



# PNCT – LPG TERMINAL TRACTOR

## REQUEST FOR PROPOSALS (RFP)

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### **GENERAL**

The Port Newark Container Terminal, LLC (PNCT) is located in Newark, New Jersey and is in a long-term lease agreement with the Port Authority of NY & NJ to operate the 300+-acre shipping container terminal. As a key component of one of the largest port facilities in the United States, PNCT handles over 1.7 million twenty-foot equivalent units (TEUs) annually. With total containerized volume (loaded and empty) in excess of 9.5 million TEUs annually, the Port of New York and New Jersey (PONYNJ) was the busiest in the United States as of February 2023. The PONYNJ complex serves more than 20 million regional consumers and is within a day's travel for more than 100 million people. PNCT has a long-standing commitment to the environment and moves more than 20% of its ship volume via rail, massively reducing the overall carbon footprint of terminal operations.

PNCT container handling operations utilize Terminal Tractors to transfer containers to/from the container yard to the rail yard. Nineteen of PNCT's Terminal Tractors are Diesel engines. As part of PNCT's initiative to reduce emissions, PNCT will be replacing these Terminal Tractors with an LPG variant resulting in far more efficient terminal tractors that run on clean, low-emitting propane fuel. These tractors will reduce more than 99% of harmful NO<sub>x</sub> particulate and 27% Green House Gas (GHG) emissions compared with the diesel vehicles currently in use at the port facility.

PNCT is now seeking professional manufacturers to provide a complete detailed design package, including but not limited to drawings, technical specifications and emission studies for the replacement of these Terminal Tractors with an LPG variant.

Interested Parties shall submit their proposals in accordance to the instructions and scope of work detailed in this RFP and the accompanying addenda to this RFP.



## PROJECT DESCRIPTION

As part of our Emissions reduction initiative, PNCT will be replacing 19 Diesel Terminal Tractors with 19 LPG Terminal Tractors. These Terminal Tractors will be utilized by operations to move container cargo to/from the container yard to the rail yard via in-terminal use bomb carts. The connection from the container yard to the rail yard contains a flyover bridge with a 5% grade incline. The Terminal Tractors must be capable of hauling 180,000 lbs. over this flyover bridge and must be suitable to run continuously over 12 hours per day.

## TECHNICAL SPECIFICATION REQUIREMENTS

The key features of the requested Terminal Tractors must include:

### 1 Documentation

- 1.1 All documentation shall be in English
- 1.2 All documentation shall be delivered in hard and soft copy
- 1.3 US safety instructions shall be included
- 1.4 One Operational manual per TT
- 1.5 One Maintenance instructions per TT
- 1.6 One spare parts manual per TT

### 2 Machine directives

- 2.1 ISO/DIN/CETOP compliant
- 2.2 OSHA, NJ DEP

### 3 Safety systems

- 3.1 All warning signs acc. to OSHA
- 3.2 ABC Fire extinguisher 4 LB in cabin
- 3.3 Engine compartment DAFO automatic fire suppression system
- 3.4 Reverse signal alarm
- 3.5 Green indication light on roof, active when seatbelt is locked
- 3.6 Green indication light on roof, active seat pressure switch
- 3.7 Reflecting tape red / white on side steps, at the rear and all-round the cabin
- 3.3 Warning stripes at front (black / yellow)
- 3.9 Steel safety guard installed behind cabin
- 3.10 Warning stripes (black / yellow) on LPG-tank corners
- 3.11 Limp-mode for any Engine/Trans faults

### 4 Generic requirements

- 4.1 Capable of hauling 180,000 lbs (82t metric) Gross Combined Weight (GCW)

4.4 Wheel base: 116"-118" 3000mm

4.3 Min turning circle

## 5 Drive train

5.1 4x2

5.5 Automatic gearbox: Allison 3000, 5 fwd. 1 rev

5.5 Interlock protection against reverse shifting in fwd. motion and gear ratio

5.4 OEM ECO mode option ECO MODE (Allison 5 gears forward)

## 6 Engine compartment

6.1 Engine LPG: PSI 8.8-liter Ultra-Low NOx

Engine to be successfully tested to operate on conventional and renewable LPG

6.2 Stage: Tier 4 Final / Off-Highway Certified for low-emission - EPA, CARB and NJDEP

6.3 Min. Engine power / 201 kWE, 265 HP or equivalent

6.4 Dry air filter with replaceable cartridge and cyclone dust pre-separator

6.5 Thermal isolation of the engine compartment

6.6 According to US standard: Battery compartment design suitable for 2 batteries, each 12 V 82 Ah  
770 cca / With dimensions 275 x 175 x 190 mm

6.7 Operating fluids and reservoirs acc. to OSHA

6.8 Engine & Battery Idle Shutdown System, automatic after 15 minutes, resettable and programmable

6.9 Speed Limitation, 25Mph and programmable

6.10 Electronic engine cooling fan

## 7 Exhaust system

7.1 Upright stack installed next to cabin

7.2 Protected by heatshield

7.3 Meets local emission standards

7.4 Noise level dB(a) 70 dB at 0.5 meter

## 8 Lubrication system

8.1 Automated greasing system

8.2 Central greasing system

## 9 Electric system

9.1 Electrical system, harness, termination, fuse boxes, ECU, seals, cable glands, sensors, sockets, connectors, shall be IP65 at minimum

9.2 All cable electrical terminations will be waterproof and heat shrink protected

9.3 Two maintenance-free, high-performance starter batteries 12 V/150 Ah Central electric in the cabin, protected, easily accessible

9.4 DC electrical system, operating voltage 24 V

9.5 Voltage converter 24V with connection unit 12V for 7-pole socket



- 9.6 7-pin trailer power socket
- 9.7 NATO socket, 12 V
- 9.8 12 V - DC socket power supply in cabin
- 9.9 Alternator 80 AMP
- 9.10 Terminals shall be machine crimped with sealed connectors
- 9.11 Battery main isolator switch
- 9.12 Ignition switch to shut off all power in the vehicle
- 9.13 Ignition switch shall be of the anti re-start type.

## 10 Lights

- 10.1 Two H4-headlights at front (high and low beam)
- 10.2 Two combined LED brake lights, turn signals and rear lights
- 10.3 Two LED reverse lights
- 10.4 Rotating beacon / Audible warning buzzer for reverse driving
- 10.5 LED rotating beacon, activated via ignition
- 10.6 One working light installed on rear of cabin roof, LED
- 10.7 Two LED working lights at mudguard
- 10.8 LED working lights at steps and walkway

## 11 Axles

- 11.1 Front axle: max. admissible axle load: 13 t Volvo or equivalent
- 11.2 Rear axle: max. admissible axle load: 50 t Kessler D81 PL 378 or equivalent
- 11.3 Differential lock at the rear axle
- 11.4 Air suspended rear axle active up to 14 tons Or equivalent, *solid rear axle is not compliant*
- 11.5 Pneumatic lowering of rear axle
- 11.6 Automatic drain valves
- 11.7 Mud flaps (1 pair) behind rear axle
- 11.8 Rubber mudguards on rear tires, full size

## 12 Brakes

- 12.1 Dual-circuit brake system with spring-loaded parking brake
- 12.2 US brake system
- 12.3 Air Compressor (18.7 CFM or greater)
- 12.4 Air Dryer (Wabco 3260380 or equivalent)
- 12.5 Automatic air system drain valves

## 13 Frame

- 13.1 Heavy duty welded profile steel frame **S355** or equivalent



- 13.7 Tow bar coupling at front
- 13.8 Tow bar coupling at rear
- 13.9 Headache rack at rear of the Cabin

#### 14 5th wheel

- 14.1 Double-acting hydraulic cylinders 500 mm
- 14.2 Lifting capacity
- 14.3 Lifting height
- 14.4 5th wheel plate: Euro hitch Holland FW 3510 TR, 2"
- 14.5 Pneumatic safety remote release of the 5th wheel
- 14.6 Extended sliding wedges (**Beavertail**) Bracket welded to the chassis
- 14.7 50.8mm (2") King Pin acc. to SAE
- 14.8 Auto greasing 5th wheel plate
- 14.9 5<sup>th</sup> wheel jaw unlock warning light inside cabin panel (Green-Locked / Red-Unlocked)

#### 15 Tires/rims

- 15.1 Tires: 310/80 R22,5 Continental Terminal Master 11R 22.5
- 15.2 Tire Pressure Monitoring System In-cab Conti Pressure Check or equivalent

#### 16 Liquids

- 16.1 LPG/ Propane Fuel tank: 2 x 40 gal LPG-tank, fully enclosed, anti-slip coated on the
- 16.2 With reinforced tank filler bracket
- 16.3 Top acc. NFPA 58 - Liquefied Petroleum Gas Code
- 16.4 Second analog hour meter close to filler neck of LPG tank
- 16.5 Enclosed Steel reinforced cage for fuel tanks

#### 17 Cabin

- 17.1 dB(a) in the cabin < 60dB
- 17.2 Left hand drive
- 17.3 Access door: side, back, siding, 2nd door for emergency exit
- 17.4 Cabin tilting shall be an automatic, hydraulic over electric system, capable of a maximum 45° tilt
- 17.5 ROPS & FOPS tested and certified (ISO 3471/SAE J10409),
- 17.6 Standard cab
- 17.7 Fabricated of sheet steel with tubular safety frame
- 17.8 Cabin suspension to isolate shocks and vibration
- 17.9 (front: rubber mounts front / back: shock absorber or air bag)
- 17.10 Wide-angle mirror left & right
- 17.11 Connection for brake coils installed at 45° angle (Red & Blue Brake Coils)
- 17.12 Horizontal two-way sliding window

- 17.13 All windows tinted and made of safety glass (Tint percentage to be verified at a later date)
- 17.14 Cabin roof pane made of laminated safety glass (if applicable)
- 17.15 Steel protection grid for rear window
- 17.16 At the bottom of the door (inside and outside) kick plate, approx. 12", made of ½" aluminum plate
- 17.17 Driver seat type ISRI 6860/870 NTS with 3-point high visibility color seatbelt (orange color), max. capacity 330 lbs, incl. headrest
- 17.18 Arm rests left and right
- 17.19 VMT brackets needed, terminal to provide input for type of VMT bracket
- 17.20 Roller shade for front window
- 17.21 Shading levels of the cabin windows:
- 17.22 Entire rear window 50 % Tint
- 17.23 Sun visor strip at left side windows and right side door with
- 17.24 Approx. 50 %, Tint from top to bottom halfway through
- 17.25 Windshield sun visor strip, from top approx. 200 mm with 70 % Tint
- 17.26 Front Grille to have Mesh grating
- 17.27 Covers on ECU
- 17.28 12V outlet
- 17.29 (2) USB Connectors
- 17.30 Pre-wired for radio use
- 17.31 Standard cup holder

## 18 Cabin controls

- 18.1 Key operating panel for shifting gears
- 18.2 Display indicators acc. hour meter, speedometer, odometer, volt meter, fuel level gauge of each individual tank, engine oil pressure gauge, engine coolant temperature gauge and air pressure
- 18.3 Instrument panel acc. attached technical data sheet
- 18.4 Light switch with integrated turn signal
- 18.5 Engine and gearbox control lights
- 18.6 Windscreen wipers with two step intervals
- 18.7 Washer system for windscreen
- 18.8 Powerful 4-speed fan
- 18.9 Integrated climate controlled Heating and Cooling system
- 18.10 Reading lamp in the cabin
- 18.11 Anti-slip rubber floor mat
- 18.12 Power steering
- 18.13 Steering wheel adjustable in height and inclination
- 18.14 Horn incorporated in steering wheel
- 18.15 Horn, foot actuated
- 18.16 Air horn
- 18.17 Electric claxon



- 18.18 Incl. Multifunction display with US measuring units
- 18.19 Automatic engine stop after 15 min with activated parking brake (leads into shut down of all electrical consumers) programmable
- 18.20 Engine start via ignition, brand "Cole Hersee"
- 18.21 Steering wheel adjustable in height and inclination

## 19 Paint system

- 19.1 Paint system options Cabin/Frame/Auxiliary components
- 19.2 Coating thickness 300 µm
- 19.3 Hot dip galvanized
- 19.4 Zinc flake coating
- 19.5 Cabin: RAL 9010 (pure white)
- 19.6 Frame: RAL 7024 (graphite grey)
- 19.7 Handrails: RAL 1003 (signal yellow)
- 19.8 Steps, working platform: RAL 1007 (daffodil yellow)
- 19.9 Mouth of the towing coupling at front: RAL 1003 (signal yellow)
- 19.10 Mouth of the tow coupling at rear: RAL 1003 (signal yellow)
- 19.11 Antislip at access steps and platform behind cabin

## 20 Decals

- 20.1 PNCT Logo Center on Left side and Right side of the Cabin (logo art provided by PNCT)
- 20.2 Propane decal bottom Left side of Cabin
- 20.3 Near-Zero Emissions decal bottom Right side of Cabin (decal art provided by PNCT)

## 21 Training

- 21.1 Provide training to both operators and maintenance staff conducted by competent instructors appointed by the OEM at the Operator's premises.
- 21.2 Operator training: 24 Hours
- 21.3 Electric training: 40 Hours
- 21.4 Mechanic training: 40 Hours

## 22 Remote monitoring

- 22.1 Fleet Management System
- 22.2 Idle hours, moves per hour, distance per move
- 22.3 Fleet health monitor
- 22.4 Active Alarms
- 22.5 Fuel Consumption
- 22.6 Running hours counters
- 22.7 PM intervals



**23 Spare Parts**

- 23.1 PM package, consumable parts
- 23.2 OEM strategic spare parts
- 23.3 Consignment agreement

**24 Warranty**

- 24.1 Standard: 3 years, or 7500 running hours, whichever comes first
- 24.2 Cabin and Structural Frame: 60 months
- 24.3 Paint and coating systems: 60 months
- 24.4 Transmission and Drive Train: 60 months
- 24.5 Spare Parts: 12 months
- 24.6 Extended Warranty: Proposed by Supplier

**25 Diagnostic Tools**

- 25.1 PowerLink with 250k or 500k baud rate
- 25.2 Allison with 250k or 500k baud rate
- 25.3 LPG Noregon
- 25.4 Any other related OEM Diagnostic tooling

## **INSTRUCTION TO BIDDERS**

### **PROPOSAL ADMINISTRATION**

Please send your proposals to the following points of contact for this project:

Charlie Ferlisi  
Director of Engineering & Equipment Services  
PNCT  
241 Calcutta Street  
Newark NJ 07114  
(973) 522-4777  
[calogero.ferlisi@pnct.net](mailto:calogero.ferlisi@pnct.net)

Copying:

James Kukucka  
VP Engineering & Procurement  
PNCT  
241 Calcutta Street  
Newark, NJ 07114  
[James.Kukucka@pnct.net](mailto:James.Kukucka@pnct.net)

Nate Melton  
Senior Manager Technical Services  
PNCT  
241 Calcutta Street  
Newark, NJ 07114  
[nate.melton@pnct.net](mailto:nate.melton@pnct.net)





## BID SCHEDULE

- |                            |                   |
|----------------------------|-------------------|
| • Issue of RFP             | November 14, 2025 |
| • Deadline to submit RFI's | November 28, 2025 |
| • Proposals Due            | December 5, 2025  |

## PROPOSAL CONTENTS

Your proposals shall include the following information, preferably in the order shown.

- *Firm / Team Description*
- *Project Organization including Service Providers*
- *Specific Project-Relevant Experience and Certifications*
- *Complete Technical Specification deviations and alternatives*
- *Work Plan and Schedule*
- *Cost Structure*
- *Delivery fees*
- *Extended Warranty Proposal and Literature*
- *Service and Spare Parts Plan*

## SELECTION CRITERIA

Submittals will be evaluated and ranked to determine the best value to PNCT based on the following criteria:

- A. Conformity with Specifications and Suitability to the Requirement of PNCT
- B. Initial and Ongoing Cost for the Project
- C. Warranty, after sales services, spare parts, industry standards & references
- D. Past Performance of the Vendor
- E. Quality of the Work

In responding to this RFP, the vendor accepts full responsibility to understand the RFP in its entirety, and in detail, including making any inquiries to PNCT as necessary to gain such understanding. PNCT reserves the right to disqualify any vendor who demonstrates less than such understanding. Further, PNCT reserves the right to determine, at its sole discretion, whether the vendor has demonstrated such understanding. That right extends to cancellation of award, if award has been made. Such disqualification and/or cancellation shall be at no fault, cost, or liability whatsoever to PNCT. All information provided by PNCT in this RFP is offered in good faith. Individual items are subject to change at any time. PNCT makes no certification that any item is



without error. PNCT is not responsible or liable for any use of the information or for any claims asserted there from.

PNCT intends to select a vendor in January 2026 but is not obligated to do so and may ask for extensions.

The purpose of this competitive RFP is to promote a fair, most efficient means to obtain the best value to PNCT, i.e., the proposal offering the best value, which shall be assessed in accordance with the evaluation criteria set forth in this RFP. Proposals will be reviewed by an internal committee where quotes will be evaluated and ranked on a consensus basis. Proposing bidders may be asked to participate in an interview to further discuss qualifications and to answer questions from the committee. PNCT reserves the right in its sole discretion to accept or reject any or all proposals, in whole or in part, without incurring any cost of liability whatsoever, and to waive informalities and minor irregularities in bids received. PNCT shall retain the RFP, and all related terms and conditions, exhibits and other attachments, in original form in any archival copy. Any modification of these, in the vendor's submission, is grounds for immediate disqualification. If the selected vendor and PNCT are not able to finalize contract terms for the intended goods or services requested in this RFP, PNCT reserves the right to select another vendor to provide the goods or services.

### **ADDITIONAL INSTRUCTIONS**

1. In these instructions reference to the Owner shall be deemed to be a reference to the persons or organizations named herein.
2. Proposals are invited subject to the terms and conditions set out in these RFP. These instructions will not form part of any subsequent Contract, and are not to be relied on as constituting any representation or warranty on the part of the Owner.
3. Persons, firms, companies or other organizations presenting proposals, will be held to have by their own independent observations and enquiries (including where appropriate inspection of drawings/records of existing facilities) fully informed and satisfied themselves as to the nature, extent and practicability of the Project.
4. The Proponents are recommended to inform themselves fully as to the nature, extent and practicability of this Project by reviewing the existing information prior to submitting their proposals and presenting queries to the Owner as appropriate.
5. Any queries concerning this RFP shall be directed to the person(s) whose name and contact details are given herein.
6. Queries arising from reviewing this RFP and attached documents should be submitted in writing. Should it be decided to answer such queries, both the queries and the answers will be sent to all vendors. The final date for submission of queries is given in the RFP's schedule.
7. Should there be any amendments to the RFP during the bid period, these will be issued to Proponents in the form of RFP Addenda and will form part of the RFP.



## **REPRESENTATIONS AND CERTIFICATION**

Full name and address of the business with a short description of the business. Include a description of the following:

- A. Business organization
- B. Year established
- C. Federal ID number
- D. Tax ID number
- E. The business' legal formation (e.g. corporation, sole proprietor, etc.)
- F. State of incorporation, if applicable.
- G. List the location and address of the business' office that will provide the equipment requested
- H. Alternative W-9 form

## **REFERENCES**

RFP reviewers may solicit references from some or all client contacts provided with previous experience examples above. Please include at least three (3) references.

## **COMPENSATION AND FEES**

Identify all costs including expenses to be charged for delivering and/or installing the equipment. PNCT is tax exempt. Prices shall not include taxes, unless PNCT is not tax-exempt for a specific service or deliverable. Exemption certificates for sales tax will be furnished upon request.

## **CONTRACT**

This project will be contracted under PNCT's *Standard Equipment Agreement for Terminal Tractors*, accompanying this RFP.

November 14, 2025

RFP - PNCT LPG TERMINAL TRACTOR



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*Addendum 1 - PNCT Standard Equipment Agreement for Terminal Tractors*

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Port Newark Container Terminal L.L.C.

as Purchaser

and

TERMINAL TRACTOR PURCHASE AGREEMENT

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This TERMINAL TRACTOR PURCHASE AGREEMENT, dated \_\_\_\_\_ (the “*Execution Date*”), is by and between Port Newark Container Terminal L.L.C., a Delaware limited liability company (together with its successors and permitted assigns, the “*Purchaser*”), and, \_\_\_\_\_ a \_\_\_\_\_ company with limited liability (the “*Seller*”).

W I T N E S E T H:

WHEREAS, the Seller has expertise in the design, manufacture and assembly of Terminal Tractors for the movement of cargo on a Trailer;

WHEREAS, the Purchaser desires to purchase from the Seller, and the Seller desires to sell to the Purchaser, \_\_\_\_\_ Terminal Tractors and certain other parts in accordance with the technical design and other specifications set forth in Appendix \_\_\_ attached hereto and made a part hereof and the Seller is willing to grant to the Purchaser an option to buy additional Terminal Tractors on substantially the same terms and conditions set forth in this Agreement; and

WHEREAS, the parties desire that all risk of loss or damage to the Terminal Tractors and all components thereof shall remain with the Seller prior to the Handover (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and for other good and reasonable consideration, the receipt and adequacy of which is hereby acknowledged, the Seller and the Purchaser hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions.

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Agreement.

“Advance Payment” has the meaning set forth in Section 11.2(a).

“Advance Payment Security” has the meaning set forth in Section 2.6(a).

“Agreement” means this Terminal Tractor Purchase Agreement, together with the Appendices and Exhibits attached hereto, as each of the same as may be amended hereafter from time to time in accordance with the terms hereof,

“Anti-Bribery Laws” means (i) the U.S. Foreign Corrupt Practices Act of 1977 (as amended), (ii) the United Kingdom Bribery Act, (iii) anti-bribery legislation promulgated by the European Union and implemented by its member states, (iv) legislation adopted in furtherance of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (v) other anti-bribery and anti-corruption laws, regulations or ordinances applicable to the Seller and its operations from time to time.

“Applicable Law” means all laws, statutes, treaties, conventions, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules and regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority of any country, state, county, municipality or local government, or port having jurisdiction, as amended and revised, and any judicial or administrative interpretation of any of the same relating to this Agreement or the Terminal Tractors, including,

without limitation, any of the same relating to noise, the environment and hazardous substances, employee compensation and safety, national security, public safety, insurance, exports or imports or contraband.

“Bumper to Bumper Warranty Period” has the meaning set forth in the definition of Warranty Period.

“Business Day” means any day other than a Saturday, a Sunday, day on which banks in New York are authorized or required by law to be closed, or an International Longshoremen’s Association holiday.

“Certificate of Origin” means a certificate substantially in the form set forth in Exhibit \_\_\_\_.

“Consignment Parts” means the new and original parts for the Terminal Tractors (a list of such agreed upon parts will be documented in a Consignment Parts agreement, the terms of which shall be entered into by no later than one hundred twenty (120) days after the Execution Date of this Agreement), to be held on consignment as further described in Appendix \_\_\_\_.

“Contract Price” means \_\_\_\_\_. The Contract Price excludes shipping from the Seller’s factory located in \_\_\_\_\_, to the Delivery Site, actual costs for which will be for the account of the Purchaser.

“Delivery Inspection” means the inspection to be conducted by the Seller, Purchaser, and Service Provider on each Terminal Tractor as a condition of Handover after delivery to the Delivery Site.

“Delivery Inspection Report” or “DIR” means the Delivery Inspection Report Certificate, substantially in the form attached hereto as Exhibit \_\_\_\_, executed by the Seller and countersigned by the Purchaser upon satisfaction of all conditions precedent in this Agreement.

“Delivery Site” means, Port Newark Container Terminal L.L.C., 241 Calcutta St., Newark, NJ 07114 USA.

“Delivery Tranche” means a tranche of Terminal Tractor deliveries as set forth in Appendix \_\_\_\_, not to exceed \_\_\_\_ tranches of \_\_\_\_\_ Terminal Tractors each.

“Designated Person” means a person (a) named on, or owned or controlled (as such terms, including any applicable ownership and control requirements, are defined and construed in the applicable Sanctions or in any official guidance in relation to such Sanctions) by a person listed on, the List of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Asset Control as administered by the United States Department of Treasury, or any similar list of Sanctions targets maintained by the United Nations Security Counter, the European Union, or the United Kingdom or (b) located, organized or residing in a country or territory that is the subject of comprehensive Sanctions, as of the date hereof the so - called Donetsk People’s Republic, the so- called Luhansk People’s Republic, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine.

“Dollar(s) or \$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be the legal tender for all debts, public and private.

“DPU” shall mean Delivered at Place Unloaded as defined in accordance with INCOTERMS® 2020.

“Execution Date” has the meaning set forth in the Preamble.

“FCPA” means the U.S. Foreign Corrupt Practices Act of 1977, as amended.

“Final Acceptance” means, with respect to each Terminal Tractor, the satisfaction of the following conditions with respect to such Terminal Tractor as evidenced by the Purchaser’s issuance of the Certificate of Final Acceptance and the Seller’s execution of such Certificate of Final Acceptance (in the form set forth in Exhibit \_\_\_): (a) that Handover has occurred with respect to such Terminal Tractor and the DIR for such Terminal Tractor has been executed and delivered by Purchaser, (b) the Reliability Level shall have been successfully achieved by such Terminal Tractor; and (c) such Terminal Tractor is free and clear of all liens, claims and encumbrances (and the Seller shall have delivered to the Purchaser all lien waivers and releases in form and substance acceptable to the Purchaser in its sole discretion).

“Force Majeure” means any act of God, strike, lockout, or other labor difficulty directly affecting the production, manufacture, transportation, delivery, assembly, or testing of the Terminal Tractors or by other causes beyond the control of the Seller and not due to the fault or negligence of the Seller, its Service Providers, subcontractors or suppliers, or any of the employees or agents of the foregoing and provided that the Seller shall have used all commercially reasonable efforts to remove, avoid or remedy any such cause, including, without limitation, any earthquakes, fire, flood or the elements, war, revolution, riot, civil commotion, any applicable governmental regulation, order or decree. Notwithstanding the foregoing, Force Majeure does not include: (i) liquidation, bankruptcy or take-over of the Seller; (ii) delay or failure on the part of sub-contractors or suppliers to the Seller unless caused by an independent event that would, itself, qualify as Force Majeure; or (iii) strikes or industrial actions directed primarily at the Seller or its Service Providers, subcontractors, or suppliers and that is not directed nationally or regionally at an entire industry or trade.

“Government” means any domestic legislative, executive, judicial or administrative body, commission, agency or similar entity having or purporting to have jurisdiction in the relevant circumstances, whether federal, state or local, including the State, or any political subdivision of any thereof or of any branch, department, agency, instrumentality, court, tribunal or regulatory authority which constitutes a part or exercises any sovereign power of any of the foregoing, including public and quasi-public corporations.

“Guaranteed Handover Date” means, with respect to each Terminal Tractor, two (2) Business Days after the dates listed on Appendix \_\_\_\_\_.

“Handover” means (i) the Terminal Tractor will have been delivered and inspected at the Delivery Site to the satisfaction of the Purchaser and a DIR has been executed, (ii) meets all conditions specified in this Agreement, including the conditions set forth in Section 4.4, (iii) meets all performance criteria of this Agreement, and (iv) the Consignment Parts have been delivered to the Servicer Provider(s)’s and/or the Seller’s locations within the Port of New York and New Jersey and/or within a sixty (60) mile radius of the Port of New York and New Jersey.

“Handover Compliance Certificate” means the certificate in the form of Exhibit \_\_\_ executed by the Seller and the Purchaser certifying the achievement of Handover as to the Terminal Tractors identified therein.

“Handover Date” means, with respect to each Terminal Tractor, the date on which the DIR for such Terminal Tractor is signed by both parties and all other requirements for Handover required by the terms of this Agreement have been completed.

“Handover Payment” has the meaning set forth in Section 11.2(b).

“IP Rights” has the meaning set forth in Section 7.4(a).

“Incident of Downtime” means, with respect to a Terminal Tractor and Working Shift, that either (a) it is determined during the pre-Working Shift inspection that such Terminal Tractor has a warranty related issue or (b) such Terminal Tractor is not able to complete the Working Shift as a result of a warranty related issue.

“Lien” means any mortgage, pledge, lien charge, encumbrance, lease or security interest or any claim or exercise of rights affecting the title to or any interest in property.

“Option Tractors” means additional Terminal Tractors that the Purchaser may purchase upon exercise of the option further specified in Section 2.13.

“Outside Performance Date” has the meaning set forth in Section 4.9.

“Person” means an individual, corporation (including, without limitation, a business trust), partnership, limited liability company, joint venture, association, joint stock company, trust (including, without limitation, any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

“Privacy and Security Laws” means all applicable (a) laws regarding (i) the processing and security of personal identifiable information, (ii) data security, (iii) cybersecurity, (iv) direct marketing by e-mail and text message; (v) data breach notification; (b) requirements of the payment card brands, including the Payment Card Industry Data Security Standard; and (c) computer crime and other laws governing unauthorized access to or use of electronic data.

“Project Plan” has the meaning set forth in Section 2.8.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Related Parties” has the meaning set forth in Section 7.1.

“QA/QC” has the meaning set forth in Section 2.9.

“Reliability Level” means, for each Terminal Tractor, that such Terminal Tractor has achieved 98.0% operation level during the applicable Testing Period, which operation level shall be calculated as follows:

1. after Handover of such Terminal Tractor, for each Working Shift that such Terminal Tractor is ordered for operation, the Terminal Tractor will be considered available so long as there are no Incidents of Downtime during such Working Shift; and
2. after the operation is completed, the operational level of such \_\_\_\_\_ will be calculated as follows: (a) total number of Working Shifts of such \_\_\_\_\_ minus the number of Working Shifts during which such \_\_\_\_\_ had an Incident of Downtime divided by (b) the total number of Working Shifts of such \_\_\_\_\_.

“Sanctions” means those applicable trade, economic and financial sanctions laws, regulations, embargoes, and restrictive measures (in each case having the force of law) administered, enacted or enforced from time to time by (i) the United States (including without limitation the Department of the Treasury, Office of Foreign Assets Control), (ii) the European Union and enforced by its member states, (iii) the United Nations, (iv) Her Majesty’s Treasury, or (v) other similar Governments.

“Security Breach” means any (i) unauthorized acquisition of, access to, loss of, or misuse (by any means) of personal identifiable information; (ii) unauthorized or unlawful processing, sale, or rental of personal

identifiable information; or (iii) phishing, ransomware, denial of service (DoS) or other cyberattack that results in a monetary loss or a business disruption.

“Security Requirements” means, with respect to the Seller, any and all Applicable Laws, including, without limitation, any and all conventions, treaties, statutes, codes, laws, rules, regulations, ordinances, orders, initiatives, measures and requirements which are enacted, decreed, adopted, issued, or published by the Government and/or the Port of New York and New Jersey, which govern or otherwise apply to the security and safety of the Seller’s goods and operations. Without limiting the generality of the foregoing, the term “Security Requirements” shall include, to the extent applicable, the International Ship and Port Facility Code, the Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064, as amended (the “MTSA”), and all regulations issued by the United States Coast Guard pursuant to the MTSA, as set forth in 33 C.F.R. Parts 101-105.

“Seller” has the meaning set forth in the Preamble.

“Seller Related Parties” has the meaning set forth in Section 7.1.

“Service Provider” means an entity permitted by the Seller, and approved by the Purchaser, to perform services on behalf of the Seller, which at all times should include at least two entities approved by the Purchaser.

“Software” has the meaning set forth in Section 2.10.

“Systems” means any and all information and communications technology and systems (including hardware, software, servers, networks, routers, hubs, switches, data communication lines and other devices, assets and equipment).

“Technical Specifications” means the technical specifications set forth in Appendix \_\_\_\_, Technical Specifications Schedule.

“Terminal Tractor” means a \_\_\_\_\_ Terminal Tractor.

“Terminal Tractor Documentation” has the meaning set forth in Section 2.12.

“Testing Period” means, with respect to each Terminal Tractor, the period beginning with Handover of such Terminal Tractor and ending when such Terminal Tractor has achieved the Reliability Level over thirty (30) Working Shifts; provided, however, that if such Terminal Tractor has not been assigned to at least thirty (30) Working Shifts within thirty (30) days after Handover of such Terminal Tractor, the Testing Period of such Terminal Tractor shall end thirty (30) days after Handover of such Terminal Tractor so long as such Terminal Tractor has achieved ninety-eight percent (98.0%) operation level during the Working Shifts to which it has been assigned.

“Training Schedule” has the meaning set forth in Section 2.7.

“Trailer” means a chassis on top of which cargo sits or onto which cargo is loaded.

“Unit Price” means \_\_\_\_\_

“Warranty” has the meaning set forth in Section 6.2.

“Warranty Period” means

1. Bumper to Bumper: Entire Terminal Tractor: 36 months after Final Acceptance, or 7,500 hours of use after Final Acceptance, whichever comes first (“**Bumper to Bumper Warranty Period**”). To the extent any specific warranty set forth below exceeds the duration of the Bumper to Bumper Warranty Period, such longer duration shall apply. Warranty shall include all labor necessary to correct, repair and/or replace.
2. For Consignment Parts and any replacement parts due to warranty / defect issues, 12 months after the later of (i) Handover and (ii) installation in a Terminal Tractor, which shall begin to run after the expiration of any Bumper-to-Bumper Warranty Period remaining on the Terminal Tractor.
3. Chassis: 60 months after Final Acceptance.
4. Transmission and Drive Train: 60 months after Final Acceptance.
5. Cab Assembly (including but not limited to the frame, paint, skin, door(s), and glass (but excluding electrical, mechanical and other attachments installed on or in the cab assembly which shall be governed by the Bumper to Bumper Warranty Period)): 60 months after Final Acceptance.

In each case as such period may be extended as follows: After forty-eight (48) hours out of service, for every day that a Terminal Tractor is out of service, the Warranty Period for that Terminal Tractor will be extended.

“Warranty Security” has the meaning set forth in Section 2.6.

“Working Shift” means, with respect to a Terminal Tractor, an eight-hour period during which such Terminal Tractor has been assigned to a commercial operation by Purchaser following Handover of such Terminal Tractor. Each Terminal Tractor will be assigned to a minimum of thirty (30) Working Shifts to demonstrate that such Terminal Tractor has achieved the Reliability Level.

## **ARTICLE II PRINCIPAL OBLIGATIONS OF THE SELLER**

Section 2.1 General Statement of Seller’s Obligations. The Seller shall be responsible for the design, manufacture, warranty, and delivery of the Terminal Tractors to the Delivery Site, and the delivery of the Consignment Parts to the Seller’s Service Provider(s)’s and/or the Seller’s locations within the Port of New York and New Jersey and/or within a sixty (60) mile radius of the Port of New York and New Jersey. The Purchaser shall have the right to approve or reject the Seller’s selection of any Service Provider. The Seller shall cause the Terminal Tractors to (a) be designed, manufactured and tested by the Seller at its facility; (b) be transported DPU Delivery Site (INCOTERMS 2020); (c) be subject to a Delivery Inspection to meet the requirements of the DIR, (d) satisfy all conditions required of the Seller for the occurrence of Handover by the Guaranteed Handover Date of each Terminal Tractor, and (e) satisfy all conditions of Final Acceptance. Time is of the essence for the Seller’s obligations hereunder. **THE SELLER IS RESPONSIBLE FOR ALL ENGINEERING, DESIGN AND OTHER TECHNICAL WORK RELATED TO THE MANUFACTURE, ASSEMBLY AND DELIVERY OF THE TERMINAL TRACTORS.** The Purchaser is not and does not purport to be the designer of the Terminal Tractors.

Section 2.2 Required On-Site Support. The Seller shall cause qualified engineers or technicians who are employees of the applicable Person (set forth in Appendix \_\_\_\_), who have the best professional qualifications, have experience in training, operation, repair and supervision of the Terminal Tractors, who are fluent in English, and are expertly familiar with the components installed on the Terminal Tractors that are supplied by such Person, present at the Delivery Site during the periods set forth in Appendix \_\_\_\_ to verify the commissioning, testing,

operation and performance of the components installed on the Terminal Tractors that are supplied by such Person and assist in connection with training the Purchaser's personnel and the Seller's obtaining certifications for material handling use by all applicable regulatory authorities having jurisdiction including, without limitation, state and federal Occupational Safety and Health Administration certifications. The quantity of such qualified major personnel and the duration each such person is required to be at the Delivery Site shall be as necessary to fully support the commissioning, testing, operation and performance of the Terminal Tractors. The Seller shall be responsible to obtain all work and site clearances and for all costs of such qualified personnel, including labor, housing, insurance and medical.

Section 2.3 Technical Specifications. The Terminal Tractors shall be designed, manufactured, and delivered by the Seller to meet the Technical Specifications.

Section 2.4 Consignment Parts. The Seller shall deliver the Consignment Parts to its Service Provider(s)'s and/or the Seller's location(s) supporting the operations of the Port of New York and New Jersey and/or within a sixty (60) mile radius of the Port of New York and New Jersey prior to Handover of the first Terminal Tractor, as set forth in an agreed upon Consignment Parts agreement, the terms of which are to be entered into by no later than one hundred twenty (120) days after the Execution Date of this Agreement. The Seller shall maintain a supply of Consignment Parts for 10 years from the date a particular model is replaced by a new series model. The Seller shall give the Purchaser written notice of the discontinuance of any Consignment Part or replacement of a Consignment Part with a newer model.

Section 2.5 Delivery of Terminal Tractors. The Seller shall deliver the Terminal Tractors to the Delivery Site, complete a DIR at the Delivery Site in accordance with the terms of this Agreement and achieve the Handover Date on or before the Guaranteed Handover Date therefor. The Seller shall give notice to the Purchaser in accordance with Section 11.7 twenty-four (24) hours prior to arrival of the Terminal Tractors, which notice shall include the name of the delivery driver(s), cell phone numbers for such driver(s), and any other contact information that is available for such driver(s). The Seller shall not deliver any Terminal Tractor more than seven (7) days prior to the delivery date set forth in Appendix \_\_\_\_ therefor without the Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed.

Section 2.6 Seller's Security.

(a) Prior to the payment by the Purchaser of the Advance Payment, the Seller shall deliver to the Purchaser a pay on demand stand-by letter of credit (in the form set forth in Exhibit \_\_) issued by a United States bank acceptable to the Purchaser located in the New York City or New Jersey area in an amount equal to ten percent (10%) of the Contract Price (the "**Advance Payment Security**"). The Seller shall ensure that the Advance Payment Security is valid and enforceable from the date of issuance until at least 30 days after Final Acceptance of all Terminal Tractors. If the terms of such stand-by letter of credit specify an expiry date, and Final Acceptance of all Terminal Tractors has not occurred by the date 30 days prior to such expiry date, the Seller must renew or replace, on or prior to such date that is 30 days prior to such expiry date, the Advance Payment Security until the date which is thirty (30) days after Final Acceptance of all Terminal Tractors.

(b) As to each Delivery Tranche, as a condition precedent to Handover and the obligation of the Purchaser to make any Handover Payment with respect to the Terminal Tractors, the Seller shall deliver to the Purchaser a pay on demand stand-by letter of credit (in the form set forth in Exhibit \_\_) issued by a US bank acceptable to the Purchaser located in the New York City or New Jersey area an amount equal to ten percent (10%) of the product of the Unit Price and the number of Terminal Tractors in an amount equal to the number of Terminal Tractors for which all elements of Handover have been satisfied, subject to the delivery of such letter of credit (the "**Warranty Security**"). The Warranty Security shall be valid and enforceable from the date of

issuance until thirty (30) days after the expiration of the Bumper to Bumper Warranty Period for the Terminal Tractors for which such Warranty Security has been delivered, as may be extended as set forth herein in this Agreement. If the terms of such stand-by letter of credit specify an expiry date, and the expiration of the Bumper to Bumper Warranty Period on all such Terminal Tractors will not occur by the date 30 days prior to such expiry date, the Seller must renew or replace, on or prior to such date that is 30 days prior to such expiry date, the Warranty Security on all such Terminal Tractors until the date which is 30 days after the expiration of the Warranty Period, as may be extended as set forth herein in this Agreement, on all such Terminal Tractors.

Section 2.7 Training. The Seller shall provide training to the Purchaser's employees and agents in accordance with the schedule set forth in Appendix \_\_\_\_ attached hereto and made a part hereof (as amended from time to time in accordance with the terms hereof, the "**Training Schedule**"). All chassis overview and operator training shall be provided by the Seller. All engine, fuel system, and exhaust assembly training shall be provided by \_\_\_\_\_ (engine supplier to the Seller).

Section 2.8 Project Plan and Progress Reports. The Seller has delivered to the Purchaser a project plan (the "**Project Plan**") in .pdf, Excel, or an equivalent format that includes anticipated dates for the achievement of significant milestones for the design, fabrication, testing, and delivery of the Terminal Tractors, including but not limited to the date when the Terminal Tractors will be delivered to the Delivery Site and the Guaranteed Handover Dates. The Seller will provide the Purchaser with updates as to the progress of the design, fabrication, testing, and delivery of the Terminal Tractors during the Parties' weekly scheduled conference calls (the "**Progress Reports**").

Section 2.9 QA/QC Plans. Within thirty (30) days after the Execution Date, the Seller shall provide to the Purchaser for the Purchaser's review and comment a comprehensive quality assurance/quality control ("**QA/QC**") plan for the manufacture of the Terminal Tractors. The Purchaser shall review the QA/QC plan and provide any comments within thirty (30) days after receipt. The Seller will incorporate the Purchaser's comments into a revised QA/QC plan and deliver the revised QA/QC plan to Purchaser. The Seller shall ensure that the Terminal Tractors are manufactured and tested in accordance with the QA/QC plan. The Purchaser's review of the QA/QC plan shall in no way relieve the Seller of any of its obligations under this Agreement.

Section 2.10 License and IP Rights.

(a) Terminal Tractor Computer Software. Computer software (including, without limitation, source code, object code, application software, server and client software, operating system software and software implemented as firmware), together with all drawings, designs, specifications, manuals and programs (collectively, the "**Software**") provided by the Seller with the Terminal Tractor remains the property of the Seller or the Seller's licensors. The Seller hereby grants to the Purchaser, and shall cause its licensors, if any, to grant to the Purchaser, a non-exclusive, royalty-free, fully paid, irrevocable, and perpetual right to use such Software, including, without limitation, all updates, improvements and maintenance thereof, only in machine-readable form (in the case of Software), and only in connection with the Terminal Tractor with which such Software is provided. The Purchaser may transfer and assign its rights and license to the Software (and this Agreement) to any subsequent owner of the Terminal Tractor regardless of whether through a sale of the Terminal Tractor or in connection with a merger, acquisition or asset sale, corporate reorganization or otherwise.

(b) Terminal Tractor IP Rights. To the extent that the Terminal Tractors or the design or components of the Terminal Tractors are covered by, incorporate or utilize in any fashion any IP Rights (whether foreign or domestic) owned or controlled by the Seller or its affiliates, the Seller hereby grants the Purchaser and any other owner of the Terminal Tractors delivered under this Agreement a non-exclusive and royalty-free, perpetual license to utilize and/or exercise all IP Rights solely in connection with the use, operation, repair and maintenance



of the Terminal Tractors. This non-exclusive, perpetual and royalty-free license applies to any and all future improvements (“upgrades”) to the Terminal Tractors made by or for the Seller.

Section 2.11 Diagnostic Software. The Seller shall provide diagnostic Software from, including, but not limited to, Powerlink (together with cabling at 250K or 500K baud rate); Allison (together with cabling at 250K or 500K baud rate); and LPG Noregon (as detailed in Exhibit \_\_\_\_), to permit the Purchaser to perform maintenance on the Terminal Tractors, provided that, notwithstanding anything in Section 2.10, the Purchaser shall be responsible for any licensing fees payable to such suppliers.

Section 2.12 Terminal Tractor Documentation. On or prior to Handover of the first Terminal Tractor, the Seller shall provide the Purchaser with the documentation regarding the Terminal Tractor in accordance with the terms set forth in Appendix \_\_\_\_ attached hereto and made a part hereof (as amended from time to time in accordance with the terms hereof, the “*Terminal Tractor Documentation*”).

Section 2.13 Option Tractors. The Purchaser shall have the right (but not the obligation) to place orders for Option Tractors, exercisable in one or more tranches, provided that any exercise of such option is made by written notice to the Seller on or before \_\_\_\_\_. The Guaranteed Handover Dates for such Option Tractors shall be as agreed by the Seller and the Purchaser upon the Purchaser’s exercise of the option. All other provisions of this Agreement, including the Unit Price of such Option Tractors, shall continue to govern the design, manufacture, delivery, and warranty of the Option Tractors, subject to such changes in the Technical Specifications as may be agreed in writing by the Purchaser and the Seller for such Option Tractors.

Section 2.14 Permits, Licenses, Documentation, and Bonds. The Seller shall obtain all permits and licenses required in connection with clearance through customs of the Terminal Tractors or any portion thereof and the Purchaser shall provide reasonable assistance to the Seller in connection with same. The Seller shall issue the necessary documentation for customs clearance as may be required by United States Customs and Border Protection or other governmental agency. The Seller will provide all bonds which may be required for importation.

### **ARTICLE III PERMISSIBLE DELAYS; ADDITIONAL WORK; ETC.**

Section 3.1 Permissible Delays. If the delivery of the Terminal Tractors is delayed by any act or omission in breach of this Agreement by the Purchaser, its employees or agents, or by changes in the scope of the work to be performed hereunder which have been requested by the Purchaser in writing, or by Force Majeure or by delayed payments of the Purchaser then, to the extent caused by such delay, the Guaranteed Handover Date of the Terminal Tractors will be correspondingly extended on a day-for-day basis for the period of delay in accordance with Section 3.2, provided that the Seller makes written claim to the Purchaser of any required extension pursuant to Section 3.2.

Section 3.2 Claims for Extension of Guaranteed Handover Date. The Seller will make written claim to the Purchaser for any extension of the Guaranteed Handover Dates due to any of the foregoing causes in Section 3.1 within ten (10) days following the later of (x) the initial date of the occurrence giving rise to the claim or (y) the initial date the Seller had knowledge of the occurrence of such cause. If the Seller fails to give such written notice the claim will be deemed waived.

Section 3.3 Additional Work Efforts. If any delay is caused in whole or in part by the Seller or any Service Provider, subcontractor, or supplier to the Seller, or any other cause or circumstance, including, without limitation, loss or casualty, regardless of Force Majeure, and, in the reasonable opinion of the Purchaser, such delay would be likely to result in a delay in the Handover of the Terminal Tractors, the Purchaser may notify the Seller in

writing and the Seller shall be required, within five (5) Business Days of receipt of such notice, to provide the Purchaser with a written plan to ensure that the Handover of the Terminal Tractors is not delayed. The costs associated with the provision and execution of such plan shall be the responsibility of the Seller to the extent that such delay is caused by the Seller or any Service Provider, subcontractor or supplier to the Seller, with the balance to be paid by the Purchaser. In no event shall the failure of the Purchaser to deliver any such notice relieve the Seller of any of its obligations under this Agreement.

Section 3.4 Changes, Modifications and Extra Work. The Purchaser will have the right to order changes in, or modifications to the work to be performed under this Agreement. If any such changes or modifications are made pursuant to such orders, equitable adjustments will be made in the Guaranteed Handover Date and in the Contract Price, as agreed in writing by the Purchaser.

#### **ARTICLE IV INSPECTION; DELIVERY AND ACCEPTANCE; RISK OF LOSS**

Section 4.1 Purchaser Inspection Rights.

(a) The Terminal Tractors are subject to fabrication, manufacturing, delivery, and inspection as per the Technical Specifications and the requirements of this Agreement. The Purchaser reserves the right to reject, refuse acceptance of, and withhold payment, subject to such acceptance, if any Terminal Tractor or any portion thereof is not in compliance with the Technical Specifications or with this Agreement. The Seller is obligated to supply Terminal Tractors in compliance with all Technical Specifications, this Agreement and with the Seller's express or implied warranties.

(b) After being informed of the completion of the various parts of the Terminal Tractors, the Purchaser or its representative may make a preliminary inspection of such part at the place of its location. Further, the Purchaser shall have a right to inspect, test and measure any part of the Terminal Tractors at any time and at any location (including, without limitation, in the Seller's and its affiliate's factories) and to verify that the Terminal Tractors are being manufactured and tested in compliance with the approved QA/QC plan. No such inspection, examination or testing shall release the Seller from any obligation under this Agreement.

(c) If, as a result of any inspection, examination or testing, the Purchaser decides that any Terminal Tractor is defective or otherwise not in accordance with this Agreement, the Purchaser may reject such Terminal Tractor and shall notify the Seller immediately. The notice shall state the Purchaser's objections with reasons. The Seller shall then with all speed make good the defect or ensure that any rejected Terminal Tractor complies with this Agreement. If the Purchaser requires such Terminal Tractor to be re-inspected or retested, the tests shall be repeated under the same terms and conditions. All costs incurred by the Purchaser by the repetition of the inspections or tests shall be deducted from the Unit Price of such Terminal Tractor and accordingly, the Contract Price.

Section 4.2 Delivery Inspection. The Seller and the Purchaser shall conduct a Delivery Inspection of each Terminal Tractor within four (4) Business Days of the delivery of such Terminal Tractor and, if such Terminal Tractor passes all of the requirements of such inspection, execute the DIR. If the Purchaser does not make resources (including personnel) available to permit the completion of the Delivery Inspection or any Terminal Tractor, the Seller shall be entitled, as a sole remedy, to an extension of the Guaranteed Handover Date of such

Terminal Tractor equal to the delay caused by the Purchaser's failure. A DIR executed by both Purchaser and Seller is a condition of Handover.

Section 4.3 Notice of Handover. The Seller shall notify the Purchaser in writing, when the Seller believes that it has completed all requirements for Handover of a Terminal Tractor, and that the Terminal Tractor complies with all of the requirements set forth in this Agreement and the DIR. Within ten (10) Business Days after receipt of the Seller's executed DIR, the Purchaser shall advise the Seller in writing if the Purchaser believes the requirements for Handover have not been met. The Seller shall thereupon perform such corrective measures as may be required and again notify the Purchaser in writing that it believes that the requirements of Handover have been met. Upon the satisfactory completion of the Delivery Inspection and the completion of all of the conditions to Handover set forth in Section 4.4, the Purchaser shall countersign and deliver the DIR, dated to reflect the Handover Date, and make the Handover Payment for such Terminal Tractor.

Section 4.4 Certain Conditions of Handover. The obligation of the Purchaser to countersign and deliver the DIR and make the Handover Payment for any Terminal Tractor shall be conditioned upon the following:

(a) Performance by the Seller of all its obligations under this Agreement required to be performed prior to Handover in compliance with all the terms and conditions herein, including, without limitation, all of the requirements of Handover other than the Purchaser's countersignature of the DIR;

(b) Receipt by the Purchaser of a Seller's Handover Compliance Certificate for such Terminal Tractor executed by the Seller in the form attached hereto as Exhibit \_\_\_\_\_ certifying that as of the date thereof (A) the Seller has transferred to the Purchaser good and marketable legal title to the Terminal Tractor(s), free and clear of any and all Liens other than those arising by, through or under the Purchaser, and has the full power and authority to transfer such title to the Purchaser (including a lien waiver from the Seller in form and substance acceptable to the Purchaser), (B) the Seller is in compliance with all of its covenants under this Agreement, (C) all of the representations and warranties of the Seller under this Agreement are true and correct in all material respects, (D) all claims and demands against, and debts incurred by, the Seller in respect of this Agreement have been settled and (E) all taxes due and payable by the Seller pursuant to Section 9.1 have been paid or otherwise provided for; and

(c) Receipt by the Purchaser of the Seller's invoice for the Handover Payment.

Section 4.5 Risk of Loss. Notwithstanding anything in this Agreement to the contrary, the Seller shall bear all risk of loss or damage to each Terminal Tractor until the Handover Date of such Terminal Tractor. For clarity, with respect to risk of loss or damage to the Terminal Tractors, this Section 4.5 shall control over any references in this Agreement (including, without limitation, the Appendices and Exhibits hereto) to any Incoterms or other language which could be construed to shift risk of loss.

Section 4.6 Transfer of Title. Title to the Terminal Tractors and each component thereof shall transfer to the Purchaser upon delivery to the Delivery Site. Within one hundred twenty (120) days after Handover of a Terminal Tractor the Seller will deliver the Certificate of Origin for such Terminal Tractor.

Section 4.7 Liquidated Damages for Delay.

(a) In the event that Handover of any Terminal Tractor has not occurred on or before the Guaranteed Handover Date of such Terminal Tractor, then the Seller shall pay to the Purchaser, upon demand, liquidated damages of three tenths of one percent (0.3%) of the Unit Price for each impacted Terminal Tractor for each day beyond the Guaranteed Handover Date. Notwithstanding the foregoing, if Seller demonstrates to the Purchaser's reasonable satisfaction that it will not be able to deliver any Terminal Tractors by their Guaranteed Handover

Date because Seller was unable, after making commercially reasonable efforts, to book transportation on a shipping vessel, the Guaranteed Handover Date shall be extended for such Terminal Tractors for a period equal to the delay resulting from the inability to book such transportation, up to a maximum of sixty (60) days.

(b) The total amount of liquidated damages payable pursuant to this Section 4.7 shall not exceed ten percent (10%) of the Contract Price.

(c) The Parties acknowledge that (i) any liquidated damages hereunder are not penalties; (ii) the amount of loss or damages likely to be incurred in connection with a delay in the timely achievement of Handover is incapable or is difficult to precisely estimate; (iii) the liquidated damages specified in this Section bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred by the Purchaser in connection with a delay in the timely achievement of Handover.

Section 4.8 Right to Set-Off. The Purchaser shall have the right, but shall not be required to, set off the amount of any liquidated damages due pursuant to Section 4.7 as a reduction in the Contract Price or, at the Purchaser's election, against amounts due from the Purchaser to the Seller hereunder. If the Purchaser elects not to set off such amounts, such amounts shall be due and owing from the Seller to the Purchaser on the Handover Date of such Terminal Tractor(s). Further, the Purchaser may deduct from any amounts due or to become due to the Seller under the Agreement any sum or sums owed by the Seller to the Purchaser or required to be satisfied by the Seller under this Agreement. The Purchaser shall also have the right to withhold from any payments due or to become due to the Seller under the Agreement an amount sufficient to protect the Purchaser from any and all loss, damage or expense from a failure of the Seller to perform its material obligations under the Agreement, until the situation giving rise to the withholding has been remedied by the Seller.

Section 4.9 Termination.

(a) In the event that (i) the Handover Date of any Terminal Tractor has not occurred within seventy five (75) days after the Guaranteed Handover Date for such Terminal Tractor (the "**Outside Performance Date**"), or (ii) an event occurs or circumstance exists, including an event of Force Majeure, that makes it impossible for the Handover of a Terminal Tractor to occur on or before the Outside Performance Date, or (iii) the Seller becomes insolvent, files a voluntary petition in bankruptcy, has a petition in bankruptcy filed against it which is not dismissed in thirty (30) days, is adjudicated a bankrupt, or has a receiver appointed for the operation of its business, or (iv) the Seller assigns this Agreement in violation of this Agreement, then the Purchaser shall have the right to terminate this Agreement, without loss or penalty, effective immediately upon delivery of a written termination notice to the Seller.

Section 4.10 Cumulative Remedies. The Purchaser's rights to liquidated damages or termination under this Article IV shall not limit any other rights of the Purchaser to damages or specific performance that may be available to the Purchaser under law or equity with respect to delay or other breaches of contract, enforcement of warranties or indemnity rights provided to the Purchaser hereunder.

## **ARTICLE V INSURANCE**

Section 5.1 General Insurance Requirements. Without limiting its obligations under Article VII or elsewhere, the Seller will, at all times during the term of this Agreement and until the expiration of all warranty, maintenance and service periods hereunder, and thereafter, at any time, the Seller, any Service Provider, or contractor is performing any work or services or is otherwise present at the Delivery Site (with the exception of Subsection

(b), which shall be required to be in effect only until the Handover Date of the last Terminal Tractor), cause to be carried and maintained on the Terminal Tractors, and on all components thereof; and covering all work, services and activities to be performed under the provisions of this Agreement or the Seller or any of the Seller Related Parties is otherwise present at the Delivery Site, insurance in the amounts and with such terms and conditions as required and approved by the Purchaser and with such insurance companies, underwriters or funds as reasonably approved by the Purchaser. Insurance will be as follows:

(a) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence, annual aggregate of \$2,000,000 and with deductibles not to exceed \$100,000, for bodily injury, including death, and property damage liability. The following coverages must be included: products and completed operations, premises and operations, broad form or blanket contractual liability, explosion/collapse/underground, property damage liability, broad form property damage, sudden and accidental pollution conditions (including property damage/restoration, environmental cleanup costs and legal defense costs), and acts of terrorism, which arise from or in connection with the Seller's performance of the Agreement.

(b) Property Insurance on an "All Risk" basis, including but not limited to flood, wind, acts of terrorism, earthquake, and named storm and storm surge, in an amount not less than 100% of the full replacement value of the Terminal Tractors, but in any event not less than an amount equal to the Contract Price, and with deductibles not to exceed \$100,000. This coverage shall be in force on the Terminal Tractors and shall apply while the Terminal Tractors are under the Seller's control from the date of delivery to the Delivery Site until the Handover Date.

(c) Business Automobile Liability Insurance with limits of not less than \$1,000,000, combined single limit, each accident, for bodily injury, including death and property damage liability, and with deductibles not to exceed \$100,000. Coverage must extend to "any auto".

(d) Statutory Workers Compensation Insurance as required by federal, state or local law and Employers Liability limit not less than \$1,000,000 per accident.

(e) Excess liability coverage with limits of not less than \$20,000,000 per occurrence, annual aggregate of \$40,000,000 and with deductibles not to exceed \$100,000, which shall be coverage over and above the policies listed above.

(f) The Seller will include each of the Purchaser, its directors, officers, parent companies and affiliates and their successors and assigns, as well as the Port of New York and New Jersey, as an additional insured on its applicable liability insurance policies set forth in subsections (a), (c) and (e) in this Section 5.1 with appropriate policy endorsements. The Seller will include Purchaser as loss payee as their interest may appear on the coverage set forth in subsection (b) in this Section 5.1. All policies and certificates will contain and be endorsed to include an express waiver of the insurer's subrogation rights in favor of the Purchaser and other parties requested by the Purchaser. All policies and certificates will contain a statement and be endorsed to include that the Seller's insurance is primary coverage to the Purchaser and that any coverage maintained by the Purchaser is excess and non-contributory for claims or losses. The policies shall also include a separation of insureds, severability of interests, or similar clause providing that, except for the limits of insurance and any specific rights or duties assigned to the first named insured, the coverage afforded applies separately to each insured against whom a claim is made or a suit is brought. Insurance shall be written on an occurrence basis unless otherwise expressly set forth in this Section 5.1. Insurance certificates, including the form and content thereof, as well as the identity and rating of each insurer are subject to the prior approval of the Purchaser's Risk Manager. The Seller shall be responsible for the payment of all deductibles.

(g) In addition to the above requirements, the Seller shall maintain the Commercial General Liability Insurance (including the excess liability coverage) for a period of ten (10) years after Final Acceptance of the Terminal Tractors, including but not limited to naming the Purchaser, its directors, officers, parent companies and affiliates and their successors and assigns, as well as the Port of New York and New Jersey, as additional insureds and including an express waiver of the insurer's subrogation rights in favor of the Purchaser and the Port of New York and New Jersey. The requirement that the Seller furnish specified minimum insurance coverages is not to be interpreted in any way as lessening or limiting the liability of the Seller, any of the Seller's contractors, and/or any of the Seller's Service Provider(s) under this Agreement, law or equity. The Purchaser's acceptance of any insurance certificates shall not be deemed to be an acceptance, modification or waiver of the Purchaser's rights with respect to any of Seller's obligations under the Agreement, including, but not limited to, the insurance obligations hereunder. No contractor and/or Service Provider shall be permitted to commence any work unless and until either (i) the contractor and/or Service Provider shall have provided to the Purchaser evidence that it maintains coverage of all insurance required under the Agreement or (ii) the Seller shall have provided evidence that it expressly covers such contractor and/or Service Provider under the insurance maintained by the Seller.

(h) Notwithstanding the foregoing, the Seller shall not be required to provide acts of terrorism coverage (both for Commercial General Liability and Property Insurance), underground, and broad form/blanket contractual liability (for Commercial General Liability). However, such coverages shall be required for the Seller's United States affiliates and subcontractors/Service Providers performing work at the Delivery Site or in connection with this Agreement.

Section 5.2 Event of Loss. In the event of loss of a Terminal Tractor or parts thereof prior to the date that risk of loss passes to the Purchaser pursuant to Section 4.5, provided that this Agreement is not terminated pursuant to Section 4.9 hereof, the Seller will undertake the repair, salvage, and recovery thereof, at its sole cost and expense, on a timetable reasonably acceptable to the Purchaser and will assume the sole responsibility for, and direct and control of, such undertaking, keeping the Purchaser advised of all developments. However, the Seller will conduct such operations in a manner that will not interfere with the Purchaser's normal operations and will comply with the Purchaser's reasonable requests in connection therewith.

Section 5.3 No Acts Resulting in Suspension. The Seller agrees that it will not do any act or suffer or permit any act to be done whereby any insurance required hereunder will or may be suspended, impaired, or defeated.

Section 5.4 Delivery of Certificates of Insurance. The Seller will furnish or cause to be furnished to the Purchaser, no later than thirty (30) days prior to the scheduled delivery of the first Delivery Tranche of Terminal Tractors, certificates of insurance evidencing the insurance requirements set forth in Section 5.1 hereof. The Seller shall not be permitted to deliver the Terminal Tractors or be present upon the Delivery Site unless and until insurance certificates meeting the requirements herein have been delivered to and accepted by the Purchaser. The Seller shall provide the Purchaser with subsequent certificates of insurance evidencing the renewal periods of all coverages prior to expiration. The Purchaser reserves the right to require certified copies of any and all insurance policies required under this Agreement. In the event any of the insurance coverages set forth in Section 5.1 are cancelled, non-renewed, reduced or restricted, the Seller shall give the Purchaser written notice as soon as possible which shall in no event exceed ten (10) business days after notice to the Seller of such event. Notwithstanding the foregoing sentence, all policies and insurance certificates will provide for thirty (30) days prior written notice to the Purchaser of any cancellation or non-renewal of any required insurance coverage.

Section 5.5 Cost of Insurance Included in Contract Price. The cost of insurance under this Article V shall be for the Seller's account.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF SELLER

Section 6.1 Seller's Warranties. The Seller makes the representations and warranties to the Purchaser set forth below in this Article VI knowing that the Purchaser is relying on same in entering into this Agreement.

Section 6.2 Warranty. The Seller warrants that the Terminal Tractors (i) will be fit for the purpose of moving cargo on a Trailer with a maximum payload of sixty-five (65) tons; (ii) will conform to all Technical Specifications; (iii) will be designed, manufactured and delivered in accordance with all Applicable Laws in effect as of the date of delivery to the Delivery Site; (iv) will be (a) free from defects in design, (b) free of defects in workmanship, including, without limitation, the process of manufacture, and (c) free of defects in materials; and (v) all Software provided, licensed, made available, or otherwise furnished (directly or indirectly) by the Seller to the Purchaser will conform to the documentation provided by the Seller and will perform in accordance with the requirements of the Technical Specifications (collectively, the "**Warranty**"). Notwithstanding the foregoing, the items on Schedule \_\_\_ to Appendix \_\_\_\_\_ are expressly excluded from, and are limitations upon the scope of, obligations undertaken by the Seller under the Warranty:

Without limitation of the foregoing, the Seller reserves the right (1) to make changes in the design and construction of \_\_\_\_\_ terminal tractors that are delivered to other customers of the Seller without being obligated to make corresponding changes in previously manufactured Terminal Tractors, except such changes pertaining to safety issues or identified defects, and (2) to deny Warranty coverage for any repair to a Terminal Tractor having a nonfunctional or altered hour meter unless such non-function is due to failure of the Terminal Tractor or to the Seller's negligence, omission or willful misconduct. For the avoidance of doubt, if the Seller makes changes in the design or construction of Terminal Tractors to be delivered to the Purchaser under this Agreement, then the Seller shall make the corresponding changes to any Terminal Tractors previously delivered to the Purchaser under this Agreement. The Warranty with respect to replacement parts installed on a Terminal Tractor in satisfaction of the Seller's Warranty obligation shall be effective for the longer of (i) the applicable warranty provided by the Seller for such part and (ii) the remaining Warranty Period with respect to the Terminal Tractor upon which it is installed.

Section 6.3 Remedies for Defects. If a breach of any Warranty is discovered, and a claim of such breach of the Warranty is made, within the applicable Warranty Period, the Seller shall remedy, or caused to be remedied, such breach of Warranty as set forth in this Section 6.3. The Seller shall at its sole cost and expense, including parts and labor, promptly (a) retrofit each Terminal Tractor in breach of the Warranty described in clause (i) or (ii) of Section 6.2 such that it shall be fit for the intended purpose and conform to the Technical Specifications, and (b) repair or replace each Terminal Tractor in breach of the Warranty described in clause (iii), (iv) or (v) of Section 6.2 such that the defect in design, material or workmanship is corrected. In addition, the Seller shall repair or cause to be repaired any damage caused by such breach of Warranty, whether to the Terminal Tractor itself or any other personal or real property. In case of significant concerns by the Purchaser whether to repair or replace a defective part both parties shall convene with the purpose of determining the best way to overcome the deficiency. The Seller shall have and maintain reasonable technical support, supplies of replacement parts and accessories and an inventory of tools and equipment in order to promptly and effectively remedy defects or damage. If the Seller fails to promptly remedy a defect or damage, the Purchaser may perform such repair itself or by others, at the Seller's expense, without relieving the Seller from any of its obligations hereunder and the Seller shall promptly reimburse the Purchaser for such expense provided, however, that before the Purchaser may undertake any such repair it shall first provide to the Seller fourteen (14) days written notice of its intent to undertake such repair. If a particular component experiences three or more defects within its warranty period or extended warranty period, whether in one Terminal Tractor or multiple Terminal Tractors, then, at the election of the Purchaser on a case by case basis, the Purchaser may advise the Seller of the same in writing as a potential

recurring failure, whereupon the Seller shall have thirty (30) days to concede the recurring failure, or elect to undertake an investigation of the claimed recurring failure. If the Seller elects to investigate the claimed recurring failure, the Seller shall have ninety (90) days to conduct its investigation, inspect the Terminal Tractors, and propose a remedy sufficient to prevent further recurrence of such defect or reject the claimed recurring failure. The Purchaser shall have thirty (30) days to review the Seller's report and accept the findings and offered remedy, or commence an action to enforce the remedies of this Section 6.3 with respect to all Terminal Tractors. If a defect or damage to a Terminal Tractor, solely or cumulatively, as determined by the Purchaser acting in its reasonable discretion, is a breach of the Technical Specifications or deprives the Purchaser substantially of the benefit of such Terminal Tractor, the Purchaser may terminate this Agreement with respect to such Terminal Tractor and recover all sums paid to Seller in respect of such Terminal Tractor, including freight costs paid by the Purchaser, and all other costs incurred by the Purchaser with respect to such Terminal Tractor. The remedies set forth in this Section 6.3 shall be the Purchaser's sole remedies for a breach of the Warranty.

Section 6.4 Intentionally Omitted.

Section 6.5 NO IMPLIED WARRANTIES. THE WARRANTIES DESCRIBED IN SECTION 6.2 OF THIS AGREEMENT ARE THE SELLER'S SOLE WARRANTIES REGARDING EACH AND EVERY TERMINAL TRACTOR AND ARE THE EXCLUSIVE WARRANTIES OF THE SELLER AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION, AND THE SELLER MAKES NO OTHER WARRANTIES TO THE PURCHASER OR ANY OTHER PERSON WITH RESPECT TO ANY AND ALL TERMINAL TRACTORS.

Section 6.6 Representations, Warranties and Additional Covenants. The Seller represents and warrants to the Purchaser on the Execution Date and on each Handover Date that:

(a) Organization and Good Standing. The Seller is a company with limited liability duly organized, validly existing and in good standing under the laws of \_\_\_\_\_ and has all requisite corporate power and authority to own and lease the properties it currently owns and leases and to carry on its business as such business is currently conducted;

(b) Corporate Authority; Authorization of Agreement. (i) The Seller has the full power, legal capacity and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) this Agreement constitutes the legal, valid and binding obligation of the Seller enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other legal requirements relating to or affecting creditors' rights generally or by equitable principles; and (iii) the Seller has, in accordance with all legal requirement and its organizational documents, obtained all approvals and taken all actions necessary for the authorization, execution, delivery and performance by it of this Agreement;

(c) No Conflicts. The execution, delivery and performance by the Seller of this Agreement, including, without limitation, the design, manufacture, and delivery of the Terminal Tractors, (i) will not result in a default under, or, upon final payment therefor by the Purchaser, the creation of any Lien on the Terminal Tractors or any part thereof pursuant to, any agreement, instrument or other arrangement to which it is a party or by which it is bound (including, without limitation, any Software licenses); (ii) upon transfer of title the Purchaser will acquire good and marketable title to the Terminal Tractors free and clear of all Liens; and (iii) shall be in compliance with all Applicable Law;

(d) Software Licenses. The Seller holds valid and enforceable license agreements to all third party software (including, without limitation, source code, object code, application software, server and client software, operating system software and software implemented as firmware) included or embedded in, or provided for use



in connection with, the Terminal Tractors, and all third party drawings, designs, specifications, manuals and programs provided by the Seller, and such license agreements permit the Seller to deliver the Terminal Tractors to the Purchaser in accordance with this Agreement and to license the Software to the Purchaser under Section 2.10;

(e) Compliance with Sanctions and Laws. The Seller is in compliance with all Sanctions, Anti-Bribery Laws and all governmental laws, rules and regulations relating to terrorism and money laundering;

(f) Subject to Sanctions. The Seller is not, and its directors, officers or employees are not, a Designated Person or otherwise the target or subject of any Sanctions;

(g) FCPA. The Seller, and to the Seller's knowledge any of its directors, officers and employees, has not taken any action that would result in a violation by any such person of the FCPA or other Anti-Bribery Laws, including, without limitation, making any offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in each case in material contravention of the FCPA;

(h) Privacy and Security. The Seller has implemented and at all times maintained commercially reasonable safeguards, consistent with practices in their industry, to comply with Privacy and Security Laws and protect the security, confidentiality, and integrity of the Systems and personal identifiable information and to safeguard against Security Breaches.

(i) Workplace Behavior. The Seller, with respect to any personnel that are part of its operations, will not employ child or forced labor, unsafe working conditions, discrimination of any kind, or cruel or abusive disciplinary practices in the workplace, and otherwise respect the human rights of such individuals.

Section 6.7 Conflicts of Interest. The Seller represents and warrants that (a) no third party (excluding the Seller's and its affiliates' own employees) has been employed or retained or solicited to secure this Agreement for the Seller upon an agreement or understanding for the payment to such person of a commission, percentage, brokerage, contingent fee or other thing of value, (b) no officer, agent or employee of the Purchaser or of any affiliate of the Purchaser was employed, retained or solicited to secure this Agreement for the Seller and (c) no officer, agent or employee of the Purchaser or of an entity affiliated with the Purchaser has a beneficial interest in the Seller or this Agreement or has or will receive anything of value as a result of or arising from this Agreement.

## ARTICLE VII INDEMNIFICATION

Section 7.1 Indemnification by the Seller. The Seller shall defend, indemnify and hold harmless the Purchaser, its parent companies, its affiliates and their respective successors and assigns (including any subsequent owner of the Terminal Tractors), and each of their directors, officers, shareholders, employees, contractors and agents (collectively, with the Purchaser, the "**Purchaser Related Parties**") from and against (i) any and all third party (which third parties shall include employees, contractors and union labor of the Purchaser Related Parties) claims, suits, acts, demands, proceedings, judgments, losses, damages, costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees and disbursements), incurred by any of the Purchaser Related Parties, including but not limited to, for physical injury to or death of any person, damage to the tangible property of any Person or costs of environmental remediation, or (ii) damage to any tangible property of a Purchaser Related Party, caused by, resulting from or arising in connection with any of the following: (1) a defect in the design, materials or workmanship of, or Warranty issue with, the Terminal Tractors (or any part, material or

component thereof), (2) any breach or violation of this Agreement by the Seller or any of its Service Providers or other subcontractors or any of their respective subcontractors, supplies, officers, employees, agents or representatives (collectively, with the Seller, the “*Seller Related Parties*”), (3) any negligent act or omission or willful misconduct of any of the Seller Related Parties, or (4) any breach or violation by any of the Seller Related Parties of any Applicable Law in connection with the performance of this Agreement; but, in each case, excluding any physical injury to or death of person or damage to or destruction of tangible property to the extent caused solely by the negligence or willful misconduct of the Purchaser or any Purchaser Related Party.

Section 7.2 Indemnification by the Purchaser. The Purchaser shall defend, indemnify and hold harmless Seller Related Parties from and against any and all tort liabilities to third parties for claims, suits, acts, demands, proceedings, judgments, losses, damages, costs, expenses and liabilities (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by any of the Seller Related Parties for physical injury to or death of any person, damage to the tangible property of any Person or costs of environmental remediation, to the extent caused by, resulting from or arising in connection with any of the following (1) the Purchaser’s or any Purchaser Related Party’s sole negligence (by act or omission) or willful misconduct including, without limitation, in the Purchaser’s or Purchaser Related Party’s operation or use of a Terminal Tractor following the Handover Date of such Terminal Tractor, or (2) any violation by any of the Purchaser Related Parties of any Applicable Law; but, in each case, excluding any physical injury to or death of person or damage to or destruction of tangible property to the extent caused by or related to the negligence or willful misconduct of the Seller or any Seller Related Party.

Section 7.3 Intentionally Omitted.

Section 7.4 Intellectual Property Indemnification.

(a) The Seller represents and warrants that neither the design of nor any components (including, without limitation, Software) of the Terminal Tractors nor the completed Terminal Tractors, or use thereof, does or will infringe, misappropriate or otherwise violate any patent, copyright, trade secrets or other intellectual property rights (collectively, “*IP Rights*”) owned or controlled by any Person other than the Seller, its affiliates, or the Purchaser.

(b) The Seller shall defend or settle, at its own expense, any claim or suit brought by a third party against Purchaser Related Parties alleging that the Terminal Tractors (or any part thereof, including, without limitation, Software and all upgrades) or its use, operation, importation, manufacture, support, sale or distribution infringes, violates or misappropriates any third party’s IP Rights (including, without limitation, any United States or foreign patent or copyright), and shall indemnify and hold harmless the Purchaser Related Parties from all resulting liabilities, judgments and damages, losses, costs and expenses, including, without limitation, attorneys’ fees and disbursements. In the event the Purchaser’s use of the Terminal Tractors or any part thereof is enjoined, the Seller shall at the Seller’s sole election obtain for the Purchaser the right to continued use of the Terminal Tractors, or retrofit the Terminal Tractors or applicable component thereof to make it non-infringing, or shall furnish to the Purchaser at no charge substantially equivalent non-infringing equipment reasonably satisfactory to the Purchaser that has at least the same level of performance. The Seller shall have no liability or obligation to the Purchaser under this Section 7.4 to the extent any claim of infringement is based upon the use of the Terminal Tractors in connection with or in combination with any equipment, devices or software not supplied by the Seller, in combinations not reasonably anticipated by the Seller in light of the Seller’s actual knowledge regarding the Terminal Tractors’ intended use or use of the Terminal Tractors in a manner other than as specified by the Seller (including in the Seller’s operations instructions), but only if the infringement would not have occurred but for the combination. Notwithstanding the foregoing, the Seller will not be relieved of its obligation

under this Section or otherwise under this Agreement, at law or equity, if there is no commercially reasonable non-infringing use for the Terminal Tractors in any combination.

## **ARTICLE VIII LIMITATION OF LIABILITY**

Section 8.1 Direct Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR THE SELLER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, THE MAXIMUM LIABILITY OF THE SELLER FOR ALL DIRECT DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, BREACH OF AN OBLIGATION TO REPAIR, REPLACE, OR RETROFIT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR OTHERWISE, OTHER THAN FOR (A) LIQUIDATED DAMAGES PAYABLE BY THE SELLER IN ACCORDANCE WITH SECTION 4.7 OF THIS AGREEMENT AND (B) GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OF THE SELLER RELATED PARTIES.

Section 8.2 Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR LIQUIDATED DAMAGES PAYABLE BY THE SELLER IN ACCORDANCE WITH SECTION 4.7 OF THIS AGREEMENT, IN NO EVENT SHALL THE PURCHASER HAVE ANY LIABILITY TO THE SELLER RELATED PARTIES NOR SHALL THE SELLER RELATED PARTIES HAVE ANY LIABILITY TO THE PURCHASER RELATED PARTIES FOR LOSS OF PROFITS, LOSS OF USE, DELAYS, OR ANY INDIRECT, SPECIAL, PUNITIVE OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF THE DESIGN, MANUFACTURE, SALE, DELIVERY, SERVICE OR USE OF THE EQUIPMENT OR THE PROVISION OF REPAIR, OVERHAUL OR OTHER SERVICES, DELAY, DEFECTS, MALFUNCTIONS OR OTHERWISE, WHETHER BASED ON WARRANTY, CONTRACT, INDEMNITY, BREACH OF AN OBLIGATION TO REPAIR, REPLACE, OR OVERHAUL, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR OTHERWISE.

## **ARTICLE IX ADDITIONAL COVENANTS**

Section 9.1 Taxes, Fees and Duties.

(a) Any and all sales and use taxes, gross receipts and ad valorem taxes, excise taxes, and fees imposed by the United States Government, a state of the United States, or a political subdivision thereof in connection with the purchase and sale of the Terminal Tractors shall be for the account of the Purchaser. The Purchaser shall reimburse the Seller for import and customs duties imposed by a United States authority located and with a domicile of origin within the United States.

(b) Any and all taxes, tariffs, customs, export fees, duties and other charges and fees other than those listed in Section 9.1(a) above in connection with this Agreement, including for the avoidance of doubt, franchise taxes payable by the Seller or taxes measured on the gross income of the Seller, shall be for the account of the Seller.

(c) No commissions are payable by the Purchaser or any Person on account of this Agreement. Commissions, if any, payable by the Seller or any of the Seller's affiliates on account of this Agreement shall be for the account of the Seller and the Seller indemnifies and holds harmless the Purchaser therefor.

Section 9.2 Equal Employment Opportunity. The Seller and the Purchaser will comply with all Applicable Laws concerning employment practices.

Section 9.3 Compliance with Certain Laws, Rules and Regulations; Safety.

(a) The Seller shall be responsible for securing all security permits and permissible identification in order to enter the Delivery Site and conduct its activities in accordance with the terms of this Agreement and Applicable Laws, including, without limitation, ensuring that all personnel of the Seller, its Service Providers, and its subcontractors and suppliers who perform any work at the Delivery Site have Transportation Worker Identity Credentials.

(b) The Seller shall observe all applicable regulations regarding safety on the Delivery Site. The Seller shall at all times comply, and cause its employees and Service Providers, subcontractors and agents, if any, to comply, with all applicable safety, security, standards, regulations and programs established, in effect or applicable to the Purchaser or the Delivery Site.

(c) The Seller shall be responsible for establishing and maintaining close coordination with the Purchaser's security officer identified by the Purchaser, beginning not later than twenty-eight (28) days prior to entering the Delivery Site.

(d) The Seller shall be responsible for conducting all work in conformity with the security plan furnished by the Purchaser.

**ARTICLE X  
GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL**

Section 10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the choice of law rules that would direct the application of the laws of another jurisdiction. The U.N. Convention on the Contracts for the International Sale of Goods is not applicable to this Agreement and is hereby expressly disclaimed.

Section 10.2 Jurisdiction. The Purchaser and the Seller hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or Federal court sitting in the Borough of Manhattan in any action or proceeding arising out of or relating to this Agreement, and the Purchaser and the Seller hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or Federal court. The Purchaser and the Seller hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Each of the Purchaser and the Seller agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 10.3 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING. Each party hereby (i) certifies that no representative, agent or attorney of the other has represented, expressly or otherwise, that the other would not, in the event of a suit in equity, action at law or other judicial or administrative proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this paragraph.

**ARTICLE XI  
MISCELLANEOUS**

Section 11.1 Assignment; Financing.

(a) This Agreement will be binding upon and inure to the benefit of the Purchaser and the Seller and their respective successors and permitted assigns. Except as provided in Sections 11.1(b) (f), or below, neither party may assign this Agreement, directly or indirectly, without the prior written consent of the other party.

(b) The Purchaser and the Seller acknowledge and agree that the Purchaser's rights under this Agreement may be assigned pursuant to a collateral assignment to any party that is providing financing to the Purchaser or is a party to such financing (or to an agent or trustee of such party) (and in connection with such financing the Seller shall execute and deliver any estoppels, consents, acknowledgments and other documents as may be reasonably requested by the Purchaser or such financing party (or the agent or trustee of such financing party and in which case the Purchaser shall reimburse the Seller for the Seller's necessary and reasonable external counsel fees)) (a "**Financing Transaction**"). Notwithstanding anything herein to the contrary, the assignment of Purchaser's right to purchase the Terminal Tractors hereunder in connection with a Financing Transaction shall not relieve the Purchaser or the Seller of its obligations under this Agreement.

(c) The Purchaser shall have the right to assign this Agreement to any entity that succeeds to the Purchaser's operations at the Port of New York and New Jersey.

(d) After delivery of the payment in Section 11.2(c) with respect to a Terminal Tractor, the Purchaser may assign this Agreement and the rights hereunder with respect to such Terminal Tractor to any subsequent owner of such Terminal Tractor without the need for consent of the Seller.

(e) The Purchaser shall have the right to assign this Agreement by reason of merger, sale of all of or substantially all of Purchaser's assets or stock of Purchaser, or operation of law, provided such assignee shall be bound by the terms of the Agreement.

(f) The Purchaser shall have the right to assign this Agreement to an affiliate of the Purchaser, provided such assignee shall be bound by the terms of the Agreement.

Section 11.2 Terms of Payment. The Contract Price shall be paid to the Seller by or on behalf of the Purchaser as follows: \_\_\_\_\_ (per tractor)

(a) \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price (the "**Advance Payment**") is payable upon (i) the execution and delivery of this Agreement and (ii) the delivery to the Purchaser of the Advance Payment Security.

(b) On the Handover Date of each Terminal Tractor, \_\_\_\_\_ percent (\_\_\_\_%) of the Unit Price of such Terminal Tractor (the "**Handover Payment**") payable as set forth in Section 11.2(d), provided, that with respect to the first Terminal Tractor delivered, the Handover Payment will not be payable until after the delivery of the Warranty Security.

(c) Upon Final Acceptance of the Terminal Tractor, \_\_\_\_\_ percent (\_\_\_\_%) of the Unit Price of such Terminal Tractor (the "**Final Acceptance Payment**") is payable as set forth in Section 11.2(d).

(d) Upon the Seller's completion of all conditions of a payment installment, the Seller shall submit to the Purchaser an invoice for the applicable payment amount, together with such documentation and information as the Purchaser may reasonably require to verify the completion of such agreed payment installment. All payments shall be made in US dollars within ten (10) days after receipt by the Purchaser of such invoice and required documentation and information. Each payment installment shall be paid by wire transfer remittance into a bank account notified in writing by the Seller to the Purchaser on or prior to the date which is ten (10) days prior to the due date thereof or if that day is not a Business Day on the immediately preceding Business Day.

Section 11.3 Intentionally Omitted.

Section 11.4 Delivery and Delivery Inspection.

(a) The Seller shall be responsible for its own and all third party equipment, manpower, costs, liabilities and expenses in connection with the manufacture, delivery, Delivery Inspection of the Terminal Tractors at the Delivery Site through the Handover Date.

(b) It is agreed that the Purchaser will not be liable for payment of or to the Seller's employees for salaries, benefits or otherwise.

Section 11.5 Survival. The provisions of Articles I, IV, V, VI, VII, VIII, IX, X and XI shall survive the Handover of the Terminal Tractors and/or termination of this Agreement.

Section 11.6 No Use of Trademarks; Public Announcements.

(a) The Seller shall not use the logos, trademarks, service marks, trade names, trade secrets or other intellectual property of the Purchaser in any way without the Purchaser's prior written consent, and the Purchaser shall not be deemed to have granted the Seller a license of, or granted the Seller any rights in, any of the foregoing by entering into this Agreement.

(b) The Seller shall not make any announcement, give any photographs, or release any information concerning all or any portion of this Agreement or its obligations hereunder, to any member of the public, press, trade or technical paper, other person or any official body, without the Purchaser's prior written consent, except as may be expressly permitted by this Agreement for the necessary execution of the Seller's obligations hereunder and except for references to this Agreement (but, other than model #, not the details of it) and pictures of the Terminal Tractors (but not the details of them) in its regular experience lists and general promotional materials.

Section 11.7 Notices. All notices or other communications required or permitted to be given under the Agreement, (which may be initially given verbally, followed up with written confirmation) shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service for inland delivery or international courier for international delivery, (c) in the event overnight delivery service or international courier service is not readily available, if mailed by postage prepaid, registered or certified with return receipt requested, or (d) if transmitted by electronic mail (with such transmission verified), in each case to the following:

If to the Purchaser, to:

Port Newark Container Terminal L.L.C.  
241 Calcutta Street  
Newark, NJ 07114  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

Port Newark Container Terminal L.L.C.  
241 Calcutta Street  
Newark, NJ 07114  
Attention: \_\_\_\_\_

Email: \_\_\_\_\_

For Deliveries of Terminal Tractors, to:

Email: [PNCT.Engineering.Management@pnct.net](mailto:PNCT.Engineering.Management@pnct.net)

If to the Seller, to:

Company:

Address:

Attention:

Phone:

Mobile:

Email:

with a copy to:

Company:

Address:

Attention:

Phone:

Mobile:

Email:

Any party by notice given in accordance with this Section to the other party may designate another address or person for receipt of notices hereunder. Delivery of any notice made as provided above will be deemed effective: (i) if in writing and delivered in person or by overnight courier service guaranteeing next day delivery, on the date it is delivered; (ii) if sent by registered or certified mail, postage prepaid, on the date that mail is delivered or its delivery is attempted; and (iii) if sent by electronic mail transmission, on the date that transmission is received by the recipient in legible form (as evidenced by the sender's written confirmation of delivery); in each case, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

Section 11.8 Severability. In the event that any of the provisions hereof are held to be invalid, illegal, or unenforceable, in whole or in part, the remaining provisions hereof shall not be affected thereby. In such event, the parties hereto agree and consent that such provisions and this Agreement shall be modified and reformed so as to affect the original intent of the parties as closely as possible with respect to those provisions which were held to be invalid, illegal or unenforceable.

Section 11.9 Amendments. This Agreement may be amended, modified, superseded or canceled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or, in the case of a waiver, by or on behalf of the party waiving compliance. The failure of any party at any time or times to require performance with any provision hereof shall

in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

Section 11.10 Entire Agreement. This Agreement (including, without limitation, the Appendices and Exhibits hereto) and the agreements and documents to be executed pursuant to this Agreement constitute the entire agreement among the parties as of the Execution Date and supersede any prior understandings, agreements or representations by or among the parties, written or oral, to the extent they have related in any way to the subject matter hereof.

Section 11.11 Further Assurances. Each party agrees to execute such further instruments or documents as the other party may from time to time reasonably request in order to confirm or carry out the transactions contemplated in this Agreement; provided that no such instrument or document shall expand a party's liability beyond that contemplated by this Agreement.

Section 11.12 Counterparts. This Agreement may be executed and delivered by the Parties by digital or electronic format (including.pdf) in any number of counterparts, each of which when executed shall be deemed to be an original, and all of which when taken together, shall constitute one and the same instrument.

Section 11.13 Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect, in any way, the meaning or interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]