

## PART II

### Agreement for Container Yard and/or Intermodal Equipment Maintenance Services

#### 1. Definitions

In this Agreement save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them.

"*Carrier*" means any third party trucker, whether owner, operator, agent, representative, user and/or employee of any of them who is approved by Customer to engage in the interchange or otherwise deliver to, or take possession of Equipment from Vendor.

"*Customer*" means the party identified in Box 2 and, in the context of Clause 9, shall include its parent company and each of its parent company's direct and indirect subsidiaries, affiliated or related corporations or entities thereof, and their insurance underwriters including but not limited to Beacon Insurance Company, Ltd. and its reinsures.

"*Vendor*" means the party identified in Box 3.

"*Equipment*" means any and all trailers, containers, chassis, bogies, flatbeds, tanks, refrigerator vans or containers and any special equipment or accessories outfitted on the unit (including but not limited to tires, tubes and generator sets) and any other types of mobile units, and all component parts and combinations thereof either owned, leased or under the control of Customer which, from time to time, may be operated by Customer, and which, from time to time, Customer and Vendor may agree between them shall be subject to this Agreement.

"*Equipment Interchange Report*" or "EIR" means a document substantially in the form as available on-line at [www.Crowley.com](http://www.Crowley.com) or by request or other document approved by Customer, which document, subject to revision from time to time, is incorporated herein by this reference.

"*Facility(ies)*" or "CY(s)" means the Terminal(s), Container Yard(s) and/or Equipment Maintenance and Repair or Storage facility(ies) stated in Part I, Box 4 at which Vendor shall provide Services under this Agreement.

"*Services*" unless qualified otherwise, means the container (CY) yard services and the maintenance and/or repair services (including any new or replacement parts and materials supplied by Vendor in the course of performing such maintenance and/or repair) specified in Clauses 2, 3 and 4, as affirmatively indicated in Boxes 5 to 6.7 and Box 12.

"*Roadability*" means the Equipment meets or exceeds then current DOT safety requirements, (including but not limited to FHWA requirements) and is reasonably fit for its intended use.

"*Evergreen*" means that this Agreement shall be automatically extended by successive contract periods from the first termination date if neither party gives the other notice of cancellation in accordance with Clause 22.

#### 2. Container Yard (CY) Services

Subject to the terms and conditions provided for herein, during the period of this Agreement, Vendor shall perform Container Yard (CY) Services on the Equipment as specified in sub-clauses 2.1 to 2.4 as indicated affirmatively in Boxes 5 to 5.4. Vendor shall provide security at the Facility that meets or exceeds the standards set by the U.S. Customs' Super Carrier Initiative Agreement (S.C.I.A.) and Customs-Trade Partnership Against Terrorism (C-TPAT). Vendor shall notify Customer immediately upon discovery of any evidence of tampering, loss, theft or damage to Equipment or cargo and provide to Customer a detailed written incident report within twenty-four (24) hours of discovering such evidence of tampering, loss, theft or damage.

Vendor shall permit only Carriers approved by Customer to receive Equipment. Upon receipt by Vendor and upon release to Customer or its approved Carrier each and every piece of Equipment shall be inspected for Roadability and Vendor and Customer (or carrier's driver signing on behalf of carrier or as Customer's authorized agent, as the case may be) shall sign the applicable EIR noting the condition of the Equipment at such time. Execution of the in-bound and out-bound EIR by Vendor and Customer (or its agent) or carrier shall constitute conclusive evidence that the Equipment was delivered to Vendor and redelivered to Customer or the carrier, as the case may be. Vendor acknowledges receipt of all Equipment covered under this Agreement in apparent good order and condition (except for latent defects not discoverable by reasonable inspection) as evidenced conclusively by its execution of the inbound EIR for each piece of Equipment.

If Vendor has not undertaken Maintenance and Repair Services as specified in Clause 3, at Customer's request, Vendor shall allow free access to the Facility by Customer's own or third party maintenance and repair contractors and; provided, further, that in any event, during the period of this Agreement, Vendor shall allow free access to the Facility by Customer's own or third party repair contractors for the purpose of performing maintenance and repair estimates on the Equipment. Notwithstanding the foregoing and Vendor's option not to provide Maintenance and Repair Service in accordance with Clause 3, all Vendors that provide CY Services in accordance this Agreement shall provide Roadability inspections on all Equipment at the time of receipt and dispatch from the Facility and release of Equipment to Customer or carrier, as the case may be; and, provided, further, may provide priority Roadability Service either through Roadability lanes or a mobile Roadability Service unit, as agreed. Upon Customer's request, Vendor shall stage Equipment for evening and weekend pick-up; provided, however, that Vendor shall provide Roadability inspections on all such Equipment at the time of staging. Vendor shall exercise reasonable care to ensure the Roadability of all Equipment upon dispatch from the Facility and release of Equipment to Customer or carrier, as the case may be.

#### 2.1 Receiving, Dispatching and Communications

*(only applicable if agreed according to Box 5.1)*

In consideration of a Gate Charge per EIR, Vendor shall receive and/or dispatch Equipment during normal business hours, except as otherwise agreed. All Equipment shall be inspected by qualified Vendor personnel who shall accurately complete Customer's EIR form in accordance with Customer's EIR Procedures available on-line at [www.Crowley.com](http://www.Crowley.com) or by request which procedures, subject to revision from time to time, are incorporated herein by this reference. Vendor shall secure the signature of the delivering or receiving carrier on the EIR to acknowledge the condition of Equipment at the time of receipt/dispatch. Vendor shall allow only carriers approved by Customer to pick up Equipment; provided, further that failure to do so shall subject Vendor to liability for Equipment in accordance with sub-clause 9.3 of this Agreement. Vendor shall promptly forward copies of completed and signed EIRs to Customer's office; provided, further that, failure to accurately reflect the condition of Equipment upon its receipt/dispatch in accordance with Customer's EIR procedures shall result in the presumption that any and all damage to Equipment occurred while the Equipment was in the care, custody and control of

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Vendor and, consequently, any undocumented damage to Equipment upon receipt or release to/from Customer or carrier shall be considered "yard damage" for which Vendor shall be liable to repair or replace in accordance with sub-clause 9.3 of this Agreement. In addition to Customer's EIR requirements in accordance with Clause 3, Vendors shall provide Roadability inspections on all Equipment at the time of receipt and dispatch, as applicable. Vendor shall immediately notify Customer upon discovery of any evidence of theft of cargo or Equipment and any defect or yard damage to Equipment that renders such Equipment un-Roadworthy. Vendor shall provide to Customer an inventory of all Equipment on the Facility as instructed by Customer's local Equipment Control representative.

#### 2.2 Mount and Ground

*(only applicable if agreed according to Box 5.2)*

Vendor shall provide mount and ground services (including chassis bundling/unbundling) during normal business hours. Such Services shall be performed when authorized by Customer in accordance with Customer's requirements.

#### 2.3 Reefer Connections

*(only applicable if agreed according to Box 5.3)*

Vendor shall provide electrical reefer outlets in sufficient quantity and type to accommodate the Equipment. All loaded reefer units shall be monitored for operation and temperature maintenance every four (4) hours in accordance with "Customer's Reefer Temperature Reading Procedures," available on-line at [www.Crowley.com](http://www.Crowley.com) or by request, which procedures, subject to revision from time to time, are incorporated herein by this reference. Vendor shall immediately notify Customer upon discovery of any evidence of reefer failure or malfunction. Vendor shall provide reefer monitoring logs at intervals as instructed by Customer's local Equipment Maintenance representative.

#### 2.4 Storage

*(only applicable if agreed according to Box 5.4)*

Vendor shall provide adequate stable, secure space for storage of Equipment. Free Time specified in Box 9 shall be allowed for all Services relating to this Agreement. Free Time shall commence when Equipment arrives at the Facility and the in-bound EIR is properly executed. Should Free Time allowed exceed time used at the Facility, Storage Payment(s) at the rate specified in Box 10 shall be payable until the piece of Equipment subject to such payment is dispatched from the Facility and an out-bound EIR for such Equipment is properly executed.

### 3. Maintenance and Repair Services *(only applicable if agreed according to Box 6)*

Subject to the terms and conditions provided for herein, during the period of this Agreement, Vendor shall provide Maintenance and Repair Services (including roadability and shop repair) on Equipment as specified in sub-clauses 3.1 to 3.7 as indicated affirmatively in Boxes 6 to 6.7.

All Service shall be performed in accordance with Customer's "Flat Rate Schedule" applicable to the type of Equipment on which Services are performed. Applicable Flat Rate Schedules are available on-line at [www.Crowley.com](http://www.Crowley.com) or by request and, subject to revision from time to time, are incorporated herein by this reference.

All repairs to Containers and Chassis shall be performed in accordance with the Institute of International Container Lessors ("IICL") repair criteria and all repairs to trailers shall be performed in accordance with the Association of American Railroads ("AAR") and/or Customer or other trailer owner's repair criteria. Maintenance, repair and Service shall be done in a professional manner, using parts and components of the same or higher design, material and quality as items being replaced or as specified by Customer. Vendor shall not make any alterations or modifications to any piece of Equipment. Vendor shall be liable for the cost of all work required to correct improper or substandard Service. If Vendor has any questions regarding compliance with Customer's maintenance standards or procedures, Vendor shall contact Customer's local Maintenance and Repair representative.

Vendor shall perform repair estimates and invoicing according to Customer's "Repair Service Order ('RSO') Maintenance Procedures" available by request from Customer's local Maintenance & Repair representative or available on-line at [www.Crowley.com](http://www.Crowley.com), which procedures, subject to revision from time to time, are incorporated herein by this reference.

Vendor shall be authorized to make repairs up to the maximum amount set forth in Box 7 per work order without prior approval; provided, however, that any invoices for such repairs shall either: (i) reference, on their face, the applicable Customer RSO Number, or (ii) be accompanied by supporting documents adequate to Customer at its sole discretion. Vendor shall secure Customer's prior written approval before undertaking any repairs that may exceed the maximum amount set forth in Box 7. Customer, at its option, may supply parts; provided, however that any Vendor supplied parts shall be billed in accordance with Box 8. Any materials provided by Vendor shall be in accordance with Customer's procedures available by request from Customer's local Maintenance & Repair representative or available on-line at [www.Crowley.com](http://www.Crowley.com), which procedures, subject to revision from time to time, are incorporated herein by this reference.

If Vendor has not undertaken certain Services as specified in sub-clauses 3.1 to 3.7 hereof or Vendor does not have sufficient technical expertise to properly perform Services contracted for under this Agreement, Vendor shall allow free access to the Facility by Customer's own or third party maintenance and repair contractors and; provided, further, that in any event, during the period of this Agreement, Vendor shall allow free access to the Facility by Customer's own or third party repair contractors for the purpose of performing Maintenance and Repair Service estimates on Equipment.

Any third party carrier on behalf of Vendor that picks-up, receives, drops-off or delivers Equipment with respect to Vendor's Maintenance and Repair Services obligations hereunder shall be approved by Customer to engage in the interchange or otherwise deliver to, or take possession of Equipment from Carrier. Vendor agrees to arrange for any Vendor designated carrier enter into an Equipment Interchange Agreement in the form available on line at [www.crowley.com](http://www.crowley.com). Any Equipment picked-up, received, dropped-off or delivered by a Vendor designated carrier or a representative of a Vendor designated carrier or coming under the direct or indirect control of the Vendor designated carrier shall be subject to the terms and conditions of this Agreement and any such third party shall be deemed to have authority on behalf of the Vendor to execute an EIR.

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#### 3.1 Chassis

*(only applicable if agreed according to Box 6.1)*

Vendor shall provide Services to Chassis in accordance with Customer's Flat Rate Schedule - Chassis available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference.

#### 3.2 Dry Containers - Open Tops - Flat Racks

*(only applicable if agreed according to Box 6.2)*

Vendor shall provide Services to Dry Containers, Open Tops and Flat Racks in accordance with Customer's Flat Rate Schedule - Dry Containers - Open Tops - Flat Racks available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference.

#### 3.3 Dry Trailer - Flatbeds

*(only applicable if agreed according to Box 6.3)*

Vendor shall provide Services to Dry Trailer - Flatbeds in accordance with Customer's Flat Rate Schedule - Dry Trailer - Flatbeds available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference.

#### 3.4 Genset Preventative Maintenance

*(only applicable if agreed according to Box 6.4)*

Vendor shall provide Services to Gensets in accordance with Customer's Flat Rate Schedule - Genset Preventative Maintenance available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference.

#### 3.5 Carrier Container Cooling Unit

*(only applicable if agreed according to Box 6.5)*

Vendor shall provide Services to Carrier Container Cooling Units in accordance with Customer's Flat Rate Schedule - Carrier Container Cooling Units available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference.

#### 3.6 ThermoKing Cooling Units and Gensets

*(only applicable if agreed according to Box 6.6)*

Vendor shall provide Services to ThermoKing Cooling Units and Gensets in accordance with Customer's Flat Rate Schedule - ThermoKing Cooling Units & Gensets available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference.

#### 3.7 Tires and Tubes

*(only applicable if agreed according to Box 6.7)*

Vendor shall provide Services to tires and tubes in accordance with this sub-clause 3.7.

Vendor shall properly maintain and repair or replace tires and tubes, including but not limited to ensuring that tires and rims are properly mated, tires are properly inflated and contain sufficient tread to comply with applicable government safety regulations and flats and pulled valve stems are fixed.

Vendor shall correct all defects noticed by reasonable inspection, including but not limited to blowouts, flat tires, separation of

caps, blisters, cuts, bumps, bulges, knots, rim wear and objects protruding from tires, such as nails, bolts and spikes.

Customer, at its option, may provide Vendor with a supply of bare or pre-mounted tires for use on Customer Equipment. Vendor shall receive, store, sort, inventory, use and return such tires and any carcasses.

Vendor shall be responsible for adequate storage and security of any tires supplied by Customer in accordance with this Clause.

#### 3.8 Reefer Container Structure Repairs

*(only applicable if agreed according to Box 6.8)*

Vendor shall provide Services to Reefer Containers structure repairs in accordance with Customer's Flat Rate Schedule - Reefer Container Structure Repairs available on-line at www.Crowley.com or by request, which Schedule, subject to revision from time to time, is incorporated herein by this reference

#### 4. Other Services

*(only applicable if agreed according to Box 6.9)*

Vendor shall provide all other Services to Customer the Scope of Work and rates for such Services which are set forth in Box 12.

#### 5. Vendor's Obligations

**5.1** Vendor shall exercise best efforts to provide the agreed Services as independent contractor of Customer in accordance with applicable industry standards.

**5.2** Vendor shall pay punctually all sums due to third parties, which Vendor may become obligated in the course of performing this Agreement and in connection with arranging for any Services in respect of the Equipment.

#### 6. Customer's Obligations

**6.1** Customer shall pay all sums due under this Agreement to Vendor punctually in accordance with the terms of this Agreement.

#### 7. CY and/or Maintenance and Repair Rates, Invoicing and Conditions of Payment

**7.1** Customer shall pay Vendor for Services under this Agreement fees as set forth in Boxes 8 and/or 12, as applicable.

**7.2** Without limiting the generality of the foregoing sub-clause 7.1, Customer shall pay Vendor the sums set out in Box 9 for Storage Services.

**7.3** Vendor shall, at no extra cost to Customer, provide its own office accommodation, office staff, facilities and stationery. Customer shall not be obligated to reimburse Vendor for postage and communication expenses, travelling expenses, and other out of pocket expenses incurred by Vendor in the performance Services.

**7.4** In the event estimated costs exceed the amount stated in Box 7, prior to commencing any Services, Vendor shall obtain authorization from Customer's local Maintenance & Repair representative.

**7.5** Vendor invoices, as applicable, shall be accompanied by original back-up evidence (invoices, work orders, etc.) sufficient to prove Vendor's costs and expenses and that Vendor's subcontractors, suppliers and vendors have been paid in full. Accordingly, Customer, at its option, shall have the right to withhold any amount payable to Vendor until Vendor has furnished to Customer satisfactory back-up evidence to any

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invoice or written lien releases and waivers by Vendor's subcontractors, suppliers and vendors.

**7.6** All invoicing (for all billings between the parties to this Agreement) shall be presented in a timely manner and, unless otherwise provided for in this Agreement, be payable within thirty (30) days of receipt of a correct and verifiable invoice for the Services provided in accordance with this Agreement or other amounts due hereunder. Notwithstanding the foregoing, Customer shall reject any invoice for unauthorized services and Customer may reject any invoice for authorized Services not submitted within 30 days from the date of completion of such Services.

**8. Vendor's Right to Assignment or Sub-Contract**

Vendor shall not have the right to sub-contract any of its obligations hereunder (including those mentioned in Clauses 2, 3 and 4), nor assign or otherwise transfer any monies due or to become due hereunder without the prior written consent of Customer; provided, however, that in the event of such a sub-contract, assignment or pledge, Vendor shall remain fully liable for the due performance of its obligations under this Agreement.

**9. Responsibilities**

**9.1 Force Majeure** – Neither Customer nor Vendor shall be under any liability for any failure to perform any of their obligations hereunder by reason of any cause whatsoever of any nature or kind beyond their reasonable control.

**9.2 Liability to Customer and Third Parties** - Vendor shall be liable to Customer and all third parties for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit or use arising from or in connection with detention of or delay to Equipment or the injury to or death of any person or damage to any property) arising from or in connection with the negligence, gross negligence or willful misconduct of Vendor, its employees, agents, subcontractors and all others acting under Vendor's direction or control in the performance of this Agreement.

**9.3 Equipment** - Without limiting the generality of the foregoing sub-clause 9.2, Liability to Customer and Third Parties, in the event any Equipment is lost, stolen, damaged or destroyed while in Vendor's care, custody or control, including but not limited to Equipment deemed a constructive total loss by Customer at its sole discretion, Vendor shall pay Customer compensation as set forth below in sub-clauses 9.3(i) and 9.3(ii) plus an amount equal to the applicable Detention Charge in accordance with Customer's Demurrage and Detention procedures available on-line at [www.Crowley.com](http://www.Crowley.com) or by request, which procedures, subject to revision from time to time, are incorporated herein by this reference; provided, however, that while settlement is pending, Saturdays, Sundays, and holidays shall be included. Such Detention Charge(s), if any, shall commence and shall continue to accrue uninterrupted until Customer receives payment for Lost, Damaged or Destroyed Equipment as follows:

- (i) If Equipment is Damaged, Vendor shall pay Customer the cost of repairing such Equipment to serviceable standards; or
- (ii) If Equipment is Lost, Stolen or Destroyed, including but not limited to Equipment deemed by Customer at its sole discretion a constructive total loss, Vendor shall pay Customer replacement cost plus the cost of any special equipment or accessories outfitted on the unit, less

depreciation of five-percent (5%) per year for each year the Equipment had been in service subject to a forty-percent (40%) minimum residual value on Customer Owned Equipment and; provided, however that, with respect to Customer Leased Equipment, such payment shall not be less than the payment due from Customer to any third party lessor.

Calculation of such amounts due and owing Customer shall be made as of the date of written notification by Vendor that the Equipment was Lost, Stolen or Destroyed. Customer shall have the option to retain title to Customer Owned Equipment that is Damaged or Destroyed or transfer title to Vendor. Title to all Customer Leased Equipment shall remain with the third party lessor of such Equipment.

**9.4 Cargo** - Without limiting the generality of the foregoing sub-clause 9.2, Liability to Customer and Third Parties, should the Services supplied under this Agreement include CY Services in accordance with Clause 2, Vendor shall be liable to Customer for all damage or loss, including but not limited to shortage, of containerized or trailerized cargo, from the time the Equipment stuffed with such cargo is received by Vendor until the time such Equipment is dispatched by Vendor **UNLESS** original seals are intact or, while in the care, custody and control of Vendor, the Equipment has been resealed in accordance with applicable U.S. Customs regulations. Vendor shall, immediately upon discovering evidence of cargo loss, damage or shortage, give notice of such to Customer. Vendor shall provide to Customer a detailed written incident report within 24 hours of discovering any cargo loss, damage or shortage.

**9.5 Indemnity** – Vendor shall indemnify, defend and hold Customer harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with:

- (i) The negligence, gross negligence or willful misconduct or breach of this Agreement or violation of any applicable law or regulation by Vendor or its employees, agents, subcontractors and all others acting under Vendor's direction or control in the course of performing Services under this Agreement, and
- (ii) Claims by any of Vendor's employees for injuries or damages under the workmen's compensation or similar acts, and
- (iii) Claims alleged against Customer and/or Vendor that any Services or materials provided by Vendor under this Agreement or use of Equipment repaired or maintained by Vendor by reason of such Services or materials provided by Vendor under this Agreement hereunder caused the injury to or death of any person or damage to any property, including but not limited to all third party claims arising from the injury to or death of any person or damage to any property, and
- (iv) Claims by all third parties against Customer and/or Vendor for those liabilities Vendor specifically assumes in sub-clauses 9.2, 9.3 and 9.4 hereof.

**9.6 Consequential Loss** - In no event shall any claim for loss of profits or incidental, special, consequential, or liquidated damages of any nature whatsoever be made by Vendor against Customer in any way arising from or in connection with this Agreement.

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#### 10. Insurance

Vendor at its sole cost and expense, including the cost of all deductibles, shall procure and maintain in force during the term of this Agreement insurance coverage in accordance with Customer's insurance requirements for all Vendors entitled, "Crowley's Required Insurance for Repair Service Orders, Purchase Orders or Master Services Agreements," available on-line at [www.Crowley.com](http://www.Crowley.com) or by request, which insurance requirements, subject to revision from time to time, are incorporated herein by this reference.

#### 11. Independent Contractor

With effect from the day and year stated in Box 1 and continuing unless and until terminated as provided herein, Customer hereby appoints Vendor and Vendor hereby agrees to act as the independent contractor of Customer for purposes of Equipment care, custody, control, maintenance and/or repair, as applicable. Vendor shall be an independent contractor in the performance of its obligations under this Agreement. Any employees of Vendor who perform duties under this Agreement shall be the employees of Vendor solely, and Customer shall not be a joint employer of any of Vendor's employees. In addition, any employees of any operator and/or company contracted by Vendor to perform any operations under this Agreement shall be the employees of such operator and/or company solely, and Customer shall not be a joint employer of any such employees. To that end, Vendor, operator and/or company contracted by Vendor shall have the exclusive right to supervise and direct the day-to-day activities of all persons who are employed by or through them to perform under this Agreement, and they shall have sole responsibility with respect to them, including without limitation, the responsibility to determine and pay their wages and any benefits, to fulfill any applicable requirements under any collective bargaining agreements and to pay all federal, state and local taxes or contributions imposed or required under unemployment, workers' compensation, social security, wage and income tax laws with respect to them. There shall be no direct or indirect participation by Customer in any employee relations matter concerning those persons employed by or through Vendor to perform this Agreement.

#### 12. General Administration

**12.1** Vendor shall keep Customer informed regarding any incident of which Vendor becomes aware, which gives or may give rise to claims or disputes involving third parties.

#### 13. Auditing

Vendor shall at all times maintain and keep true and correct accounts and shall make the same available for inspection and auditing by Customer at such times as may be mutually agreed. On the termination, for whatever reasons, of this Agreement, Vendor shall release to Customer, if so requested, the originals where possible, or otherwise certified copies, of all such accounts and all documents specifically relating to all services performed by vendor in accordance with this Agreement.

#### 14. Inspection of Equipment

Customer shall have the right at any time after giving reasonable notice to Vendor to inspect Equipment for any reason it considers necessary. No inspection of Equipment by Customer or carrier shall constitute approval of such Equipments' condition or be deemed a waiver of the Roadability requirements undertaken by Vendor.

#### 15. Compliance with Laws and Regulations

Vendor, with respect to the Services under this Agreement, shall not do or permit to be done anything, which might cause any breach or infringement of laws and regulations in any of the places where the Equipment may trade. Vendor shall comply with all applicable laws and regulations of government authorities, including, among others, Executive Order 11246, as amended; 38 USC 2012 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; Section 503 of the Rehabilitation Act of 1973, as amended; regulations at 41 CFR 60-1 through 60-61, 60-250, and 60-741; the Civil Rights Act of 1964; the "Americans with Disabilities Act" at Chapter 26, 42 USCA 12101 through 12213; the Occupational Safety and Health Act of 1970; and all pertinent State and Federal occupational safety and health laws. Hazard communication information such as complete Material Safety Data Sheets (MSDS) shall be supplied to Customer for all hazardous material. Vendor further agrees to indemnify, defend and hold harmless Customer for any loss, damage, fine, penalty or any expense whatsoever as a result of Vendor's failure to comply with all applicable laws and regulations.

#### 16. Drug Free Environment

Vendor agrees to maintain a drug/alcohol free environment as it relates to the Services provided to Customer and its customers. Vendor understands this requirement is critical to maintaining this Agreement with Customer.

#### 17. Duration of the Agreement

This Agreement shall commence as of the date set forth in Box 1 and remain in full force and effect through the date set forth in Box 10, the "Initial Contract Period". This Agreement shall continue Evergreen after the date set forth in Box 10 unless terminated by Customer in accordance with Clause 18 or by Vendor in accordance with Clause 22 with a minimum of thirty (30) days notice to Customer.

#### 18. Termination

Customer may terminate this Agreement, in whole or in part at any time by written notice in accordance with Clause 22, stating the extent and effective date of such termination. Upon receipt of such notice Vendor shall, as and to the extent directed by Customer, stop the performance of Services under this Agreement and the placement of further orders or subcontracts hereunder, terminate work orders and subcontracts outstanding hereunder, and take any necessary action to protect Equipment in Vendor's possession in which Customer has or may acquire an interest. Customer's sole liability to Vendor in case of termination shall be reimbursement of the expense incurred up to and including the date and time of termination. Any such termination of this Agreement shall be without prejudice to all rights accrued between the parties prior to the date of termination.

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#### 19. Special Provisions Relating to Performance of Services

**19.1 Default** - Customer reserves the right to cancel this Agreement in its entirety, or in part, on account of Vendor's failure to provide the agreed services or any part thereof, or if Vendor fails to comply with or perform any of the terms and conditions, provisions, promises or warranties of this Agreement and, upon written notice from Customer, fails to cure such failure within five (5) calendar days. Vendor shall also be liable for all damages and costs of Customer resulting from such default, regardless of any action taken by Customer to cancel this Agreement entirely or in part.

**19.2 Manner and Materials** - Vendor shall perform the Services in a workmanlike manner, at the location designated by Customer in accordance with the specifications of Customer. All plans, drawings, materials, machinery, equipment, outfitting and workmanship involved in performance of the Services that are supplied by Vendor and shall be of a quality conforming to the best commercial practice for such Services or to other standards as specified by Customer.

**19.3 Correction of Work** - Vendor shall correct all work, which has been rejected by Customer because of non-conformance with the requirements of Agreement. Vendor shall bear all the expenses of correcting such work, including the expense of any additional or professional inspection services necessary to conform the work to the requirements of Agreement.

**19.4 Warranties** - Vendor shall keep the property free and clear of all liens, security interests, encumbrances and claims of all types, including statutory and maritime liens in favor of workmen, materialmen, subcontractors, or all others acting under Vendor's direction or control in the performance of this Agreement. Vendor shall immediately discharge all such liens and other claims. Vendor hereby waives all liens, whether possessory or otherwise in its favor, which would otherwise attach to Equipment. Vendor shall correct to the satisfaction of Customer all defects in workmanship or in materials furnished by Vendor hereunder, which develop within a period of one year (or other period if specified by the Customer whichever is longer) after completion of Services.

**19.5 Cleanup** - In the event any performance of this Agreement by Vendor shall take place on property owned, leased or under the control of Customer, Vendor shall at all times keep the work-site free from waste materials or rubbish caused by Vendor's Services, and upon final completion of such Services Vendor shall remove rubbish, waste, tools, scaffolding, equipment and surplus materials from and about the work-site and shall leave the work-site broom-clean, or its equivalent.

**19.6 Nature of Services** - The nature and location of the Services and all conditions which may affect its completion have been carefully inspected and considered by Vendor, who assumes all risk of loss and unanticipated expense, however caused and whether or not foreseeable.

**19.7 Time** - Time is of the essence in performance of Services by Vendor.

**19.8 Taxes** - Unless otherwise expressly provided on the face of this Agreement, all taxes, duties, tolls, fees, import charges or other governmental exactions shall be deemed included in the purchase price, and Customer shall have no liability to pay Vendor any amount in excess of the purchase price specified herein.

#### 20. General Provisions

**20.1 Headings** - Captions used in this Agreement are for convenience of reference only and shall have no legal effect or meaning in the construction or enforcement of this Agreement.

**20.2 Drafting** - Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and the neutral gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning may require.

**20.3 Severability** - If, in any legal proceeding, it is determined that any provision of this Agreement is unenforceable under applicable law, then the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Agreement, and the Agreement shall be construed and enforced as if such provision had not been included.

**20.4 Third Party Beneficiaries** - Except as specifically provided for elsewhere in this Agreement, this Agreement shall not be construed to confer any benefit on any third party not a party to it nor shall the Agreement provide any rights to such third party to enforce its provisions.

**20.5 Waiver** - No benefit or right accruing to either party under this Agreement shall be waived unless the waiver is reduced to writing and signed by both Customer and Vendor. The failure of either party to exercise any of its rights under this Agreement, including but not limited to either party's failure to comply with any time limit set out in this Agreement, shall in no way constitute a waiver of those rights, nor shall such failure excuse the other party from any of its obligations under this Agreement.

**20.6 Warranty of Authority** - Customer and Vendor each warrant and represent that the person whose signature appears in Part I of this Agreement is its representative and is duly authorized to execute this Agreement as a binding commitment of such party.

**20.7 Integration** - This Agreement and all documents attached hereto or available on-line and incorporated by reference herein represent the final and complete agreement of the parties for the Services. All prior written and oral agreements with respect to the Services are superseded by and fully integrated into this Agreement. Vendor's acceptance of this Agreement is limited to the terms and conditions herein. Any written confirmation of this Agreement, or any oral understanding upon which this Agreement is based, containing proposals or terms additional to or different from those set forth herein are not binding on Customer unless Customer expressly agrees to any such proposal or term in writing. Any modification to this Agreement must be made in writing and agreed by both Customer and Vendor prior to such modification becoming effective.

**20.8 Counterparts** - This Agreement may be executed and delivered by each party in separate counterparts (including execution and delivery by facsimile transmission), each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement, notwithstanding that all the parties have not signed the same counterpart.

#### 21. Law and Jurisdiction

**21.1 Governing Law** - This Agreement shall be governed by and construed in accordance the laws of the State of Florida, excluding any choice of law or conflict of laws principles that would direct the substantive law of another jurisdiction to apply.

**PART II**  
**Agreement for Container Yard and/or Intermodal Equipment Maintenance Services**

**21.2 Jurisdiction and Venue** - Any and all disputes arising out of or in any way related to this Agreement shall be referred to litigation in the United States District Court for the Middle District of Florida located in Duval County, the City of Jacksonville and such court shall have exclusive jurisdiction to hear such disputes. Vendor agrees that any breach of this Agreement to the detriment of Customer (a foreign corporation having its principle place of business and administering this Agreement in the State of Florida) shall be deemed an act committed in the State of Florida that subjects Vendor to the jurisdiction of Florida's courts, and that in such event, if Crowley files suit against Vendor for such act in the aforementioned court located in Florida, Vendor has expressly waived its right to contest the jurisdiction of such court; provided, further that the parties hereto expressly consent to and agree that the United States District Court for the Middle District of Florida located in Duval County, the City of Jacksonville, has personal jurisdiction over each of them and likewise agree that venue is proper in such court.

**22. Notices**

**22.1** Any notice to be given by either party to the other party shall be in writing and may be sent by facsimile, e-mail (providing for electronic confirmation), registered or recorded mail or by personal service.

**22.2** The address of the parties for service of such communication shall be as stated in Boxes 13 and 14 respectively.