

SUBLEASE AGREEMENT

- by and between -

GATEWAY NEW LONDON LLC

- and -

NORTH EAST OFFSHORE, LLC

- and joined, for limited purposes by -

CONNECTICUT PORT AUTHORITY

- Dated as of –

May 19, 2023

## SUBLEASE AGREEMENT

**THIS SUBLEASE AGREEMENT** (the “**Sublease Agreement**” or the “**Sublease**”) is made as of the [19] day of May, 2023 (the “**Effective Date**”) by and, between GATEWAY NEW LONDON LLC (“**Gateway**”), a Delaware limited liability company, and NORTHEAST OFFSHORE LLC, a Delaware limited liability company (“**NEO**”) and joined, for the limited provisions expressly provided herein by CONNECTICUT PORT AUTHORITY (the “**Authority**”), a quasi-public body corporate and politic and a political subdivision of the State of Connecticut (the “**State**”) (each a “**Party**” and, collectively, the “**Parties**”).

### RECITALS

(A) The Authority was created pursuant to Sections 15-31a through 15-31i of Chapter 264a of the General Statutes of Connecticut to coordinate the development of Connecticut's ports and harbors, utilizing private and public investments in partnership with the Department of Economic and Community Development and other state, local and private entities and has statutory authorization to invest in, acquire, lease, purchase, own, manage, hold and dispose of real property and lease, convey or deal in or enter into agreements with respect to such property on terms necessary or incidental to carrying out its legislative purpose;

(B) The Site and the Port Facilities, each as defined herein, are State of Connecticut assets with property characteristics suitable for a wide variety of marine activities, including staging for off-shore wind development;

(C) NEO is an off-shore wind developer providing certain funding to support the redevelopment of the Site and the Port Facilities under the conditions set forth in that certain Harbor Development Agreement dated as of February 11, 2020 among the Authority, NEO, and Gateway (“**Harbor Development Agreement**” or “**HDA**”) (such modification of the Site and the Port Facilities being the “**Project**”), including the use of the Site and the Port Facilities as an offshore wind turbine generator (“**WTG**”) hub;

(D) Gateway, a deep-water marine terminal operator in the business of operating ports, is a party to that certain Concession Agreement with the Authority, dated as of January 7, 2019 (“**Concession Agreement**”) which confers certain rights to Gateway, including, pursuant to the provisions of Exhibit A attached hereto, the right to lease the contemplated Project to Persons subject to the terms of the Concession Agreement;

(E) NEO is an affiliate of “**BSW**” (as defined in the Concession Agreement), the Project is the “**BSW Development**”, and the Harbor Development Agreement and this Sublease, respectively, are the “*contemplated harbor development agreement and sublease*” expressly anticipated for the BSW Development in Annex A to the Concession Agreement;

(F) NEO and Gateway desire to enter into this Sublease Agreement to govern the operation of certain offshore WTG and non-WTG uses of the completed Project immediately following Substantial Completion of the Project as defined in the Harbor Development Agreement; and

(G) The Authority is joining in this Sublease Agreement for the purposes of expressly consenting hereto, and having the benefits of and being bound by Section 6.5, Section 8, Section 10, Section 12.3, Section 13, Section 14, Section 16.1, Section 19.3, Section 21 and Exhibit A attached hereto hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Sublease Agreement and for 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 Sublease 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 Sublease 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 Sublease 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 Sublease Agreement.

### **1.4 Sublease Agreement.**

The following documents shall form this Sublease Agreement:

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

### **1.5 Conflicts.**

The several documents forming the Sublease Agreement are intended to be complementary and to describe and provide for a complete agreement. Each of the documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all.

Unless otherwise provided in this Sublease Agreement, any ambiguities or discrepancies between this Sublease Agreement and any other Project Agreement shall be resolved according to the following priority:

- (a) any amendments to this Sublease Agreement, any of its Annexes, or Schedules;
- (b) this Sublease Agreement, including its Annexes, Schedules and Exhibit A;
- (c) the Harbor Development Agreement, including any amendments thereto; and
- (d) the Concession Agreement, including any amendments thereto.

## **SECTION 2 TERM**

### **2.1 Term.**

This Sublease Agreement shall be for a period of ten (10) years commencing on the Occupancy Date, as defined in Section 2.2, and expiring at 11:59 p.m. EST on the day immediately preceding the tenth anniversary of the Occupancy Date unless otherwise extended in accordance with Section 2.3 or terminated early as expressly provided herein (the “**Term**”).

### **2.2 Occupancy.**

NEO’s right to use the Project for Permitted Uses and obligation to pay Rent under this Sublease Agreement commences at 12:00 a.m. EST on the day immediately subsequent to the date of Substantial Completion under the Harbor Development Agreement (“**Occupancy Date**”).

### **2.3 Extensions.**

2.3.1 NEO shall have the right to extend this Sublease Agreement for an initial extension period of seven (7) years (“**Renewal Term**”), provided that the following conditions are met:

- (a) NEO shall notify Gateway and the Authority in writing, of its intent to extend no later than twelve (12) months prior to the end of initial Term; and
- (b) NEO shall submit to Gateway and the Authority, no later than nine (9) months prior to the end of the initial Term, documentation confirming the formula calculation (similar to CPI) of the change in Rent payable to the Authority with respect to such first extension period.

The Rent for the Renewal Term shall be adjusted by multiplying the Rent in effect at the end of the initial Term by a fraction, the numerator of which is the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Northeast Region (“CPI”) twelve (12) months prior to the end of the initial Term and the denominator of which is the CPI as of the Occupancy Date. No other changes to this Sublease Agreement, except for the Adjusted Rent (hereinafter defined), are contemplated during the Renewal Term.

2.3.2 NEO shall have the additional right, but not the obligation, to extend this Sublease Agreement beyond the Renewal Term (the “**Extended Renewal Term**”) for a time period to be agreed by NEO and the Authority provided that:

(a) NEO shall notify Gateway and the Authority, in writing, of its intent to request an extension no later than twelve (12) months prior to the end of the Renewal Term; and

(b) In the event that NEO and the Authority agree to such Extended Renewal Term, NEO shall submit to Gateway, no later than nine (9) months prior to the end of the Renewal Term, documentation demonstrating agreement between NEO and the Authority on Adjusted Rent to be in effect for any period beyond the Renewal Term, which Adjusted Rent, in Gateway’s reasonable judgment, does not materially and adversely affect Gateway’s revenues or liabilities provided, further, that if Gateway does not object in writing to such adjusted Rent within ten (10) business days of such submission by NEO to Gateway, then Gateway shall be deemed to have waived any such objection; and

(c) NEO, Gateway and Authority shall agree on the duration of the extension and any other terms and conditions of the Extended Renewal Term.

NEO, Gateway and Authority mutually covenant and agree to use diligent commercial efforts to agree upon each of the foregoing. Should no such Extended Renewal Term be agreed upon, the Term of this Sublease shall expire on the last day of the Renewal Term, unless otherwise previously terminated pursuant to this Sublease.

### **SECTION 3 LEASE OF PORT FACILITIES**

#### **3.1 Lease.**

3.1.1 Subject to the terms and conditions of this Sublease Agreement and as more particularly set forth in and subject in all events to Section 21 below, Gateway hereby subleases to NEO and NEO hereby subleases from Gateway the Site, for the Term. Gateway hereby covenants and agrees that NEO and its designated OEMs shall have, subject to the terms hereof, the right to occupy and utilize the Site for operations and activities associated or conducted in connection with the pre-assembly, assembly, construction, mobilization, deployment, and commissioning of one or more WTG projects, and any other wind industry related activities (collectively, the “**Permitted Uses**”) during the Term, Renewal Term, and Extended Renewal Term. NEO shall obtain and maintain all Regulatory Approvals and all other permits, authorizations, and approvals required to conduct the Permitted Uses, other than those required to be maintained by Gateway under the Concession Agreement. NEO shall not use the Site and Port Facilities for any uses other than the Permitted Uses.

#### **3.2 NEO Local Representative.**

3.2.1 NEO shall have the right to maintain onsite a NEO Local Representative (the “**NEO Local Representative**”) and associated staff and Gateway shall not unreasonably withhold or delay consent to a request of the NEO Local Representative to locate a trailer on the

Site. The NEO Local Representative will have the following rights/responsibilities at the Port Facilities:

(a) Coordinate vessel arrival and departure scheduling for the Permitted Uses, and other Port Facilities operations with Gateway, the Authority and applicable local, state, and federal entities; and

(b) Coordination of use of the Port Facilities for the Permitted Uses in accordance with this Sublease.

### **3.3 Shared Rights with Concessionaire.**

3.3.1 NEO and its designated OEMs have the right to use the Site and Port Facilities for the Permitted Uses during Active Periods, on an exclusive basis (except as set forth in Section 5.4.2.1 below), and using Gateway's services as set forth in Section 7.2.3 below, coextensive in area with, but distinct from, Gateway's rights and obligations under the Concession Agreement.

3.3.2 As more particularly set forth in Section 21, a termination of the Concession Agreement, for any reason, does not impair NEO's right to occupy the Site and use the Port Facilities as granted in this Sublease Agreement.

### **3.4 Existing Easements and Agreements.**

3.4.1 NEO shall maintain, at all times, reasonable access to the Site and the Port Facilities as well as access to all utilities on the Site for all Persons known by NEO to have such rights under all easements, agreements and licenses encumbering or affecting the Port Facilities. NEO agrees not to act in contravention of any such easements, agreements and licenses. Easements, agreements or licenses granted by Gateway or the Authority after the Occupancy Date shall not unreasonably interfere with NEO's Permitted Uses. Gateway agrees that NEO shall have no liability for incidents arising out of the use of the Port Facilities by any third party with the exception of any Subcontractors, Affiliates, agents, or invitees of NEO.

### **3.5 Compliance with Applicable Law.**

3.5.1 NEO shall comply with all Applicable Laws with respect to this Sublease and the Port Facilities or the use or occupancy thereof, as further described in Section 21.5 and Schedule 4.

3.5.2 NEO shall, if necessary, modify its use of the Port Facilities to restore the Port Facilities to compliance with Applicable Laws relating to the use or occupancy of the Port Facilities, whether said compliance is ordered or directed to or against the Authority, Gateway, its Subcontractors or NEO.

3.5.3 NEO shall at all times, and at NEO's sole expense, comply with the conditions and requirements of the United States Coast Guard.

### **3.6 Casualty.**

3.6.1 In the event (i) that the Port Facilities, any part thereof or access thereto, shall be damaged by fire or other insured casualty and (ii) NEO continues to have reasonably convenient and uninterrupted access to and use of the Port Facilities, then the Port Facilities shall not thereby be rendered unfit for use and occupancy by NEO, provided repairs to the Port Facilities can be completed within two (2) months (“**Repair Deadline**”) from the date on which the damage occurred. In the event that such repairs cannot be completed by such Repair Deadline then an equitable portion of the Rent payable by NEO shall be abated for the period after the Repair Deadline and until the completion of such repairs. If the repairs are not completed within one year of such damage, NEO may, at its election, terminate the obligations of NEO hereunder.

3.6.2 With respect to any such damage arising after the Occupancy Date, Gateway shall oversee and in compliance with the Concession Agreement cause its Subcontractor to oversee repairs associated with this Section 3.6 with reasonable diligence and applying to the same proceeds of NEO’s, Gateway’s or their respective Subcontractors’ insurance coverages.

### **3.7 Quiet Enjoyment.**

3.7.1 Provided that there are no NEO Events of Default existing and continuing, NEO shall have the right to peaceably and quietly enjoy the Port Facilities, in accordance with this Sublease Agreement and the Concession Agreement, free from any demands of any Person claiming any rights by, through or under the Authority or Gateway, except as otherwise provided herein.

### **3.8 Environmental Compliance.**

3.8.1 NEO shall (i) not use the Port Facilities or Site for any dangerous, noxious or offensive trade or business nor cause or maintain a nuisance (ii) not maintain or store any Hazardous Substances at the Port Facilities or Site, except to the extent necessary to carry out its business operations, (iii) at all times cause its operations at the Site and the Port Facilities to comply with all Environmental Laws, except that NEO shall not be responsible for environmental conditions existing on the Occupancy Date or caused by third parties not related to, operating on behalf or in connection with, or otherwise under the control or direction of NEO into compliance with Environmental Laws, and (iv) keep the Site and the Port Facilities free of any lien imposed pursuant to any Environmental Laws arising or as a result of the actions of or failure to act by NEO or any third parties related to, operating on behalf or in connection with, or otherwise under the control or direction of NEO.

### **3.9 Damage by NEO or OEM.**

NEO shall promptly repair any damage to the Port Facilities caused by NEO or an OEM, ordinary wear and tear excepted.

### **3.10 Removal by NEO.**

Before the end of each Active Period, and before the end of the Term (unless extended), the Renewal Term (unless extended) or the Extended Renewal Term, as applicable, NEO shall or

shall cause the OEM, at its sole cost and expense, to remove all equipment, supplies and other property (including any trash or debris) from the Site.

## **SECTION 4 SERVICE RATES AT PORT FACILITIES, DESIGNATION OF OEMS, AND EXPECTED USE REPORTS**

### **4.1 Role of OEM.**

The OEMs or their contractor / shipping agent will be the responsible party for requesting services at the Port Facilities during Active Periods and shall contract directly with Gateway for services under the Concession Agreement with the rates to be charged as set forth in **Annex B**.

4.1.1 NEO shall keep Gateway regularly updated from time to time of the identities of each OEM expected to utilize the Port Facilities.

### **4.2 NEO Expected Use Report.**

4.2.1 Not later than January 1, April 1, July 1 and October 1 during each year of this Sublease Agreement, NEO shall provide to Gateway and the Authority a written report (“**Expected Use Report**”) covering the following:

- (a) The start and expected end date of any then existing Active Period;
- (b) The start and end date of any then existing Idle Period, including whether such Idle Period is to be a Long-Term Idle Period;
- (c) For any then existing or pending Active Period, the arrival, departure, loading and unloading dates of any OEM related vessels expected during the next three (3) months of activity; and
- (d) Revisions to any start or end date of any Active Period or Idle period, since the date of the last report.

4.2.2 In the event that any start or end date of any Active Period or Idle period set forth in the revised Expected Use Report proves to be materially erroneous, Gateway shall be compensated in the manner set forth in Section 6.3.

## **SECTION 5 ACTIVE PERIODS**

### **5.1 Active Period Notification Requirements.**

5.1.1 All periods in which NEO or its OEMs are using the Port Facilities and the Site for Permitted Uses shall be deemed an “**Active Period**” hereunder. NEO shall have the right to resume an Active Period after any Idle Period or Long-Term Idle Period in accordance with the terms of this Sublease Agreement.



5.1.2 In the case of an Idle Period that has not been designated a Long-Term Idle Period, NEO will provide no less than twelve (12) months' notice to Gateway (“**Active Period Advance Notice**”) that it will resume an Active Period, unless such shorter period is consented to by Gateway (per **Annex A** paragraph (n)). The withholding of such consent by Gateway shall not be deemed unreasonable if such shorter notice will materially adversely impact the previously contracted non-WTG use of the Port Facilities by Gateway, and the conditioning of such consent by Gateway upon Gateway being made whole for any additional costs for relocating customers or stored cargo shall not be deemed unreasonable. The Active Period Advance Notice may be by, but is not limited to, notice via the Expected Use Report. The Active Period Advance Notice can be provided at any time after NEO has identified the Idle Period Start Date.

5.1.3 During the continuation of a Long-Term Idle Period, the Active Period Advance Notice shall not specify a commencement date of an Active Period less than twenty-four (24) months after the commencement of the applicable Long-Term Idle Period, without the consent of Gateway (per **Annex A** paragraph (n)). The withholding of such consent by Gateway shall not be deemed unreasonable if such shorter notice will materially adversely impact the previously contracted non-WTG use of the Port Facilities by Gateway, and the conditioning of such consent by Gateway upon Gateway being made whole for any additional costs for relocating customers or stored cargo shall not be deemed unreasonable.

## **5.2 Active Period Pre-Assembly Mobilization.**

5.2.1 For any Active Period, NEO shall provide Gateway with two (2) months' notice of any pre-assembly mobilization for an upcoming Active Period, and Gateway shall cause the Port Facilities to be made ready for occupation by the OEMs for such pre-assembly mobilization no less than three (3) months prior to start of such Active Period, and shall regularly update NEO and the OEMs on such activities. For example, for an Active Period to commence on January 1, 2027, an Active Period pre-assembly mobilization notice given by NEO as of August 1, 2026 shall trigger the obligation of Gateway to have the Port Facilities ready for pre-assembly mobilization as of October 1, 2026. NEO and the OEMs shall, subject to reasonable rules and regulations established by Gateway, be able to likewise utilize the Site for mobilization activities during such two (2) month notice period to the extent such use leaves sufficient storage and work space on the Site for Gateway's ongoing activities until the pre-assembly mobilization three (3) month period begins.

## **5.3 NEO and Concessionaire Obligations During Active Period.**

5.3.1 NEO covenants and agrees to use its diligent commercially reasonable efforts to maximize utilization of the Port Facilities for WTG activities during all Active Periods, including, without limitation;

- (a) Maximizing utilization of the Port Facilities and Gateway for WTG staging and load-out;
- (b) ensuring Gateway has close engagement with the OEMs; and
- (c) providing the Expected Use Report on a quarterly basis.

5.3.2 Gateway covenants and agrees to use its diligent commercially reasonable efforts to establish, maintain, and document a flexible and prudent cost structure throughout Active Periods and Idle Periods.

#### **5.4 Concessionaire Revenue/Expense Reporting; Reports; Shortfall During Active Operations.**

5.4.1 **Quarterly Reports.** Gateway shall provide to NEO and the Authority, promptly upon the preparation and issuance thereof, a complete copy of the quarterly income and expense reports provided to the Authority under Section 10.4 of the Concession Agreement (“**Gateway Quarterly Reports**”). A sample Gateway Quarterly Report is attached as **Annex C**, provided that this sample’s attachment shall not restrict Gateway’s right to change accounting systems and such report’s format and content from time to time. Gateway shall provide supporting backup documentation on the constituent elements of the Gateway Quarterly Report as may be reasonably requested from time to time by NEO.

5.4.2 **Stand-By Fee.** Not later than one (1) month prior to the beginning of each Active Period (subject to timely receipt by Gateway from NEO of reasonably requested information regarding the wind construction campaign schedule and other details), Gateway will reasonably project revenues and its direct costs for the immediately following two years and provide a copy thereof to NEO and the Authority (“**Initial Two Year Active Period Projection**”). To the extent that such Initial Two Year Active Period Projection projects Gateway generating less than either (a) \$5 million of Gateway Gross Revenue in the first year of such Active Period or (b) \$10 million of cumulative Gateway Gross Revenue in the first two years of such Active Period, or both, then NEO shall elect between the following options:

5.4.2.1 Allow Gateway to receive other, non-WTG cargo in addition to offshore wind equipment, while recognizing that NEO will have priority berthing and storage rights based on its vessel schedule, provided that NEO shall not be able to elect this option with respect to any period in which Gateway is not provided sufficient access to storage space at the Port Facilities to render handling of such non-WTG cargo commercially feasible; or

5.4.2.2 Retain exclusive use of the Port Facilities, but pay to or receive from Gateway (directly or via the OEMs) the GT Revenue Shortfall Fee. The “**GT Revenue Shortfall Fee**” with respect to any quarterly period shall mean the amount, positive or negative, by which Gateway’s actual prudently incurred direct costs as set forth in the applicable Gateway Quarterly Reports exceed (or are exceeded by) Gateway’s actual Gross Revenues for such period. Each such calculation of the GT Revenue Shortfall Fee shall include a cumulative calculation in arrears for all prior quarters in such two year period, with quarterly payments and credits set by the cumulative calculation. The GT Revenue Shortfall Fee shall be paid and credited quarterly in arrears during the Initial Two Year Active Period Projection, within thirty (30) days after receipt of the calculation.

5.4.3 **GT Revenue Shortfall Forecast After Initial Two Years.** Gateway will continue to reasonably project revenues and its direct costs for portions of each Active Period following the initial two (2) years, and shall timely provide NEO and the Authority with such

projections (“**Later Active Period Projection**”). In the event that a Later Active Period Projection reasonably projects Gateway generation of less than \$10 million of cumulative revenue in a consecutive two-year period, the Parties agree to:

5.4.3.1 Use commercially reasonable efforts to evaluate the cause or causes or the anticipated revenue shortfall, and to develop a plan to address those causes in a manner intended to avoid shortfalls going forward.

5.4.3.2 Such a plan may or may not require an amendment to the Sublease Agreement. If an amendment is needed, the Parties will work cooperatively to execute such on a timely basis in order to avoid delaying any later following Active Period;

If the Parties are not successful addressing the causes of a Gateway revenue shortfall prior to the commencement of the Active Period in question, the Parties will revert to same structure used in the first two (2) years of active operations under Section 5.4.2, but will continue to negotiate in good faith until a long-term solution is identified to their mutual reasonable satisfaction.

## **SECTION 6 IDLE PERIODS**

### **6.1 Idle Period Notification.**

6.1.1 During periods where NEO is not using the Port Facilities for Permitted Uses (each an “**Idle Period**”), NEO shall have the right and obligation to notify Gateway and the Authority in advance. No later than twelve (12) months prior to the expected end of any Active Period, NEO will notify Gateway and the Authority of the date that it expects to end current operations (“**Idle Period Advance Notice**”). The Idle Period Advance Notice may be by, but is not limited to, notice via the Expected Use Report.

6.1.2 NEO will update its Idle Period Advance Notice six (6) months and three (3) months prior to the expected end date of its current offshore wind operations.

6.1.3 When NEO provides Gateway and the Authority with Idle Period Advance Notice it will also provide Gateway and the Authority with a good faith estimate of the duration of the applicable Idle Period.

6.1.4 Each respective Idle Period shall begin (“**Idle Period Start Date**”) on the earlier of the date specified in the Idle Period Advance Notice or the actual date the Site is vacated by NEO and its OEM.

### **6.2 Long-Term Idle Period Notification.**

6.2.1 NEO shall have the right from time to time to designate by notice to Gateway and the Authority (“**Long-Term Idle Period Advance Notice**”) an Idle Period that it expects to persist longer than twenty-four (24) months (“**Long-Term Idle Period**”).

6.2.2 The Long-Term Idle Period Advance Notice may be by, but is not limited to, notice via the Expected Use Report. Notification of a Long-Term Idle Period may be made

independently from notification of an Idle Period. Without limiting the foregoing, notification of a Long-Term Idle Period may be made during an Active Period.

6.2.3 In each case, the Long-Term Idle Period will commence no earlier than twelve (12) months after the Long-Term Idle Period Advance Notice has been given (“**Long-Term Idle Period Start Date**”).

### **6.3 Short-Term Idle Period Fees.**

6.3.1 In the case of an Idle Period that has not been designated a Long-Term Idle Period (each a “**Short-Term Idle Period**”), NEO will pay Gateway the Gateway Short-Term Idle Period Fee.

6.3.2 The “**Gateway Short-Term Idle Period Fees**” will be equal to and calculated quarterly based on the Gateway Idle Period Direct Costs during the period commencing on the Idle Period Start Date for that Short-Term Idle Period and ending upon the earlier of (a) the resumption by NEO of an Active Period or (b) a Long-Term Idle Period Start Date. After the end of each three (3) month anniversary of the Idle Period Start Date of each Short-Term Idle Period, and after the last day of that Short-Term Idle Period, Gateway shall promptly calculate and deliver to NEO a cumulative calculation of the amount, positive or negative, by which the Gateway Idle Period Direct Costs exceed (or are exceeded by) the Gateway Idle Period Gross Revenues during that Short-Term Idle Period. A positive excess of Gateway Idle Period Direct Costs over the Gateway Idle Period Gross Revenues shall be the Gateway Short-Term Idle Period Fee owed by NEO for such quarter. A negative excess (i.e. when Gateway Idle Period Direct Costs are exceeded by the Gateway Idle Period Gross Revenues) shall be a credit owed by Gateway to NEO for such quarter. Each such quarterly calculation shall also include a cumulative calculation of fees and credits with respect to all prior quarterly portions of such Short-Term Idle Period. NEO shall make payment to Gateway of any net cumulative Gateway Short-Term Idle Period Fees within thirty (30) days after receipt of the calculation from Gateway, and Gateway shall make payment to NEO of any net cumulative Gateway Short-Term Idle Period Fees credits (but only up to an amount that does not exceed the cumulative Gateway Short-Term Idle Period Fees, if any, received during such Short-Term Idle Period) owed within thirty (30) days after the end of the applicable Short-Term Idle Period.

6.3.3 No Gateway Short-Term Idle Period Fee shall be due with respect to any Long-Term Idle Period.

6.3.4 Gateway will utilize best commercially reasonable efforts to minimize costs and maximize revenues during the Idle Period.

6.3.5 Except for the Gateway Short-Term Idle Period Fee, and Section 5.4.2.2, NEO will owe no other fees or payments to Gateway during any Idle Period.

### **6.4 Third Party Remarketing for Idle Periods.**

6.4.1 For each pending or continuing Idle Period, NEO will collaborate with Gateway and will use their best commercially reasonable efforts to remarket the Port Facilities to other customers during the Idle Period, with preference given to other offshore wind developers.

6.4.2 NEO and Gateway will collaborate to establish a sub-Sublease fee structure payable to NEO (“**NEO sub-Sublease Fees**”) from other Port Facilities users who desire to sublease or otherwise utilize all or a portion of the Port Facilities during an Idle Period, with the goal of providing the maximum available market rate NEO sub-Sublease Fees. Payment of NEO sub-Sublease Fees to NEO shall not relieve users of the Port Facilities from paying to Gateway the fees otherwise due to Gateway under the Concession Agreement. Any dispute between NEO and Gateway about the rate of such NEO sub-Sublease Fees shall be resolved under Section 17.

#### **6.5 Shared Revenue During Idle Periods.**

6.5.1 NEO is not relieved of its Rent obligation to the Authority during Idle Periods.

6.5.2 Any NEO sub-Sublease Fees paid by other customers during any Idle Period will be payable to NEO, not Gateway or the Authority.

6.5.3 NEO sub-Sublease Fees paid by other customers to NEO in excess of \$4,000,000 per annum will be shared with the Authority in proportion to the Authority/NEO Capital Cost Ratio, the payment of which Authority share shall be deemed Rent due hereunder. NEO shall provide supporting documentation for all such NEO sub-Sublease Fees in form and substance reasonably acceptable to the Authority.

6.5.4 Except for the NEO sub-Sublease Fees, all other fees payable by other customers during an Idle Period will be payable by these other customers to Gateway; NEO will not share in these revenues.

### **SECTION 7 GATEWAY OBLIGATIONS**

The obligations and responsibilities of Gateway are as follows:

#### **7.1 General Responsibilities.**

7.1.1 Gateway will discharge and fulfill all Concessionaire obligations under the Concession Agreement, as modified by Section 10 hereof, in addition to the specific responsibilities expressly applicable to Gateway under the Sublease.

#### **7.2 Operation, Repair, and Maintenance.**

7.2.1 Gateway shall perform, at Gateway’s sole cost and expense, any actions necessary to provide for the comprehensive administration, management, operation, maintenance, repair, and improvement of the Port Facilities and all other obligations assumed by Gateway under the Concession Agreement, all in accordance with the Port Operations Manual, the Port Standards, Good Industry Practice, all Applicable Laws, the terms of the Concession Agreement, (as modified by Section 10 hereof) and this Sublease Agreement.

7.2.2 NEO may, but shall not be required (except as may be otherwise expressly required by the Harbor Development Agreement) to make any improvement on or to the Site or

Port Facilities during the Term. Any NEO improvements to the Site or Port Facilities (other than the initial Authority improvements for WTG set forth on **Schedule 1**) requires both Gateway's and the Authority's consent (per **Annex A** paragraph (n)).

7.2.3 Gateway shall provide the specific services ("NEO Services") for NEO and the OEMs as set forth on Annex B.

7.2.4 Any fees charged to or collected from NEO or the OEMs by Gateway for the NEO Services shall be as set forth in Annex B, notwithstanding the Concession Agreement.

7.2.5 NEO's and the OEMs' respective Subcontractors, Affiliates, agents, or invitees shall have the right to access the Site and Port Facilities during the Term, after timely reasonable prior notice using reasonable efforts to minimize interference with any operations then being conducted on or about the Site. To the extent that any such Persons exercise access rights pursuant to this Section, they shall strictly abide by any safety and operational requirements of the Site at the instruction of Gateway's employees working at the Site and the Terminal Operation Rules and Regulations issued by Gateway from time to time.

### **7.3 Utilities.**

7.3.1 Except as otherwise set forth on Annex B, Gateway shall pay or shall cause to be paid all costs and expenses for the following utilities used or consumed at the Site: water, sewer, electric, oil, and gas.

7.3.2 Gateway does not warrant that any of the utilities will be free from interruptions caused by any Force Majeure event or any other event beyond the control of Gateway.

7.3.3 Gateway shall, at its own expense, maintain, service, and repair all utility lines and appurtenant improvements including, but not limited to, water mains and hydrants, and sewer and gas lines existing on the Site as of the Occupancy Date, provided such maintenance, service and repair are not the result of the fault or negligence of NEO or its Subcontractors, Affiliates, agents, or invitees.

### **7.4 Signage.**

7.4.1 To the extent permitted by Applicable Law, Gateway (a) shall provide signs on State Pier Road indicating the approach to the Port Facilities, together with signs designed to direct traffic within the area and (b) reserves the right to erect, remove or change directional or informational signs on State Pier Road and other highways as it deems necessary and desirable for the convenience of the traveling public.

7.4.2 NEO shall be permitted to erect, at its sole cost and expense, reasonable and customary signs on or adjacent to the Port Facilities identifying NEO. The signs, if so erected, must state the corporate name of NEO and conform to Applicable Law.

## **7.5 Gateway Capital Improvements.**

7.5.1 Pursuant to, and as defined in, Sections 9.4 and 9.5 of the Concession Agreement, as modified by Section 10 hereof, Gateway shall perform the Capital Improvements required thereby, provided that no such Capital Improvement by Gateway may materially and adversely interfere with NEO's Permitted Uses hereunder.

## **7.6 Notice of Inspections.**

7.6.1 Gateway shall give NEO timely notice of any general inspection or any other inspection of Port Facilities necessary to comply with Applicable Laws or otherwise effectuate the terms of the Concession Agreement, except where prohibited by a governmental authority or when circumstances do not permit.

7.6.2 NEO and the Authority and their respective representatives shall be entitled to attend any inspection of the Port Facilities upon giving reasonable notice to Gateway (whether or not it is entitled to receive or has received notice thereof in accordance with Section 7.6.1 above), except where prohibited by a governmental authority or when circumstances do not permit.

## **SECTION 8 RENT PAYMENTS AND INTEREST**

NEO will remit all monies owing and due under this Section 8 to the Authority and not to Gateway.

### **8.1 Rent.**

8.1.1 Beginning on the Occupancy Date, and as more particularly set forth in Section 8.1.1(c) of the Harbor Development Agreement, for every year thereafter during the Term, NEO shall make payments directly to the Authority for the use, subject to the Concession Agreement, of the Site and the Port Facilities ("**Rent**"). Payments of the Rent include all applicable taxes thereon, however, the Rent payable hereunder does not include any amount due and payable or owing for real or personal property taxes and NEO shall be solely responsible for the payment of all such real or personal property taxes. Upon not less than ten (10) days prior notice to the Authority, NEO shall have the right to appeal the amount of such real and personal property taxes and the Authority shall not object to such appeal. Subject to adjustment as set forth in Sections 5.2.4, 5.2.5, 8.1.1, 8.4.4, 14.1 and 14.2 of the Harbor Development Agreement, the Rent shall be Two Million US Dollars (\$2,000,000) per annum, and shall be made in four (4) installments of five hundred thousand US Dollars (\$500,000). The initial installment of Rent shall be first paid on or before the Occupancy Date. All subsequent Rent shall be made in advance, on or before the first day of every third month following the Occupancy Date. All Rent and Adjusted Rent payments shall initially be payable and deliverable as follows (the Authority reserving, however, the right to modify Rent payment instructions): to [insert Authority wiring instructions].

8.1.2 For duration of the Renewal Term, or anytime thereafter during which this Sublease Agreement is in effect (each an "**Extended Term**"), NEO shall pay an aggregate fixed payment of the Rent as adjusted by NEO and the Authority consistent with Section 2.3.1 for the

Renewal Term and Section 2.3.2 for an Extended Renewal Term (the “**Adjusted Rent**”). Adjusted Rent shall be paid on or before the first day of every third month following the effective date of the Extended Term.

8.1.3 Notwithstanding anything to the contrary in Section 8.1.1, upon commencement of this Sublease Agreement NEO shall (i) pay the Authority one (1) year’s Rent in advance for the first (1st) year of the Term; and (ii) deliver to the Authority a clean, irrevocable and unconditional standby letter of credit (the “**Letter of Credit**”) from a financial institution (the “**Issuing Bank**”) containing the terms set forth in Section 8.1.4 below and otherwise in customary form (with both such form and the Issuing Bank being reasonably satisfactory to the Authority). The Letter of Credit shall serve as a security deposit hereunder (the “**Security Deposit**”), and shall be in an amount equivalent to six (6) months’ Rent (which is expected to be \$1,000,000 unless Rent is reduced pursuant to the HDA).

8.1.4 NEO shall deliver to the Authority the Letter of Credit as security for the faithful performance and observance by NEO of the terms, provisions and conditions of this Sublease Agreement. NEO agrees that in the event (i) of the occurrence of an Event of Default or (ii) in the performance of any of NEO’s obligations under this Sublease Agreement, including the payment of any item of Rent or Adjusted Rent due to the Authority, the Authority may draw under the Letter of Credit the whole or any part of such amounts due, to the extent required for the payment of any Rent or Adjusted Rent or any other sum as to which NEO is in default in paying the Authority, or for any sum that the Authority may expend or may be required to expend by reason of the such default (including any damages or deficiency accrued before or after summary proceedings or other re-entry by the Authority). If the Authority applies or retains any portion or all of the proceeds of the Letter of Credit, NEO shall forthwith restore the amount so applied or retained by delivering an additional or new Letter of Credit so that, at all times, the amount of the security deposit shall be the then required full amount. Provided there is no uncured Event of Default, any balance of the proceeds of the Letter of Credit held by the Authority and not used, applied or retained by the Authority as above provided, and any remaining Letter of Credit, shall be returned to NEO after the expiration of the Term and after NEO surrenders possession of the Site and Port Facilities in the condition required under the Sublease Agreement.

The Letter of Credit shall have a term of not less than one year, be in form and content reasonably satisfactory to the Authority, be for the account of the Authority and be in the amount of the Security Deposit. The Letter of Credit shall provide that:

(1) The Issuing Bank shall pay to the Authority or its duly authorized representative an amount up to the face amount of the Letter of Credit upon presentation of the Letter of Credit and a sight draft in the amount to be drawn;

(2) The Letter of Credit shall be deemed to be automatically renewed, without amendment, for consecutive periods of one year each during the Term, unless the Issuing Bank sends written notice (the “**Non-Renewal Notice**”) to the Authority by certified or registered mail, return receipt requested, at least thirty (30) days prior to the expiration date of the Letter of Credit, to the effect that it elects not to have such Letter of Credit renewed;



(3) The Letter of Credit delivered in respect of the last year of the Term shall have an expiration date of not earlier than sixty (60) days after the Expiration Date; and

(4) The Letter of Credit shall be transferable by the Authority to any successor or purchaser.

The Authority, after receipt of the Non-Renewal Notice, shall have the right to draw the entire amount of the Letter of Credit and to hold the proceeds as a cash Security Deposit. The Authority shall release such proceeds to NEO upon delivery to the Authority of a replacement Letter of Credit complying with the terms hereof.

NEO covenants that it will not assign or encumber, or attempt to assign or encumber, the Letter of Credit held hereunder, and that neither the Authority nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance. In the event that any bankruptcy, insolvency, reorganization or other debtor-creditor proceedings shall be instituted by or against NEO, its successors or assigns, or any guarantor of NEO hereunder, the security shall be deemed to be applied to the payment of the Rent and Adjusted Rent due to the Authority for periods prior to the institution of such proceedings and the balance, if any, may be retained by the Authority in partial satisfaction of the Authority's damages.

8.1.5 In the event NEO fails to vacate the Site or Port Facilities after expiration of or termination of this Sublease Agreement, without the express written consent of Gateway to remain, NEO shall pay, effective upon the expiration of the Rental Term 125% of Rent on a monthly basis. No holding over by NEO after the Term shall be construed to extend the Term.

## **8.2 Interest.**

Unless otherwise provided for in this Agreement, any Party in default of payment of any amount due hereunder shall pay interest thereon to the Party to whom the payment is owing at the following rate: a rate of two (2) per cent per annum above Prime Rate commencing thirty (30) days from the applicable default. Such interest shall be computed on the amount due on a daily basis from the due date until the relevant amount together with accrued interest is fully paid by the defaulting Party.

## **8.3 Currency.**

All disbursements or payments by or to a Party shall be denominated and collected in United States Dollars in immediately available funds.

# **SECTION 9 REPRESENTATIONS AND WARRANTIES**

## **9.1 NEO Representations and Warranties.**

NEO hereby represents and warrants, as of the Effective Date, that:

9.1.1 It is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of NEO's organization and duly qualified to conduct business in the State;

9.1.2 NEO has the power and authority to enter into this Sublease 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 NEO in accordance with the terms hereof;

9.1.3 This Sublease Agreement is legally valid and binding upon NEO and does not require any further approval or consent or registration in any form in order to give full force and effect thereto;

9.1.4 The execution and delivery of this Sublease Agreement by NEO, the consummation of the transactions contemplated hereby and the performance by NEO 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 NEO under (a) any Applicable Law, (b) any material agreement, instrument or document to which NEO is a party or by which it is bound or (c) the articles, bylaws or governing documents of NEO;

9.1.5 NEO does not require any consent to be obtained, no notice to be given to, or filing to be made with any Person (including any Relevant Authority) in connection with the execution and delivery by NEO of this Sublease 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; and

9.1.6 NEO is not aware, after making due inquiries, of any proceedings, actions or claims, pending or threatened, against or otherwise involving NEO that would prejudice, in any way, NEO's ability to fulfill its or their respective obligations under this Sublease Agreement.

## **9.2 Gateway Representations and Warranties.**

Gateway hereby represents and warrants, as of the Effective Date, that:

9.2.1 Gateway has all necessary rights in the Site and Port Facilities to effectuate the specific terms of this Sublease Agreement;

9.2.2 Gateway is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of Gateway's organization and duly qualified to conduct business in the State;

9.2.3 Gateway has the power and authority to enter into this Sublease 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 Gateway in accordance with the terms hereof;

9.2.4 This Sublease Agreement is legally valid and binding upon Gateway and does not require any further approval or consent or registration in any form in order to give full force and effect thereto;

9.2.5 The execution and delivery of this Sublease Agreement by Gateway, the consummation of the transactions contemplated hereby and the performance by Gateway 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 Gateway under (a) any Applicable Law, (b) any material agreement, instrument or document to which Gateway is a party or by which it is bound or (c) the articles, bylaws or governing documents of Gateway;

9.2.6 Gateway does not require any consent to be obtained, notice to be given, or filing to be made with, any Person (including any Relevant Authority) in connection with the execution and delivery by Gateway of this Sublease 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; and

9.2.7 Gateway is not aware, after making due inquiries, of any proceedings, actions or claims, pending or threatened, against or otherwise involving Gateway that would prejudice, in any way, Gateway's ability to fulfill its or their respective obligations under this Sublease Agreement.

## **SECTION 10 SUSPENSION OF CERTAIN CONCESSION AGREEMENT PROVISIONS**

### **10.1 Suspension.**

Commencing upon the execution of the Harbor Development Agreement, and continuing for the entire Term of the Sublease Agreement (as the same may be extended), the Authority, Gateway and NEO mutually agree that certain provisions of the Concession Agreement are hereby suspended and/or modified as set forth on Exhibit A attached hereto, the terms of which are hereby expressly incorporated by this reference.

## **SECTION 11 FORCE MAJEURE**

### **11.1 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 not a Party to this Sublease Agreement; (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 a Party, its Affiliates, Employees or Subcontractors; (v) acts of god (such as extreme weather, tornado, flood, hurricane or 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; (vi) changes to existing laws, codes or regulations governing construction of the Project that have a material adverse impact on the Project; and, in each case,

(a) which is beyond the control of the Party seeking to invoke Force Majeure;  
and

(b) which such Party could not reasonably have avoided, prevented or overcome through the exercise of due diligence; and

(c) which is not substantially attributable to such Party.

Without limiting the generality of the foregoing, for purposes of this Sublease Agreement, the term “Force Majeure” excludes: (A) the Authority’s failure to procure and secure the Permits necessary to complete the Work or additional funds to cover amounts to be funded by the Authority under Sections 8.2 or 8.4 of the Harbor Development Agreement, (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 the Harbor Development 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 OEM, Subcontractor or worker performing any work or any other delay, default or failure (financial or otherwise) of an OEM, Subcontractor, vendor or supplier, (F) change orders to the LQRB (as defined in the Harbor Development Agreement) as a result of design errors or omissions.

Notwithstanding the above, an event of Force Majeure shall not apply to (i) the failure of the Authority to obtain the Permits, (ii) the obligation of NEO to make Rent, Adjusted Rent and other payments to the Authority due under this Sublease Agreement and (iii) the obligation of NEO to make the payments set forth in Section 8.1.3 of the Harbor Development Agreement.

## **11.2 Notice of Force Majeure.**

If any Party hereto claims to be affected by an event of Force Majeure as defined in Section 11.1, it shall give notice within five (5) Business Days of the occurrence thereof to the other Parties. The affected Party shall likewise immediately give notice to the other Parties within five (5) Business Days when the event of Force Majeure has ceased.

## **11.3 Excuse of Performance.**

11.3.1 Should an event of Force Majeure prevent the total or partial performance of any of the obligations of either Party under this Sublease 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 Sublease Agreement except as otherwise provided herein. The Party claiming the event of Force Majeure shall use commercially reasonable efforts to continue to perform its obligations hereunder.

11.3.2 No Party shall claim damages, penalties, interest or any other compensation from any other Party due to the occurrence of an event of Force Majeure.

11.3.3 The foregoing provisions of this Section 11 shall not, however, excuse or release the Party claiming Force Majeure from obligations due or performable, or compliance required, under this Sublease 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 Sublease Agreement shall have been terminated pursuant to Section 13, a Party excused from performance by the occurrence of Force Majeure shall continue its performance under this Sublease Agreement when the effects of the event of Force Majeure are removed.

## **SECTION 12 EVENTS OF DEFAULT; REMEDIES.**

### **12.1 Default by NEO.**

The occurrence of any of the following events shall be deemed a default by NEO (and, after lapse of any applicable grace period set forth below, a “**NEO Event of Default**”):

12.1.1 NEO fails to timely pay any installment of the GT Revenue Shortfall Fee, the Gateway Short-Term Idle Period Fee, or any other monetary sum due from NEO to Gateway hereunder, or any Rent due from NEO to the Authority hereunder, within five (5) Business Days after receipt of written notice of such failure;

12.1.2 NEO shall have become unable or admits in writing its inability to meet its financial obligations under this Agreement;

12.1.3 NEO 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;

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

12.1.5 NEO fails to perform any other covenant, condition, agreement or provision contained herein for thirty (30) days after written notice; or

12.1.6 Any representation or warranty of NEO contained in this Sublease Agreement or any other document delivered by NEO in connection with this Sublease Agreement proves to have been false, inaccurate or misleading in any material respect when made.

### **12.2 Remedies of Gateway upon NEO Event of Default.**

Upon the occurrence and during the continuance of a NEO Event of Default other than payment of Rent to the Authority, Gateway may, by notice to NEO, declare NEO to be in Default and may do any or all of the following as Gateway, in its discretion, shall determine:

12.2.1 Gateway may give written notice to NEO requiring NEO to use its best efforts to remedy the NEO Event of Default within a period of time prescribed by Gateway, which shall not exceed five (5) Business Days in the case of NEO's failure to pay any monetary sum when due, 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 NEO Event of Default;

12.2.2 If such NEO Event of Default is not remedied by the expiration of the specified period, or such shorter period as may be required in the event of emergency, or NEO fails to pursue reasonable steps to remedy such NEO Event of Default by the expiration of the specified period, Gateway shall have the right, but not the obligation, to cure such NEO Event of Default at any time thereafter, and NEO agrees to reimburse Gateway for any amount paid by Gateway to cure a NEO Event of Default. If NEO fails to reimburse Gateway within thirty (30) days of such payment, Gateway may deduct the amount paid from the next or future payments or credits to NEO hereunder;

12.2.3 To the extent that performance by NEO of the relevant obligation is reasonably practicable or legally available, Gateway may seek specific performance or other equitable remedies; and

12.2.4 Gateway may exercise any of its other rights and remedies provided for hereunder (including Section 13) or at law or equity.

### **12.3 Remedies of Authority Upon NEO Event of Default.**

Upon the occurrence and during the continuance of a NEO Event of Default, involving any obligation of NEO to the Authority under this Sublease Agreement, including the nonpayment of Rent or Adjusted Rent to the Authority or failure to deliver or maintain the full amount of the Letter of Credit, the Authority may, by notice to NEO, declare NEO to be in default and may do any or all of the following as the Authority, in its discretion, shall determine:

12.3.1 In the event of nonpayment of Rent or Adjusted Rent to the Authority continuing beyond five (5) Business Days after receipt of written notice of such failure, the Authority may draw all applicable unpaid funds under the Letter of Credit described in Section 8.1 above;

12.3.2 The Authority may give written notice to NEO requiring NEO to use its best efforts to remedy the NEO Event of Default within a period of time prescribed by the Authority, which shall not exceed five (5) Business Days in the case of NEO's failure to pay any monetary sum when due;

12.3.3 To the extent that performance by NEO of the relevant obligation to the Authority is reasonably practicable or legally available, the Authority may seek specific performance or other equitable remedies; and

12.3.4 The Authority may exercise any of its other rights and remedies provided for hereunder (including Section 13) or at law or equity.

## **12.4 Gateway Event of Default.**

The occurrence of any of the following events shall be deemed a default by Gateway (and, after the lapse of any applicable grace period set forth below, a “**Gateway Event of Default**”):

12.4.1 Gateway fails to operate and maintain the Port Facilities in accordance with the terms of the Concession Agreement and/or this Sublease Agreement for thirty (30) days after written notice;

12.4.2 Gateway fails to correct any Concessionaire Event of Default, as defined in Section 15.1 of the Concession Agreement, including the interruption of the utilities, services, or facilities within its control and used or consumed by NEO at the Site;

12.4.3 Gateway fails to pay any amount of money due to NEO within five (5) Business Days after receipt of written notice of such failure;

12.4.4 Gateway fails to perform any other covenant, condition, agreement or provision contained in the Concession Agreement and/or herein for thirty (30) days after written notice (or, with respect to the Concession Agreement such longer grace period as may be expressly set forth therein); and

12.4.5 Any representation or warranty of Gateway contained in this Sublease Agreement or any other document delivered by Gateway in connection with this Sublease Agreement proves to have been false, inaccurate or misleading in any material respect when made.

## **12.5 Remedies of NEO upon Gateway Event of Default.**

Upon the occurrence and during the continuance of a Gateway Event of Default, NEO may, by notice to Gateway, declare Gateway to be in default and may do any or all of the following as NEO, in its discretion, shall determine:

12.5.1 NEO may require Gateway to use its best efforts to remedy the Gateway Event of Default within a period time which shall not exceed five (5) Business Days in the case of Gateway’s failure to pay any monetary sum when due, and which shall not exceed three (3) months in all other cases and which shall take into account the nature of the breach (the “**Gateway Cure Period**”). If such Gateway Event of Default involves a failure to provide services required of Gateway under this Sublease Agreement or the Concession Agreement, NEO’s remedies shall include the election to provide such services and charge Gateway the costs thereof.

12.5.2 If such Gateway Event of Default is not remedied by the expiration of the specified period, or such shorter period as may be required in the event of an emergency, or Gateway fails to pursue reasonable steps to remedy such Gateway Event of Default by the expiration of the specified period, NEO shall have the right, but not the obligation, to cure such Gateway Event of Default at any time thereafter, and Gateway agrees to reimburse NEO for any amount paid by NEO to cure a Gateway Event of Default. If Gateway fails to reimburse NEO within thirty (30) days of such payment, NEO may deduct the amount paid from the next or any future payments to Gateway hereunder.

12.5.3 To the extent that performance by Gateway of the relevant obligation is reasonably practicable or legally available, NEO may seek specific performance, injunction or other equitable remedies; and

12.5.4 NEO may exercise any of its other rights and remedies provided for hereunder (including Section 13) or at law or equity.

## **12.6 Limitation on Liability.**

12.6.1 Notwithstanding any other provision of this Sublease 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 Sublease 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 12.6).

12.6.2 In all cases, the liability of any Party for such Party's activities, obligations, liabilities, or debts with respect to this Sublease Agreement shall not be a liability of any officer, director, manager, member or equity owner of such Party.

12.6.3 In the event of any transfer or assignment by any Party of all or any portion of its rights and obligations hereunder, such transfer or assignment shall be effected pursuant to a written agreement whereby the transferee is responsible for all applicable obligations or liabilities under this Sublease Agreement arising from and after the date of assignment.

## **SECTION 13 TERMINATION**

### **13.1 Termination.**

This Sublease Agreement may be terminated as follows:

(a) NEO shall have the right, but not the obligation, to terminate if any Gateway Event of Default occurs and continues beyond the cure periods set forth in Sections 12.4 and 12.5 above. If NEO terminates under this subsection, NEO shall provide Gateway thirty (30) days' written notice.

(b) Gateway shall have the right, but not the obligation, to terminate if any NEO Event of Default occurs and continues beyond the cure periods set forth in Sections 12.1 and 12.2 above. If Gateway terminates under this subsection, Gateway shall provide NEO thirty (30) days' written notice.

(c) The Authority shall have the right, but not the obligation to terminate if any NEO Event of Default occurs and continues.

(d) Automatically, upon a termination of the Harbor Development Agreement by the Authority under Section 15.4 thereof as a result of a NEO Event of Default thereunder.



### **13.2 Effect of Termination.**

On the early termination of this Sublease Agreement for whatever reason:

13.2.1 This Sublease Agreement (except for those provisions that by their terms survive the termination of this Sublease Agreement) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;

13.2.2 NEO shall have no further Rent obligations beyond any prorated Rent necessary to fulfill its obligations hereunder for any occupancy of the Port Facilities from the later date of (i) notice of termination was given by either Party until such date as when the termination is deemed effective under Section 13.1 or (ii) the date NEO surrenders possession of the Site and Port Facilities in the condition required hereunder;

13.2.3 NEO shall have no further monetary obligations to Gateway for fees beyond any prorated fees necessary to fulfill its obligations hereunder;

13.2.4 If either Party shall dispute such termination by the other Party, a final determination of the validity of any termination notice given under 13.1 shall be made in accordance with Section 17 herein; and

13.2.5 NEO shall surrender possession of the Site and Port Facilities in the condition required at the end of the Term, the Renewal Term or the Extended Renewal Term as applicable.

## **SECTION 14 INDEMNIFICATION**

### **14.1 Indemnification by NEO.**

NEO shall indemnify and hold harmless the Authority, Gateway and its Affiliates and the respective directors, officers, agents and employees of Gateway and its Affiliates (Gateway, the Authority and each such entity or person, being a “**NEO Indemnified Person**”) from and against all third party personal injury or property losses, claims, damages judgments, assessments, costs and other liabilities (collectively, “**Expenses**”), whether or not in connection with pending or threatened litigation and whether or not any Indemnified Party is a party, to the proportionate extent arising out of or resulting from NEO’s performance under this Sublease Agreement. The indemnity obligations of NEO set forth herein shall apply to any modification of this Sublease Agreement and shall remain in full force and effect regardless of any termination of, or the completion of services under or in connection with this Sublease Agreement.

### **14.2 Indemnification by Gateway.**

Gateway shall indemnify and hold harmless the Authority, NEO and its Affiliates and the respective directors, officers, agents and employees of NEO and its Affiliates (NEO, the Authority and each such entity or person, being a “**Gateway Indemnified Person**”) from and against all Expenses, whether or not in connection with pending or threatened litigation and whether or not any Indemnified Party is a party, to the proportionate extent arising out of or resulting from

Gateways' performance under this Sublease Agreement. The indemnity obligations of Gateway set forth herein shall apply to any modification of this Sublease Agreement and shall remain in full force and effect regardless of any termination of, or the completion of services under or in connection with this Sublease Agreement.

### **14.3 Injured Employees.**

The indemnification obligations under this Section 14 shall apply, without limitation, to all matters involving injured employees of NEO or Gateway, any supplier or Subcontractor of either, regardless of any provisions of the applicable workers' compensation laws, and in particular regardless of the exclusive remedy and/or employees' immunity provisions of those laws, all of which are hereby expressly waived.

### **14.4 Procedures.**

14.4.1 If an Indemnified Party receives notice of any claim or the commencement of any suit, action, claim, proceeding or investigation brought by any Person other than an Indemnifying Party and with respect to which an Indemnifying Party is obligated to provide indemnification pursuant to this Sublease 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.

14.4.2 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 14; 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.

14.4.3 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 14, 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.

14.4.4 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 14.

14.4.5 The amount of any Loss indemnifiable pursuant to this Section 14 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.

14.4.6 No amount shall be payable by any Indemnifying Party pursuant to this Section 14 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 14 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.

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

## **SECTION 15 INSURANCE**

### **15.1 Gateway Insurance Requirements.**

15.1.1 Gateway shall obtain and maintain, or cause to be obtained and maintained, in full force and effect, the types and amounts of insurance set forth in **Schedule 2** at all times during the Term.

15.1.2 Gateway shall not act and shall prevent its Affiliates and Subcontractors from acting in any manner that would void any of the Insurances of Gateway or NEO.

15.1.3 On request of NEO, Gateway will provide certificates of insurance and additional insured endorsements for any insurance policy required under **Schedule 2**.

15.1.4 On request of NEO, Gateway shall provide copies of any insurance policies to NEO following a claim or notice of potential claim to which the policy may reasonably be believed to afford coverage to NEO as an additional insured.

15.1.5 Gateway shall provide at least thirty (30) days prior written notice to NEO and its designees of any cancellation.

## **15.2 NEO Insurance Requirements.**

15.2.1 NEO shall obtain and maintain, or cause to be obtained and maintained, in full force and effect, the types and amounts of insurance set forth in **Schedule 3** at all times during the Term.

15.2.2 NEO shall not act and shall prevent its Affiliates and Subcontractors from acting in any manner that would void any of Gateway's Insurances.

15.2.3 On request of Gateway, NEO will provide certificates of insurance for any insurance policy required under Schedule 3.

15.2.4 On request of Gateway, NEO shall provide copies of any insurance policies to Gateway following a claim or notice of potential claim to which the policy may reasonably be believed to afford coverage to Gateway as an additional insured.

15.2.5 NEO shall provide at least thirty (30) days prior written notice to Gateway and its designees of any cancellation.

## **15.3 Waiver of Subrogation.**

The Parties waive any right of action that they or their insurance carriers might have against each other (including their respective representatives) 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 Sublease 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 Parties' applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, the Party seeking to provide the waiver the waiver shall cause the applicable insurance policy to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section 15.

## **SECTION 16 ASSIGNMENTS**

This Sublease Agreement shall be binding upon, and inure to the benefit of NEO, Gateway, the Authority and their permitted successors and assigns.

### **16.1 Assignment by NEO.**

NEO may assign (a) this Sublease Agreement together with all its then surviving obligations under the Harbor Development Agreement, or (b) any of its assets, *provided that*:

(a) the assignee expressly assumes in writing all of the NEO obligations under this Sublease Agreement and other Project Documents that arise on or after the assignment date and provides no less than ninety (90) days prior written notice of such assignment and assumption to the Authority and Gateway; and

(b) the Authority and Gateway shall have each consented to such assignment (per Annex A paragraph (n)).

Notwithstanding the foregoing, NEO shall have the right without the consent of (but with notice to) the Authority and Gateway to assign or transfer this Sublease Agreement and/or the rights and obligations thereunder, to an entity controlled by, under common control with, controlling, or affiliated with NEO. A transfer of or new issue of member interests within NEO shall not be considered an assignment.

### **16.2 Assignment by Gateway.**

During the Term or Renewal Term, Gateway may assign the rights and obligations conferred under this Sublease Agreement to any Person, *provided that*:

(a) such assignment shall not modify NEO's rights under this Sublease Agreement;

(b) such assignment shall be to an experienced marine terminal operator having the ability to continue to operate the Port Facilities for the purposes contemplated by this Sublease Agreement; and

(c) NEO shall have consented to such assignment (per Annex A paragraph (n)).

In the event Gateway assigns the rights and obligations hereunder, it shall provide NEO no less than ninety (90) days prior written notice.

### **16.3 Change of Concessionaire.**

16.3.1 Without limiting Section 21, the termination of the Concession Agreement before the end of the Concession Period (as defined in the Concession Agreement) does not terminate the rights or obligations of NEO under this Sublease Agreement.

## **SECTION 17 RESOLUTION OF DISPUTES.**

### **17.1 Scope.**

Any dispute arising out of, relating to, or in connection with this Sublease Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Section 17.

### **17.2 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 in the next following ten (10) day period,

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 17.2 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.

### **17.3 Arbitration.**

If the procedures described in Section 17.2 do not result in resolution of the dispute within an aggregate thirty (30) day period (or as may be extended by mutual agreement following input from a Designated Senior Person from each Party) then

(a) The Party seeking resolution of a dispute shall give written notice to the other Party, setting forth the matters in dispute with particularity. If the Parties shall not have resolved such dispute within ten (10) days of written notice of the dispute, then either Party may submit the dispute for non-binding mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association then in effect (the "Mediation"). Each Party shall have a senior management officer present during the Mediation. Any finding, award or testimony from such Mediation shall be inadmissible in any Court proceeding or action of the Parties pursuant to Section 17.4. If any dispute is not resolved by Mediation within ten (10) days of initiation of Mediation then

(b) the dispute shall be referred to non-binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "AAA Rules"). Any 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 Sublease, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Sublease. The arbitral panel shall be composed of three arbitrators who have been licensed to practice law in the State for at least ten (10) years, one to be selected by Gateway, one to be selected by the NEO and with the third to be selected by the first two, unless the Authority is a party to the Arbitration in which case the third is to be selected by the Authority. 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 may include interest. The award shall be in writing and state the reasons upon which it is based. The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern any arbitration conducted pursuant to this Section 17.3. Any finding, award or testimony from such arbitration shall be inadmissible in any court proceeding or action of the Parties pursuant to Section 17.4.

### **17.4 Submission to Jurisdiction and Jury Waiver.**

EACH PARTY (A) SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF CONNECTICUT IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SUBLEASE

AGREEMENT, (B) WAIVES ANY CLAIM OF INCONVENIENT FORUM OR OTHER CHALLENGE TO VENUE IN SUCH COURT IN ANY SUCH ACTION OR PROCEEDING, (C) AGREES NOT TO BRING ANY SUCH CLAIM OR CHALLENGE REGARDING THE WAIVERS OR OTHER PROVISIONS IN THIS SECTION 17.4, AND (D) AGREES TO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SUBLEASE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY EVICTION OR FORCIBLE ENTRY OR DETAINER ACTION. EACH PARTY AGREES TO ACCEPT SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER INITIAL PLEADING MADE IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES IN SECTION 20.1, PROVIDED THAT NOTHING IN THIS SECTION 17.4 SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE SUCH SUMMONS, COMPLAINT OR OTHER INITIAL PLEADING IN ANY OTHER MANNER PERMITTED BY LAW. PROCESS IN ANY ACTION OR PROCEEDING REFERRED TO IN THE PRECEDING SENTENCE MAY BE SERVED ON ANY PARTY ANYWHERE IN THE WORLD.

**17.5 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 Sublease, 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 any income, costs or expenses provided for in this Sublease Agreement.

**SECTION 18  
GOVERNING LAW; SUBMISSION TO JURISDICTION**

**18.1 Governing Law.**

The rights and obligations of the Parties under or pursuant to this Sublease 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 17, 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 Sublease Agreement.

**SECTION 19  
MISCELLANEOUS**

**19.1 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 purpose of performing its obligations or enforcing its rights hereunder, or as it may necessarily be required to disclose pursuant to

Applicable Laws or orders of appropriate Relevant Authorities. The provisions of this Section 19.1 shall, for the avoidance of doubt, supersede all confidentiality provisions contained in any prior agreement between the Parties.

### **19.2 Variations in Writing.**

Any and all additions, amendments and variations to this Sublease Agreement shall be binding only if in writing and signed by Duly Authorized Signatories of each of the Parties.

### **19.3 Time and Indulgence.**

19.3.1 No waiver by either Party of any Default by the other in the performance of any of the provisions of this Sublease 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 by a Party's Duly Authorized Signatory.

19.3.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Sublease 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.

19.3.3 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.

### **19.4 No Third Party Beneficiaries.**

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

### **19.5 Severability.**

If any provision of this Sublease 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 Sublease 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 17 hereof.



**19.6 No Sovereign Immunity.**

To the extent applicable, the Authority waives sovereign immunity and consents to any claim, action, or arbitration brought or initiated by a Party to this Sublease Agreement to enforce any debt, liability, or obligation accruing to the Authority as a result of the obligations set forth herein.

**19.7 No Personal Obligation.**

No obligation, debt, or liability set forth in this Sublease Agreement is a personal obligation of any member, trustee, partner, director, officer, or shareholder of any Party, or any direct or indirect constituent entity of any Party or any Party's affiliates or agents. No Party shall seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Sublease Agreement or otherwise.

**19.8 No Implied Surrender or Waiver.**

The acceptance of Rent by the Authority or its Affiliate shall not be deemed to be a waiver (except as to any Default arising out of the failure to pay the Rent so accepted) of any breach by NEO of any covenant herein contained. No provisions of this Sublease Agreement shall be deemed to have been waived by Gateway or NEO unless such waiver is in writing and signed by the Party to be charged.

**19.9 Survival.**

The following sections shall survive the expiration or earlier termination of this Sublease Agreement:

- Section 3.10 Removal by NEO
- Section 12 Events of Default; Remedies
- Section 13.2 Effect of Termination
- Section 14 Indemnification
- Section 17 Resolution of Disputes
- Section 19.1 Confidentiality
- Section 19.5 Severability
- Section 19.6 No Sovereign Immunity
- Section 19.7 No Personal Obligation
- Section 19.8 No Implied Surrender or Waiver

**SECTION 20  
NOTICES**

**20.1 Address for Notices.**

Any notice or communication to be given under or in connection with this Sublease Agreement shall be given in writing and shall either be delivered personally or sent by registered mail or internationally recognized overnight courier, or by email provided the applicable notice is

simultaneously circulated by a 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 NEO:	c/o Orsted North America, Inc. 100 International Place 100 Oliver Street, Suite 2610 Boston, MA 02110 Attn: Charles R. Scott
with copies to:	Eversource Energy Service Company 56 Prospect Street Hartford, CT 06103 Attn: Wind Project Director
	Eversource Energy Service Company 800 Boylston Street, 17 <sup>th</sup> Floor Boston, MA 02199 Attn: Deputy General Counsel
	Orsted A/S Kraftvaerksvej 53 DK-7000 Fredericia Denmark Attn: General Counsel Anders Zoega Hansen
	Orsted A/S Kraftvaerksvej 53 DK-7000 Fredericia Denmark Attn: Lead Legal Counsel Jeppe Skov Andersen
	Pierce Atwood, LLP 100 Summer Street Boston, MA 02110 Attn: Richard S. Novak, Esq.
to Gateway	Enstructure New Haven Holdings LLC 400 Waterfront Street New Haven, CT 06512
with copies to:	Enstructure LLC 16 Laurel Avenue, Suite 300

	Wellesley, MA 02481
	Phelps Dunbar, L.L.P. 365 Canal Street, Suite 2000 New Orleans, LA 70130-6534 Attn: James A. Stuckey, Esq.
To the Authority:	Connecticut Port Authority 455 Boston Post Road, Suite 204 Old Saybrook, CT 06475 Attn: Executive Director
with copies to:	Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103 Attn: Glenn A. Santoro, Esq.
	Director of Legal Affairs Office of the Secretary State of Connecticut Office of Policy and Management 450 Capitol Avenue Hartford, CT 06106-1379
	Legal Director Office of Legal Affairs, Policy & Procurement Department of Administrative Services 450 Columbus Boulevard, Suite 1307 Hartford, CT 06103

**20.2 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, and (d) if sent by email upon proof of delivery (which may include the required evidence of the notice simultaneously being delivered by internationally recognized overnight courier.

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

**20.3 Change of Address.**

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

## **20.4 Counterparts; Facsimile Execution.**

This Sublease Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Sublease 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 Sublease 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 Sublease Agreement on the date it sent such electronic transmission. In such event, such Party shall forthwith deliver an original counterpart of this Sublease Agreement executed by such Party.

## **SECTION 21 JOINDER BY AUTHORITY**

### **21.1 Leasehold Rights.**

21.1.1 For such period as the Sublease Agreement is continuing and in full force and effect and no Concessionaire Event of Default has occurred under the Concession Agreement and/or the Sublease Agreement, respectively, the Authority agrees to extend Gateway's rights in the Site to include a leasehold interest for the sole purpose of allowing Gateway to enter into this Sublease Agreement. The Authority and Gateway hereby acknowledge and agree that upon the expiration or earlier termination of the Sublease Agreement, Gateway's leasehold interest in the Site shall automatically be terminated without the need for further action or documentation by any party (but for the avoidance of doubt, Gateway's rights in the Site under the Concession Agreement are not terminated by any expiration or earlier termination of the Sublease). In addition, upon any termination of the Concession Agreement, Gateway's rights and interest in the Site shall automatically terminate without the need for further action or documentation by any party and Gateway shall immediately quit and peacefully surrender the Site and Port Facilities to the Authority under the terms set forth in Sections 15.6 and 15.7 of the Concession Agreement. In the event Gateway's rights or interest in the Project terminate and Gateway fails to immediately quit and surrender the Site and Port Facilities as required hereunder, the Authority shall have all rights and remedies under the Concession Agreement and the Sublease Agreement, at law or in equity; provided that NEO's rights shall continue as set forth in Sections 21.1.6, 21.2 and 21.3 below. Notwithstanding the foregoing, upon any such termination of Gateway's rights or interest, the rights of Gateway shall revert to those set forth in the Concession Agreement.

21.1.2 By virtue of all powers delegated to the Authority, including without limitation the Quitclaim Deed dated February 24, 2020 from the State of Connecticut, Department of Transportation recorded at Volume 2336, Page 6 in the New London City Clerk's Office, the Authority hereby confirms its authority to provide the lease and sublease expressly provided in this Article 21 above and the Authority hereby joins in this Sublease Agreement and expressly confirms, that the Authority hereby leases to Gateway, for the purposes of the Authority effectuating this Sublease Agreement and the Authority being bound by the sublease by Gateway to NEO hereunder, of the Site (and all easements, entitlements and appurtenant rights appurtenant rights related thereto).

21.1.3 In the event of any final termination of NEO's sublease rights under this Sublease (and which rights are not then replaced by a New Sublease under Section 21.3), then all

leasehold rights of Gateway granted under this Section 21.1 shall be null and void ab initio, and the respective rights of the Authority and Gateway shall revert to those set forth in the Concession Agreement, and without limiting the foregoing all respective rights of Gateway and the Authority with respect to possession and surrender of the Site shall be set forth in the Concession Agreement.

21.1.4 By virtue of all powers delegated to Gateway under Section 21.1.1 and the Concession Agreement, Gateway hereby subleases the Site (and all easements, entitlements and appurtenant rights related thereto) to NEO on the term and conditions set forth herein.

21.1.5 NEO hereby acknowledges and agrees that the foregoing grant of subleasehold rights shall in all events be subject to the terms and conditions of the Concession Agreement, as modified by Section 10 above, whether NEO possesses under this Sublease or under a New Sublease under Section 21.3. Except as expressly provided in this Sublease Agreement, the Sublease Agreement shall in all respects be subject to, and subordinate to, the Concession Agreement and to all of the terms and conditions thereof.

21.1.6 The Authority hereby consents to Gateway and NEO entering into this Sublease Agreement. Gateway and NEO shall not, without the Authority's prior written consent in each instance: (i) permit any assignment, subletting, licensing or otherwise encumbering the Site except as otherwise expressly set forth herein, or (ii) modify or amend the Sublease Agreement in any manner altering the Rent, Term or other aspect material to the Authority without the prior written consent of the Authority, but, in every such case, NEO and Gateway shall promptly provide the Authority with notice of such modification and amendment and provide the Authority with a copy thereof. Notwithstanding anything to the contrary contained herein, the Sublease Agreement shall, in no event, be construed to permit any greater use of the Site than is provided for in the Concession Agreement and the HDA. NEO shall not act in any way which causes Gateway to default under the Concession Agreement, the HDA or this Sublease Agreement. Nothing contained herein shall constitute the Authority's consent to any alteration to the Site or Port Facilities, and all alterations must comply with the applicable provisions of the Concession Agreement and/or HDA.

## **21.2 Recognition and Non-Disturbance Agreement of NEO.**

So long as no NEO Event of Default has continued beyond any applicable cure period, NEO's possession of the Port Facilities, the Site and the Project and NEO's rights and privileges under this Sublease, including any extensions or renewals, shall not be diminished or interfered with by the Authority during the term of this Sublease or any extensions or renewals, by reason of any termination of the Concession Agreement or otherwise, and the Authority will not join NEO as a party for the purpose of terminating or otherwise affecting NEO's interest under this Sublease, in any action of termination or other proceeding brought by the Authority to enforce any rights arising because of any default under the Concession Agreement. The Authority may, however, join NEO as a party if joinder is necessary under any statute or law to secure the remedies available to the Authority under the Concession Agreement, but joinder shall be for that purpose only and not for the purpose of terminating this Sublease or affecting NEO's right to possession of the Port Facilities, the Site and the Project.

If Gateway's interest in the Port Facilities, the Site and the Project or in this Sublease is transferred to and owned by the Authority or transferred to a new operator of the Site and Port Facilities (replacing Gateway) (either such party, a "Gateway Successor") because of termination or other proceedings brought by the Authority, or by any other manner, and the Gateway Successor succeeds to Gateway's interest under this Sublease, then NEO shall be bound to the Gateway Successor, and the Gateway Successor shall be bound to NEO under all of the terms, covenants and conditions of this Sublease for the balance of the remaining Term, the Renewal Term or the Extended Renewal Term, as applicable, including any extensions or renewals, with the same effect as if the Gateway Successor were initially party to all of Gateway's rights and obligations hereunder. NEO agrees to attorn to the Gateway Successor, with the attornment being effective and self-operable immediately upon the Gateway Successor succeeding to the interest of Gateway under this Sublease, all without the execution by the Parties of any further instruments. The respective rights and obligations of NEO and the Gateway Successor upon attornment, to the extent of the then-remaining balance of the Term of this Sublease, shall be the same as in this Sublease. If the Gateway Successor succeeds to Gateway's interest in this Sublease, then the Gateway Successor shall be bound to NEO under all the terms, covenants and conditions of this Sublease, and NEO shall, after the Gateway Successor's succession to Gateway's interest, have the same remedies against the Gateway Successor for the breach of any agreement in this Sublease that NEO might have had against Gateway.

### **21.3 Grant of New Sublease to NEO.**

The Authority covenants and agrees with NEO that upon any deemed termination of this Sublease for any reason other than a NEO Event of Default remaining uncured beyond all applicable grace periods, then, at the request of NEO delivered in writing to the Authority within fifteen (15) days after receipt of notice of such termination, the Authority will, upon compliance with the requirements of this Section 21.3, with reasonable promptness, enter into a new sublease with NEO upon the same terms and conditions contained in this Sublease, with appropriate revisions to reflect the rights of NEO, for the remainder of the Term of this Sublease subsequent to the date of the termination of this Sublease (the "New Sublease"); said New Sublease shall have the same priority as this Sublease with respect to the Port Facilities, the Site and the Project, and that the Authority shall assign to all insurance and condemnation proceeds which would have been the property of NEO under this Sublease absent termination, if any. The Authority shall not be required to enter into such a New Sublease unless, prior to the execution and delivery of such New Sublease, NEO (A) shall have paid, or caused to be paid, all Rent, and other sums due and payable by NEO to the date of commencement of the New Sublease, together with the Authority's reasonable expenses including (i) all reasonable costs incurred by the Authority in curing any defaults or managing the Port Facilities, the Site and the Project, and (ii) any reasonable attorneys' fees in terminating the Sublease and preparing and delivering the New Sublease, less a credit for the net proceeds of all rents collected by the Authority during the interval between termination of this Sublease and entry into the New Sublease, and (B) shall have cured all existing defaults under this Sublease Agreement, including, any monetary defaults and paid any delinquent premiums for insurance required under the Sublease. Upon becoming the tenant under such New Sublease, NEO shall perform all the covenants and obligations of the Tenant which are reasonably within the power of NEO to perform. Notwithstanding anything to the contrary contained herein, if there is a Gateway Successor that is not the Authority, then the Authority's obligation under this Section

21.3 shall be limited to ensuring that the New Sublease is executed and delivered by the Gateway Successor, as sublandlord under the New Sublease.

#### **21.4 Representations and Warranties of the Authority.**

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

21.4.1 The Authority has the power and authority to enter into this Sublease 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 Authority in accordance with the terms hereof;

21.4.2 This Sublease Agreement and the other Project Agreements to which it is a Party have been duly executed by the Authority and are legally valid and binding upon the Authority,

21.4.3 No consent is required to be obtained by the Authority from, and no notice or filing is required to be given by the Authority to or made by the Authority with, any Person (including any Relevant Authority) in connection with the execution and delivery by the Authority of this Sublease 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,

21.4.4 The Authority or its designees are or will be the holder of all governmental consents, Permits and other authorizations required to fulfill its obligations, if any, expressly provided under this Sublease Agreement,

21.4.5 The Authority has, and shall retain, good and valid title to the Port Facilities and the Site, and the Authority has all necessary rights in respect of the Site in order to lease the same to Gateway under the Concession Agreement, as modified by the terms of Exhibit A attached hereto.

21.4.6 The execution and delivery of this Sublease Agreement by the Authority, the consummation of the transactions contemplated hereby and the performance by the Authority 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 Authority under (a) any Applicable Law, (b) any material agreement, instrument or document to which the Authority is a party or by which it is bound or (c) the enabling legislation, articles, bylaws or governing documents of the Authority; and

21.4.7 After making due inquiries, the Authority has no actual knowledge of any proceedings, actions or claims, pending or threatened, against or otherwise involving the Authority that would have a Material Adverse Effect on the Authority's ability to fulfill its respective obligations under this Sublease Agreement or the other Project Agreements to which it is a party.

**21.5 Contracting Requirements.**

In accordance with the Operating Procedures of the Authority, NEO and Gateway shall comply with the applicable procurement and contracting requirements as set forth on **Schedule 4** attached hereto.

**SECTION 22  
JOINT PREPARATION.**

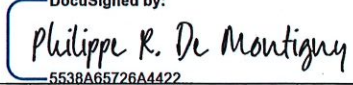
All Parties have participated equally and freely in negotiating and drafting this Sublease Agreement, with the advice of legal counsel selected by it. The Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable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

[SIGNATURE PAGE FOLLOWS]



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

**GATEWAY:  
Gateway New London LLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Philippe R. De Montigny  
Title: Authorized Representative


**NEO:  
NORTH EAST OFFSHORE, LLC**

By: \_\_\_\_\_  
Authorized Person

By: \_\_\_\_\_  
Authorized Person

**For the limited purposes of joining this Sublease Agreement as expressly provided in this Sublease Agreement:**

**Connecticut Port Authority**

By:   
Name: Ulysses B. Hammond  
Title: Interim Executive Director

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

**GATEWAY:**  
**Gateway New London LLC**

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

NEO:  
**NORTH EAST OFFSHORE, LLC**

By: MIKE AUSERE'  
Authorized Person

By: Paul My PAUL Murphy  
Authorized Person

**For the limited purposes of joining this Sublease Agreement as expressly provided in this Sublease Agreement:**

**Connecticut Port Authority**

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

## **Annexes to Sublease**

- a. Definitions
- b. Gateway Scope of Services and Fees to OEMs
- c. Form of Gateway Quarterly Report

## **Schedules to Sublease**

- 1. The Site
- 2. Gateway Insurance
- 3. NEO Insurance
- 4. CPA Procurement and Contracting Requirements

### **Schedule 4 Attachments**

- Attachment 1 - OPM Form 1
- Attachment 2 - SEEC Notice

## **Exhibits to Sublease**

- Exhibit A - Concession Agreement Provisions
- Exhibit B - Intentionally Omitted

## Annex A

### Part I

#### Definitions.

“AAA”	has the meaning given to that term in Section 17.3;
“AAA Rules”	has the meaning given to that term in Section 17.3;
“Active Period”	has the meaning given to that term in Section 5;
“Active Period Advance Notice”	has the meaning given to that term in Section 5.1.2;
“Affiliate”	means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; and provided, further, 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;
“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;
“Authority”	means the Connecticut Port Authority and its successors and permitted assigns;
“Authority/NEO Capital Cost Ratio”	Means the ratio, totaling 100% and expressed as “__%/__%”, of the Authority Project Capital Cost and the NEO Project Capital Cost, as a percentage of the sum of both. For example if the Authority Project Capital Cost is \$35.5 million, the NEO Project Capital Cost is \$35 million and the total is \$70.5 Million, the Authority/NEO Capital Cost Ratio would be 50.35%/49.65% (i.e. 50.35% for the Authority and 49.65% for NEO).
“Authority Project Capital Cost”	means the actual monies paid by the Authority to fulfill its Budgeted Costs funding obligation for the Project pursuant to Section 8 of the Harbor Development Agreement;

“Budgeted Costs”	means all reasonable costs associated with Project permitting, engineering and design, construction and other costs directly related to the Work as outlined in Schedule 4 of the Harbor Development Agreement;
“Business Day”	means a day (other than a Saturday or Sunday) on which the offices of the government of the State are open for business;
“Code”	means Internal Revenue Code;
“Concession Agreement”	means the agreement entered into on January 7, 2019, as may be amended from time to time, by and between the Authority and Gateway, conferring certain rights and obligations upon Gateway, as Gateway, for the administration of the Port Facilities and to provide Port Services;
“Concessionaire”	means Gateway or any other Person with rights to the Site and the right and obligation to operate, maintain, or improve the Port Facilities pursuant to an executed concession agreement;
“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;
“Designated Senior Person”	means an individual, as designated from time to time by each Party, with the appropriate level of oversight and authority for the purposes of Section 17;
“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;
“United States Dollars”, “Dollars”, “USD” or “\$”	means the lawful currency from time to time of the United States of America;
“Duly Authorized Signatory”	means an individual, as designated from time to time by each Party, with the requisite authority to bind the Party to certain actions and obligations as set forth in this Harbor Development Agreement;
“Effective Date”	means the date set forth on the title page of this Sublease Agreement;
“Employee”	means a person employed by a Party to this Harbor Development Agreement or assignee thereof in connection with the Project;

“Environmental Laws”	means all federal, state and local laws, statutes, ordinances, regulations, orders, criteria and guidelines issued by governmental authorities having jurisdiction, including any judicial or administrative interpretations thereof, in each case as amended, relating to the regulation and protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Oil Pollution Act of 1990, the Toxic Substances Control Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, each as amended;
“Event of Default”	means a breach of this Agreement caused by or resulting from the actions or inactions of a Party to this Agreement beyond any applicable notice and cure period;
“Expected Use Report”	has the meaning given to that term in Section 4.2.1;
“Expenses”	has the meaning given to that term in Section 14.1;
“Extended Term”	has the meaning given to that term in Section 8.1.2;
“Final Acceptance”	shall have the meaning given to that term in Section 5.4 of the Harbor Development Agreement;
“Force Majeure”	has the meaning given to that term in [Section 11.1];
“Gateway” or “GT”	means Gateway New London, LLC, its successors or assigns;
“Gateway Event of Default”	has the meaning given to that term in [Section 12.4];
“Gateway Gross Revenues”	has the meaning given to that term in Annex A of the Concession Agreement;
“Gateway Idle Period Direct Costs”	means, for any Idle Period, all actual, direct costs prudently incurred by Gateway;
“Gateway Idle Period Gross Revenues”	means all Gateway Gross Revenues actually received by Gateway during any Idle Period;
“Gateway Quality Report”	has the meaning given to that term in Section 5.4.1;
“Gateway Short-Term Idle Period Fees”	has the meaning given to that term in Section 6.3.2;
“Good Industry Practice”	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;
“GT Revenue Shortfall Fee”	has the meaning given to that term in Section 5.4.2.2;

“Harbor Development Agreement”	means the agreement entered into on [ ], 2020, as may be amended from time to time, by and between the Authority, Gateway, and NEO conferring certain rights and obligations upon each for the redevelopment and operation of the Port Facilities to provide 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;
“Idle Period”	has the meaning given to that term in Section 6.1.1;
“Idle Period Advance Notice”	has the meaning given to that term in Section 6.1.1;
“Idle Period Start Date”	means the first [Business] Day following the end of an Active Period, determined in accordance with Section 6.1.4;
“Indemnification Notice”	means a notice referred to in [Section 14.4.1];
“Indemnified Party”	means the Party to be indemnified pursuant to [Sections 14.1 to 14.3], as applicable;
“Indemnifying Party”	means the Party providing indemnification pursuant to [Sections 14.1 to 14.3], as applicable;
“Insurance Requirements”	means the obligations set forth in [Section 17] with respect to the Site, the Work, 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;
“Long-Term Idle Period”	Means any duration of time greater than 24 months designated by NEO under Section 6.2.1, during which NEO does not perform any Permitted Uses at the Site, except that nonperformance for reason of Force Majeure shall be excluded;
“Long-Term Idle Period Advance Notice”	has the meaning given to that term in Section 6.2.1;
“Long-Term Idle Period Start Date”	has the meaning given to that term in Section 6.2.3;

<p>“Loss”</p>	<p>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;</p>
<p>“Material Adverse Effect”</p>	<p>means a material adverse effect on the business, financial condition or the rights of any Party under this Harbor Development 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 all Parties have knowledge as of the Effective Date; (e) any action, omission, change, effect, circumstance or condition contemplated by this Harbor Development Agreement or attributable to the execution, performance or announcement of this Harbor Development Agreement or the transactions contemplated hereby, with the exception of litigation related to the execution or delivery of this Harbor Development Agreement; (f) any negligence, intentional misconduct or bad faith of a Party or its representatives; (g) any changes in industry standards, technology, available materials or resources; or (h) 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;</p>
<p>“NEO”</p>	<p>means Bay State Wind or its Affiliate and any successors and permitted assigns;</p>
<p>“NEO Event of Default”</p>	<p>has the meaning given to that term in Section 12.1;</p>
<p>“NEO Indemnified Person”</p>	<p>has the meaning given to that term in Section 14.2;</p>
<p>“NEO Local Representative”</p>	<p>shall have the meaning given to that term in Section 3.2.1;</p>



“NEO Project Capital Cost”	means the actual monies, excluding the DWW Funding Commitment, paid by NEO to fulfill its Budgeted Costs funding obligation for the Project pursuant to Section 8 of the Harbor Development Agreement;
“NEO Services”	has the meaning given to that term in Section 7.2.3;
“NEO sub-Lease Fees”	has the meaning given to that term in Section 6.4.2;
“New Haven Facility”	means Gateway pier operations located at 400 Waterfront St, New Haven, CT 06512;
“Occupancy Date”	has the meaning given to that term in 2.2;
“OEM” or “OEMs”	means the several WTG Original Equipment Manufacturers designated from time to time by NEO as users of the Project;
“Party” or “Parties”	means NEO, Gateway, or the Authority as individually or collectively referenced;
“Permit”	means all permits, approvals, licenses, authorizations, certifications, filings, recordings or other approval, including without limitation zoning, land use, building, environmental, construction and operating permits that are required to be obtained or maintained or otherwise necessary in any activity related to the Port Facilities and performance of the Work;
“Permitted Uses”	has the meaning given to the term in Section 3;
“Person”	means any individual, partnership, corporation, company, business organization, trust, governmental agency or other entity;
“Port Facilities” or “Port Facility”	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 the Harbor Development Agreement and the Concession Agreement;
“Port Services”	means: (a) the services, responsibilities and other obligations of Gateway specified in Annex B (Port Services) of the Concession Agreement, (b) all other services, responsibilities and other obligations of Gateway as is provided elsewhere in the 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 Gateway may be permitted or required to provide from time to time in accordance with Section 8.3, Section 8.5 or any other provision of the Concession Agreement, or pursuant to the Port Standards, Applicable Laws or Good Industry Practice;

“Prime Rate”	means the interest rate announced from time to time by Bank of America, N.A. or any successor thereto as its “prime rate”;
“Project”	has the meaning given to that term in the Recitals;
“Project Agreements”	means this Sublease Agreement; the Harbor Development Agreement, including each Subcontract thereunder; the Concession Agreement and each other agreement or instrument initialed or otherwise designated in writing as a “Project Agreement” to which either the Authority, NEO, or Gateway is a party and which further effectuates the bargained-for value of this Sublease Agreement;
“Redevelopment”	shall have the meaning given to the term [in the Harbor Development Agreement];
“Regulatory Approval”	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;
“Release”	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;
“Relevant Authority”	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 any Party, 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;
“Renewal Term”	has the meaning given to that term in Section 2.3;
“Rent”	Has the meaning given to that term in Section 8;
“Repair Deadline”	has the meaning given to that term in Section 3.6;
“Short-Term Idle Period”	has the meaning given to that term in Section 6.3.1;
“Site”	has the meaning given to that term described in Schedule 1. The site includes use of all Port Facilities associated therewith, as the same shall have been modified pursuant to the Project
“State”	means the State of Connecticut;
“Subcontract”	means any other subcontract, purchase order or similar agreement with any Subcontractor;

“Subcontractor”	means any Person with whom NEO, the Authority or Gateway 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 itself in connection with the Project (and any other Person with whom any Subcontractor has further entered into such a contract or subcontract);
“Sublease Agreement”	has the meaning set forth in Section 1.4;
“Term”	has the meaning given to that term in Section 2.1;
“Work”	means the Work described in Annex B to the HDA;
“WTG”	has the meaning given to that term in the Recitals;

ANNEX A- CONTINUED

Part II

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.

(c) 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.

(e) Unless defined otherwise herein, a term defined or construed in any communication or document made or delivered under or in connection with this Sublease 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 Sublease Agreement must be in writing (unless waived in writing by the other Party), and unless otherwise provided in this Sublease Agreement, such an approval shall not be unreasonably or arbitrarily withheld, conditioned or delayed.

(o) The word “**discretion**” with respect to any Person means the sole and absolute discretion of such Person.

## New London State Harbor

### Gateway services

GT Baseline- core harbor services that GT will perform as standard scope without special request

Direct OEM request- additional services that the OEM and its contractors may request directly from GT. This scope may belong in a side agreement between GT and OEM where rates should be agreed

### Sublease Annex B

Type	Service	Scope of Service	Rate
GT Baseline	Site security	Full site security including fencing, gate with 24/7 security guard responsible for guest management, CCTV TBD, mobile fencing as needed.	All provided rates are subject to reasonable adjustments at the time the commercial services are provided to incorporate labor market pricing, to be agreed by both parties  Costs are paid by OEM unless otherwise agreed. Indicative cost is \$ / hr.
GT Baseline	Electricity & water consumption	Electricity and water provided to site and vessels tracked by specific consumption.	- Calculated on actual consumption covering inbound cargo vessels and payable by OEM unless otherwise agreed. - Calculated on actual consumption covering outbound installation vessels and payable by Developer unless otherwise agreed.
GT Baseline	General site maintenance	Typical required upkeep on site to keep conditions at a good working level such as lighting, landscaping, and general facility upkeep.	- Calculated on actual consumption covering site operations and equipment and payable by OEM unless otherwise agreed.
GT Baseline	Additional site maintenance	Additional maintenance requirements outside of general site maintenance that are required due to damage caused by the NEO or OEM. GT may perform or subcontract work.	GT responsible at no cost to NEO or OEM.  At additional cost to NEO or OEM. Cost TBD based on work being performed; indicative rate of \$ / man hr. If works are subcontracted, NEO or OEM to be involved in selection process.
GT Baseline	Wharfage	Refers to a charge assessed against the vessel on all cargo, passengers and containers, loaded or empty, passing or conveyed over, onto or between vessels (to or from barge, lighter or water) when berthed at a wharf. Wharfage is solely the charge for use of the wharf and does not include charges for any other service.	- Calculated on inbound cargo as per published port tariff at \$1.45 per manifested MT and payable by cargo owner unless otherwise agreed. - Commencing with second year of Pier operations, this rate is subject for annual CPI
GT Baseline	Dockage	Refers to the charge assessed against a vessel for berthing at the facility or for mooring to a vessel so berthed. The period of time for which Dockage shall be assessed against the vessel shall commence when such vessel is made fast to the wharf, bulkhead, or to another vessel so berthed, and shall continue until such vessel has completely vacated such berth.	- Calculated on inbound cargo vessels as per published port tariff at \$0.39 per net registered ton (NRT) and payable by OEM unless otherwise agreed. - Calculated on outbound installation vessels as per net registered ton (NRT) and payable by Developer unless otherwise agreed. - Commencing with second year of Pier operations, this rate is subject for annual CPI

GT Baseline	Stevedoring	General labor to handle cargo from in and outbound transports. Training guidelines and instructions to be provided by customer. If additional training is required, then should be implemented in collaboration with customer. 6-8 men teams (tbd) for inbound and outbound vessels, repetitive work working in two shifts (12 hr shifts), full-timers to be provided during long project periods.	<ul style="list-style-type: none"> <li>- \$ [redacted] Standard Gang labor rate escalated [redacted]% annually</li> <li>- \$ [redacted] Lashing Gang labor rate escalated [redacted]% annually</li> <li>- Fees shall be payable by OEM unless otherwise agreed</li> </ul>
GT Baseline	Warehouse Management	storeman support to manage all components in warehouse, sort, unpack and administer all moving components, logistics (forklift operator), inventory management,	<ul style="list-style-type: none"> <li>- Fees (TBD) shall be payable by OEM unless otherwise agreed. Cost TBD based on work being performed; indicative rate of \$ [redacted] / man hr.</li> </ul>
GT Baseline	Standard equipment drivers	Driver labor for forklift, man lift operators, etc.	<ul style="list-style-type: none"> <li>- Fees (TBD) shall be payable by OEM unless otherwise agreed. Cost TBD based on work being performed; indicative rate of \$ [redacted] / man hr.</li> </ul>
GT Baseline	Basic Scrap Management	Scrap management of basic materials such as misc. steel and other scrap as part of de-mob or regular wear and tear such as plates, wires, bolts etc.	<ul style="list-style-type: none"> <li>- Fees (TBD) shall be payable by OEM unless otherwise agreed. Cost TBD based on work being performed; indicative rate of \$ [redacted] / man hr. for management and to be deducted from scrap credit.</li> </ul>
GT Baseline	Waste Management	All waste disposal based on customer requirement, sewage handling as needed.	Agreement and costs (TBD) directly with OEM (NEO to remain involved through development)
Direct OEM request	Specialty equipment drivers	Specialty logistical equipment drivers/ labor support as specially requested by OEM.	Agreement and costs (TBD) directly with OEM (NEO to remain involved through development)
Direct OEM request	Specialty services & Site refurbishments	Special requested refurbishments or site modifications either directly or via market quoting and contractor management (in collaboration with customer). Does not include typical and required site upkeep. Adhoc requests such as including welding, mechanic, carpenter.	Agreement and costs (TBD) directly with OEM (NEO to remain involved through development)
Direct OEM request	Specialty Scrap Management	Scrap management of specialty materials such as SGRE specific transport equipment, frames, cradles, yokes etc. which damaged and may otherwise be returned as part of 'reverse logistics' set-up.	Agreement and costs (TBD) directly with OEM (NEO to remain involved through development)
Direct OEM request	Inventory Management software	GT has an inventory system that can be provided upon request.	Agreement and costs (TBD) directly with OEM (NEO to remain involved through development)

Sublease Annex C (sample)

**INVOICE**



Gateway New London LLC  
 200 State Pier Road  
 New London, CT 06320  
 P: (203) 467-1997  
 E: accounts payable@gatewayt.com

BILL TO:	
North East Offshore LLC c/o Orsted North America, Inc. 100 International Place 100 Oliver Street, Suite 2610 Boston, MA 02110 Attn: Charles R. Scott	Document Date: 12/31/2019 Reference Number: 000667 Due Date: Due five (5) Business Days after the funding by the Authority and NEO to the Escrow Agent

DESCRIPTION	PRICE
Total make whole reimbursement due as of December 31, 2019	\$1,368,254.47

Calculation Detail:

Net Operating Loss as Reported as of December 31, 2019, net of legal fees	\$1,201,587.80
CPA Annual Fee Paid May 2019 (i)	500,000.00
Less Amortized Annual CPA fee (i)	<u>-333,333.33</u>
<b>Total:</b>	<b>\$1,368,254.47</b>

(i) The CPA annual fee of \$500,000 was paid in full on May 1, 2019 but is being amortized on a straight-line basis over 12 months for accounting purposes. Therefore, the invoiced amount includes reimbursement for the full \$500,000 paid by Enstructure.

See attached Income Statement for buildup of the year-to-date operating loss.

<b>TOTAL:</b>	<b>\$1,368,254.47</b>
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GATEWAY NEW LONDON LLC

BANKING INSTRUCTIONS FOR WIRE TRANSFERS

M&T BANK  
 303 SOUTH BROADWAY SUITE 130  
 TARRYTOWN, NY 10591

ACCOUNT #: 9875736325  
 ABA#: 022000046  
 SWIFT CODE: MANTUS33  
 ACCOUNT NAME: GATEWAY NEW LONDON, LLC  
 400 WATERFRONT STREET  
 NEW HAVEN, CT 06512



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# GATEWAY NEW LONDON

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Quarterly Report for the period ended December 31, 2019

FINANCIAL AND OPERATIONS REPORT

## Gateway New London December 2019 Financial Report

### Summary

This report covers the operating period through December 31, 2019 for Gateway New. Revenues during the last quarter of the calendar year were the highest since operations commenced, primarily due to greater vessel activity in December. Expenses continue to be comprised primarily of equipment rental costs, labor, and professional services, which is consistent with the composition of modeled costs.

Year-to-date (YTD) EBITDA margin remains negative, as many of the costs necessary to run operations are somewhat fixed and revenue-generating activity has not covered operating expenses. As scheduled below, YTD loss before the make-whole accrual is approximately \$1.2M; the Income Statement and Balance Sheet reflect a receivable due from Baystate Wind to get the terminal to virtually breakeven.

From a cash flow and balance sheet perspective, the terminal continued to be infused with cash for working capital needs by Gateway New Haven, bringing intercompany payables to approximately \$1.4M.

### High-Level Financials:

New London Terminal December 2019 Financial Statements			
Income Statement			
Revenue	Month		YTD
Terminal	767,413	100.0%	2,190,011 98.9%
Trucking	-		24,430 1.1%
<b>Total revenues</b>	<b>767,413</b>	<b>100.0%</b>	<b>2,214,441 100.0%</b>
<b>Cost of goods sold</b>			
Cost of materials	-		-
Subcontractor Costs	-		19,441 0.9%
Payroll and related	189,392	24.7%	821,157 37.1%
Fuel	7,001	0.9%	28,895 1.3%
Repairs & Maintenance	1,149	0.1%	72,054 3.3%
Equipment Rental	132,545	17.3%	1,015,464 45.9%
All Other	-		-
<b>Total cost of goods sold</b>	<b>330,088</b>	<b>43.0%</b>	<b>1,957,011 88.4%</b>
Gross Profit	437,325		257,430
<b>Operating Expenses</b>			
Insurance	13,433	1.8%	130,931 5.9%
Utilities	9,168	1.2%	49,882 2.3%
CPA Fees - % of Revenue	169,543	22.1%	534,740
CPA Fees - Annual Fee Amort.	41,667	5.4%	333,335 15.1%
Meals & Travel	-		533 0.0%
Professional Services	102,825	13.4%	268,984 12.1%
Other operating expense	18,591	2.4%	192,767 8.7%
<b>Total operating expenses</b>	<b>355,227</b>	<b>46.3%</b>	<b>1,511,171 68.2%</b>
<b>EBITDA</b>	<b>82,098</b>		<b>(1,253,741)</b>
<b>Other Expenses (Income)</b>			
Make Whole Reimbursement	134,251		(1,201,589)
Depreciation	-		-
Amortization	-		-
Federal & State Corporate Tax	-		-
Gain (Loss) on Sale	-		-
Interest	-		-
<b>Total Other Expenses (Income)</b>	<b>134,251</b>		<b>(1,201,589)</b>
<b>Net Ordinary Income (Loss)</b>	<b>\$ (52,153)</b>		<b>\$ (52,152)</b>

<b>Balance Sheet</b>			
<b>12/31/2019</b>			
<b>Assets</b>		<b>Liabilities</b>	
<b>Current Assets</b>		<b>Current Liabilities</b>	
Cash	\$ 6,848	Accounts Payable, trade	\$ 245,876
Accounts Receivable, Trade	807,278	Accrued Payroll	85,827
Accounts Receivable, Other	1,201,588	Accrued Expenses	219,919
Inventory	-	Deferred Revenue	126,112
Prepays and other current assets:		Payable to CPA	188,354
Prepays and deposits	12,260	Intecompany, net	1,381,705
CPA annual payment	166,667	<b>Total Current Liabilities</b>	<b>2,247,793</b>
Prepays and other current assets	178,927	<b>Noncurrent Liabilities</b>	
<b>Total Current Assets</b>	<b>2,194,641</b>	Long Term Debt (net)	-
Property, Plant & Equipment (net)	1,000	Other noncurrent liabilities	-
Other Long Term Assets	-	<b>Total Liabilities</b>	<b>2,247,793</b>
		Equity	(52,152)
<b>Total Assets</b>	<b>\$ 2,195,641</b>	<b>Total Liabilities and Equity</b>	<b>\$ 2,195,641</b>

### **Revenue and Receivables**

Top five customer receivables are as follows. Collections efforts are being actively managed.

<b><u>Customer</u></b>	<b><u>Balance</u></b>
DRIVEN ENTERPRISES	373,839
CONCORD RESOURCES LTD.	201,761
NEW ENGLAND STEAMSHIP AGEN	71,151
MORAN SHIPPING	66,097
SKANSKA	57,180

### **Expenses and Payables:**

Expenses are primarily comprised of equipment rental fees and operating supplies paid and payable to Summit Handling, United Rentals, Pine Bush Equipment and a handful of other vendors. Payroll costs consist of direct labor paid to employees of GT New London; Professional Services are mostly IT-related expenses and Port Security. Insurance expense is based on allocated annual premiums.

### **Other Notable Financial Items:**

- The annual fixed fee paid to the CPA of \$500,000 was treated as a prepaid expense and is being amortized over 12 months at \$41,667 per month.
- Deferred revenue shown on the B/S as a liability is the amount collected from customers for which reloading services have yet to be performed by the Company. See the schedule below. Per generally accepted accounting principles, it is only once the reloading service has been provided that revenue can be recognized; until then, the amounts collected are treated similar to customer deposits.

**Deferred Revenue**

	<u>Amount</u> <u>Collected</u>	<u>Amount</u> <u>Recognized</u>	<u>Balance</u>
Meever	7,662	(7,662)	0
Summitt	25,859		25,859
Concord	50,501	(28,788)	21,713
Ultrabulk	76,410	(23,191)	53,219
stamford Metals	55,675	(38,356)	17,319
Thyssen	7,561	(7,561)	(0)
Atlantic	1,864		1,864
Ocean	7,603	(1,466)	6,137
Arcelor	8,330	(8,330)	0
Arcelor	32,650	(32,650)	(0)
Arcelor	13,525	(13,525)	(0)
<b>Total Deferred Revenue</b>	<b>287,641</b>	<b>(161,529)</b>	<b>126,112</b>

- Intercompany payables to Gateway New Haven for working capital cash funding
 

May-September	\$491,225
October-December	<u>390,480</u>
	\$881,705
- The payable to Enstructure LLC includes the funding of the \$500,000 annual payment to the CPA as well as other fees paid by Enstructure.
- Variable Fees owed to the CPA related to generated revenues have been calculated as follows:

	Revenue	Variable Rate	Amount Owed	Amount Paid	Amount Outstanding
<b>Stevedoring, Handling &amp; Storage Revenue</b>					
October	\$ 240,314	7.0%	\$ 16,822	\$ -	\$ 16,822
November	\$ 28,400	7.0%	\$ 1,988	\$ -	\$ 1,988
December	\$ 635,571	7.0%	\$ 44,490	\$ -	\$ 44,490
<b>Amount to meet Minimum Annual Guarantee (\$125K/Qtrly)</b>			<b>\$ 61,700</b>	<b>\$ -</b>	<b>\$ 61,700</b>
<b>Total Q4' 2019 Payment</b>	<b>\$ 904,286</b>		<b>\$ 125,000</b>	<b>\$ -</b>	<b>\$ 125,000</b>
<b>Wharfage &amp; Dockage Fees</b>					
October	\$ 89,927	50.0%	\$ 44,964	\$ (44,964)	\$ -
November	\$ 34,174	50.0%	\$ 17,087	\$ (17,087)	\$ -
December	\$ 127,334	50.0%	\$ 63,667	\$ -	\$ 63,667
<b>Total Q4' 2019 Payment</b>	<b>\$ 251,434</b>		<b>\$ 125,717</b>	<b>\$ (62,050)</b>	<b>\$ 63,667</b>

## Gateway New London December 2019 Operations Report

During October and November there continued to be limited activity from the perspective of reloading bulk materials already on site and related to incoming vessel activity. However, December proved to be our most active and profitable month due to the two vessels received. See the deferred revenue schedule in the Financial section above for throughput/materials handling; see below for the vessel report for the period. There have been no unforeseen occurrences, accidents or injuries, damages, losses or disruptions to the business to report.

### VESSEL REPORT



200 State Pier Road  
New London, CT 06320

#### GATEWAY NEW LONDON LLC

Vessel Name	Arrival Date	Departure Date	Cargo Handled	Unloaded/Loaded	Tons(MT)
BBC Eagle	December 15th	December 19th	Copper	Unloaded	8,877
Tai Honesty	December 15th	December 21st	Salt	Unloaded	41,405

## Schedule 2

### **INSURANCE requirements of Gateway**

Gateway shall provide and maintain, or cause any of Gateway's Subcontractors who are providing services under the Sublease to provide or maintain, the types and amounts of insurance set forth in this Schedule 2 at all times during the Term. The insurance carriers providing insurance as described in this Schedule 2 shall have an A.M. Best Financial Rating of "A-" or better and a financial size category of "IX" or higher with limits, or if unrated, such carriers shall be acceptable to all Parties, which acceptance shall not be unreasonably withheld.

Gateway shall procure and maintain the following insurance:

**Workers' Compensation Insurance; Employer's Liability Insurance.** Employer's liability Insurance with a one million US Dollars (\$ 1,000,000) limit per accident and disease. If Work is to be performed on or near navigable waters, the policy shall include the maritime coverage endorsement including coverage for the Jones Act (including all transportation, wages, maintenance and cure), the Death on the High Seas Act and other applicable maritime Laws and Codes and provide further that a claim in rem shall be treated as a claim against the employer. A maritime employers' liability and/or protection and indemnity policy may be used to satisfy applicable parts of this requirement with respect to Work performed on or near navigable waters.

Workers' Compensation Insurance (including occupational disease) as required by the statutory benefit laws of the state or states where the Services are to be performed (or any associated Materials and Equipment created) or as required by any other state where the employee performing the Services (or creating, assembling, delivering, or otherwise working on any associated Materials and Equipment) is normally employed, or approval as a qualified self-insurer as required by applicable state laws. If Work is to be performed on or near navigable waters, the policy shall include coverage for the United States Longshoreman's and Harbor Workers' Act, the Outer Continental Shelf Lands Act and other applicable maritime Laws and Codes. Such insurance shall include an "Alternate Employer Endorsement."

**Commercial General Liability Insurance.** Commercial liability insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for products liability/completed operations (which coverage shall remain in effect for a period of at least three years following the Term), blanket contractual, explosion, collapse and underground coverage, broad form property damage, and personal injury insurance, with a fifty million US Dollars (\$50,000,000) minimum limit per occurrence for combined bodily injury and property damage. The commercial general liability insurance policy shall be endorsed to provide primary and non-contributing liability. Coverage shall include stevedore and wharfingers liability.

**Automobile Liability Insurance.** Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage, including automobile uninsured/underinsured motorist protection endorsements, covering all owned (if any), leased, non-owned and hired vehicles used in the performance of Gateway's or Subcontractor's

obligations under this Contract with a one million US Dollars (\$1,000,000) minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable

**Protective and Indemnity Insurance.** To the extent Gateway or any Gateway Subcontractor operates Vessels in connection with the performance of the Work for the Project, Gateway and Subcontractor shall maintain: Protection and Indemnity Insurance including contractual liability, collision liability, specialist operations, tower's liability, and pollution buy-back endorsement, wreck removal and removal of debris coverage extensions and specialist operations including, but not limited to, dredging, pile driving, cable laying, heavy lifts and installation or its equivalent with limits of at least fifty million US Dollars (\$50,000,000) each occurrence. However, with regards to small value workboats and other vessels not involved in major installation activities, lesser amounts of Protection and Indemnity Insurance may be allowable, however never less than five million US Dollars (\$5,000,000) each occurrence;

Gateway shall carry Vessel Pollution Insurance subject to not less than the full limits and conditions available through the Water Quality Insurance Syndicate or its equivalent for OPA, CERCLA and other substances coverage; and Hull and Machinery Insurance not less than the full replacement value.

**Property Insurance.** "All Risk" Property Damage insurance covering the Port Facilities shall be procured and maintained by Gateway pursuant to the terms of the Concession Agreement. Coverage shall be provided on full value basis. Such property insurance shall be procured for the benefit of NEO as though NEO were a party to the Concession Agreement. The waiver of subrogation in the Concession Agreement shall apply equally as to NEO.

**Additional Insured.** To the fullest extent permitted by law, Gateway and Subcontractors shall cause the commercial general liability coverage to include NEO as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of NEO's general liability insurance policies and shall apply to both ongoing and completed operations. The additional insured endorsement should be a scheduled endorsement naming Bay State Wind, LLC as an additional insured. A copy of the additional insured endorsement shall be provided to NEO.

### **Schedule 3**

#### **INSURANCE requirements of NEO.**

NEO shall provide and maintain, or cause any of NEO's OEMs operating at the Port Facilities to provide or maintain, the types and amounts of insurance set forth in this Schedule 3 at all times during the Term. The insurance carriers providing insurance as described in this Schedule 3 shall have an A.M. Best Financial Rating of "A-" or better and a financial size category of "IX" or higher with limits, or if unrated, such carriers shall be acceptable to all Parties, which acceptance shall not be unreasonably withheld.

NEO shall procure (or so cause to be procured) and maintain the following insurance:

**Workers' Compensation Insurance; Employer's Liability Insurance.** Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which any work is to be performed hereunder, and with such Employer's Liability Insurance to have a coverage limit of \$1,000,000 per accident and \$1,000,000 per disease per employee and in the aggregate for disease.

**Commercial General Liability Insurance.** Commercial liability insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for liability arising from independent contractors, products liability/completed operations, blanket contractual, explosion, collapse and underground coverage, broad form property damage "sudden and accidental" pollution coverage, , and personal injury insurance, with policy limits of not less than fifty million US Dollars (\$50,000,000) per occurrence and general aggregate. Either under this policy or by separate policy, NEO shall procure and maintain pollution coverage with a one million US Dollars (\$1,000,000) minimum limit. A claims made form is acceptable for the pollution coverage.

**Automobile Liability Insurance.** Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage, including automobile uninsured/underinsured motorist protection endorsements, covering all owned (if any), leased, non-owned and hired vehicles used in the performance of the NEO's operations pursuant to this Sublease Agreement with a three million US Dollars (\$3,000,000) minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable

**Protective and Indemnity Insurance.** To the extent the NEO or any of its OEMs operates Vessels in connection with use of the Port Facilities, NEO shall maintain or cause such OEMs to maintain Protection and Indemnity Insurance including contractual liability, collision liability, specialist operations, tower's liability, and pollution buy-back endorsement, wreck removal and removal of debris coverage extensions and specialist operations including, but not limited to, dredging, pile driving, cable laying, heavy lifts and installation or its equivalent with limits of at least fifty million US Dollars (\$50,000,000) each occurrence. However, with regards to small value workboats and other vessels not involved in major installation activities, lesser amounts of



Protection and Indemnity Insurance may be allowable, however never less than five million US Dollars (\$5,000,000) each occurrence;

NEO shall carry (or cause its OEMs to carry) Vessel Pollution Insurance subject to not less than the full limits and conditions available through the Water Quality Insurance Syndicate or its equivalent for OPA, CERCLA and other substances coverage;

**Hull and Machinery Insurance:** To the extent that NEO, its subcontractors, or any of its OEMs operates Vessels in connection with use of the Port Facilities, NEO, its subcontractors, or any of its OEMs shall maintain Hull and Machinery Insurance under the American Institute Hull Clauses (June 2, 1977) or equivalent. Such insurance shall be endorsed specifically to include the following:

1. Waiver of subrogation in favor of Gateway.
2. Where legally permitted, Gateway shall be named as an additional assured.

**Contractor Equipment/Inland Marine Insurance:** To the extent that NEO, its subcontractors, or OEMs operates mobile equipment in connection with use of the Port Facilities, NEO, its subcontractors, or OEMs shall procure and maintain "All Risk" contractor equipment/inland marine insurance. Coverage shall be provided on full value basis. Such insurance shall be endorsed specifically to include the following:

1. Waiver of subrogation in favor of Gateway.
2. Where legally permitted, Gateway shall be named as an additional assured.

**Additional Insured.** To the fullest extent permitted by law, NEO shall cause the commercial general liability coverage to include the Authority and Gateway as additional insureds for claims caused in whole or in part by the negligent acts or omissions of NEO or an applicable OEM, which occur during the Term. The additional insured coverage shall be primary and non-contributory to any of Gateway or Gateway's general liability insurance policies and shall apply to both ongoing and completed operations. The additional insured endorsement should be a scheduled endorsement naming Connecticut Port Authority and Gateway New London, LLC as additional insureds. A copy of the additional insured endorsement shall be provided to Gateway and Gateway.

**Schedule 4**  
**Procurement and Contracting Requirements**

**Section 1.1 Nondiscrimination.** A contract for a quasi-public agency project shall include a nondiscrimination affirmation provision in the contract certifying that the contractor understands their duties required under sections 4a-60 and 4a-60a of the Connecticut General Statutes. Pursuant to sections 4a-60 and 4a-60a of the Connecticut General Statutes, Gateway and NEO, for themselves and their authorized signatories of this Agreement, affirm that they understand the obligations, and shall comply with, of said section 4a-60 and 4a-60a of the Connecticut General Statutes and that they will maintain a policy for the duration of the Agreement to assure that the Agreement will be performed in compliance with the nondiscrimination requirements of such sections. Gateway and NEO and their authorized signatories of this Agreement demonstrate their understanding of this obligation by either (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if Gateway and NEO understand their obligations under such sections, or (B) initialing this nondiscrimination affirmation in the following box: .

**Section 1.2 Campaign Contribution Restriction.** For all State contracts, defined in section 9-612 of the Connecticut General Statutes as 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, Gateway and NEO represent that they have received the State Elections Enforcement Commission’s notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform their principals of the contents of the notice. In addition, Gateway and NEO have executed a document entitled “OPM Form 1” and said document is attached hereto and made a part of this Agreement as “Attachment 1”.

**Section 1.3 Consulting Agreements Representations.** No quasi-public agency shall execute a contract for the purchase of goods or services, which contract has a total value to the state of fifty thousand dollars or more in any calendar or fiscal year, unless such contract contains the representations described in section 4a-81 of the Connecticut General Statutes. Pursuant to section 4a-81 of the Connecticut General Statutes, Gateway and NEO represent that they have not entered into any consulting agreements in connection with this Agreement, except for the agreements listed below. “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 contracts. “Consulting agreement” does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of section 4a-81 of the Connecticut General Statutes.

---

Consultant’s Name and Title

---

Name of Firm (if applicable)

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

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

\_\_\_\_\_  
Cost

The basic terms of the consulting agreement are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Section 1.4 Large State Contract Representation.** No quasi-public agency shall execute a large state contract unless such contract contains the representation described in section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021. Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, Gateway and NEO, for themselves and on behalf of all of their principals or key personnel who submitted a bid or proposal, represent: (1) That no gifts were made by (A) Gateway and NEO, (B) any principals and key personnel of Gateway and NEO, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of Gateway and NEO or principals and key personnel, who participate 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 requests 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; (2) That no such principals and key personnel of Gateway and NEO, or agent of Gateway and NEO or of such principals and key personnel, know of any action by Gateway and NEO to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of Gateway and NEO to provide a gift to any such public official or State employee; and (3) That Gateway and NEO are submitting bids or proposals without fraud or collusion with any person.

**Section 1.5 Iran Energy Investment Certification.** No quasi-public agency shall enter into any large state contract or amend or renew any such contract with any entity unless such contract contains the described certification in section 4-252a of the Connecticut General Statutes. Pursuant to section 4-252a of the Connecticut General Statutes, Gateway and NEO certify that they have not made a direct investment 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, and have not increased or renewed such

investment on or after said date. (b) If Gateway and NEO make a good faith effort to determine whether they have made an investment described in subsection (a) of this section shall not be subject to the penalties of false statement pursuant to section 4-252a of the Connecticut General Statutes. A “good faith effort” for purposes of this subsection includes a determination that Gateway and NEO are not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Agreement.

**Section 1.6 Summary of Ethics Law.** No quasi-public agency shall enter into a large state construction or procurement contract unless the requirements described in section 1-101qq of the Connecticut General Statutes are met. Pursuant to section 1-101qq of the Connecticut General Statutes, the Authority has provided to Gateway and NEO the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Agreement as if the summary had been fully set forth in this Agreement. Additionally, pursuant to section 1-101qq of the Connecticut General Statutes, (a) Gateway and NEO represent that the chief executive officer or authorized signatories of the Agreement and all key employees of such officer or signatories have read and understood the summary and agree to comply with the provisions of state ethics law; (b) prior to entering into a contract with any subcontractors or consultants, Gateway and NEO shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (c) failure to include such representations in such contracts with subcontractors or consultants shall be cause for termination of the Contract; and (d) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the Agreement terms.

**Section 1.7 Access to Data for State Auditors.** Any contract between a state contracting agency and a contractor that is entered into, renewed, or amended on or after October 1, 2021 requires notice described in section 4e-72 of the Connecticut General Statutes. Pursuant to section 4e-72 of the Connecticut General Statutes, Gateway and NEO shall provide to the Authority access to any data, as defined in Connecticut General Statute §4e-1, concerning the Agreement and the Authority, that are in the possession or control of Gateway and/or NEO upon demand, and shall provide the data to the Authority in a format prescribed by the Authority or its agents and the State Auditors of Public Accounts at no additional cost.

**Section 1.8 State Contracting Standards Board Requirements.** All State contracts of each state contracting agency that take effect on or after June 1, 2010 are subject to the State Contracting Board Requirements as described in section 4e-14 of the Connecticut General Statutes. Pursuant to section 4e-14 of the Connecticut General Statutes, this Agreement is subject to the provisions and requirements of the State Contracting Standards Board, including without limitation, ensuring accountability, transparency, and results-based outcomes, all of which are incorporated into and are made a part of this Agreement as if they had been fully set forth in it.

**Section 1.9 Executive Orders.** The Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. 16 of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services. If Executive Order No. 14 is applicable, it is deemed to be incorporated into and made a part of the Agreement as if it had been fully set forth in it. At Gateway and/or NEO's request, the Authority shall provide a copy of these orders to each.

**Section 1.10 Whistleblower Protection.** Each contract between a state or quasi-public agency and a large state contractor as described in section 4-61dd of the Connecticut General Statutes, provides for penalties regarding retaliatory actions against its personnel as set forth in section 4-61dd(h) of the Connecticut General Statutes. If an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) or subdivision (1) of subsection (e) of section 4-61dd of the Connecticut General Statutes, the contractor 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 distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty. Additionally, pursuant to subsection (i) of section 4-61dd of the Connecticut General Statutes, each state agency or quasi-public agency shall post a notice of the provisions of this section relating to state employees and quasi-public agency employees in a conspicuous place that is readily available for viewing by employees of such agency or quasi-public agency; and each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.



STATE OF CONNECTICUT
CAMPAIGN CONTRIBUTION CERTIFICATION

Written or electronic certification to accompany a bid or proposal or a non-competitive contract with a value of \$50,000 or more, pursuant to C.G.S. § 9-612.

INSTRUCTIONS:

Complete all sections of the form. Attach additional pages, if necessary, to provide full disclosure about any 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 submission of your bid or proposal (if no bid or proposal- submit this completed form with the earliest submittal of any document to the state or quasi-public agency prior to the execution of the contract), 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.

Check One:

- Initial Certification
Updated Certification because of change of information contained in the most recently filed certification

CAMPAIGN CONTRIBUTION CERTIFICATION:

I certify that neither the contractor or prospective state contractor, nor any of its principals, have made any contributions to, or solicited any contributions on behalf of, any party committee, exploratory committee, candidate for state-wide office or for the General Assembly, or political committee authorized to make contributions to or expenditures to or for, the benefit of such candidates, in the previous four years, that were determined by the State Elections Enforcement Commission to be in violation of subparagraph (A) or (B) of subdivision (2) of subsection (f) of Section 9-612 of the General Statutes, without mitigating circumstances having been found to exist concerning such violation. Each such certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement. If there is any change in the information contained in the most recently filed certification, such person shall submit an updated certification not later than thirty days after the effective date of any such change or upon the submittal of any new bid or proposal for a state contract, whichever is earlier.

All Campaign Contributions on behalf of any party committee, exploratory committee, candidate for state-wide office or for the General Assembly, or political committee authorized to make contributions to or expenditures to or for, the benefit of such candidate, for a period of four years prior to signing the contract or date of the response to the bid, whichever is longer, include:

Table with 5 columns: Contribution Date, Name of Contributor, Recipient, Value, Description. Includes multiple blank rows for data entry.

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

\_\_\_\_\_  
**Printed Contractor Name**

\_\_\_\_\_  
**Printed Name of Authorized Official**

\_\_\_\_\_  
**Signature of Authorized Official**

**Subscribed and acknowledged before me this** \_\_\_\_\_ **day of** \_\_\_\_\_, **20**\_\_\_\_.

\_\_\_\_\_  
**Commissioner of the Superior Court (or Notary Public)**

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





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

**Please note:** A copy of, or a hyperlink to, the electronic version of this notice must be provided in the bid specifications or requests for proposals for a state contract. Notice of the contribution certification requirements detailed below must also be given. No state agency or quasi-public agency shall execute a state contract unless such contract contains a representation that the chief executive officer or authorized signatory of the contract has received such notice and the written certifications have been provided by the state contractor.

### 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.

### CERTIFICATION REQUIREMENT

A state contractor or prospective state contractor submitting a bid or proposal for a state contract must disclose on the certification form (typically OPM Form 1,) all contributions made by any of its principals to any party committee, exploratory committee, candidate for state-wide office or for the General Assembly, or political committee authorized to make contributions to or expenditures to or for the benefit of such candidates *for a period of four years prior* to the signing of the contract or date of the response to the bid, whichever is longer, and certify that all contributions have been disclosed.

Furthermore, a state contractor or prospective state contractor submitting a bid or proposal for a state contract shall certify that neither the contractor or prospective state contractor, nor any of its principals, have made any contributions to, or solicited any contributions on behalf of, any party committee, exploratory committee, candidate for state-wide office or for the General Assembly, or political committee authorized to make contributions to or expenditures to or for, the benefit of such candidates, *in the previous four years*, that were determined by the State Elections Enforcement Commission to be in violation of General Statutes § 9-612, without mitigating circumstances being found.

Each certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement. If there is any change in the information contained in the most recently filed certification, such person shall submit an updated certification not later than thirty days after the effective date of any such change or upon the submittal of any new bid or proposal for a state contract, whichever is earlier.

For further information on the notice and certifications, and to find answers to many questions raised by this notice, please see the Frequently Asked Questions – State Contractors section of the Commission's website at <https://seec.ct.gov/Portal/SCCB/FAQs>.





## 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.

Additional information about state contractors campaign finance limitations may be found on the website of the State Elections Enforcement Commission, <https://portal.ct.gov/seec>. Click on the link to “State Contractor and Lobbyist Provisions.”

## 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-100. “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.



## DEFINITIONS (CONTINUED)

“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 proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving 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 fundraising 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, serving on the committee that is hosting a fundraising event, introducing the candidate or making other public remarks at a fundraising event, being honored or otherwise recognized at a fundraising event, 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 155 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.

## Exhibit A

### **Certain Concession Agreement Provisions**

In this Exhibit A to Sublease Agreement, unless the subject or context otherwise requires, capitalized terms shall have the meanings given to them in the Sublease Agreement, or if not defined in the Sublease Agreement, in Part I of Annex A of the Concession Agreement. However, for the avoidance of doubt, "Project" as used in this Exhibit A has the meaning provided in the Sublease Agreement and not in the Concession Agreement. This Exhibit A forms an integral part of the Sublease Agreement pursuant to Section 10 thereof. (This Exhibit A is also Schedule 5 to the Harbor Development Agreement and applies during the term thereof pursuant to Section 9.4.3 thereof.) Unless otherwise stated, references in this Exhibit A to sections refer to sections in the Concession Agreement.

Subject to the provisions set forth in Sections 2.4, 5.2.4 and 5.2.5 of the Harbor Development Agreement, the Authority and Gateway agree upon the following terms and provisions relating to the Concession Agreement:

1. This Exhibit A to Sublease Agreement (and also Schedule 5 to the Harbor Development Agreement) forms a part of the Concession Agreement (Section 1.4). In the event of ambiguities or discrepancies among the several documents forming the Concession Agreement, the priority of the documents forming the Concession Agreement shall be first this Exhibit A to Sublease Agreement, and then as provided in Section 1.5 of the Concession Agreement.
2. Once the Project work commences, for the avoidance of doubt, notwithstanding Gateway's acceptance of the Site from the Authority in "AS IS" condition pursuant to Section 2.1.2 of the Concession Agreement, Gateway reserves any rights it may have under Sections 5.4, 5.5 and 16.2.6 of the Harbor Development Agreement in respect of Substantial Completion and Final Acceptance of the Project, including any available construction and design warranties from third parties. Subject to the preceding sentence, after the occurrence of Substantial Completion under the Harbor Development Agreement, Gateway's suspension of operation will end as provided in Sections 5.6.1 and 9.4.1 of the Harbor Development Agreement and Gateway will resume control of and responsibility for ongoing port operations.
3. For such period of time as the Sublease Agreement is continuing and in full force and effect, the last sentence of Section 2.2.1(d) of the Concession Agreement regarding annual notice by Gateway of all Movable Property and Fixtures and Fittings acquired by Gateway is suspended insofar as it pertains to the Capital Improvements Commitment under Section 9.4.1 of the Concession Agreement. The Authority, Gateway and NEO nonetheless shall maintain in their respective records appropriate documentation of which Movable Property, Fixtures and Fittings are acquired by such Party.
4. Commencing with the Project work through the term of the Harbor Development Agreement, and thereafter for such period as the Sublease Agreement is continuing and in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway will (i) be required to make the Variable Fee payment only under clause (a), but not under clause (b), of

Section 2.4.2 of the Concession Agreement, and (ii) not be required to make Annual Fixed Fee payments or Minimum Annual Guarantee payments (Sections 2.4.1 and 2.4.2 of the Concession Agreement).

5. During the term of the Harbor Development Agreement and thereafter for such period of time as the Sublease Agreement is continuing and in full force and effect, the requirement for Gateway to provide a Letter of Credit to the Authority is suspended (Section 2.4.3 of the Concession Agreement).

6. As reflected in Sublease Agreement Recital E the Project is the "BSW Development" and thus in accordance with the terms of Section 2.4.4 of the Concession Agreement, upon the execution of the Harbor Development Agreement, Gateway is no longer responsible for reimbursement of costs in respect of any feasibility study concerning wind energy uses (Section 2.4.4 of the Concession Agreement).

7. During the term of the Harbor Development Agreement, Gateway's agreement to assume and discharge or perform when due all debts and obligations whatsoever relating to the Site, the Port Facilities and the Port Services is modified, and thereafter for such period of time as the Sublease Agreement is continuing and in full force and effect, to not apply insofar as pertains (i) to all debts and obligations whatsoever relating to the Project construction and (ii) to NEO's obligations under the Harbor Development Agreement and under the Sublease Agreement (Section 2.7 of the Concession Agreement).

8. For such period of time as the Sublease Agreement is in full force and effect, and no Gateway Event of Default has occurred thereunder, Gateway's obligation to accommodate and to use reasonable efforts to coordinate the Ferry berthing is suspended (Section 7.2.3 of the Concession Agreement).

9. While the Project is under construction, and further thereafter during NEO's Active Periods (as defined in the Sublease Agreement) and for such period of time as the Sublease Agreement is in full force and effect, and no Gateway Event of Default has occurred thereunder, Gateway's obligations to operate the Port Facilities to provide Port Services (except for specified services to NEO and the OEMs, as defined in the Sublease Agreement) and to maximize Throughput Volume are suspended (Concession Agreement Sections 2.3.1, 2.3.2, 8.1, and 8.8, and Annex B Paragraph 6).

10. For such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway and the Authority each acknowledge, as to itself, that there are no Cranes owned or leased by Gateway or the Authority on the Site, and no Cranes will be installed by Gateway as part of the Project, and therefore Cranes are excluded from Gateway's obligations (Sections 2.2.1(d), 9.1, 9.2, 9.3, and 15.6.7, and Annex B Paragraphs 2.1 and 2.4, and other references of the Concession Agreement). It is acknowledged that any new mobile heavy lift crane is an OEM item.

11. During the Project until Final Acceptance under the Harbor Development Agreement and for such period of time as the Sublease Agreement is in full force and effect, and no Gateway Event of Default has occurred thereunder, Gateway's obligation to maintain the Site and the Port

Facilities in good, sanitary and safe working condition is suspended except as it relates to specified services to NEO and the OEMs, as defined in the Sublease Agreement. Furthermore, during the Project and for such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway's obligations under Section 9.2 of the Concession Agreement to periodically overhaul, rehabilitate, refurbish or replace components or elements of the Site and the Port Facilities is suspended until Final Acceptance under the Harbor Development Agreement except as it relates to specified services to NEO and the OEMs, as defined in the Sublease Agreement.

12. For such period of time as the Harbor Development Agreement is in full force and effect, Gateway's obligation to restore and repair damaged or destroyed parts of the Site or the Port Facilities under Section 9.3 of the Concession Agreement is suspended insofar as pertains to damage or destruction caused by EPC Contractor or the Authority (Section 9.3 and Annex B Paragraph 2.5 of the Concession Agreement); provided, however, that Section 9.3 of the Concession Agreement will apply to any structural damage to the State Pier that the Authority identifies in writing (with reasonable supporting documentation) to Gateway no later than thirty (30) days after Gateway ceases pier operations as having been caused by Gateway. For such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway's obligation to restore and repair damaged or destroyed parts of the Site or the Port Facilities under Section 9.3 is suspended insofar as pertains to damage or destruction caused by NEO or an OEM (Section 9.3 and Annex B Paragraph 2.5 of the Concession Agreement). In other respects and at other times, Gateway shall undertake to promptly restore damage or destruction to the extent of available insurance proceeds and as required by the Concession Agreement.

13. During the term of the Harbor Development Agreement and thereafter for such period of time as the Sublease Agreement is in full force and effect, and no Gateway Event of Default has occurred thereunder, Gateway's Capital Improvements Commitment under Section 9.4 is thereby satisfied by the provision of NEO's funding commitments under the Harbor Development Agreement. Nonetheless, during Idle Periods (as defined in the Sublease Agreement), Gateway agrees to have the requisite equipment needed to perform the Port Services.

14. It is agreed that the quarterly reports provided under Section 10.5 of the Concession Agreement shall be provided on a calendar quarter basis, as with the reports under Section 10.4 of the Concession Agreement.

15. During the Project and thereafter for such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway's responsibility to provide an Annual Environmental Report is suspended (Section 10.8 of the Concession Agreement). Additionally, during the Project Gateway will not be responsible for coordinating mitigation plans and for compliance with obligations set forth as part of the permits for the Project (Exhibit B Section 3.1 of the Concession Agreement).

16. Gateway's obligations to indemnify the Authority Indemnified Parties under Section 12 of the Concession Agreement shall not extend to the actions or omissions of NEO or any OEM or otherwise arising out of or as a consequence of any claim or action by any Person employed by NEO or any OEM.

17. During the Project, the insurance provisions of the Harbor Development Agreement will prevail over the insurance provisions of the Concession Agreement, and Gateway's insurance requirements are suspended but only for such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder. Without limiting the foregoing and for such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway's requirement to procure property insurance under the Concession Agreement is suspended.

18. Pursuant to Section 22.1 of the Concession Agreement, Gateway hereby provides notice to the Authority that the address for the copy of notices to Gateway is changed to be:

Phelps Dunbar, L.L.P.  
365 Canal Street, Suite 2000  
New Orleans, Louisiana 70130  
Attn: James A. Stuckey

19. During the Project and thereafter for such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default (excluding for this paragraph a Gateway Event of Default arising solely from Sublease Agreement Section 12.4.3) has occurred thereunder, the berths at the Site will have been fundamentally altered by the Project, and Gateway is relieved of any obligation to share in dredging costs (Annex B Paragraphs 2.5 and 2.6 of the Concession Agreement).

20. During the Project and thereafter for such period of time as the Sublease Agreement is in full force and effect and no Gateway Event of Default has occurred thereunder, Gateway's responsibilities for security and utilities may be altered in coordination and agreement with the EPC Contractor under the Harbor Development Agreement (Annex B Paragraphs 2.11 and 2.15 of the Concession Agreement).

**Exhibit B**

**Intentionally Omitted**