

**PORT FEE SERVICES AGREEMENT**

This **PORT FEE SERVICES AGREEMENT** (the "Agreement"), is entered into this 20th day of October, 2008, by and among the City of Los Angeles, acting by and through its Board of Harbor Commissioners ("POLA"), and the City of Long Beach, acting by and through its Board of Harbor Commissioners ("POLB") on the one hand (POLA and POLB are hereinafter referred to jointly as the "Ports"), and PortCheck LLC ("Vendor") and each of the marine terminal operators listed in Appendix A hereto (hereinafter referred to individually as an "MTO" and jointly as the "MTOs"), on the other hand.

**WHEREAS**, the Ports, as part of their Clean Air Action Plan, have adopted a Clean Truck Program (the terms "Clean Air Action Plan" and "Clean Truck Program" refer to the plans and programs set forth in Section 20 of Port of Los Angeles Tariff No. 4 and Rule 34-J; Section 10 of Port of Long Beach Tariff No. 004 (collectively the "Tariffs" as such Tariffs may from time to time be amended)) pursuant to which they seek to exclude certain trucks from port property, provide financing to replace such trucks with environmentally cleaner trucks, and impose a truck fee ("TF") on certain cargo leaving and/or entering the Ports; and

**WHEREAS**, the Ports also have adopted an infrastructure fee ("IF") as set forth in Section 21 of Port of Los Angeles Tariff No. 4 and Rule 34-K; Section 11 of Port of Long Beach Tariff No. 004 (the TF and IF are referred to jointly as the "Fees") on certain cargo leaving and/or entering the Ports in order to fund infrastructure improvements, including improvements intended to mitigate the environmental impact of port operations; and

**WHEREAS**, the Ports wish to have the MTOs (who lease and/or operate marine terminals within the Ports) collect the Fees and administer certain other aspects of the Ports' Clean Truck Program; and

**WHEREAS**, the MTOs are prepared to collect the Fees and administer other aspects of the Ports' Clean Truck Program in exchange for reimbursement of their incremental costs and other valuable consideration as set forth herein, and have established the Vendor to collect the Fees for each of them.

**NOW THEREFORE**, the parties, intending to be legally bound, hereby agree as follows:

**SECTION 1. SERVICES TO BE PROVIDED BY VENDOR OR MTOs.**

The Vendor, or the MTOs if specifically so provided herein, shall provide the services set forth below to the Ports, with respect to cargo moving in the foreign and/or domestic commerce of the United States, to the extent such cargo falls within the scope of the Ports' Tariffs.

1.1 Appropriate Identification. Vendor shall provide or cause to be provided an appropriate means of identifying and obtaining relevant information with respect to trucks serving terminals at the Ports of Los Angeles and Long Beach through accessing the Ports' Drayage Truck Registry.

1.2 Collection of Fees. The Vendor agrees to use commercially reasonable efforts to collect, on behalf of the Ports, all Fees on cargo moving to/from the terminals of the MTOs in Los Angeles or Long Beach in accordance with the Ports' respective Tariffs, subject to Section 2.4 hereof, and to keep all Fees collected in an interest-bearing account for the benefit of the Ports. Vendor is authorized to establish such payment methods and procedures as it may deem advisable, and may permit payments on credit pursuant to such credit terms and agreements as it may establish,

but the substantive provisions of the Ports' Clean Truck Program and Infrastructure Fee Program (including, but not limited to the amount of the Fees, the persons by whom payment is to be made, and the criteria for truck access to terminals) shall be determined solely by the Ports. Except with respect to those items which are the responsibility of the Ports pursuant to Section 3 hereof, Vendor shall be responsible for obtaining and providing all computer hardware, software, personnel, and related goods and services necessary to collect the Fees.

1.3 Remittance of Fees. Vendor agrees to remit all Fees collected and interest earned thereon to the Ports in accordance with the payment parameters attached hereto as Exhibit A and incorporated by this reference. The Vendor or an MTO shall not be liable for uncollected Fees provided Vendor uses commercially reasonable collection practices. Reasonableness in this context shall take into account the time and expense involved in collection relative to the amount to be collected as well as the creditworthiness and financial standing of the debtor.

1.4 Access to Terminals. To the extent the Ports' Tariffs establish criteria which trucks and their owners or operators must meet in order to gain access to marine terminals at the Ports and/or a deadline by which such criteria must be met, the MTOs shall permit access only to trucks that meet the criteria/deadlines established by the Ports, provided that the relevant information as to whether a truck meets the criteria is timely provided to the MTOs through the Ports' Drayage Truck Registry ("DTR").

1.5 Use of Contractor(s) Permitted. Vendor may, at its discretion, fulfill its obligations under Sections 1.1 through 1.3 of this Agreement directly, through the use of one or more contractor(s), or through a combination thereof.

1.6 Reports/Audits/Accounting. The intent of the parties to this Agreement is that Vendor shall remit all Fees collected to the Ports without deduction or offset and that in exchange Ports shall pay as compensation to Vendor all costs attributable to the services provided by Vendor pursuant to this Agreement ("Incremental Costs") The Incremental Costs are further described in Section 2. Vendor shall keep full and accurate books, records and accounts relating to its operations under this Agreement, including without limitation, the amount of Fees collected and not collected, from whom collected, shipments on which Fees are collected, and Incremental Costs. Vendor shall provide to the Ports periodic reports accounting for Fees collected, shipments on which Fees are collected, and any Fees not collected. Ports shall have the right and privilege, through their respective representatives at all reasonable times and on reasonable notice, and at their expense, to inspect Vendor's books, records and accounts in order to verify the accuracy of information, including without limitation, the Fees, Incremental Costs and other information described in this Section 1.6. Vendor agrees that such books, records and accounts shall be made available to the Ports or their representatives at a mutually agreed location in either the City of Los Angeles or the City of Long Beach, as the case may be.

1.7 Ownership of Materials. Vendor and MTOs acknowledge and agree that any and all work product, including data relating to Fees, identification of the MTOs, payment records, invoices, account information, ideas, specifications, drawings, designs, writings, concepts, hardware and standard, off-the-shelf software created by or purchased by Vendor at any time with respect to or for exclusive use in connection with the Clean Truck Program, but excluding proprietary or customized software of Vendor or its contractor and all component parts and codes thereof (collectively, the "Work") is "work made for hire" within the meaning of all relevant copyright laws; if

any such Work is not "work made for hire" for any reason, then Vendor assigns all right, title, and interest in the Work to the Ports as follows: For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vendor and MTOs hereby assign and agree to assign to the Ports all right, title, and interest in and to the Work, including without limitation any and all worldwide copyrights for the full term of copyrights and all renewals, extensions, revivals, resuscitations, and reissuances thereof, in the name of the Ports jointly and severally, together with all present and future rights of every kind pertaining to the Work whether or not such rights are now known, recognized or contemplated, in all media now known or hereafter developed. Such right, title, and interest shall include without limitation the unrestricted right to adapt, change, transpose, add to, interpolate in and subtract from the Work to such extent as the Ports in their sole discretion may deem expedient, and to use parts of the Work in conjunction with any other work or works, in any manner. Vendor and MTOs shall execute and deliver, at no expense to themselves, to the Ports all further documents that may be necessary to effectuate the purposes of this paragraph and to convey to the Ports all rights in the Work.

1.8 Service Levels. Vendor shall make commercially reasonable efforts to ensure that any systems used to provide the services described in this Agreement ("Systems") are available in the manner and at the times set forth in Exhibit B, Service Levels for Vendor's Systems, attached hereto and incorporated by this reference. Ports shall make commercially reasonable efforts to ensure that the DTR is available in the manner and at the times set forth in Exhibit C, Drayage Truck Registry Service Levels, attached hereto and incorporated by this reference.

## **SECTION 2. COMPENSATION TO VENDOR.**

In exchange for the services provided under this Agreement, the Ports shall be jointly and severally liable to compensate Vendor as set forth below.

2.1 Development Costs. Within 30 days of the effective date of this Agreement, the Ports shall each pay Vendor one half of the Incremental Costs of developing the Systems as set forth in Exhibit D, attached hereto and incorporated by this reference, in the total amount of \$3,844,787 ("Development Costs").

2.2 Operating Costs. In addition to Development Costs, the Ports shall pay Vendor the Incremental Costs of operating the Systems and performing all other services pursuant to this Agreement as set forth in Exhibit E, attached hereto and incorporated by this reference, in a total annual amount not to exceed \$7,638,055, as such annual amount may be adjusted by the budgets agreed to under this Section (subject to such Board approval as may be required) ("Operating Costs"). The Vendor shall submit invoices for Operating Costs to the Ports every month on or about the first day of the month for Incremental Costs projected to be incurred during the month in accordance with the then-current version of Exhibit E. The Operating Costs for that month shall be apportioned between POLA and POLB according to the respective volume of merchandise for each port assessed the Fees, measured in twenty-foot equivalent units. All payments to Vendor shall be made by the Ports in due course, but not to exceed 30 days after receipt of the invoices by the Ports, without prejudice to or waiver of the right to subsequent adjustment of the amounts due pursuant to Section 2.3 hereof.

2.3 Adjustment of Payments for Development Costs and Operating Costs. Exhibits D and E reflect the parties' current expectations regarding Development Costs and Operating Costs and the actual amounts may vary. With respect to Development Costs, within 90 days after payment of the Development Costs pursuant to Section 2.1 hereof, the parties shall reconcile the actual amount of Development Costs to the amount projected in Exhibit D and the Ports shall pay any additional

amount so determined or the Vendor shall reimburse any excess amount so paid by the Ports. With respect to Operating Costs, every six months from the receipt of the first invoice for Operating Costs, the parties shall reconcile the actual Operating Costs for the prior six month period to the amount projected in the then-current version of Exhibit E and the Ports shall pay any additional amount so determined or the Vendor shall reimburse any excess amount so paid by the Ports. All amounts invoiced under this Agreement are subject to audit by the Ports pursuant to Section 1.6 of this Agreement. Development Costs and Operating Costs shall be paid by the regardless of whether Fees are collected or in what amount, unless noncollection of Fees results from a material breach of this Agreement by the Vendor.

2.4 Other Adjustments in Compensation. In the event POLA, POLB, or both, revise its/their Tariff(s) in a manner that necessitates a change in the scope of the services hereunder, requires a change in the Systems, and/or services to be provided by Vendor or MTOs, or otherwise results in additional costs to the Vendor or MTOs which are not provided for in Section 2.1 and 2.2 above and Exhibits D and E, the parties agree to negotiate in good faith for an appropriate adjustment to the Agreement and the compensation payable hereunder. If the parties cannot agree, the Vendor and MTOs (the latter pursuant to the vote required under Article VII(i) of the West Coast MTO Agreement) may terminate this Agreement on not less than ninety (90) days written notice to the Ports. If the Agreement is terminated for this reason or any other, the Vendor shall provide to the Ports, in electronic format, all Work as defined by Section 1.7 of this Agreement.

2.5 Payment of Compensation An On-Going Obligation. Unless the Agreement has been terminated, and subject to the parenthetical in the last sentence of this Section, the Ports shall remain liable for payment of the compensation set forth

in Sections 2.1 through 2.4 of this Agreement even if the Fees or either of them are not imposed and/or cannot be collected on either a permanent or temporary basis.

During the term of this Agreement, the Ports shall not be relieved of their obligation to pay compensation to Vendor in the event any aspect of the Fees, the Clean Truck Program and/or the Clean Air Action Plan is not implemented, is delayed or suspended, or is discontinued for any reason whatsoever including, but not limited to, any interim or final order of a court (but not if the noncollection results from a material breach of this Agreement by Vendor). If any aspect of the Fees, the Clean Truck Program and/or the Clean Air Action Plan is not implemented, is delayed or suspended, or is discontinued for any reason whatsoever, including, but not limited to any interim or final order of a court, Vendor and MTOs agree to reduce and avoid Development Costs and Operating Costs to the maximum extent feasible.

### **SECTION 3. COVENANTS AND OBLIGATIONS**

3.1 Cooperation. The parties shall cooperate fully with each other, and shall cause any contractor(s) to cooperate with the parties, in connection with the performance by Ports, Vendor and MTOs of their respective obligations hereunder. The parties and their contractor(s) shall provide to each other, all information which the parties or their contractor(s) may deem reasonably necessary for the complete and efficient collection of the Fees and administration of those aspects of the Ports' Clean Truck Program for which Vendor and MTOs are responsible hereunder, including but not limited to information from the DTR and information with respect to the Ports' truck concession program relevant to application of the Fees and/or access of trucks to the MTOs' terminals, records of collections and transactions. Vendor shall not be responsible for the accuracy of information provided to it by the Ports or the Ports' contractors for purposes of performing Vendor's services under this Agreement.

3.2 Public Outreach. In order to permit the efficient and timely collection of the Fees by Vendor and administration of other aspects of the Clean Truck Program by MTOs, the Ports, at their own expense, shall engage in all public outreach and education efforts reasonably necessary to inform all parties liable for payment of the Fees of the requirement to pay the Fees and the procedures and timing thereof, and to inform licensed motor carriers of all obligations imposed on them under the Ports' Clean Truck Program including, but not limited to, the need to meet certain environmental and other criteria and to obtain concessions and truck identification. Such outreach and education efforts shall be conducted in a manner and at a time reasonably satisfactory to the Vendor, MTOs and its/their contractor(s) in order to ensure that information disseminated through such efforts is accurate, consistent and timely.

3.3 Maintenance of and Access To Database. The Ports, at their expense, shall be responsible for the maintenance of a complete, accurate and up-to-date DTR that identifies the status of all trucks regularly serving the Ports with respect to the environmental and concession requirements for trucks established by the Ports. The Ports, at their expense, shall provide Vendor, MTOs and its/their contractor(s) with access to such database to the extent necessary to fulfill their obligations under this Agreement but the Ports shall not be responsible for costs related to such access. Vendor and MTOs shall not be liable for the consequences of any errors or omissions in the content or transmission of the data in the database maintained by the Ports. Upon accurate transmission of the data to the Vendor and MTOs, they shall be responsible for maintaining accurate copies of the data transmitted and stored on their Systems.

3.4 Effective Date of System Changes. In the event that a revision in POLA's, POLB's or both Ports' Tariffs requires a modification to Vendor's System, Vendor will endeavor to implement any such modification as soon as possible, but in any event, no later than ninety (90) days from the effective date of such Tariff change.

3.5 Indemnification. The Ports hereby undertake and agree to protect, defend, hold harmless and indemnify Vendor, each of the MTOs, and their respective owners, members, and employees ("Indemnitees") against any and all claims, demands, losses, damages, fines and/or liabilities brought or imposed by a third-party (hereinafter "Claims") arising from or relating to the collection of one or both of the Fees or the enforcement of criteria imposed by Ports for truck access to marine terminals at the Ports. The indemnity set forth in this Section shall apply to and cover litigation by any third party challenging the Fees, Ports-imposed truck access criteria, or any actions by Vendor or the MTOs taken pursuant to this Agreement to collect or administer any of the foregoing (including, but not limited to, any enforcement or civil penalty action brought by a federal agency with jurisdiction over the subject matter of this Agreement), except to the extent such Claims are caused by any negligent act, recklessness or willful misconduct by any of the Indemnitees. Said indemnity shall include reasonable attorneys' fees and costs of the defense of any proceedings brought against the Indemnitees in court or by or before any agency. Said indemnity is expressly conditioned upon Indemnitees giving the Ports prompt written notice of any threatened, anticipated, or initiated Claims. Ports shall have the right to select legal counsel and control the defense of any Claims and the Indemnitees agree to assist the Ports, as may be reasonably requested, in such defense. Indemnitees shall have the right to consult with respect to the defense of their interests. In the event that any Indemnitee(s) elects to defend itself with respect to any Claim or Claims or control the

defense thereof, this Section shall not apply and the Ports shall not be responsible for indemnification of such Claim or Claims; provided, however, that if the Ports and Indemnitees have conflicting or inconsistent interests in the defense of any Claims, the Indemnitees shall be permitted to engage independent counsel to provide their defense at the Ports' expense. Furthermore, Indemnitees shall not be entitled to indemnity with respect to any Claim(s) initiated against the Ports by said Indemnitees.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES.**

4.1 Representations and Warranties of Vendor. Vendor hereby represents and warrants to the Ports that:

(a) It is a limited liability company duly organized and validly existing under the laws of the State of California and has all requisite power, capacity, and authority to enter into this Agreement and perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by Vendor and constitutes the legal, valid, and binding obligation of Vendor enforceable against Vendor in accordance with its terms, subject to bankruptcy, insolvency and other similar laws relating to or affecting the enforceability of creditors' rights generally, and to general principles of equity.

(c) The execution, delivery and performance of this Agreement by Vendor, will not violate any agreements or instruments to which Vendor is a party, and does not require the consent of any third party.

4.2 Representations and Warranties of MTOs. Each MTO hereby represents and warrants to the Ports that:

(a) It is duly organized and validly existing under the laws of the jurisdiction in which it is incorporated and has all requisite power, capacity, and authority to enter into this Agreement and perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by it or on its behalf and constitutes the legal, valid, and binding obligation of the MTO enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other similar laws relating to or affecting the enforceability of creditors' rights generally, and to general principles of equity.

(c) The execution, delivery and performance of this Agreement it will not violate any agreements or instruments to which MTO is a party, and does not require the consent of any third party.

4.3 Representations and Warranties of Ports. Each of the Ports hereby represents and warrants to Vendor that:

(a) This Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of POLA or POLB (as the case may be), enforceable against each of them in accordance with its terms.

(b) The execution, delivery and performance of this Agreement by POLA and POLB will not violate any agreement or instrument to which they or either of them is a party, and does not require the consent of any third party.

(c) Ports have complied with all applicable laws, ordinances and regulations applicable to procurement, approval and execution of this Agreement.

(d) The Ports are not immune from suit for claims arising under this Agreement providing any claimant complies with the procedures set forth in California Government Code Section 900 and following.

#### **SECTION 5. LIMITATION OF MTO LIABILITY**

Each MTO shall be liable only for the performance or non-performance of those obligations expressly imposed on it by Sections 4.2 and 7.3 of this Agreement. No

MTO shall be liable for any act or omission on the part of the Vendor or any other MTO including, but not limited to, non-collection of any Fee(s).

**SECTION 6. EFFECTIVE DATE, DURATION AND TERMINATION**

6.1 Effective Date and Duration. This Agreement shall become effective on the later of the date last signed below or the date it becomes effective pursuant to the Shipping Act of 1984, as amended ("Shipping Act), to the extent applicable, and shall remain in effect for an initial term of two (2) years. Unless any party has given notice of termination pursuant to any applicable provision of this Agreement, the Agreement shall be automatically extended for successive one-year periods thereafter, up to a maximum of five years. In the event the Agreement extends beyond three years from the effective date, POLA shall seek City Council approval pursuant to its City charter.

6.2 Termination Without Cause. The Vendor/MTOs (the latter pursuant to the vote required under Article VII(i) of the West Coast MTO Agreement) and the Ports may terminate this Agreement by providing advance written notice of termination to the other party not less than six (6) months prior to the expiration date of the Agreement term then in effect (the initial two-year term or any of the successive one-year terms).

6.3 Termination Due to Material Breach. Notwithstanding anything to the contrary in Sections 6.1 and 6.2 hereof, the Ports (on the one hand) or the Vendor/MTOs (on the other hand, and the latter pursuant to the vote required under Article VII(i) of the West Coast MTO Agreement) may terminate this Agreement on not less than thirty (30) days written notice in the event of a material breach of this Agreement by the other party after first giving the breaching party written notice of such breach and ten (10) days in which to cure such breach.

6.4 Termination Due To Discontinuation of Clean Truck Program. This Agreement shall terminate immediately with respect to POLA and/or POLB if such port discontinues its Clean Truck Program and/or deletes the Fees from its Tariffs upon the effective date of such Port action.

## **SECTION 7. TIME FOR PERFORMANCE**

7.1 Collection of TF. The Vendor and MTOs shall use their best commercial efforts, individually and collectively, to begin collection of the TF beginning on October 1, 2008. However, because the ability of the Vendor to collect the TF beginning on that date is subject to the completion of various tasks by the Ports, Vendor cannot and does not guarantee that the TF will be collected beginning on that date. Vendor and MTOs shall not be liable for any loss of any nature whatsoever incurred by the Ports as a result of collection of the TF beginning after October 1, 2008.

7.2 Collection of IF. The Vendor and MTOs shall use their best commercial efforts, individually and collectively, to begin collection of the IF beginning on January 1, 2009. However, because the ability of the Vendor to collect the IF beginning on that date is subject to the completion of various tasks by the Ports, Vendor cannot and does not guarantee that the IF will be collected beginning on that date. Vendor and MTOs shall not be liable for any loss of any nature whatsoever incurred by the Ports as a result of collection of the IF beginning after January 1, 2009.

7.3 Implementation of Marine Terminal Access Criteria. Each of the MTOs shall use its best commercial efforts to begin implementation of criteria established by the Ports for truck access to marine terminals beginning on October 1, 2008. However, because the ability of MTOs to implement such criteria is subject to the completion of various tasks by the Ports, MTOs cannot and do not guarantee that said criteria will be implemented beginning on that date. MTOs shall not be liable for any

loss of any nature whatsoever incurred by the Ports as a result of implementation of marine terminal access criteria beginning after October 1, 2008.

### **SECTION 8. PORTS' TARIFFS**

The Vendor and/or MTOs shall be deemed to have fulfilled any obligations they may have to collect or remit the Fees or administer or enforce any other aspect of the Ports' Clean Truck Program under the Ports' Tariffs by performance of Vendor or MTOs as required under this agreement, or in the event any failure to perform by the Vendor and/or any MTO is due to any act or omission on the part of one or both Ports or their contractor(s).

### **SECTION 9. RELATIONSHIP BETWEEN PARTIES**

Vendor and MTOs, in collecting the Fees and administering other aspects of the Ports' Clean Truck Program on behalf of the Ports, act as independent contractors. Nothing herein is intended to create or shall be interpreted as creating any other relationship between the Ports and Vendor/MTOs. Except to the extent the Vendor is authorized to act as agent for the MTOs, no party to this Agreement has authority to bind any other party with respect to any matters whatsoever.

### **SECTION 10. CONFIDENTIALITY**

10.1 Each party hereto shall keep confidential any and all information disclosed to it by any other party and which has been identified and labeled as "Confidential", including, but not limited to, the identity of and all other information relating to any cargo interests. Any and all information obtained by the Ports in the course of audits pursuant to Section 1.6 of this Agreement is hereby identified and labeled as "Confidential" by Vendor, and shall be treated as such by Ports and their contractor(s). Information received by a party shall be secured and protected from unauthorized use or disclosure using at least the same degree of care as the receiving

party employs to avoid unauthorized use or disclosure of its own confidential information, but in no event less than reasonable care.

10.2 Notwithstanding Section 10.1, as necessary to accomplish the purposes of this Agreement a party may disclose information received by it to any employee, officer, director, attorney, auditor, accountant, contractor, service provider, agent or representative ("Recipient") who has a legitimate need to know the information in question for the purposes of this Agreement. Any Recipient to whom information is disclosed shall be advised of this confidentiality provision and shall secure and protect such information from unauthorized use or disclosure using at least the same degree of care as the Recipient employs to avoid unauthorized use or disclosure of its own confidential information, but in no event less than reasonable care.

10.3 Section 10.1 and the second sentence of Section 10.2 shall not apply to any information (i) which is or becomes available other than through a breach of this Agreement by the disclosing party, (ii) which is lawfully obtained from third parties, (iii) which was known prior to its disclosure, (iv) which is independently developed without the use of the confidential information, (v) which is independently acquired from a third party who is not under confidentiality obligations to the non-disclosing party to this Agreement, (vi) which is used to enforce any party's rights hereunder, or (vi) the disclosure of which is required by or done in connection with any compulsory legal process or law, including without limitation, a court order or the California Public Records Act.

#### **SECTION 11. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of law principles, and shall be subject to Federal law to the extent applicable. The venue of any dispute

between the parties to this Agreement shall be the appropriate federal court having personal and subject matter jurisdiction in Los Angeles, CA (or state court, if the otherwise appropriate federal court lacks jurisdiction) or the appropriate federal agency having jurisdiction over any dispute arising under applicable Federal law.

## **SECTION 12. MISCELLANEOUS**

12.1 Amendments. This Agreement may not be amended or modified, nor may any provision hereof be waived, except pursuant to an instrument in writing signed by each of the parties hereto.

12.2 Integration. This Agreement, together with the documents contemplated hereby, sets forth the entire understanding between the parties relating to the subject matter hereof.

12.3 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and delivered to the other party.

12.4 Force Majeure. Except as otherwise provided in this Agreement, no party hereto shall be liable for failure or delay in carrying out its obligations under this Agreement when such failure or delay results from any cause which is beyond the reasonable control of the party including, but not limited to, work stoppages, strikes, accidents, casualties, labor disputes, fire, road, marine or rail disasters, acts of God, governmental restraints, war or hostilities, acts of terrorism, embargoes or other similar conditions beyond the control of the affected party. In the event of happening of any of such contingencies, the party delayed from performance shall promptly give the other party written notice of such contingency, specifying the cause for delay or failure. The party so delayed shall use reasonable diligence to remove the cause of

delay, and if and when the occurrence or condition which delayed or prevented the performance shall cease or be removed, the party delayed shall notify the other party immediately, and the delayed party shall recommence its performance of the terms, covenants and conditions of this Agreement.

12.5 Tax and Permit Matters. Each party shall be fully responsible for any income, sales, excise, use and transfer tax or any other governmental fees or exactions, including fees for any required permits, applicable to its performance under this Agreement. Vendor shall obtain and submit on all invoices for payment, its Business Tax Registration Certificate number from the Cities of Los Angeles and Long Beach.

12.6 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by a recognized reputable private courier company or by United States or other national mail system, return receipt requested, or by facsimile transmission followed by such means, to:

If to POLA:

City of Los Angeles Harbor Department  
P.O. Box 151  
San Pedro, California 90733-0151  
Attention: Executive Director  
Fax: (310) 831-6936

With a copy to:

City of Los Angeles  
Office of the City Attorney  
425 South Palos Verdes Street  
San Pedro, California 90731  
Attention: General Counsel  
Fax: (310) 831-9778

If to POLB:

City of Long Beach  
Long Beach Harbor Department  
P.O. Box 570  
Long Beach, California 90801  
Attention: Executive Director  
Fax: (562) 901-1733

with a copy to:

City of Long Beach  
Office of the City Attorney  
City Hall, 8<sup>th</sup> Floor  
333 West Ocean Boulevard  
Long Beach, California 90801  
Attention: Harbor Division  
Fax: (562) 570-2232

If to Vendor/MTO(s):

PortCheck LLC  
100 Ocean Gate, Suite 600  
Long Beach, CA 90802  
Attention: Mr. Bruce Wargo  
Fax: (562) 437-9960

With a copy to:

David Smith/Wayne Rohde  
Sher & Blackwell LLP  
Suite 900  
1850 M Street, N.W.  
Washington, D.C. 20036  
Fax: (202) 463-4950

12.7 Existing Obligations/Rights. Except as otherwise expressly provided herein, neither execution of this Agreement by the parties nor performance hereunder shall affect any otherwise existing obligations of the MTOs to the Ports, including but not limited to any obligations the MTOs may have under the Ports' Tariffs, nor shall execution of this Agreement or performance hereunder constitute a waiver of any party's legal rights.

12.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 City Required Provisions. The City of Los Angeles requires the provisions set forth on Exhibit F, attached hereto and incorporated by this reference.

12.10 Insurance. Vendor shall comply with the insurance provisions set forth on Exhibit G, attached hereto and incorporated by this reference.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**THE CITY OF LOS ANGELES,  
acting by and through  
its Board of Harbor Commissioners**

By: Molly Campbell  
for Geraldine Knatz, Ph.D.  
Executive Director

Attest: Rose M. Dwarshak  
Board Secretary

APPROVED AS TO FORM

October 20, 2008

ROCKARD J. DELGADILLO, City Attorney

By: Joy Crose  
Joy Crose, Assistant General Counsel

**THE CITY OF LONG BEACH,  
acting by and through  
its Board of Harbor Commissioners**

By: \_\_\_\_\_  
Richard D. Steinke  
Executive Director

Account#	59967	W.O. #	08220
Ctr/Div#	210	Job Fac.#	
Proj/Prog#	652		
Budget FY:		Amount:	
08/09		\$2,870,711	
09/10		\$2,870,711	
TOTAL		\$5,741,422	

For Acct/Budget Div. Use Only

Verified by: T. GREEN

Verified Funds Available: \_\_\_\_\_

Date Approved: 10/22/08

12.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.9 City Required Provisions. The City of Los Angeles requires the provisions set forth on Exhibit F, attached hereto and incorporated by this reference.

12.10 Insurance. Vendor shall comply with the insurance provisions set forth on Exhibit G, attached hereto and incorporated by this reference.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**THE CITY OF LOS ANGELES,  
acting by and through  
its Board of Harbor Commissioners**

By: \_\_\_\_\_  
Geraldine Knatz, Ph.D.  
Executive Director

Attest: \_\_\_\_\_  
Board Secretary

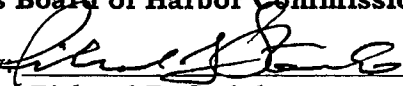
APPROVED AS TO FORM

\_\_\_\_\_, 2008

ROCKARD J. DELGADILLO, City Attorney

By \_\_\_\_\_  
Joy Crose, Assistant General Counsel

**THE CITY OF LONG BEACH,  
acting by and through  
its Board of Harbor Commissioners**

By:   
Richard D. Steinke  
Executive Director

APPROVED AS TO FORM

10/17, 2008

ROBERT E. SHANNON, City Attorney

By Dominic Holzhaus  
Dominic Holzhaus, Principal Deputy

**PORTCHECK LLC**

By: Bruce C. Wargo  
Name: BRUCE C. WARGO  
Title: President

**APM TERMINALS PACIFIC LTD.**

By: Alan McNeill  
Name: ALAN McNEILL  
Title: SVP

**EAGLE MARINE SERVICES, LTD.**

By: Jack Cutler  
Name: Jack Cutler  
Title: Port Manager

**LONG BEACH CONTAINER  
TERMINAL, INC.**

By: Anthony Otto  
Name: Anthony Otto  
Title: President

**TOTAL TERMINALS  
INTERNATIONAL**

By: Larry Bennett  
Name: Larry Bennett  
Title: VP Ops

**CALIFORNIA UNITED TERMINALS,  
INC.**

By: George Lane  
Name: GEORGE LANE  
Title: S. J. P.

**INTERNATIONAL TRANSPORTATION  
SERVICE, INC.**

By: Phil Feldhus  
Name: PHIL FELDHUS  
Title: V.P. of OPERATIONS

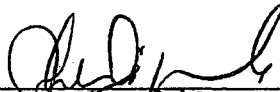
**SEASIDE TRANSPORTATION  
SERVICE LLC**

By: Eric Wilson  
Name: ERIC WILSON  
Title: VICE PRESIDENT/GENERAL MANAGER

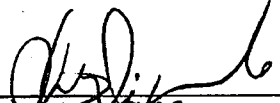
**WEST BASIN CONTAINER TERMINAL  
LLC**

By: Mark Wheeler  
Name: Mark Wheeler  
Title: General Manager

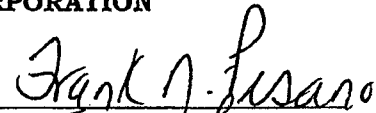
**PACIFIC MARITIME SERVICES, L.L.C.**

By:   
Name: JOHN D. BERNARDO  
Title: VP

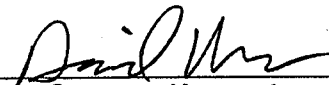
**SSA TERMINAL (LONG BEACH), LLC**

By:   
Name: JOHN D. BERNARDO  
Title: VP

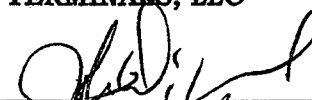
**TRANS PACIFIC CONTAINER SERVICE CORPORATION**

By:   
Name: Frank N. Lisano  
Title: Vice-President

**YUSEN TERMINALS, INC.**

By:   
Name: DAVID MENUS  
Title: VP.

**SSA TERMINALS, LLC**

By:   
Name: JOHN D. BERNARDO  
Title: VP

**APPENDIX A TO PORT FEE SERVICES AGREEMENT**

APM TERMINALS PACIFIC LTD.  
2500 Navy Way  
Terminal Island, CA

CALIFORNIA UNITED TERMINALS, INC.  
1200 Pier E Street  
Long Beach, CA 90822

EAGLE MARINE SERVICES, LTD.  
1111 Broadway  
Oakland, CA 94607

INTERNATIONAL TRANSPORTATION SERVICE, INC.  
1281 Pier J Avenue  
Long Beach, CA 90802-6393

LONG BEACH CONTAINER TERMINAL, INC.  
1171 Pier F Avenue  
Long Beach, CA 90802

SEASIDE TRANSPORTATION SERVICE LLC  
1999 Harrison St., Suite 550  
Oakland, CA 94612-3520

TOTAL TERMINALS LLC  
1999 Harrison St., Suite 550  
Oakland, CA 94612-3520

WEST BASIN CONTAINER TERMINAL LLC  
1999 Harrison St., Suite 550  
Oakland, CA 94612-3520

PACIFIC MARITIME SERVICES, L.L.C.  
1131 SW Klickitat Way  
Seattle, WA 98134

SSA TERMINAL (LONG BEACH), LLC  
1131 SW Klickitat Way  
Seattle, WA 98134

TRANS PACIFIC CONTAINER SERVICE CORPORATION  
920 West Harry Bridges Boulevard  
Wilmington, CA 90744-5230

YUSEN TERMINALS, INC.  
701 New Dock Street  
Terminal Island, CA 90731

**APPENDIX A TO PORT FEE SERVICES AGREEMENT (continued)**

SSA TERMINALS, LLC  
1131 SW Klickitat Way  
Seattle, WA 98134

## Exhibit A Payment Remittance Parameters

On or before the 21<sup>st</sup> calendar day after the end of each calendar month during the term of the Agreement in which the TF and/or IF are in effect:

- a. Vendor shall wire all TF and IF Fee payments received and interest earned thereon during the previous calendar month in full without setoff or deduction to each Port's bank account as set forth below, as such account information may be changed from time to time with prior written notice to Vendor.
- b. Vendor shall submit a statement under separate cover to each Port indicating for each terminal the total volume of merchandise (in TEUs) subject to the TF and the total volume of merchandise (in TEUs) subject to the IF in the previous calendar month.

For the Port of Long Beach, Vendor shall remit funds to:

Union Bank of California  
Los Angeles, CA  
ABA: 122 000 496  
Account No.: 274 00 23139  
(800) 238 – 4486

For the Port of Los Angeles, Vendor shall remit funds to:

Bank of America  
Government Banking, Southern California  
Account No. : 1459950632  
Account Name: City of L A Department of Harbors  
ABA No.: 122000661 (ACH)  
ABA No.: 121000358 (wire)  
Ref: Clean Truck Fees

**Exhibit B**  
**Service Levels For Vendor's Systems**

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
TMF Sys.	<p>1.1 <u>System Availability</u></p>	<p>For the purpose of measuring individual downtime incidents less than four hours in duration, the TMF system (including all servers, equipment, EDI and applications hosted by Supplier that are not related to the website) shall have at least 99.5% availability each calendar month.</p> <p>Measurement of performance under this SLA is a cumulative measurement of all minutes of downtime, (excluding maintenance periods that are approved by PierPASS in advance) less than (4) continuous hours in duration. It is not an average of all downtime in the month.</p> <p>Downtime does not include any time where normal system availability and functionality is maintained through the use of the Supplier's back-up system.</p> <p>"Availability" means the number of minutes each month during which the TMF System is operating within normal operating parameters, and can be accessed and used by all classes of end users in accordance with its intended functionality. Availability is measured on a 7 x 24 basis excluding a maximum of four (4) hours of scheduled downtime each month and during previously-agreed maintenance events.</p>	Zabbix	\$10,000 per month
TMF Sys.	<p>1.2 <u>System Availability-Major Failure</u></p>	<p>The TMF System (including all servers, equipment, and applications, including EDI, hosted by Supplier that are not related to the website) cannot have a single continuous period of downtime in any month (other than scheduled, previously-agreed maintenance events) that exceeds four (4) hours.</p> <p>If supplier pays a credit for a Major Failure, the period of downtime representing that Major Failure will be excluded from the calculation of downtime for the purposes of the System Availability SLA in item 1.1 above.</p>	Zabbix	\$30,000 per incident

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
TMF Sys.	<p>1.3 <u>Website Availability</u></p>	<p>The website interface of the TMF System shall have at least 99.5% availability each calendar month.</p> <p>Measurement of performance under this SLA is limited to the website and does not include any TMF System downtime measured under SLA 1.1 or 1.2.</p> <p>Measurement of performance under this SLA is a cumulative measurement of all non-maintenance website downtime, less than four continuous hours in duration. It is not an average of all website downtime in the month.</p> <p>"Availability" means the percentage of minutes of each month during which the website is accessible to end users and operating within normal operating parameters.</p>	Zabbix	\$10,000 per month
TMF Sys.	<p>1.4 <u>Website Availability - Major Failure</u></p>	<p>The website interface of the System cannot have a single continuous period of downtime in any calendar month, that exceeds four (4) hours.</p> <p>Measurement of performance under this SLA is does not include any TMF System downtime measured under SLA 1.1 or 1.2.</p>	Zabbix	\$30,000 per incident
TMF Sys.	<p>1.5 <u>EDI Translation and Processing - Inbound</u></p>	<p>Supplier will complete the processing of 99.5%, calculated on a monthly basis, of all inbound files received via an EDI interface within 30 minutes of receipt of EDI files that comply with all technical specifications published for the EDI interface ("good EDI").</p>	Supplier-provided monthly automated query of business rules engine which calculates the difference between the "start time" and "finish time" time stamps for each record processed in the month.	\$1,000 per file below the 99.5% level - See Note 2
TMF Sys.	<p>1.6 <u>EDI Translation and Processing - Outbound</u></p>	<p>Supplier will send to each MTO or make available a "release notice" ("outbound EDI") to each MTO within five (5) minutes of the time that BCO completes the TMF payment transaction, as an average during the month. The maximum time for processing any individual outbound EDI transaction during a month will not exceed 15 minutes.</p>	Supplier-provided monthly automated query of business rules engine which calculates the difference between the "start time" and "finish time" time stamps for each record processed in the month.	\$1,000 per non-compliant release - See Note 2

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
Call Center	2.1 <u>Call Center- Wait Time</u>	Only as a goal for the first three months of the call center operations, the monthly average call "pick-up" wait time shall not exceed 30 seconds. As an SLA for the first three months of call center operations, the monthly average call pick up time shall not exceed 45 seconds. After three months' operation, the SLA will be adjusted to a monthly average call pick up time that shall not exceed 30 seconds.	Cisco UCCE Unified Contact Center Enterprise Package	\$5,000 per month
Call Center	2.2 <u>Call Center- Hold Time</u>	Average monthly call "on hold" wait time (amount of time that a caller is placed "on hold") shall not exceed (2) minutes at any time.	Cisco UCCE Unified Contact Center Enterprise Package	\$7,000 per month
Call Center	2.3 <u>Call Center- Call Abandon Rate</u>	The percentage of calls that are abandoned will not exceed (3%) in any one calendar month.	Cisco UCCE Unified Contact Center Enterprise Package	\$5,000 per month
Call Center	2.4 <u>Customer Service Center - Response Time</u>	Supplier will respond to ninety five percent (95%) of all customer service requests, within a month, that are not initially resolved by the Supplier customer service representative over the telephone, within two (2) PPI business days. 100% within (4) PPI business days.  This Service Level will measure response time based on the elapsed time between the time: (i) a customer service request is initiated, and (ii) delivery of a response to the customer requests through phone, fax, or e-mail.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per incident
Acctg.	3.1 <u>Monthly General Ledger Entry</u>	Supplier will provide month end General Ledger journal entries, in accordance with GAAP, for each accounting period (calendar or 4-4-5 basis) within five (5) business days after the accounting period ending date (to be provided annually by PPI).  The penalty for any failure to provide a general ledger journal entry shall be cumulative from month to month (i.e. the number of failures for any one month continue to accumulate monthly until the missing general ledger journal entry is provided)	As reported by VES	\$7,000 per incident
Acctg.	3.2 <u>Payment Posting (Cash Application)</u>	Supplier will post all payments received either to (a) individual customer accounts, or (b) to an "unapplied payment account," within one business day of the payment receipt.	As reported by VES	\$1,000 per day

# EXHIBIT B

SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
<p>Accg.</p> <p>3.3 <u>Weekly Bank Deposit Reconciliation</u></p>	<p>On Thursday of each week Supplier will send to PierPASS a weekly deposit reconciliation report, covering activity for the immediate prior week (ending upon the close of business, Friday), which includes for each day of the prior week:</p> <ul style="list-style-type: none"> <li>(a) amounts submitted for payment of TMF (purchases),</li> <li>(b) amounts collected and deposited (payments), and</li> <li>(c) all exception items, including charge backs (charge backs initiated and charge back adjustments, separately reported) and other credits</li> </ul> <p>Any failure to provide the weekly bank deposit reconciliation shall be cumulative (i.e. the credit will continue to accumulate weekly until the missing weekly reconciliation is provided)</p>	<p>As reported by VES</p>	<p>\$7,000 per week</p>
<p>Accg.</p> <p>3.4 <u>Monthly Bank Deposit Reconciliation</u></p>	<p>Within five (5) business days of the end of each month, Supplier will send to PierPASS a month-end deposit reconciliation report, covering activity for the immediate prior month (ending upon the close of business, of the last Friday of each month), which includes:</p> <ul style="list-style-type: none"> <li>(a) total monthly amount submitted for payment of TMF (purchases),</li> <li>(b) amounts collected and deposited (payments) during the month, and</li> <li>(c) all exception items, including charge backs (charge backs initiated and charge back adjustments, separately reported) and other credits, as of the end of the month.</li> </ul> <p>Any failure to provide the monthly deposit reconciliation shall be cumulative (i.e. the credit will continue to accumulate monthly until the missing monthly reconciliation is provided)</p>		<p>\$7,000 per month</p>

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
Acctg.	3.5 <u>Invoicing</u>	Each of the following requirements must be satisfied on a weekly basis:  1. All Beneficial Cargo Owner (BCO; customer) accounts with a PPI approved credit agreement, will be electronically invoiced weekly in accordance with terms of PPI's approved credit agreement.  2. Weekly invoices will include and report all transactions with the individual BCO for the seven day period which ends at midnight, each Friday (the billing closing date).  3. Invoices will be sent to BCO's within five (5) business days of the billing closing date.	Billing Register prepared from VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$10,000 per weekly closing cycle in which full compliance is not achieved
Acctg.	3.6 <u>Reports</u>	Supplier will provide the reports specified in the TMF Replacement System Requirements within the following deadlines:  (a) within one business day of the report due date, for daily reports,  (b) within one business day of the report due date, for weekly reports, and  (c) within five business days of the report due date, for monthly reports.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per late report
Exceptions	4.1 <u>Exception Processing- Reporting</u>	Within 24 hours of the release of freight (import containers) or within 24 hours of receipt of freight (export containers), without BCO claiming of the associated container (imports) or booking (exports), Supplier will notify responsible terminal, and have a report available for PPI, of the release or receipt.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per week in which 100% compliance is not achieved
Exceptions	4.2 <u>Exception Processing</u>	Within five (5) days of the release of freight (import containers) or of receipt of freight (export containers), without payment of TMF (as described in SLA 4.1), Supplier will either:  (a) obtain and report to PPI from the responsible terminal an explanation for such release/receipt or  (b) report that no explanation was received within five (5) days.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per week in which 100% compliance is not achieved

Note 1: All SLA's will be reported to PPI monthly, within six business days of the end of each (calendar or fiscal) month.  
 Note 2: SLA Credits for all items that are subject to 'Note 2' are limited to \$10,000 per month in the aggregate.

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
TMF Sys.	<p>1.1 <u>System Availability</u></p>	<p>For the purpose of measuring individual downtime incidents less than four hours in duration, the TMF system (including all servers, equipment, EDI and applications hosted by Supplier that are not related to the website) shall have at least 99.5% availability each calendar month.</p> <p>Measurement of performance under this SLA is a cumulative measurement of all minutes of downtime, (excluding maintenance periods that are approved by PierPASS in advance) less than (4) continuous hours in duration. It is not an average of all downtime in the month.</p> <p>Downtime does not include any time where normal system availability and functionality is maintained through the use of the Supplier's back-up system.</p> <p>"Availability" means the number of minutes each month during which the TMF System is operating within normal operating parameters, and can be accessed and used by all classes of end users in accordance with its intended functionality. Availability is measured on a 7 x 24 basis excluding a maximum of four (4) hours of scheduled downtime each month and during previously-agreed maintenance events.</p>	Zabbix	\$10,000 per month
TMF Sys.	<p>1.2 <u>System Availability-Major Failure</u></p>	<p>The TMF System (including all servers, equipment, and applications, including EDI, hosted by Supplier that are not related to the website) cannot have a single continuous period of downtime in any month (other than scheduled, previously-agreed maintenance events) that exceeds four (4) hours.</p> <p>If supplier pays a credit for a Major Failure, the period of downtime representing that Major Failure will be excluded from the calculation of downtime for the purposes of the System Availability SLA in item 1.1 above.</p>	Zabbix	\$30,000 per incident

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
TMF Sys.	<p><u>1.3 Website Availability</u></p> <p>The website interface of the TMF System shall have at least 99.5% availability each calendar month.</p> <p>Measurement of performance under this SLA is limited to the website and does not include any TMF System downtime measured under SLA 1.1 or 1.2.</p> <p>Measurement of performance under this SLA is a cumulative measurement of all non-maintenance website downtime, less than four continuous hours in duration. It is not an average of all website downtime in the month.</p> <p>"Availability" means the percentage of minutes of each month during which the website is accessible to end users and operating within normal operating parameters.</p>	Zabbix	\$10,000 per month	
TMF Sys.	<p><u>1.4 Website Availability- Major Failure</u></p> <p>The website interface of the System cannot have a single continuous period of downtime in any calendar month, that exceeds four (4) hours.</p> <p>Measurement of performance under this SLA is does not include any TMF System downtime measured under SLA 1.1 or 1.2.</p>	Zabbix	\$30,000 per incident	
TMF Sys.	<p><u>1.5 EDI Translation and Processing - Inbound</u></p> <p>Supplier will complete the processing of 99.5%, calculated on a monthly basis, of all inbound files received via an EDI interface within 30 minutes of receipt of EDI files that comply with all technical specifications published for the EDI interface ("good EDI").</p>	Supplier-provided monthly automated query of business rules engine which calculates the difference between the "start time" and "finish time" time stamps for each record processed in the month.	\$1,000 per file below the 99.5% level - See Note 2	
TMF Sys.	<p><u>1.6 EDI Translation and Processing - Outbound</u></p> <p>Supplier will send to each MTO or make available a "release notice" ("outbound EDI") to each MTO within five (5) minutes of the time that BCO completes the TMF payment transaction, as an average during the month. The maximum time for processing any individual outbound EDI transaction during a month will not exceed 15 minutes.</p>	Supplier-provided monthly automated query of business rules engine which calculates the difference between the "start time" and "finish time" time stamps for each record processed in the month.	\$1,000 per non-compliant release - See Note 2	

# EXHIBIT B

Area	SLA No. & Title	Service Level (See Note J)	Measurement Tool and Description	Amount of Credit
Call Center	2.1 <u>Call Center- Wait Time</u>	Only as a goal for the first three months of the call center operations, the monthly average call "pick-up" wait time shall not exceed 30 seconds. As an SLA for the first three months of call center operations, the monthly average call pick up time shall not exceed 45 seconds. After three months' operation, the SLA will be adjusted to a monthly average call pick up time that shall not exceed 30 seconds.	Cisco UCCE Unified Contact Center Enterprise Package	\$5,000 per month
Call Center	2.2 <u>Call Center- Hold Time</u>	Average monthly call "on hold" wait time (amount of time that a caller is placed "on hold") shall not exceed (2) minutes at any time.	Cisco UCCE Unified Contact Center Enterprise Package	\$7,000 per month
Call Center	2.3 <u>Call Center- Call Abandon Rate</u>	The percentage of calls that are abandoned will not exceed (3%) in any one calendar month.	Cisco UCCE Unified Contact Center Enterprise Package	\$5,000 per month
Call Center	2.4 <u>Customer Service Center - Response Time</u>	Supplier will respond to ninety five percent (95%) of all customer service requests, within a month, that are not initially resolved by the Supplier customer service representative over the telephone, within two (2) PPI business days. 100% within (4) PPI business days.  This Service Level will measure response time based on the elapsed time between the time: (i) a customer service request is initiated, and (ii) delivery of a response to the customer requests through phone, fax, or e-mail.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per incident
Acctg.	3.1 <u>Monthly General Ledger Entry</u>	Supplier will provide month end General Ledger journal entries, in accordance with GAAP, for each accounting period (calendar or 4-4-5 basis) within five (5) business days after the accounting period ending date (to be provided annually by PPI).  The penalty for any failure to provide a general ledger journal entry shall be cumulative from month to month (i.e. the number of failures for any one month continue to accumulate monthly until the missing general ledger journal entry is provided)	As reported by VES	\$7,000 per incident
Acctg.	3.2 <u>Payment Posting (Cash Application)</u>	Supplier will post all payments received either to (a) individual customer accounts, or (b) to an "unapplied payment account," within one business day of the payment receipt.	As reported by VES	\$1,000 per day

# EXHIBIT B

Acctg.	SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
Acctg.	<p>3.3 <u>Weekly Bank Deposit Reconciliation</u></p>	<p>On Thursday of each week Supplier will send to PierPASS a weekly deposit reconciliation report, covering activity for the immediate prior week (ending upon the close of business, Friday), which includes for each day of the prior week:</p> <ul style="list-style-type: none"> <li>(a) amounts submitted for payment of TMF (purchases),</li> <li>(b) amounts collected and deposited (payments), and</li> <li>(c) all exception items, including charge backs (charge backs initiated and charge back adjustments, separately reported) and other credits</li> </ul> <p>Any failure to provide the weekly bank deposit reconciliation shall be cumulative (i.e. the credit will continue to accumulate weekly until the missing weekly reconciliation is provided)</p>	As reported by VES	\$7,000 per week
Acctg.	<p>3.4 <u>Monthly Bank Deposit Reconciliation</u></p>	<p>Within five (5) business days of the end of each month, Supplier will send to PierPASS a month-end deposit reconciliation report, covering activity for the immediate prior month (ending upon the close of business, of the last Friday of each month), which includes:</p> <ul style="list-style-type: none"> <li>(a) total monthly amount submitted for payment of TMF (purchases),</li> <li>(b) amounts collected and deposited (payments) during the month, and</li> <li>(c) all exception items, including charge backs (charge backs initiated and charge back adjustments, separately reported) and other credits, as of the end of the month.</li> </ul> <p>Any failure to provide the monthly deposit reconciliation shall be cumulative (i.e. the credit will continue to accumulate monthly until the missing monthly reconciliation is provided)</p>		\$7,000 per month

# EXHIBIT B

SLA No. & Title	Service Level (See Note 1)	Measurement Tool and Description	Amount of Credit
Acctg. 3.5 <u>Invoicing</u>	Each of the following requirements must be satisfied on a weekly basis:  1. All Beneficial Cargo Owner (BCO; customer) accounts with a PPI approved credit agreement, will be electronically invoiced weekly in accordance with terms of PPI's approved credit agreement.  2. Weekly invoices will include and report all transactions with the individual BCO for the seven day period which ends at midnight, each Friday (the billing closing date).  3. Invoices will be sent to BCO's within five (5) business days of the billing closing date.	Billing Register prepared from VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$10,000 per weekly closing cycle in which full compliance is not achieved
Acctg. 3.6 <u>Reports</u>	Supplier will provide the reports specified in the TMF Replacement System Requirements within the following deadlines:  (a) within one business day of the report due date, for daily reports,  (b) within one business day of the report due date, for weekly reports, and  (c) within five business days of the report due date, for monthly reports.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per late report
Exceptions 4.1 <u>Exception Processing- Reporting</u>	Within 24 hours of the release of freight (import containers) or within 24 hours of receipt of freight (export containers), without BCO claiming of the associated container (imports) or booking (exports), Supplier will notify responsible terminal, and have a report available for PPI, of the release or receipt.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per week in which 100% compliance is not achieved
Exceptions 4.2 <u>Exception Processing</u>	Within five (5) days of the release of freight (import containers) or of receipt of freight (export containers), without payment of TMF (as described in SLA 4.1), Supplier will either:  (a) obtain and report to PPI from the responsible terminal an explanation for such release/receipt or  (b) report that no explanation was received within five (5) days.	VTX-CSC Customer Service Module and VTX-RPT Reports Module	\$1,000 per week in which 100% compliance is not achieved

**Note 1: All SLA's will be reported to PPI monthly, within six business days of the end of each (calendar or fiscal) month.**  
**Note 2: SLA Credits for all items that are subject to 'Note 2' are limited to \$10,000 per month in the aggregate.**

## Exhibit C

### Drayage Truck Registry Service Levels

The Agreement for Information Technology Products and Services Between and Among the City of Los Angeles, the City of Long Beach and eModal.com, LLC, provides in Exhibit A, Section VII as follows:

Consultant shall make commercially reasonable efforts to ensure the DTR is available 24 hours per day, every day of the year, except for scheduled maintenance periods during low activity periods. Scheduled maintenance periods must be clearly stated on the Login page of the web portal and communicated via e-mail to the registered DTR users at least 3 days before the period.

1. The targeted system quality is:

- At least 99.97% full system availability by all users during non-maintenance periods.
- No more than 70% average CPU utilization over any 5 minute period of time for any server.
- No less than 20% free space on any hard disk storage system used by the system.
- Level 1 Errors – Begin professional resolution efforts within 1 hour of receiving error notification. Summary of efforts must be e-mailed every 2 hours detailing issues and attempts at resolution.
- Level 2 Errors – Begin professional resolution efforts within 4 hours of receiving error notification. Summary of efforts must be e-mailed every 4 hours detailing issues and attempts at resolution.
- Level 3 Errors – Begin professional resolution efforts within 8 “business” hours of receiving error notification. Summary of efforts must be e-mailed every 8 “business” hours detailing issues and attempts at resolution.

## Exhibit D Development Costs

### PortCheck Detailed Budget for Development Costs

1. Implementation Hardware/Software	<u>Amount</u>
Hardware	\$471,622
Software Purchase and Licensing	302,766
Software Customization Costs	1,659,000
Implementation Costs	1,034,000
Training	30,000
Travel, Communication and other costs	75,000
Total	<u>3,572,388</u>
2. Business Processing Outsource (BPO) Implementation Costs	
Infrastructure Costs	62,835
Office Equipment & Supplies	40,970
Furniture	57,834
Telephone System	16,178
Personnel	94,582
Total	<u>272,399</u>
Total Due	<u>\$3,844,787</u>

## Exhibit E Operating Costs

### PortCheck Detailed Budget of Operating Costs

Cost Elements	Amount	
Bank Transaction Fees		
Credit Card - Visa/Mastercard	1,202,215	
Credit Card - American Express	1,343,466	
Telecheck Fees	353,685	
Bank Fees - Other	301,474	
		3,200,840
Bad Debt Expense		882,000
Staff Compensation		0 ***
Operational Costs		
Truck Identification Support Maintenance		0 ****
Truck Identification Replacement Expense		0 ****
Professional fees		
Legal	150,000	
Financial	104,400	
Public Relations	120,000	
		374,400
System Operations and Customer Service Center		
IT Post Implementation		18,835
BPO Post Implementation		2,934,235
Other Expenses		
Occupancy	27,000	
Office Expense	83,440	
Office IT Costs	10,000	
Audit Expense	50,000	
Insurance Expense	43,200	
Taxes & Licenses	14,105	
		227,745
		7,638,055

\*\*\* To be determined on incremental staffing requirements

\*\*\*\* Does not include future truck identification costs agreed to by both Ports

## Exhibit F City Required Provisions

The City of Los Angeles requires all City contracts to contain the following provisions.

1. AFFIRMATIVE ACTION

Vendor, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "F-1."

2. SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Harbor Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Vendor shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit "F-2." NOTE: Prior to being awarded a contract with the City, Vendor and all subconsultants must be registered with the Harbor Department's Contracts Management Database, e-DiversityXchange.

3. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

4. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Vendor shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

5. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

Vendor and/or any subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or subconsultant's employees. Vendor and/or subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Vendor and/or subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. Vendor or subconsultant will maintain such compliance throughout the term of this Agreement.

6. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Vendor shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit "F-3."

## Exhibit G Insurance Provisions

1. General Liability Insurance. Vendor shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Vendor. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by Department shall be excess of Vendor's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Attachment "G-1."

2. Workers' Compensation. Vendor shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Vendor shall comply with such provisions before commencing the performance of the tasks under this Agreement. Vendor shall submit Workers' Compensation policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. See Attachment "G-2."

3. Notice of Cancellation. Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Managers and the City Attorneys of City have each been given thirty (30) days' prior written notice by registered mail addressed to City of Los Angeles Harbor Department, 425 S. Palos Verdes Street, San Pedro, California 90731 and City of Long Beach Harbor Department, 925 Harbor Plaza, P.O. Box 570, Long Beach, CA 90801.

4. Copies of Policies. Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured

endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Managers of the Cities.

5. Modification of Coverage. Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to Cities, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Vendor.

6. Renewal of Policies. At least thirty (30) days prior to the expiration of each policy, Vendor shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Vendor neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Vendor.

7. Right to Self-Insure. Upon written approval by the Executive Director, Vendor may self-insure if the following conditions are met:

Vendor has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Vendor must have a formal resolution of its board of directors authorizing self-insurance.

Vendor agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

Vendor agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

Vendor agrees that any insurance carried by Department is excess of Vendor's self-insurance and will not contribute to it.

Vendor provides the name and address of its claims administrator.

Vendor submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.

Vendor agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.

Vendor has complied with all laws pertaining to self-insurance.

8. Accident Reports. Vendor shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Cities if Vendor's officers, agents or

employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Vendor, its officers or managing agents.