

**FORM AMENDMENT FOR SECTOR A PERCENTAGE RENT TENANTS/LICENSEES**

**[#] AMENDMENT TO**

**LEASE No. L-xxxx**

**Tenant name**

This [#] Amendment to Lease No. L-xxx (“Amendment”) is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), operating through the SAN FRANCISCO PORT COMMISSION (“Port”), as landlord, and [tenant name], a [type entity], as tenant (“Tenant”) and is dated for reference purposes only as of [date, 2020].

**RECITALS**

**A.** Port and Tenant entered Lease No. L-xxx dated for reference purposes only as of [month xx, xxxx for use of that certain real property located at [location] in the City and County of San Francisco [, as amended by the First Amendment dated for reference purposes as of date; the Second Amendment dated for reference purposes as of date; etc., (“Lease”) (See Port Commission Resolutions xx-xx, xx-xx and Board of Supervisors’ Resolutions xxx-xx; xxx-xx). The Lease commenced on xxxxxxxx xx, xxxx and will expire on xxxxxxxx xx, xxxx (“Expiration Date”)[/or expired on xxxxxxxx xx, xxxx (“Expiration Date”) and has been on month to month holdover status since that date]. **Add for shared spaces licensees:** In connection with the Lease, Port and Tenant, as licensee, also entered into License No. xxxx (“License”) which allows Tenant to conduct outdoor operations subject to the terms and conditions of the License and the Lease, including the obligation to report and pay as a monthly license fee, the percentage rent due to Port in the percentage specified in the Lease. The License expires on December 31, 2020.

**B.** Consistent with Port Commission Resolution xx-xx, the Port desires to forgive certain rent payments due to Port in order to address the devastating financial impacts of the COVID-19 pandemic on Tenant’s business. Amending the Lease to forgive such amounts is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant’s ability to continue operations at the Port, while at the same time meeting the Port’s own goals, including protecting its revenue streams and assets; supporting the Port’s maritime mission and its small local business tenants and aligning Port’s and Tenant’s interest in promoting a shared prosperity partnership, and is in the best interests of the Port’s long-term financial health.

**C.** The Port’s Executive Director has determined that this Amendment satisfies the requirements of Port Commission Resolution xx-xx.]

**D.** As material consideration for this Amendment, Tenant must comply with all Lease provisions as modified by this Amendment. This Amendment is narrowly tailored to relieve Tenant’s rent obligations only and is not intended to excuse, waive, suspend or modify any other provision or obligation of either party under the Lease. Except as explicitly provided in this Amendment as to rent, nothing in this Amendment is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Lease. The parties agree that each of the terms in this Amendment are material and that Port would not have agreed to this Amendment absent such terms.

**E.** The Lease and this Amendment shall collectively be referred to as the “Lease”. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in original Lease as amended.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Lease as follows:

## AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Lease Compliance.** Except as explicitly provided in this Amendment, this Amendment does not excuse, waive, suspend or modify any provision or obligation of Tenant under the Lease, including without limitation the obligation to pay all amounts owed prior to the Effective Date. Tenant shall comply with all terms and conditions of the Lease as modified by this Amendment. Tenant agrees that, in addition to any remedies under the Lease, upon an uncured default by Tenant of any term or condition of the Lease, including without limitation, the terms and conditions of this Amendment, the provisions of Sections 3, 4 and 6 of this Amendment shall automatically terminate and be of no further force or effect as of the date of default. Tenant acknowledges and agrees that compliance with the Lease is a material condition of this Amendment and that Port would not have agreed to this Amendment absent such terms.
3. **Rent Forgiveness.**

(a) For purposes of this Amendment, the “**Forgiveness Period**” is that period beginning on March 1, 2020 and ending on the earlier of: (i) April 30, 2021; or (ii) the last day of the third consecutive calendar month in which Tenant’s percentage rent (or a similarly defined term under the Lease for Port’s participation rent based on Tenant’s revenues) equals or exceeds the base rent otherwise due under the terms of the Lease. In the case of the Forgiveness Period expiring under (ii) above, base rent for the next month (the fourth (4<sup>th</sup>) month) will be due at the same time as the next percentage rent payment. Tenant’s obligation to pay base rent (or a similarly defined term under the Lease for guaranteed minimum monthly payments) including any late fees and interest on past due amounts is hereby waived and forgiven during the Forgiveness Period; provided that

(i) subject to compliance with any order of the SF Health Officer, Tenant’s business is open any of the following: take-out, outdoor, curbside or indoor dining for a minimum of ten (10) days per calendar month for four (4) hours each day; and Tenant provides satisfactory written documentation of compliance with the required open hours upon Port’s request;

(ii) Tenant pays percentage rent (or a similarly defined term under the Lease for Port’s participation rent based on Tenant’s revenues) in the percentage specified in the Lease during the Forgiveness Period;

(iii) Tenant submits timely reports as required by the Lease including without limitation, monthly and annual revenue reports used to calculate and verify percentage rent due to Port (however such reports are defined in the Lease).

(b) Notwithstanding any other provision of this Amendment, monies received by Tenant from any federal, regional, state or local government-funded financial aid, grant or loan program including without limitation the Paycheck Protection Program, Economic Injury Disaster Loan program, the San Francisco Hardship Emergency Loan Program (SFHELP), Port’s Micro-LBE Hardship Emergency Loan Program, or Port’s Crab Fisher Assistance Loan Program for the stated purposes of paying rent are not eligible for forgiveness and will be deducted from any forgiveness amount (whether or not actually used to pay rent). Tenant represents and warrants that it has provided and will continuously provide Port with accurate and complete information regarding such funds and further agrees to promptly make its records available to Port for the purpose of determining the accuracy of Tenant’s disclosures. If an audit reveals that Tenant has misrepresented any amounts eligible for forgiveness, Tenant will immediately pay such amounts to Port plus interest from the original due date at ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law. In addition, Tenant shall pay to Port Three Hundred Dollars (\$300.00) which the parties agree represents a fair and reasonable estimate of the

administrative cost and expense which Port will incur by reason of Tenant's misrepresentation. 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 the Lease, at law or in equity.

(c) Tenant agrees to keep Port apprised of its reopening plans and, if applicable, to provide prompt notice of its intent to permanently cease operations on Port property so that the parties can negotiate in good faith for a mutually acceptable termination agreement.

#### 4. **Rent Credits.** Use as applicable or delete

4.1. **Use for restaurant/retail: Rent Credit for Start Up Costs.** As provided in this Section, if Tenant's verified expenditures for improvements and equipment necessary to maximize operations under COVID- 19-related restrictions such as furniture, tents, bollards, canopies, diverters, stanchions, signage and other articles of movable personal property such as removable barriers to enforce social distancing[, including its expenditures necessary to operate under the License] ("**Verified Expenditures**") exceed a minimum of One Thousand Dollars (\$1,000), Tenant is eligible for a rent credit for its Verified Expenditures ( ("**Start Up Rent Credit**"). Ongoing operational costs, such as the cost of marketing and advertising costs, personal protective equipment, hand sanitizer and other cleaning products, and plastic utensils are not eligible for a rent credit.

(a) Tenant shall be eligible for the Start Up Rent Credit only if all of the following conditions are met:

(i) With respect to any Alterations or Improvements, Tenant has performed such Alterations or Improvements in conformance with provisions of the Lease regarding alterations and improvements including the requirement to obtain a building permit and all regulatory approvals; and

(ii) Verified Expenditures must have been made after March 16, 2020;

(iii) For Verified Expenditures made after March 16, 2020 and prior to the Effective Date; no later than the date that is thirty (30) days after the Effective Date, Tenant must provide to Port and Port must review and approve proof of payment including as applicable: copies of receipts, cancelled checks, invoices marked "Paid," unconditional lien waivers from all contractors, subcontractors, suppliers and materialmen who provided any labor, materials or services related to any Alterations or Improvements, and other items reasonably acceptable to Port evidencing proof of such expenditures ("**Proof of Payment**"). For any expenditures after the Effective Date, Tenant must provide to Port and Port must review and approve Proof of Payment within thirty (30) days of such expenditure.

(b) The Start Up Rent Credit shall be applied first to any balance outstanding prior to March 1, 2020 and then to other amounts due.

(c) The Start Up Rent Credit shall be applied against rents next due after the Effective Date under [the License and/or] the Lease and in each successive month until June 30, 2020. Any Start Up Rent Credit amounts not applied as of June 30, 2020 shall expire on June 30, 2020 and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused Start Up Rent Credit.

#### 4.2. **Rent Credit for Rent Paid.**

(a) During the Forgiveness Period, the parties acknowledge that, Tenant paid the Port the amount of xxxxxxxxxxxx (\$xx, xxx) in Rent, even though Tenant could have instead deferred such payments under the Port's Covid-19 tenant relief policies in Port Commission Resolutions 20- 18; 20-27 and 20-30 (the "**Excess Rent Amount**") and that Tenant is eligible for a rent credit in such amount, after applying the Excess Rent Amount to pay any balance

outstanding prior to March 1, 2020 (the “**Rent Paid Rent Credit**”). The Rent Paid Rent Credit is ~~xxxxxxx~~ (\$xxxx).

(b) The Rent Paid Rent Credit shall be applied in the following manner. One-twelfth (1/12) of the Rent Paid Rent Credit (with no interest or escalation) (the “**Monthly Rent Paid Rent Credit**”) will be applied against rent due beginning in the month of July 2021 and in each of the next eleven (11) months (through and including June 2022). The Monthly Rent Paid Rent Credit can be taken against any rent due (including percentage rent), but not against any other fee or charge under the Lease, including without limitation any amounts defined as Additional Rent.

**4.3. Expiration of Rent Credits.** Notwithstanding any other provision of this Amendment, rent credits due but not applied (“**unused rent credits**”) shall expire upon the earlier to occur of (x) a default by Tenant of any term or condition of the Lease; or (y) the expiration or earlier termination of this Amendment or the Lease, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credits.

**5. Worksheet.** The Worksheet attached as *Exhibit A* documents the total applicable forgiveness amount (taking into account deductions) and any applicable rent credits. The parties will update the Worksheet as needed and any such revised Worksheet shall be incorporated into this Amendment by countersignature of the parties without further action.

**6. Lease Expiration.**

In order to allow for the twelve (12) month period needed to apply the full Rent Paid Rent Credit amount as provided under *Section 4.2*, the Lease Expiration Date will be extended to ~~xxxx, xx, xxxx~~.

**Use this language instead for holdover tenants and licensees:** Provided that Tenant strictly complies with the terms and conditions of this Amendment, Port agrees that it will not terminate the Lease/License or otherwise attempt to obtain possession without cause until ~~xxxx, xx, xxxx~~. Port's agreement not to terminate as provided in this Section is not intended to create a term lease, but is for the limited purposes of allowing the Lease/License to continue only until the Rent Paid Rent Credit is fully applied and only so long as Tenant is in strict compliance with all terms of this Amendment.

**7. Tax Consequences.** Tenant is solely responsible for seeking advice from its own legal and financial counsel on the relief provided in this Amendment, and for any liabilities that arise therefrom. No such advice has been given by City in any manner and City is not in any way liable for any tax consequences incurred by Tenant arising directly or indirectly from the agreements, terms and/or conditions of this Amendment.

**8. Mutual Waiver and Release.** Tenant, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the Port, its agents, employees, departments, commissioners, and officers, from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the matters described in this Amendment.

As to such claims, Tenant 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.

Tenant understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Tenant should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Amendment, Tenant will not be permitted to make any claims to recover for such loss, damages or injury against the City and County of San Francisco, its elective and/or appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San Francisco Port Commission. Tenant acknowledges that it intends these consequences even as to claims that may exist as of the date of this Amendment but which Tenant does not know exist, and which, if known, would materially affect Tenant's decision to execute this Amendment, regardless of whether Tenant's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Provided that Tenant strictly comply with the provisions of this Amendment, Port, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge Tenant, its agents and employees from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to claims related to rent forgiven under this Amendment.

Port 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.

Port hereby waives application of Section 1542 of the Civil Code. Port understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Port should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Agreement, or any of them, Port will not be permitted to make any claims to recover for such loss, damages or injury. Port acknowledges that it intends these consequences even as to claims that may exist as of the date of this Agreement but which Port does not know exist, and which, if known, would materially affect Port's decision to execute this Agreement, regardless of whether Port's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The provisions of this Section 8 shall survive the expiration or earlier termination of the Lease.

**9. Disclosures.** Tenant has received and reviewed the disclosures included in *Exhibit B*.

**10. City and Port Requirements.** Sections [x, y, z] of the Lease are hereby deleted and replaced with the following.

“xx **CITY AND PORT REQUIREMENTS.**

The provisions of the San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City and Port policies described or referenced in *Exhibit C* attached hereto are incorporated by reference as though fully set forth in this Lease. The descriptions in *Exhibit C* are not comprehensive but are provided for notice purposes only; Tenant 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. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

**11. Entire Agreement.** This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment 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 such drafts in interpreting this Amendment.

**12. Authority.** Each of the persons executing this Amendment on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Amendment, and that each and all of the persons signing on behalf of Tenant are authorized to do so.

**13. Miscellaneous.** This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment will be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Amendment. The terms of this Amendment are contractual and not a mere recital. The liability of and all rights, powers, and remedies of the parties under this Amendment shall be cumulative and not alternative. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Amendment, other than as expressly set forth herein. This Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

**14. [As applicable, include: Subject to Board of Supervisor's Approval.** Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Amendment unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Amendment and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Amendment will be null and void if City's Mayor and the Board of Supervisors do not approve this Amendment, in their respective sole discretion. Approval of this Amendment by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

**15. Effective Date.** This Amendment is effective upon the date of Port's execution as indicated below.

**Exhibits**

**Exhibit A      Worksheet**

**Exhibit B      Disclosures**

**Exhibit C      City and Port Requirements[REMAINDER OF PAGE LEFT BLANK]**

**IN WITNESS WHEREOF**, Port and Tenant execute this Amendment at San Francisco, California, as of the last date set forth below.

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

By: \_\_\_\_\_  
Michael J. Martin  
Deputy Director, Real Estate and Development

Date Signed: \_\_\_\_\_

**TENANT:**        **[TENANT NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**APPROVED AS TO FORM:**  
**DENNIS J. HERRERA, City Attorney**

By: \_\_\_\_\_  
Name: [Name]  
Deputy City Attorney

Amendment Prepared By: [name] \_\_\_\_\_(initial)

Port Commission Reso. No.  
Board of Supervisors Reso. No.

**EXHIBIT A  
WORKSHEET**

**[Attachment on following pages]**

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**EXHIBIT B  
DISCLOSURES**

**16.**

**Exhibit C**  
**City and Port Requirements**

***xx.1 Nondiscrimination.***

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant 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 Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 29.1(a) above. In addition, Tenant shall incorporate by reference in all subleases 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 subtenants and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the 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 Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

(e) **Penalties.** Tenant 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 Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

***xx.2 Requiring Health Benefits for Covered Employees.***

(a) Unless exempt, Tenant 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).

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

(c) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 29.2(a) above.

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant 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.

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

(f) Tenant 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.

(g) Tenant 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.

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

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

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

(k) 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.

**xx.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. Tenant 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. Tenant 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 Lease.

**xx.4. Local Business Enterprises.** The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with the Contract Monitoring Division ("CMD") of the City's General Services Agency to determine appropriate methods for promoting participation by LBEs. 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>.

**xx.5. Indoor Air Quality.** Tenant 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.

**xx.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.** Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. 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, Tenant 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 Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. 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.

**xx.7. Graffiti Removal.** Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant'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 Lease 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.).

**xx.8. 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. Tenant shall not use or apply or allow the use or application of any pesticides on

the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, 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 Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant 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 Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant'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 Tenant 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 Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant 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>.

**xx.9. *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.

**xx.10. *Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Tenant 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, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant 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.

**xx.11. *Preservative-Treated Wood Containing Arsenic.*** Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease 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. Tenant 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 Tenant 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.

**xx.12. *Notification of Limitations on Contributions.*** If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this

Section 29.12 shall apply. Through its execution of this Lease, Tenant 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. Tenant 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. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant'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 (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 29.12 applies, Tenant 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 the persons required to be informed.

**xx.13. *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.

**xx.14. *Conflicts of Interest.*** Through its execution of this Lease, Tenant 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 Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

**xx.15. *Drug-Free Workplace.*** Tenant 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.

**xx.16. *Prevailing Wages and Working Conditions.*** Tenant 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 the 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. Tenant 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”). Tenant 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.

Tenant shall include and shall require its subtenants, 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. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises 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).

**xx.17. All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

**xx.18. Public Transit Information.** Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, 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 Tenant's sole expense.

**xx.19. Food Service and Packaging Waste Reduction Ordinance.** Tenant 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 Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant 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 Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

**xx.20. Consideration Of Criminal History In Hiring And Employment Decisions.**

(a) Tenant 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 Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants 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) Tenant and subtenants 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. Tenant and subtenants 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) . Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants 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 Lease, 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 Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**xx.20.9. 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"). Tenant Improvements and Alterations under this Lease 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. Tenant agrees that it will

comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants 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. Tenant shall cooperate, and require its subtenants 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

**xx.21. San Francisco Bottled Water Ordinance.** Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

**xx.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.** Tenant shall not install or permit any vending machine on the Premises 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"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises 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 Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises 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.

**xx.23. Tenant's Compliance with City Business and Tax Regulations Code.** Tenant 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 Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 29.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**xx.24. Consideration of Salary History.** Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant 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. Tenant 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. Tenant 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>.

**xx.25. Notice of Transfers to Port.** In addition to the obligations under the Lease with respect to reporting transfers, subleases and/or assignments, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

**xx.x. Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56).** That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators."

## FORM AMENDMENT FOR MARITIME SECTOR TENANTS/LICENSEES

### [#] AMENDMENT TO

LEASE No. L-xxxx

Tenant name

This [#] Amendment to Lease No. L-xxx (“Amendment”) is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), operating through the SAN FRANCISCO PORT COMMISSION (“Port”), as landlord, and [tenant name], a [type entity], as tenant (“Tenant”) and is dated for reference purposes only as of [date, 2020].

### RECITALS

A. Port and Tenant entered Lease No. L-xxx dated for reference purposes only as of [month xx, xxxx for use of that certain real property located at [location] in the City and County of San Francisco [, as amended by the First Amendment dated for reference purposes as of date; the Second Amendment dated for reference purposes as of date; etc., (“Lease”) (See Port Commission Resolutions xx-xx, xx-xx and Board of Supervisors’ Resolutions xxx-xx; xxx-xx). The Lease commenced on xxxxxxxx xx, xxxx and will expire on xxxxxxxx xx, xxxx (“Expiration Date”)[/or expired on xxxxxxxx xx, xxxx (“Expiration Date”) and has been on month to month holdover status since that date].

B. Consistent with Port Commission Resolution xx-xx, the Port desires to forgive certain rent payments due to Port in order to address the devastating financial impacts of the COVID-19 pandemic on Tenant’s business. Amending the Lease to forgive such amounts is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant’s ability to continue operations at the Port, while at the same time meeting the Port’s own goals, including protecting its revenue streams and assets; supporting the Port’s maritime mission and its small local business tenants and aligning Port’s and Tenant’s interest in promoting a shared prosperity partnership, and is in the best interests of the Port’s long-term financial health.

C. The Port’s Executive Director has determined that this Amendment satisfies the requirements of Port Commission Resolution xx-xx.]

D. As material consideration for this Amendment, Tenant must comply with all Lease provisions as modified by this Amendment. This Amendment is narrowly tailored to relieve Tenant’s rent obligations only and is not intended to excuse, waive, suspend or modify any other provision or obligation of either party under the Lease. Except as explicitly provided in this Amendment as to rent, nothing in this Amendment is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Lease. The parties agree that each of the terms in this Amendment are material and that Port would not have agreed to this Amendment absent such terms.

E. The Lease and this Amendment shall collectively be referred to as the “Lease”. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in original Lease as amended.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Lease as follows:

### AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Lease Compliance.** Except as explicitly provided in this Amendment, this Amendment does not excuse, waive, suspend or modify any provision or obligation of Tenant under the Lease, including without limitation the obligation to pay all amounts owed prior to the Effective Date. Tenant shall comply with all terms and conditions of the Lease as modified by this Amendment. Tenant agrees that, in addition to any remedies under the Lease, upon an uncured default by Tenant of any term or condition of the Lease, including without limitation, the terms and conditions of this Amendment, the provisions of Sections 3, 4 and 6 of this Amendment shall automatically terminate and be of no further force or effect as of the date of default. Tenant acknowledges and agrees that compliance with the Lease is a material condition of this Amendment and that Port would not have agreed to this Amendment absent such terms.

3. **Rent Forgiveness.**

(a) For purposes of this Amendment, the Forgiveness Period is that period beginning on March 1, 2020 and ending on August 31, 2020. Tenant's obligation to pay rent and any late fees and interest on past due amounts is hereby waived and forgiven during the Forgiveness Period.

(b) Notwithstanding any other provision of this Amendment, monies received by Tenant from any federal, regional, state or local government-funded financial aid, grant or loan program including without limitation the Paycheck Protection Program, Economic Injury Disaster Loan program, the San Francisco Hardship Emergency Loan Program (SFHELP), Port's Micro-LBE Hardship Emergency Loan Program, or Port's Crab Fisher Assistance Loan Program for the stated purposes of paying rent are not eligible for forgiveness and will be deducted from any forgiveness amount (whether or not actually used to pay rent). Tenant represents and warrants that it has provided and will continuously provide Port with accurate and complete information regarding such funds and further agrees to promptly make its records available to Port for the purpose of determining the accuracy of Tenant's disclosures. If an audit reveals that Tenant has misrepresented any amounts eligible for forgiveness, Tenant will immediately pay such amounts to Port plus interest from the original due date at ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law. In addition, Tenant shall pay to Port Three Hundred Dollars (\$300.00) which the parties agree represents a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's misrepresentation. 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 the Lease, at law or in equity.

(c) Tenant agrees to keep Port apprised of its reopening plans and, if applicable, to provide prompt notice of its intent to permanently cease operations on Port property so that the parties can negotiate in good faith for a mutually acceptable termination agreement.

4. **Rent Credits. Use as applicable or delete**

4.1. **Rent Credit for Rent Paid.**

(a) During the Forgiveness Period, the parties acknowledge that, Tenant paid the Port the amount of xxxxxxxxxxxx (\$xx, xxx) in Rent, even though Tenant could have instead deferred such payments under the Port's Covid-19 tenant relief policies in Port Commission Resolutions 20- 18; 20-27 and 20-30 (the "**Excess Rent Amount**") and that Tenant is eligible for a rent credit in such amount, after applying the Excess Rent Amount to pay any balance outstanding prior to March 1, 2020 (the "**Rent Paid Rent Credit**"). The Rent Paid Rent Credit is xxxxxxxx (\$xxxx).

(b) The Rent Paid Rent Credit shall be applied in the following manner. One-twelfth (1/12) of the Rent Paid Rent Credit (with no interest or escalation) (the "**Monthly Rent Paid Rent Credit**") will be applied against rent due beginning in the month of July 2021 and in each of the next eleven (11) months (through and including June 2022). The Monthly Rent Paid

Rent Credit can be taken against any rent due (including percentage rent), but not against any other fee or charge under the Lease, including without limitation any amounts defined as Additional Rent.

**4.2. Expiration of Rent Credits.** Notwithstanding any other provision of this Amendment, rent credits due but not applied (“**unused rent credits**”) shall expire upon the earlier to occur of (x) a default by Tenant of any term or condition of the Lease; or (y) the expiration or earlier termination of this Amendment or the Lease, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credits.

**5. Worksheet.** The Worksheet attached as *Exhibit A* documents the total applicable forgiveness amount (taking into account deductions) and any applicable rent credits. The parties will update the Worksheet as needed and any such revised Worksheet shall be incorporated into this Amendment by countersignature of the parties without further action.

**6. Lease Expiration.**

In order to allow for the twelve (12) month period needed to apply the full Rent Paid Rent Credit amount as provided under *Section 4.1*, the Lease Expiration Date will be extended to **xxxx, xx, xxxx**.

**Use this language instead for holdover tenants and licensees:** Provided that Tenant strictly complies with the terms and conditions of this Amendment, Port agrees that it will not terminate the Lease/License or otherwise attempt to obtain possession without cause until **xxxx, xx, xxxx**. Port's agreement not to terminate as provided in this Section is not intended to create a term lease, but is for the limited purposes of allowing the Lease/License to continue only until the Rent Paid Rent Credit is fully applied and only so long as Tenant is in strict compliance with all terms of this Amendment.

**7. Tax Consequences.** Tenant is solely responsible for seeking advice from its own legal and financial counsel on the relief provided in this Amendment, and for any liabilities that arise therefrom. No such advice has been given by City in any manner and City is not in any way liable for any tax consequences incurred by Tenant arising directly or indirectly from the agreements, terms and/or conditions of this Amendment.

**8. Mutual Waiver and Release.** Tenant, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the Port, its agents, employees, departments, commissioners, and officers, from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the matters described in this Amendment.

As to such claims, Tenant 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.

Tenant understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Tenant should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Amendment, Tenant will not be permitted to make any claims to recover for such loss, damages

or injury against the City and County of San Francisco, its elective and/or appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San Francisco Port Commission. Tenant acknowledges that it intends these consequences even as to claims that may exist as of the date of this Amendment but which Tenant does not know exist, and which, if known, would materially affect Tenant's decision to execute this Amendment, regardless of whether Tenant's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Provided that Tenant strictly comply with the provisions of this Amendment, Port, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge Tenant, its agents and employees from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to claims related to rent forgiven under this Amendment.

Port 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.

Port hereby waives application of Section 1542 of the Civil Code. Port understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Port should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Agreement, or any of them, Port will not be permitted to make any claims to recover for such loss, damages or injury. Port acknowledges that it intends these consequences even as to claims that may exist as of the date of this Agreement but which Port does not know exist, and which, if known, would materially affect Port's decision to execute this Agreement, regardless of whether Port's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The provisions of this Section 8 shall survive the expiration or earlier termination of the Lease.

**9. Disclosures.** Tenant has received and reviewed the disclosures included in *Exhibit B*.

**10. City and Port Requirements.** Sections [x, y, z] of the Lease are hereby deleted and replaced with the following.

**“xx CITY AND PORT REQUIREMENTS.**

The provisions of the San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City and Port policies described or referenced in *Exhibit C* attached hereto are incorporated by reference as though fully set forth in this Lease. The descriptions in *Exhibit C* are not comprehensive but are provided for notice purposes only; Tenant 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. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

**11. Entire Agreement.** This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment 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 such drafts in interpreting this Amendment.

**12. Authority.** Each of the persons executing this Amendment on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Amendment, and that each and all of the persons signing on behalf of Tenant are authorized to do so.

**13. Miscellaneous.** This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment will be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Amendment. The terms of this Amendment are contractual and not a mere recital. The liability of and all rights, powers, and remedies of the parties under this Amendment shall be cumulative and not alternative. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Amendment, other than as expressly set forth herein. This Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

**14. Effective Date.** This Amendment is effective upon the date of Port's execution as indicated below.

#### **Exhibits**

<b>Exhibit A</b>	<b>Worksheet</b>
<b>Exhibit B</b>	<b>Disclosures</b>
<b>Exhibit C</b>	<b>City and Port Requirements</b>

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**IN WITNESS WHEREOF**, Port and Tenant execute this Amendment at San Francisco, California, as of the last date set forth below.

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

By: \_\_\_\_\_  
Michael J. Martin  
Deputy Director, Real Estate and Development

Date Signed: \_\_\_\_\_

**TENANT:**            **[TENANT NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**APPROVED AS TO FORM:**  
**DENNIS J. HERRERA, City Attorney**

By: \_\_\_\_\_  
Name: [Name]  
Deputy City Attorney

Amendment Prepared By: [name] \_\_\_\_\_(initial)

Port Commission Reso. No.  
Board of Supervisors Reso. No.

**EXHIBIT A  
WORKSHEET**

**[Attachment on following pages]**

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**EXHIBIT B  
DISCLOSURES**

**15.**

**Exhibit C**  
**City and Port Requirements**

***xx.1 Nondiscrimination.***

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant 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 Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 29.1(a) above. In addition, Tenant shall incorporate by reference in all subleases 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 subtenants and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the 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 Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

(e) **Penalties.** Tenant 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 Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

***xx.2 Requiring Health Benefits for Covered Employees.***

(a) Unless exempt, Tenant 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).

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

(c) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 29.2(a) above.

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant 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.

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

(f) Tenant 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.

(g) Tenant 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.

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

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

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

(k) 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.

**xx.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. Tenant 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. Tenant 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 Lease.

**xx.4. Local Business Enterprises.** The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with the Contract Monitoring Division ("CMD") of the City's General Services Agency to determine appropriate methods for promoting participation by LBEs. 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>.

**xx.5. Indoor Air Quality.** Tenant 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.

**xx.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.** Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. 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, Tenant 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 Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. 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.

**xx.7. Graffiti Removal.** Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant'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 Lease 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.).

**xx.8. 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. Tenant shall not use or apply or allow the use or application of any pesticides on

the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, 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 Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant 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 Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant'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 Tenant 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 Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant 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>.

**xx.9. *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.

**xx.10. *Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Tenant 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, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant 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.

**xx.11. *Preservative-Treated Wood Containing Arsenic.*** Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease 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. Tenant 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 Tenant 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.

**xx.12. *Notification of Limitations on Contributions.*** If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this

Section 29.12 shall apply. Through its execution of this Lease, Tenant 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. Tenant 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. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant'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 (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 29.12 applies, Tenant 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 the persons required to be informed.

**xx.13. *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.

**xx.14. *Conflicts of Interest.*** Through its execution of this Lease, Tenant 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 Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

**xx.15. *Drug-Free Workplace.*** Tenant 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.

**xx.16. *Prevailing Wages and Working Conditions.*** Tenant 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 the 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. Tenant 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”). Tenant 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.

Tenant shall include and shall require its subtenants, 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. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises 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).

**xx.17. All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

**xx.18. Public Transit Information.** Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, 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 Tenant's sole expense.

**xx.19. Food Service and Packaging Waste Reduction Ordinance.** Tenant 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 Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant 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 Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

**xx.20. Consideration Of Criminal History In Hiring And Employment Decisions.**

(a) Tenant 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 Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants 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) Tenant and subtenants 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. Tenant and subtenants 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) . Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants 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 Lease, 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 Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**xx.20.9. 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"). Tenant Improvements and Alterations under this Lease 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. Tenant agrees that it will

comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants 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. Tenant shall cooperate, and require its subtenants 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

**xx.21. San Francisco Bottled Water Ordinance.** Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

**xx.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.** Tenant shall not install or permit any vending machine on the Premises 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"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises 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 Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises 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.

**xx.23. Tenant's Compliance with City Business and Tax Regulations Code.** Tenant 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 Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 29.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**xx.24. Consideration of Salary History.** Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant 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. Tenant 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. Tenant 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>.

**xx.25. Notice of Transfers to Port.** In addition to the obligations under the Lease with respect to reporting transfers, subleases and/or assignments, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

**xx.x. Prohibition of Alcoholic Beverages Advertising.** Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. 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.

”

## FORM AMENDMENT FOR LBE SECTOR TENANTS/LICENSEES

### [#] AMENDMENT TO

LEASE No. L-xxxx

Tenant name

This [#] Amendment to Lease No. L-xxx (“Amendment”) is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), operating through the SAN FRANCISCO PORT COMMISSION (“Port”), as landlord, and [tenant name], a [type entity], as tenant (“Tenant”) and is dated for reference purposes only as of [date, 2020].

### RECITALS

A. Port and Tenant entered Lease No. L-xxx dated for reference purposes only as of [month xx, xxxx for use of that certain real property located at [location] in the City and County of San Francisco [, as amended by the First Amendment dated for reference purposes as of date; the Second Amendment dated for reference purposes as of date; etc., (“Lease”) (See Port Commission Resolutions xx-xx, xx-xx and Board of Supervisors’ Resolutions xxx-xx; xxx-xx). The Lease commenced on xxxxxxxx xx, xxxx and will expire on xxxxxxxx xx, xxxx (“Expiration Date”)[/or expired on xxxxxxxx xx, xxxx (“Expiration Date”) and has been on month to month holdover status since that date].

B. Consistent with Port Commission Resolution xx-xx, the Port desires to forgive certain rent payments due to Port in order to address the devastating financial impacts of the COVID-19 pandemic on Tenant’s business. Amending the Lease to forgive such amounts is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant’s ability to continue operations at the Port, while at the same time meeting the Port’s own goals, including protecting its revenue streams and assets; supporting the Port’s maritime mission and its small local business tenants and aligning Port’s and Tenant’s interest in promoting a shared prosperity partnership, and is in the best interests of the Port’s long-term financial health.

C. The Port’s Executive Director has determined that this Amendment satisfies the requirements of Port Commission Resolution xx-xx.]

D. As material consideration for this Amendment, Tenant must comply with all Lease provisions as modified by this Amendment. This Amendment is narrowly tailored to relieve Tenant’s rent obligations only and is not intended to excuse, waive, suspend or modify any other provision or obligation of either party under the Lease. Except as explicitly provided in this Amendment as to rent, nothing in this Amendment is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of the Lease. The parties agree that each of the terms in this Amendment are material and that Port would not have agreed to this Amendment absent such terms.

E. The Lease and this Amendment shall collectively be referred to as the “Lease”. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in original Lease as amended.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Lease as follows:

### AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Lease Compliance.** Except as explicitly provided in this Amendment, this Amendment does not excuse, waive, suspend or modify any provision or obligation of Tenant under the

Lease, including without limitation the obligation to pay all amounts owed prior to the Effective Date. Tenant shall comply with all terms and conditions of the Lease as modified by this Amendment. Tenant agrees that, in addition to any remedies under the Lease, upon an uncured default by Tenant of any term or condition of the Lease, including without limitation, the terms and conditions of this Amendment, the provisions of Sections 3, 4 and 6 of this Amendment shall automatically terminate and be of no further force or effect as of the date of default. Tenant acknowledges and agrees that compliance with the Lease is a material condition of this Amendment and that Port would not have agreed to this Amendment absent such terms.

### **3. Rent Forgiveness.**

(a) For purposes of this Amendment, the Forgiveness Period is that period beginning on March 1, 2020 and ending on May 31, 2020. Tenant's obligation to pay rent and any late fees and interest on past due amounts is hereby waived and forgiven during the Forgiveness Period; provided that Tenant was certified as a "local business enterprise" or "LBE" by the City's Contract Monitoring Division ("CMD") of the City's General Services Agency under the program requirements set forth in SF Administrative Code Chapter 14B throughout the Forgiveness Period. Tenant must provide satisfactory written documentation of its continuing LBE status promptly upon Port's request.

(b) Notwithstanding any other provision of this Amendment, monies received by Tenant from any federal, regional, state or local government-funded financial aid, grant or loan program including without limitation the Paycheck Protection Program, Economic Injury Disaster Loan program, the San Francisco Hardship Emergency Loan Program (SFHELP), Port's Micro-LBE Hardship Emergency Loan Program, or Port's Crab Fisher Assistance Loan Program for the stated purposes of paying rent are not eligible for forgiveness and will be deducted from any forgiveness amount (whether or not actually used to pay rent). Tenant represents and warrants that it has provided and will continuously provide Port with accurate and complete information regarding such funds and further agrees to promptly make its records available to Port for the purpose of determining the accuracy of Tenant's disclosures. If an audit reveals that Tenant has misrepresented any amounts eligible for forgiveness, Tenant will immediately pay such amounts to Port plus interest from the original due date at ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law. In addition, Tenant shall pay to Port Three Hundred Dollars (\$300.00) which the parties agree represents a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's misrepresentation. 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 the Lease, at law or in equity.

(c) Tenant agrees to keep Port apprised of its reopening plans and, if applicable, to provide prompt notice of its intent to permanently cease operations on Port property so that the parties can negotiate in good faith for a mutually acceptable termination agreement.

### **4. Rent Credits. Use as applicable or delete**

#### **4.1. Rent Credit for Rent Paid.**

(a) During the Forgiveness Period, the parties acknowledge that, Tenant paid the Port the amount of xxxxxxxxxxxx (\$xx, xxx) in Rent, even though Tenant could have instead deferred such payments under the Port's Covid-19 tenant relief policies in Port Commission Resolutions 20- 18; 20-27 and 20-30 (the "Excess Rent Amount") and that Tenant is eligible for a rent credit in such amount, after applying the Excess Rent Amount to pay any balance outstanding prior to March 1, 2020 (the "Rent Paid Rent Credit"). The Rent Paid Rent Credit is xxxxxxxx (\$xxxx).

(b) The Rent Paid Rent Credit shall be applied in the following manner. One-twelfth (1/12) of the Rent Paid Rent Credit (with no interest or escalation) (the "Monthly Rent

**Paid Rent Credit**”) will be applied against rent due beginning in the month of July 2021 and in each of the next eleven (11) months (through and including June 2022). The Monthly Rent Paid Rent Credit can be taken against any rent due (including percentage rent), but not against any other fee or charge under the Lease, including without limitation any amounts defined as Additional Rent.

**4.2. Expiration of Rent Credits.** Notwithstanding any other provision of this Amendment, rent credits due but not applied (“**unused rent credits**”) shall expire upon the earlier to occur of (x) a default by Tenant of any term or condition of the Lease; or (y) the expiration or earlier termination of this Amendment or the Lease, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credits.

**5. Worksheet.** The Worksheet attached as *Exhibit A* documents the total applicable forgiveness amount (taking into account deductions) and any applicable rent credits. The parties will update the Worksheet as needed and any such revised Worksheet shall be incorporated into this Amendment by countersignature of the parties without further action.

**6. Lease Expiration.**

In order to allow for the twelve (12) month period needed to apply the full Rent Paid Rent Credit amount as provided under *Section 4.1*, the Lease Expiration Date will be extended to **xxxx, xx, xxxx**.

**Use this language instead for holdover tenants and licensees:** Provided that Tenant strictly complies with the terms and conditions of this Amendment, Port agrees that it will not terminate the Lease/License or otherwise attempt to obtain possession without cause until **xxxx, xx, xxxx**. Port's agreement not to terminate as provided in this Section is not intended to create a term lease, but is for the limited purposes of allowing the Lease/License to continue only until the Rent Paid Rent Credit is fully applied and only so long as Tenant is in strict compliance with all terms of this Amendment.

**7. Tax Consequences.** Tenant is solely responsible for seeking advice from its own legal and financial counsel on the relief provided in this Amendment, and for any liabilities that arise therefrom. No such advice has been given by City in any manner and City is not in any way liable for any tax consequences incurred by Tenant arising directly or indirectly from the agreements, terms and/or conditions of this Amendment.

**8. Mutual Waiver and Release.** Tenant, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the Port, its agents, employees, departments, commissioners, and officers, from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the matters described in this Amendment.

As to such claims, Tenant 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.

Tenant understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Tenant should eventually suffer additional or further loss, damages or

injury arising out of or in any way related to any of the events which gave rise to this Amendment, Tenant will not be permitted to make any claims to recover for such loss, damages or injury against the City and County of San Francisco, its elective and/or appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San Francisco Port Commission. Tenant acknowledges that it intends these consequences even as to claims that may exist as of the date of this Amendment but which Tenant does not know exist, and which, if known, would materially affect Tenant's decision to execute this Amendment, regardless of whether Tenant's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Provided that Tenant strictly comply with the provisions of this Amendment, Port, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge Tenant, its agents and employees from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to claims related to rent forgiven under this Amendment.

Port 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.

Port hereby waives application of Section 1542 of the Civil Code. Port understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Port should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Agreement, or any of them, Port will not be permitted to make any claims to recover for such loss, damages or injury. Port acknowledges that it intends these consequences even as to claims that may exist as of the date of this Agreement but which Port does not know exist, and which, if known, would materially affect Port's decision to execute this Agreement, regardless of whether Port's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The provisions of this Section 8 shall survive the expiration or earlier termination of the Lease.

**9. Disclosures.** Tenant has received and reviewed the disclosures included in *Exhibit B*.

**10. City and Port Requirements.** Sections [x, y, z] of the Lease are hereby deleted and replaced with the following.

**“xx CITY AND PORT REQUIREMENTS.**

The provisions of the San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City and Port policies described or referenced in *Exhibit C* attached hereto are incorporated by reference as though fully set forth in this Lease. The descriptions in *Exhibit C* are not comprehensive but are provided for notice purposes only; Tenant 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. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or

highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

**11. Entire Agreement.** This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment 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 such drafts in interpreting this Amendment.

**12. Authority.** Each of the persons executing this Amendment on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Amendment, and that each and all of the persons signing on behalf of Tenant are authorized to do so.

**13. Miscellaneous.** This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment will be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Amendment. The terms of this Amendment are contractual and not a mere recital. The liability of and all rights, powers, and remedies of the parties under this Amendment shall be cumulative and not alternative. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Amendment, other than as expressly set forth herein. This Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

**14. Effective Date.** This Amendment is effective upon the date of Port's execution as indicated below.

**Exhibits**

- Exhibit A      Worksheet**
- Exhibit B      Disclosures**
- Exhibit C      City and Port Requirements**

[REMAINDER OF PAGE LEFT BLANK]

**IN WITNESS WHEREOF**, Port and Tenant execute this Amendment at San Francisco, California, as of the last date set forth below.

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

By: \_\_\_\_\_  
Michael J. Martin  
Deputy Director, Real Estate and Development

Date Signed: \_\_\_\_\_

**TENANT:**        **[TENANT NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**APPROVED AS TO FORM:**  
**DENNIS J. HERRERA, City Attorney**

By: \_\_\_\_\_  
Name: [Name]  
Deputy City Attorney

Amendment Prepared By: [name] \_\_\_\_\_(initial)

Port Commission Reso. No.  
Board of Supervisors Reso. No.

**EXHIBIT A  
WORKSHEET**

**[Attachment on following pages]**

**[PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT B  
DISCLOSURES**

**Exhibit C**  
**City and Port Requirements**

***xx.1 Nondiscrimination.***

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant 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 Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 29.1(a) above. In addition, Tenant shall incorporate by reference in all subleases 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 subtenants and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the 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 Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

(e) **Penalties.** Tenant 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 Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

***xx.2 Requiring Health Benefits for Covered Employees.***

(a) Unless exempt, Tenant 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).

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

(c) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 29.2(a) above.

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant 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.

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

(f) Tenant 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.

(g) Tenant 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.

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

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

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

(k) 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.

**xx.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. Tenant 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. Tenant 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 Lease.

**xx.4. Local Business Enterprises.** The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with the Contract Monitoring Division ("CMD") of the City's General Services Agency to determine appropriate methods for promoting participation by LBEs. 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>.

**xx.5. Indoor Air Quality.** Tenant 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.

**xx.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.** Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. 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, Tenant 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 Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. 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.

**xx.7. Graffiti Removal.** Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant'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 Lease 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.).

**xx.8. 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. Tenant shall not use or apply or allow the use or application of any pesticides on

the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, 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 Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant 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 Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant'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 Tenant 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 Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant 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>.

**xx.9. *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.

**xx.10. *Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Tenant 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, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant 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.

**xx.11. *Preservative-Treated Wood Containing Arsenic.*** Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease 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. Tenant 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 Tenant 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.

**xx.12. *Notification of Limitations on Contributions.*** If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this

Section 29.12 shall apply. Through its execution of this Lease, Tenant 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. Tenant 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. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant'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 (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 29.12 applies, Tenant 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 the persons required to be informed.

**xx.13. *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.

**xx.14. *Conflicts of Interest.*** Through its execution of this Lease, Tenant 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 Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

**xx.15. *Drug-Free Workplace.*** Tenant 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.

**xx.16. *Prevailing Wages and Working Conditions.*** Tenant 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 the 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. Tenant 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”). Tenant 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.

Tenant shall include and shall require its subtenants, 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. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises 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).

**xx.17. All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

**xx.18. Public Transit Information.** Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, 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 Tenant's sole expense.

**xx.19. Food Service and Packaging Waste Reduction Ordinance.** Tenant 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 Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant 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 Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

**xx.20. Consideration Of Criminal History In Hiring And Employment Decisions.**

(a) Tenant 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 Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants 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) Tenant and subtenants 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. Tenant and subtenants 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) . Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants 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 Lease, 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 Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**xx.20.9. 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"). Tenant Improvements and Alterations under this Lease 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. Tenant agrees that it will

comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants 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. Tenant shall cooperate, and require its subtenants 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. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. 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.

**xx.21. San Francisco Bottled Water Ordinance.** Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

**xx.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.** Tenant shall not install or permit any vending machine on the Premises 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"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises 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 Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises 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.

**xx.23. Tenant's Compliance with City Business and Tax Regulations Code.** Tenant 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 Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 29.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**xx.24. Consideration of Salary History.** Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant 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. Tenant 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. Tenant 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>.

**xx.25. Notice of Transfers to Port.** In addition to the obligations under the Lease with respect to reporting transfers, subleases and/or assignments, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

**xx.x. Prohibition of Alcoholic Beverages Advertising.** Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. 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."