

# **TERMINAL 91 CRUISE FACILITY LEASE AGREEMENT**

## TABLE OF CONTENTS

	Page
ARTICLE 1 : DEFINITIONS.....	1
ARTICLE 2 : LEASE; PREFERENTIAL USE; CONDITION AND USE OF PROPERTY .....	9
ARTICLE 3 : TERM .....	11
ARTICLE 4 : RENT .....	12
ARTICLE 5 : BOND OR OTHER SECURITY .....	16
ARTICLE 6 : ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS.....	16
ARTICLE 7 : USE .....	19
ARTICLE 8 : TENANT’S OPERATION OF PREMISES .....	20
ARTICLE 9 : PORT OBLIGATIONS RESPECTING TENANT OPERATIONS .....	24
ARTICLE 10 : REAL AND PERSONAL PROPERTY TAXES .....	24
ARTICLE 11 : INDEMNITY AND INSURANCE .....	25
ARTICLE 12 : OPERATING EXPENSES; UTILITIES .....	29
ARTICLE 13 : REPAIR AND MAINTENANCE; COMPLIANCE WITH LAWS .....	33
ARTICLE 14 : ENVIRONMENTAL STANDARDS AND SUSTAINABILITY .....	36
ARTICLE 15 : DAMAGE OR DESTRUCTION.....	41
ARTICLE 16 : SURRENDER AND HOLDING OVER.....	42
ARTICLE 17 : IMPAIRMENT OF TITLE .....	43
ARTICLE 18 : DEFAULT .....	44
ARTICLE 19 : TERMINATION; EASEMENTS .....	46
ARTICLE 20 : NO WAIVER; LANDLORD’S RIGHT TO PERFORM.....	47
ARTICLE 21 : ASSIGNMENT AND SUBLETTING .....	48
ARTICLE 22 : MISCELLANEOUS .....	50
ARTICLE 23 : SIGNATURES.....	56
ARTICLE 24 : ACKNOWLEDGMENTS .....	57
EXHIBIT A.....	58
EXHIBIT B.....	59
EXHIBIT C .....	60

EXHIBIT D.....	0
EXHIBIT E .....	14
EXHIBIT F .....	15
EXHIBIT G.....	16
EXHIBIT H.....	17
EXHIBIT I .....	18
EXHIBIT J .....	19

# CRUISE FACILITY LEASE AGREEMENT

THIS CRUISE FACILITY LEASE AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2025 by and between the PORT OF SEATTLE, a Washington municipal corporation, and \_\_\_\_\_, a Washington limited liability corporation.

WHEREAS, the Port is the owner of a two-berth cruise facility located at its Terminal 91; and

WHEREAS, Tenant is experienced in the operation of cruise terminal facilities; and

WHEREAS, the Port wishes to lease cruise terminal facilities to Tenant, and Tenant wishes to lease those cruise terminal facilities from the Port for a period of up to 5 years, with an additional 5 year option exercisable by the parties on the terms set forth below; and

WHEREAS, the parties share goals around clean air, protecting water quality and the environment, decarbonization and creating economic benefit in the community and wish to formalize these shared goals;

NOW THEREFORE, for and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

## ARTICLE 1: DEFINITIONS

The following terms shall have the meanings specified in this Article, unless otherwise specifically provided. Other terms may be defined in other parts of the Lease.

- 1.1 Affiliate. “Affiliate” shall mean and refer to any person that, directly or indirectly, (i) is owned by, (ii) owns, (iii) shares common ownership with, (iv) is controlled by, (v) controls, or (vi) is subject to common control with any Qualifying Person. Notwithstanding the foregoing, Affiliate shall not include any entity the shares or other equity interests of which are traded over any public exchange and for which the total number of shares or other equity interests held by all Qualifying Persons do not exceed five percent (5%) of the total number of shares or other equity interests outstanding.
- 1.2 Lease. “Lease” shall mean and refer to this Cruise Terminal Lease, together with the Exhibits and all agreements supplemental to or modifying this Lease, whether made contemporaneously herewith or subsequent hereto.
- 1.3 Allowable Expenses. “Allowable Expenses” shall mean and refer to the aggregate of the following expenses (computed on an accrual basis in accordance with generally accepted accounting principles) reasonably incurred by Tenant and pertaining to the Premises:

- 1.3.1 Cost of operations, maintenance, and repair of all operating equipment and replacement of minor items initially supplied by the Port;
- 1.3.2 Cost of operating supplies;
- 1.3.3 Tenant's reasonable expense associated with the cost of compensation, benefits and payroll taxes of all employees to the extent working at the Premises (whether full or part time) or performing duties pertaining to the Premises at Tenant's office, excluding Executive Personnel;
- 1.3.4 Cost of all utilities;
- 1.3.5 Costs associated with parking at the Terminal 91 Cruise Facility;
- 1.3.6 Costs of repair and maintenance of the Premises;
- 1.3.7 Cost of all equipment leases necessary for the operation of the Terminal 91 Cruise Facility;
- 1.3.8 To the extent reasonably allocable to the Premises, the cost of insurance required under this Lease to be carried by Tenant and any deductibles or reasonable costs to cover any self-insured losses except if Tenant or its employees were negligent;
- 1.3.9 Cost of all business taxes and valid third-party assessments payable by Tenant with respect to the operation of the Premises, excluding federal, state or local income taxes payable by Tenant which are Tenant's sole responsibility;
- 1.3.10 To the extent reasonably allocable to the Premises, the cost of reasonable legal and accounting fees for services directly related to the operation of the Premises and annual auditing fees;
- 1.3.11 To the extent reasonably allocable to the Premises, costs of technical consultants and specialized operational experts for specialized services in connection with non-recurring work on operation, functional, design or construction problems or for specialized expertise on recurring work and operations which can most efficiently be provided by vendors rather than employees; and
- 1.3.12 All other reasonable Operating Expenses actually incurred in the operation and management of the Premises to the extent approved by the Port (which approval shall not be unreasonably withheld or delayed) in advance of the expense being incurred.

Allowable Expenses shall not include the following:

- 1.3.13 Notwithstanding anything to the contrary set forth in Sections 1.3.1 through 1.3.12, any amounts paid to an Affiliate or Qualifying Person (other than bona fide cost of compensation specifically allowed by Section 1.3.3) unless expressly approved, in advance and in writing, by the Port as necessary and reasonable;
  - 1.3.14 Cost of leasehold excise tax payable by Tenant with respect to any “Leasehold Interest,” as that term is defined in Chapter 82.29A of the Revised Code of Washington and Chapter 458-29A of the Washington Administrative Code, in the Premises;
  - 1.3.15 Costs of fines or penalties as a result of any failure to comply with any federal, state and local laws, ordinances and regulations in the operation of the facility (specifically including those levied as a result of acts or omissions of third-parties including ship operators); and
  - 1.3.16 Any expense otherwise includable within the definition of Allowable Expense but which expense is passed directly through to a third-party unless the same is written off as uncollectible.
- 1.4 Alteration. “Alteration” shall have the meaning set forth in Section 6.1 below.
  - 1.5 Authorities. “Authorities” shall mean and refer to the United States, State, County, City or other local governmental or quasi-governmental authorities, or any department, office, or agency of the foregoing now existing or hereafter created.
  - 1.6 Cruise Period. “Cruise Period” shall mean and refer to the period of time during each calendar year of the term, commencing seven (7) days prior to date on which the first cruise vessel is scheduled to call at the Terminal 91 Cruise Facility until seven (7) days after the date on which the last cruise vessel is schedule to call at the Terminal 91 Cruise Facility.
  - 1.7 Default Rate. “Default Rate” shall mean and refer to 18% per annum or the maximum interest rate permitted by law for this transaction in the State of Washington, whichever is less.
  - 1.8 Environmental Laws. “Environmental Laws” shall mean and refer to any and all Legal Requirements relating to the protection of human health and the environment.
  - 1.9 Event Activities. “Event Activities” shall mean and refer to parties, weddings, conferences, trade shows, meetings and the like at the Terminal 91 Cruise Facility.
  - 1.10 Event License. “Event License” shall have the meaning set forth in Section 2.3 below.

- 1.11 Event of Default. “Event of Default” shall have the meaning set forth in Section 18.1 below.
- 1.12 Event Reimbursement Agreement. “Event Reimbursement Agreement” shall mean and refer to an agreement between Tenant and Columbia Hospitality, Inc., an assignee of the Port under the Event License, or any future assignee of the Port, by which Columbia Hospitality, Inc., and Tenant outline the responsibilities of each party with respect to Event Activities, in a form substantially similar to the agreement set forth in Exhibit C. This Event Reimbursement Agreement will outline the responsibilities of both parties, which ensures the Tenant returns the facilities to one another in a clean and defect-free condition following use.
- 1.13 Executive Personnel. “Executive Personnel” shall mean and refer to any officer, director or senior executive of either Tenant or any equity owner of Tenant, including but not limited to [REDACTED] and their successors, and any other or future employee who performs similar duties and has similar responsibilities. Executive Personnel shall not, however, include either: (i) the controller of Tenant to the extent providing day-to-day accounting services pertaining to the Premises or (ii) [REDACTED] to the extent providing day-to-day managerial services pertaining to the Premises.
- 1.14 Flow-Through Event Revenue. “Flow-Through Event Revenue” shall mean and refer to that portion of Tenant’s Gross Revenues attributable to any amounts paid to Tenant pursuant to Section 2.3 of this Lease and associated with the Port’s use of the Event License *except* amounts that constitute: (i) a direct, pass-through reimbursement of any utilities costs associated with the actual period of use under the Event License or (ii) a reimbursement for actual, out-of-pocket costs incurred by Tenant to repair any specific damage (i.e. *not* wear and tear) associated with the failure to return the portion of the Premises actually occupied in substantially the same condition in which received. Without limiting the generality of the foregoing, Flow-Through Event Revenue specifically includes any the payment under numbered Paragraph 10 of the Terminal 91 portion of current Event Reimbursement Agreement. It shall likewise include any other/further portion of “room rentals” or “net income” paid to Tenant under the current or any future iteration of the Event Reimbursement Agreement.
- 1.15 Gross Revenues. “Gross Revenues” shall mean and refer to the aggregate gross amount of revenue derived in, on or about the Premises or from Tenant’s Operations, and whether: (i) in cash, on credit or in kind, (ii) at wholesale, at retail or otherwise, and (iii) transacted by Tenant, by any persons, firms or corporations on Tenant’s behalf, or by any subtenants, licensees or concessionaires of Tenant (specifically including any Parking Operator), from, in or upon the Premises. Without limiting the generality of the foregoing, Gross Revenue specifically includes the following:
- 1.15.1 All charges for parking, dockage, wharfage, demurrage, storage, equipment rentals and passenger traffic fees attributable to the Premises;

1.15.2 All income from the short-term rental and/or usage of the Premises or any portion thereof;

1.15.3 All income derived from the sale of any goods, merchandise or services of any type or kind or in, on or about the Premises (including orders accepted by means of electronic, telephonic, video, computer or other technology based systems from sources other than the Premises); and

1.15.4 Any deposit not refunded.

Gross Revenue shall not include the following:

1.15.5 When properly recorded and accounted for, refunds allowed to customers because of unacceptable or unsatisfactory goods or services to the extent such refund was actually granted and adjustment actually made;

1.15.6 When properly recorded and accounted for, federal, state and local excise, sales, use or passenger taxes collected directly from customers as part of or based on the sales price of goods and services, collected as agent for the taxing body imposing the tax and billed to the customer as a separate item;

1.15.7 When properly recorded and accounted for, gratuities collected by or on behalf of employees;

1.15.8 Any revenue from Event Activities undertaken by the Port or its assignee pursuant to the Event License;

1.15.9 Revenue derived from any item of expense which is passed directly through to a third-party (e.g., the cost of security provided for the benefit of cruise ships during port calls); provided, however, any markup on such pass-through expense shall be included within Gross Revenue.

1.15.10 Any revenue generated by the Port from any rights reserved to itself under Section 2.4 below.

1.16 Hazardous Substance. “Hazardous Substance” shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect.

1.17 Ingress and Egress License. “Ingress and Egress License” shall have the meaning set forth in Section 2.1.4 below.



- 1.18 Legal Requirements. “Legal Requirements” shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, which may be applicable to or have jurisdiction over the Premises, or the sidewalks or streets adjacent thereto and all requirements, obligations and conditions of all instruments of record at any time during the term of this Lease. Legal Requirements shall also include all applicable rules and regulations of the Port pertaining to the Premises, whether now in existence or hereafter promulgated, for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public.
- 1.19 Lien. “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises and any Alteration, fixture, improvement or appurtenance thereto.
- 1.20 Net Operating Income. “Net Operating Income,” which will generally be measured only on a yearly basis, shall mean and refer to Gross Revenues for the period minus: (i) Allowable Expenses for the period, (ii) Rent for the period, and (iii) leasehold excise tax for the period.
- 1.21 Notice of Default. “Notice of Default” shall mean and refer to written notice of any Event of Default to Tenant. Such notice, for all purposes, shall be in lieu of, and not in addition to, any notice required as a prerequisite to an unlawful detainer or similar action for possession of the Premises.
- 1.22 Operating Expenses. “Operating Expenses” shall have the meaning set forth in Section 12.1 below.
- 1.23 Parking Operator. “Parking Operator” shall mean and refer to the Parking Operator selected by Tenant pursuant to Section 8.1.8.
- 1.24 Percentage Rent. “Percentage Rent” shall have the meaning set forth in Section 4.1.
- 1.25 Permitted Encumbrances. “Permitted Encumbrances” means any and all encumbrances of record together with such matters that would be disclosed by a detailed inspection and/or survey of the Premises.
- 1.26 Port. “Port” or “the Port” shall mean and refer to the Port of Seattle, whose street address for purposes of notice is 2711 Alaskan Way, Seattle, Washington 98121, Attention: Director, Cruise & Maritime Operations and whose mailing address for purposes of notice is PO Box 1209, Seattle, Washington 98111, Attention: Director, Cruise & Maritime Operations. A copy of any notice shall also be provided to Port of Seattle, Attn: Managing Director, Maritime, 2711 Alaskan Way, PO Box 1209, Seattle, WA 98111.

- 1.27 Port Directed Cruise Fee Revenue. “Port Directed Cruise Fee Revenue” shall mean and refer to that portion of Tenant’s Gross Revenues attributable to the Dockage Fee and Passenger Fee charged to passenger vessels and cruise ships under Section Four of Port of Seattle Terminal Tariff No. 5, or any amendment or replacement thereof, as the same may be modified or discounted in any written agreement with a cruise line(s) (e.g. the Long Term Preferential Berthing Agreement with Carnival Lines). In the event that the Port substantially revises the way that it charges passenger vessels and cruise ships under its terminal tariffs, “Port Directed Cruise Fee Revenue” shall then mean that portion of Tenant’s Gross Revenues attributable to such other items that are substantially intended to replace the Dockage Fee and/or Passenger Fee. For purposes of Tenant’s Gross Revenues from the Bundled Port Fees set forth in Item 4005 (or any amendment or replacement thereof), the Dockage Fee and Passenger Fee component shall be as itemized and set forth in the final calculation of the Bundled Port Fee prepared for, and documenting the composition of, the most recent update of the Bundled Port Fee in the terminal tariff. Port Directed Cruise Fee Revenue specifically do not include any Gross Revenues associated with (i) any Passenger Vessels Terminal 91 Facility Surcharge, (ii) fees associated with fresh water consumption, specifically including any hook-up fee, (iii) fees associated with security services (whether baseline or otherwise), (iv) fees associated with bunkering permits, (v) fees associated with Memorandum of Understanding with the Department of Ecology, (vi) fees associated with shorepower, or (vii) fees, other than incremental Dockage Fees, associated with any delayed sailings.
- 1.28 Premises. “Premises” shall mean and refer to the Terminal 91 Cruise Facility, subject to the Permitted Encumbrances.
- 1.29 Qualifying Person. “Qualifying Person” shall mean and refer to either:
- 1.29.1 Tenant;
  - 1.29.2 Any equity interest owners of Tenant;
  - 1.29.3 Any equity interest owner in any of those persons set forth in Section 1.29.2
  - 1.29.4 Any officer, director, manager, or employee in any of those persons set forth in Sections 1.29.1, 1.29.2, 1.29.3; and
  - 1.29.5 Any spouse, parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandchild, grandparent or any parent-in-law, son- or daughter-in-law, or brother- or sister-in-law or any person set forth in Section 1.29.4.
- 1.30 Rent. “Rent” shall mean and refer collectively to sums denominated as Percentage Rent or any other sums or charges otherwise payable by Tenant under the terms of this Lease. Failure by Tenant to pay any sum denominated as Rent shall entitle the Port to pursue any

or all remedies specified in this Lease as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.

- 1.31 Revenue of Consequence. “Revenue of Consequence” shall mean and refer to that portion of Tenant’s Gross Revenues falling within Flow Through Event Revenue or Port Directed Cruise Fee Revenue.
- 1.32 Security. “Security” shall have the meaning set forth in Section 5.1 below.
- 1.33 Ship Activities. “Ship Activities” shall mean and refer to all activities related to the berthing of ships including, but not limited to, scheduling, security, passenger transportation and concierge services, baggage operations, deliveries, and stevedoring services.
- 1.34 Tenant. “Tenant” shall mean [REDACTED], whose address for purposes of notice is \_\_\_\_\_ with a copy of any notice to be provided to \_\_\_\_\_.
- 1.35 Tenant’s Operations. “Tenant’s Operations” shall mean and refer to all operations of Tenant in the conduct of Tenant’s business as a cruise terminal operator and/or all operations on or about the Premises or conducted off the Premises and related to operations conducted on or about the Premises.
- 1.36 Term. “Term” shall have the meaning set forth in Section 3.1 below.
- 1.37 Terminal 91 Access Areas. “Terminal 91 Access Areas” shall mean and refer to those areas established by the Port, from time-to-time, for access from public roadways to the Terminal 91 Lease Area, Terminal 91 Parking Area and/or Terminal 91 Preferential Use Area. Except as specifically provided in this Lease, the Port shall have exclusive control and management of the Terminal 91 Access Areas. Without limiting the Port’s right of control and management, the Port specifically reserves the right to: (i) establish, modify from time to time, and enforce reasonable rules and regulations governing the use of Terminal 91 Access Areas; (ii) change the area, level, location and arrangement of Terminal 91 Access Areas; (iii) provided Tenant is not deprived of reasonable access to the Terminal 91 Cruise Facility sufficient for Tenant’s use of the Terminal 91 Cruise Facility, close all or any portion of the Terminal 91 Access Areas; and (iv) do and perform such other acts in and to the Terminal 91 Access Areas as may be reasonable with a view to the improvement of the convenience and use thereof by the Port and tenants of any larger Terminal 91 property of which the Terminal 91 Cruise Facility is a part.
- 1.38 Terminal 91 Cruise Facility. “Terminal 91 Cruise Facility” shall mean and refer to: (i) the Terminal 91 Lease Area, (ii) for the Cruise Period each year, the Terminal 91 Parking Area and Terminal 91 Preferential Use Area, and (iii) the Terminal 91 Access Areas, together with the personal property currently located or to be installed thereon.

- 1.39 Terminal 91 Lease Area. “Terminal 91 Lease Area” shall mean and refer to that portion of the Port’s Pier 91 consisting of approximately two (2) acres, together with all improvements now existing or to be constructed on that portion of the parcel. The legal description and precise area of the Terminal 91 Lease Area are set forth on Exhibit A.
- 1.40 Terminal 91 Parking Area. “Terminal 91 Parking Area” shall mean and refer to those portions of the Port’s Terminal 91 designated by the Port from time-to-time for parking and vehicle staging associated with the operation of the Terminal 91 Cruise Facility. The Port shall provide Tenant with sufficient parking and truck staging areas to meet the parking (including passenger, longshore or otherwise) and truck staging needs of the Terminal 91 Cruise Facility. The Port shall, prior to the commencement of each Cruise Period, provide Tenant written notice of those portions of Terminal 91 to be used as the Terminal 91 Parking Areas. Except to the extent that Port makes provision for, and pays any cost associated with, the relocation of the Terminal 91 Parking Areas, the Port shall not relocate the Terminal 91 Parking Areas during the course of any one Cruise Period. During the non-Cruise Period, the parties acknowledge that the Terminal 91 Parking Area may constitute a portion of Terminal 91 that would otherwise fall within the Terminal 91 Preferential Use Area. For any off-season events requiring significant parking, Tenant shall notify the Port at least seven (7) days in advance of the event of the estimated parking demand and the Port will identify sufficient parking areas for the event.
- 1.41 Terminal 91 Parking Area License. “Terminal 91 Parking Area License” shall have the meaning set forth in Section 2.1.3 below.
- 1.42 Terminal 91 Preferential Use Area. “Terminal 91 Preferential Use Area” shall mean and refer to that portion of the Port’s Pier 91 consisting of approximately twelve (12) acres, having at least one thousand (1,000) lineal feet of moorage along both the east and west sides of Pier 91, together with all improvements now existing or to be constructed on that portion of the parcel. The legal description and precise area of the Terminal 91 Preferential Use Area are set forth on Exhibit B. The Port reserves the right of secondary use of all or any part of the Terminal 91 Preferential Use Area for berthing of vessels operated by entities other than Tenant, for loading and discharging cargoes of such vessels, for transporting cargo, and for cargo storage and operations incidental thereto, provided that such secondary use of the Terminal 91 Preferential Use Area by the Port shall not interfere with Tenant’s operations as authorized in this Lease. In the event of such secondary use by the Port, all applicable charges shall accrue to the benefit of and shall be billed and retained by the Port.

## ARTICLE 2: LEASE; PREFERENTIAL USE; CONDITION AND USE OF PROPERTY

- 2.1 Grant of Rights to Tenant. Subject to all of the provisions, covenants and agreements contained in this Lease, the Port continues to grant to Tenant, and Tenant hereby accepts, the following rights:

- 2.1.1 *Lease.* The Port leases to Tenant the Terminal 91 Lease Area for the Term.
- 2.1.2 *Preferential Use.* The Port grants to Tenant a right of preferential use on a non-continuous, ship-by-ship basis of the Terminal 91 Preferential Use Area for the Term; provided, however, such right of preferential use shall apply *only*: (i) for the Cruise Period, and (ii) to cruise vessels and associated Ship Activities. Except as expressly provided, Tenant shall have no other right to the Terminal 91 Preferential Use Area except as may be granted by the Port pursuant to the terms of Terminal Tariff No. 4, Terminal Tariff No. 5 or otherwise.
- 2.1.3 *Terminal 91 Parking Area License.* The Port grants to Tenant an irrevocable license (the “Terminal 91 Parking Area License”) to make use of the Terminal 91 Parking Area.
- 2.1.4 *License for Ingress and Egress.* The Port grants to Tenant an irrevocable license for ingress and egress but no other purpose (the “Ingress & Egress License”) to make use of Terminal 91 Access Areas. In making any use of the Ingress & Egress License provided for by this Section 2.1.4, the Tenant, its customers and their suppliers shall reasonably cooperate with Port in satisfying the terms of any non-discriminatory security plan adopted by Port or its tenant for the property of which the Terminal 91 Access Areas are a part.
- 2.2 Condition and Use of Terminal 91 Cruise Facility. Tenant has examined the Premises and accepts them in their present condition, and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Tenant’s use of the Premises. Tenant shall use the Premises only for the uses set forth in ARTICLE 7 of this Lease, so long as such uses are in conformity with all Legal Requirements affecting the Premises, and Tenant will not, by action or inaction, take or allow any action or thing which is contrary to any legal or insurable requirement or which constitutes a public or private nuisance or waste. Tenant shall not use the Premises for any other purpose without the written consent of the Port. Tenant shall ensure that the Terminal 91 Cruise Facility is maintained and operated in a first-class manner, consistent with good maritime practices and industry standards for a functional cruise ship terminal.
- 2.3 Irrevocable License for Event Activities. Tenant continues to grant to the Port an irrevocable, assignable license (the “Event License”) to make use of the Terminal 91 Cruise Facility for Event Activities. In the exercise of the rights granted under the Event License, the Port or its assignee:
- 2.3.1 Shall not materially interfere with any Ship Activities, and it is understood between the Parties that Ship Activities shall have priority over Event Activities;
- 2.3.2 Shall return that portion of the Premises actually occupied in substantially the same condition in which received;

- 2.3.3 Shall reimburse Tenant (to the extent paid by Tenant) for the reasonable cost of any utilities consumed in the enjoyment of the Event License without markup of any kind; and
- 2.3.4 Shall provide commercial general liability insurance, including liquor liability coverage, against claims for injury or death to persons or damage to property occurring on or about that portion of the Premises actually occupied in an amount not less than \$2,000,000 combined single limit for each occurrence. Notwithstanding Section 11.6.1, this insurance shall, to the extent of the limits set forth in this Section 2.3.4, be primary and non-contributory with any insurance carried by Tenant pursuant to Section 11.1.1.

In the event of the Port or its assignee makes use of the Event License, any and all applicable charges deriving from and/or revenues attributable to such use shall accrue to the benefit of, and shall be billed and retained by, the Port. Except as either: (i) specifically provided in this Lease, or (ii) set forth in the Event Reimbursement Agreement, Tenant shall not charge the Port or its assignee any fee associated with the use of the Event License.

- 2.4 Port Use of Terminal 91 Preferential Use Area, Parking Area and Access Area. Except to extent the use of the Terminal 91 Preferential Use Area, Terminal 91 Parking Area or Terminal 91 Access Area is expressly granted to Tenant under, respectively, Sections 2.1.2, 2.1.3, and 2.1.4, the Port reserves to itself all right of use of the Terminal 91 Preferential Use Area, Terminal 91 Parking Area and Terminal 91 Access Area for any purposes whatsoever. Any and all applicable charges deriving from and/or revenues attributable to such use shall accrue to the benefit of, and shall be billed and retained by, the Port.
- 2.5 Rights Reserved to the Port. Tenant acknowledges that Tenant's right to utilize the Premises shall at all times remain subject to the Port's reserved right described in Sections 2.3, 2.4, 19.4 and 22.7.

### ARTICLE 3: TERM

- 3.1 Term. The Term of this Lease shall commence seven (7) days prior to date on which the first cruise vessel is scheduled to call at the Terminal 91 Cruise Facility in 2026 and shall continue until seven (7) days after the last scheduled ship in 2030, or November 30, 2030, whichever is earlier.
- 3.2 Extension. Subject to the Port's sole consent and if Tenant is in compliance with the terms and conditions of this Lease, Tenant has the option to request up to one (1) extension of the Lease term for one (1) additional five (5) year option term. In the event Tenant wishes to extend the Lease term, Tenant shall provide the Port with written notice of Tenant's request to exercise such option no more than two (2) years and no less than one (1) year prior to the expiration of the Lease term. No later than sixty (60) days after receipt of

Tenant's notice, the Port, in its sole discretion, may provide Tenant with written confirmation of the Port's consent to the extension. The Port's failure to provide Tenant with such written notice within the stated sixty (60) day period shall constitute the Port's refusal to consent to the extension.

- 3.3 Possession. If the Port shall be unable for any reason to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to Tenant, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Tenant shall not be liable for any Rent until such time as the Port can deliver possession. If Tenant shall, in the interim, take possession of any portion of the Premises, Tenant shall pay as Rent the full rent specified herein reduced pro rata for the portion of the Premises not available for possession by Tenant. If the Port shall be unable to deliver possession of the Premises at the commencement of the term of this Lease, Tenant shall have the option to terminate this Lease by at least thirty (30) days' written notice, unless the Port shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If Tenant shall, with the Port's consent, take possession of all or any part of the Premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Tenant shall not be obligated to pay any Rent for the period prior to the commencement of the term of this Lease unless otherwise mutually agreed.

#### ARTICLE 4: RENT

- 4.1 Percentage Rent. For and in consideration of Tenant's rights in the Terminal 91 Cruise Facility, Tenant shall pay to the Port percentage fees (collectively "Percentage Rent") as follows:

- 4.1.1 Percentage of Port Directed Cruise Fee Revenue. Tenant shall pay the Port a portion of the Port Directed Cruise Fee Revenue as set forth below.

For the Tenant's Rights In	Percentage of Port Directed Cruise Fee Revenue
Terminal 91 Lease Area, and Terminal 91 Parking Area	
Terminal 91 Preferential Use Area	

Pursuant to Section 4.3, the amounts associated with the Terminal 91 Lease Area and the Terminal 91 Parking Area are considered Contract Rent subject to Leasehold Excise Tax and the amounts associated with the Terminal 91 Preferential Use Area are not considered Contract Rent subject to Leasehold Excise Tax.

- 4.1.2 Percentage of Flow-Through Event Revenue. Tenant shall pay the Port fifty percent (50%) of Flow-Through Event Revenue. Pursuant to Section 4.3, this portion of the

Percentage Fee is attributable to the Terminal 91 Lease Area and is subject to Leasehold Excise Tax.

- 4.1.3 Payment of Percentage Rent. The Percentage Rent shall be paid monthly, with respect to Revenue of Consequence made during the month, within fifteen (15) days after the end of each calendar month; provided, however, Percentage Rent for the month of May each year shall be due within thirty (30) days (and not fifteen (15) days) after the end of the month of May. Together with remittance of Percentage Rent, Tenant shall submit a written report in a form acceptable to the Port wherein Tenant shall set forth the number of cruise passengers for the month, the Revenue of Consequence for the month and the Percentage Rent, if any, due for such month. Tenant or an officer of Tenant shall certify that the report is a true and correct statement of the Revenue of Consequence.
- 4.2 Annual Reconciliation. Within thirty (30) days after the end of each calendar year during the Term of this Lease or after the expiration of sooner termination thereof, Tenant shall have verified with each cruise line having called at the Terminal 91 Cruise Facility during the year the total number of cruise passengers for the year, broken down by vessel. Tenant shall further, based on that verified figure, compute the total amount of Gross Revenue, Allowable Expenses and Net Operating Income for such calendar year. If the total amount of Percentage Rent paid for such calendar year exceeds the total Percentage Rent due for such calendar year and Tenant is not otherwise in default, then the Port shall credit such excess to the payment of any Percentage Rent and or other sums which may thereafter become due to the Port; provided, however, upon expiration or sooner termination of this Lease, if Tenant has otherwise complied with all other terms and conditions of this Lease, the Port shall refund such excess to Tenant.
- 4.3 Contract Rent. The Port and Tenant agree that the amounts associated with the Terminal 91 Lease Area and Terminal 91 Parking Area shall be “Contract Rent,” as that term is defined in Chapter 82.29A of the Revised Code of Washington and Chapter 458-29A of the Washington Administrative Code, for the rights of possession and use of publicly owned real and personal property granted by this Lease. All amounts associated with the Terminal 91 Preferential Use Area shall be consideration for rights less than possession and/or use of publicly owned real and personal property. By approving the terms of this Lease in an open public meeting, it is the intention of the Port to declare that the “Contract Rent” as set forth in this Section 4.3 was the maximum amount attainable for the rights and responsibilities set forth in this Lease, considering alternative uses for the Premises, and considering the condition, and any restrictions on the use, of the Premises. All percentage amounts set forth in Section 4.1 shall be *exclusive* of any Leasehold Excise Tax due on such amounts, even if it may subsequently determined that any amount excluded from Contract Rent under this Section is, in fact, subject to Leasehold Excise Tax.
- 4.4 Records. Tenant shall keep true and accurate accounts, records, books and data, which shall show all Gross Revenues and Allowable Expenses from Tenant’s Operations. Tenant



further agrees to keep in the Seattle area, books and records in accordance with good accounting practice, and such records as the Port may request. The duplicate invoices, any and all other books and records of Tenant as aforesaid, shall be open for inspection by authorized representatives of the Port at all reasonable times during business hours; provided, however, the Port shall have only have the right to inspect those records (i) relevant to the Revenue of Consequence or (ii) necessary to reasonably determine Tenant's compliance with the non-revenue requirements of this Lease. In the event Tenant's records are not kept in the Seattle area, they shall be made available to the Port for inspection within five (5) business days.

#### 4.5 Audit.

4.5.1 Tenant shall maintain during the term of this Lease all books of account and records customarily used in this type of operation, and as may from time to time be required by the Port, in accordance with generally accepted accounting principles, and for such period of time thereafter as provided herein unless otherwise approved by the Port. The Port shall be permitted to audit and examine all such records and books of account relating to the operation of Tenant's Operations but only to the extent (i) relevant to the Revenue of Consequence or (ii) necessary to reasonably determine Tenant's compliance with the non-revenue requirements of this Lease. Tenant shall not be required to maintain such enumerated records for more than three (3) years after the end of each twelve (12) month period. All such documents shall be made available for audit locally within five (5) business days or Tenant shall pay in full, any travel and related expenses of Port representative(s) to any location out of the Seattle area.

4.5.2 The cost of any audit shall be borne by the Port unless the results of such audit reveals an understatement of Percentage Rent of more than two percent (2%), all reported for any twelve (12) month period. In the event of such discrepancy, the full cost of the audit shall be borne by the Tenant, and Tenant shall promptly pay all additional fees owing to the Port. In addition, Tenant shall pay the Port interest on all sums due hereunder at the Default Rate, from the date due until paid. If, through the process of the audit, Tenant has overpaid the Port a credit will be issued after deducting the costs of the audit.

4.6 Annual Plan. Not later than August 1 of each year thereafter (with an initial draft no later than July 1), Tenant shall submit to the Port an annual plan for the Premises for the following calendar year. The annual plan must provide reasonable estimates of Revenue of Consequence. The annual plan will also include a narrative description of the proposed operations and security program. The annual plan will be Tenant's best estimate of operations for the following calendar year and the parties recognize that actual results may vary from the annual plan.

- 4.7 Additional Responsibility. In addition to the Percentage Rent described in Section 4.1, Tenant covenants and agrees to pay the following: (a) taxes as set forth in ARTICLE 10; (b) insurance costs as set forth in Section 11.2; (c) Operating Expenses as set forth in Section 12.1; (d) utility charges as set forth in Section 12.2; (e) maintenance and repair expenses as set forth in ARTICLE 13 and (f) any other cost or expense associated with Tenant's Operations on or occupation of the Premises, of whatever description, and whether imposed in the first instance on the Port or Tenant. In the event that the Port pays any of these amounts in the first instance or provides any services to Tenant for which Tenant is financially responsible, Tenant shall reimburse the Port for such amounts, and such reimbursement shall become due within thirty (30) days of invoice by the Port unless otherwise provided and shall be paid to the Port without deduction, set-off or abatement whatsoever.
- 4.8 Remittance Address. Any and all payments due to the Port by Tenant shall be remitted to the following address: Port of Seattle, PO Box 24507, Seattle, WA 98124-0507, or at such other place as the Port may direct in writing.
- 4.9 Late Charges.
- 4.9.1 Tenant hereby acknowledges that late payment by Tenant to the Port of Rent, or any portion thereof, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Lease. Accordingly, if any installment of Rent, or any portion thereof, or any other sum due from Tenant shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay the Port a late charge equal to the greater of five dollars (\$5.00) or 5% of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Tenant. Acceptance of such late charge by the Port shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies granted hereunder.
- 4.9.2 In the event that a late charge is payable in this Lease or otherwise, whether or not collected, for three (3) installments of Rent and/or other remuneration in any 12-month period, then the Port reserves the right to require that Rent and/or other remuneration become due and payable quarterly in advance, rather than monthly, notwithstanding Section 4.13-4 or any other provision of this Lease to the contrary.
- 4.9.3 In addition to the late charges provided for in this Section, interest shall accrue on any unpaid Rent and/or other remuneration, or any other sums due hereunder, at the rate of 18% per annum or the maximum rate provided by law, whichever is less, ("the Default Rate") from the date due until paid, provided, however, the minimum charge of interest shall be five dollars (\$5.00).

## ARTICLE 5: BOND OR OTHER SECURITY

- 5.1 Security. Tenant shall maintain a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, cash deposit or other security in an amount equal to Five Million dollars (\$5,000,000.00) (hereinafter referred to as “Security”), to secure Tenant’s full performance of this Lease, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder. The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port’s approval. The Security shall remain in place at all times throughout the full term of this Lease and throughout any holdover period. If the Security is in a form that periodically requires renewal, Tenant must renew the Security not less than forty-five (45) days before the Security is scheduled to expire. No interest shall be paid on the Security and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.
- 5.2 Return of Security. The Security is a part of the consideration for execution of this Lease. If Tenant shall have fully performed all terms and conditions of this Lease, any cash deposit security shall be paid to Tenant within thirty (30) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Lease or at law or equity, retain title thereto.
- 5.3 Application of Security. The Port may apply all or part of the Security to unpaid rent or any other unpaid sum due hereunder, or to cure other defaults of Tenant. If the Port uses any part of the Security, Tenant shall restore the Security to its then-currently required amount within fifteen (15) days after the receipt of the Port’s written request to do so. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port’s right to seek further remedy under law or equity.

## ARTICLE 6: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

- 6.1 Alterations. Tenant shall make no changes, alterations, additions, substitutions or improvements (collectively referred to as “Alterations”) to the Premises, unless Tenant shall first deliver to the Port plans and specifications for, and obtain the Port’s prior written approval of such Alterations. All such Alterations shall be done at Tenant’s sole cost and expense and at such times and subject to such conditions as the Port may from time to time designate.
- 6.2 Alterations Related to Security. Notwithstanding anything to the contrary in Section 6.1, Tenant shall, at its sole cost and expense, be obligated to provide any necessary Alterations required to satisfy any security requirement related to cruise vessel Ship Activities and imposed by the United States Federal Investigative Services, Coast Guard, Transportation Security Administration, Customs and Border Protection, or any other governmental

agency responsible for security, and the Port agrees that it will not unreasonably withhold or condition its consent to such Alterations.

- 6.3 Requirements for All Alterations. In addition to, and not in lieu of, conditions imposed by the Port pursuant other Sections of this Lease, any alterations or improvements permitted by the Port shall be performed: (i) in a good and workmanlike manner; (ii) in compliance with all Legal Requirements; and (iii) in a manner which will not unreasonably interfere with or disturb other tenants of the Port. In addition, prior to commencement of any Alterations, Tenant shall furnish to the Port proof of insurance for any and all contractors working on behalf of Tenant in the minimum form and limits as set forth in Sections 11.2.1 and 11.2.2. Any Alterations shall immediately become the property of the Port without any obligation on its part to pay therefor, and shall not be removed by Tenant unless directed to do so in connection with any consent issued under this Lease.
- 6.4 Trade Fixtures. Tenant shall retain ownership of all trade fixtures and business equipment and furnishings from time to time installed by Tenant at its expense. Tenant may remove any of such fixtures, equipment or furnishings at any time during the term and shall remove all thereof prior to the expiration of the term. Any such property not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Tenant, or be deemed abandoned and removed by the Port, at Tenant's expense. Upon any removal of such property, Tenant shall promptly repair any and all damage to the Premises caused thereby and reimburse the Port for its costs and expenses in removing any such property not removed by Tenant and repairing any such damage not repaired by Tenant; this covenant shall survive the termination of this Lease.
- 6.5 Prevailing Wage. Tenant shall, in connection with the labor associated with any tenant improvements or Alterations under this Lease, comply with all prevailing wage laws in the State of Washington, as set forth in R.C.W. 39.12 as amended, and the rules and regulations of the Department of Labor and Industries. The wage rates to be paid all laborers, workers and mechanics that perform any part of the work on any tenant improvements or Alterations shall meet or exceed the prevailing wage rates as required by Chapter 39.12 of the R.C.W., as amended. This requirement applies to laborers, workers and mechanics whether they are employed by Tenant, Contractors, Subcontractors, Sub-subcontractors, or any other person who performs a portion of the work on any tenant improvements or Alterations.
- 6.5.1 The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where any work under this Lease will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by this reference made a part of this Lease as though fully set forth herein. The W.A.C. Chapter 296-127 relating to prevailing wage can be found at: <http://apps.leg.wa.gov/wac/default.aspx?cite=296-127>. In any contracts for tenant improvements or Alterations approved by the Port,

Tenant's contract with any general contractor and/or sub-contractor shall require the payment of the local prevailing wage.

- 6.5.2 In connection with this Lease, Tenant will be required to submit to the Port "Statements of Intent to Pay Prevailing Wages" for its employees, contractors and subcontractors at all tiers prior to commencing work. The Statements of Intent require the approval of the industrial statistician of the Department of Labor and Industries — which shall include the contractor's registration certificate number; the prevailing rate of wage for each classification of workers entitled to prevailing wages under R.C.W. 39.12.020; and the estimated number of workers in each classification. Tenant shall ensure that each Statement of Intent to Pay Prevailing Wages that is submitted to the Port has been approved by the industrial statistician of the Department of Labor and Industries before said statement is submitted to the Port. Such Statements of Intent shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.
- 6.5.3 Tenant will further be required to submit to the Port "Affidavits of Wages Paid" for its employees, contractors and subcontractors at all tiers. The Affidavits of Wages Paid require the certification of the industrial statistician of the Department of Labor and Industries — which shall include the contractor's registration certificate number; the prevailing rate of wage for each classification of workers entitled to prevailing wages under R.C.W. 39.12.020; and the estimated number of workers in each classification. Tenant shall ensure that each Affidavit of Wages Paid that is submitted to the Port has been certified by the industrial statistician of the Department of Labor and Industries before said Affidavit is submitted to the Port. Such Affidavits of Wages Paid shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.
- 6.5.4 Pursuant to W.A.C. 296-127-040 and W.A.C. 296-127-045, Tenant shall be responsible for payment to the Department of Labor and Industries the applicable processing fee(s) set forth in R.C.W. 39.12.070 due with the submittal of each "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid." Tenant shall monitor contractors' and subcontractors' compliance with the requirements of this Section 6.4; any failure by Tenant or contractor or subcontractor at any tier to meet the requirements of this Section 6.4 or violation of prevailing wage laws or regulations shall be a material breach of this Lease.
- 6.6 Although not required, the Port encourages Tenant to examine the applicability of a Project Labor Agreement ("PLA") in light of any: (i) project needs for labor continuity and stability, including analysis of labor needs by trade; (ii) project complexity, including cost and duration; (iii) value of having uniform working conditions; (iv) potential impact of PLA on small business opportunities; (v) past labor disputes or issues indicating risk of delay; (vi) potential PLA impact on project cost; (vii) project presents specific safety concerns to the public; (viii) value of an established PLA grievance process to resolve

labor-management or jurisdictional disputes; and (ix) any other considerations particular to the project.

- 6.7 Building Compliance. Only to the extent of Tenant's Alterations and tenant improvements installed pursuant to this Lease and any applicable maintenance and repair obligations pursuant to this Lease, Tenant shall adhere to all applicable state and local building performance standards, reporting, and auditing requirements, including: (i) Washington State Clean Building Standard; (ii) City of Seattle's Benchmarking Program; and (iii) City of Seattle's Building Tune-Ups Program. Upon the Port's request, Tenant shall provide the Port with documentation of Tenant's compliance with this obligation.

#### ARTICLE 7: USE

- 7.1 Use of Premises. Subject to and in accordance with all present and future Legal Requirements, Tenant covenants and agrees that it shall use the Premises as a cruise terminal, and perform the duties in Exhibit D. Tenant will actively work to attract, promote and facilitate cruise traffic. Port and Tenant acknowledge and agree that the objective of the Port and the Tenant is to maximize the revenue generated from activities on the Premises and that uses in addition to the operation of a cruise facility will be required to do so. Notwithstanding the foregoing, Tenant shall not be permitted to use any portion of the Terminal 91 Preferential Use Area for purposes other than cruise Ship Activities without the prior written consent of the Port. Tenant may not, under any circumstances, use the Premise for any "industrial activity" as that term is defined in 40 CFR 122.26(b)(14) or in the Washington State Department of Ecology's Stormwater Management Manual for Western Washington (July 2024), as they now exist or may subsequently be revised.

## 7.2 General Standards Governing Use.

- 7.2.1 Tenant shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements; (ii) violate any of the covenants, agreements, provisions and conditions of this Lease; (iii) violate the certificate of occupancy then in force with respect thereto; (iv) constitute a public or private nuisance; (v) impair or interfere with, in the Port's reasonable judgment, the character, reputation or appearance of the Port; or (vi) occasion discomfort, inconvenience or annoyance to either the Port or its adjoining tenants.
- 7.2.2 Tenant shall not conduct or permit to be conducted without the prior written consent of the Port, any auction, fire, bankruptcy, "going out of business" or other distress sales of any nature upon or from the Premises, whether voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding, unless ordered by a court of competent jurisdiction.
- 7.2.3 Vehicle Maintenance and Equipment Cleaning Prohibition. Vehicle maintenance and equipment cleaning are prohibited on the premises except with prior written consent from the Port. Vehicle maintenance includes, but is not limited to, rehabilitation, mechanical repairing, painting, fueling, and/or lubricating of a motor-driven conveyance. Equipment cleaning includes wet cleaning of industrial equipment or dry cleaning with potential to discharge pollutants.
- 7.3 Signs. No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Tenant shall be removed by Tenant at its own expense, and Tenant shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said signs, etc.

## ARTICLE 8: TENANT'S OPERATION OF PREMISES

- 8.1 Ship Activities. Tenant shall perform all of the duties described in Exhibit D, Tenant Duties, and manage and coordinate all Ship Activities at the Premises in a manner that supports the growth of cruise business in Seattle, including:
- 8.1.1 Scheduling. Process all berth applications for the Premises for cruise ships. The Port shall, pursuant to Section 9.2, be responsible for approving all applications for homeport cruise ship applications. Subject to the Port's berthing policy, Tenant shall be responsible for approving all port-of-call cruise ship applications. Tenant

shall maintain an on-line, up-to-date ship schedule that shall be accessible to (but not modifiable by) the Port at all times.

- 8.1.2 *Security.* Manage the security operations at the Premises on cruise ship days, as necessary. This will include, as necessary, security staff who will provide security guards and security equipment operators for terminal security together with any commissioned police officers. In addition, in the event that the United States Federal Investigative Services, Coast Guard, Transportation Security Administration or any other governmental agency responsible for security imposes any material obligation for waterside security in connection with cruise vessel Ship Activities, Tenant shall be responsible, at its cost, for arranging for such security.
- 8.1.3 *Passenger Transportation and Concierge Services.* Coordinate with the cruise line tour operator all passenger movement within and through the Premises, ground transportation outside the Premises, including off-site staging areas, during disembarkation and embarkation, and concierge services for passengers.
- 8.1.4 *Baggage Operations.* Coordinate ship passenger luggage within the cruise terminal facilities.
- 8.1.5 *Deliveries.* Coordinate deliveries of provisions, stores and freight with port agent and stevedore company.
- 8.1.6 *Stevedoring Services.* Tenant shall engage the stevedoring services provider for all terminal handling, which shall include equipment, labor and the movement of luggage between the terminal and the dock, provided, however, the rates and charges for these terminal handling services shall at all times match industry standards. Tenant shall accommodate the vessel stevedoring services provider(s) selected by the respective cruise lines or their agents.
- 8.1.7 *Hospitality Services.* Coordinate all hospitality services, including food and beverage service, to passengers and guests on cruise ship days.
- 8.1.8 *Parking.* Tenant shall be responsible for all parking, whether passenger, longshore, guest or otherwise, associated with cruise Ship Activities at the Terminal 91 Cruise Facility. Tenant is responsible for providing all courtesy shuttling, whether of passengers, longshore or otherwise. Such courtesy shuttling includes transporting passengers on the terminal between passenger parking lots, Ride Share pickup and drop off and the passenger terminal building. Tenant shall provide such services in a manner consistent with the expectations of the cruise lines and cruise passengers at a standard equal to or higher than comparable international cruise terminals and shall endeavor to address any complaints received by the Port or Tenant prior to the next vessel call. If the Port determines at any time that Tenant is consistently failing to meet the foregoing service standards, the Port shall notify Tenant of such failure



and the Port and Tenant shall meet as soon as practicable to address the service issues, which may include adding additional shuttles or otherwise increasing shuttle capacity or frequency based on demand.

- 8.2 Traffic Control and Directional Signage. The Port shall, as part of the construction of the Terminal 91 Cruise Facility, provide sufficient directional signage for the location and efficient operation of all vehicle operations associated with cruise Ship Activities. Unless as a result of a major relocation of the Terminal 91 Access Area and/or Terminal 91 Parking Area, any subsequent revisions to or replacements of such signage shall be the responsibility of Tenant. To the extent necessary, Tenant shall also provide sufficient staff to ensure the orderly flow of traffic on and over the Terminal 91 Cruise Facility.
- 8.3 Event Activities. Tenant shall coordinate with the Port, or its assignee, in the exercise of rights granted under the Event License. Tenant shall specifically cooperate with the Port, or its assignee, to ensure that the portion of the Premises being used for Event Activities is in good condition and repair and that all building systems (including, but not limited to, electrical, HVAC, elevator/escalator, etc.) are operational and available for use in connection with the Event Activities.
- 8.4 Contracts for Goods and Services. Although Tenant has no authority whatsoever to enter into contracts on the Port's behalf or bind the Port, all contracts for acquisition of any furniture, fixtures, equipment and/or services provided to the Premises and necessary for the operation of the Premises as a cruise terminal shall contain a provision: (i) that the Port of Seattle is a third-party beneficiary of the agreement, (ii) that all representations, warranties and guaranties are fully assignable to the Port of Seattle, and (iii) that the contract may be assigned to and assumed by the Port of Seattle in the event of termination of this Lease.
- 8.5 Billing. Tenant shall undertake all commercially reasonable efforts necessary to collect, all amounts chargeable to or collectible from third parties for the use of the Facility. All amounts billed for dockage, wharfage, passenger fees, fresh water and other terminal fees shall be as set forth in the Port's Terminal Tariff Number 4 and Number 5, as applicable (and as amended from time to time), unless otherwise agreed by the Port in writing.
- 8.6 Continuous Operations. During the term of this Lease, Tenant shall continuously conduct the business of operating and promoting the use of the Premises for ship operations and other approved uses.
- 8.7 Tours. Tenant shall coordinate all media, travel agent and VIP tours with tour operator, port agent, security, Port staff and cruise line representatives.
- 8.8 Marketing. Tenant will assist the Port in marketing the Facility to additional cruise ship operators, but the Port will have primary responsibility.

- 8.9 Cap on Markup for Security Services. The Port and Tenant agree that Tenant shall not be permitted to charge a markup on third-party security services. The Port and Tenant further agree that the charges for security services intended to recover the cost of Port and/or Tenant provided security services (e.g. reimbursement amounts for X-ray machines and magnetometers) shall be reasonable in light of the cost of acquisition, operation, maintenance, repair and replacement. The Port and Tenant agree that compliance with these requirements shall be conclusively determined by the Parties on a year-by-year basis as part of the annual exercise by the Port of establishing the bundled cruise fee amounts. Tenant may properly exclude from Allowable Expenses and Gross Revenues the amounts actually paid for those portions of any security services provided by third parties, the fee for freshwater hook-up and fire department fee for bunkering permit, all of which fees would otherwise have been separately stated and paid. This exclusion does not, however, apply to any markup on these items or the collection of any amounts in excess of the actual pass-through expense amount based on the fact that the cruise ships passenger loads frequently exceed one hundred percent of lower berth capacity, on which percentage the per-passenger amount included in the bundled fee is based.
- 8.10 Future Facility Surcharge. Port and Tenant agree that Tenant shall be obligated to collect any future Passenger Vessel Surcharge set forth the Port's Terminal Tariff No. 5 (or any amendment or successor thereto), and any such future surcharge shall not be included within either Gross Revenues or Allowable Expenses, and that Tenant shall remit the surcharge to the Port without offset, reduction or other handling charge. In the event that the Port in the future implements any similar charge that is intended to defray the cost of specific investments/improvements by the Port and which is imposed in addition to, and not in lieu of, dockage, passenger and/or bundled fees for cruise lines, the same rule shall apply.
- 8.11 Stevedoring Fees. Tenant may, as a convenience to the cruise lines, include the charges billed by the stevedoring services provider selected by a cruise line on Tenant's invoice to the particular cruise line. Any amounts for those stevedoring services shall be treated as a pass-through item under Sections 1.3.16 and 1.15.9 of this Lease; provided, however, any markup or administrative fee shall fall within the definition of Gross Revenues.
- 8.12 Licensee Revenue. Port and Tenant recognize that Tenant will regularly grant licenses/permits for third parties to operate from the Terminal 91 Cruise Facility where the services provided by those vendors are primarily provided as a customer convenience and not to fulfill any of Tenant's basic obligations under this Lease. As a result, the Port and Tenant expressly agree that any revenues generated by such vendors, as set forth annually on a list submitted by Tenant and approved by the Port shall, notwithstanding Sections 1.15 and 1.15.3 of this Lease, *not* be included within Tenant's Gross Revenues. Instead, only the license/permit fee paid by such vendors shall be included within Gross Revenues as provided by Section 1.15.2 of this Lease.

- 8.13 Shore Power. Tenant shall ensure that 100 percent of all homeported cruise vessels are shore power capable and plug into shore power at the start of the 2027 cruise season per Port of Seattle Commission Motion ORDER NO. 2024-08, attached as Exhibit E. On an annual basis, Tenant will meet with Port of Seattle staff to evaluate home-porting operations and strategies to comply with the shore power order's goal of achieving 100-percent capability and use.

#### ARTICLE 9: PORT OBLIGATIONS RESPECTING TENANT OPERATIONS

- 9.1 Tariff Rates. The Port shall be responsible for determining the rates for dockage, wharfage, passenger fees, fresh water and other terminal charges as set forth in the Port's tariffs, which may be revised or replaced from time to time. At the Port's discretion in consultation with Tenant, the Port shall also have the ability to deviate from charges set forth in the Port's Terminal Tariff Number 4 and Number 5 for specific customers and/or transactions. The Port shall also reasonably consider, and respond within two (2) business days to, any request provided in the manner for notice from Tenant to deviate from the charges set forth in the Port's Terminal Tariff Number 4 and 5 in order to induce or retain business at the Premises and if the Port fails to respond within the time provided, it shall be deemed to have assented to Tenant's request.
- 9.2 Marketing. The Port shall be primarily responsible for marketing the Premises for cruise ship activities and approving all berth applications for home-port cruise vessels. The Port shall, concurrent with its annual budgeting process, prepare a marketing plan and budget for the Premises. The Port shall reasonably consult with Tenant in the preparation of the marketing plan but shall retain sole discretion as to the content of, and budget for, the marketing plan.
- 9.3 Public Relations. The Port shall be responsible for all public affairs and community relations relating to the Premises. This shall include handling all press inquiries related to the Premises and its operations and issuing any press releases necessary or beneficial for the operation of the Premises. This shall also include attending all meetings related to, and coordinating all information necessary for, events such as Seafair, Maritime Week, etc. The Port shall not, however, be responsible for performing any public affairs or community relations for or on behalf of Tenant.

#### ARTICLE 10: REAL AND PERSONAL PROPERTY TAXES

- 10.1 Payment of Real Property Taxes by Tenant. Tenant shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees payable for, or on account of, the activities conducted on the Premises and all taxes on the property on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Lease and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, fees payable hereunder, whether imposed on Tenant or on the Port and including, without limitation, leasehold excise tax due under Chapter 82.29A of the

Revised Code of Washington, or assessments levied by any other entity (including LID assessments). Tenant shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are on or measured by the rent or fee payments hereunder, Tenant shall pay to the Port with each rent or fee payment an amount equal to the tax on, or measured by that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Tenant shall be payable by Tenant to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Tenant shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

- 10.2 Tenant's Personal Property Taxes. Tenant shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Tenant. If any such taxes on Tenant's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Tenant shall, upon demand, repay to the Port the taxes so levied.

#### ARTICLE 11: INDEMNITY AND INSURANCE

11.1 Indemnity.

- 11.1.1 The Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others, including but not limited to all persons directly or indirectly employed by Tenant, or any agents, contractors, subcontractors, licensees or invitees of Tenant, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Tenant's use or occupancy of the Premises and of areas adjacent thereto.
- 11.1.2 Tenant shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs for or from: (a) anything and everything whatsoever arising from the condition of the Premises or out of the occupancy by the Tenant or any sublessee, licensee, invitee or concessionaire of Tenant; and (b) any accident, injury, death or damage to any party however caused in or about the Premises or upon the sidewalks adjacent to the Premises, whether or not caused by the negligence of Tenant or any third party; and (c) any fault or negligence by Tenant or any sublessee, licensee, invitee or concessionaire of the Tenant or of any officer, agent, employee, guest or invitee of any such person; and (d) any failure on Tenant's part to comply with any of the covenants, terms and conditions contained in this Lease; provided, however, nothing herein shall require Tenant to

indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Tenant expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity.

11.1.3 Notwithstanding anything to the contrary in Section 11.1.1, in the event of the concurrent negligence of Tenant, any of its sublessees, licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Tenant's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Tenant's negligence and that of any of Tenant's officers, sublessees, assignees, agents, employees, contractors or licensees, including Tenant's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

11.1.4 TENANT AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

11.2 Insurance. Tenant shall obtain and keep in force, at its sole cost and expense, during the Term of this Lease the following types of insurance, in the amounts specified and in the form hereinafter provided for:

11.1.1 Marine General Liability Insurance. Tenant shall obtain and keep in force during the Term of this Lease a marine general liability policy of insurance protecting Tenant and the Port, as an additional insured using ISO Form 20 26 11 85 or equivalent, against claims for injury or death to persons or damage to property occurring on or about the Premises in an amount not less than ~~three-five~~ million dollars (\$~~35~~,000,000.00) combined single limit for each occurrence. This insurance must include bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability ~~and shall include warehousemen's legal liability coverage in an amount of \$250,000. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. This policy shall include, along with a certificate of insurance, the~~

following endorsements:

- Additional insured endorsement
- Non-Contributory and Primary endorsement
- Waiver of Subrogation
- Stop Gap insurance endorsement

11.2.1 Auto Liability Insurance. Tenant shall obtain and keep in force during the Term of this Lease a business automobile policy insuring Tenant and the Port, as an additional insured using ISO Form 20 26 11 85 or equivalent, arising out of any auto, including, owned, non-owned and hired. Such insurance shall be on an occurrence based providing single limit coverage in an amount not less than three million dollars (\$3,000,000) per occurrence.

11.2.2 Other Insurance. Tenant shall also obtain and keep in force during the Term of this Lease, Stop Gap Employers Liability insurance and, if applicable, longshoremen's and Harbor Workers Act, Jones Act, or Federal Employers Liability Act coverage in the amounts required by law.

11.3 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide." Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Article. No insurance required herein shall contain a deductible or self-insured retention in excess of \$100,000 without the prior written consent of the Port.

11.4 Property Insurance.

This coverage is applicable to personal property and any Improvements (betterments and/or alterations) of the Tenant for the term of the Agreement. Tenant shall obtain and keep in force during the Term of this Lease a "Special Extended" or "all risk" property insurance insuring loss or damage to any property of Tenant used in Tenant's Operations. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of the Premises including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be equal to the full replacement cost of the property (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause.

11.5 Waiver of Subrogation. Without affecting any other rights or remedies, the Port and Tenant (for themselves and on behalf of anyone claiming through or under them by way of

subrogation or otherwise) hereby waives any rights it may have against the other, their officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to the insured party and arising out of or incident to the perils required to be insured against under this Article. Accordingly, both the Port and Tenant shall cause each insurance policy required by this Article to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

#### 11.6 Miscellaneous Insurance Provisions.

- 11.6.1 The limits of insurance required by this Lease or as carried by Tenant shall not limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only. If at any time during the Term, Tenant shall have in full force and effect a blanket policy of commercial general liability and umbrella liability insurance covering the Premises and other premises and/or properties of Tenant, such insurance shall satisfy the requirements hereof, provided said policy contains a specific endorsement providing a minimum amount of coverage applicable to the Premises equal to or greater than the amount required above.
- 11.6.2 The amounts and types of insurance specified in this Lease shall be subject to periodic adjustment to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.
- 11.6.3 Increase in Port's Cost of Insurance. Tenant shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the term of this Lease, may be added to the amount of Rent and shall be paid by Tenant to the Port upon the monthly rental day next thereafter occurring.
- 11.6.4 *Termination; Renewal.* Insurance is to remain current throughout the term of the Lease. The Port shall receive documentation annually to include a certificate of insurance and any applicable endorsements to validate the insurance required herein has been purchased and is compliant with the Lease requirements within ten (10) days of each insurance renewal. Should any insurance required herein be terminated, cancelled, or not renewed, the Tenant will have five (5) days to obtain replacement insurance from the date of the termination, cancellation or non-renewal notice Tenant receives from their insurer(s). In the event the insurance is not

replaced within five (5) days, the Lease will be considered under Default in accordance with Section 18.

11.6.5 *Evidence of Insurance.* Tenant shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Lease, and the amounts of all deductibles and/or self-insured retentions. Upon request by the Port, Tenant shall deliver or cause to be delivered to the Port, certified copies of the policies of insurance that Tenant has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Tenant's insurance policies.

11.6.6 *No Limitation of Liability.* The limits of insurance required by this Lease or as carried by Tenant shall not limit the liability of Tenant nor relieve Tenant of any obligation hereunder.

## ARTICLE 12: OPERATING EXPENSES; UTILITIES

12.1 Operating Expenses; Responsibility for Operations and Maintenance. Throughout the Term of this Lease, Tenant shall pay directly to all third parties the total of all the costs and expenses incurred with respect to the operation and maintenance of the Premises and the services provided for the benefit of the Tenant (the "Operating Expenses"), it being understood and agreed that the Port shall not be required to furnish any services and/or utilities of any nature to the Premises during the Term of this Lease, Tenant hereby assuming full and sole responsibility for the supply and payment for all services, operational costs and utilities.

12.2 Utilities. Tenant shall be liable for and shall pay throughout the term of this Lease, all charges for all utility services furnished or attributable to the Premises (except those related to shorepower that are borne by cruise lines), including, but not limited to, light, heat, electricity, fire alarm monitoring, gas, water, sewerage and drainage (which includes removal and disposal of sewerage and surface water), recycling, garbage disposal, and janitorial services, specifically including reasonable costs and charges associated with the management of such utility services. In the event that the Premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Tenant agrees to pay to the Port Tenant's pro rata share of the cost of any such utility services. Tenant's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

12.2.1 *Interruption.* With respect to any utility service provided to the Premises as a part of a building or any larger premises of which the Premises are a part, the Port shall



have the right to shut down electrical or other utility services to the Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to any utility system for which the Port has responsibility pursuant to Section 13.2 (singularly or collectively, “Utility Work”), regardless of whether the need for such Utility Work arises in respect of the Premises, any other part of the building or larger premises. Whenever possible, the Port shall give Tenant no less than two (2) days prior notice for such utility shutdown. The Port shall not be liable to Tenant for any losses, including loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Premises, except when such losses result from the Port’s gross negligence.

- 12.3 Energy Conservation. Tenant is encouraged to meet all increased energy needs through conservation, electric, and/or renewable sources. The Port shall have the right to institute such reasonable policies, programs, and measures as may be necessary or desirable, in the Port’s discretion, for the conservation and/or preservation of energy or energy-related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary. Existing energy systems, vehicles or other fixed equipment asset replacements are encouraged to meet the Port’s commitments to phase out fossil fuels use or show viable conservation where fossil fuels cannot be abandoned. Any building modifications are subject to the Port’s review and approval. Port acknowledges that natural gas is a typical cooking fuel, and currently is not subject to this provision.
- 12.4 Fossil Natural Gas Restriction. In line with Port of Seattle greenhouse gas emission reduction goals, the Port reserves the right to acquire all or part of the energy for the Premises from sources with low greenhouse gas emissions. Any incremental cost in so doing above the cost of obtaining conventionally generated electricity and/or fossil natural gas may be included in Operating Expenses at the Port’s discretion.
- 12.5 High-Efficiency Lighting. Tenant shall install and maintain high-efficiency lighting technology (or the latest approved lighting technology per Seattle City Light and City of Seattle Energy Code Section C405) for all new lighting projects and replacements, while utilizing lighting in the most efficient way. This includes but is not limited to daylight sensors, occupancy sensors, vacancy sensors or other best available technology to optimize energy efficiency opportunities and minimize unnecessary use of electricity. Tenant shall have first priority to the benefits associated with any rebates or incentives that Tenant-funded lighting projects or replacements may qualify for.
- 12.6 Waste Management. Tenant shall adopt waste management strategies aligned with City of Seattle and Port of Seattle objectives, which include maximizing diversion of recyclable materials, food, and organic wastes from landfills, responsible disposal of construction and industrial materials and minimizing waste generation.

- 12.7 Utility Data Access and Reporting. Tenant shall provide the Port permission to access utility data directly from any utilities serving the Premises upon request. Upon request, Tenant shall submit to the Port consumption and usage data, including total usage and charges as they appear on Tenant's electric, gas, water, waste removal, and other utility bills, in a format deemed reasonably acceptable by the Port, or original copies as may be required by local benchmarking/disclosure regulations. The Port may also require Tenant to authorize direct data retrieval from utility providers. If Tenant provides their own utility data monitoring platform, it must be compatible with Port energy management system and shall require prior review and approval by the Port. Tenant shall provide Port access to data, settings, and graphic user interface of Building Control System, Building Management System, or Building Automation System.
- 12.7.1 Separate Metering. The Port may, at any time, install and connect to Tenant's communication system (secure cloud via ethernet, Wi-Fi or LTE) providing separate metering for the Premises or for any specific use within the Premises (including, without limitation, Tenant's datacenter, server rooms, or other information technology equipment) for electricity, water, gas, steam, or other utility usage. The Port shall have access to the Premises and utility as is reasonably necessary to accomplish the installations set forth in Section 6. These meters may include, but are not limited to, a direct meter, a submeter, a check meter. all of which shall be calibrated, maintained, and/or replaced according to industry standards by the Port. If such a meter is installed, Tenant shall pay for the consumption shown on the meter plus any fee applicable to reading the meter, either directly to the third-party utility provider in the case of a direct meter or to the Port in the case of a submeter or check meter, and Tenant shall report to the Port Tenant's usage as measured by the meter.
- 12.7.2 Stormwater/Drainage. Surface water, or drainage, is managed by the Port of Seattle Marine Stormwater Utility ("Utility"), which is also responsible for billing of stormwater utility charges. Tenant charges are subject to rates established by the Utility and are adjusted each January. Drainage charges are itemized separately from on billing invoices/statements and are subject to the same late charges set forth elsewhere in this Lease. Tenant shall keep the stormwater and surface water drainage systems free of any substances that could contaminate stormwater. The stormwater drainage system includes catch basins, manholes, trenches, drain lines, and other related infrastructures that convey stormwater directly to other stormwater systems or to surface waters.
- 12.8 Port Not Responsible. The Port shall not be required to furnish any services or utilities of any nature to the Premises during the term of this Lease, Tenant hereby assuming full and sole responsibility for the supply of and payment for all utilities and services. Furthermore, the Port shall not be liable in any way to Tenant for any failure or defect in the supply or character of electrical energy or water and sewer service furnished to the Premises by

reason of any requirement, act or omission of the public utility providing such service or for any other reason.

## ARTICLE 13: REPAIR AND MAINTENANCE; COMPLIANCE WITH LAWS

### 13.1 Tenant's Duty to Repair and Maintain.

13.1.1 Terminal 91 Lease Area. Tenant shall, at its sole cost and expenses, keep the Terminal 91 Lease Area, together with the cruise terminal building and all Alterations, equipment and installations therein and the appurtenances thereto, in good order, maintenance and repair. Except to the extent otherwise specifically provided, Tenant shall undertake all maintenance and make all repairs and replacements, ordinary, as well as extraordinary, foreseen and unforeseen, which may be necessary or required so that at all times the Terminal 91 Lease Area, the cruise terminal building and all Alterations, equipment, installations and appurtenances shall be in thorough good order, condition and repair including but not limited to: (i) ~~Port owned~~ gangways, passageways, and mobile ramps (whether passenger or crew), whether located strictly within the Terminal 91 Lease Area or without (ii) all security equipment (specifically including the acquisition and maintenance or upgrade required under any security law or plan), (iii) all furniture, fixtures and equipment, ~~and~~ (iv) electrical systems, HVAC, elevators, escalators, fixed conveyors, passenger concourses, and (v) the fire suppression system, including sprinklers. Tenant shall conduct all maintenance in a manner consistent with Port of Seattle maintenance procedures and schedules for all mechanical, plumbing, electrical and other systems.

Provided, Tenant's obligation to make all necessary repairs shall not extend to: (i) the piling supporting the piers/wharves, (ii) the roof, foundations, exterior walls or structural elements of the building or pier of which the Terminal 91 Cruise Facility is a part, (iii) any electrical, natural gas, water or sewer utility systems outside the point at which they are separately metered/submetered for or otherwise exclusively serve the Premises, and (iv) the initial configuration of gangways, passageways and mobile ramps (whether passenger or crew) associated with any new cruise line not currently calling at the Port of Seattle (but not any new cruise vessel associated with any cruise line currently calling at the Port of Seattle or any such line's successor) except to the extent that any of the repairs described in this provision may be required as a result of damage caused by negligence of Tenant or its agents, employees, sublessees, invitees or licensees.

### 13.1.2 Terminal 91 Preferential Use Area, Parking Area and Access Area.

13.1.2.1 For the Terminal 91 Preferential Use Area, Terminal 91 Parking Area or Terminal 91 Access Area, Tenant shall, at its sole cost and expenses, keep: (i) any equipment utilized by Tenant in connection with cruise Ship Activities, (ii) all marking/stripping of pavement associated with cruise Ship Activities, (iii) any traffic control devices and/or signs associated with cruise Ship Activities, (iv) any fence surrounding Parking

Area, and (v) any toll collection kiosks or plazas (whether temporary or permanent) and all toll collection equipment associated with cruise Ship Activities, in good order, maintenance and repair. Except to the extent otherwise specifically provided, Tenant shall undertake all maintenance and make all repairs and replacements, ordinary, as well as extraordinary, foreseen and unforeseen, which may be necessary or required so that these items shall be in thorough good order, condition and repair.

13.1.2.2 Tenant shall also be responsible for keeping the Terminal 91 Preferential Use Area, Terminal 91 Parking Area and Terminal 91 Access Areas clean and in good order during periods of use and shall return the same following any period of use authorized under this Lease in substantially the same condition in which received, normal wear and tear excepted.

13.1.2.3 Except as specifically provided in this Section 13.1.2, Tenant shall have no other obligation of repair or maintenance, except to the extent required as a result of either Tenant's failure to adhere to the obligations set forth in this Section 13.1.2 or damage caused by negligence of Tenant or its agents, employees, sublessees, invitees or licensees.

## 13.2 Port's Duty to Repair and Maintain.

13.2.1 Terminal 91 Lease Area. The Port shall be responsible for any and all repairs and maintenance to: (i) the piling supporting the piers/wharves, (ii) the roof, foundations, exterior walls or structural elements of the building or pier of which the Terminal 91 Cruise Facility is a part, (iii) any electrical, natural gas, water or sewer utility systems (unless the responsibility of the utility provider supplying the applicable utility) to the point at which they are separately metered/submetered for or otherwise exclusively serve the Premises, (iv) the initial configuration of gangways, passageways and mobile ramps (whether passenger or crew) associated with any new cruise line not currently calling at the Port of Seattle (but not any new cruise vessel associated with any cruise line currently calling at the Port of Seattle or any such line's successor), and (v) any off-season relocation of the gangways, passageways and mobile ramps necessary to accommodate the fishing fleet's use of the Terminal 91 Lease Area and/or Terminal 91 Preferential Use Area. In the event that any repairs to any of these items may be required as a result of damage caused by negligence of Tenant or its agents, employees, sublessees, invitees, or licensees, those repairs shall be at the sole cost and expense of Tenant. Otherwise, any repair and maintenance of these items shall be at the Port's sole cost and expense. The Port shall perform any such repair or maintenance work called to its attention by Tenant within a reasonable period of time after receipt of such notice by the Port. There shall be no abatement or reduction of any financial or other

obligation of Tenant under this Lease by reason of the Port's making repairs, alterations and/or improvements to the Terminal 91 Cruise Facility.

13.2.2 Terminal 91 Preferential Use Area, Parking Area and Access Area. Except to the extent provided in Section 13.1.2, the Port shall be responsible for any and all repairs and maintenance to the Terminal 91 Preferential Use Area, the Terminal 91 Parking Area and the Terminal 91 Access Area, including but not limited to: (i) the piling supporting the piers/wharves, (ii) the repair or replacement of fender piling, (iii) the fender rafts, including the annual removal and reinstallation of floats for purposes of annual maintenance, (iv) the dock safety ladders, (v) the perimeter fencing, (vi) the maintenance and replacement of the asphalt surface of the Terminal 91 Preferential Use Area, Terminal 91 Parking Area and/or Terminal 91 Access Area, and (vii) any electrical, natural gas, water or sewer utility systems (unless the responsibility of the utility provider supplying the applicable utility) to the point at which they are separately metered/submetered for or otherwise exclusively serve the Premises. In the event that any repairs to any of these items may be required as a result of damage caused by negligence of Tenant or its agents, employees, sublessees, invitees, or licensees, those repairs shall be at the sole cost and expense of Tenant. Otherwise, any repair and maintenance of these items shall be at the Port's sole cost and expense. The Port shall perform any such repair or maintenance work called to its attention by Tenant within a reasonable period of time after receipt of such notice by the Port. There shall be no abatement or reduction of any financial or other obligation of Tenant under this Lease by reason of the Port's making repairs, alterations and/or improvements to the Terminal 91 Cruise Facility.

13.3 Continuing Compliance. Throughout the Term of this Lease, Tenant shall, at its own cost and expense, promptly and diligently observe and comply with:

13.3.1 All Legal Requirements and the requirements of any fire insurance rating organization and all insurance companies writing policies covering the Premises or any part or parts thereof, whether or not such compliances herewith shall require repairs, changes or alterations in and about the Premises, or repairs, changes or alterations incident to or as the result of any use or occupation of the Premises or interfere with the use and enjoyment of the Premises or any part therefor, and whether or not the same now are in force or at any time in the future may be passed, enacted, or directed;

13.3.2 Procure, maintain and comply with all permits, licenses, franchises and other authorizations required for any use of the Premises or any part thereof then being made and for proper erection, installation, operation and maintenance of any improvements or any part thereof; and

13.3.3 Comply with any instruments of record at the time in force affecting the Premises or any part thereof.

Tenant shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding and all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of or be imposed because of the failure of Tenant to comply with this covenant. Tenant's obligations of indemnity under this Section shall survive the expiration or earlier termination of this Lease.

13.4 Waste. Tenant will not do or permit or suffer any waste, damages, disfigurement or injury to or upon the Premises or any part thereof.

13.5 Semi-Annual Condition Surveys. The parties shall conduct an inspection of all the Premises semi-annually, before and after the "cruise season" to again observe and note the condition of, cleanliness of and existing damage to the Premises and to determine repairs and maintenance required to be performed. Responsibility for repairing any problems or defects noted shall be as provided in Sections 13.1 and 13.2 this Lease.

#### ARTICLE 14: ENVIRONMENTAL STANDARDS AND SUSTAINABILITY

14.1 "Law or Regulation" as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.

14.2 Hazardous Substances. Tenant shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Tenant shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Tenant shall provide the Port with Tenant's USEPA Waste Generator Number, and with copies of all Safety Data Sheets (SDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Tenant receives from, or provides to, any governmental unit or agency in connection with Tenant's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises. Tenant shall use non-toxic and zero VOC paints for any interior painting. Tenant shall first consider paints with natural or recycled contents and shall choose water-based paints over oil-based paints. Preferred suppliers should be those offering products certified by environmental organizations such as Green Seal or UL Environment

If Tenant, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Tenant shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Tenant (Tenant hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any Law or Regulation, or that Tenant's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Tenant upon presentation of an invoice therefor.

- 14.3 Violation of Environmental Law. If Tenant, or the Premises is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Tenant shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Tenant (Tenant hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any Law or Regulation, or that Tenant's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Tenant upon presentation of an invoice therefor.
- 14.4 Inspection; Test Results. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Tenant shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Tenant shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Tenant shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Tenant, and Tenant shall provide copies to the Port.
- 14.5 Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Lease, Tenant shall remove any Hazardous Substances placed on the Premises during the term of this Lease or Tenant's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Tenant upon termination or expiration of this Lease.



14.6 Remedies Not Exclusive. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Tenant whenever the Port incurs any costs resulting from Tenant's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Lease).

14.7 Environmental Indemnity.

In addition to all other indemnities provided in this Lease, Tenant agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether: (i) made, commenced or incurred during the term of this Lease; or (ii) made, commenced or incurred after the expiration or termination of this Lease if arising out of events occurring during the term of this Lease.

14.8 Best Management Practices. Tenant shall implement the best management practices ("BMPs") identified in the 2025 Agreements Regarding Implementation of Best Management Practices at Pier 91 for vessel operations and dock operations (attached as Exhibits F and G and incorporated herein), and updated annually and provided by the Port at the start of cruise season.

14.9 Stormwater Management. Tenant acknowledges that the Premises are subject to the requirements of the City of Seattle ("City") ordinance regarding stormwater drainage, source control, and other applicable City requirements, as well as the federal Clean Water Act and Washington State Department of Ecology ("Ecology") stormwater regulations and permits, which may include the Industrial Stormwater General Permit ("ISGP"), Boatyard General Permit, Construction General Permit, individual permits, and the Phase I Municipal Separate Storm Sewer System Permit ("MS4 Permit") (collectively, the "Stormwater Regulations"). Tenant will comply with all applicable requirements of the Stormwater Regulations, including at minimum Ecology's MS4 Permit, and shall apply for and hold as permittee any other applicable stormwater permit. It shall be Tenant's sole responsibility to determine which requirements and permit(s) are applicable. Tenant shall implement and perform all best management practices ("BMPs") necessary to meet the requirements of the Stormwater Regulations. Tenant shall keep onsite a spill kit capable of handling minor spills and/or leaks from parked vehicles or other sources of potential pollution. In the event of a spill or leak to a drainage structure, Tenant shall notify the Port's

24-hour Port Dispatch Line at (206) 787-3350. If any regulatory authority (including but not limited to Ecology) or citizen cites or alleges the Port has violated any Stormwater Regulation, Tenant will fully defend and indemnify the Port for any damages, penalties, or other assessments made against the Port for the violations. Tenant will pay the Port's attorneys' fees in connection with such claims, notices, citations, and/or enforcement actions.

- 14.10 Environmental Covenant. NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON AUGUST 28, 2017 AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER 20170828000574. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT AS EXHIBIT J.
- 14.11 Greenhouse Gas Reductions. Tenant shall strive to attain the Port's Greenhouse Gas Reduction Goals. The Northwest Ports Clean Air Strategy, the Port's guiding climate and air strategy, sets a vision to phase out emissions from seaport-related activities by 2050, supporting cleaner air for our local communities and fulfilling our shared responsibility to help limit global temperature rise to 1.5°C. The Port of Seattle GHG reduction goals include scope 1 and 2 targets to achieve an absolute reduction of 50% by 2030 from a 2005 baseline and net zero by 2040, and scope 3 targets to achieve an absolute reduction of 50% by 2030 from a 2007 baseline and carbon neutral by 2050.
- 14.12 Equipment and Vehicle Fleet. Tenant must consult the Port in the event Tenant undertakes replacement of equipment or fleet vehicles that operate on the Premises, and consider the cleanest available technology to minimize criteria air pollutant and greenhouse gas emissions. The Port may request an inventory of equipment and fleet vehicles that operate on Port of Seattle premises.
- 14.13 Commute Trip Reduction. Tenant shall encourage its employees to choose commute modes that reduce single-occupancy vehicle trips to Port property, such as carpooling, transit, biking, or walking. Tenant is strongly encouraged to provide access to public transportation and/or benefit programs such as free transit cards, subsidized bike/scooter share program, or incentives to walk or bike to work to encourage employees to choose a more sustainable commute option than single occupancy vehicle. When possible, Tenant is encouraged to provide necessary facilities for active transportation users. These facilities include, but are not limited to, secured and/or weather-protected bike/scooter storage spaces, showers, lockers, and restrooms. Tenant shall also maintain its on-Premises bike/scooter storage area and other facilities on a regular basis.
- 14.14 Efficient Parking Management. Tenant shall use parking reduction management strategies to prioritize necessary parking needs and encourage employees to choose commute modes that reduce single-occupancy vehicle trips to Port property such as

carpooling, transit, biking, or walking. Tenant shall cooperate with the Port in implementing any survey or analysis of the commuting patterns of personnel working at the Premises.

- 14.15 Building Operations. Tenant is encouraged to optimize energy efficiency opportunities and use best efforts to help meet building-wide energy use reduction goals and minimize unnecessary use of electricity, natural gas, water, heating, and air conditioning.

- 14.16 Energy, Sustainability Audits, Commissioning, and Investigations. Tenant shall allow the Port access to the Premises after 24-hour advance notice to Tenant to conduct energy audits, commissioning, retro commissioning, recommissioning and/or general sustainability audits routinely or upon request. The Tenant shall share or grant the Port access to all required building spaces, information, and resource consumption data in a timely manner. With agreement and/or direction from the Port, the Tenant may complete their own ASHRAE Level II audits but shall provide the Port with all audit information and findings. Where Tenant is required to self-audit, Tenant must provide evidence that these are performed by a Qualified Auditor as defined in the WA Clean Buildings Performance Standard at a minimum of every 3 years.

14.16.1 Energy Credits, Certificates & Rebates. Any carbon offset credits, renewable energy credits, tradable renewable credits, energy saving certificates, rebates, incentives, offsets, allowances and other similar entitlements, now or hereafter existing (“Renewable Credits”) received by the Property Premises or by the Port and applicable to the Premises shall belong to the Port except to the extent, if any, to which (i) Tenant may be entitled to them under applicable law, in which event Tenant shall be entitled to the Renewable Credits to the extent required by law, (ii) the same arise directly from any action or activity undertaken by Tenant itself in the Premises that result in decreased consumption of natural resources by the Building or the avoidance of environmental impacts on air, soil or water, or (iii) Tenant may have paid as an Operating Expense or contributed to a cost or program that obtained the Renewable Credits and Tenant is not compensated under preceding clause (i) of this subsection (14.16.1), in which event Tenant shall be entitled to an equitable share, as determined by Port in its reasonable discretion, after first netting out the costs of participating in the carbon reduction program and/or of obtaining the credit.

- 14.17 Sustainable Cleaning. Tenant shall use cleaning supplies with sustainable cleaning chemicals that are environmentally friendly as defined by the U.S. EPA’s Environment Standards, defined as non-toxic and biodegradable. Tenant, upon written request by the Port, shall provide documentation showing specifications for chemicals used, dates and activities associated with cleaning maintenance.

- 14.18 Conservation. Tenant agrees to comply with all applicable and Port-required, in the Port’s reasonable discretion, mandatory and voluntary energy, water, recycling or other

conservation controls, or requirements issued by the federal, state, county, municipal or other applicable governments, or any public utility or insurance carrier including, without limitation, controls on the permitted range of temperature settings or requirements necessitating curtailment of the volume of energy consumption or the hours of operation.

- 14.19 Indoor Air Quality. Tenant is encouraged to ensure that ventilation systems that they are responsible for are routinely checked and kept in good working condition to ensure interior air quality meets ANSI/ASHRAE Standard 62.1-2022: Ventilation for Acceptable Indoor Air Quality.
- 14.20 Efficiency Upgrades. Whether or not Port shares in costs of improvement, Tenant shall provide the Port with documented evidence of all efficiency upgrades, following the completion of any upgrades, such as those related to premises alterations, on site equipment and building operation improvements. The Port must review any tenant improvements involving a change in space use or the relocation of partitions (including partial height partitions) so that they do not alter the building's annual net energy use, except to the extent that such change (increase or decrease) is consistent with any change in the building's energy target. The Port shall reserve the right to change utility providers and/or purchase green or renewable energy, even if such change results in higher costs to Tenant.
- 14.21 Energy Law Compliance. Tenant shall comply with all applicable energy performance and benchmarking laws, regulations, and standards, including but not limited to the Washington Clean Buildings Performance Standard, the Seattle Building Emissions Performance Standard, and the Seattle Energy Benchmarking and Reporting Program. Tenant shall cooperate with the Port in providing timely access to energy usage data, equipment specifications, and operational information as reasonably necessary for the Port to demonstrate compliance with such laws. Upon request, Tenant shall submit or assist in the submission of required reports, benchmarking data, and certifications. Any upgrades, retrofits, or operational changes undertaken by Tenant shall be consistent with the Port's efforts to meet or exceed the applicable energy performance targets and emissions reduction goals established under such laws. Tenant shall not take any action or inaction that would cause the premises or building to fall out of compliance.
- 14.22 Improvements. Tenant is encouraged to align all improvements and alterations made to the premises to the guidelines set forth by the Port and outlined in the Port Building Rules and Regulations. Tenant is required to adhere to the most current version of the Port's Waterfront Design and Environmental Standards for any improvement or alteration on the Premises.

## ARTICLE 15: DAMAGE OR DESTRUCTION

- 15.1 Duty to Repair. If the Premises or any buildings or structures of which the Premises are a part are damaged by fire, the elements, earthquake, accident or other casualty (collectively,

“Casualty”), Tenant shall give immediate written notice thereof to the Port. The Port may, except to the extent the Port has the right to terminate this Lease under Section 15.1, use reasonable efforts to repair and restore the Premises and/or the buildings or structures of which the Premises are a part to substantially their former condition to the extent permitted by then-applicable Legal Requirements; provided, however, the Port shall have no obligation to repair and restore any Alterations or any of Tenant’s personal property.

- 15.2 Right to Terminate. The Port may elect to terminate this Lease in the event that the Port, in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefor to be done during regular working hours on regular work days). In the event that the Port elects to terminate this Lease, the Port shall advise Tenant of that fact within thirty (30) days of the date the Port is notified of the Casualty and notify Tenant of the date, not more than ninety (90) days after the Casualty, on which the Lease will terminate.
- 15.3 Tenant’s Fault. Notwithstanding anything herein to the contrary, if the damages by Casualty to the Premises or any buildings or structures of which the Premises are a part results from Tenant’s fault, negligence, or breach of the terms of this Lease, Tenant shall be liable to the Port for the cost and expense of any repair and restoration of the Premises or any buildings or structures of which the Premises are a part.
- 15.4 Abatement of Rent. Unless the damages by Casualty result from Tenant’s fault, negligence or breach of the terms of this Lease, the Base Rent and Additional Rent, if any, shall be abated for any portion of the Premises that is rendered untenable or inaccessible from the period from the date the Port is notified of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Lease). The Port shall not otherwise be liable to Tenant for any loss in the use in the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.
- 15.5 Waiver. Except as specifically set forth in this Lease, Tenant hereby waives any right that Tenant may have, under any applicable existing or future law, to terminate this Lease in the event of any damage to, or destruction of, the Premises or any buildings or structures of which the Premises are a part.

#### ARTICLE 16: SURRENDER AND HOLDING OVER

- 16.1 Surrender. Tenant shall quit and surrender the Property, together with any remaining improvements or modifications, in good condition and repair, normal wear and tear excepted.

- 16.2 Holding Over. If the Premises are not surrendered as provided in this Article, Tenant shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay. Any holding over with the consent of the Port after expiration or earlier termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions provided in this Lease. Any holding over without the consent of the Port after expiration or earlier termination of this Lease shall be construed to be tenancy at sufferance upon the same terms and conditions provided in this Lease, except that Base Rent shall be one hundred fifty percent (150%) of that which it was immediately prior to expiration or earlier termination of this Lease.
- 16.3 Survival. Tenant's obligations under this Article shall survive the expiration or earlier termination of this Lease. No modification, termination or surrender to the Port of this Lease or surrender of the Property or any part thereof, or of any interest therein by Tenant, shall be valid or effective unless agreed to and accepted in writing by the Port, and no act by any representative or agent of the Port, other than such written Lease and acceptance, shall constitute an acceptance thereof.

#### ARTICLE 17: IMPAIRMENT OF TITLE

- 17.1 Liens. Tenant will not directly or indirectly create or permit to be created and/or to remain, a Lien upon the Premises, including any Alterations (as defined in Section 6.1), fixtures, improvements or appurtenances thereto, except those Liens expressly permitted in writing by the Port. In the event any such Lien(s) have been created by or permitted by Tenant in violation of this provision, Tenant shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Tenant shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding brought on or for the enforcement of such Lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance thereto, or any larger building and/or property of which the Premises may be a part.
- 17.2 Recording. Tenant covenants and agrees with the Port that Tenant shall not record this Lease or any memorandum thereof without the Port's prior written consent. In the event that the Port or its lender requires this Lease or a memorandum thereof to be recorded in priority to any mortgage, deed of trust or other encumbrance which may now or at any time hereafter affect the Premises in whole or in part, and whether or not any such mortgage, deed of trust or other encumbrance shall affect only the Premises, any part thereof, or shall be a blanket mortgage, deed of trust or encumbrance affecting other premises as well, the Tenant covenants and agrees with the Port that the Tenant shall execute promptly upon request from the Port any certificate, priority agreement or other instrument which may from time to time be requested to give effect thereto and the Tenant hereby irrevocably

appoints the Port as agent and attorney for the Tenant with full power and authority to execute and deliver such instruments for and in the name of the Tenant.

#### ARTICLE 18: DEFAULT

- 18.1 Events of Default. The occurrence of any of the following events shall constitute an “Event of Default” on the part of the Tenant with or without notice from the Port:
- 18.1.1 The vacating or abandonment of the Premises by Tenant.
  - 18.1.2 The failure by Tenant to make any payment of rent, fees or any other payment required by this Lease, when due.
  - 18.1.3 The failure by Tenant to observe or perform any covenant, condition, or agreement to be observed or performed by Tenant in this Lease.
  - 18.1.4 The discovery by the Port that any financial or background statement provided to the Port by Tenant, any successor, grantee, or assign was materially false.
  - 18.1.5 The filing by Tenant of a petition in bankruptcy, Tenant being adjudged bankrupt or insolvent by any court, a receiver of the property of Tenant being appointed in any proceeding brought by or against Tenant, Tenant making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Tenant’s interest in the Premises or on any personal property kept or maintained on the Premises by Tenant.
- 18.2 Remedies. In addition to, and not in lieu or to the exclusion of, any other remedies provided in this Lease or to any other remedies available to the Port at law or in equity:
- 18.2.1 Whenever any default (other than a default under Section 18.1.5 above, upon which termination of this Lease shall, at the Port’s option, be effective immediately without further notice) continues unremedied in whole or in part for thirty (30) days after Notice of Default is provided by the Port to Tenant (or for ten (10) days after Notice of Default in the case of default for failure to pay any rent, fees or other required payment when due), this Lease and all of Tenant’s rights under it will automatically terminate if the Notice of Default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Tenant all unpaid Rent, fees or any other payments and damages incurred because of Tenant’s default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney’s fees and costs (“Termination Damages”), together with interest on all Termination Damages at the Default Rate, from the date such Termination Damages are incurred by the Port until paid.

18.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Tenant's liability for all Rent, fees or other charges which, but for termination of this Lease, would have become due over the remainder of the Lease term ("Future Charges") will not be extinguished and Tenant agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:

18.2.2.1 An amount equal to Future Charges, less the amount of actual rent and fees, if any, which the Port receives during the remainder of the Lease term from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

18.2.2.1.1 In an accelerated lump-sum payment discounted to present worth, or

18.2.2.1.2 In monthly installments, in advance, on the first day of each calendar month following termination of this Lease and continuing until the date on which the Lease term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

18.2.2.2 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Lease term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subsection, "present worth" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

18.2.3 If this Lease is terminated for default as provided in this Lease, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Lease term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Tenant's obligations under this Lease be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.

18.2.4 If upon any reentry permitted under this Lease, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the



personal property for the account and at the expense of Tenant. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Tenant of the Port's action. All risks associated with removal and storage shall be on Tenant. Tenant shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property which has been stored for a period of thirty (30) days or more, unless Tenant has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys' fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Tenant to the Port. The balance of sale proceeds, if any, will then be paid to Tenant.

- 18.3 Remedies Cumulative. All rights, options and remedies of the Port contained in this Lease shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease.
- 18.4 No Counterclaim or Setoff. If the Port shall commence any proceeding for non-payment of Rent, fees or of any other payment of any kind to which the Port may be entitled or which the Port may claim under this Lease, Tenant will not interpose any counterclaim or setoff of any nature or description in any such proceeding; the parties specifically agreeing the Tenant's covenant to pay Rent, fees or any other payments under this Lease are independent of all other covenants and agreements in this Lease; *provided, however*, this shall not be construed as a waiver of Tenant's right to assert such a claim in any separate action brought by Tenant.

#### ARTICLE 19: TERMINATION; EASEMENTS

- 19.1 Termination. In the event the Port, in its sole discretion, requires the Premises or any substantial part thereof for any reason, then this Lease may be terminated by the Port by written notice to Tenant not less one hundred eighty (180) days prior to the date of termination set forth in the notice. Tenant shall not be entitled to any compensation at termination for the bargain value of the leasehold.
- 19.2 Condemnation. In the event that any federal, state or local government or agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any substantial part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and, if Tenant is not in default under any of the provisions of this Lease on that date, any Rent prepaid by Tenant shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Tenant.

19.3 Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its material obligations under this lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Tenant is not in default under any of the provisions of this Lease on the effective date of such termination, any Rent prepaid by Tenant shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Tenant.

19.4 Easements.

19.4.1 The Parties recognize that the Port facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port, or its agents, shall have the right to enter the Premises of Tenant, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, fiber and communication service, the roadways and all other services and facilities, all as required by the Port for its own use or benefit. The Port and its authorized utility service provider is hereby granted a continuous easement or easements that the Port believes is necessary within the Property and Premises, without any additional cost to the Port for the purposes expressed hereinabove. *Provided, however,* that the Port by virtue of such use, does not substantially deprive Tenant from its beneficial use or occupancy of the Property or Premises for an unreasonable period of time, not to exceed thirty (30) working days, without consent of Tenant.

19.4.2 In the event that the Port permanently deprives Tenant from such beneficial use or occupancy, then an equitable reimbursement of pre-paid rent or an adjustment in rent for any extension, or in the cost required to modify its Premises to allow the Tenant to operate its business, will be negotiated and paid by the Port to Tenant. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse Tenant for the cost required to modify its Premises for the temporary period that Tenant is inconvenienced by such entry. The Port will not be responsible to Tenant for any reduced efficiency or loss of business occasioned by such entry.

ARTICLE 20: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

20.1 Receipt of Monies Following Termination. No receipt of monies by the Port from Tenant after the termination or cancellation of this Lease in any lawful manner shall (a) reinstate, continue or extend the Term of this Lease; (b) affect any notice theretofore given to Tenant; (c) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees then due or thereafter falling due; or (d) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Lease, or after the

commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Tenant's liability hereunder.

- 20.2 No Waiver of Breach. The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Tenant requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Tenant.
- 20.3 No Waiver of Rent. The receipt by the Port of any installment of the Base Rent, Percentage Rent, fees or of any amount shall not be a waiver of any Base Rent, Percentage Rent or any other amount then due.
- 20.4 Application of Payments. The Port shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to the Port, in the Port's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of a check or checks drawn by others than Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Lease or subletting by Tenant.
- 20.5 Port's Right to Perform. Upon Tenant's failure to perform any obligation or make any payment required of Tenant hereunder, the Port shall have the right (but not the obligation) to perform such obligation of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse the Port the reasonable cost of the Port's performing such obligation on Tenant's behalf, including reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate.

#### ARTICLE 21: ASSIGNMENT AND SUBLETTING

- 21.1 Prohibition. Tenant shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Tenant of all or any part of the Premises, without the prior written consent of the Port in each instance. Tenant shall at the time the Tenant requests the consent of the Port, deliver to the Port such information in writing as the Port

may reasonably require respecting the proposed assignee, subtenant or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee. Within twenty (20) business days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (a) to consent to such proposed assignment, sublease or license or (b) to refuse such consent. The Port's failure to provide Tenant with such written consent within the stated twenty (20) day period shall constitute the Port's refusal to consent to the proposed assignment, sublease or license.

21.1.1 As a condition for the Port's consent to any assignment, encumbrance or sublease, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Tenant by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Tenant pursuant to Section 21.2). In addition, a condition to the Port's consent to any assignment, sublease or license of this Lease or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, subtenant or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, subtenant or licensee assumes and agrees to be bound by the terms and provisions of this Lease and perform all the obligations of Tenant hereunder.

21.1.2 In the event of any assignment, Tenant and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Lease and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Lease and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including Tenant; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Tenant and of each respective assignor.

21.1.3 Tenant agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Lease then the subtenant or licensee, at the request of the Port, will attorn to the Port and the subtenant or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant or licensee in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.

21.1.4 No assignment, subletting or license by Tenant shall relieve Tenant of any obligation under this Lease, including Tenant's obligation to pay Base Rent, fees or other amount due hereunder. Any purported assignment, subletting or license contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

- 21.1.5 Tenant shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Tenant for consent to an assignment, subletting or license.
- 21.2 Excess Rental. If in connection with any assignment, sublease or license, Tenant receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Tenant in connection with such assignment, sublease or license, are appropriately taken into account, Tenant shall pay to the Port fifty percent (50%) of the excess of each such payment of rent or other consideration received by Tenant after its receipt.
- 21.3 Scope. The prohibition against assigning or subletting contained in this Article shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Article, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Tenant (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Lease be assigned, or if the underlying beneficial interest of Tenant is transferred, or if the Premises or any part thereof be sublet or occupied by anybody other than Tenant, the Port may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of Section 21.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease.

## ARTICLE 22: MISCELLANEOUS

- 22.1 Notices. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier addressed as follows:

*To Lessor:*

Port of Seattle  
Attn: XXX  
2711 Alaskan Way  
Seattle, WA 98121

For payments only, the following mailing address should be used:

Port of Seattle  
P. O. Box 24507  
Seattle, WA 98124-0507

*To Tenant:*



or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered: (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

- 22.2 Promotion of Port Commerce. Tenant agrees that throughout the term of this Lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Tenant further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Tenant.
- 22.3 Labor Disputes. Tenant agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Tenant, and in the event of a strike, picketing, demonstration or other labor difficulty involving Tenant, to use its good offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.
- 22.4 Port Management Agreement. With respect to any portion of this Lease that pertains to Washington State-owned aquatic lands under the Port's management, this Lease is specifically subject and subordinate to the terms and conditions of the Port Management Agreement dated November 1, 1997 between the Washington State Department of Natural Resources (DNR) and the Port of Seattle, which Port Management Agreement is hereby incorporated by this reference and included as attachment I, and any future Port Management Agreement between the Port and DNR

that is executed during the Term of the Lease, which will be provided to Tenant upon request.

22.5 Non-Discrimination.

It is the basic policy of the Port to provide equal opportunity to the users of all Port services and facilities and all contracting entities. Tenant covenants and agrees that it will not discriminate by segregation or otherwise against any person or persons in furnishing, or by refusing to furnish, to such person or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state, and federal laws.

It is agreed that Tenant's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

22.5.1 Nondiscrimination – Employment. Tenant covenants and agrees that in all matters pertaining to the performance of this Lease, Tenant shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons, in particular:

22.5.2 Tenant will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and

22.5.3 Tenant will comply strictly with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination.

22.6 Successors Bound. This Lease and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective assignees, subject to the provisions hereof. Whenever in this Lease a reference is made to the Port, such reference shall be deemed to refer to the person in whom the interest of the Port shall be vested, and the Port shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of the Tenant who accepts an assignment of the benefit of this Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and

conditions thereof. Nothing herein contained shall be deemed in any manner to give a right of assignment to Tenant without the prior written consent of the Port and otherwise in compliance with ARTICLE 21 hereof.

- 22.7 Access to Premises. The Port shall have the right to show the Premises at all reasonable times to any prospective purchasers, tenants or mortgagees of the same, and may at any time enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from the Tenant. The Port shall also have the right to enter upon the Premises for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Tenant (except that no notice shall be required in the event of an emergency) or an authorized employee of Tenant at the Premises, which notice may be given orally.
- 22.8 Time. Time is of the essence of each of Tenant's obligations, responsibilities and covenants under this Lease.
- 22.9 Consent. Whenever the Port's prior consent or approval is required by this Lease, the same shall not be unreasonably withheld but may, unless otherwise specifically provided by this Lease, be granted or denied in the Port's sole and absolute discretion.
- 22.10 Attorneys' Fees. In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease or in the event suit is brought for the recovery of any Rent or fees due under this Lease or the breach of any covenant or condition of this Lease, or for the restitution of the Premises to the Port and/or eviction of Tenant during the Term of this Lease, or after the expiration thereof, the prevailing party will be entitled to a reasonable sum for attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal.
- 22.11 Captions and Article Numbers. The captions, article and section numbers and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.
- 22.12 Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.
- 22.13 Applicable Law; Waiver of Trial by Jury. This Lease, and, the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of



Washington. In any action on or related to the terms of this Lease, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

- 22.14 Submission of Lease. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by the Port and Tenant. No act or omission of any officer, employee or agent of the Port or Tenant shall alter, change or modify any of the provisions hereof.
- 22.15 Entire Agreement; Modification. This Lease sets forth all covenants, promises, agreements, conditions and understandings between the Port and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Tenant other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Lease shall be binding upon the Port or Tenant unless reduced to writing and signed by the Port and Tenant.
- 22.16 Relationship of the Port and Tenant. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Lease nor any acts of Tenant and the Port shall be deemed to create any relationship other than that of Tenant and the Port.
- 22.17 Tenant shall comply with all local, state, federal, and other laws, rules, regulations, and other requirements applicable to its operations, including those relating to environmental responsibility, worker safety, labor, anti-discrimination, and anti-human trafficking. Tenant shall adhere to the Values and Standards of the Port of Seattle, included as Attachment H.
- 22.18 Labor Unrest. Tenant agrees to join with the Port and use its best efforts in avoiding labor unrest, or in the event of a wildcat strike or other labor difficulty, to use its good offices in negotiating and bringing to a swift and satisfactory conclusion any kind of labor dispute that may affect the interests of the Port.
- 22.19 Federal Maritime Commission Regulations. This Lease may be subject to the Shipping Act of 1984, the Shipping Act of 1916, the Ocean Shipping Reform Act of 1998, and their respective implementing regulations. No future amendment or modification to this instrument will be effective until the appropriate procedures, if any, have been completed in accordance with the procedures of the appropriate federal agency which has jurisdiction over the Shipping Acts.
- 22.20 Governing Law; Venue. This Lease shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating hereto shall be in the state or federal courts located in King County, Washington.

- 22.21 Survival of Indemnities. All indemnities provided in this Lease shall survive the expiration or any earlier termination of this Lease. In any litigation or proceeding within the scope of any indemnity provided in this Lease, Tenant shall, at the Port's option, defend the Port at Tenant's expense by counsel satisfactory to the Port.
- 22.22 Subordination, Attornment. Unless otherwise designated by the Port, this Lease shall be subordinate to all existing or future mortgages and deeds of trust on the Premises or any larger property of which the Premises may be a part, and to all extensions, renewals or replacements thereof. Within ten (10) days of the Port's request, Tenant shall execute and deliver all instruments or certificates which may be necessary or appropriate to reflect such subordination. Notwithstanding the foregoing, Tenant shall not be required to subordinate to future mortgages or deeds of trust unless the mortgagee or beneficiary under the deed of trust agrees that if it becomes the owner of the property, it will recognize the Lease as long as Tenant is not in default. Within ten (10) days of the Port's request, Tenant shall also execute and deliver to third parties designated by the Port an estoppel certificate or letter in the form requested by the Port or any lender the correctly recites the facts with respect to the existence, terms and status of this Lease. Tenant agrees to attorn to any successor to the Port following any foreclosure, sale or transfer in lieu thereof.
- 22.23 Washington Public Records Act. Tenant acknowledges that the Port is subject to the provisions of the Washington Public Records Act, Chapter 42.56 RCW et seq. ("PRA"), and all documents and information prepared or provided by Tenant under this Agreement may be subject to the provisions of the PRA. The Port may disclose any such documents, information or other materials as required: (i) to comply with the PRA; (ii) to comply with orders of governmental entities that have jurisdiction over it; and/or (iii) as otherwise required by law. In the event of a request for disclosure under the PRA, any obligation to keep materials confidential shall be subject and subordinate to the Port's obligation to comply with law. Tenant shall be solely responsible for and will bear the full costs of taking legal action to prohibit disclosure of documents, information or other materials. If Tenant elects to commence suit to oppose disclosure of any such materials, Tenant agrees to defend, indemnify, and save and hold harmless the Port, its commissioners, officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of Tenant's intervention including, but not limited to, prompt reimbursement to the Port of all reasonable attorney fees, costs and damages that the Port may incur directly or may be ordered to pay in connection with any such suit.
- 22.24 Exhibits. Exhibits are attached to this Lease after the signatures and by this reference incorporated herein.

ARTICLE 23: SIGNATURES

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

PORT OF SEATTLE

TENANT

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

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT A

- Legal Description of Terminal 91 Lease Area -

## EXHIBIT B

- Legal Description of Terminal 91 Preferential Use Area

## EXHIBIT C

### Agreement with for CHI regarding Event Activities at T91

#### PIER91

##### CLEANING, REPAIR AND MAINTENANCE, AND UTILITY EXPENSE

1. It is the responsibility of both TENANT and Columbia Hospitality, Inc. ("CHI") to "turn the facility over" before/after the cruise season in the condition it was received. This process will involve a walkthrough of the facility detailing any deficiencies, which are to be remedied before the turnover date.
2. CHI and TENANT will both ensure that the space is fully cleaned within three (3) days of use by either party, unless otherwise agreed
3. It is agreed that a representative of CHI will walk-through the facility with a TENANT representative after every major event to denote any damage or cleanliness issues to be addressed immediately.
4. TENANT maintains a preventative maintenance schedule to keep the facility in optimal cross-use readiness. Any costs or follow-up requirements other than by TENANT must be mutually agreed upon.
5. At the conclusion of each event, TENANT will read the electrical and gas meters and invoice CHI on consumption.

##### BOOKING POLICY, UTILIZATION OF SPACE AND TENANT SHARE OF OPERATING MARGIN

6. It is understood that the primary purpose of this space is cruise ships and that cruise ships have space use priority regardless of when an event was booked.
7. CHI will seek permission from TENANT prior to confirming any event on the day prior to the first day of cruise season.
8. It is understood that TENANT and CHI will do everything possible to accommodate events when there is a booking conflict.
9. CHI will incorporate TENANT in the client contract indemnification, and provide a
10. The event revenue produced at Pier 91 will be shared per the following definitions and calculation:

Gross Revenue means all income for any event. Operating Expenses include all payroll and related benefits, food and beverage cost of goods, cost of operating supplies, A/V, utilities and any incidental expenses related to the event. For the purpose of this calculation they are estimated to be 72% of Gross Revenue Operating Margin (OM). OM means Gross Revenues less Estimated Operating Expense.

Tenant Share – 20% of OM

CHI Share = 80% of OM

##### USE OF FURNITURE AND EQUIPMENT

11. TENANT equipment requires prior approval from TENANT for event usage.
12. All borrowed equipment is to be returned in the condition it was received and put in place within 24 hours of the event, unless otherwise agreed.

##### CRUISE OPERATIONS AND SECURITY

13. It is understood that the cruise areas must be reset to TENANT's template by 4AM the morning of cruises.
14. TENANT will be the central point of contact for coordinating work with SSA, or any other cruise equipment removal, as requested for events. It is understood that a charge may be involved that will be mutually agreed upon prior to work commencing.
15. The CHI team will generally be executing on the concierge needs for cruise days. Any other

associated expenses to be passed on to TENANT will require prior approval by TENANT.

TENANT Payments to CHI	
Accounting Services	\$2,500 May to Oct / \$2,000 Nov to Apr.
Concierge payroll	Hourly Rate + benefits
Human resource services	No Charge
Marketing services	No Charge
Utility Expense	
Utility at Pier 91	Meters will be read before and following each event and TENANT will bill CHI on consumption
CHI Payments to TENANT	
Event Space at Pier 91	20% of Operating Margin

The event revenue produced at Pier 91 will be shared per the following definitions and calculation:

**Gross Revenue.** Gross Revenue means all income for any event.

**Estimated Operating Expense.** 72% of Gross Revenue

**Operating Margin (OM).** Gross Revenue less Estimated Operating Expense

TENANT share = 20% of

OM SH share = 80% of OM

A sample calculation follows on the next page.



Sample Calculation		
<b>REVENUE</b>		
Food Beverage		23,800
/1/ Rental		12,478
Other		7,000
<b>Total Revenue</b>		<u>28,518</u>
		<b>71,795</b>
<b>EXPENSE</b>		
	% of Total Revenue	
<b>Operating Expense</b>	72%	
<b>Operating Margin</b>		<b>51,692</b>
TENANT Share of OM	20%	<b>20,103</b>
SH share of OM	80%	4,021
		16,082

#### STANDARD OPERATING PROCEDURES

Subject	Section	Number	Page
Pier 91 - Smith Cove Cruise Terminal (SCCT)			
<b>Affects</b> Sales & Planning Managers POS Operations TENANT	<b>Cancels NEW</b>	<b>Effective Date</b>	<b>UPDATED:</b>
<b>Approval Managing Director</b>	<b>Approval Director of Operations</b>		

#### PURPOSE:

To create a process to notify Port of Seattle, Tenant and SSA information on site visits, potential dates for events, events moving forward with contracting the space and then specific event details once the event is planned.

#### PROCESS FOR SITE VISITS:

~SENT THE DAY BEFORE THE VISIT~

*BH Manager should send an email to \_\_\_\_\_ and cc: TENANT Ops Email. See list below for contact details.*

This should include:

- # of People Attending the Site (Include yourself)
- Day and Time of Site Visit

BH Manager should email client with **"Pier 91 Site Visit Pass"** that includes directions and details on what to expect. BH Manager should fill in the Date and Time of site visit, etc. and communicate that every vehicle should bring this with them and present to the west security gate.

#### PROCESS FOR PROSPECT GROUPS!

~SENT AS SOON AS CLIENT SHOWS INTEREST ON DATES~

Once BH Manager has a group looking at specific dates for a prospect event the following steps should happen:

- Complete **"Prospect Event Letter to TENANT"**
- Email letter to TENANT who will pass along
  - Subject Line: Prospect Group at SCCT at 91 - *"Name of Group"*
- Wait for confirmation back that there are no conflicts (No More then 1-2 business days)

#### PROCESS FOR DEFINITE GROUPS:

~SENT AS SOON AS CLIENT REQUESTS CONTRACT TO MOVE FORWARD~

Once BH Manager has a prospect group decide to move forward with the event:

- Email/Forward Original **"Prospect Event Letter to TENANT"** to TENANT who will pass along, highlight any updates or changes since the first email.
  - Subject Line: DEFINITE Group at SCCT at 91 - *"Name of Group"*

#### PROCESS FOR CANCELLING GROUPS THAT HAVE BEEN COMMUNICATED:

~SENT AS SOON AS CLIENT DECLINES MOVING FORWARD~

Once BH Sales Manager has a client turndown the request to have an event at P91:

Email/Forward Original **"Prospect Event Letter to TENANT"** to TENANT who will pass along, highlight any updates or changes since the first email.

- Subject Line: CANCELLED Group at SCCT at 91 - *"Name of Group"*
- Body of email...this group has cancelled and will not be moving forward

#### PROCESS FOR PLANNING MANAGER:

~SENT 4 WEEKS PRIOR TO EVENT~

This email should include:

- Subject Line: seer P91 Event - *"Name of Group and Dares"*
- Room Diagram for Building
- Pier 91 Diagram including Parking Lot
  - Must show where Parking Attendants, Signage and Security will be located
- Agenda of Program - should include the day, date, and times for set up, event days and teardown.

**EXAMPLE:**

Day/Date	Time	Action
Sunday, July 1,	6:00am	SSA to remove
Monday, July 2,	2:00pm	equipment BH to get
Tuesday, July 3,	3:00pm	keys from TENANT
	8:00pm	BH Set Up Staff to arrive to set up venue
	6:00am	Set Up Concludes, Building Locked Down
	6am-5pm	Access Begins to Venue
	7am-5pm	AA Set up
	5pm-9pm	BH set up
	7am-5pm	*Event*
		BH Teardown

## EXHIBIT D

### Tenant Duties and Responsibilities

The Tenant shall use the Terminal for the purposes approved by the Port and the relevant authorities only and shall not use the Terminal for any other purpose without the prior written consent of the Port. Without prejudice to the foregoing, the following is a general description of the intended use of the Terminal:

- (1) The primary function of the Terminal is to serve as an international cruise terminal, which may include:
  - a. The handling, accommodation, and provisioning of international cruise passenger ships; and
  - b. The handling, accommodation and servicing of passengers and associated cargo, and other activity incidental to such operations.

### **Duties, Responsibilities, and Scope of the Tenant**

The Tenant shall provide and perform the following scope of services for the Terminal as outlined below. Key services include, but are not limited to, passenger handling, baggage operations, facility maintenance, traffic circulation, and customer service. This is not an all-exhaustive list, but rather generally describes the major functions of the Tenant. The Tenant however will be responsible for all other functions necessary for the operations of the Terminal that may not be described below but become necessary to achieve the objectives of this RFP.

#### *I.* GENERAL TERMINAL MANAGEMENT

- (1) The Tenant shall manage and operate the Terminal in a manner to meet the objectives of making it and maintaining it as a world-class standard infrastructure with efficient, secure, and user-friendly facilities to meet the needs of its customers, including cruise lines and cruise passengers.
- (2) Except for such equipment relating to the functioning of the Terminal owned and furnished by the Port, the Tenant shall provide equipment, materials, and labor necessary to manage, operate, facilitate, and oversee all activities for the performance of the Terminal's functions. The Tenant shall pay for and either lease or purchase the equipment whichever the Tenant feels is most advantageous.
- (3) The Tenant shall work with the Port to develop and implement programs to continuously review the performance of its services and activities within the Terminal including stevedoring services, berthing services, passenger services, security services, ground transportation services, tenant relations and terminal facilities

administration, where applicable. This effort includes organizing and coordinating meetings of stakeholders of the Terminal to ascertain their concerns and objectives.

- (4) The Tenant shall coordinate and administer all licenses and concessions granted in respect of premises within the Terminal to third parties (which have been approved in writing by the Port) and shall communicate with all third-party tenants, licensees, and concessionaires to address any concerns or requests.

## II. GENERAL TERMINAL OPERATIONS

- (1) The Terminal shall be open at such times as required to handle, accommodate and supply the vessels which berth at the Terminal.
- (2) The Tenant shall conduct its operations in an orderly and proper manner, as not to annoy, disturb or be offensive to others near or at the Terminal including nearby neighborhoods. The Tenant shall work with the Port to correct any issues and remove the cause of any objection due to lighting, noise, and traffic impacts. The Tenant shall correct any issues and remove the cause of any objection due to the demeanor, conduct or appearance of any of the employees of the Tenant or of any other party who is at the Terminal with the consent of the Tenant.
- (3) The Tenant shall promptly remove from the Terminal all garbage, debris, and other waste materials whether solid or liquid arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in receptacles, designed, and constructed to contain the waste material safely. The said receptacles shall be provided and maintained by the Tenant and shall be kept covered except when being filled or emptied. The Tenant shall use extreme care when effecting removal of all such material and shall in no event make use of any facility or equipment of the Port for the removal of such material except with the prior consent of the Port. These activities shall be done in accordance with the Best Management Practices.
- (4) The Tenant shall not cause or permit to be caused or produced upon the Terminal, to permeate the same or to emanate therefrom, any unusual, noxious, or objectionable smokes, gases, vapors, or odors.
- (5) The Tenant shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier, or wharf at the Terminal and shall repair, replace, or rebuild any such, including but not limited to structural members, damaged by overloading.
- (6) The Tenant shall not do or permit to be done any act or thing at the Terminal which:
  - a. will invalidate or contravene any insurance policies covering the Terminal, or any part thereof; and/or

- b. in the opinion of the Port, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Lease.
- (7) The Tenant shall promptly raise and remove or cause to be raised and removed all objects of any kind, including vessels or other floating structures and equipment which shall have sunk, settled, or become partially or wholly submerged within the Pier 91 berths. If such object was sunk because of an action by the Tenant, the Tenant shall pay for such removal or corrective action. If the occurrence is because of an action not under the control of the Tenant, the Port will pay for the removal.
- (8) The Tenant or its employees, or employees of other companies under the supervision of the Tenant shall not throw, discharge, or deposit or permit to be thrown, discharged, or deposited any cargo, refuse, ashes, or any material whatsoever, into or upon the waters of or about the Terminal.
- (9) The Tenant is to ensure that all used waste discharge from the vessels calling at the Terminal are discharged, collected, and disposed in an appropriate manner and in accordance with Ecology regulations.
- (10) The Tenant shall set up an Operations Center for the primary function of the Terminal which will be equipped with communications via telephone, radio, and internet to provide access, coordination and reporting for all operations, security, emergencies, and communications. The Operations Center may also be linked with the security control center if approved within the Security Plan. The Operations Center shall be open throughout the operating hours of the Terminal when cruise operations are in progress. At all other times, the Tenant must assign a designated duty manager/ personnel to be contactable 24 hours a day and 365 days a year for issues related to the Terminal.
- (11) The Tenant shall maintain coordination and liaison with the Port and any other relevant third party appointed by the Port, reporting promptly all pertinent information affecting the functioning of the Terminal.

### *III. PLANS AND PROCEDURES FOR PASSENGER SERVICES*

- (1) The Tenant and any companies providing ground handling services shall develop and implement all plans and procedures to be adopted in respect of the efficient transit of passengers from and to ships berthed at the Terminal. Such plans shall be shared with the port and communicated to others as appropriate.
- (2) The Tenant shall maintain all way-finding signage and pavement striping inside and within the leased areas of the Terminal.

#### IV. REPORTING AND RECORDKEEPING

- (1) Throughout the year, as requested by the Port, the Tenant is to submit the projected cruise passenger throughput, schedule of cruise ship calls, and berth requests for the following Year including vessel arrival and departure time. The Tenant shall strive to show the calendars days that might be reserved for terminal maintenance or refurbishment.
- (2) By August 01 of each year (with an initial draft no later than July 01), the Tenant is to submit to the Port an annual plan for the Premises for the following calendar year. The annual plan must provide reasonable estimates of Revenue of Consequence. The annual plan will also include a narrative description of the proposed operations and security program. The annual plan will be Tenant's best estimate of operations for the following calendar year and the parties recognize that actual results may vary from the annual plan.
- (3) By November 15th of each year the Tenant is to submit to the Port the following:
  - a. A business plan and marketing strategy to achieve the targeted cruise traffic.
  - b. A description, budget and schedule of any, maintenance and repairs or replacements the Tenant proposes be made to the Terminal or to any equipment used in the operation of the Terminal to be paid by the Tenant.
  - c. A description, budget and schedule or any alterations of improvements the Tenant proposed to be made to the Terminal to be paid by the Tenant.
  - d. A proposal to the Port for major maintenance or capital requirements to be paid by the Port.
  - e. Any other matter or item requiring the attention of the Port, including those which may not directly concern the Terminal.
- (4) Before the 2nd week of each month, the Tenant shall provide to the Port a monthly written report on the number of cruise ship calls and cruise passenger throughput statistics.
- (5) The Tenant shall maintain accurate books and records of accounts (including all source documents necessary to support financial statements and associated supporting schedules) detailing all charges, services and facilities fees, passenger fees, terminal incidents, and other reports and records as required by the Lease.
- (6) The Tenant shall make such books, records, and reports available to the Port or its designee/s for inspection and audit as required by the Lease.

- (7) To foster business relations and ultimately the operations of the Terminal, effective and timely communication between the Tenant, the Port and among all stakeholders is important. To facilitate communication the Tenant should create a communications plan that provides for effective communication flows and will endeavor to disseminate messages to all stakeholders in a timely and accurate manner. As examples of good industry practices the following are some important meetings and tools to be included in such a plan:
- a. A formal pre-season meeting each year, in partnership with the Port, with attendance open to the management of all the Terminal stakeholders, including cruise lines, shore operations agents, stevedores, ship agents, relevant government agencies including but not limited to the US Coast Guard, USCBP, Seattle Fire Department, Washington Department of Ecology, ground transportation providers and security staff. The purpose of the meeting is to introduce any changes to terminal procedures or processes, present planning, and strategic issues, and to provide a forum for stakeholders to discuss any changes to their own operations that may impact the operations of other stakeholders.
  - b. The Tenant should host internal safety and security committee meeting(s) as required in the Security Plan.
  - c. Vessel Scheduling. The Tenant shall be responsible for the effective scheduling of vessels arrivals, departures, and operations to maximize its use for its primary function as an international cruise ship terminal. The Tenant shall effectively schedule vessel arrivals, departures, and operations to not only maximize the Terminal's primary function as a cruise terminal but also align with the Port's overall policies, i.e., the requirement that 100% of homeporting cruise ships be shore power capable and use shore power by 2027.
- (8) The Tenant will process all berth applications to determine berth allocation. The Port will be responsible for approving all homeport cruise ship applications and subject to the Port's berthing policy, Tenant shall be responsible for approving all port-of-call cruise ship applications. Berth allocation should explicitly include:
- a. A method of prioritizing the berth allocation, which may include the following factors:
    - i. Ship type
    - ii. Nature of ship calls
    - iii. Ship size
    - iv. Passenger volumes, dates, and number of calls
    - v. Shore power capability and location of shore power connection points

vi. Preferential Leases

- b. Timeline and process workflow for berth allocation exercise from application to confirmation.
  - c. Communication protocol with customers.
  - d. Conflict resolution methodology in the event of unavailability of berth and/ or rejection of application.
- (9) The Tenant shall endeavor to accommodate the berth applications at the Terminal or other appropriate facilities where possible. All homeport berth assignments and conflict resolution issues are subject to the approval of the Port. The Port is to be notified immediately upon identifying conflicts and the Tenant shall inform the Port of the outcome of the berth allocation exercise and the berth applications which are turned down (if any) after best endeavors have been made and before the outcome is announced to the applicants. The Port reserves the right to be the final arbiter of the final decisions.
- (10) Where appropriate, the Tenant should investigate the use of online systems in its berth application management system.
- (11) The Tenant shall coordinate arrivals and departures of passenger vessels with the US Coast Guard, USCBP and other stakeholders to facilitate their resource planning, especially if there are concurrent arrivals and departures of passenger vessels.
- (12) The Tenant may NOT enter into preferential berth agreements with cruise lines.

V. CLEANING AND JANITORIAL

- (1) The Tenant shall maintain the Terminal, including the Terminal building, all aprons, storage and cargo areas, gangways, baggage rooms, escalators, passenger concourses, fixed conveyors, elevators, employee spaces and parking areas, clean, tidy and uncluttered and promptly remove debris and waste material from these areas to the satisfaction of the Port.
- (2) The Tenant shall undertake all necessary cleaning of the Terminal, including all the furniture, fixtures and equipment located therein. The Tenant may appoint a professional cleaning contractor(s) for the Terminal and shall ensure that the Terminals are maintained in a clean and sanitary condition at all times.
- (3) The Tenant shall ensure that the Terminal and the facilities therein are clean and in proper working condition before any ship arrival. All bathrooms and public spaces must be regularly cleaned and checked at such intervals as may be necessary to ensure the continued cleanliness of such spaces at all times.



- (4) The Tenant shall submit its operation plan for the cleaning and janitorial services of the Terminal and shall make such adjustments as may be directed by the Port from time to time and at any time.
- (5) Any general or emergency janitorial or maintenance requests should be directed to the Tenant and the Tenant shall ensure that such situations will be dealt with promptly.
- (6) The Tenant shall ensure that all pipes, drains, basins, sinks and water-closets in the Terminal are kept clean and unblocked at all times.

## VI. SECURITY

- (1) The Tenant shall be responsible for providing all security measures, personnel, and materials necessary for the operations of the Terminal. This includes security for the facility, pier side ship operations, passenger and luggage screening and all areas within the Terminal Area.
- (2) The Tenant shall be responsible for managing all security operations on the Terminal premises on cruise days. This will include security staff that will provide security guards and security equipment for the cruise terminal security plan. The Tenant shall collaborate with the Port, which is responsible for security beyond the Terminal.
- (3) The Tenant shall prepare and continuously update and maintain an "International Cruise Terminal Security Program which meets the requirements of the Port, the US Coast Guard and all international directives and norms such as those issued by the International Maritime Organization (IMO) in particular the International Ship and Port Facility Security Code (ISPS Code).
- (4) The Tenant shall provide all training, supervision, and coordination all personnel, sub-contractors, and security services providers for the purposes of implementing, carrying out and coordinating the Security Plan and such other security program in respect of the Terminal as the Port shall from time to time adopt.
- (5) The Security Plan must also be acceptable to the international cruise lines to facilitate the use of the Terminal.
- (6) The Tenant shall provide screening services and gangway access security on behalf of the cruise lines and shall coordinate the execution of the Security Plan with the individual cruise lines.
- (7) The Tenant shall promptly inform the Port and any other relevant authority of any breach/incidents of safety or security or vandalism or loss of damage to the Terminal (or any item or thing therein) or other property of the Port.

- (8) The Tenant shall provide and maintain an adequate safety and security infrastructure and system to prevent any loss or damage to any furniture, fitting, equipment item or thing in the Terminal belonging to or put in by the Port and/or any other relevant authority from time to time.
- (9) The Tenant shall coordinate the Security Plan with the Ports master security program and work in cooperation with the Port and other stakeholders in developing, improving, and implementing such security programs. The Tenant will hold the Facility Security Plan for Smith Cove Cruise Terminal at Pier 91 and will employ the Facility Security Officer.
- (10) The Tenant shall conduct regular audits of the sufficiency, suitability and performance of the Security Plan and report the results of such audits to the Port and the relevant authority. These audits will be performed at least once every Year or sooner if security problems arise and/ or procedures are significantly modified.

#### V. VESSEL / APRON / GANGWAY OPERATIONS

- (1) The Tenant shall ensure the availability for fully functional passenger gangways at all times and the number of gangways per ship as requested by the customers.
- (2) The Tenant shall be responsible for the placement and retraction of gangways on ships upon arrival and departures, the cost of such movements, and maintaining safe operations of the gangways at all times. Gangways shall be stowed in a position to prevent any damage from ship movements, ground traffic or other hazards.
- (3) The Tenant shall coordinate with the stevedoring companies who may be responsible for handling of lines, in respect of all ship operations at the Terminal.
- (4) The Tenant shall train and supervise all labor to ensure the safe operation of gangways and ship and unship gangways.
- (5) The Tenant shall attend all vessel dockings and un-dockings and, upon vessel departures, conduct reasonable berth inspections, as practicable, prepare written reports of any evidence of damage to wharfs, pilings, and fender systems, and give immediate notification of such damage to the Port.
- (6) The Tenant shall coordinate and cooperate with the pilot(s), port agent(s), stevedoring service provider(s) and ground handler(s) of the cruise lines or their agents, or the relevant authorities.
- (7) The Tenant shall coordinate the arrivals, departures and placement of any service vehicles coming to the apron, including but not limited to those for provisioning, repairs, if allowed by the license, and waste disposal.

- (8) The Tenant shall coordinate and cooperate with agencies and authorities with regulatory authority of cruise terminal operations to provide and ensure safe transit operations, working conditions and emergency services for the protection of all passengers, dockworkers, employees, and visitors on the Terminal.

#### *VI.* CRUISE VESSEL STEVEDORING AND GROUND HANDLING

- (1) The Tenant shall select a single stevedoring service provider for all cruise ships calling at the Terminal. These services include the following tasks:
- a. Stevedoring services:
    - i. Scheduling labor and equipment requirements.
    - ii. Line handling for the berthing of ships
    - iii. Handling, sorting and storage of the baggage of all passengers embarking on or disembarking from ships arriving and berthing at the Terminal.
    - iv. Care, custody and handling of all stores and materials to be loaded on or off the ships while berthed at the Terminal.
    - v. Coordinating the movements of delivery trucks to/from cruise terminals.
    - vi. Coordinating the shore power connection.
    - vii. Such other services, labor, supervision, equipment, and materials necessary to affect the efficient and economical performance of the foregoing.
- (2) The stevedore will also be responsible for the provision and maintenance of passenger baggage carts and other equipment required to execute their role (e.g., baggage cages, forklifts, and pallet jacks).
- (3) The Tenant shall provide the Port a market rate analysis and performance criteria of stevedoring services. The Tenant will keep the Port fully informed of the stevedoring operator selected.
- (4) The Tenant will cooperate with any firms contracted directly by the cruise lines to work at the Terminal including to provide ground handling services, transportation, and any other service. Such cooperation includes providing the necessary security clearances, access to workspace, access to bathrooms set forth for labor, break rooms, access to utilities and any other activity needed by such companies to perform their duties.
- (5) The Tenant may not charge or mark-up the fees charged by other ground handling firms using the Terminal.

#### *VII.* GROUND TRANSPORTATION

- (1) The Tenant shall coordinate all required ground transportation activities relating to the ingress to and egress from the Terminal by passengers in accordance with the procedures and requirements which are prepared by the Tenant and subsequently endorsed by the Port from time to time.
- (2) The Tenant shall liaise with third party transportation and tour providers so that the Terminal is adequately served by the appropriate taxi, bus, Rideshare, and transit services.
- (3) The Tenant shall operate the Ground Transportation Area (GTA) facilities. The services provided shall include but not be limited to:
  - a. Scheduling bus arrival and departures in coordination with the cruise line's ground handling operator
  - b. Assignment of loading and off-loading slots to each partner or tour partner
  - c. Managing the safety of all pedestrian crossings
  - d. Managing the taxi loading and off-loading area and providing a system for dispatch of vehicles
  - e. Managing the Rideshare loading and off-loading area
- (4) Where applicable, the Tenant shall work together with and assist the Port in the development, implementation and operation of different off-site ground transportation systems and programs. The Tenant shall provide the necessary traffic attendant staff for traffic control services in and about the Terminal and any off-site traffic holding lots.
- (5) The Tenant shall develop traffic control and dispatch systems, including systems for vehicle identification, dispatch and invoicing and shall implement and utilize all such systems as are stipulated, adopted, or approved by the Port from time to time and at any time.
- (6) The Port may at any time temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Terminal hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Tenant.
- (7) The Tenant shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Terminal or in, along, across or through any streets, ways and walks near the Terminal and shall manage the

transportation system to prevent traffic back-ups and congestion on the approach avenues.

#### VIII. PREVENTION OF INFECTIOUS DISEASES

- (1) The Tenant shall take all necessary steps and measures, at the cost and expense of the Tenant, to detect, monitor and/or prevent any outbreak, spread or any transmission whatsoever of any infectious disease (including, but not limited to, thoroughly fumigating and disinfecting the Terminal to the satisfaction of the relevant authorities) and to this end to promptly comply, at the Tenant's cost and expense, with the law and all guidelines, rules and requirements of the relevant authorities from time to time relating to the detection, monitoring and prevention of any outbreak and/or spread of such infectious diseases.
- (2) The Tenant shall promptly notify the Port and the relevant authorities if the Tenant is aware or suspects that any person who has entered the Terminal is suffering or has died from or is a carrier or a contact of, or is at risk of infection from, an infectious disease and to provide such other information or particulars as may be required by the Port and/or the relevant authorities.

#### IX. MAJOR MAINTENANCE, REPAIRS AND MAINTENANCE DREDGING

- (3) The Port shall pay for and undertake major upgrading, enhancement or overhaul of the Terminal, its infrastructure and equipment which is deemed by the Port to be adding long-term value to the Terminal and/or requirements in compliance with the relevant authorities' statutory regulations. This may include but not be limited to the refurbishment of the building structure and façade, overhaul and upgrading of mechanical and electrical systems, re-roofing of the facility, maintenance dredging, major reconstruction of pier and footing as identified in the draft lease.

#### X. MARKETING AND PUBLIC RELATIONS

- (1) The Tenant is expected, upon appointment as the Tenant of the Terminal and in consultation with the Port, to commence marketing and business development activities to ensure that cruise vessels berth at the Terminal from the start of the Terminal operations as practical as possible.
- (2) The Tenant shall maintain a web site for the Terminal which will include but not limited to:
  - a. Information related to the facility,
  - b. Information and assistance to passengers and visitors,
  - c. Useful links to visitor information

- d. Schedules for vessel arrivals/ departures and berth assignments
  - e. Link to the Port's website
- (3) The Port shall be alerted immediately should there be any requests for media interviews and the Tenant shall adhere to such directions as may be given by the Port and any other relevant authority from time to time with respect to media interviews. All press release statements to be submitted to and approved by the Port.
- (4) The Tenant shall maintain sufficient telephone lines with a system of handling incoming calls and queries from the general public as well as industry stakeholders. Answering service must be provided for calls received during non-operating hours of the Terminal and information on the operating hours and a 24-hour emergency contact number shall be provided and made accessible.

## XI. TERMINAL MANGAGEMENT

- (1) The Tenant shall provide passenger terminal staff including the General Manager, Facility Security Officer, and other staffing, and related office and other equipment and supplies necessary to facilitate and accomplish all duties described in the Tenant Duties and Responsibilities.
- (2) The General Manager shall maintain a close reporting relationship with the Port and its designated person responsible for cruise operations. The General Manager shall be available at the request of the Port to review the operations and shall attend all such meetings as may be directed by the Port from time to time.
- (3) The Tenant shall at its own expense, employ adequate staff and ensure that they are suitably qualified and knowledgeable to carry out the services available at the Terminal. All staff shall be well-presented, courteous and have good interpersonal skills. They shall be properly attired to always project a professional and visitor-friendly conduct and wear name-badges.
- (4) The Tenant shall, at its own cost, train their staff and ensure that they attend relevant courses from time to time.
- (5) All staff working for the Tenant shall be compensated and provided with the appropriate benefits as provided by Law.

## XII. CHARGES AND TARIFFS

- (1) The Tenant shall present to the Port the charges for any goods or services which the Tenant proposes to impose, if any, and once the charges are set with the approval of the Port, the Tenant shall not establish any new rates, charges, or change such rates

without the prior written consent of the Port. The Tenant acknowledges that the charges are subject to such restrictions, guidelines and directions as may be issued by the Port from time to time.

- (2) The Tenant may not raise tariffs above the rates established by the Port for the use of the Terminal without the express approval of the Port.
- (3) An analysis of tariff and terminal charges at the Terminal and other competitive ports shall be made by the Tenant each Year. Such charges shall include passenger fee, dockage, pilotage, tugs, special assessments, and stevedoring. The ports and ships to be included will be determined in partnership with the Port. The reports shall be included in the annual report to be submitted to the Port.

### XIII. BILLINGS AND COLLECTIONS

- (1) The Tenant shall invoice customers and collect fees as per Port-approved tariffs and charges, maintaining detailed records of all collections.
- (2) Together with remittance of Percentage Rent, Tenant shall submit a written report in a form acceptable to the Port wherein Tenant shall set forth the number of cruise passengers for the month, the Revenue of Consequence for the month and the Percentage Rent, if any, due for such month. Tenant or an officer of Tenant shall certify that the report is a true and correct statement of the Revenue of Consequence.

### XIV. ACCOUNTS PAYABLE

- (1) The Tenant shall be responsible for and shall pay when due all costs relating to the performance of its services and responsibilities under the Lease including but not limited to the management, operation, maintenance and cleaning of the Terminal all salaries, wages, payroll expenses and benefits of its employees, the cost of equipment, utilities, insurance, materials and supplies used in connection with the provision of its services and all amounts due under any service contracts or equipment leases entered into by the Tenant in respect of its responsibilities hereunder.

### XV. SUSTAINABILITY AND REPORTING

- (1) Air Quality and Greenhouse Gas Emissions Inventory. On at least an annual basis, the Tenant will participate, with Port of Seattle and partners, in evaluating, planning and/or developing strategies to reduce emissions from the terminal building and at-berth operations in accordance with the Northwest Ports Clean Air Strategy and in support of Port of Seattle's Century Agenda and greenhouse gas emission reduction goals. This will include participation in Emission Inventories conducted by the Port of Seattle, on an annual basis.

- (2) In support of shared sustainability goals and strategies (e.g. air quality, water quality, waste management, energy efficiency, etc.) for on-terminal transportation (e.g., shuttle buses), equipment (e.g., cargo handling equipment), regional ground transportation (e.g., motor coach operations and Transportation Network Companies), and as part of the annual planning for shore-side transportation operations, the Tenant will strive to minimize air emissions. This includes demonstrated efforts to employ options such as preferred contracting, incentives, use of newer and/or low and zero-emission buses and engines, low and zero-emission fuels in vehicles and equipment, building efficiency measures, advanced pollution control device retrofits and anti-idling programs. The Tenant will work with Port of Seattle and partners, on at least an annual basis, to identify joint sustainability opportunities, projects, and programs. Where feasible and when agreed upon, the Tenant will work with Ports and partners to develop implementation plans, schedules, and joint communication strategies which may include an option for partnership-funding mechanisms.
- (3) If Tenant contracts directly with stevedores at Smith Cove Terminals, the Tenant will encourage stevedores use of low emission equipment with a zero emission shoreside goal by 2030. Tenant will partner with the Port, Stevedore and other parties to achieve this 2030 goal.
- (4) The Tenant will use reasonable efforts to partner with Maritime focused non-profit entities to assist in creating curriculum and experiential field-based learning opportunities and internships for students as part of Maritime-focused workforce development programs.
- (5) Tenant will collaborate with the Port on Anti-human trafficking efforts and will sign on to the Port Allies Against Human Trafficking Pledge.
- (6) The Tenant will participate in an annual review of their efforts with respect to diversity with ground handlers and participate to a reasonable extent in programs related to equity.
- (7) On an annual basis the Tenant will meet with the Port of Seattle staff to evaluate home-porting operations and strategies to increase the use of shore power toward a goal of achieving 100-percent use per shore-power capable call.



EXHIBIT E

Port of Seattle Commission Motion ORDER NO. 2024-08

## EXHIBIT F

2025 Best Management Practices for Vessel & Berth Operations at Port of Seattle Pier 91

## EXHIBIT G

2025 Best Management Practices for Dock Operations at Cruise Terminals at Port of Seattle Pier

91

## EXHIBIT H

### Port of Seattle Statement of Values and Standards

## EXHIBIT I

### Port Management Agreement

## EXHIBIT J

### Environmental Covenant