

## RESOLUTION 21-8

### AUTHORIZING THE EQUIPMENT PURCHASE AND SALE AGREEMENT TO HAINA INTERNATIONAL TERMINALS, S.A.S

**WHEREAS**, The Virginia Port Authority (“Authority”), a body corporate and a political subdivision of the Commonwealth of Virginia, has been established pursuant to Chapter 10, Title 62.1 of the Code of Virginia of 1950, as amended (the “Act”); and

**WHEREAS**, Section 62.1-132.6 of the Code of Virginia of 1950 as amended exempts the Authority from certain obligations relative to the disposal of surplus property, provided the Authority adopts and the Board of Commissioners approves policies or regulations governing the sale of surplus property; and

**WHEREAS**, the Board of Commissioners adopted the Procurement and Capital Outlay Manual with an effective date of October 1, 2020, in compliance with the requirements of Section 62.1-132.6 of the Code of Virginia; and

**WHEREAS**, the requirements of section 6.4 of the Procurement and Capital Outlay Manual requires the disposition of surplus property valued in excess of prescribed amounts to be approved by the Board of Commissioners by Resolution; and

**WHEREAS**, the Authority recommends the sale of three ship-to-shore cranes and the associated spare parts located at Portsmouth Marine Terminal to Haina International Terminals, S.A.S. for a total sale price of two hundred thousand dollars (\$200,000) and has prepared an Equipment Purchase and Sale Agreement as presented to the Board (“Sale Agreement”); and

**WHEREAS**, the Board of Commissioners has duly reviewed and considered the Sale Agreement and determined that the purpose of the sale and the terms contemplated by the Sale Agreement are in conformity with the purposes of the Authority set forth in the Act and are in the public interest and otherwise beneficial to the Commonwealth of Virginia.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Virginia Port Authority, as follows:

Section 1. Approval of the Sale of Ship-To-Shore Cranes. The Board approves the Sale Agreement with Haina International Terminals, S.A.S for a total sale price of two hundred thousand dollars (\$200,000) and the execution and delivery thereof by the Authority is hereby authorized, and the Sale Agreement shall be executed in the manner therein set forth to evidence the acceptance by the Authority of such a Sale Agreement, with such changes, insertions, and omissions as may be approved by the Executive

Director, the execution of the Sale Agreement by the Executive Director to be conclusive evidence of the Authority's approval of any such changes, insertions and omissions.

Section 2. Ratification; Further Action. The actions previously taken by the officers and staff of the Authority in furtherance of this Resolution are hereby ratified and confirmed. The officers and staff of the Authority, any of whom may act, are hereby authorized to take such actions, and deliver such additional documents and certificates, as they may, in their discretion, deem necessary or proper in connection with the adoption of this Resolution.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** this 27<sup>th</sup> day of July, 2021.

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John G. Milliken  
Chairman

Attest:

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Ryanne A. Shields, Secretary

## EQUIPMENT PURCHASE AND SALE AGREEMENT

This Equipment Purchase and Sale Agreement (the "Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), is entered into by and between the Virginia Port Authority, a political subdivision of the Commonwealth of Virginia ("VPA"), whose principal place of business is located at 600 World Trade Center, Norfolk, Virginia 23510, and \_\_\_\_\_, a \_\_\_\_\_ ("Buyer") whose principal place of business is located at \_\_\_\_\_.

WHEREAS, VPA owns and/or leases several marine terminals within the Commonwealth of Virginia, including Portsmouth Marine Terminal, located at 2000 Seaboard Avenue, Portsmouth, Virginia 23707 ("PMT");

WHEREAS, VPA operates PMT through its wholly-owned operating subsidiary, Virginia International Terminals, LLC ("VIT");

WHEREAS, VPA determined that three ZPMC Post Panamax Ship to Shore Cranes currently in service at PMT, along with certain related replacement and spare parts (collectively, the "Equipment"), were surplus property as defined in VPA's Procurement and Capital Outlay Manual;

WHEREAS, VPA advertised and offered the Equipment for sale through third-party auction marketplace, GovDeals;

WHEREAS, Buyer submitted an offer to purchase the Equipment along with a plan for their safe decommissioning, loading, and transport from PMT; and

WHEREAS, VPA has accepted Buyer's offer.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby irrevocably acknowledged, and the mutual covenants set forth in this Agreement, VPA and Buyer agree as follows:

1. **Purchase and Sale of Equipment.** At the Closing (as defined in Section 2) VPA shall sell, transfer, convey, assign, and deliver to Buyer, and Buyer shall purchase, accept, and pay for all right, title, and interest in and to the tangible machinery and equipment set forth on **Exhibit A** hereto (the "Equipment"), and Buyer shall pay VPA, by wire transfer or certified funds \_\_\_\_\_ and 00/100 dollars (\$X,XXX,XXX.00) (the "Purchase Price").

2. **Closing.** The closing (the "Closing") and consummation of the transactions contemplated by this Agreement, shall take place by facsimile exchange or email of the documents on \_\_\_\_\_, 2021, and delivery of the original documents via FedEx the next business day, or such other date as the parties may mutually determine. "Closing Date" means the date of the exchange of documents via facsimile or email.

3. **Representations and Warranties of VPA.** VPA represents and warrants to Buyer that the statements contained in this Section 3 are true, correct and complete as of the Effective Date and will be true, correct and complete as of the Closing Date.

3.1. Organization of the VPA; Authorization of Transaction. VPA a political subdivision of the Commonwealth of Virginia. Pursuant to resolution of the Virginia Port Authority Board of Commissioners, VPA has full power and authority, to execute and deliver this Agreement and to perform and consummate, its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of VPA, enforceable in accordance with its terms and conditions.

3.2. Title to Equipment. VPA has good and marketable title to the Equipment, free and clear of all security interests, liens and encumbrances. Other than as expressly set forth herein, the Equipment is being sold "AS-IS" "WHERE-IS" WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND.

3.3 Condition of PMT. VPA makes no representations or warranties of any kind regarding the condition of PMT, its structures, piers, berths, wharfs, equipment, improvements, or any other aspect of PMT.

4. **Representations and Warranties of Buyer.** Buyer represents and warrants to VPA that the statements contained in this Section 4 are true, correct and complete as of the Effective Date and will be true, correct and complete as of the Closing Date.

4.1. Organization of the Buyer; Authorization of Transaction. The Buyer is a \_\_\_\_\_ corporation, duly organized and in good standing in the State of \_\_\_\_\_. Buyer has full power and authority, including full corporate power and authority, to execute and deliver this Agreement and to perform and consummate, its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Buyer, enforceable in accordance with its terms and conditions. The Buyer need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any person(s), or government or governmental agency in order to consummate the transactions contemplated by this Agreement.

4.2. Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will, immediately or with the passage of time: (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Buyer is subject; or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound.

4.3. Consents. No approval, consent, waiver, or authorization of or filing or registration with any governmental authority or third party is required for the execution, delivery, or performance by Buyer of the transactions contemplated by this Agreement.

4.4. Litigation. Buyer is not: (A) subject to any outstanding injunction, judgment, order, decree, ruling, or charge that would limit, restrict or prevent consummation of the transactions contemplated hereby; or (B) a party, or, to the knowledge of Buyer's officers, threatened to be made a party, to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator that would, if determined adversely to Buyer: (1) limit, restrict or prevent

consummation of the transactions contemplated hereby; or (2) cause any representation or warranty of VPA herein to be not true.

4.5. **Brokers' Fees.** Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which the VPA could become liable or obligated.

4.6. **Assumption of the Risk; General Release.** Buyer acknowledges and agrees that VPA-owned property, including all aspects of PMT and the Equipment, may contain patent and latent dangerous conditions that make travel thereon or use thereof hazardous to person and property. Buyer further acknowledges and agrees that VPA is uncertain as to the condition of the Equipment and that dismantling, removing, and transporting it may be hazardous to person and property. Buyer represents, warrants and agrees that Buyer, its employees, agents, representatives, subcontractors, and assigns, have assumed any and all risk associated with the following: entering and remaining on VPA-owned property including but not limited to PMT, transporting personnel and equipment to the site of the Equipment, decommissioning and removing the Equipment, restoring VPA-owned property to its prior condition, transporting of the Equipment to its final destination, and future use of the Equipment or any of its components, and do so at their own risk. Buyer further releases and forever discharges the VPA, VIT, and their commissioners, directors, officers, members, employees, agents, and contractors, from and for any and all liabilities, causes of action, claims, demands, losses, and damages that may arise from the removal or use of the Equipment after Closing and from any consequential damages that may arise from any alleged breach of this Agreement.

5. **Pre-Closing.** VPA and Buyer will use its reasonable best efforts to take all actions and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement.

6. **Post-Purchase Covenants.** In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the parties will take such further action (including the execution and delivery of such further instruments and documents) as any other party may request, at the sole cost and expense of the requesting party (unless the requesting party is entitled to indemnification therefore under Section 10 below). Without limiting the foregoing, VPA shall from time to time after the Closing at the request of Buyer and without further consideration, execute and deliver such instruments of transfer, conveyance, and assignment in addition to those delivered hereunder, and will take such other actions as Buyer may request from time to time, to more effectively transfer, convey, and assign to and vest in Buyer, and to put Buyer in possession of, all or any portion of the Equipment.

7. **Conditions to Obligation to Close.**

7.1 **Conditions to Obligation of the Buyer.** The obligation of the Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions: (A) the representations and warranties of VPA set forth in Section 3 shall be true and correct in all material respects at and as of the Closing Date; (B) no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an

unfavorable injunction, judgment, order, decree, ruling, or charge would: (1) prevent consummation of any of the transactions contemplated by this Agreement, (2) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (3) make any of the representations or warranties set forth in Section 3, not true or not correct; and (C) all actions to be taken by VPA under this Agreement or in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Buyer. Buyer may waive any condition specified in this Section 7.1 if it executes a writing so stating at or prior to the Closing.

7.2 Conditions to Obligation of VPA. The obligation of VPA to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions: (A) the representations and warranties of Buyer set forth in Section 4 shall be true and correct in all material respects at and as of the Closing Date; (B) no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would: (1) prevent consummation of any of the transactions contemplated by this Agreement, (2) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (3) make any of the representations or warranties set forth in Section 3, not true or not correct; and (C) all actions to be taken by Buyer under this Agreement or in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to VPA. VPA may waive any condition specified in this Section 7.2 if it executes a writing so stating at or prior to the Closing.

8. **Items to be Delivered**. At the Closing: (A) VPA shall: (1) deliver to Buyer a bill of sale substantially in the form attached hereto as **Exhibit B** (the "Bill of Sale") to transfer and vest in Buyer good and marketable title to the Equipment, free and clear of all liens and encumbrances; and (2) make the Equipment available to the Buyer at PMT up to the \_\_\_\_\_st of \_\_\_\_\_ 2021; and (B) Buyer shall: (1) deliver to VPA 100% of the Purchase Price, by wire transfer in accordance with VPA's written instructions or by certified funds; and (2) provide proof of insurance coverage required by Section 9.2 below.

9. **Possession and Removal of Equipment**. Buyer shall arrange promptly to take possession of and remove the Equipment from PMT in accordance with the Decommissioning Plan submitted to VPA and attached hereto as **Exhibit C**.

9.1 Damages/Repair. Buyer agrees that after removal of the Equipment from PMT, Buyer shall restore PMT, along with all other improvements, structures, piers, berths, wharfs, or equipment thereon, to the same condition that they were in prior to Buyer's entry upon PMT. The restoration shall be to VPA's satisfaction and shall include, but not be limited to, repair of all damage caused to roads, surrounding buildings, fences, piers, berths, and wharfs, and removal of debris caused by the dismantling/removal of the Equipment; and replacement of all damaged improvements, structures, or equipment that cannot be repaired in a reasonable period of time,

as determined by VPA in its sole discretion. Such repair and replacement shall be performed as soon as is commercially feasible.

9.2 **Insurance.** Prior to Closing, Buyer and any contractor or agent acting on its behalf, shall procure and continue in force until after the Equipment has been removed from PMT and all repairs and replacements required by Section 9.1 have been completed, the policies of insurance described in **Exhibit D** from companies authorized to transact business in the Commonwealth of Virginia.

10. **Termination.** The parties may terminate this Agreement as set forth in this Section.

10.1. **Buyer Termination Generally.** Buyer may terminate this Agreement by giving written notice to VPA at any time prior to the Closing: (A) in the event VPA has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Buyer has provided VPA ten (10) business days' written notice of such breach, and VPA has not cured such breach within the notice period; or (B) if the Closing does not have occurred on or before \_\_\_\_\_, 2021, by reason of the failure of any condition precedent under Section 7.1.

10.2. **VPA Termination Generally.** VPA may terminate this Agreement by giving written notice to the Buyer at any time prior to the Closing: (A) in the event the Buyer has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, VPA has provided Buyer with ten (10) business days' written notice of such breach, and Buyer has not cured such breach within the notice period; or (B) if the Closing shall not have occurred on or before \_\_\_\_\_, 2021, by reason of the failure of any condition precedent under Section 7.2.

10.3. **Effect of Termination.** If a party terminates this Agreement pursuant to Sections 10.1(B) or 10.2(B) above, all rights and obligations of the parties hereunder shall terminate without any liability of any party to the other party, except for any liability of a party then in breach.

11. **Indemnification.** Buyer shall indemnify, defend, and hold VPA, VIT, and their respective commissioners, directors, officers, members, employees, agents, and contractors, harmless from any and all losses, claims, liabilities, damages, obligations, liens, encumbrances, costs and expenses, including reasonable attorney fees, pretrial, trial and appellate, and court costs that are suffered or incurred by, in whole or in part, from time to time, and arise as a result of: (A) any breach of the covenants, warranties or representations of this Agreement or the Bill of Sale by Buyer; (B) Buyer's ownership and utilization of the Equipment on and after the Closing Date; (C) Buyer's removal of the Equipment from PMT; (D) negligence, gross negligence, bad faith, or willful misconduct of Buyer, including by its directors, officers, employees, agents, subcontractors, or other parties acting on behalf of Buyer; or (E) any injury to or death of any person or damage to property caused by or resulting from Buyer's removal of the Equipment from PMT or Buyer's performance of its other obligations under this Agreement. This indemnification clause shall survive the expiration, termination, or cancellation of the Agreement.

12. **Responsibility for Subcontractors.** Buyer shall be responsible for supervising and directing any subcontractors it may engage for the removal of the Equipment. Buyer agrees that it is fully responsible for the acts and omissions of its subcontractors. Buyer agrees that its and its subcontractors' access to PMT is subject to the rules and requirements of the VPA and VIT and applicable law with respect to such access.

13. **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

14. **Entire Agreement, Waiver and Modification.** This Agreement sets forth the entire understanding of the parties concerning the subject matter hereof and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than those set forth herein. No purported waiver by any party of any default by another party of any term or provision contained herein shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving party. No such waiver shall in any event be deemed a waiver of any subsequent default under the same or any other term or provision contained herein. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless in writing and signed by the party to be charged.

14. **Notices.** Any consent, waiver, notice, demand, request or other instrument required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given at the earlier of: (A) actual delivery, when delivered in person; or (B) three (3) business days after being sent by certified United States mail, return receipt requested, postage prepaid, to the party's address first set forth above. Either party may change its address for notices in the manner set forth herein.

15. **Captions.** The captions and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of the provisions of this Agreement.

16. **Applicable Law, Venue and Jurisdiction.** This Agreement shall be construed and governed under and by the laws of the Commonwealth of Virginia. The parties agree that Chapter 10 of the VPA Procurement and Capital Outlay Manual ("Chapter 10") applies to any claims or disputes arising out of this Agreement and that any appeal from the procedure set forth in Chapter 10 shall be to the Circuit Court for the City of Norfolk, which shall have exclusive jurisdiction for any such dispute. Buyer agrees not to contest the venue set forth herein and not to contest the exercise of personal jurisdiction over Buyer by the foregoing court.

17. **WAIVER OF JURY TRIAL.** THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ALL OF THEIR RIGHTS TO A TRIAL BY JURY ON ANY AND ALL ISSUES PERTAINING TO OR ARISING OUT OF THIS AGREEMENT AND EQUIPMENT.

18. **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this

Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

19. **Attorneys' Fees.** In the event any litigation between the parties hereto arises out of or relates to this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable attorneys' fees, expenses, and litigation costs, including those associated with any appellate proceedings or any post-judgment collection proceedings.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same Agreement.

21. **Survival.** Sections 3, 4, 6, 9 and 11 through 19 shall survive the Closing and shall continue in full force and effect thereafter.

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

**VIRGINIA PORT AUTHORITY:**

**BUYER:**

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Stephan A. Edwards  
CEO & Executive Director

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Printed Name:  
Title

**EXHIBIT A – EQUIPMENT LIST**

**EXHIBIT B – BILL OF SALE**

IN CONSIDERATION OF THE PAYMENT OF \_\_\_\_\_ DOLLARS and 00/100 (\$XXX,XXX.00), AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the Virginia Port Authority, a political subdivision of the Commonwealth of Virginia (“VPA”), pursuant to, and in connection with the consummation of the transactions contemplated by, that certain Equipment Purchase and Sale Agreement dated on or about \_\_\_\_\_, 2021 (the “Purchase and Sale Agreement”), does hereby grant, bargain, sell, convey, transfer and deliver unto \_\_\_\_\_, a \_\_\_\_\_ corporation, its successors and assigns (“Buyer”), to have and to hold forever, all and singular, all of the assets set forth on Exhibit A hereto (the “Assets”).

VPA warrants and represents that it is the lawful owner in all respects of the Assets and that the Assets are free and clear of any and all liens, security agreements, encumbrances, claims, demands and charges of every kind and character whatsoever.

VPA covenants and agrees at all times and from time to time hereafter, at its expense, to (1) warrant and defend the title to all of the Assets unto the Buyer, its successors and assigns, forever against every person whomsoever makes any claim against or for such herein described property and the Assets or any part thereof; and (2) execute and deliver to Buyer such further instruments, documents, consents and assurances as Buyer may reasonably request to fully and effectively sell, convey and transfer the Assets to Buyer.

**EXCEPT FOR THE FOREGOING WARRANTY OF TITLE, THE ASSETS ARE SOLD AS-IS WHERE-IS, WITH ALL FAULTS, AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE.**

IN WITNESS WHEREOF, this Bill of Sale has been executed and delivered, and is effective to transfer the Assets, as of this \_\_\_th day of \_\_\_\_\_, 2021.

**VIRGINIA PORT AUTHORITY**

\_\_\_\_\_  
Stephen A. Edwards  
CEO & Executive Director

**EXHIBIT C – BUYER’S DECOMMISSIONING PLAN**

## EXHIBIT D – INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, during the Term, Buyer will maintain the following minimum insurance coverage, at its sole cost and expense (including the cost of all deductibles), written by a reputable insurance company with a Best's Guide Rating of at least A- (VII), or its equivalent, from any other internationally recognized credit agency:

- A. "All Risk" Property Insurance with a limit equal to the full replacement cost of all Buyer owned, rented, and leased property and equipment. Coverage shall include loss of business income. Failure of Buyer to secure such insurance or to maintain adequate levels of coverage shall not obligate VPA for any losses of or damage to Buyer owned, rented or leased property. Buyer hereby releases and waives all rights of recovery against VPA, its parent, subsidiary or affiliated companies and their shareholders, officers, directors, agents and employees, from any liability for loss of or damage to Buyer's owned, rented or leased property, to the extent covered or required to be covered by property insurance (including loss or damage within any deductible or retention), regardless of the cause of the loss or damage. Such coverage shall include a waiver of subrogation endorsement in favor of VPA.
- B. Workers' Compensation insurance as required by law for all employees, agents and subcontractors; and, Employer's Liability insurance in an amount not less than \$1,000,000 each accident. Such insurance shall provide coverage in the location in which the work is performed (PMT) and the location in which the Buyer is domiciled. If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers Compensation Act (including the Outer Continental Shelf Lands Act), the Jones Act, Admiralty Act, Death on the High Seas Act and/or other statutes applicable to maritime employees, Buyer agrees to maintain insurance for such injuries or illnesses, and to provide evidence of such insurance as applicable. Such coverage shall include an Alternate/Related Employer endorsement as well as a waiver of subrogation endorsement in favor of VPA.
- C. Commercial General Liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability; watercraft exclusions deleted and "in rem" coverage as may be applicable; with the following minimum limits:
  - (i) \$2,000,000 general aggregate
  - (ii) \$1,000,000 each occurrence
  - (iii) \$1,000,000 premises and operations
  - (iv) \$1,000,000 personal injury/advertising liability
  - (v) \$2,000,000 products/completed operations
  - (vi) \$500,000 fire damage legal liability

- D. Commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by Buyer, with limits of not less than \$1,000,000 each occurrence. In the event Buyer will be transporting and/or disposing of any Hazardous material or waste, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to \$5,000,000 each occurrence.
- E. Excess/Umbrella Insurance in the amount of \$10,000,000 per occurrence and aggregate in excess of the limits specified above.

Buyer's Insurance Requirements when Applicable:

- F. If consulting services are being performed under this Agreement: Professional Liability/Errors & Omissions Liability insurance with limits not less than \$5,000,000 any one occurrence.
- G. If delivery of fuel or other hazardous products, or waste disposal, are being performed: Pollution insurance or Environmental Impairment insurance with limits of liability not less than \$5,000,000 per occurrence, and any other public liability or environmental impairment coverage required by Federal, State or local regulatory authorities.
- H. If Buyer's or subcontractor's vessels are used in performance of this Agreement:

Protection & Indemnity insurance to be evidenced through a full entry with an international P&I Club, including collision liability, tower's liability, and liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, removal of wreck, etc., subject to a minimum limit of liability of \$10,000,000 any one accident or occurrence. Alternatively, if a full entry in an international P&I Club is not available or applicable, maritime liability coverage should be evidenced on an SP-23 form or equivalent including collision liability, tower's liability and third-party statutory liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, wreck/debris removal, subject to a minimum limit of liability of \$10,000,000.

Hull & Machinery insurance including collision liability with sistership clause unamended, with limits of liability at least equal to the full value of all vessels used in connection with performance of the Work required under this Agreement, and with navigational limitations adequate for the Buyer to perform the specified Work. Where vessels engage in towing operations, said insurance shall include full towers' liability with sistership clause un-amended.

General Requirements:

1. Buyer shall provide VPA with certificates of insurance evidencing its compliance with the insurance requirements herein.
2. Buyer shall ensure that VPA, VIT, and their shareholders, officers, directors, agents and employees are listed as additional insureds under all policies required herein (except for Workers' Compensation, Professional and Property) using the ISO Additional Insured Endorsement forms CG 20 10 04 13 and CG 20 37 04 13 or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the other party in writing.
3. All insurance maintained by Buyer hereunder shall contain a waiver of subrogation against the additional insureds referenced above. Such waiver of subrogation shall apply to any deductible or retention amounts and shall apply to the extent of all insurance actually carried and to the extent of all insurance required to be carried herein.
4. In the event of cancellation of any insurance required hereunder, Buyer shall obtain replacement insurance consistent with the requirements set forth herein as soon as possible, which shall be effective and in full force and effect as of or earlier than the effective time and date of cancellation of the cancelled insurance, such that there shall be no lapse in coverage.
5. In no event shall the amount or scope of insurance described herein place any limitation on the liability assumed by Buyer. If Buyer maintains insurance limits higher than the limits listed above, VPA shall benefit from those higher limits. Buyer shall require their subcontractors performing hereunder to maintain insurance of the types and amounts required of Buyer. Policies of Buyer shall be primary to any insurance carried by or available to VPA and any "other insurance" clauses under Buyer's policies shall be amended accordingly. Should Buyer fail to procure or maintain any of these insurance coverages, or by any act or omission vitiate or invalidate any of the aforesaid insurance coverages, Buyer shall pay to VPA all losses and indemnify VPA against all claims and demands which would otherwise have been covered by such insurance. Irrespective of the requirements as to insurance to be carried by Buyer or their subcontractors as provided herein, insolvency, bankruptcy, or failure of any insurance company to pay all claims accruing shall not be held to relieve Buyer of any of its obligations.
6. All of the Buyer's and their subcontractors' insurance shall be endorsed using ISO form CG 20 01 04 13 or the policy must contain similar language indicating that the coverage provided is primary to and will not contribute with any insurance maintained by VPA.
7. Unless a longer period of time is specified above, Buyer and its subcontractors shall maintain all required insurance coverage in full force and effect until removal of the Equipment from PMT and all repairs and replacements required by Section 9.1 have been completed.

4826-7420-1069, v. 1