

approved by the Department of Transportation, and the Maritime Transportation Security Act of 2002, Coast Guard rules and regulations, and other current or future regulations;

(v) matters relating to experience that the parties, their affiliates, and/or their contractors have had at other locations or in connection with other programs relating to technology, processes, systems, software, databases, and/or general administration with respect to the matters described in Article 5.1;

(vi) off-peak operations at marine terminal facilities in the Port, including: measures to encourage use of off-peak hours, recovery of costs of establishing and maintaining off peak operations, hours and days of service, services and facilities to be made available, and measures to facilitate efficient payment, collection and distribution of any funds collected with regard to off-peak operation. Any measures, activities or charges adopted pursuant to this subparagraph may be applied with respect to peak hour shipments in furtherance of or in connection with an off-peak hours program. Provided, that the parties will not implement an off-peak program agreed to pursuant to this paragraph (vi) unless and until (1) they have filed a further amendment to this Agreement authorizing such implementation, and such amendment has become effective under the Shipping Act of 1984, as amended, and (2) a copy of an MTO schedule setting forth the material details of such off-peak program has been provided to the Federal Maritime Commission ("FMC") not less than forty-five (45) days prior to the effective date of such program. Said schedule may thereafter be revised without further amendment to this Agreement, provided that the parties provide the FMC with a copy of the revised schedule at least thirty (30) days prior to implementation; and

(vii) In view of the urgent need to ease congestion in the Port of Oakland, and pursuant to the authority contained in Article 5.1(vi) and elsewhere in this Agreement, the Parties hereby agree that they shall open their terminals for one or more additional shifts per week for such time period and for such number, scheduling and duration of additional shifts as they may from time to time agree. The number, scheduling and/or duration of such additional shift(s) may be uniform or, if one or more Parties so decides, non-uniform. Initially, one (1) additional shift per week shall be added. In order to offset in whole or in part the costs of such additional shift(s) and to encourage use of the additional shift(s), the Parties shall establish a fee to be assessed on some or all of the cargo moving via their terminals at the Port of Oakland. The amount of such fee and the terms and conditions of its application and collection shall be set forth in a marine terminal operator schedule to be published by the Parties, which fee and schedule may be adjusted and/or revised from time to time as the Parties may agree. The fee shall initially be collected via a limited liability company to be established by the Parties and to be named OAKPASS, LLC (or such other name as the Parties may decide), which may subcontract with one or more other entities to perform some or all administrative functions related to the collection of the fee and the administration of the program offering additional shift(s).