



**PIER 1
SAN FRANCISCO, CA 94111**

**LICENSE TO USE PROPERTY
LICENSE NO. XXXXX**

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

[INSERT NAME OF LICENSEE]

PIER 68 SHIPYARD

[LICENSE DATE]

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
ED HARRINGTON, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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BASIC LICENSE INFORMATION

<i>License Date:</i>	XXXXXX
<i>License Number:</i>	XXXXXX
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Licensee:</i>	[INSERT NAME OF LICENSEE]
<i>Licensee's Main Contact Person and Mailing Address:</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE SUBMITTING TO LEGAL] Telephone: () Cell: () Facsimile: () Email:
<i>Licensee's Billing Contact and Address:</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE SUBMITTING TO LEGAL] Telephone: () Cell: () Facsimile: () Email:
<i>Licensee's Emergency Contact and Address:</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE SUBMITTING TO LEGAL] Telephone: () Cell: () Facsimile: () Email:
<i>Licensee's Insurance Contact and Address (not broker):</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE SUBMITTING TO LEGAL] Telephone: () Cell: ()

	Facsimile: () Email:
<i>Contact Information for Licensee's Agent for Service of Process:</i>	[NOTE: ADDRESS CANNOT BE P.O. BOX OR MAILBOX ETC. ADDRESS—DELETE BRACKETED LANGUAGE BEFORE SUBMITTING TO LEGAL] Telephone: () Cell: () Facsimile: () Email:
<i>License Area:</i>	Parcel A: Approx. 30,000 Square Feet of Pier Space at Wharf No. 3 Parcel B: Approximately 82,000 Square Feet of Submerged Land at Wharf No. 3 Parcel C: Approx. 17,000 Square Feet of Pier Space on the High-Water Platform Parcel D: Approximately 170,000 Square Feet of Submerged Land at Wharf No. 5 Located at Pier 68 Shipyard in the City and County of San Francisco, State of California, as further described in Exhibit A attached hereto and made a part hereof; together with any and all improvements and alterations thereto.
<i>Access to License Area:</i>	In addition to the License Area, Licensee shall have nonexclusive access to a drive aisle on Port property between the License Area and Georgia Street for ingress and egress purposes only (the "Access Area"). Stopping, parking, and placement of materials or personnel outside the License Area, including but not limited to the Access Area, shall be subject to enforcement provisions under this License, including but not limited to Section 2.2 (Encroachment). The Access Area shall be deemed to be included within the License Area.
<i>Commencement Date:</i>	This License permits Licensee to use the License Area in connection with a Port-issued berthing agreement(s) pursuant to Port Tariff 5 (each, a "Berthing Agreement") to berth Licensee's Dry Dock at Pier 68 commencing upon full execution by the Port. ("Commencement Date")
<i>Term; Expiration Date:</i>	Without affecting Port's Termination Right as described in Section 4, the Term of this License is month-to-month and can be terminated by either party on thirty (30) days' prior written notice. Unless earlier terminated under the terms and conditions set forth in this License or extended by mutual written agreement, this License shall expire on December 31st, 2025.

<p><i>Permitted Activity:</i></p>	<p>Parcels A, B, C, and D shall be used solely for Berthing and Maritime Operations associated with the preparation of the Dry Dock No. 2 and/or the Dry Dock Eureka for transport. (each a “Dry Dock Preparation Operation”) pursuant to a Berthing Agreement and for no other purpose.</p> <p>Such operations may include the following activities, subject to compliance with all regulatory and permitting requirements: spray application of paint or coatings; sanding or other abrasive blasting of vessel exterior; application of paints or coatings beyond minor paint touch-up; hot works, welding, or cutting; and other reasonably necessary operations.</p> <p>Licensee may use its own portable, temporary equipment and materials including work vehicles, mobile equipment, ramps, tables, chairs, generators, monitors, signs, portable restrooms, handwashing stations, barricades, and trash and recycling receptacles on the License Area. All such equipment and materials must be removed by Licensee at the end of each Dry Dock Preparation Operation.</p> <p>All Permitted Activities must be performed in compliance with Licensee’s Operations Plan attached hereto as Exhibit B) as approved by the Port and amended from time to time as necessary.</p> <p>Parcel E may be used only for ingress and egress to and from Parcels A, B, C, D, and 20th Street.</p>
<p><i>Monthly License Fee:</i></p>	<p>Parcel A: \$12,000.00 Parcel B: \$15,580.00 Parcel C: \$6,800.00 <u>Parcel D: \$32,300.00</u> Monthly Fee: \$66,680.00</p>
<p><i>Rent Credit:</i></p>	<p>If Licensee has completed Dry Dock Preparation Operation by December 31st, 2025. Port will apply a Credit of equal to the Monthly License Fee accrued between the Commencement Date and the Expiration Date. If Licensee fails to complete the Dry Dock Preparation Operation by December 31st, 2025, Port has the right, in its sole discretion, to terminate the License and Monthly License Fees for the period between the Commencement Date and date of termination of this License will be immediately due and payable. The Rent Credit will be applied in accordance with Section 5.7.</p>

<i>Security Deposit:</i>	One Hundred Thirty-Three Thousand Three Hundred Sixty Dollars and No Cents (\$133,360.00)
<i>Operations Plan:</i>	<p>The Operations Plan, attached hereto as Exhibit B must document operating procedures consistent with Laws, industry standards, best management practices and good housekeeping.</p> <p>Within 60 Days of the Commencement Date, Licensee shall submit a revised Operations Plan to Port for review.</p> <p>Failure to comply with the Operations Plan is a material breach of this License. Port may, from time to time (including but not limited to upon any request for an Extension Term), review Licensee’s Operations Plan and make recommendations for revisions. All revisions to the Operations Plan, whether initiated by Port or Licensee, are subject to Port approval, in its sole discretion.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities:</p> <ul style="list-style-type: none"> a) Use of the License Area without a Berthing Agreement which Port may grant or deny in its sole discretion; b) Storage of any equipment or materials on the License Area or any other Port property except as described in the Operations Plan. c) Except as allowed under the Operations Plan and any applicable permits or regulatory approvals: spray application of paint or coatings; sanding or other abrasive blasting of vessel exterior; application of paints or coatings beyond minor paint touch-up; d) Except as allowed under the Operations Plan and any applicable permits or regulatory approvals: hot works, welding, or cutting. All Hot works, welding, and cutting do be done in compliance with all associated regulatory requirements and e) Washing of Dry Dock, as allowed under the Operations Plan and any applicable permits or regulatory approvals, unless the wash water is fully captured for discharge to the sanitary sewer; the decks may be cleaned with a mop and bucket or using an equivalent water capture method using minimally toxic, biodegradable, and phosphate-

	<p>free materials for deck cleaning and above-water line hull cleaning in compliance with 33 CFR § 151 ;</p> <p>f) Discharge of materials from the vessel into the air or Bay, including but not limited to:</p> <ul style="list-style-type: none"> a. Plastic and Styrofoam packaging materials b. Dust from vessel maintenance activities, c. Discharge of ballast or bilge water d. Discharge of any material into Bay waters <p>g) Licensee is advised that the drain holes on the pier discharge directly into the Bay.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<p><i>Entry by Port:</i></p>	<p>Port and its authorized Agents may enter the License Area without notice in the event of an emergency and at any time during normal business hours of generally recognized business days.</p> <p>Port will provide advance written notice to Licensee prior to entry for the following purposes:</p> <ul style="list-style-type: none"> a. To perform any necessary maintenance, repairs or restoration to the License Area or the seawall, or to perform any services which Port has the right or obligation to perform; b. To show the License Area to prospective tenants or other interested parties; c. To excavate or perform or permit other construction on any property or street adjacent to the License Area, to shore the foundations, footings or walls of the License Area, or to erect scaffolding and protective barricades around and about the License Area as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the License Area), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or d. To obtain environmental samples and perform equipment and facility testing. <p>In no event shall the activities conducted under this provision constitute or otherwise be construed or interpreted as an actual or constructive eviction of Licensee, entitle Licensee to any abatement or diminution of Rent, or otherwise relieve Licensee from any of its obligations under this License and Licensee</p>

	<p>hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance from the activities.</p>
<p><i>Good Neighbor Policies:</i></p>	<p>Licensee acknowledges that the nature of Dry Dock Preparation Operations might generate noise/sound, light, odor, or other issues or impacts that can be perceived from outside of the Premises. The Parties also acknowledge that the anticipated commercial and residential developments planned for Pier 70, and more specifically to the immediate south of the Premises, will bring visitors, residents and customers to Pier 70. In order to address potential issues that might arise, the parties agree to cooperate with each other, and other interested parties on developing good neighbor strategies to minimize the potential impacts of noise, sound, and light from Licensee's operations during certain periods of the day and week. Such strategies might include Licensee's advance community notice of when higher than usual noise, sound, light, odor, or other perceptible impacts may be anticipated.</p>
<p><i>Regulatory Approvals:</i></p>	<p>Licensee shall, at its sole cost and expense obtain and submit to Port for review any applicable permits and/or regulatory approvals issued by governmental agencies for each Dry Dock Preparation Operation, which may include but are not limited to:</p> <ol style="list-style-type: none"> a. Port of San Francisco b. San Francisco Department of Public Health c. San Francisco Public Utilities Commission d. San Francisco Fire Department e. San Francisco Planning Department f. California Department of Toxic Substances Control g. San Francisco Regional Water Quality Control Board h. California Department of Resources, Recycling, & Recovery i. California Highway Patrol j. California Public Utilities Commission k. California Department of Occupational Health and Safety l. California Department of Fish & Wildlife m. Bay Conservation and Development Commission

	<p>n. Federal Department of Transportation</p> <p>o. U.S. Army Corps of Engineers</p> <p>p. Any other permit or approval deemed necessary by the Port of San Francisco and/or any City Agency</p> <p>Licensee’s failure to submit to the Port the following permits and approvals, the Port may, in its sole discretion and without further notice to or approval from the Licensee, terminate this License or disallow any specific Dry Dock Preparation Operation.</p>
<i>Pier 70 Risk Management Plan</i>	<p>Licensee is advised that there is a Risk Management Plan for Pier 70 due to existing Hazardous Materials contamination in soils at the Pier 70. The Pier 70 Risk Management Plan (Treadwell & Rollo, 7/25/13) (“RMP”) applies throughout the Pier 70 Master Plan Area, between Mariposa and 22nd Streets, from mean higher high water inland to Illinois Street. The Pier 70 RMP establishes measures that must be followed by anyone performing management, maintenance, and construction at Pier 70 to mitigate potential health risks related to contaminated soil at Pier 70. The requirements generally serve to minimize site users’ exposure to soil. The Pier 70 RMP requires notification to the S.F. Department of Public Health and the San Francisco Bay Regional Water Quality Control Board as well as the Port prior to undertaking soil-disturbing activities, and specifies dust control, soil management, and health and safety requirements for work that exposes or disturbs soil at Pier 70. The RMP is available on the Port's website at http://www.sfport.com/index.aspx?page=263 . Licensee must comply with the Pier 70 RMP as a material condition of this Lease.</p>
<i>Cure Period where applicable:</i>	24 Hours
<i>Substructure:</i>	See Schedule 2 attached hereto.
<i>Utilities and Services:</i>	Sole responsibility of Licensee–no exceptions
<i>Parking:</i>	Licensee acknowledges that this License does not include parking rights or spaces.
<i>Maritime Styrofoam Equipment:</i>	Licensee is advised that San Francisco Environment Code Section 1605(a) prohibits the sale of “dock floats, mooring buoys, or anchor or navigation markers made, in whole or

	in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.”
<i>Prepared By:</i>	Demetri Amaro, Maritime Business Development Manager

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License**." In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

2.1. License. In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and *Exhibit A* attached hereto.

2.2. Encroachment.

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall immediately vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity.

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars (\$300) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars (\$400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in surrendering the

Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

3. SECURITY.

3.1. **Security.** Licensee is solely responsible for providing security on each Dry Dock and adjacent to the Dry Dock extending to the entire License Area throughout the duration of each Dry Dock Preparation Operation. In preparation for and during a Dry Dock Preparation Operation, Licensee shall:

(a) Provide and supervise all required security personnel, subcontractors, and providers of related services.

(b) Be responsible for compliance with the FSP, including maintaining and enforcing the FSP. Obtain compliance with all applicable regulations, and arrange for the provision of a Facility Security Officer and alternates, as may be required. Submit revised plans as requested by USCG for approval by USCG.

(c) Without limiting the generality of the foregoing, be responsible for hiring security guards and effectively coordinating operations with the San Francisco Police Department and San Francisco Fire Department whenever necessary.

(d) Protect the overall safety of all persons within the License Area.

(e) Be responsible for perimeter security traffic control within the License Area, and night watch.

(f) Maintain sufficient and effective security communications equipment to facilitate security operations.

(g) Provide necessary security parameters for the protection and safeguarding of the License Area and persons and property at or on the License Area. Provide additional safety and security procedures and equipment as may be further required from time to time by local, state, and federal authorities with applicable jurisdiction.

(h) Respond to site emergency situations as they arise. This will require, among other things, Licensee's staff to be on-call around the clock, during the Term.

4. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

Without limiting any of Port's rights hereunder, by initialing below, Licensee agrees and acknowledges that Port may, in its sole and absolute discretion, revoke or terminate this License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Licensee ("**Port's Termination Right**"). Failure of Licensee to initial below shall in no way affect or hinder Port's Termination Right.

Initials: _____

Name: _____
Title: _____

5. FEES.

5.1. License Fee. Licensee shall pay the License Fee set forth in the Basic License Information upon execution of this License, and thereafter if the Term is for a period greater than one (1) month, in advance on or before the first day of each month during the Term. The monthly License Fee shall be paid to Port in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever. All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. Without limiting its right to revoke or terminate this License or any of its other rights hereunder, Port may increase the License Fee at any time and from time to time upon not less than thirty (30) days written notice to Licensee. The License Fee and all other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees."

5.2. Additional Charges. Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 15.3 (Licensee's Environmental Condition Notice Requirements), 15.8 (SWPPP), 21.1(d) (CMD Form), or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars (\$300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars (\$350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

5.3. Late Charges/Habitual Late Payer. Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Licensee's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

5.4. Default Interest. Any Fees, if not paid within five (5) days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge.

Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

5.5. Returned Checks. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5.6. Rent Credit.

(a) As set forth in the BLI, Licensee may, at Licensee's sole cost and expense, perform the **Dry Dock Preparation Operation**. Such Licensee work shall be performed in conformance with the **Operations Plan** as attached in Exhibit B. Notwithstanding the foregoing, subject to the terms and conditions of Sections 5.7(b) and (c) below, Port shall provide the "**Rent Credit**" to Licensee as set forth in the BLI:

(b) Licensee shall be entitled to receive the Rent Credit and Port shall provide Licensee the Rent Credit only if all of the following conditions are met:

- (i) Licensee is not in default, and has not been in default, under any term or condition of this License;
- (ii) Licensee has complied with the provisions of the **Operations Plan** attached as Exhibit B in connection with Licensee's performance of the **Dry Dock Preparation Operation**;
- (iii) Tenant has fully completed the **Dry Dock Preparation Operation** prior to **December 31st, 2025**;

(c) From and after all the terms and conditions of Section 5.7(b) above have been met, the Rent Credit shall be applied against the immediately against the balance due; provided, however that, in the event all or any portion of the Rent Credit available to Licensee exceeds such balance due, the remaining portion of the Rent Credit shall be null and void. Licensee agrees and acknowledges that any right or claim Licensee may have to any form of Rent Credit that has not yet been actually applied against any balance due ("**unused rent credit**") shall, upon the earlier to occur of (a) a default by Licensee of any term or condition of this License, or (b) the expiration or earlier termination of this License, be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Licensee all or any portion of the unused rent credit.

6. SECURITY DEPOSIT.

Licensee shall pay to Port on or before the Commencement Date, in addition to the advance payment of the first month's License Fee, a deposit, in cash, in the sum specified in the Basic License Information, as security for the faithful performance by Licensee of all terms, covenants and conditions of this License. Licensee agrees that Port may (but shall not be required to) apply the security deposit in whole or in part to (a) pay any sum due to Port under this License, (b) compensate Port for any damage to the License Area caused by Licensee or its Agents or Invitees, (c) cure any default by Licensee, or (d) cure, or attempt to cure, any failure of Licensee to perform any covenant, term or condition of this License. If Port uses any portion of the security deposit to cure any default by Licensee hereunder, Licensee shall replenish the security deposit to the original amount within 24 hours of Port's notice of the amount due. Port's obligation with respect to the security deposit is solely that of debtor and not trustee. Licensee

shall not be entitled to any interest on such security deposit. Port shall not be required to keep the security deposit separate from its general funds. If Licensee is not in default at the termination of this License, Port shall return the unused balance of the security deposit to Licensee after Licensee vacates the License Area. The amount of the security deposit shall in no way limit Licensee's obligations under this License, and nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this License or provided by Law or equity.

Licensee hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the security deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Licensee or any agent, employee or invitee of Licensee, and that following a default by Licensee, all or any portion of the security deposit may be retained by Port following a termination of this License and applied to future damages, including damages for future rent, pending determination of the same.

7. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee is to make and maintain the License Area in a secure condition. Licensee shall maintain the License Area so that it will not be unsafe, unsightly or unsanitary.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials, and *Schedule 2* regarding the condition of the substructure, if any, of the License Area and shall be deemed to have inspected the License Area and accepted the License Area in its "As Is" condition, with all dangerous places and defects, including both latent and patent, and as being suitable for the conduct of Licensee's activity thereon.

Port shall have the full right and authority to make, revoke, impose, and amend any rules and regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no rules and regulations currently exist for the Facility, Licensee agrees to be bound by any rules and regulations Port later imposes on the Facility. Licensee also acknowledges that Port's exercise of any of its rights regarding the License Area and other Port property in the vicinity of the License Area will not entitle Licensee to any abatement or diminution of Fees.

8. PROHIBITED USES.

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Licensee shall not place any object, machinery or equipment on any portion of the License Area that exceeds the load restrictions, if any, described in the Basic License Information or in *Schedule 2*. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "Prohibited Use").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars (\$300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars (\$400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

9. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

9.1. *Compliance With Laws.* Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the License Area.

9.2. *Regulatory Approval.* Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

9.3. *Port Acting As Owner of Property.* By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any

required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

9.4. Accessibility. California Law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The Law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by Law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state Law. Although state Law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause the License Area and Licensee's uses thereof to be conducted in compliance with the all federal or state disability access Laws.

10. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.

10.1. Utilities. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area. Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area or to be used by Licensee. Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

10.2. Services. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

10.3. Maintenance and Repair. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred by Port related

to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

11. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Licensee must provide a copy of this License to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Licensee to timely provide a copy of this License to the County Assessor will be a default under this License. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

12. INSURANCE.

12.1. *Required Insurance.*

Licensee shall maintain throughout the Term, at Licensee's expense, insurance as follows:

(a) Workers' compensation insurance as required by Laws, U.S. Longshore and Harborworker's Act Insurance and Jones Act insurance with employer's liability limit not less than One Million Dollars (\$1,000,000) for each accident, on employees eligible for each. Notwithstanding the foregoing, so long as Licensee does not (i) operate, use, or berth any watercraft vessels or floating barges owned or operated by Licensee, and (ii) employ any maritime workers within the License Area for loading, unloading, building, repairing, dismantling, or longshoring of any watercraft or marine vessel, Licensee shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(b) Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence with a combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Licensee is conducting any activity on or Alteration or Improvement to the License Area with risk of explosion, collapse or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(c) Comprehensive or Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired automobiles, as applicable, which

insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Licensee's activity on, in or around the License Area. If parking is a Permitted Activity under this License, Licensee must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Licensee's Agents and Invitees.

(d) **Personal Property Insurance.** Licensee, at its sole cost and expense, shall procure and maintain on all of Licensee's personal property and if applicable, any alterations or improvements Licensee is permitted to make as described in the Basic License Information, in, on, or about the License Area, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Licensee's sole discretion, for the replacement of Licensee's personal property and if applicable, alterations and improvements. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Licensee by Port pursuant to this License in such amounts as Port deems reasonably appropriate and Licensee shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Licensee's personal property, alterations, or any improvements regardless of cause of loss.

(e) **Other Coverage.** Such other insurance as required by Law or as City's Risk Manager may require.

12.2. Claims Made Policy. Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

12.3. Annual Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

12.4. Payment of Premiums. Licensee shall pay all the premiums for maintaining all required insurance.

12.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Licensee (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the License Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this License or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the License Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

12.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Licensee hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

(c) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(d) Licensee shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking system such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Licensee's broker shall complete the insurance questionnaire and submit all required documentation. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Licensee to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility with respect to risks comparable to those associated with the use of the License Area.

13. NOTICES.

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

14. DEFAULT BY LICENSEE; REMEDIES.

14.1. *Event of Default.* The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(c) Failure to perform the obligations under any Berthing Agreement associated with any Dry Dock Preparation Operation, if the failure to perform is not cured within the cure period set forth in the Berthing Agreement, if any; or

(d) An assignment, or attempted assignment, of this License by Licensee; or

(e) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

14.2. Port's Remedies. Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

15. INDEMNITY AND EXCULPATION.

15.1. General Indemnity. Licensee shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Licensee, or loss or damage to or destruction of any property occurring in, on or about the License Area, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy, manner of use or occupancy, or condition of the License Area or the activities therein by Licensee, its Agents, or Invitees, or (d) any construction or other work undertaken by Licensee on the License Area whether before or during the Term, or (e) any acts, omissions or negligence of Licensee, its Agents or Invitees, in, on or about the License Area, the Facility or any other Port property.

15.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under Section 14.1, Licensee, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Licensee's Exacerbation of any Hazardous Material Condition.

(b) Licensee's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the License Area or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Area or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Licensee must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Licensee's obligations hereunder shall survive the expiration or earlier termination of this License.

15.3. Scope of Indemnities. The Indemnification obligations of Licensee set forth in this License shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Licensee set forth in this License shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this License. Except as specifically provided otherwise, the Indemnification obligations of Licensee set forth in this License shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Licensee's obligation to Indemnify the Indemnified Parties, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Licensee set forth in this License, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Licensee shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

15.4. Exculpation and Waiver. To the fullest extent permitted by Law, Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Licensee, and Licensee hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the License Area by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the License Area, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the License Area, the Facility or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this License prior to the Commencement Date, (ix) inability to use all or any portion of the License Area due to sea level rise, and (x) any other acts, omissions or causes to the fullest extent permitted by Law.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this License might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this License shall remain effective. Therefore, with respect to the Claims released in this License, Licensee waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials: _____
Name: _____
Title: _____

Licensee specifically acknowledges and confirms the validity of the release made above and the fact that Licensee was represented by counsel who explained the consequences of the release at the time this License was made, or that Licensee had the opportunity to consult with counsel, but declined to do so.

15.5. *Survival.* The provisions of Section 14 shall survive the expiration or earlier termination of this License.

16. HAZARDOUS MATERIALS.

16.1. *Requirements for Handling.* Neither Licensee nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the License Area or any other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

16.2. *Licensee Responsibility.* Licensee agrees to protect its Agents and Invitees in its operations on the License Area from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area, each of them:

(a) will not permit any Hazardous Materials to be present in, on, under or about the License Area, any other part of the Facility, or other Port property except as permitted under Section 15.1 (Requirements for Handling);

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition, and will not engage in or permit any activity at the License Area or any other Port property, or in the operation of any vehicles or vessels used in connection with the License Area in violation of any Environmental Laws.

16.3. *Licensee's Environmental Condition Notice Requirements.*

(a) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1 (Requirements for Handling), Handled, in, on, or about the License Area, any other Port property, or the environment, or from any vehicles or vessels that Licensee, its Agents or Invitees use during Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the License Area, any other Port property, or the environment, or from any vehicles or vessels Licensee or its Agents or Invitees uses during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the License

Area, the Facility, other Port property, or the environment, or from any vehicles or vessels Licensee or its Agents or Invitees use during Licensee's occupancy of the License Area;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the License Area, the Facility, other Port property, or the environment, or from any vehicles or vessels that Licensee or its Agents or Invitees use during Licensee's occupancy of the License Area; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(c) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Licensee's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any Environmental Regulatory Approval, plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area, including a "Spill Prevention Control and Countermeasure Plan." Licensee must provide Port with copies of any of the documents within the scope of this Section upon Port's request.

(e) Licensee must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. Upon Port's request, Licensee must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Licensee will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

16.4. Requirement to Remediate.

(a) Licensee's Remediation obligations under this Subsection (a) are subject to Subsection (b).

(i) After notifying Port in accordance with Section 15.3(a) (Licensee's Environmental Condition Notice Requirements), Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License, any Hazardous Material Condition occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy any part of the License Area. Licensee must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this License terminates for any reason, Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License: (A) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be

Remediated by any Regulatory Agency if Remediation would not have been required but for Licensee's use of the License Area.

(iii) If Environmental Laws require a Remediation action plan, Licensee must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area in any manner related directly, or indirectly to Hazardous Materials.

(b) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition, Licensee will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Licensee's occupancy of the License Area; or (ii) arising before the Commencement Date or the date of Licensee's first use of the License Area, whichever is earlier.

16.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the License Area for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 16 (Port's Entry on License Area). Port's failure to inspect or obtain samples or to detect conditions attributable to Licensee's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Licensee's responsibility under this License.

16.6. Notification of Asbestos. Port hereby notifies Licensee, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Cal OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in *Schedule 1* attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in Schedule 1 attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Licensee hereby acknowledges receipt of the notification specified in the first paragraph of this Section and the notice or report attached as Schedule 1 hereto and understands, after having consulted its legal counsel (or having had the opportunity but declining to do so), that it must make its Agents aware of the presence of ACMs and/or PACMs in or about the License Area in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Licensee further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its Agents regarding the presence of ACMs and PACMs at the License Area and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Licensee agrees that its waiver of Claims set forth in Section 14.1 (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the License Area and the potential consequences of such fact. Licensee is aware that the presence, or possibility, of asbestos in or about the License Area may limit Licensee's ability to use the License Area without Licensee first performing abatement of such asbestos. The presence of asbestos in the License Area and the removal or non-removal by Port of all or a

portion of the asbestos, whether in the License Area or elsewhere, shall not, however, (i) entitle Licensee to any Claim, (ii) relieve Licensee of any of its obligations hereunder, including without limitation the obligation to pay License Fees, or (iii) constitute or be construed as a breach of Licensee's rights under this License.

Notwithstanding any other provisions of this License, Licensee agrees to Indemnify Port for Licensee's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

16.7. Notification of Lead. Port hereby notifies Licensee of the potential presence of lead-containing and presumed lead-containing materials in the License Area or Facility. Disturbance or removal of lead is regulated by among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and Port Building Code § 3424.

Licensee agrees that its waiver of Claims set forth in Section 14 (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the License Area and the potential consequences of such fact. Licensee is aware that the presence, or possibility, of lead in or about the License Area may limit Licensee's ability to use the License Area without Licensee first performing abatement of such lead. The presence of lead in the License Area and the removal or non-removal by Port of all or a portion of the lead, whether in the License Area or elsewhere, shall not, however, (i) entitle Licensee to any Claim, (ii) relieve Licensee of any of its obligations hereunder, including without limitation the obligation to pay License Fees, or (iii) constitute or be construed as a breach of Licensee's rights under this License.

Notwithstanding any other provisions of this License, Licensee agrees to defend and Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims for damages arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

16.8. Storm Water Pollution Prevention.

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

16.9. Presence of Hazardous Materials. California Law requires landlords to disclose the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in **Schedule 1** attached hereto and the Hazardous Materials described in the reports listed in **Schedule 3** attached hereto, copies of

which have been delivered to or made available to Licensee. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16.10. *Survival.* Licensee's obligations under this Section 15 (Hazardous Materials) shall survive the expiration or earlier termination of this License.

17. PORT'S ENTRY ON LICENSE AREA.

17.1. *Entry for Inspection.* Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

17.2. *Emergency Entry.* Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

17.3. *No Liability.* Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

18. IMPROVEMENTS AND ALTERATIONS.

Unless specified in the Basic License Information, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

19. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in good condition (except for ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Licensee, or Licensee otherwise performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing,

removing and disposing of abandoned property and repairing any damage to the License Area or the Facility resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

20. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

20.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

20.2. *City Attorney.* For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in Law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

20.3. *Limitation on Damages.* Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

20.4. *Non-Liability of City Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

20.5. *Limitation on Port's Liability Upon Transfer.* In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or

obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

21. MINERAL RESERVATION.

The State of California (“**State**”), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State’s exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

22. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License to the extent applicable to Licensee and this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any applicable code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

22.1. Nondiscrimination.

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

22.2. Requiring Health Benefits for Covered Employees. Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 12Q.3(d) of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a "small business" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 21.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Licensee shall notify the Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Licensee based on the Sublicensee's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

22.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this License.

22.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises (LBEs) in Licensee's operations. Licensee agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

22.5. Indoor Air Quality. Licensee agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

22.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

22.7. Prohibition of Alcoholic Beverages Advertising. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes

the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

22.8. Graffiti Removal. Licensee agrees to remove all graffiti from the License Area, including from the exterior of the Facility if included within the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

22.9. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

22.10. MacBride Principles Northern Ireland. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages

such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

22.11. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.12. *Preservative-Treated Wood Containing Arsenic.* Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

22.13. *Notification of Limitations on Contributions.* If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.13 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee's bid or contract. Additionally, Licensee certifies that if this Section 21.13 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

22.14. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary

financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22.15. *Conflicts of Interest.* Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

22.16. *Drug-Free Workplace.* Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

22.17. *Prevailing Wages and Working Conditions.* Licensee shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee’s failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Licensee shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

22.18. *Public Transit Information.* Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee

employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Licensee's sole expense.

22.19. Food Service and Packaging Waste Reduction Ordinance. Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

22.20. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Licensee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Chapter 12T**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee shall incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the License Area, and shall require all sublicensees to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection shall constitute a material breach of this License.

(c) Licensee and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Licensee and sublicensees shall post the notice prepared by OLSE, available on OLSE’s website, in a conspicuous place at the License Area and at other workplaces

within San Francisco where interviews for job opportunities at the License Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 12T.8.

22.21. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Licensee's improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee's improvements or alterations, Licensee shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

22.22. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Licensee shall provide community benefits and beautification measures in consideration for the use of the License Area. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the License Area; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Licensee's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the License Area that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the License Area of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the San Francisco Human Rights Commission as "Local Business Enterprises" under the City's

Local Business Enterprise and Nondiscrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Licensee agrees to provide Port with documents and records regarding these activities upon Port's request.

22.23. Local Truckers. As material consideration for Port's agreement to enter into this License, Licensee agrees that, for all directly contracted or service agreement trucking opportunities associated with Licensee's operations at the License Area, including, without limitation, hauling of materials on and off the License Area, Licensee shall make good faith efforts to first use Local Truckers.

For purposes of this Section, "truckers" means a business that provides trucking services for a profit. "Local truckers" means those truckers that are certified by the Contract Monitoring Division of the City's General Services Agency as "Local Business Enterprises" pursuant to the City's Local Business Enterprise and Nondiscrimination in Contracting Ordinance as amended from time to time (Administrative Code Chapter 14B.)

To the extent that Licensee in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Licensee shall use Local Truckers for a minimum of sixty percent (60%) of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the sixty percent (60%) requirement; equipment rental and disposal fees will not be counted. Notwithstanding the foregoing, if Licensee fails to meet the sixty percent (60%) minimum, Licensee shall not be in default of this provision so long as Licensee first offered trucking opportunities to Local Truckers, and such Local Truckers were unavailable or unwilling to perform the work.

Licensee shall submit a monthly report to the Port and CMD stating the total cost to Licensee of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers by the Licensee. The monthly report shall document all truckers who conducted contract or service agreement work for Licensee, and identify those truckers which are Local Truckers. If Licensee fails to meet the 60% minimum in any month, the report shall document Licensee's good faith outreach efforts to contact Local Truckers and the reasons that such work could not be conducted by Local Truckers. At Port or CMD's request, Licensee shall provide additional documentation required to ensure Licensee's compliance with this provision. Licensee's failure to comply with this Section shall be deemed a material breach under this License subject to the default provisions of Section 13 (Default by Licensee; Remedies).

22.24. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Licensee shall not install or permit any vending machine on the License Area without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this License. Without limiting Port's other rights and remedies under this License, Port shall have the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

22.25. Licensee's Compliance with City Business and Tax Regulations Code. Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 21.24 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

22.26. Consideration of Salary History. Licensee shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

22.27. Labor Peace Agreement. The City has adopted a Labor Peace Agreement ordinance ("LPA Ordinance") codified at SF Administrative Code Section 23.70 et seq.) which requires among other things, Employers of Employees working in Excursion Vessel Operations to agree, upon request by their Employees' labor representative, to enter into a Labor Peace Agreement with a union seeking recognition containing specified minimum terms and to engage in mediation and arbitration if the parties are unable to agree on the terms of a Labor Peace Agreement within the specified timeframe and to make certain reports to the Office of Labor Standards and Enforcement ("OLSE"). Licensee shall comply with the requirements of the LPA Ordinance unless it: (i) employs fewer than forty (40) employees in vessel operations; (ii) is signatory to a valid and binding collective bargaining agreement as to the union seeking recognition; or (iii) meets any of the other exemptions in the LPA Ordinance as determined by OLSE. In addition, Licensee shall include, as a material term in any Subcontract the following language: "San Francisco Administrative Code Chapter 23, Article VIII, commencing at Section 23.70, which applies to [Subcontractor], is incorporated herein by reference. To the extent [Subcontractor] employs Employees in Excursion Vessel Operations within the scope of Administrative Code Chapter 23, Article VIII, [Subcontractor] hereby agrees as a material condition of this subcontract to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor's] Employees, if and as required by Article VIII, and to otherwise fully comply with the requirements of that Article."

Licensee's failure to comply with the LPA Ordinance or this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.74 against the breaching party.

23. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar Law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

24. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written

consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

25. MISCELLANEOUS PROVISIONS.

25.1. California Law; Venue. This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

25.2. Entire Agreement. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

25.3. Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

25.4. Severability. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

25.5. Interpretation of License.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time

during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(g) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(h) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

25.6. Successors. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

25.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

25.8. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

25.9. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

25.10. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not

be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

25.11. *Time is of Essence.* Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

25.12. *Cumulative Remedies.* All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

25.13. *Survival of Indemnities.* Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

25.14. *Relationship of the Parties.* Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

25.15. *No Recording.* Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

25.16. *Additional Written Agreement Required.* Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

26. DEFINITIONS.

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"ACMs" is defined in Section 15.6.

"Agents" when used with reference to either party to this License or any other person, means the officers, directors, commissioners, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"Basic License Information" refers to the summary of basic license information attached to this License.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"Cal-OSHA" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"City" is defined in Section 1.

"Claim" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date specified in the Basic License Information.

"Cure Period" means the period of time described in the Basic License Information.

"Dry Dock Preparation Operation" means maritime operations, support, and repair work associated with the preparation of the Dry Dock No. 2 and Dry Dock Eureka for transport.

"Dry Dock " means either that certain item of floating equipment known as Dry Dock No. 2 or Dry Dock Eureka, or both.

"Encroachment Area" is defined in Section 2.2.

"Encroachment Area Charge" is defined in Section 2.2.

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Facility. Environmental Laws include the Risk Management Plan for Pier 70 (Treadwell & Rollo, 7/25/13) as amended and as interpreted by Regulatory Agencies with jurisdiction ("**RMP**").

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

"Exacerbate" or **"Exacerbating"** when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee's operations, Investigations, maintenance, repair, Improvements and Alterations under this License. **"Exacerbation"** has a correlating meaning.

"Expiration Date" means the date specified in the Basic License Information.

"Facility" means the pier, building or other structure in or on which the License Area is located.

"FSP" means the Facility Security Plan for the Facilities required by the Marine Transportation Security Act of 2002 (MTSA) guidelines, including any amendments or changes to the FSP during the term of this Agreement.

"Fees" means the License Fee and all other sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"Handle" or **"Handling"** means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the License Area, any Improvements to be constructed on the License Area by or on behalf of Licensee, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the License Area, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Material, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or any other Port property, the loss or restriction of the use or any amenity of the License Area or any other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the License Area, any other Port property, or the environment, or from any vehicles or vessels Licensee, or its Agents and Invitees uses during Licensee's occupancy of the License Area.

"Indemnified Parties" is defined in Section 14.1.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever.

"Indemnification" and **"Indemnity"** have correlating meanings.

"Interest Rate" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property, or the environment, and includes, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitees" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

"Late Charge" means a fee equivalent to fifty dollars (\$50.00).

"Law" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

"License" is defined in Section 1.

"**License Area**" means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**PACMs**" is defined in Section 15.6.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Port**" is defined in Section 1.

"**Port's Termination Right**" is defined in Section 3.

"**Prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area, any other part of the Facility, other Port property, or the environment.

"**Remediate**" or "**Remediation**" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"**RMP**" is defined in the Basic Lease Information.

"**SWPPP**" is defined in Section 15.8.

"**Term**" is defined in Section 3.

"**Waiving Party**" is defined in Section 11.5.

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IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: [INSERT NAME OF LICENSEE]

By: _____
Name: _____
Title: _____

Date signed: _____

By: _____
Name: _____
Title: _____

Date signed: _____

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Andre Coleman,
Deputy Director, Maritime

Date signed: _____

Approved as to Form: DAVID CHIU, City Attorney

By: _____
Deputy City Attorney

License Prepared by Demetri Amaro,
Maritime Business Development Manager _____(initial)

EXHIBIT A
LICENSE AREA

(To be attached.)

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EXHIBIT B
OPERATIONS PLAN

(To be attached.)

EXHIBIT C
BERTH AGREEMENT

(To be attached.)

SCHEDULE 1

ASBESTOS NOTIFICATION AND INFORMATION

(To be attached.)

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SCHEDULE 2

Substructure Report(s)

(To be attached.)

SCHEDULE 3
HAZARDOUS MATERIALS DISCLOSURE