**CONFIDENTIALIITY AGREEMENT**

This NONDISCLOSURE AGREEMENT (“Agreement”) is entered into as of May [ ] , 2023, between Arthur Kill Terminal, LLC, having its principal place of business at 145 Avenue of the Americas, New York, New York 10013 (“AKT”) and [ ] having its principal place of business at [ ], (the “Counterparty”), each such party referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties desire to explore a potential business opportunity in relation to the business of AKT (the “Project”);

WHEREAS, the Parties desire to enter into this Agreement to set forth their respective obligations as to the disclosure of certain confidential information relating to the Project;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. This Agreement creates mutual obligations of confidentiality with respect to certain confidential information (the “Confidential Information”) to be shared between the Parties in connection with a possible transaction involving the Project. The Party disclosing Confidential Information (as defined below) is termed the “Disclosing Party” herein, and the Party receiving such Confidential Information is termed the “Receiving Party.” Inasmuch as either Party may disclose Confidential Information under this Agreement to the other, a Party may be a Disclosing Party as to certain Confidential Information and a Receiving Party to other Confidential Information. “Party “shall also include without limitation all affiliates, parents, subsidiaries and representatives of a Party.

2. “Confidential Information” shall mean all information that is disclosed by or on behalf of a Disclosing Party to the Receiving Party on or after the date hereof in connection with the Project, including material in any form, including oral, printed, handwritten, electronic, and drawing form.

3. The Receiving Party shall treat any and all Confidential Information provided by the Disclosing Party as confidential in accordance with the terms herein and shall not use, disclose or distribute such Confidential Information to any person or entity, other than as specifically permitted by this Agreement. The Receiving Party shall use Confidential Information solely for the purpose of analyzing, evaluating, negotiating and, if applicable, consummating, the Project and any transaction in connection therewith (the “Purpose”) and shall not use, disclose or exploit such Confidential Information for any other purpose without the prior written consent of the Disclosing Party.

4. Notwithstanding the other provisions of this Agreement, the Receiving Party may disclose Confidential Information to its affiliates, financing sources and insurance providers and its and their respective employees, officers, directors, consultants and advisors, including legal advisors (such of the aforementioned persons that receive Disclosing Party’s Confidential Information from the Receiving Party, its “Representatives”), provided that Receiving Party shall restrict access to Confidential Information to its Representatives who have a need to know such Confidential Information in connection with the Project and shall direct such Representatives to maintain the confidentiality of Confidential Information as required by this Agreement. Receiving Party shall be responsible for any breach of the confidentiality and use terms of this Agreement by any of Receiving Party’s Representatives, except that Receiving Party shall not be liable for breaches by any Representative that (i) enters into a separate agreement in a form similar to this Agreement in substance for the benefit of the Disclosing Party or (ii) executes a separate confidentiality agreement with the Disclosing Party relating to a potential transaction.

5. The obligations imposed upon the Parties under this Agreement shall not apply to Confidential Information:

 a. which is generally known or available to the public at the time of disclosure or becomes generally known or available to the public through no breach by the Receiving Party or its Representatives of this Agreement;

 b. which is already known to or in the possession of the Receiving Party or its Representatives on a non-confidential basis at the time of disclosure hereunder;

 c. which was or becomes available to the Receiving Party or its Representatives from a third person who was not, to the actual knowledge of the Receiving Party, bound by an obligation to the Disclosing Party to keep such information confidential;

 d. which is independently developed by the Receiving Party or its Representatives without the use of or reference to Confidential Information; or

 e. which is disclosed pursuant to a request or requirement of any regulatory, self-regulatory or government agency or in connection with any law, rule, regulation or legal proceeding or process (collectively “Law”), provided that the Receiving Party or such Representative shall, to the extent permitted by Law and other than where such disclosure is requested or required as a result of a routine examination by a regulatory, self-regulatory or governmental agency, organization, or body, give notice to the Disclosing Party that the Receiving Party or such Representative is requested or required to make such disclosure so that the Disclosing Party may, if it so desires and at its own expense, seek a protective order with respect to the confidentiality of the Confidential Information covered thereby. Receiving Party or such Representative shall, to the extent permitted by Law and other than where such disclosure is requested or required as a result of a routine examination by a regulatory, self-regulatory or governmental agency, organization, or body, use commercially reasonable efforts to cooperate with Disclosing Party’s reasonable efforts, at its expense, to seek a protective order, to avoid and/or minimize the extent of such disclosure. If Receiving Party or such Representative is nonetheless required by Law to disclose the Confidential Information, Receiving Party and its Representatives, may without liability hereunder disclose only such of the Confidential Information as is required by Law.

6. The Disclosing Party is and shall remain the exclusive owner of the Confidential Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.

7. Upon written request of the Disclosing Party, the Confidential Information disclosed by or on behalf of the Disclosing Party and all copies, reproductions and reprints thereof in the Receiving Party’s or its Representatives’ possession shall be destroyed or, at the Receiving Party’s election, returned by the Receiving Party to the Disclosing Party, except that the Receiving Party and its Representatives may, subject to the other terms of this Agreement, retain any Confidential Information (i) pursuant to Law or bona fide document retention policies and (ii) created pursuant to automatic electronic archiving and back-up procedures, provided that any Confidential Information so retained shall remain subject to this Agreement.

8. This Agreement constitutes the entire Agreement between the Parties and supersedes any prior or contemporaneous oral or written agreements with regard to the subject matter hereof. The Disclosing Party has not made any representation or warranty and the Disclosing Party shall have no liability with respect to the Confidential Information, absent fraud, unless it is specifically set forth in a definitive agreement between the Parties. No Party shall assign any of its rights or delegate any of its obligations under this Agreement, except with the prior written consent of the other Party.

9. The Receiving Party shall promptly report to the Disclosing Party any actual or suspected violation of the terms of this Agreement and shall take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such violation.

10. No failure or delay in exercising any right, power or privilege contained in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11. This Agreement shall inure to the benefit of the Parties and their respective successors and permitted assigns.

12. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. The covenants contained in this Agreement shall be construed as a series of separate and separable covenants. If, in any judicial proceeding, a court refuses fully to enforce any such separate covenant, then such non-enforceable covenant shall be deemed eliminated from this Agreement or reduced for purposes of such proceedings to the extent necessary to permit the remainder hereof to be enforced.

13. No agency, partnership, joint venture or other joint relation is created by this Agreement. Unless and until a definitive agreement regarding a possible transaction between the Parties has been executed and delivered by the Parties, neither Party shall be under any legal obligation of any kind whatsoever with respect to any possible transaction between the Parties by virtue of this Agreement, except for the matters specifically agreed to herein.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles. The courts of New York, New York shall have jurisdiction over any action, claim, suit or proceeding arising from or relating to this Agreement. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT OR PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT.

16. The Parties acknowledge that neither has made any representation or warranty herein as to the accuracy or completeness of the Confidential Information or of any other information provided to each other, nor shall the transmission thereof constitute any representation, warranty, assurance, guaranty or inducement by one Party to the other with respect to infringement of intellectual property or other rights of others, and the Parties agree that neither shall have liability to the other resulting from the use of the Confidential Information or such other information, absent fraud and except as may otherwise be set forth in a definitive agreement.

17. The Parties acknowledge that a breach of this Agreement by one Party will result in immediate and irreparable harm to the other, for which there will be no adequate remedy at law, and the non-breaching Party shall be entitled to equitable relief to compel the breaching Party to cease and desist all unauthorized use and disclosure of the Confidential Information. Remedies referenced in this Agreement shall be considered cumulative and not exclusive. The non-prevailing Party agrees to pay all costs and expenses (including reasonable attorney’s fees) incurred by the prevailing Party in enforcing the terms of this Agreement. A Party’s breach of any provision of this Agreement shall not constitute a defense of any violation by the other Party of the foregoing restrictions.

# 18. All notices under this Agreement shall be deemed to have been duly given five (5) days following the mailing of the notice by first class mail or upon the email transmission, return receipt received, to the Party entitled to such notice at the address set forth below:

If to CounterParty:

If to AKT:

145 Avenue of the Americas, 7th Flr

New York, New York 10012

Attn: Manager

bdavis@atlanticterminals.com

# 19. Counterparts Either the original or copies, including facsimile transmissions, of this Agreement, may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

# 20. Term. This Agreement and the obligations of the Parties hereunder shall terminate and be of no further force and effect two (2) years from the date set forth above other than those obligations that survive termination.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representative as of the date first written above.

Arthur Kill Terminal, LLC.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name: