



GOVERNMENT OF PUERTO RICO  
Ports Authority

AGREEMENT

2018-000089

AP-17-18-(4)-089


In San Juan, Puerto Rico, this 3<sup>rd</sup> day of May 2018.

APPEAR

**AS PARTY OF THE FIRST PART: THE PUERTO RICO PORTS AUTHORITY**, a public corporation and instrumentality of the Government of Puerto Rico, created by Act No. 125 of May 7, 1942, as amended (the "Authority"), represented by its Executive Director, Anthony O. Maceira-Zayas, , of legal age, single, attorney at law and resident of San Juan, Puerto Rico.

**AS PARTY OF THE SECOND PART: NFENERGÍA LLC**, a limited liability company organized under the laws of the Commonwealth of Puerto Rico, with register number (the "Lessee"), represented by herein by its Authorized Signatory, Brannen G. McElmurray, of legal age, married and resident of New York, New York, who is authorized to appear herein pursuant to a Certificate of Resolution to that effect.

STATE

 **WHEREAS**, the Authority is the owner in fee simple of certain parcels of land and berths, including certain structures located thereon, known as Wharves A and B located in the Puerto Nuevo Port of the Municipality of San Juan, Puerto Rico, and recorded in the Registry of the Property of Puerto Rico at Page 176 of Volume 645 under property number 21394 of Puerto Nuevo, Third Section of San Juan, which are depicted in the plan identified as PE 754 Fig. 31, signed by professional engineer Thomas J. Danner (Puerto Rico PE 9755) dated April 27, 2018, attached hereto as **Exhibit A** and made to form a part hereof (hereinafter collectively referred to as the "Property");

**WHEREAS**, Lessee desires to lease from the Authority certain rights with respect to certain facilities and areas of the Property, and the Authority wishes to lease such rights to Lessee, for the installation of a fuel handling facility for liquefied natural gas with temporary and permanent components, including, without limitation, loading racks and other equipment, as well as for any other lawful purpose related thereto, upon and subject to the terms, conditions, covenants and provisions of this Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:



## TERMS AND CONDITIONS

### ARTICLE 1. LEASED PREMISES

A. The Authority leases to Lessee, and Lessee hires from the Authority, upon and subject to the terms, conditions, covenants and provisions hereof, certain rights with respect to certain facilities and areas of the Property, consisting of (i) second preference berthing rights with respect to platform located in Wharf A with an area of nineteen thousand four hundred nine point eighty-seven square feet (19,409.87 sq. ft.), identified in Exhibit A as "Wharf Area A"; (ii) exclusive right to use open area located in Wharf A with an area of nineteen thousand one hundred and twenty-five point forty five square feet (19,125.45 sq. ft.), identified in Exhibit A as "Wharf Area B"; (iii) second preference right to use open space in located in Wharf A with an area of four thousand five hundred twenty-nine point fifty-four square feet (4,529.540 sq. ft.), identified in Exhibit A as Area A1; (iv) second preference right to use open space located in Wharf A with an area of six thousand two hundred eighty-four point sixteen square feet (6,284.16 sq. ft.), identified in Exhibit A as Area A2; (v) second preference right to use open space located in Wharf A with an area of four thousand seven hundred forty-three point eighty-five square feet (4,743.85 sq. ft.), identified in Exhibit A as Area A3; (vi) exclusive right to use open space located in Wharf B with an area of eighteen thousand one hundred forty-four point seventy-six square feet (18,144.76 sq. ft.), identified in Exhibit A as Area B-1; (vii) exclusive right to use open space located in Wharf B with an area of fifty-two thousand four thirty-two point fifteen square feet (52,432.15 sq. ft.), identified in Exhibit A as Area B-1A; (viii) exclusive right to use office space located in Wharf B with an area of one thousand one hundred fifty-one point sixty-three square feet (1,151.63 sq. ft.), identified in Exhibit A as Office B-2; (ix) exclusive right to use office space located in Wharf B with an area of one thousand one hundred forty-nine point fifteen square feet (1,149.15 sq. ft.), identified in Exhibit A as Office B-3; (x) exclusive right to use warehouse space located in Wharf B with an area of thirty thousand one hundred thirty-three point fifty-five square feet (30,133.55 sq. ft.), identified in Exhibit A as Excusive Warehouse B-4; (xi) exclusive right to use office space located in Wharf B with an area of twenty-five thousand six hundred and forty-six point twenty-one square feet (25,646.21 sq. ft.), identified in Exhibit A as Office B-5; and (xii) second preference berthing rights with respect to platform located at Wharf B with an area of twenty-one thousand sixty-four point seventy square feet (21,064.70 sq. ft.), identified in Exhibit A as Area B6 (collectively, the "Leased Premises"). In connection with the lease of the Leased Premises, Lessee shall also have the right to use the entrance gates and access roadway areas at the entrance to Wharf A.

B. The Authority and Lessee agree that the Leased Premises have an estimated total area of Two Hundred Fifty-Six Thousand Five Hundred Fifty-Four point Seventy-Nine square feet (256,554.79 sq. ft.) (the "Area of the Leased Premises"). The Area of the Leased Premises shall be controlling and shall not be subject to revision after the date of execution of this Agreement.

## ARTICLE 2. TERM

A. The term of this Agreement shall be twenty (20) years, commencing on the date of execution hereof by the Executive Director of the Authority (the "Initial Term"). Lessee may, upon prior agreement with the Authority, negotiate the possibility of extending this Initial Term. Lessee shall notify the Authority in writing of its intention to extend this Agreement at least ninety (90) days prior to the date of expiration of the Initial Term in order to negotiate any extension or extensions of this Lease. Each lease year during the Initial Term or an Extension Term, if any, shall hereinafter be referred to as a "Lease Year". The Initial Term and the Extension Terms, if any, shall hereinafter collectively be referred to as the "Term".

## ARTICLE 3. AUTHORIZED REPRESENTATIVE

The Maritime Management Director or his authorized representative(s) shall be responsible for the faithful performance of the obligations under this Agreement.

## ARTICLE 4. USE OF PREMISES

A. During the Term, Lessee shall be entitled to use the Leased Premises solely and exclusively for the operation of a fuel handling facility, with temporary and permanent components, to provide end customers with liquefied natural gas in ISO containers or natural gas through any other means, including, without limitation, the installation of loading racks, manifolds, pipes, valves and other equipment, and the provision of other services related or incidental thereto, all ancillary and auxiliary activities necessary to provide such services, and any other lawful use or purpose related thereto.

B. With respect to the second preference berthing and use rights described in Article 1 of this Agreement, Lessee's rights shall be subject to the Puerto Rico Electric Power Authority's first preference berthing and use rights.

C. Lessee shall be responsible for obtaining and maintaining all permits, authorizations, certifications, licenses and approvals required to Legal Requirements (defined below) for the

operation of its business at the Leased Premises.

**ARTICLE 5. RENT AND OTHER CHARGES**

A. Lessee shall pay to the Authority for rights and privileges granted herein a monthly rent of **Thirty-Four Thousand Two Hundred Seventy-Seven Dollars and Seventy-Eight Cents (\$34,277.78)** (the "Rent"), which has been determined based on the amounts that appear in the rent schedule attached hereto as Exhibit B and made to form a part hereof.

B. The total amount of rent payable by Lessee during the first (1st) Lease Year is equivalent to **Four Hundred Eleven Thousand Three Hundred Thirty-Four Dollars and Three Cents (\$411,334.03)**. The total amount of Rent payable by Lessee during the Term is equivalent to **Eight Million Two Hundred Twenty-Six Thousand Six Hundred Sixty-Eight Dollars and Eighty Cents (\$8,226,678.80)**.

C. Rent and any other sums payable to the Authority pursuant to the terms of this Agreement shall be paid by Lessee in advance, on or before the tenth (10th) day of each calendar month. Any Rent or other sums due to the Authority that are not paid by Lessee within the previously specified ten (10) day period shall accrue interest at an annual rate of nine percent (9%), without the need to provide notice of default to Lessee. Interest on any past due Rent or other sums shall accrue from the first (1st) day of each calendar month until the date in which Lessee makes full payment thereof.

D. Lessee may, at its election, make payments of Rent or any other sums due to the Authority at the Authority's main office (or such other place as may be designated by the Authority from time to time by written notice to the Lessee) or by means of electronic funds transfer. If Lessee elects to make payments of Rent or any other sums due to the Authority by electronic funds transfer, Lessee shall notify the Authority of such election on the date hereof and shall make such payments during the Term using the following information:

Electronic Payment	Electronic Funds Transfer
Name of the account holder Employer Identification Number Name of the bank and branch Routing Number (ABA) Account Number:	

E. Rent and other sums payable to the Authority pursuant to the terms of this Agreement are based on the rents, rates, charges and other amounts specified in existing regulations approved by the Authority and shall be subject to readjustment in accordance with the rents, rates, charges and

other amounts established from time to time pursuant to the Authority's enabling act and applicable regulations. Lessee agrees to pay the readjusted rent, rates, charges and other amounts in accordance with the provisions of the Authority's enabling act and applicable regulations.

F. Advance payments to the Authority shall not constitute an amendment to the original terms of this Agreement, an accord and satisfaction or a novation with respect to the Term (duration), amounts due hereunder (Rent, charges, penalties, etc.) or other provisions hereof.

G. The Authority reserves the right to revoke and/or cancel ID cards issued by the Authority for access purposes, if Lessee shall default in the payment of Rent and such default is not cured within thirty (30) days from the date in which Lessee receives notice of such default.

H. On the date of execution hereof, Lessee has delivered to the Authority as guarantee for the payment of Rent and other sums due pursuant to the terms hereof and the faithful performance of its obligations hereunder, a security deposit in the amount of **One Hundred Thirty Seven Thousand One Hundred Eleven Dollars with Twelve Cents (\$137,111.12)**, equivalent to four (4) months of Rent (the "Security Deposit"). If Lessee fails to comply with any of its obligations hereunder, including, but not limited to, those related to the payment of Rent or other sums due to the Authority pursuant to the terms hereof, then the Authority may use, apply or retain all or any part of the Security Deposit (i) for payment of any past due Rent or other sums; (ii) for payment of any reasonable amounts the Authority becomes obligated to spend by reason of Lessee's default; or (iii) to compensate the Authority for any other loss or damage the Authority may suffer by reason of Lessee's default. The Security Deposit or any balance thereof shall be returned to Lessee on the effective date of expiration or earlier termination of this Agreement.

## ARTICLE 6. UTILITIES

A. Lessee shall pay (i) all initial utility deposits and fees; and (ii) all monthly service charges for electric power, water and sewer, telephone, gas, telecommunications and other similar services supplied or rendered to the Leased Premises during the Term directly to the applicable utility provider on a timely basis.

B. The Leased Premises have separate electric power and water and sewer utility meters.

C. Lessee shall have ninety (90) days from the date of execution hereof to install any separate electric power and water and sewer meters required for its operations at the Leased Premises, provided that the existing infrastructure allows for such installation. During such ninety (90) day period, or in the event that separate electric power and/or water and sewer meters cannot be installed

at the Leased Premises, the amount to be charged by the Authority for Lessee's consumption of electric power and/or water and sewer services at the Leased Premises shall be based on the actual rates, fees and charges billed to the Authority for such consumption by the utility companies providing such services. If the electric power and/or water and sewer meters currently installed at the Leased Premises are shared by various lessees of the Authority, then Lessee shall pay electric power and/or water and sewer service consumption charges based on the Authority's reasonable estimate of such charges corresponding to Lessee. Lessee shall pay electric power and/or water and sewer consumption charges billed by the Authority in the manner provided above in Paragraphs C and D of Article 5.

D. If the existing infrastructure allows for the installation of separate electric power and/or water and sewer meters at the Leased Premises and Lessee fails to install any meters required for its operations within the aforementioned ninety (90) day period, then Lessee shall pay to the Authority, in addition to the applicable monthly utility service charges specified in this Article 6, a penalty equivalent to twenty-five percent (25%) of the electric power and/or water and sewer utility consumption charges billed to the Authority with respect to the Leased Premises (as applicable) or five hundred dollars (\$500.00), whichever amount is greater. The Authority shall also have the right to interrupt any unauthorized use of electric power and/or water and sewer utility services at the Leased Premises.

## ARTICLE 7. RELOCATION OF PREMISES

A. The Authority reserves the right during the Term, with the prior authorization of the Authority's Board of Directors and with at least ninety (90) days prior written notice to Lessee (the "Relocation Notice"), to relocate Lessee to another site within the Puerto Nuevo Port, under the terms and conditions specified in this Article 7. The Authority may only exercise such right upon the occurrence of an unexpected event of significant importance for the economic development of Puerto Rico and the Authority that is part of an economic development plan approved by the Authority's Board of Directors. The Authority may not act in an unreasonable, arbitrary or capricious manner in making its determination to relocate Lessee.

B. The Authority shall relocate Lessee to a new site (the "New Premises") suitable for the permitted use specified in Article 4 hereof, preferably adjacent to or near the Leased Premises, if possible, with an area of approximately the same size as the area of the Leased Premises (subject to a variation of up to five percent (5%) and facilities that are equal or comparable to those of the Leased

Premises (similar buildings, warehouses and open spaces, direct access to platforms and berthing areas of equal or approximate size, same rights of use with respect to all of such structures and areas), provided that such site is available. The Relocation Notice shall specify the location and description of the New Premises.

C. If Lessee shall not agree to the New Premises proposed by the Authority or shall not wish to relocate, then Lessee shall have the right to terminate this Agreement by delivering written notice (the "Lessee Termination Notice") to the Authority within thirty (30) days from the date of receipt of the Relocation Notice stating that this Agreement shall expire and terminate on the date specified in the Lessee Termination Notice, which shall be at least thirty (30) days after the giving of the Lessee Termination Notice. Upon any such termination, the parties shall prorate Rent and other charges as of the effective date of termination, and neither party shall have any further obligation or liability to the other arising out of this Agreement, except for (i) payments of Rent and other charges accruing prior to the effective date of termination that remain unpaid as of such date, and that are attributable to periods of time commencing prior to such date and ending on or prior to such date; (ii) refunds of Rent or other charges paid prior to the effective date of termination that are attributable to periods of time commencing after such date; (iii) liability for third party claims based upon any act or omission occurring prior to the effective date of termination; and (iv) any provision that, by its terms, survives termination of this Agreement.

D. If Lessee shall elect to relocate to the New Premises, all costs and expenses of such relocation shall be paid by Lessee. Lessee shall not be required to vacate and surrender the Leased Premises until Lessee has completed any required improvements to the New Premises and is ready to commence operations therein. Payment of Rent with respect to the New Premises shall not commence until Lessee has commenced operations in the New Premises. The New Premises shall be deemed to be and shall constitute the leased premises, and all of the terms, covenants and conditions of this Agreement shall continue in full force and effect and shall apply to the New Premises, except that Lessee shall pay Rent for the New Premises in accordance with the new area of the Leased Premises and the rates specified in the Resolutions applicable thereto.

E. If a site with the characteristics and facilities described in Paragraph B of this Article 7 were not available at the Puerto Nuevo Port, then the Authority shall not have the obligation to relocate Lessee. In such event, the Authority shall provide written notice thereof to Lessee (the "Relocation Termination Notice") stating that this Agreement shall expire and terminate on the date specified in the Relocation Termination Notice, which shall be at least ninety (90) days after the giving

of the Relocation Termination Notice. Upon such termination, the parties shall prorate Rent and other charges as of the effective date of termination, and neither party shall have any further obligation or liability to the other arising out of this Agreement, except for (i) payments of Rent and other charges accruing prior to the effective date of termination that remain unpaid as of such date, and that are attributable to periods of time commencing prior to such date and ending on or prior to such date; (ii) refunds of Rent or other charges paid prior to the effective date of termination that are attributable to periods of time commencing after such date; (iii) liability for third party claims based upon any act or omission occurring prior to the effective date of termination; and (iv) any provision that, by its terms, survives termination of this Agreement.

F. Upon any termination of this Agreement under this Article 7, and provided that Lessee shall have vacated the Leased Premises, the Authority shall pay to Lessee a sum in cash equal to either (i) the total sum incurred by Lessee and its affiliates in improvements and construction to develop, operate and maintain the Leased Premises up to the date of such termination; or (ii) the total sum of relocation and related costs to be incurred by the Lessee in order to operate its business from an alternative location in substantially the same manner as operated prior to such termination. The amount payable to the Lessee under this Article 7.F(i), once calculated in accordance with the immediately preceding sentence, shall be reduced pro rata in the same proportion that the then-remaining Term of the Lease bears to the initial 20-year Term of the Lease (plus any extensions). At its sole discretion, Lessee shall determine which of the two payment alternatives (either Article 7.F(i) or Article 7.F(ii)) will be payable, and in any event such amount must be paid in cash to Lessee prior to, and as a condition of, the effectiveness of the termination of this Agreement.

**G. ARTICLE 8. ACCOUNTING RECORDS; AUDIT**

A. During the Term, Lessee shall maintain accounting books and records in accordance with generally accepted accounting principles, in which Lessee shall record every transaction related to this Agreement. Lessee shall maintain such books and records separate from any other accounting books and records related to any other businesses operated by Lessee. Such books and records shall at all times during the Term be kept by Lessee at its principal offices in New York, New York but with copy at its offices in the Leased Premises.

B. Prior to the expiration or earlier termination of the Term, the Authority shall have the



right to examine and audit all accounting books and records in which Lessee records the transactions related to this Agreement, at the Authority's sole cost and expense. The Authority shall provide to Lessee written notice of such audit at least five (5) business days prior to date in which the Authority will conduct the same. Such audit shall be performed at reasonable times during Lessee's normal business hours by employees of the Authority's Office of Internal Auditors, in order to verify Lessee's compliance with applicable laws, regulations, procedures and the terms of this Agreement; provided, that while performing such audit, the Authority's employees shall not unreasonably interfere with or disrupt the operation of Lessee's business.

#### ARTICLE 9. INSPECTION OF LEASED PREMISES

During the Term, any employees, authorized representatives and/or agents of the Authority may, at reasonable times within Lessee's normal business hours and upon at least seven (7) days prior written notice (the "Notice of Inspection") to Lessee, enter and inspect the Leased Premises in order to verify Lessee's compliance with the terms of this Agreement; provided, that such employees, authorized representatives and/or agents (i) shall be accompanied by Lessee or its designee; and (ii) shall not unreasonably interfere with or disrupt the operation of Lessee's business. The Notice of Inspection shall specify the date, time and purpose of the Authority's inspection.

#### ARTICLE 10. INDEMNITY

A. Lessee shall indemnify and hold the Authority and its directors, officers and employees (collectively, the "Authority Indemnified Parties"), harmless from and against any and all third party claims, demands, causes of action, fines, penalties, damages, losses, judgments, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, the "Claims"), arising out of or resulting from (i) the use or occupancy of the Leased Premises by Lessee or any work or other activity that Lessee does or permits or suffers to be done in the Leased Premises, except to the extent that such Claims arise out of or result from, in whole or in part, the negligent or intentional acts or omissions of the Authority or any of its employees, agents, contractors, invitees or visitors (collectively, the "Authority Parties"); (ii) any failure of the representations made in this Agreement by Lessee and any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement to be performed or complied with by Lessee; (iii) any breach, violation or nonperformance by Lessee or its employees, agents, contractors, invitees or visitors of any Legal Requirement applicable to the Leased Premises;

*(Handwritten initials)*

and (iv) any accident, injury or damage caused to any person or to the property of any person in the Leased Premises, except to the extent that such Claims arise out of or result from, in whole or in part, the negligent or intentional acts or omissions of any of the Authority Parties. If any action or proceeding is brought against any of the Authority Indemnified Parties by reason of any such Claim, Lessee shall defend such action upon notice from any such party, at Lessee's cost and expense, with counsel selected by Lessee. Lessee shall provide an Authority Indemnified Party the opportunity to participate, at such party's sole cost and expense, in the defense or settlement of any such Claim.

B. The Authority shall indemnify and hold Lessee and its members, managers, officers and employees (collectively, the "Lessee Indemnified Parties") harmless from and against any and all Claims arising out of or resulting from (i) any failure of the representations made in this Agreement by the Authority and any failure on the part of the Authority to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement to be performed or complied with by the Authority; (ii) any accident, injury or damage caused to any person or to the property of any person in the Leased Premises, as a result of the negligent or intentional acts or omissions of the Authority or its employees, agents, contractors, invitees or visitors; and (iii) any breach, violation or nonperformance by the Authority or its employees, agents, contractors, invitees or visitors of any Legal Requirement applicable to the Leased Premises. If any action or proceeding is brought against any of the Lessee Indemnified Parties by reason of any such Claim, the Authority shall defend such action upon notice from any such party, at the Authority's cost and expense, with counsel reasonably satisfactory to such party. The Authority shall provide a Lessee Indemnified Party the opportunity to participate, at such party's sole cost and expense, in the defense or settlement of any such Claim.

C. If a party fails to comply with the provisions of this Article 10, and such failure results in the imposition of fines, penalties or other similar sums on the other party pursuant to any final, unappealable and unappealed administrative decision or judgment, then the affected party shall be entitled to recover from the non-complying party the amount of such fines, penalties or other similar sums and any other related costs and expenses incurred by such party including, but not limited to, reasonable attorney's fees and costs. The non-complying party shall pay to the affected party all such amounts, costs and expenses within fifteen (15) days from the date of receipt of an invoice from the affected party therefor.

D. The provisions of this Article 10 shall survive the expiration or earlier termination of this Agreement.



## ARTICLE 11. INSURANCE

A. During the Term, Lessee shall obtain and maintain a commercial general liability insurance policy (including products-completed operations, advertising injury and medical expenses coverage) issued by an insurance company acceptable to the Authority, duly authorized to do business in the Commonwealth of Puerto Rico, insuring Lessee against liability for damage to property and personal injury, including bodily injury or death, caused by Lessee's use and occupation of the Leased Premises, with limits of at least (i) **ONE MILLION DOLLARS (\$1,000,000.00)** for personal injury, including bodily injury or death; (ii) **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence that affects more than one person; and (iii) **ONE MILLION DOLLARS (\$1,000,000.00)** for damage to property

B. The commercial general liability insurance policy shall include a fire damage endorsement in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)** to cover any damage to the Leased Premises, including fixtures permanently attached thereto, if such damage arises out of any act of negligence of Lessee, its employees, agents or any other person acting at the direction of Lessee. Such endorsement shall provide that any loss with respect to any property owned by the Authority shall be payable to the Authority.

C. The commercial general liability policy shall contain an endorsement that reads as follows: "This policy may not be amended for purposes of decreasing its coverage under the limits specified herein or for any other purpose nor shall it be cancelled without providing **thirty (30) days** prior written notice to the Authority. The Authority shall also be given **thirty (30) days** prior written notice of the non-renewal of this policy." Such policy shall also include a hold harmless endorsement in favor of the Authority and shall name the Authority as additional insured.

D. Deductibles, if any, in the commercial general liability policy shall be solely for the account of Lessee.

E. During the Term, Lessee shall obtain and maintain workers' compensation insurance coverage as shall be required and be in conformance with the laws of the Commonwealth of Puerto Rico. Lessee shall deliver to the Authority, on an annual basis, the corresponding certification of electronic validation issued by the Puerto Rico State Insurance Fund ("*Fondo del Seguro del Estado*"), which is obtained at [www.cfsg.gov.pr](http://www.cfsg.gov.pr).

F. On the date of execution hereof, and thereafter not less than **thirty (30) days** prior to

the expiration dates of the insurance policies required pursuant to the provisions of this Article 11 (collectively, the "Insurance Policies"), Lessee shall submit to the Authority copies of the certificates of insurance of such policies or certified copies thereof. If the policies maintained by Lessee as of the date of execution hereof shall expire in less than thirty (30) days, then Lessee shall provide to the Authority evidence of the renewal thereof on such date.

G. Lessee shall reimburse the Authority for any costs and expenses incurred by the Authority (i) due to Lessee's failure to comply with the insurance and lease bond obligations established herein; or (ii) to cover any of the risks specified herein.

H. The Authority shall fine Lessee **ONE THOUSAND DOLLARS (\$1,000.00)** for each and every month that the Lease Bond and the Insurance Policies are not renewed by Lessee. If Lessee does not deliver copies of the certificates of insurance of the Insurance Policies or certified copies thereof to the Authority at least thirty (30) days prior to the expiration dates of such policies, then it shall be deemed that Lessee is in default of the terms and conditions of this Agreement. The Authority shall immediately proceed with the termination of this Agreement and at the same time file the corresponding eviction proceeding, in addition to imposing the aforementioned penalty.

I. The Authority and Lessee (the "Waiving Parties") each waive any and all rights to recover against the other or against the managers, members, directors, officers, employees, agents, contractors, customers, invitees or business visitors of such other party (as applicable), for any loss or damage to such Waiving Party arising from any cause covered by any insurance required to be carried by such Waiving Party or any other insurance actually carried by such Waiving Party. The Authority and Lessee shall promptly give to their insurance companies written notice of the mutual waivers contained in this Paragraph I, and shall cause its insurance policies to be properly endorsed, if necessary, to prevent the invalidation of any insurance coverages by reason of the mutual waivers contained in this Paragraph I.

## ARTICLE 12. FIRE EXTINGUISHING EQUIPMENT

Lessee shall keep in the Leased Premises such fire extinguishing equipment as is required by the Authority, the Puerto Rico Fire Department, any applicable safety codes, including, but not limited to, those established by the National Fire Protection Association, and any applicable fuel handling regulations. If Lessee shall fail to keep fire extinguishing equipment in the Leased Premises as required herein, then Lessee shall be responsible for any damage or injury caused and for the payment of any fines and penalties imposed due to such failure.

### ARTICLE 13. LESSEE'S OBLIGATIONS

A. During the Term, Lessee shall operate in the Leased Premises in accordance with the standards of conduct specified in the Authority's rules and regulations.

B. Lessee shall pay for identification cards at the time they are issued. Such identification cards must be visible at all the times.

C. All identification cards must be renewed at least thirty (30) days prior to their expiration dates. Any person who requests a renewal of an identification card after the expiration date thereof shall pay to the Authority a daily penalty of **TWENTY-FIVE DOLLARS (\$25.00)**. Identification cards shall not be renewed until such penalty is paid in full.

D. Lessee shall be responsible for returning identification cards within three (3) business days from the date in which an employee has ended its employment with Lessee. The Authority shall impose a penalty of **FIVE HUNDRED DOLLARS (\$500.00)** to Lessee if it fails to comply with such requirement.

E. Prior identification cards shall be returned to the Authority upon the issuance of new identification cards due to a renewal, change of employer, change of information or damages.

F. The Authority shall impose a penalty of **FIVE HUNDRED DOLLARS (\$500.00)** to Lessee for identification cards of employees that have been processed and found guilty of crimes in any federal or state forum. The foregoing complies with federal regulations. Lessee shall return such identification cards to the Authority within ten (10) business days.

G. Lessee shall not place any signs or advertisements within or outside of the Leased Premises that have not been previously approved in writing by the Authority. The Authority reserves the right to approve the design, quantity and location of any such signs or advertisements.

H. Lessee shall be responsible for providing security and surveillance at the Leased Premises, at its sole cost and expense. Lessee shall be responsible for engaging any security and surveillance services that are required for such purposes.

### ARTICLE 14. CONSERVATION AND MAINTENANCE BY LESSEE

A. Lessee shall maintain the Leased Premises in a reasonably clean and sanitary condition at all times during the Term.

B. Lessee shall preserve, protect and keep the Leased Premises in a good state of repair, including collection of garbage, at its sole cost and expense. Any work required in order to comply with such obligations shall require the prior written authorization of the Authority.

C. Lessee, as part of its obligations, shall also repair and maintain the berths and their docking and fendering systems and navigation aid lighting related to Wharf A and Wharf B of the Leased Premises.

#### ARTICLE 15. REPAIRS AND MAINTENANCE BY THE AUTHORITY

A. The Authority shall repair and maintain the entrance gates and access roadway areas at the entrance to Wharf A, at its sole cost and expense. Pothole repair and maintenance of the roadway shall be carried out periodically, as required.

B. The Authority shall use best efforts, to the extent necessary and subject to the availability of funds, to dredge or cause the periodic maintenance dredging of Berths "A" and "B" and to maintain a depth of thirty-two (32) feet, or such greater depth as may be agreed to by the Authority and the United States Army Corps of Engineers.

#### ARTICLE 16. ALTERATIONS AND IMPROVEMENTS TO LEASED PREMISES

A. Lessee has examined and knows the present condition and state of repair of the Leased Premises and accepts the same and acknowledges that the Authority has not agreed or promised to alter, improve or repair the Leased Premises or any portion thereof during the Term. Lessee acknowledges that the Authority has not made any representations regarding the condition or current state of the Leased Premises which are not set forth herein.

B. Lessee shall not make alterations, additions or substantial or structural improvements (collectively, the "Improvements") to the Leased Premises without the Authority's prior written consent, which consent shall not be unreasonably withheld, delayed, conditioned or denied. During the Term, Lessee shall have title to all Improvements made and installed by Lessee at the Leased Premises.

C. A description of the initial Improvements to be made to the Leased Premises by Lessee (collectively, the "Initial Lessee Improvements") is included in Exhibit C attached hereto and made to form a part hereof. Prior to the date of execution of this Agreement, Lessee delivered to the Authority a detailed scope of the Initial Lessee Improvements, for review and approval by the Authority. The Authority hereby approves the Initial Lessee Improvements. Lessee shall have the right to commence the construction and installation of the Initial Lessee Improvements on the date of execution hereof.

D. The Authority, without cost to it and on other terms reasonably requested of it, shall

cooperate with Lessee by executing and delivering any documents, certificates, acknowledgments, endorsements or otherwise which may be necessary for Lessee to hold or deliver to any person in order to obtain or maintain any and all permits and approvals required pursuant to Legal Requirements for the development and construction of the Initial Lessee Improvements through Final Completion (as defined below), including, but not limited to, (i) all preliminary permits, approvals and endorsements and any amendments thereto and environmental approvals and any amendments thereto; (ii) all permits, approvals, endorsements and consents and any amendments thereto required to permit the performance of any activities of any kind whatsoever to be conducted by Lessee and/or its affiliates, agents, representatives, contractors and subcontractors at the Leased Premises in connection with the construction and installation of the Initial Lessee Improvements; (iii) all permits, approvals, endorsements and consents and any amendments thereto required to permit the operation of Lessee's business; and (iv) all endorsements, filings or approvals and any amendments thereto required for the availability of water and sewer, electric power, telephone, gas, telecommunications and any other related services necessary for the operation of Lessee's business. For purposes of this Paragraph D, the term "Final Completion" means (i) substantial completion of all the Initial Lessee Improvements and readiness of the same for their permitted use; and (ii) the issuance of a permanent, full and unconditional certificate or certificates of occupancy ("*permiso o permisos de uso*") for the Initial Lessee Improvements.

E. Presence of Material Containing Asbestos or Lead-Based Paint:

- i. The Authority acknowledges that the Leased Premises, due to their nature, may have material containing asbestos or lead-based paint in its interior or exterior. The Authority may not have performed a study or assessment of the Leased Premises to determine if it has material containing asbestos or lead-based paint, but in the event that Lessee intends to perform construction, reconstruction, renovation, alteration or demolition activities at the Leased Premises (collectively, the "Activities"), Lessee agrees to conduct the corresponding studies or assessments of the Leased Premises prior to performing Activities to determine if material containing asbestos or lead-based paint exists therein. If such studies or assessments of the Leased Premises show that the areas that shall be subject to the Activities have material containing asbestos or lead-based paint, then Lessee, at its sole cost and expense, shall perform the corresponding Management or Mitigation Plan, as the case may be. Lessee shall comply with all applicable laws and regulations for the inspection, assessment and mitigation of the activities for the management of materials containing asbestos or lead-based paint, and shall ensure that all contractors, employees, agents or representatives designated to perform such work have the corresponding certifications required by the Puerto Rico Environmental Quality Board or any other government agency.
- ii. Lessee shall notify the date in which it intends to carry out the inspection of the Leased Premises for purposes of this Paragraph C at least fifteen (15) days in advance. Lessee shall deliver to the Authority copies of the studies or assessments performed. If mitigation is required, Lessee shall provide to the Authority copies of all licenses and/or certifications held by the companies performing the same. Lessee shall cause the material containing asbestos or lead-based paint that is removed from the Leased Premises to be transported for disposal by a company duly authorized to perform such

services and shall ensure that the facility selected for final disposal of such material has all necessary authorizations to dispose of the same. Upon the end of the mitigation activities, Lessee shall deliver to the Authority a final report, which shall describe all of the work performed and shall include a copy of the final disposal manifests.

- iii. Failure to comply with the conditions established herein may be cause for termination of this Agreement. If Lessee determines that it shall not perform the mitigation activities, the Authority, at its option, may perform the same. Lessee shall reimburse the Authority for the costs and expenses incurred in performing such work.

#### ARTICLE 17. INSTALLATION OF FIXTURES

Lessee may, at its sole cost and expense, install any signs related to its business and any other fixtures that are necessary for the ordinary course of its operations, in such a manner as not to deface or injure the Leased Premises. Lessee may not install such signs or fixtures without the Authority's prior written consent. All signs required by federal or local law shall be exempt from the approval requirement.

#### ARTICLE 18. LIENS

Lessee shall not do, or suffer anything to be done, upon or in connection with the Leased Premises, that may subject the same to any liens or rights *in rem* and shall promptly take all actions that are necessary to discharge, or cause to be discharged, any lien or right *in rem* which may arise or exist at any time with respect to the Leased Premises or to any Improvements.

#### ARTICLE 19. DEFAULT; TERMINATION; SURRENDER OF PREMISES

A. The Authority may declare Lessee in default under this Agreement upon written notice if any one or more of the following events shall occur (each, a "Lessee Default"):

- i. Abandonment of the Leased Premises by Lessee for a period of more than thirty (30) days or the liquidation of Lessee's assets.
- ii. Occupancy or seizure by any third party under a court mandate or the attachment of Lessee's assets located in the Leased Premises, if such occupancy, seizure or attachment is not discharged or terminated within thirty (30) days following the date thereof.
- iii. Failure of Lessee to pay any Rent or other amounts payable under this Agreement when and as the same shall become due and payable, and such failure shall continue for a period of fifteen (15) days after receipt by Lessee of notice from the Authority specifying such non-payment.
- iv. Failure of Lessee to perform or comply with any other covenants, agreements, terms or conditions under this Agreement, and such failure shall continue for a period of thirty (30) days after written notice thereof from the Authority to Lessee specifying the nature of such failure, or, in the case of a failure or a contingency which cannot with reasonable diligence be cured within such period of thirty (30) days, if Lessee fails to proceed with all reasonable diligence within such period of thirty (30) days to cure the same and thereafter to prosecute the curing of such failure with all reasonable diligence (it being



intended that in connection with a failure not susceptible of being cured with reasonable diligence within thirty (30) days, that the time within which Lessee shall cure the same shall be extended for such period as may be necessary to complete the same with all reasonable diligence). No default under this paragraph shall be deemed to continue if and so long as Lessee shall be diligently proceeding to cure the same in good faith, or be delayed in or prevented from curing the same by any cause; provided, however, that any failure to comply with a monetary obligation shall not be deemed to be one that cannot be cured within thirty (30) days.

B. In addition to any other right or remedy that the Authority may exercise under the terms of this Agreement, the Authority may terminate this Agreement upon the occurrence of one or more Lessee Defaults, by giving written notice to Lessee (the "Authority Termination Notice") specifying the Lessee Default or Defaults and stating that this Agreement shall expire and terminate on the date specified in the Authority Termination Notice, which shall be at least thirty (30) days after the giving of the Authority Termination Notice. Upon the date specified in the Authority Termination Notice, this Agreement and all rights of Lessee hereunder shall expire and terminate, unless prior to the date specified for the termination, the Lessee Default or Defaults shall have been cured by Lessee or in the case of a failure or a contingency which cannot with reasonable diligence be cured within such period of thirty (30) days, Lessee fails to proceed with all reasonable diligence within such period of thirty (30) days to cure the same and thereafter to prosecute the curing of such failure with all reasonable diligence (it being intended that in connection with a failure not susceptible of being cured with reasonable diligence within thirty (30) days, that the time within which the Lessee shall cure the same shall be extended for such period as may be necessary to complete the same with all reasonable diligence). No such termination of this Agreement shall relieve Lessee of its liability and obligations under this Agreement, and such liability and obligations shall survive any such termination.

C. Lessee may declare the Authority in default under this Agreement upon written notice if the Authority shall fail to perform or comply with any covenants or obligations under this Agreement for more than thirty (30) days after the Authority's receipt of written notice thereof from Lessee, or, in the case of a failure or a contingency which cannot with reasonable diligence be cured within such period of thirty (30) days, if the Authority fails to proceed with all reasonable diligence within such period of thirty (30) days to cure the same and thereafter to prosecute the curing of such failure with all reasonable diligence (it being intended that in connection with a failure not susceptible of being cured with reasonable diligence within thirty (30) days, that the time within which the Authority shall cure the same shall be extended for such period as may be necessary to complete the same with all reasonable diligence) (each, an "Authority Default"). No Authority Default under this Paragraph C shall be deemed to continue if and so long as the Authority shall be diligently proceeding

to cure the same in good faith, or be delayed in or prevented from curing the same by any cause.

D. If any one or more Authority Defaults shall occur, then Lessee shall have the right, at its election, to (i) initiate breach of contract proceedings to declare the Authority in default under this Agreement and/or to seek specific performance and pursue any other remedies available at law or in equity; or (ii) give written notice to the Authority (the "Lessee Termination Notice") specifying the Authority Default or Defaults and stating that this Agreement shall expire and terminate on the date specified in the Lessee Termination Notice, which shall be at least thirty (30) days after the giving of the Lessee Termination Notice. Upon the date specified in the Lessee Termination Notice, this Agreement and all rights of the Authority hereunder shall expire and terminate, unless prior to the date specified for the termination, the Authority Default or Defaults shall have been cured by the Authority. No such termination of this Agreement shall relieve the Authority of its liability and obligations under this Agreement, and such liability and obligations shall survive any such termination.

E. On the effective date of expiration or earlier termination of this Agreement, Lessee shall vacate and surrender the Leased Premises to the Authority in good order, condition and repair, ordinary wear and tear excepted. Title to all non-removable Improvements shall be transferred to the Authority, without cost to it and free and clear of any liens and encumbrances; provided, however, that the Authority may require Lessee to remove or demolish, within sixty (60) days from the effective date of expiration or earlier termination of this Agreement, all or any portion of such Improvements and return the Leased Premises to their original condition, except for ordinary wear and tear and force majeure. If Lessee does not proceed with such removal or demolition, then it shall be deemed that Lessee has abandoned such Improvements and the Authority shall be entitled to dispose of the same in any manner that it deems advisable or convenient, at Lessee's sole cost and expense. Lessee shall not be required to remove those Improvements that are of a permanent nature, or which removal shall result in damages to the Leased Premises. The Authority shall not require Lessee to rebuild or reconstruct any buildings, structures or facilities (including, but not limited to, any warehouses or office space) located on the Leased Premises prior to the commencement of the Term that were demolished or removed by Lessee in connection with the construction of the Initial Subtenant Improvements.

F. Within sixty (60) days from the effective date of expiration or earlier termination of this Agreement, Lessee shall remove from the Leased Premises all equipment, personal property, accessories, advertisements, movable structures and improvements, machinery and items or merchandise built, made, kept or deposited therein by Lessee. If Lessee does not proceed with the



removal of its property, it shall be deemed that Lessee has abandoned such property and the Authority may dispose of the same in any manner that it deems advisable or convenient, at Lessee's sole cost and expense.

G. If Lessee does not vacate and surrender the Leased Premises to the Authority on the effective date of expiration or earlier termination of this Agreement, then Lessee shall pay to the Authority (i) a sum equivalent to Rent payable as of the effective date of expiration or earlier termination, as compensation for Lessee's use and occupation of the Leased Premises; and (ii) a penalty equivalent to ten percent (10%) of Rent payable as of the effective date of expiration or earlier termination for each day that Lessee continues to occupy the Leased Premises. Lessee's compliance with the provisions of this Paragraph G shall not prevent the Authority from taking any and all legal actions as it deems necessary in order to evict Lessee from the Leased Premises. The Authority's acceptance of the amounts referred to in this Paragraph G shall not be construed as an amendment, extension or tacit renewal ("*tácita reconducción*") of this Agreement. Lessee agrees to submit to summary eviction proceedings in the Court of First Instance, Court of San Juan, in the event that Lessee does not vacate and surrender the Leased Premises as herein provided. Lessee shall pay to the Authority all costs and expenses, including, but not limited to, reasonable attorneys' fees and costs, incurred by the Authority in connection with any eviction, collection of monies, damages or other legal proceedings filed by the Authority due to Lessee's breach of its obligations under this Agreement, provided that the Authority is the prevailing party in any such proceedings.

## ARTICLE 20. UNAUTHORIZED USE OF LEASED PREMISES

A. Lessee shall pay to the Authority a penalty equivalent to thirty-five percent (35%) of the annual gross income generated by any business conducted on the Leased Premises that has not been authorized by this or any other agreement. Any costs and expenses related to annual gross income shall not be deducted for purposes of determining annual gross income. As used in this Paragraph A, the term "gross income" means all revenue derived by Lessee from the operation of the unauthorized business.

B. Lessee shall pay to the Authority a penalty equivalent to thirty-five percent (35%) of the annual rent payable to Lessee under any subleases that have not been authorized by the Authority.

C. This Article 20 shall not be construed as an authorization to perform activities in the Leased Premises that are not specifically authorized by this or any other agreement and the collection of the foregoing penalties shall not constitute a waiver of the Authority's right to terminate this

Agreement due to such breach.

## ARTICLE 21. ASSIGNMENT AND SUBLEASE

A. Lessee shall not assign or transfer this Agreement or sublet the Leased Premises, in whole or in part, without the prior written consent of the Authority, which consent shall not be unreasonably withheld, delayed, conditioned or denied. Lessee and the assignee or the sublessee shall comply with the requirements specified in this Article 21.

B. Prior to any assignment or transfer, in whole or in part, of the rights hereunder (i) Lessee or the assignee shall pay all amounts due to the Authority up to the date of such assignment or transfer; (ii) Lessee or the assignee, as may be agreed to by the parties, shall pay to the Authority an administrative fee equivalent to three (3) months of Rent (the "Transfer Fee"); and (iii) the assignee shall apply for and obtain credit with the Authority as an essential requirement for the approval of such assignment or transfer.

C. Notwithstanding the provisions of Paragraphs A and B above, if the assignment, transfer or sublease is to Lessee's Affiliate (as defined below), then (i) the Authority shall give prior written consent to such assignment, transfer or sublet, subject to Lessee or Lessee's Affiliate paying all amounts due to the Authority up to the date of such assignment or transfer and Lessee's Affiliate delivering to the Authority all certifications required to formalize contracts with Governmental Authorities of the Commonwealth of Puerto Rico and all forms and documents required to apply for and obtain credit with the Authority; and (ii) the Transfer Fee shall not apply to such assignment, transfer or sublet. As used in this Paragraph C, the term "Lessee's Affiliate" means any entity which controls, is controlled by or is under common control with Lessee and, for purposes of such definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

D. Lessee shall not deliver possession of all or any portion of the Leased Premises to the assignee or the sublessee, or allow assignee or sublessee to occupy all or any portion thereof, unless and until (i) the requirements specified in this Article 21 have been fulfilled; and (ii) the agreements and other documents required for the assignment or sublease have been executed. Lessee shall pay to the Authority all costs and expenses, including, but not limited to, reasonable attorneys' fees and costs, incurred by the Authority in connection with any eviction, collection of monies, damages or other legal proceedings filed by the Authority due to Lessee's and the assignee's or the sublessee's

failure to comply with the requirements specified in this Article 21, provided that the Authority is the prevailing party in any such proceedings.

E. The terms and conditions of this Agreement shall remain unaltered and the Lessee shall be in compliance with all of such terms and conditions.

F. Lessee shall represent and warrant that it did not request or receive, and that it shall not subsequently request or receive, any compensation, payment, economic benefit or commission of any kind from the assignee in connection with the assignment. Failure to comply with this condition shall be sufficient cause for the annulment of the assignment and the termination of any agreement executed by the Authority and the assignee in connection therewith. In such event, the Authority shall have the right to reject assignee's request as lessee of the Authority.

## ARTICLE 22. SECURITY

A. During the Term, Lessee shall comply with all applicable maritime facility security requirements established pursuant to any applicable Legal Requirements, including, but not limited to, those under Section 7 of the Ports and Waterways Safety Act, 33 U.S.C. § 1226, as amended, and the regulations promulgated thereunder.

B. Neither party shall allow unauthorized personnel to enter maritime operation areas, piers and buildings, the Leased Premises or any other areas restricted by federal or local rules and regulations. If a party fails to comply with the provisions of this Article 22, and such failure results in the imposition of fines, penalties or other similar sums on the other party for the violation of any federal or local laws or regulations pertaining to access to restricted areas pursuant to any final, unappealable and unappealed administrative decision or judgment, then the affected party shall be entitled to recover from the non-complying party the amount of such fines, penalties or other similar sums and any other related costs and expenses incurred by such party including, but not limited to, reasonable attorneys' fees and costs. The non-complying party shall pay to the affected party all such amounts, costs and expenses within fifteen (15) days from the date of receipt of an invoice from the affected party therefor.

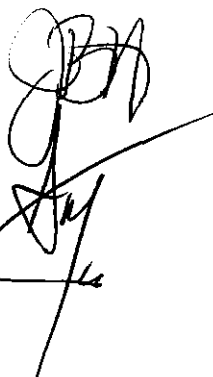
## ARTICLE 23. ENVIRONMENTAL PROVISIONS

A. Lessee shall comply with all existing and future applicable Legal Requirements relating to the protection of human health, the environment and the workplace, public and industrial health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal

or management of Hazardous Materials (defined below) within the Leased Premises (collectively, the "Environmental Legal Requirements").

B. Lessee shall request and obtain all applicable environmental permits and licenses from the appropriate Governmental Authorities (defined below), such as, but not limited to, the United States Environmental Protection Agency ("EPA"), the United States Army Corps of Engineers, the United States Department of Transportation, the United States Nuclear Regulatory Commission, the United States Department of Energy, the United States Department of Labor Occupational Safety and Health Administration, the Federal Communications Commission, the Puerto Rico Environmental Quality Board ("EQB"), the Puerto Rico Department of Natural and Environmental Resources and the Puerto Rico Solid Waste Management Authority, if Lessee does not already possess the same. Such permits and licenses shall be maintained, as necessary, throughout the Term.

C. As used in this Article 23, the term "Hazardous Material(s)" includes:

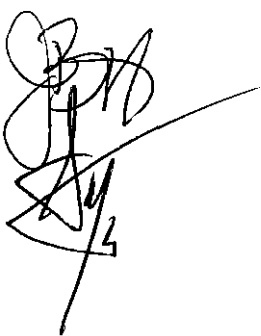
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- i. any "Hazardous Waste", as defined under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., as amended from time to time ("RCRA"), and the regulations promulgated thereunder;
  - ii. any "Hazardous Substance", as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended from time to time ("CERCLA"), and the regulations promulgated thereunder;
  - iii. any "Pollutant", as defined under the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended from time to time, and the regulations promulgated thereunder;
  - iv. any "Hazardous Material", as defined under the Hazardous Material Transportation Act, 49 U.S.C. §§ 5101 et seq., as amended from time to time, and the regulations promulgated thereunder; and
  - v. oil, petroleum, any oil petroleum product and any oil or petroleum by-product.

D. If any Hazardous Materials are used, stored, generated or disposed of by Lessee or any of its agents, employees, contractors or invitees on or in the Leased Premises during the Term, and the Leased Premises become contaminated as a result thereof, then Lessee shall indemnify and hold the Authority harmless from and against any and all claims, damages, fines, judgments, penalties, costs and liabilities including, without limitation, any decrease in the value of the Leased Premises not corrected by remediation, damages caused by loss or restriction of rentable or usable space or adverse impact on the value of the Leased Premises and any sums paid for settlement of claims approved by Lessee, including reasonable attorneys' and consultants' fees, arising from such contamination, whether such contamination is discovered at any time during the Term or after the expiration or earlier termination of this Agreement. The foregoing indemnification includes all reasonable costs and



expenses incurred as a result of (i) an environmental investigation of the Leased Premises; and (ii) any necessary and proper clean-up, removal or restoration mandated by a Governmental Authority other than the Authority. The provisions of this Paragraph D shall be in addition to any other obligations and liabilities which Lessee may have to the Authority at law or equity and shall survive the expiration or earlier termination of this Agreement.

E. Lessee shall not cause or permit any Hazardous Materials to be brought upon, kept, generated, used, stored, transported upon, treated, disposed of or otherwise managed in or about the Leased Premises by its employees, agents, contractors or invitees, except for such Hazardous Materials as are necessary or used in the normal conduct of Lessee's business. Any Hazardous Materials on the Leased Premises, and in all containers utilized in Lessee's operations, shall be used, generated, kept, stored, transported, treated, disposed of and otherwise managed in a manner that complies with all applicable Environmental Legal Requirements. Lessee shall not discharge, release, leak or emit, or allow to be discharged, released, leaked or emitted, any Hazardous Material into the atmosphere, ground, soil, sediment, groundwater, sewer system or any body of water, if such Hazardous Material (as is reasonably determined by the EPA or the EQB) does or may:

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- i. pollute or contaminate any of the same, whether located on the Leased Premises or elsewhere;
  - ii. materially adversely affect the health, welfare or the security of people, whether located on the Leased Premises or elsewhere; or
  - iii. materially adversely affect the condition, use or enjoyment of building(s) or any other real or personal property, whether located on the Leased Premises or elsewhere.

F. Upon the execution of this Agreement, Lessee shall disclose to the Authority the names and, if known, the approximate amounts of all Hazardous Materials that Lessee or any of its employees, agents, contractors or invitees intend to generate, store, use, transport, treat, dispose of or otherwise manage on the Leased Premises in the coming year. In addition, during the Term, Lessee shall immediately disclose to the Authority the names and approximate amounts of any Hazardous Materials generated, used, stored, transported, treated, disposed of or otherwise managed on the Leased Premises, if not previously notified to the Authority.

G. Lessee hereby agrees that it shall be liable for all costs and expenses related to the generation, use, storage, transportation, treatment, disposal of or other management of Hazardous Materials kept on the Leased Premises by Lessee or any of its employees, agents, contractors or invitees. Lessee shall defend, indemnify and hold the Authority harmless from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including,



without limitation, reasonable attorneys' and consultants' fees, and court costs and expenses), arising out of:

- i. the presence, disposal, release or threatened release of any Hazardous Material on, from, to or under the Leased Premises, or otherwise affecting the soil, water, vegetation, buildings, personal property or animals at the Leased Premises;
- ii. any personal injury (including wrongful death) or real or personal property damage arising out of or caused at the Leased Premises by Lessee or any of its employees, agents, contractors or invitees;
- iii. any lawsuit or threatened lawsuit, any settlement reached or approved by Lessee or any government order relating to Hazardous Materials brought onto or generated at the Leased Premises by Lessee or any of its employees, agents, contractors or invitees; or
- iv. any violation of any applicable Environmental Legal Requirement resulting from any act or omission of Lessee or any of its employees, agents, contractors or invitees.

The provisions of this Paragraph G shall be in addition to any other obligations and liabilities which Lessee may have to the Authority at law or equity and shall survive the expiration or earlier termination of this Agreement.

H. Lessee shall, at its sole cost and expense, make all submissions to, provide all information required by and comply with all requirements of all Governmental Authorities with jurisdiction over environmental matters pursuant to applicable Environmental Legal Requirements (collectively, the "Environmental Authorities"). Lessee shall promptly provide to the Authority all information regarding the use, generation, storage, transportation, treatment, disposal of or other management of Hazardous Materials that is requested in writing by the Authority. If Lessee fails to reasonably fulfill any duty imposed under this Paragraph H within a reasonable time, the Authority may do so, at Lessee's sole cost and expense. In such case, Lessee shall cooperate with the Authority to determine the applicability of Environmental Legal Requirements to the Leased Premises and Lessee's use thereof and for compliance therewith, and Lessee shall, upon the Authority's request, promptly execute any documents reasonably required by the Authority for such purposes. No such action by the Authority, and no attempt made by the Authority to mitigate damages under any law, shall constitute a waiver of any of Lessee's obligations under this Paragraph H. The provisions of this Paragraph H shall survive the expiration or earlier termination of this Agreement.

I. During the Term, any employees, authorized representatives and/or agents of the Authority may request and obtain copies of reports and notices concerning Lessee's compliance with applicable Environmental Legal Requirements. The Authority's monitoring activities may include, among other things, (i) physical inspections, tests and sampling; (ii) installation, service and inspection



of environmental monitoring devices; (iii) examination and copying of documents or records related to Lessee's compliance with applicable Environmental Legal Requirements; and (iv) interviews of Lessee's personnel and contractors regarding Lessee's environmental performance. The Authority may only photocopy those documents that are reasonably necessary to confirm Lessee's compliance with applicable Environmental Legal Requirements. Any disclosure of information to the Authority as to which Lessee claims confidential protection shall be on the basis that such information shall be (i) used by the Authority solely for purposes of confirming Lessee's compliance with applicable Environmental Legal Requirements, and for no other purpose; and (ii) held confidential by the Authority pursuant to a customary form of confidentiality and non-disclosure agreement. No exercise of the Authority's rights pursuant to this Paragraph I shall constitute a waiver of Lessee's obligation to comply with applicable Environmental Legal Requirements.

J. Lessee shall promptly notify the Authority of any known violation of applicable Environmental Legal Requirements that could give rise to environmental liability for the Authority or Lessee with respect to the Leased Premises. Within five (5) days of becoming aware of such violation, Lessee shall submit to the Authority a written report describing the circumstances thereof. Failure of Lessee to notify the Authority of such violation shall not constitute a waiver of Lessee's obligation to comply with applicable Environmental Legal Requirements.

K. The Authority may request that Lessee submit to the Authority a quarterly report regarding any violation of applicable Environmental Legal Requirements that has a substantial likelihood of giving rise to environmental liability for the Authority or Lessee with respect to the Leased Premises. No exercise of the Authority's rights under this Paragraph K shall constitute a waiver of Lessee's obligation to comply with applicable Environmental Legal Requirements.

L. If Lessee or any of its employees, agents, contractors or invitees violates any applicable Environmental Legal Requirements at the Leased Premises during the Term, and such violation has a substantial likelihood of giving rise to environmental liability for the Authority with respect to the Leased Premises, then the Authority may:

- i. compel Lessee, at Lessee's sole cost and expense, to perform such remedial actions as may be required pursuant to CERCLA, RCRA or any other applicable Environmental Legal Requirements or take any other actions to correct the violation, to the extent necessary to cure the environmental non-compliance; or
- ii. perform or cause to be performed, at Lessee's sole cost and expense, the remedial actions described in subparagraph (i) above, if Lessee fails to perform such actions.

Subparagraphs (i) and (ii) above shall not apply if Lessee complies with the requirements made

by Environmental Authorities. There shall be no abatement or reduction of Rent or other sums payable to the Authority pursuant to the terms of this Agreement while any such remedial actions are being performed. No exercise of the Authority's rights under this Paragraph L shall constitute a waiver of Lessee's obligation to comply with applicable Environmental Legal Requirements. The provisions of this Paragraph L shall survive the expiration or earlier termination of this Agreement.

M. Lessee's material breach of the terms of this Article 23 shall constitute an event of default under Article 19 hereof.

#### **ARTICLE 24. NON-DISCRIMINATION PROVISION**

A. In connection with the use of the Leased Premises, the Authority and Lessee shall not discriminate against any person, employee or applicant for employment on the basis of race, gender, sexual orientation, religion, color or nationality. This provision shall include, but shall not be limited to, the following: employment, promotion, demotion, transfer, recruitment or advertising, suspension, dismissal or severance, wages or any other form of compensation or selection for training, including apprenticeship. Lessee shall place notices in areas that are accessible to its employees and applicants for employment that include the provisions of this Paragraph A.

B. Lessee shall implement an affirmative action program, as required by 14 CFR, Part 152, Subpart E, to ensure that no person is excluded from participating in any employment activity covered by 14 CFR, Part 152, Subpart E on the basis of race, religion, color, national origin or sex. Lessee agrees that no person shall be excluded from participating or receiving any services or benefits under programs or activities covered by 14 CFR, Part 152, Subpart E on such grounds. Lessee further agrees that it shall require its sub-organizations to provide guarantees to the Authority that they shall also implement affirmative action programs and that such sub-organizations shall also require the same guarantees from their sub-organizations, as required by 14 CFR, Part 152, Subpart E.

#### **ARTICLE 25. MORTGAGES; RECORDATION OF LEASE**

A. During the Term, the Authority shall not mortgage, lien, pledge, assign as collateral or otherwise encumber its interest in the leasehold estate created by this Agreement or its fee interest in the Property, without the prior written consent of Lessee. In such event, the Authority shall not require Lessee to subordinate this Agreement nor any of the rights of Lessee hereunder to any such mortgage, and the Authority shall use commercially reasonable efforts to cause any beneficiary of such

mortgage, lien or pledge to execute a non-disturbance agreement recognizing the rights of Lessee under this Agreement, with such terms and conditions as are acceptable to Lessee, in its sole and absolute discretion.

B. Lessee shall have the right, with the prior written consent of the Authority, to mortgage, pledge or assign the leasehold interest created by this Agreement to a leasehold mortgagee, upon the condition that all rights acquired under such mortgage, pledge or assignment shall be subordinate to all of the provisions of this Agreement and to all of the rights and interests of the Authority hereunder.

C. The Authority and Lessee agree that this Agreement may, upon Lessee's request, be converted to a public instrument and filed for recordation at the Puerto Rico Registry of Property (the "Registry"). The Authority agrees to execute any and all deeds, instruments, agreements and documents deemed necessary or convenient for the recordation of this Agreement at the Registry. Upon the expiration or earlier termination of this Agreement, the Authority and Lessee shall execute any and all deeds, instruments, agreements and documents deemed necessary or convenient for the cancellation of this Agreement at the Registry. Lessee shall (i) select the Notary Public who shall authorize any and all deeds required to affect the foregoing; and (ii) be responsible for all fees, costs and expenses related to the execution of any required deeds and the recordation and cancellation of this Agreement at the Registry.

 **ARTICLE 26. PROPERTY TAXES**

A. Lessee shall pay to the corresponding taxing authorities, as the same shall become due and before delinquency, all real property taxes and assessments which may be properly levied or assessed during the Term against any Improvements located within the Leased Premises owned by Lessee and which constitute real property pursuant to applicable law.

B. Lessee may seek a review of the taxable valuation of any Improvements and may contest in good faith by appropriate proceedings, at its sole cost and expense, the amount or validity, in whole or in part, of any Real Property Taxes. The Authority shall provide reasonable assistance to Lessee in obtaining any documents or information required in connection with such proceedings, at no cost to the Authority. Lessee shall pay all reasonable costs and expenses the Authority incurs in assisting Lessee, including, but not limited to, reasonable attorneys' fees and any and all costs or expenses that the Authority charges.

C. Lessee shall also pay to the corresponding taxing authorities, as the same become due



and before delinquency, all personal property taxes and assessments which may be properly levied or assessed during the Term against Lessee's personal property located within the Leased Premises.

**ARTICLE 27. GOVERNMENT ETHICS; CRIMES RELATED TO THE PUBLIC TREASURY**

A. The Authority certifies that neither the Authority's officials or employees nor any of their respective family unit members, relatives or business partners, nor any persons living in their households, have or had, within the two (2) years immediately preceding the date in which such employees or officials took office, a direct or indirect pecuniary interest in this Agreement.

B. The Authority certifies that neither the Authority's officials or employees authorized to evaluate, consider, approve or execute agreements on behalf of the Authority nor any of their respective family unit members, relatives or business partners, nor any persons who live in their households, have or had, within the two (2) years immediately preceding the date in which such employees or officials took office, a direct or indirect pecuniary interest in Lessee.

C. Lessee certifies that neither Lessee's managers, members, officers or employees nor any of their respective family unit members are officials or employees of the Authority.

D. Lessee certifies that as of the date of execution of this Agreement, it has no particular interest in any case or matter of any kind which involves a conflict of interest or conflict of public policy and shall not accept any agreement of any kind which may cause a conflict of interest or a conflict of public policy with the Commonwealth of Puerto Rico, its agencies, instrumentalities and public corporations.

E. Lessee certifies that, as of the date of execution of this Agreement, neither Lessee nor any of its managers, members, officers or managerial employees have been convicted, and Lessee has no knowledge of it or any of the aforesaid persons being investigated, indicted or convicted in a criminal procedure in the courts of the Commonwealth of Puerto Rico, the United States federal court system, other jurisdictions of the United States of America or other countries, for criminal charges related to the public treasury, the public trust, a public function or a fault that involves criminal misuse of public funds or property or for any of the felonies or misdemeanors specified in Act Number 428 of September 22, 2004, as amended ("Act 428"). It is expressly acknowledged that this certification is an essential condition of this Agreement. If the foregoing certification is determined to be false, the Authority shall have the right to terminate this Agreement immediately, and, if the conviction is related to this Agreement, the Authority shall have the right to require that Lessee reimburse the Authority any amount of money Lessee may have received from the Authority under this Agreement.

Lessee has executed a sworn statement, in the form attached as Exhibit D, to this effect and in accordance with Act 428. If the status of Lessee or its managers, members, officers or managerial employees with regards to the criminal convictions previously mentioned in this Paragraph E should change at any time during the Term, the Authority shall be immediately notified. Failure to comply with such notification obligation shall constitute a violation of this Paragraph E and shall result in the termination of this Agreement.

F. Lessee agrees to be bound by the provisions of Act Number 84 of June 18, 2002, which established the Code of Ethics for Contractors, Suppliers of Goods and Services and Applicants of Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico. Lessee certifies that on the date of execution hereof, it received a copy of such Code of Ethics.

G. Lessee and its authorized representatives shall at all times behave in a professional and respectful manner towards officials and employees of the Authority. If any of Lessee's officers or employees insults, offends or threatens any of the Authority's officials or employees, the Authority may terminate this Agreement, in accordance with the provisions of Article 19.

H. Lessee certifies that, as of the date of execution of this Agreement, it has no litigation whatsoever with the Commonwealth of Puerto Rico, its agencies or instrumentalities.



**ARTICLE 28. REQUIRED CERTIFICATIONS AND DOCUMENTS**

- A. Lessee certifies as of the date of execution of this Agreement that:
- i. It has filed all income tax returns, if any, required to be filed in the Commonwealth of Puerto Rico during the last five (5) taxable years and that it does not have any tax indebtedness with the Commonwealth of Puerto Rico.
  - ii. It has filed all sales and use tax returns, if any, required to be filed in the Commonwealth of Puerto Rico during the last sixty (60) monthly tax periods and that it does not have any sales and use tax indebtedness with the Commonwealth of Puerto Rico.
  - iii. It has filed all personal property tax returns, if any, required to be filed in the Commonwealth of Puerto Rico during the last five (5) taxable years and that it does not have any real or personal property tax indebtedness with the Municipal Revenue Collection Center ("CRIM", its Spanish acronym).
  - iv. It has paid all unemployment, disability and chauffeurs' insurance taxes, if any, required to be paid to the Puerto Rico Department of Labor and Human Resources (the "Department of Labor").
  - v. It is compliance with any orders issued by the Puerto Rico Child Support Administration ("Administración para el Sustento de Menores") ("ASUME", its Spanish acronym), regarding withholding of child support payments from employee salaries.
- B. On the date of execution hereof, Lessee has delivered the following documents to the



## Authority:

- i. Certificate of debt issued by the Puerto Rico Department of the Treasury (the "Department of the Treasury") (Model SC 6096);
- ii. Certificate of filing of income tax returns for the last five (5) taxable years issued by the Department of the Treasury (Model SC 6088);
- iii. Certificate of filing of sales and use tax returns for the last sixty (60) monthly tax periods issued by the Department of the Treasury (Model SC 2942);
- iv. Certificate of sales and use tax debt issued by the Department of the Treasury (Model SC 2927);
- v. Copy of Merchant's Registration Certificate issued by the Puerto Rico Department of the Treasury (Model SC 2918);
- vi. Certificate of filing of personal property tax returns issued by CRIM;
- vii. Certificate of debt issued by CRIM;
- viii. Certificates of employer registration and debt with regards to unemployment, disability and chauffeurs' insurance issued by the Department of Labor;
- ix. Certificate of debt issued by the Puerto Rico State Insurance Fund;
- x. Certificate of compliance issued by ASUME;
- xi. Certificate of Organization issued by the Puerto Rico Department of State;
- xii. Certificate of Good Standing issued by the Puerto Rico Department of State; and
- xiii. Certificate of Resolution authorizing the person executing this Agreement on behalf of Lessee.

**ARTICLE 29. REPRESENTATIONS AND WARRANTIES**

- A. The Authority represents and warrants to Lessee that:
- i. The Authority is a legal entity of local government subordinated to the Constitution of the Commonwealth of Puerto Rico and its laws, with independent legal capacity, and has full power and capacity to own its properties, to carry on its business as presently conducted, and to enter into and perform the transactions contemplated by this Agreement.
  - ii. The Authority's execution, delivery and performance of this Agreement and the transactions contemplated hereby has been duly authorized by all necessary corporate and/or legal action on its part, and does not and shall not conflict with or constitute a default under its organizational documents or any agreement or instrument to which the Authority is a party or by which the Authority or the Authority's property may be bound or affected.
  - iii. This Agreement constitutes the valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
  - iv. There are no actions, suits or proceedings pending or, to the best of the Authority's knowledge, threatened against or affecting the Authority before any court, administrative agency or other Governmental Authority, the result of which could prevent the performance by the Authority of its obligations under this Agreement.

- v. No approval, authorization, consent or other order or action of or filing by the Authority with any court, administrative agency or other Governmental Authority is required for the execution and delivery by the Authority of this Agreement.
- vi. The Authority is the owner in fee simple ("*pleno dominio*") of the Property and during the Term, it shall maintain all necessary proprietary rights over the Property to comply with its obligations under this Agreement.
- vii. Lessee's intended use of the Property as described in this Agreement does not and shall not conflict with or violate any agreement of the Authority affecting the Property.
- viii. There is no event, fact, occurrence, condition or any Legal Requirement which would preclude, prohibit or restrict, in whole or in part, directly or indirectly, Lessee's rights or the performance of its obligations under this Agreement.
- ix. There is no pending, or to the best of the Authority's knowledge, proposed or threatened condemnation, eminent domain, taking, temporary taking or similar proceeding, the result of which could affect the exercise by Lessee of its rights or the performance of its obligations under this Agreement.

Each and every representation made by the Authority in this Agreement shall survive the execution and delivery of this Agreement and shall be required to remain true and correct at all times during the effectiveness of this Agreement.

B. Lessee represents and warrants to the Authority that:

- i. Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico and has full power and capacity to own its properties, to carry on its business as presently conducted and to enter into and perform the transactions contemplated by this Agreement.
- ii. Lessee's execution, delivery and performance of this Agreement and the transactions contemplated hereby has been duly authorized by all necessary corporate and/or legal action on its part and does not and shall not conflict with or constitute a default under its organizational documents, or any agreement or instrument to which Lessee is a party or by which Lessee or Lessee's property may be bound or affected.
- iii. This Agreement constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally from time to time in effect.
- iv. There are no actions, suits or proceedings pending or threatened against or affecting Lessee before any court, administrative agency or any other Governmental Authority, the result of which could prevent the performance by Lessee of its obligations under this Agreement.
- v. No approval, authorization, consent or other order or action of or filing by Lessee with any court, administrative agency or other Governmental Authority is required for the execution and delivery by Lessee of this Agreement.

Each and every representation made by Lessee in this Agreement shall survive the execution and delivery of this Agreement and shall be required to remain true and correct at all times during the effectiveness of this Agreement.

*ben*

### ARTICLE 30. OTHER PROVISIONS

A. A party shall be excused from performing its obligations hereunder to the extent that such failure is caused by events beyond such party's reasonable control, including, without limitation: (i) strikes or other labor difficulties; (ii) inability to obtain necessary governmental permits and approvals; (iii) unavailability or scarcity of materials or labor; (iv) wars or war-like action (whether actual and pending or expected); (v) riot; (vi) civil insurrection; (vii) accidents not attributable to such party; (viii) acts of God; (ix) governmental preemption in connection with a national emergency; (x) restraints of government (civil or military); (xi) blockades; (xii) embargoes; (xiii) epidemics; (xiv) lightning; (xv) earthquakes; (xvi) fires; (xvii) hurricanes; (xviii) storms; (xix) floods; (xx) explosions; (xxi) acts of the public enemy; (xxii) terrorism; (xxiii) civil disturbance or disobedience; (xxiv) sabotage; (xxv) threats of sabotage or terrorism and (xxvi) any other cause, whether of the kind herein enumerated or otherwise, that is not within the reasonable anticipation or control of such party and which, in any event, is not a result of the intentional act, negligence or willful misconduct of such party (such events hereinafter collectively referred to as "Events of Force Majeure"); provided, however, that this provision shall in no event excuse Lessee's obligations to timely pay all amounts payable pursuant to the provisions of this Agreement, such obligations being unconditional. The party affected by an Event of Force Majeure shall use its best reasonable efforts to remove such cause of nonperformance; upon removal thereof, such party shall immediately resume the performance of its obligations hereunder.

B. Failure of a party hereto to complain of any act, omission, course of action or continued acts or omissions, no matter how long such failure may continue, shall not be deemed a waiver by such party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or consent to any subsequent breach of this Agreement. The Authority's receipt and acceptance of Rent shall not be deemed to be a waiver of any default by Lessee, nor shall it invalidate or impair the effectiveness of any termination or notice of termination hereunder, unless expressly agreed to in writing by the Authority.

C. Each right and remedy provided to the Authority or Lessee in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided to the Authority or Lessee in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Authority or Lessee of any one or more of the rights or



remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Authority or Lessee of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or equity or by statute or otherwise.

D. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

E. This Agreement shall create only the relationship of landlord and tenant between the parties, and not a partnership, joint venture or any other type of relationship.

F. This Agreement supersedes all prior conversations, understandings, agreements and negotiations between the parties with respect to the matters contemplated herein. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended except by an instrument in writing signed by the parties.

G. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

H. This Agreement shall not be effective until such date as Lessee meets the requirements that are specified herein. This Agreement shall not bind the Authority until the same is executed by the Executive Director of the Authority and filed for registration at the Office of the Comptroller of the Commonwealth of Puerto Rico.

**ARTICLE 31. NOTICES**

A. All notices, requests, consents and other communications required or permitted under this Lease (collectively, the "Notices") shall be in writing and shall be, as elected by the person giving notice, hand delivered by messenger or courier service (including overnight delivery) or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to the Authority at:

Puerto Rico Ports Authority  
PO Box 362829  
San Juan, Puerto Rico 00936-2829  
Attention: General Legal Counsel  
Telephone Number: (787) 729-8715  
Electronic Mail: [mlopez@prpa.pr.gov](mailto:mlopez@prpa.pr.gov)

If to Lessee at:

NFEnergía LLC  
 c/o New Fortress Energy Holdings LLC  
 111 West 19th Street, 8th Floor  
 New York, New York 10011  
 Attention: General Counsel  
 Telephone Number: (516) 268-7400  
 Electronic Mail: [legal@newfortressenergy.com](mailto:legal@newfortressenergy.com)

Each Notice shall be deemed delivered and received (i) on the date delivered, if by personal delivery or courier; or (ii) on the date upon which the return receipt is signed or delivery is refused, or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. By giving to the other party at least fifteen (15) days written notice thereof, such party and its successors and assigns shall have the right from time to time and at any time during the Term to change their respective addresses.

B. If Lessee has any complaints or claims with respect to the operations authorized under this Agreement or of any other nature, then Lessee shall communicate the same in writing (the "Claims Notice") to the Executive Director of the Authority. The Claims Notice shall be delivered to the Authority as provided in Paragraph A of this Article 31.

## ARTICLE 32. COMPLIANCE WITH LAWS AND REGULATIONS

A. The Authority and Lessee shall comply with all applicable laws, rules, regulations, ordinances, orders and requirements of all Governmental Authorities (collectively, the "Legal Requirements"). As used in this Agreement, the term "Governmental Authority" means the Federal Government of the United States of America, the Commonwealth of Puerto Rico or any political subdivision, municipality, department, commission, board, office or instrumentality of either thereof. Lessee agrees to comply with the Authority's resolutions, as the same may be approved or modified from time to time.

B. If a party fails to comply with the provisions of this Article 32, and such failure results in the imposition of fines, penalties or other similar sums on the other party pursuant to any final, unappealable and unappealed administrative decision or judgment, then the affected party shall be entitled to recover from the non-complying party the amount of such fines, penalties or other similar sums and any other related costs and expenses incurred by such party including, but not limited to, reasonable attorney's fees and costs. The non-complying party shall pay to the affected party all such amounts, costs and expenses within fifteen (15) days from the date of receipt of an invoice from the affected party therefor.

C. This Agreement shall be subject to the provisions of any existing or future agreement between the Authority and the Government of the United States of America related to the operations or maintenance of the Leased Premises and other facilities, the execution of which is required or may be required as a precondition to the disbursement of federal funds for the development of the Leased Premises and other facilities.

### ARTICLE 33. GOVERNING LAW AND JURISDICTION

A. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico, without regard to principles of conflicts of laws.

B. Any litigation in any way related to this Agreement shall be brought and maintained exclusively in the courts of the Commonwealth of Puerto Rico sitting in San Juan, Puerto Rico or in the federal courts sitting in the Commonwealth of Puerto Rico. Each party hereto hereby expressly and irrevocably submits to the jurisdiction of the courts of the Commonwealth of Puerto Rico and of the federal courts sitting in the Commonwealth of Puerto Rico for purposes of any such litigation as set forth above and irrevocably agrees to be bound by any final and non-appealable judgment rendered thereby in connection with such litigation. Each party hereto hereby expressly and irrevocably waives (to the fullest extent permitted by law) any objection which it may have or hereafter may have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient forum.

C. Lessee shall pay to the Authority any costs and expenses, including, but not limited to, reasonable attorneys' fees and costs, incurred by the Authority in connection with any legal proceedings filed by the Authority due to Lessee's breach of its obligations under this Agreement, provided that the Authority is the prevailing party in any such proceedings.

### ARTICLE 34. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE 35. REGISTRATION AT OFFICE OF THE COMPTROLLER**

The obligations under this Agreement may not be enforced unless and until this Agreement is filed for registration at the Office of the Comptroller of the Commonwealth of Puerto Rico, in accordance with Law No. 18 of October 30, 1975, as amended.

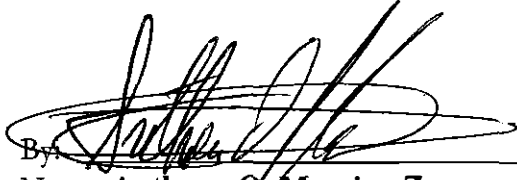
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first stated above.

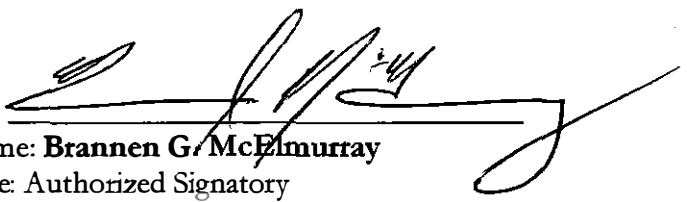
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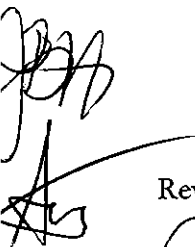
**LESSEE:**

**PUERTO RICO PORTS AUTHORITY**


**NFENERGÍA LLC**

By:   
Name: **Anthony O. Maceira-Zayas**  
Title: Executive Director

By:   
Name: **Brannen G. McElmurray**  
Title: Authorized Signatory



Revised and recommended by:

  
Name: **Julián M. Bayne Hernández**  
Title: General Legal Counsel





