

**CONCESSION AGREEMENT**

**- between -**

**CONNECTICUT PORT AUTHORITY**

**- and -**

**GATEWAY NEW LONDON LLC**

**- dated as of -  
January 7, 2019**

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## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (this “**Concession Agreement**”) is made as of the 7th day of January, 2019 (the “**Effective Date**”) by and between THE CONNECTICUT PORT AUTHORITY (the “**Authority**”), a quasi-public agency of the State of Connecticut (the “**State**”) and GATEWAY NEW LONDON LLC, a Delaware limited liability company (the “**Concessionaire**” and together with the Authority, each a “**Party**” and collectively, the “**Parties**”).

### RECITALS

**WHEREAS**, pursuant to Sections 15-31a through 15-31i of the General Statutes of Connecticut, as amended from time to time, and collectively with all rules and regulations promulgated thereunder (the “**Act**”), the Authority, a public instrumentality and political subdivision of the State, was created to coordinate the development of the State’s ports and harbors and to, among other things, operate and maintain such ports and harbors, including the Port Facilities (as defined herein);

**WHEREAS**, on June 7, 2018, the Authority issued a request for proposals (as amended, the “**RFP**”) to private contractors to enter into a long-term operating agreement to, among other things, improve, develop, finance, maintain and operate the Port Facilities;

**WHEREAS**, on or about August 31, 2018, the Authority received proposals in response to the RFP;

**WHEREAS**, after reviewing the proposals in accordance with the provisions of the RFP, the Authority entered into negotiations with the Concessionaire;

**WHEREAS**, the Authority desires to receive, and the Concessionaire desires to provide, the Port Services (as defined herein) at the Port Facilities under the terms of this Agreement;

**WHEREAS**, a resolution authorizing this Agreement, its execution and delivery was duly adopted by the Authority on January 7, 2019; and

**WHEREAS**, the execution and delivery of this Agreement by the Concessionaire has been duly authorized by all necessary corporate action.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### SECTION 1.

#### DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Concession Agreement, unless the subject or context otherwise requires, capitalized terms shall have the meanings given to them in Part I of Annex A.

## **1.2 Annexes and Schedules**

The Annexes and Schedules to this Agreement shall form an integral part hereof and, unless otherwise stated, references to the Annexes or Schedules herein shall be construed as references to Annexes and Schedules to this Concession Agreement.

## **1.3 Rules of Interpretation**

Unless otherwise expressly provided herein, the rules of interpretation set forth in Part II of Annex A shall apply to this Concession Agreement.

## **1.4 Concession Agreement**

The following documents shall form this Concession Agreement :

- (a) this agreement, including its Annexes; and
- (b) the Schedules.

## **1.5 Conflicts**

The several documents forming this Concession Agreement are to be taken as mutually explanatory of one another, but in the event of ambiguities or discrepancies the same shall be explained and adjusted by the Authority who shall thereupon issue to the Concessionaire instructions thereon. In such event, unless otherwise provided in this Concession Agreement, the priority of the documents forming this Concession Agreement shall be as follows:

- (a) this agreement, including its Annexes; and
- (b) the Schedules.

## **SECTION 2.**

### **CONCESSION**

#### **2.1 Grant of Concession; Authority Tariff**

2.1.1 By virtue of the powers delegated to the Authority, the Authority hereby grants to the Concessionaire, for the Concession Period and subject to the terms and conditions of this Concession Agreement, the right and obligation to: (a) operate, administer, manage, improve and maintain the Port Facilities and to provide Port Services at the Site; and (b) use and occupy the Site for the purpose of exercising and performing its rights and obligations as set forth in sub-clause (a) above.

2.1.2 The Authority grants, and the Concessionaire accepts, the rights and obligations hereunder, including the rights to use and occupy the Port Facilities and the Site for the purposes set forth in this Concession Agreement, in "AS IS" condition.

2.1.3 This Concession Agreement may create a possessory interest in real property subject to taxation and the Concessionaire acknowledges that it may be subject to payment of Taxes levied on such interest, if such an interest is created.

2.1.4 The Authority shall have the right to establish and amend, from time to time, an Authority Tariff to set forth rules and regulations applicable to the Site and the Port Facilities; *provided* that such Authority Tariff shall not establish the rates or charges applicable to the users of the Port Facilities during the Concession Period, except as is otherwise may be required by the Shipping Act. During the Concession Period, the Concessionaire shall have the right to advise the Authority of the Concessionaire's views with respect to any provision of the Authority Tariff or any proposed amendments to the Authority Tariff that the Concessionaire reasonably believes would be inconsistent with the Concessionaire's rights under this Concession Agreement; *provided, however*, that the foregoing shall not require the Authority to amend, or preclude the Authority from amending as the Authority deems appropriate in its discretion, the Authority Tariff in any way.

## **2.2 Title**

### **2.2.1 Retention of Title**

(a) The State has, and shall retain, good and valid title to the Port Facilities and the Site. The Authority, pursuant to an agreement with the State, maintains custody and control of and the right to use the Port Facilities and the Site. The Authority has the power, right and authority to enter into this Concession Agreement and to grant the rights and use in the Site to Concessionaire pursuant to the Authority's agreement with the State.

(b) The Concessionaire has and will have no fee title to, or fee ownership interest in the Site or any title or ownership interest in any portion of the Port Facilities owned by the Authority or the State, except with respect to (i) such Movable Property and Fixtures and Fittings transferred to the Concessionaire as described in Section 2.2.1(d) (ii) such Movable Property and Fixtures and Fittings that the Authority declines its option to purchase pursuant to Section 15.6.5 and (iii) any such Movable Property and Fixtures and Fittings that are owned by the Concessionaire and on the Site from time to time.

(c) Except in accordance with Section 17 and Section 19, the Concessionaire may not sell, assign or otherwise transfer, or create or suffer the creation or existence of any Encumbrance (other than a Permitted Concessionaire Encumbrance) upon, all or any part of the Site or any Port Facilities or any property interest of the Concessionaire therein granted by the Concession Agreement.

(d) The Movable Property and Fixtures and Fittings described on Schedule 3 shall be conveyed and transferred to the Concessionaire at the Closing and such transfer and conveyance shall be made pursuant to one or more bills of sale in form and substance reasonably satisfactory to the Authority and the Concessionaire. Such bill(s) of sale shall assign, convey and transfer to the Concessionaire any and all maintenance repair and maintenance contracts, manufacturer and vendor warranties applicable to such Movable Property and Fixtures and Fittings (to the extent that the same may be assignable, conveyable and transferable). Upon expiration or earlier termination of this Concession Agreement, the Authority shall have the right to purchase from the Concessionaire the Movable Property, Fixtures and Fittings and Cranes as are in use at the Site and the Port Facilities as of such expiration or termination date. The purchase price to be negotiated between the Authority and the Concessionaire shall be the Fair Market Value of such Movable Property, Fixtures and Fittings and Cranes as of such date. Within ninety (90) days of the end of each calendar year during the Concession Period, the Concessionaire shall notify the Authority of all Movable Property and Fixtures and Fittings acquired (whether via purchase or lease) by



the Concessionaire during such calendar year or otherwise put into service by the Concessionaire at the Site, such notification to include an estimate of the value of Movable Property, Fixtures and Fittings and Cranes.

**2.3 Obligations of the Concessionaire**

The Concessionaire agrees to assume the following principal obligations, as further set forth in this Concession Agreement:

**2.3.1 Operation and Maintenance of Port Facilities**

The Concessionaire shall be responsible, at its sole cost, risk and expense, for the comprehensive administration, management, operation and maintenance of the Port Facilities and all other obligations assumed by it under this Concession Agreement, all in accordance with the Port Operations Manual, the Port Standards, Good Industry Practice, all Applicable Laws and the terms hereof.

**2.3.2 Port Services**

Without limiting the generality of Section 2.1.1 or Section 2.3.1, the Concessionaire shall be obligated, at its sole cost, risk and expense, to provide or procure the provision of the Port Services for the duration of the Concession Period, all in accordance with the Port Operations Manual, the Port Standards, Good Industry Practice, all Applicable Laws and the terms hereof.

**2.4 Fees and Payments**

**2.4.1 Annual Fixed Fee**

On or before the Closing Date and on or before each anniversary of the Closing Date, the Concessionaire shall pay to the Authority, in cash, the amount corresponding to the applicable period as set forth in the following table:

| <b>Applicable Period</b>   | <b>Annual Fixed Fee</b> |
|--|-------------------------|
| The Closing Date through and including the fourth (4th) anniversary of the Closing Date  | \$500,000               |
| The fifth (5th) anniversary of the Closing Date through and including the ninth (9th) anniversary of the Closing Date            | \$750,000               |
| The tenth (10th) anniversary of the Closing Date through and including the fourteenth (14th) anniversary of the Closing Date     | \$1,000,000             |
| The fifteenth (15th) anniversary of the Closing Date through and including the nineteenth (19th) anniversary of the Closing Date | \$1,250,000             |

(as adjusted, the “**Annual Fixed Fee**”). Such Annual Fixed Fee, once paid, shall be non-refundable, including in the event that the Concession Period is terminated after the payment of the Annual Fixed Fee applicable to such year but prior to the next anniversary of the Closing Date.

#### 2.4.2 Variable Fee

The Concessionaire shall pay to the Authority, in cash, an amount (the “**Variable Fee**”) equal to the greater of (a) seven percent (7%) of the Gross Revenues and (b) the Minimum Annual Guarantee. The Variable Fee for each year of the Concession Period shall be payable as follows: (i) four equal quarterly installments in the amount of twenty-five percent (25%) of the then-applicable Minimum Annual Guarantee, which shall be due on (A) the Closing Date or the anniversary of the Closing Date, as applicable, (B) that date that is 90 days after the Closing Date or the anniversary of the Closing Date, as applicable, (C) that date that is 180 days after the Closing Date or the anniversary of the Closing Date, as applicable and (D) that date that is 270 days after the Closing Date or the anniversary of the Closing Date, as applicable; and (ii) any Variable Fee in excess of the Minimum Annual Guarantee shall be due and shall be paid by the Concessionaire within 30 days after the delivery of the audited annual financial statements of the Concessionaire, as required by Section 10.6. Any unpaid installments of the Variable Fee in respect of the final year of the Concession Period shall be due and shall be paid by the Concessionaire within 90 days after the expiration or termination of the Concession Period. In the event that containerized cargo exceeds more than 10% of the Gross Revenue of the Concessionaire in a calendar year, the Parties shall, in good faith, negotiate with respect to a possible increase to the calculation methodology for the Variable Fee with respect to containerized cargo, if appropriate.

#### 2.4.3 Annual Deposit

(a) No later than sixty (60) days prior to the first day of each calendar year during the Concession Period, the Concessionaire shall either (i) deliver to the Authority a Letter of Credit with a term of at least one year from the first day of that year in an amount equal to One Million Dollars (USD 1,000,000) or (ii) deliver or maintain in an Escrow Account for the benefit of the Authority a cash deposit in the same amount. On each of the fifth (5th), tenth (10th) and fifteenth (15th) anniversaries of the Closing Date (each such date, a “Fee Adjustment Date”), the amount of the annual deposit required by this Section 2.4.3 shall be increased by an amount equal to the net incremental change in the sum of the Annual Fixed Fee and the Minimum Annual Guarantee becoming applicable as of such Fee Adjustment Date as compared to the sum of the Annual Fixed Fee and the Minimum Annual Guarantee applicable immediately prior to such Fee Adjustment Date.

(b) The Letter of Credit or Escrow Account (including any interest earnings thereon) described in this Section 2.4.3 shall be used (i) for the purpose of funding (A) any shortfalls in the Annual Fixed Fee or the Variable Fee, (B) any other amounts due and payable to the Authority under this Concession Agreement or (C) generally applicable Taxes that the Concessionaire fails to pay for which the failure to pay may result in the imposition of an Encumbrance on the Site or the Port Facilities, and (ii) for paying any Losses or damages provided for in Section 15.2.

(c) In the event of any such shortfalls, amounts or Losses, the Authority shall have the right (in addition to all other rights and remedies provided in this Concession Agreement, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn, and without the Authority’s exercise of such right being deemed a waiver or a cure of the Concessionaire’s failure to perform and whether or not this Concession Agreement is thereby terminated), without notice to the Concessionaire, to draw up to the full amount of the Letter of Credit or to withdraw up to the full amount of cash in the Escrow Account (but in either case, no greater than the applicable shortfall, amount or Loss) upon presentation of a sight draft or escrow instruction, as applicable, and a certificate confirming that the Authority has the right to draw under the Letter of Credit or withdraw from the Escrow Account in the amount of such sight draft or escrow instruction.

(d) In the event the Authority draws down on any Letter of Credit or withdraws cash from the Escrow Account delivered pursuant to this Section 2.4.3, the Concessionaire shall, immediately upon notice by the Authority of such draw, deliver to the Authority an additional Letter of Credit or make an additional deposit in the Escrow Account in an amount equal to the amount so drawn or withdrawn, as applicable, or a replacement Letter of Credit in the full amount set forth in Section 2.4.4(a) so that at all times the Authority shall have in its possession one or more Letters of Credit or an Escrow Account balance totaling the full amount set forth in Section 2.4.3(a).

(e) In the event that the issuer of a Letter of Credit no longer meets the credit rating requirements for such issuer set forth in this Concession Agreement, then the Concessionaire shall have the obligation to replace such Letter of Credit with an instrument that meets the requirements set forth in this Concession Agreement or instead use an Escrow Account.

(f) Absent intentional fraud on behalf of the Authority, the Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit or improper instruction for withdrawal from the Escrow Account shall be the right to obtain from the Authority a refund of the amount which was drawn or withdrawn inappropriately or misapplied and the reasonable costs incurred by the Concessionaire as a result of such draw or misapplication (including, for the avoidance of doubt, interest thereupon).

(g) The Concessionaire acknowledges that the presentment of sight drafts drawn under the Letter of Credit or the withdrawal from the Escrow Account could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages as described in Section 2.4.4(f), and that the recovery of such money damages would be an adequate remedy therefor.

(h) The Concessionaire shall not request or instruct the issuer of the Letter of Credit or the escrow agent to refrain from paying any sight draft drawn under a Letter of Credit or request for payment under the Escrow Account.

#### 2.4.4 Certain Reimbursements.

The Concessionaire shall reimburse the Authority for any costs incurred by the Authority in respect of any feasibility study concerning wind energy uses of for the [REDACTED] to the extent that, by that date that is two (2) years following the Effective Date, the [REDACTED] does not proceed and any such costs have not been reimbursed to the Authority by [REDACTED], subject to a maximum cap of such reimbursement from the Concessionaire equal to \$74,000.

#### 2.4.5 Additional Amounts

All payments to be made by or on behalf of the Concessionaire to the Authority under this Concession Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes. If the Concessionaire (or any other Person effecting payment on behalf of the Concessionaire's obligations) is required by generally Applicable Law or otherwise to deduct or withhold any Taxes from any such payment, then the amount payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional amounts payable under this Section) the Authority shall receive the full amount it would have received had no such deduction or withholding been required. For the avoidance of doubt and in furtherance of the Authority's obligations under Section 2.4.8, the Authority shall use its commercially reasonable efforts to negotiate with the Concessionaire with respect to the addition of any additional land to the Site to the extent that the addition of any such additional land may cause an imposition or increase in any Taxes payable by the Concessionaire.

#### 2.4.6 Method of Payment

All payments to be made by the Concessionaire to the Authority under this Concession Agreement shall be made, free of any set-offs or counterclaims whatsoever, in immediately available funds to an account notified in writing by the Authority for such purpose. Payments to be made by the Concessionaire to the Authority under this Concession Agreement shall not be subject to any abatement, and the payments thereof shall not be subject to any set-off or reduction for any reason whatsoever, including any present or future claims of the Concessionaire against the Authority, any other Relevant Authority, any Subcontractor, any User or any other Person under this Concession Agreement, any other Project Agreement or otherwise.

#### 2.4.7 Payment Obligations Unconditional

From and after the Closing Date, the obligations of the Concessionaire to pay Concession Fees to the Authority under Section 2.4 of this Concession Agreement are absolute and unconditional and shall not be affected by any circumstance whatsoever, including: (a) any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment right the Concessionaire may have against the Authority, any Subcontractor or any other Person for any reason whatsoever; (b) any defect in the title, condition, design, operation, merchantability or fitness for use of, or any damage to or loss or theft or destruction of, the Site or the Port Facilities, or the absence of access thereto or any interference, interruption or cessation in or prohibition of the use or possession thereof by the Authority or any other Person for any reason whatsoever, including any such interference, interruption, cessation or prohibition resulting from the act of any Relevant Authority or otherwise; (c) any Encumbrances or rights of any Person with respect to the Site or the Port Facilities; (d) the invalidity or unenforceability or lack of due authorization or other infirmity of this Concession Agreement or any other Project Agreement or any lack of right, power or authority of the Authority, the Concessionaire, any Subcontractor or any other Person to enter into this Concession Agreement or any other Project Agreement, as the case may be; (e) the Concessionaire or any other Person at any time having immunity from suit, prejudgment attachment, attachment in aid of execution or execution on the grounds of sovereignty or otherwise; (f) Force Majeure; or (g) any other event or circumstance, whether similar or dissimilar to the foregoing, that, but for this provision, could constitute a legal or equitable defense to payment hereunder, any present or future law notwithstanding.

#### 2.4.8 Area Measurements; Additions to Site

The Parties acknowledge that the Concession Fees stated herein have not been determined strictly on the basis of surface dimensions and therefore shall not be subject to adjustment, notwithstanding any technical discrepancy between the description of the Site contained in Schedule 1 hereof and any final measurements or legal description contained in or resulting from any subsequent land survey. To the extent that the Authority wishes to add additional land to the Site, the Authority shall provide notice of such intention to the Concessionaire and shall use commercially reasonable efforts to negotiate in good faith with the Concessionaire regarding a corresponding increase in the Annual Fixed Fee (it being understood that a percentage increase to the Annual Fixed Fee not less than the corresponding percentage increase in the land included in the Site shall be a good-faith opening position for such negotiations). Notwithstanding the foregoing, the Authority may proceed to add any such additional land to the Site without the consent of the Concessionaire. To the extent that portions of the Site are removed by the Authority, by eminent domain or otherwise, the Parties agree to use commercially reasonable efforts to mutually agree on a decrease of the Annual Fixed Fee to reflect such decrease.

## 2.5 User Fees

### 2.5.1 Determination and Collection; Distribution

(a) Subject to the terms and conditions of this Concession Agreement, the Concessionaire shall have the exclusive right to establish, collect and retain fees and charges for all Port Services performed or conducted by the Concessionaire at the Site and the Port Facilities as it shall determine including those uses set forth on Schedule 2 (collectively, the “**User Fees**”); *provided* that the Concessionaire shall not have the right to collect from the Authority or any other Person authorized to access the Site and the Port Facilities on behalf of the Authority under this Concession Agreement any User Fees with respect thereto to the extent that the Concessionaire is not requested to perform any Port Services in respect of the Authority or other Person authorized to access the Site and the Port Facilities on behalf of the Authority. In addition, the Concessionaire shall have the right, subject to the requirements of the Shipping Act, to enter into agreements with ocean common carriers and other vessel owners or operators, rail carriers, and other users of the Site and the Port Facilities and to establish, maintain and modify MTO Schedules throughout the Concession Period, as such MTO Schedules may be required or permitted by the Shipping Act, and subject to the requirements thereof. The MTO Schedules, as from time to time amended, established by the Concessionaire shall not be inconsistent with the Authority Tariff, including amendments thereto.

(b) The Concessionaire shall distribute, not later than the 15th day of each calendar month, to the Authority fifty percent (50%) of that portion of the User Fees attributable to wharfage and dockage fees collected by the Concessionaire during the preceding calendar month.

### 2.5.2 Obligation to file MTO Schedules with the Authority

Not less than thirty (30) days prior to the imposition of or change to the MTO Schedules, the Concessionaire shall notify the Authority in writing of such imposition or change and file the proposed MTO Schedules with the Authority. The Authority and the Concessionaire may, on a voluntary and non-binding basis, discuss and agree on the rates, terms and conditions in the MTO Schedules; *provided* that the Concessionaire shall have the ultimate right to establish the MTO Schedules pursuant to Section 2.5.1 in its discretion.

### 2.5.3 Assessments by Relevant Authorities

The Concessionaire shall collect, on behalf of all Relevant Authorities (other than the Authority), all fees, duties and other charges assessed from time to time by such other Relevant Authorities upon Port Services, Cargo, Vessels or Users, including, without limitation, any charges from time to time assessed by the State or other Relevant Authorities for purposes of funding maritime or transportation infrastructure maintenance or development. Such amounts collected by the Concessionaire shall be the property of such Relevant Authority, shall be held by the Concessionaire in trust for such Relevant Authority and shall be immediately deposited by the Concessionaire (as and when collected) into the account designated by such Relevant Authority for such purpose.

### 2.5.4 Exemptions

The military of the State and the United States Federal Government and the police of the State, the United States Federal Government or other municipal or regional authority with jurisdiction shall be exempt from User Fees in connection with the performance of their statutory, non-commercial functions.

### 2.5.5 Currency

All User Fees shall be denominated in Dollars and collected by the Concessionaire in Dollars.

## 2.6 Compliance with Laws

The Concessionaire acknowledges and agrees that it has familiarized itself with the requirements of any and all Applicable Laws, including the conditions of any required Regulatory Approvals prior to entering into this Concession Agreement. The Concessionaire shall be responsible for complying with the foregoing at its sole cost and without any modification in Concession Fees or extension of time for performance of any obligation under this Concession Agreement on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment or costs not expressly provided for in this Concession Agreement. The Concessionaire has no reason to believe that any Regulatory Approval required to be obtained by the Concessionaire will not be granted in due course and thereafter remain in effect so as to enable performance of this Concession Agreement in accordance with its terms. In the event that any Regulatory Approvals required to be obtained by the Concessionaire must formally be issued in the name of the Authority or another Person, the Concessionaire shall undertake all efforts to obtain such approvals subject to the Authority's (or such other Person's, as the case may be) reasonable cooperation with Concessionaire. To the extent not inconsistent with Applicable Law, the Concessionaire shall provide the Authority with copies of all Regulatory Approvals.

## 2.7 Assumed Obligations

The Concessionaire agrees to assume and discharge or perform when due, all debts and obligations whatsoever relating to the Site, the Port Facilities and the Port Services that occur, arise out of or relate to, or are based on facts or actions occurring, during (and not prior to) the Concession Period, but only to the extent that such debts or obligations do not arise from or relate to any breach by the Authority of any covenant, term, condition, representation or warranty set forth in this Concession Agreement (collectively, the "**Assumed Obligations**"); *provided, however*, that the Assumed Obligations shall not include, and as between the Authority and the Concessionaire, the Authority shall perform and discharge as and when due, any debts, obligations and liabilities (i) with respect to the Authority's obligations under this Concession Agreement; (ii) under any Environmental Law arising out of or relating to the ownership, operation or condition of the Site and the Port Facilities at any time prior to the Time of Closing or any Hazardous Substance or other contaminant that was present on the Site or otherwise existed at any time prior to the Time of Closing; and (iii) relating to any latent defects of the Site or the Port Facilities that existed prior to the Time of Closing (collectively, the "**Excluded Obligations**").

## 2.8 Other Operations

The Concessionaire shall not conduct, and shall cause its Affiliates to not conduct, the operations at the New Haven, Connecticut port facilities and any other port facility operations at any other port facilities that the Concessionaire (or its Affiliates) may in the future undertake located in the State of Connecticut, the State of Rhode Island or the Commonwealth of Massachusetts to be undertaken in a manner with respect to customer activity and arrangements resulting in disparate and negative outcomes for the Concessionaire's operations at the Site and the Port Facilities as compared to such other operations that are attributable to the willful conduct of the Concessionaire or its Affiliates that prioritize or favor such other operations over the operations at the Site and the Port Facilities, unless such disparity is supported by a reasonable business rationale, as demonstrated by the Concessionaire to the Authority by clear and convincing evidence. Upon notice from the Authority to the Concessionaire that the Authority has a reasonable belief that the Concessionaire may have engaged in conduct in contravention of the

Concessionaire's obligations under this Section 2.8, the Concessionaire shall cooperate with the Authority to investigate such belief, including by promptly providing the Authority with accurate and complete records of the operations of the Concessionaire and its Affiliates with respect to the Site, the Port Facilities and the other operations of the Concessionaire and its Affiliates, as applicable to the alleged conduct in contravention of this Section 2.8. For the avoidance of doubt, and notwithstanding anything contained herein to the contrary, the continued operations of port facilities located at New Haven, Connecticut owned and/or operated by the Concessionaire (or its Affiliates) in the ordinary course of business, consistent with past practice as of the Effective Date (as shown by reasonable supporting evidence from the Concessionaire), shall be deemed to satisfy the requirements of the Concessionaire pursuant to this Section 2.8.

## **2.9 Additional Services**

During the Concession Period, the Authority may request the Concessionaire to provide additional services to the Authority which are reasonably similar or related to the services performed pursuant to this Concession Agreement provided they do not materially and adversely impair the Concessionaire, existing services being performed, or operations then existing. The Authority and the Concessionaire shall mutually agree in good faith as to the terms and conditions relating to the Concessionaire providing such additional services prior to the commencement of such services. This Concession Agreement shall be amended by the Parties as necessary to provide for such additional services.

## **SECTION 3.**

### **CONCESSION PERIOD**

#### **3.1 Concession Period**

3.1.1 The Concession Period shall be for a period of twenty (20) years from the Closing Date, subject to extension in accordance with Section 14.4 and subject to earlier termination in accordance with the terms of this Concession Agreement. To the extent that the [REDACTED] has been implemented, as of the twelfth (12th) anniversary of the Closing Date, the Parties agree to use commercially reasonable efforts to renegotiate in good faith possible increases to the Annual Fixed Fee, the Variable Fee and/or the Minimum Annual Guarantee in light of such [REDACTED] and corresponding operations.

3.1.2 If no Default shall have occurred and be continuing at the end of the initial Concession Period, upon notice from the Authority to the Concessionaire not later than 180 days prior to the expiration of the initial Concession Period, the Concession Period shall be extended for an additional ten (10) years from the then-scheduled expiration of the Concession Period (the "**First Extension Period**").

3.1.3 If no Default shall have occurred and be continuing at the end of the First Extension Period, upon notice from the Authority to the Concessionaire not later than 180 days prior to the expiration of the First Extension Period, the Concession Period shall be extended for an additional ten (10) years from the then-scheduled expiration of the Concession Period (the "**Second Extension Period**").

3.1.4 If no Default shall have occurred and be continuing at the end of the Second Extension Period, the Concession Period may be extended (or a new agreement between the Parties may be executed) by mutual agreement of the Parties, if such extension (or new agreement) is determined to be in the best interests of the Parties, as determined by each Party in such Party's discretion.

## SECTION 4.

### CLOSING

#### **4.1 Prior to Closing**

4.1.1 The Authority and the Concessionaire shall use best efforts to satisfy the conditions precedent to the Closing Date specified in Section 4.4 within ninety (90) days of the Effective Date and not later than April 15, 2019 (the "**Outside Closing Date**").

#### **4.2 Closing Deposit**

4.2.1 The Authority acknowledges the deposit into an Escrow Account (the "**Closing Deposit**") as of the Effective Date of an aggregate amount equal to Five Hundred Thousand Dollars (USD 500,000.00) to be held by the Authority solely for the purposes described in Sections 4.2.2 and 4.2.3.

4.2.2 If the Authority terminates this Concession Agreement pursuant to Section 4.7.1(d), then the Authority shall be entitled to retain any Closing Deposit and all interest earned thereon, as the sole remedy or right of the Authority against the Concessionaire related to the failure of the Concessionaire to satisfy any condition set forth in Section 4.4. If this Concession Agreement is terminated for any other reason, the Authority shall return any Closing Deposit and all interest earned thereon. The right of the Authority to retain any Closing Deposit and all interest earned thereon is intended to be, and shall constitute, liquidated damages to compensate the Authority for the cost of forgoing alternative opportunities and for other costs incurred by the Authority in reliance on the Concessionaire's agreement to enter into the transactions contemplated hereby, and full retention of any Closing Deposit and all interest earned thereon shall terminate all other rights and remedies of the Authority with respect to the Concessionaire related to the failure of the Concessionaire to satisfy any condition set forth in Section 4.4. The Parties acknowledge that the damages suffered by the Authority as a result of such termination would be impossible to ascertain and that the Closing Deposit and all interest earned thereon is a reasonable estimate thereof and is not intended as a penalty.

4.2.3 At Closing, upon satisfaction of the conditions set forth in Sections 4.4, 4.5 and 4.6, the Authority shall be entitled to withdraw the Closing Deposit and all interest earned thereon as a credit against the first payment of the Annual Fixed Fee.

#### **4.3 Closing**

4.3.1 Except for the rights and obligations of the Parties specified in Section 4.1.1, which are intended to be legally binding as of the Effective Date and subject to Section 4.4, the rights and obligations of the Parties under this Concession Agreement shall become effective upon the closing of the transactions contemplated hereby (the "**Closing**").



4.3.2 The Closing shall take place on such date as is agreed to in writing by the Authority and the Concessionaire (the “**Closing Date**”). The Closing Date shall be not more than ninety (90) days after the Effective Date; *provided* that such 90-day period may be extended to a date not later than the Outside Closing Date if the Party wishing to extend such period has shown, to the reasonable satisfaction of the other Party, that it has exerted best efforts to satisfy the conditions to the Closing Date in accordance with the terms of this Concession Agreement and that the Closing Date is likely to occur within the extended period.

4.3.3 The Closing shall take place at 10:00 a.m. on the Closing Date or such other time on such date agreed to in writing by the Authority and the Concessionaire (the “**Time of Closing**”).

4.3.4 The Closing shall be held at the offices of the Authority, or such other place mutually agreed to in writing by the Authority and the Concessionaire.

4.3.5 At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to the Authority same-day funds by wire transfer in the amount of the initial payment of the Annual Fixed Fee (less the amount of any Closing Deposit (plus all interest thereon) that the Concessionaire previously paid pursuant to Section 4.2).

#### **4.4 Conditions Precedent to Closing for the Benefit of the Authority**

The Authority shall be obliged to consummate the Closing in accordance with the terms hereof only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived by the Authority:

4.4.1 the representations and warranties of the Concessionaire in Section 5.1 shall be true and correct on and as of the Effective Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder (it being understood that, for purposes of determining whether such failures have not had and are not reasonably likely to have a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder, all materiality qualifications and references to a material adverse effect contained in such representations and warranties shall be disregarded);

4.4.2 the Authority shall have received the initial payment of the Annual Fixed Fee (less the amount of any Closing Deposit (plus all interest thereon)) and as required pursuant to Section 2.4.4, a Letter of Credit or Escrow Account for the initial annual deposit;

4.4.3 the Authority shall have received the Performance Bond to the extent required for the initial year of the Concession Period by this Agreement, in lawful cash currency of the United States, or by a Letter of Credit or bond in form and substance reasonably satisfactory to the Authority;

4.4.4 the Authority shall have received and approved the Port Operations Manual, in form and substance reasonably satisfactory to the Authority;

4.4.5 the execution and delivery of each other Project Agreement to which the Concessionaire, but not the Authority, is a party, which Project Agreements shall be in full force and effect, with all conditions precedent to the effectiveness thereof having been fulfilled or waived, as the case may be, except any condition precedent regarding the effectiveness of this Concession Agreement;

4.4.6 except for those approvals required as mutual conditions to Closing as described in Sections 4.6.1 and 4.6.2, all necessary approvals, consents and authorizations, including all required Regulatory Approvals with respect to the execution, delivery and performance by the Concessionaire of its obligations under this Concession Agreement and each other Project Agreement having been obtained and being in full force and effect;

4.4.7 the Authority shall have received evidence, in the form of brokers' certificates or insurance binders, that satisfactory arrangements have been made by the Concessionaire for the procurement of the insurance policies required to be in effect on the Closing Date in accordance with the Insurance Requirements, subject only to the payment by the Concessionaire of the required premiums;

4.4.8 the Authority shall have approved the Transition Plan;

4.4.9 there being, other than as previously disclosed in writing by the Concessionaire, no proceeding, action or claim pending, or threatened, which may have a potentially adverse effect on the Project or the performance of its obligations hereunder;

4.4.10 the Concessionaire's legal adviser or advisers shall have issued a legal opinion, in form and substance acceptable to the Authority; and

4.4.11 the Authority shall have received approval of this Concession Agreement from applicable Relevant Authorities as may be required by any Applicable Law. Concessionaire shall cooperate with the Authority to obtain all such approvals, including, providing such Relevant Authorities with any data, documents, or information that such Relevant Authorities may reasonably determine to be necessary in obtaining said approvals and meeting with any State of Connecticut representatives, as reasonably requested by Authority or such Relevant Authorities.

#### **4.5 Conditions Precedent to Closing for the Benefit of the Concessionaire**

The Concessionaire shall be obliged to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by the Concessionaire:

4.5.1 the representations and warranties of the Authority set forth in Section 5.2 shall be true and correct on and as of the Effective Date and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a Material Adverse Effect;

4.5.2 the Authority's legal adviser or advisers shall have issued a legal opinion, in form and substance reasonably acceptable to the Concessionaire; and

4.5.3 the Concessionaire has completed due diligence of all Regulatory Approvals and Environmental Permits necessary for the operation of the Port Facilities to the reasonable satisfaction of the Concessionaire.

#### **4.6 Mutual Conditions Precedent to Closing**

The Authority and the Concessionaire shall be obliged to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by both the Authority and the Concessionaire:

4.6.1 this Concession Agreement shall have been filed with the United States Federal Maritime Commission to the extent required by Section 5 of the Shipping Act, as amended by the United States Ocean Shipping Reform Act of 1996;

4.6.2 if applicable, any of the following shall have occurred (and with respect to the condition described in this Section 4.6.2, the Concessionaire, at the Concessionaire's expense, shall prepare any required filing in connection with such review under the Exon-Florio Act, and the Parties shall make best efforts to cooperate in expediting the review under the Exon-Florio Act to the extent practicable): (a) the review period under Section 721 of Title VII of the Defense Production Act of 1950, as amended (the "**Exon-Florio Act**") during which the President or his designee may commence a review of this Concession Agreement shall have expired without such review having been commenced, or (b) such review shall have been commenced and the Authority shall have received notice that such review has been completed and that either this Concession Agreement is not a covered transaction under the Exon-Florio Act or there are no unresolved national security concerns, or (c) the President or his designee shall have commenced an investigation and the Authority shall have received notice that such investigation has been completed and that either this Concession Agreement is not a covered transaction under the Exon-Florio Act or there are no unresolved national security concerns, or (d) the period under the Exon-Florio Act during which the President may announce his decision to take action to suspend, prohibit or place any limitations on the transactions contemplated by this Concession Agreement shall have expired without any such action being threatened, announced or taken or (e) the President shall have announced a decision not to take any such action; and

4.6.3 there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Relevant Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the transactions contemplated hereby, and there shall be no action taken (including the pendency of any review or proceeding), or any Applicable Law enacted, entered, enforced or deemed applicable to the transactions contemplated hereby by any Relevant Authority of competent jurisdiction that, in any such case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Relevant Authority conditioning or restricting the consummation of the transactions contemplated hereby in a manner that would impose a material impairment on such transactions or make the consummation of such transactions illegal.

#### **4.7 Termination Prior to Closing**

4.7.1 This Concession Agreement may be terminated at any time prior to the Closing:

(a) by mutual consent of the Authority and the Concessionaire in a written instrument;

(b) by either the Authority or the Concessionaire, upon notice to the other Party, if any Relevant Authority (other than the Authority) of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, and such order, decree, ruling or other action has become final and nonappealable; *provided, however*, that the right to terminate this Concession Agreement under this Section 4.7.1(b) shall not be available to any Party whose failure to comply with any provision of this Concession Agreement

has been the cause of, or resulted in, any order, decree, ruling or other action being imposed or becoming final and nonappealable

(c) by either the Authority or the Concessionaire, upon notice to the other Party if the Closing shall not have occurred as of 11:59 p.m. on the Outside Closing Date, unless such date is extended by mutual agreement of the Parties; *provided, however*, that the right to terminate this Concession Agreement under this Section 4.7.1(c) shall not be available to a Party whose actions or failure to act caused the Closing not to occur;

(d) by the Authority, upon notice to the Concessionaire, if any condition set forth in Section 4.4 remains unsatisfied as of the Time of Closing; *provided, however*, that the Authority shall not have the right to terminate this Concession Agreement under this Section 4.7.1(d) if the Authority's failure to comply with any provision of this Concession Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(e) by the Concessionaire, upon notice to the Authority, if any condition set forth in Section 4.5 remains unsatisfied as of the Time of Closing; *provided, however*, that the Concessionaire shall not have the right to terminate this Concession Agreement under this Section 4.7.1(e) if the Concessionaire's failure to comply with any provision of this Concession Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied.

4.7.2 In the event of termination of this Concession Agreement by either the Authority or the Concessionaire as provided in Section 4.7.1, this Concession Agreement shall forthwith become void and there shall be no liability or obligation on the part of the Authority or the Concessionaire or their respective representatives, except as set forth in Section 4.2.2 and Section 12 and subject to and in accordance with Section 18 and Section 22 and except that no Party shall be relieved or released from any liabilities or damages arising out of its breach of this Concession Agreement (subject to Section 4.2.2 in connection with the Authority's termination of this Concession Agreement pursuant to Section 4.7.1(d)).

#### **4.8 Access Rights Prior to the Time of Closing**

Prior to the Time of Closing, the Authority shall provide the Concessionaire with reasonable access to the Site at reasonable times and upon reasonable notice for the purposes described herein. In connection with any access by the Concessionaire to the Site prior to the Time of Closing, the Concessionaire shall provide the Authority with advance written or telephonic notice of such entry upon the Site, including the identity of the company or persons involved with the entry upon the Site and the scope of the activities, and shall conduct such entry and any activities in connection therewith so as to minimize, to the extent reasonably practicable, disruption at the Site and otherwise in a manner reasonably acceptable to Authority. The Concessionaire may proceed with that entry upon the Site and related activity unless the Authority gives the Concessionaire written notice of the Authority's objection to the same within 24 hours after receiving the Concessionaire's notice regarding the entry. The Concessionaire and the Authority agree to negotiate in good faith regarding any objection that the Authority may have with respect to the Concessionaire's entry and activities hereunder. The Concessionaire shall keep the Site and the Port Facilities free and clear of any liens asserted against the Authority, the Site or the Port Facilities as a result of any such entry and activities by the Concessionaire. If any of the activities (including any tests or inspections) disturb the Site, the Concessionaire will restore the Site and Port Facilities to substantially the same condition as existed prior to any such activities. The Concessionaire shall maintain reasonable commercial general liability insurance and automobile liability insurance insuring the Concessionaire and each representative of the Concessionaire against any liability for injury to person or property arising out of or in connection with any entry upon or activities on the Site and all areas appurtenant thereto. The Concessionaire also shall maintain workers' compensation

insurance covering each of its employees. The Concessionaire shall save, defend, indemnify and hold the Authority harmless from any and all Losses, damages, expenses, liens or claims (including attorneys' fees and costs) arising from the Concessionaire's exercise of its access rights hereunder.

## **SECTION 5.**

### **REPRESENTATIONS AND WARRANTIES**

#### **5.1 The Concessionaire**

The Concessionaire hereby represents and warrants, as of the Effective Date and as of the Closing Date, that:

5.1.1 the Concessionaire is duly organized and validly existing under the laws of the jurisdiction of the Concessionaire's organization and duly qualified to conduct business in the State. Except as disclosed in the written certification delivered to the Authority prior to the Effective Date (or, to the extent changes in ownership of the Concessionaire are made prior to Closing that would be permitted under the definition of "Change in Control", the Closing Date), no Person owns, directly or indirectly, 20% or more of the capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire (including options, warrants and other rights to acquire any such equity interests);

5.1.2 the Concessionaire has the power and authority to enter into this Concession Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by the Concessionaire in accordance with the terms hereof;

5.1.3 this Concession Agreement and the other Project Agreements to which the Concessionaire is a party have been duly executed by the Concessionaire, are legally valid and binding upon the Concessionaire, and do not require any further approval or consent or registration in any form in order to give full force and effect thereto;

5.1.4 The execution and delivery of this Concession Agreement by the Concessionaire, the consummation of the transactions contemplated hereby and the performance by the Concessionaire of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (a) any Applicable Law, (b) any material agreement, instrument or document to which the Concessionaire or any Equity Participant is a party or by which it is bound or (c) the articles, bylaws or governing documents of the Concessionaire and each of the Equity Participants;

5.1.5 No consent is required to be obtained by the Concessionaire or any Equity Participant from, and no notice or filing is required to be given by the Concessionaire or any Equity Participant to or made by the Concessionaire or any Equity Participant with, any Person (including any Relevant Authority) in connection with the execution and delivery by the Concessionaire of this Concession Agreement or the consummation of the transactions contemplated hereby, except for such consents that have been obtained and notices of filings that have been given as of the Effective Date or such other consents that are not required to be obtained as at the Effective Date and are expected to be obtainable following the Effective Date;

5.1.6 The Concessionaire is in compliance with all Applicable Laws related to its obligations under this Concession Agreement. Neither the Concessionaire or any of its Equity Participants, nor, to the knowledge of the Concessionaire, any Affiliate of the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, or on any other list of Persons with which the Authority may not do business under Applicable Law. There is no action, suit or proceeding, at law or in equity, or before or by any Relevant Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire or any Equity Participant, that would have a material adverse effect on (a) the transactions contemplated by this Concession Agreement or (b) the validity or enforceability of this Concession Agreement;

5.1.7 The Concessionaire is not aware, after making due inquiries, of any proceedings, actions or claims, pending or threatened, against or otherwise involving the Concessionaire or any Equity Participant that would prejudice, in any way, the Concessionaire's ability to fulfill its or their respective obligations under this Concession Agreement and the other Project Agreements to which the Concessionaire is a party;

5.1.8 To the extent the Operator is not the Concessionaire or an Affiliate of the Concessionaire, the Concessionaire shall cause the Operator to deliver to the Authority at Closing an officer's certificate in form and substance acceptable to the Authority in which the Operator represents and warrants as follows: (a) the Operator is duly organized and validly existing under the laws of its place of its organization and is duly qualified to conduct business in the State; (b) except as disclosed in the written certification that the Concessionaire delivered to the Authority prior to the Effective Date, no Person owns, directly or indirectly, 10% or more of the capital stock, units, partnership or membership interests and other equity interests or securities of the Operator (including options, warrants and other rights to acquire any such equity interests); (c) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (d) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how and all necessary Authorizations to perform the Port Services in accordance with this Concession Agreement; (e) the Operator is not in breach of any Applicable Law that could have a material adverse effect on its ability to operate the Port Facilities; (f) neither the Operator or any of its Equity Participants, nor, to the knowledge of the Operator, any Affiliate of the Operator is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, or on any other list of Persons with which the Authority may not do business under Applicable Law; and (g) there is no action, suit or proceeding, at law or in equity, or before or by any Relevant Authority, pending nor, to the best of the Operator's knowledge, threatened against the Operator, that would have a material adverse effect on the Operator's ability to operate the Port Facilities;

5.1.9 neither the Concessionaire nor any of the Concessionaire's officers, directors, employees, agents, advisers or representatives have furnished or offered to furnish any gratuities, favors or anything of monetary value to any State or Authority officers, directors, employees, agents, advisers or representatives engaged by the State or the Authority (or to any member of their families) for purposes of influencing the award of this Concession Agreement; and

5.1.10 no officer or employee of the State, the Authority or any other public agency of the State who has participated in the selection process for the award of, or in negotiations in connection

with, this Concession Agreement (nor any member of their families) has an economic interest in or is connected with the Concessionaire or the Operator, and no officer or employee of the State, the Authority or any other public agency of the State (nor any member of their families) has directly or indirectly participated with the Concessionaire in connection with this Concession Agreement.

## **5.2 The Authority**

The Authority hereby represents and warrants, as of the Effective Date and as of the Closing Date, that:

5.2.1 this Concession Agreement and the other Project Agreements to which it is a party have been duly executed by the Authority, are legally valid and binding upon the Authority, and do not require any further approval or consent or registration in any form in order to give full force and effect to its obligations thereunder;

5.2.2 other than as disclosed in writing to the Concessionaire prior to the Closing Date, the Authority is not aware, after making due inquiries, of any proceedings, actions or claims, pending or threatened, against or otherwise involving (a) the selection process pursuant to which the Concessionaire was awarded the Concession Rights, (b) this Concession Agreement or any of the other agreements executed in connection herewith or (c) the Project; and

5.2.3 the Authority has all necessary rights in respect of the Site and the Port Facilities in order to grant to the Concessionaire the rights therein pursuant to Section 2.1.1(a) of this Concession Agreement.

## **SECTION 6.**

### **TRANSITION PLAN FOR PORT FACILITIES**

#### **6.1 Approval of Transition Plan**

The Concessionaire shall, by a date not less than thirty (30) days prior to the anticipated Closing Date, prepare and deliver a Transition Plan to the Authority for approval, which approval shall not be unreasonably withheld or delayed.

#### **6.2 Implementation of Transition Plan**

The Concessionaire shall be responsible, at its sole cost, risk and expense, for implementing the Transition Plan.

#### **6.3 Certain Dispositions**

The Authority and the Concessionaire agree that, as between the Authority and the Concessionaire:

6.3.1 the Authority shall: (a) be responsible for payment or other satisfaction of any liability, obligation, account payable or commitment of the Authority in connection with the Port Facilities prior to the Closing Date and for the Excluded Obligations set forth in Section 2.7; and (b) be

entitled to retain all revenue in connection with the Port Facilities received prior to the Closing Date or received on or after the Closing Date in respect of accounts receivable generated prior to the Closing Date; *provided, however*, that the Concessionaire shall use its commercially reasonable efforts to provide assistance to the Authority to collect such accounts receivable;

6.3.2 the Concessionaire shall: (a) be responsible for the payment or other satisfaction of any liability, obligation or commitment of the Concessionaire in connection with the performance of the Port Services at the Port Facilities on or after the Closing Date but not including the Excluded Obligations set forth in Section 2.7; and (b) be entitled to establish, collect and retain User Fees for such Port Services performed on or after the Closing Date, subject to the terms and conditions of Section 2.5;

6.3.3 the Concessionaire shall, as part of the Transition Plan, undertake an inventory of all the Fixtures and Fittings and Movable Property at the Site and provide a copy of such inventory to the Authority, and the Authority shall cooperate with the Concessionaire in the preparation of such inventory;

6.3.4 from the Closing Date, the Concessionaire shall be responsible, at its sole, risk cost and expense, for performing the obligations of the Authority under the Existing Contracts assumed by it under the Transition Plan, except to the extent otherwise expressly provided in the Transition Plan;

6.3.5 the Concessionaire shall be responsible for coordinating all Relevant Authorities, national or international organizations, Subcontractors and employees, Vessel operators and other Users as the case may be, with respect to any Regulatory Approvals required for the implementation of the Transition Plan; and

6.3.6 the Authority shall permit the Concessionaire and its Employees, Subcontractors and other representatives to have such access to and to make such inspection of the Site and the Port Facilities as is reasonably necessary to implement the Transition Plan upon the reasonable request of the Concessionaire and subject to the provisions of Section 4.8.

## **SECTION 7.**

### **COOPERATION WITH OTHER CONTRACTORS; ACCESS**

#### **7.1 Cooperation with Other Contractors**

7.1.1 The Concessionaire acknowledges and agrees that the Authority and its contractors from time to time may, and shall have the right to, contract for, conduct and perform other or additional work or activities on or near the Site. The Concessionaire shall coordinate its activities with and otherwise cooperate with the Authority and its contractors to the extent reasonably necessary for the performance by such contractors of their work (including without limiting the generality of the foregoing, by providing access to the Site and such information, reports or other documentation as may be necessary or appropriate in connection therewith), and shall cause its employees, agents, officers and Subcontractors and other Persons for whom the Concessionaire may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by the Authority or its contractors that affect the Project, the Site or the Port Facilities, the Concessionaire shall coordinate its activities with and cooperate with the Authority and/or its contractors and their respective contractors and shall otherwise exercise its rights and perform its obligations under this Concession Agreement without interfering with or hindering the progress or completion of the work being performed by the Authority or its contractors.



7.1.2 If the Concessionaire asserts that a contractor of the Authority has hindered or interfered with the exercise of its rights and/or performance of its obligations under this Concession Agreement, then the Concessionaire's sole remedy shall be to seek recourse against such contractor. The Concessionaire shall have the right to seek dispute resolution pursuant to Section 18, *provided* that such contractor has agreed to submit the dispute to resolution pursuant to Section 18, and *provided, further* that such proceeding shall be conducted at no cost to the Authority.

## **7.2 Access**

7.2.1 The Concessionaire shall permit the Authority, any other Relevant Authorities, their respective contractors and subcontractors and their respective employees and agents to enter the Site and any other relevant areas at such times and as often as may be necessary for purposes of performing and implementing this Concession Agreement, any other Project Agreement and the Project generally, or inspecting any aspect thereof. To the extent that the Authority and its contractors, subcontractors and employees exercise access rights pursuant to this Section 7.2 and subject to Applicable Law, the Authority shall (i) provide the Concessionaire with reasonable prior notice under the circumstances, (ii) agree to schedule such access at a time that is reasonably convenient to the Concessionaire, and in any instance at such that will not cause a material and adverse impact on Concessionaire's performance of the Port Services, and (iii) strictly abide by any safety and operational requirement of the Site at the instruction of the Concessionaire's employees working at the Site.

7.2.2 The Authority reserves for itself and its representatives, the right and shall have the right to enter the Site and any other relevant areas at all times during the Concession Period, without an obligation to provide reasonable prior notice under the circumstances or an obligation to avoid causing Undue Interference, in the following circumstances:

(a) if a Concessionaire Event of Default then exists, to make any necessary repairs to the Port Facilities or the Site, perform any work therein and take any reasonable actions in connection with such Concessionaire Event of Default; and

(b) in the event of an Emergency, to take, at such times as the Authority determines necessary in its discretion and with contemporaneous notice to the Concessionaire if practicable under the circumstances, such actions as the Authority or such designee determines necessary to respond to or to rectify such Emergency.

7.2.3 Notwithstanding the terms of this Concession Agreement, the Concessionaire acknowledges that pursuant to Section 11 of that certain Memorandum of Understanding, dated on or about June 23, 2016, by and among CTDOT, the Authority and the Treasurer of the State, the State reserves the right to access and use a portion of the Port Facilities to berth the CTDOT ferry, Selden III, or its successor ferry (the "Ferry") from approximately December 1 through April 1, each year, in accordance with the following:

(a) The Authority and Concessionaire will use reasonable efforts to coordinate the Ferry berthing and such use will not materially interfere with the operations of Concessionaire; provided however that if at any time such berthing causes material and adverse interference with the operation of the Concessionaire, the Authority agrees to use commercially reasonable efforts to find a suitable alternative location for the berthing thereafter.

(b) The State shall, to the extent practicable, provide reasonable prior notice to the Authority and Concessionaire regarding the anticipated arrival of the Ferry, and Concessionaire shall reserve and designate a location at the Port Facilities to accommodate this request.

(c) The Concessionaire agrees to accommodate the berthing of the Ferry without charging dockage, mooring or labor costs.

(d) The Authority and Concessionaire agree that, upon assignment or termination of the Agreement, the State's right to berth the Ferry shall survive and the State will coordinate with the Authority for compliance with this Section 7.2.3.

### **7.3 Police, Fire, Emergency and Public Safety Rights**

Notwithstanding any other provision of this Concession Agreement, at all times during the Concession Period and without notice or compensation to the Concessionaire, to the extent necessary for management of an Emergency (including the prevention of or response to an Emergency), the following shall be applicable: (a) any police, fire and emergency services and any other security or emergency personnel, including the armed forces, and any Relevant Authority with jurisdiction over the Port Facilities or the Site shall have access to the Port Facilities and the Site; (b) any police, fire and emergency services and any other security or emergency personnel, including the armed forces, and any Relevant Authority with jurisdiction over the Port Facilities or the Site may close the Port Facilities and the Site; and (c) any Relevant Authority with jurisdiction over the Port Facilities or Site may adopt an Applicable Law relating to such emergency management and homeland security purposes.

## **SECTION 8.**

### **PORT OPERATIONS**

#### **8.1 Responsibility of the Concessionaire to Provide Port Services**

The Concessionaire hereby agrees to, at its own cost and expense, comprehensively administer, manage, operate and maintain the Port Facilities, and provide, or procure the provision of: (a) the Port Services at the Site for the duration of the Concession Period; and (b) otherwise perform all obligations of the Concessionaire set forth in this Concession Agreement, all of the foregoing in each case:

8.1.1 in accordance with this Concession Agreement (including its Annexes);

8.1.2 in accordance with the Port Operations Manual;

8.1.3 in accordance with the Port Standards and all other Applicable Laws and Regulatory Approvals (including Environmental Permits);

8.1.4 in accordance with Good Industry Practice; and

8.1.5 so as to permit performance and observance of, and compliance with, all obligations and provisions to be performed, observed and complied with on the part of the Authority under this Concession Agreement.

#### **8.2 Personnel; Operator**

8.2.1 The Concessionaire or the Operator, at the sole cost and expense of the Concessionaire or the Operator, as applicable, shall:

(a) employ at the Port Facilities, or cause to be employed at the Port Facilities, the number of trained, experienced Employees or other personnel sufficient to operate the Port, provide the Port Services in accordance with the Port Operations Manual, the Port Standards, all Applicable Laws and Good Industry Practice (acknowledging the Authority's goal that the Concessionaire cultivate and maintain a strong and productive relationship with the International Longshoreman's Association);

(b) provide regular, ongoing training and professional programs for all Employees as required by the Port Operations Manual, the Port Standards, all Applicable Laws and Good Industry Practice; and

(c) ensure that all Employees and other personnel shall have the skill and experience and any licenses or other Regulatory Approvals required to perform the functions assigned to them.

(d) in recognition of the importance of the role that unionized labor has had and will have in relation to the development and operation of the Site and the Port Facilities, (i) negotiate in good faith with the International Longshoreman's Association with respect to the employment of their members at the Port Facilities and (ii) consider the use of a project labor agreement, as applicable, to ensure the continuation of the Authority's commitment to the development of local jobs.

8.2.2 During the performance of this Concession Agreement, the Concessionaire agrees that it will not intentionally discriminate against any Employee or applicant for employment because of race, color, religion, sex, national origin or any other classification as may be required by Applicable Law. The Concessionaire agrees to: (a) post in conspicuous places, available to Employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause; and (b) in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, national origin or any other classification as may be required by Applicable Law.

8.2.3 The Port Services shall, at all times during the Concession Period, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how and all necessary Regulatory Approvals to perform the Port Services in accordance with this Concession Agreement (an "**Operator**"). As of the Closing Date, the Operator shall be the Concessionaire or its Affiliate (so long as the Concessionaire or such Affiliate possesses the expertise, qualifications, experience, competence, skills and know-how and all necessary Regulatory Approvals to perform the Port Services in accordance with this Concession Agreement) or another Person designated by the Concessionaire and approved by the Authority (based upon a determination in accordance with Section 8.2.4). The Concessionaire shall not engage or appoint a replacement Operator unless the Authority has approved such Operator (based upon a determination in accordance with Section 8.2.4) or such replacement Operator is the Concessionaire or an Affiliate of the Concessionaire, in which case no such approval shall be required. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. The arrangement with the Operator must be subject to and consistent with this Concession Agreement, including imposing obligations on the Operator to comply with the Port Operations Manual, the Port Standards and Applicable Law and to operate the Port Facilities in accordance with Good Industry Practice. In the event the Operator suffers any action described in Section 15.1.12, the Authority may demand that the Operator be replaced. Upon such demand, the Concessionaire shall immediately replace the Operator in accordance with Section 8.2.4. For purposes of this Concession Agreement, the Concessionaire shall be responsible for the actions of the Operator. The Concessionaire shall immediately notify the Authority upon the termination or resignation of an Operator. The Operator shall

have no interest in or rights under this Concession Agreement, the Site or the Port Facilities unless the Operator is the Concessionaire itself.

8.2.4 The Authority's approval of a proposed Operator (other than the Concessionaire or its Affiliates as provided above) may be withheld if the Authority determines, acting reasonably, that the engagement of such proposed Operator is prohibited by Applicable Law or such proposed Operator is not capable of performing the Port Services in accordance with this Concession Agreement, which determination shall be based upon and take into account the following factors: (a) the financial strength and integrity of the proposed Operator, its direct or indirect beneficial owners and each of their respective Affiliates; (b) the experience of the proposed Operator in operating marine container shipping terminals and operating other relevant projects; (c) the background and reputation of the proposed Operator, its direct or indirect beneficial owners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); (d) the terms of the agreement between the Concessionaire and the Operator and (e) such other factors as the Authority reasonably determines to be relevant. Any proposed replacement Operator also shall be required to deliver to the Authority an officer's certificate in which the replacement Operator makes representations and warranties covering the matters set forth in Section 5.1.8. Any disputes between the Authority and the Concessionaire with respect to the appointment or replacement of the Operator shall be settled in accordance with the provisions of Sections 18 and 20.

8.2.5 Notwithstanding the foregoing, in the event that, upon termination or resignation of the Operator, a replacement Operator has not been approved by the Authority in accordance with Section 8.2.4, the Concessionaire shall have the right to appoint, for a period not to exceed one year, an interim Operator to operate the Port Facilities until a replacement Operator can be selected pursuant to this Concession Agreement. This interim Operator may be selected without approval by the Authority required under the terms of Section 8.2.4 so long as the interim Operator meets the following criteria: (a) the interim Operator has experience in operating comparable port facilities; (b) the interim Operator (or any guarantor of its obligations) has a tangible net worth reasonably sufficient to carry out its obligations and responsibilities as Operator; and (c) the interim Operator delivers to the Authority an officer's certificate covering the matters set forth in Section 5.1.8. The Concessionaire shall not extend the term of any interim Operator beyond one year, unless the qualification of the replacement Operator is subject to a dispute, in which case the one-year period shall be extended until the conclusion of the dispute resolution process.

### **8.3 Concessionaire Services Change**

8.3.1 The Concessionaire may at any time during the Concession Period submit to the Authority any proposed revision to or substitution for the Port Services (a "**Concessionaire Services Change**") together with supporting documentation and a written explanation of the reasons for the proposed change. Within forty-five (45) Business Days, the Authority shall notify the Concessionaire whether or not it objects to the proposed Concessionaire Services Change. The Concessionaire shall not proceed to implement a proposed Concessionaire Services Change until the Authority has provided its approval of the proposed Concessionaire Services Change, which approval may be granted or withheld in the Authority's discretion. The Concessionaire shall remain responsible for all payment obligations required by this Concession Agreement regardless of the status of the approval (or rejection) of any such proposed Concessionaire Services Change.

8.3.2 The Concessionaire shall bear all the financial consequences of a Concessionaire Services Change.

## **8.4 Defaults**

In the event that the Concessionaire becomes aware of any Default, the Concessionaire shall forthwith notify the Authority of such Default and as soon as reasonably practicable submit to the Authority:

8.4.1 a full statement of the circumstances in which the Default took place together with a full explanation of the reasons for the Default and, if appropriate, for any delay in providing notification;

8.4.2 a full statement of the measures, if any, which the Concessionaire proposes to adopt in order to rectify the Default or to preclude or mitigate the consequences of it (if any); and

8.4.3 if the Default relates to a variation in Port Services, an application for a Concessionaire Services Change.

## **8.5 Authority Services Change**

The Authority may at any time during the Concession Period submit to the Concessionaire any proposed revision to or substitution for the Port Services (an “**Authority Services Change**”), in which case the following procedure shall apply:

8.5.1 The Authority shall give to the Concessionaire notice indicating the nature of the proposed Authority Services Change;

8.5.2 As soon thereafter as may be reasonably practicable, and in any event within thirty (30) Business Days after receipt by the Concessionaire of the notice referred to in Section 8.5.1, the Parties shall meet in good faith to discuss the proposed variation, the Authority providing such further information as the Concessionaire may reasonably request, including detailed information as to Authority’s requirements and its proposals for their implementation; and

8.5.3 Within sixty (60) Business Days after the receipt by the Concessionaire of the notice referred to in Section 8.5.1 above, the Concessionaire shall, acting reasonably and in good faith, submit to Authority:

(a) detailed proposals for any modification of the Port Services necessary to implement the Authority Services Change;

(b) detailed proposals as to any modifications in User Fees necessary to reflect the anticipated costs or savings to the Concessionaire and the anticipated effect (if any) on revenue the Concessionaire can expect to realize over the Concession Period (both before and after giving effect to such modifications) as a consequence of complying with the proposed Authority Services Change;

(c) such other detailed proposals as may be necessary in the reasonable opinion of the Concessionaire for the implementation of the proposed Authority Services Change or as a consequence thereof; and

(d) its written opinion as to whether the proposed Authority Services Change would adversely affect the Port Facilities or the provision of the Port Services, accompanied by the grounds for such opinion (and, in the event that the Authority questions the Concessionaire’s opinion or grounds, the

Parties shall meet and acting in good faith shall use reasonable endeavors to reach agreement on the matter).

8.5.4 In the event that the Concessionaire's proposals submitted pursuant to Section 8.5.3 above are agreed, the Authority shall issue an Authority Services Change within forty-five (45) Business Days in respect thereof and the Concessionaire shall give effect thereto in such manner as may be agreed between the Authority and the Concessionaire.

8.5.5 If no agreement is reached in relation to the proposals referred to in Section 8.5.3 above, the Parties shall meet and acting in good faith shall use reasonable endeavors to reach agreement in relation thereto. In the absence of agreement, either Party may refer the matter to dispute resolution pursuant to Section 18 for a determination of the question of what (if any) changes in Port Services or changes in User Fees would be reasonable in the circumstances. After a determination has been made pursuant to Section 18, the Authority may, but shall not be obliged to, issue the Authority Services Change, in which case the Concessionaire shall give effect thereto and the term "Port Services" shall be deemed amended accordingly (and each Party shall confirm such amendment to the other Party in writing upon request by such other Party) and the determination rendered pursuant to the Section 18 shall be given effect by the Parties.

## **8.6 Updating Port Operations Manual**

From time to time during the Concession Period when so requested by Authority, the Concessionaire shall prepare and submit to Authority an amended and restated version of the Port Operations Manual containing, among other things, such revisions as have been given effect in accordance with Section 8.3 and Section 8.5 above, or as may be required by Applicable Law.

## **8.7 Notice of Inspections**

8.7.1 Without prejudice to the rights of the Authority under Section 10, the Concessionaire shall give the Authority timely notice of any general inspection or any other inspection of Port Facilities to be conducted in accordance with this Concession Agreement or otherwise.

8.7.2 The Authority and its representatives shall be entitled to attend any inspection of the Port Facilities (whether or not it is entitled to receive or has received notice thereof in accordance with Section 8.7.1 above) upon giving reasonable notice to the Concessionaire.

## **8.8 Efforts to Maximize Throughput Volumes at the Port**

8.8.1 The Concessionaire shall use its best efforts to maximize Throughput Volume at the Port Facilities during the Concession Period, which best efforts shall include the following:

(a) Utilizing the best efforts of the Concessionaire to increase the volume of rail-based traffic in respect of the Site and the Port Facilities; and

(b) All operations of Concessionaire shall be conducted:

(i) In a fair, safe, efficient and economic manner at a cost which is competitive with other ports and other modes of transportation and in a manner that demonstrates a high degree of concern for and response to the wants and needs of customers and improves the existing quality of services delivered to customers at competitive rates;

(ii) So as to effectively market the use of the Port Facilities by current and future exporters and importers of all lawful, water-transported cargoes; and

(iii) So as to maximize the revenues of the Port Facilities and Authority that is consistent with fair pricing and increasing commerce at the Port Facilities, while providing all management and supervision, labor, equipment, expertise, and effort required to fully and completely manage and operate stevedoring, line handling, and warehouse management operations within the Port Facilities so as to compete within the market of Authority.

(c) During the Concession Period of this Concession Agreement, Concessionaire agreed to provide, or have provided, the following services for bulk, project, and break-bulk cargoes;

(i) Line handling;

(ii) Loading and unloading of vessels, barges, railcars, trucks, containers, and all other means of transportation; and

(iii) General management of the warehouses and open storage of the Port Facilities.

8.8.2 The Concessionaire and the Authority shall use reasonable efforts to work cooperatively to market the Port Facilities to maximize Throughput Volume at the Port Facilities

### **8.9 Access for Users**

8.9.1 The Concessionaire shall at all times allow access to the Site and the Port Facilities for Users and their agents and shall not impose any restrictions upon Users or their agents or unfairly discriminate between them.

8.9.2 The Concessionaire shall maintain sufficient cargo facilities on a public, nonexclusive basis and upon reasonable terms through the Concession Period.

### **8.10 Archeological Remains**

The Concessionaire hereby acknowledges that any fossils, coins, articles of value or antiquity or other similar remains are and shall remain the property of the State and/or the Authority, in accordance with Applicable Law. In the event of the discovery of any such items at the Site on or after the Closing Date, the Concessionaire shall immediately inform the Authority and shall: (a) if the items discovered are movable, allow the Authority or any Relevant Authority to enter the Site and effect their removal, at no cost to the Concessionaire; or (b) allow the Authority or any Relevant Authority to effect such investigations as are required by Applicable Law or otherwise deemed necessary at the Authority's expense.

### **8.11 Sub-letting; Subcontracts**

8.11.1 The Concessionaire shall not have the right to sub-let the whole or any part of the Port Facilities or the Port Services to any Person without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed.

8.11.2 Notwithstanding any Subcontract, the Concessionaire shall remain liable, and responsible to the Authority, for the execution of the Port Services in accordance with this Concession

Agreement and otherwise responsible for the acts and omissions of any Subcontractor while carrying out any Subcontract as fully as if they were the acts and omissions of the Concessionaire.

8.11.3 All Port Services or other works or services performed or supplied by a Subcontractor shall be performed or supplied pursuant to an appropriate Subcontract. Any material Subcontract shall, as appropriate, contain provisions in form and substance reasonably satisfactory to the Authority that:

(a) reasonably preserve and protect all the rights of the Authority under this Concession Agreement;

(b) require that any Port Services or other works or services undertaken by such Subcontractor be performed in strict accordance with the requirements of this Concession Agreement, including compliance with all Applicable Laws, the Port Operations Manual, the Port Standards, Good Industry Practice and the Insurance Requirements;

(c) obligate each Subcontractor to consent to and be bound by those obligations under this Concession Agreement which, by their terms, are intended to also obligate Subcontractors, including the provisions of this 8.11.3; and

(d) require each Subcontractor to provide and maintain adequate insurance consistent with its obligations under the Subcontract.

8.11.4 Notwithstanding any Subcontract or other agreement with any Subcontractor, the Concessionaire shall be fully responsible for all of its obligations under this Concession Agreement. The Authority shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the Authority. Each Subcontract shall include the following provision:

“Nothing contained herein shall be deemed to create any privity of contract between the Authority and the Subcontractor, nor does it create any rights, claims, duties, obligations, or liabilities on the part of the Authority to the Subcontractor. In the event of any claim or dispute arising under the Subcontract and/or this Concession Agreement with the Authority, the Subcontractor shall look only to Concessionaire for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against the Authority arising out of the Subcontract or otherwise arising in connection with the Subcontractor’s work.”

8.11.5 The Concessionaire agrees to hold all Subcontractors, including all Persons directly or indirectly employed by them, responsible for any Losses due to breach of contract or any negligent or willful act and to diligently endeavor to effect reimbursement for such Losses.

8.11.6 Without limiting the generality of Section 8.11.1:

(a) the Concessionaire may not engage in any sub-letting or Subcontract relationship with any wind energy company for the use of any of the Site and the Port Facilities for purposes of the receiving, storage and transportation of equipment concerning the generation, storage and transmission of wind-powered energy without the prior approval of the Authority, which approval shall be within the Authority’s discretion. The approval of the Authority expressly may be conditioned upon the entering into of amendments to this Concession Agreement or separate agreements by or among the Authority, the Concessionaire and such wind energy company or companies, all as may be satisfactory to the Authority. The Concessionaire and the Authority shall use their respective reasonable efforts to cooperate with one



another in respect of any such sub-let or Subcontract relationship, including the negotiation, execution and delivery of any amendments to this Concession Agreement or any separate agreements pertaining to such sub-let or Subcontract; and

(b) the Concessionaire shall be required to obtain the consent of the Authority (which consent shall not be unreasonably withheld, conditioned or delayed) for any customer arrangements or contracts that (i) require the use of more than fifteen percent (15%) of the available storage space of the Port Facilities and (ii) exceed, as of the commencement of such arrangement or contract, four (4) years in length (it being understood that the Concessionaire shall inform the Authority of the basic terms and conditions of such customer arrangement or contract (whether in the form of a draft document or otherwise) as soon as such is available and shall provide the Authority a substantially final version of such for consent not later than seven (7) Business Days prior to proposed execution); *provided* that the Authority shall be deemed to have provided consent upon the expiration of such seven (7) Business Day period if the Authority has not responded to the Concessionaire's proposed execution version.

### **8.12 Warranties**

8.12.1 Throughout the Concession Period, the Concessionaire shall comply with all requirements related to the Warranties, including all specifications for the design of the Port Facilities.

8.12.2 The Concessionaire, at any time during the Concession Period, shall have the right to request, by written notice, that the Authority assign the Warranties, and upon receipt of such request by the Authority, the Authority shall promptly assign the Warranties to the Concessionaire; *provided, however*, that to the extent that the Authority has already undertaken actions to enforce any such Warranty, the Authority shall not be obligated to assign such Warranty to the Concessionaire during the pendency of such enforcement.

8.12.3 To the extent that the Concessionaire determines that a claim exists under any Warranty that has not been assigned to the Concessionaire, the Authority shall, upon written notice from the Concessionaire, undertake actions to enforce any such Warranty within 15 Business Days.

8.12.4 Upon any assignment of the Warranties by the Authority to the Concessionaire, the Authority shall use reasonable efforts to cooperate and assist the Concessionaire in enforcing rights and remedies under the Warranties.

### **8.13 Single Purpose Covenants**

The Concessionaire shall, at all times during the Concession Period; (a) be formed and organized solely for the purpose of owning the Concessionaire Rights and using, possessing, leasing and operating the Port Facilities and collecting User Fees with respect to and otherwise dealing with the Port Facilities (and carrying out other activities permitted pursuant to this Concession Agreement (and any activities reasonably incidental thereto)); (b) not engage in any business unrelated to clause (a) above; (c) not have any material assets other than those reasonably related to its activities in accordance with clauses (a) and (b) above; (d) except as appropriate for Tax reporting purposes, maintain its own separate books and records and its own accounts; (e) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence; (f) except as expressly permitted hereby or by any Security Interest or in connection in the ordinary course of business of the Port Facilities, not pledge its assets for the benefit of any other Person or guarantee or otherwise obligate itself with respect to the debts of any other Person; and (g) maintain adequate capital in light of its contemplated business operations.

## **8.14 Finance Obligations**

### **8.14.1 Concessionaire's Finance Obligations**

Except in those instances where the Authority is required to provide the funding of costs and expenses related to the Authority's obligations hereunder, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Concession Agreement. The Concessionaire shall provide reasonable notice to the Authority of the material terms of any such financing. The material terms of any such financing shall comply with all requirements of this Concession Agreement.

### **8.14.2 Authority's Finance Obligations**

(a) *Concessionaire Financing.* The Authority shall, to the extent consistent with Applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The Authority's cooperation may include reviewing, approving and executing documents which substantiate the terms of this Concession Agreement and responding to reasonable requests for available information and material to furnish to any Security Holder to facilitate financing to the extent permitted by Applicable Law and contractual obligations with third parties and to the extent the Authority considers reasonable in the circumstances. If requested to do so by the Concessionaire, the Authority shall, at the sole cost and expense of the Concessionaire, use its reasonable efforts to cause the Authority's then independent public accountants to consent to the use and inclusion of certain financial information regarding the Port Facilities in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the Authority shall, promptly upon the request of the Concessionaire or a Security Holder, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Concession Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Authority. Nothing herein shall require the Authority to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with or in violation of any Applicable Law or the provisions of this Concession Agreement. The Authority acknowledges and agrees that any new debt or other obligations undertaken by the Authority after the Effective Date may not be secured by any of the Site or the Port Facilities. Notwithstanding the foregoing, nothing herein is intended to prevent the Authority from encumbering its interest in revenues that the Authority has a right to receive from the Concessionaire under this Concession Agreement.

(b) *Governmental Financing Assistance.* The Authority, upon the request of the Concessionaire, shall reasonably consider and, if determined to be acceptable to the Authority, shall (i) seek or cooperate with the Concessionaire's efforts to obtain grants or loans from Relevant Authorities or (ii) provide or cooperate with the Concessionaire's efforts to obtain debt financing assistance through the issuance of special purpose bonds (including "special facility bonds" that may be issued by the Authority on behalf of the Concessionaire to the extent permitted under the Authority's bond financing documents) or from other financing programs for which the Concessionaire or the Authority may be eligible; *provided* that the Concessionaire agrees to comply with all applicable policies and practices of the Authority in connection with such programs (including the right of the Authority to designate the bond counsel, the tax counsel, the financing advisers, the underwriters, and any other advisors in connection with such matters and to require third party credit support for the transaction), and to reimburse the Authority for all costs and expenses incurred by the Authority in connection therewith. Nothing in this Section 8.14.2(b) shall obligate the Authority (A) to advocate or recommend the enactment or adoption of any federal or State legislation or regulations, or (B) to cooperate with the Concessionaire in connection with the actions

described in the first sentence of this Section 8.14.2(b) if (1) the Authority is required to commit to the expenditure or allocation of Authority funds in connection with such request or (2) such cooperation could have any adverse effect on the Authority, its properties, finances or financial statements.

#### 8.14.3 Concessionaire's Obligation for Estoppel Certificates.

The Concessionaire shall, promptly upon the request of the Authority, execute and deliver to the Authority, or any of the parties specified by the Authority, standard consents and estoppel certificates with respect to this Concession Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with Applicable Law and the provisions of this Concession Agreement

### **SECTION 9.**

#### **MAINTENANCE; CONSTRUCTION; CAPITAL IMPROVEMENTS**

##### **9.1 Routine Maintenance**

The Concessionaire shall, at its own cost and expense, maintain the Site and the Port Facilities, including the Cranes, in good, sanitary working condition, in a manner safe to personnel and to the public, in accordance with Annex B (Port Services) (including any applicable Handback Requirements), the Port Operations Manual, the Port Standards, Good Industry Practice and all Applicable Laws and Regulatory Approvals.

##### **9.2 Replacement**

In addition to performing the preventative maintenance and regular corrective maintenance in accordance with Section 9.1, the Concessionaire shall, at its own cost and expense: (a) periodically overhaul, rehabilitate, refurbish or replace components of the Site and the Port Facilities, including the Cranes, in order to ensure that the Project remains safe, efficient to operate and maintain and in good repair; and (b) replace any Project element that has reached the end of its design life, cannot be maintained to perform within the limits specified in its original design, exhibits a measurably higher failure rate or ceases to be economical to maintain due to wear, damage or obsolescence.

All such maintenance or replacement work shall conform to the original specifications of such component or Project element, unless otherwise agreed by the Authority in writing.

##### **9.3 Repairs**

If any part of the Site or the Port Facilities, including the Cranes, are damaged or destroyed by fire, weather conditions or other casualty, however caused, the Concessionaire shall, at its own cost and expense, promptly restore the damaged or destroyed Site or Port Facilities to substantially their original condition. In performing this obligation the Concessionaire shall be entitled to use any available insurance proceeds obtained in respect of such damage or destruction for such purpose.

## **9.4 Capital Improvements Commitment**

9.4.1 During the initial 20-year Concession Period, the Concessionaire shall undertake and expend not less than Thirty Million Dollars (USD 30,000,000) in Capital Improvements, Movable Property, Fixtures and Fittings, and Cranes which shall include the expenditure of not less than Ten Million Dollars (USD 10,000,000) in each of the first ten (10) years of the Concession Period and second ten (10) years of the Concession Period (the “**Capital Improvements Commitment**”). Not more than Ten Million Dollars (USD 10,000,000) of capital maintenance expenditures may be allocated in satisfaction of the Capital Improvements Commitment. For the avoidance of doubt, the calculation of the Capital Improvement Commitment shall include the actual fair market value of any Movable Property, Fixtures and Fittings, and Cranes (demonstrated in accordance with the immediately succeeding sentence) that Concessionaire brings to the Site regardless of whether such fair market value constitutes the out of pocket cost of the Concessionaire (e.g., whether such items are subject to capital lease or otherwise). Such fair market value of any Movable Property, Fixtures and Fittings, and Cranes shall be confirmed by the Concessionaire’s audited annual financial statements delivered in accordance with Section 10.6 hereof or, if not included in such audited annual financial statements, confirmed by an independent appraisal conducted by a third-party appraiser selected by the Concessionaire (subject to the reasonable approval of the Authority).

9.4.2 Upon the completion of any Capital Improvements authorized hereunder, all relevant additional parcels and improvements with respect to such Capital Improvements shall be considered a part of the Site and the Port Facilities, as the case may be.

## **9.5 Capital Improvements**

### **(a) Capital Improvements Generally.**

(i) Proposed by the Concessionaire. During the Concession Period, the Concessionaire may propose Capital Improvements to the Authority by submitting a proposal including (A) any preliminary design necessary for the Authority to evaluate the Capital Improvement, (B) a cost sharing proposal, if any. The costs for Capital Improvements proposed by the Concessionaire shall be paid as proposed by the Concessionaire and as mutually agreed by the Parties.

(ii) Proposed by the Authority; No Consent by Concessionaire Required. During the Concession Period, the Authority may propose and construct Capital Improvements that will be financed by the Authority or the State or a third party other than Concessionaire. The Concessionaire shall not have any right to consent or otherwise approve of any such Capital Improvements to be undertaken by the Authority, the State or a third-party under an agreement with the Authority or the State; *provided* that no such Capital Improvement to be undertaken by the Authority, the State or a third-party may materially and adversely interfere with the operations of the Concessionaire at the Port Facilities and *provided further, however*, that the Concessionaire and the Authority acknowledge that the potential development and use, by [REDACTED], of all or a portion of the Port Facilities and the Site for the purposes of the receiving, storage and transportation of equipment concerning the generation, storage and transmission of off-shore wind-energy power is contemplated by this Concession Agreement and that any Capital Improvements in respect of the [REDACTED] is agreed by the Concessionaire to not interfere with the Concessionaire’s operations of the Port Facilities.

(iii) No Capital Improvements Without Authority Consent. The Concessionaire shall not make Capital Improvements without the prior written approval of the Authority. Any Capital Improvements made by the Concessionaire shall be for the benefit of the Authority, and shall remain on the Port Facilities after the end of the Concession Period. The cost of such Capital Improvements shall be borne solely by the Concessionaire without any reimbursement or payment from the Authority.

(iv) Maintenance or Repair Not Capital Improvements. No maintenance or repair required to be performed by the Concessionaire pursuant to the terms of this Concession Agreement shall constitute a Capital Improvement for which the Authority shall be financially responsible.

(v) Capital Improvements Insurance and Other Third Party Payments. To the extent that any Capital Improvement costs that are incurred pursuant to this Section can be recovered by the Authority or the Concessionaire from any insurer providing insurance required of Concessionaire pursuant to the terms of this Concession Agreement or from another third party, the Concessionaire shall exercise with due diligence such rights as it may have to effect such recovery. The Concessionaire shall give prompt written notice to the Authority of the receipt of any such recovery which shall be applied as appropriate to the restoration or reconstruction of the Port Facilities. The Concessionaire shall provide the Authority with copies of all documentation, and shall afford the Authority a reasonable opportunity to participate in all conferences, negotiations and litigation, regarding insurance claims which materially affect the Authority's interest under this Concession Agreement. All applicable insurance recoveries shall be applied to reducing the cost of restoration or reconstruction prior to the calculation of the amount of any cost (if any) to be shared by the Parties as arising out of an event of Force Majeure.

(b) Central Vermont Railroad Pier. The Authority shall be solely responsible for the undertaking of capital improvements to the Central Vermont Railroad Pier necessary to rehabilitate the structural deficiencies with the Central Vermont Railroad Pier. Until such time as the Authority completes such rehabilitation work, the Concessionaire shall only be required to maintain and repair the Central Vermont Railroad Pier as is reasonably necessary for the Concessionaire's operation of the Port Facilities; provided however the Concessionaire shall have no obligation to undertake any maintenance or repair of the Central Vermont Railroad Pier that is the result of, or related to, such structural deficiencies. Following the completion by the Authority of such rehabilitation work, the Concessionaire shall maintain, repair and replace the Central Vermont Railroad Pier consistent with the Concessionaire's obligations in respect of the Port Facilities under this Concession Agreement, including the obligations set forth in Section 9.1, Section 9.2 and Section 9.3.

## **SECTION 10.**

### **INSPECTION AND OVERSIGHT OF CONCESSIONAIRE ACTIVITIES**

#### **10.1 Right to Be Kept Informed**

During the term of this Concession Agreement, the Concessionaire shall promptly inform the Authority, in writing, of any and all material events or developments that may arise in the course of the Project.

#### **10.2 Inspection; Capital Asset Condition Report**

10.2.1 Upon reasonable notice under the circumstances and at the Authority's own cost, the Authority and its representatives or advisors shall have the right to enter the Site for the purpose of observing the activities of the Concessionaire, ensuring the Concessionaire's compliance with its obligations hereunder, and monitoring service levels, provided such inspection shall be in specifically in accordance with the requirements of Section 7.2.1.

10.2.2 Upon reasonable notice under the circumstances, the Authority and its representatives or advisors shall have the right, during normal business hours, to inspect the books, plans, financial records, commercial contracts, and other records and documents belonging to or kept by or on behalf of the Concessionaire with respect to the Project for the purposes of ensuring compliance by the Concessionaire with this Concession Agreement, provided such inspection shall be in specifically in accordance with the requirements of Section 7.2.1.

10.2.3 Upon the fifth anniversary of the Closing Date, and thereafter upon each subsequent fifth anniversary of the Closing Date, the Concessionaire shall deliver to the Authority (at the sole cost and expenses of the Concessionaire) a capital asset condition report detailing the condition of the Site and the Port Facilities relative to the condition of the Site and the Port Facilities as required by this Concession Agreement and identifying any deficient conditions.

#### **10.3 Appointment of Auditors**

The Concessionaire shall, at its sole cost and expense: (a) put in place an accounting and cost control system; and (b) retain a firm of independent accountants of recognized international standing and expertise, reasonably acceptable to the Authority, as auditors of the Concessionaire. The Concessionaire shall prepare and maintain its accounts in accordance with Applicable Law and Accounting Principles.

#### **10.4 Quarterly Financial and Operations Reports**

The Concessionaire shall, within 30 days after the end of each calendar quarter after the Closing Date, provide to the Authority a detailed report regarding the Concessionaire's: (a) financial results with respect to operations, including: (i) Throughput Volume for such quarter and (ii) depreciation, amortization and other similar charges and amounts; and (b) information regarding operations, unforeseen occurrences, accidents, injuries, damages, Losses, and any disruptions or suspensions during the preceding calendar quarter.

### **10.5 Vessel Reports**

The Concessionaire shall deliver to the Authority on a ship-by-ship basis quarterly reports on a form to be provided by the Authority summarizing all Vessel movements and all cargo loaded, discharged or transhipped at the Port Facilities (“**Vessel Report**”). Vessel Reports shall include vessel arrival and departure details and data on cargo tonnages discharged, loaded or transhipped at the Port Facilities.

### **10.6 Annual Reports**

The Concessionaire shall, as soon as available but in any event by May 31 of each year, furnish to the Authority a copy of its complete financial declaration for such fiscal year, including its audited annual financial statements prepared in accordance with Accounting Principles.

### **10.7 Reports and Information Regarding Disruption and Suspension**

The Concessionaire shall, within seven (7) days of any disruption, closure or interruption of all or any portion of the Site, the Port Facilities or the Port Services, provide the Authority with a report detailing the circumstances of such disruption or closure. The Authority has the right to request any and all reasonable information from the Concessionaire relating to any disruption or closure of the Site or the Port Facilities, or any disruption or interruption of the Port Services, such requests to be complied with within ten (10) Business Days.

### **10.8 Annual Environmental Report**

Unless otherwise agreed in writing with the Authority, the Concessionaire shall prepare and provide the Authority with an Annual Environmental Report (the “**Annual Environmental Report**”) within sixty (60) days after the end of each of the Concessionaire’s fiscal years. The Annual Environmental Report shall address the environmental issues related to or arising in connection with the Project and shall include, at a minimum, the following: (a) a detailed description of any ongoing or pending Environmental Matter affecting or arising in connection with the Project or any such Environmental Matter resolved or closed during the preceding fiscal year; (b) a detailed description of any facts, circumstances or conditions that are reasonably likely to result in any Environmental Matter affecting or arising in connection with the Project; (c) a discussion of any new, pending or anticipated requirement under any Environmental Law which is reasonably likely to impact the Project or the operations of the Project or would prevent the Concessionaire from renewing, maintaining or obtaining any Environmental Permit required under any Environmental Law; and (d) a discussion of the various steps or measures the Concessionaire has taken or will take to address the matters discussed in (a), (b) or (c). At its discretion, the Authority may or may not make the Annual Environmental Report available to the public.

### **10.9 Vessel Manifest Reports**

The Concessionaire shall provide the Authority with prompt (and in all cases not later than 24 hours prior to the scheduled arrival of such vessel) notice and copies of all vessel schedules, manifests, bills of lading and waybills. Such information shall be provided to the Authority by the Concessionaire so as to permit the Authority to have real-time notification of such activity as is reasonably practicable under the circumstances.

**10.10 Incident Reports**

The Concessionaire shall promptly (and in all cases within 12 hours) notify the Authority of (i) all Emergencies, accidents and incidents occurring on or at the Site or the Port Facilities and (ii) all Emergencies, accidents and incidents involving employees of the Concessionaire or the Authority arising from work conducted by such employees pursuant to this Concession Agreement.

**10.11 Other Reports and Information**

Upon request by the Authority, the Concessionaire shall supply the Authority with all other reports, information, analyses and other documentation required to be provided or disclosed by the Authority to any Relevant Authority or pursuant to Applicable Law.

**SECTION 11.**

**FURTHER UNDERTAKINGS**

Unless the Authority otherwise agrees in writing, the Concessionaire shall, in addition to its other obligations hereunder:

**11.1** not impose or suffer or permit the imposition of any Encumbrances (other than Permitted Concessionaire Encumbrances) on any Project Facilities, the Site or any other property related to the Project;

**11.2** comply, and cause the Project to be in compliance in all material respects, with the Port Operations Manual, the Port Standards, Good Industry Practice and all Applicable Laws;

**11.3** ensure that the commercial terms upon which the Concessionaire enters into any contracts, leases, or other arrangements with any Affiliate are no less favorable to the Concessionaire than those which could reasonably have been obtained by or from any bona fide third-party after arm's length negotiations;

**11.4** comply with all of its obligations under, and cause the Project to be in compliance in all material respects with all requirements set forth in, each Project Agreement to which it is a party;

**11.5** comply in all material respects with all Applicable Laws and, without limiting the generality of the foregoing, (a) obtain and thereafter comply with all obligations under and maintain in force for the Concession Period all Regulatory Approvals required under Applicable Laws; and (b) pay all Taxes imposed on or applicable to it, the Port Services, the Port Facilities, the Site, the Concession Rights or the Project in accordance with all Applicable Laws; and

**11.6** notwithstanding and without limiting the generality of the provisions of Section 11.6 above: (a) comply and cause the Project to comply in all material respects at all times with all Environmental Laws; (b) apply for, obtain, maintain and comply in all material respects at all times with all Environmental Permits required under any Environmental Law to operate the Project in accordance with this Concession Agreement; (c) cause the Project to comply in all material respects at all times with all Environmental Permits required under any Environmental Law; and (d) comply and cause the Project



to comply in all material respects at all times with the obligations and requirements under this Concession Agreement relating to Environmental Laws and otherwise to the Environment set forth in Annex B (Port Services), and any other actions or steps reasonably requested by the Authority related to protection of the Environment.

## **SECTION 12.**

### **INDEMNIFICATION**

#### **12.1 Third Party Liability**

The Concessionaire shall indemnify the Authority Indemnified Parties against and hold the Authority Indemnified Parties harmless from, and shall otherwise be responsible to third parties for, any Loss of any kind whatsoever suffered or incurred by the Authority Indemnified Parties by reason of any injury or death to, or any damage or destruction of any tangible property of, any other Person to the extent such Loss is directly attributable to the actions or omissions of the Concessionaire or otherwise arises out of or as a consequence of the Port Services, including the failure to perform any Port Services in accordance with the Port Operations Manual, the Port Standards, Good Industry Practice or Applicable Laws except to the extent such Loss is caused by or is attributable to any gross negligence of, or willful misconduct by, the Authority.

#### **12.2 Environmental**

12.2.1 Notwithstanding and without limiting the provisions of Section 12.1.1 and subject to the Authority's obligations with respect to certain environmental matters that the Authority has assumed under Section 2.7 for which the Concessionaire shall have no liability:

(a) the Concessionaire shall assume, before the Authority, any and all Loss of any kind and/or liability resulting from or arising from the following (whether known or unknown): (i) any Environmental Matter arising directly or indirectly from or related to the operation of the Project; (ii) any failure to comply with any undertaking set forth in Section 11.7 of this Concession Agreement; and (iii) any investigation, clean-up or remediation of any Environmental Matter identified by the Environmental Consultant in the Final Environmental Study; and

(b) the Concessionaire also shall indemnify the Authority Indemnified Parties against and hold the Authority Indemnified Parties harmless from and shall otherwise be responsible to third parties or any Relevant Authority for any fine, Loss or damage of any kind whatsoever that may be suffered, imposed or incurred, directly or indirectly, by the Authority Indemnified Parties in relation to the Port Facilities or the immediate real property surrounding that serves the Port Facilities resulting from or arising from the following (whether known or unknown): (i) any Environmental Matter arising directly or indirectly from or related to the operation of the Project; (ii) any failure to comply with any undertaking set forth in Section 11.7 of this Concession Agreement; and (iii) any investigation, clean-up or remediation of any Environmental Matter identified by the Environmental Consultant in the Final Environmental Study.

12.2.2 The provisions of this Section 12.2 shall not restrict or limit in any way any rights or remedies of the Concessionaire or the Authority that may be available under any applicable Environmental Law with respect to Persons who are not Parties to this Concession Agreement.

### **12.3 Port Facilities**

12.3.1 The Authority shall indemnify the Concessionaire against and hold the Concessionaire harmless from, and shall otherwise be responsible to third parties for, any Loss of any kind whatsoever suffered or incurred by the Concessionaire by reason of any claim or action by (a) any Person employed at or in connection with the Port Facilities before the Closing Date, any Person acting on behalf of or in place of any such employee, or any Person based upon any act or omission of any such employee; (b) any Person based upon any liability, obligation or commitment of the Authority, whether for services rendered or goods delivered by such Person or otherwise, in connection with the Port Facilities, in each case based on acts or omissions occurring prior to the Closing Date, except to the extent such Loss is caused by or attributable to any act or omission of the Concessionaire or any breach of this Concession Agreement by the Concessionaire; or (c) any of the Excluded Liabilities, except to the extent such Loss is caused by or attributable to any act or omission of the Concessionaire or any breach of this Concession Agreement by the Concessionaire.

12.3.2 The Concessionaire shall indemnify the Authority Indemnified Parties against and hold the Authority Indemnified Parties harmless from, and shall otherwise be responsible to third parties for, any Loss of any kind whatsoever suffered or incurred by the Authority Indemnified Parties by reason of any claim or action by (a) any Person (including any Subcontractor or Employee) employed at or in connection with the Port Facilities on or after the Closing Date, any Person acting on behalf of or in place of any such Subcontractor or Employee, or any Person based upon any act or omission of any such Subcontractor or Employee; (b) any Person based upon any liability, obligation or commitment of the Concessionaire, whether for services rendered or goods delivered by such Person or otherwise, in connection with the Port Facilities, in each case based on acts or omissions occurring on or after the Closing Date, except to the extent such Loss is caused by or attributable to any act or omission of the Authority or any breach of this Concession Agreement by the Authority; or (c) any of the Assumed Liabilities, except to the extent such Loss is caused by or attributable to any act or omission of the Authority or any breach of this Concession Agreement by the Authority.

### **12.4 Concessionaire Additional Indemnification Obligations.**

The Concessionaire agrees that it shall protect, indemnify and hold harmless the Authority Indemnified Parties, from and against (and pay the full amount of) all Losses, and shall defend the Authority Indemnified Parties in any suit, including appeals, arising out of or relating to, directly or indirectly, (a) any act or omission of the Concessionaire or any of its directors, officers, officials, members, employees, agents, representatives or subcontractors in connection with its obligations or rights under this Concession Agreement, (b) the operation of the Port Facilities by or under the direction of the Concessionaire during the Concession Period in violation of Applicable Law or in breach of the terms and provisions of this Concession Agreement, (c) any Concessionaire Event of Default, (d) any inaccuracy or misrepresentation in or breach of any representation, warranty, covenant or agreement of the Concessionaire contained herein, or (e) the performance or non-performance of the Concessionaire's obligations under this Concession Agreement, except (in each instance) to the extent such Loss is caused by or attributable to any act or omission of the Authority or any breach of this Concession Agreement by the Authority.

### **12.5 References**

12.5.1 All references in this Section 12 with respect to actions taken by the Concessionaire shall include the actions of the Concessionaire, any of its officers, directors, Employees, contractors, Subcontractors, consultants, agents and any other Person for whose actions or omissions the Concessionaire is vicariously liable under Applicable Laws.

12.5.2 All references in this Section 12 to “the Authority” shall include the Authority and any of its officers, directors, employees, contractors, subcontractors, consultants, agents and any Person for whose actions or omissions the Authority is vicariously liable under the laws of the State.

## **12.6 Procedures**

12.6.1 If the Indemnified Party receives notice of any claim or the commencement of any suit, action, claim, proceeding or investigation brought by any Person other than the Indemnifying Party and with respect to which the Indemnifying Party is obligated to provide indemnification pursuant to this Concession Agreement, the Indemnified Party shall, within ten (10) Business Days thereafter, give the Indemnifying Party written notice (an “**Indemnification Notice**”) thereof which sets forth in reasonable detail such information with respect to such suit, action, claim, proceeding or investigation as the Indemnified Party shall then have, but the failure to give an Indemnification Notice to the Indemnifying Party shall not relieve the Indemnifying Party of any liability that it may have to the Indemnified Party except to the extent that the Indemnifying Party shall have been materially prejudiced in its ability to defend the suit, action, claim, proceeding or investigation for which such indemnification is sought.

12.6.2 Upon receipt of an Indemnification Notice, the Indemnifying Party shall be entitled at its option and at its cost and expense to assume the defense of such suit, action, claim, proceeding or investigation with respect to which it is called upon to indemnify an Indemnified Party pursuant to this Section 12; *provided, however*, that the Indemnifying Party notifies the Indemnified Party of its intention to assume such defense within thirty (30) days after the Indemnified Party gives the Indemnifying Party the relevant Indemnification Notice. If the Indemnifying Party elects to assume the defense of such suit, action, claim, proceeding or investigation, as the case may be, the Indemnifying Party shall retain counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall have the right to employ its own counsel in any such suit, action, claim, proceeding or investigation, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party.

12.6.3 If the Indemnifying Party elects to assume the defense of any suit, action, claim, proceeding or investigation for which it is called upon to indemnify the Indemnified Party pursuant to this Section 12, the Indemnifying Party shall not settle or compromise such suit, action, claim, proceeding or investigation without the prior written consent of the Indemnified Party unless there is no finding or admission of any violation of law by the Indemnified Party, and the sole relief provided is monetary damages covered in full by the indemnity.

12.6.4 The Indemnifying Party agrees to keep the Indemnified Party reasonably informed of the events of any applicable suit, action, claim, proceeding or investigation. If requested by the Indemnifying Party, the Indemnified Party shall co-operate to the extent reasonably requested in the defense or prosecution of any suit, action, claim, proceeding or investigation for which such Indemnifying Party is called upon to indemnify the Indemnified Party pursuant to this Section 12.

12.6.5 The amount of any Loss indemnifiable pursuant to this Section 12 shall be reduced by (a) the value of any benefit (other than any insurance benefit or proceeds) realized, directly or indirectly, in any jurisdiction by the Indemnified Party as a result of such Loss; and (b) the amount of any insurance proceeds received by the Indemnified Party in respect of such Loss. If such proceeds are received by the Indemnified Party following an indemnifying payment in respect of the relevant Loss, the Indemnified Party shall pay to the Indemnifying Party an amount equal to the lesser of (i) the amount of such proceeds and (ii) the amount of the indemnifying payment made by the Indemnifying Party.

12.6.6 No amount shall be payable by any Indemnifying Party pursuant to this Section 12 in respect of consequential damages, including any loss of profit, revenue or opportunity or punitive damages; *provided, however*, that an Indemnifying Party may be liable under this Section 12 for all actual payments reasonably made by the other Party to third parties or reasonable out-of-pocket and documented costs or expenses actually suffered or incurred by such other Party in respect of third-party claims.

12.6.7 No Indemnified Party shall be entitled to be indemnified more than once under this Concession Agreement for the same Loss.

### **12.7 Setoff**

In the event Concessionaire is not in compliance with any of the terms of this Concession Agreement or in the event any Authority Indemnified Party is entitled to indemnification pursuant to Section 12 of this Concession Agreement or in the event any Losses or any other amounts are owed but unpaid by Concessionaire pursuant to any provision of this Concession Agreement, the Authority shall have the immediate right, upon the giving of notice, to offset the amount of any such indemnity claim, Losses or other amounts against amounts then owing or to become owing by the Authority to Concessionaire pursuant to the terms and provisions of this Concession Agreement including any schedules or exhibits thereto. The rights of the Authority under this Section shall be in addition to, and not in limitation of, any other rights, which it may have.

### **12.8 Survival**

This Section 12 shall survive the termination of this Concession Agreement and, notwithstanding any such termination, amounts owed under this Section 12 by one Party to the other Party shall be paid in accordance with this Concession Agreement.

## **SECTION 13.**

### **INSURANCE**

#### **13.1 Policies**

The Concessionaire shall, at its sole cost and expense, obtain or cause to be obtained, and maintain in force for the entirety of the Concession Period insurance policies issued by internationally recognized carriers duly authorized to issue insurance policies in the State and acceptable to the Authority, with such policy limits, sublimits and deductibles as shall be acceptable to the Authority, and shall otherwise comply with all Insurance Requirements.

#### **13.2 Required Insurance**

Without limiting the generality of Section 13.1, at all times during the Concession Period, the Concessionaire shall provide and maintain the following types of coverage:

13.2.1 The Concessionaire shall maintain an occurrence form marine general liability policy or policies at all times during the Concession Period. Such coverage shall be written on an ISO occurrence form, or equivalent, providing coverage for bodily injury, including death, personal injury, advertising liability, contractual liability and property damage in an amount of not less than \$20,000,000 per occurrence, subject to a self-insured retention or deductible not to exceed \$1,000,000 each occurrence

unless approved by the Authority. Each policy shall provide cross-liability coverage equivalent to the standard separation of insured's clause published by the ISO or a successor organization and coverage for certified acts of terrorism. The Concessionaire shall also provide coverage for sudden and accidental and gradual pollution upon land or water arising out of the Concessionaire's operations at the Port Facilities, under policy terms standard in the insurance industry; *provided* that such insurance is attainable at commercially reasonable rates. The Operator, if applicable, shall maintain the same amounts of marine general liability insurance for the benefit of the Concessionaire and the Authority.

13.2.2 The Concessionaire shall procure and maintain, in full force and effect during the Concession Period, "All Risk" property damage insurance (including the perils of flood and earthquake/earth movement) or equivalent, including certified acts of terrorism coverage, business interruption/time element insurance, covering all of the Port Facilities in an amount equal to 100% of the replacement value (unless otherwise agreed upon in writing by the Authority and the Concessionaire) and covering the Concessionaire and the Authority, as their interests appear, for loss of income arising out of this Concession Agreement due to business interruption/time element, including extra expense and expediting expense as a result of physical damage. The deductible under the policy may not exceed 5% of values at risk at the time of loss subject to minimum \$1,000,000 in respect of earthquake, and not exceed \$1,000,000 in respect of all others, unless approved by the Authority, and the Authority shall not be liable for damage under any deductible or self-insured retention.

13.2.3 During the construction of improvements required or permitted hereunder by the Concessionaire, the Concessionaire shall obtain and maintain for the benefit of the Parties, as their interests may appear, "All-Risk" builder's risk insurance equal to 100% of the value of the improvement (including coverage for certified acts of terrorism), subject to a commercially reasonable deductible not to exceed 5% of loss minimum \$1,000,000 per occurrence in respect of windstorm, earthquake & flood, and not exceed \$1,000,000 in respect of all others unless approved by the Authority, and the Authority shall not be liable for damage under any deductible or self-insured retention. Coverage shall also include: (i) form work in place; (ii) form lumber on site; (iii) temporary structures; (iv) equipment; and (v) supplies related to the work while at the site.

13.2.4 The Concessionaire shall maintain in force and effect, or cause to be maintained, as applicable, workers' compensation insurance for all of the Concessionaire's employees in accordance with all requirements of the State and any other Applicable Law. The Concessionaire shall also maintain employer's liability coverage in an amount not less than \$5,000,000 per accident and \$5,000,000 per employee for disease. The Concessionaire may meet these requirements through a combination of a self-insurance program meeting the requirements of the State and commercial workers' compensation and employers' liability insurance. The Concessionaire shall require that all other users of the Port Facilities maintain the same or similar insurance as required by Applicable Law.

13.2.5 If the Concessionaire operates Vessels in connection with the performance of the Port Services at the Port Facilities (including coverage for certified acts of terrorism), the Concessionaire shall maintain Protection & Indemnity Insurance in an amount not less than \$20,000,000.

13.2.6 The Concessionaire shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of any of the Concessionaire's automobiles (including owned, hired and non-owned vehicles) on and around the Port Facilities (including coverage for certified acts of terrorism). Coverage shall be in an amount of not less than \$5,000,000 each accident subject to a self-insured retention or deductible not to exceed \$1,000,000 unless approved by the Authority.

13.2.7 The Concessionaire shall be responsible for ensuring that the Concessionaire's Subcontractors and representatives maintain insurance with coverage amounts generally acceptable in the industry that are commercially reasonable in light of the work provided by the Subcontractors and representatives. In no event shall the Concessionaire's obligations to the Authority be diminished by failure of a Subcontractor or representative to maintain adequate insurance coverage.

### **13.3 The Authority As Beneficiary**

Subject to the claims of any Security Holder, the Authority shall be named as an additional insured in all policies issued pursuant to this Section 13, and shall, in the event of any termination of this Concession Agreement, have such rights as may be set forth in the Insurance Requirements.

### **13.4 Other Requirements**

The required insurance amounts set forth in this Section 13 shall not in any way limit the amount or scope of liability of the Concessionaire under this Concession Agreement. The amounts listed indicate only the minimum amounts of insurance coverage the Authority is willing to accept to help insure full performance of all terms and conditions of this Concession Agreement. In addition, all insurance required by the Concessionaire under this Concession Agreement shall meet the following minimum requirements:

13.4.1 On or before the Closing Date, and thereafter during the Concession Period, the Concessionaire shall provide the Authority with current certificates of insurance, including additional insured endorsements and loss payee provisions executed by a duly authorized representative of each insurer, evidencing the existence of all insurance policies required under this Section 13. The Concessionaire shall have the right to satisfy the insurance requirements of this Concession Agreement by means of a blanket policy; *provided* that such blanket policy provides the required levels of protections set forth in this Concession Agreement. The Authority shall receive at least 30 days' notice prior to cancellation, non-renewal or material change in any policy. Insurance must be maintained without any lapse in coverage during the Concession Period. The Authority shall, upon request, be given, at the Concessionaire's own expense, certified copies of the Concessionaire's policies of insurance. Failure of the Authority to demand such certificates or other evidence of full compliance with these insurance requirements, or failure of the Authority to identify any deficiency or noncompliance with coverage requirements, shall not be construed as a waiver of the Concessionaire's obligation to maintain the insurance required by this Concession Agreement.

13.4.2 Each insurance policy required in this Section 13 shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Authority.

13.4.3 All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Authority may, upon 30 days' notice to the Concessionaire, require the Concessionaire to change any carrier whose rating drops below an "A-" rating.

### **13.5 No Liability to the Authority for Failure to Insure**

The Authority shall not bear any risk or responsibility for the failure of the Concessionaire to obtain or maintain any or all of the foregoing policies or to otherwise comply with all Insurance Requirements and, except as specifically provided herein, shall not be liable to the Concessionaire for uninsured losses.

### **13.6 Waiver of Subrogation**

The Concessionaire and the Authority waive any right of action that they or their insurance carriers might have against each other (including their respective representatives) or against other tenants of the Port Facilities for any Loss to the extent that such Loss is covered by any property insurance policy or policies maintained, or required to be maintained pursuant to this Concession Agreement, and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the Party claiming the Loss. If any of the Concessionaire's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, the Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section 13.

### **13.7 Review of Policies**

13.7.1 The amounts of coverage required under this Section 13 shall be reviewed by the Authority, and if necessary, adjusted each succeeding anniversary of the Closing Date in accordance with then-prevailing market conditions.

13.7.2 At the Concessionaire's request, the Authority shall review and determine, in its discretion, whether any required insurance under this Section 13 should be amended or waived because it is not available on commercially reasonable terms.

## **SECTION 14.**

### **FORCE MAJEURE**

#### **14.1 Force Majeure**

“**Force Majeure**” means (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies; (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; (iii) riot, commotion, disorder, strike or lockout by Persons other than the Concessionaire or the Operator, Affiliates of the Concessionaire or the Operator or employees or contractors of the Concessionaire or the Operator; (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the use of such munitions, explosives, radiation or radio-activity by the Concessionaire, its Affiliates, Employees or Subcontractors; (v) natural catastrophes such as earthquake and volcanic activity, in each case only to the extent such event or circumstance is an exceptional event or circumstance; and (vi) extreme weather (including hurricanes) for which an evacuation is ordered by a Relevant Authority:

- (a) which is beyond the control of the Party seeking to invoke Force Majeure;
- (b) which such Party could not reasonably have avoided, prevented or overcome through the exercise of due diligence;
- (c) which is not substantially attributable to such Party; and
- (d) which has the effect of preventing a Party from performing its obligations under this Concession Agreement as a consequence of: (1) unavoidable and material physical damage or destruction

to the Port Facilities; or (2) interruption to the regular operation of all or any material portion of the Port Facilities.

Without limiting the generality of the foregoing, for purposes of this Concession Agreement, the term “**Force Majeure**” *excludes*: (A) changes in Applicable Law and acts by Relevant Authorities, in each case other than a Discriminatory Change in Law, (B) changes in financial markets or market conditions generally, (C) events or circumstances within the conditions required to be designed against or provided for in accordance with this Concession Agreement, (D) the occurrence of any shortages of manpower or supplies; or (E) any delay, default or failure (direct or indirect) in obtaining supplies, or of any Subcontractor or worker performing any work or any other delay, default or failure (financial or otherwise) of a Subcontractor, vendor or supplier.

#### **14.2 Notice of Force Majeure**

If any Party hereto is affected by an event of Force Majeure as defined in Section 14.1, it shall give notice within five (5) Business Days of the occurrence thereof to the other Party. The affected Party shall likewise immediately notify the other Party within five (5) Business Days when the event of Force Majeure has ceased.

#### **14.3 Excuse of Performance**

14.3.1 Should an event of Force Majeure prevent the total or partial performance of any of the obligations of either Party resulting from this Concession Agreement, then the Party claiming the event of Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected and the other Party shall not be entitled to terminate this Concession Agreement except as otherwise provided herein, *provided* that, except as provided herein, no event of Force Majeure shall be construed to relieve a Party of its obligation to pay sums of money due or that may become due under this Concession Agreement (including the obligations of the Concessionaire to make timely payment of the Concession Fees due in accordance with Section 2.4). The Party claiming the event of Force Majeure shall use commercially reasonable efforts to continue to perform its obligations hereunder.

14.3.2 Neither Party shall claim damages, penalties, interest or any other compensation from any other Party due to the occurrence of an event of Force Majeure.

14.3.3 The foregoing provisions of this Section 14 shall not, however, excuse or release the Party claiming Force Majeure from obligations due or performable, or compliance required, under this Concession Agreement prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure or obligations not affected by the event of Force Majeure. Unless this Concession Agreement shall have been terminated, a Party excused from performance by the occurrence of Force Majeure shall continue its performance under this Concession Agreement when the effects of the event of Force Majeure are removed.

#### **14.4 Extension of Concession Period upon Force Majeure**

If an event of Force Majeure (a) is not covered by business interruption insurance and (b) prevents the Concessionaire from providing Port Services for a period of more than 60 continuous days, the Concession Period shall be extended for a period of time equal to the length of such event of Force Majeure lasts in excess of 60 days.



## **14.5 Extended Force Majeure; Termination**

14.5.1 This Concession Agreement may be terminated by mutual consent of the Authority and the Concessionaire, at any time following the occurrence of (a) Concessionaire's delivery of written notice to the Authority as required by Section 14.2 claiming an Event of Force Majeure, and (b) the passage of a period of sixty (60) consecutive days, or more, from the date of such notice during which the Event of Force Majeure has continued uninterrupted.

14.5.2 Upon the occurrence and continuation of an Event of Force Majeure described in Section 14.5.1, the Concessionaire will be permitted to abate the Annual Fixed Fee and the Minimum Annual Guarantee by fifty percent (50%) during the pendency of such Event of Force Majeure.

14.5.3 Upon the occurrence and continuation of an Event of Force Majeure as described in Section 14.5.1 that continues for one hundred twenty (120) consecutive days, the Concessionaire will have the right, upon a 120-day notice to the Authority, to terminate this Agreement.

## **SECTION 15.**

### **EVENTS OF DEFAULT; REMEDIES**

#### **15.1 Default by the Concessionaire**

The occurrence of any of the following events shall be deemed an event of default by the Concessionaire (each, a "**Concessionaire Event of Default**"):

15.1.1 the Concessionaire (a) abandons all or any significant portion of or (b) evidences an intent to cease or significantly diminish operations at the Port Facilities, the Site or the Project period of more than 30 continuous days;

15.1.2 the Concessionaire suspends all or any significant portion of the Port Services for a period of three (3) consecutive months and fails to recommence the performance of such Port Services within three (3) months after the Authority notifies the Concessionaire to recommence such Port Services;

15.1.3 the Concessionaire shall have become unable, admits in writing its inability, or fails generally, to pay its debts as they become due or otherwise becomes insolvent;

15.1.4 the Concessionaire files a petition for bankruptcy, insolvency, or voluntarily commences any proceeding or files any petition seeking liquidation, winding up, reorganization, moratorium, arrangement, composition or other similar relief under Applicable Law;

15.1.5 an involuntary proceeding is commenced or an involuntary petition is filed seeking an adjudication of the Concessionaire as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, moratorium, arrangement, composition or other similar relief under Applicable Law in respect of the Concessionaire or any substantial part of its property;

15.1.6 the Concessionaire breaches its obligations under Section 2.4; *provided, however*, that if the Authority draws on the Letter of Credit or the Escrow Account under Section 2.4.4, such action shall be deemed to be a sufficient cure of any such breach under Section 2.4;

15.1.7 any representation or warranty of the Concessionaire or any Equity Participant contained in this Concession Agreement or any other document delivered by the Concessionaire in connection with this Concession Agreement or the selection process proves to have been false, inaccurate or misleading in any material respect when made;

15.1.8 the Concessionaire fails to obtain or maintain any insurance which it is required to obtain or maintain under Section 13;

15.1.9 the Concessionaire enters into an agreement to, or assigns, transfers, conveys, leases, encumbers or otherwise disposes of all or any portion of its rights or obligations under this Concession Agreement other than in accordance with the express terms of Section 17;

15.1.10 the Concessionaire shall have repudiated this Concession Agreement or any other Project Agreement or otherwise demonstrated its intention not to be bound by the terms thereof;

15.1.11 the Concessionaire fails to complete the Capital Improvements in accordance with Section 9.4;

15.1.12 the Concessionaire commits a material breach or default in respect of the performance of any of its other obligations under any Project Agreement to which it is a party, or any party to a Project Agreement terminates or is entitled for any reason (other than pursuant to the Authority's right to terminate by reason of a default thereunder by the Authority) to terminate such Project Agreement;

15.1.13 the Operator commits a material breach or default in respect of the performance of any of its obligations under the Port Operations Manual, the Port Standards, all Applicable Laws, Good Industry Practice or any other Project Agreement to which the Operator is a party or the agreement between the Operator and the Concessionaire is repudiated or terminated by the Operator for any reason or ceases to be the valid and binding obligation of the parties thereto; *provided, however*, that no Concessionaire Event of Default shall exist as a result of the termination of the agreement with the Operator if the Concessionaire has appointed an interim Operator in accordance with Section 8.2.5; or

15.1.14 the Concessionaire commits a material breach or default in respect of the performance of any of its obligations under this Concession Agreement (other than those mentioned elsewhere in this Section 15.1), which breach has continued unremedied for sixty (60) days or more.

## **15.2 Remedies of the Authority upon Concessionaire Event of Default**

Upon the occurrence and during the continuance of a Concessionaire Event of Default, the Authority may, by notice to the Concessionaire with a copy to the Security Holder in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to the rights of the Security Holder pursuant to Sections 19.3 and 19.4, do any or all of the following as the Authority, in its discretion, shall determine:

15.2.1 the Authority may give written notice to the Concessionaire requiring the Concessionaire to use its best efforts to remedy the Concessionaire Event of Default within a period of time prescribed by the Authority, which shall not exceed ten (10) days in the case of an Emergency, and

which shall not exceed three (3) months in all other cases, from the receipt of such notice and which shall take into account the nature of the breach and if such Concessionaire Event of Default is not remedied by the Concessionaire by the expiration of the specified period, or the Concessionaire fails to pursue reasonable steps to remedy such Concessionaire Event of Default by the expiration of the specified period, the Authority shall have the right to terminate this Concession Agreement by notice in writing to the Concessionaire;

15.2.2 if the Concessionaire Event of Default is by reason of the failure to pay any monies to a third party, the Authority may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Authority shall be payable by the Concessionaire to the Authority within fifteen (15) days after written demand therefor;

15.2.3 the Authority may cure the Concessionaire Event of Default (but this shall not obligate the Authority to cure or attempt to cure a Concessionaire Event of Default or, after having commenced to cure or attempted to cure a Concessionaire Event of Default, to continue to do so), and all costs and expenses reasonably incurred by the Authority in curing or attempting to cure the Concessionaire Event of Default shall be payable by the Concessionaire to the Authority within fifteen (15) days after written demand therefor; *provided, however*, that (a) the Authority shall not incur any liability to the Concessionaire for any act or omission of the Authority or any other Person in the course of remedying or attempting to remedy any Concessionaire Event of Default (other than as a result of negligence or willful misconduct) and (b) the Authority's cure of any Concessionaire Event of Default shall not affect the Authority's rights against the Concessionaire by reason of the Concessionaire Event of Default;

15.2.4 the Authority may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for the specific Concessionaire Event of Default;

15.2.5 the Authority may seek to recover its Losses arising from such Concessionaire Event of Default (including the right to recover immediately all Concession Fees owed but not paid, calculated through the End Date) and, in connection therewith, immediately draw down on the Letter of Credit or withdraw from the Escrow Account contemplated in Section 2.4.3 and exercise any other recourse available to any Person who is owed damages or a debt;

15.2.6 subject to the rights of the Security Holder under the Security Interest and the terms of this Concession Agreement, the Authority may close any and all portions of the Port Facilities; and

15.2.7 the Authority may exercise any of its other rights and remedies provided for hereunder or at law or equity.

### **15.3 Default by the Authority**

The occurrence of any of the following events shall be deemed an event of default by the Authority (each, an "**Authority Event of Default**"):

15.3.1 the Authority commits a material breach or default in respect of the performance of any of its obligations under this Concession Agreement and such breach continues uncured for a continuous period of ninety (90) days (it being understood that the Authority being dissolved or ceasing to have the power or authority to perform its obligations under this Concession Agreement shall not be

considered a material breach or default of the Authority's obligations under this Concession Agreement); and

15.3.2 the occurrence of any compulsory acquisition or expropriation by the Authority or any other Relevant Authority of any part of the Site or Port Facilities, which results in the material impairment of the Concession Rights significantly impeding the ability of the Concessionaire to perform the Terminal Services or significantly reducing the economic benefits to be derived therefrom.

#### **15.4 Remedies of the Concessionaire upon Authority Event of Default**

15.4.1 Upon the occurrence and during the continuance of an Authority Event of Default, the Concessionaire may by notice to the Authority declare the Authority to be in default and may, subject to the provisions of Section 18, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(a) the Concessionaire may give written notice to the Authority requiring the Authority to use reasonable efforts to remedy the Authority Event of Default within a period of time prescribed by the Concessionaire, which period of time shall be not less than three (3) months from the receipt of such notice and which shall take into account the nature of the breach and if such Authority Event of Default is not remedied before the expiration of the specified period, the Concessionaire may, upon the expiration of the specified period, terminate this Concession Agreement by notice in writing to the Authority;

(b) upon a termination of this Concession Agreement by the Authority pursuant to Section 15.4.1(a), the Concessionaire is entitled to be paid the following amount by the Authority: (i) the Concessionaire's actual and documented costs expended for the Capital Improvement Projects, adjusted based on changes in US CPI for the period between the Closing Date and the date of such termination under Section 15.4.1(a) and pro-rated based on the number of days that otherwise would have remained in the Concession Period as of such termination as a percentage of the total number of days in a 43-year term; *plus* (ii) without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination pursuant to Section 15.4.1(a); *less* (iii) any insurance proceeds received and retained by the Concessionaire with respect to all or any portion of the Site and the Port Facilities as a result of the occurrence of the Authority Event of Default; *provided* that any Movable Property and Fixtures and Fittings allocable to the payment in respect of the Capital Improvement Projects described in clause (i)(B) above shall be transferred by the Concessionaire to the Authority upon such termination date;

(c) to the extent that performance by the Authority of the relevant obligation is reasonably practicable or legally available, the Concessionaire may seek specific performance, injunction or other equitable remedies; and

(d) the Concessionaire may exercise any of its other rights and remedies provided for hereunder or at law or equity.

15.4.2 No notice given by the Concessionaire to the Authority in which the Concessionaire states that it elects to exercise its right of termination of this Concession Agreement shall be valid for any purpose unless, if any Security Interest remains outstanding and if and to the extent required by the terms of any Security Interest, the Concessionaire has first obtained and delivered to the Authority the written consent of the Security Holder to such notice.

## **15.5 Limitation on Liability**

Notwithstanding any other provision of this Concession Agreement, the Parties acknowledge that it is in their mutual interests to limit their liability to each other, and expressly bargain for and agree that neither Party shall be liable to the other Party under this Concession Agreement for punitive, remote, indirect, special, consequential, expectation, ongoing, future or speculative damages, lost profits or any contingent liability (it being understood that such contingent liability, if it becomes actual, is subject to the exclusions under this Section 15.5).

## **15.6 Effect of Termination**

On the expiration or termination of this Concession Agreement and/or the Concession Period (subject to Section 19) for whatever reason:

15.6.1 this Concession Agreement (except for those provisions that by their terms survive the termination of this Concession Agreement) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination (including the obligation of the Concessionaire to pay all Concession Fees and other accrued and unpaid amounts payable to the Authority hereunder prior to the date of such expiration or termination);

15.6.2 the Concession Rights shall terminate, subject to Section 15.6.1;

15.6.3 any reimbursement or compensation payable by the Authority to the Concessionaire, or by the Concessionaire to the Authority, pursuant to this Section 15, if any, shall be deemed a debt due and payable in Dollars, and shall be paid by the Party liable, together with interest thereon accruing at the rate specified in Section 22.6 from the date this Concession Agreement terminates until the date of payment, into one or more bank accounts designated by the other Party for such purpose, on or before the date which shall be the later of: (a) the date which shall be ninety (90) days after the date on which this Concession Agreement terminates, and (b) if either Party shall dispute such termination by the other Party, the date which shall be ninety (90) days after a final determination is made in accordance with Section 18 hereof;

15.6.4 the Authority shall retain the Environmental Consultant who shall prepare a Final Environmental Study of the Project. With respect to the Final Environmental Study, the Authority and Concessionaire agree as follows:

(a) the Authority shall prepare the scope of work for the Final Environmental Study that complies with the requirements of Applicable Law and is reasonable in scope;

(b) the Environmental Consultant shall investigate and assess (1) any Environmental Matter arising directly or indirectly from or related to the operation of the Project by the Concessionaire and (2) all costs and expenses required to investigate, clean-up, remediate, address or rectify any Environmental Matter arising directly or indirectly from or related to the Project or the operation of the Project by the Concessionaire. The Final Environmental Study shall consist of or include a discussion of the following: (A) a Phase I environmental assessment conducted in accordance with standard E 1527-00 of the American Society for Testing and Materials (ASTM), as revised, amended or updated, or its equivalent at the time of the expiration or termination of this Concession Agreement; (B) any soil, water and ground water sampling or intrusive work necessary to determine, in the opinion of the Authority, the existence or extent of any Environmental Matter or the costs and expenses necessary to address any Environmental Matter; and (C) any other assessment, investigation or activities reasonably requested by the Authority;

(c) the Final Environmental Study shall be consistent with the scope of work prepared by the Authority and shall be to the reasonable satisfaction of the Authority; and

(d) any amounts payable to the Concessionaire by the Authority at the expiration or termination of this Concession Agreement shall be offset by the costs and expenses, as estimated and certified by the Environmental Consultant, to investigate, clean-up, remediate, address or rectify any Environmental Matter and to pay for all costs and expenses incurred by the Environmental Consultant in connection with preparation of the Final Environmental Study;

15.6.5 the Concessionaire shall surrender to the Authority possession of the Site and the Port Facilities, and the Authority shall have the right to (a) enter and take immediate possession and operational control of the Site and all Port Facilities, (b) request that all Intangible Property be immediately delivered to it, except to the extent that any such Intangible Property involves proprietary information or software subject to an exclusive license agreement, and (c) select and substitute a new concessionaire for the Concessionaire. Notwithstanding the foregoing, in the event that the Concessionaire shall have abandoned the Site or the Port Facilities, the Authority shall have the immediate right to take the actions in subsections (a), (b) and (c) above. The exercise of such right by the Authority shall not relieve the Concessionaire of any of its obligations as specified in this Section 15;

15.6.6 the Authority shall have the right to purchase from the Concessionaire all or any portion of the Movable Property, Fixtures and Fittings and any Cranes for which the Authority approved the purchase of such Cranes by the Concessionaire pursuant to Section 2.2.1(e) and all or any portion of the tangible and intangible personal property (including inventories) located on the Site or used in connection with the Port Facilities as of such expiration or termination date in accordance with Section 2.2.1(d); *provided, however*, that this Section 15.6.6 shall not apply to Movable Property and Fixtures and Fittings transferred to the Authority pursuant to Section 14.5.2 or Section 15.4.1(b) and *provided further* that the Authority's option to purchase Cranes under this Section 15.6.6 shall not apply in the circumstances described in Section 15.6.7; and

15.6.7 this Section 15.6 shall survive the expiration or earlier termination of this Concession Agreement.

### **15.7 Additional Damages on Termination**

15.7.1 Upon any termination of this Concession Agreement or the expiration of the Concession Period, all in accordance with the terms of this Concession Agreement, the Concessionaire shall promptly and in any event within thirty (30) days after the date of termination vacate the Site (it being understood that such thirty (30) day period may be reasonably extended); *provided* that the activities of the Concessionaire in vacating the Site and the Port Facilities shall, in no event, interfere with the subsequent operation of the Site during such initial thirty (30) day period or any extension thereof. If the Concessionaire fails to vacate the Site as aforesaid, the Concessionaire shall pay to the Authority any and all damages as may be determined in accordance with Section 18.

15.7.2 For the purposes of Section 15.7.1, the date of any termination of this Concession Agreement shall be the date of termination notified by one Party to the other, or otherwise agreed by the Parties, or, if any such terminations shall be disputed and submitted to dispute resolution in accordance with Section 18, the date on which the a final and binding decision is rendered in respect of the matter pursuant to Section 18.

15.7.3 This Section 15.7 shall survive the expiration or earlier termination of this Concession Agreement.

## SECTION 16.

### HANDBACK REQUIREMENTS

#### **16.1 Handback Requirements**

Upon the date of termination of this Concession Agreement in accordance with the provisions of Section 3 or Section 15, each element of the Port Facilities shall comply with the Handback Requirements.

#### **16.2 Handback Inspection**

16.2.1 Not later than three hundred sixty-five (365) days prior to the Termination Date (or, in the case of a termination pursuant to Section 15, as soon as practicable after a notice of termination is delivered by either Party), the Concessionaire and the Authority shall conduct a joint inspection of the Port Facilities (the “**Handback Inspection**”). The inspection shall comply with any requirements of the Handback Requirements and shall be at the sole cost and expense of the Concessionaire.

16.2.2 Within forty-five (45) days after the completion of the Handback Inspection, the Authority shall either:

(a) issue to the Concessionaire a certificate (the “**Handback Certificate**”) stating that it is satisfied the Port Facilities will meet the Handback Requirements on the Termination Date; or

(b) notify the Concessionaire in writing of its decision not to issue the Handback Certificate and state the reason for its decision.

16.2.3 The Authority may refuse to issue the Handback Certificate if the Port Facilities for any reason do not comply with the Handback Requirements in all material respects. Any notice given by the Authority in accordance with Section 16.2.2(b) above shall set out each respect in which the Port Facilities do not comply with the Handback Requirements and shall state the Authority’s estimate of the cost of procuring that the Port Facilities comply in all material respects with the Handback Requirements.

16.2.4 Within thirty (30) days after receipt of a notice given in accordance with Section 16.2.2(b) above, the Concessionaire may, by notice to the Authority, object to any matter set out in the notice issued by the Authority. The notice from the Concessionaire shall give details of the grounds for such objection and shall give the Concessionaire’s proposals in respect of such matters.

16.2.5 If no agreement is reached between the Concessionaire and the Authority as to any matter referred to in the notice given by the Concessionaire in accordance with Section 16.2.2(b) above within sixty (60) days, then either Party may refer the matter to dispute resolution in accordance with Section 18 for a determination of:

(a) whether the Port Facilities comply in all material respects with the Handback Requirements; and/or

(b) the estimated cost of procuring that the Port Facilities shall comply in all material respects with the Handback Requirements on the Termination Date.

16.2.6 If it is agreed or determined by dispute resolution under Section 18 that the Port Facilities do not comply in all material respects with the Handback Requirements, then without prejudice to any other right or remedy of the Authority, the Concessionaire shall pay to the Authority an amount equal to the estimated cost of procuring that the Port Facilities comply in all respects with the Handback Requirements, as agreed or determined in accordance with Section 16.2.5(b) above, together with an administrative fee equal to 5% of such costs. Such payment shall be made not later than fourteen (14) days after such estimated cost has been agreed or determined in accordance with this Section 16.2.

### **16.3 Transition Personnel and Training**

In complying with the Handback Requirements, the Concessionaire shall, if requested by the Authority, provide to the Authority a complete list of all its Service Providers and of all Employees of the Concessionaire who have been engaged full time on the Project. The Concessionaire shall co-operate with the Authority to arrange for as orderly as possible a transfer of the Port Facilities and for the continuous provision of Port Services with a minimum of disruption to Users, including providing the Authority with any required transition personnel and training (such transition personnel and training to be provided at the reasonable expense of the Authority) for such period of time as may reasonably be requested by the Authority.

## **SECTION 17.**

### **ASSIGNMENTS AND TRANSFERS**

This Concession Agreement shall be binding upon, and inure to the benefit of, the Concessionaire, the Authority and their permitted successors and assigns.

#### **17.1 Assignment by the Concessionaire**

Without the prior written consent of the Authority, except with respect to a granting of a Security Interest in accordance with Section 19, the Concessionaire may not assign or transfer (a) this Concession Agreement or any other agreement executed in connection with the Project to which it is a party, (b) any of its rights or obligations thereunder, or (c) any of its assets; *provided* that, while any Security Interest is outstanding, the Authority shall not agree to any transfer of any or all of the Concession Rights to or in favor of any Person without the previous written confirmation from the Security Holder that such transfer is permitted under all outstanding Security Interests. For purposes of this Section 17.1, a Change in Control of the Concessionaire shall be deemed a transfer by the Concessionaire of this Concession Agreement; *provided, however*, that changes in the relative ownership percentages of the Equity Participants of the Concessionaire between the Effective Date and the Closing Date shall not be a Change of Control so long as all such Equity Participants as of the Closing Date were Equity Participants as of the Effective Date. From the Closing Date until the ninth (9th) anniversary of the Closing Date, such consent shall be in the discretion of the Authority. From and after the ninth (9th) anniversary of the Closing Date, any such consent shall not be unreasonably withheld, conditioned or delayed by the Authority. The Authority shall respond to any such request for a consent to an assignment under this Section 17.1 within sixty (60) days of the receipt of such request by the Authority.



### **17.2 Assignment by the Authority**

Without the prior written consent of the Concessionaire, the Authority may not assign or transfer this Concession Agreement or any of its rights or obligations hereunder, except that the Authority shall be permitted to assign or transfer all or a part of its rights and obligations hereunder (without the requirement of the prior written consent of the Concessionaire) to any successor entity or government body which succeeds to its functions, which such successor entity shall be bound by the terms and conditions of this Concession Agreement. The Authority shall use its commercially reasonable efforts to give notice of any such assignment not later than 30 days prior to such assignment.

## **SECTION 18.**

### **RESOLUTION OF DISPUTES**

#### **18.1 Scope**

Any dispute arising out of, relating to, or in connection with this Concession Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Section 18.

#### **18.2 Informal Dispute Resolution Procedures**

The Parties shall attempt in good faith to resolve such dispute within fifteen (15) days following receipt by the other party of notice of such dispute. If the Parties are unable to resolve the dispute within such fifteen-day period, and upon notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by representatives of the Parties during the dispute resolution procedures set forth in this Section 18.2 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any arbitration or other litigation proceeding between the Parties without the mutual consent of the Parties.

#### **18.3 Arbitration**

If the procedures described in Section 18.2 do not result in resolution of the dispute within thirty (30) days, as may be extended by mutually agreeable following a reference to the Designated Senior Persons of the Parties, the dispute shall be exclusively and finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect (the “AAA Rules”). Either Party may initiate the arbitration, as provided in the AAA Rules. The place of arbitration shall be Hartford, Connecticut unless the Parties agree otherwise. The arbitral panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the State and without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Concession Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Concession Agreement. The arbitral panel shall be composed of three arbitrators, one to be selected by the Authority, one to be selected by the Concessionaire and the third (who shall act as chairman of the panel) to be selected by the two previously-selected arbitrators. If the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, the third arbitrator shall be selected in accordance with the AAA

Rules. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any *ex parte* communication with any member of the arbitral panel. Each Party shall bear its own attorney fees, expenses, and costs. The award shall include interest at the interest rate determined in accordance with Section 22.6 from the date of any breach or violation of this Concession Agreement or the incurring of any obligation as determined in the arbitral award until paid in full. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties. Judgment on the award may be entered by any court with competent jurisdiction. The Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, shall govern any arbitration conducted pursuant to this Section 18.3.

#### **18.4 Provisional Remedies**

No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Concession Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of the User Fees.

#### **18.5 Tolling**

If a Party receiving a notice of default under this Concession Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Section 18, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

### **SECTION 19.**

#### **LENDERS' RIGHTS AND REMEDIES**

##### **19.1 Security Interests**

The Concessionaire shall have the right, at its sole cost and expense, to grant one or more (subject to Section 19.7) Security Interests, if at the time any such Security Interest is executed and delivered to the Security Holder, no Concessionaire Event of Default exists unless any such Concessionaire Event of Default will be cured pursuant to Section 19.3 in connection with entering into such Security Interest, and upon and subject to the following terms and conditions:

19.1.1 a Security Interest may cover property of, and secure debt issued or guaranteed by the Concessionaire and any Affiliate of the Concessionaire including that it may cover Equity Securities of the Concessionaire;

19.1.2 no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Security Holder in this Concession Agreement; *provided, however*, that lessors and lenders to the Concessionaire, including any financial insurers, shall be entitled to the benefits and protections accorded to a Security Holder in this Concession Agreement so long as any Security Interest securing the relevant debt or financial insurance provided by such Persons is held by an Institutional Lender acting as collateral agent or trustee with the customary powers given to collateral agents or trustees in similar commercial financing transactions;

19.1.3 no Security Interest or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concession Rights shall extend to or affect the interest of the Authority or the State in the Site and the Port Facilities (other than a Permitted Concessionaire Encumbrance);

19.1.4 except (a) for violations by the Authority of the express obligations to the Security Holder set forth in this Section 19 and (b) for any remedies of the Security Holder provided by Applicable Law with respect to the Concessionaire or the Authority, including (i) the exercise by the Security Holder of the Security Holder's rights hereunder as to the Concessionaire and (ii) the right of the Security Holder to receive amounts otherwise due to the Concessionaire under this Concession Agreement as a result of the exercise by the Security Holder of the Security Holder's rights under a perfected Security Interest, the Security Holder shall not be entitled to seek any damages or other amounts against the Authority with respect to the payment of the principal sum secured by any Security Interest, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;

19.1.5 the Authority shall have no obligation to any Security Holder in the enforcement of the Authority's rights and remedies herein and by Applicable Law provided, except as expressly set forth in this Concession Agreement and unless the Concessionaire or such Security Holder has provided the Authority with notice of its Security Interest in accordance with the Security Holder Notice Requirements;

19.1.6 each Security Interest shall provide that if an event of default under the Security Interest has occurred and is continuing and the Security Holder gives notice of such event of default to the Concessionaire, then the Security Holder shall give notice of such default to the Authority;

19.1.7 subject to the terms of this Concession Agreement that specifically refer to the rights of the Security Holder, all rights acquired by a Security Holder under any Security Interest shall be subject to all of the provisions of this Concession Agreement;

19.1.8 while any Security Interest is outstanding, the Authority shall not (a) agree to any amendment to or modification of this Concession Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Security Holder or (b) agree to a voluntary surrender or termination of this Concession Agreement by the Concessionaire without the consent of the Security Holder;

19.1.9 notwithstanding any enforcement of the security of any Security Interest, the Concessionaire shall remain responsible to the Authority for the payment of all sums owing to the Authority under this Concession Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Concession Agreement; and

19.1.10 a Security Holder shall not, by virtue of its Security Interest, acquire any greater rights or interest in the Site and the Port Facilities than the Concessionaire has at any applicable time under this Concession Agreement, other than such rights or interest as may be granted or acquired in accordance with Sections 19.2, 19.3, 19.4 or 19.5.

## **19.2 Notices and Payments to Security Holders**

Whenever a Security Interest exists as to which the Authority has been provided notice by the Concessionaire or the holder thereof in accordance with the Security Holder Notice Requirements, the Authority shall, simultaneously with providing the Concessionaire any required notice under this Concession Agreement, provide a copy of such notice to such Security Holder, and no such notice to the

Concessionaire shall be effective against the Security Holder until a copy thereof is duly provided to such Security Holder at its address specified in its notice given to the Authority in accordance with the Security Holder Notice Requirements (or any subsequent change of address notice given to the Authority pursuant to the requirements of Section 23.1). With respect to a Security Interest regarding which the Authority has been provided notice in accordance with the Security Holder Notice Requirements, unless the Security Holder recognized by the Authority pursuant to Section 19.7 has otherwise advised the Authority in writing, all payments to the Concessionaire to be made by the Authority under this Concession Agreement shall be made to the Security Holder or to the institution acting as the collateral agent or depository under the financing provided by such Security Holder. The Concessionaire waives any claims against the Authority related to payments made by the Authority to the Security Holder or to the institution acting as the collateral agent or depository under the financing provided by such Security Holder in accordance with this Section 19.2.

### **19.3 Security Holder's Right to Cure**

The Security Holder shall have a period of 60 days with respect to any Concessionaire Event of Default beyond any cure period expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Event of Default; *provided, however*, that such 60-day period shall be extended if the Concessionaire Event of Default is non-monetary, is not a Concessionaire Event of Default described in Section 15.1.3, Section 15.1.4 or Section 15.1.5 and may be cured but cannot reasonably be cured within such period of 60 days, and the Security Holder begins to cure such default within such 60-day period (or if possession is necessary in order to effect such cure, the Security Holder, within such 60-day period, files the appropriate legal action to commence foreclosure on the liens of the Security Interest or takes other appropriate action to commence a transfer of title to the relevant property) and thereafter proceeds with all due diligence to cure such Concessionaire Event of Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the Authority, acting reasonably. If a Security Holder is acting to cure a Concessionaire Event of Default in accordance with this Section 19.3, then the Authority shall not exercise its right to terminate this Concession Agreement by reason of such Concessionaire Event of Default; *provided, however*, that the Authority may exercise any of its other rights and remedies provided for hereunder at law or in equity so long as the exercise of such rights does not interfere with the Security Holder's rights hereunder and *provided further* that nothing in this Section 19.3 shall diminish any of the rights of the Authority to access the Site and the Port Facilities pursuant to Section 7.2. In furtherance of the foregoing, the Authority shall permit the Security Holder the same access to the Site and the Port Facilities as is permitted to the Concessionaire hereunder; *provided* that any actions taken by a Security Holder pursuant to this Section 19.3 shall be undertaken in accordance with the provisions of this Concession Agreement that would be applicable to the Concessionaire were it taking such actions. The Authority shall accept any such performance by a Security Holder or its nominee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Security Holder hereunder as a prerequisite to keeping this Concession Agreement in effect shall be deemed properly to have been made or taken by the Security Holder if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Security Holder. Any exercise of the Security Holder's rights to cure hereunder shall not result in the assumption by such Security Holder of the Concessionaire's obligations hereunder.

### **19.4 Rights of the Security Holder**

19.4.1 Subject to the provisions of this Concession Agreement, a Security Holder may (i) enforce any Security Interest in any lawful way, (ii) acquire the Concession Rights in any lawful way or (iii) take possession of in any lawful way and manage the Site and the Port Facilities. Upon

foreclosure of the Security Interest (or without foreclosure upon exercise of any contractual or statutory power of sale under such Security Interest or an assignment in lieu) and subject to the provisions of Section 17.1 (applied to the Security Holder as if it were the Concessionaire), a Security Holder may transfer the Concession Rights; *provided, however*, that no transfer by a Security Holder shall be effective unless the transfer is made in accordance with Section 17.1. Any Person to whom the Security Holder transfers the Concession Rights (including such Security Holder) shall take the Concession Rights subject to any of the Concessionaire's obligations under this Concession Agreement. The Security Holder is not permitted in connection with its enforcement of its lien to do anything that would materially and adversely affect the Site, the Port Facilities or the Port Services.

19.4.2 Except as provided in Section 19.3, unless and until a Security Holder (i) forecloses or has otherwise taken ownership of the Concession Rights or (ii) has taken possession or control of the Concession Rights, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concession Rights by reference to the Security Interest, the Security Holder shall not be responsible for any of the Concessionaire's obligations under this Concession Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Concession Agreement, except by way of security. During any period in which the Security Holder itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concession Rights, it shall be bound by all liabilities and obligations of the Concessionaire accruing under this Concession Agreement during such period (including the obligation to engage an Operator). Once the Security Holder goes out of possession or control of the Concession Rights or transfers the Concession Rights to another Person in accordance with the provisions of this Concession Agreement, the Security Holder shall cease to be responsible for any of the Concessionaire's obligations under this Concession Agreement accruing thereafter, and to the extent assumed by any transferee or any other Person acceptable to the Authority in accordance with the terms of this Concession Agreement, for any of the Concessionaire's obligations under this Concession Agreement accrued during the period in which the Security Holder itself or by an agent or a receiver and manager was the owner, or was in control or possession of, the Concession Rights, and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Concession Agreement, except, if the Security Interest remains outstanding, by way of security.

### **19.5 Authority's Termination of this Concession Agreement; New Agreement**

19.5.1 Without prejudice to the rights of a Security Holder under Section 19.3, if this Concession Agreement is terminated prior to the expiration of the Concession Period due to a Concessionaire Event of Default (in which case the Authority shall notify the Security Holder of such termination and deliver to the Security Holder, together with such notice, a Statement of Estimated Liabilities) or if this Concession Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar Applicable Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the Authority agrees, if there are outstanding obligations to a Security Holder, to enter into a new concession agreement of the Site and the Port Facilities with the Security Holder (or its designee or nominee; *provided* that such designee or nominee either is controlled by the Security Holder or is approved by the Authority as transferee under Section 17.1) for the remainder of the Concession Period upon all of the covenants, agreements, terms, provisions and limitations of this Concession Agreement and all of the agreements, terms, provisions and limitations relating to the engagement of an Operator (the "**New Agreement**"), effective as of the date of such termination. The Authority's obligation to enter into a new concession agreement of the Site and the Port Facilities pursuant to the preceding sentence is subject to the satisfaction of all of the following requirements and conditions: (i) such Security Holder (or its designee or nominee) commits in writing to the Authority, in a notice delivered to the Authority, within 30 days after the Authority delivers the termination notice and Statement of Estimated Liabilities to the Security

Holder (or, if later, upon the termination of any cure period granted to the Security Holder pursuant to Section 19.3) or within 10 days after the effective date of such rejection or disaffirmance, as the case may be, that the Security Holder (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Security Holder (or its designee or nominee); (ii) reasonably in advance of the execution of the New Agreement, the Security Holder (or its designee or nominee) pays or causes to be paid to the Authority, at the time of the execution and delivery of such New Agreement, (A) all amounts set forth in the Statement of Estimated Liabilities which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Concession Agreement but for such termination and (B) all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements set forth in the Statement of Estimated Liabilities paid or incurred by the Authority in connection with such defaults and termination, the recovery of possession from the Concessionaire, and the preparation, execution and delivery of the New Agreement and related agreements; and (iii) such Security Holder (or its designee or nominee), at the time of such written request, cures all Concessionaire Events of Default under this Concession Agreement (curable by the payment of money) that are existing immediately prior to the termination of this Concession Agreement set forth in the Statement of Estimated Liabilities, or, if such defaults cannot be cured by the payment of money, such Security Holder (or its designee or nominee) commits to the Authority in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Concessionaire Events of Default (to the extent curable) set forth in the Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Concessionaire Events of Default, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults to the extent curable (and such cure shall be a covenant in the New Agreement).

19.5.2 Nothing contained in this Section 19.5 shall be deemed to limit or affect the Authority's interest in and to the Site and the Port Facilities upon the expiration of the Concession Period of the New Agreement. The provisions of this Section 19.5 shall survive the termination of this Concession Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 19.5 were a separate and independent contract made by the Authority, the Concessionaire and the Security Holder and, if the Security Holder satisfies the conditions to a New Agreement from the effective date of such termination of this Concession Agreement to the date of execution and delivery of the New Agreement, the Security Holder may use and enjoy the rights created by this Concession Agreement without hindrance by the Authority, but only on and subject to the terms and provisions of this Concession Agreement.

19.5.3 The Security Holder shall be entitled to request that the Authority pre-qualify pursuant to Section 17.1 one or more potential transferees of the Concession Rights in connection with any prospective exercise of the Security Holder's rights hereunder; *provided* that the Security Holder reimburses the Authority for the reasonable cost and expense of such pre-qualification. Any such approval by the Authority of such a potential transferee shall be valid for one year after approval, *provided* that the Security Holder shall be obligated to notify the Authority if the Security Holder becomes aware during such one-year period of a reasonable basis for the Authority to withhold its approval under Section 17.1 and *provided further* that the Authority may rescind such approval if the Authority becomes aware during such one-year period (through the Security Holder or otherwise) of a reasonable basis for the Authority to withhold its approval under Section 17.1.

## **19.6 Right to Dispute Resolution**

In each case specified in this Concession Agreement in which resort to dispute resolution is authorized, the Security Holder shall have the right and privilege if an event of default under the Security Interest then exists and notice has been given to the Authority as contemplated by Section 19.1.6, in the

Concessionaire's name, place and stead, to obtain and participate in such dispute resolution upon notice to the Authority in accordance with Section 18; *provided* that the Security Holder agrees to be bound by the outcome of the dispute resolution process.

### **19.7 Recognition by the Authority of Security Holder**

Notwithstanding anything in this Concession Agreement to the contrary, if there is more than one Security Holder, only that Security Holder, to the exclusion of all other Security Holders, whose notice was earliest received by the Authority pursuant to the Security Holder Notice Requirements, shall have the rights as a Security Holder under this Section 19, or otherwise under this Concession Agreement, unless such Security Holder has designated in writing another Security Holder to exercise such rights; *provided, however*, that such notice may name more than one Security Holder and the rights referred to in this Section 19.7 may extend to all Security Holders named therein if such notice is submitted by a representative of all such Security Holders (which representative may itself be a Security Holder). Any references in this Concession Agreement to the "Security Holder" shall be references to the Security Holder or representative of more than one Security Holder, acting on behalf of such Security Holders, whose notice was earliest received by the Authority pursuant to the Security Holder Notice Requirements unless the context otherwise requires.

## **SECTION 20.**

### **GOVERNING LAW; SUBMISSION TO JURISDICTION**

The rights and obligations of the Parties under or pursuant to this Concession Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to any provision that would result in the application of the laws of another jurisdiction. Without prejudice to the provisions of Section 18, each Party hereby irrevocably and unconditionally submits, for itself and its property, to the sole and exclusive jurisdiction of the state and federal courts within the State and any appellate court from any thereof, in any legal action, suit or proceeding arising out of or relating to this Concession Agreement.

## **SECTION 21.**

### **MISCELLANEOUS**

#### **21.1 Project Agreements**

The Concessionaire shall not, and shall ensure that none of its employees, representatives or Subcontractors, shall, take any action or enter into any other Project Agreement which would cause it or the Authority to be in breach of, or unable to perform its obligations under, this Concession Agreement or that could otherwise frustrate the purposes of any this Concession Agreement.

## **21.2 Entire Agreement**

This Concession Agreement constitutes the entire agreement between the Parties in relation to the subject matter hereof and supersede any or all previous agreements or arrangements, whether oral or written, between the Parties in respect of the subject matter hereof.

## **21.3 Confidentiality**

Each Party shall keep in confidence all drawings, records, data, books, reports, documents and information, whether technical, commercial or financial in nature, supplied to it by or on behalf of another Party relating to the Project that are designated as confidential by the applicable Party and shall not disclose the same in any manner other than for the purpose of raising financing for the Project (whether by way of debt or equity), for the operation of the Port Facilities, for the purpose of performing its obligations hereunder, or as it may necessarily be required to disclose pursuant to Applicable Laws or orders of appropriate Relevant Authorities or as may be required by the Authority in connection with procuring a substitute for the Concessionaire; *provided* that nothing in this Section 21.3 shall limit the Authority's right to use such documents and information in circumstances where this Concession Agreement has been terminated in accordance with Sections 3 or 15. The provisions of this Section 21.3 shall, for the avoidance of doubt, supersede all confidentiality provisions contained in any prior agreement between the Parties.

## **21.4 Variations in Writing**

Any and all additions, amendments and variations to this Concession Agreement shall be binding only if in writing and signed by duly authorized representatives of each of the Parties.

## **21.5 Time and Indulgence**

21.5.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Concession Agreement: (a) shall operate or be construed as a waiver of any other or further default whether of a like or different character; or (b) shall be effective unless in writing duly executed by an authorized representative of such Party.

21.5.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Concession Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

21.5.3 Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder. Any such time or indulgence or waiver may be on and subject to such terms and conditions as the Party giving it may specify and shall be without prejudice to that Party's then accrued rights except to the extent expressly varied in such time, indulgence or waiver.

## **21.6 Interest**

Any Party in default of payment of any amount due hereunder shall pay interest thereof at the following rate: (a) a rate of three (3) per cent per annum above Prime Rate during the first thirty (30) days after the applicable default; (b) a rate of four (4) per cent per annum above Prime Rate during the second thirty (30) days after the applicable default; (c) a rate of five (5) per cent per annum above Prime Rate during the third thirty (30) days after the applicable default; and (d) a rate of six (6) per cent per annum



above Prime Rate thereafter. Such interest shall be computed on a daily basis from the due date until the relevant amount together with accrued interest is fully paid by the defaulting Party.

### **21.7 No Third Party Beneficiaries**

This Concession Agreement is made exclusively for the benefit of the Authority and the Concessionaire and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof, except as may be expressly provided herein.

### **21.8 Severability**

If any provision of this Concession Agreement is or becomes wholly or partly invalid, illegal, or unenforceable: (a) the validity, legality and enforceability of the remaining provisions shall continue in force unaffected; and (b) the Parties shall meet as soon as possible and negotiate in good faith upon a replacement provision that is legally valid and that as nearly as possible achieves the objectives of this Concession Agreement and produces an equivalent economic effect.

A replacement provision shall apply as of the date that the replaced provision has become invalid, illegal or unenforceable. If the Parties cannot reach agreement in good faith, any Party may invoke the dispute resolution procedure of Section 18 hereof.

### **21.9 Independent Contractor**

The Concessionaire is an independent contractor, and except as provided in Section 2.5.3 nothing contained in this Concession Agreement shall be construed as constituting any relationship with the Authority other than that of granting authority and independent contractor. In no event shall the relationship between the Authority and the Concessionaire be construed as creating any relationship whatsoever between the Authority and the Concessionaire's employees. Neither the Concessionaire nor any of its employees is or shall be deemed to be an employee of the Authority. Except as otherwise specified in this Concession Agreement, the Concessionaire has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Concessionaire or any Subcontractor hires to perform or assist in performing the obligations of the Concessionaire under or in connection with this Concession Agreement.

### **21.10 No Estoppel**

The Authority shall not, nor shall any officer thereof, be precluded or estopped by any statement, document or certificate made or given by the Authority, its consultants or representatives or any other officer, agent, or employee of the Authority from at any time showing the true and correct amount and character of the work performed or the designs or materials furnished by the Concessionaire or any other Person under this Concession Agreement, or from showing at any time that any such statement, document or certificate is untrue and incorrect, or improperly made in any particular, or that any such work, design or materials, or any part thereof, do not in fact conform to the requirements of this Concession Agreement; and the Authority shall not be precluded or estopped, notwithstanding any such statement, document or certificate or payment in accordance therewith, from demanding and recovering from the Concessionaire such damages as it may sustain by reason of the Concessionaire's failure to comply with this Concession Agreement.

**21.11 Further Assurances**

The Concessionaire shall promptly execute and deliver to the Authority all such instruments and other documents and assurances as are reasonably requested by the Authority to further evidence the obligations of the Concessionaire hereunder or otherwise to effectuate the purposes of this Concession Agreement.

**SECTION 22.**

**NOTICES**

**22.1 Address for Notices**

Any notice or communication to be given under or in connection with this Concession Agreement shall be given in writing and shall either be delivered personally or sent by registered mail or internationally recognized overnight courier. The addresses for service of the Parties shall be those provided below, or such other address as any Party may notify in writing to the other Parties for this purpose.

to the Concessionaire: Gateway New London, LLC  
c/o Enstructure LLC  
16 Laurel Avenue, Suite 300  
Wellesley, MA 02481  
Attn: Chief Legal Officer

with a copy to: Morgan Lewis & Bockius LLP  
One Federal Street  
Boston, MA 02110  
Attn: Michael A. Muller

to the Authority: Connecticut Port Authority  
455 Boston Post Road, Suite 204  
Old Saybrook, CT 06475  
Attn: Executive Director

with a copy to: Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103  
Attn: Glenn A. Santoro, Esq.

**22.2 Deemed Service**

A notice shall be deemed to have been duly serviced as follows: (a) if personally delivered, at the time of receiving; (b) if sent by registered mail, on the third Business Day following the date of posting; and (c) if sent by internationally recognized overnight courier, upon receipt of confirmation of delivery.

In providing such service it shall be sufficient to prove that personal delivery was made or that the letter was properly addressed and dispatched.

### **22.3 Change of Address**

Either Party may change a nominated address to another address by prior notice to the other Party.

### **22.4 Counterparts; Facsimile Execution.**

This Concession Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Concession Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Concession Agreement, a Party may send a copy of its executed counterpart by electronic transmission. Such Party shall be deemed to have executed and delivered this Concession Agreement on the date it sent such electronic transmission. In such event, such Party shall forthwith deliver an original counterpart of this Concession Agreement executed by such Party.

### **22.5 Contracting Requirements.**

In accordance with Applicable Law and the operating procedures of the Authority, Concessionaire shall comply with the applicable procurement and contracting requirements as set forth on Annex D attached hereto.

## **SECTION 23.**

### **JOINT PREPARATION**

All Parties have participated equally and freely in negotiating and drafting this Concession Agreement, with the advice of legal counsel selected by it. The Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Concession Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Concession Agreement has been executed by duly authorized representatives of the Parties hereto as of the day, month and year first above written.

On behalf of the Authority:

On behalf of the Concessionaire:

CONNECTICUT PORT AUTHORITY

GATEWAY NEW LONDON LLC

By:



Name: Evan H. Matthews  
Title: Executive Director

By:



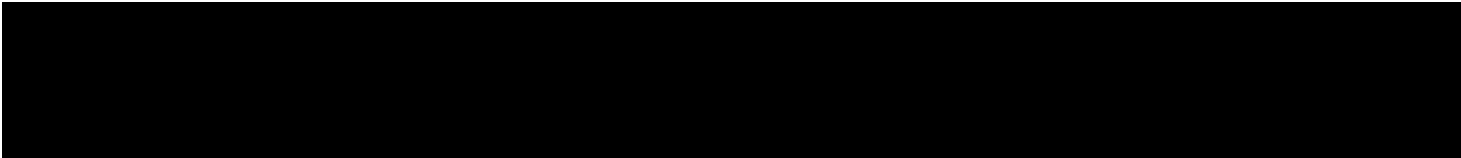
Name: Matthew Satnick  
Title: Authorized Representative

## ANNEX A

### DEFINITIONS

|                               |  |
|-------------------------------|--|
| “AAA”                         | has the meaning ascribed thereto in Section 18.3;  |
| “AAA Rules”                   | has the meaning ascribed thereto in Section 18.3;  |
| “Accounting Principles”       | means generally accepted accounting principles of the United States of America, or, if accepted by the Authority in writing, International Accounting Standards (IAS) promulgated by the International Accounting Standards Committee, in either case applied on a consistent basis;   |
| “Affiliate”                   | means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; and <i>provided, further</i> , that an Affiliate of any Person shall also include (a) any Person that directly or indirectly owns more than fifty percent (50%) of any class of capital stock or other equity interest of such Person, (b) any officer, director, trustee or beneficiary of such Person, (c) any spouse, parent, sibling or descendant of any natural Person described in paragraphs (a) or (b) above, and (d) any trust for the benefit of any Person described in paragraphs (a) through (c) above or for the benefit of any spouse, issue or lineal descendant of any Person described in paragraphs (a) through (c) above; |
| “Annual Deposit”              | means the Letter of Credit or the deposit held in an Escrow Account pursuant to Section 2.4.4;   |
| “Annual Environmental Report” | has the meaning given to that term in Section 10.8;  |
| “Annual Fixed Fee”            | has the meaning given to that term in Section 2.4;   |
| “Applicable Law”              | means any international, national, United States, State, municipal or other local statute, treaty, regulation, resolution, rule, ordinance, opinion, enactment, judgment, decision, award, order, code, decree, directive, requirement, any common or customary law, constitutional law or other governmental restriction (including any Regulatory Approval) applicable to the Parties, the Project, the Port Facilities, the Port Services, the Site or any of the transactions contemplated hereby, and any form or decision of or determination by or interpretation of any of the foregoing by any Relevant Authority, now or hereafter in effect, in each case as amended, re-enacted or replaced;   |
| “Assumed Obligations”         | has the meaning given to that term in Section 2.7;   |
| “Authority”                   | means the Connecticut Port Authority and its successors and permitted assigns;   |

|  |  |
|--|--|
| <b>“Authority Event of Default”</b>    | has the meaning given to that term in Section 15.3;  |
| <b>“Authority Indemnified Parties”</b> | Means each of the Authority and the State, and their respective representatives, directors, officers, agents, employees, attorneys and subcontractors; |
| <b>“Authority Services Change”</b>     | has the meaning given to that term in Section 8.5;   |
| <b>“Authority Tariff”</b>              | means the MTO Schedule published by the Authority in accordance with Section 2.1.4;  |
| <b>“Business Day”</b>                  | means a day (other than a Saturday or Sunday) on which the offices of the government of the State are open for business;                               |



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| <b>“Capital Improvement”</b>             | means any improvement, alteration or addition to the Port Facilities, or any part thereof (other than any repair or maintenance of the Port Facilities).   |
| <b>“Capital Improvements Commitment”</b> | has the meaning given to that term in Section 9.4.1;   |
| <b>“Cargo”</b>                           | means bulk, breakbulk, project cargoes, containers and all other containerized cargo;  |
| <b>“Change in Control”</b>               | <p>means, with respect to the Concessionaire, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in the Concessionaire is transferred to another Person or group of Persons acting in concert, (ii) the power, directly or indirectly, to direct or cause the direction of management and policy of the Concessionaire, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of the Concessionaire; <i>provided, however</i>, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a “Change in Control” for the purposes of this Concession Agreement:</p> <p>(a) transfers of direct or indirect ownership interests in the Concessionaire between or among Persons that are Affiliates of each other or Persons who are under common control (a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that</p> |

other Person and any Person or Persons with whom that other Person is acting jointly or in concert)), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

(b) transfers of shares of the Concessionaire or the direct or indirect shareholders of the Concessionaire pursuant to *bona fide* open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or a comparable United States or foreign securities exchange, including any such transactions involving an initial or “follow on” public offering;

(c) transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its beneficial owner(s) to any Person or issuance of new direct or indirect ownership interests in the Concessionaire to any Person, so long as (in any case) the Equity Participants or their respective beneficial owner(s) having ownership interests in the Concessionaire as of the Effective Date together retain, in the aggregate, actual control of the power (directly or indirectly) to direct or cause the direction of the management and policy of the Concessionaire, through voting membership on the board of directors (or equivalent body) of the Concessionaire;

(d) transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its direct or indirect beneficial owner(s) to any partners, members, shareholders, directors, officers, employees or investors who are distributees of investments held by such Equity Participant or beneficial owner(s) pursuant to any *bona fide* liquidation of such Equity Participant or beneficial owner(s) as a result of which securities held by such entity are distributed to such distributees; and

(e) transfers of direct or indirect ownership interests in the Concessionaire by an individual who is an Equity Participant holding 50% or more of the direct or indirect interest in the Concessionaire; *provided* that such transfer occurs as a result of the death of the individual or through a gift by the individual for which no consideration is received;

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| <b>“Closing”</b>              | has the meaning given to that term in Section 4.3.1;  |
| <b>“Closing Date”</b>         | has the meaning given to that term in Section 4.3.2;  |
| <b>“Closing Deposit”</b>      | has the meaning given to that term in Section 4.2.1;  |
| <b>“Code”</b>                 | means Internal Revenue Code;  |
| <b>“Concession Agreement”</b> | has the meaning given to that term in the Preamble;   |
| <b>“Concession Fees”</b>      | means the Annual Fixed Fee and the Variable Fee payable by the Concessionaire to the Authority in accordance with the terms set out in Section 2.4; |

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| <b>“Concession Period”</b>               | means the period as specified in Section 3.1, subject to extension and/or to termination in accordance with this Concession Agreement;   |
| <b>“Concession Rights”</b>               | means all the rights conferred on the Concessionaire pursuant to this Concession Agreement, including the right of the Concessionaire to use and occupy the Site and the Port Facilities for the purposes of providing the Port Services and implementing its other rights and obligations hereunder;  |
| <b>“Concessionaire Event of Default”</b> | has the meaning given to that term in Section 15.1;  |
| <b>“Concessionaire Services Change”</b>  | has the meaning given to that term in Section 8.3.1;   |
| <b>“Concessionaire”</b>                  | has the meaning given to that term in the Preamble;  |
| <b>“Cranes”</b>                          | means any fixed ship to shore cranes, mobile cranes, rubber tire gantry cranes and other related or similar equipment used at the Port Facilities by the Concessionaire as required or otherwise permitted pursuant to this Concession Agreement;  |
| <b>“Debt”</b>                            | means, with respect to any Person, the aggregate (as of the relevant date of calculation) of all such Person’s obligations (whether actual or contingent) to pay or repay money, including obligations in respect of: (a) borrowed money or debit balances at financial institutions; (b) the outstanding principal amount of any bonds, notes, loan stock, commercial paper, acceptance credits, debentures and bills or promissory notes drawn, or any other security accepted, endorsed, guaranteed or issued by such Person, together with accrued interest thereon; (c) amounts raised under any other transaction having the commercial effect of a borrowing and which would be classified as a borrowing (and not as an off-balance sheet financing) under Accounting Principles including, without limitation, under leases or similar arrangements entered into primarily as a means of financing the asset leased; any credit to such Person from a supplier of goods or under any installment purchase or other similar arrangement in respect of goods or services; (d) liabilities of any other Person to the extent that such Person provides a guarantee of such liabilities; (e) liabilities of such Person (actual or contingent) under any conditional sale or a transfer with recourse or obligation to repurchase, including by way of discount or factoring of book debts or receivables; (f) non-contingent obligations to reimburse any other Person in respect of amounts paid under a letter of credit, acceptance, documentary credit or similar instrument; and (g) any swap agreement, cap agreement, collar agreement, futures contract, forward contract or similar arrangement with respect to interest rates, currencies, commodities or indices or otherwise relating to the hedging |



of assets or liabilities;

- “Default”** means any event, circumstance or condition that constitutes an Event of Default or which, upon notice, lapse of time or any combination thereof, would become an Event of Default;
- “Depository”** means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire and approved by the Authority, to serve as depository pursuant to this Concession Agreement;
- “Designated Senior Person”** means such individual who is designated as such from time to time by each Party for the purposes of Section 18.2;
- “Discriminatory Change in Law”** means any change in Applicable Law enacted (or which comes into force) after the Effective Date by the State or the Authority or their agencies or instrumentalities, the terms of which have a material adverse effect on the Project or on the Concessionaire;
- “Dollars”, “USD” or “\$”** means the lawful currency from time to time of the United States of America;
- “Effective Date”** means the date set forth on the title page of this Concession Agreement;
- “Emergency”** means a condition, situation or occurrence whereby the security of any Port Facility or User is or is likely to be in danger or where bodily injury or death or damage to the Port Facilities or other property located within the Site is likely to occur, including any collision of a vessel with any other vessel or the Port Facilities or other property;
- “Employee”** means a person employed by the Concessionaire or the Operator or assignee thereof in connection with the Project;
- “Encumbrance”** means any mortgage, pledge, charge, assignment, hypothecation, lien (statutory or other), security interest, deposit arrangement, encumbrance, right of set-off, trust arrangement, option, counterclaim, preference, priority agreement or any other equity or preferential arrangement of any kind or nature whatsoever (including any designation of loss payees or beneficiaries or any similar arrangement under or with respect to any insurance policy, any conditional sale or other title retention agreement and any lease having substantially the same economic effect as any of the foregoing) or any agreement or arrangement to create any of them;
- “Environment”** means any air (including air within natural or man-made structures above or below ground), water (including surface, sub-surface, territorial, coastal and inland waters and ground water and water in drains and sewers), land (including the sea bed or river bed under any water), surface land and sub-surface land, natural resources, flora, fauna

or man;

- “Environmental Consultant”** means an independent environmental consultant of international reputation and standing;
- “Environmental Indemnity”** means the indemnity provided in Section 12.2;
- “Environmental Law”** means any Applicable Law applicable or relating to the Environment, Hazardous Substances or human health and safety including, for the avoidance of doubt, all Applicable Laws applicable or relating to (a) the dredging, excavation, transport, remediation, storage, handling or Release of materials from or to the Site or the Port Facilities, (b) any endangered species, or (c) the discovery, preservation, protection, handling, removal, transport or handling of any cultural prehistoric dwelling sites or artifacts;
- “Environmental Matter”** means (a) any actual or alleged presence, Release or threatened Release of any Hazardous Substance in, on, at, under or from any Site; (b) any actual or alleged off-site migration of any Hazardous Substance referred to in (a) above or the actual or alleged presence, Release or threatened Release of any Hazardous Substance at any off-site location resulting from or in connection with any activities of the Concessionaire; or (c) any actual or alleged Loss, requirement, commitment or obligation arising under or relating to any Environmental Law or Environmental Permit including, for the avoidance of doubt, any actual or alleged personal injury, property or natural resource damages arising under or relating to any Environmental Law;
- “Environmental Permit”** means any Regulatory Approval required under or issued pursuant to any Environmental Law;
- “Equity Participant”** means any Person who holds any Equity Securities in the Concessionaire or the Operator, as applicable;
- “Equity Security”** means with respect to a Person: (a) any capital stock, partnership interest, membership interest or similar security or ownership interest in such Person; (b) any preferred security or debt obligation or other security of such Person convertible or exchangeable with or without consideration into a security as described in clause (a) above; (c) any such warrant, option or right convertible or exchangeable with or without consideration into a security as described in clause (a) above; and (d) any security of such Person having a direct or indirect participation in the profits of such Person or having the right to vote for the election of one or more members of the board of directors or other governing body of such Person; *provided* that the term Equity Security shall not include any publicly traded capital stock, partnership interest or similar security or ownership interest in an investment company registered under the Investment Company Act of 1940 or similar investment company incorporated outside of the United States of America, which investment company owns or has a nominal or

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|                                    | beneficial ownership interest in such Person;  |
| <b>“Escrow Account”</b>            | means an escrow deposit account established by the Authority and the Concessionaire with a Depositary;   |
| <b>“Event of Default”</b>          | means a Concessionaire Event of Default or a Authority Event of Default;   |
| <b>“Excluded Obligations”</b>      | has the meaning given to that term in Section 2.7;   |
| <b>“Existing Contract”</b>         | means each contract or agreement relating to the Site or the Port Facilities identified in Schedule 4 (Existing Contracts).  |
| <b>“Exon-Florio Act”</b>           | has the meaning given to that term in Section 4.6.2;   |
| <b>“Fair Market Value”</b>         | means the fair market value as determined by an appraisal process reasonably agreed upon by the Parties, and if the Parties cannot agree on an appraisal process within 30 days, the Parties shall select a single appraiser reasonably acceptable to each Party who will deliver an appraisal of such fair market value. The Parties will each pay 50% of the fees, costs and expenses in connection with any appraisal;  |
| <b>“Ferry”</b>                     | has the meaning given to that term in Section 7.2.3;   |
| <b>“Final Environmental Study”</b> | means the study and evaluation of existing environmental conditions to be conducted in accordance with the provisions of Section 15.5.4;   |
| <b>“First Extension Period”</b>    | has the meaning given to that term in Section 3.1.2;   |
| <b>“Fixtures and Fittings”</b>     | means, in relation to the Site, all fixtures and fittings in or upon any terminal, building, pier, dock, wharf or other structure located within the Site, as the case may be, including plant and machinery, lifts, conveyor systems, boilers, central heating, air-conditioning, lighting, plumbing, sanitary and sprinkler systems, electrical plant and generators and electronic equipment, but excluding the Cranes; |
| <b>“Force Majeure”</b>             | has the meaning given to that term in Section 14.1;  |
| <b>“Good Industry Practice”</b>    | means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator adhering to internationally recognized good practices prevailing at the relevant time and seeking in good faith to comply with its contractual obligations, the Port Standards and all other Applicable Laws;                                      |
| <b>“Gross Revenues”</b>            | means, for any period, all revenues, including receipts, proceeds, income and other money, received by Concessionaire, during such period from the ownership, leasing or operation of, or in connection with, the Port Facilities, including, among others, revenues derived from stevedoring, shorehandling and storage revenue, all User Fees (but   |

excluding those User Fees paid by the Concessionaire pursuant to Section 2.5.1(b) hereof), services rendered by, or any use or occupancy of, the Port Facilities or any part thereof, or revenues derived from rents, leases, subleases, contracts, accounts receivable, insurance and other sources, proceeds derived from condemnation awards and insurance, grants, appropriations and other receipts that would be considered gross revenues in accordance with generally accepted accounting principles, including the income and profits therefrom, but excluding and dedicated from the above: (i) utility reimbursements for water and electricity and (ii) reimbursement or payment for goods and services.

- “Handback Certificate”** has the meaning given to that term in Section 16.2.2;
- “Handback Inspection”** has the meaning given to that term in Section 16.2.1;
- “Handback Requirements”** means the requirements set out or identified in Section 2.17 of Annex B (Port Services);
- “Hazardous Substance”** means (a) any radioactive materials, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum byproducts and derivatives and radon gas, or (b) any other chemical, material, substance, waste, pollutant or contaminant that is capable of causing damage, harm or disruption to the Environment or is prohibited, limited or regulated by or pursuant to any Environmental Law;
- “Indemnification Notice”** means a notice referred to in Section 12.5.1;
- “Indemnified Party”** means the Party to be indemnified pursuant to Sections 12.1 to 12.6, as applicable;
- “Indemnifying Party”** means the Party providing indemnification pursuant to Sections 12.1 to 12.6, as applicable;
- “Institutional Lender”** means (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (b) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or banking institution qualified to do business as an insurer or banking institution as applicable under the laws of the United States, (iii) pension fund, foundation or university or college or other endowment fund or (iv) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (c) any “qualified institutional buyer” under Rule

144(A) under the United States Securities Act of 1933, as amended, or any other similar law hereinafter enacted that defines a similar category of investors by substantially similar terms, (d) conduit issuers established for the purpose of issuing private activity bonds authorized by law for the benefit of the Concessionaire or (e) any other financial institution or entity designated by the Concessionaire and approved by the Authority; *provided* that such institution or entity, in its activity under this Concession Agreement, shall be acceptable under then current guidelines and practices of the Authority; *provided, however*, that each such entity (other than entities described in clause (c) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$500 million which shall include, in the case of an investment or advisory firm or fund, assets controlled by or under management;

**“Insurance Requirements”**

means the obligations of the Concessionaire set forth in Section 13 with respect to the Site, the Port Facilities and the Port Services, including required insurance, obligations with respect to the payment of premiums and rights and obligations with respect to the payment of losses under insurance policies;

**“Intangible Property”**

means the records, plans, specifications, engineering documents, soil data and analysis, systems, procedures, software, property acquisition documents, diaries, utility relocation plans, record maps, reports and samples relating to the Project;

**“Letter of Credit”**

means an irrevocable, unconditional, commercial standby letter of credit, in favor of the Authority, in form and content reasonably acceptable to the Authority, payable in United States dollars upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization, which letter of credit (a) is issued by a commercial bank or trust company that has and maintains a current credit rating of A or better by Standard & Poor’s Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized rating agencies if the named rating agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the Authority prior to the submission of the letter of credit); (b) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Concession Agreement; and (c) has the office for presentment of sight drafts specified in the Letter of Credit located at a specified street address within Connecticut or New York, or such other location within the continental United States or its territories as is reasonably acceptable to the Authority;

**“Loss”**

means any loss, liability, damage, fine, penalty, reasonable attorney’s or consultant’s fee, expense or cost (including current or future unpaid Concession Fees and including any cost of limiting, mitigating, remediating, preventing, removing, addressing, investigating, monitoring, containing, evaluating, abating or cleaning up, or of reporting to and dealing with any Relevant Authority or third party in respect of the Release or threatened Release of any Hazardous Substances or any Environmental Matter), but excluding any punitive, remote, or speculative damages, and further excluding any contingent liability until such contingent liability becomes actual, and **“Losses”** means any one or more Loss;

**“Material Adverse Effect”**

means a material adverse effect on the business, financial condition or results of operations of the Port Facilities taken as a whole or the rights of the Concessionaire under this Concession Agreement; *provided, however*, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (a) general economic conditions or changes therein; (b) financial, banking, currency or capital markets fluctuations or conditions (whether in the United States, any of its territories or any international market and including changes in interest rates); (c) conditions affecting all of the real estate, financial services, construction or marine port industries; (d) any existing event, occurrence or circumstance of which the Concessionaire has knowledge as of the Effective Date; (e) any action, omission, change, effect, circumstance or condition contemplated by this Concession Agreement or attributable to the execution, performance or announcement of this Concession Agreement or the transactions contemplated hereby, with the exception of litigation related to the execution or delivery of this Concession Agreement; (f) any negligence, intentional misconduct or bad faith of the Concessionaire or its representatives; (g) any customer attrition occurring in the normal course or caused by the announcement of the transaction contemplated by this Concession Agreement; (h) any changes in industry standards, technology, available materials or resources; or (i) the adoption of any Applicable Law by any Relevant Authority after the Effective Date, or any change in any Applicable Law or in the interpretation or application thereof by any Relevant Authority after the Effective Date.

**“Minimum Annual Guarantee”**

means that amount as set forth in the following table:

| Applicable Period  | Minimum Annual Guarantee   |
|--|--|
| Closing Date through and including the fourth (4th) anniversary of the Closing Date  | \$500,000  |
| Fifth (5th) anniversary of the Closing Date through and including the ninth (9th) anniversary of the Closing Date            | The then-applicable Minimum Annual Guarantee, increased by the percentage equal to the compound annual growth rate (CAGR) for the Concessionaire’s Gross Revenues over the period from the Closing Date through the fourth (4th) anniversary of the Closing Date   |
| Tenth (10th) anniversary of the Closing Date through and including the fourteenth (14th) anniversary of the Closing Date     | The then-applicable Minimum Annual Guarantee, increased or decreased, as applicable, by the percentage equal to the compound annual growth rate (CAGR) for the Concessionaire’s Gross Revenues over the period from the fifth (5th) anniversary of the Closing Date through the ninth (9th) anniversary of the Closing Date; <i>provided</i> that, in any event, such Minimum Annual Guarantee shall not be less than \$500,000        |
| Fifteenth (15th) anniversary of the Closing Date through and including the nineteenth (19th) anniversary of the Closing Date | The then-applicable Minimum Annual Guarantee, increased or decreased, as applicable, by the percentage equal to the compound annual growth rate (CAGR) for the Concessionaire’s Gross Revenues over the period from the tenth (10th) anniversary of the Closing Date through the fourteenth (14th) anniversary of the Closing Date; <i>provided</i> that, in any event, such Minimum Annual Guarantee shall not be less than \$500,000 |

By way of illustration, presented on Annex C are examples of the calculation of Minimum Annual Guarantee in accordance with the terms of this definition.

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| <b>“Movable Property”</b>                     | means Movable plant, machinery, vehicles of all kinds (including tractors, trailers, trucks, forklift trucks, rolling stock), tools, equipment, furniture and other like articles used in connection with the Port Facilities (not being Fixtures and Fittings or Cranes);   |
| <b>“MTO Schedules”</b>                        | means any marine terminal operator schedule or tariff published or made available to the public pursuant to the Shipping Act;  |
| <b>“New Agreement”</b>                        | has the meaning given to that term in Section 19.5.1;  |
| <b>“Prime Rate”</b>                           | means the interest rate announced from time to time by Bank of America, N.A. or any successor thereto as its “prime rate”;   |
| <b>“Projected Annual Throughput”</b>          | has the meaning given to that term in Section 8.15.1;  |
| <b>“Operator”</b>                             | has the meaning given to that term in Section 8.2.3;   |
| <b>“Outside Closing Date”</b>                 | has the meaning given to that term in Section 4.1.1;   |
| <b>“Party”</b>                                | means the Authority or the Concessionaire, as the case may be, and <b>“Parties”</b> means both of them;  |
| <b>“Performance Bond”</b>                     | means a bond in an amount equal to the amount of Capital Improvement expenditures related to construction activities scheduled to be undertaken by the Concessionaire for each applicable year and issued on behalf of the Concessionaire in favor of the Authority by a bank or other financial institution or insurance company of international repute (which, in the case of an insurance company, must be authorized to issue policies in the State) with a credit rating from Standard and Poor’s of not less than A or a financial strength rating from A.M. Best Company, Inc. of not less than A-VI (or such other rating as may be approved by the Authority);   |
| <b>“Permitted Concessionaire Encumbrance”</b> | means, with respect to the Site and the Port Facilities: (a) any (i) lien or security interest for obligations not yet due and payable to a Subcontractor or other Person, (ii) any statutory lien, deposit or other non-service lien or (iii) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Port Services and in respect of obligations that are not delinquent; (b) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s, construction, or other like Encumbrances arising in the ordinary course of business of the Site and the Port Facilities or the Concessionaire’s performance of its obligations hereunder, and in respect of obligations that are not delinquent; (c) any right reserved to or vested in any Relevant Authority by any statutory provision; (d) any other Encumbrance permitted hereunder (including any Security Interest or any Encumbrance created |



in connection with any financing permitted hereunder); © any Encumbrances created, incurred, assumed or suffered to exist by the Authority or any Person claiming through it except to the extent caused by an act or omission of the Concessionaire; and (f) any amendment, extension, renewal or replacement of any of the foregoing.

**“Person”** means any individual, partnership, corporation, company, business organization, trust, governmental agency or other entity;

**“Port Facilities”** means the reclamation, piers, docks, wharves, terminals, buildings, structures, storage areas, roads, railways, machinery, apparatus and like facilities intended to form or forming part of the works designed, built, constructed, located, maintained, operated and/or improved at the Site, including all supporting infrastructure, Cranes, Fixtures and Fittings and Movable Property incidental thereto or necessary or useful for the provision of the Port Services at the Site, as the same may be altered or added to from time to time in accordance with this Concession Agreement;

**“Port Operations Manual”** means, as of the Closing Date, the manual attached as Schedule 5, and thereafter, the manual prepared by the Concessionaire and approved by the Authority in accordance with Section 8.6 setting forth quality objectives consistent with this Concession Agreement, the Port Standards, Good Industry Practice and all Applicable Laws and prescribing procedures, schedules, plans, instructions and timelines for the operation and maintenance of the Port Facilities and the provision of Port Services that are sufficient to meet or exceed the requirements of this Concession Agreement, the Port Standards, Good Industry Practice and all Applicable Laws (as the same shall be amended in accordance with Section 8.6 and in effect from time to time);

**“Port Services”** means: (a) the services, responsibilities and other obligations of the Concessionaire specified in Annex B (Port Services), (b) all other services, responsibilities and other obligations of the Concessionaire as is provided elsewhere in this Concession Agreement, (c) such other business, activities, facilities and services as may be necessary or incidental to the provision of the foregoing or otherwise ordinarily provided from time to time at marine terminal facilities and (d) such other business, activities, facilities and services as the Concessionaire may be permitted or required to provide from time to time in accordance with Sections 8.3, 8.5 or any other provision of this Concession Agreement, or pursuant to the Port Standards, Applicable Laws or Good Industry Practice;

**“Port Standards”** means the international, national, State, municipal, local or other laws, rules, regulations and/or standards as the same may be amended and updated from time to time governing safety, security, environmental, customs, drug interdiction, maritime traffic and other matters relevant to the provision of the Port Services;

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| <b>“Project”</b>                 | means (a) the administration, management, operation and maintenance of the Port Facilities and the provision of Port Services at the Site, and (b) all activities incidental thereto, all as contemplated by this Concession Agreement;   |
| <b>“Project Agreement”</b>       | means this Concession Agreement, each Subcontract, the Performance Bond and each other agreement or instrument initialed or otherwise designated in writing as a “Project Agreement” to which the Concessionaire is a party;  |
| <b>“Quiet Enjoyment”</b>         | means the right to use the Site for purposes of providing the Port Services without Undue Interference;   |
| <b>“Rating Agency”</b>           | means any of Standard & Poor’s Corporation, Moody’s Investors Service, Inc. or Fitch Investors Service, Inc. or any similar entity or any of their respective successors;   |
| <b>“Regulatory Approvals”</b>    | means, collectively, all licenses, permits, approvals, orders, authorizations, registrations, filings or consents required by Relevant Authorities, the Authority, Applicable Laws, the Port Standards, Good Industry Practice or generally accepted practices with respect to the administration, management, operation, improvement and maintenance of, and the provision of Port Services at, the Site and the Port Facilities;  |
| <b>“Release”</b>                 | means any spilling, leaking, pumping, pouring, emitting, discharging, escaping, leaching, dumping, disposing, dispersing, injecting, depositing, emanating or migrating of any Hazardous Substance in, into, onto, or through the Environment or within any building, structure, facility or fixture;   |
| <b>“Relevant Authority”</b>      | means any United States Federal, State, local, municipal or other public authority, body, agency, ministry, department, commission, instrumentality, court, tribunal, judicial or arbitral body or other Person having jurisdiction over or with respect to the Concessionaire, the Port Facilities, the Port Services, the Site or the Project, including without limitation the U.S. Coast Guard and any other branch of the military services of the State or the United States; |
| <b>“Second Extension Period”</b> | has the meaning given to that term in Section 3.1.3;  |
| <b>“Security Holder”</b>         | means the holder or beneficiary of a Security Interest, including a financial insurer, or an agent, trustee or other representative or designee of such a holder or beneficiary;  |

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| <b>“Security Holder Notice Requirements”</b> | means the delivery, by either the Concessionaire or a Security Holder to the Authority of a true and complete copy of the executed original of such Security Interest, together with a notice containing the name and post office address of such Security Holder;   |
| <b>“Security Interest”</b>                   | means any lease, indenture, pledge, mortgage, deed of trust or other security agreement or arrangement, including a securitization transaction with respect to User Fees, encumbering any or all of the Concession Rights (including the Site and the Port Facilities) and any cash reserves, deposits or assets held in the name of the Concessionaire that, in each case, satisfies all of the conditions in Section 19.1;   |
| <b>“Service Provider”</b>                    | means any Person other than the Concessionaire from time to time engaged in providing to Users any or all of the Port Services, whether as a Subcontractor (of any tier) to the Concessionaire or under any other arrangement;   |
| <b>“Shipping Act”</b>                        | means the Shipping Act of 1984, 46 U.S.C. §§ 40101-41309, as amended, modified or restated from time to time, and all applicable rules and regulations published by the Federal Maritime Commission from time to time in accordance therewith;   |
| <b>“Site”</b>                                | means the land, spaces and surfaces described in Schedule 1 (Description of the Site);   |
| <b>“State”</b>                               | means the State of Connecticut;  |
| <b>“Statement of Estimated Liabilities”</b>  | means a statement by the Authority setting forth (i) the relevant Concessionaire Event of Default or other circumstances giving rise to its right to terminate this Concession Agreement, (ii) all amounts that (A) are estimated to be due and payable by the Concessionaire to the Concessionaire under this Concession Agreement as of the date of such statement or (B) to the Authority’s knowledge, are expected to become due and payable by the Concessionaire under this Concession Agreement on or prior to the date that is 30 days after the date of such statement, (iii) to the extent not included in <u>clause (ii)</u> above, all other obligations of the Concessionaire under this Concession Agreement known to the Authority that should have been, but have not been, performed as of the date of such statement and (iv) to the extent not included in <u>clauses (ii)</u> or <u>(iii)</u> above, all costs and expenses (including legal fees), Losses, costs in connection with Environmental Laws, Taxes, fees, charges and disbursements estimated to be paid or incurred by the Authority in connection with any Concessionaire Event of Default, the termination of this Concession Agreement, the recovery of possession from the Concessionaire, and the preparation, execution and delivery of the New Agreement and related agreements and the Statement of Estimated Liabilities that (A) are estimated to have been paid or incurred by the Authority as of the date of such statement or (B) to the best of the Authority’s knowledge after due inquiry, are expected to be paid or incurred by the Authority on or prior to the date that is 30 |

days after the date of such statement;

- “Subcontract”** means any subcontract, purchase order or similar agreement with any Subcontractor;
- “Subcontractor”** means any Person with whom the Concessionaire has entered into a contract or subcontract to perform services or to provide any materials, equipment, supplies or other goods to or on behalf of the Concessionaire in connection with the Project (and any other Person with whom any Subcontractor has further entered into such a contract or subcontract);
- “Tax” or “tax”** means any present or future net income, alternative or add-on minimum tax, gross income, gross receipts, value added, sales, use, ad valorem, payments in lieu of taxes, franchise, capital, paid-up capital, profits, greenmail, licenses, withholding, payroll, employment, excise, severance, stamp, occupation, premium, real or personal property, environmental or windfall profit tax, customs duty or other tax, fee, duty or other like assessment or charge of any kind whatsoever (including notarization and registration fees, royalties, bonuses, rentals and other state charges) together with any interest or any penalty, addition to tax or additional amount imposed, levied or charged by any Relevant Authority, but excluding for the avoidance of doubt, Concession Fees;
- “Termination Date”** means the date on which this Concession Agreement terminates in accordance with Section 3 (Concession Period) or, if earlier, the date on which this Concession Agreement is terminated by either Party in accordance with Section 15;
- “TEU” or “Twenty-foot Equivalent Unit”** means the volume equivalent of one ISO twenty-foot container (it being understood that the volume of any non-containerized cargo otherwise permitted hereunder shall be converted from tonnage to TEUs using a generally accepted multiplier);
- “Throughput Volume”** means the marine container throughput volume and, bulk, project cargo, breakbulk cargo tonnage at the Site associated with vessels, excluding volumes associated with military and police of the State and the United States Federal Government in connection with the performance of their statutory non-commercial functions;
- “Time of Closing”** has the meaning given to that term in Section 4.3.3;
- “Transition Plan”** means that plan, to be prepared by the Concessionaire and approved by the Authority prior to the Closing Date, for the transition of operational control of the Site and the Port Facilities from the Authority to the Concessionaire;
- “Undue Interference”** means any act by a third party which has a material adverse effect on the provision of Port Services, *provided*, that “Undue Interference” does

not include: (a) actions by Relevant Authorities or other third parties in the event of an Emergency, (b) actions by the Authority or any other Relevant Authorities to mitigate damages resulting from the Concessionaire's failure to comply with its obligations under the Project Agreements, or (c) any Vessel or other maritime traffic near the Site, *provided* that such traffic is permitted under Applicable Law;

- “US CPI”** means the Consumer Price Index for all urban consumers (CPI-U), not seasonally adjusted, city average, all items and base period of 1982-1984, published by the Bureau of Labor Statistics of the United States of America Department of Labor or, if such publication is discontinued, such appropriate substitute index as may be agreed to by the Parties;
- “User Fees”** has the meaning given to that term in Section 2.5.1;
- “Users”** means the users of the Port Facilities or the Port Services;
- “Utilities”** means infrastructure facilities and services such as water, water treatment (both incoming water and waste water), sewage, electricity, gas, waste disposal and telecommunications located or to be provided on or at the Site;
- “Variable Fee”** has the meaning given to that term in Section 2.4;
- “Vessel”** means every kind of water craft or other contrivance used or capable of being used as a means of transportation on water, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water; and
- “Vessel Reports”** has the meaning given to that term in Section 10.5;
- “Warranties”** means all warranties and warranty bonds concerning the Site and the Port Facilities with respect to the Capital Improvement Projects.

## ANNEX A

### RULES OF INTERPRETATION

- (a) An “**amendment**” includes any modification, supplement, novation or re-enactment (and “**amended**” is to be construed accordingly);
- “**assets**” includes present and future properties, revenues and rights of every description whether real, personal or mixed, and whether tangible or intangible;
- an “**authorization**” includes an authorization, consent, approval, order, resolution, permit, notice, license, exemption, filing, registration and notarization;
- “**control**” means, with respect to a Person, the possession, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise (and the terms “**controlled by**” and “**under common control with**” shall have correlative meanings); and
- an “**instrument**” includes any written document.
- (b) A Section, Clause, Recital, Schedule, Exhibit, Part or paragraph is, subject to any contrary indication, a reference to a section, clause, recital, schedule, exhibit, part or paragraph of the agreement or document in which such reference appears.
- © A reference to any Party or Person includes its successors and its permitted transferees and assigns.
- (d) Unless otherwise specified, a time of day is a reference to New London, Connecticut time.
- © Unless the contrary intention appears, a term defined or construed in any communication or document made or delivered under or in connection with this Concession Agreement has the same meaning when used in any other such communication or document and vice versa.
- (f) Unless the context otherwise requires, reference to the singular includes a reference to the plural and vice versa and reference to the masculine includes a reference to the feminine and neuter.
- (g) Unless the context otherwise requires, any reference to an agreement, document or other instrument shall be a reference to the same including all schedules, exhibits, annexes and other attachments thereto, and in each case as amended, novated, supplemented and in effect from time to time, and any reference to any Regulatory Approval or other Applicable Law includes references to the same as amended, novated, supplemented, re-enacted or applied (before or after the signature of the agreement, document or instrument in which such reference is made).
- (h) Unless the contrary intention appears, the term “**including**”, “**include**” or “**includes**” shall be deemed to be followed by the phrase “but not limited to”, and the term “**material**” and “**materially**” shall be deemed to be followed by the phrase “in the reasonable opinion of the relevant Party”.

- (i) A document is in “**agreed form**” if it is in the form initialed for the purposes of identification as such by the Parties.
- (j) The index to and the headings in any agreement or document are for convenience only and are to be ignored in construing such agreement or document.
- (k) The annexes, schedules, appendices or exhibits attached to an agreement are an integral part of that agreement.
- (l) Except as otherwise expressly provided, where the day on or by which a payment is due to be made is not a Business Day, that payment shall be made on or by the next succeeding Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not one). If the due date of such payment is extended, interest, fees and charges (if any) thereon shall continue to accrue for the period from the due date that is not a Business Day to that next succeeding Business Day.
- (m) An approval by the Authority is not “**unreasonably withheld or delayed**” if such approval requires action by another Relevant Authority whose processes or procedures delay approval by the Authority.
- (n) Unless specified otherwise, any approval that is required or permitted under this Concession Agreement must be in writing (unless waived in writing by the other Party), and unless otherwise provided in this Concession Agreement, such an approval shall not be unreasonably or arbitrarily withheld or conditioned.
- (o) The word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

## **ANNEX B PORT SERVICES**

This Annex B (Port Services) sets out the general obligations of the Concessionaire with respect to the administration, management, operation and maintenance of the Port Facilities during the term of this Concession Agreement. These obligations include the responsibilities of the Concessionaire for project management, scheduling, and coordinating items of work with entities such as the State, the Authority, U.S. Coast Guard, U.S. Transportation Security Administration, utility owners, and all other relevant U.S. Federal, State, municipal and local agencies.

### **1. GENERAL**

The Concessionaire shall administer, manage, operate and maintain the Port Facilities in accordance with the terms of this Concession Agreement, including, but not limited to this Annex B, for the duration of the Concession Period. In performing these services, the Concessionaire shall comply in all respects with all applicable U.S. Federal, State, municipal and local laws and regulations, as well as all applicable international laws and conventions and generally accepted practices in the terminal industry. Unless otherwise specifically provided in this Concession Agreement, all operating and maintenance obligations shall be satisfied at the Concessionaire's cost and expense.

Concessionaire shall keep the Port Facilities and dock areas free of debris, dunnage, and general waste. At a minimum, the dock areas utilized by Concessionaire are to be swept following the departure of a cargo if dust and debris remain on the dock. The dock areas are to be maintained in a clean and safe manner at all times. All cargo stored within the Port Facilities, either within the dock areas, the general lay-down areas, or warehouses shall be stacked and maintained in a safe and orderly manner.

Concessionaire will deliver to Authority at the end of this Concession Agreement, the Port Facilities and dock area free and clear of debris and any other general waste resulting from Concessionaire's operations. Contractor shall store all materials on the docks in a manner allowing long-term tenants and/or other stevedores to operate in a safe and efficient manner within the Port Facilities.

### **2. TERMINAL SERVICES**

#### **2.1 Operations**

The Concessionaire shall, at a minimum, offer and provide to authorized common carriers in the U.S. domestic and international trades, other non-common carrier vessels and other Port Users, on a full-time basis throughout the Concession Period (including any extensions thereof), a complete range of marine terminal and stevedoring services for the handling of containers, including the berthing, mooring, loading and unloading of vessels and their containerized cargo, the provision of fuel, supplies, ship chandler, repair, port, customs and shipping agency services, the rendering of preparation for delivery and repair services to the vessel, containers and other cargo, and their masters, crew and passengers, the marshalling, preparation and transshipment of containers in connection therewith, the operation of handling equipment, tractors and cranes, the storage of containers within the terminal until an authorized common carrier arrives at the Port Facilities to take possession of said containers and such other services related or incidental thereto as may be necessary or advisable to operate a marine container terminal at the Site in an efficient and productive manner. In performing the Port Services, the Concessionaire shall adhere to the specific coordinates defining the geographic limits of the Site.

An authorized common carrier can be a truck, rail, or vessel operator who presents the proper documentation to legally effectuate the transfer of the container from the marine terminal onto the transportation asset they are operating. Proper documentation will be an original bill-of-lading and any other documentation needed to satisfy any public authority prior to transfer. Proper documentation can



also be the industry accepted electronic equivalent and standard for container transfer authorization and execution as is appropriate throughout the life of the definitive Concession Agreement.

## **2.2 Rates**

The Concessionaire shall provide the services specified in Section 2.1 of this Annex B (Port Services) to all members of the public, at competitive rates in accordance with the Concessionaire's stevedoring and other contracts or public terminal rates as shall be filed, to the extent required under Applicable Laws, with the appropriate regulatory agencies having jurisdiction over such rates. The Concessionaire shall provide the Authority with copies of the Concessionaire's rates and tariffs as they may be amended from time to time in accordance with Section 2.5.2 of this Concession Agreement, and shall maintain copies available at the Site for inspection by any Persons interested in using the Port and its services. Any such rates may be published to the extent necessary for the Authority to comply with Applicable Law; *provided* that the Authority shall provide the Concessionaire prior notice of any such publication.

## **2.3 Collection and Remittance of Other Assessments**

The Concessionaire shall bill and collect, as agent and trustee for such other Relevant Authorities, and remit to such other Relevant Authorities as are entitled thereto, such other fees, duties and other charges assessed from time to time upon Port Services, Cargo, Vessels or Users by such other Relevant Authorities, in accordance with Section 2.5.3 of this Concession Agreement. The Concessionaire shall maintain throughout the Concession Period accurate books and records of all of the foregoing, and shall make such books and records available to the Authority (or such other Relevant Authorities) for audit upon request.

## **2.4 Equipment**

Unless otherwise provided in this Concession Agreement, the Concessionaire shall, at its own expense, procure, maintain, repair, replace as necessary, and otherwise make available for provision of the Port Services, such machinery and equipment as is reasonably necessary to operate the Port Facilities and to perform the Port Services in an efficient and productive manner and in accordance with this Concession Agreement, the Port Standards and Applicable Laws. The Concessionaire shall keep any Cranes in working order for at least the expected useful life as dictated by straight-line depreciation accounting standards. When it is no longer economical to maintain and repair any such Cranes, the Concessionaire is obligated to notify the Authority and to replace this equipment with assets equal to or greater in performance specifications vis-à-vis the original equipment, unless otherwise approved in writing by the Authority.

## **2.5 Maintenance of Port Facilities**

The Concessionaire shall maintain and repair the Port Facilities. The maintenance and repair of the Port Facilities includes maintenance and repair of the pier bulkhead, wharf, crane rail, yard, pavement, buildings, operating equipment, information systems equipment, communications equipment, security fences and structures, security equipment, lighting, Utilities, safety signage and structures as well as maintenance of the dredged water depth alongside the wharf.

## **2.6 Dredging/Excavation**

Any dredging of the Federal channel and the harbor will be overseen by the United States Army Corps of Engineers ("USACE"), the United States Environmental Protection Agency ("USEPA"), the Authority

and/or its representatives. However, the Concessionaire will be required to accommodate, in its operations scheduling, ongoing and future excavation and construction activities undertaken by the Authority or others.

The Concessionaire shall monitor the water depth of the anchorage area, vessel turning basin, and vessel navigational channel. Whenever needed, the Concessionaire shall notify and cooperate with the Authority and the necessary agencies to perform harbor maintenance dredging in these areas to create a depth equal to or greater than the conditions as of the Closing Date. The Concessionaire and the Authority will share evenly the maintenance dredging costs, less any Federal funding subsidy that may be available, according to the United States Army Corps of Engineers stipulations or other appropriate Federal agencies' regulations existing at that time.

## **2.7 Navigation Aids and Systems**

The Concessionaire will assist in the navigation planning and design in consultation with the Authority, including but not limited to, channel signage, buoys, lighted and unlighted beacons, ranges, and leading lights. The Concessionaire shall provide and maintain the anchorage areas, turning basin and navigation channel signage and buoys. Navigational aids and anchorage facilities as necessary shall be furnished, installed and maintained by the Concessionaire in accordance with the United States Coast Guard guidelines and requirements.

## **2.8 Traffic Services**

The Concessionaire will be responsible for the scheduling of vessel berthing at the Port Facilities. The Concessionaire will coordinate with the United States Coast Guard, the Pilots' Associations, water firefighting, medical and health services, and United States Customs agencies, as well as any other Relevant Authority to expedite and maintain the orderly flow of Vessel traffic to prevent collisions between Vessels or obstacles in the water.

The Concessionaire shall employ personnel and purchase necessary assets and provide such necessary maritime traffic information services, traffic advisory services and traffic control services as is necessary to effectively manage bulk, container, and any other Vessel traffic regardless of whether the Concessionaire is managing the land facilities these vessels are calling.

## **2.9 Medical Rescue and Response**

The Concessionaire shall provide medical rescue and response services for the terminal facility.

## **2.10 Fire**

The Concessionaire shall provide fire rescue and response services for the terminal facility.

## **2.11 Security and Customs**

The Concessionaire shall abide by, and manage, administer, operate and maintain the Site in accordance with, all requirements of the Homeland Security Act, the Maritime Transportation Security Act, and all other applicable U.S. Federal, State, local and municipal laws and regulations relating to security, public health and safety and the protection of the environment, all applicable international conventions and agreements and any other generally accepted practices in the industry throughout the Concession Period. In particular, but without limiting the generality of the foregoing, the Concessionaire shall:

- (a) manage, administer, operate and maintain the Port Facilities in accordance with the security requirements of the Maritime Transportation Security Act (“MTSA”) of 2002, Public Law 107-295, all subsequent revisions to the MTSA from time to time, including: the Security Regulations as promulgated by the U.S. Department of Homeland Security thereunder from time to time; Navigation and Inspection Circular (“NVIC”) No. 11-02 and 33 CFR Part 105 issued by the United States Coast Guard, all other applicable Coast Guard issued NVICs; and the security measures as set forth in the International Convention for the Safety of Life at Sea (“SOLAS”) by the International Maritime Organization; and any other laws, regulations, and practices that become necessary or are adopted by the terminal operations industry from time to time.
- (b) coordinate efforts and share information as required with Department of Homeland Security, the United States Coast Guard, Customs, and any other agency working in conjunction with these public agencies for the purpose of protection against terrorism;
- (c) employ security personnel and will invest in security systems for the purpose of protection against terrorism; and
- (d) comply with the relevant requirements of Part A of the International Ship and Port Facility Security (ISPS) Code; the requirements of the 24-hour Advance Vessel Manifest Rule, promulgated by the U.S. Customs and Border Protection under the Trade Act of 2002; and the standards recommended or required by the Customs Trade Partnership Against Terrorism (C-TPAT) as they apply to U.S. marine ports/terminal operators, in each case as amended and in effect from time to time.

## **2.12 Theft Prevention**

The Concessionaire shall coordinate efforts and share information as required with any Federal, State, municipal or local law enforcement, and any other agency working in conjunction with these public agencies regarding crime prevention. The Concessionaire shall employ security personnel and shall invest in security systems for the purpose of protection against theft of customers’ goods, terminal assets, and other crime.

## **2.13 Interdiction**

The Concessionaire shall provide information, terminal resources and personnel necessary to enable Customs to perform their interdiction duties.

## **2.14 Immigration**

The Concessionaire shall provide information, terminal resources and personnel necessary to enable Customs to perform their immigration duties.

## **2.15 Utilities**

The Concessionaire shall procure and pay for all Utilities, including without limitation, all water, gas, heat, electricity, fuel, power, telephone and telecommunications service, and other utilities, as well as janitor or watchman services and mechanical fire alarm or security services, which may be needed or used in connection with the provision of Port Services and otherwise in the performance of its obligations under this Concession Agreement.

## **2.16 Transition of the Port Facilities**

The Concessionaire shall perform final inspection and acceptance testing prior to occupancy as part of the Transition Plan. All required certifications must be obtained before operations commence.

Inspection by the Authority or its consultants does not relieve the Concessionaire from responsibility for any of its responsibilities under this Concession Agreement or for violation(s) of applicable codes, laws, rules, ordinances or regulations.

## **2.17 Transfer Obligations at Completion of Concession Period**

Upon completion of Concession Period, control, management, and the operation of the Port Facilities operated by the Concessionaire will be transferred to the Authority or its designee. The Port Facilities must be transferred in good working order capable of handling the maximum capacity of cargo determined attainable (not considering equipment or gate factors), reasonable wear and tear excepted, upon the completion of the Concession Period. That is, the pier bulkhead, wharf, crane rail, yard, pavement, buildings, security fences and structures, lighting, Utilities, safety signage and structures as well as the dredged water depth alongside the pier must be suitable for continued safe and efficient marine terminal operations.

Equipment equivalent to the first set of equipment financed by the Authority must be transferred in good working order. This equipment must be capable of handling the maximum capacity of cargo determined attainable by the manufacturer for the type of equipment. The operating equipment, information systems equipment, communications equipment, and security equipment must be suitable for continued safe and efficient marine terminal operations.

## **3. ENVIRONMENTAL COMPLIANCE**

### **3.1 Mitigation Measures**

As part of the undertaking of work by the Concessionaire pursuant to this Concession Agreement, the State will require appropriate mitigation of unavoidable impacts to waters of the United States and other environmental impacts. The Concessionaire will be responsible for coordinating with the Authority and USACE regarding the mitigation plans for these impacts and compliance with any technical and administrative obligations set forth by the USACE and USEPA as part of the permits for the proposed fill of wetlands. To the extent that mitigations are required due to ongoing operations or maintenance activities, the Concessionaire shall be responsible for performance and documentation of the relevant mitigation.

### **3.2 Waste Disposal**

Disposal of non-hazardous materials shall be performed in accordance with Applicable Law. Non-hazardous solid waste may be generated during the construction period, particularly debris, wood and cardboard scraps. Also, domestic debris may be generated by the construction and administrative personnel at the site. In order to ensure compliance with the applicable laws and regulations, the Concessionaire shall report to the Authority any questionable activities while supervising construction.

### **3.3 Discharge Management**

Activities (including but not limited to land-disturbing activities) that disturb one acre or more are regulated under the United States Environmental Protection Agency (“USEPA”) National Pollutant Discharge Elimination System (“NPDES”) storm water program. The Concessionaire shall report to the Authority any such regulated activities to be undertaken during the Concession Period, and shall carry out all measures required under applicable laws.

### **3.4 Hazardous Materials**

Generation of Hazardous Materials is not anticipated as part of the Project operations. However, should these materials be generated at or become introduced at the Site, the Concessionaire shall report to the Authority any evidence of these materials, and the Concessionaire shall be required to remove these materials as required under applicable laws.

### **3.5 Spill Prevention**

A Spill Prevention Control and Countermeasures Plan (“SPCCP”) shall be designed and implemented by the Concessionaire at the Project site to avoid improper handling of oil products that would potentially impact ground water resources and pursuant to Title 40 of the Code of Federal Regulations (“CFR”), Part 112 (Oil Pollution Prevention). The SPCCP is designed to help prevent the discharge of oil. The SPCCP should contain a spill contingency plan, addressing responsibilities and procedures for containing and cleaning up spills. The Concessionaire shall report to the Authority any spillage or precarious activities, and shall carry out all measures required under the SPCCP.

### **3.6 Visual Aesthetics**

The Concessionaire shall not erect or display, or permit to be erected or displayed, on or at the Site, or upon the Port Facilities, any signs, placards or advertising matter of any kind, without first obtaining the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed. The Concessionaire shall post, erect and maintain at the Site or upon the Port Facilities such signs and other notices as the Authority may reasonably direct.

## **4. MANAGEMENT AND ADMINISTRATION**

### **4.1 Community Relations**

The Concessionaire shall participate in community relations activities. The Concessionaire is to undertake best efforts to minimize the disturbances and inconveniences to the adjacent communities and the neighboring businesses that can result from a major marine terminal’s operation. The Concessionaire shall use best efforts to utilize community friendly lighting and power equipment, as well as community friendly business scheduling. The Concessionaire shall attend public meetings relating to the terminal and to address any community issues arising from the operation of this marine facility. The Concessionaire shall cooperate with the Authority with its community relations activities as well.

### **4.2 Marketing**

The Concessionaire shall use its best efforts to market the Port and the services provided by the Concessionaire at the Port Facilities to all potential Users of the Port. The Concessionaire shall perform marketing activities and will assist the Authority in its own marketing endeavors. Operating statistics,

summaries of efforts undertaken and performance measures shall be furnished by the Concessionaire to the Authority upon request.

#### **4.3 Administrative Services**

The Concessionaire shall hold periodic meetings with the staff members of the Authority (not less frequently than monthly) to review the status of the Concessionaire's business with the Authority. The Concessionaire shall attend all meetings of the board of directors of the Authority. The Concessionaire shall provide the Authority, Relevant Authorities and any auditors or inspectors appointed by them with access to the Port and the Port Facilities and to the Concessionaire's books records so that the Authority or such Relevant Authorities can have audits and inspections performed. The Concessionaire shall assist the Authority with communications prepared for the public and the State whenever requested. If other administrative services become necessary, the Concessionaire shall cooperate with the Authority, other public agencies, or their representatives, to assist them in attaining their goals.

#### **4.4 Supervisory and Operating Personnel**

The Concessionaire shall, at its sole expense, contract and hire such executive, managerial, supervisory and operating personnel as may be necessary to operate the Port and the Port Facilities and to perform the Port Services in an efficient and productive manner, in accordance with this Concession Agreement, the Port Standards and Applicable Laws.

#### **4.5 Quality Assurance**

The Concessionaire shall develop and periodically update (as necessary), and at all times during the Concession Period implement and comply with, a Quality Management Plan ("QMP"), including operations, maintenance, testing, and mitigation compliance, approved by the Authority. The QMP shall be submitted to the Authority within sixty (60) days following the Closing Date.

The QMP shall ensure that the administration, management, operations and maintenance of the Port Facilities, the materials and equipment used in the provision of Port Services and their repair and maintenance, and all other Port Services, are adequate and of high quality and will comply with the requirements of this Concession Agreement, the Port Standards and Applicable Laws. The QMP shall describe the Concessionaire's quality control ("QC") / quality assurance ("QA") organization, including the number of full-time equivalent employees with specific QC/QA responsibilities, including a chart showing lines of authority and reporting responsibilities. The persons and organizations performing QC/QA functions shall have sufficient authority and organization freedom to identify quality problems and to initiate, recommend, provide, and verify implementation of solutions and shall report to the Concessionaire's QA Manager.

The Authority shall have the right to conduct inspection oversight and sampling, testing, and evaluation, as well as conduct QA reviews of the Concessionaire's obligations. The Authority shall have the right to check testing equipment for compliance with specified standards and to check testing procedures and techniques. The Authority also reserves the right to access the testing facilities of the independent testing agencies, at no additional cost to the Authority, to witness the testing and verify compliance of the testing procedures, testing techniques, and test results.

### **5. OTHER SERVICES**

With the approval of the Authority, which approval shall not be unreasonably withheld or delayed, the Concessionaire may provide other services beyond the activities described elsewhere in this Annex B (Port Services) to the public as long as such services do not compete with the Authority. All services being performed by the Concessionaire need to be described in writing and approved by the Authority prior to implementation.

#### **6. COMPLIANCE**

The Concessionaire shall administer, manage, operate and maintain and repair the Port Facilities (including yard, wharves, gates, buildings, equipment, etc.), anchorage areas, turning basin and the vessel navigation channel in accordance with all U.S. Federal, State, municipal and local laws and regulations, including without limitation environmental, water traffic, and safety regulations. The Concessionaire shall also assist the Relevant Authorities in ensuring trucker compliance to roadway safety regulations by notifying truckers of any known failure of compliance upon the implementation of the interchange inspection at the terminal interchange gate. The Concessionaire shall ensure vessel operator compliance with the Authority berthing procedures and regulations as well.

#### **7. COORDINATION**

The Concessionaire shall operate responsibly and shall abide by all Federal, State, municipal and local authorities' emergency response regulations. Terminal personnel evacuation procedures will be reviewed and approved by the Authority. The Concessionaire shall notify all pertinent authorities of any extraordinary events that raise suspicion and concern for the wellbeing of terminal personnel, the community population, terminal assets or community personal and real property.

Concessionaire shall identify and familiarize itself with any Adjacent Work, whether by the Authority or others, which may affect Port Services, and, in the case of adjacent work by others, shall immediately notify the Authority whenever it becomes aware of such work. "**Adjacent Work**" means any project or activity, public or private, being planned, designed, constructed, or conducted, whether by the Authority or others, which could affect or conflict with the Port or is on, adjacent to or near the Port or the Site. The Concessionaire shall be responsible for obtaining and reviewing plans, maps, and reports for Adjacent Work, monitoring Adjacent Work, providing written assessment of any potential impacts from the Adjacent Work and coordinating with the Adjacent Work as necessary.

For any Adjacent Work being conducted by the Authority or otherwise identified by the Authority to the Concessionaire, the Concessionaire shall identify and examine features of such work as necessary. Any inconsistencies or conflicts between such Adjacent Work and the terminal operation or Port Services shall be brought to the attention of the Authority by the Concessionaire.

#### **8. GENERAL INFORMATION RE: VESSELS AND CARGOES.**

Concessionaire shall provide Authority, in a timely manner and as requested by Authority, with copies of all documentation and information relating to time in berth for vessels and barges, tonnages loaded and off-loaded and other information necessary to properly invoice for such charges. Authority shall have the right to audit information supplied regarding the supplied information.

**ANNEX C**  
**MINIMUM ANNUAL GUARANTEE EXAMPLES**

This Annex C (Minimum Annual Guarantee Examples) sets out, for illustrative purposes, various examples of the calculation of Minimum Annual Guarantee as defined in this Concession Agreement.

Compound Annual Growth Rates to be applied to the MAG

$CAGR = (EV/BV)^{(1/5)} - 1$

**Years 1-5**

MAG: 500  
The MAG can only go "up" after Years 1-5  
*Scenario 1*

MAG: 500  
*Scenario 2*

| <u>Years 1-5</u> | <u>Revenue</u> | <u>Years 1-5</u> | <u>Revenue</u> |
|------------------|----------------|------------------|----------------|
| 2019             | 498            | 2019             | 498            |
| 2020             | 803            | 2020             | 600            |
| 2021             | 954            | 2021             | 675            |
| 2022             | 1,154          | 2022             | 850            |
| 2023             | 1,246          | 2023             | 988            |
| <b>CAGR</b>      | <b>20.1%</b>   | <b>CAGR</b>      | <b>14.7%</b>   |
| <u>New MAG</u>   | <u>601</u>     | <u>New MAG</u>   | <u>573</u>     |

**Years 6-10**

The MAG can go either "up" or "down" after Years 6-10  
MAG: 601  
*Scenario 1*

MAG: 573  
*Scenario 2*

| <u>Years 6-10</u> | <u>Revenue</u> | <u>Years 6-10</u> | <u>Revenue</u> |
|-------------------|----------------|-------------------|----------------|
| 2024              | 1,325          | 2024              | 1,325          |
| 2025              | 1,396          | 2025              | 1,396          |
| 2026              | 1,461          | 2026              | 1,200          |
| 2027              | 1,529          | 2027              | 1,100          |
| 2028              | 1,601          | 2028              | 1,150          |
| <b>CAGR</b>       | <b>3.9%</b>    | <b>CAGR</b>       | <b>-2.8%</b>   |
| <u>New MAG</u>    | <u>624</u>     | <u>New MAG</u>    | <u>557</u>     |

**Years 11-15**

The MAG can go either "up" or "down" after years 11-15  
MAG: 624  
*Scenario 1*

MAG: 557  
*Scenario 2*

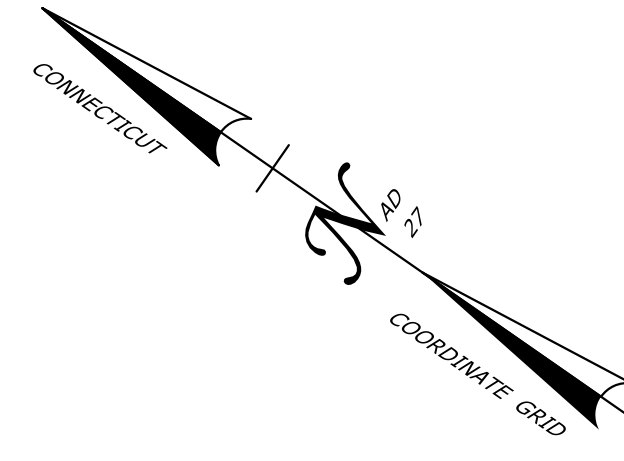
| <u>Years 11-15</u> | <u>Revenue</u> | <u>Years 11-15</u> | <u>Revenue</u> |
|--------------------|----------------|--------------------|----------------|
| 2029               | 1,676          | 2029               | 1,250          |
| 2030               | 1,755          | 2030               | 1,100          |
| 2031               | 1,843          | 2031               | 1,300          |
| 2032               | 1,935          | 2032               | 1,300          |
| 2033               | 2,032          | 2033               | 1,200          |
| <b>CAGR</b>        | <b>3.9%</b>    | <b>CAGR</b>        | <b>-0.8%</b>   |
| <u>New MAG</u>     | <u>649</u>     | <u>New MAG</u>     | <u>552</u>     |



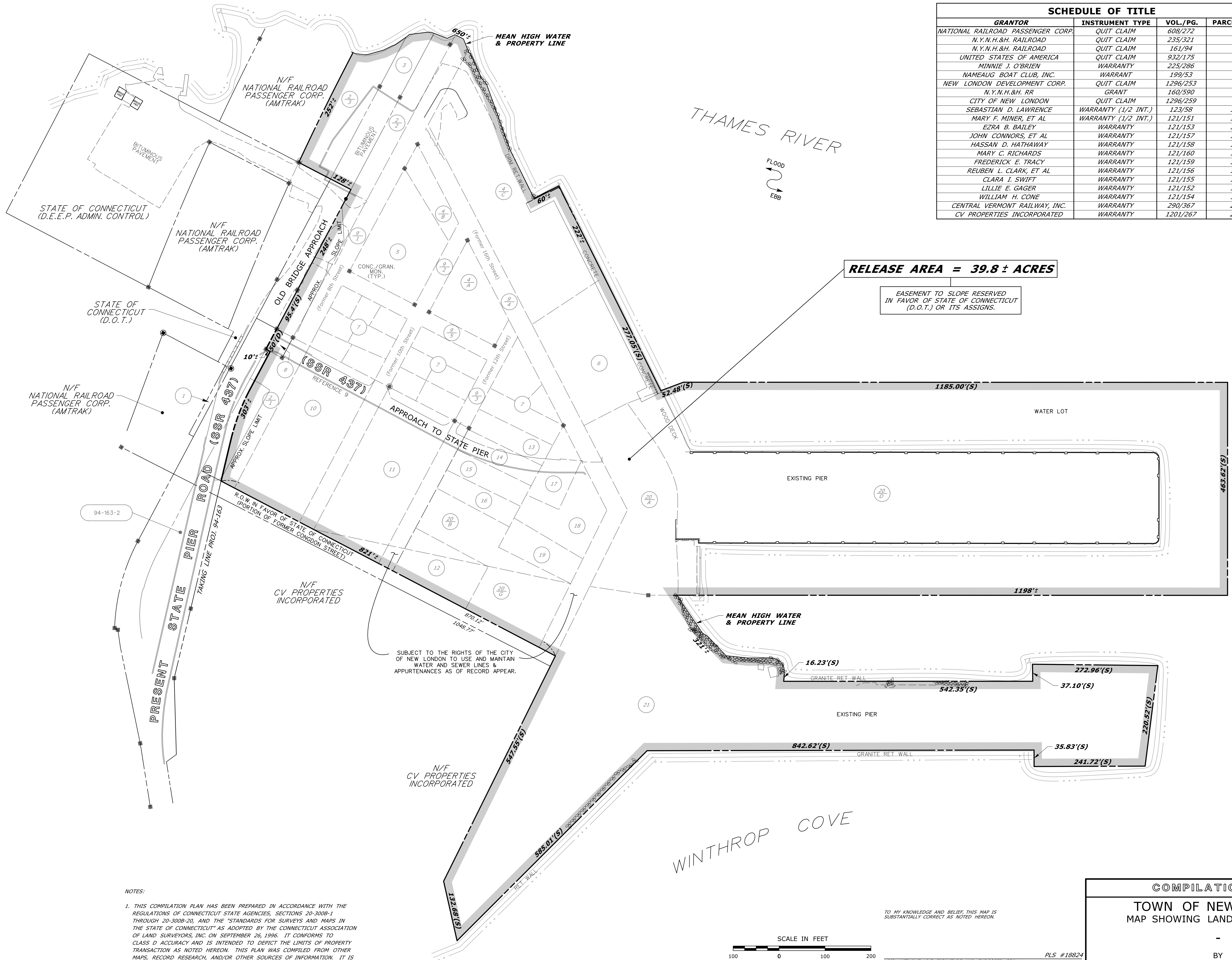
## **Schedule 1**

### **THE SITE**

Attached hereto is a map depicting the Site. A narrative legal description of the Site follows the map.



| SCHEDULE OF TITLE                 |                     |          |            |
|-----------------------------------|---------------------|----------|------------|
| GRANTOR                           | INSTRUMENT TYPE     | VOL./PG. | PARCEL NO. |
| NATIONAL RAILROAD PASSENGER CORP. | QUIT CLAIM          | 608/272  | 1          |
| N.Y.N.H.&H. RAILROAD              | QUIT CLAIM          | 235/321  | 2          |
| N.Y.N.H.&H. RAILROAD              | QUIT CLAIM          | 161/94   | 3          |
| UNITED STATES OF AMERICA          | QUIT CLAIM          | 932/175  | 4          |
| MINNIE J. O'BRIEN                 | WARRANTY            | 225/286  | 5          |
| NAMEAUG BOAT CLUB, INC.           | WARRANTY            | 199/53   | 6          |
| NEW LONDON DEVELOPMENT CORP.      | QUIT CLAIM          | 1296/253 | 7          |
| N.Y.N.H.&H. RR                    | GRANT               | 160/590  | 8          |
| CITY OF NEW LONDON                | QUIT CLAIM          | 1296/259 | 9          |
| SEBASTIAN D. LAWRENCE             | WARRANTY (1/2 INT.) | 123/58   | 10         |
| MARY F. MINER, ET AL              | WARRANTY (1/2 INT.) | 121/151  | 10         |
| EZRA B. BAILEY                    | WARRANTY            | 121/153  | 11         |
| JOHN CONNORS, ET AL               | WARRANTY            | 121/157  | 12         |
| HASSAN D. HATHAWAY                | WARRANTY            | 121/158  | 13         |
| MARY C. RICHARDS                  | WARRANTY            | 121/160  | 14         |
| FREDERICK E. TRACY                | WARRANTY            | 121/159  | 15         |
| REUBEN L. CLARK, ET AL            | WARRANTY            | 121/156  | 16         |
| CLARA J. SWIFT                    | WARRANTY            | 121/155  | 17         |
| LILLIE E. GAGER                   | WARRANTY            | 121/152  | 18         |
| WILLIAM H. CONE                   | WARRANTY            | 121/154  | 19         |
| CENTRAL VERMONT RAILWAY, INC.     | WARRANTY            | 290/367  | 20         |
| CV PROPERTIES INCORPORATED        | WARRANTY            | 1201/267 | 21         |



**RELEASE AREA = 39.8 ± ACRES**

EASEMENT TO SLOPE RESERVED IN FAVOR OF STATE OF CONNECTICUT (D.O.T.) OR ITS ASSIGNS.

- REFERENCES:
- MAP ENTITLED "PLAN OF PROPERTY AT NEW LONDON, CONN., BELONGING TO THE NAMEAUG BOAT CLUB", SCALE: 1"=20', DATE: MAY 1911.
  - MAP ENTITLED "PROPERTY SURVEY PREPARED FOR CENTRAL VERMONT RAILWAY INC., PORTION OF LAND OF CENTRAL VERMONT RAILWAY INC., SOUTH OF STATE PIER ROAD, NEW LONDON, CONNECTICUT", DATE: MAY 28, 1938, SCALE: 1"=100' PREPARED BY CPK. (MAP NO. 3029, N.L.L.R.)
  - CONNDOT BRC FILE NO. 94-95-54B
  - CONNDOT BRC FILE NO. (94)103-197-1
  - CONNDOT BRC FILE NO. 94-MISC-3A
  - CONNDOT BRC FILE NO. 94-MISC-4
  - CONNDOT BRC FILE NO. 94-MISC-4A
  - VOL. 123, PG. 372 (Q.C.)
  - CONNDOT ROUTE CHANGE NOTICE DATED OCTOBER 28, 1963.

- NOTES:
- THIS COMPILATION PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE REGULATIONS OF CONNECTICUT STATE AGENCIES, SECTIONS 20-300B-1 THROUGH 20-300B-10, AND THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 26, 1996. IT CONFORMS TO CLASS D ACCURACY AND IS INTENDED TO DEPICT THE LIMITS OF PROPERTY TRANSACTION AS NOTED HEREON. THIS PLAN WAS COMPILED FROM OTHER MAPS, RECORD RESEARCH, AND/OR OTHER SOURCES OF INFORMATION. IT IS NOT TO BE CONSTRUED AS HAVING BEEN NECESSARILY OBTAINED AS THE RESULT OF A FIELD SURVEY AND IS SUBJECT TO SUCH CHANGE AS AN ACCURATE FIELD SURVEY MAY DISCLOSE.
  - THE TOPOGRAPHY AND PROPERTY LINE EVIDENCE DEPICTED ARE BASED UPON THE SURVEY/MAPPING DATA AS REFERENCED. UNLESS OTHERWISE NOTED, THESE PROPERTY/BOUNDARY LINES DO NOT REPRESENT THE PROFESSIONAL OPINION OF THE UNDERSIGNED.

DRAWN BY TJB  
 DATE 1/2016  
 CHECKED BY CEA  
 DATE 1/2016

SCALE IN FEET

| DATE | REVISION | REQ. BY |
|------|----------|---------|
|      |          |         |
|      |          |         |
|      |          |         |
|      |          |         |

TO MY KNOWLEDGE AND BELIEF THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.

PLS #18824

VOID WITHOUT LIVE SIGNATURE AND EMBOSSED SEAL

TOWN NO. 94

PROJECT NO. 94-247 ROBERT J. BARON, P.L.S.

SERIAL NO. 1 TITLE MANAGER - SURVEY OPERATIONS

SHEET 1 OF 1 DATE \_\_\_\_\_

COMPILATION PLAN

TOWN OF NEW LONDON  
 MAP SHOWING LAND RELEASED TO

BY  
**THE STATE OF CONNECTICUT**  
 DEPARTMENT OF TRANSPORTATION

STATE PIER

SCALE 1"=100'

THOMAS A. HARLEY, P.E.  
 CHIEF ENGINEER - BUREAU OF ENGINEERING AND CONSTRUCTION

JANUARY 2016

**New London State Pier**

**Parcel A**

A certain parcel of land, beginning at a point on the northwesterly boundary of land owned by the United States of America and having Connecticut Cartesian coordinate values of north 193,095.994, east 780,717.070;

Thence proceeding north Thence proceeding north 83° 24'06" east for a distance of 177.32 feet to a point;

Thence proceeding south 27° 42'54" west for a distance of 194.81 feet to a point;

Thence proceeding south 83° 24'06" west for a distance of 64.69 feet to a point;

Thence proceeding north 7° 35'54" west for a distance of 160.93 feet to the point and place of beginning.

**Parcel B**

A certain parcel of land beginning at a point on the northwesterly boundary of land owned by the United States of America and having Connecticut Cartesian coordinate values of north 193,308.035, east 780,943.143;

Thence proceeding north 83°27'03" east for a distance of 60.00 feet to a point;

Thence proceeding south 27°42' 54" west for a distance of 193.16 feet to a point;

Thence proceeding south 83°24' 06" west for a distance of 45.00 feet to a point;

Thence proceeding north 23°52'10" east for a distance of 185.17 feet to the point of the beginning.

**Parcel C**

A certain parcel of land beginning at a point on the northwesterly boundary of land owned by the United States of America and having Connecticut Cartesian coordinate values of north 193,320.399, east 781,050.835;

Thence proceeding north 83°27'03" east for a distance of 140.00 feet to a point;

Thence proceeding southwesterly along the mean high water mark of the Thames River or the existing quay wall to a point;

Thence proceeding north 68°16'55" west for a distance of 175.00 feet to a point;

Thence proceeding north 27°43'05" east for a distance of 490.08 feet to the point and place of beginning.

All as more particularly shown on a map marked "Exhibit B", and entitled "TOWN OF NEW LONDON, MAP SHOWING LAND ACQUIRED FROM THE UNITED STATES OF AMERICA BY THE STATE OF CONNECTICUT AT THE STATE PIER, dated December 1991, signed by O. Paquette, Chief of Surveys, dated January 16, 1992".

Further, the Grantor herein releases, remises and forever quitclaims all its right title and interest in and to the land leased by the Grantor from the State of Connecticut and the improvements and appurtenances

thereto under lease number N62472-81-00386, dated December 5, 1951, as amended and more particularly described as follows:

The leased areas with the improvements and appurtenances thereon, known as State Pier, New London Connecticut, together with certain additional areas, to be used in conjunction therewith, all as delineated on a map entitled "NAVAL SUBMARINE BASE NEW LONDON GROTON, CONN. STATE PIER LEASED AREAS, F80091, 6/26/85", all as more particularly shown on a map marked "Exhibit C".

### **Central Vermont Railroad Pier**

A certain tract or parcel of land located Southerly of 10th Street in the City of New London, County of New London, State of Connecticut, being bounded and described as follows:

Beginning at a point on the face of the sea wall at Winthrop Cove, said point being located at the Westerly corner of the herein described tract and on the dividing line between the herein described tract and other land of the Central Vermont Railway, Inc. and thence running North 42° 26' 04" East 132.68 feet to a point; thence North 81° 34' 16" East 522.49 feet to a concrete monument; thence continuing North 81° 34' 16" East 25.06 feet to a point at the Southwesterly corner of land now or formerly of the State of Connecticut, the last three lines abutting Northwesterly and Northerly on said other land of the Central Vermont Railway, Inc.; thence North 81° 30' 19" East 168.71 feet to a point; thence South 26° 20' 02" East 129.19 feet to a point; thence South 34° 43' 24" East 54.33 feet to a CHD Disk.; thence continuing South 34° 43' 24" East 8 feet more or less to the shore of Winthrop Cove, the last four lines abutting Northerly and Northeasterly on said land now or formerly of the State of Connecticut; thence in a general Southerly direction along the high water mark of said Cove 321 feet, more or less to a point on the face of the sea wall; thence South 60° 06' 44" West 16.23 feet to a point; thence South 34° 49' 41" East 542.35 feet to a point; thence North 54° 19' 45" East 37.10 feet to a point; thence South 34° 11' 42" East 272.96 feet to a point; thence South 62° 24' 09" West 220.52 feet a point; thence North 35° 01' 11" West 241.72 feet to a point; thence North 54° 58' 49" East 35.83 feet to a point; thence North 34° 55' 11" West 842.62 feet to a point; thence North 79° 48' 16" West 585.01 feet to the point of beginning, the last nine lines running along the face of the sea wall abutting said Cove.

Containing 8.36 acres, more or less

Together with a 30 foot wide easement recorded in Volume 290, page 382 and as shown on the hereinafter referred to map.

Being shown on "Property Survey prepared for Central Vermont Railway, Inc. portion of land of Central Vermont Railway, Inc. South of State Pier Road, New London, Connecticut. Chandler, Palmer & King, Architecture, Engineers and Surveying, 110 Broadway, Norwich, CT 06360 (860) 889-3397 fax (860) 886-7801

Scale 1" = 100' May 28, 1998 Sheet 1 of 1"

## **Schedule 2**

### **USER FEES**

1. Stevedoring
2. Shorehandling
3. Storage
4. Dockage
5. Wharfage
6. Gate Services

**Schedule 3**

**PROPERTY TO BE TRANSFERRED TO THE CONCESSIONAIRE**

None

**Schedule 4**  
**EXISTING CONTRACTS**

None

**Schedule 5**

**INITIAL PORT OPERATIONS MANUAL**

*[To be inserted upon the Closing Date, when agreed by the Concessionaire and the Authority.]*



## Annex D

### Connecticut Port Authority Procurement and Contracting Requirements

**Section 1.1 Non-Discrimination.** Concessionaire in accordance with Applicable Law agrees and warrants that in the performance of the services, Concessionaire will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Concessionaire that such disability prevents performance of the services involved, in any manner prohibited by Applicable Law. Concessionaire further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by Concessionaire that such disability prevents performance of the services involved;

(a) Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of Contractor, to state that it is an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Connecticut Commission on Human Rights and Opportunities (the “CHRO”);

(b) Concessionaire agrees to provide each labor union or representative of workers with which Concessionaire has a collective bargaining agreement or other contract or understanding and each vendor with which Concessionaire has a contract or understanding, a notice to be provided by the CHRO, advising the labor union or workers’ representative of Concessionaire’s commitments under Sections 4a-60 and 4a-60a of the Connecticut General Statutes as amended from time to time (the “Connecticut General Statutes”) and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(c) Concessionaire agrees to comply with each provision of Sections 4a-60, 4a-60a, 46a-68e, and 46a-68f, inclusive, of the Connecticut General Statutes and with each regulation or relevant order issued by the CHRO pursuant to Sections 46a-56, 46a-68e, and 46a-68f of the Connecticut General Statutes; and

(d) Concessionaire agrees to provide the CHRO with such information requested by the CHRO, and permit access to pertinent books, records and accounts concerning the employment practices and procedures of Concessionaire as they relate to the provisions of Sections 4a-60, 4a-60a and 46a-56 of the Connecticut General Statutes.

**Section 1.2 Set-aside Programs.** Concessionaire and Authority shall comply with any applicable set-aside small contractors and minority business enterprise requirements set forth in Section 4a-60g of the Connecticut General Statutes.

**Section 1.3 Prevailing Wages.** Concessionaire shall comply with prevailing wages laws for all labor engaged in connection with the services, pursuant to C.G.S. Sec. 31-53 and 31-53a, as applicable, for contracts for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project where the total cost of all work to be performed by all contractors and subcontractors in connection with new construction of a public works project is more than one million (\$1,000,000) dollars and the remodeling,

refinishing, refurbishing, rehabilitation, alteration or repair of any public works project under one hundred thousand (\$100,000) dollars.

(a) If Prevailing Wage Rates are required, wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Concessionaire who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

**Section 1.4 Occupational Safety and Health Act Compliance.** Concessionaire certifies, pursuant to C.G.S. Sec. 31-57b, that Concessionaire has not: (1) been cited for three or more willful or serious violations of any occupational safety and health act or of any standard, order or regulation promulgated pursuant to such act, during the three-year period preceding the date of RFP, provided such violations were cited in accordance with the provisions of any state occupational safety and health act or the Occupational Safety and Health Act of 1970, and not abated within the time fixed by the citation and such citation has not been set aside following appeal to the appropriate agency or court having jurisdiction; or (2) received one or more criminal convictions related to the injury or death of any employee in the three-year period preceding the RFP.

**Section 1.5 Whistleblower Protection.** If any officer, employee or appointing authority of Concessionaire takes or threatens to take any personnel action against any employee of Concessionaire in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of Connecticut General Statutes Section 4-61dd, Concessionaire shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and direct offense. Concessionaire shall post a notice in a conspicuous place which is readily available for viewing by employees of the provisions of Connecticut General Statutes Section 4-61dd relating to large state contractors.

**Section 1.6 Campaign Contribution And Solicitation Prohibitions.** For all State of Connecticut contracts as defined in Section 9-612 of the Connecticut General Statutes having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Concession Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice, SEEC Form 10 in Exhibit A, advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

**Section 1.7 Affidavit of Third Party Fees.** At the time Concessionaire submitted its bid or proposal to the Authority, it simultaneously, if applicable, executed a document entitled Affidavit Of Third Party Fees and said document is attached hereto and made a part of this Agreement as Exhibit B.

**Section 1.8 Affidavit Concerning Nondiscrimination.** At the time Concessionaire submitted its bid or proposal to the Authority, it simultaneously, if applicable, executed a

document entitled Affidavit Concerning Nondiscrimination and said document is attached hereto and made a part of this Agreement as Exhibit C.

**Section 1.9** Affidavit Concerning Consulting Fees. At the time of Concessionaire's execution of this Agreement, Concessionaire simultaneously, if applicable, executed a document entitled Affidavit Concerning Consulting Fees and said document is attached hereto and made a part of this Agreement as Exhibit D.

**Section 1.10** Concessionaire's Certification Concerning Gifts. At the time of Concessionaire's execution of this Agreement, Concessionaire simultaneously, if applicable, executed a document entitled Concessionaire's Certification Concerning Gifts and said document is attached hereto and made a part of this Agreement as Exhibit E.

**Section 1.11** Executive Director's Certification Concerning Gifts. At the time of the Executive Director's execution of this Agreement, the Executive Director simultaneously, if applicable, executed a document entitled Executive Director's Certification Concerning Gifts and said document is attached hereto and made a part of this Agreement as Exhibit F.

**Section 1.12** Iran Certification Form. At the time Concessionaire submitted its bid or proposal to the Authority, it simultaneously, if applicable, executed a document entitled Iran Certification Form and said document is attached hereto and made a part of this Agreement as Exhibit H.

**Section 1.13** State Ethics Laws Summary. At the time Concessionaire submitted its bid or proposal to the Authority, it simultaneously, if applicable, executed a document entitled Affirmation of Receipt of State Ethics Laws Summary and said document is attached hereto and made a part of this Agreement as Exhibit I.

**EXHIBIT A**

(SEEC Form 10 attached)



**Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations**

***Acknowledgement of Receipt of Explanation of Prohibitions for Incorporation in Contracting and Bidding Documents***

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (*italicized words are defined on the reverse side of this page*).

**CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS**

No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall knowingly *solicit* contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

**DUTY TO INFORM**

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

**PENALTIES FOR VIOLATIONS**

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

**Civil penalties**—Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties**—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

**CONTRACT CONSEQUENCES**

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

**SEEC FORM 10**CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION  
Rev. 1/11  
Page 4 of 3

Form 10

**DEFINITIONS**

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-101b. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposal, request for information or request for quotes, inviting bids, quotes or other types of submissions, through a competitive procurement process or another process authorized by law involving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 133 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty-first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.

A handwritten signature or initials, possibly "MS", written in dark ink.



| ACKNOWLEDGEMENT OF RECEIPT  |    |                                 |        |
|---|----|---------------------------------|--------|
| <hr style="width: 100%; border: 0.5px solid black;"/> SIGNATURE   |    | 08/24/2018<br>DATE (mm/dd/yyyy) |        |
| NAME OF SIGNER  |    |                                 |        |
| First Name<br>Matthew   | MI | Last Name<br>Satnick            | Suffix |
| TITLE   |    |                                 |        |
| Authorized Representative   |    |                                 |        |
| COMPANY NAME  |    |                                 |        |
| Enstructure New Haven Holdings LLC dba Gateway Terminal   |    |                                 |        |
|   |    |                                 |        |
| Additional information may be found on the website of the State Elections Enforcement Commission,<br><a href="http://www.ct.gov/seec">www.ct.gov/seec</a><br>Click on the link to "Lobbyist/Contractor Limitations" |    |                                 |        |

MS

**EXHIBIT B**

**AFFIDAVIT OF THIRD PARTY FEES**

(See form attached)





**AFFIDAVIT OF THIRD PARTY FEES**

This Affidavit must be completed and properly executed by an individual or business entity submitting a bid/proposal/statement of qualifications to the Connecticut Port Authority (such individual or business entity hereinafter in this form referred to as the "Contractor"). The purpose of this Affidavit is to ascertain if the Contractor has made or promised any payment to a third party attributable to this Agreement. If no such payment has been made or promised, Contractor should write "None" in the first box in the table and execute this Affidavit. For purposes of the Affidavit, Contractor's subcontractors, if any, are not considered third parties.

I, Matthew Satnick, a duly authorized officer and/or representative of Enstructure New Haven Holdings LLC dba Gateway Terminal (firm name) (the "Contractor"), being duly sworn, hereby depose and say that:

1. I am over eighteen (18) years of age and believe in the obligations of an oath;
2. The Contractor seeks to enter into the "SERVICE AGREEMENT" (the "Agreement") with the Connecticut Port Authority; and
3. All third party fees and agreements to pay third party fees attributable to the Agreement are as follows:

| Name Of Payee | Dollar Amount Paid Or Value Of Non-Cash Compensation AND Date | Fee Arrangement | Specific Services Performed Or To Be Performed By Payee <sup>1</sup> |
|---------------|---|-----------------|--|
| None          |   |                 |  |
|               |   |                 |  |
|               |   |                 |  |

(Attach additional copies of this page as necessary.)

**NOTE:** For each third party fee arrangement described above (if any), complete the attached Form.

4. The information set forth herein is true, complete and accurate to the best of my knowledge and belief under penalty of perjury.

Signed: [Signature]  
 Name (Print): Matthew Satnick  
 Title: Authorized Representative

Sworn to before me this 24<sup>th</sup> day of August 2018

Notary Public/Commissioner of the Superior Court  
Mary W. Cacace

Commission Expiration Date

Mary W. Cacace  
 NOTARY PUBLIC  
 State of Connecticut  
 My Commission Expires October 31, 2022

<sup>1</sup> Please attach documents evidencing the terms of the fee arrangement and services.



**ADDENDUM TO  
AFFIDAVIT OF THIRD PARTY FEES**

For each third party fee arrangement disclosed in the attached Affidavit, please explain whether and how each such payment falls within one or more of the following categories of compensation:

Compensation earned for the rendering of planning services when engaged in the ongoing business of providing planning services;

Compensation earned for the rendering of investment services when provided by an investment professional while engaged in the ongoing business of providing investment services;

Compensation for placement agent, due diligence or comparable tangible marketing services when paid to a person who is an investment professional (i) engaged in the ongoing business of representing providers of investment services, or (ii) in connection with the issuance of bonds, notes or other evidence of indebtedness by a public agency;

Compensation earned by a licensed real estate broker or real estate salesperson while engaging in the real estate business on an ongoing basis; or

Payments for client solicitation activities meeting the requirements of Rule 206(4)-3 under the Investment Advisers Act of 1940.

***Attach additional pages as necessary.***

MS

**EXHIBIT C**

**AFFIDAVIT CONCERNING NONDISCRIMINATION**

(See form attached)

(See also OPM Forms C, D, & E)

(See also Exhibit G - CHRO Notification to Bidders)



**AFFIDAVIT CONCERNING  
NONDISCRIMINATION**

This Affidavit must be completed and properly executed under penalty of false statement by a chief executive officer, president, chairperson, member or other corporate officer duly authorized to adopt company, corporate or partnership policy of the business entity submitting a bid/proposal/statement of qualifications to the Connecticut Port Authority that certifies such business entity complies with the nondiscrimination agreement and warranties contained in Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), as amended, regarding nondiscrimination against persons on account of their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, physical disability or sexual orientation.

I, the undersigned, am over the age of eighteen and understand and appreciate the obligation of an oath. I am Authorized Representative (title) of Enstructure New Haven Holdings LLC dba Gateway Terminal (firm name), an entity duly formed and existing under the laws of Delaware (name of state or commonwealth) ("Contractor").

I certify that I am authorized to execute and deliver this affidavit on behalf of Contractor, as follows:

1. Contractor seeks to enter into the "SERVICE AGREEMENT" (the "Agreement") with the Connecticut Port Authority; and
2. Contractor has in place a company or corporate policy that complies with the nondiscrimination agreements and warranties required under Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), as amended, and the said company or corporate policy is in effect as of the date hereof.

By (Signature): [Signature]  
Name (Print): Matthew Satnick  
Title: Authorized Representative

Sworn to before me this 24<sup>th</sup> day of August 20 18

Mary W. Carac  
Notary Public/Commissioner of the Superior Court

Commission Expires 10/31/2022  
NOTARY PUBLIC  
State of Connecticut  
My Commission Expires October 31, 2022

Sections 4a-60(a)(1) and 4a-60a(a)(1) of the Connecticut General Statutes follow.

**Sec. 4a-60. (Formerly Sec. 4-114a). Nondiscrimination and affirmative action provisions in contracts of the state and political subdivisions other than municipalities.**

Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

The Contractor agrees and warrants that in the performance of the contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved;

**Sec. 4a-60a. Contracts of the state and political subdivisions, other than municipalities, to contain provisions re nondiscrimination on the basis of sexual orientation.**

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The Contractor agrees and warrants that in the performance of the contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;



STATE OF CONNECTICUT  
NONDISCRIMINATION CERTIFICATION -- Affidavit  
By Entity  
For Contracts Valued at \$50,000 or More

*Documentation in the form of an affidavit signed under penalty of false statement by a chief executive officer, president, chairperson, member, or other corporate officer duly authorized to adopt corporate, company, or partnership policy that certifies the contractor complies with the nondiscrimination agreements and warranties under Connecticut General Statutes §§ 4a-60 and 4a-60a, as amended*

**INSTRUCTIONS:**


For use by an entity (corporation, limited liability company, or partnership) when entering into any contract type with the State of Connecticut valued at \$50,000 or more for any year of the contract. Complete all sections of the form. Sign form in the presence of a Commissioner of Superior Court or Notary Public. Submit to the awarding State agency prior to contract execution.

**AFFIDAVIT:**

I, the undersigned, am over the age of eighteen (18) and understand and appreciate the obligations of an oath. I am Authorized Representative of Enstructure New Haven Holdings LLC dba Gateway Terminal, an entity  
Signatory's Title Name of Entity  
duly formed and existing under the laws of Delaware  
Name of State or Commonwealth

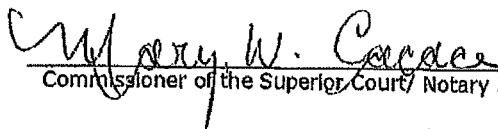
I certify that I am authorized to execute and deliver this affidavit on behalf of Enstructure New Haven Holdings LLC dba Gateway Terminal and that Enstructure New Haven Holdings LLC dba Gateway Terminal  
Name of Entity Name of Entity

has a policy in place that complies with the nondiscrimination agreements and warranties of Connecticut General Statutes §§ 4a-60 and 4a-60a, as amended.

  
Authorized Signatory

Matthew Satnick  
Printed Name

Sworn and subscribed to before me on this 24 day of August 20 18.

  
Commissioner of the Superior Court/ Notary Public

Commission Expiration Date  
Mary W. Cacace  
NOTARY PUBLIC  
State of Connecticut  
My Commission Expires October 31, 2022

MS

**EXHIBIT D**

**AFFIDAVIT CONCERNING CONSULTING FEES**

(See form attached)

(See also OPM Ethics Form 5)



**AFFIDAVIT CONCERNING CONSULTING FEES**

Pursuant to Section 4a-81 of the Connecticut General Statutes, this Affidavit must be completed and properly executed under penalty of false statement by a chief official of the successful bidder/proposer/statement of qualifications submitter for an Agreement (the "Contractor"). Such chief official of the Contractor must be the person who is properly authorized to execute the Agreement on behalf of the Contractor. This Affidavit must be properly executed at the same time that the Contractor executes the Agreement. If the Contractor fails to execute this Affidavit, the Contractor shall be disqualified for the Agreement.

I, the undersigned, am over the age of eighteen and understand and appreciate the obligation of an oath. I am Authorized Representative \_\_\_\_\_ (title) of Gateway New London LLC \_\_\_\_\_ (firm name), an entity duly formed and existing under the laws of Delaware \_\_\_\_\_ (name of state or commonwealth) ("Contractor").

I certify that I am authorized to execute and deliver this affidavit on behalf of Contractor, as follows:

1. Contractor seeks to enter into the SERVICE AGREEMENT (the "Agreement") with the Connecticut Port Authority ("CPA");
2. Except as disclosed in Table 1 below and except for a consulting agreement that is with a contractor who is registered under the provisions of Chapter 10 of the Connecticut General Statutes<sup>1</sup> as of the date this Affidavit is submitted, Contractor has not entered into any consulting agreement<sup>2</sup> in connection with the Agreement whereby any duties of the contractor pursuant to said consulting agreement<sup>2</sup> require that contractor pursue communications concerning business of CPA, whether or not direct contact with CPA, a CPA official, a CPA employee, a state agency, a state or public official, or a state employee was expected or made;
3. Contractor shall amend this Affidavit whenever Contractor enters into any new consulting agreement<sup>2</sup> during the term of the Agreement; and
4. The statements set forth herein are true, to the best of my knowledge and belief, subject to the penalties of false statement.

<sup>1</sup> Pursuant to Section 1-94 of Chapter 10 the Connecticut General Statutes, a lobbyist as defined in the Chapter is required to register with the Office of State Ethics.


<sup>2</sup> Pursuant to Section 41-81 of the Connecticut General Statutes, for the purposes of this Affidavit, "consulting agreement" means "any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the state, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contract. Consulting agreement does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 as of the date such affidavit is submitted in accordance with the provisions of this section."



**TABLE 1: Disclosure of Consulting Agreements**

(If Contractor has not entered into any consulting agreements<sup>2</sup> in connection with the Agreement, Contractor should enter "None" in the space provided for the "Name of Contractor.")

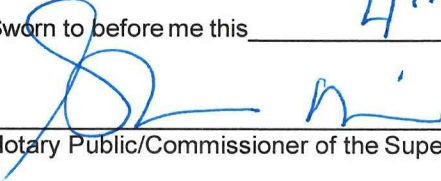
|  |      |    |
|--|------|----|
| Name of Contractor:  | None |    |
| Name of Contractor's Firm:   |      |    |
| Description of the Basic Terms of the Consulting Agreement:  |      |    |
| Brief Description of the Services Provided:  |      |    |
| Is the Contractor a Former State Employee or Public Official?  | Yes  | No |
| If the answer to the question above concerning whether or not the Contractor is a former state employee or public official is "Yes," the following information must be provided. |      |    |
| Name of Former Agency:   |      |    |
| Date Employment Terminated:  |      |    |

By (Signature): 

Name (Print): Matthew Satnick

Title: Authorized Representative

Sworn to before me this 4<sup>th</sup> day of January 20 19

  
Notary Public/Commissioner of the Superior Court

December 28, 2019  
Commission Expiration Date

SHALEEMA MITCHELL  
NOTARY PUBLIC STATE OF NEW YORK  
LIC. #01M6334883  
QUALIFIED IN WESTCHESTER COUNTY  
MY COMMISSION EXPIRES DECEMBER 28, 2019



# STATE OF CONNECTICUT CONSULTING AGREEMENT AFFIDAVIT

*Affidavit to accompany a bid or proposal for the purchase of goods and services with a value of \$50,000 or more in a calendar or fiscal year, pursuant to Connecticut General Statutes §§ 4a-81(a) and 4a-81(b). For sole source or no bid contracts the form is submitted at time of contract execution.*

### INSTRUCTIONS:

**If the bidder or vendor has entered into a consulting agreement, as defined by Connecticut General Statutes § 4a-81(b)(1):** Complete all sections of the form. If the bidder or contractor has entered into more than one such consulting agreement, use a separate form for each agreement. Sign and date the form in the presence of a Commissioner of the Superior Court or Notary Public. **If the bidder or contractor has not entered into a consulting agreement, as defined by Connecticut General Statutes § 4a-81(b)(1):** Complete only the shaded section of the form. Sign and date the form in the presence of a Commissioner of the Superior Court or Notary Public.

Submit completed form to the awarding State agency with bid or proposal. For a sole source award, submit completed form to the awarding State agency at the time of contract execution.

This affidavit must be amended if there is any change in the information contained in the most recently filed affidavit not later than (i) thirty days after the effective date of any such change or (ii) upon the submittal of any new bid or proposal, whichever is earlier.

**AFFIDAVIT:** [Number of Affidavits Sworn and Subscribed On This Day: \_\_\_\_\_]

I, the undersigned, hereby swear that I am a principal or key personnel of the bidder or contractor awarded a contract, as described in Connecticut General Statutes § 4a-81(b), or that I am the individual awarded such a contract who is authorized to execute such contract. I further swear that I have not entered into any consulting agreement in connection with such contract, **except for the agreement listed below:**

\_\_\_\_\_  
Consultant's Name and Title

\_\_\_\_\_  
Name of Firm (if applicable)

\_\_\_\_\_  
Start Date

\_\_\_\_\_  
End Date

\_\_\_\_\_  
Cost

Description of Services Provided: \_\_\_\_\_  
\_\_\_\_\_

Is the consultant a former State employee or former public official?  YES  NO

If YES: \_\_\_\_\_  
Name of Former State Agency Termination Date of Employment

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

Gateway New London LLC \_\_\_\_\_  
Printed Name of Bidder or Contractor Signature of Principal or Key Personnel Date 1/4/19

Matthew Satnick \_\_\_\_\_  
Printed Name (of above) Awarding State Agency

Sworn and subscribed before me on this 4th day of January, 2019.

\_\_\_\_\_  
Commissioner of the Superior Court  
or Notary Public  
December 28, 2019  
My Commission Expires

SHALEEMA MITCHELL  
NOTARY PUBLIC STATE OF NEW YORK  
LIC. #01M16334883  
QUALIFIED IN WESTCHESTER COUNTY  
MY COMMISSION EXPIRES DECEMBER 28, 2019

**EXHIBIT E**

**CONTRACTOR'S CERTIFICATION CONCERNING GIFTS**

(See form attached)

(See also OPM Ethics Form 1)



## CONTRACTOR'S CERTIFICATION CONCERNING GIFTS

### Service Agreement

(This CERTIFICATION is to be signed by an authorized officer of the Contractor or the Contractor's managing general partner.)

Section 4-252 of the *Connecticut General Statutes* requires that a Contractor (i.e., the successful bidder/proposer/statement of qualifications submitter for an Agreement) complete and properly execute this Certification Concerning Gifts at the same time that the Contractor executes the Agreement. If the Contractor fails to make the required certifications, the Contractor shall be disqualified for the Agreement.

I, Matthew Satnick, a duly authorized officer and/or representative of Gateway New London LLC (firm name) (the "Contractor"), being duly sworn, hereby depose and say that:

1. I am over eighteen (18) years of age and believe in the obligations of an oath; and
2. The Contractor has submitted a bid for the "SERVICE AGREEMENT" (the "Agreement") to the Connecticut Port Authority ("CPA"), and has been selected by CPA as the successful bidder/proposer/SOQ submitter for the Agreement and is prepared to enter into the Agreement with CPA; and
3. No gifts were made between June 7, 2018 and the date of execution of the Agreement, by
  - (a) The Contractor,
  - (b) Any principals and key personnel of the Contractor who participated substantially in preparing the Contractor's bid/proposal/statement of qualifications for or the negotiation of the Agreement, or
  - (c) Any agent of the Contractor or principals and key personnel who participated substantially in preparing the Contractor's bid/proposal/statement of qualifications for or the negotiation of the Agreementto
  - (1) Any public official or employee of CPA who participated substantially in the preparation of the bid/proposal/qualifications solicitation for or the negotiation or award of the Agreement (such CPA employees are listed in Table 2 below), or
  - (2) Any public official or state employee of any state agency who has supervisory or appointing authority over CPA (such public officials and state employees are listed in Table 3 below); and
4. No such principals and key personnel of the Contractor or agent of the Contractor or principals and key personnel knows of any action by Contractor to circumvent the prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or state employee; and


5. The Contractor made the bid/proposal/statement of qualifications for the Agreement without fraud or collusion with any person;
6. The information set forth herein is true, to the best of my knowledge and belief, subject to the penalties of false statement.

**TABLE 2: CPA Substantial Participants in the Preparation of the Request for Bids for the Agreement**

|                                   |
|-----------------------------------|
| Evan Matthews, Executive Director |
| Joseph Salvatore, Project Manager |


**TABLE 3: Public Officials and State Employees of State Agencies Who Have Supervisory or Appointing Authority over CPA**

|   |
|---|
| Governor Dannel P. Malloy   |
| Senator Martin Looney, President Pro Tempore of the Senate                      |
| Representative Joe Aresimowicz, Speaker of the House of Representatives         |
| Representative Themis Klarides, Minority Leader of the House of Representatives |
| Senator Bob Duff, Majority Leader of the Senate                                 |
| Senator Len Fasano, Minority Leader of the Senate                               |

Signature:   
 Name (type/print): Matthew Satnick  
 Title: Authorized Representative  
 State Of: New York  
 County Of: New York

Matthew Satnick, being fully sworn, deposes and says that he/she is the Authorized Representative (Title) of Gateway New London LLC (Firm Name), the Contractor herein, that he/she has read the foregoing statement concerning gifts, and, under the penalty of perjury, certifies that each and every part of said statement is true to his/her best knowledge and belief.

Sworn to before me this 4<sup>th</sup> day of January 2019

  
 Notary Public/Commissioner of the Superior Court

December 28, 2019  
 Commission Expiration Date

SHALEEMA MITCHELL  
 NOTARY PUBLIC STATE OF NEW YORK  
 LIC. #01M16334883  
 QUALIFIED IN WESTCHESTER COUNTY  
 MY COMMISSION EXPIRES DECEMBER 28, 2019

For the purposes of this Certification Concerning Gifts, the following terms are defined as follows:

"Gift" means anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return. "Gift" shall **not** include:

- (1) A political contribution otherwise reported as required by law or a donation or payment as described in subdivision (9) or (10) of subsection (b) of section 9-601a of the *Connecticut General Statutes*;
- (2) Services provided by persons volunteering their time, if provided to aid or promote the success or defeat of any political party, any candidate or candidates for public office or the position of convention delegate or town committee member or any referendum question;
- (3) A commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;
- (4) A gift received from (A) an individual's spouse, fiancée or fiancée, (B) the parent, brother or sister of such spouse or such individual, or (C) the child of such individual or the spouse of such child;
- (5) Goods or services (A) which are provided to a state agency or quasi-public agency (i) for use on state or quasi-public agency property, or (ii) that support an event, and (B) which facilitate state or quasi-public agency action or functions. As used in this Affidavit Concerning Gifts, "state property" means
  - (i) property owned by the state or a quasi-public agency, or (ii) property leased to a state agency or quasi-public agency;
- (6) A certificate, plaque or other ceremonial award costing less than one hundred dollars;
- (7) A rebate, discount or promotional item available to the general public;
- (8) Printed or recorded informational material germane to state action or functions;
- (9) Food or beverage or both, costing less than fifty dollars in the aggregate per recipient in a calendar year, and consumed on an occasion or occasions at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance;
- (10) Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed legislative reception to which all members of the General Assembly are invited and which is hosted not more than once in any calendar year by a lobbyist or business organization. For the purposes of such limit, (A) a reception hosted by a lobbyist who is an individual shall be deemed to have also been hosted by the business organization which he owns or is employed by, and (B) a reception hosted by a business organization shall be deemed to have also been hosted by all owners and employees of the business organization who are lobbyists. In making the calculation for the purposes of such fifty-dollar limit, the donor shall divide the amount spent on food and beverage by the number of persons whom the donor reasonably expects to attend the reception;
- (11) Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed reception to which all members of the General Assembly from a region of the state are invited and which is hosted not more than once in any calendar year by a lobbyist or business organization. For the purposes of such limit, (A) a reception hosted by a lobbyist who is an individual shall be deemed to have also been hosted by the business organization which he owns or is employed by, and (B) a reception hosted by a business organization shall be deemed to have also been hosted by all owners and employees of the business organization who are lobbyists. In making the calculation for the purposes of such fifty-dollar limit, the donor shall divide the amount spent on food and beverage by the number of persons whom the donor reasonably expects to attend the reception. As used in this subdivision, "region of the state" means the established

geographic service area of the organization hosting the reception;

- (12) Gifts costing less than one hundred dollars in the aggregate or food or beverage provided at a hospitality suite at a meeting or conference of an interstate legislative association, by a person who is not a registrant or is not doing business with the state of Connecticut;
- (13) Admission to a charitable or civic event, including food and beverage provided at such event, but excluding lodging or travel expenses, at which a public official or state employee participates in his official capacity, provided such admission is provided by the primary sponsoring entity;
- (14) Anything of value provided by an employer of (A) a public official, (B) a state employee, or (C) a spouse of a public official or state employee, to such official, employee or spouse, provided such benefits are customarily and ordinarily provided to others in similar circumstances; or
- (15) Anything having a value of not more than ten dollars, provided the aggregate value of all things provided by a donor to a recipient under this subdivision in any calendar year shall not exceed fifty dollars.
- (16) Training that is provided by a vendor for a product purchased by a state or quasi-public agency which is offered to all customers of such vendor; or
- (17) Travel expenses, lodging, food, beverage and other benefits customarily provided by a prospective employer, when provided to a student at a public institution of higher education whose employment is derived from such student's status as a student at such institution, in connection with bona fide employment discussions.

"Participated substantially" means participation that is direct, extensive and substantive, and not peripheral, clerical or ministerial.

"Principals and key personnel" means officers, directors, shareholders, members, partners and managerial employees.



## STATE OF CONNECTICUT GIFT AND CAMPAIGN CONTRIBUTION CERTIFICATION

*Written or electronic certification to accompany a State contract with a value of \$50,000 or more, pursuant to C.G.S. §§ 4-250, 4-252(c) and 9-612(f)(2) and Governor Dannel P. Malloy's Executive Order 49.*

### INSTRUCTIONS:

Complete all sections of the form. Attach additional pages, if necessary, to provide full disclosure about any lawful campaign contributions made to campaigns of candidates for statewide public office or the General Assembly, as described herein. Sign and date the form, under oath, in the presence of a Commissioner of the Superior Court or Notary Public. Submit the completed form to the awarding State agency at the time of initial contract execution and if there is a change in the information contained in the most recently filed certification, such person shall submit an updated certification either (i) not later than thirty (30) days after the effective date of such change or (ii) upon the submittal of any new bid or proposal for a contract, whichever is earlier. Such person shall also submit an accurate, updated certification not later than fourteen days after the twelve-month anniversary of the most recently filed certification or updated certification.

- CHECK ONE:**     Initial Certification     12 Month Anniversary Update (Multi-year contracts only.)
- Updated Certification because of change of information contained in the most recently filed certification or twelve-month anniversary update.

### GIFT CERTIFICATION:

As used in this certification, the following terms have the meaning set forth below:

- 1) "Contract" means that contract between the State of Connecticut (and/or one or more of its agencies or instrumentalities) and the Contractor, attached hereto, or as otherwise described by the awarding State agency below;
- 2) If this is an Initial Certification, "Execution Date" means the date the Contract is fully executed by, and becomes effective between, the parties; if this is a twelve-month anniversary update, "Execution Date" means the date this certification is signed by the Contractor;
- 3) "Contractor" means the person, firm or corporation named as the contractor below;
- 4) "Applicable Public Official or State Employee" means any public official or state employee described in C.G.S. §4-252(c)(1)(i) or (ii);
- 5) "**Gift**" has the same meaning given that term in C.G.S. § 4-250(1);
- 6) "Principals or Key Personnel" means and refers to those principals and key personnel of the Contractor, and its or their agents, as described in C.G.S. §§ 4-250(5) and 4-252(c)(1)(B) and (C).

I, the undersigned, am a Principal or Key Personnel of the person, firm or corporation authorized to execute this certification on behalf of the Contractor. I hereby certify that, no gifts were made by (A) such person, firm, corporation, (B) any principals and key personnel of the person firm or corporation who participate substantially in preparing bids, proposals or negotiating state contracts or (C) any agent of such, firm, corporation, or principals or key personnel who participates substantially in preparing bids, proposals or negotiating state contracts, to (i) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for state contracts who participates substantially in the preparation of bid solicitations or request for proposals for state contracts or the negotiation or award of state contracts or (ii) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency.

I further certify that no Principals or Key Personnel know of any action by the Contractor to circumvent (or which would result in the circumvention of) the above certification regarding **Gifts** by providing for any other Principals, Key Personnel, officials, or employees of the Contractor, or its or their agents, to make a **Gift** to any Applicable Public Official or State Employee. I further certify that the Contractor made the bid or proposal for the Contract without fraud or collusion with any person.

**CAMPAIGN CONTRIBUTION CERTIFICATION:**

I further certify that, on or after January 1, 2011, neither the Contractor nor any of its principals, as defined in C.G.S. § 9-612(f)(1), has made any **campaign contributions** to, or solicited any contributions on behalf of, any exploratory committee, candidate committee, political committee, or party committee established by, or supporting or authorized to support, any candidate for statewide public office, in violation of C.G.S. § 9-612(f)(2)(A). I further certify that **all lawful campaign contributions** that have been made on or after January 1, 2011 by the Contractor or any of its principals, as defined in C.G.S. § 9-612(f)(1), to, or solicited on behalf of, any exploratory committee, candidate committee, political committee, or party committee established by, or supporting or authorized to support any candidates for statewide public office or the General Assembly, are listed below:

**Lawful Campaign Contributions to Candidates for Statewide Public Office:**

| <u>Contribution Date</u> | <u>Name of Contributor</u> | <u>Recipient</u> | <u>Value</u> | <u>Description</u> |
|--------------------------|----------------------------|------------------|--------------|--------------------|
| N/A                      |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |

**Lawful Campaign Contributions to Candidates for the General Assembly:**

| <u>Contribution Date</u> | <u>Name of Contributor</u> | <u>Recipient</u> | <u>Value</u> | <u>Description</u> |
|--------------------------|----------------------------|------------------|--------------|--------------------|
| N/A                      |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |
|                          |                            |                  |              |                    |

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

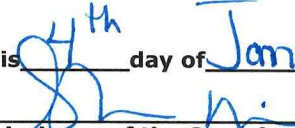
Gateway New London LLC  
Printed Contractor Name

Matthew Satnick  
Printed Name of Authorized Official

  
Signature of Authorized Official

Subscribed and acknowledged before me this 4<sup>th</sup> day of January, 2019.

SHALEEMA MITCHELL  
NOTARY PUBLIC STATE OF NEW YORK  
LIC. #01MI6334883  
QUALIFIED IN WESTCHESTER COUNTY  
MY COMMISSION EXPIRES DECEMBER 28, 2019

  
Commissioner of the Superior Court (or Notary Public)  
December 28, 2019  
My Commission Expires



**EXHIBIT F**  
**EXECUTIVE DIRECTOR'S CERTIFICATION CONCERNING GIFTS**

(See form attached)

(See also OPM Ethics Form 3)



**STATE OF CONNECTICUT  
CERTIFICATION OF STATE AGENCY OFFICIAL OR EMPLOYEE  
AUTHORIZED TO EXECUTE CONTRACT**

*Certification to accompany a State contract, having a value of \$50,000 or more, pursuant to Connecticut General Statutes §§ 4-250 and 4-252(b), and Governor Dannel P. Malloy's Executive Order 49.*

**INSTRUCTIONS:**

Complete all sections of the form. Sign and date in the presence of a Commissioner of the Superior Court or Notary Public. Submit to the awarding State agency at the time of contract execution.

**CERTIFICATION:**

I, the undersigned State agency official or State employee, certify that (1) I am authorized to execute the attached contract on behalf of the State agency named below, and (2) the selection of the contractor named below was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

GATEWAY NEW LONDON, LLC  
Contractor Name

CONNECTICUT PORT AUTHORITY  
Awarding State Agency

[Signature]  
State Agency Official or Employee Signature

EVEN H. MATTHEWS  
Printed Name

01-07-2019  
Date

EXECUTIVE DIRECTOR.  
Title

Sworn and subscribed before me on this 7th day of January, 2019.

[Signature]  
Commissioner of the Superior Court  
~~or Notary Public~~

\_\_\_\_\_  
My Commission Expires

**AGREEMENT**

**Awarded To**

**Consultant**

(This CERTIFICATION is to be signed by the Executive Director of CPA  
at the time the Agreement is executed by him)

By submission of this Certification, the Executive Director of the Connecticut Port Authority ("CPA") hereby certifies that the selection of the most qualified or highest ranked person, firm or corporation for the "Professional Services Agreement" was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

Signature:



Name: **Evan H. Matthews**

Title: **Executive Director**

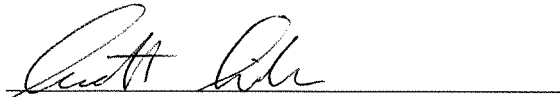
State Of: **Connecticut**

County Of: **Hartford**

Evan H. Matthews, being fully sworn, deposes and says that he is the Executive Director of the Connecticut Port Authority, that he has read the forgoing statement concerning collusion, the giving of gifts or the promise of gifts, compensation, fraud or inappropriate influence and, under the penalty of perjury, certifies that each and every part of said statement is true.

Sworn to before me this 7<sup>th</sup> day of January 2019

~~Notary Public~~ Commissioner of the Superior Court



Scott Sieder

**EXHIBIT G**  
**CHRO NOTIFICATION TO BIDDERS**

(See CHRO Form attached)

**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
CONTRACT COMPLIANCE REGULATIONS  
NOTIFICATION TO BIDDERS**

(Revised 09/3/15)

The contract to be awarded is subject to contract compliance requirements mandated by Sections 4a-60 and 4a-60a of the Connecticut General Statutes; and, when the awarding agency is the State, Sections 46a-71(d) and 46a-81i(d) of the Connecticut General Statutes. There are Contract Compliance Regulations codified at Section 46a-68j-21 through 43 of the Regulations of Connecticut State Agencies, which establish a procedure for awarding all contracts covered by Sections 4a-60 and 46a-71(d) of the Connecticut General Statutes.

According to Section 46a-68j-30(9) of the Contract Compliance Regulations, every agency awarding a contract subject to the contract compliance requirements has an obligation to "aggressively solicit the participation of legitimate minority business enterprises as bidders, contractors, subcontractors and suppliers of materials." "Minority business enterprise" is defined in Section 4a-60 of the Connecticut General Statutes as a business wherein fifty-one percent or more of the capital stock, or assets belong to a person or persons: "(1) Who are active in daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in subsection (a) of Section 32-91." "Minority" groups are defined in Section 32-91 of the Connecticut General Statutes as "(1) Black Americans . . . (2) Hispanic Americans . . . (3) persons who have origins in the Iberian Peninsula . . . (4) Women . . . (5) Asian Pacific Americans and Pacific Islanders; (6) American Indians . . ." An individual with a disability is also a minority business enterprise as provided by Section 4a-60g of the Connecticut General Statutes. The above definitions apply to the contract compliance requirements by virtue of Section 46a-68j-21(11) of the Contract Compliance Regulations.

The awarding agency will consider the following factors when reviewing the bidder's qualifications under the contract compliance requirements:

- (a) the bidder's success in implementing an affirmative action plan;
- (b) the bidder's success in developing an apprenticeship program complying with Sections 46a-68-1 to 46a-68-17 of the Administrative Regulations of Connecticut State Agencies, inclusive;
- (c) the bidder's promise to develop and implement a successful affirmative action plan;
- (d) the bidder's submission of employment statistics contained in the "Employment Information Form", indicating that the composition of its workforce is at or near parity when compared to the racial and sexual composition of the workforce in the relevant labor market area; and
- (e) the bidder's promise to set aside a portion of the contract for legitimate minority business enterprises. See Section 46a-68j-30(10)(E) of the Contract Compliance Regulations.

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**INSTRUCTIONS AND OTHER INFORMATION**

The following BIDDER CONTRACT COMPLIANCE MONITORING REPORT must be completed in full, signed, and submitted with the bid for this contract. The contract awarding agency and the Commission on Human Rights and Opportunities will use the information contained thereon to determine the bidders compliance to Sections 4a-60 and 4a-60a CONN. GEN. STAT., and Sections 46a-68j-23 of the Regulations of Connecticut State Agencies regarding equal employment opportunity, and the bidder's good faith efforts to include minority business enterprises as subcontractors and suppliers for the work of the contract.

**1) Definition of Small Contractor**

Section 4a-60g CONN. GEN. STAT. defines a small contractor as a company that has been doing business under the same management and control and has maintained its principal place of business in Connecticut for a one year period immediately prior to its application for certification under this section, had gross revenues not exceeding fifteen million dollars in the most recently completed fiscal year, and at least fifty-one percent of the ownership of which is held by a person or persons who are active in the daily affairs of the company, and have the power to direct the management and policies of the company, except that a nonprofit corporation shall be construed to be a small contractor if such nonprofit corporation meets the requirements of subparagraphs (A) and (B) of subdivision 4a-60g CONN. GEN. STAT.

2) Description of Job Categories (as used in Part IV Bidder Employment Information) (Page 2)

**MANAGEMENT:** Managers plan, organize, direct, and control the major functions of an organization through subordinates who are at the managerial or supervisory level. They make policy decisions and set objectives for the company or departments. They are not usually directly involved in production or providing services. Examples include top executives, public relations managers, managers of operations specialties (such as financial, human resources, or purchasing managers), and construction and engineering managers.

**BUSINESS AND FINANCIAL OPERATIONS:** These occupations include managers and professionals who work with the financial aspects of the business. These occupations include accountants and auditors, purchasing agents, management analysts, labor relations specialists, and budget, credit, and financial analysts.

**MARKETING AND SALES:** Occupations related to the act or process of buying and selling products and/or services such as sales engineer, retail sales workers and sales representatives including wholesale.

**LEGAL OCCUPATIONS:** In-House Counsel who is charged with providing legal advice and services in regards to legal issues that may arise during the course of standard business practices. This category also includes assistive legal occupations such as paralegals, legal assistants.

**COMPUTER SPECIALISTS:** Professionals responsible for the computer operations within a company are grouped in this category. Examples of job titles in this category include computer programmers, software engineers, database administrators, computer scientists, systems analysts, and computer support specialists

**ARCHITECTURE AND ENGINEERING:** Occupations related to architecture, surveying, engineering, and drafting are included in this category. Some of the job titles in this category include electrical and electronic engineers, surveyors, architects, drafters, mechanical engineers, materials engineers, mapping technicians, and civil engineers.

**OFFICE AND ADMINISTRATIVE SUPPORT:** All clerical-type work is included in this category. These jobs involve the preparing, transcribing, and preserving of written communications and records; collecting accounts; gathering and distributing information; operating office machines and electronic data processing equipment; and distributing mail. Job titles listed in this category include telephone operators, bill and account collectors, customer service representatives, dispatchers, secretaries and administrative assistants, computer operators and clerks (such as payroll, shipping, stock, mail and file).

**BUILDING AND GROUNDS CLEANING AND MAINTENANCE:** This category includes occupations involving landscaping, housekeeping, and janitorial services. Job titles found in this category include supervisors of landscaping or housekeeping, janitors, maids, grounds maintenance workers, and pest control workers.

**CONSTRUCTION AND EXTRACTION:** This category includes construction trades and related occupations. Job titles found in this category include boilermakers, masons (all types), carpenters, construction laborers, electricians, plumbers (and related trades), roofers, sheet metal workers, elevator installers, hazardous materials removal workers, paperhangers, and painters. Paving, surfacing, and tamping equipment operators; drywall and ceiling tile installers; and carpet, floor and tile installers and finishers are also included in this category. First line supervisors, foremen, and helpers in these trades are also grouped in this category.

**INSTALLATION, MAINTENANCE AND REPAIR:** Occupations involving the installation, maintenance, and repair of equipment are included in this group. Examples of job titles found here are heating, ac, and refrigeration mechanics and installers; telecommunication line installers and repairers; heavy vehicle and mobile equipment service technicians and mechanics; small engine mechanics; security and fire alarm systems installers; electric/electronic repair, industrial, utility and transportation equipment; millwrights; riggers; and manufactured building and mobile home installers. First line supervisors, foremen, and helpers for these jobs are also included in the category.

**MATERIAL MOVING WORKERS:** The job titles included in this group are Crane and tower operators; dredge, excavating, and lading machine operators; hoist and winch operators; industrial truck and tractor operators; cleaners of vehicles and equipment; laborers and freight, stock, and material movers, hand; machine feeders and offbearers; packers and packagers, hand; pumping station operators; refuse and recyclable material collectors; and miscellaneous material moving workers.

**PRODUCTION WORKERS:** The job titles included in this category are chemical production machine setters, operators and tenders; crushing/grinding workers; cutting workers; inspectors, testers sorters, samplers, weighers; precious stone/metal workers; painting workers; cementing/gluing machine operators and tenders; etchers/engravers; molders, shapers and casters except for metal and plastic; and production workers.

3) Definition of Racial and Ethnic Terms (as used in Part IV Bidder Employment Information). (Page 3)

|  |   |
|--|---|
| <p><u>White</u> (not of Hispanic Origin)-All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.</p> <p><u>Black</u> (not of Hispanic Origin)-All persons having origins in any of the Black racial groups of Africa.</p> <p><u>Hispanic</u>- All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.</p> | <p><u>Asian or Pacific Islander</u>- All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.</p> <p><u>American Indian or Alaskan Native</u>- All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.</p> |
|--|---|

**BIDDER CONTRACT COMPLIANCE MONITORING REPORT**

**PART 1 -- Bidder Information**

|  |  |
|--|--|
| <p>Company Name: Enstructure New Haven Holdings LLC dba Gateway<br/>                 Street Address: 16 Laurel Ave, Suite 300<br/>                 City &amp; State: Wellesley, MA<br/>                 Chief Executive: Matthew Satnick</p> | <p>Bidder Federal Employer 81-3444562 (Parent Company FBIN)<br/>                 Identification Number:<br/>                 Or<br/>                 Social Security Number:</p>   |
| <p>Major Business Activity: Port and Terminal operator, cargo handling and transportation and logistics provider (brief description)</p>   | <p>Bidder Identification (response optional/definitions on page 1)</p> <p>-Bidder is a small contractor? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>-Bidder is a minority business enterprise? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(If yes, check ownership category)</p> <p>Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian American <input type="checkbox"/><br/>                 American Indian/Alaskan Native <input type="checkbox"/> Iberian Peninsula <input type="checkbox"/><br/>                 Individual(s) with a Physical Disability <input type="checkbox"/> Female <input type="checkbox"/></p> <p>-Bidder is certified as above by State of CT? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> |
| <p>Bidder Parent Company: Enstructure LLC (If any)</p>   |  |
| <p>Other Locations in CT: No (If any)</p>  |  |

**PART II - Bidder Nondiscrimination Policies and Procedures**

|   |   |
|---|---|
| <p>1. Does your company have a written Affirmative Action/Equal Employment Opportunity statement posted on company bulletin boards? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>   | <p>7. Do all of your company contracts and purchase orders contain non-discrimination statements as required by Sections 4a-60 &amp; 4a-60a Conn. Gen. Stat.? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>   |
| <p>2. Does your company have the state-mandated sexual harassment prevention in the workplace policy posted on company bulletin boards? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>   | <p>8. Do you, upon request, provide reasonable accommodation to employees, or applicants for employment, who have physical or mental disability? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>  |
| <p>3. Do you notify all recruitment sources in writing of your company's Affirmative Action/Equal Employment Opportunity employment policy? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>   | <p>9. Does your company have a mandatory retirement age for all employees? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>  |
| <p>4. Do your company advertisements contain a written statement that you are an Affirmative Action/Equal Opportunity Employer? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>   | <p>10. If your company has 50 or more employees, have you provided at least two (2) hours of sexual harassment training to all of your supervisors? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/></p>  |
| <p>5. Do you notify the Ct. State Employment Service of all employment openings with your company? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>  | <p>11. If your company has apprenticeship programs, do they meet the Affirmative Action/Equal Employment Opportunity requirements of the apprenticeship standards of the Ct. Dept. of Labor? Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p>   |
| <p>6. Does your company have a collective bargaining agreement with workers? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>6a. If yes, do the collective bargaining agreements contain non-discrimination clauses covering all workers? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>6b. Have you notified each union in writing of your commitments under the nondiscrimination requirements of contracts with the state of CT? Yes <input type="checkbox"/> No <input type="checkbox"/></p> | <p>12. Does your company have a written affirmative action Plan? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If no, please explain.<br/>                 We are an equal opportunity employer</p> <p>13. Is there a person in your company who is responsible for equal employment opportunity? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, give name and phone number:</p> |

Part III - Bidder Subcontracting Practices

(Page 4)

I. Will the work of this contract include subcontractors or suppliers? Yes  No

1a. If yes, please list all subcontractors and suppliers and report if they are a small contractor and/or a minority business enterprise. (defined on page 1 / use additional sheet if necessary)

1b. Will the work of this contract require additional subcontractors or suppliers other than those identified in 1a. above? Yes  No

PART IV - Bidder Employment Information

Date: 8/24/16

| JOB CATEGORY*   | OVERALL TOTALS | WHITE (not of Hispanic origin) |        | BLACK (not of Hispanic origin) |        | HISPANIC |        | ASIAN or PACIFIC ISLANDER |        | AMERICAN INDIAN or ALASKAN NATIVE |        |
|---|----------------|--------------------------------|--------|--------------------------------|--------|----------|--------|---------------------------|--------|-----------------------------------|--------|
|   |                | Male                           | Female | Male                           | Female | Male     | Female | Male                      | Female | Male                              | Female |
| Management  | 10             | 10                             |        |                                |        |          |        |                           |        |                                   |        |
| Business & Financial Ops  | 3              | 2                              | 1      |                                |        |          |        |                           |        |                                   |        |
| Marketing & Sales   | 2              | 2                              |        |                                |        |          |        |                           |        |                                   |        |
| Legal Occupations   |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Computer Specialists  |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Architecture/Engineering  |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Office & Admin Support  | 4              |                                | 4      |                                |        |          |        |                           |        |                                   |        |
| Bldg/ Grounds Cleaning/Maintenance  |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Construction & Extraction   |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Installation, Maintenance & Repair  | 4              | 3                              |        |                                |        | 1        |        |                           |        |                                   |        |
| Material Moving Workers   | 122            | 82                             |        | 9                              |        | 31       |        |                           |        |                                   |        |
| Production Occupations  |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| TOTALS ABOVE  | 145            | 99                             | 5      | 9                              |        | 32       |        |                           |        |                                   |        |
| Total One Year Ago  | 145            | 99                             | 5      | 9                              |        | 32       |        |                           |        |                                   |        |
| FORMAL ON THE JOB TRAINEES (ENTER FIGURES FOR THE SAME CATEGORIES AS ARE SHOWN ABOVE) |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Apprentices   |                |                                |        |                                |        |          |        |                           |        |                                   |        |
| Trainees  |                |                                |        |                                |        |          |        |                           |        |                                   |        |

\*NOTE: JOB CATEGORIES CAN BE CHANGED OR ADDED TO (EX. SALES CAN BE ADDED OR REPLACE A CATEGORY NOT USED IN YOUR COMPANY)

MS




**PART V - Bidder Hiring and Recruitment Practices**

(Page 5)

| 1. Which of the following recruitment sources are used by you?<br>(Check yes or no, and report percent used) |                                     |                                     |                                    | 2. Check (X) any of the below listed requirements that you use as a hiring qualification<br>(X) |                                   | 3. Describe below any other practices or actions that you take which show that you hire, train, and promote employees without discrimination |
|--|-------------------------------------|-------------------------------------|------------------------------------|---|-----------------------------------|--|
| SOURCE   | YES                                 | NO                                  | % of applicants provided by source |   |                                   |  |
| State Employment Service   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                                    |   | Work Experience                   |  |
| Private Employment Agencies  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 5                                  |   | Ability to Speak or Write English |  |
| Schools and Colleges   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 5                                  |   | Written Tests                     |  |
| Newspaper Advertisement  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 10                                 |   | High School Diploma               |  |
| Walk Ins   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 15                                 |   | College Degree                    |  |
| Present Employees  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 15                                 |   | Union Membership                  |  |
| Labor Organizations  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                                    |   | Personal Recommendation           |  |
| Minority/Community Organizations   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                                    |   | Height or Weight                  |  |
| Others (please identify)   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 50                                 |   | Car Ownership                     |  |
| WWW Employment sites   | <input type="checkbox"/>            | <input type="checkbox"/>            |                                    |   | Arrest Record                     |  |
|  | <input type="checkbox"/>            | <input type="checkbox"/>            |                                    |   | Wage Garnishments                 |  |

Certification (Read this form and check your statements on it CAREFULLY before signing). I certify that the statements made by me on this BIDDER CONTRACT COMPLIANCE MONITORING REPORT are complete and true to the best of my knowledge and belief, and are made in good faith. I understand that if I knowingly make any misstatements of facts, I am subject to be declared in non-compliance with Section 4a-60, 4a-60a, and related sections of the CONN. GEN. STAT.

|  |                                      |                         |                             |
|--|--------------------------------------|-------------------------|-----------------------------|
| (Signature)<br> | (Title)<br>Authorized Representative | (Date Signed)<br>8/7/18 | (Telephone)<br>203-467-1997 |
|--|--------------------------------------|-------------------------|-----------------------------|

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**

**NOTICE CONCERNING CONTRACT COMPLIANCE RESPONSIBILITIES**

**TO ALL LABOR UNIONS, WORKERS REPRESENTATIVES AND VENDORS:**

Any contract this contractor has with the State of Connecticut or political subdivisions of the state, other than municipalities, shall be performed in accordance with CONN. GEN. STAT. Section 4a-60 and Section 4a-60a.

This means that this contractor:

1. Agrees to provide the Commission on Human Rights and Opportunities (CHRO) with any information concerning this contractor's employment practices and procedures which relates to the Commission's responsibilities under CONN. GEN. STAT. Sections 4a-60 or 46a-56 or Section 4a-60a.; and
2. Agrees to include the provisions of CONN. GEN. STAT. Section 46a-60(a) and Section 4a-60a in each and every subcontract and purchase order and to take whatever action the CHRO deems necessary to enforce these provisions.

WITH REGARD TO RACE, COLOR, RELIGIOUS CREED, AGE, MARITAL STATUS, NATIONAL ORIGIN, ANCESTRY, SEX, MENTAL RETARDATION OR PHYSICAL DISABILITY, this means that this contractor:

1. Shall not discriminate or permit discrimination against anyone;
2. Shall take affirmative action so that persons applying for employment are hired on the basis of job-related qualifications and that employees once hired are treated without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, unless the contractor can show that the disability prevents performance of the work involved;
3. Shall state in all advertisements for employees that it is an affirmative action-equal opportunity employer;
4. Shall comply with CONN. GEN. STAT. Sections 4a-60, 46a-68e and 46a-68f and with each regulation or relevant order issued by the CHRO under CONN. GEN. STAT. Sections 46a-56, 46a-68e and 46a-68f; and
5. Shall make, if the contract is a public works contract, good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials.

WITH REGARD TO SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION:

1. The contractor will not discriminate or permit discrimination against anyone, and employees will be treated without regard to their sexual orientation, gender identity or expression once employed; and
2. The contractor agrees to fully comply with Section 4a-60a and each regulation or relevant order issued by the CHRO under CONN. GEN. STAT. Section 46a-56.

Persons having questions about this notice or their rights under the law are urged to contact the:

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
AFFIRMATIVE ACTION AND CONTRACT COMPLIANCE  
UNIT

450 Columbus Boulevard, Suite 2  
Hartford, CT 06103  
(860) 541-4709

COPIES OF THIS NOTICE SHALL BE POSTED IN CONSPICUOUS PLACES  
AVAILABLE TO ALL EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

*MJ*

**EXHIBIT H**  
**IRAN CERTIFICATION FORM**  
(See form attached)  
(See also OPM Iran Certification Form 7)



## IRAN CERTIFICATION FORM

This form must be completed and properly executed under penalty of false statement by a chief executive officer, president, chairperson, member or other corporate officer duly authorized to adopt company, corporate or partnership policy of the business entity submitting a bid/proposal/statement of qualifications to the Connecticut Port Authority.

I, Matthew Satnick (name), Authorized Representative (title) of  
Enstructure New Haven Holdings LLC  
dba Gateway Terminal (firm name, hereafter "Contractor") an entity duly formed and existing under  
the laws of Delaware, being duly sworn, hereby depose that:

- i. I am over the age of eighteen and understand and appreciate the obligations of an oath
- ii. Contractor seeks to enter into the "SERVICE AGREEMENT" (the "Agreement") with the Connecticut Port Authority; and
- iii. Contractor hereby certifies as follows:

### Section 1: APPLICABILITY

Check applicable box (must be completed regardless of where the Contractor's principal place of business is located):

- Contractor's principal place of business is within the United States or Contractor is a United States subsidiary of a foreign corporation. Contractors who check this box are not required to complete the Section 2: Certification portion of this form, but are still required to complete Section 3 of this form.
- Contractor's principal place of business is outside the United States and it is not a United States subsidiary of a foreign corporation. Contractors who check this box are required to complete all sections of this form.

Please complete this form as specified in this Section 1 and submit it with the RFB, RFP or RFQ response or contract package if there was no RFB, FRP, or RFQ process.

#### Additional definitions.

- 1) "Large state contract" has the same meaning as defined in section 4-250 of the Connecticut General Statutes;
- 2) "Contractor" means the person whose name is set forth at the beginning of this form; and
- 3) "State agency" and "quasi-public agency" have the same meanings as provided in section 1-79 of the Connecticut General Statutes.

**Section 2: CERTIFICATION**

Pursuant to P.A. No. 13-162, upon submission of a bid, or prior to executing a large state contract if no bid process was conducted, the certification portion of this form must be completed by any corporation, general partnership, limited partnership, limited liability partnership, joint venture, nonprofit organization or other business organization whose principal place of business is located outside of the United States. United States subsidiaries of foreign corporations are exempt. For purposes of this form, a "foreign corporation" is one that is organized and incorporated outside the United States of America.

**CERTIFICATION:**

I, the undersigned, am the official authorized to execute contracts on behalf of the Contractor. I certify that:

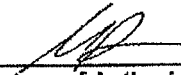
- Contractor has made no direct investments of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010.
- Contractor has either made direct investments of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, or Contractor made such an investment prior to October 1, 2013 and has now increased or renewed such an investment on or after said date, or both.

**Section 3: AFFIRMATION**

Note: This Section 3 must be completed even if Section 2 of this form was not required based on the responses in Section 1 of this form.

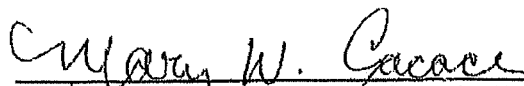
Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

|   |  |
|---|--|
| Enstructure New Haven Holdings LLC dba Gateway Terminal | Matthew Satnick                            |
| <b>Printed Contractor Name</b>                          | <b>Printed Name of Authorized Official</b> |

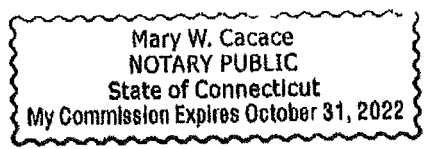


\_\_\_\_\_  
**Signature of Authorized Official**

Subscribed and acknowledged before me this 24 day of August, 2018.



\_\_\_\_\_  
**Commissioner of the Superior Court (or Notary Public)**





STATE OF CONNECTICUT

Written or electronic PDF copy of the written certification to accompany a large state contract pursuant to P.A. No. 13-162 (Prohibiting State Contracts With Entities Making Certain Investments In Iran)

Respondent Name: Enstructure New Haven Holdings LLC dba Gateway Terminal

INSTRUCTIONS:

CHECK ONE: [X] Initial Certification. [ ] Amendment or renewal.

A. Who must complete and submit this form. Effective October 1, 2013, this form must be submitted for any large state contract, as defined in section 4-250 of the Connecticut General Statutes. This form must always be submitted with the bid or proposal, or if there was no bid process, with the resulting contract, regardless of where the principal place of business is located.

Pursuant to P.A. No. 13-162, upon submission of a bid or prior to executing a large state contract, the certification portion of this form must be completed by any corporation, general partnership, limited partnership, limited liability partnership, joint venture, nonprofit organization or other business organization whose principal place of business is located outside of the United States. United States subsidiaries of foreign corporations are exempt. For purposes of this form, a "foreign corporation" is one that is organized and incorporated outside the United States of America.

Check applicable box:

[X] Respondent's principal place of business is within the United States or Respondent is a United States subsidiary of a foreign corporation. Respondents who check this box are not required to complete the certification portion of this form, but must submit this form with its Invitation to Bid ("ITB"), Request for Proposal ("RFP") or contract package if there was no bid process.

[ ] Respondent's principal place of business is outside the United States and it is not a United States subsidiary of a foreign corporation. CERTIFICATION required. Please complete the certification portion of this form and submit it with the ITB or RFP response or contract package if there was no bid process.

B. Additional definitions.

- 1) "Large state contract" has the same meaning as defined in section 4-250 of the Connecticut General Statutes;
2) "Respondent" means the person whose name is set forth at the beginning of this form; and
3) "State agency" and "quasi-public agency" have the same meanings as provided in section 1-79 of the Connecticut General Statutes.

C. Certification requirements.

No state agency or quasi-public agency shall enter into any large state contract, or amend or renew any such contract with any Respondent whose principal place of business is located outside the United States and is not a United States subsidiary of a foreign corporation unless the Respondent has submitted this certification.

Complete all sections of this certification and sign and date it, under oath, in the presence of a Commissioner of the Superior Court, a Notary Public or a person authorized to take an oath in another state.

CERTIFICATION:

I, the undersigned, am the official authorized to execute contracts on behalf of the Respondent. I certify that:

[X] Respondent has made no direct investments of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010.

[ ] Respondent has either made direct investments of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, or Respondent made such an investment prior to October 1, 2013 and has now increased or renewed such an investment on or after said date, or both.

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

Enstructure New Haven Holdings LLC dba Gateway Terminal

Matthew Satnick Printed Name of Authorized Official

Signature of Authorized Official

Subscribed and acknowledged before me this 24 day of AUGUST, 2018.

Mary W. Caface Commissioner of the Superior Court (or Notary Public)

Mary W. Caface NOTARY PUBLIC State of Connecticut My Commission Expires October 31, 2022

**EXHIBIT I**  
**AFFIRMATION OF RECEIPT OF STATE ETHICS LAWS SUMMARY**

(See OPM Ethics Form 6 attached)





STATE OF CONNECTICUT
AFFIRMATION OF RECEIPT OF STATE ETHICS LAWS SUMMARY

Written or electronic affirmation to accompany a large State construction or procurement contract, having a cost of more than \$500,000, pursuant to Connecticut General Statutes §§ 1-101mm and 1-101qq

INSTRUCTIONS:

Complete all sections of the form. Submit completed form to the awarding State agency or contractor, as directed below.

CHECK ONE:

- I am a person seeking a large State construction or procurement contract. I am submitting this affirmation to the awarding State agency with my bid or proposal. [Check this box if the contract will be awarded through a competitive process.]
I am a contractor who has been awarded a large State construction or procurement contract. I am submitting this affirmation to the awarding State agency at the time of contract execution. [Check this box if the contract was a sole source award.]
I am a subcontractor or consultant of a contractor who has been awarded a large State construction or procurement contract. I am submitting this affirmation to the contractor.
I am a contractor who has already filed an affirmation, but I am updating such affirmation either (i) no later than thirty (30) days after the effective date of any such change or (ii) upon the submittal of any new bid or proposal, whichever is earlier.

IMPORTANT NOTE:

Within fifteen (15) days after the request of such agency, institution or quasi-public agency for such affirmation contractors shall submit the affirmations of their subcontractors and consultants to the awarding State agency. Failure to submit such affirmations in a timely manner shall be cause for termination of the large State construction or procurement contract.

AFFIRMATION:

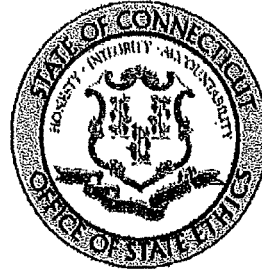
I, the undersigned person, contractor, subcontractor, consultant, or the duly authorized representative thereof, affirm (1) receipt of the summary of State ethics laws\* developed by the Office of State Ethics pursuant to Connecticut General Statutes § 1-81b and (2) that key employees of such person, contractor, subcontractor, or consultant have read and understand the summary and agree to comply with its provisions.

\* The summary of State ethics laws is available on the State of Connecticut's Office of State Ethics website.

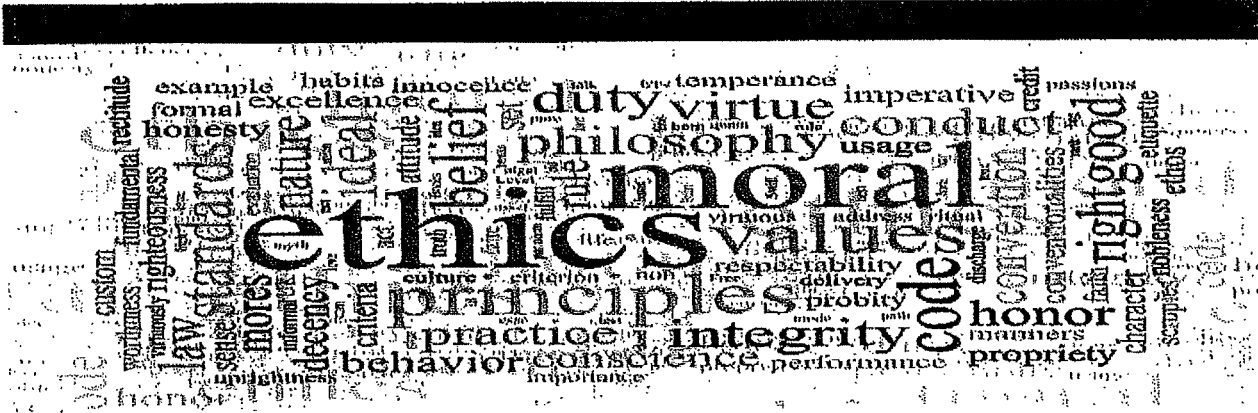
Signature: [Handwritten Signature] Date: 8/24/18
Matthew Satnick Authorized Representative
Printed Name Title

Enstructure New Haven Holdings LLC dba Gateway Terminal
Firm or Corporation (if applicable)
16 Laurel Ave, Suite 300 Wellesley Hills MA 02481
Street Address City State Zip

CPA
Awarding State Agency



# State Contractors Guide to the Code of Ethics



**Office of State Ethics**  
Carol Carson, Executive Director

*MS*

## State Contractors Guide to the Code of Ethics

### Contact Us



**Agency Address:** Connecticut Office of State Ethics  
18-20 Trinity Street  
Suite 205  
Hartford, CT 06106

**Telephone:** 860-263-2400

**Facsimile:** 860-263-2402

**Website:** [www.ct.gov/ethics](http://www.ct.gov/ethics)

**Business Hours:** 8:00 am to 5:00 pm

**Visitors must enter the building through the door next to the Bushnell Memorial Theater.**

**Specific E-mail Contacts:** For the timeliest responses, please be sure to direct your questions to the appropriate e-mail address; for example, with a question such as, "Can I accept this outside position with a vendor?" please be sure to send your query to [ethics.code@ct.gov](mailto:ethics.code@ct.gov)

- |  |  |
|--|--|
| ➤ Legal Advice Regarding Code of Ethics      | <a href="mailto:ethics.code@ct.gov">ethics.code@ct.gov</a>               |
| ➤ Lobbyist Filing/Reporting Questions        | <a href="mailto:lobbyist.ose@ct.gov">lobbyist.ose@ct.gov</a>             |
| ➤ Public Official Filing/Reporting Questions | <a href="mailto:sfi.ose@ct.gov">sfi.ose@ct.gov</a>                       |
| ➤ Enforcement/Filing a Complaint             | <a href="mailto:ethics.enforcement@ct.gov">ethics.enforcement@ct.gov</a> |
| ➤ All Other Inquiries                        | <a href="mailto:ose@ct.gov">ose@ct.gov</a>                               |

Staff Phone Number Listing

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## State Contractors Guide to the Code of Ethics

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## State Contractors Guide to the Code of Ethics

### OFFICE OF STATE ETHICS

Created on July 1, 2005, under Public Act 05-183, the Office of State Ethics ("OSE") is an independent regulatory division of the Office of Governmental Accountability charged with administering and enforcing the Connecticut Codes of Ethics ("Ethics Codes"), which are found in Chapter 10 of the Connecticut General Statutes.

The OSE's duties include educating all those covered by the Ethics Codes; interpreting and applying the Ethics Codes; investigating violations of, and otherwise enforcing, the Ethics Codes; and providing information to the public.

The OSE's jurisdiction:

- Part I** Code of Ethics for Public Officials  
General Statutes §§ 1-79 to 1-90a
- Part II** Code of Ethics for Lobbyists  
General Statutes §§ 1-91 to 1-101a
- Part III** Lobbying: Miscellaneous Provisions  
General Statutes §§ 1-101aa and 1-101bb
- Part IV** Ethical Considerations Concerning Bidding and State Contracts  
General Statutes §§ 1-101mm to 1-101rr

The OSE Executive Director has overall responsibility for the welfare and effectiveness of the OSE, which has three divisions, the legal division, the enforcement division, and the administrative division.

The OSE's governing body is the Citizen's Ethics Advisory Board ("CEAB"), which has nine members appointed by the Governor and legislative leadership. The CEAB holds monthly meetings that are open to the public. A schedule of CEAB meeting dates, times, and locations is available at [www.ct.gov/ethics](http://www.ct.gov/ethics).

CEAB Members:

- Attend monthly CEAB meetings
- Appoint and evaluate the Executive Director of the OSE
- Issue advisory opinions to persons subject to the Ethics Codes
- Serve as a Hearing Officer for non-confidential hearings held under the Uniform Administrative Procedures Act, General Statutes § 4-166 et. seq.
- Attend hearings to determine if violations occurred and, if so, assess penalties
- Attend special meetings if necessary
- Oversee legislative agenda

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## State Contractors Guide to the Code of Ethics

### THE BIG PICTURE

Like state employees and officials, state contractors are subject to the Ethics Codes, but in a more limited manner. That is, they are not, as Advisory Opinion No. 99-26 puts it, "subject to the far more restrictive provisions . . . that apply to state employees and public officials," but they are subject to certain "narrow constraints."

As you read through this guide, be aware that these restraints, and those that apply to state employees and officials, were enacted to prevent persons from using their public position or authority for their own financial benefit, or for the financial benefit of certain others (for example, family members).

Also be aware that each state agency has its own ethics policy, which may be more restrictive than what follows, particularly concerning the types of benefits a state employee or official may accept from state contractors (and others).

### CONFLICTS

The Ethics Codes contain two primary conflict statutes that apply specifically to state contractors: General Statutes §§ 1-86e and 1-101nn.

#### GENERAL STATUTES § 1-86e

Section 1-86e applies to any "person hired by the state as a consultant or independent contractor." Such persons may not do as follows:

- (1) Use the authority, or confidential information, provided under the contract to financially benefit the person, an employee, or an immediate family member;
- (2) Accept another state contract that would impair the person's independence of judgment in performing the existing contract; or
- (3) Accept a bribe (that is, accept anything of value based on an understanding that the person's actions on the state's behalf would be influenced).

#### Key points from Advisory Opinion No. 99-26 concerning § 1-86e:

- Section 1-86e is not intended to interfere with a contractor's business, but to prevent a private entity from using state money to, for example, hire immediate family members without appropriate state oversight.
- A conflict of interest exists only if there is a connection between the facts in question and the state money and authority granted to the independent contractor or consultant by contract.

## State Contractors Guide to the Code of Ethics

- The term "independent contractor" does not apply just to individuals, but also to private agencies that contract with the state.
- If a state contractor wants to hire a family member to work under a state contract, the following procedure must be followed:
  1. The contractor must notify the contracting state agency in writing and demonstrate why the individual is appropriate for the job.
  2. The state agency must determine if the person is qualified for the job and whether the compensation is market rate; and if necessary, it may require the contractor to document a job search.

**NOTE:** In an enforcement action, a former state contractor was alleged to have violated § 1-86e (a) (1) by using confidential information gained under its contract with a state agency in its subsequent representation of clients before that agency. The contractor entered into a Consent Order with the OSE, agreeing to pay a \$10,000 penalty.

### GENERAL STATUTES § 1-101nn

**Subsection (a)** of § 1-101nn applies to persons who are, or are seeking to be:

- (1) Prequalified under General Statutes § 4a-100;
- (2) A party to a large state construction or procurement contract, as defined in General Statutes § 1-101mm (3), with a state or quasi-public agency; or
- (3) A party to a consultant services contract with a state or quasi-public agency.

Such persons may not do as follows:

- (A) Solicit information from state officials or employees that is not available to other bidders;
- (B) Defraud the state (that is, charge a state or quasi-public agency for work not performed or goods not provided);
- (C) Attempt to circumvent state competitive bidding and ethics laws; or
- (D) Provide information about the person's donation of goods and services to state or quasi-public agencies in order to influence the award of a state contract.

**Subsection (b)** of § 1-101nn applies to a more limited group: Any consultant that is hired by the state to help plan a state contract, and any "associated" businesses, as defined in General Statutes § 1-101mm (1).

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## State Contractors Guide to the Code of Ethics

Under § 1-101nn (b) neither the consultant nor any "associated" businesses may serve in the following roles with respect to the contract the consultant helped to plan:

- Consultant to any person seeking to obtain the contract,
- Contractor for the contract, or
- Consultant or subcontractor to the person awarded the contract.

**NOTE:** *If you are unsure whether § 1-101nn applies to you, please contact the OSE, because any person found to have violated this section may be deemed a "nonresponsible bidder" by a state or quasi-public agency. General Statutes § 1-101nn (c).*

### ONE MORE CONFLICT RULE (of limited applicability)

General Statutes § 1-84 (n) bars the State Treasurer from doing business with an investment services firm whose political committee or principals have contributed to, or solicited contributions for, her exploratory or candidate campaign committee.

The prohibition applies during the term of office for which the candidate is campaigning, as well as for the remainder of an incumbent treasurer's term.

The prohibition applies only to contributions to the incumbent or victorious candidate for the office. Advisory Opinion No. 2003-1.

### ARE YOU REQUIRED TO REGISTER AS A LOBBYIST?

With certain exceptions, efforts to obtain a state contract can be considered administrative lobbying, requiring registration as a client lobbyist.

#### Some Key Terms

**Client lobbyist:** Generally, an individual or entity that, on its own behalf, expends or agrees to expend \$3,000 or more in a calendar year for *administrative* and/or legislative lobbying and activities in furtherance of lobbying. General Statutes § 1-91 (12).

**Lobbying:** Generally, communicating directly, or soliciting others to communicate, with any public official or his or her staff in the legislative or executive branch, or in a quasi-public agency, in an effort to influence legislative or *administrative action*. General Statutes § 1-91 (11).

**Administrative action:** Any matter within a state or quasi-public agency's jurisdiction—such as any action or nonaction concerning a contract. General Statutes § 1-91 (1).



## State Contractors Guide to the Code of Ethics

### Exceptions to Administrative Lobbying

The following activities are not considered administrative lobbying:

- Preparation of responses to an agency's request for proposals ("RFP"). OSE Regs. § 1-92-42a (e) (1).
- Communications strictly for informational purposes (e.g., to determine what agency contract proposals will be forthcoming). OSE Regs. § 1-92-42a (e) (3).
- Communications by a vendor's representative who acts as a *salesperson* and does not otherwise engage in administrative lobbying. General Statutes § 1-91 (11) (B).
  - "Salespersons": Generally, individuals who have a set territory they routinely cover, and who are not part of a company's executive management. See Advisory Opinion No. 95-11.

Thus, if your contact with state or quasi-public agencies is limited to responding to RFPs, or otherwise pursuing a contract through the **normal agency process**, then you are not required to register as a "client lobbyist."

But you are "lobbying" if you go **outside the agency process** in trying to obtain a state contract. For example:

- Entertaining state employees and officials.
- Communicating with officials outside the agency (such as the Governor or legislators).
- Communicating with officials within the agency but outside the normal process (such as the agency head).

If \$3,000 or more is spent on such lobbying activities, "lobbyist" registration is required. See General Statutes § 1-94.

#### **Hypothetical from** Advisory Opinion No. 2003-6:

In responding to a state agency's RFP, a business entity spends \$3,500 in printing and personnel costs in taking a number of steps within the agency's normal contracting process. But in an effort to secure the contract, the entity contacts the Governor, thus taking action outside the normal agency process and, in doing so, expends an additional \$500 in personnel costs. Must it register as a lobbyist?

No. The \$3,500 spent in following the normal process to respond to the RFP is exempted from consideration as a lobbying expense. Therefore this entity would not have to register as a client lobbyist, because it has spent only \$500 towards its lobbying effort.

**NOTE:** *If you are unsure whether you must register as a "lobbyist," please contact the OSE and/or review the "Client Lobbyist Guide to the Code of Ethics."*

## State Contractors Guide to the Code of Ethics

### GIFTS

#### GIVING GIFTS

General Statutes § 1-84 (m) contains the "gift"-giving bans for state contractors and potential state contractors:

- An individual or entity **doing or seeking to do business** with a state agency may not give a "gift" to any of that agency's employees or officials.
  - This is an *agency-specific ban*, meaning: If an entity is doing or seeking to do business with State Agency X—but not with any other state agency—then it is prohibited from giving "gifts" only to employees and officials of State Agency X.
- A person **prequalified under § 4a-100** may not knowingly give a "gift" to any state employee or official.
  - This ban is *not agency specific*, meaning it applies to all state employees and officials, even if the person is not doing or seeking to do business with an employee's or official's agency. (Registered lobbyists are subject to a similar ban. See General Statutes § 1-97 (a).)

#### What is a "gift"?

General Statutes § 1-79 (5) defines "gift" in three parts:

1. "anything of value" (for example, money, tickets to a sporting event, meals, services, etc.),
2. "which is directly and personally received" (that is, the state employee or official accepts the opportunity to partake of it),
3. "unless consideration of equal or greater value is given in return" (that is, unless the state employee or official pays fair market value for it).

#### Gift exceptions

There are many benefits that are not deemed "gifts," some of which may be used by state contractors, including these:

- **Token Items:** Items valued less than \$10 (such as a pen or mug), provided the annual aggregate of such items from a single source is \$50 or less. General Statutes § 1-79 (5) (P).

## State Contractors Guide to the Code of Ethics

- **Food/Beverage:** Up to \$50 in food/beverage annually, provided the donor or a representative is in attendance when it is being consumed. General Statutes § 1-79 (5) (L).
- **Training:** Training provided by a vendor for a product purchased by a state entity, provided it is offered to all of the vendor's customers. General Statutes § 1-79 (5) (O).
- **Ceremonial awards:** A certificate, plaque or other ceremonial award valued at less than \$100. General Statutes § 1-79 (5) (F).
- **Gifts to the State:** Goods or services given to a state entity. The gift must facilitate state action, and must (1) be for use on state property (e.g., a computer), (2) support a state event (e.g., funds to support an agency event), or (3) support the participation by a state employee or official at an event (e.g., funds for an agency employee to attend an educational conference relevant to his state duties). General Statutes § 1-79 (5) (e).

**NOTE:** There is a "gift" exception in § 1-79 (5) (L) for "major life events" (a term defined by regulation), but state contractors and potential state contractors may not use it.

### Gift Reporting

If a person doing or seeking to do business with a state agency gives an agency employee or official any of the benefits found in the "gift" exceptions, the person may have a reporting obligation. See General Statutes § 1-84 (o).

Generally, if the benefit is valued over \$10, the person (or a representative) must do as follows: Give *both* the recipient *and* the executive head of the recipient's department or agency a written report stating:

- The donor's name,
- A description of the item or items given,
- The value of such items, and
- The cumulative value of all items given to such recipient in the calendar year.

**NOTE:** This helps both the donor and the state employee or official keep track of the "gift" exceptions noted above, so that permissible limits are not exceeded.

## State Contractors Guide to the Code of Ethics

### ACCEPTING GIFTS

In Advisory Opinion No. 99-17, the conflict language in § 1-86e (a) (1) (see above) was interpreted as creating the following rule:

- If, as a state contractor or an employee thereof, you are offered benefits from a person by virtue of your authority under the state contract (for example, clients of the contracting state agency), you may accept **no more** than \$100 annually from that person.

**NOTE:** In an enforcement action, a former employee of a state contractor was found to have violated § 1-86e (a) (1)—and ordered to pay a \$10,000 penalty—for using his authority over a subcontractor to solicit free or discounted gifts, services and other items of value (e.g., meals and tickets to sporting events and concerts).

### NECESSARY EXPENSES

General Statutes § 1-84 (k)—the “necessary expenses” provision—prohibits a state employee or official from accepting a fee or honorarium for participating at an event *in his or her official capacity*.

However, a state employee or official may receive payment or reimbursement for “necessary expenses” if—in his or her official capacity—the employee or official *actively participates* in the event (for example, gives a speech or runs a workshop).

“Necessary expenses” are not considered gifts and may include the cost of:

- Travel (coach),
- Lodging (standard room for the nights before, of, and immediately following the event),
- Meals (non-lavish), and
- Conference or seminar registration fees.

“Necessary expenses” do not include the cost of entertainment (tickets to sporting events, golf outings, etc.), or payment of expenses for family members or other guests.

A state contractor has *no reporting obligations* when it pays for, or reimburses, a state employee’s or official’s “necessary expenses.”

#### Example:

A state contractor is hosting an out-of-state conference and would like the Governor to come and give a speech in his official capacity. The contractor has offered to pay the Governor’s

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## State Contractors Guide to the Code of Ethics

travel and lodging expenses, to waive his conference registration fee, and to give him a \$500 honorarium. Permissible?

The Governor may not accept the \$500 honorarium (because he is participating in his official capacity), but may accept payment or reimbursement for "necessary expenses," which include coach-class travel, standard lodging for the nights before, of, and after the speech, and waiver of the conference registration fee.

### HIRING CURRENT OR FORMER STATE EMPLOYEES AND OFFICIALS

#### Former State Employees and Officials

A state contractor wanting to hire a *former* state employee or official should be aware of the Code's post-state employment prohibitions. See General Statutes §§ 1-84a and 1-84b.

Most of these prohibitions are "personal" to the former state employees and officials, meaning they do not apply to their post-state *employers*. These include:

- Confidential information: A former state employee or official may *never* "disclose or use confidential information" gained in state service for anyone's financial gain. General Statutes § 1-84a.
- Side switching: A former state employee or official may *never* "represent anyone other than the state, concerning any particular matter (1) in which he participated personally and substantially while in state service, and (2) in which the state has a substantial interest." General Statutes § 1-84b (a).
- Cooling off: For *one year* after leaving state service, a former state employee or official may not "represent" anyone for compensation before their former state agency. ("Represent" means doing any activity that reveals the former state employee's or official's identity.) General Statutes § 1-84b (b).

**NOTE:** *Certain former employees and officials of the Department of Consumer Protection and the Department of Emergency Services and Public Protection are subject to a two-year employment ban with respect to entities engaged in Indian gaming operations. General Statutes § 1-84b (d) and (e).*

#### Prohibitions on Employer

There are two post-state employment provisions that apply not only to former state employees and officials—but also to those that hire them:

- For *one year* after leaving state service, a former state employee or official may not accept employment with a party to a state contract valued at \$50,000 or more, if:

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- (1) He or she participated substantially in, or supervised, the negotiation or award of that contract, and
- (2) It was signed within his or her last year of state service.

Further, "[n]o party to such a contract or agreement . . . shall employ any such former public official or state employee in violation of this subsection." General Statutes § 1-84b (f).

- Individuals who held designated positions at certain state regulatory agencies may not—for **one year** after leaving state service—"accept employment with a business subject to regulation by that agency." Further, "[n]o business shall employ a . . . former public official or state employee in violation of this subsection." General Statutes § 1-84b (c).

### Current State Employees and Officials

State contractors wanting to hire a *current* state employee or official should be aware of the Code's outside-employment rules, which bar the employee or official from:

- Accepting outside employment with an individual or entity that can benefit from the state servant's official actions (e.g., the individual in his or her state capacity has specific regulatory, contractual, or supervisory authority over the private person). OSE Regs. § 1-81-17.
- Using state time, materials, or personnel to perform their outside work. General Statutes § 1-84 (c).
- Accepting—or being a member or employee of an entity that agrees to accept—compensation for representing others before 11 statutorily designated state agencies. General Statutes § 1-84 (d). The agencies include:
  - the Department of Banking,
  - the Claims Commissioner,
  - the Office of Health Care Access division within the Department of Public Health,
  - the Insurance Department,
  - the Department of Consumer Protection,
  - the Department of Motor Vehicles,
  - the State Insurance and Risk Management Board,
  - the Department of Energy and Environmental Protection,
  - the Public Utilities Regulatory Authority,
  - the Connecticut Siting Council, and
  - the Connecticut Real Estate Commission.

\*\*\*The prohibition on being a "member or employee" applies to entities that are in the business of *representing others* for compensation before the listed agencies (law firms, accounting firms, etc.).

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### OTHER OUTSIDE EMPLOYMENT CONSIDERATIONS

There are two other outside employment prohibitions, but they apply only to a limited number of state employees and officials:

- Individuals holding designated positions at certain state regulatory agencies may not—while in state service—“negotiate for, seek or accept employment with any business subject to regulation by his agency.” Also, “[n]o business shall employ a present . . . public official or state employee in violation of this subsection.” General Statutes § 1-84b (c).
- Certain present employees and officials of the Department of Consumer Protection and the Department of Emergency Services and Public Protection may not “negotiate for, seek or accept employment with” entities engaged in Indian gaming operations. General Statutes § 1-84b (d) and (e).

### OTHER CONSIDERATIONS

#### WRITTEN AFFIRMATION CONCERNING STATE ETHICS LAWS SUMMARY

General Statutes § 1-101qq contains three requirements with respect to the OSE’s state ethics laws summary:

1. State agencies must provide large state construction or procurement contractors with the state ethics laws summary; and—before accepting their bids—must obtain written affirmation that their key employees read, understand, and agree to comply with those laws.
2. Large state construction or procurement contractors must, in turn:
  - a. provide their subcontractors and consultants with the state ethics laws summary,
  - b. obtain the same written affirmation as above from their subcontractors and consultants, and
  - c. provide the affirmations to the state agency with which they have the contract—or face termination of the contract.
3. The state ethics laws summary must be included by reference in each contract with a contractor, subcontractor or consultant.

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### ETHICS AFFIDAVITS & CERTIFICATIONS FOR STATE CONTRACTS

The Office of Policy and Management has created ethics forms to help executive branch agencies comply with the State's contracting requirements. The forms include, for example, "Affirmation of Receipt of State Ethics Laws Summary" and "Gift and Campaign Contribution Certification." Copies of these forms and other updated information regarding state contractors can be found on the websites of the Office of Policy and Management and the Department of Administrative Services.

**NOTE: The OSE does not have jurisdiction over the ethics affidavits and certifications. Questions concerning them should be directed to the Office of Policy and Management.**

### ETHICS ENFORCEMENT

Enforcement of the Ethics Codes is initiated by a complaint, which is filed by the OSE Ethics Enforcement Officer or a member of the public. In most cases, a complaint by the Ethics Enforcement Officer is preceded by a confidential staff evaluation.

A two-stage process follows:

1. Confidential investigation and confidential probable cause hearing.
2. If probable cause is found, a public hearing to determine if a violation has occurred.

At any stage of this process, the OSE and the Respondent may negotiate a settlement.

After a finding or admission of a violation, the CEAB may order the Respondent to comply with the Ethics Codes in the future, file any required report or statement, and/or pay a civil penalty.

For failure to file a report, statement, or other information required by the Ethics Codes, the CEAB may, after a hearing, impose a civil penalty of up to \$10 per day, with the aggregate penalty for any one violation being \$10,000.

The OSE may refer matters to the Chief State's Attorney for criminal prosecution. An intentional violation of the Ethics Codes is a misdemeanor for the first violation, unless the individual has derived a financial benefit of at least \$1,000. In that case, the violation is a class D felony.

The Attorney General may sue for up to three times the economic gain received through knowingly committing or knowingly profiting from a violation of the Code.

The "*Citizen's Guide to Filing a Complaint*," which is available on the OSE's website, gives a detailed overview of the complaint process and related confidentiality rules.

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