



## MERCHANT ACCOUNT SET UP REQUEST

### Merchant Information

Company Name:
Doing Business As (if applicable):
Supplier:

### Financial Office/Remittance Address

Finance Manager:		
Address 1:		
Address 2:		
City/State:	Postal Code:	Country:
Email:		
Phone:	Fax:	

### Physical Address

Operations Manager:		
Address 1:		
Address 2:		
City/State:	Postal Code:	Country:
Email:		
Phone:	Fax:	

### Parent Company (if applicable)

Company Name:		
Address 1:		
Address 2:		
City/State:	Postal Code:	Country:
Email:		
Phone:	Fax:	

### Notification Contacts

Communication	Email:	Phone:
Fuel & Handling Requests		

### Tax Information

In accordance with the laws of the United States Internal Revenue Service, KHI is required to obtain a completed W-9 form all merchants based within the United States. For companies outside of the United States, a W-8 form or the enclosed W-8 Substitution form is required. Your merchant account set up will NOT be completed without one of the below forms. Please select which form is to be submitted.

W-9    W-8    W-8 Substitution



## MERCHANT AGREEMENT

THIS MERCHANT AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Agreement) by and between, \_\_\_\_\_ (MERCHANT) located in \_\_\_\_\_ and Kropp Holdings Inc., a Maryland corporation with an office at 8650 College Boulevard, Overland Park, Kansas 66210 (PROCESSOR).

**A. MERCHANT AGREES:**

1. To honor its OPEN MARKET contractual commitments made with the U.S. Government under the SEA Card® Online Program.
2. To follow all procedures and purchase policies applicable to the purchase of Marine Fuel and Ancillary Services under the SEA Card® Online Program, including but not limited to those relating to invoicing and transaction authorization.
3. To transmit all Invoice information to the PROCESSOR representing all purchases made via the SEA Card® Online system.
4. To pay PROCESSOR the Service Fee in accordance with the Payment Option as selected in writing by MERCHANT. MERCHANT authorizes PROCESSOR to deduct and retain for its own account from each payment due to MERCHANT under the acceptable Payment Option the Service Fee arrived at by multiplying the percentage amounts corresponding to the Payment Option selected by MERCHANT times the total amount of each Invoice included in the PROCESSOR payment to MERCHANT.
5. To acknowledge that MERCHANT is not entitled to payment until all aspects of a transaction have been fulfilled as required in the SEA Card® Operating Procedures. A valid SEA Card® transaction is considered fulfilled and authorized for payment only after approval by an authorized Government Official.
6. Amounts representing Merchandise purchases not made in accordance with the SEA Card® Operating Procedures will be rejected by PROCESSOR. If a transaction is paid and billed to a DLA Customer, who subsequently rejects the transaction, this amount will be deducted from the next regular payment due to the MERCHANT.
7. PROCESSOR PAYMENT OPTION. MERCHANT hereby elects the Payment Option and corresponding PROCESSOR Service Fee percentage as follows:

Payment Option	PROCESSOR will electronically send payments based on the schedule below equal to the net invoice amount for all invoices	Service Fee Percentage
A	Four Week Pay - Payment will be sent approximately 20-21 business days after Government Approval Date	2.25%
B	Two Week Pay - Payment will be sent approximately 10-11 business days after Government Approval Date	2.75%
C	One Week Pay - Payment will be sent approximately 5-6 business days after Government Approval Date	3.25%
D	Three Day Pay - Payment will be sent approximately 3-4 business days after Government Approval Date	3.75%

The above selected Payment Option and corresponding Service Fee Percentages shall remain in effect until the date that PROCESSOR receives and accepts the MERCHANT's signed written instrument selecting a new Payment Option and corresponding Service Fee percentages being effective for all PROCESSOR payments made to the MERCHANT on and after such date of receipt and acceptance.

**B. PROCESSOR AGREES TO:**

1. After receiving confirmation from the U.S. Government that an OPEN MARKET delivery has been made in accordance with MERCHANT's contractual obligations to the U.S. Government, make payments to the MERCHANT in accordance with the Payment Option selected by MERCHANT less the amounts due to PROCESSOR per such Payment Option.
2. Provide MERCHANT operating guidance, which outline's procedures and purchase policies, authorized product/services, invoice and payment information and any other written materials which PROCESSOR determines that the MERCHANT will require to fulfill MERCHANT's obligations under this agreement. The SEA Card® Operating Procedures shall be provided to MERCHANT by PROCESSOR.
3. Keep confidential all proprietary or confidential information or data of MERCHANT received from MERCHANT or otherwise obtained by PROCESSOR in the course of performing this Agreement. Such information or data shall be used by PROCESSOR solely for the purpose of performing its obligations under this Agreement or in the course of fulfilling its obligations as PROCESSOR of the SEA Card®. PROCESSOR shall not disclose such information to any third party, including but not limited to affiliates of PROCESSOR. Notwithstanding the foregoing, PROCESSOR shall be permitted to make disclosures to the U.S. Government required in the course of fulfilling its obligations as PROCESSOR of the SEA Card® and disclosures required by law, regulation or any court of competent jurisdiction.

This agreement: (i) may be terminated at any time by either PROCESSOR or MERCHANT upon written notice given to the other party; (ii) shall be automatically terminated upon change in control, ownership or management of MERCHANT; (iii) may not be assigned by MERCHANT without the written consent of PROCESSOR, and (iv) shall be governed by and construed in accordance with the laws of the State of Maryland and subject to the jurisdiction of the courts of the State of Kansas situated in Johnson County.

Executed this _____ day of _____ 20____	Accepted this _____ day of _____ 20____
(MERCHANT)	Kropp Holdings Inc.(PROCESSOR)
(PRINTED NAME)	(PRINTED NAME)
(SIGNATURE)	(SIGNATURE)
(TITLE)	(TITLE)

## PAYMENT SELECTION FORM

This document authorizes Kropp Holdings, Inc (KHI) or its affiliate to:

- Deposit funds into the undersigned's bank account by means of Electronic Funds Transfer for payment of goods and services processed by the KHI SEA Card® Processing Center.
- Withhold processing fees as selected below from the reimbursement of invoice payments.
- Initiate funds withdraw for adjustments or offsets in the event of billing errors or chargebacks. Disputes regarding deposits should be made within fifteen days of issuance of the account statement. Disputes regarding charges should be made within forty-five days after the account was charged.

This authorization will remain in effect until notification in writing of cancellation.

Below is the Processing Fee Schedule outlined in the KHI Merchant Agreement and Operating Procedures. The selected fee option will be withheld from all payments made directly from KHI. Please select one.

- Option A: Four Week Pay at 2.25%** - Payment will be sent approximately 20-21 business days after the KHI processing date.
- Option B: Two Week Pay at 2.75%** - Payment will be sent approximately 10-11 business days after the KHI processing date.
- Option C: One Week Pay at 3.25%** - Payment will be sent approximately 5-6 business days after the KHI processing date.
- Option D: Three Day Pay at 3.75%** - Payment will be sent approximately 3-4 business days after the KHI processing date.

\*An additional fee of \$40 (per invoice) will be assessed for any invoice submitted via manual methods, which includes mail, courier, fax or email.

### Country: Bank Details for Payment

Bank Name:		
City:	Postal Code:	Country:
IBAN:		
ABA/SWIFT:		Acct Number:

### Authorized by:

Name:		
Company:		
Address 1:		
Address 2:		
City:	Postal Code:	Country:
Email:		
Phone:		Fax:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PLEASE SEND A COPY OF A VOIDED CHECK WHEN RETURNING THIS FORM.

## SEA Card<sup>®</sup> Operating Procedures

These Operating Procedures (“Operating Procedures”), as amended from time to time by Kropp Holdings Inc. (“KHI”) detail the manner in which transactions under the SEA Card<sup>®</sup> program are to be submitted and processed as well as to outline Service Fees and payment schedules.

### 1. Introduction

The Defense Logistics Agency Energy (“DLA Energy”) has entered into an agreement with KHI to provide a purchasing network to facilitate the purchase of Marine Fuels and a limited number of Non-Fuel Products and Services via a program called SEA Card<sup>®</sup> (“SEA Card<sup>®</sup>”) designed specifically for DLA Energy. SEA Card<sup>®</sup> account holders must be approved by DLA Energy to participate in the program.

The DLA Energy SEA Card<sup>®</sup> program is used for two types of bunker fuel purchases: DLA-Contract and Open Market purchases. For both types of transactions, the Department of Defense SEA Card<sup>®</sup> System is used as the ordering and transaction processing system. Ancillary charges associated with fuel purchases are also processed through the SEA Card<sup>®</sup> System as outlined below.

Kropp Holdings Inc., whose registered office is at 4 North Park Drive, Suite 412, Cockeysville, Maryland 21030, is a transaction processor and added service provider to the marine industry. KHI offers a purchasing network and Order Management System to facilitate the purchase of Marine Fuels and Non-Fuel Products and Services by U.S. military services, U.S. Coast Guard and authorized federal agencies. KHI, has agreed to build, maintain and support a network of Merchants to sell Marine Fuels and a limited number of Non-Fuel Products and Services to SEA Card<sup>®</sup> account holders requiring DLA-Contract and Open Market supply.

Merchants wanting to be part of the SEA Card<sup>®</sup> Merchant network must abide by the following Operating Procedures and also complete the SEA Card<sup>®</sup> Merchant Agreement. Signing of Merchant Agreement constitutes acceptance of the terms and conditions set forth within this Operating Procedures document which pertains solely to the DLA Energy SEA Card<sup>®</sup> Government program.

### 2. Appointment as a Merchant

- You accept appointment as a Merchant under the terms of the related Merchant Agreement for the sale of Marine Fuels and/or the provision of a limited number of Non-Fuel Products and Services to SEA Card<sup>®</sup> account holders; Acceptable Non-Fuel Products and Services on the DLA Energy SEA Card<sup>®</sup> program include, but are not limited to, fueling services such as barging, wharfing, boom fees, overtime, and others as allowed in the SEA Card<sup>®</sup> System.
- For so long as KHI issues SEA Card<sup>®</sup> on behalf of DLA Energy, this will be the only accepted vehicle for purchases of Marine Fuels, Non-Fuel Products or Services made using the SEA Card<sup>®</sup> program. This means you agree not to direct bill or otherwise process transactions when a SEA Card<sup>®</sup> account holder initiates a transaction through use of the SEA Card<sup>®</sup> System.

### 3. Getting Started and Using the SEA Card<sup>®</sup> System

- All Merchants wishing to supply SEA Card<sup>®</sup> account holders with Open Market requirements are required to have a current Merchant Agreement with KHI.
- All Merchants participating in the SEA Card<sup>®</sup> program must comply with the following Federal Acquisition Regulation (“FAR”) Requirements:
  - Registration in the System for Award Management (SAM) at <https://www.sam.gov>
- Upon enrollment in the SEA Card<sup>®</sup> program, the Merchant will be issued a SEA Card<sup>®</sup> Merchant account and instructions on how to securely access the online SEA Card<sup>®</sup> System.
- The Support Team will provide the Merchant with training on the use of the SEA Card<sup>®</sup> System.
- In order to ensure efficient communication and reimbursement, the Merchant will need to provide the Support Team with the following information and ensure that the Support Team is updated promptly when the information changes:
  - Name(s) and contact details (including individual email addresses) of the individuals nominated by the Merchant to deal with enquiries;
  - Ports at which the Merchant wishes to provide or procure Marine Products or Non-Fuel Products and Services;
  - The Marine Fuels and/or Non-Fuel Products and Services which can be supplied by the Merchant;
  - The name and location of the physical supplier of the fuel, if applicable
  - Merchant bank details to enable the transfer of funds.
  - Merchant must retain each bunker delivery receipt or invoice copy for a period of at least three (3) years or for any longer period as required by statute from the date of delivery of Marine Fuel or other Non-Fuel Product or Service. You agree to provide KHI with a copy of a bunker delivery receipt (fuel) or invoice within seven (7) Business Days of request.
  - Merchant will upload delivery receipt notice under SEA Card<sup>®</sup> order using the upload tool.

## SEA Card<sup>®</sup> Operating Procedures (continued)

### 4. Acceptable Transactions

- Acceptable transactions must be received from, and processed through, the SEA Card<sup>®</sup> System. In the event of a systems outage, this can be done directly via the Support Team.
- Only valid SEA Card<sup>®</sup> account numbers are able to be used in the SEA Card<sup>®</sup> System. If, for logistical or timing reasons, orders are taken outside of the systems, the validity of the vessel or SEA Card<sup>®</sup> account holder should be checked with the SEA Card Support Team, as appropriate.
- The Merchant is not permitted to submit transactions on SEA Card<sup>®</sup> accounts that represent replacement for uncollected funds from another payment method, such as a returned check. The Merchant will additionally not be permitted to submit transactions that represent a bad debt or potential bad debt with regard to the Merchant's own accounts receivable.
- The Merchant is not permitted to submit transactions if the Merchant has knowledge of any fact or circumstance that may impair its validity and the ability to collect.
- The Merchant is not permitted to submit transactions prior to the effective date of DLA Energy contracts unless specifically approved in writing by KHI who in turn shall seek approval or guidance from the Government SEA Card<sup>®</sup> Bunkers Contracting Office.

### 5. Contract Fuel Orders

- The Merchant will initially be notified of a DLA-Contract Order via email and will be asked to access and accept the order online via the SEA Card<sup>®</sup> System before the order is considered a bona fide order.
- The Merchant will accept the order or, if unable to supply against the contract, will provide a reason for not supplying. Where the order is outside the terms and conditions of the contract (e.g. an order not meeting advance notice requirements or minimum delivery requirements under the contract), the Merchant may submit a counteroffer, providing, however, that the Merchant's counteroffer is not to supply a different grade of fuel than is requested or covered under the DLA contract.
- For detailed procedures on the SEA Card<sup>®</sup> System and transaction flows for Contract transactions please visit [www.seacardsys.com](http://www.seacardsys.com)

### 6. Open Market Marine Fuel or Non-Fuel Products and Services Orders

- When a request for quote or inquiry is received from the SEA Card<sup>®</sup> System, the Merchant, if participating in supplying that product or service, will submit quotes for Marine Fuels and/or Non-Fuel Products and Services using the SEA Card<sup>®</sup> System.
- The Merchant is not obligated to quote on any inquiry or supply requirement.
- For all quotes made by the Merchant for Open Market supply requirements, the unit price quoted shall be for product delivered to the vessel inclusive of all delivery or transportation charges.

### 7. Fuel Supply Agreements

- The related Merchant Agreement specifically covers the use of the SEA Card<sup>®</sup> System and payment for purchases using said programs, however, the related Merchant Agreement does not govern product supply and delivery by you.
- The agreement and terms & conditions for the supply and delivery of Marine Fuels and Non-Fuel Products and Services to SEA Card<sup>®</sup> account holders is stated on SEA Card<sup>®</sup> System as part of the inquiry.
- You acknowledge that KHI and/or any of its affiliates are acting as a processor only and at no time takes title or risk on any product or service supplied and at no time does such title or risk pass to DLA Energy or KHI. Any dispute arising under or about such a purchase is a matter between the Merchant and the SEA Card<sup>®</sup> account holder.

### 8. Finalizing Orders and Entering Fulfillment & Invoice Information

- After delivery, the Merchant will input all fulfillment and invoice information in full using the SEA Card<sup>®</sup> System, including but not limited to quantities, units of measure, unit price, Non-Fuel Products and Services, and total invoice value for all sales made through the SEA Card<sup>®</sup> System.
- The Merchant is responsible for entering correct prices, charges and taxes into the SEA Card<sup>®</sup> System. KHI is not responsible for accurate input of this data. Applicable taxes must be reported on a separate line (example - FET, State Tax, VAT, GST, Sales Tax) as they are applied to individual product items.
- Non-Fuel Products and Service charges may be entered on the same transaction with fuel items. Please note the SEA Card<sup>®</sup> program only allows a limited number of Non-Fuel Products and Services to be added to the transaction.

## SEA Card<sup>®</sup> Operating Procedures (continued)

- The Merchant must still provide a completed bunker delivery receipt to the receiving vessel for fuel and obtain a signed acknowledgement of receipt of fuel from an authorized vessel's representative. (See Section 13 - "Retention and Furnishing of Records") Receipts, invoice copies and any supporting documentation should be uploaded into the system and stored with the transaction for future reference.

### 9. Invoicing and General Payment Terms

- KHI will process invoices electronically for payment once approved by an authorized Government official with a SEA Card<sup>®</sup> account and will collect funds from these account holders.
- KHI will have the right to offset outstanding amounts owed by the Merchant on the Merchant's SEA Card<sup>®</sup> account against any sums payable to the Merchant by KHI under any contract, agreement or arrangement.
- KHI will pay the Merchant by electronic funds transfer unless otherwise agreed. Merchants should ensure that KHI has the correct bank details for correct transfer of funds.
- Merchant acknowledges that the payment received from KHI will be a good discharge of the obligation of the SEA Card<sup>®</sup> account holder to make a payment under a Marine Fuels or Non-Fuel Product and Services agreement for transactions conducted using the SEA Card<sup>®</sup> System.
- KHI will pay the Merchant the invoice amount less the applicable Service Fee. This Service Fee will be a fixed percentage of the value of the Marine Fuels and Non-Fuel Products and Services invoiced in a valid Invoice. This Service Fee will be withheld at the time of payment of each invoice. Service Fees and Payment Schedules are detailed in the following section.
- The Merchant agrees to reimburse KHI and/or agrees that KHI has the right to refuse payment on a transaction if:
  - The relevant Government SEA Card<sup>®</sup> account holder disputes the transaction with regard to the nature, quality or performance of the goods or services purchased in the transaction, or such goods and services are returned or rejected by the SEA Card<sup>®</sup> account holder, or such goods and services are not provided by the Merchant.
  - The transaction violates any applicable law or procedures as specified by the related Merchant Agreement.
  - The procedures set out in these Operating Procedures are not followed.
  - For charges billed to an invalid SEA Card<sup>®</sup> account.
- KHI will not make SEA Card<sup>®</sup> payments in the event that DFAS or another paying body of the US Government has given instruction to withhold payment because of disputes or any wrongful act or omission by the Merchant.
- All charges or quotes for SEA Card<sup>®</sup> Open Market transactions and for ancillary charges, when submitted, should be fully built up prices, which may include costs associated with acceptance of the SEA Card<sup>®</sup>, such as Service Fees. KHI has the right to seek full restitution, including legal actions, for all due payments in the event of a Merchant business change that affects the relationship to KHI. This can include actions ranging from, but not limited to, bankruptcy, insolvency, appointing a receiver or a liquidator over its business, change of ownership, sale of business or a material part of the assets, significant closure of operations and ceasing to do business.

### 10. Service Fees and Payment Schedules

Service Fees will be charged for transactions processed as follows:

- DLA-Contract Fuel Purchases:
  - No Service Fees are assessed on any fuel delivered under a contract between DLA Energy and the Merchant. Reimbursement will be made to the Merchant by DFAS.
- Open Market SEA Card<sup>®</sup> Purchases and all Non-Fuel Product and Service Charges:
  - Merchants will be reimbursed by KHI on behalf of the customer.
  - Merchant must select a payment option for SEA Card<sup>®</sup> payments. Payment options are defined below.
  - KHI will pay Merchants for bona fide invoices approved by an authorized Government SEA Card<sup>®</sup> account holder based on the schedule below equal to the net invoice amount for all invoices:
    - Four Week Pay (2.25% Service Fee): Payment will be sent approximately 20-21 business days after Government Approval Date
    - Three Week Pay (2.75% Service Fee): Payment will be sent approximately 10-11 business days after Government Approval Date
    - Two Week Pay (3.25% Service Fee): Payment will be sent approximately 5-6 business days after Government Approval Date
    - Fast Pay (3.75% Service Fee): Payment will be sent approximately 3-4 business days after Government Approval Date
  - If the payment due date is a U.S. banking holiday, payment shall be sent on the first U.S. banking day following the holiday.
  - A bona fide invoice is defined as an electronic invoice that has been generated by the SEA Card<sup>®</sup> System after delivery fulfillment details have been entered by the Merchant and subsequent approval of the details has taken place by an approved Government official. This official is known as DLA Energy's "Authorizing Official". It is not necessary for a Merchant to submit a paper invoice, nor will Merchant-submitted paper invoices be considered a bona fide invoice.

## SEA Card<sup>®</sup> Operating Procedures (continued)

### 11. Disputes

- KHI is not responsible for resolving disputes for Marine Fuel, Open Market, or Non-Fuel Products and Services purchases including but not limited to pricing, quantity, quality, taxes or the provision and charging for services. All disputes must be resolved directly between the Merchant and the SEA Card<sup>®</sup> contracting officer who made the award. For DLA-Contract fuel purchases, disputes should be brought to the attention of the appropriate DLA Energy Contracting Officer, as should any unresolved disputes involving ancillary charges relating to a contract fuel purchase. Once approved by the customer, payments to Merchants for previously disputed items will still be transacted through the SEA Card<sup>®</sup> System and Service Fees will be deducted from the payment.
- The SEA Card<sup>®</sup> Support Team will, if requested, facilitate the exchange of information or relevant documentation between the Merchant and the customer to assist in resolving disputes.
- KHI is not responsible for the Merchant's ability to provide product or services.
- The Merchant must advise the Support Team immediately if any dispute arises which would impact the fulfillment or invoicing schedule or the payment of the invoice by the customer within agreed terms.
- The Merchant will, at all times, endeavor to work with customers to resolve disputes rapidly to ensure payment within agreed terms can proceed.

### 12. Chargeback and Credit Transactions

- KHI will have the right to deduct the amount of a chargeback from the next payment(s) to the Merchant or to issue a demand letter.
- The Merchant cannot resubmit transactions which have been previously charged back, without written consent of KHI.

### 13. Retention and Furnishing of Records

- The Merchant agrees to maintain a copy of each bunker delivery receipt or invoice copy for at least three years after the delivery date.
- The Merchant agrees to provide the customer or Support Team with a copy of any bunker delivery receipt, invoice or associated paper records within seven (7) business days of receiving such a request.

### 14. Advertising

- The Merchant may use promotional materials to display or advertise that it is a SEA Card<sup>®</sup> Merchant for as long as they are a SEA Card<sup>®</sup> Merchant.
- The Merchant cannot use promotional materials in any way which suggests or implies that DLA Energy or KHI endorses their goods or services.

### 15. Merchant Information Technology ("IT") Capability

You will ensure that for so long as you are a Merchant that:

- You will have adequate IT systems, and appropriate IT support, to enable you to submit transactions for processing as required in these Operating Procedures.
- Any costs associated with ensuring that you have adequate IT systems including the setup, development and testing of your IT system, shall be the Merchant's responsibility alone.
- You shall ensure that proper controls are instituted and enforced so that transactions made via the SEA Card<sup>®</sup> System are secure and such security is maintained in accordance with best industry practice.

### 16. Merchant Warranties

You will ensure that for so long as you are a Merchant that:

- You will abide by all applicable laws and have and will maintain in full force and effect all licenses, permits, approvals and other regulatory or statutory consents that are required, necessary or advisable for the performance of your obligations under the associated Merchant Agreement;
- You will comply with the SEA Card<sup>®</sup> Operating Procedures

You confirm at the date of the related Merchant Agreement that:

## SEA Card<sup>®</sup> Operating Procedures (continued)

- The related SEA Card<sup>®</sup> Merchant Agreement and Operating Procedures have been duly authorized by all necessary corporate and entity actions and they do not contravene any provisions of the constitutional documents under which you are incorporated or otherwise constituted;
- There is no action, suit or other proceeding at law or in equity now pending or, to your knowledge, threatened by or against you which would substantially impair your right to carry on your business or adversely affect your financial condition or operation.

### 17. Confidentiality

Merchant and Processor both agree to keep confidential and use only for the purposes of the related Merchant Agreement and Operating Procedures, all information (written or oral) concerning the business and affairs of the other that each have obtained or received as a result of the discussions leading up to or the entering into the related Merchant Agreement, except for information which is:

- Already in the possession of one party where one party has obtained the information in a way that:
  - is in the public domain other than as a result of a breach of this Clause 5;
  - is required to be disclosed pursuant to law or regulation applicable from time to time or on behalf of any competent regulatory authority
  - is required to be disclosed by order of any court of competent jurisdiction
  - Merchant and processor each undertake to the other to take all such steps that shall from time to time be necessary to ensure compliance with the provisions of Clause 5 above by its employees, agents and subcontractors.

### 18. Audit and Review of Performance

DLA-Energy and KHI have the right at all reasonable times and on reasonable notice in writing of at least fourteen (14) days to audit and inspect your systems, procedures, supporting documentation, financial and other books and records to the extent that they relate to your obligations under the related Merchant Agreement and Operating Procedures.

Merchants are also required to respond to DLA-Energy or KHI surveys should the need arise.

### 19. Limit of Liability

Neither Party shall be liable to the other Party under the related Merchant Agreement for any indirect or consequential loss or damage (including loss of profits, business, contracts, anticipated savings, revenue or goodwill) suffered by the other Party whether such loss is caused by that Party's breach of its contractual obligations or by any tortious act or omission (including negligence) or in any other way.

### 20. Termination

Either of party may terminate the related Merchant Agreement as set out below:

- By giving to the other Party not less than 90 days' written notice of termination to expire at any time.  
At any time upon the service of written notice of termination by one Party on the other in any of the following circumstances:
  - Immediately if the other Party commits a material breach of any of the terms of the related Merchant Agreement;
  - Immediately if the other Party commits any other breach of any of the terms of the related Merchant Agreement and fails to remedy such breach within thirty (30) days following notice of such breach;
  - Immediately if the other Party becomes insolvent, or if an administrator, administrative receiver or receiver is
  - Appointed in respect of the whole or any part of the Party's assets or business, or if the other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

### 21. Change of Control

The Merchant shall inform the Support Team of a Change of Control within one (1) month following such Change of Control and the Support Team may elect to serve notice of termination of the related Merchant Agreement provided that such notice is given within sixty (60) days of Processor becoming aware of such change.

### 22. Notices

- No alteration to or variation to the terms of the related Merchant Agreement shall be valid unless made in writing and signed by both Parties. The Operating Procedures are subject to change pursuant to its terms.



## SEA Card<sup>®</sup> Operating Procedures (continued)

- Any notice ("Notice") to be given under or in connection with the related Merchant Agreement and all related documents shall be in writing and shall either be delivered personally, sent by First Class mail, sent electronically, or by fax (with a copy sent by first-class mail at the same time for confirmation purposes only). The address for service of each Party shall be its address set out below and a Notice shall be considered to have been served properly at the following times:
  - o where personally delivered, at the time of delivery;
  - o where sent by First Class airmail on the fifth Business Day after the date of postage; and
  - o if sent by facsimile, the Business Day after its dispatch.

In proving service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such Notice was properly addressed and delivered into the custody of the postal authority as a First Class recorded delivery or employing certified mail return receipt.

Notices from the Merchant should be sent to:

By EMail: [merchant-support@seacardsys.com](mailto:merchant-support@seacardsys.com)

By Fax: +1.913.217.9358

By Mail: SEA Card<sup>®</sup> Operations Center, 8650 College Blvd., Overland Park, KS 66210 USA

### 23. Governing Law and Jurisdiction

The related Merchant Agreement and Operating Procedures shall be governed by and construed in accordance with internal laws of the State of Maryland, USA. The Parties expressly agree that the transaction described in the related Merchant Agreement and all related documents bear a reasonable relationship to the State of Maryland, USA, that the Agreement and all related documents shall in all respects be governed by Maryland law and the Parties agree to submit to the exclusive jurisdiction of the federal courts presiding over Baltimore County, Maryland in any action of proceeding arising out of or relating to the related Merchant Agreement and all related documents and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court, except as provided below. For any matter or controversy not qualifying for federal subject matter jurisdiction, the exclusive jurisdiction and forum shall be in the District Court of Baltimore County, Maryland and each of the Parties agrees that all claims in respect of the action or proceeding may be heard and determined in any such court and the Parties hereto agree to such jurisdiction and forum. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceedings so brought and waives any bond, surety or other security that might be required of any Party or any other party with respect to any such action or proceeding. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Nothing in Section 23 will affect the right of any Party to serve legal process in any other manner by law or inequity.

### 24. Indemnification

- Except for KHI's willful misconduct, gross negligence or negligence, Merchant agrees to indemnify and hold harmless KHI, its officers, directors, employees, successors, assigns, subsidiaries, and affiliates from and against any and all losses, damages, costs, and expenses (including, without limitation, any reasonable attorneys' fees and court costs), liabilities, claims, settlements, and judgments arising out of:
  - o Merchant's or its employees' or agents' gross negligence, willful misconduct or negligence in the performance of its duty and obligation under the related Merchant Agreement and Operating Procedures;
  - o The failure by Merchant or its employees or agents to properly comply with the terms of the related Merchant Agreement and all related documents; or
  - o Merchant or its employees' or agents' errors or omissions regarding the subject matter hereof.
- Except for Merchant's willful misconduct, gross negligence or negligence, KHI agrees to indemnify and hold harmless Merchant, its officers, directors, employees, successors, assigns, subsidiaries, and affiliates from and against any and all losses, damages, costs, and expenses (including, without limitation, any reasonable attorneys' fees and court costs), liabilities, claims, settlements, and judgments arising out of:
  - o KHI or its employees' or agents' gross negligence, willful misconduct or negligence in the performance of its duty and obligation under the related Merchant Agreement and Operating Procedures;
  - o The failure by KHI or its employees or agents to properly comply with the terms of the related Merchant Agreement and all related documents; or
  - o KHI or its employees' or agents' errors or omissions regarding the subject matter hereof.

### 25. Force Majeure

Neither Party shall be liable to the other for failure to perform the related Merchant Agreement and all related documents where such failure to perform is due to any natural disaster, fire, flood, storm, strike, labor unrest, acts of God, equipment or power interruptions (when not due to the negligence of the nonperforming Party, its employees and contractors), interruptions in the telephone systems, failures in third-party computer software or hardware, or any cause beyond the non-performing Party's reasonable control provided that written notice of such Force Majeure event is

## SEA Card<sup>®</sup> Operating Procedures (continued)

provided to the other Party within ten (10) days of such event. However, in the event that any Party declares Force Majeure and shall be unable to re-commence performance within sixty (60) days of the date of the onset of Force Majeure, the Parties agree that they will meet and negotiate in good faith concerning acceptable solutions to the situation.

### 26. Assignment and Binding Effect

The related Merchant Agreement and all related documents shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The related Merchant Agreement and all related documents are personal to Merchant and KHI and Merchant cannot assign its rights or delegate its obligations hereunder, in whole or in part, without the prior written consent of KHI, which consent shall not be unreasonably withheld or delayed. In the event of any consent to assignment, the assigning Party shall continue to be liable for its obligations (pre- and post-assignment). Any attempt at non-permissible assignment of delegation without such consent shall be null and void.

### 27. Definitions

Unless the context requires a different interpretation, where words have initial capitals, those words will have the meanings set out below:

- **“SEA Card<sup>®</sup> Account Holder”** – A Vessel Ordering Officer or other authorized holders of SEA Card<sup>®</sup> account approved by DLA Energy to make purchases using the SEA Card<sup>®</sup> System.
- **“Change of Control”** – In relation to a party, the acquisition by any person of (i) ownership or control of more than 50% of the voting share capital of the party or any of its parent companies; (ii) the ability to direct more than 50% of the votes exercisable at a general meeting of a party or any of its parent companies or (iii) the right to appoint or remove directors holding a majority of the voting rights at board meetings of a party of any of its parent companies.
- **“SEA Card<sup>®</sup> System”** – The SEA Card<sup>®</sup> order management system accessible via [www.seacardsys.com](http://www.seacardsys.com) owned and operated by KHI for the SEA Card<sup>®</sup> Program;
- **“Marine Fuels”** – Fuel used for marine applications, other than for a term bunker contract with DLA Energy.
- **“Merchant Marine Criteria”** – Defined as the following:
  - o when registering for SEA Card<sup>®</sup>, may not be listed on the Government Prohibited Parties List at <http://www.epls.gov> or Office of Foreign Assets Control (OFAC) Specifically Designated Nationals (SDN) list at: <http://www.treas.gov/offices/enforcement/ofac/sdn/>
  - o must be able to effectively access websites via internet connection
  - o must be accessible for communications 24 hours a day, 7 days a week
  - o must agree to all the terms and conditions of the related Merchant Agreement
  - o shall, if requested, provide proof of financial viability
  - o Must meet Local and Marine Industry Health, Safety & Environmental Quality and Assurance Standards. Where the Merchant cannot conform to the requirements below due to a particular port situation, the Merchant must indicate this on the order nomination at the time Merchant responds to initial order inquiry as well as on the order confirmation Specifically Merchant Warrants that it and relevant subcontractors:
    - Are in compliance with all Local and Marine Industry Health, Safety & Environmental Quality and Assurance Standards
    - Adhere to MARPOL (International Convention for the Prevention of Pollution from Ships) including latest amendments, as strictly as possible within the local port
    - Adhere to SOLAS (International Convention for the Safety of Life at Sea (SOLAS), 1974) including latest amendments
    - Adhere to IMO International Safety Management Code and seek continuous improvement through OCIMF’s Tanker Management and Self-Assessment (TMSA) program (See <http://www.ocimf-tmsa.com>)
    - Comply with the recommendations set down in ISGOTT (International Safety Guide for Oil Tankers and Terminals)
    - Will supply fuel in compliance with ISO 8217 Standard for Marine Distillate & Marine residual Fuels or, where applicable, alternative military or industry specifications
    - Shall meet all Federal Acquisition Regulation (FAR) registration requirements related to Small Business Set asides (FAR 19.502), Central Contractor Registration (FAR 4.1102) and Annual Electronic Representations and Certifications (FAR 12.301(b)(2))- for details see <http://www.seacardsys.com>
- **“Non-Fuel Products and Services”** – Fueling services including but not limited to barging, wharfing, boom fees, pumpback and overtime, lubricants, chandlery services and other marine industry fueling or service related items transacted through the SEA Card<sup>®</sup> System. Whether they are associated with DLA-Contract or Open Market purchases, the Merchant is reimbursed by KHI after government authorization of the invoice.

## SEA Card<sup>®</sup> Operating Procedures (continued)

- **“Operating Procedures”** – Procedures, as amended from time to time by KHI, which detail the manner in which transactions under SEA Card<sup>®</sup> are to be submitted and processed as well as Service Fees and payment schedules;
- **“Open Market”** - The supply of fuel and services that are not covered by a bunker contract between the Merchant and DLA Energy;
- **“Parties”** – All participating entities;
- **“Party”** – One entity or the other;
- **“Service Fee”** – A fixed percentage of the invoice for Marine Fuel and Non-Fuel Products and Services supplied to a SEA Card<sup>®</sup> account holder under an Open Market Agreement
- **“Support Team”** - The team providing 24/7 support to Merchants and DLA Customers;
- **“Business Day”** – A day in any Week on which banks in New York are open for business;
- **“Contract Fuel Purchase”** - A contract fuel purchase is one in which the Merchant or the merchant’s fuel supplier has a bunker contract directly with DLA Energy. KHI serves as the transaction processor and provides the purchase information to DLA Energy so their agency, Defense Finance and Accounting Service (“DFAS”), a division of US Government, may reimburse the Merchant directly.
- **“Open Market Fuel Purchase”** – A fuel purchase in which a SEA Card<sup>®</sup> account holder elects to purchase a spot fuel requirement when the requirement cannot be met by existing DLA Energy bunker contracts or defense fuel supply points. Merchants wishing to supply Open Market requirements must be registered SEA Card<sup>®</sup> Merchants and have signed a Merchant Agreement with KHI. KHI will process and reimburse the Merchant for the transactions in accordance with their Agreement and these Operating Procedures.
- **“Merchant Agreement”** – The most recently signed agreement between KHI and Merchant regarding the SEA Card<sup>®</sup> program to establish Payment Terms and Service Fees.
- **“Marine Fuels”** – Fuel used for marine applications, other than for a term bunker contract with DLA Energy.
- **“Merchant”** – The supplier of Marine Fuels or Non-Fuel Products and Service that is a party to the Merchant Agreement with the Processor, Kropp Holdings Inc.

In all types of transactions, all rules and regulations in these Operating Procedures must be followed in order to obtain reimbursement.

### 28. Revisions

- We may revise these Operating Procedures, and any revisions shall become effective fourteen (14) days after notification by KHI. The Merchant shall be deemed to have agreed to this and any future revisions by continued participation in the SEA Card<sup>®</sup> programs after the effective date of the revisions.