SAN JUAN BAY CRUISE TERMINALS

PUBLIC – PRIVATE PARTNERSHIP AGREEMENT

dated as of

August ___, 2022

by and between

THE PUERTO RICO PORTS AUTHORITY

and

SAN JUAN CRUISE PORT LLC

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SAN JUAN BAY CRUISE TERMINALS
PUBLIC – PRIVATE PARTNERSHIP AGREEMENT

This **SAN JUAN BAY CRUISE TERMINALS PUBLIC – PRIVATE PARTNERSHIP AGREEMENT** (this "Agreement") is made and entered into as of this ___ day of August, 2022 (the "Date of this Agreement"), by and between the Puerto Rico Ports Authority (the "Authority"), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act No. 125 of the Legislative Assembly of Puerto Rico enacted on May 7, 1942, as amended, and San Juan Cruise Port LLC (the "Concession Company"), a limited liability company organized under the laws of the Commonwealth of Puerto Rico.

RECITALS

WHEREAS, the Authority owns and operates the Cruise Port Facility (as defined herein);

WHEREAS, pursuant to, and under the terms and conditions contained in Act No. 29-2009 (the "Act"), the Authority is authorized to execute and deliver this Agreement, perform its obligations hereunder and enter into the Transaction (as defined, along with other capitalized terms, herein);

WHEREAS, the Authority desires to grant a concession on an exclusive basis pursuant to this Agreement, which incorporates real property and personal property leases as described herein and which is also a Partnership Contract (*contrato de alianza*) pursuant to the Act, to the Concession Company for the primary purpose and essential consideration of repairing, improving, operating and maintaining certain public use cruise terminals and related facilities in a safe and secure manner; maintaining the safety and security of the Cruise Port Facility at the highest possible levels; promoting, facilitating, aiding and enhancing commerce, tourism and economic development for the Commonwealth, in recognition that the Cruise Port Facility is the primary point of cruise ship access in the Commonwealth and related economic activity and tourism and providing various other benefits to the Cruise Lines, the traveling public and the Authority;

WHEREAS, the Authority and the Concession Company have agreed upon the terms and conditions of the Open Access Regime and the other Operating Standards in order to assure the safe, secure, economical and effective operation of the Cruise Port Facility; and

WHEREAS, the Concession Company desires to receive the concession from the Authority to repair, improve, operate and maintain the Cruise Port Facility, as hereinafter provided;

NOW THEREFORE, for and in consideration of the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"AA-Compensation" has the meaning ascribed thereto in Section 14.1(b).

"AA-Dispute Notice" has the meaning ascribed thereto in Section 14.1(c).

"AA-Termination Damages" has the meaning ascribed thereto in Section 14.2(a).

"AA-Notice" has the meaning ascribed thereto in Section 14.1(c).

"AA-Preliminary Notice" has the meaning ascribed thereto in Section 14.1(c).

"Acceptance Notice" has the meaning ascribed thereto in Section 3.19.

"Access Dispute" means a dispute between the Concession Company and the Authority or an Access Seeker regarding the Open Access Regime and the Concession Company's compliance with it, as provided in Schedule 3.

"Access Protocol Independent Expert" has the meaning ascribed thereto in Schedule 3.

"Account LC" means an unconditional and irrevocable Letter of Credit in favor of the Concession Company or any Concession Mortgagee issued by a financial institution whose long-term senior unsecured indebtedness has obtained a rating of "BBB+" or better by Standard & Poor's Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if the named Rating Agency ceases to publish ratings) and which Letter of Credit is not secured by the Concession Company Interest and does not impose on the Concession Company any obligation to reimburse draws in respect thereof.

"Act" has the meaning ascribed thereto in the Recitals.

"Act No. 2-2018 Crime" means any crime specified in Act No. 2-2018 of the Legislative Assembly of Puerto Rico, as may be amended from time to time, known as the Anti-Corruption Code for a New Puerto Rico.

"Actual Revenue Share Credit" has the meaning ascribed thereto in Section 15.1(c).

"AD-Termination Damages" has the meaning ascribed thereto in Section 16.2(c).

"Additional Coverages" has the meaning ascribed thereto in Section 13.2(l).

"Additional Cruise Port Facilities" means any land and all easements, licenses, privileges, rights and appurtenances related thereto, including all terminals, buildings, structures (above grade and below grade), Authority roadways, and all fixtures, and related facilities, situated on

such land, and any piers and wharves located adjacent to such land, for Cruise Line Vessels that may be Developed or as to which a Grant of Development Authority may be made, including any Additional Cruise Port Facilities Projects but excluding the Cruise Piers or any other portion of the Cruise Port Facility.

"Additional Cruise Port Facilities Project" has the meaning ascribed thereto in Section 3.19.

"Adjusted for Inflation" means, with respect to the amount to be "Adjusted for Inflation," to multiply such amount by the CPI Factor for the applicable adjustment period.

"Administrative Determination" means Administrative Determination No. 22-05 issued by the Department of the Treasury of the Commonwealth on August 2, 2022, as may be amended from time to time.

"Adverse Action" has the meaning ascribed thereto in Section 14.1(a).

"Affected Property" means any public or private property, including a highway, street, road, roadway, bridge, railroad, rail or other transit way, rights-of-way, bicycle or hiking path and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of the Authority, that is located above, intersects with, crosses over or under or is adjacent to the Cruise Port Facility or any part thereof, as initially shown on Schedule 1.

"Affiliate", when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries, has a 10% (or in the case of "majority-owned Affiliates," 50%) or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed that for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing such fund or trust). For the avoidance of doubt, with respect to the Concession Company, its Affiliates shall include Equity Participants and each Person controlled by the Equity Participants.

"Affiliated Service Providers" has the meaning ascribed thereto in Section 4(a) of Schedule 15.

"Aggregate Concession Compensation" has the meaning ascribed thereto in Section 15.1(c).

"Agreed Minimum Value" means seventy-two million dollars ($72,000,000).

"Agreed Modification" has the meaning ascribed thereto in Section 5.1(d).

"Agreement" has the meaning ascribed thereto in the preamble to this Agreement (including all schedules referred to herein), as amended from time to time in accordance with the terms hereof.

"Ancillary Services" has the meaning ascribed thereto in Schedule 3 and as described in Schedule 15.

"Annual Authority Revenue Share" has the meaning ascribed thereto in Section 2.1(c).

"Annual Dredging Payment" has the meaning ascribed thereto in Section 2.1(a).

"Approval", "Approved", "Approves", "Approved by the Authority", consent, determination and similar expressions mean approved or consented to by the Authority, which shall be made in accordance with the provisions of Section 1.17.

"Asset Management Plan" has the meaning ascribed thereto in Section 3.4.

"Assigned Port Facility Contracts" means the agreements that are set forth on Schedule 2 under the heading "Assigned Port Facility Contracts."

"Assumed Liabilities" has the meaning ascribed thereto in Section 3.2(c).

"Atlantic Standard Time" means time as measured in Puerto Rico by subtracting four hours from Greenwich Mean Time.

"Audit" and similar expressions mean, with respect to any matter or thing relating to the Cruise Port Facility, the Cruise Port Facility Operations or this Agreement, including compliance with the terms of this Agreement, the performance by or on behalf of the Authority of such reviews, investigations, inspections and audits relating to such matter or thing as the Authority may determine, in its reasonable discretion, to be advisable or necessary in the circumstances, conducted in each case in accordance with applicable United States audit practices customarily accepted in the shipping industry, if any, and the terms of this Agreement or as required by Law (including as may be required in connection with the receipt of Government Contributions).

"Authority" has the meaning ascribed thereto in the preamble to this Agreement.

"Authority Default" has the meaning ascribed thereto in Section 16.2(a).

"Authority Employee" means each person employed by the Authority with respect to the Cruise Port Facility as of the Date of this Agreement.

"Authority Related Entity" has the meaning ascribed thereto in Section 3.7(a).

"Authority's Option" has the meaning ascribed thereto in Section 18.8(a).

"Authorization" means any approval, certificate of approval, authorization, consent, grant, agreement, waiver, variance, exemption, concession, endorsement, declaratory order, exception, license, filing, registration, permit, special lease or other requirement of any Person that applies to all or any portion of the Cruise Port Facility, the Cruise Port Facility Operations or any Additional Cruise Port Facilities.

"Authorized Auditor" has the meaning ascribed thereto in Section 8.2(a).

"Bank Rate" means the prime rate of interest announced publicly by *The Wall Street Journal* (or its successors) as the so-called "prime rate."

"Bankruptcy Code" means the Bankruptcy Code of the United States of America, being Title 11 of the United States Code, as may be amended from time to time.

"Berthing Areas" has the meaning ascribed thereto in Section 3.2(j).

"Berthing Areas Adjusted Minimum Dredging Depth" has the meaning ascribed thereto in Section 3.2(j).

"Berthing Areas Minimum Dredging Depth" has the meaning ascribed thereto in Section 3.2(j).

"Bid Date" means July 31, 2019.

"Breakage Costs" means any breakage costs, financing fees, make-whole premium payments, termination payments or other prepayment amounts (including premiums) that are required to be paid by the Concession Company with respect to Concession Mortgage Debt or Qualified Debt as a result of the early repayment of such Concession Mortgage Debt or Qualified Debt prior to its scheduled maturity date, including the cost of early termination of interest rate hedging arrangements.

"Business Day" means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the Commonwealth or the United States government.

"Capital Costs Reserve" has the meaning ascribed thereto in Section 16.3(h)(i).

"Capital Lease" means a lease under which the obligations of the Concession Company would, in accordance with GAAP, be included in determining total liabilities as shown on the liability side of a balance sheet of a Concession Company.

"Capital Project" means any purchase, Capital Lease, creation, improvement or renovation of a Fixed Asset.

"Cash Deposit" has the meaning ascribed thereto in Section 2.3(a).

"Casualty Cost" has the meaning ascribed thereto in Section 13.3(a).

"CE-Dispute Notice" has the meaning ascribed thereto in Section 15.1(a).

"CE-Notice" has the meaning ascribed thereto in Section 15.1(a).

"CE-Preliminary Notice" has the meaning ascribed thereto in Section 15.1(a).

"Change in Control" means, with respect to any Person, whether accomplished through a single transaction or a series of related transactions and whether accomplished directly or indirectly, (i) a change in ownership so that more than 50% of the direct or indirect voting or economic interests in such Person is transferred to another Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert that did not have such power immediately prior to such transaction or transactions or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person for the purpose of or with the effect contemplated in clauses (i) or (ii) above; *provided, however*, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a "Change in Control" for the purposes of this Agreement:

(A) transfers of direct or indirect ownership interests in the Concession Company between or among Persons that are Affiliates of each other or Persons who are under common control (a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert)), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed that for purposes of this definition, a fund or trust shall be deemed to be under common control with the Person managing or advising such fund or trust (with respect to each of the foregoing, notwithstanding the fact that an independent board or trustee makes final investment decisions with respect thereto) and a limited partner or equivalent in a fund or trust shall be deemed to be under common control with such fund or trust and the Person managing or advising such fund or trust);

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

(C) transfers of direct or indirect ownership interests in the Concession Company by any Equity Participant or its beneficial owner(s) to any Person not prohibited under Sanction Laws (including another Equity Participant) so long as the Equity Participants, collectively, or the Equity Participant as of the Date of this Agreement consisting of GPH Americas Ltd., a company organized under the laws of the Bahamas; or their respective beneficial owner(s) having ownership interests in the Concession Company (as of the later of (1) the Date of this Agreement or (2) the date on which the Authority most recently approved a Change in Control), together retain, or individually retains, in the aggregate, 50% or more of the direct or indirect voting or

economic interests in the Concession Company or the power directly or indirectly to direct or cause the direction of management and policy of the Concession Company, through ownership of voting securities or common directors, officers or trustees;

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

(E) any change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Authority under this Agreement so long as (1) no "Change in Control" occurs with respect to the Concession Company and (2) the Concession Company remains obligated under this Agreement;

(F) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concession Company's economic interest under this Agreement to another entity so long as (1) no "Change in Control" occurs with respect to the Concession Company and (2) the Concession Company remains obligated under this Agreement; and

(G) transfers of direct or indirect ownership interests in the Concession Company (1) between or among investment funds, including infrastructure funds, and investors therein; *provided* that following such Transfer, such direct or indirect ownership interests remain under common ownership, management or control or (2) from investment funds, including infrastructure funds, or investors therein, to any Person; *provided* that such direct or indirect ownership interests, following consummation of such Transfer, remain under common management or control, it being understood in each of (1) and (2) above that (x) ownership interests shall be deemed to be controlled by a Person if controlled in any manner whatsoever that results in control in fact, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise and (y) ownership interests of an investment fund shall be deemed to be managed by a Person if such Person has the right to direct, recommend or propose all or substantially all of the investments of such investment fund (with respect to each of the foregoing, notwithstanding the fact that an independent board or trustee makes final investment decisions with respect thereto).

"Claim" means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification under Section 12.1 or Section 12.2.

"Closing" has the meaning ascribed thereto in Section 2.2(a).

"Closing Bond or Guaranty Determination" has the meaning ascribed thereto in Appendix 1 to Schedule 6.

"Closing Corporate Guaranty" has the meaning ascribed thereto in Section 2.3(a).

"Closing Date" has the meaning ascribed thereto in Section 2.2(a).

"Closing LOC" has the meaning ascribed thereto in Section 2.3(a).

"Closing Security Delivery Date" means the date on which the Cash Deposit, the Closing LOC or the Closing Surety Bond is delivered to the Authority as provided in Section 2.3(a).

"Closing Surety Bond" has the meaning ascribed thereto in Section 2.3(a).

"Code of Ethics" has the meaning ascribed thereto in Section 9.2(j).

"Commercially Reasonable Insurance Terms" has the meaning ascribed thereto in Section 13.2(a).

"Commonwealth" means the Commonwealth of Puerto Rico.

"Commonwealth Court" has the meaning ascribed thereto in Section 19.6.

"Commonwealth Registry of Property" means the 1st Section of the Municipality of San Juan of the Registry of Property of the Commonwealth and where this Agreement must be recorded.

"Comparable Cruise Port" means a marine port in any (i) State, including the Commonwealth, (ii) island constituting a part of the Greater Antilles or the Lesser Antilles or (to the extent not included therein) the West Indies (including the Bahamas and the Turks and Caicos Islands) or (iii) country bordering the Caribbean Sea or the Gulf of Mexico, in each case which is maintained and operated by a Person other than a Governmental Authority, regardless of whether a Governmental Authority owns all or a substantial part of such marine port or has an ownership interest in such Person so long as the Governmental Authority does not exercise day-to-day control over such maintenance and operations except through a lease, concession, operations or similar agreement with such Person, and which marine port is open to Cruise Line Vessels in connection with the conduct of a Cruise Line Business that is reasonably comparable to the Cruise Port Facility with respect to the matter to be determined.

"Compensation Date" has the meaning ascribed thereto in Section 15.1(b).

"Compensation Event" has the meaning ascribed thereto in the definition of "Concession Compensation" below.

"Completion" or "Complete" has the meaning ascribed thereto in Section 4.8.

"Completion Inspection" has the meaning ascribed thereto in Section 4.6.

"Concession" has the meaning ascribed thereto in Section 2.1.

"Concession Company" has the meaning ascribed thereto in the preamble to this Agreement.

"Concession Company Default" has the meaning ascribed thereto in Section 16.1(a).

"Concession Company Interest" means the interest of the Concession Company in the Concession over the Cruise Port Facility created by this Agreement and any other rights, benefits and obligations of the Concession Company under this Agreement (including the right to receive Concession Compensation and Termination Damages hereunder).

"Concession Compensation" means with respect to (i) any applicable entry into the Cruise Port Facility pursuant to Section 3.7(a)(v) through Section 3.7(a)(vii) (but, for the avoidance of doubt, excluding access to and use of Pier 4 for the Pier 4 Reconstruction, access to and use of Piers 11-12 for the Piers 11-12 Wharf Project, access to and use of Pier 13 and Pier 14 for the Piers 13-14 Wharf Project and access to and use of Pan American Pier 1 and Pan American Pier 2 for the Pan American Piers Wharf Structure Project and any Modifications of any of the foregoing to the extent such access and use is in connection with the development of such Cruise Pier Improvement Projects using Government Contributions and in accordance with Section 4.6(f) and Section 4.6(h)), (ii) the Concession Company's compliance with or the implementation of any Required Modification (but, for the avoidance of doubt, it is acknowledged and agreed that any development of the Design and Technical Specifications consistent with Approved 30% Design and Technical Specifications or Approved 60% Design and Technical Specifications shall not constitute a Modification and shall not be the basis for Concession Compensation) or any modified or changed Operating Standard (as contemplated by Section 6.2(c)), (iii) amounts payable as a remedy under Section 16.2(b)(i), (iv) the occurrence of an Adverse Action, (v) the circumstances described in items (vi), (vii), (viii) and (xiii) of the definition of Delay Event, (vi) any Delay Event described in Section 15.2(c) which entitles the Concession Company to a Delay Event Remedy, (vii) the circumstances described in item (ix) of the definition of Delay Event under circumstances in which the Authority possesses the authority under applicable Law to grant such access and provided that the applicable denial by the Authority of access to the Cruise Port Facility after the Closing Security Delivery Date is not the result of the exercise by the Authority of any of its rights under Section 3.7(a)(i) through (iv), (viii) the circumstances described in item (xv) of the definition of Delay Event, (ix) the circumstances described in item (iii) of the definition of Delay Event if (A) such circumstances constitute an Adverse Action, and (B) whether or not they result in a delay or interruption in the performance by the applicable performing Party of any obligation under this Agreement, and to the extent such circumstances occur between the Date of this Agreement and the Closing Date and are not the result of the negligence or intentional misconduct of the Party affected by such circumstances or such Party's Representatives, or Contractors to or agents of such Party or Representatives, or the result of any act or omission by the Party affected by such circumstances or its Representatives in breach of the provisions of this Agreement, and (x) any other event the occurrence of which under the terms of this Agreement requires the payment of Concession Compensation or is described as a Compensation Event under the relevant provision of this Agreement (each of the foregoing, a "Compensation Event"), compensation payable by the Authority to the Concession Company in order to restore the Concession Company to the after-Tax economic position which is no better and no worse than the after-Tax economic position the

Concession Company would have enjoyed if such Compensation Event had not occurred, which shall be calculated in accordance with Section 15.1(d) and (e).

"Concession Fee" has the meaning ascribed thereto in Section 2.1.

"Concession Mortgage" means any lease, indenture, pledge, mortgage, deed of trust or other security agreement or arrangement, including a securitization transaction with respect to revenues generated at the Cruise Port Facility, encumbering any or all of the Concession Company Interest, in each case that satisfies all of the conditions in Section 18.1.

"Concession Mortgage Debt" means any *bona fide* debt secured by a Concession Mortgage, including (i) principal (including accreted principal under interest rate hedges or bonds); (ii) accrued interest (including capitalized interest and interest pursuant to an original issue discount); (iii) customary fees, costs, premiums, expenses and reimbursement obligations with respect thereto owed to lenders, financial insurers, agents, trustees and similar service providers; (iv) all payment obligations under interest rate hedging agreements with respect thereto (including accreting interest rate hedging agreements); (v) reimbursement obligations with respect thereto to any financial insurer and (vi) an assignment in connection with a securitization transaction, in each case, pursuant to an agreement entered into prior to the delivery by the Concession Company to the Authority of an AA-Preliminary Notice or a notice under Section 16.2(b) stating that an Authority Default has occurred. For the purposes of determining Cruise Port Facility Concession Value, Concession Mortgage Debt shall not include: (A) debt from an Affiliate of the Concession Company or from any Equity Participant or its Affiliate, unless such debt is secured debt on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith and in accordance with market standards; *provided* that the Concession Company may request at any time during the Term that the Authority confirm in writing, and the Authority shall so confirm within a reasonable time following such request (but not exceeding ten (10) Business Days), whether any such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith and in accordance with market standards (and if such conditions are complied with confirmation that such debt constitutes Concession Mortgage Debt shall not be unreasonably denied); (B) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after delivery by the Concession Company to the Authority, with a copy to the Concession Mortgagee, of an AA-Preliminary Notice or a notice under Section 16.2 stating that an Authority Default has occurred; or (C) any debt with respect to which the Concession Mortgagee Notice Requirements apply and the Concession Mortgagee does not provide the Authority with notice in all material respects in accordance with the Concession Mortgagee Notice Requirements. Notwithstanding anything herein to the contrary, except with respect to any such *bona fide* secured debt which was incurred or committed on or prior to the Closing Date or which is incurred or committed in connection with the funding of the Cruise Pier Improvement Projects Cost for the Expansion Investment Projects and satisfies clause (i) of the Expansion Investment Projects Requirements, all of which incurred or committed debt shall be deemed to be Concession Mortgage Debt (except to the extent excluded from Concession Mortgage Debt pursuant to clauses (A) or (B) above), Concession Mortgage Debt shall not include any new debt incurred or committed following the Closing Date except that which is incurred or committed in connection with the funding of the Cruise Pier Improvement Projects Cost for the Expansion Investment Projects and satisfies clause (i) of the Expansion Investment

Projects Requirements (it being understood and agreed by the Parties that any capitalization of interest or accretion of principal or other committed increases on any debt incurred or committed on or prior to the Closing Date or which is incurred or committed in connection with the funding of the Cruise Pier Improvement Projects Cost for the Expansion Investment Projects and satisfies clause (i) of the Expansion Investment Projects Requirements or any refinancing of any debt that has previously qualified as Concession Mortgage Debt up to the original principal amount thereof, plus any premium and customary fees, costs, expenses and reimbursement obligations with respect thereto, shall not constitute such new debt) that (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* 80% of the fair market value of the Concession Company Interest set forth in an appraisal; *provided* that, in order for such new debt to qualify as Concession Mortgage Debt, such appraisal shall (x) be prepared at the Concession Company's expense by an independent third party appraiser described under "Cruise Port Facility Concession Value" and delivered to the Authority prior to the incurrence or commitment of such new debt, (y) be a written appraisal of the fair market value of the Concession Company Interest as of the time of the incurrence or commitment of such new debt and (z) identify the extent to which such new debt (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* 80% of the fair market value of the Concession Company Interest set forth in such appraisal at the time of incurrence or commitment of such new debt; *provided* that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such appraisal shall constitute Concession Mortgage Debt to the extent such debt constitutes Concession Mortgage Debt on the date such appraisal is given; and *provided further* that the Parties agree that for the purposes of this definition and notwithstanding the requirements of the foregoing sub-clauses (x), (y) and (z), the amount of the Concession Fee paid at the Closing shall be deemed to constitute the fair market value of the Concession Company Interest for a period of 12 months after the Closing Date and, as such, no appraisal shall be required within such 12-month period. The appraisal requirement in the preceding sentence shall not apply to any protective advances made by any Concession Mortgagee or advances made by any Concession Mortgagee to cure Concession Company defaults under the Concession Mortgage (regardless of whether entered into on or after the Closing Date) or other financing documents of such Concession Mortgagee.

"Concession Mortgagee" means the holder or beneficiary of a Concession Mortgage, including a financial insurer, or an agent, trustee or other representative or designee of such a holder or beneficiary.

"Concession Mortgagee Notice Requirements" means the delivery, by a Concession Mortgagee (or the Concession Company on behalf of the Concession Mortgagee) to the Authority, after the execution and delivery of a Concession Mortgage by the Concession Company, of a true and complete copy of the executed original of such Concession Mortgage, together with a notice containing the name and post office address of the holder of such Concession Mortgage.

"Concession Mortgagee's Notice" has the meaning ascribed thereto in Section 18.8(a).

"Consent" means any approval, consent, ratification, waiver, exemption, franchise, license, permit, novation, certificate of occupancy or other authorization of any Person, including any consent issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

"Construction Contract" means any contract or other agreement made between the Concession Company and any Contractor or between one Contractor and another Contractor with respect to any one or more Cruise Pier Improvement Projects or Modifications. For the avoidance of doubt, the term "Construction Contract" is intended to include (i) more than one contract if the Concession Company enters into more than one contract for the design, engineering, procurement, construction, equipping and completion of any one or more Cruise Pier Improvement Projects or Modifications, (ii) any contract that relates to one or more of the categories of design, engineering, procurement, construction, equipping and completion, and, by way of example and not limitation, a design contract would constitute a Construction Contract and (iii) any contract or other agreement with respect to any one or more Cruise Pier Improvement Projects or Modifications that is entered into by a Person other than the Concession Company and that is assigned in whole or in part to the Concession Company (to the extent of such assignment), provided that this item (iii) shall only be included in the term "Construction Contract" for the purposes of provisions that remain applicable after its assignment to the Concession Company.

"Construction Milestone" means each milestone for the Initial Investment Projects and the Expansion Investment Projects set forth in Schedule 13 and each milestone for any other Cruise Pier Improvement Project set forth in any supplement to this Agreement or Agreed Modification as the case may be.

"Contractor" means, with respect to a Person, any Person with whom such Person contracts to perform any Cruise Port Facility Operations or any work related to any Cruise Pier Improvement Projects or Modifications or otherwise to perform any work or supply materials or labor in relation to the Cruise Port Facility, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with any such Person, but excluding, for the avoidance of doubt, any financial advisor retained by the Equity Participants or the Concession Company to provide advice in relation to the financing of the Concession or any Capital Projects and any legal counsel retained by the Equity Participants or the Concession Company. Any Affiliate of the Concession Company performing any work or supplying any materials or labor in relation to the Cruise Port Facility as provided in this definition shall constitute a "Contractor".

"Contracts" means any contract or agreement entered into by the Concession Company related to the Cruise Port Facility (or subcontracts thereunder).

"Covered Party" has the meaning ascribed thereto in Section 9.2(k).

"COVID-19" means any epidemic or pandemic declared by the World Health Organization which results from the strain of virus known as coronavirus infectious disease 2019 (COVID-19) and/or causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS CoV-2).

"COVID-19 Adverse Effect" has the meaning ascribed thereto in Section 2.5(d).

"CPI Factor" means (i) with respect to a one-year adjustment period (*e.g.* where the amount is to be Adjusted for Inflation annually), the amount equal to (A) CPI Value for the calendar year immediately prior to the date of such adjustment divided by (B) the CPI Value for the calendar year two years prior to the date of such adjustment (for illustrative purposes only, if an amount is to be Adjusted for Inflation on April 1, 2018, for the one-year period of April 1, 2017 through April 1, 2018, the CPI Value for such calculating adjustment is equal to 1.021, which is the CPI Value for calendar year 2018 (which is 257.025) divided by the CPI Value for calendar year 2017 (which is 251.642)) or (ii) with respect to a multiple-year adjustment period, the amount equal to (A) the CPI Value for the calendar year immediately prior to the date of such adjustment divided by (B) the CPI Value for the calendar year immediately prior to the date of the start of such adjustment period (for illustrative purposes only, if an amount is to be Adjusted for Inflation on the fifth anniversary of April 1, 2018, for the five-year period of April 1, 2014 through April 1, 2018, the CPI Value for such calculating adjustment is equal to 1.0781, which is the CPI Value for calendar year 2017 (which is 251.642) divided by the CPI Value for calendar year 2013 (which is 233.236)); *provided, however, that* in no case shall be the CPI Factor for any adjustment period be less than 1.000.

"CPI Value" means the "Annual Value" of that year obtained from "Consumer Price Index—All Urban Consumers—U.S. All Items Less Food and Energy (CUUR0000SA0L1E)" published by the Bureau of Labor Statistics of the United States Department of Labor (for illustrative purposes only, the CPI Value for the calendar year 2013 is 233.236); *provided, however*, that if such index is changed so that the base year thereof changes, such index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics; *provided further* that if such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised; *provided further* that any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision.

"Cruise Line" means any Person actively engaged in a Cruise Line Business.

"Cruise Line Business" means the transportation on a Cruise Line Vessel of persons for compensation or hire who are traveling for leisure purposes, and including cruise tourism involving multiple ports of call, cruises that return to their originating port and cruises from one port to another port without a return to the originating port.

"Cruise Line Vessel" means a passenger vessel that meets all of the following criteria: used for pleasure voyages lasting more than 24 hours, of which some part is on the open ocean (and not a bay or inland waterway), that is designed for ocean travel, contains food, recreational and entertainment amenities for cruise touring, and is sufficiently large to accommodate 500 passengers or more (or, in the case of Pier 1, no less than 150 passengers), unless otherwise Approved by the Authority. For the avoidance of doubt, a Cruise Line Vessel does not include a Ferry, a vessel that carries cargo except cargo of the passengers or required to feed or entertain the passengers, or a containership, bulk cargo carrier or any similar commercial cargo vessel, a

yacht, regardless of size, or any other vessel that does not meet the criteria in the first sentence of this definition.

"Cruise Pier Buildings" means the existing buildings and other structures within the Cruise Port Facility as of the Date of this Agreement, any building or other structure designated as a Cruise Pier Building in any Cruise Pier Improvement Project or otherwise included in any Cruise Pier Improvement Project, and any building or other structure designated as a Cruise Pier Building in connection with any Modification or otherwise included in any Modification.

"Cruise Pier Improvement Projects" means, collectively, the Initial Investment Projects, the Expansion Investment Projects, the Pier 4 Reconstruction (if applicable), the Phase Two Projects, the Piers 11-12 Wharf Project, the Piers 13-14 Wharf Project (if applicable), and the Additional Cruise Port Facilities Projects, or any of the same as applicable.

"Cruise Pier Improvement Projects Cost" means the total cost of designing, engineering, procuring, constructing, equipping and completing the Cruise Pier Improvement Projects or Modifications, including financing costs (including interest and fees), Taxes, project management cost, mobilization and demobilization costs and all other cost and expense associated with designing, engineering, constructing, equipping and completing the Cruise Pier Improvement Projects or Modifications.

"Cruise Piers" means the piers and wharves designated and owned by the Authority as Pier 1, Pier 3, Pier 4, Piers 11-12, Pier 13, Pier 14, Pan American Pier 1, and Pan American Pier 2, each located in San Juan Bay. For the avoidance of doubt, "Pier 1", "Pier 3", "Pier 4", "Piers 11-12", "Pier 13", "Pier 14", "Pan American Pier 1" and "Pan American Pier 2" shall each mean the pier designated as such in Schedule 1, and references to "Cruise Piers" shall be deemed (i) to include Pier 14 only after Pier 14 constitutes part of the Cruise Port Facility and the Concession and (ii) not to include Pier 13, Pier 14 (if it has become part of the Cruise Port Facility and the Concession as provided in Section 2.1(a)) and Piers 11-12 if the applicable Cruise Pier no longer constitutes part of the Cruise Port Facility and the Concession as provided in Section 2.1(a), having been removed pursuant to Section 3.24 or Section 3.25, as applicable.

"Cruise Port Facility" means the Cruise Piers and related Authority land described in Schedule 1 (and by this reference made a part hereof) situated in the Municipality of San Juan, Commonwealth of Puerto Rico and all easements, licenses, privileges, rights and appurtenances related thereto, including all terminals, buildings, structures (above grade and below grade), roadways, and all fixtures, and related facilities, now situated on that Authority real property as the same may be enlarged, enhanced, improved, reconstructed, rebuilt, rehabilitated, developed or otherwise modified in accordance with this Agreement (and, for the avoidance of doubt, including the Cruise Pier Buildings). To the extent provided in any amendment to this Agreement, one or more Additional Cruise Port Facilities may constitute part of the Cruise Port Facility.

"Cruise Port Facility Assets" means each of the movable and immovable real property, personal property and equipment and intangible assets located at the Cruise Port Facility, which is to be inventoried by the Parties as part of the transition activities between the Date of this Agreement and the Time of Closing.

"Cruise Port Facility Concession Value" means, as of any date, the fair market value of the Concession Company Interest determined (without regard to the effect of the Adverse Action, Authority Default, Act No. 2-2018 Crime or Public Integrity Crime giving rise to such determination) as of the time of the occurrence of the relevant Adverse Action or Authority Default (or as of the time of the conviction or guilty plea relating to the relevant Act No. 2-2018 Crime or Public Integrity Crime, as the case may be) and taking into account the operations, traffic and revenues thereof, as determined pursuant to a written appraisal by an independent third party appraiser that is nationally recognized in appraising similar assets and that is reasonably acceptable to the Authority and the Concession Company; *provided, however*, that the Cruise Port Facility Concession Value shall in no event be less than the amount equal to the sum of (i) any Concession Mortgage Debt and any Qualified Debt and (ii) any related Breakage Costs, in each case as of the End Date and *provided further* that, solely in the case of a determination of the Cruise Port Facility Concession Value occasioned by (A) an Authority Default or an Adverse Action on or prior to the fifth anniversary of the Closing Date or (B) an Adverse Action or Authority Default after the fifth anniversary of the Closing Date due to the failure of the Authority to make one or more monetary payments owed to the Concession Company that, as of the time of such failure, in the aggregate exceed five times the amount of the immediately preceding payable Annual Dredging Payment or Annual Authority Revenue Share and Incremental Authority Revenue Share (without regard to any offsets taken against such amount), the Cruise Port Facility Concession Value shall in no event be less than the greater of (1) the amount equal to the sum of (I) any Concession Mortgage Debt and any Qualified Debt and (II) any related Breakage Costs, and (2) the amount equal to the sum of (I) the Concession Fee, (II) the Initial Dredging Payment and all Annual Dredging Payments actually paid by the Concession Company up to the date of such determination, and (III) the sum of the amounts of the reasonable, documented and unreimbursed expenditures made by the Concession Company for any Cruise Pier Improvement Projects or Modifications constituting capital improvement projects (w) contemplated by the initial business plan referred to in Section 3.2(e), (x) required to be completed in accordance with this Agreement (including the Operating Standards) and (y) undertaken by the Concession Company for which the consent of the Authority has been obtained, in each case as of the End Date. If the Parties fail to agree upon such a single appraiser within 30 days after a Party requests the appointment thereof, then the Authority and the Concession Company shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the appraisal referred to above. If either Party fails to appoint such independent third party appraiser or if the independent third party appraisers appointed by the Parties fail to select a third independent third party appraiser, in each case, within 60 days after the request of the Authority or the Concession Company, then either the Authority or the Concession Company may request the appointment of an independent third party appraiser (which appraiser shall be appointed by a Person agreed to by the Concession Company and the Authority or if the Parties fail to agree on such Person within 30 days after a Party requests the appointment hereof, such appraiser shall be appointed by the American Arbitration Association) to make the appraisal referred to above. The Parties shall each pay 50% of the costs and expenses of any appraisal.

"Cruise Port Facility Contracts" means the agreements to which the Authority is a party relating to the operations of the Cruise Port Facility that are set forth on Schedule 2 under the headings "Assigned Port Facility Contracts" and "Preferential Berthing Agreements".

"Cruise Port Facility Operations" means (i) the operation, management and maintenance of the Cruise Port Facility, in each case in accordance with this Agreement, and (ii) all other actions relating to the operation of the Cruise Port Facility or otherwise that are to be performed by or on behalf of the Concession Company pursuant to this Agreement (including the Operating Standards).

"Cruise Port Facility Operations Cash Reserve" has the meaning ascribed thereto in Section 3.8.

"Cruise Port Facility Security Program" means the security program and procedures described in Schedule 12.

"Cruise Port Facility Services" has the meaning ascribed thereto in Schedule 3.

"Cruise Port Purposes" means the use of the Cruise Port Facility to provide scheduling and allocation of Cruise Piers for Cruise Line Vessels, parking, fresh water and food provision, fueling and other services ancillary or complementary thereto, and for other purposes consistent with the purposes of services provided at Comparable Cruise Ports, including retail services at the Cruise Port Facility, leasing of space in Cruise Pier Buildings and any other services, purposes and uses permitted in Schedule 15.

"Cruise Port Revenues" means all fees, rents, tariffs, revenues and any other type of charge for use of or in connection with the Cruise Port Facility permitted to be established and collected by the Concession Company and any Affiliated Service Provider pursuant to Schedule 15 and not retained by the Authority, but (for the avoidance of doubt) excluding any Government Contributions, any Port Service Charges (as described in Schedule 15), established and collected by the Authority with respect to any Cruise Line Vessel or Other Shipping Lines as provided in Schedule 15, and any fee or charge established and collected by the Authority with respect to any area or activity outside of the Cruise Port Facility or outside the scope of the Concession. Without limiting the generality of the foregoing, Cruise Port Revenues shall include the proceeds of any business interruption insurance paid by any insurer with respect to any fees, rents, tariffs, revenues or other charges described above that are interrupted or lost as a result of direct physical damage and/or indirect damages (such as utilities interruption) to the Cruise Port Facility.

"Date of this Agreement" means the date that the Concession Company and the Authority sign this Agreement, following the Authority having obtained Authorization for such signing from the Board of Directors of the Authority and the Puerto Rico Public-Private Partnerships Authority, the Governor of the Commonwealth and any other applicable Governmental Authority pursuant to the Act.

"DBE" has the meaning ascribed thereto in Section 11.3.

"Defending Party" has the meaning ascribed thereto in Section 12.1(e).

"Deferral Notice" has the meaning ascribed thereto in Section 16.2(c).

"Delay Event" means any of the following events that results in or would result in a delay or interruption in the performance by the applicable performing Party of any obligation under this Agreement: (i) an event of Force Majeure, (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority, including (for the avoidance of doubt) an Authorization from a Governmental Authority permitting entry into, exit from or transit through San Juan Bay by the Concession Company or any Contractor (*provided* that such failure or delay could not have been reasonably prevented by technical and scheduling measures of the applicable performing Party in the ordinary course), (iii) the enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application or interpretation thereof by any Governmental Authority) after the Date of this Agreement, (iv) a delay caused by the performance of works (including the activities authorized by Section 3.7) carried out by a Governmental Authority or any utility (including the relocation of utilities) or a delay caused by the performance of works by any other Person not acting under the authority or direction of, or pursuant to a contract, sublease or any other agreement or arrangement with the Concession Company, (v) a failure by the other Party to perform or observe any of its covenants or obligations under this Agreement, (vi) the presence in, on, under or around the Cruise Port Facility of any Hazardous Substance or other contaminant that was present in the Cruise Port Facility at any time prior to the Time of Closing, which, in each case, results in or would result in a delay or interruption in the performance by the Concession Company of any obligation under this Agreement, (vii) the implementation of Engineering or Institutional Controls related to the Cruise Port Facility (but only if such failure or delay could not have been reasonably prevented by technical and scheduling measures of the Concession Company), (viii) a delay required by Law due to the discovery of protected plant or animal species, archaeological, paleontological or cultural resources at or about a site of a construction required or permitted to be undertaken pursuant to this Agreement, (ix) denial by the Authority after the Closing Security Delivery Date of access to the Cruise Port Facility and such denial by the Authority causes delay in achieving a Construction Milestone, (x) a delay in the performance by the Concession Company of any of the Cruise Pier Improvement Projects or Modification due to the postponement of such works by the Authority or (xi) interruption of electricity or water utility services to the Cruise Port Facility which continues for seven (7) continuous days, (xii) Named Windstorms, (xiii) the failure by the Authority to comply with its obligations under Section 3.2(j), (xiv) the failure of a Governmental Authority to maintain or increase the depth of the Shipping Channels in accordance with Section 3.2(j), (xv) the circumstances described in Section 4.14(g), (xvi) the circumstances described in Section 4.13(b) as giving rise to a Delay Event; (xvii) a delay in the performance of any obligation of the Concession Company under this Agreement or an interruption of the Cruise Port Facility Operations caused directly as a result of the requirement of a Governmental Authority related to COVID-19, but, with respect to the occurrence of the COVID -19 pandemic which was declared a pandemic by the World Health Organization on or about March 11, 2020 only to the extent provided in Section 16.7(f); or (xviii) a change of classification of the portion of the Cruise Port Facility comprising Piers 11-12 from Class D (as such classification is defined by Codes ASCE/SEI 7-16 of the American Society of Civil Engineers and was determined in the reports listed in Appendix M to Schedule 13) to Class E or higher (as such classifications are defined by Code ASCE/SEI 7-16 of the American Society of Civil Engineers), as found in the Piers 11-12 Geotechnical Report; *provided, however*, that in each case such delay or the cause thereof is neither otherwise specifically dealt with in this Agreement nor arises by reason of (A) the

negligence or intentional misconduct of the Party affected by the Delay Event or such Party's Representatives, or Contractors to or agents of such Party or its Representatives, (B) any act or omission by the Party affected by the Delay Event or its Representatives in breach of the provisions of this Agreement, (C) except in the case of funds contemplated to be provided by the Authority pursuant to Section 5.2, or in the case of the Government Contributions contemplated to be provided by the Authority in those circumstances described in Section 10.5, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Party affected by the Delay Event or its Representatives, or Contractors to or agents of such Party or its Representatives, (D) except to the extent such events constitute an event of Force Majeure, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Party affected by the Delay Event or its Representatives, or Contractors to or agents of such Party or its Representatives to supply materials or services for or in connection with the Cruise Port Facility Operations or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of such Party or its Representatives, (E) except to the extent such events constitute an event of Force Majeure or a Named Windstorm, any weather conditions or (F) except to the extent the Authority Develops Additional Cruise Port Facilities or makes a Grant of Development Authority in violation of its obligations under Section 3.18, the development, redevelopment, construction, maintenance, modification or change in the operation of any existing mode of transportation that results in the reduction of revenues generated at the Cruise Port Facility or in the number of users using the Cruise Port Facility.

"Delay Event Dispute Notice" has the meaning ascribed thereto in Section 15.2(d).

"Delay Event Notice" has the meaning ascribed thereto in Section 15.2(d).

"Delay Event Remedy" has the meaning ascribed thereto in Section 15.2(c).

"Depositary" means a savings bank, a savings and loan association or a commercial bank or trust company that would qualify as an Institutional Lender, designated by the Concession Company to serve as depositary pursuant to this Agreement and Approved by the Authority; *provided, however*, that so long as a Concession Mortgage is in effect, the Depositary contemplated under Section 13.3 shall be the institution acting as the collateral agent or depositary under the financing secured by such Concession Mortgage.

"Designated Person" means each representative of a Party who is designated as such for the purposes of Article 19.

"Design and Build Standards" has the meaning ascribed thereto in Schedule 13.

"Design and Technical Specifications" means the design and technical specifications for each Initial Investment Project, Expansion Investment Project and Phase Two Project that the Concession Company shall comply with when designing and constructing each Initial Investment Project, Expansion Investment Project and Phase Two Project, as set forth in Schedule 13 and any supplement to this Agreement. With respect to any Additional Cruise Port Facilities Project or Modification, Design and Technical Specifications means the design and technical specifications relating to the applicable Additional Cruise Port Facilities Project and the

applicable Modification reasonably required by good engineering practices as a basis for preparing detailed design documents and having approximately the same level of detail as set forth in Schedule 13.

"Design Workshop" has the meaning ascribed thereto in Section 4.5(b).

"Develop" or "Development" has the meaning ascribed thereto in Section 3.18.

"Development Offer Notice" has the meaning ascribed thereto in Section 3.20.

"DFA" means Duty-Free Americas Puerto Rico, LLC.

"Development Proposal" has the meaning ascribed thereto in Section 3.20.

"Dispute Resolution Procedure" has the meaning ascribed thereto in Section 19.1.

"Document" has the meaning ascribed thereto in Section 1.17(b).

"DOT" means the United States Department of Transportation created under 49 U.S.C. § 101, *et seq.*, or any successor agency or department thereto.

"Eligible Investments" means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers' acceptances issued by any Institutional Lender (*provided* that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) that has been rated "A" or higher by a Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and that have been rated "A" or higher by a Rating Agency and (v) other investments then customarily accepted by the Authority in similar circumstances; *provided however*, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

"Encumbrance" means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, servitude, option, reservation, lease, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

"End Date" means the date on which this Agreement expires or is terminated.

"Engineering or Institutional Controls" means those engineering, environmental or institutional controls required by a Governmental Authority (other than the Authority) in relation to the remediation or avoidance of a release of a Hazardous Substance.

"Environment" means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, plants, animals, and other life forms, flora, fauna and humans.

"Environmental Laws" means all applicable Laws regulating or imposing liability or standards of conduct concerning or relating to the protection of human health, the Environment or the use, generation, disposal, discharge, Release, transportation, storage or management of Hazardous Substances.

"Equity Participant" means any Person who holds any shares of capital stock or securities of, or units, partnership interests, membership interests or other equity interests in, the Concession Company.

"Escrow Account" means the account as defined and referred to in the Escrow Agreement and consisting of sub-accounts as provided therein.

"Escrow Account – Capital Dredging Sub-Account" means the sub-account of the Escrow Account as defined and referred to in the Escrow Agreement.

"Escrow Account – Initial Investment Projects Sub-Account" means the sub-account of the Escrow Account as defined and referred to in the Escrow Agreement.

"Escrow Account – Maintenance Dredging Sub-Account" means the sub-account of the Escrow Account as defined and referred to in the Escrow Agreement.

"Escrow Agent" means the Person appointed by the Parties as Escrow Agent under the Escrow Agreement, which Person shall be a commercial bank or trust company located within the Commonwealth and reasonably acceptable to the Authority.

"Escrow Agreement" means the agreement to be entered into on or prior to Closing as a condition to Closing as provided in Section 2.4(c)(x) and Section 2.11, among the Authority, the Concession Company and the Escrow Agent.

"Escrow Amount" has the meaning ascribed thereto in Section 2.11.

"Estimated Revenue Share Credit" has the meaning ascribed thereto in Section 15.1(c).

"Excluded Liabilities" has the meaning ascribed thereto in Section 3.2(c).

"Exercise Period" has the meaning ascribed thereto in Section 3.20.

"Exon-Florio Act" has the meaning ascribed thereto in Section 2.4(c)(ii).

"Expansion Investment Projects" means the capital improvement projects set forth on Schedule 13 and identified as "Expansion Investment Projects". The Expansion Investment Projects consist of the Piers 11-12 Project and the conversion of Pier 4 to a Port of Call facility (Cruise Pier Building), as each such capital improvement project is described in Schedule 13.

"Expansion Investment Projects Demand Threshold Calculation" has the meaning ascribed thereto in the definition of Expansion Investment Projects Trigger Event in Schedule 13.

"Expansion Investment Projects Notice" has the meaning ascribed thereto in Section 3.25(b).

"Expansion Investment Projects Requirements" means the requirements for the implementation of the Expansion Investment Projects set forth in Section 4.13.

"Expansion Investment Projects Trigger Event" has the meaning ascribed thereto in Schedule 13 (but, for the avoidance of doubt, shall be deemed to occur only when the conditions for the Expansion Investment Projects Trigger Event have been satisfied and the Concession Company or the Authority notifies the other Party in writing that the conditions for the Expansion Investment Projects Trigger Event have been satisfied).

"Expert Technical Determination" has the meaning ascribed thereto in Section 19.4(a).

"FAA" means the Federal Aviation Administration established under 49 U.S.C. § 101 *et seq.*, or any successor agency thereto, and where the context otherwise requires, DOT.

"FEMA" means the Federal Emergency Management Agency, an agency of the United States of America Department of Homeland Security, or any successor agency thereto.

"Ferry" means a vessel that meets the following criteria: (i) is used for voyages which embark and disembark passengers and cargo only originating and/or ending in any port in Puerto Rico, including the island-municipalities of Vieques and Culebra; (ii) is used on a regular schedule to embark and disembark passengers and cargo in destinations that are less than 300 miles apart; (iii) makes voyages lasting 24 hours or less; and (iv) accommodates fewer than 500 passengers. For the avoidance of doubt, the vessels referred in the Ferry Development Agreement are Ferries for purposes of this Agreement.

"Ferry Development Agreement" means that certain Development Agreement dated November 4, 2019, by and between the Authority and America Cruise Ferries, Inc. and Priority Roro Services, Inc., as may be amended from time to time.

"Financing Costs" means any transaction costs and expenses (including legal fees), Taxes, and disbursements incurred by the Authority to finance, arrange for the financing of, or otherwise fund, the payment of any PIC-Termination Damages or any amount payable by the Authority pursuant to Section 16.6(e).

"First Offer Notice" has the meaning ascribed thereto in Section 3.19.

"Fixed Asset" means tangible property used in the Cruise Port Facility Operations, but not expected to be converted into cash in the ordinary course of events, such as plant, machinery and equipment, furniture and fixtures, buildings, land and improvements.

"FM – Termination Damages" has the meaning ascribed thereto in Section 16.7(d).

"FOMB" has the meaning ascribed thereto in Section 2.5(n).

"Force Majeure" means any event that is unforeseeable or otherwise beyond the reasonable control of the applicable performing Party that delays or interrupts the performance of such Party's obligations hereunder, including an intervening act of God or public enemy, war (whether or not declared), invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, Cruise Line Vessel crash, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, waterspout, Named Strong Windstorm, flooding, tsunami, tidal wave, earthquake or other natural disaster, riot or other public disorder, epidemic, pandemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority of competent jurisdiction, governmental embargo; *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of (i) the negligence or intentional misconduct of the applicable performing Party or its Representatives, (ii) any act or omission by the applicable performing Party or its Representatives in breach of the provisions of this Agreement, (iii) except in the case of funds contemplated to be provided by the Authority pursuant to Section 5.2, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the applicable performing Party, (iv) any strike, labor dispute or other labor protest involving any Person employed by the applicable performing Party or its Representatives in connection with the Cruise Port Facility Operations or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the applicable performing Party or its Representatives or (v) any weather conditions that are ordinarily or customarily encountered or experienced at or in the vicinity of the Cruise Port Facility, including any Ordinary Storm, but excluding any tornado, waterspout or Named Strong Windstorm.

"Force Majeure Termination" has the meaning ascribed thereto in Section 16.7(a).

"Force Majeure Termination Dispute Notice" has the meaning ascribed thereto in Section 16.7(b).

"Force Majeure Termination Notice" has the meaning ascribed thereto in Section 16.7(b).

"Foreign Corrupt Practices Act" means the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, *et seq.*, as amended.

"GAAP" means generally accepted accounting principles in the United States of America.

"Good Industry Practice" means those relevant practices, methods and acts generally engaged in, or approved, by a Person other than a Governmental Authority who, as applicable (i) maintains and operates international cruise port operations in the United States of America through a lease, concession, operations or similar agreement or (ii) designs, engineers, procures, equips and constructs international marine ports in the United States of America (regardless, in either case, of whether a Governmental Authority owns all or a substantial part of such cruise port or marine port or has an ownership interest in such Person so long as the Governmental Authority does not exercise day-to-day control over such maintenance and operations except through a concession, operations or similar agreement with such Person or such design, engineering, procurement, equipping and construction except through an engineering, procurement and construction contract or similar contract) that at that particular time, in the exercise of reasonable judgment in the light of the facts known or that reasonably should have been known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Law.

"Government Agreement" has the meaning ascribed thereto in Section 3.13(a).

"Government Contributions" means those monies granted or loaned to the Authority or granted to the Concession Company, or otherwise granted with respect to the Cruise Port Facility, by the United States of America or any agency thereof (including FEMA and HUD grants), or the Commonwealth, or any political subdivision or agency thereof, to pay all or a portion of the cost of a Cruise Pier Improvement Project or Modification thereto at or related to the Cruise Port Facility, or any other cost or expense related to the Cruise Port Facility.

"Government Contributions Agreements" means any contract or other agreement (i) between the Authority and the applicable Governmental Authority or (ii) between the Concession Company and any Governmental Authority (including, for the avoidance of doubt, any such contract or other agreement assigned to the Concession Company) that relates to the funding of a Cruise Pier Improvement Project or Modification with Government Contributions, whether or not the Authority is a party to them, including any contract or other agreement that is paid in whole or in part with Government Contributions or that is required in connection with the provision of Government Contributions.

"Government Contributions Authorization" means the approval of Government Contributions by a Governmental Authority with respect to one or more Cruise Pier Improvement Projects or Modifications as documented by the execution or approval, as applicable, by the Governmental Authority and the Receiver of the Government Contributions of an agreement or other document describing the Cruise Pier Improvement Projects or Modifications and stating the amount of Government Contributions for such Cruise Pier Improvement Projects or Modifications and authorizing the disbursement of Government Contributions subject to satisfaction of conditions set forth in such agreement or other grant funding document. By way of example, under applicable Law as of the Date of this Agreement, with respect to HUD Community Disaster Block Grants, the Government Contributions Authorization would consist of a grant agreement executed by an authorized officer of the Puerto Rico Department of Housing and the applicable Receiver of Government Contributions, and with respect to FEMA's Hazard Mitigation Grant Program, the Government Contributions Authorization would consist of acceptance of award by the Authority following receipt of a

Notice of Award from the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency (COR3).

"Governmental Authority" means the Commonwealth or any municipality, political subdivision, instrumentality, agency or public corporation of or in the Commonwealth and any federal, state, commonwealth, county, local (including all municipalities, municipal authorities and districts) or foreign government, department, court, commission, board, bureau, agency or instrumentality or other regulatory, judicial, administrative, governmental or quasi-governmental authority.

"Governor" means the Governor of the Commonwealth or another official of the Commonwealth acting under the direction and pursuant to the authority of the Governor.

"Grant of Development Authority" or "Grant Development Authority" shall have the meaning ascribed to these terms in Section 3.18.

"Hazardous Substance" means, but is not limited to, any solid, semi-solid, sludge, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic or otherwise regulated substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including lead-based paint, gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

"Holding Fee" has the meaning ascribed thereto in Schedule 13.

"HUD" means the United States Department of Housing and Urban Development, or any successor agency thereto.

"ICC" has the meaning ascribed thereto in Section 19.4(b).

"Incremental Authority Revenue Share" has the meaning ascribed thereto in Schedule 15.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money and (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments.

"Indemnified Party" means any Person entitled to indemnification under this Agreement.

"Indemnifier" means any Party obligated to provide indemnification under this Agreement.

"Indemnity Payment" has the meaning ascribed thereto in Section 12.3(b).

"Independent Engineer" means the international professional consulting engineering firm authorized to practice in the Commonwealth in accordance with applicable Law and appointed jointly by the Authority and the Concession Company for the purpose of this Agreement as provided in Section 2.4.

"Independent Expert" has the meaning ascribed thereto in Section 19.4(a).

"Information" means any and all information of the Concession Company relating to the Cruise Port Facility Operations, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding revenues generated at the Cruise Port Facility (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the Cruise Port Facility Operations, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, port and pier information and parking information (including volume counts, classification counts and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Cruise Port Facility, the Concession Company or any of its Representatives in connection with the Cruise Port Facility or the Cruise Port Facility Operations, (iii) data, documents and information relating to the Concession Company's compliance with the Open Access Regime, including Access Disputes, and the provisions of Section 20.15, and (iv) books, records, accounts and documents of the Concession Company relating to the Cruise Port Facility Operations, including any Information that is stored electronically or on computer-related media; *provided, however,* that nothing in this Agreement shall require the disclosure by any Party of Information that the Party has a reasonable basis to believe is protected by attorney-client or other legal privilege.

"Initial Dredging Payment" has the meaning ascribed thereto in Section 2.1(a).

"Initial Investment Projects" means the capital improvement projects set forth on Schedule 13 and identified as the "Initial Investment Projects". The Initial Investment Projects consist of the "Pier 1 Project", the "Piers 1-4 Walkway Project", the "Pan American Pier 1 Project", the "Pan American Pier 2 Project", the "Pan American Piers Wharf Structure Project", the "Rehabilitation Pier 4 Wharf", and the "Pier 3 Project", as each such capital improvement project is described in Schedule 13.

"Initial Termination Notice" has the meaning ascribed thereto in Section 16.2(b)(ii).

"Institutional Lender" means (i) the United States of America, any state or commonwealth thereof or any agency or instrumentality of any of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America (if such qualification is necessary in connection with the acquisition of Concession Mortgage Debt), (C) pension fund, foundation or university or college or other endowment fund or (D) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (iii) any "qualified institutional buyer" under Rule 144(A) under the Securities Act or any other similar Law

hereinafter enacted that defines a similar category of investors by substantially similar terms, (iv) a Governmental Authority acting (directly or through a trust or other single purpose vehicle controlled by it) as a conduit for the purpose of issuing private activity bonds authorized by Law for the benefit of the Concession Company or (v) any other financial institution or entity designated by the Concession Company and Approved by the Authority; *provided, however, that* each such entity or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than $1,000,000,000.

"Insured Amount" means the insured amount required under Section 13.1(g), as such insured amount may be adjusted pursuant to Section 13.1(g) and Section 13.2(o) from time to time.

"Intellectual Property" means all intellectual property rights existing worldwide, including any patent, design, database rights, copyright and related rights, trademark, protected circuit layout (or similar right), trade secret, confidential information or other right (in each case, whether registered or not) which exists under any Law, at common law or in equity.

"Law" means any order, writ, injunction, decree, judgment, law, ordinance, decision, ruling, statute, code, rule or regulation of any Governmental Authority.

"Letter of Credit" means an irrevocable, unconditional, commercial letter of credit, in favor of the Authority as payee (without dual or multiple beneficiaries), in form and content reasonably acceptable to the Authority, payable immediately in United States dollars upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization (including the original letter of credit), which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has and maintains a current credit rating of "BBB+" or better by Standard & Poor's Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if the named Rating Agency ceases to publish ratings) (or by such other commercial bank, trust company or other issuer reasonably acceptable to the Authority prior to the submission of the letter of credit), (ii) is in form and content reasonably acceptable to the Authority prior to the submission of the letter of credit and (iii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. If the Letter of Credit expires or is terminated prior to the expiration of the period it is required to be maintained pursuant to this Agreement, prior to such expiration or termination the Concession Company shall provide or cause to be provided a substitute Letter of Credit in the amount and with the provisions provided herein and otherwise in this Agreement so that there is no gap in coverage. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the Commonwealth or such other location within the continental United States as is reasonably acceptable to the Authority. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under the Letter of Credit may be secured by a Concession Mortgage.

"Loss" or "Losses" means, with respect to any Person, any loss, liability, damage, penalty, increased financing costs, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, including costs for cleanup, remediation or corrective action required under Environmental Laws, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual. For avoidance of doubt, (i) all actual payments reasonably made by any Person to third parties or reasonable out-of-pocket and documented costs or expenses actually suffered or incurred by any Person in respect of Claims made by third parties shall constitute Losses of such Person whether or not such payments or such costs and expenses relate to punitive, special, indirect and consequential damages or contingent liabilities of such third parties, and (ii) for purposes of Section 16.2(b)(iv), Losses shall include, as applicable, the reasonably required cost of removing (A) employees of the Concession Company and Contractors from the Cruise Port Facility, and (B) removing all equipment and other property owned by the Concession Company or Contractors from the Cruise Port Facility.

"Material Adverse Effect" means a material adverse effect on the business, condition (financial or otherwise) or results of operations of the Cruise Port Facility taken as a whole, the Concession Company or the rights of the Concession Company under this 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: (i) general economic conditions or changes therein; (ii) conditions affecting any or all of the real estate, financial services, construction or cruise line industries generally; (iii) any existing event, occurrence or circumstance of which the Concession Company has actual knowledge as of (A) the Bid Date for the purposes of Sections 9.1(g) and 9.1(o), and (B) the Date of this Agreement for the purposes of Sections 2.4(a)(i), 2.4(c)(xi), 3.2(j)(iii) and 5.2(a); (iv) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby or (v) any negligence, intentional misconduct or bad faith of the Concession Company or its Representatives.

"Maximum Cruise Port Capacity" has the meaning ascribed thereto in Schedule 13.

"Mediation Rules" has the meaning ascribed thereto in Section 19.5.

"Milestone Inspection" has the meaning ascribed thereto in Section 4.7.

"Modification" means deleting, dispensing with or changing the dimensions, character, quantity, quality, description, location or position of any part of the Cruise Port Facility or making other changes to the Cruise Port Facility, including adding buildings or other structures, or making other improvements, to the Cruise Port Facility; *provided, however*, that no Modification may (i) change the boundaries of the Cruise Port Facility described in Schedule 1 or (ii) require the Concession Company to do or omit any act that could reasonably be expected to violate any applicable Law or cause the Concession Company to fail to be in compliance with this Agreement. For the avoidance of doubt, the Initial Investment Projects, the Expansion Investment Projects, the Pier 4 Reconstruction (if applicable) and the Phase Two Projects shall not constitute "Modifications" but any material change to the Design and Technical Specifications for any such Cruise Pier Improvement Project and any deleting, dispensing with

or changing the dimensions, character, quantity, quality, description, location or position of any part of the Cruise Port Facility other than the Initial Investment Projects, the Expansion Investment Projects, the Pier 4 Reconstruction (if applicable) or the Phase Two Projects shall constitute a "Modification".

"Named Strong Windstorm" is a storm or weather disturbance Category 1 or higher in the Saffir-Simpson scale that is named by the National Oceanic and Atmospheric Administration's National Hurricane Center or similar body until sustained wind speeds drop below the Category 1 storms.

"Named Windstorm" is any windstorm that is named by the National Oceanic and Atmospheric Administration's National Hurricane Centre or similar body.

"Negotiation Period" has the meaning ascribed thereto in Section 19.3(b).

"New Agreement" has the meaning ascribed thereto in Section 18.5(a).

"Notice of Dispute" has the meaning ascribed thereto in Section 19.2.

"Notice of Mediation" has the meaning ascribed thereto in Section 19.5.

"Notice Period" has the meaning ascribed thereto in Section 12.1(d).

"Notifying Party" has the meaning ascribed thereto in Section 3.14.

"Officer's Certificate" means a certificate duly executed by an officer of the Concession Company if required by the terms of this Agreement certifying to the relevant facts and circumstances as required hereunder.

"Offsets" has the meaning ascribed thereto in Section 12.5(a).

"Open Access Principles" means with respect to Additional Cruise Port Facilities at Piers 11-12, Pier 13 and Pier 14 if such Cruise Piers are not or are no longer part of the Concession and the Authority Develops Additional Cruise Port Facilities or Grants Development Authority at Piers 11-12, Pier 13 or Pier 14 as provided in Section 3.18, the principles of open non-discriminatory access for Cruise Line Vessels of all Cruise Lines, without discriminating against any Cruise Line in favor of any other Cruise Line and in particular any affiliated Cruise Line, in order to promote efficient operation and patronage of such Cruise Piers, increase touristic activities, and grant access to such Cruise Piers to Persons capable of providing services similar to the Reference Services and Ancillary Services to Cruise Line Vessels, which Open Access Principles shall be more specifically defined with respect to each such Development of Additional Cruise Port Facilities at Piers 11-12, Pier 13 and Pier 14, if and when such Developments occur.

"Open Access Regime" means those procedures and requirements for the Concession Company to allocate and reserve Cruise Piers for Cruise Line Vessels, as set forth in Schedule 3.

"Operating Agreement" means (i) any material agreement, contract or commitment to which the Concession Company is a party or between one Contractor and another Contractor relating to the Cruise Port Facility Operations as in force from time to time (including the Assigned Port Facility Contracts and any warranties or guaranties assigned), and (ii) the Preferential Berthing Agreements, but excluding any Concession Mortgage and financing documents related thereto.

"Operating Standards" means the standards, specifications, policies, procedures and processes that apply to the operation, maintenance, construction and rehabilitation of and capital improvements to the Cruise Port Facility, as set forth in Schedule 12. The Open Access Regime constitutes a part of the Operating Standards.

"Opex Reserve Requirement" has the meaning ascribed thereto in Section 3.8.

"Ordinary Storm" means a storm that is comparable to any storm in length or severity of its effect on the Cruise Port Facility that has occurred on or around the Cruise Port Facility within 10 years prior to the Bid Date; *provided* that in no event shall a Named Strong Windstorm tornado, or waterspout be deemed an Ordinary Storm.

"Other Shipping Lines" has the meaning ascribed thereto in Section 3.23.

"Outside Closing Date" has the meaning ascribed thereto in Section 2.2(a).

"Outside Closing Security Delivery Date" means the date occurring ninety (90) days after the Date of this Agreement, or such later date agreed in writing by the Concession Company and the Authority.

"Pan American Piers Condition Report" has the meaning ascribed thereto in Section 2.4(c)(ix).

"Pan American Piers Wharf Structure Project" means the capital improvement project set forth on Schedule 13 and described as the "Pan American Piers Wharf Structure Project".

"Pan American Piers Wharf Structure Budget" has the meaning ascribed thereto in Section 2.4(c)(ix).

"Party" means a party to this Agreement and "Parties" means all of the parties to this Agreement.

"Passenger Fee" means the passenger fee charged Cruise Lines on the basis of passengers on Cruise Line Vessels, as described in Schedule 15, as adjusted from time to time as provided therein.

"Passenger Movement" has the meaning ascribed thereto in Schedule 15.

"Permitted Authority Encumbrance" means, with respect to the Cruise Port Facility: (i) the rights and interests of the Authority under this Agreement; (ii) any Encumbrance that is being contested, or being caused to be contested, by the Authority in accordance with Section

3.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers' or warehousemen's liens or other like Encumbrances arising in the ordinary course of business of the Authority's performance of any of its rights or obligations hereunder, and in respect of obligations that are either (A) not delinquent or (B) being contested, or being caused to be contested, by the Authority in accordance with Section 3.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way, servitude or any zoning, building, environmental, health or safety Law (including any Engineering or Institutional Control implemented thereunder) relating to the development, use or operation of the Cruise Port Facility (or other similar reservation, right or restriction) or other defects and irregularities in the title to the Cruise Port Facility that do not materially (individually or in the aggregate) interfere with the Cruise Port Facility Operations (in whole or in part) or the rights and benefits of the Concession Company under this Agreement or materially impair the value of the Concession Company Interest; (v) any right reserved to or vested in any Governmental Authority (other than the Authority) by any statutory provision or under common law, or covenants, conditions, rights or obligations imposed or required by the Governmental Authority granting Government Contributions for the Cruise Port Facility, including in connection with FAA grants which may establish an Encumbrance on the Pan American Pier 1 and Pan American Pier 2 (it being understood and agreed that nothing in this clause (v) shall limit or otherwise affect the Authority's obligations or the Concession Company's rights hereunder, provided however that any Encumbrances on Pan American Pier 1 and Pan American Pier 2 resulting from Government Contributions to Isla Grande Airport may take precedence in rank, but shall continue to be a Permitted Authority Encumbrance); (vi) any Encumbrances created, incurred, assumed or suffered to exist by the Concession Company or any Person claiming through it; (vii) any rights reserved to or vested in the Authority by any statutory and/or regulatory provision or under common law (it being understood and agreed that nothing in this clause (vii) shall limit or otherwise affect the Authority's obligations or the Concession Company's rights hereunder); (viii) any amendment, extension, renewal or replacement of any of the foregoing Permitted Authority Encumbrances on substantially similar terms as such Permitted Authority Encumbrances; and (ix) any easement, covenant, condition, right-of-way or servitude existing as of the Date of this Agreement or reasonably required after the Date of this Agreement to provide ingress and egress to and from (A) Pier 2 of the Authority through the portion of the Walkways (described in Schedule 1) abutting such Pier 2 or otherwise reasonably required for the operation of any facilities located on such Pier 2 or (B) any lot or lots that are not part of the Cruise Port Facility and that reasonably require access to Fernandez Juncos Avenue by way of South Street. For the avoidance of doubt, "Permitted Authority Encumbrance" shall not include any pledge or mortgage by the Authority, or other grant of a security interest by the Authority, in all or any part of the Cruise Port Facility to secure any debt issued by the Authority, but excluding the Annual Authority Revenue Share, the Incremental Authority Revenue Share, the Annual Dredging Payment or any other amount to which the Authority is entitled pursuant to this Agreement.

"Permitted Concession Company Encumbrance" means, with respect to the Cruise Port Facility: (i) the rights and interests of the Concession Company under this Agreement; (ii) any Encumbrance that is being contested, or being caused to be contested by the Concession Company, in accordance with Section 3.5(a) (but only for so long as such contestation

effectively postpones enforcement of any such Encumbrance); (iii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person (including in respect of Taxes not yet due and payable), (B) statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Cruise Port Facility Operations and in respect of obligations that are either (1) not delinquent or (2) being contested, or being caused to be contested, by the Concession Company in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers' or warehousemen's liens, or other like Encumbrances arising in the ordinary course of business of the Cruise Port Facility or the Concession Company's performance of any of its rights or obligations hereunder, and in respect of obligations that are either (A) not delinquent or (B) being contested, or being caused to be contested, by the Concession Company in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (v) any right reserved to or vested in any Governmental Authority by any statutory and/or regulatory provision or under common law; (vi) any other Encumbrance permitted hereunder (including any Concession Mortgage (and financing statements relating thereto including purchase money liens) and any Encumbrance created in connection with any financing permitted hereunder); (vii) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Cruise Port Facility; (viii) covenants, conditions, rights or obligations imposed or required by the Governmental Authority granting Government Contributions for the Cruise Port Facility; (ix) any Encumbrances for Taxes not yet due and owing or being contested in good faith; (x) any Encumbrances created, incurred, assumed or suffered to exist by the Authority or any other Governmental Authority or any Person claiming through it except to the extent caused by an act or omission of the Concession Company; (xi) any (A) right to build, (B) surface rights or (C) lease, use, concession or similar rights or agreements granted by the Concession Company, in each case with Approval of the Authority, in connection with the Concession Company's conduct of Cruise Port Facility Operations and (xii) any amendment, extension, renewal or replacement of any of the foregoing. Notwithstanding anything to the contrary contained herein, no Permitted Concession Company Encumbrance or other Encumbrance shall be permitted to attach to the fee simple interest of the Authority in, or the title of Authority to, the Cruise Port Facility or the Cruise Port Facility Assets.

"Persistent Breach Month" has the meaning ascribed thereto in Section 16.1(a)(iv).

"Person" means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

"Phase Two Calculation Date" has the meaning ascribed thereto in the definition of Phase Two Trigger Event in Schedule 13.

"Phase Two Demand Threshold Calculation" has the meaning ascribed thereto in the definition of Phase Two Trigger Event in Schedule 13.

"Phase Two Projects" means the capital improvement projects set forth on Schedule 13 and identified as the "Phase Two Projects." The Phase Two Projects consist of the "Piers 13-14 Project", as such capital improvement project is described in Schedule 13; *provided, however*, that during any period in which Pier 14 does not constitute part of the Cruise Port Facility or the Concession, as provided in Section 2.1(a), the Concession Company shall have no obligation to complete the Phase Two Projects pursuant to Section 4.1.

"Phase Two Projects Notice" has the meaning ascribed thereto in Section 3.24(c).

"Phase Two Projects Requirements" means the requirements for the implementation of the Phase Two Projects set forth in Section 4.12.

"Phase Two Rate of Return Test" has the meaning ascribed thereto in Schedule 13.

"Phase Two Trigger Event" has the meaning ascribed thereto in Schedule 13 (but, for the avoidance of doubt, shall be deemed to occur only when the conditions for the Phase Two Trigger Event have been satisfied and the Concession Company or the Authority notifies the other Party in writing that the conditions for the Phase Two Trigger Event have been satisfied).

"PIC-Termination Damages" has the meaning ascribed thereto in Section 16.6(c).

"Piers 11-12 Project" means the capital improvement project set forth on Schedule 13 and identified as the "Piers 11-12 Project."

"Piers 11-12 Wharf Project" means the capital improvement project set forth on Schedule 13 and identified as the "Piers 11-12 – Wharf." For the avoidance of doubt, except where treated separately under the terms of this Agreement, the Piers 11-12 Wharf Project is a component part of the Piers 11-12 Project.

"Piers 11-12 Removal Notice" has the meaning ascribed thereto in Section 3.25(c).

"Piers 11-12 Geotechnical Report" has the meaning ascribed thereto in Section 4.13(a).

"Pier 15" means the pier in San Juan Bay designated as Pier 15 in the records of the Authority and marked in Schedule 1.

"Pier 4 Condition Report" has the meaning ascribed thereto in Section 2.4(c)(vii).

"Pier 4 Reconstruction" means the rehabilitation or reconstruction of Pier 4, such rehabilitation or reconstruction to include any reasonable scope of work approved by the applicable Governmental Authority providing Government Contributions for such rehabilitation or reconstruction, so long as the capacity of Pier 4 permits the simultaneous berthing of two (2) port of call Category 2 or larger (as described in Schedule 13) Cruise Line Vessels, to be funded by Government Contributions (subject to the use of Reasonable Efforts by the Concession

Company to provide the funding described in Section 4.12(c)), if such works are instructed by the Authority pursuant to Section 4.12(c).

"Pier 13 Removal Notice" has the meaning ascribed thereto in Section 3.24(c).

"Piers 13-14 Wharf Project" means the capital improvement project set forth on Schedule 13 and identified as the "Pier 13 and Pier 14 – Wharf." For the avoidance of doubt, except where treated separately under the terms of this Agreement, the Piers 13-14 Wharf Project is a component part of the Phase Two Projects.

"Pier 3 Duty Free America Agreement" means the Development and Lease Agreement AP-16-17-(4)-040, dated as of August 25, 2016, by and between the Authority and DFA to design, develop, construct and finance the Pier 3 Duty Free Building complex and structural improvements, as amended by the First Amendment to Development and Lease Agreement dated in December 2020.

"Pier 3 Duty Free Building" means the building described in Appendix I of Schedule 13.

"Pier 3 EPIC Repairs" means the capital improvement project described in Schedule 13 and to be included (in a customary expanded form) in the Pier 3 EPIC Repairs Contract.

"Pier 3 EPIC Repairs Contract" means any contract or other agreement made between the Authority and any contractor with respect to the Pier 3 EPIC Repairs.

"Pier 3 EPIC Repairs Design" has the meaning ascribed thereto in Section 4.14.

"Pier 3 EPIC Repairs Project Management Contract" means the contract between the Authority and Capital Improvements Program Management P.S.C. for the management of the Pier 3 EPIC Repairs.

"Plans" has the meaning ascribed thereto in Section 3.15.

"Port Emergency" means any event that results in a material danger to the safety or security of Cruise Port Facility Operations or a material impairment to the Cruise Port Facility or to the continuing use of the Cruise Port Facility for the Cruise Line Business.

"Preferential Berthing Agreements" means the agreements to which the Authority is a party with the Signatory Cruise Lines that are set forth in Schedule 2 under the heading "Preferential Berthing Agreements."

"P.R. Mortgage and Property Registry Law" means Act No. 210-2015, P.R. Laws Ann., tit. 30, § 6001 *et seq.*, as may be amended from time to time.

"P.R. Penal Code" means Act No. 146-2012, P.R. Laws Ann., tit. 33, § 5001 *et seq.*, as may be amended from time to time, known as the Penal Code of the Commonwealth of Puerto Rico.

"P.R. Revenue Code" means the Puerto Rico Internal Revenue Code of 2011, P.R. Laws Ann., tit. 13, § 30011 *et seq.*, as may be amended from time to time.

"President" means the President of the United States of America.

"Pre-Existing Hazardous Substance" has the meaning ascribed thereto in Section 3.2(c)(vii).

"Pricing Date" means the date on which the Concession Company signs the bond purchase agreement regarding the Concession Mortgage Debt relating to the tax-exempt and taxable bond instruments to be issued at Closing.

"Principal Contract" has the meaning ascribed thereto in Section 3.2(d) and, for the avoidance of doubt and notwithstanding the provisions of Section 3.2(d), shall include the Technical Services Agreement and the Construction Contract described in Section 2.4(b)(v).

"Proceeding" means as to any Person any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors; undertaken under federal, State or Commonwealth Law, including, without limitation, PROMESA.

"PROMESA" means the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. 114-187, 48 U.S.C. sec. 2121 *et seq.*

"Public Integrity Crime" means any crime described in Section 5(p) of the Code of Ethics, Section 5(fi) of Act No. 237-2004, P.R. Laws Ann., tit. 3, § 8611 *et seq.*, as may be amended from time to time, or in other sections of such Laws.

"Public-Private Partnerships Authority's Ethical Guidelines" means the "Public-Private Partnerships Authority's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts", promulgated by the Public-Private Partnerships Authority and dated as of December 19, 2009.

"Qualified Debt" means any senior or subordinated *bona fide* debt not otherwise constituting Concession Mortgage Debt that is incurred at any time to finance or refinance, directly or indirectly, the Concession Fee payable hereunder or is otherwise expected to be paid exclusively from the revenues generated at the Cruise Port Facility, including: (i) principal (including accreted principal included in interest rate hedges or bonds); (ii) accrued interest (including capitalized interest and interest pursuant to an original issue discount); (iii) customary and reasonable lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto; (iv) all payment obligations under interest rate hedging agreements with respect thereto (including accreting interest rate hedging agreements); (v) reimbursement obligations with respect thereto to any financial insurer and (vi) an assignment in connection with a securitization transaction; *provided* that, in each case, the Concession Company, promptly after the incurrence of any such debt, notifies the Authority of such debt and the material terms thereof. For the purposes of determining Cruise Port Facility Concession Value, Qualified Debt shall not include (A) debt from any Equity Participant or its

Affiliate or from any Affiliate of the Concession Company or (B) debt the holders of which have the benefit of a guaranty or payment from an Affiliate of the Concession Company, unless, in each case, such debt is debt on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith and in accordance with market standards, *provided* that the Concession Company may request at any time during the Term that the Authority confirm in writing, and the Authority shall so confirm within a reasonable time following such request (but not exceeding ten (10) Business Days), whether any such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith and in accordance with market standards (and if such conditions are complied with confirmation that such debt constitutes Qualified Debt shall not be unreasonably denied). Notwithstanding anything herein to the contrary, except with respect to any such senior or subordinated *bona fide* debt incurred or committed on or prior to the Closing Date or which is incurred or committed in connection with the funding of the Cruise Pier Improvement Projects Cost for the Expansion Investment Projects and the Documents for committing and incurring such debt are Approved by the Authority, all of which incurred or committed debt shall be deemed to be Qualified Debt (except to the extent excluded from Qualified Debt pursuant to clauses (A) or (B) above), Qualified Debt shall not include any new debt incurred or committed following the Closing Date except that which is incurred or committed in connection with the funding of the Cruise Pier Improvement Projects Cost for the Expansion Investment Projects and the Documents for committing and incurring such debt are Approved by the Authority (it being understood and agreed by the Parties that any capitalization of interest or accretion of principal or other committed increases on any debt incurred or committed on or prior to the Closing Date or which is incurred or committed in connection with the funding of the Cruise Pier Improvement Projects Cost for the Expansion Investment Projects and the Documents for committing and incurring such debt are Approved by the Authority or any refinancing of any debt that has previously qualified as Qualified Debt up to the original principal amount thereof shall not constitute such new debt) that (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* 80% of the fair market value of the Concession Company Interest set forth in an appraisal; *provided* that, in order for such new debt to qualify as Qualified Debt, such appraisal shall (x) be prepared at the Concession Company's expense by an independent third party appraiser described under "Cruise Port Facility Concession Value" and delivered to the Authority prior to the incurrence or commitment of such new debt, (y) be a written appraisal of the fair market value of the Concession Company Interest as of the time of the incurrence or commitment of such new debt and (z) identify the extent to which such new debt (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* 80% of the fair market value of the Concession Company Interest set forth in such appraisal at the time of incurrence or commitment of such new debt; *provided* that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such appraisal shall constitute Qualified Debt to the extent such debt constitutes Qualified Debt on the date such appraisal is given; and *provided further* that the Parties agree that notwithstanding the requirements of the foregoing sub-clauses (x), (y) and (z), the amount of the Concession Fee paid at the Closing shall be deemed to constitute the fair market value of the Concession Company Interest for a period of 12 months after the Closing Date and, as such, no appraisal shall be required within such 12-month period. The appraisal requirement in the preceding sentence shall not apply to any protective advances

made by any provider of Qualified Debt or advances made by any provider of Qualified Debt to cure Concession Company defaults under the agreements evidencing such Qualified Debt (regardless of whether entered into on or after the Closing Date) or other financing documents of such Qualified Debt.

"Qualifying Account Instrument" means either (i) an Account LC or (ii) a revolving working capital or liquidity facility that is available for drawing by the Concession Company at any time, and from time to time, to pay operating expenses or debt service (as applicable) as it becomes due; *provided* that (A) the maturity of such revolving working capital or liquidity facility shall in no event be less than 12 months from the date of determination of the Opex Reserve Requirement, (B) such revolving working capital or liquidity facility shall have no conditions precedent to drawing other than (1) the non-occurrence of a payment default in respect of any Concession Mortgage Debt, (2) the non-acceleration of any Concession Mortgage Debt as a result of an event of default with respect thereto, (3) the nonoccurrence of any of the events set forth in Section 16.1(a)(v), (vi) or Section 16.1(a)(viii) of this Agreement with respect to the Concession Company or (4) other customary conditions precedent for a liquidity facility and (C) such revolving working capital or liquidity facility shall be provided by one or more financial institutions whose long-term senior unsecured indebtedness has obtained a rating of "BBB+" or better by Standard & Poor's Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if the named Rating Agency ceases to publish ratings).

"Rating Agency" means any of Standard & Poor's Rating Services, Moody's Investors Service, Inc. or Fitch Investors Service, Inc. or any similar entity or any of their respective successors.

"Reasonable Efforts" means the taking of those commercially reasonable steps in the power of the relevant Person that are capable of producing the desired result, being steps which a reasonable person desiring to achieve such result would take; *provided* that, subject to the relevant Person's other express obligations under this Agreement, the relevant Person shall not be required to expend any funds other than those funds (i) necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Person and (ii) the expenditure of which is not the obligation of another Person hereunder *and provided further that*, for purposes of Section 4.12(d) and Section 4.13(b), the Concession Company shall affirmatively demonstrate to the Authority its Reasonable Efforts to obtain Institutional Lenders' commitment, under reasonable conditions, to fund Cruise Pier Improvement Projects Cost following the Phase Two Trigger Event and the Expansion Investment Projects Trigger Event, respectively.

"Receiver of Government Contributions" means any Person that enters into a Government Contributions Agreement, directly receives Government Contributions from the applicable Governmental Authority and is directly responsible to the Governmental Authority providing the Government Contributions for the delivery of the applicable Cruise Pier Improvement Project or Modification funded by such Government Contributions.

"Receiver's Agent" means any Person who acts on behalf of a Receiver of Government Contributions in connection with the delivery of a Cruise Pier Improvement Project or Modification funded by Government Contributions and to whom Government Contributions are

disbursed by the Receiver of Government Contributions and who has effective control over such delivery pursuant to a written agreement between such Person and the Receiver of Government Contributions and, if the Authority is not the Receiver of Government Contributions, the Authority setting forth the terms and conditions for the delivery of the applicable Cruise Pier Improvement Project or Modification and the control of such Person over such delivery. The Concession Company shall only be the Receiver's Agent where such written agreement is on terms which grant the Concession Company effective control over the delivery of the applicable Cruise Pier Improvement Project or Modification as envisaged in the previous sentence.

"Recitals" means the recitals of this Agreement.

"Reference Services" has the meaning ascribed thereto in Schedule 3 and as described in Schedule 15.

"Rehabilitation Pier 4 Wharf" means the capital improvement project set forth on Schedule 13 and described as the "Rehabilitation Pier 4 Wharf."

"Release" means any unlawful spilling, leaking, emitting, discharging, disposing, depositing, leaching, escaping, dumping, pumping, emptying, injecting, pouring, or migration into or through the Environment.

"Relevant Return Condition Works" has the meaning ascribed thereto in Section 16.8.

"Replacement Letter of Credit" has the meaning ascribed thereto in Section 16.3(c).

"Reporting Year" means each calendar year during the Term, except that unless the Closing Date is the first day of January, the first Reporting Year shall be a partial year commencing on the Closing Date and ending on December 31 of such calendar year and the last Reporting Year shall be a partial Reporting Year commencing January 1 of such Reporting Year and ending on the End Date. The Reporting Year may be adjusted during the Term to an alternate twelve month period by written agreement between the Parties, not to be unreasonably withheld.

"Representative" means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other Person for whom such Person is responsible at law or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its "Representative."

"Required Coverages" has the meaning ascribed thereto in Section 13.1.

"Required Modification" has the meaning ascribed thereto in Section 5.2(a).

"Reserved Section" has the meaning ascribed thereto in Section 3(a) of Schedule 2.

"Restoration", "Restore", or "Restoring" means, with respect to any casualty loss, destruction or damage of the Cruise Port Facility, to repair or rebuild the affected portions of the Cruise Port Facility in accordance with all Laws applicable at the time of the repair or rebuilding

to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage.

"Restoration Funds" has the meaning ascribed thereto in Section 13.3(a).

"Re-Tender Costs" means any costs, expenses (including legal fees), Taxes, fees, charges, disbursements and other Losses that are incurred by the Authority (or to the best of the Authority's knowledge after due inquiry, are expected to be paid or incurred by the Authority) in connection with any Re-Tender of the Cruise Port Facility.

"Re-Tender of the Cruise Port Facility" means (a) any process by which the Authority (i) requests tenders from any Person interested in entering into a concession, lease or other transaction in respect of the Cruise Port Facility, (ii) evaluates any response to such request from such Person or (iii) grants or enters into such concession, lease or other transaction with such Person, or (b) any financing, bonding or similar transaction undertaken by the Authority in respect of the Cruise Port Facility.

"Return Condition Works" has the meaning ascribed thereto in Section 16.8.

"Return Condition Works Completion Notice" has the meaning ascribed thereto in Section 16.8.

"Return Condition Works Cost" has the meaning ascribed thereto in Section 16.8.

"Return Condition Works Program" has the meaning ascribed thereto in Section 16.8.

"Revenue Share Credit" has the meaning ascribed thereto in Section 15.1(c).

"Reversion Date" means the day immediately following the End Date.

"ROFO Exclusivity Period" has the meaning ascribed thereto in Section 3.19.

"ROFR Exclusivity Period" has the meaning ascribed thereto in Section 3.20.

"San Juan Bay" means the area described in Figure 1 of Section 1 of Schedule 1 as the San Juan Bay Zoned Port Area, *provided* that, within such San Juan Bay Zoned Port Area, San Juan Bay is the area up to the high tide level.

"Sanction Laws" has the meaning ascribed thereto in Section 9.2(f).

"Scheduled Completion Date" has the meaning ascribed thereto in Section 4.1.

"Secretary" means the U.S. Secretary of Transportation.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Shipping Channels" means the channels in San Juan Bay that provide access to the Cruise Piers and are marked on Schedule 1, excluding the areas marked on Schedule 1 as Berthing Areas that are immediately adjacent to the Cruise Piers.

"Shipping Channels Adjusted Minimum Dredging Depth" has the meaning ascribed thereto in Section 3.2(j).

"Shipping Channels Minimum Dredging Depth" has the meaning ascribed thereto in Section 3.2(j).

"Signatory Cruise Lines" means Carnival Corporation, a corporation organized and existing under the laws of Panama, Royal Caribbean Cruises Ltd., a corporation organized and existing under the laws of Liberia, and NCL (Bahamas) Ltd. d/b/a Norwegian Cruise Line, a corporation organized and existing under the laws of the Bahamas.

"60% Design and Technical Specifications" means, with respect to the Initial Investment Projects and the Expansion Investment Projects, or any other Cruise Pier Improvement Project or Modification, the design documentation and technical specifications for the applicable Cruise Pier Improvement Project or Modification that is developed to a level of detail and completeness of at least sixty percent (60%) of the level of detail and completeness required for final, one hundred percent (100%) complete, design documentation and technical specifications. Without limiting the generality of the foregoing, the 60% Design and Technical Specifications shall include the documents and information provided in clauses (i) through (iv) of the definition of 30% Design and Technical Specifications. For the avoidance of doubt, references in Schedule 13 to "60% Design" shall be deemed to be references to the "60% Design and Technical Specifications", and the 60% Design and Technical Specifications shall include all the information and design documentation required in Schedule 13 for "60% Design".

"State" means any state in the United States of America or any possession or territory thereof.

"Statement of Estimated Liabilities" means a statement by the Authority setting forth (i) the relevant Concession Company Default or other circumstances giving rise to its right to terminate this Agreement, (ii) all amounts that (A) are estimated to be due and payable by the Concession Company to the Authority under this Agreement as of the date of such statement or (B) to the best of the Authority's knowledge after due inquiry, are expected to become due and payable by the Concession Company under this Agreement on or prior to the date that is 30 days after the date of such statement, (iii) to the extent not included in clause (ii) above, all other obligations of the Concession Company under this Agreement known to the Authority that should have been, but have not been, performed as of the date of such statement and (iv) to the extent not included in clauses (ii) or (iii) above, all costs and expenses (including legal fees), Taxes, fees, charges and disbursements estimated to be paid or incurred by the Authority in connection with any Concession Company Default, the termination of this Agreement, the recovery of possession from the Concession Company, and the preparation, execution and delivery of the New Agreement and related agreements and the Statement of Estimated Liabilities that (A) are estimated to have been paid or incurred by the Authority as of the date of such statement or (B) to the best of the Authority's knowledge after due inquiry, are expected to be paid or incurred by the Authority on or prior to the date that is 90 days after the date of such statement.

"Surety Bond" means (i) with respect to the Surety Bond provided by the Concession Company pursuant to Section 16.3(h), a surety bond or other guarantee that is in form and content reasonably acceptable to the Authority prior to submission of such surety bond or other guarantee and (ii) with respect to the Closing Surety Bond delivered to the Authority pursuant to Section 2.3(a), a surety bond or other guarantee in the form for a surety bond set forth in Schedule 6 (or otherwise in form and content reasonably acceptable to the Authority prior to submission of the surety bond), and in the case of both (i) and (ii), the issuer shall be an insurance company or other surety that is Approved by the Authority.

"Sworn Statement" means the sworn statement required by Act No. 2-2018, as amended, known as the Anti-Corruption Code for the New Puerto Rico.

"Sworn Statement for Closing" means the sworn statement in the form of Schedule 8.

"Tax" means any federal, Commonwealth, State, municipal, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, surcharge, penalty or addition thereto, whether disputed or not.

"Technical Dispute" has the meaning ascribed thereto in Section 19.3.

"Technical Services Agreement" has the meaning ascribed thereto in Section 2.4(b)(v).

"Term" means the term of this Agreement referred to in Section 2.1.

"Term Year" means (i) if the Closing Date occurs on the first day of a calendar month, the 12-month period beginning on the Closing Date or (ii) if the Closing Date does not occur on the first day of a calendar month, the period from the Closing Date through the 12-month anniversary of the end of the calendar month in which the Closing Date occurred and, in either case of clause (i) or (ii), each succeeding 12-month period and in any case ending on the End Date.

"Termination Damages" means AA-Termination Damages, AD-Termination Damages or PIC-Termination Damages.

"Third Party Claim" means any Claim asserted against an Indemnified Party by any Person who is not a Party or an Affiliate of such a Party.

"30% Design and Technical Specifications" means, with respect to the Initial Investment Projects and the Expansion Investment Projects, or any other Cruise Pier Improvement Project or Modification, the design documentation and technical specifications for the applicable Cruise Pier Improvement Project or Modification that is developed to a level of detail and completeness of at least thirty percent (30%) of the level of detail and completeness required for final, one hundred percent (100%) complete, design documentation and technical specifications. Without

limiting the generality of the foregoing, the 30% Design and Technical Specifications shall (i) incorporate data obtained from completed geotechnical and subsurface utility investigations, soil and rock borings, (ii) include design and technical information about structural systems (wharf structure, footings, and other structural support requirements), mechanical and electrical systems and architectural design features (such as interior and exterior walls, windows and flooring and the HVAC system), including architectural design renderings, (iii) include the documents and information described in Section 8(b) (Review Guidelines) of Schedule 13, and (iv) be sufficient for submission to the USACE or other applicable Governmental Authority of applications for the construction of the applicable Cruise Pier Improvement Project or Modification. For the avoidance of doubt, references in Schedule 13 to "30% Design" shall be deemed to be references to the "30% Design and Technical Specifications", and the 30% Design and Technical Specifications shall include all the information and design documentation required in Schedule 13 for "30% Design".

"Time of Closing" means 10:00 a.m. (AST) on the Closing Date or such other time on such date as the Authority and the Concession Company may agree to in writing.

"Transaction" has the meaning ascribed thereto in Section 2.1.

"Transfer" means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of, directly or indirectly.

"Transferee" has the meaning ascribed thereto in Section 17.1(a).

"Unamortized Concession Fee" means, as of the End Date, the amount equal to:

(i) the product of (A) the Concession Fee, *multiplied* by (B) the difference of (1) one *less* (2) the quotient of (I) the number of days elapsed from the Closing Date through and including the End Date, *divided* by (II) 10,950 (plus such number of days as may be added to the Term in the event of an extension of the Term); *plus*

(ii) for each Annual Dredging Payment actually paid by the Concession Company, the product of (A) each such Annual Dredging Payment actually paid by the Concession Company, *multiplied* by (B) the difference of (1) one *less* (2) the quotient of (I) the number of days elapsed from the date that each such Annual Dredging Payment was paid by the Concession Company through and including the End Date, *divided* by (II) the difference of (x) 10,950 (plus such number of days as may be added to the Term in the event of an extension of the Term) *less (y)* the number of days that elapsed between the Closing Date through and including the date that each such Annual Dredging Payment was paid by the Concession Company.

"USACE" means the United States Army Corps of Engineers, or any successor agency or department thereto.

"U.S. Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

"Utility Systems" means gas, electricity, light, heat, power, telephone, water and other utilities and services used in, or required for the use of, the Cruise Port Facility Operations or supplied to the Cruise Port Facility during the Term.

"Voluntary Notice of Transaction" has the meaning ascribed thereto in Section 2.4(c)(iii)(C).

Section 1.2 Number and Gender. In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa and words in one gender include all genders.

Section 1.3 Headings. The division of this Agreement into articles, sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

Section 1.4 References to this Agreement. The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words "Article", "Section", "paragraph", "sentence", "clause" and "Schedule" mean and refer to the specified article, section, paragraph, sentence, clause or schedule of, or to, this Agreement.

Section 1.5 References to Agreements and Other Documents. Unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified or supplemented from time to time.

Section 1.6 References to Any Person and to Good Faith Negotiations. A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assigns. A reference in this Agreement to the Parties negotiating, discussing or resolving a matter in "good faith" shall not be construed to mean that there is an obligation of the Party or Parties to agree with respect thereto.

Section 1.7 Meaning of Including. In this Agreement, the words "include", "includes" or "including" mean "include without limitation", "includes without limitation", "including without limitation" and "including but not limited to", respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

Section 1.8 Meaning of Discretion. In this Agreement, unless otherwise qualified or limited, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

Section 1.9 Meaning of Notice. In this Agreement, the word "notice" means "written notice" unless specified otherwise.

Section 1.10 Meaning of Promptly. In this Agreement, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

Section 1.11 Consents and Approvals. Wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

Section 1.12 Trade Meanings and References to Puerto Rico and the United States. Unless otherwise defined herein, (a) words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings, and (b) the words "Puerto Rico" and "United States" mean the Commonwealth of Puerto Rico and the United States of America, or their respective geographic jurisdictions, as applicable. References to Global Ports Holding PLC means the company incorporated in England.

Section 1.13 Laws. Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of any Governmental Authority to enact, administer, apply and enforce any Law. Except for Adverse Actions or if compensation or other relief is otherwise available or provided for pursuant to applicable Law or this Agreement, the Concession Company shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of any Law by any Governmental Authority.

Section 1.14 Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

Section 1.15 Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States of America, consistently applied.

Section 1.16 Time.

(a) *References to Specific Time*. Unless specified otherwise, all statements of or references to a specific time in this Agreement are to Atlantic Standard Time.

(b) *Period of Days*. For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. on the next Business Day.

Section 1.17 Approvals, Consents and Performance by the Authority.

(a) *Procedures*. Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Authority of or to any action, Person, Document or other matter contemplated by this Agreement, the following provisions shall apply, as applicable: (i) such request for approval or consent must (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, (B) clearly set forth the matter in respect of which such approval or consent is being sought, (C) form the sole subject matter of the correspondence containing such request for approval or consent (provided, however, more than one approval or consent may be requested in a single correspondence if the subject matter of each approval or consent is related and each approval or consent is clearly separately set forth) and (D) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or that it may be given or provided at the discretion of the Authority); (iii) the Authority shall, within such time period set forth herein (or (A) if no time period is provided, within 45 days, subject to the Authority's right to extend such period once for an additional 15 days or (B) in the event of a Port Emergency, as promptly and reasonably practicable under the circumstances) after the giving of a notice by the Concession Company requesting an approval or consent, advise the Concession Company by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the Authority) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the Authority acting reasonably, of the information or documentation provided; (iv) if the responding notice mentioned in clause (iii) of this Section 1.17(a) indicates that the Authority does not approve or consent, the Concession Company may take whatever steps may be necessary to satisfy the objections of the Authority set out in the responding notice and, thereupon, may submit a revised request for approval or consent from time to time and the provisions of this Section 1.17 shall again apply until such time as the approval or consent of the Authority is finally obtained; (v) if the disapproval or withholding of consent mentioned in clause (iv) of this Section 1.17(a) is subsequently determined pursuant to Article 19 to have been improperly withheld, conditioned or delayed by the Authority, such approval or consent shall, unless otherwise determined pursuant to Article 19, be deemed to have been given on the date on which such approval or consent was originally required (and for the purpose of determining any period of delay the amount of time required to obtain such approval or consent shall be taken into consideration); and (vi) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 19.

(b) *Approved Documents*. Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any material

respect without first obtaining a further Approval in accordance with the provisions of this Section 1.17.

ARTICLE 2
THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS

Section 2.1 Grant of Concession; Right to Lease; Intent of the Parties.

(a) Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (i) the Concession Company (A) shall pay the Authority the exact amount of $72,000,000.00, in cash (the "Concession Fee"), (B) shall pay into the Escrow Account – Capital Dredging Sub-Account $1,600,002 as the initial dredging payment ("Initial Dredging Payment"), (C) agrees to pay into the Escrow Account – Maintenance Dredging Sub-Account the Annual Dredging Payment described in Section 2.1(a), (D) agrees to pay the Annual Authority Revenue Share described in Section 2.1(c) and the Incremental Authority Revenue Share, and (E) shall pay into the Escrow Account – Initial Investment Projects Sub-Account the amount provided in Section 2.11(b)(i), in cash, and (ii) the Authority shall and does hereby (A) grant the Concession Company a concession free and clear of Encumbrances other than Permitted Authority Encumbrances, for and during the term commencing as of the Time of Closing and expiring at 11:59 p.m. on the 30th anniversary of the Closing Date, as such expiration date may be extended pursuant to Section 4.13(d) (the "Term"), unless terminated earlier or extended in accordance with the terms of this Agreement, to repair, operate, manage, maintain, improve, enhance, develop, rehabilitate, use, and enjoy the Cruise Port Facility for Cruise Port Purposes and otherwise in accordance with and pursuant to this Agreement and (B) grant the Concession Company the right to collect and retain all fees, charges and revenues set forth in Section 7.1 hereto in respect of the Cruise Port Facility, the Cruise Port Facility Assets and the Cruise Port Facility Contracts, but excluding Government Contributions (collectively, the "Concession"). For the avoidance of doubt, such fees, charges and revenues shall be the property of the Concession Company. As part of the Concession, the Authority hereby conveys to the Concession Company the right to use, and to the fullest extent permitted under applicable Law, leases, for Cruise Port Purposes each (and all) of the Cruise Port Facility Assets, transfers responsibility to the Concession Company for the Preferential Berthing Agreements as provided in Schedule 2 and assigns to the Concession Company the Assigned Port Facility Contracts (including any security deposits tendered to the Authority by the counterparties thereto), and the Concession Company shall accept the Concession and each related right, assignment and transfer (collectively, including the Concession, the "Transaction"). Pier 14 shall not constitute part of the Cruise Port Facility or the Concession until the Authority notifies the Concession Company in writing with ninety (90) days' prior notice that Pier 14 constitutes part of the Cruise Port Facility and the Concession, following which ninety (90) day period Pier 14 shall constitute part of the Cruise Port Facility and the Concession for all purposes of this Agreement, without any further action required by either Party. Pier 13, Pier 14 (if it has become part of the Cruise Port Facility and the Concession as provided above), Piers 11-12, including all terminals, buildings, structures (above grade and below grade), roadways, and all fixtures, and related facilities, situated as of the Closing Date on that Authority real property as the same may be enlarged, enhanced, improved, reconstructed, rebuilt, rehabilitated, developed or otherwise modified in accordance with this Agreement, shall not constitute part of the Cruise Port Facility and the Concession if removed pursuant to Section 3.24 and Section 3.25, as

applicable. Notwithstanding anything to the contrary herein, rights provided to the Concession Company under the Concession and Transaction under this Agreement are integrated and non-severable. To the maximum extent permitted by applicable Law, the Authority acknowledges that any rights relating to use of real property conveyed as part of the Concession are a real property lease. Except where otherwise provided in this Agreement, any proceeds received by the Authority after the Time of Closing for any claims made by the Authority before the Time of Closing under any insurance policy of, or for the benefit of, the Authority shall be the property of the Authority, and the Concession Company shall have no interest in or claim upon any such proceeds, such proceeds including proceeds related to claims made by the Authority with respect to the Pier 3 EPIC Repairs.

(b) On the first day of the fourth full Reporting Year and each succeeding Reporting Year, the Concession Company shall deposit in the Escrow Account – Maintenance Dredging Sub-Account, in cash, the exact amount of $310,000, as Adjusted for Inflation and as further provided in Section 3.2(j) (the "Annual Dredging Payment"). The payment of the Initial Dredging Payment and the Annual Dredging Payment shall be senior to the payment of any debt of the Concession Company and shall be for the benefit of the Authority for payment of its dredging obligations provided in Section 3.2(j).

(c) The Concession Company shall pay to the Authority, in cash, for each Reporting Year an amount (the "Annual Authority Revenue Share") equal to 5% of the gross Cruise Port Revenues of the Concession Company and each Affiliated Service Provider in each such Reporting Year, provided that, with respect to the gross Cruise Port Revenues of an Affiliated Service Provider, it shall include only the percentage of gross Cruise Port Revenues of the Affiliated Service Provider equal to the percent ownership of the Concession Company in such Affiliated Service Provider, as further adjusted and provided in Schedule 15. The Concession Company shall also pay to the Authority, in cash, for applicable Reporting Years provided in Schedule 15 the Incremental Authority Revenue Share as provided in Schedule 15. The Annual Authority Revenue Share for each Reporting Year is due and shall be paid by the Concession Company, together with any Incremental Authority Revenue Share due for such Reporting Year in accordance with Schedule 15, within 30 days after the delivery of the audited annual financial report for such Reporting Year as required by Section 8.1(c)(ii). Any Annual Authority Revenue Share and any Incremental Authority Revenue Share in respect of the final Reporting Year shall be due and shall be paid by the Concession Company within 90 days after the Reversion Date. The payment of the Annual Authority Revenue Share and the Incremental Authority Revenue Share shall be senior to the payment of any debt of the Concession Company (including Concession Mortgage Debt, Qualified Debt or other debt of the Concession Company), except with respect to the Incremental Authority Revenue Share as provided in Schedule 15.

(d) As part of the Concession, the Authority hereby grants the Concession Company the right to use and lease spaces in the Cruise Pier Buildings of the Cruise Port Facility for the purpose established in this Agreement and Schedule 15 and collect and retain all fees, charges, payments and revenues in respect of such facilities, *provided however* that all agreements entered into by the Concession Company with any Person with respect to the Cruise Pier Buildings shall (i) include the right of the Authority, in its discretion, to receive an assignment of such agreement at the end of the Term, or earlier if terminated for Concession

Company Default or otherwise, without any condition, cost or penalty to the Authority, (ii) provide for the exclusive liability of the Concession Company and shall release and hold the Authority harmless of any liability whatsoever arising in relation thereto, and (iii) shall expressly provide that the Person using or renting from the Concession Company shall not register such contract and rights thereunder in the Registry of Property. Pursuant to this right, the Authority, by the Time of Closing, shall cause all those Cruise Port Facility Contracts (and, for the avoidance of doubt, excluding the Preferential Berthing Agreements) to include the Concession Company as a party thereof or shall assign such Cruise Port Facility Contracts to the Concession Company in order for the Concession Company to have the right to collect and retain all fees, charges, payments and revenues in respect of such Cruise Port Facility Contracts. For the avoidance of doubt, such fees, charges and revenues shall be the property of the Concession Company.

(e) It is the intent of the Parties that the Concession Company shall have the right of enjoyment and use of ("goce y uso") the Cruise Port Facility and the Cruise Port Facility Assets as provided in this Agreement as set forth in Section 2.1(a), and that the Authority in no way is assigning, transferring or otherwise conveying title of the Cruise Port Facility or the Cruise Port Facility Assets to the Concession Company.

(f) For the avoidance of doubt, to the extent that an Assigned Port Facility Contract includes services to be provided to the Authority in connection with other facilities or assets of the Authority not being conveyed to the Concession Company as part of the Concession, the Authority may partially assign such Assigned Port Facility Contract to the Concession Company, and the Concession Company shall accept such partial assignment, in accordance with the foregoing.

(g) The Authority expressly acknowledges and agrees that the Concession is a "real property right" under Puerto Rico law and such right shall be considered, for purposes of Section 365(h) of the Bankruptcy Code, a "real property lease". Whether or not Section 365(h) of the Bankruptcy Code is applicable, the Authority expressly agrees that if this Agreement is rejected or disaffirmed, or if the Concession is otherwise rejected or disaffirmed, in whole or in part, the Concession Company may retain its rights under this Agreement (including rights such as those relating to the amount and timing of payments due to the Authority hereunder and other amounts payable by the Concession Company and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the Term of this Agreement and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable Law. If the Concession Company retains its rights under this Agreement and all rights hereunder, the Concession Company may offset against the payments otherwise due to the Authority for the balance of the Term after the date of the rejection or disaffirmance of this Agreement and for any renewal or extension of Term of this Agreement, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the Authority under this Agreement, but the Concession Company shall not have any other right against the Authority on account of any damage occurring after such date caused by such nonperformance. The Concession Company shall provide an accounting of any offset taken by the Concession Company against the payments otherwise due to the Authority within ten (10) Business Days after any such offset, and the Concession Company shall disgorge any amounts offset by the Concession Company that are finally

determined by a court of competent jurisdiction to not have been damages caused by the Authority's nonperformance after the date of such rejection. Notwithstanding anything to the contrary in this Agreement, the rights granted to the Concession Company under this Agreement and the rights provided to the Concession Company in this Section 2.1(g) are integrated and non-severable.

Section 2.2 Closing.

(a) The closing of the Transaction (the "Closing") shall take place on a Business Day not later than 180 days after the Closing Security Delivery Date (unless otherwise agreed in writing by the Authority and the Concession Company) (the "Outside Closing Date") that is specified by the Concession Company in a notice to the Authority not less than 10 Business Days prior to such Business Day; *provided* that the Closing shall not take place prior to the later of (i) the first Business Day that is 120 days after the Closing Security Delivery Date and (ii) the date on which all Closing conditions shall have been satisfied or waived by the Party or Parties for the benefit of which such conditions are applicable (the "Closing Date"). The Closing shall be held at the Puerto Rico Convention Center District Authority or such other place agreed to in writing by the Authority and the Concession Company. At the Time of Closing, the Concession Company shall deliver or cause to be delivered to the Authority same-day funds by wire transfer in the amount of the Concession Fee (less the amount of any Cash Deposit and any interest thereon withdrawn by the Authority pursuant to Section 2.3(c)) and payment into the Escrow Account – Initial Investment Projects Sub-Account of the amount provided in Section 2.11(b)(i) and payment into the Escrow Account – Capital Dredging Sub-Account of the Initial Dredging Payment as provided in Section 2.11(b)(ii) in full payment for the Concession Company Interest, and upon receipt of such payment the Transaction shall be effective. Upon receipt of the funds described in the preceding sentence, the Authority shall immediately cancel and return the Closing LOC or the Closing Surety Bond, as applicable, in accordance with the Concession Company's instructions. The Outside Closing Date shall be subject to extension on a fair and reasonable basis for an additional period not to exceed 90 days upon request of the Concession Company or the Authority if (A) the satisfaction of any of the conditions is delayed by any action or omission of the Authority or the Commonwealth or any agency or instrumentality thereof or any Delay Event occurring prior to the Outside Closing Date (including the inability of the Authority to satisfy the condition specified in Section 2.4(a)(i) because it is unable to make the representations in Section 9.1(d)) or (B) one of the results specified in Section 2.4(c)(iii)(B) from the submission of a Voluntary Notice of Transaction has not been obtained or any of the Authorizations identified as required by the Closing Date in section B of Schedule 17 has not been issued (other than as a result of the negligence or lack of due diligence of the Concession Company) and the Institutional Lender requires any of such Authorizations for Closing or (C) the condition set forth in Section 2.4(c)(i)(B) has not been satisfied. If at the end of the not to exceed 90 day extension of the Outside Closing Date provided in the immediately preceding sentence the Concession Company has not obtained the Authorizations identified in paragraph 2 of section B of Schedule 17 (other than as a result of the negligence or lack of due diligence of the Concession Company) and the Institutional Lender requires such Authorizations for Closing, then such not to exceed 90 day extension of the Outside Closing Date shall be subject to an additional extension on a fair and reasonable basis for an additional period not to exceed 30 days upon request of the Concession Company. For the avoidance of doubt, notwithstanding anything in this Agreement to the contrary, (1) the Outside

Closing Date shall not be extended for any reason other than the reasons set forth in this Section 2.2(a), (2) if extended to the maximum period provided in this Section 2.2(a) the Outside Closing Date will be that date which is 300 days after the Closing Security Delivery Date (unless this maximum number of days is extended by agreement in writing of the Authority and the Concession Company) and (3) the Closing Security Delivery Date shall be no later than the Outside Closing Security Delivery Date, and the Outside Closing Security Delivery Date shall not be extended for any reason, unless agreed in writing by the Authority and the Concession Company.

(b) The Authority shall be entitled to all revenues with respect to the Cruise Port Facility (including Government Contributions) and shall be responsible for all charges, costs and expenses with respect to the Cruise Port Facility, including with respect to Assumed Liabilities, that shall have accrued as of 11:59 p.m. on the day immediately preceding the Closing Date. If the Authority and the Concession Company are unable to determine if any revenues or charges, costs and expenses with respect to the Assumed Liabilities actually accrued as of 11:59 p.m. on the day immediately preceding the Closing Date, such revenues, charges, costs and expenses shall be prorated between the Authority and the Concession Company as of 11:59 p.m. on the day immediately preceding the Closing Date based upon the actual number of days in the month and a 365-day year. Any amounts payable to or owed by the Authority pursuant to this Section 2.2(b) shall be added to or subtracted from the Concession Fee accordingly. If final amounts cannot be determined at the Closing for any items contemplated by this Section 2.2(b), then the Authority and the Concession Company shall allocate such items on a fair and equitable basis as soon as revenue statements, invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing Date. The Authority and the Concession Company shall have reasonable access to, and the right to inspect and audit, the other's books to confirm such final determinations, subject to the terms and conditions set forth in Article 8 and Article 19. Payment of any amount due under the final adjustment will be paid by the Concession Company to the Authority or by the Authority to the Concession Company (as applicable) within 30 days of agreement by the Authority and the Concession Company of the final adjustment. It is understood and agreed that the Authority shall, up to and including 11:59 p.m. on the day immediately preceding the Closing Date, be entitled to all of the cash or cash equivalents in or generated by the Cruise Port Facility (other than any security deposit under any Assigned Port Facility Contract).

Section 2.3 Security Deposit and Outside Closing Security Delivery Date.

(a) The Concession Company shall on the Date of this Agreement deliver to the Authority the Closing Corporate Guaranty in the form attached hereto in Schedule 6A with a term through the Outside Closing Date plus 30 days. The delivery of the Closing Corporate Guaranty to the Authority on the Date of this Agreement is a condition to the effectiveness of this Agreement, and (for the avoidance of doubt) this Agreement shall be of no force or effect in the event the Concession Company fails or refuses for any reason to deliver the Closing Corporate Guaranty to the Authority on the Date of this Agreement. The Concession Company shall, in addition, on or before the Outside Closing Security Delivery Date and unless one or more of the circumstances in Section 2.3(d) is in effect, deliver to the Authority cash (a "Cash Deposit") or either a Letter of Credit with a term of at least 180 days from the Closing Security Delivery Date (the "Closing LOC") or a Surety Bond in the form attached hereto in Schedule 6

with a term of at least 180 days from the Closing Security Delivery Date (the "Closing Surety Bond"), or a combination of the foregoing, in an aggregate amount equal to ten million dollars ($10,000,000), to be held by the Authority for the sole purpose described in Section 2.3(b). The Closing LOC and the Closing Surety Bond (as applicable) shall be effective as of the day following the Outside Closing Security Delivery Date or such later date agreed in writing between the Parties. The Authority shall deposit any Cash Deposit with a Depositary, which shall invest such amount in Eligible Investments pending Closing. The Concession Company may provide a combination of a Cash Deposit and either a Closing LOC or a Closing Surety Bond to comply with the requirements of this Section 2.3(a), in which case the relevant provisions of this Agreement related to a Cash Deposit and to a Closing LOC or a Closing Surety Bond, including the rights of the Parties related thereto, shall be construed to apply to both forms of security. Upon the delivery to the Authority of the Cash Deposit, the Closing LOC or the Closing Surety Bond, or a combination of the foregoing, as provided above, and the effective date of the Closing LOC or the Closing Surety Bond, or both, as applicable, having been reached, the Authority shall not be entitled to make any claim under the Closing Corporate Guaranty and shall promptly return to the Concession Company the Closing Corporate Guaranty marked "canceled".

(b) Unless this Agreement is earlier terminated pursuant to Section 2.4(d)(vii) as a result of the failure of the Concession Company to deliver the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority by the Outside Closing Security Delivery Date, as provided in Section 2.3(a) and Section 2.3(d), if the Authority terminates this Agreement pursuant to Section 2.4(d)(iv) because a condition set forth in Section 2.4(b) remains unsatisfied (unless such Section 2.4(b) condition remains unsatisfied solely because a condition set forth in Section 2.4(a) or Section 2.4(c) remains unsatisfied or any such condition remains unsatisfied as a result of the occurrence of an event of Force Majeure), then, if the conditions set forth in Section 2.4(a) have been satisfied (other than any condition (i) the satisfaction of which depends upon an action of the Concession Company or the satisfaction of any condition set forth in Section 2.4(b) or Section 2.4(c) or (ii) which has not been satisfied as a result of the Concession Company's failure to comply with any provision of this Agreement) the Authority shall be entitled to (A) retain any Cash Deposit and all interest earned thereon and/or (B) draw immediately without notice to the Concession Company, the full amount of the Closing LOC upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under the Closing LOC in the amount of such sight draft or (C) make a call for the full amount of the Closing Surety Bond in accordance with its terms, or (D) if the Cash Deposit, the Closing LOC or the Closing Surety Bond has not been delivered to the Authority and the Closing Corporate Guaranty has not been returned to the Concession Company as provided in Section 2.3(a), make a claim under the Closing Corporate Guaranty up to the limit of liability provided therein, and the Authority shall be entitled to retain all of the proceeds of the Closing LOC or the Closing Surety Bond or a claim under the Closing Corporate Guaranty, in any case as the sole and exclusive remedy or right of the Authority against the Concession Company hereunder for any cause of action arising under or relating to this Agreement or any document executed in connection herewith; *provided, however*, that if the termination by the Authority provided in this sentence of this Section 2.3(b) occurs and the Concession Company has not delivered the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority, as provided in Section 2.3(a), on or before the Outside Closing Security Delivery Date, then the Concession Company will compensate the Authority by payment to the Authority of the sum of $10,000,000, and (for

the avoidance of doubt) the Authority may make a claim under the Closing Corporate Guaranty for such amount. If this Agreement is terminated for any other reason, the Authority shall, within five days, return any Cash Deposit and all interest earned thereon and return the Closing LOC and Closing Surety Bond, if any, and the Closing Corporate Guaranty (if the Closing Corporate Guaranty has not been returned to the Concession Company as provided in Section 2.3(a)) to the Concession Company marked "canceled". The right of the Authority to retain any Cash Deposit and all interest earned thereon or to draw the Closing LOC or the Closing Surety Bond or to make a claim under the Closing Corporate Guaranty is intended to be, and shall constitute, liquidated damages and the exclusive remedy to compensate the Authority for the cost of forgoing alternative opportunities and for other costs incurred by the Authority in reliance on the Concession Company's agreement to enter into the transaction contemplated hereunder, and full retention of any Cash Deposit and all interest earned thereon and full payment of the entire draw on the Closing LOC or the Closing Surety Bond or full payment by the Concession Company of a claim under the Closing Corporate Guaranty to the Authority shall terminate all other rights and remedies of the Authority with respect to the Concession Company. The Parties acknowledge that the damages suffered by the Authority as a result of such termination would be impossible to ascertain and that the combined amount of any Cash Deposit and all interest earned thereon and the Closing LOC or the Closing Surety Bond or the Closing Corporate Guaranty is a reasonable estimate thereof and is not intended as a penalty.

(c) If the Outside Closing Date is extended as provided in Section 2.2(a), then as a condition to such extension the Concession Company shall replace the initial Closing LOC or Closing Surety Bond or Closing Corporate Guaranty (if the Closing Corporate Guaranty has not been returned to the Concession Company as provided in Section 2.3(a) and if such an extension is not provided in the initial Closing Corporate Guaranty) with a replacement Closing LOC or Closing Surety Bond or Closing Corporate Guaranty meeting the same requirements as the initial Closing LOC or Closing Surety Bond or Closing Corporate Guaranty but having an expiration date of at least 30 days after the extended Outside Closing Date. At Closing, upon satisfaction of the conditions set forth in Section 2.4(a), Section 2.4(b) and Section 2.4(c), the Authority shall withdraw the Cash Deposit and all interest earned thereon as a credit against the Concession Fee.

(d) The Concession Company shall be obligated to deliver the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority, as provided in Section 2.3(a), on or before the Outside Closing Security Delivery Date; *provided, however,* that the Concession Company shall not be so obligated to deliver the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority if any of the circumstances described in Section 2.3(d)(i) is in effect on the Outside Closing Security Delivery Date, and *provided, further,* that the Authority may waive in writing the obligation to so deliver the Cash Deposit, the Closing LOC or the Closing Surety Bond, and the Concession Company may waive in writing the occurrence of such circumstances and deliver the Cash Deposit, the Closing LOC or the Closing Surety Bond (and, for the avoidance of doubt, the Outside Closing Security Delivery Date shall not be extended as a result of the occurrence of any of the following circumstances or for any other reason and may only be extended by written agreement of the Authority and the Concession Company):

(i) there shall be, arising from COVID-19 which has occurred or is continuing: (A) an official travel advice or similar restrictions from a United States or

Commonwealth Governmental Authority or cruise industry supply and demand issues which would be reasonably likely to have a material negative impact on the number of Cruise Line Vessels or passengers using the Cruise Port Facility in the twelve (12) months following the Closing Date or (B) a disruption of or condition in the financial, banking or capital markets which would be reasonably likely to cause the Concession Mortgage Debt issuance to be available only in an amount materially less than $150,000,000 or at pricing or structure materially less favorable than the pricing or structure otherwise reasonably expected to be available for the credit of the quality of the Concession Mortgage Debt had such COVID-19 not occurred.

Section 2.4 Closing Conditions Precedent; Termination.

(a) *Conditions for the Benefit of the Concession Company*. The Concession Company shall be obligated to consummate the Closing in accordance with the terms hereof only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived in writing by the Concession Company:

(i) the representations and warranties of the Authority set forth in Section 9.1 shall be true and correct on and as of the Date of this Agreement and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except for (A) such representations and warranties made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date, and (B) failures of representations and warranties (other than the representation and warranty set forth in Section 9.1(o)) to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a Material Adverse Effect;

(ii) the Authority shall not be in material breach of any covenant on its part contained in this Agreement that is to be performed or complied with by the Authority at or prior to the Time of Closing *provided* that the Authority shall have been given prompt notice of such breach and given a reasonable opportunity to cure such breach prior to the Closing Date (it being understood that the opportunity to cure such breach prior to the Closing Date may not extend beyond the Outside Closing Date);

(iii) the Authority shall have arranged for the deposit of funds from the Concession Fee or from other sources sufficient to provide for the payment, in full or as shall have been agreed with the creditors, of the obligations of the Authority secured by the mortgage over a portion of the Cruise Port Facility and outstanding at the Time of Closing in such a manner that such obligations and mortgage shall be legally retired as of the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued and are secured;

(iv) the Authority shall have delivered to the Concession Company, the underwriter, the bond issuer, the collateral agent and the trustee legal opinions of the Authority's General Counsel, each substantially in the form attached hereto as Schedule 9 (such opinion to the underwriter, the bond issuer, the collateral agent and the trustee being conformed with the identity of such addressees), together with all factual certificates delivered with respect thereto;

(v) the Authority shall have executed and delivered to the Concession Company the estoppel certificate contemplated by Section 10.2(b);

(vi) neither the Authority nor the Commonwealth nor any other Governmental Authority established under the Laws of the Commonwealth shall have enacted any legislation or ordinance or promulgated any rule or regulation or taken any action that would constitute an Adverse Action hereunder were such action to take place during the Term or that has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning, restricting or prohibiting the consummation of the Transaction in a manner that would impose a material impairment on the Transaction or the rights of the Concession Company hereunder or make the consummation of the Transaction illegal;

(vii) the Authority shall have duly filed this Agreement with the Office of the Comptroller of the Commonwealth pursuant to Act No. 18 of the Legislative Assembly of Puerto Rico enacted on October 30, 1975, as amended;

(viii) the Authority shall have duly filed the Partnership Committee Report with respect to this Agreement pursuant to Article 9(g)(ii) and (iii) of the Act;

(ix) all necessary Authorizations pursuant to the Act and the enabling Law applicable to the Authority with respect to the execution, delivery and performance by the Authority of this Agreement or the consummation of the Transaction shall have been obtained from the Board of Directors of the Authority and the Puerto Rico Public-Private Partnerships Authority and the Governor of the Commonwealth, as necessary;

(x) the Authority shall have delivered to the Concession Company a certificate confirming that each of the conditions set forth in Section 2.4(a)(i) through (x) has been satisfied in full by the Authority (except for any such condition that has been waived in writing by the Concession Company) at or before the Time of Closing. The Authority shall share a copy of the certificate referred to in this Section 2.4(a)(x) with FOMB, but failing to do so shall not be considered by the Concession Company as a failure to satisfy the conditions to this Section 2.4(a);

(xi) the Authority shall have received Authorization from FOMB to enter into this Agreement; and

(xii) counsel to the Authority shall deliver a memo in form and substance reasonably satisfactory to the Concession Company to the effect that (i) if this Agreement is rejected or disaffirmed, or if the Concession is otherwise rejected or disaffirmed, in whole or in part, by the Authority in a Proceeding, the Concession Company shall nevertheless be entitled to remain in possession of its rights granted hereunder; (ii) whether or not Section 365(h) of the Bankruptcy Code is applicable, if this Agreement is rejected or disaffirmed, or if the Concession is otherwise rejected or disaffirmed, in whole or in part, in a Proceeding, the Concession Company may retain its rights under this Agreement (including rights such as those relating to the amount and timing of payments due to the Authority hereunder and other amounts payable by the Concession Company and any right of use, possession, quiet enjoyment,

subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the Term and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable Law; and (iii) if the Concession Company retains its rights under the Concession, the Concession Company may offset, subject to the accounting and disgorgement provisions set forth in Section 2.1(g) and Section 16.2(b)(vii) of this Agreement, the payments otherwise due to the Authority for the balance of the Term after the date of the rejection or disaffirmance of the Concession and for any renewal or extension of the Term of this Agreement.

(b) *Conditions for the Benefit of the Authority*. The Authority shall be obligated to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by the Authority:

(i) the representations and warranties of the Concession Company in Section 9.2 shall be true and correct on and as of the Date of this Agreement at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except for (A) such representations and warranties made as of a specified date, in which case such representations and warranties shall be true and correct as of such specified date, and (B) failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on the ability of the Concession Company to consummate the transactions contemplated hereby or perform its obligations hereunder;

(ii) the Concession Company shall not be in material breach of any covenant on its part contained in this Agreement that is to be performed or complied with by the Concession Company at or prior to the Time of Closing; *provided* that the Concession Company shall have been given prompt notice of such breach and given a reasonable opportunity to cure such breach prior to the Closing Date (it being understood that the opportunity to cure such breach prior to the Closing Date may not extend beyond the Outside Closing Date);

(iii) the Concession Company shall have delivered to the Authority a legal opinion (A) of counsel to the Concession Company and Enka Construction and Development B.V. (or any successor Contractor Approved by the Authority) with respect to this Agreement, the Construction Contract described in Section 2.4(b)(v)(A), and the Technical Services Agreement described in Section 2.4(b)(v)(B), and (B) of counsel to Global Ports Holding PLC with respect to the Technical Services Agreement described in Section 2.4(b)(v)(B), in each case substantially in the respective forms of opinion attached hereto as Schedule 10 and Schedule 10-A;

(iv) the Concession Company shall have delivered to the Authority (A) the evidence of insurance policies (which may be in the form of certificates of insurance) required to be delivered by Section 13.2(a), (B) an Officer's Certificate certifying that the Concession Company has a capitalization as of the Closing Date that includes equity that is equal to at least 20% of the Concession Fee and (C) Sworn Statement for Closing (duly notarized as of the Closing Date);

(v) the Concession Company shall have executed and delivered to the Authority (A) the Construction Contract with Enka Construction and Development B.V., a company incorporated in the Netherlands (or any successor Contractor Approved by the Authority), for the design, engineering, procurement, construction and completion of the Initial Investment Projects (other than the Rehabilitation Pier 4 Wharf or the Pan American Piers Wharf Structure Project if the Authority has given the Concession Company the notice and election in accordance with Section 4.12(c) that it has received Government Contributions for the Pier 4 Reconstruction or the Pan American Piers Wharf Structure Project), Approved by the Authority and executed by such Contractor, (B) the Technical Services Agreement with Global Ports Holding PLC for the provision of operational and management services by such Contractor to the Concession Company in relation to the Cruise Port Facility Operations under this Agreement (the "Technical Services Agreement"), Approved by the Authority and executed by such Contractor, and (C) the Concession Mortgage and related Documents securing Concession Mortgage Debt in an amount sufficient to pay (together with equity of the Concession Company available to pay) (x) the contract price under the Construction Contract for the design, engineering, procurement, construction and completion of the Initial Investment Projects, including the Rehabilitation Pier 4 Wharf, (y) the Concession Fee, and (z) the amounts required to be deposited in the Escrow Account as provided in Section 2.11(b), Approved by the Authority and executed by the applicable Concession Mortgagee and any other applicable Person;

(vi) the Concession Company shall have delivered to the Authority the 30% Design and Technical Specifications for (A) the Pan American Piers Wharf Structure Project, (B) all other Cruise Pier Improvement Projects for the Initial Investment Projects, and (C) the Piers 11-12 Wharf Project and the portion of the Piers 11-12 Project identified in Schedule 13 as Piers 11-12 – Uplands, each Approved by the Authority, and the Concession Company shall have delivered to the Authority the Cruise Pier Improvement Port Master Plan (CPIMP) with respect to the Initial Investment Projects as provided in Section 8(b) of Schedule 13;

(vii) The Concession Company shall have submitted to the USACE or other applicable Governmental Authority applications for the following Authorizations: Pan American Piers Wharf Structure Project and Rehabilitation Pier 4 Wharf permit application, and the USACE or other applicable Governmental Authority shall have accepted such applications; and

(viii) the Concession Company shall have delivered to the Authority a certificate confirming that each of the conditions set forth in Section 2.4(b)(i) through (viii) has been satisfied in full by the Concession Company (except for any such condition that has been waived in writing by the Authority) at or before the Time of Closing.

(c) *Conditions for the Benefit of Each of the Parties*. The Authority and the Concession Company shall each be obligated to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived in writing by each of the Authority and the Concession Company or, in the case of the condition precedent in Section 2.4(c)(i)(B) below, waived in writing by the Concession Company only:

(i) there shall be (A) no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction *(provided* that the Authority may not claim the benefit of this condition if such injunction or restraining order has been issued by the Authority) or other legal restraint or prohibition enjoining or preventing the Transaction or preventing Cruise Lines from serving the Cruise Port Facility; or (B) arising from the pandemic of COVID-19 which has occurred or is continuing, no disruption or condition in the financial, banking or capital markets which (i) causes the Concession Company to be unable to obtain a volume underwriting commitment for Concession Mortgage Debt ("Volume Commitment") or (ii) causes the Concession Mortgage Debt issuance pursuant to the terms of the Volume Commitment to be available only in an amount materially less than $150,000,000 or at pricing or structure materially less favorable than the pricing or structure otherwise reasonably expected to be available for a credit of the quality of the Concession Mortgage Debt had such COVID-19 not occurred;

(ii) there shall be no action taken (including the pendency of any review or proceeding), or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction *(provided* that the Authority may not claim the benefit of this condition if such injunction or restraining order has been issued by the Authority or any Governmental Authority under the direction of the Authority) that, in any such case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning or restricting the consummation of the Transaction in a manner that would impose a material impairment on the Transaction or make the consummation of the Transaction illegal;

(iii) (A) the release by or authorization from the FAA provided in Section 2.5(l), provided that such release or authorization is subject only to such conditions as are acceptable to the Concession Company and the Authority, each acting reasonably, (B) if the Authority has determined that the Transaction may result in control of Cruise Port Facility by foreign interests, the Concession Company and the Authority shall have submitted a "Voluntary Notice of Transaction" under Section 721 of Title VII of the Defense Production Act of 1950, as amended (the "Exon-Florio Act") and such other process as may be required, including under the Foreign Investment and National Security Act of 2007 ("FINSA") and the Foreign Investment Risk Review Modernization Act of 2018, and any of the following (and any other as may be applicable) shall have occurred: (1) the Authority shall have received notice that a review has been completed and that either the Transaction is not a covered transaction under the Exon-Florio Act or there are no unresolved national security concerns; (2) the President or his designee shall have commenced an investigation and the Authority shall have received notice that such investigation has been completed and that either the Transaction is not a covered transaction under the Exon-Florio Act or there are no unresolved national security concerns; (3) the

President shall have announced a decision not to take any action to suspend, prohibit or place any limitations on the Transaction; or (4) the President or his designee shall have indicated that a mitigation agreement shall be required in order to resolve national security concerns and the Concession Company and the Authority, after good faith efforts (including as required by Section 2.5(a)), are able to reach agreement with the President or his designee on the terms of a mitigation agreement acceptable to the Concession Company and the Authority, and (C) the Concession Company has received from the relevant Governmental Authorities the Authorizations listed in section B of Schedule 17;

(iv) the prescription period specified in the Act for the commencement of any action challenging the validity of this Agreement shall have expired and no such action shall be pending;

(v) the Parties shall have executed such documents as are necessary to enable the Concession Company to record this Agreement in the Commonwealth Registry of Property;

(vi) those certain Preferential Berthing Agreements shall be in full force and effect as of the Closing Date between the Authority and Signatory Cruise Lines;

(vii) the Parties shall have agreed on the identity and terms of appointment of the Independent Engineer, and the Parties and the Independent Engineer shall have executed and delivered the agreement appointing the Independent Engineer pursuant to which, among other terms of appointment, the Concession Company shall pay the cost and expense of the Independent Engineer and the Authority shall have no liability for any such cost or expense;

(viii) The engineering report of Gvelop LLC (or any other Person Approved by the Authority) commissioned by the Concession Company (the "Pier 4 Condition Report") with respect to the overall condition of the structure of Pier 4 does not contradict, subject to any assumptions customary for similar reports, that the current live loading capacity (as referred to in the report prepared by Gvelop LLC (titled the "Structural Assessment Report: Pier 4")) that may be exerted on Pier 4 is at least 165 pounds per square foot;

(ix) The engineering report of Gvelop LLC (or any other Person Approved by the Authority) commissioned by the Concession Company pursuant to a letter dated January 2020 (the "Pan American Piers Condition Report") with respect to the overall condition of the structure of the Pan American Piers Wharf Structure Project confirms, subject to any assumptions customary for similar reports, that based on the condition of the Pan American Piers Wharf Structure Project determined to exist in the Pan American Piers Condition Report, (A) the initial technical solution on the basis of which the budget for the Pan American Piers Wharf Structure Project set forth in Schedule 13 (the "Pan American Piers Wharf Structure Budget") was established is feasible or (B) an alternative solution exists, the cost of design and construction of which will not exceed the amount of the Pan American Piers Wharf Structure Budget, in the aggregate, based on the condition of the Pan American Piers Wharf Structure determined to exist in the Pan American Piers Condition Report and provided that (1) amounts paid for materials, products, supplies and equipment incorporated into the Pan American Piers

Wharf Structure, and rental costs for machinery and equipment used for the construction of the Pan American Piers Wharf Structure, shall not exceed prevailing market rates available to an EPC contractor providing equivalent commitments and security package, and (2) only the budgetary line items for the Pan American Piers Wharf Structure shall be used for determining whether the cost of design and construction of the Pan American Piers Wharf Structure exceeds the Pan American Piers Wharf Structure Budget;

(x) the Parties shall have agreed on the identity and terms of appointment of the Escrow Agent, and the Parties and the Escrow Agent shall have executed and delivered the Escrow Agreement as provided in Section 2.11;

(xi) the Administrative Determination shall not have been withdrawn or amended by the Department of the Treasury of the Commonwealth in any manner that has a Material Adverse Effect;

(xii) the Authority shall have delivered an opinion to the Concession Company from the Secretary of Justice of Puerto Rico to the effect that, for recordation in the Registry of Property of Puerto Rico and other purposes under Puerto Rico law, the deed of concession to be executed at Closing pursuant to this Agreement may cover both public domain property (*bienes de dominio público*) and private property (*bienes patrimoniales*) of the Authority and shall be treated as a property right under Commonwealth law;

(xiii) the Concession Company has confirmed from the relevant Governmental Authority or legal counsel to the Concession Company that the zoning applicable to the Cruise Port Facility (excluding Piers 11-12, Pier 13 and Pier 14, as shown in Schedule 1) as of the Date of this Agreement is adequate for the implementation of the Initial Investment Projects; and

(xiv) the Concession Company and the Authority shall have delivered to each other a certificate confirming that each of the conditions set forth in (i) through (xiv) has been satisfied in full (except for any such condition that has been waived in writing by both the Concession Company and the Authority or, in the case of the condition precedent in Section 2.4(c)(i)(B), waived in writing by the Concession Company only) at or before the Time of Closing.

(d) *Termination*. This Agreement may be terminated at any time prior to the Closing, except that termination pursuant to Section 2.4(d)(vii) shall be made by the Authority by notice given within the period provided in such Section:

(i) by the consent of both the Authority and the Concession Company in a written instrument;

(ii) by either the Authority or the Concession Company, upon notice to the other Party, if (A) any Governmental Authority of competent jurisdiction (other than, with respect to the Authority, the Authority or any Governmental Authority under the direction of the Authority) shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction or which would materially impair

the Transaction or make the consummation of the Transaction illegal, and such order, decree, ruling or other action has become final and nonappealable; *provided*, *however*, that the right to terminate this Agreement under this Section 2.4(d)(ii)(A) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, any order, decree, ruling or other action being imposed or becoming final and nonappealable, (B) any condition set forth in Section 2.4(c)(ii) remains unsatisfied as of the Time of Closing; *provided*, *however*, that the right to terminate this Agreement under this Section 2.4(d)(ii)(B) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied or (C) the Closing shall not have occurred as of 11:59 p.m. on the Outside Closing Date, unless such date is extended by mutual written agreement of the Concession Company and the Authority; *provided*, *however*, that the right to terminate this Agreement under this Section 2.4(d)(ii)(C) shall not be available to any Party whose actions or failure to act caused the Closing not to occur;

(iii) by the Concession Company, upon notice to the Authority, if any condition set forth in Section 2.4(a) or Section 2.4(c) remains unsatisfied as of the Outside Closing Date; *provided*, *however*, that the Concession Company shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) (A) if the Concession Company's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied, or (B) as provided in Section 2.4(g);

(iv) by the Authority, upon notice to the Concession Company, if any condition set forth in Section 2.4(b) or Section 2.4(c) remains unsatisfied as of the Outside Closing Date; *provided however*, that the Authority shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) (A) if the Authority's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied, or (B) as provided in Section 2.4(g);

(v) by the Authority, upon notice to the Concession Company, if any material casualty loss, destruction of or damage to any part of the Cruise Port Facility has occurred and such casualty loss, destruction or damage would permit the Concession Company, pursuant to Section 2.5(i)(ii)(B) but before giving effect to Section 2.5(i)(iii)(A), to reduce the Concession Fee to an amount that is less than the Agreed Minimum Value;

(vi) by the Concession Company or the Authority, upon notice to the Authority, as provided in the penultimate sentence of Section 2.5(i)(ii); or

(vii) by the Authority, upon notice to the Concession Company given during the period beginning on the day following the Outside Closing Security Delivery Date and ending 30 days after the Outside Closing Security Delivery Date, if the Concession Company has not delivered the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority on or before the Outside Closing Security Delivery Date, as provided in Section 2.3(a).

(e) *Effect of Termination*.

(i) In the event of termination of this Agreement by either the Authority or the Concession Company as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the Authority or the Concession Company or their respective representatives, except as set forth in Section 2.3(b), this Section 2.4(e) and Article 12 and subject to and in accordance with Article 19 and Article 200 and except that no Party shall be relieved or released from any liabilities or damages arising out of its breach of this Agreement (subject to Section 2.3(b) in connection with the Authority's termination of this Agreement pursuant to Section 2.4(d)(iv)).

(ii) In the event that the Concession Company terminates this Agreement pursuant to Section 2.4(d)(iii) because a condition set forth in Section 2.4(a) (other than the condition in Section 2.4(a)(i) with respect to the representations and warranties of the Authority set forth in Section 9.1(g), which shall be considered to be conditions under Section 2.4(c), and the failure of such representations and warranties to be true and correct shall impose no liability on the Authority) remains unsatisfied or in the event that the Authority terminates this Agreement pursuant to Section 2.4(d)(v), the Authority will (unless such Section 2.4(b) condition remains unsatisfied as a result of the occurrence of an event of Force Majeure) compensate the Concession Company by payment to the Concession Company of the sum of (A) $500,000 and (B) up to $500,000 of the actual documented and reasonable out-of-pocket costs and expenses incurred by the Concession Company in connection with the transactions contemplated by this Agreement after the Date of this Agreement but excluding the costs associated with the unwinding of any hedging arrangement entered into in connection with the prospective financing of the Concession Fee. In consideration of the payment made by the Authority to the Concession Company pursuant to this Section 2.4(e)(ii), the Concession Company shall, as a condition to such payment, (x) provide the Authority a physical and electronic copy of all design documentation and technical specifications related to the Cruise Pier Improvement Projects, whether or not previously provided to the Authority, and in whatever level of detail has been developed by the Concession Company or its Contractors to the date of such payment, in a format reasonably acceptable to the Authority, and (y) by an appropriate instrument reasonably acceptable to the Authority, give the Authority a perpetual, non-exclusive, royalty-free, transferable license to such design documentation and technical specifications for use in connection with the development of the operations of the Authority in San Juan Bay.

(iii) Any Cash Deposit and all interest earned thereon shall be retained or returned, and the Closing LOC or the Closing Surety Bond (if provided) shall be drawn upon or returned cancelled under the circumstances described in and in accordance with Section 2.3. In the event of termination other than by the Authority as described in Section 2.3, the Authority shall promptly return to the Concession Company any Closing LOC or Closing Surety Bond marked "canceled" and any Cash Deposit and any interest earned thereon.

(iv) In the event that the Authority terminates this Agreement pursuant to Section 2.4(d)(vii) and none of the conditions set forth in Section 2.3(d) is in effect on the Outside Closing Security Delivery Date and the Concession Company does not deliver the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority on or before the Outside Closing Security Delivery Date, the Concession Company will compensate the Authority by

payment to the Authority of the sum of one million dollars ($1,000,000), and (for the avoidance of doubt) the Authority may make a claim under the Closing Corporate Guaranty for such amount.

(f) *Change in Interest Rate.* The amount of the Concession Fee shall not be reduced or increased based on any change in interest rates, credit spreads or other factors relating to the Concession Mortgage Debt to be issued at Closing.

(g) If (A) the conclusions provided in any of the Pier 4 Condition Report or the Pan American Piers Condition Report cause the condition set forth in Section 2.4(c)(vii) or Section 2.4(c)(ix), respectively, not to be satisfied (and the condition has not been waived), or (B) if any of the conditions set forth in Section 2.4(c)(iii) is not satisfied (and the condition has not been waived), or (C) if the condition included in Section 2.4(c)(i)(B) is not satisfied (and the condition has not been waived), then prior to the exercise by the Concession Company or the Authority of any right to terminate this Agreement pursuant to Section 2.4(d)(iii) or Section 2.4(d)(iv), respectively, the Parties shall meet promptly following the failure of the condition set forth in Section 2.4(c)(i)(B), Section 2.4(c)(iii), Section 2.4(c)(vii), or Section 2.4(c)(ix) to be satisfied and discuss in good faith an alternative technical and/or financial solution for the Rehabilitation Pier 4 Wharf or the Pan American Piers Wharf Structure Project, or an alternative approach to satisfying the conditions set forth in Section 2.4(c)(iii) or Section 2.4(c)(i)(B), as applicable, and the achievement of Closing. The Parties acknowledge that, as provided in Section 1.6, any such good faith discussion shall not be construed as an obligation of either Party to agree to any alternative technical and/or financial solution or to any such alternative approach.

Section 2.5 Covenants.

(a) *Cooperation*. The Parties shall cooperate with each other in good faith in order to permit the Closing to be consummated on the Closing Date, including as described in Section 2.4(g).

(b) *Reasonable Efforts*. Each Party shall use all Reasonable Efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements of Law that may be imposed on such Party to consummate the Transaction promptly and (ii) to obtain or transfer (and to cooperate with the other Party to obtain or transfer) any Consent or Authorization of any Governmental Authority (including the release by or authorization from the FAA as provided in Section 2.5(l)) or any other public or private third-party that is required to be obtained or made by such Party in connection with the consummation of the Transaction (including the execution of all necessary approvals and exemptions for the Concession Company to receive all revenues generated at the Cruise Port Facility and charge fees as set forth in this Agreement and for the Authority's receipt and use for general Authority purposes of the Concession Fee, the Annual Dredging Payments, the Annual Authority Revenue Share and the Incremental Authority Revenue Share). The Parties shall promptly cooperate with and furnish information to the other Party at such other Party's reasonable request in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions*. If any Governmental Authority of competent jurisdiction (other than the Authority) issues a preliminary or permanent injunction or temporary restraining

order or other order before the Time of Closing that would prohibit or materially restrict, hinder or adversely affect the Closing, each Party shall use all Reasonable Efforts (unless the Authority or the Concession Company terminates this Agreement pursuant to Section 2.4(d)(ii)) to have such injunction, decree or restraining order or other order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case promptly and, in any event, prior to the Time of Closing. Subject to Section 2.4(e), any and all costs incurred by any Party pursuant to any action taken in accordance with this Section 2.5(c) shall be borne by the Party against whom such injunction, restraining order or other order has been entered or whose alleged action or inaction in violation of applicable Law is the basis for issuance of such injunction, restraining order or other order (except to the extent that such injunction or other order resulted from, in whole or in part, the actions, direction or instrument of the other Party, in which case such costs shall be borne by such other Party).

(d) *Operation of the Cruise Port Facility*. From the Date of this Agreement up to the Time of Closing, the Authority shall (i) cause the Cruise Port Facility to be operated in the ordinary course in a manner consistent with past practice, (ii) use all Reasonable Efforts to preserve the goodwill of the Cruise Port Facility and to maintain good business relationships with the Cruise Lines and others having business dealings with the Authority in connection with the Cruise Port Facility, (iii) perform (or cause to be performed) in all material respects all of the Authority's obligations under the Cruise Port Facility Contracts, (iv) not enter into any material contracts relating to the Cruise Port Facility or the Cruise Port Facility Operations unless such contracts are terminable by the Concession Company on the Closing Date (at no cost to the Concession Company) or are approved or consented to in writing by the Concession Company prior to the execution thereof, (v) not incur any Encumbrances on the Cruise Port Facility or the Cruise Port Facility Assets (other than Permitted Authority Encumbrances) that are not satisfied by the Closing Date or retained by the Authority as an Excluded Liability after the Closing Date and (vi) cause the Cruise Port Facility to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all with the purpose that the Cruise Port Facility as a going concern shall be unimpaired and transferred pursuant to this Agreement to the Concession Company at the Closing in a condition substantially similar to the condition as of the Date of this Agreement; *provided, however*, that it is acknowledged by the Concession Company that the global outbreak of COVID-19 has caused the Cruise Piers to be temporarily closed and has otherwise had a material adverse effect on the operations of the Cruise Port Facility and their revenues, which effect may continue (the "COVID-19 Adverse Effect"), and accordingly the foregoing obligations of the Authority are qualified in their entirety by the COVID-19 Adverse Effect; *provided, further*, that the failure of the Authority to comply with its obligations under parts (i), (ii), (iii) and (vi) of this Section 2.5(d) as a result of any such COVID-19 Adverse Effect is not the result of the negligence or intentional misconduct of the Authority and that the Authority uses its Reasonable Efforts to minimize the effect and duration of the COVID-19 Adverse Effect. Without limiting the foregoing, the Authority shall not terminate, assign, amend, modify or agree to a waiver of the terms of any material Assigned Port Facility Contract or Preferential Berthing Agreement, or any material Authorization related to the Cruise Port Facility after the Date of this Agreement and before the Time of Closing (or in the case of any material Assigned Port Facility Contract that has not been assigned or transferred to the Concession Company as contemplated herein, before such assignment or transfer is completed) and shall not enter into any new

contracts of a similar nature, in each case without the Concession Company's consent or unless such contracts are terminable by the Concession Company on or after the Closing Date (at no cost to the Concession Company).

(e) *Policies of Insurance*. The Authority shall cause all applicable policies of insurance maintained in respect of the Cruise Port Facility to be continued in full force and effect from the Date of this Agreement up to the Time of Closing. During the Term, the Concession Company shall be responsible for maintaining insurance for the Cruise Port Facility in accordance with the terms of this Agreement.

(f) *Disclosure of Changes*.

(i) From the Date of this Agreement up to the Time of Closing, each Party shall promptly disclose to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of such Party's representations or warranties contained in Article 9. From the Date of this Agreement up to the Time of Closing, each Party shall use good faith efforts to promptly disclose to the other Party any matter which becomes known to it which is inconsistent in any material respect with the representations or warranties of the other Party contained in Article 9; *provided* that the failure of a Party to so notify the other Party shall not operate to foreclose any remedy otherwise available to the Party in accordance with this Agreement with respect to such inconsistency. No such disclosure shall be deemed to change any representation or warranty or cure any breach thereof or affect any inability to make such a representation or warranty for purposes of Section 2.4(a) or for any other purpose.

(g) *Access to Information*. From the Date of this Agreement up to the Time of Closing, the Authority shall (i) give the Concession Company and its Representatives reasonable access during normal business hours and on reasonable notice to (A) the Cruise Port Facility, subject to the Authority's policies and regulations regarding safety and security and any other reasonable conditions imposed by the Authority and (B) management personnel of the Cruise Port Facility (but not other employees of the Authority until the Closing Security Delivery Date), (ii) permit the Concession Company and its Representatives to make such inspections of the Cruise Port Facility and such related documents and information as they may reasonably request and (iii) furnish the Concession Company and its Representatives with such financial and operating data and other information that is available with respect to the Cruise Port Facility as they may from time to time reasonably request, except that with respect to any documents or information under clause (ii) or clause (iii), prior to the Closing Security Delivery Date, such documents and information shall only include documents and information reasonably required to prepare applications for and obtain Authorizations relating to the Initial Investment Projects. From the Closing Security Delivery Date up to the Time of Closing, the Authority shall give the Concession Company and its Representatives reasonable access during normal business hours and on reasonable notice to the employees of the Cruise Port Facility, including both management personnel and other employees. The Authority's obligations in the preceding sentences are subject to all confidentiality obligations binding on the Authority with respect to any Person. From the Date of this Agreement until the Closing Date, the Concession Company shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the Cruise Port Facility to the extent and in accordance with the terms and conditions of the confidentiality agreement entered into prior to the Date of this Agreement

governing the Authority and the Concession Company as if such terms and conditions were fully restated herein; *provided* that to the extent that the terms and conditions of such confidentiality agreement conflict with the terms of this Agreement, the terms of this Agreement shall prevail (with terms and conditions of such confidentiality agreement becoming null and void at any time following the Closing Date). From the Closing Date and until the End Date, the Authority shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the Cruise Port Facility to the extent and in accordance with Section 8.2(b). After the Closing Date, the Concession Company shall, at the request of the Authority, provide reasonable assistance with respect to claims or actions brought by third parties against the Authority or by the Authority against third parties based upon events or circumstances concerning the Cruise Port Facility and in that regard the Concession Company shall (A) provide reasonable assistance in the collection of information or documents and (B) make the Concession Company's employees available when reasonably requested by the Authority.

(h) *Transition*. From the Closing Security Delivery Date up to the Time of Closing, the Parties shall cooperate with each other and with the Cruise Lines to ensure the orderly transition of control, custody, operation, management, maintenance, improvement, enhancement, development and rehabilitation of the Cruise Port Facility at the Time of Closing. The Concession Company shall ensure an orderly transition of the Cruise Port Facility in accordance with the principles and actions set forth in Schedule 5 as such actions shall be further developed and specified in the transition plan required therein. The Parties shall also develop before the Time of Closing a transition plan that shall be applicable upon expiration of the Term or earlier termination of this Agreement.

(i) *Casualty Loss Prior to Closing*.

(i) *Restoration*. If, following the Date of this Agreement and prior to the Time of Closing, there has occurred any material casualty loss, destruction or damage to any part of the Cruise Port Facility and this Agreement has not been terminated under Section 2.4(d), then the Authority shall promptly and diligently Restore the affected portion of the Cruise Port Facility; *provided* that if the affected portion of the Cruise Port Facility cannot be Restored prior to the Closing Date, then the Authority shall make or cause to be made such Restoration as can reasonably be completed prior to the Closing Date (in a good and workmanlike manner, in accordance with any applicable Operating Standards and using Reasonable Efforts to minimize interference with the Cruise Port Facility Operations and further damage to the Cruise Port Facility) and assign all warranties and guarantees in respect of such Restoration to the Concession Company on the Closing Date and, at the option of the Authority, either (A) the Authority, prior to the Closing Date, shall provide to the Concession Company a plan for the completion of such Restoration efforts by the Authority or its agents following the Time of Closing at the Authority's sole expense and subject to the Concession Company's reasonable approval and shall then complete such Restoration in substantial accordance with such plan; or (B) the Concession Company shall Restore the remaining affected portion of the Cruise Port Facility in accordance with its own plan for the completion of such Restoration; *providing, however*, that notwithstanding whether the Authority elects to complete the Restoration or to require the Concession Company to complete the Restoration as contemplated above, the occurrence of such material casualty loss, destruction or damage to any part of the Cruise Port Facility shall constitute a Delay Event and the Authority shall provide Concession Compensation

to the Concession Company during the period from the Closing Date until the Restoration is complete, which Concession Compensation shall not include compensation for any cost or expense paid by the Authority pursuant to Section 2.5(i)(ii) or related to any Cruise Pier Improvement Project compensation for which is otherwise provided under this Agreement (which Concession Compensation, for the avoidance of doubt, may be provided by extending the Term in accordance with and subject to Section 15.1(c)). For the avoidance of doubt, the construction of the Pier 3 Duty Free Building shall not constitute a material casualty loss, destruction or damage to the Cruise Port Facility, but if other parts of the Cruise Port Facility (other than any alterations to Pier 3 that are contemplated by the construction of the Pier 3 Duty Free Building) are materially damaged prior to the Time of Closing as a consequence of the construction of the Pier 3 Duty Free Building, then such damage may constitute material loss, damage or destruction for purposes of this Section 2.5(i).

(ii) *Compensation*. If the Concession Company is required by the Authority to Restore the remaining affected portion of the Cruise Port Facility as described in Section 2.5(i)(i)(B), then (A) the Authority shall assign to the Concession Company all available insurance and other proceeds payable by third-party insurers or other third parties to the Authority in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concession Company) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers any rights to recovery it may have against other third parties, whether at law, pursuant to contract or otherwise and (B) the Concession Company shall have the right to reduce the Concession Fee to be paid at Closing by any expected deficiency between the amount of such insurance and the cost to the Concession Company of Restoring the affected portion of the Cruise Port Facility, in each case as estimated by the Concession Company; *provided, however*, that if the Concession Company's estimated cost of Restoring the affected portion of the Cruise Port Facility pursuant to Section 2.5(i)(i)(B) is more than $5,000,000 greater than the net amount of insurance proceeds received by the Concession Company from the Authority thereof plus the amount deducted from the Concession Fee in accordance with Section 2.5(i)(ii)(B), the Concession Company shall not, without its prior written approval (at its discretion and without limiting its entitlements under the proviso following Section 2.5(i)(i)(B)) be obligated to Restore the affected portion of the Cruise Port Facility unless the Authority pays the excess to the Concession Company in advance of commencement of Restoration. The Authority shall contribute to the Restoration costs the amount of insurance proceeds the Authority receives for any applicable casualty loss, destruction or damage related to a Restoration prior to the expenditure of such $5,000,000 by the Concession Company. If the Concession Company is not obligated to, and does not elect to, Restore the affected portion, and the Authority does not elect to Restore the affected portion following the Time of Closing, in each case under Section 2.5(i)(i), the Concession Company or the Authority may terminate this Agreement in accordance with Section 2.4(d)(vi). In the event of any such termination, the Authority shall have no obligation to make any payment to the Concession Company, and the Authority shall have no liability to the Concession Company.

(iii) *Adjustments*.

(A) In no event shall the Concession Fee be reduced in accordance with Section 2.5(i)(ii)(B) to an amount that is less than seventy-two million dollars ($72,000,000).

(B) In the event that the actual cost of Restoring the affected portion of the Cruise Port Facility pursuant to Section 2.5(i)(i)(B) is greater than the net amount of insurance proceeds received by the Concession Company from the Authority therefor plus the amount deducted from the Concession Fee in accordance with Section 2.5(i)(ii)(B), such event shall be a Compensation Event, and the Authority shall pay Concession Compensation to the Concession Company in accordance with Section 15.1(b) with respect to any Restoration required to be undertaken pursuant to this Section 2.5(i).

(C) In the event that the actual cost of Restoring the affected portion of the Cruise Port Facility pursuant to Section 2.5(i)(i)(B) is less than the net amount of insurance proceeds received by the Concession Company from the Authority therefor plus the amount deducted from the Concession Fee in accordance with Section 2.5(i)(ii)(B), such excess shall be the property of the Authority and shall be paid by the Concession Company to the Authority upon the Restoration of the affected portion of the Cruise Port Facility.

(j) *Cruise Port Facility Security Program*. The Concession Company acknowledges and agrees that it is obligated under the Maritime Transportation Security Act of 2002, as amended, 46 U.S.C. Chapter 701 and 33 C.F.R. Parts 101-105, 126 to develop and have in effect a Facility Security Plan as part of the Cruise Port Facility Security Program as of the Closing Date, and/or a Terminal Security Plan under the Ports and Waterways Safety Act of 1972, as amended, 33 U.S.C. §§1221 et seq. and 33 C.F.R. Part 128. The Concession Company understands and agrees that the implementation, maintenance and operation of the Cruise Port Facility pursuant to the requirements of a Facility Security Plan and a Terminal Security Plan is essential to the operation of the Cruise Port Facility. The Authority shall cooperate with the Concession Company in connection with the preparation and approval process relating to the Cruise Port Facility Security Program.

(k) *Port Facility Employees*.

(i) Within 20 days after the Closing Security Delivery Date, the Authority shall provide the Concession Company with a list of the Authority Employees. After the Closing Security Delivery Date and prior to the Time of Closing, the Concession Company shall use its Reasonable Efforts to interview all Authority Employees who apply to the Concession Company for employment and, pursuant to the latter's operational needs, to offer, on terms and conditions designated by the Concession Company taking into account applicable Law, employment to commence following the Closing Date to such Authority Employees who, as determined by the Concession Company, meet the Concession Company's stated requirements for employment; *provided, however*, that the Concession Company shall have no obligation to offer employment to any such Authority Employee but will give preference to such Authority Employees over other applicants with otherwise similar qualifications. The Concession Company commits to offer competitive and attractive benefits to the Authority Employees who receive a job offer. On the Closing Date, the Concession Company shall deliver to the Authority a list of all Authority Employees hired by the Concession Company as of the Time of Closing.

(ii) With respect to any Authority Employee hired by the Concession Company the Authority Employee may elect, and the Concession Company shall not object to and will facilitate, the transfer of the balance of his or her retirement account (i.e. system benefit account and/or individual contributions account from the Commonwealth employee retirement system) as permitted under Act 106-2017, to the defined contribution individual retirement account program the Concession Company establishes in its discretion. The Concession Company does not assume any obligation in relation to the payment of the "Pay Go" charge in relation to any Authority Employees; *provided, however*, that the Concession Company acknowledges that the Concession Fee may be used by the Authority in part to make contributions to the Commonwealth for the employee retirement system (or successor structure) as provided in the Act.

(iii) The Concession Company agrees that the Authority Employees hired by it shall enjoy the following additional protections: (A) his or her job will be guaranteed for a minimum period of two (2) years, and (B) an Authority Employee may only be separated from the position during the aforesaid period of two (2) years if he or she engages in behavior that warrants dismissal or constitutes just cause under Act 80 of May 30, 1970, as amended.

(iv) As contemplated in the Act, the Concession Company and the Authority shall establish a program to retrain Authority Employees that are not hired by the Concession Company or otherwise transferred to another job position within a Governmental Authority of the Commonwealth. The Concession Company shall contribute to the creation of such program by covering a portion of the properly documented and directly incurred costs thereof up to a maximum amount of US$50,000.00 per annum for two (2) years from the Time of Closing. The Authority shall provide full substantiation of all such costs for the approval of the Concession Company with any request to the Concession Company for the aforesaid contribution.

(v) Failure of the Concession Company to comply with any of the covenants included in this Section 2.5(k) will constitute a material breach of this Agreement.

(l) *Isla Grande Airport Layout Plan*. The Authority shall use its Reasonable Efforts to obtain (i) a release of the land occupied by Pan American Pier 1 and Pan American Pier 2 from the layout plan designated by the FAA for the Isla Grande Airport located adjacent to the Cruise Port Facility, or (ii) authorization from the FAA for the use of such land as a maritime port consistent with this Agreement. Upon the Authority obtaining such release or such authorization from the FAA, as the case may be, the Concession Company shall comply with all requirements imposed by the FAA that affect the Cruise Port Facility or the Cruise Port Facility Operations, including any requirements related to construction, security, and environmental matters (but the Concession Company shall not be liable for any amounts payable to the FAA in connection with such release or authorization; *however*, the Concession Company acknowledges that a portion of the Concession Fee may be used by the Authority, for airports benefits, to comply with applicable grant assurance and regulatory requirements of the FAA). Such release by or authorization from the FAA shall be a condition to Closing pursuant to Section 2.4, and shall constitute a Delay Event to the extent that a failure to obtain such release or authorization results in a delay or interruption in the performance by the Concession Company of the Cruise Port Facility Operations or the Pan American Pier 1 Project or the Pan American Pier 2 Project,

except to the extent any such delay or interruption is the result of the negligence or intentional misconduct of the Concession Company or its Representatives or any act or omission by the Concession Company in breach of the provisions of this Agreement; *provided, however*, that the failure to obtain such release or authorization shall not constitute a Compensation Event.

(m) *Notices Required by the Act*. The Authority shall have sent all notices required under the Act in sufficient time to have allowed the prescription period specified in the Act for the commencement of any action challenging the validity of this Agreement to have expired by the Time of Closing.

(n) *Indebtedness*. The Authority shall not create or incur any Indebtedness at any time prior to the termination of its designation as a "Covered Entity" by the Financial Oversight and Management Board ("FOMB") established under PROMESA, except in accordance with the provisions of PROMESA, including Section 207 of PROMESA.

(o) *Access to Cruise Port Facility Prior to Closing Security Delivery Date*. Prior to the Closing Security Delivery Date, the Authority shall (i) grant the Concession Company access to the Cruise Port Facility under circumstances in which the Authority possesses the authority under applicable Law to grant such access and (ii) use Reasonable Efforts to obtain any Consent or Authorization from any Governmental Authority to grant the Concession Company access to the Cruise Port Facility, in each case for activities of the Concession Company or any Contractor reasonably required prior to the Closing Security Delivery Date in order to consummate the Transaction.

Section 2.6 Recordation of Agreement. At the Time of Closing, the Parties shall execute such documents as are necessary to enable the Concession Company to record this Agreement in the Commonwealth Registry of Property, free and clear of Encumbrances (other than a Permitted Authority Encumbrance). To the extent that changes are made to this Agreement with respect to any material matters, the Parties shall execute, deliver and record an amendment to the recorded Agreement reflecting such changes. The Parties shall mutually select the Notary Public who shall authorize the corresponding deed of ratification and conversion of this Agreement into a public document to be filed at the Commonwealth Registry of Property to cause its recordation, as well as any amendment or supplement thereto to reflect any changes to the recorded Agreement. The Concession Company shall be responsible for all the notarial fees and for all costs related to the execution and the recording of this Agreement or any amendment or supplement thereto in the Commonwealth Registry of Property, including without limitation all applicable documentary stamps and the filing and recording vouchers payable to the Commonwealth. Any and all deeds to effect a land assemblage to permit the recordation of this Agreement, including deeds of conveyance, deeds of segregation of parcels, deeds of consolidation of properties and any other required public instrument to create the realty that will be granted in concession pursuant to the terms and conditions of this Agreement shall be authorized by a Notary Public selected by the Authority. The Authority shall be responsible for all execution and recordation costs of any deed performing a required land assemblage operation to permit the recording of this Agreement at the Commonwealth Registry of Property and all required documentary stamps and filing and recording vouchers, and the Concession Company shall be responsible for the notarial fees charged by the Notary Public selected by the Authority. In the event that any Encumbrance has to be cancelled or released to cause the recordation of this

Agreement free and clear of such Encumbrance, the Authority shall be responsible for all execution and recording costs of any required deed to cause the foregoing, including all documentary stamps, filing and recording vouchers and the notary's fees charged by the acting Notary Public. The Parties shall mutually select the Notary Public who shall authorize the required deed of cancellation or release. Upon the expiration or termination of this Agreement, the Concession Company shall cancel the inscription of this Agreement in the books of the Commonwealth Registry of Property, bearing all execution and recording costs of the deed (including all documentary stamps, recording vouchers and the notarial tariff) that shall cause such cancellation, unless this Agreement is terminated by the Concession Company pursuant to Section 16.2, in which case the Authority shall bear such costs. The Parties shall mutually select the Notary Public who shall authorize the corresponding deed of cancellation.

Section 2.7 Closing Deliveries. At the Time of Closing, each Party shall execute and deliver all assets, agreements, bills of sale, assignments, endorsements, instruments, affidavits and documents as are reasonably necessary in the opinion of the other Party to effect the Transaction (and in form and substance that are reasonably satisfactory to such other Party).

Section 2.8 Intended Treatment for Commonwealth Income Tax Purposes.

(a) This Agreement is intended for Commonwealth income tax purposes to be considered an intangible asset to the extent provided in the Administrative Determination.

(b) The Concession Company shall be subject to and responsible for the fixed income tax rate of twenty percent (20%) over the net income derived from the operations provided under this Agreement, as currently provided for in the Act, and the Equity Participants shall not be subject to income tax on distributions of dividends or benefits from utilities and benefits arising from the net income derived from the operations provided under this Agreement, as currently stated in the Act.

Section 2.9 Intended Treatment for Commonwealth Sales and Use Tax Purposes; Private Rulings. The treatment for sales and use tax purposes of (i) fees and charges imposed by the Concession Company, and (ii) the Concession Company and its Contractors performing any of the works under this Agreement or any of the Construction Contracts, as the case may be, shall be governed by the Administrative Determination. The Concession Company may request determinations from the Secretary of the Treasury regarding tax considerations not specifically addressed in the Administrative Determination and request the issuance of a private ruling from the Secretary, as further instructed in the Administrative Determination.

Section 2.10 No Authority Compensation. The Authority shall have no liability to the Concession Company in the event that this Agreement or the Concession Company are treated by any Governmental Authority or any other Person in a manner different than intended as provided in Section 2.8(a) or Section 2.9. Without limiting the generality of the foregoing, no such treatment in a manner different than intended as provided in Section 2.8(a) or Section 2.9 (and, for the avoidance of doubt, no imposition by the Commonwealth or any other Governmental Authority of any sales and use tax with respect to any works referred to in Section 2.9 or in the Administrative Determination or otherwise) shall constitute a Compensation Event.

Section 2.11 Escrow Account.

(a) As a condition to Closing, the Parties shall negotiate and enter into an Escrow Agreement in a form to be negotiated in good faith following the Date of this Agreement and prior to Closing and, pursuant thereto, appoint the Escrow Agent and establish the Escrow Account, including the Escrow Account – Capital Dredging Sub-Account, the Escrow Account – Maintenance Dredging Sub-Account and the Escrow Account – Initial Investment Projects Sub-Account.

(b) At Closing, the Concession Company shall deposit (i) the lesser of (A) $3,000,000 and (B) the amount that is equal to $3,000,000 less the aggregate amount of any reductions in the Concession Fee pursuant to Section 2.5(i)(ii)(B) (the "Escrow Amount") into the Escrow Account – Initial Investment Projects Sub-Account, and (ii) $1,600,002 into the Escrow Account – Capital Dredging Sub-Account, each in satisfaction of the requirement to pay such amounts under Section 2.1.

(c) On the first day of the fourth full Reporting Year and each succeeding Reporting Year, the Concession Company shall deposit in the Escrow Account – Maintenance Dredging Sub-Account the Annual Dredging Payment. The amount in the Escrow Account – Capital Dredging Sub-Account shall be paid to the Authority at its request in order for the Authority to satisfy its dredging obligations under Section 3.2(j) with respect to the deepening of the Berthing Areas or the Shipping Channels or any other cost and expense provided in Section 3.2(j)(vi)(B). The amount in the Escrow Account – Maintenance Dredging Sub-Account shall be paid to the Authority in accordance with the provisions of the Escrow Agreement in order for the Authority to satisfy its dredging obligations under Section 3.2(j) with respect to the maintenance of the depth of the Berthing Areas or any other cost or expense provided in Section 3.2(j)(vi)(A), or to the Concession Company as provided in Section 3.2(j). Except as provided in Section 3.2(j), the Concession Company shall not be obligated to pay any amounts into the Escrow Account – Maintenance Dredging Sub-Account if (x) the balance of the Escrow Account – Maintenance Dredging Sub-Account is equal to or more than the Annual Dredging Payment next to be paid by the Concession Company pursuant to Section 2.1(a) and (y) the Authority certifies in writing to the Concession Company, upon the request of the Concession Company, that the amount in the Escrow Account – Maintenance Dredging Sub-Account that is in excess of the Annual Dredging Payment next to be paid by the Concession Company is not expected to be needed by the Authority to meet the obligations of the Authority provided in Section 3.2(j) with respect to the maintenance of the depth of the Berthing Areas, which certification (for the avoidance of doubt) shall be given by the Authority acting reasonably. For the avoidance of doubt, since dredging activities in San Juan Bay do not typically occur on an annual basis, it is expected that amounts in the Escrow Account – Maintenance Dredging Sub-Account will accumulate in anticipation of the obligations of the Authority with respect to the payment of dredging costs and that such accumulated amount will exceed the amount that is equal to the Annual Dredging Payment next to be paid by the Concession Company.

(d) The Escrow Amount shall be held as security for the payment to the Concession Company of (i) any Concession Compensation that becomes payable in respect of Compensation Events occurring prior to the Completion of the Initial Investment Projects and (ii) any Termination Damages or FM-Termination Damages payable in respect of termination of

this Agreement prior to the Completion of the Initial Investment Projects. If the Authority accepts an amount claimed by the Concession Company in a CE Notice or as Termination Damages or FM-Termination Damages, it shall notify the Escrow Agent and the relevant amount shall be paid to Concession Company from the Escrow Account – Initial Investment Projects Sub-Account. If the Authority does not so notify the Escrow Agent and has not otherwise paid any Concession Compensation, Termination Damages or FM-Termination Damages (as applicable) due to the Concession Company by the Compensation Date or such other date on which a portion or the whole of the Concession Compensation or Termination Damages or FM-Termination Damages (as applicable) becomes due and payable, the Concession Company may provide evidence of its entitlement to the Escrow Agent and apply for payment from the Escrow Account – Initial Investment Projects Sub-Account in accordance with the Escrow Agreement. The Concession Company shall not be entitled to make any withdrawals from the Escrow Account – Initial Investment Projects Sub-Account other than for the purpose of satisfying any Concession Compensation, Termination Damages and FM-Termination Damages as aforesaid (and in accordance with the Escrow Agreement) prior to the Completion of the Initial Investment Projects or as otherwise agreed between the Parties. The Authority shall not be entitled to make any withdrawals from the Escrow Account – Initial Investment Projects Sub-Account prior to the Completion of the Initial Investment Projects and, thereafter, shall only be entitled to make withdrawals in amounts which leave funds on deposit in the Escrow Account – Initial Investment Projects Sub-Account that are equal to the amount of any outstanding claims of the Concession Company for Concession Compensation relating to the period prior to the Completion of the Initial Investment Projects.

(e) All interest accruing on the amounts held from time to time in the Escrow Account – Initial Investment Projects Sub-Account shall be added to the Escrow Amount – Initial Investment Projects Sub-Account and ultimately paid to the Authority in accordance with Section 2.11(g) if not paid to the Concession Company pursuant to Section 2.11(d). All interest accruing on the amounts held from time to time in the Escrow Account – Maintenance Dredging Sub-Account or the Escrow Account – Capital Dredging Sub-Account shall be added to the Escrow Account – Maintenance Dredging Sub-Account or the Escrow Account – Capital Dredging Sub-Account, respectively, and paid to the Authority in accordance with Section 2.11(c).

(f) The costs of the Escrow Agreement shall be shared equally between the Authority and Concession Company.

(g) The Authority shall be entitled to apply for payment of any amounts remaining in the Escrow Account– Initial Investment Projects Sub-Account in accordance with the Escrow Agreement at any time following the Completion of the Initial Investment Projects, provided that the amount in the Escrow Account – Initial Investment Projects Sub-Account shall at no time be reduced to an amount less than the aggregate of any outstanding claims by the Concession Company for Concession Compensation which relate to the period prior to Completion of the Initial Investment Projects. The Authority shall provide evidence of such entitlement and the Concession Company shall have reasonable opportunity to provide evidence of claims for Concession Compensation not yet satisfied before the Escrow Agent pays any amount from the Escrow Account– Initial Investment Projects Sub-Account to the Authority.

ARTICLE 3
TERMS OF THE CONCESSION

Section 3.1 Right to Operate; Present Condition.

(a) *Right to Operate*. The Authority hereby grants to the Concession Company the rights set out in this Agreement and agrees that the Concession Company shall, at all times during the Term, be entitled to and shall have the exclusive right to possession of (including access over) and the right to use, develop, enjoy and operate the Cruise Port Facility for all Cruise Port Purposes and to conduct Cruise Port Facility Operations, subject to (i) the rights of the Authority set forth in Section 3.7(a), (ii) the other provisions contained in this Agreement, including Article 7 and Schedule 15, and (iii) Permitted Authority Encumbrances. The Authority shall deliver at its cost the use, enjoyment and possession of the Cruise Port Facility to the Concession Company as from the Closing Date, together with the right to use the Cruise Port Facility for all purposes of this Agreement and in accordance with the requirements of this Agreement, free from any third party rights or interference by the Authority or any Governmental Authority and shall maintain such rights in favor of the Concession Company throughout the Term; provided, however, that such rights of possession and use and from interference are subject to clauses (i), (ii) and (iii) above. Furthermore, and subject to clauses (i), (ii) and (iii) above, the Authority shall (x) not deny the Concession Company access and egress to and from the Cruise Port Facility and any part or parts thereof required for the purposes of carrying out its rights and obligations under this Agreement and (y) use Reasonable Efforts to ensure that the Concession Company shall have full rights of access and egress to and from the Cruise Port Facility and any part or parts thereof required for the purposes of carrying out its rights and obligations under this Agreement. Any failure by the Authority to comply with the foregoing shall constitute a Compensation Event and the Concession Company shall be entitled to Concession Compensation in respect thereof. The Authority and the Concession Company acknowledge that the Concession Company's rights to use and operate the Cruise Port Facility as a public cruise vessel port are subject to the right of the Authority, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Cruise Port Facility is used and operated as required by this Agreement and Law. The Authority shall, at its sole cost and expense and at all times during the Term, defend its title to the Cruise Port Facility, Cruise Port Facility Assets, Cruise Pier Buildings, and the rights granted to the Concession Company hereunder, or any portion thereof, against any Person claiming any interest adverse to the Authority or the Concession Company in the Cruise Port Facility, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, willful misconduct or violation of Law of the Concession Company, its Affiliates or their respective Representatives.

(b) *Present Condition*. Subject to Section 2.5(i) and Section 3.2(c) and except as specifically set forth in Section 9.1, the Concession Company understands, agrees and acknowledges that the Concession Company (i) by the execution of this Agreement, agrees to accept the Cruise Port Facility, including the Cruise Port Facility Assets, "AS IS" at the Time of Closing (subject to the "Excluded Liabilities" and subject to the Authority's obligation for Restoration under Section 2.5(i)) and (ii) has inspected the Cruise Port Facility, including the Cruise Port Facility Assets, and is aware of its condition and acknowledges that the Authority neither has made nor is making any representation or warranty, express or implied, regarding the

condition of the Cruise Port Facility, including the Cruise Port Facility Assets (or any part thereof) or its or their suitability for the Concession Company's proposed use. For the avoidance of doubt, the Authority is not obligated to remove any structures or other property from the Cruise Port Facility prior to Closing and any removal and disposal of any structures or other property by the Concession Company after Closing shall not constitute a Compensation Event.

Section 3.2 Cruise Port Facility Operations.

(a) *Use*. The Concession Company and the Authority agree that a primary purpose and essential consideration of this Agreement is for the Authority to operate a public cruise vessel port in a safe and secure manner. Except as otherwise specifically provided herein, the Concession Company shall, at all times during the Term, (i) be responsible for all aspects of the Cruise Port Facility Operations and (ii) cause the Cruise Port Facility Operations to be performed in accordance with the provisions of this Agreement. The Cruise Port Facility Operations will not be interrupted in the event that the Concession Company or the Authority becomes insolvent or seeks or becomes subject to any Proceeding.

(b) *Costs and Expenses*. Except as otherwise specifically provided herein, the Concession Company shall, at all times during the Term, pay or cause to be paid all costs and expenses relating to the Cruise Port Facility Operations as and when the same are due and payable.

(c) *Assumed Liabilities*. The Concession Company agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Cruise Port Facility or the Cruise Port Facility Operations to the extent arising out of or relating to, or based on actions occurring during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the Authority of any covenant, representation or warranty set forth in this Agreement (collectively, the "Assumed Liabilities"); *provided, however*, that the Assumed Liabilities shall not include, and the Authority shall perform or cause to be performed and discharge or cause to be discharged as and when due, any debts, liabilities and obligations, whether such debts, liabilities or obligations are initially charged to the Authority, the Concession Company or any other Person, and shall retain responsibility and liability:

(i) with respect to the Authority's obligations under this Agreement;

(ii) arising out of the satisfaction of the conditions precedent set forth in Section 2.4(a) of this Agreement;

(iii) arising out of Cruise Port Facility Operations prior to the Time of Closing or relating to the Cruise Port Facility and incurred or assumed prior to the Time of Closing, *provided, however*, that (for the avoidance of doubt) Assumed Liabilities shall include debts, liabilities or obligations provided in the Preferential Berthing Agreement (other than with respect to the Reserved Sections), the Pier 3 EPIC Repairs Contract, the Pier 3 EPIC Repairs Project Management Contract and the other Cruise Port Facility Contracts that are assigned to or otherwise assumed by the Concession Company as provided in Schedule 2 and Section 4.14;

(iv) arising out of (A) the Reserved Sections, as defined in Schedule 2, or (B) causes of action, suits or other legal proceedings arising, brought or initiated against the Authority prior to the Time of Closing under any of the Cruise Port Facility Contracts, *provided, however*, that (for the avoidance of doubt) none of the Cruise Port Facility Contracts shall be considered to be an Excluded Liability as a result of such Cruise Port Facility Contracts having been executed and delivered prior to the Time of Closing;

(v) with respect to the employment of any Authority Employee hired by the Concession Company if such debts, liabilities and obligations arise under employment or labor Law or under any contracts or arrangements with or regarding such Authority Employee and relate to, or were otherwise incurred or accrued during, the time period prior to or at the Time of Closing, including (A) obligations in respect of benefits that had accrued but had not vested in favor of such Authority Employee prior to the Time of Closing and (B) any unfunded compensation or other benefits or any unfunded pension or retirement fund liabilities at the Time of Closing;

(vi) with respect to any claim made by any Authority Employee not hired by the Concession Company arising under employment or labor Law, including any unfunded compensation or other benefits or any pension or retirement fund liabilities (except if such claim arises from the act or omission of the Concession Company);

(vii) under any Environmental Law arising out of or relating to (A) the ownership, operation or condition of the Cruise Port Facility (including the Cruise Port Facility Assets) at any time prior to the Time of Closing, including any noncompliance with Environmental Law that existed at or prior to the Time of Closing and continued after the Time of Closing, or (B) any Hazardous Substance or other contaminant that was present or Released on or migrated or escaped from or was Released from the Cruise Port Facility (including the Cruise Port Facility Assets) or otherwise existed at any time prior to the Time of Closing (a "Pre-Existing Hazardous Substance"), except to the extent the Release or condition is exacerbated as a result of the Concession Company's negligent, unlawful or willful acts or omissions, and, for the avoidance of doubt, the Assumed Liabilities shall not include the following, subject to the foregoing exception**:** (1) the full extent of any Release that began prior to the Time of Closing and continued after the Time of Closing, (2) any Release of a Pre-Existing Hazardous Substance that occurs after the Time of Closing as a result of any Capital Project undertaken by the Concession Company and (3) the proper disposal of any such Pre-Existing Hazardous Substances required as a result of any Capital Project undertaken by the Concession Company, and including any environmental conditions existing prior to the Time of Closing, whether or not the manifestation of which occurs at or following the Time of Closing, in each case whether or not known by the Authority or the Concession Company at the Time of Closing;

(viii) arising out of any Additional Cruise Port Facilities, until such time, if ever, as the applicable Additional Cruise Port Facilities is included in the Cruise Port Facility in accordance with Section 3.19;

(ix) arising out of the condition or operation of Pier 14, until 90 days after the Authority notifies the Concession Company in writing that Pier 14 constitutes part of

the Cruise Port Facility and the Concession, at which time Pier 14 will, without further action required by either Party, become an Assumed Liability;

(x) with respect to the structural condition of Pier 4 below the non-structural surface covering the deck of Pier 4, and related connecting bridges, until the commencement of the Rehabilitation Pier 4 Wharf or such other arrangement as may be agreed by the Concession Company and the Authority pursuant to Section 2.4(g); *provided, however*, that it is acknowledged and agreed by the Concession Company that (A) the Concession Company shall conduct Cruise Port Facility Operations with respect to Pier 4 beginning at the Time of Closing, and (B) the conduct of Cruise Port Facility Operations during the Term with respect to Pier 4, including all debts, liabilities and obligations related thereto, shall constitute an Assumed Liability, except for the structural condition of Pier 4 below the non-structural surface covering the deck of Pier 4 during the period set forth above (but, for the avoidance of doubt, excluding any debts, liabilities and obligations related to such structural condition of Pier 4 below the non-structural surface covering the deck of Pier 4 that result from the failure of the Concession Company to conduct Cruise Port Facility Operations in accordance with the Operating Standards and Good Industry Practice, which shall also constitute an Assumed Liability);

(xi) with respect to the structural condition below the non-structural surface covering Pan American Pier 1 pier and Pan American Pier 2 pier, until the commencement of the Pan American Piers Wharf Structure Project for Pan American Pier 1 and Pan American Pier 2, as applicable and considered separately, or such other arrangement as may be agreed by the Concession Company and the Authority pursuant to Section 2.4(g),; *provided, however*, that it is acknowledged and agreed by the Concession Company that (A) the Concession Company shall conduct Cruise Port Facility Operations with respect to Pan American Pier 1 and Pan American Pier 2 beginning at the Time of Closing, and (B) the conduct of Cruise Port Facility Operations during the Term with respect to Pan American Pier 1 and Pan American Pier 2, including all debts, liabilities and obligations related thereto, shall constitute an Assumed Liability, except for the structural condition of Pan American Pier 1 and Pan American Pier 2 below the non-structural surface covering Pan American Pier 1 pier and Pan American Pier 2 pier during the period set forth above (but, for the avoidance of doubt, excluding any debts, liabilities and obligations related to such structural condition of Pan American Pier 1 and Pan American Pier 2 below the non-structural surface covering Pan American Pier 1 pier and Pan American Pier 2 pier that result from the failure of the Concession Company to conduct Cruise Port Facility Operations in accordance with the Operating Standards and Good Industry Practice, which shall also constitute an Assumed Liability); and

(xii) with respect to the structural condition of the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs (as described in Schedule 13), but (for the avoidance of doubt) excluding any portion of Pier 3 other than the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs, until the completion of the Pier 3 EPIC Repairs (as described in Schedule 13) in accordance with the terms of the Pier 3 EPIC Repairs Contract; *provided, however*, that it is acknowledged and agreed by the Concession Company that (A) the Concession Company shall conduct Cruise Port Facility Operations with respect to Pier 3 beginning at the Time of Closing, and (B) the conduct of Cruise Port Facility Operations during the Term with respect to Pier 3, including all debts, liabilities and obligations related thereto, shall constitute an Assumed

Liability, except for the structural condition of the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs (as described in Schedule 13) during the period set forth above (but, for the avoidance of doubt, excluding any debts, liabilities and obligations related to such structural condition of the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs (as described in Schedule 13) that result from the failure of the Concession Company to conduct Cruise Port Facility Operations in accordance with the Operating Standards and Good Industry Practice, which shall also constitute an Assumed Liability) (clause (i) through clause (xii) above constituting, collectively, except as provided therein, the "Excluded Liabilities").

Notwithstanding the foregoing, the Assumed Liabilities shall include any liabilities and obligations arising due to the Concession Company's failure to comply with established Engineering or Institutional Controls or Good Industry Practice for any environmental conditions on the Cruise Port Facility. For the avoidance of doubt, the debts, liabilities, obligations and responsibility of the Authority for the Excluded Liabilities described in clause (x), clause (xi) and clause (xii) of the definition of Excluded Liabilities shall be limited to (1) the Casualty Cost for Restoring Pier 4, Pan American Pier 1, Pan American Pier 2 and the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs, and (2) Losses of the Concession Company resulting from the casualty that resulted in such Casualty Cost, including lost Cruise Port Revenues; *provided, however*, that (x) the cost or expense to the Concession Company of the Rehabilitation Pier 4 Wharf, the Pan American Piers Wharf Structure Project or any other Cruise Pier Improvement Project, including any increased contract price of any Construction Contract related to any such Cruise Pier Improvement Projects as a result of any condition of Pier 4, Pan American Pier 1 or Pan American Pier 2, except to the extent comprising part of the Casualty Cost as aforesaid, shall be borne by the Concession Company (and, for the avoidance of doubt, shall not constitute a Delay Event or a Compensation Event), (y) any Losses of the Concession Company for which the Authority is responsible as provided above may be paid by the Authority as provided in Section 15.1(c) as if such Losses constitute Concession Compensation, and (z) with respect to the Excluded Liability described in clause (xii) of the definition of Excluded Liabilities shall be paid by the Authority only from the liquidated damages (if any) and the proceeds of other remedies of the Authority under the Pier 3 EPIC Repairs Contract.

(d) *Operating Agreements and Construction Contracts*. The Concession Company shall not, and shall not permit any Contractor to, enter into any Operating Agreement or Construction Contract that extends beyond the Term unless (i) such agreement is assignable to the Authority and subject to a right by the Authority to terminate such agreement without penalty within three Business Days' notice or (ii) the Authority consents to such Operating Agreement or Construction Contract. Before any Operating Agreement or Construction Contract is entered into by the Concession Company or any Contractor which provides for compensation to the Contractor equal to or greater than (i) $2,000,000 for Operating Agreements, or (ii) $15,000,000 for Construction Contracts (each, a "Principal Contract"), the Concession Company shall provide an Officer's Certificate to the Authority pursuant to Section 20.15. For purposes of determining whether such $2,000,000 or $15,000,000 amount (as applicable) has been reached or exceeded, (i) a series of contracts relating to substantially the same transaction, capital improvement project or other set of circumstances and including the same Contractor or any Affiliate of such Contractor shall constitute a single Operating Agreement or Construction Contract, as applicable, and (ii) all revenues reasonably expected to be paid under the applicable Operating Agreement or

Construction Contract over its term (including any extension or renewal period) shall be included.

(e) *Business Plan and Marketing*. The Concession Company shall endeavor in good faith to implement its initial business plan, a copy of which is attached hereto as Schedule 14, as such initial business plan is modified annually in subsequent business plans as provided in this Agreement, each such business plan subject to alterations thereto in light of changing conditions and the ongoing business judgment of the Concession Company. No later than 30 Business Days prior to the first day of each Reporting Year, the Concession Company shall provide the Authority a modified business plan for such year. Each modified business plan shall be based upon, and address the matters in, the initial business plan attached hereto as Schedule 14. The Authority may, within 20 Business Days of receipt by the Authority of a business plan, provide comments to the Concession Company on such business plan, and the Concession Company shall promptly answer questions of the Authority regarding such business plan and provide information reasonably requested by the Authority; provided, however, that (i) the Authority shall not have the right to Approve any business plan other than the initial business plan and (ii) no business plan shall be inconsistent with the terms and provisions of this Agreement. To the extent that the implementation of any part of the Concession Company's initial business plan or any subsequent business plan (including as modified to reflect the alterations contemplated above) constitutes a Modification, such Modification shall be subject to Section 5.1. The Concession Company shall use Reasonable Efforts to perform marketing and promotion activities for the Cruise Port Facility in accordance with the initial business plan attached hereto as Schedule 14 and each subsequent business plan referred to in this Section 3.2(d).

(f) *Safety and Security*. The Concession Company shall (i) maintain the safety of the Cruise Port Facility at a level and in a manner consistent with Good Industry Practice and the other requirements of this Agreement, including Schedule 12; (ii) maintain at the Cruise Port Facility all safety and security devices and safety and security practices required by applicable Law, the requirements of all insurance policies and Good Industry Practice; (iii) keep accurate records of any accident or other occurrence at the Cruise Port Facility that results in injury to persons or damage to property or that constitutes a Port Emergency, and provide to the Authority reasonable access to these records, from time to time as requested by the Authority; and (iv) maintain security of the Cruise Port Facility at a level and in a manner consistent with Good Industry Practice and the requirements of this Agreement, including Schedule 12.

(g) *Staffing and Personnel*. The Concession Company shall staff the Cruise Port Facility and perform its obligations under this Agreement with qualified personnel who meet the licensing and certification requirements of applicable Law, and at a level and in a manner consistent with Good Industry Practice and the other requirements of this Agreement. The Concession Company shall comply within staffing requirements provided in Schedule 12.

(h) *Key Performance Indicators*. The failure of the Concession Company to satisfy the key performance indicators set forth in Schedule 12 shall, with respect to each such failure, constitute a failure to comply with the Operating Standards for purposes of determining whether a Persistent Breach Month has occurred.

(i) *Obligation to Maximize Use of Cruise Port Facility*. The Concession Company shall, to the extent reasonably practicable, and subject always to the requirements and constraints arising in connection with the Preferential Berthing Agreements, maximize the use of the Cruise Port Facility by Cruise Lines, including (1) (without limiting the Operating Standards or the other requirements of this Agreement) providing a level of service for services provided by the Concession Company or an Affiliated Service Provider at the Cruise Port Facility that is no less than the level of service provided by the Concession Company, Global Ports Holding PLC, or any Affiliate of either of them, to Cruise Lines in any other cruise port operated or serviced by any of them in any State bordering the Caribbean Sea or the Gulf of Mexico or in any other location described in clauses (ii) or (iii) of the definition of Comparable Cruise Port, (2) that the Concession Company shall not, and shall cause its Affiliates and Global Ports Holding PLC and its Affiliates not to, unreasonably discriminate against the Cruise Port Facility to the Cruise Port Facility's competitive detriment in favor of any other cruise port described in clause (1) above, and (3) as further described in Schedule 14, (x) committing adequate and committed resources, including resources from Global Ports Holding PLC or an Affiliate, to promote and market the Cruise Port Facility to Cruise Lines and cruise passengers targeted to increase the number of calls and the passenger volume at the Cruise Port Facility and (y) maximizing business opportunities for local stakeholders, which shall be comparable to and not less than any other cruise port described in clause (1) above. In addition, in order to facilitate the conduct by Cruise Lines of their Cruise Line Business at the Cruise Port Facility, the Concession Company shall, subject to and in accordance with the Open Access Regime and the other Operating Standards, applicable Law and the terms of this Agreement, permit Cruise Lines to perform those operations and functions as are incidental or reasonably necessary to the conduct by the Cruise Lines of their Cruise Line Business at the Cruise Port Facility. Without limiting the generality of the foregoing, the Concession Company shall permit Cruise Lines: (i) to dock Cruise Line Vessels at the Cruise Piers (excluding Piers 11-12, Pier 13 and Pier 14 until the Expansion Investment Projects and Phase Two Projects (respectively) are completed, and excluding other Cruise Piers while Cruise Pier Improvement Projects are being undertaken at such Cruise Pier); (ii) to embark and disembark passengers, crew and other personnel, and load and unload cargo, baggage and property, utilizing gangways or other devices or means of conveyance provided by the Cruise Lines or the Concession Company, as agreed by the Cruise Lines and the Concession Company; (iii) to provide ingress to and egress from the Cruise Port Facility for passengers, guests, patrons and invitees of Cruise Lines and their equipment, vehicles, machinery and other property; (iv) to handle reservations, ticketing, billing and manifesting of passengers required to be handled at the Cruise Port Facility; (v) to lease or use space in Cruise Piers Buildings for administrative or operational purposes of the Cruise Lines related to their Cruise Line Business at the Cruise Port Facility; (vi) to provide handling services on the Cruise Piers for baggage and other property of passengers, crew and other personnel or to obtain any such handling services from the Concession Company or any other Person; (vii) to repair and maintain Cruise Line Vessels at the Cruise Piers for such reasonable period of time as does not interfere with the operations of the Cruise Port Facility or the rights of other Cruise Lines to use the Cruise Piers or, alternatively, to receive towing assistance to moorings or other locations for the performance of any such repairs or maintenance; (viii) to use, in common with others so authorized, any public address system serving the Cruise Piers or Cruise Pier Buildings; (ix) to use water and electric power, telephone and other Utility Systems provided by the Concession Company and any other Person; and (x) to have access for its employees,

customers or suppliers to reasonable numbers of parking spaces at the Cruise Port Facility for the conduct of the Cruise Line Business at the Cruise Port Facility, or to ground transportation provided by the Concession Company or any other Person to locations outside of the Cruise Port Facility that provide such parking spaces.

(j) *Dredging Activities in San Juan Bay*.

(i) *Berthing Areas*. The Authority shall maintain the areas marked on Schedule 1 that are immediately adjacent to the Cruise Piers (the "Berthing Areas") at their depth specified in Figure 2 in Schedule 1 as the Minimum Dredging Depth (the "Berthing Areas Minimum Dredging Depth"). In addition, the Authority shall use Reasonable Efforts to cause any applicable Governmental Authority to provide dredging services to increase the Berthing Areas Minimum Dredging Depth as reasonably required by the Concession Company to accommodate Cruise Line Vessels and Other Shipping Lines that require deeper water depth than the Berthing Areas Minimum Dredging Depth (any such increase in the Berthing Areas Minimum Dredging Depth, the "Berthing Areas Adjusted Minimum Dredging Depth"). The Authority shall maintain any Berthing Areas Adjusted Minimum Dredging Depth, subject to an increase in the Annual Dredging Payment to account for any additional cost of maintaining the Berthing Areas Adjusted Minimum Dredging Depth.

(ii) *Shipping Channels*. The Authority shall use Reasonable Efforts to cause the applicable Governmental Authority to provide dredging services to (A) maintain the Shipping Channels at their depth specified in Figure 2 in Schedule 1 as the Shipping Channels Minimum Dredging Depth (the "Shipping Channels Minimum Dredging Depth"), (B) increase the Shipping Channels Minimum Dredging Depth as reasonably required by the Concession Company to accommodate Cruise Line Vessels and Other Shipping Lines that require deeper water depth than the Shipping Channels Minimum Dredging Depth (any such increase in the Shipping Channels Minimum Dredging Depth, the "Shipping Channels Adjusted Minimum Dredging Depth"), and (C) maintain any Shipping Channels Adjusted Minimum Dredging Depth.

(iii) *Concession Company Notice*. The Concession Company shall notify the Authority no later than two years before any Cruise Line Vessel or Other Shipping Line requires an increase in the Berthing Areas Minimum Dredging Depth, the Shipping Channels Minimum Dredging Depth, Berthing Areas Adjusted Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth. Such notice shall contain reasonably detailed information about the Cruise Line Vessels and Other Shipping Lines requiring such greater water depth, the location where such water depth is needed and the effect on the Cruise Port Facility Operations and Cruise Port Revenues if such greater water depth is not provided. For purposes of this Section 3.2(j) an increase in the Berthing Areas Minimum Dredging Depth, the Shipping Channels Minimum Dredging Depth, Berthing Areas Adjusted Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth will be considered reasonably required if the failure to obtain such increase (as described in such notice from the Concession Company) shall impede access to the Cruise Port Facility by the Cruise Line Vessels and have a Material Adverse Effect on the Cruise Port Revenues.

(iv) *Failure to Comply.* The failure of the Authority to comply with its obligations under the foregoing provisions of this Section 3.2(j) constitutes a Compensation Event. The failure of any Governmental Authority to (A) increase the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth or (B) maintain or increase the Shipping Channels Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth shall constitute a Delay Event but shall not constitute a Compensation Event or an Adverse Action. The Concession Company may, subject to receipt of any applicable Authorizations and upon no less than sixty (60) days prior written notice to the Authority, undertake any such dredging activities which the Authority or any such Governmental Authority fails to undertake, and such dredging activities shall be at the cost and expense of the Concession Company (but with respect to dredging activities which the Authority failed to undertake even though sufficient funds were available in the Escrow Account – Maintenance Dredging Sub-Account to maintain the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth, such cost and expense of the Concession Company shall be recoverable by the Concession Company from any amounts in the Escrow Account – Maintenance Dredging Sub-Account as provided below). In addition to the payment of Concession Compensation as provided in Section 15.1(b) and Section 15.1(c), but without limiting the obligation of the Concession Company to provide funds for the Authority to maintain the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth as provided in Section 2.1(a) and Section 3.2(j)(vi), in the event the Concession Company undertakes any dredging activities to maintain the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth because the Authority fails to undertake such dredging activities, as provided in the immediately preceding sentence, the Concession Company will be reimbursed from the Escrow Account – Maintenance Dredging Sub-Account for its reasonable costs of undertaking such dredging activities.

(v) *Reasonable Efforts.* The taking of commercially reasonable steps by the Authority, jointly with the Concession Company, to obtain Authorizations from the applicable Governmental Authority and the incurrence of reasonable costs reasonably incidental or ancillary thereto shall constitute the use by the Authority of Reasonable Efforts to (A) increase the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth or (B) maintain or increase the Shipping Channels Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth (in each case, as reasonably required by the Concession Company to accommodate Cruise Line Vessels and Other Shipping Lines and following receipt of a duly documented request from the Concession Company).

(vi) *Payment of Costs*.

(A) In the event the cost and expense of the Authority to maintain the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth exceeds the amount available for such purpose in the Escrow Account – Maintenance Dredging Sub-Account, the Authority shall notify the Concession Company of such shortfall. To the extent that the Concession Company has not deposited the Annual Dredging Payment in the Escrow Account – Maintenance Dredging Sub-Account as required by Section 2.1(a), the Concession Company shall promptly make such deposit. In addition, to the extent that (1) the Annual Dredging

Payment for the Reporting Year in which the Authority notifies the Concession Company of such shortfall is less than $410,000, Adjusted for Inflation, or (2) the Annual Dredging Payment for any of the seven (7) Reporting Years immediately preceding such Reporting Year is less than $410,000, Adjusted for Inflation (calculated as of each such Reporting Year), then the Concession Company shall promptly deposit in the Escrow Account – Maintenance Dredging Sub-Account (calculated for each such Reporting Year) the difference between (x) the amount of the Annual Dredging Payment deposited in the Escrow Account – Maintenance Dredging Sub-Account during each such Reporting Year and (y) $410,000, Adjusted for Inflation, up to the amount of such shortfall, and such deposit shall be considered a part of the Annual Dredging Payment. By way of example, if in a Reporting Year the cost and expense of the Authority to maintain the Berthing Areas Minimum Dredging Depth is $1,000,000, the amount available for such purpose in the Escrow Account – Maintenance Dredging Sub-Account is $500,000, and for such Reporting Year and each of the immediately preceding seven (7) Reporting Years the Concession Company deposited in the Escrow Account – Maintenance Dredging Sub-Account $310,000, then the Concession Company would be obligated to deposit in the Escrow Account – Maintenance Dredging Sub-Account up to $700,000 (assuming no inflation during those years), but only up to the $500,000 shortfall. The Authority shall not be required to pay any amount in excess of the amounts on deposit in the Escrow Account – Maintenance Dredging Sub-Account for the cost and expense of maintaining the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth, and the Concession Company shall not be required to pay any amount in excess of the Annual Dredging Payment for the cost and expense of maintaining the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth; *provided, however*, that if the amounts on deposit in the Escrow Account – Maintenance Dredging Sub-Account are less than required to pay the cost and expense of maintaining the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth, the Parties shall meet promptly and discuss in good faith an alternative financial solution for the payment of such cost and expense (which may, by way of reference, include increased charges for Cruise Lines and/or passengers using the Cruise Port Facility). The Authority shall provide the Concession Company such information regarding such shortfall as the Concession Company reasonably requests.

(B) Except as provided in clause (A) of this Section 3.2(j)(vi), in the event the Concession Company requests or otherwise reasonably requires dredging services, or the Authority reasonably requires funds, to increase the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth or to maintain or increase the Shipping Channels Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth, the Concession Company shall pay the cost and expense of such dredging services, or provide the Authority with such funds, and the request or requirement for such dredging services or funds shall not constitute a Compensation Event or an Adverse Action. Without limiting the generality of the foregoing, the Concession Company shall pay or provide the Authority with funds to pay, as needed by the Authority, the cost and expense of (1) an increase in the Berthing Areas Minimum Dredging Depth, the Berthing Areas Adjusted Minimum Dredging Depth, the

Shipping Channels Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth or any notice from the Concession Company as provided in clause (iii) of this Section 3.2(j) and/or (2) an increase in the Authority's share of the cost of (x) increasing the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth or (y) increasing or maintaining the Shipping Channels Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth (including a change in the proportion of the cost to be borne by the Authority as compared to any other applicable Governmental Authority). Such funds paid to the Authority shall be deposited by the Authority in the Escrow Account – Maintenance Dredging Sub-Account or the Escrow Account – Capital Dredging Sub-Account, as applicable.

(C) The Authority's obligation to expend funds to maintain the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth, to increase the Berthing Areas Minimum Dredging Depth or the Berthing Areas Adjusted Minimum Dredging Depth, or to pay its share of the cost as compared to any other applicable Governmental Authority to maintain or increase the Shipping Channels Minimum Dredging Depth or the Shipping Channels Adjusted Minimum Dredging Depth shall be limited to amounts on deposit in the Escrow Account – Maintenance Dredging Sub-Account or the Escrow Account – Capital Dredging Sub-Account, as applicable, and the Authority shall not be obligated to expend funds for such purposes if amounts on deposit in the Escrow Account – Maintenance Dredging Sub-Account or the Escrow Account – Capital Dredging Sub-Account, as applicable, are insufficient for such purposes.

(k) *Isla Grande Airport*. The Concession Company shall not operate the Cruise Port Facility in a manner that adversely affects the operations of the Isla Grande Airport located near the Cruise Port Facility. The Concession Company shall obtain any Authorizations that may be required to effect any construction or other activities therein and comply with any conditions imposed by the FAA in relation thereto.

Section 3.3 Concession Company Responsibility. The Concession Company shall, at all times during the Term, be responsible for the Cruise Port Facility Operations in a manner consistent with the Operating Standards and all applicable requirements of Law. The Concession Company may, consistent with the operations plan under the Operating Standards, enter into contracts or agreements with other parties (which may include Affiliates of the Concession Company) to provide services in connection with the Cruise Port Facility Operations; *provided however*, that those Ancillary Services which the Concession Company is not authorized to provide exclusively, as provided in Schedule 15, shall only be provided by the Concession Company through Affiliated Service Providers and otherwise as provided in Schedule 15. No contract or agreement of any kind between the Concession Company and any other Person shall relieve the Concession Company of its responsibility and liability for the performance of all of its obligations under this Agreement. The Concession Company shall require Cruise Lines and other third parties with whom it contracts in connection with the Cruise Port Facility Operations to comply with all applicable requirements of the Law. Further, no agreement or contract of any kind between the Concession Company and any other Person shall affect the right of the Authority to exercise any remedies provided hereunder, including any right of access to the

Cruise Port Facility in connection therewith, for the failure by the Concession Company to carry out any of its obligations under this Agreement.

Section 3.4 Asset Management Plan and Government Contributions Agreements.

(a) *Asset Management Plan*. The Concession Company shall provide the Authority a draft asset management plan (the "Asset Management Plan") no later than two (2) months following the Closing Date. The Asset Management Plan shall be consistent with the terms and provisions of this Agreement, contain a detailed description of the means and methods of properly maintaining, repairing and replacing the Cruise Port Facility, and shall otherwise document procedures, practices and schedules set forth in Schedule 12. The Concession Company shall review and discuss in good faith with the Authority any aspect of the draft Asset Management Plan and will provide the Authority a final Asset Management Plan no later than four (4) months following the Closing Date. Neither the review of or comment upon, nor the failure of the Authority to comment upon, the Asset Management Plan shall relieve the Concession Company of any of its responsibilities under this Agreement, be deemed to constitute a representation by the Authority that maintaining, repairing and replacing the Cruise Port Facility pursuant to the Asset Management Plan will cause the Cruise Port Facility to be in compliance with this Agreement or applicable Law, or impose any liability upon the Authority. The Concession Company shall bear all costs and expenses of preparing the Asset Management Plan. The Concession Company shall update the Asset Management Plan to take into account the following: (i) each Cruise Pier Improvement Project, in each case after its Completion; (ii) Modifications that consist of capital improvements projects; (iii) changes in relevant standards and legal requirements; (iv) improvements in best practice and technology; and (vi) other relevant matters, and shall supply the Authority with any updates, supplements, revisions or other changes thereto promptly after they are made, and in any event within 60 days prior to the end of (A) the third Reporting Year and (B) each three (3) year period of the Term thereafter. Upon expiration of the Term or the earlier termination of this Agreement, the Concession Company shall promptly deliver to the Authority the current Asset Management Plan.

(b) *Emergency Response Manual*. The Concession Company shall prepare and deliver to the Authority, concurrently with the preparation and delivery of the Asset Management Plan, and regularly update, an emergency response manual for the Cruise Port Facility relating to fire, weather, environmental, health, safety, and other potential emergency conditions, including any Port Emergency. The emergency response manual shall set out appropriate notifications to be made to all Governmental Authorities having jurisdiction with respect to the emergency, and appropriate actions to be taken to effectively handle any such emergency.

(c) *Government Contributions Agreements*. The Concession Company hereby confirms its acceptance of all Government Contributions Agreements that may be executed between the Authority and the applicable Governmental Authority for projects related to the Cruise Port Facility, including the assurances contained therein. The Concession Company shall, for and on behalf of the Authority, at the written direction of the Authority (but without any further action required), perform all the obligations of the Authority under such Government Contributions Agreements; *provided, however*, that the Authority agrees that it will carry out the

terms of all Government Contributions Agreements relating to property or activities that are not part of the Cruise Port Facility or that involve inherently governmental functions (such as oversight, policy development and internal auditing). If the Cruise Pier Improvement Projects Cost for any Cruise Pier Improvement Project or Modification constituting a capital improvement project is paid with Government Contributions (which, for the avoidance of doubt, would not include the Initial Investment Projects other than, if applicable, the Pan American Piers Wharf Structure Project), the Concession Company shall comply with all obligations under the applicable Government Contributions Agreement relevant to it as the Receiver of Government Contributions, the Receiver's Agent or the construction manager for the applicable Cruise Pier Improvement Project or Modification constituting a capital improvement project, or if the Concession Company is acting in none of the foregoing capacities then in the capacity of the Concession Company under this Agreement.

(d) *Authorizations*. The Concession Company shall obtain, comply with, promptly renew and maintain in good standing all Authorizations necessary to perform its obligations hereunder; *provided, however, that if* (i) the Concession Company is, at any time during the Term, required to obtain any Authorization from a Governmental Authority that the Authority was not required to obtain in connection with its operation of the Cruise Port Facility prior to the Time of Closing or (ii) any such Authorization can be obtained only by the Authority or some other Governmental Authority, then the Authority shall (x) use its Reasonable Efforts to assist the Concession Company in obtaining such Authorization and (y) subject to Law, promptly deliver to the Concession Company a copy of any notice, summons, letter or other communication in respect of any Authorization obtained, renewed or maintained in the Authority's name following the Authority's receipt thereof. Nothing in this Agreement, including Section 2.1, shall be deemed to waive or modify any Authorization required to be obtained by the Concession Company or any other Person in connection with the Cruise Port Facility, the Cruise Port Facility Operations or any activities generating revenues at the Cruise Port Facility.

(e) *Prohibition Against Exclusive or Preferential Rights*. Subject to the Preferential Berthing Agreements, and except to the extent permitted in Schedule 3, nothing in this Agreement shall be construed to authorize the Concession Company to grant a Cruise Line the exclusive or preferential right to conduct a Cruise Line Business, and the Concession Company shall, in accordance with the Open Access Regime, grant to Cruise Lines other than the Signatory Cruise Lines pursuant to the Preferential Berthing Agreements the privileges and right of conducting any or all activities relating to a Cruise Line Business. For the avoidance of doubt, compliance by the Concession Company with the Open Access Regime shall not constitute the granting by the Concession Company of any preferential right. The Concession Company may not enter into any Operating Agreement with any Cruise Line that provides the Cruise Line with any preferential rights to berth at the Cruise Piers or is in any manner inconsistent with the Open Access Regime, unless the Authority approves such Operating Agreement in its discretion, except to the extent permitted in Schedule 3.

(f) *Subordination*. The Parties covenant and agree that this Agreement and any Concession Mortgage shall be subordinated to the provisions of any existing or future agreement or assurances between the Authority or the Concession Company and the United States federal government or other Governmental Authority, or between or among any

Governmental Authorities, that in whole or in part relates to the Cruise Port Facility (including any Government Contributions Agreement), the execution or acknowledgement of which by the Authority or the Concession Company has been or will be required as a condition precedent to the granting of any Government Contributions. The Authority further agrees that it shall not cause the Concession Company to violate any assurances made by the Concession Company to the United States federal government or any other Governmental Authority in connection with the granting of such Government Contributions or approvals.

(g) *Qualifications*. The Concession Company shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Cruise Port Facility, the Cruise Port Facility Operations or any activities generating revenues at the Cruise Port Facility, including all rights, franchises, licenses, privileges and qualifications required in connection with the Cruise Port Facility Operations.

Section 3.5 No Encumbrances.

(a) *By the Concession Company*. The Concession Company shall not do any act or thing that will create any Encumbrance (other than a Permitted Concession Company Encumbrance) against the Cruise Port Facility and shall promptly remove any such Encumbrance (other than a Permitted Concession Company Encumbrance) against the Cruise Port Facility unless any such Encumbrance comes into existence as a result of an act or omission by the Authority, any other Governmental Authority or any Person claiming through the Authority or any other Governmental Authority, which in turn was not caused by an act or omission of the Concession Company. The Concession Company shall not be deemed to be in default hereunder if the Concession Company continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; *provided* that the Concession Company (i) has given advance notification to the Authority that it is the intent of the Concession Company to contest the validity or collection thereof or cause such contest and (ii) has given a reasonably satisfactory indemnity to the Authority.

(b) *By the Authority*. Neither the Authority nor any Governmental Authority of or in the Commonwealth shall do any act or thing that will create or permit to exist any Encumbrance (other than a Permitted Authority Encumbrance) against the Cruise Port Facility and shall promptly remove any Encumbrance (other than a Permitted Authority Encumbrance) against the Cruise Port Facility that came into existence as a result of an act of or omission by the Authority or a Person claiming through the Authority. The Authority shall not be deemed to be in default hereunder if the Authority continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; *provided* that the Authority (i) has given advance notification to the Concession Company that it is the intent of the Authority to contest the validity or collection thereof or cause such contest and (ii) has given a reasonably satisfactory indemnity to the Concession Company or has deposited with the Concession Company a Letter of Credit, Surety Bond, cash or Eligible Investment reasonably satisfactory to the Concession Company in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs or other charges as the Concession Company may reasonably estimate to be payable by the Authority at the conclusion of such

contest or as is required to provide insurance over any potential Encumbrance; *provided, however*, that in the event such Letter of Credit, Surety Bond, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other Encumbrance shall have been released and discharged and shall thereupon be returned to the Authority, less any amounts expended by the Concession Company, if any, to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the Concession Company, if any, by virtue of the contest of such Encumbrance.

(c) *Removal*. Each Party, at the reasonable request of the other Party, shall use its Reasonable Efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party (excluding Encumbrances permitted by Section 3.5(a) or (b)); *provided* that nothing herein shall obligate the Authority to waive, modify or otherwise limit or affect the enforcement by the Authority of any applicable Law with respect to the Cruise Port Facility or any activities generating revenues at the Cruise Port Facility and *provided further* that the costs and expenses incurred by any Party in connection with such efforts shall be borne by the Party whose act or omission has given rise to such Encumbrance.

Section 3.6 Single Purpose Covenants. The Concession Company shall, at all times during the Term, (a) be formed and organized solely for the purpose of owning the Concession Company Interest and using, possessing, leasing, operating and otherwise dealing with the Cruise Port Facility (and carrying out any activities permitted pursuant to this Agreement (and any activities reasonably incidental thereto, including the financing thereof and of the Transaction), (b) not engage in any business unrelated to clause (a) above, (c) not have any assets other than those related to its activities in accordance with clauses (a) and (b) above, (d) maintain its own separate books and records and its own accounts, in each case that are separate and apart from the books and records and accounts of any other Person; *provided, however*, that the Concession Company's assets may be included in a consolidated financial statement of a direct or indirect shareholder or other owner of a beneficial interest of the Concession Company if inclusion on such consolidated financial statement is required to comply with the requirement of generally accepted accounting principles of the relevant jurisdiction, but only if (i) such consolidated financial statement shall be appropriately footnoted to the effect that the Concession Company's assets are owned by the Concession Company and that they are being included on the consolidated financial statement of such shareholder or other owner of a beneficial interest only to comply with the requirements of generally accepted accounting principles of the relevant jurisdiction and (ii) such assets shall be listed on the Concession Company's own separate balance sheet, (e) hold itself out as being a Person, separate and apart from any other Person, (f) not commingle its funds or assets with those of any other Person, (g) conduct its own business in its own name independently and through its own authorized officers and agents, (h) except as noted in clause (d) above, maintain separate financial statements and file its own Tax returns (to the extent required by applicable Law), (i) pay its own debts and liabilities when they become due out of its own funds, (j) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, (k) have sufficient officers and personnel to run its business operations and to supervise its Contractors pursuant to one or more contractual arrangements, (l) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of its contemplated business operations, (m) not guarantee or otherwise obligate itself with respect to the debts or obligations

of any other Person, or hold out its credit as being available to satisfy the debts or obligations of any other Person, (n) not acquire obligations of or securities issued by its shareholders, partners or members, as applicable, (o) use separate stationery, invoices and checks bearing its own name, (p) except as expressly permitted hereby or by any Concession Mortgage or in connection with the ordinary course of business of the Cruise Port Facility, not pledge its assets for the benefit of any other Person or make any loans or advances to any other Person, (q) correct any known misunderstanding regarding its separate identity, (r) maintain adequate capital in light of its contemplated business operations, (s) observe all customary organizational and operational formalities, including taking and maintaining of complete minutes of all member, manager, shareholder, board or similar meetings, (t) maintain an arm's length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis and pursuant to enforceable agreements and (u) have organizational documents which do not conflict with the requirements set forth in this Section 3.6.

Section 3.7 Rights of the Authority to Access and Perform Work at the Cruise Port Facility.

(a) *Reservation of Rights*. The Authority (for itself and any of its Representatives and any other Governmental Authority of competent jurisdiction, as well as grantees, tenants, mortgagees, licensees and others claiming or acting by, through or under the Authority (each, an "Authority Related Entity")) reserves the right and shall, at all times during the Term, have the right to enter the Cruise Port Facility and each and every part thereof in response to any event, circumstance or purpose described in this Section 3.7(a), subject to applicable Law and the Cruise Port Facility Security Program:

(i) to inspect the Cruise Port Facility or determine whether or not the Concession Company is in compliance with its obligations under this Agreement pursuant to Section 8.3;

(ii) if a Concession Company Default then exists, subject to the cure rights of the Concession Mortgagee provided in Section 18.3, to make any necessary repairs to the Cruise Port Facility and perform any work therein and take any reasonable actions in connection therewith pursuant to Section 16.1(b)(v);

(iii) in the event of an actual or reported emergency, danger, threat, circumstance or event that is reasonably believed by the Authority or its designee (including relevant police, fire, emergency services, armed forces and any other security or emergency personnel in accordance with Section 3.17(b)) to have caused (or to present the imminent potential to cause) injury to individuals, damage to property, or harm to the Environment or to public safety or health (including with respect to the COVID-19 Adverse Effect or other Force Majeure), to take, at such times as the Authority determines necessary in its discretion (or as directed by any Governmental Authority) and with notice to the Concession Company if practicable under the circumstances, such actions as the Authority or such designee reasonably determines necessary (or as directed by any Governmental Authority) to respond to or to rectify such emergency, danger, threat, circumstance or event, including granting or denying permission to any vessel, whether or not owned by a Governmental Authority, to berth at or otherwise use

the Cruise Piers during the occurrence of any such emergency, danger, threat, circumstance or event;

(iv) in the event of any circumstance or event that is reasonably believed by the Authority to have caused a material impairment to the continuous operation of the Cruise Port Facility as a public cruise vessel port (and the Authority shall provide written notice to the Concession Company of such event or circumstance as soon as is reasonably practicable after first becoming aware of such event or circumstance), and if the Authority in its discretion (or as directed by any Governmental Authority) reasonably determines that the Concession Company is not then taking all necessary steps to respond to or to rectify such circumstance or event, to take, at such times as the Authority determines necessary in its discretion (or as directed by any Governmental Authority) and with notice to the Concession Company if practicable under the circumstances, such actions as the Authority determines may be reasonably necessary (or as directed by any other Governmental Authority) to respond to or to rectify such circumstance or event or to restore the operation of the Cruise Port Facility;

(v) at its own cost and expense, to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property;

(vi) at its own cost and expense, to (A) install, design, manage, maintain, inspect, repair and rehabilitate any existing or future utilities or similar services or safety measures related to such utilities or services (whether provided by the Authority or third parties) in, on, under, across, over or through the Cruise Port Facility (including water and sewer lines, power transmission lines, fiber optic cable, surveillance equipment and other communications and other equipment) *(provided* that the Authority shall not be required to compensate the Concession Company with respect to the use of the Cruise Port Facility for such utilities, services or measures unless they materially impair the Concession Company's use of the Cruise Port Facility for the Cruise Port Facility Operations and such impairment results in Losses or reduced revenues), (B) grant easements and rights on, over, under or within the Cruise Port Facility for the benefit of suppliers or owners of any such utilities, services or measures and (C) use the Cruise Port Facility in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing clauses (A), (B) and (C), the Concession Company shall have the right, but not the obligation, at all times during the Term, and subject to applicable Law, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and for resale or service to third parties, including Cruise Lines and their passengers, and tenants of the Cruise Port Facility) to the extent that the said utilities or services are necessary or desirable for the Cruise Port Facility Operations);

(vii) at its own cost and expense (except as otherwise expressly set out in this Agreement) and solely in accordance with the terms hereof, to do any other act or thing that the Authority or any Authority Related Entity may be obligated to do or have a right to do under applicable Law that is in addition to the rights of the Authority under this Agreement and that is not inconsistent with the rights granted to the Concession Company in this Agreement; and

(viii) as provided in Section 4.6(f) and Section 4.6(h).

In connection with any entry made pursuant to (v) Section 3.7(a)(i) and (ii), such right to be exercised at all reasonable times upon reasonable prior notice to the Concession Company; (w) Section 3.7(a)(iii) and (iv), such right to be exercised at all reasonable time with notice to be provided as set forth in such subclauses (iii) and (iv) respectively; (x) Section 3.7(a)(v) through (vi), such right to be exercised at all reasonable times with the Authority to request, with reasonable prior written notice, the Concession Company's consent to the exercise of such right; (y) Section 3.7(a)(vii) , such right to be exercised at all reasonable times without prior notice to the Concession Company; and (z) Section 3.7(a)(viii), such right to be exercised as provided in Section 4.6(f) and Section 4.6(h).

In connection with any entry made pursuant to this Section 3.7(a), (aa) such right to enter the Cruise Port Facility shall not include any of the private business offices of the Concession Company that may be located at the Cruise Port Facility; (bb) notwithstanding Section 3.7(a)(i) through (viii), any cost or expense related to any exercise by the Authority of its rights under Section 3.7(a)(ii) shall be borne by the Parties according to Section 16.1(b)(v); (cc) the Authority (A) shall conduct all activities in connection therewith consistent with the Cruise Port Facility Security Program and shall use its Reasonable Efforts to cause any Authority Related Entity effecting such entry or action to use Reasonable Efforts to minimize interference with the Cruise Port Facility Operations (including security) and damage to the Cruise Port Facility in connection with any entry on the Cruise Port Facility and (B) shall pay to the Concession Company the Concession Compensation, upon demand by the Concession Company, resulting from any entry or action on the Cruise Port Facility that qualifies as a Compensation Event pursuant to the definition thereof or as a result of any liability or obligation of or to the Concession Company under any Environmental Law directly caused by an entry or action with respect to the Cruise Port Facility or Cruise Port Facility Operations pursuant to this Section 3.7(a).

(b) *Access Rights Regarding Work.* The Authority, its Representatives and any Governmental Authority of or in the Commonwealth, during the progress of any work referred to in this Section 3.7, at no additional cost to the Authority, its Representatives or any Governmental Authority of or in the Commonwealth, shall have all necessary or appropriate access rights and may keep and store at the Cruise Port Facility all necessary or appropriate materials, tools, supplies, equipment, shed, mobile trailers and other vehicles, in a reasonably neat and orderly fashion, in material compliance with all Laws (including Environmental Laws) and the Operating Standards; *provided* that such access and storage shall not unreasonably interfere with the Concession Company's conduct of the Cruise Port Facility Operations. The Concession Company shall not have any liability for theft of or damage to such material and other items or with respect to any acts or omissions of the Authority, its Representatives or any Governmental Authority of or in the Commonwealth or any Person acting on behalf of any of them. To the extent that the Authority or any Governmental Authority of or in the Commonwealth or any other Person on the Authority's behalf undertakes works or repairs under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as not to materially interfere with the Concession Company's conduct of business in or use of such space to the extent reasonably practicable without incurring any additional cost.

(c) *Effect of Reservation*. Any exercise or reservation of a right by the Authority and any of its Representatives to enter the Cruise Port Facility and to make or perform any repairs, alterations, Restoration or other work in, to or about the Cruise Port Facility that is the Concession Company's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on the Authority to do so, (ii) render the Authority liable to the Concession Company or any other Person for the failure to do so or (iii) relieve the Concession Company from any obligation to indemnify the Authority as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the Authority to do any work required to be performed by the Concession Company hereunder and performance of any such work by the Authority and any of its Representatives shall not constitute a waiver of the Concession Company's default in failing to perform the same.

Section 3.8 Cruise Port Facility Operations Cash Reserve. In accordance with and subject to any Concession Mortgage, the Concession Company shall (subject to the penultimate sentence of this Section 3.8) at all times during the Term maintain reserves in an amount equal to at least (on any date of determination) 25% of the projected operating expenses for the Cruise Port Facility (excluding, for the avoidance of doubt, Annual Authority Revenue Share and Incremental Authority Revenue Share accruals and payments) for the then-current Term Year, as determined as of the commencement of such current Term Year (the "Opex Reserve Requirement"); *provided* that, if, at any time during the Term Year, changes to the Concession Company's projected operating expenses result in the Concession Company maintaining an Opex Reserve Requirement that is 10% more than the amount of the Opex Reserve Requirement that would be required taking into account such changes, then the Concession Company may adjust (the "Interim Adjustment") the amount in reserve to conform to the Concession Company's then-current forecast; *provided, further, that* in no event will the Concession Company be entitled to make more than two Interim Adjustments during any Term Year. The Opex Reserve Requirement may be satisfied by cash (or cash equivalents or Eligible Investments) held by the Concession Company for such purpose or by the undrawn available amount of any Qualifying Account Instrument. The Concession Company shall be entitled to use funds on deposit or available in respect of the cash reserves contemplated in this Section 3.8 for the purpose of funding any shortfalls in operating expenses or debt service, as applicable. Following the use of any such funds in the cash reserve for operating expenses, the Concession Company shall be obligated to replenish the amount so utilized by the later of (i) the date on which it is required to deliver the compliance certificate noted in the immediately succeeding sentence and (ii) 60 days following any such utilization. To the extent that the Concession Mortgagee requires account reserves substantially similar to the Opex Reserve Requirement, such that the Opex Reserve Requirement is satisfied in all material respects by compliance with such Concession Mortgagee account reserve requirements, the Concession Company shall be in compliance with the requirements of this Section 3.8 for so long as the Concession Company continues to satisfy such Concession Mortgagee account reserve requirements. For the avoidance of doubt, it is the intent of the Parties that the Concession Company not be required to maintain two substantially similar cash reserves and that only one cash reserve which complies in all material respects with the requirements of this Section 3.8 shall be maintained by the Concession Company. The Concession Company shall deliver to the Authority on the first Business Day of each quarter of each Term Year (or at such times as may be required by the Concession Mortgagee; *provided* that such Concession Mortgagee's requirement is a quarterly

requirement), and as otherwise requested by the Authority from time to time, an Officer's Certificate in which the Concession Company represents and warrants that it is in compliance with the requirements contemplated in this Section 3.8.

Section 3.9 Coordination.

(a) *Utility Coordination*. Subject to Section 3.7(a)(vi) and without limiting the obligations of the Concession Company under Section 3.12, the Concession Company shall be responsible for coordinating or ensuring the coordination of all Cruise Port Facility Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over or adjacent to the Cruise Port Facility. The Concession Company shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with or otherwise affect the Cruise Port Facility Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the Cruise Port Facility Operations or as may exist under this Agreement or applicable Law, in each case at the sole cost and expense of such utilities or other Persons or the Concession Company. The Authority shall use its Reasonable Efforts to cooperate with the Concession Company with respect to its obligations under this Section 3.9. All reasonable out-of-pocket costs and expenses incurred by the Authority in connection with or related to such coordination shall be borne by the Concession Company.

(b) *Affected Property Coordination*. The Concession Company shall be responsible for coordinating or ensuring the coordination of all Cruise Port Facility Operations with Affected Property, but shall have no responsibility for such Affected Property. The Authority shall use its Reasonable Efforts to cooperate with the Concession Company with respect to its obligations under this Section 3.9(b). All reasonable out-of-pocket costs and expenses incurred by the Authority in connection with or related to such coordination shall be borne by the Concession Company.

Section 3.10 No Entry on Authority Property. Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property) and except for limited access necessary for the Concession Company's performance of its obligations hereunder or its compliance with applicable Laws that does not interfere with the Authority's use or operation of such other properties in any material respect or otherwise, except to the extent available for public use, the Concession Company shall not enter upon any property of the Authority adjacent to, above, under or within the boundaries of the Cruise Port Facility, in connection with the Cruise Port Facility Operations without the prior Approval of the Authority.

Section 3.11 Taxes.

(a) *Payment of Taxes*. Except as otherwise provided herein, the Concession Company shall pay when due all Taxes that are or become payable by the Concession Company or that are required to be collected by the Concession Company from other Persons in respect of periods during the Term in respect of the operations at, occupancy of or conduct of business, in each case of (or by) the Concession Company, in or from the Cruise Port Facility and fixtures or

personal property included in the Cruise Port Facility, other than as set forth below. The Authority reserves the right, without being obligated to do so, following reasonable prior written notice to the Concession Company and subject to the last sentence of this Section 3.11(a), to pay the amount of any such Taxes not timely paid by the Concession Company, and the amount so paid by the Authority shall be due and payable by the Concession Company promptly upon demand by the Authority; *provided, however*, that such Taxes are final and non-appealable or their non-payment will involve a reasonable possibility of forfeiture or sale of the Cruise Port Facility and the Authority has given prior notice to the Concession Company of the amount of any such Taxes the Authority will pay. The Concession Company shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.11; *provided* that (i) the Concession Company has given prior notice to the Authority of each such contest, (ii) no contest by the Concession Company may involve a reasonable possibility of forfeiture or sale of the Cruise Port Facility and (iii) upon the final determination of any contest by the Concession Company, if the Concession Company has not already done so, the Concession Company shall pay the amount found to be due, if any, together with any costs, penalties and interest applicable thereto (if any). If the Concession Company is contesting in good faith the validity or amount of any Taxes in accordance with the immediately preceding sentence, the Authority shall not have the right to pay the amount of such Taxes until there is a final determination of such contest.

(b) *Exemption from taxes*. It is the intention of the Parties that during the Term the Concession Company shall not be responsible for, and the Concession Company and the Cruise Port Facility shall not be subject to, (i) any real property Tax imposed on or measured by the value of the Cruise Port Facility that is imposed by the Authority or any other Governmental Authority of the Commonwealth, and (ii) any personal property Tax on personal property owned by the Authority and used by the Concession Company exclusively in the Cruise Port Facility or in the Cruise Port Facility Operations that is imposed by the Authority or any Governmental Authority under Law of the Commonwealth.

(c) *Income Tax*. It is the intention of the Parties that the Concession Company and the Equity Participants, as applicable, shall be treated for income tax purposes as provided in Section 2.8(b) of this Agreement.

(d) *Authority Compensation*. The Authority shall provide Concession Compensation to the Concession Company as an Adverse Action (i) to the extent that the Concession Company becomes responsible for or subject to any income tax in excess of the fixed income tax rate of twenty percent (20%) over the net income derived from the operations provided under this Agreement as currently provided for in the Act in lieu of any other income tax, if any, provided by the P.R. Revenue Code or by any other applicable Law of the Commonwealth, including, but not limited to the alternative minimum tax and the tax on dividend equivalent amount imposed under the P.R. Revenue Code and (ii) to the extent that the Equity Participants become subject to income tax on distributions of dividends or benefits from utilities and benefits arising from the net income derived from the operations provided in this Agreement.

Section 3.12 Utilities. The Concession Company shall (i) provide, or cause the provision of, all Utility Systems and (ii) pay, or cause to be paid, when due all charges (including

all applicable Taxes and fees) for the Utility Systems. Upon the reasonable request of the Authority, the Concession Company shall forward to the Authority, within 30 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the Authority, acting reasonably, of the payment required to be made by the Concession Company in accordance with this Section 3.12. The Authority does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services shall never be deemed an Adverse Action or an eviction or disturbance of the Concession Company's use and possession of the Cruise Port Facility or any part thereof unless in such case caused by the Authority, or render the Authority liable to the Concession Company for damages or, unless the same constitutes a Delay Event, relieve the Concession Company from performance of the Concession Company's obligations under this Agreement. The Authority shall maintain and preserve, for the length of the Term, all legal rights and easements in its possession related to utility services to the extent necessary for the Concession Company to operate the Cruise Port Facility.

Section 3.13 Negotiations with Governmental Authorities.

(a) Prior to entering into any agreement with any Governmental Authority in connection with the Cruise Port Facility Operations (a "Government Agreement"), the Concession Company shall submit such Government Agreement for Approval by the Authority, which Approval may be withheld, delayed or otherwise conditioned in the discretion of the Authority in the case of Government Agreements that extend or could extend beyond the Term (unless such agreement is assignable and subject to a right by the Authority to terminate such agreement without penalty upon three Business Days' notice or less, effective upon such extension) or pursuant to which the Authority may incur any liability whatsoever. Notwithstanding the foregoing, if the absence of such Government Agreement may cause the Concession Company or Cruise Port Facility Operations to fail to be in compliance with applicable Law or the terms of this Agreement, the Concession Company may enter into such Government Agreement upon notice to the Authority. If the Concession Company wishes the Authority to be a party to a Government Agreement, in the place and stead of, or in addition to, the Concession Company, then the Concession Company must provide notice of the proposed terms of such Government Agreement to the Authority for the Authority's Approval, which Approval will be in the Authority's discretion, and all costs and expenses incurred by the Authority in connection with or related to such Government Agreement shall be borne by the Concession Company except where the Government Agreement provides otherwise. For the avoidance of doubt, the Concession Company may not enter into any binding agreement on behalf of the Authority.

(b) The Authority shall use its Reasonable Efforts to cooperate with the Concession Company in any negotiations with any Governmental Authority regarding any Government Agreements. All reasonable out-of-pocket costs and expenses incurred by the Authority in connection with or related to such negotiations shall be borne by the Concession Company.

Section 3.14 Notices of Defaults and Claims. The Concession Company or the Authority (the "Notifying Party") shall promptly give notice to the other Party (a) if the Notifying Party becomes aware that it is in default of its obligations under this Agreement (including the Operating Standards), any material Assigned Port Facility Contract or any Principal Contract and (b) of all material claims, proceedings, disputes (including labor disputes) or litigation pertaining to the Cruise Port Facility, the Cruise Port Facility Operations or the Notifying Party (whether or not such claim, proceeding or litigation is covered by insurance) of which the Notifying Party has actual knowledge. The Notifying Party's notice shall provide all reasonable information requested by the Authority or the Concession Company, as applicable, from time to time concerning the status of such default, claims, proceedings or litigation. A copy of the notices provided pursuant to this Section 3.14 shall be given to the Concession Mortgagee.

Section 3.15 Assignment of Operating Agreements, Construction Contracts and Plans.

At the request of the Authority, the Concession Company shall collaterally assign, to the extent reasonably practicable, to the Authority, in form and substance satisfactory to the Authority, acting reasonably, all of the right, title and interest of the Concession Company in, to and under all or any of the Principal Contracts and all present and future specifications, plans, software (including source code) to the extent that such software is subject to a non-exclusive license permitting collateral assignment, drawings, information and documentation in relation to the Cruise Port Facility Operations or Cruise Pier Improvement Projects or Modifications, except to the extent that any of the foregoing involve proprietary information (the "Plans") as collateral security to the Authority for the observance and performance by the Concession Company of its covenants and obligations under this Agreement, to the extent so requested by the Authority and subject to the rights of the Concession Mortgagee. The Concession Company covenants that it shall use all Reasonable Efforts to cause all of the right, title and interest of the Concession Company in, to and under all Principal Contracts, and the Plans entered into or created after the Time of Closing to be collaterally assignable to the Authority for the purposes of this Section 3.15. The Authority acknowledges that the Operating Agreements, the Construction Contracts and the Plans may also be assigned as security to a Concession Mortgagee and that each of the Authority and such Concession Mortgagee shall be entitled to use the Operating Agreements, the Construction Contracts, or the Plans in enforcing their respective security as hereinafter provided. The Authority agrees that it shall exercise any amendments or take any other actions necessary for the Concession Company to exercise all of the Authority's rights under the Principal Contracts, and the Authority shall transfer to the Concession Company all security under any such Principal Contracts. Without limiting the generality of the foregoing, but subject to the Authority's assumption of liabilities under the Principal Contracts accruing after such time as the Authority exercises its rights under this Section 3.15 and subject to Article 18, the Authority shall be entitled to use such Operating Agreements, the Construction Contracts and the Plans in each of the following events: (a) if the Authority terminates this Agreement without a concession or lease agreement being granted to the Concession Mortgagee or nominee thereof pursuant to the provisions of Article 18 and (b) if the Authority elects to use such Operating Agreements and Construction Contracts or the Plans to remedy a Concession Company Default under this Agreement. Notwithstanding the foregoing, in the event that the Concession Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of exercising the Concession Company's rights under this

Agreement, the appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using or reasonably expects to be using the Operating Agreements and Construction Contracts or the Plans in respect of the Cruise Port Facility Operations, the Authority shall not be entitled to use such Operating Agreements and Construction Contracts or the Plans in enforcing its security, it being acknowledged that any assignment of such Operating Agreements and Construction Contracts or the Plans to a Concession Mortgagee shall have priority over any assignment of such Operating Agreements and Construction Contracts or the Plans to the Authority and the Authority shall cooperate with the Concession Company and the Concession Mortgagee in connection with ensuring such priority, including that the Authority shall execute and deliver to the Concession Mortgagee an intercreditor and subordination agreement in form and substance satisfactory to such Concession Mortgagee, acting reasonably, acknowledging such priority. The Concession Company shall promptly deliver to the Authority, at the sole cost and expense of the Concession Company, forthwith after completion or execution and delivery, a copy of each item of the Principal Contracts (provided that the Concession Company may redact any contract price and liquidated damages details except in (i) those Principal Contracts to be provided to the Authority pursuant to Section 2.4(b)(v), (ii) any Operating Agreement or Construction Contract for a capital improvement project to be funded with Government Contributions, and (iii) any Principal Contract entered into during the last 5 years of the Term and the term of which extends beyond the end of the Term) and the Plans.

Section 3.16 Name; Intellectual Property.

(a) *The name designated for the Cruise Port Facility is "San Juan Bay Cruise Terminals*." The Concession Company shall not have the right to (i) sell or lease any naming rights for the Cruise Port Facility, or any portion of the Cruise Port Facility, to any third-party or (ii) change the name of the Cruise Port Facility or to sell or lease naming rights for the Cruise Port Facility or any portion thereof without the prior Approval of the Authority, which Approval may be withheld, delayed or otherwise conditioned in the discretion of the Authority.

(b) The Authority, in its discretion, shall have the right to change the name of the Cruise Port Facility, or any portion of the Cruise Port Facility (and to cause the Concession Company to change, at the Authority's expense, any signage on or at the Cruise Port Facility in connection therewith), at any time during the Term upon 90 days' prior notice to the Concession Company and with the consent of the Concession Company, such consent not to be unreasonably withheld, conditioned or delayed (and if the Concession Company, acting reasonably, does not consent to a new name the Concession Company may continue to use the previous name designated for the Cruise Port Facility as referred to in Section 3.16(a) or as consented to by the Concession Company)*; provided, however*, that the Authority shall grant a license of the name together with all related logos and marks to the Concession Company upon terms substantially similar to those contained in Section 3.16(c); *provided further* that any change in the name of the Cruise Port Facility by the Authority in accordance with this Section 3.16 shall not result in a name of the Cruise Port Facility, or any portion of the Cruise Port Facility, being odious or offensive or otherwise likely to result in a negative association by the public. The exercise of such right by the Authority shall not constitute an Adverse Action. The Authority shall have the right to all proceeds and other consideration received in connection with any such name change and shall reimburse the Concession Company for all out-of-pocket and documented costs and

expenses reasonably incurred by the Concession Company in connection with any such name change.

(c) The Authority grants to the Concession Company a non-exclusive, non-transferable (except pursuant to a Transfer permitted under Section 17.1), royalty-free license during the Term to use the name "San Juan Bay Cruise Terminals" together with all existing and future developed logos and marks (not including the Authority seal) used in connection with the Cruise Port Facility Operations, solely in connection with the performance of the Concession Company's obligations and exercise of rights under this Agreement. The Concession Company may grant sublicenses of the same to Contractors.

(d) With regard to Intellectual Property:

(i) The Concession Company warrants to the Authority that: (A) the Concession Company either owns or is licensed by third parties to use and sublicense to the Authority on the terms of this Agreement all Intellectual Property rights used by the Concession Company and necessary for performance of the Concession Company's obligations under this Agreement; (B) the performance of the Concession Company's obligations under this Agreement will not infringe the Intellectual Property rights of any third party; and (C) use by the Authority of any Intellectual Property right granted pursuant to Section 3.16(d)(v) will not infringe the Intellectual Property rights of any third party or the Concession Company.

(ii) This warranty survives the Term.

(iii) If either the Authority or the Concession Company (or both) are in any way prevented from performing their obligations or exercising their rights under this Agreement as a direct or indirect consequence of any Claim for the alleged breach of any Intellectual Property right, the Party against which the Claim is asserted shall: (A) inform the other Party of any alleged breach as soon as reasonably practicable; and (B) at its sole cost take all steps necessary to defend the Claim or provide all assistance required by the other Party if a Claim is brought against it and secure the right for it or the other Party, as the case may be, to perform their obligations or exercise their rights in the manner intended.

(iv) If either the Authority or the Concession Company are unsuccessful in the proceedings referred to in Section 3.16(d)(iii) or the Party against which the Claim is asserted is otherwise unable to secure the right for it or the other Party to perform their obligations or exercise their rights under this Agreement within the time required by the other Party, the Party against which the Claim is asserted will take such steps or carry out such modifications, at no cost to the other Party and to the full satisfaction of the other Party, to ensure that either the other Party or the Party against which the Claim is asserted can perform its obligations and exercise its rights under this Agreement.

(v) The Concession Company grants to the Authority a royalty free, non-transferable, perpetual, irrevocable, non-exclusive license to use, modify and adapt the Intellectual Property of the Concession Company to the extent such Intellectual Property is developed in whole by the Concession Company solely for use in connection with the Cruise Port Facility. In addition, during any period pursuant to Section 3.7 that the Authority is

managing or operating the Cruise Port Facility, and for a reasonable period of time but not less than six (6) months following the End Date, the Concession Company shall grant or otherwise make available to the Authority a royalty free, non-transferable, perpetual, irrevocable, non-exclusive license to use, modify and adapt all Intellectual Property used by the Concession Company in connection with the Cruise Port Facility Operations, and shall otherwise reasonably cooperate with the Authority in the Authority's management and operation of the Cruise Port Facility.

Section 3.17 Police, Fire and Emergency Services; Access Rights for Security Personnel.

(a) At all times during the Term, the Concession Company shall cause the Cruise Port Facility to be serviced by adequate police, perimeter security and firefighting, including law enforcement officer (LEO) support as required by applicable Law. Notwithstanding any other provision of this Agreement, and subject to all applicable Governmental Authority requirements, the Concession Company shall have the right to contract with the Commonwealth Police Department and private security and emergency service providers for enhanced levels of service.

(b) Notwithstanding any other provision of this Agreement, at all times during the Term and without notice or compensation to the Concession Company (i) any police, perimeter security and fire and any other security or emergency personnel retained by or on behalf of the Authority (including the Commonwealth Police Department and Authority's fire/rescue personnel) shall have access, as required by such services or personnel, to the Cruise Port Facility for the performance of their duties; (ii) the Authority shall have access to the Cruise Port Facility as necessary for the protection of public safety; and (iii) any Governmental Authority (including the armed forces) with jurisdiction over the Cruise Port Facility shall have access to the Cruise Port Facility as necessary for emergency management and homeland security purposes, including the prevention of, practice drills for, or response to, a public safety emergency. The Concession Company shall cooperate with police, fire and emergency services and any other security or emergency personnel, including the armed forces, in respect of such emergency management and homeland security purposes.

(c) Consistent with its responsibility to satisfy the Cruise Port Facility Security Program, the Concession Company shall, at all times during the Term, on a 24-hour basis at the Cruise Port Facility maintain sufficient personnel who shall be qualified to respond to emergencies. If, at any time during the Term, the Authority, in its discretion, determines that the Concession Company is not satisfying its obligations under this Section 3.17, then the Authority may, at the cost of the Concession Company, provide sufficient personnel at the Cruise Port Facility to respond to emergencies. The Concession Company shall be responsible for, and shall pay the costs of, any additional security measures implemented at the Cruise Port Facility at the request of any Governmental Authority pursuant to any adopted rule, regulation, standard, recommended practice or procedure.

Section 3.18 Development of Additional Cruise Port Facilities Outside the Cruise Port Facility.

(a) Without limiting the rights of the Concession Company, including the Concession Company's exclusive rights to conduct Cruise Port Facility Operations at the Cruise Port Facility as provided in Section 3.1(a) and otherwise in this Agreement, the Authority may (i) design, build, operate, maintain, repair, improve, replace and finance any Additional Cruise Port Facilities, either within or outside San Juan Bay (but, for the avoidance of doubt, outside the Cruise Port Facility), utilizing design/build, design/build/operate, design/build/finance/operate, design/build/operate/transfer or any other type of project delivery approach, including a long-term lease, a concession, a joint venture or any other contract structure, with any Person and under the Act or any other applicable Law (any of the foregoing constituting "Development" or to "Develop"), and (ii) grant any Person a certificate, permit or other official approval to Develop any Additional Cruise Port Facilities or to provide berthing slots or other berthing or mooring services, or embarkation or disembarkation services, to Cruise Line Vessels of the types of services specified to be provided exclusively by the Concession Company in Schedule 15, in either case either within or outside San Juan Bay (but, for the avoidance of doubt, outside the Cruise Port Facility, as to which the Concession Company has the rights granted in Section 3.1(a)) (any of the foregoing constituting the "Grant of Development Authority" or to "Grant Development Authority"), and no such Development of Additional Cruise Port Facilities or Grant of Development Authority shall constitute a breach by the Authority of this Agreement or entitle the Concession Company to Concession Compensation; *provided, however*, that (A) the Authority shall not Develop Additional Cruise Port Facilities or Grant Development Authority, in either case within San Juan Bay, unless and until (x) Maximum Cruise Port Capacity has been reached and (y) the Authority has held the discussions provided in Section 3.18(a) with the Concession Company and (B) the Concession Company shall have the right of first offer and the right of first refusal set forth in Section 3.19 and Section 3.20, respectively, with respect to Additional Cruise Port Facilities within San Juan Bay either owned by the Authority or with respect to which the Authority has Development rights under applicable Law that do not require Authorizations from any other Person, including such Additional Cruise Port Facilities that may be Developed or as to which a Grant of Development Authority may be given on the piers and wharves shown on Figure 14 of Schedule 1 (which piers and wharves are shown there for illustration and reference purposes only, with the actual locations, and ownership or exclusive control, shown in the records of the Authority), and (C) any such Additional Cruise Port Facilities within San Juan Bay described in clause (B) above and located at Piers 11-12, Pier 13 or Pier 14 only, shall be subject to the Open Access Principles. For the avoidance of doubt, (1) the Development of Additional Cruise Port Facilities or the Grant of Development Authority by the Authority outside of San Juan Bay, even if a Cruise Line Vessel utilizes the Cruise Piers, shall not be considered a violation of this Section 3.18(a) or the exclusivity rights granted under Section 3.1(a), (2) with respect to the Development of Additional Cruise Port Facilities within San Juan Bay by any Person other than the Authority which are not owned by the Authority or with respect to which the Authority does not have Development rights under applicable Law that do not require Authorization from any other Person (such as the Development of Additional Cruise Port Facilities by another Governmental Authority in San Juan Bay), the Authority will, to the maximum extent of its authority under applicable Law, not Grant Development Authority to Develop such Additional Cruise Port Facilities, unless at such time Maximum Cruise Port

Capacity has been reached and the Authority has held the discussions provided in Section 3.18(a) with the Concession Company, but the Concession Company shall not have the right of first offer and the right of first refusal set forth in Section 3.19 and Section 3.20, respectively, with respect to such Additional Cruise Port Facilities, and (3) with respect to Additional Cruise Port Facilities within San Juan Bay with respect to which the Authority has Development rights under applicable Law that require Authorizations from any other Person, the Authority will use its Reasonable Efforts to cause the Authorization to be granted or issued by such other Person so that the Concession Company shall have the right of first offer and the right of first refusal set forth in Section 3.19 and Section 3.20, respectively, with respect to applicable Additional Cruise Port Facilities within San Juan Bay. Further, the Authority may, to the extent required by the conditions for Government Contributions or otherwise by applicable Law, Develop Additional Cruise Port Facilities or Grant Development Authority within San Juan Bay consisting of the construction or the design and construction (or a similar project delivery approach, but, for the avoidance of doubt, excluding operation and maintenance, leasing or otherwise dealing with Cruise Port Facility Operations) of any portion of the Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, an Expansion Investment Project, a Phase Two Project or Additional Cruise Port Facilities Project, or any Modification constituting a capital improvement project which is funded in whole or part by Government Contributions through a competitive procurement process (including a competitive procurement process implemented by the Concession Company to the extent provided in Section 4.6(a)), and such competitive procurement shall not be considered a Compensation Event or a violation of this Section 3.18(a) or the exclusivity rights granted under Section 3.1(a).

(b) At any time after the Cruise Port Facility has reached the Maximum Cruise Port Capacity, and before the Authority Develops Additional Cruise Port Facilities or Grants Development Authority within San Juan Bay, the Authority and the Concession Company shall, at the written request of either of them, in good faith discuss possible options for expanding the capacity of the Cruise Port Facility to accommodate more visits from Cruise Line Vessels, including any Modifications that may be necessary or desirable to accomplish the expansion of such capacity. The Authority shall use Reasonable Efforts to assist the Concession Company in implementing appropriate options identified by the Concession Company for expanding such capacity. Notwithstanding anything to the contrary provided in Section 3.18(a) or this Section 3.18(a), and without limiting the rights of the Concession Company under Section 3.19 and Section 3.20, (i) the Authority shall have no obligation to discuss, or assist the Concession Company in implementing, any such expansion of the Cruise Port Facility and (ii) the Authority may at any time terminate the discussions with the Concession Company provided in this Section 3.18(a).

(c) Without limiting the obligations of the Authority under clauses (A) and (C) of Section 3.18(a) or the rights of the Concession Company under clause (B) of Section 3.18(a), the Authority shall be required to provide Concession Compensation to the Concession Company in accordance with Section 15.1 to the extent that the Authority either Develops Additional Cruise Port Facilities within San Juan Bay or makes a Grant of Development Authority within San Juan Bay during the Term, in either case if the Maximum Cruise Port Capacity has not been reached (except as provided in Section 3.18(d)) and/or the Authority has not complied with its obligations under Section 3.18(a) and Section 3.18(a); *provided, however*, that the Authority shall not be required to provide Concession Compensation to the Concession

Company for the Development of Additional Cruise Port Facilities in San Juan Bay or the Grant of Development Authority within San Juan Bay if the Maximum Cruise Port Capacity has been reached and the Authority has complied with its obligations under Section 3.18(a) and Section 3.18(a). Any such Concession Compensation shall be provided only to the extent that the Concession Company reasonably demonstrates a decrease in net income as a result of such Development of Additional Cruise Port Facilities or Grant of Development Authority, in each case within San Juan Bay. The Concession Company's entitlements under this Section 3.18 shall not prejudice its other rights under this Agreement, including its right to terminate this Agreement for material breach by the Authority as provided in Article 16.

(d) Notwithstanding anything in this Agreement to the contrary, if the Pier 13 Removal Notice is issued to remove Pier 13 and Pier 14 from the Concession as provided in Section 3.24 or if the Piers 11-12 Removal Notice is issued to remove Piers 11-12, Pier 13 and Pier 14, from the Concession as provided in Section 3.25, then, with respect to Piers 11-12, Pier 13 or Pier 14, as applicable, (i) the Authority may Develop Additional Cruise Port Facilities or Grant Development Authority if (A) the Maximum Cruise Port Capacity has been reached or (B) with respect to the Piers 11-12 Wharf Project and the Piers 13-14 Wharf Project, Government Contributions are in an amount sufficient to pay one hundred percent (100%) of the Cruise Pier Improvement Projects Cost of the Piers 11-12 Wharf Project or the Piers 13-14 Wharf Project, as applicable, but the Concession Company shall have the right of first offer and the right of first refusal set forth in Section 3.19 and Section 3.20, respectively, and (ii) Piers 11-12, Pier 13 and Pier 14, as applicable, may be used by Cruise Line Vessels for the Reference Services, as defined in Schedule 3, or the Ancillary Services which are specified to be provided exclusively by the Concession Company or Affiliated Service Providers in Schedule 15, or for other services; *provided, however,* that any Additional Cruise Port Facilities or provision of Reference Services or Ancillary Services, in either case at Piers 11-12, Pier 13 or Pier 14 only, shall be subject to the Open Access Principles.

Section 3.19 Right of First Offer.

(a) If, at any time after the Date of this Agreement and prior to that date which is ninety (90) months before the expiration of the Term, the Authority (without limiting its obligations under Section 3.18(a)(A)) desires to Develop Additional Cruise Port Facilities or Grant Development Authority with respect to Additional Cruise Port Facilities within San Juan Bay either owned by the Authority (including Piers 11-12, Pier 13 or Pier 14, as applicable, if the Pier 13 Removal Notice is issued to remove Pier 13 and Pier 14 from the Concession as provided in Section 3.24 or if the Piers 11-12 Removal Notice is issued to remove Piers 11-12, Pier 13 and Pier 14, from the Concession as provided in Section 3.25) or with respect to which the Authority has Development rights under applicable Law that do not require Authorizations from any other Person, it shall give a written notice to the Concession Company no less than nine (9) months before the intended date of such Development of Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay (the "First Offer Notice"); *provided, however*, that the Authority shall not be required to give a First Offer Notice to the Concession Company when a competitive procurement process is being utilized under the circumstances described in the last sentence of Section 3.18(a), but the Authority shall give the Concession Company written notice of the utilization of such competitive procurement process prior to the issuance of a request for proposals or similar procurement document to potential bidders (and

such notice, for the avoidance of doubt, shall not constitute a First Offer Notice) and the Authority shall invite the Concession Company to participate as a bidder in such competitive procurement process except to the extent prohibited by the relevant Governmental Authority providing the Government Contributions. The First Offer Notice shall specify the material terms and conditions of the proposed Development of Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay, including a description of any capital improvement projects related to such Development of the Additional Cruise Port Facilities or Grant of Development Authority (the "Additional Cruise Port Facilities Projects"), technical conditions supported by appropriate surveys and/or reports, and any amendments to this Agreement or any other agreements required by the Authority in connection with such Development of Additional Cruise Port Facilities or Grant of Development Authority (including the proposed extension to the Term). The First Offer Notice shall not be given to any other Person and shall constitute an irrevocable offer by the Authority to the Concession Company to Develop the Additional Cruise Port Facilities or accept the Grant of Development Authority upon the material terms and conditions set forth in the First Offer Notice. The Concession Company, if it desires to accept such offer or to negotiate terms with the Authority for such Development of Additional Cruise Port Facilities or Grant of Development Authority, shall, within ninety (90) days after receipt of the First Offer Notice, provide the Authority written notice to such effect (the "Acceptance Notice"). The Concession Company shall thereafter have the exclusive right for a period of one hundred twenty (120) days from the receipt by the Authority of the Acceptance Notice (the "ROFO Exclusivity Period") to negotiate terms with the Authority with respect to the Development of the Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay and to agree any amendments to this Agreement or other agreements in respect thereof. The Parties shall discuss with one another in good faith during the ROFO Exclusivity Period with respect to mutually acceptable terms for the Concession Company to Develop such Additional Cruise Port Facilities or accept such Grant of Development Authority. If the Concession Company fails to give the Acceptance Notice within such ninety (90) day period or the Parties fail to agree mutually acceptable terms for the Concession Company to Develop such Additional Cruise Port Facilities or to accept such Grant of Development Authority during the ROFO Exclusivity Period, the Concession Company shall be deemed to have consented to the proposed Development of Additional Cruise Port Facilities or Grant of Development Authority Develop, as the case may be, and the Authority may Develop the Additional Cruise Port Facilities or make the Grant of Development Authority upon the material terms and conditions set forth in the First Offer Notice at any time within twelve (12) months of the expiration of the later of such ninety (90) day period for the giving of the Acceptance Notice or the ROFO Exclusivity Period; *provided, however*, that the Authority may only, during such twelve (12) month period, Develop the Additional Cruise Port Facilities or make the Grant of Development Authority within San Juan Bay on terms and conditions no more favorable in any material respect to any Person other than the Concession Company than the terms and conditions included in the First Offer Notice. In the event that (i) the Concession Company fails to give the Acceptance Notice within such ninety (90) day period or the Parties fail to agree mutually acceptable terms for the Concession Company to Develop such Additional Cruise Port Facilities or to accept such Grant of Development Authority during the ROFO Exclusivity Period and, in either case, the Authority does not Develop the Additional Cruise Port Facilities or make a Grant of Development Authority within the San Juan Bay within twelve (12) months of the expiration of the later of such ninety (90) day period for the giving of the Acceptance Notice or the ROFO

Exclusivity Period to a Person other than the Concession Company or (ii) during such twelve (12) month period, the Authority makes any material term or condition for the Development of the Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay more favorable to any Person other than the Concession Company than the terms contained in the First Offer Notice, then (x) in the case of the circumstance described in clause (i) above, the Authority shall not Develop Additional Cruise Port Facilities or make a Grant of Development Authority within San Juan Bay to such other Person and shall give the Concession Company another First Offer Notice and the ninety (90) day period for the Concession Company to give an Acceptance Notice (and subsequent ROFO Exclusivity Period, if the Concession Company gives an Acceptance Notice) as set forth in this Section 3.19(a) shall be repeated and (y) in the case of the circumstance described in clause (ii) above, the Authority shall give another First Offer Notice to the Concession Company containing the modified material terms and conditions of the proposed Development of the Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay and the ninety (90) day period for the Concession Company to give an Acceptance Notice (and subsequent ROFO Exclusivity Period, if the Concession Company gives an Acceptance Notice) as set forth in this Section 3.19(a) shall be repeated.

(b) The Concession Company may at any time after sixty (60) months following Completion of the Initial Investment Projects submit a Development Proposal to the Authority. The Development Proposal shall include (i) whether an upfront fee will be paid to the Authority and, if so, its amount, (ii) a description of any capital improvement projects to be undertaken by the Concession Company and (iii) any other material matters related to the Development Proposal. At the request of the Authority, the Concession Company shall discuss such Development Proposal with the Authority and provide any information reasonably requested by the Authority. If the Authority desires to Develop Additional Cruise Port Facilities or Grant Development Authority with respect to Additional Cruise Port Facilities within San Juan Bay either owned by the Authority or with respect to which the Authority has Development rights under applicable Law that do not require Authorizations from any other Person, as described in the Development Proposal, the Authority shall give to the Concession Company a First Offer Notice and the procedures in Section 3.19(a) shall apply. For the avoidance of doubt, the Authority shall have no obligation to give such First Offer Notice to the Concession Company and may do so in its discretion.

Section 3.20 Right of First Refusal.

(a) If, at any time after the Date of this Agreement and prior to that date which is ninety (90) months before the expiration of the Term, and so long as the Authority has not given the Concession Company a First Offer Notice under Section 3.19, the Authority receives or obtains, through whatever means or procedure, a letter, proposal or proposed agreement, whether oral or written, from any Person (other than the Concession Company) outlining or containing terms for the Development of Additional Cruise Port Facilities by, or the Grant of Development Authority to, any Person identified in any such letter, proposal or proposed agreement with respect to Additional Cruise Port Facilities within San Juan Bay either owned by the Authority (including Piers 11-12, Pier 13 or Pier 14, as applicable, if the Pier 13 Removal Notice is issued to remove Pier 13 and Pier 14 from the Concession as provided in Section 3.24 or if the Piers 11-12 Removal Notice is issued to remove Piers 11-12, Pier 13 and Pier 14, from the Concession as provided in Section 3.25) or with respect to which the Authority

has Development rights under applicable Law that do not require Authorizations from any other Person (the "Development Proposal") and the Authority intends to utilize this Section 3.20 in connection with the Development of Additional Cruise Port Facilities or the Grant of Development Authority within San Juan Bay, the Authority shall (without limiting its obligations under Section 3.18(a)(A)) first send written notice to the Concession Company of such intention, which notice shall set forth the name and address of the proposed Person and the material terms and conditions of such proposed Development of Additional Cruise Port Facilities or Grant of Development Authority, including a description of any Additional Cruise Port Facilities Projects (the "Development Offer Notice"); *provided, however*, that the Authority shall not be required to give a Development Offer Notice to the Concession Company when a competitive procurement process is being utilized under the circumstances described in the last sentence of Section 3.18(a), but the Authority shall give the Concession Company written notice of the utilization of such competitive procurement process prior to the issuance of a request for proposals or similar procurement document to potential bidders (and such notice, for the avoidance of doubt, shall not constitute a Development Offer Notice) and the Authority shall invite the Concession Company to participate as a bidder in such competitive procurement process except to the extent prohibited by the Governmental Authority providing the Government Contributions. The Development Offer Notice shall constitute an irrevocable offer by the Authority to Develop the Additional Cruise Port Facilities or Grant Development Authority upon the material terms and conditions set forth in the Development Offer Notice. The Concession Company shall have the option to accept the Development of Additional Cruise Port Facilities or Grant of Development Authority on the terms set forth in the Development Offer Notice for a period of ninety (90) days following its receipt of the Development Offer Notice (the "Exercise Period"), which option the Concession Company may exercise by written notice to the Authority at any time during the Exercise Period, and such written notice shall constitute a commitment of the Concession Company to accept the terms of the Development Offer Notice, subject to the Parties entering into mutually acceptable amendments to this Agreement or other agreements related thereto within one hundred twenty (120) days from the Concession Company's acceptance of the Development Offer Notice (the "ROFR Exclusivity Period"). The Parties shall discuss with one another in good faith during the ROFR Exclusivity Period with respect to mutually acceptable terms. The Authority shall not enter into any agreement or other commitment of any kind with respect to any Development of Additional Cruise Port Facilities or Grant of Development Authority or Development Proposal, in each case within San Juan Bay without first sending the Development Offer Notice to the Concession Company and providing the Concession Company the Exercise Period to exercise the option provided in this Section 3.20 and the ROFR Exclusivity Period. If the Concession Company exercises such option, the closing of such Development of Additional Cruise Port Facilities or Grant of Development Authority shall occur at such time and place as agreed by the Parties but no later than the end of the ROFR Exclusivity Period, provided that such closing may be extended as required to obtain any necessary third party consents or Governmental Approvals. If the Concession Company does not timely exercise its option pursuant to this Section 3.20 or the Parties do not agree on amendments to this Agreement and other agreements related thereto within the ROFR Exclusivity Period, the Authority may Develop the Additional Cruise Port Facilities or Grant of Development Authority at any time within twelve (12) months after the later of the expiration of the Exercise Period or (if applicable) the ROFR Exclusivity Period to the proposed Person described in the Development Offer Notice on terms and conditions that are not more favorable to such Person

than those set forth in the Development Offer Notice. In the event that (i) the Concession Company fails to exercise its option within the Exercise Period or the Parties do not agree on amendments to this Agreement and other agreements related thereto within the ROFR Exclusivity Period and the Authority does not Develop the Additional Cruise Port Facilities or Grant Development Authority within twelve (12) months of the later of the expiration of the Exercise Period or (if applicable) the ROFR Exclusivity Period to a Person other than the Concession Company or (ii) during such twelve (12) month period, the Authority changes any material term or condition for the Development of Additional Cruise Port Facilities or Grant of Development Authority to be more favorable to the Person than the terms contained in the Development Offer Notice, then (x) in the case of the circumstance described in clause (i) above, the Authority shall not Develop the Additional Cruise Port Facilities or Grant of Development Authority to such other Person and shall give the Concession Company another Development Offer Notice and the Exercise Period for the Concession Company to exercise its option as set forth in this Section 3.20 (and if applicable the ROFR Exclusivity Period) shall be repeated and (y) in the case of the circumstance described in clause (ii) above, the Authority shall give another Development Offer Notice to the Concession Company containing the changed material terms and conditions of the proposed Development of Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay and the Exercise Period for the Concession Company to exercise its option as set forth in this Section 3.20 (and if applicable the ROFR Exclusivity Period) shall be repeated.

Section 3.21 Closing of Right of First Offer and Right of First Refusal; Loss of Rights.

(a) In the event that the Concession Company gives the Authority an Acceptance Notice or exercises its option to accept the Development Offer Notice and the Parties agree on amendments to this Agreement and other agreements related thereto within the ROFO Exclusivity Period or the ROFR Exclusivity Period under Section 3.19 and Section 3.20, respectively, then, on such Business Day as the Parties agree, which shall be not later than the end of the ROFO Exclusivity Period or the ROFR Exclusivity Period, as the case may be, provided that such closing may be extended as required to obtain any Authorization from any Governmental Authority, the Authority and the Concession Company shall enter into any amendments to this Agreement or any other agreements related thereto in connection with such Development of Additional Cruise Port Facilities or Grant of Development Authority within San Juan Bay that are included in the First Offer Notice or the Development Offer Notice, as the case may be, and the Concession Company shall pay the Authority any amount identified in the First Offer Notice or the Development Offer Notice, or agreed during the ROFO Exclusivity Period or the ROFR Exclusivity Period, and comply with any other terms and conditions of the First Offer Notice and the Development Offer Notice or agreed during the ROFO Exclusivity Period or the ROFR Exclusivity Period.

(b) In the event that, with respect to any Additional Cruise Port Facilities within San Juan Bay, the Concession Company does not give the Authority an Acceptance Notice or does not exercise its option to accept the Development Offer Notice, or the Parties do not agree on amendments to this Agreement and other agreements related thereto within the ROFO Exclusivity Period or the ROFR Exclusivity Period, under Section 3.19 and Section 3.20, respectively, and the Authority Develops such Additional Cruise Port Facilities or makes the

Grant of Development Authority to another Person on terms and conditions no more favorable in any material respect than the terms and conditions included in the First Offer Notice or the Development Offer Notice, as the case may be, then thereafter, from the date on which the Authority and such other Person enter into agreements for the Development of the Additional Cruise Port Facilities or the Grant of Development Authority, any such agreement between the Authority and any such Person shall provide that such Person shall be subject to the Open Access Principles (but, for the avoidance of doubt, only with respect to Additional Cruise Port Facilities at Piers 11-12, Pier 13 or Pier 14) and shall not with respect to the applicable Additional Cruise Port Facilities within San Juan Bay impose passenger fees, dockage rates or service charges in respect of services equivalent to the services under Schedule 15 that are lower to any material degree than the level of passenger fees, dockage rates and service charges imposed by the Concession Company or an Affiliated Service Provider at the Cruise Port Facility.

(c) If at any time the Authority (i) desires to Develop Additional Cruise Port Facilities or Grant Development Authority with respect to Additional Cruise Port Facilities within San Juan Bay either owned by the Authority or with respect to which the Authority has Development rights under applicable Law that do not require Authorizations from any other Person as provided in Section 3.19 or (ii) receives or obtains a Development Proposal as provided in Section 3.20 and intends to utilize Section 3.20 and there is a Concession Company Default as to which the Authority has given the Concession Company and the Concession Mortgagee a notice of default as provided in Section 16.1(b), the Concession Company shall not have the right of first offer or the right of first refusal under Section 3.19 and Section 3.20, respectively, and the Authority shall not be obligated to send the Concession Company the First Offer Notice or the Development Offer Notice, as the case may be, unless at such time as the Authority would be required to send such First Offer Notice or Development Offer Notice, as the case may be, the Concession Company has cured any such Concession Company Default. In such case, the Open Access Principles shall apply with respect to the Additional Cruise Port Facilities at Piers 11-12, Pier 13 and Pier 14.

(d) In the event that, with respect to any Additional Cruise Port Facilities within San Juan Bay, the Concession Company does not give the Authority an Acceptance Notice or does not exercise its option to accept the Development Offer Notice, or the Parties do not agree on amendments to this Agreement and other agreements related thereto within the ROFO Exclusivity Period or the ROFR Exclusivity Period, under Section 3.19 and Section 3.20, respectively, and the Authority Develops such Additional Cruise Port Facilities or makes the Grant of Development Authority based on a public procurement process involving an invitation to submit proposals or a similar process, the Concession Company shall have no right to participate in such process; *provided, however,* that the Authority may determine, in its discretion, to include the Concession Company, and the Concession Company shall have the rights set forth in Section 3.19 and Section 3.20 to the extent applicable; *and provided, further*, that the Authority may not accept terms and conditions pursuant to such public procurement process that are materially more favorable to a Person than those set forth in the First Offer Notice or the Development Offer Notice, as applicable, as the Authority shall reasonably determine in its discretion *and provided, further*, that (i) the Concession Company shall have the right to participate in such public procurement process with respect to Additional Cruise Port Facilities at Piers 11-12, Pier 13 and Pier 14 and (ii) the Open Access Principles shall apply with respect to the Additional Cruise Port Facilities at Piers 11-12, Pier 13 and Pier 14. For the

avoidance of doubt, with respect to any Additional Cruise Port Facilities, if the Concession Company does not give the Authority an Acceptance Notice under Section 3.19 or the Parties do not agree on amendments to this Agreement and other agreements related thereto within the ROFO Exclusivity Period, and the Authority Develops such Additional Cruise Port Facilities or makes the Grant of Development Authority based on a public procurement process involving an invitation to submit proposals or a similar process, the Concession Company shall have no right of first refusal under Section 3.20 with respect to the successful proposal selected by the Authority, and the Authority shall have no obligation to send a Development Offer Notice to the Concession Company. In the event that the Authority Develops any Additional Cruise Port Facilities or makes the Grant of Development Authority based on a public procurement process involving an invitation to submit proposals or a similar process after the date which is ninety (90) months before the expiration of the Term, the Authority acknowledges and agrees that the Concession Company shall have the right to participate in such public procurement process (it being acknowledged by the Concession Company that at such time the Concession Company shall have no rights under either Section 3.19 or Section 3.20).

(e) If at the time the Authority determines to Develop Additional Cruise Port Facilities or Grant Development Authority, in either case within San Juan Bay, the Maximum Cruise Port Capacity has been reached and thereafter circumstances change so that Maximum Cruise Port Capacity would no longer be considered to be reached, such changed circumstances shall not constitute a Compensation Event or in any other manner affect the obligations of the Concession Company under this Agreement or provide an excuse for non-performance of the Concession Company hereunder or be the basis for any additional compensation to the Concession Company. For the avoidance of doubt, the Development of Additional Cruise Port Facilities or the Grant of Development Authority as provided in Section 3.18(d) shall not constitute a Compensation Event. In addition, if at any time the Expansion Investment Projects Trigger Event or the Phase Two Trigger Event has been reached and thereafter circumstances change so that the Expansion Investment Projects Trigger Event or the Phase Two Trigger Event would no longer be considered to be reached, such changed circumstances shall not affect the rights or obligations of the Authority or the Concession Company that accrued or were imposed as a result of the initial occurrence of the Expansion Investment Projects Trigger Event or the Phase Two Trigger Event, as applicable. Any such changed circumstances shall not constitute a Compensation Event or in any other manner affect the rights or obligations of the Authority or the Concession Company under this Agreement or provide an excuse for non-performance of the Concession Company hereunder or be the basis for any additional compensation to the Concession Company.

Section 3.22 Other Actions by Governmental Authorities. In the event that any Governmental Authority (other than the Authority or the Commonwealth (or any subdivision or agency of any of the foregoing)) proposes to take any action at any time after the Date of this Agreement through the End Date (including or enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concession Company or private operators of Comparable Cruise Ports and (ii) to have a material adverse effect on the fair market value of the Concession Company Interest, except where such action is in response to any act or omission on the part of the Concession Company that is illegal (other than an act or omission rendered illegal by virtue of an Adverse Action or such action by any such other Governmental Authority), then at the request of the Concession Company, the Authority shall use its

Reasonable Efforts (i) to oppose and challenge such action by any such other Governmental Authority or (ii) to advocate such other measures that would eliminate or reduce such material adverse effect; *provided, however,* that all reasonable out-of-pocket costs and expenses incurred by the Authority in connection with such opposition or challenge shall be borne by the Concession Company and *provided further* that, except as expressly provided in Article 14, the Authority shall have no liability to the Concession Company on account of the taking of any action by a Governmental Authority described in this Section 3.22.

Section 3.23 Preferential Berthing Agreements and Assigned Port Facility Contracts; Use of the Cruise Piers Only for Cruise Line Purposes.

(a) The Concession Company shall enforce the rights, perform the obligations and assume the liabilities of the Authority under the Preferential Berthing Agreements, as provided in Schedule 2. Effective upon Closing, all such obligations and liabilities under the Preferential Berthing Agreements shall constitute Assumed Liabilities.

(b) Effective upon Closing, the Authority hereby assigns, sells, conveys, transfers and sets over to the Concession Company, and the Concession Company hereby assumes and accepts, for its use, benefit and behalf, all of the Authority's right, title, benefit, privileges and interest in and to the Assigned Port Facility Contracts, and the Authority delegates to the Concession Company all of the Authority's duties, obligations, covenants and liabilities (of any kind and whether known or unknown, accrued or unaccrued or otherwise) under the Assigned Port Facility Contracts. The Concession Company hereby (i) represents and warrants that it has the power and authority to accept the assignment, novation and transfer of the Assigned Port Facility Contracts and (ii) agrees to be bound by the terms of the Assigned Port Facility Contracts and to perform all of its obligations thereunder incurred on and after the Closing as if the Concession Company had been entered into originally between the Concession Company and each Person who is a party to the applicable Assigned Port Facility Contract. Effective upon Closing, the Assigned Port Facility Contracts shall constitute Assumed Liabilities.

(c) The Concession Company acknowledges that its indemnity obligations under Section 12.1(a) shall extend to all Claims for payment or damages by any Person who is a party to the applicable Assigned Port Facility Contract or Preferential Berthing Agreement to the extent any such Claim arises out of or relates to, or is based on, actions, events or circumstances occurring during the Term, except to the extent any such Claim arises from or relates to (i) any Excluded Liabilities, (ii) any breach by the Authority of any covenant, representation or warranty set forth in this Agreement, (iii) any breach of the Preferential Berthing Agreements by the Authority or the Concession Company that is caused by the Authority, or (iv) any Reserved Section under Schedule 2.

(d) The Concession Company shall use the Cruise Port Facility and any Additional Cruise Port Facilities (including the Cruise Piers) only for Cruise Port Purposes; *provided*, that the Authority may Approve, in its discretion, the use of the Cruise Port Facility to provide berthing, fresh water and food provision, fueling and other services comparable to the services provided to the Cruise Lines at the Cruise Port Facility to vessels which on a regularly scheduled basis transport persons for compensation or hire, other than Cruise Line Vessels

("Other Shipping Lines"); and, *provided, further*, that (i) the right of the Concession Company to provide to Other Shipping Lines services comparable to the services provided to the Cruise Lines at the Cruise Port Facility shall be a non-exclusive right and such right may also be exercised by any other Person at piers and other facilities that are not a part of the Cruise Port Facility (and such rights may be granted by the Authority), (ii) Cruise Line Vessels shall at all times have priority over Other Shipping Lines in obtaining berthing slots and other services at the Cruise Port Facility, and the provision of such services to Other Shipping Lines shall in no manner interfere with the use of the Cruise Port Facility for Cruise Port Purposes, and (iii) No Other Shipping Line may be required to utilize the Cruise Port Facility and such utilization shall be at the request of the Other Shipping Line. For the avoidance of doubt, the Operating Standards and other requirements of this Agreement applicable to Cruise Line Vessels shall also apply to Other Shipping Lines, except that the Open Access Regime shall not apply to Other Shipping Lines. As of the Date of this Agreement, the Authority has Approved the following as an Other Shipping Line: a Ferry; *provided, however*, that in the event the Authority or any other Governmental Authority has granted prior to the Date of this Agreement or grants after the Date of this Agreement to any Person other than the Concession Company the exclusive right to provide berthing services to any Ferry in San Juan Bay (other than at the Cruise Port Facility), then any such Ferry shall not be considered an Other Shipping Line and the Authority shall be deemed not to have Approved any such Ferry as an Other Shipping Line. For the avoidance of doubt, the granting of any such exclusivity right to any Person before or after the Date of this Agreement shall not constitute a violation of the rights granted to the Concession Company under this Agreement or a Compensation Event. The Concession Company acknowledges that as of the Date of this Agreement there are certain operations related to Ferries which take place in the Cruise Piers which will be relocated by the Authority to other piers in the San Juan Bay but shall not be subject to the Concession and that such relocation of Ferry operations or the performance of any operations related to the Ferries does not constitute a conflict in any way with the Concession Company's rights under this Agreement, including under Section 2.1. Notwithstanding the foregoing and for the avoidance of doubt, the Authority undertakes and agrees that the activities contemplated under the Ferry Development Agreement to be performed at Pier 15 do not entail and shall not be interpreted to entail providing from Pier 15 services equivalent to the services to Cruise Lines which are to be provided under this Agreement by the Concession Company.

Section 3.24 Pier 13 and Pier 14 Use, Phase Two Projects and Conditions for Removal from Concession.

(a) Without limiting the requirements of the Operating Standards to the Cruise Port Facility during the Term, the Concession Company shall at all times (i) keep Pier 13 in a neat and orderly condition, including (A) clearing the site of debris, unused equipment and derelict structures, (B) constructing and maintaining perimeter fencing around the site, (C) paving the site, (D) providing landscape maintenance (including replacement of all dead and dying plants, weeding and a thorough spring and fall cleanup), and (E) maintaining adequate drainage to prevent water accumulation in order to reduce insect and vermin breeding, and (ii) remove and properly dispose of all trash and debris on Pier 13. The provisions of this Section 3.24(a) shall apply to Pier 14 once it has become part of the Cruise Port Facility and the Concession as provided in Section 2.1(a).

(b) Following completion of the Expansion Investment Projects and the occurrence of the Phase Two Trigger Event, the Concession Company shall promptly implement the Phase Two Projects as provided in, but subject to the conditions (including the Phase Two Projects Requirements) specified in Section 4.12.

(c) On each Phase Two Calculation Date after the completion of the Expansion Investment Projects the Concession Company shall make the Phase Two Demand Threshold Calculation and determine, acting reasonably, whether or not the Phase Two Trigger Event has occurred. The Concession Company shall notify the Authority of such determination, including in such notice the Phase Two Demand Threshold Calculation in reasonable detail. If the Phase Two Trigger Event has not occurred, then the Concession Company shall have no obligation to implement the Phase Two Projects.

(d) Not later than twenty (20) Business Days following the occurrence of either the Phase Two Trigger Event described in clause (ii) of the definition of such term or receipt by the Concession Company of the notice from the Authority pursuant to Section 4.12(d) that the Authority has received a Government Contributions Authorization for the Cruise Pier Improvement Projects Cost of the Phase Two Projects which are eligible for receipt of Government Contributions and intends to utilize Government Contributions for payment of such Cruise Pier Improvement Projects Cost, the Concession Company shall determine, acting reasonably, whether or not the implementation of the Phase Two Projects will cause the Concession Company to be unable to satisfy the Phase Two Rate of Return Test and shall notify the Authority of such determination (the "Phase Two Projects Notice"). The Phase Two Projects Notice shall state one of the following: (i) the Phase Two Rate of Return Test is able to be satisfied, (ii) the Phase Two Rate of Return Test is unable to be satisfied and the Concession Company has determined on such basis not to implement the Phase Two Projects or (iii) the Phase Two Rate of Return Test is unable to be satisfied but the Concession Company has nevertheless determined to implement the Phase Two Projects. If the Phase Two Rate of Return Test is unable to be satisfied and the Concession Company has determined on such basis not to implement the Phase Two Projects, then the Concession Company shall have no obligation to implement the Phase Two Projects. The Concession Company may at any time following completion of the Expansion Investment Projects issue a Phase Two Projects Notice confirming that it has determined to implement the Phase Two Projects notwithstanding that the Phase Two Trigger Event has not occurred and/or that the Phase Two Rate of Return Test is unable to be satisfied.

(e) The Phase Two Projects Notice shall contain the calculation to determine whether the Phase Two Rate of Return Test is able to be satisfied in reasonable detail. In connection with such calculation, the Concession Company shall utilize and assume Cruise Pier Improvement Projects Cost, Cruise Port Revenues and other relevant factors based upon two scenarios, one involving the berthing at Piers 11-12, Pier 13 and Pier 14 of one (1) Category 2 and one (1) Category 3 (each as described in Schedule 13) Cruise Line Vessel and the other involving the berthing at Piers 11-12, Pier 13 and Pier 14 of two (2) Category 3 (as described in Schedule 13) Cruise Line Vessels. The calculation for each scenario shall utilize both Concession Mortgage Debt and Government Contributions. If the Authority notifies the Concession Company in writing that Authorization for locating a mooring dolphin at the west end of Piers 11-12 will be issued and answers questions of the Concession Company about such

Authorization to the reasonable satisfaction of the Concession Company, then the Concession Company shall assume the issuance of such Authorization in connection with the calculation of the Phase Two Rate of Return Test. The Concession Company may also assume that it will be able to obtain all required Authorizations to enable it to implement the applicable scenario.

(f) If (i) the Phase Two Trigger Event occurs or the Phase Two Trigger Event does not occur but the Concession Company has nevertheless determined to implement the Phase Two Projects as provided in Section 3.24(c) or (ii) the Phase Two Rate of Return Test is able to be satisfied or the Phase Two Rate of Return Test is unable to be satisfied but the Concession Company has nevertheless determined to implement the Phase Two Projects as provided in Section 3.24(d), the Concession Company shall promptly implement the Phase Two Projects as provided in, but subject to the conditions (including the Phase Two Projects Requirements) specified in, Section 4.12. The occurrence of the Phase Two Trigger Event or the satisfaction of the Phase Two Rate of Return Test shall not apply to the implementation of the Piers 13-14 Wharf Project as provided in Section 4.12(d) and Section 4.12(e) upon receipt by the Authority of a Government Contributions Authorization; *provided, however*, that (A) if the Government Contributions Authorization is in an amount less than one-hundred percent (100%) of the applicable Cruise Pier Improvement Projects Cost, the Concession Company, at the request of the Authority, shall, using Reasonable Efforts, subject to the requirements of Section 10.1, proceed with the issuance of such Concession Mortgage Debt for the payment of all Cruise Pier Improvement Projects Cost which are not eligible for receipt of Government Contributions or with respect to which Government Contributions are delayed or denied (including, for the avoidance of doubt, any cost sharing amount for which the Authority would be responsible), (B) if such Concession Mortgage Debt which the Authority requests the Concession Company to issue exceeds ten percent (10%) of the Cruise Pier Improvement Projects Cost for the Piers 13-14 Wharf Project, the Concession Company may condition the issuance of such Concession Mortgage Debt on the satisfaction of the Phase Two Rate of Return Test and (C) if the Concession Company using Reasonable Efforts, subject to the requirements of Section 10.1, is unsuccessful in issuing such Concession Mortgage Debt, the Concession Company shall meet with the Authority to discuss in good faith alternative options for implementing the Piers 13-14 Wharf Project, including finding other ways to cover any shortfall in Government Contributions and implement the Piers 13-14 Wharf Project in its entirety; and the Parties agree that they shall utilize the Government Contributions obtained, even if such contributions cover less than one-hundred percent (100%) of the Cruise Pier Improvement Projects Cost for the Piers 13-14 Wharf Project, provided that such utilization does not require the Concession Company to fund the shortfall (except as otherwise required under foregoing clauses (A), (B) or (C)).

(g) If by that date (i) which is twenty (20) Business Days after the Phase Two Trigger Event described in clause (i) of the definition of such term the Phase Two Trigger Event described in clause (ii) of the definition of such term has not occurred and the Concession Company has not notified the Authority in a Phase Two Projects Notice that it has determined to implement the Phase Two Projects as provided in Section 3.24(c) or (ii) after the twelfth anniversary of the Closing Date on which the Concession Company notifies the Authority that the Phase Two Rate of Return Test is unable to be satisfied and the Concession Company has determined on such basis not to implement the Phase Two Projects as provided in Section 3.24(d), then not later than one hundred eighty (180) days following each such date the Authority may notify the Concession Company (the "Pier 13 Removal Notice") that Pier 13 and Pier 14 (if

Pier 14 has become part of the Cruise Port Facility and the Concession) shall no longer constitute part of the Cruise Port Facility and the Concession, and on that date which is thirty (30) days following the date of the Pier 13 Removal Notice by the Authority to the Concession Company Pier 13 and Pier 14 (if applicable), without further action required by either Party, shall no longer constitute part of the Cruise Port Facility or the Concession and shall become Excluded Liabilities. The Authority may notify any Governmental Authorities of such occurrence and file any necessary document with any Governmental Authority to confirm such occurrence. If the Authority does not issue the Pier 13 Removal Notice within the one hundred eighty (180) day period provided in this Section 3.24(g), then the Concession Company shall continue to perform its obligations with respect to Pier 13 and Pier 14 (if applicable) under this Agreement but in such case the Concession Company shall have no obligation to perform the Phase Two Projects.

(h) At any time following receipt by the Authority of a Phase Two Projects Notice the Authority may, and promptly following the date of the Pier 13 Removal Notice the Authority shall, meet with the Concession Company to discuss in good faith possible options for use of Pier 13 and Pier 14 (if applicable) by the Concession Company; *provided, however*, that the decision of the Authority that Pier 13 and Pier 14 (if applicable) shall no longer constitute part of the Cruise Port Facility and the Concession may be made by the Authority during the one hundred and eighty (180) day period provided in Section 3.24(g) (and, for the avoidance of doubt, if the Authority does not issue a Pier 13 Removal Notice during such period or if the Authority determines in its discretion that Pier 13 and Pier 14 (if applicable) shall remain part of the Cruise Port Facility and the Concession and so notified the Concession Company during such period, Pier 13 and Pier 14 (if applicable) shall remain part of the Cruise Port Facility and the Concession and the Concession Company shall continue to perform its obligations with respect to Pier 13 and Pier 14 (if applicable) under this Agreement but in such case the Concession Company shall have no obligation to perform the Phase Two Projects and the Authority shall not be entitled to issue a Pier 13 Removal Notice); and, *provided, further*, that the Authority shall not with respect to Pier 13 or Pier 14 Develop Additional Cruise Port Facilities or Grant Development Authority unless the Authority complies with Section 3.18. For the avoidance of doubt, if the Pier 13 Removal Notice is issued to remove Piers 13 and 14 from the Concession as aforesaid, then the Authority agrees that Piers 13 and 14 shall not be used by Cruise Line Vessels for (i) the Reference Services, as defined in Schedule 3, or (ii) the Ancillary Services which are specified to be provided exclusively by the Concession Company in Schedule 15, or for substantially the same services, except in compliance with Section 3.18.

(i) If the Phase Two Projects are to be implemented as provided in Section 3.24(f) (excluding where the Phase Two Trigger Event has not occurred but the Concession Company has nevertheless determined to implement the Phase Two Projects) but the Phase Two Projects Requirements are not satisfied by that date which is one hundred eighty (180) days (as such period may be extended by agreement of the Parties) following the applicable date provided in Section 3.24(f), then the Authority may (unless the Authority's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of any such Phase Two Projects Requirements to be satisfied) deliver the Pier 13 Removal Notice to the Concession Company, which shall have the effect provided in Section 3.24(g). If the Phase Two Projects are to be implemented as provided in Section 3.24(f) and the Phase Two Projects Requirements are satisfied, but the Concession Company fails or refuses promptly to implement the Phase Two Projects, such failure or refusal shall at the Authority's option either constitute the failure to

comply with, perform or observe a material obligation as provided in Section 16.1(a)(i)(A) or entitle the Authority to deliver the Pier 13 Removal Notice to the Concession Company, which shall have the effect provided in Section 3.24(g).

(j) If Piers 11-12 are removed from the Cruise Port Facility and the Concession as provided in Section 3.25(e), then, as provided in Section 3.25(e), Pier 13 and Pier 14 (if applicable) shall at the same time no longer constitute part of the Cruise Port Facility and the Concession, without further action required by either Party.

(k) In connection with the removal of Pier 13 and Pier 14 (if applicable) from the Cruise Port Facility and the Concession pursuant to a Pier 13 Removal Notice as provided in this Section 3.24, (i) the Authority (A) shall have no obligation to pay the Concession Company any amount and (B) shall not assume any obligation with respect to any Concession Mortgage Debt or any other debt or liability of the Concession Company and (ii) the Concession Company shall (A) promptly transfer Pier 13 and Pier 14 (if applicable) to the Authority in a neat and orderly condition and otherwise in compliance with the obligations of the Concession Company under Section 3.24(a) and free and clear of any liens or claims of any Concession Mortgage Debt, Concession Mortgagee or other Person and (B) reasonably cooperate with the Authority in effecting such transfer of Pier 13 and Pier 14 (if applicable) to the Authority, including signing any document reasonably required to effect such transfer.

Section 3.25 Piers 11-12 Use, Expansion Investment Projects and Conditions for Removal from Concession.

(a) Without limiting the requirements of the Operating Standards to the Cruise Port Facility during the Term, the Concession Company shall at all times (i) keep Piers 11-12 in a neat and orderly condition, including (A) clearing the site of debris, unused equipment and derelict structures, (B) constructing and maintaining perimeter fencing around the site, (C) paving the site, (D) providing landscape maintenance (including replacement of all dead and dying plants, weeding and a thorough spring and fall cleanup), and (E) maintaining adequate drainage to prevent water accumulation in order to reduce insect and vermin breeding, and (ii) remove and properly dispose of all trash and debris on Piers 11-12.

(b) Following the occurrence of an Expansion Investment Projects Trigger Event, the Concession Company shall promptly implement the Expansion Investment Projects as provided in, but subject to the conditions (including the Expansion Investment Projects Requirements) specified in, Section 4.13. For the avoidance of doubt, as used in this Agreement, except where otherwise specifically provided, the Expansion Investment Projects Trigger Event refers to and includes the occurrence of cumulative Passenger Movements in a twelve (12) month period equal to or greater than 1,800,000 or equal to or greater than 2,000,000, as provided in the definition of Expansion Investment Projects Trigger Event, with the effect that when Passenger Movements are equal to or greater than 1,800,000 the Concession Company shall promptly implement the Expansion Investment Projects as provided in, but subject to the conditions (including the Expansion Investment Projects Requirements) specified in, Section 4.13. Passenger Movements regarding passengers embarking and disembarking at the Cruise Port Facility for any trip which begins and ends at the Cruise Port Facility (that is, a “round trip”) shall be counted only once (for the disembarkation Passenger Movement only).

(c) The Concession Company shall on a monthly basis make the Expansion Investment Projects Demand Threshold Calculation and notify the Authority of the Passenger Movements in the prior twelve (12) month period and the other details of the Expansion Investment Projects Demand Threshold Calculation. Such notice shall state if the Expansion Investment Projects Trigger Event has occurred or that, even though the Expansion Investment Projects Trigger Event has not occurred, the Concession Company has nevertheless determined to implement the Expansion Investment Projects (either such notice of confirmation being the "Expansion Investment Projects Notice"). Such monthly notice shall be given by the Concession Company to the Authority until the first to occur of (i) the occurrence of an Expansion Investment Projects Trigger Event, (ii) the delivery by the Concession Company to the Authority of an Expansion Investment Projects Notice stating that, even though the Expansion Investment Projects Trigger Event has not occurred, the Concession Company has nevertheless determined to implement the Expansion Investment Projects, (iii) the delivery by the Authority to the Concession Company of the Piers 11-12 Removal Notice and (iv) the later of the fifth anniversary of the Closing Date or, as applicable, the conclusion of the last 12-month period for which the Concession Company has paid the Holding Fee; *provided, however*, that if with respect to clauses (i) and (ii) the Expansion Investment Projects are not implemented then, at the direction of the Authority, the Concession Company shall continue making the Expansion Investment Projects Demand Threshold Calculation and notifying the Authority as provided in this Section 3.25(c) until the circumstances described in clauses (iii) or (iv) above occur.

(d) Upon delivery of the Expansion Investment Projects Notice stating that the Expansion Investment Projects Trigger Event has occurred or that, even though the Expansion Investment Projects Trigger Event has not occurred, the Concession Company has nevertheless determined to implement the Expansion Investment Projects, the Concession Company shall promptly implement the Expansion Investment Projects as provided in, but subject to the conditions (including the Expansion Investment Projects Requirements) specified in, Section 4.13; *provided, however*, that the Concession Company shall not be required to make Reasonable Efforts to satisfy the Expansion Investment Projects Requirements more than once in any twelve (12) month period.

(e) If by that date which is twenty (20) Business Days after the fifth, sixth, seventh, eighth, and ninth anniversary of the Closing Date the Expansion Investment Projects Trigger Event has not occurred (and, for the avoidance of doubt, the Expansion Investment Projects Trigger Event includes the occurrence of cumulative Passenger Movements equal to or greater than 1,800,000) and the Concession Company has not notified the Authority in an Expansion Investment Projects Notice that it has determined to implement the Expansion Investment Projects and the Expansion Investment Projects are not being implemented following the notice and election of the Authority pursuant to Section 3.25(i) using Government Contributions as provided in such notice and election, then in the period beginning on each such date and ending one hundred eighty (180) days following each such date, the Authority may notify the Concession Company (the "Piers 11-12 Removal Notice") that Piers 11-12, Pier 13 and Pier 14 (if applicable) shall no longer constitute part of the Cruise Port Facility and the Concession, and on that date which is thirty (30) days following the date of the Piers 11-12 Removal Notice by the Authority to the Concession Company Piers 11-12, Pier 13 and Pier 14 (if applicable), without further action required by either Party, shall no longer constitute part of the Cruise Port Facility or the Concession and shall become Excluded Liabilities; *provided,*

however, that the Authority shall not issue the Piers 11-12 Removal Notice during each such period if the Concession Company pays the Authority the Holding Fee by that date which is twenty (20) Business Days after the fifth, sixth, seventh, eighth, and ninth anniversary of the Closing Date. By way of example, if by that date which is twenty (20) Business Days after the fifth anniversary of the Closing Date the Expansion Investment Projects Trigger Event has not occurred and the Concession Company has not notified the Authority in an Expansion Investment Projects Notice that it has determined to implement the Expansion Investment Projects and the Expansion Investment Projects are not being implemented following the notice and election of the Authority pursuant to Section 3.25(i) using Government Contributions as provided in such notice and election, unless the Concession Company pays the Holding Fee by that date, the Authority may issue the Piers 11-12 Removal Notice any time during the following 180 day period; *however*, if by that date which is twenty (20) Business Days after the sixth anniversary of the Closing Date the Expansion Investment Projects Trigger Event has still not occurred and the Concession Company has not notified the Authority in an Expansion Investment Projects Notice that it has determined to implement the Expansion Investment Projects and the Expansion Investment Projects are not being implemented following the notice and election of the Authority pursuant to Section 3.25(i) using Government Contributions as provided in such notice and election, unless the Concession Company again pays the Holding Fee by that date, the Authority may again issue the Piers 11-12 Removal Notice any time during the following 180 day period, and the same would apply each year to the ninth anniversary of the Closing Date, with (for the avoidance of doubt) the Concession Company having the obligation (subject to the conditions, including the Expansion Investment Projects Requirements, specified in Section 4.13) to implement the Expansion Investment Projects at any time that the Expansion Investment Projects Trigger Event occurs and having the right to pay the Holding Fee and prevent the Authority from issuing the Piers 11-12 Removal Notice after the applicable anniversary of the Closing Date. The Authority may notify any Governmental Authorities of the occurrence of Piers 11-12, Pier 13 and Pier 14 (if applicable) no longer constituting part of the Cruise Port Facility and the Concession and file any necessary document with any Governmental Authority to confirm such occurrence. If the Authority does not issue the Piers 11-12 Removal Notice within the one hundred eighty (180) day period provided in this Section 3.25(e), then the Concession Company shall continue to perform its obligations with respect to Piers 11-12, Pier 13 and Pier 14 (if applicable) under this Agreement but in such case the Concession Company shall have no obligation to perform the Expansion Investment Projects or the Phase Two Projects after the later of the fifth anniversary of the Closing Date or, as applicable, the conclusion of the last 12-month period for which the Concession Company has paid the Holding Fee. Notwithstanding anything in this Agreement to the contrary, and without limiting the rights of the Authority otherwise to deliver the Piers 11-12 Removal Notice to the Concession Company under this Agreement or the obligation of the Concession Company to construct the Expansion Investment Projects, if by that date which is the tenth anniversary of the Closing Date the Concession Company has not entered into a Construction Contract or Construction Contracts for the construction of the Expansion Investment Projects, issued Concession Mortgage Debt or provided other funds to pay the Cruise Pier Improvement Projects Cost of the Expansion Investment Projects, each with terms and conditions Approved by the Authority, and provided the Authority with evidence acceptable to the Authority, acting reasonably, that substantial construction with respect to the Expansion Investment Projects will begin promptly and Completion will occur within 31 months thereafter, then the Authority may deliver the Piers 11-

12 Removal Notice to the Concession Company and Piers 11-12, Pier 13 and Pier 14 (if applicable) shall no longer constitute part of the Cruise Port Facility or the Concession on that date which is 30 days following the date of the Piers 11-12 Removal Notice, notwithstanding any Delay Event or other circumstance.

(f) Promptly following the date of the Piers 11-12 Removal Notice the Authority shall meet with the Concession Company to discuss in good faith possible options for use of Piers 11-12, Pier 13 and Pier 14 by the Concession Company; *provided, however*, that the decision of the Authority that Piers 11-12, Pier 13 and Pier 14 (if applicable) shall no longer constitute part of the Cruise Port Facility and the Concession may be made by the Authority during the applicable one hundred eighty (180) day period provided in Section 3.25(e) (and, for the avoidance of doubt, if the Authority does not issue a Piers 11-12 Removal Notice during such period or if the Authority determines in its discretion that Piers 11-12, Pier 13 and Pier 14 (if applicable) shall remain part of the Cruise Port Facility and the Concession and so notifies the Concession Company during such period, Piers 11-12, Pier 13 and Pier 14 (if applicable) shall remain part of the Cruise Port Facility and the Concession and the Concession Company shall continue to perform its obligations with respect to Piers 11-12, Pier 13 and Pier 14 (if applicable) under this Agreement but in such case the Concession Company shall have no obligation to perform the Expansion Investment Projects or the Phase Two Projects and the Authority shall not be entitled to issue a Piers 11-12 Removal Notice); and, *provided, further*, that the Authority shall not with respect to Piers 11-12, Pier 13 and Pier 14 Develop Additional Cruise Port Facilities or Grant Development Authority unless the Authority complies with Section 3.18. For the avoidance of doubt, if a Piers 11-12 Removal Notice is issued to remove Piers 11-12, Pier 13 and Pier 14 from the Concession as aforesaid, the Authority agrees that Piers 11-12, Pier 13 and Pier 14 shall not be used by Cruise Line Vessels for (i) the Reference Services, as defined in Schedule 3, or (ii) the Ancillary Services which are specified to be provided exclusively by the Concession Company in Schedule 15, or for substantially the same services, except in compliance with Section 3.18.

(g) If the Expansion Investment Projects are to be implemented as provided in Section 3.25(d) but the Expansion Investment Projects Requirements are not satisfied by that date which is one hundred eighty (180) days (as such period may be adjusted by agreement of the Parties) following the Expansion Investment Projects Notice, then the Authority may (unless the Authority's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of any such Expansion Investment Projects Requirements to be satisfied) deliver the Piers 11-12 Removal Notice to the Concession Company within a further one hundred eighty (180) days following the expiry of the aforesaid period of one hundred eighty (180) days (as may be adjusted as aforesaid) from the Expansion Investment Projects Notice, which shall have the effect provided in Section 3.25(e); *provided, however*, that the Authority shall not be entitled to issue a Piers 11-12 Removal Notice under this Section 3.25(g) if (i) the Expansion Investment Projects Notice referred to in Section 3.25(d) stating that the Expansion Investment Projects Trigger Event has occurred is based on cumulative Passenger Movements equal to or greater than 1,800,000 but less than 2,000,000 and the Concession Company used Reasonable Efforts to satisfy the Expansion Investment Projects Requirements or (ii) the Expansion Investment Projects Trigger Event has not occurred but the Concession Company has nevertheless determined to implement the Expansion Investment Projects; and *provided, further*, that under the circumstances described in clauses (i) and (ii) above the Concession Company

shall (if it elects to do so under Section 3.25(e)) pay the Holding Fee to the Authority by that date which is twenty (20) Business Days after the fifth, sixth, seventh, eighth, and ninth anniversary of the Closing Date notwithstanding that the 1,800,000 Passenger Movements Expansion Investment Projects Trigger Event has occurred or the Concession Company has determined to implement the Expansion Investment Projects notwithstanding that the Expansion Investment Projects Trigger Event has not occurred, and if the Concession Company does not so pay the Holding Fee then the Authority may deliver the Piers 11-12 Removal Notice to the Concession Company in the same manner and with the same effect as provided in Section 3.25(e). If the Authority does not deliver the Piers 11- 12 Removal Notice within such further one hundred eighty (180) days following the expiry of the aforesaid period of one hundred and eighty (180) days (as may be adjusted as aforesaid) from the Expansion Investment Projects Notice, the Concession Company shall continue to perform its obligations with respect to Piers 11-12, Pier 13 and Pier 14 (if applicable) under this Agreement but in such case the Concession Company shall have no obligation to perform the Expansion Investment Projects or the Phase Two Projects after the later of the fifth anniversary of the Closing Date or, as applicable, the conclusion of the last 12-month period for which the Concession Company has paid the Holding Fee. For the avoidance of doubt, up to the later of the fifth anniversary of the Closing Date or, as applicable, the conclusion of the last 12-month period for which the Concession Company has paid the Holding Fee, even if the Authority does not deliver the Piers 11- 12 Removal Notice within such further one hundred eighty (180) days following the expiry of the aforesaid period of one hundred and eighty (180) days (as may be adjusted as aforesaid) from the Expansion Investment Projects Notice, the Concession Company shall continue to have an obligation to perform the Expansion Investment Projects following the occurrence of the Expansion Investment Projects Trigger Event, based either on cumulative Passenger Movements equal to or greater than 1,800,000 or equal to or greater than 2,000,000, subject to the conditions (including the Expansion Investment Projects Requirements) specified in Section 4.13. If the Expansion Investment Projects are to be implemented as provided in Section 3.25(d) and the Expansion Investment Projects Requirements are satisfied, but the Concession Company fails or refuses promptly to implement the Expansion Investment Projects, such failure or refusal shall at Authority's option either constitute the failure to comply with, perform or observe a material obligation as provided in Section 16.1(a)(i)(A) or entitle Authority to deliver the Piers 11-12 Removal Notice to the Concession Company, which shall have the effect provided in Section 3.25(e).

(h) In connection with the removal of Piers 11-12, Pier 13 and Pier 14 from the Cruise Port Facility and the Concession pursuant to a Piers 11-12 Removal Notice as provided in this Section 3.25, (i) the Authority (A) shall have no obligation to pay the Concession Company any amount and (B) shall not assume any obligation with respect to any Concession Mortgage Debt or any other debt or liability of the Concession Company and (ii) the Concession Company shall (A) promptly transfer Piers 11-12, Pier 13 and Pier 14 to the Authority in a neat and orderly condition and otherwise in compliance with the obligations of the Concession Company under Section 3.25(a) and free and clear of any liens or claims of any Concession Mortgage Debt, Concession Mortgagee or other Person and (B) reasonably cooperate with the Authority in effecting such transfer of Piers 11-12, Pier 13 and Pier 14 to the Authority, including signing any document reasonably required to effect such transfer.

(i) The Authority and the Concession Company shall use Reasonable Efforts to obtain the Government Contributions necessary to pay the Cruise Pier Improvement Projects Cost for all or part of the Piers 11-12 Wharf Project which are eligible for receipt of Government Contributions. Accordingly, at the cost and expense of the Concession Company, the Concession Company shall, using Reasonable Efforts, provide the Authority the Piers 11-12 Geotechnical Report no later than sixty (60) days after the Date of this Agreement and the Concession Company and the Authority shall, using Reasonable Efforts, complete the 30% Design and Technical Specifications for the Piers 11-12 Wharf Project no later than ninety (90) days after the Date of this Agreement. Moreover, in addition to the obligation of the Concession Company to implement the Expansion Investment Projects as otherwise provided in this Section 3.25 and Section 4.13, at any time following receipt by the Authority of a Government Contributions Authorization with respect to the Expansion Investment Projects for Government Contributions in an amount sufficient to pay the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions for all or a part of the Expansion Investment Projects (including all or part of the Piers 11-12 Wharf Project), the Authority may elect to require the Concession Company to design, engineer, procure, construct, equip and complete (i) the Expansion Investment Projects funded by such Government Contributions (or, if required by the terms and conditions of the applicable Government Contributions Authorization or by applicable Law, the Authority shall undertake a competitive procurement for the construction of the portion of the Expansion Investment Projects funded by Government Contributions and the Concession Company has one of the roles provided in Section 4.6(e)) and (ii) the remaining portion of the Expansion Investment Projects that are not funded by such Government Contributions, by giving notice to the Concession Company of such election. Such notice shall (A) identify the Government Contributions Authorization, including the amount of the Government Contributions, and (B) direct the Concession Company to commence the design, engineering, procurement, construction, equipping and completion of the Expansion Investment Projects (recognizing that the Authority may be required pursuant to the requirements for Government Contributions or applicable Law to undertake a competitive procurement for the construction of the part of the Expansion Investment Projects funded by Government Contributions and that the Concession Company will have one of the roles provided in Section 4.6(e)). Promptly following receipt by the Concession Company of such notice from the Authority, the Concession Company shall, provided the Government Contributions (whether pursuant to one Government Contributions Authorization or multiple Government Contributions Authorizations) are in an amount sufficient to pay at least fifty million dollars ($50,000,000) of the Cruise Pier Improvement Projects Cost of the Piers 11-12 Wharf Project, and subject to the satisfaction of the Expansion Investment Projects Requirements, implement the Expansion Investment Projects or part thereof, as provided in this Section 3.25(i) and Section 4.1 through Section 4.11 (recognizing that the Authority may be required pursuant to the requirements for Government Contributions or applicable Law to undertake a competitive procurement for the construction of the part of the Expansion Investment Projects funded by Government Contributions and that the Concession Company will have one of the roles provided in Section 4.6(e)). If Government Contributions are insufficient to pay a portion of the Cruise Pier Improvement Projects Cost of the Expansion Investment Projects or are delayed or reduced, then the Concession Company, at the request of the Authority, shall, using Reasonable Efforts, pursuant to Section 10.1, proceed with the issuance of Concession Mortgage Debt for the payment of all Cruise Pier Improvement Projects Cost which are not eligible for the receipt of

Government Contributions or with respect to which Government Contributions are delayed or reduced. For the avoidance of doubt, amounts not eligible for receipt of Government Contributions shall include any part of the Expansion Investment Projects that are not included in the Government Contributions Authorization (such as, for example, as applicable, the parts of the Expansion Investment Projects identified in Schedule 13 as the "Piers 11-12 – Cruise Pier Building", the "Piers 11-12 – Uplands" or the "Conversion of Pier 4 into a Port of Call facility"), and any cost sharing amount for which the Authority would be responsible but for which the Concession Company, at request of the Authority, would include in the amount of Concession Mortgage Debt. If (1) the Authority so notifies the Concession Company and makes such election but such fifty million dollars ($50,000,000) condition is not satisfied; or (2) the Concession Company using Reasonable Efforts, pursuant to Section 10.1, is unsuccessful in issuing Concession Mortgage Debt for the payment of all Cruise Pier Improvement Projects Cost of the Expansion Investment Projects which are not eligible for the receipt of Government Contributions or with respect to which Government Contributions are delayed or reduced, then the Concession Company shall not be required to implement the portion of the Expansion Investment Projects that are not funded by such Government Contributions, but shall, at the Authority's election by notice: (x) implement the portion of the Expansion Investment Projects that are one hundred percent (100%) funded by such Government Contributions, subject to the satisfaction of the Expansion Investment Projects Requirements; and (y) meet with the Authority to discuss in good faith alternative options for implementing any portion of the Expansion Investment Projects that is partially funded or not funded by such Government Contributions, including any adjustment to the Annual Authority Revenue Share in accordance with Section 12(b) of Schedule 15. If the Expansion Investment Projects are not fully implemented pursuant to this Section 3.25(i), the Concession Company shall implement any portion of the Expansion Investment Projects that is not funded by such Government Contributions (which, for the avoidance of doubt, may include the whole of the Expansion Investment Projects, depending on the receipt of Government Contributions) in accordance with Section 3.25(b), subject to the occurrence of the Expansion Investment Projects Trigger Event and subject to the satisfaction of the Expansion Investment Projects Requirements.

Section 3.26 Piers 11-12 Wharf Project and Piers 13-14 Wharf Project Coordinated Implementation. For the avoidance of doubt, it is further clarified that it is the intention of the Parties, upon the request of the Authority and to the maximum extent permitted by applicable Law, that the application for Government Contributions for the Piers 11-12 Wharf Project and the Piers 13-14 Wharf Project be presented jointly and the implementation of the Piers 11-12 Wharf Project and the Piers 13-14 Wharf Project proceed simultaneously upon receipt of the Government Contributions Authorization and that the Parties find ways to implement both the Piers 11-12 Wharf Project and the Piers 13-14 Wharf Project in their entirety and to utilize the Government Contributions obtained for these projects.

ARTICLE 4
CAPITAL PROJECTS

Section 4.1 Concession Company Responsibility for Capital Projects. In addition to the Additional Cruise Port Facilities Projects (where applicable), the Concession Company's capital improvement obligations shall comprise the capital improvement projects set forth on Schedule 13 and identified as Initial Investment Projects, Expansion Investment Projects, and

Phase Two Projects, such capital improvement projects required to be completed by the Concession Company during the Term in accordance with the terms of this Agreement (including the Operating Standards) and subject to Section 10.1 with respect to Concession Company responsibility for obtaining financing for any Cruise Pier Improvement Project or Modification. The Concession Company, with reasonable diligence, and at its sole cost and expense (except to the extent otherwise specifically stated in this Agreement), shall complete or cause the completion of all Cruise Pier Improvement Projects and each Modification constituting a capital improvement project in a good and workmanlike manner in accordance with the terms of this Agreement. Each Cruise Pier Improvement Project set forth on Schedule 13 and each Modification constituting a capital improvement project shall be Completed by the Concession Company on or before the deadline for Completion set forth on Schedule 13 or on any supplement to this Agreement, as the case may be, including in the case of any Modification in any written agreement related to an Agreed Modification as provided in Section 5.1(d) (as applicable, the "Scheduled Completion Date"). The Authority at its option may, in its discretion, cancel or postpone the commencement of any Cruise Pier Improvement Project by giving prior notice to the Concession Company; *provided that* to the extent that any notice of cancellation or postponement shall have been provided to the Concession Company following the date on which the Concession Company shall have incurred any liabilities or commitments with respect to such project, the Authority shall be required to provide Concession Compensation to the Concession Company upon demand (but, for the avoidance of doubt, subject to Section 15.1(c) the calculation of which shall, for the avoidance of doubt, take into account the Concession Company's out-of-pocket costs in connection therewith and any cost savings to the Concession Company as a result of the cancellation of such project). The Authority shall consult with the Concession Company prior to the postponement of any such projects concerning revised timing and scheduling for implementation and shall use its Reasonable Efforts to ensure that the revised schedule does not unduly interfere with the Cruise Port Facility Operations. The Concession Company shall not be in breach of this Section 4.1 for failure to Complete any Cruise Pier Improvement Project or any Modification constituting a capital improvement project by the deadline for completion thereof as set forth on Schedule 13, or by the deadline set forth in any supplement to this Agreement, including in the case of any Modification in any written agreement related to an Agreed Modification as provided in Section 5.1(d), to the extent that such failure is caused by (i) the postponement or cancellation of such project by the Authority in accordance with this Section 4.1 (unless such postponement, cancellation or failure is the result of a Concession Company Default), (ii) the discovery of protected plant or animal species, human remains, archaeological, paleontological or cultural resources at or about the site of the lands required by any Cruise Pier Improvement Project, (iii) any action or omission of the Authority or the Commonwealth or any agency or instrumentality thereof, (iv) any applicable entry by Authority or Authority Related Entities into the Cruise Port Facility pursuant to Section 3.7(a)(v) through Section 3.7(a)(vii), (v) the Concession Company's compliance with or the implementation of any Required Modification or any modified or changed Operating Standard (as contemplated by Section 6.2(c)), (vi) the occurrence of an Adverse Action, or (vii) any Delay Event. In such event, the Scheduled Completion Date or other deadline for completion shall be subject to a fair and reasonable extension which shall be agreed by the Parties or, failing agreement within fourteen (14) days of notice of any such event being given by either Party to the other, may be referred by either Party for resolution in accordance with Article 19.

Section 4.2 Authorizations Related to Capital Projects. The Concession Company's obligation to perform the Cruise Pier Improvement Projects and all Modifications constituting capital improvement projects, shall be subject to the terms and conditions of this Agreement and the timely issuance by the Authority or any other applicable Governmental Authority of any and all Authorizations with respect thereto without extraordinary expenses or conditions, and the Authority agrees not to withhold, condition or delay unreasonably the issuance of any such Authorizations issued by the Authority. The Authority shall use its Reasonable Efforts to assist the Concession Company in obtaining Authorizations from other applicable Governmental Authorities.

Section 4.3 Authority Responsibility for Affected Property. The Authority shall use Reasonable Efforts, subject to the availability of Authority funds for such purpose in the applicable year, to maintain, repair and rehabilitate any existing or future roads, streets, sidewalks or bridges constituting any Affected Property under the jurisdiction of the Authority that provide direct access to or from the Cruise Port Facility in such a manner as to maintain reasonable public access to and from the Cruise Port Facility, in each case in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as could not reasonably be expected to interfere with the Cruise Port Facility Operations.

Section 4.4 Condition of the Cruise Port Facility During Work. The Authority acknowledges that the Concession Company shall not be in default under the terms of this Agreement, including for failure to comply with the Operating Standards, in relation to the condition of portions of the Cruise Port Facility that are subject to any Cruise Pier Improvement Project or any Modification constituting a capital improvement project required to be completed by the Concession Company in accordance with the terms of this Agreement, at any time during which work on any such project and the planning for such project is being undertaken by the Concession Company; *provided* that (a) with respect to the Cruise Pier Improvement Projects, and all Modifications constituting capital improvement projects, the Concession Company shall comply with the requirements of Schedule 13, (b) with respect to the Cruise Pier Improvement Projects and all Modifications constituting capital improvement projects, the Concession Company shall comply with all obligations under the Operating Standards related to such projects, including the scope of work and construction documents Approved by the Authority for such projects and (c) the Concession Company shall comply with all other terms of this Agreement, including the Concession Company's general maintenance obligations under the Operating Standards, related to the portions of the Cruise Port Facility subject to the Cruise Pier Improvement Projects, or any Modification constituting a capital improvement project prior to the commencement of work on any such portion of the Cruise Port Facility.

Section 4.5 Design and Construction Standards and Procedures.

(a) Without limiting Section 4.1, the Concession Company shall design, engineer, procure, construct, equip and complete or cause the design, engineering, procurement, construction, equipping and completion of each Cruise Pier Improvement Project and each Modification constituting a capital improvement project (i) so that the design, materials, equipment and performance comply with the applicable Design and Technical Specifications, (ii) in accordance with Good Industry Practices, (iii) in accordance with all relevant Laws and Authorizations and (iv) otherwise in accordance with the terms of this Agreement.

(b) The Concession Company shall prepare and submit simultaneously to the Authority and the Independent Engineer the design documents for each Cruise Pier Improvement Project and each Modification constituting a capital improvement project for review and comment in sufficient time before they are needed for applying for Authorizations, construction or equipping of the applicable Cruise Pier Improvement Project and each Modification constituting a capital improvement project, or any other purpose contemplated by this Agreement. The Concession Company shall prepare and submit simultaneously to the Authority and the Independent Engineer the 30% Design and Technical Specifications for the Piers 13-14 Wharf Project not later than 270 days after the Date of this Agreement. Review of the Authority and the Independent Engineer shall consist of verifying that the design documents submitted by the Concession Company are consistent and otherwise compliant with (to the extent previously Approved) the 30% Design and Technical Specifications or the 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), the Design and Build Standards and the other requirements of Schedule 13, and it is agreed that compliance of the design documents with Good Industry Practices shall be reviewed only for the 30% Design and Technical Specifications Approval. Ten (10) Business Days after receipt of any design document, the Concession Company shall meet with the Authority and the Independent Engineer at the offices of the Authority, or at such other location agreed by the Concession Company, the Authority and the Independent Engineer (the "Design Workshop"), at which Design Workshop the Concession Company shall make a presentation explaining the design document, including an explanation regarding how the design document is consistent and otherwise compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), the Design and Build Standards and the other requirements of Schedule 13. The Authority or the Independent Engineer may, after receipt of any design document and before the Design Workshop, by notice to the Concession Company, require the Concession Company to provide such further supporting information as the Authority or the Independent Engineer may reasonably consider necessary, and the Concession Company shall provide such supporting information at the Design Workshop and answer any questions of the Authority or the Independent Engineer. The Design Workshop shall last two (2) Business Days, unless the Concession Company, the Authority and the Independent Engineer agree to conclude the Design Workshop before the end of such two (2) Business Day period, and shall include the preparation of written minutes by the Independent Engineer prior to the end of the Design Workshop which include a summary of any changes to the design documents discussed during the Design Workshop. Within three (3) Business Days following the conclusion of the Design Workshop, if the Authority reasonably concludes that a design document is not consistent or otherwise compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), or the Design and Build Standards or the other requirements of Schedule 13, it shall submit its comments for review by the Independent Engineer (which comments may relate to matters contained in the Design Workshop minutes prepared by the Independent Engineer). If, following review by the Independent Engineer within two (2) Business Days following receipt by the Independent Engineer of such comments of the Authority, the Independent Engineer concludes, either based on such comments of the Authority or the Independent Engineer's separate review of the design documents and such other information provided by the Concession Company, that a design document (including any matters contained in Design Workshop minutes) is not

consistent or otherwise compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), or the Design and Build Standards or the other requirements of Schedule 13, the Independent Engineer shall notify the Concession Company of such lack of consistency and require the Concession Company at its sole cost and expense to modify the design documents to ensure that the same are in compliance with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), Design and Build Standards and other requirements of Schedule 13; *provided, however*, that upon one (1) days' notice, the Concession Company may request a meeting with the Authority, whose attendance shall be required only if available, and the Independent Engineer, to be held not later than two (2) Business Days following receipt of a notification of the Independent Engineer, in order to review the requirements of the Independent Engineer to modify the design documents (the "Comments Review Meeting"). During the Comments Review Meeting the Independent Engineer shall explain its required modifications to the design documents and answer questions of the Concession Company and the Authority. Not later than two (2) Business Days following the Comments Review Meeting the Independent Engineer shall notify the Concession Company and the Authority (i) confirming its required modifications to the design documents, (ii) modifying its required modifications to the design documents or (iii) withdrawing its required modifications to the design documents and stating that no modifications are required. If such notice from the Independent Engineer either confirms or modifies its required modifications to the design documents, the Concession Company shall modify the design documents to take into account the required modifications of the Independent Engineer (which may include comments from the Authority to the extent deemed relevant by the Independent Engineer) hereunder, and shall resubmit the design document to the Authority and the Independent Engineer within ten (10) Business Days of receipt of such notice from the Independent Engineer following the Comments Review Meeting (or within ten (10) Business Days of receipt of such notice from the Independent Engineer following the Design Workshop if the Concession Company and the Independent Engineer agree not to request a Comments Review Meeting) as evidence that the same have been modified so as to be in compliance with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), the Design and Build Standards and the other requirements of Schedule 13; *provided, however*, that if within five (5) Business Days of receipt by the Authority and the Independent Engineer of such resubmitted design documents the Independent Engineer notifies the Concession Company that a resubmitted design document is not consistent or otherwise compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), or the Design and Build Standards or the other requirements of Schedule 13, then the Concession Company shall at its sole cost and expense modify the design documents to ensure that the same are in compliance with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), the Design and Build Standards and the other requirements of Schedule 13; *provided, however*, that the Concession Company may request another Comments Review Meeting (within the same time limit and notice period set forth above for the Comments Review Meeting), in which case the process for required modifications to design documents occurring following the Comments Review Meeting set forth above shall be repeated until the

Independent Engineer notifies the Concession Company that no further modifications to the design documents are required.

(c) If following the Design Workshop the Authority does not respond to a design document submission by approving the same or by submitting its comments to the Independent Engineer within three (3) Business Days following the conclusion of the Design Workshop and/or if the Independent Engineer does not notify the Concession Company of any non-compliance and required modifications within two (2) Business Days following receipt by the Independent Engineer of comments of the Authority and/or if the Independent Engineer does not notify the Concession Company of any non-compliance and required modifications within five (5) Business Days following receipt by the Independent Engineer of resubmitted design documents from the Concession Company, and/or if the Independent Engineer does not notify the Concession Company of any non-compliance and required modifications within two (2) Business Days following a Comments Review Meeting, the relevant design document shall be deemed to be Approved by the Authority. For the avoidance of doubt, (i) the only right of the Authority with respect to design documents for each Cruise Pier Improvement Project and each Modification constituting a capital improvement project shall be to review such design documents and to determine whether it reasonably believes that a design document is not consistent or otherwise compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), or the Design and Build Standards or the other requirements of Schedule 13 and to require modifications to design documents if the Independent Engineer concurs regarding such lack of compliance and (ii) if the Independent Engineer concludes that a design document is not consistent or otherwise compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), or the Design and Build Standards or the other requirements of Schedule 13, a modification to such design document required by the Independent Engineer to cause such design document to be compliant with the 30% Design and Technical Specifications or 60% Design and Technical Specifications, or both (as applicable depending on the stage of design development), or the Design and Build Standards or the other requirements of Schedule 13 shall not constitute a Modification or a Delay Event, and the Concession Company shall make or cause to be made such modification at its sole cost and expense.

(d) The Concession Company is responsible for any discrepancies, errors or omissions in the design documents, irrespective of whether the design documents have been reviewed by the Authority or any comment or direction by the Authority. The Authority does not owe any duty to the Concession Company to review the design documents submitted by the Concession Company for discrepancies, errors or omissions. No review of or comments on, failure to review or comment on, or rejection of any design documents will relieve the Concession Company of its responsibilities under this Agreement or prejudice the Authority's rights against the Concession Company.

(e) The Concession Company's responsibilities, obligations and warranties under this Agreement will remain, and the Authority's rights against the Concession Company are not prejudiced, notwithstanding: (i) any receipt or review or approval of, or comment or direction on, or failure to review or comment on, or rejection of, the design documents by the Authority; (ii) any information supplied by the Authority or any changes made to the design

documentation by the Concession Company following the Authority's review, comment or direction; or (iii) any attendance of the Authority or any Representative of the Authority at the Completion Inspection or any other inspection at any time.

(f) The Authority shall be deemed to have Approved the 30% Design and Technical Specifications for the following Cruise Pier Improvement Projects, as of the Date of this Agreement: the portion of the Piers 11-12 Project identified in Schedule 13 as Piers 11-12 – Cruise Pier Building (but not the portion of the Piers 11-12 Project identified in Schedule 13 as Piers 11-12 – Wharf or Piers 11-12 – Uplands). Accordingly, for such Cruise Pier Improvement Projects for which the Authority has Approved 30% Design and Technical Specifications, the rights of the Authority and the Independent Engineer for review and Approval of design documents shall be limited as provided in Section 4.5(b) and Section 4.5(c), except to the extent modifications are made to the portions of the Piers 11-12 Project identified in Schedule 13 as Piers 11-12 – Cruise Pier Building as provided in Section 4.13(a).

Section 4.6 Competitive Procurement; Payment of Excess Costs.

(a) The Concession Company shall, to the extent required by any Government Contributions Agreement (including, for the avoidance of doubt, any Government Contributions Agreement to which the Concession Company is not a party but in connection with which the Concession Company is assisting in the procurement of the applicable Cruise Pier Improvement Project or Modification as Receiver's Agent or otherwise), conduct a competitive process for the services of any Contractor to be engaged and funded in full or in part with Government Contributions in connection with the Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, an Expansion Investment Project, a Phase Two Project or Additional Cruise Port Facilities Project, or any Modification constituting a capital improvement project, in compliance with all the laws, regulations, terms and conditions related to such Government Contributions, including the required provisions set forth in Schedule 7 (to the extent required by the relevant Governmental Authority providing the Government Contributions) and any other FEMA, HUD or other applicable Governmental Authority procurement requirements. For the avoidance of doubt, any Contractor to be engaged in connection with an Initial Investment Project, Expansion Investment Project, Phase Two Project or Additional Cruise Port Facilities Project, or any Modification constituting a capital improvement project that will not be funded with Government Contributions may be selected by the Concession Company in its discretion, unless otherwise required by applicable Law and subject to Section 20.15(a).

(b) With regard to the Pan American Piers Wharf Structure Project, the Expansion Investment Projects, the Pier 4 Reconstruction, the Phase Two Projects, any Additional Cruise Port Facilities Project or any Modification constituting a capital improvement project that will be funded in whole or part with Government Contributions, if the Concession Company is the Receiver of Government Contributions or the Receiver's Agent for any such Cruise Pier Improvement Project or Modification, before any Construction Contract or Government Contributions Agreement is entered into by the Concession Company, the Authority shall have the right to review and Approve the form of any Government Contributions Agreement or Construction Contract that is a Principal Contract or that is required to be submitted to any Governmental Authority for the applicable Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, Expansion Investment Project, Phase Two Project, Additional

Cruise Port Facilities Project or Modification constituting a capital improvement project. Each such Construction Contract shall contain the provisions required by applicable Law in connection with the receipt of Government Contributions, including the provisions set forth in Schedule 7 (to the extent required by the relevant Governmental Authority providing the Government Contributions). Notwithstanding anything to the contrary provided in this Agreement, the Concession Company shall not use cost plus percentage of cost contracting in any Construction Contract funded with Government Contributions unless permitted by applicable Law and authorized by the Authority. For the avoidance of doubt, in respect of any Contractor to be engaged in connection with the Pan American Piers Wharf Structure Project or a Phase Two Project, Expansion Investment Project, Additional Cruise Port Facilities Project or Modification constituting a capital improvement project that will not be funded with Government Contributions, the form of Construction Contract shall not be subject to review and Approval by the Authority; *provided, however*, that each Construction Contract shall contain the provisions referred to in Section 20.15 (which provisions may be incorporated by reference with appropriate adjustments to make them applicable to the Contractor) and the Concession Company shall comply with the provisions of Section 20.15 with regard to Contractors. As soon as practicable after the Authority has Approved the design documents in accordance with Section 4.5 and the Construction Contract (if applicable) or Government Contributions Agreement (if applicable) in accordance with this Section 4.6, the Concession Company shall provide the Authority with: (i) a draft supplement to this Agreement setting out the Design and Technical Specifications, Scheduled Completion Date and other relevant matters relating to the applicable Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, Phase Two Project, Expansion Investment Project, Additional Cruise Port Facilities Project or Modification constituting a capital improvement project and (ii) where the Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, Expansion Investment Project, Phase Two Project, Additional Cruise Port Facilities Project or Modification constituting a capital improvement project will be funded with Government Contributions, the final Government Contributions Agreement or Construction Contract that is a Principal Contract or that is required to be submitted to any Governmental Authority. Simultaneously with the execution of the Construction Contract or Government Contributions Agreement with respect to the applicable Pier 4 Reconstruction, Phase Two Project, Expansion Investment Project, Additional Cruise Port Facilities Project or Modification constituting a capital improvement project, the Concession Company and the Authority will execute such supplement to this Agreement and the Concession Company shall enter into any other relevant agreements necessary to be entered into by the Concession Company to enable it to undertake the Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, Phase Two Projects, Expansion Investment Project or Additional Cruise Port Facilities Projects or Modification constituting a capital improvement project and to otherwise exercise its rights and fulfil its obligations under this Agreement. The Concession Company shall provide the Authority with certified copies of these agreements as soon as practicable after their execution, and obtain all Authorizations necessary for it to undertake the Pan American Piers Wharf Structure Project, Pier 4 Reconstruction, Phase Two Projects, Expansion Investment Project or Additional Cruise Port Facilities Projects or Modification constituting a capital improvement project and to otherwise exercise its rights and perform its obligations under this Agreement. For the avoidance of doubt, if Government Contributions are utilized to pay the Cruise Pier Improvement Projects Cost with respect to any Cruise Pier Improvement Project (which, for the avoidance of doubt, would not include the Initial Investment Projects other than, if applicable,

the Pan American Piers Wharf Structure Project) or Modification constituting a capital improvement project, to the extent there is any conflict between the procedures contained in this Section 4.6 for procuring design and construction of the applicable Cruise Pier Improvement Project and the procedures required as a condition of or requirement for Government Contributions, the Government Contributions procedures shall supersede the procedures contained in this Section 4.6 and the Parties shall comply with them.

(c) Subject to the provisions of Section 10.1 in respect of any financing to be obtained by the Concession Company, with regard to any Cruise Pier Improvement Project for which a Government Contributions Authorization has been issued (which, for the avoidance of doubt, would not include the Initial Investment Projects other than, if applicable, the Pan American Piers Wharf Structure Project) and which the Authority has elected to utilize for the applicable Cruise Pier Improvement Project, the Concession Company shall, provided it is the Receiver of Government Contributions or the Receiver's Agent, be responsible for the payment of any Cruise Pier Improvement Projects Cost in excess of the amount of Government Contributions received by the Concession Company, including any cost sharing amount that the Authority would be responsible for contributing as part of the conditions of the Government Contributions received (to the extent such cost sharing amount is not paid by other Government Contributions), except to the extent such excess Cruise Pier Improvement Projects Cost is caused by a Compensation Event. Accordingly, by way of example and not limitation, (A) if the Government Contribution is a maximum fixed amount and the Cruise Pier Improvement Projects Cost is an amount greater than such maximum fixed amount, then the Concession Company would be responsible for paying the excess of the Cruise Pier Improvement Projects Cost over such maximum fixed amount of the Government Contribution, or (B) if the Government Contribution does not cover a specific portion of the Cruise Pier Improvement Projects Cost (such as, for example, 10%), or does not cover a specific category of Cruise Pier Improvement Projects Cost (such as, for example, any work that does not fit into the category of rehabilitation) then the Concession Company shall be responsible for the payment of such Cruise Pier Improvement Projects Cost, subject to the provisions of Section 10.1 in respect of any financing to be obtained by the Concession Company.

(d) Subject to the provisions of Section 10.1 in respect of any financing to be obtained by the Concession Company, to the extent any Cruise Pier Improvement Projects Cost is required to be paid to the Contractor under the applicable Construction Contract before Government Contributions are available for the payment of such Cruise Pier Improvement Project Cost (which, for the avoidance of doubt, would not include the Initial Investment Projects other than, if applicable, the Pan American Piers Wharf Structure Project), the Concession Company, provided it is the Receiver of Government Contributions or the Receiver's Agent, shall pay, or cause the Contractor to pay, such Cruise Pier Improvement Projects Costs and be reimbursed upon receipt of Government Contributions and in accordance with the applicable Government Contributions Agreement. Accordingly, by way of example and not limitation, if a Construction Contract provides for payment of Contractor invoices no later than 45 days following their submission and FEMA, HUD or other Governmental Authority providing the Government Contribution provides reimbursement for the applicable Cruise Pier Improvement Projects Cost seventy (70) days after the submission of the Contractor invoice, the Concession Company, provided it is the Receiver of Government Contributions or the Receiver's Agent, shall be responsible for paying the Contractor no later than 45 days following the submission of

the Contractor invoice. The Government Contribution will, when received, be used to reimburse the Concession Company for the amount it paid the Contractor, but without any interest accruing on or other fee payable with respect to the amount the Concession Company paid the Contractor, and in accordance with the applicable Government Contributions Agreement.

(e) If the Cruise Pier Improvement Projects Cost for any Cruise Pier Improvement Project or Modification constituting a capital improvement project is paid with Government Contributions (which, for the avoidance of doubt, would not include the Initial Investment Projects other than, if applicable, the Pan American Piers Wharf Structure Project), (i) the Authority shall use its Reasonable Efforts to cause the Concession Company to act as the Receiver of Government Contributions, *provided* that if acting in such capacity is prohibited by the Government Contributions Authorization or applicable Law or otherwise cannot be effected, then (ii) the Authority shall use its Reasonable Efforts to cause the Concession Company to act as the Receiver's Agent, *provided* that if acting in such capacity is prohibited by the Government Contributions Authorization or applicable Law or otherwise cannot be effected, then (iii) the Authority shall use its Reasonable Efforts to cause the Concession Company to act as the construction manager as provided in Section 4.6(f) and Schedule 13, *provided* that if acting in such capacity is prohibited by the Government Contributions Authorization or applicable Law or otherwise cannot be effected, then (iv) the Concession Company shall act in the capacity provided in Section 4.6(h), in each case for the applicable Cruise Pier Improvement Project or Modification constituting a capital improvement project; *provided, however*, that this Section 4.6(e) shall not apply to Additional Cruise Port Facilities Projects outside the Cruise Port Facility, including at any Cruise Pier that is not a part of, or that has been removed from, the Cruise Port Facility and the Concession pursuant to this Agreement.

(f) If the Concession Company is acting as the construction manager for any Cruise Pier Improvement Project or Modification constituting a capital improvement project paid with Government Contributions in accordance with Section 4.6(e), then (i) the Concession Company shall comply with its obligations as construction manager as provided in Schedule 13; (ii) the Concession Company, at its cost and expense, shall, using Reasonable Efforts, cooperate with the Authority, any Receiver of Government Contributions (if other than the Authority), any Receiver's Agent and any Governmental Authority with audit or oversight authority to ensure that the applicable Cruise Pier Improvement Project or Modification is designed, engineered, procured, constructed, equipped and completed as contemplated under this Agreement and as provided in Schedule 13 and the applicable design, engineering, construction or equipping contract, including providing input, suggestions, support and feedback and calling to the attention of the Authority any objection, anticipated problem or suggestion necessary to the successful integration of the Cruise Pier Improvement Projects or Modification into the Cruise Port Facility (provided Concession Company shall not be responsible for the applicable Cruise Pier Improvement Project save as provided in clause (viii) below except to the extent arising out of the Concession Company's failure to discharge its obligations as construction manager as set out in this Agreement); (iii) the Concession Company shall allow the Authority, any Receiver of Government Contributions (if other than the Authority) or any Receiver's Agent for the applicable Cruise Pier Improvement Project or Modification, and any Person acting for any of them as Contractor or otherwise, access to and use of the applicable Cruise Pier to the extent any such Person considers necessary or desirable to design, engineer, procure, construct, equip and complete the applicable Cruise Pier Improvement Project or Modification, subject to the

conditions provided in Section 3.7 (and, for the avoidance of doubt, such access to and use of the applicable Cruise Pier shall not require the consent of the Concession Company and shall include all construction work necessary or desirable to be performed in order to design, engineer, procure, construct, equip and complete the applicable Cruise Pier Improvement Project or Modification), and such access to and use of the applicable Cruise Pier shall not constitute a Compensation Event except to the extent such access and use unreasonably disregards Concession Company's reasonable requests as to how such Cruise Pier Improvement Project or Modification may be undertaken so as to minimize disruption to Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by the Concession Company and unreasonably interferes with Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by the Concession Company (and the Concession Company shall, at the request of the Authority, consult with the Authority and any other such Person to agree reasonable terms of access and use); (iv) the applicable Cruise Pier Improvement Project shall be implemented in accordance with the Design and Technical Specifications for such Cruise Pier Improvement Project or Modification and only material changes to such Design and Technical Specifications shall constitute a Modification to which the procedures in Article 5 shall apply; (v) with respect to the Piers 11-12 Wharf Project, the Concession Company shall use its Reasonable Efforts to complete the 30% Design and Technical Specifications for the Piers 11-12 Wharf Project no later than ninety (90) days following the Date of this Agreement and, in any case, the 30% Design and Technical Specifications for the Piers 11-12 Wharf Project are a condition to Closing as provided in Section 2.4 and shall be considered to be attached to this Agreement as part of Schedule 13, and more detailed design and technical specifications for the Piers 11-12 Wharf Project shall be considered a Modification only if such more detailed design and technical specifications are not consistent or compliant with the 30% Design and Technical Specifications for the Piers 11-12 Wharf Project in a material manner; (vi) with respect to the Piers 13-14 Wharf Project, the 30% Design and Technical Specifications for the Piers 13-14 Wharf Project are subject to Approval by the Authority in accordance with Section 4.5(b) and, subject to such Approval, shall be considered to be attached to this Agreement as part of Schedule 13, and more detailed design and technical specifications for the Piers 13-14 Wharf Project shall be considered a Modification only if such more detailed design and technical specifications are not consistent or compliant with such Approved 30% Design and Technical Specifications for the Piers 13-14 Wharf Project in a material manner; (vii) the Authority shall, or shall use its Reasonable Efforts to ensure that any Person acting as the Receiver of Government Contributions for the applicable Cruise Pier Improvement Project or Modification shall, cooperate with the Concession Company as construction manager to avoid or limit interference with the Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by Concession Company; and (viii) upon completion of the applicable Cruise Pier Improvement Project or Modification in accordance with the terms of the applicable construction contract, such Cruise Pier Improvement Project or Modification shall become an Assumed Liability, *provided, however*, that the Concession Company, acting reasonably, shall have the right to confirm that completion of the applicable Cruise Pier Improvement Project or Modification has occurred in accordance with the terms of the applicable construction contract(s) for such Cruise Pier Improvement Project or Modification within no more than thirty (30) days following notice from the Authority that such completion has occurred, and *provided, further*, that the Authority shall, or shall ensure that any Person acting as the Receiver of Government Contributions for the

applicable Cruise Pier Improvement Project or Modification shall, assign to the Concession Company the benefit of all warranties and guarantees provided under the applicable design, engineering, procurement, construction and equipment contracts entered into for such Cruise Pier Improvement Project or Modification, each of which shall be in a form reasonably satisfactory to Concession Company. Until such assignment, the Authority shall use Reasonable Efforts to ensure that the applicable Cruise Pier Improvement Project (including any Modification thereto) to be paid with Government Contributions is performed in a good and workmanlike manner, in cooperation with the Concession Company to avoid or limit interference with the Cruise Port Facility Operations or Cruise Pier Improvement Projects or Modifications being undertaken by Concession Company, and without damage to the Cruise Port Facility (provided that Authority shall not be in breach thereof to the extent Concession Company fails to perform its obligations as construction manager). The Authority shall, and shall use its Reasonable Efforts to ensure such other Person acting as Receiver of Government Contributions for the applicable Cruise Pier Improvement Project or Modification shall, enforce the terms of contracts entered into for such Cruise Pier Improvement Projects and not, without the approval of the Concession Company, amend, vary or waive compliance with any warranties and guarantees or otherwise vary or instruct a change order under any contract which may have a material effect on Cruise Port Facility Operations or any Cruise Pier Improvement Project (including any Modification thereto). The failure of the Authority to comply with clause (iii) or clause (vii) of this Section 4.6(f) shall constitute a Delay Event and a Compensation Event, except to the extent the impact of such breach would have been avoided had the Concession Company complied with its obligations as construction manager in accordance with this Agreement.

(g) The Annual Authority Revenue Share shall be adjusted as provided in Section 10.6 and Schedule 15.

(h) If the Cruise Pier Improvement Projects Cost for any Cruise Pier Improvement Project or Modification constituting a capital improvement project is paid with Government Contributions (which, for the avoidance of doubt, would not include the Initial Investment Projects other than, if applicable, the Pan American Piers Wharf Structure Project) and the Concession Company does not act as the Receiver of Government Contributions, the Receiver's Agent or the construction manager for the applicable Cruise Pier Improvement Project or Modification constituting a capital improvement project, then (i) the Concession Company, at its cost and expense, shall, using Reasonable Efforts, cooperate with the Authority and any Person acting as the construction manager or Receiver of Government Contributions for the applicable Cruise Pier Improvement Project or Modification to ensure that the applicable Cruise Pier Improvement Project or Modification is designed, engineered, procured, constructed, equipped and completed as contemplated under this Agreement and as provided in Schedule 13 and the applicable design, engineering, construction or equipping contract, including providing input, suggestions, support and feedback and calling to the attention of the Authority any objection, anticipated problem or suggestion necessary to the successful integration of the Cruise Pier Improvement Projects or Modification into the Cruise Port Facility (provided the Concession Company shall not be responsible for the applicable Cruise Pier Improvement Project save as provided in clause (vii) below); (ii) the Concession Company shall allow the Authority, any Person acting as the construction manager or the Receiver of Government Contributions for the applicable Cruise Pier Improvement Project or Modification, and any Person acting for any of them as Contractor or otherwise, access to and use of the applicable

Cruise Pier to the extent any such Person considers necessary or desirable to design, engineer, procure, construct, equip and complete the applicable Cruise Pier Improvement Project or Modification, subject to the conditions provided in Section 3.7 (and, for the avoidance of doubt, such access to and use of the applicable Cruise Pier shall not require the consent of the Concession Company and shall include all construction work necessary or desirable to be performed in order to design, engineer, procure, construct, equip and complete the applicable Cruise Pier Improvement Project or Modification), and such access and use shall not constitute a Compensation Event except to the extent such access and use unreasonably disregards Concession Company's reasonable requests as to how such Cruise Pier Improvement Project or Modification may be undertaken so as to minimize disruption to Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by the Concession Company and unreasonably interferes with Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by the Concession Company (and the Concession Company shall, at the request of the Authority, consult with the Authority and any other such Person to agree reasonable terms of access and use); (iii) the applicable Cruise Pier Improvement Project shall be implemented in accordance with the Design and Technical Specifications for such Cruise Pier Improvement Project or Modification and only material changes to such Design and Technical Specifications shall constitute a Modification to which the procedures in Article 5 shall apply; (iv) with respect to the Piers 11-12 Wharf Project, the Concession Company shall use its Reasonable Efforts to complete the 30% Design and Technical Specifications for the Piers 11-12 Wharf Project no later than ninety (90) days following the Date of this Agreement and, in any case, the 30% Design and Technical Specifications for the Piers 11-12 Wharf are a condition to Closing as provided in Section 2.4 and shall be considered to be attached to this Agreement as part of Schedule 13, and more detailed design and technical specifications for the Piers 11-12 Wharf Project shall be considered a Modification only if such more detailed design and technical specifications are not consistent or compliant with the 30% Design and Technical Specifications for the Piers 11-12 Wharf Project in a material manner; (v) with respect to the Piers 13-14 Wharf Project, the 30% Design and Technical Specifications for the Piers 13-14 Wharf Project are subject to Approval by the Authority in accordance with Section 4.5(b) and, subject to such Approval, shall be considered to be attached to this Agreement as part of Schedule 13, and more detailed design and technical specifications for the Piers 13-14 Wharf Project shall be considered a Modification only if such more detailed design and technical specifications are not consistent or compliant with such Approved 30% Design and Technical Specifications for the Piers 13-14 Wharf Project in a material manner; (vi) the Authority shall, or shall use its Reasonable Efforts to ensure that any Person acting as the construction manager or Receiver of Government Contributions for the applicable Cruise Pier Improvement Project or Modification shall, cooperate with the Concession Company to avoid or limit interference with the Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by Concession Company; and (vii) upon completion of the applicable Cruise Pier Improvement Project or Modification) such Cruise Pier Improvement Project shall become an Assumed Liability, *provided, however,* that the Concession Company, acting reasonably, shall have the right to confirm that completion of the applicable Cruise Pier Improvement Project or Modification has occurred in accordance with the terms of the applicable construction contract for such Cruise Pier Improvement Project or Modification within no more than thirty (30) days following notice from the Authority that such completion has occurred, and *provided, further*, that (i) the Authority shall assign to the

Concession Company the benefit of all warranties and guarantees provided under the applicable design, engineering, procurement, construction and equipment contracts entered into for such Cruise Pier Improvement Project, each of which shall be in a form reasonably satisfactory to Concession Company. Until such assignment, the Authority shall use Reasonable Efforts to ensure that the applicable Cruise Pier Improvement Project (including any Modification thereto) to be paid with Government Contributions is performed in a good and workmanlike manner, in cooperation with the Concession Company to avoid or limit interference with the Cruise Port Facility Operations or any Cruise Pier Improvement Projects or Modifications being implemented by Concession Company, and without damage to the Cruise Port Facility. The Authority shall, and shall use its Reasonable Efforts to ensure such other Person acting as the construction manager or Receiver of Government Contributions for the applicable Cruise Pier Improvement Project or Modification shall, enforce the terms of contracts entered into for such Cruise Pier Improvement Projects and shall not, without the approval of the Concession Company, amend, vary or waive compliance with any warranties and guarantees or otherwise vary or instruct a change order under any contract which may have a material effect on Cruise Port Facility Operations or any Cruise Pier Improvement Project (including any Modification thereto). The failure of the Authority to comply with clause (ii) or clause (vi) of this Section 4.6(h) shall constitute a Delay Event and a Compensation Event.

Section 4.7 Milestone Inspection and Completion Inspection; Title.

(a) The Concession Company is responsible for the development and implementation of inspection procedures for each Cruise Pier Improvement Project and Modification in accordance with the Design and Technical Specifications for each Construction Milestone (the "Milestone Inspection") and completion of the applicable Cruise Pier Improvement Project or Modification in accordance with the terms of the applicable construction contract(s) for such Cruise Pier Improvement Project or Modification (the "Completion Inspection"). The Concession Company shall give the Authority and the Independent Engineer at least 30 days prior written notice of the commencement of each Milestone Inspection and the Completion Inspection. A Representative or Representatives nominated by the Authority is entitled to attend the Completion Inspection. The Concession Company shall, at its sole cost and expense, undertake each Milestone Inspection and the Completion Inspection.

(b) Title to all repairs, replacements and any other improvements of or relating to the Cruise Port Facility, including any Cruise Pier Improvement Project or Modification, shall pass to the Authority immediately upon completion thereof, irrespective of who pays for such repairs, replacement or other improvements and without any additional action required by either Party or any other Person. The passage of title to such repairs, replacements or improvements of or relating to the Cruise Port Facility shall not release the Concession Company from its responsibility to meet its obligations under this Agreement.

Section 4.8 Milestone Certificate and Completion Certificate.

(a) The Concession Company (and, at the request of the Concession Company, the Authority) shall ensure that the Independent Engineer attends and participates in each Milestone Inspection and the Completion Inspection.

(b) Within 5 days following each Milestone Inspection and 10 days following completion of the Completion Inspection and the review and analysis of the relevant data and other information, the Independent Engineer shall issue a certificate to the Authority and the Concession Company which shall state either that:

(i) the Milestone Inspection or Completion Inspection, as applicable, has been passed and in the opinion of the Independent Engineer (A) the Cruise Pier Improvement Project or Modification, as applicable, has achieved the Construction Milestone or is complete in all respects in accordance with this Agreement, as applicable, other than minor items that in the reasonable opinion of the Independent Engineer will not prejudice (either by not being completed or as a result of the work needed to complete them) the ability of the Concession Company to continue to the next succeeding Construction Milestone or to conduct operation of the Cruise Pier Improvement Project or Modification, as applicable, legally, safely, reliably, efficiently and otherwise in accordance with this Agreement and (B) in the case of the Completion Certificate (in addition), all Authorizations required for Completion to occur and the Cruise Pier Improvement Project or Modification, as applicable, to be operated in accordance with this Agreement have been issued to the Concession Company; or

(ii) the Milestone Inspection or the Completion Inspection, as applicable, has not been passed and the Cruise Pier Improvement Project or Modification, as applicable, is not satisfactory to the Independent Engineer or all Authorizations have not been issued to the Concession Company or are not in full force and effect, or both, and which identifies the specific items of non-compliance.

(c) If the Independent Engineer issues a certificate in accordance with Section 4.8(b)(ii), the Concession Company shall rectify or cause to be rectified the Cruise Pier Improvement Project or Modification, as applicable, as set out in the certificate and the procedures in Section 4.8(a) and (b) will re-commence.

(d) The Concession Company is not entitled to additional costs related to the issuance of a certificate by the Independent Engineer pursuant to Section 4.8(b), including the obligation of the Concession Company to rectify or cause to be rectified the Cruise Pier Improvement Project or Modification, as applicable, in accordance with Section 4.8(c), and no circumstance related to Section 4.8(b) or Section 4.8(c) shall constitute a Delay Event.

(e) The Concession Company shall provide to the Authority all documents and Authorizations required to be provided under this Agreement in order to achieve Completion and shall confirm in an Officer's Certificate that: (i) all such Authorizations for the Cruise Pier Improvement Project or Modification, as applicable, have been issued to the Concession Company and have been provided to the Authority; (ii) copies of all the documents and drawings referred to in Section 4.8(b) have been provided to the Authority; and (iii) all documents (including all handover and operation and maintenance manuals) and other information required under this Agreement with respect to the Cruise Pier Improvement Project or Modification, as applicable, including those documents described as part of the Close Out Submittals in Section 8(d)(i) of Schedule 13, have been supplied to the Authority, excluding, for the avoidance of doubt, those documents identified in Section 8(d)(ii) and Section 8(d)(iii) of Schedule 13 to be

provided within one hundred and twenty (120) days or one hundred and eighty (180) days (as specified in Section 8(d) of Schedule 13) after the Completion Inspection.

(f) With respect to the Milestone Inspections, upon receipt by the Authority of the certificate of the Independent Engineer in Section 4.8(b)(i), completion of the applicable Construction Milestone for the Cruise Pier Improvement Project or Modification, as applicable, shall be deemed to have occurred.

(g) With respect to the Completion Inspection, upon receipt by the Authority of the certificate of the Independent Engineer under Section 4.8(b)(i), the certificate of the Concession Company under Section 4.8(e) and all Authorizations and other documents to be provided by the Concession Company as required by Section 4.8(e), completion of the applicable Cruise Pier Improvement Project or Modification, as applicable, shall be deemed to have occurred ("Completion").

(h) If either Party disputes a decision or determination of the Independent Engineer, it may submit such dispute for resolution in accordance with Article 19.

Section 4.9 The Authority to be Kept Informed.

(a) The Authority is entitled to inspect any part of any Cruise Pier Improvement Project or Modification, as applicable, during the design, engineering, construction, equipping and completion of it and where applicable the Concession Company will be given reasonable prior notice of such inspection.

(b) The Concession Company shall: (i) promptly inform the Authority of any likely material deviations from any Scheduled Completion Date; and (ii) provide to the Authority monthly written reports setting out the current progress of the design, engineering, construction, equipping of each Cruise Pier Improvement Project or Modification, as applicable, against the Scheduled Completion Date.

Section 4.10 Protection of Persons and Property and Interference.

(a) The Concession Company shall, when performing its obligations under this Agreement: (i) take measures necessary to protect people and property; (ii) avoid unnecessary interference with the passage of persons and vehicles on Affected Property or otherwise; (iii) prevent nuisance and unreasonable noise and disturbance when performing its obligations under this Agreement; and (iv) ensure that emissions, discharges and debris from the Concession Company's activities comply with all Laws.

(b) The Concession Company shall: (i) ensure that when performing its obligations under this Agreement it does not interfere with or disrupt any of the Authority's operations or any activity on Affected Property, except at the times and in the manner approved in writing by the Authority; and (ii) immediately notify the Authority if in performing its obligations under this Agreement it is likely to interfere with or disrupt any of the Authority's operations or any activity on Affected Property.

Section 4.11 Documentation. From the date of Completion of each Cruise Pier Improvement Project or Modification, as applicable, and throughout the Term, the Concession Company shall retain at the Cruise Port Facility and provide the Authority: (a) copies of the specifications and operation manuals for all items of equipment incorporated into the Cruise Pier Improvement Project or Modification, as applicable; (b) the as-built drawings for each Cruise Pier Improvement Project or Modification, as applicable; and (c) all detailed technical documents related to the engineering, procurement, construction, equipping and completion of each Cruise Pier Improvement Project or Modification, as applicable, to the extent that such items are normally retained in accordance with Good Industry Practices or are otherwise required to be retained under this Agreement.

Section 4.12 Implementation of the Pier 4 Reconstruction and the Phase Two Projects; Use of Government Contributions for the Pan American Piers Wharf Structure Project.

(a) The Concession Company shall design, engineer, procure, construct, equip and complete the Rehabilitation Pier 4 Wharf as part of the Initial Investment Projects unless the Authority elects pursuant to Section 4.12(c) that the Pier 4 Reconstruction shall be carried out by the Concession Company (acting in one of the capacities provided in Section 4.6(e)) on the basis that Government Contributions in an amount sufficient to pay the Cruise Pier Improvement Projects Cost for the Pier 4 Reconstruction which are eligible for receipt of Government Contributions have been approved as described below (in which case the Concession Company shall be released from its obligations to carry out the Rehabilitation Pier 4 Wharf hereunder, currently comprising part of the Initial Investment Projects, and the conversion of Pier 4 into a Port of Call, currently comprising part of the Expansion Investment Projects); *provided, however*, that (for the avoidance of doubt) the obligations of the Concession Company pursuant to Section 4.6(b) and Section 4.6(c) with respect to the Pier 4 Reconstruction to the extent the Government Contributions are insufficient to any Cruise Pier Improvement Projects Cost under the circumstances described in Section 4.6(b) and Section 4.6(c) shall be applicable to the Pier 4 Reconstruction.

(b) The Concession Company shall design, engineer, procure, construct, equip and complete the Phase Two Projects upon the occurrence of the Phase Two Trigger Event and satisfaction of the Phase Two Projects Requirements. Following the occurrence of the Phase Two Trigger Event and subject to the provisions of Section 3.24, the Concession Company shall promptly obtain the following, which shall constitute the Phase Two Projects Requirements: (i) the issuance by the Concession Company, using Reasonable Efforts, pursuant to Section 10.1, of Concession Mortgage Debt, on the terms set forth in Schedule 13, in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Phase Two Projects (unless the Authority notifies the Concession Company as to the receipt by the Authority of the Government Contributions Authorization with respect to the Phase Two Projects as provided in Section 4.12(d)), (ii) the Phase Two Rate of Return Test is able to be satisfied (except as provided in the last sentence of Section 3.24(f) with respect to the Piers 13-14 Wharf Project) or the Concession Company has otherwise determined as provided in Section 3.24(d) to implement the Phase Two Projects or and (iii) the issuance by the applicable Governmental Authorities of the Authorizations for the construction of the Phase Two Projects; and subject, further, to the provisions of Section 3.24.

(c) Following receipt by the Authority of the Government Contributions Authorization with respect to the Pan American Piers Wharf Structure Project or the Pier 4 Reconstruction approving Government Contributions in an amount sufficient to pay the Cruise Pier Improvement Projects Cost in respect thereof which are eligible for receipt of Government Contributions, the Authority may notify the Concession Company that it has received Government Contributions Authorization for the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions and elects to carry out the Pan American Piers Wharf Structure Project or the Pier 4 Reconstruction in place of the Rehabilitation Pier 4 Wharf and the conversion of Pier 4 into a Port of Call, *provided* that such notice may not be given any later than thirty (30) days prior to the Closing Date. Promptly following receipt of such notice by the Concession Company, the Authority and the Concession Company shall use Reasonable Efforts to obtain the Government Contributions necessary to pay the Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions. If Government Contributions are insufficient to pay a portion of the Cruise Pier Improvement Projects Cost or are delayed or denied, then the Concession Company, at the request of the Authority, shall, using Reasonable Efforts, pursuant to Section 10.1, proceed with the issuance of Concession Mortgage Debt for the payment of all Cruise Pier Improvement Projects Cost which are not eligible for the receipt of Government Contributions or respect to which Government Contributions are delayed or denied, *provided* that the issuance of Concession Mortgage Debt for the Pan American Piers Wharf Structure Project shall not be limited to the use of Reasonable Efforts. For the avoidance of doubt, amounts not eligible for receipt of Government Contributions shall include any cost sharing amount for which the Authority would be responsible but for which the Concession Company, at request of the Authority, would include in the amount of Concession Mortgage Debt. If the Authority does not so notify the Concession Company and make such election no later than thirty (30) days prior to the Closing Date, as aforesaid, then the Concession Company shall not be required to implement the Pan American Piers Wharf Structure Project or the Pier 4 Reconstruction and shall implement the Pan American Piers Wharf Structure Project or the Rehabilitation Pier 4 Wharf, as applicable, as part of the Initial Investment Projects (including, for the avoidance of doubt, providing financing for the Pan American Piers Wharf Structure Project or the Rehabilitation Pier 4 Wharf, as applicable, without being limited to use of Reasonable Efforts, as provided in Section 10.1) and, subject to the occurrence of the Expansion Investment Projects Trigger Event and satisfaction of the Expansion Investment Projects Requirements, the conversion of Pier 4 into a Port of Call.

(d) Following the occurrence of the Phase Two Trigger Event, and subject to the provisions of Section 10.1, the Concession Company shall use Reasonable Efforts to obtain a binding commitment from Institutional Lenders for the issuance of Concession Mortgage Debt on the terms set forth in Schedule 13 and in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Phase Two Projects. In the event the Concession Company obtains such binding commitment from such Institutional Lenders and the other Phase Two Projects Requirements have been satisfied, the Concession Company shall promptly (i) prepare bid documents for prospective Contractors and implement the Phase Two Projects, as provided in Section 4.1 through Section 4.11, as applicable, and (ii) proceed with the issuance of such Concession Mortgage Debt; *provided, however*, that the Concession Company shall not proceed with the issuance of such Concession Mortgage Debt if the Authority has notified the

Concession Company that it has received a Government Contributions Authorization for the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions and intends to utilize Government Contributions for payment of the Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions. Such notice from the Authority shall direct the Concession Company to commence the design, engineering, procurement, construction, equipping and completion of the Phase Two Projects, and shall state that the Authority intends to utilize Government Contributions to pay the Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions (recognizing that the Authority may be required pursuant to the requirements for Government Contributions or applicable Law to undertake a competitive procurement for the construction of the part of the Phase Two Projects funded by Government Contributions and that the Concession Company will have one of the roles provided in Section 4.6(e)). If the Authority states in such notice that the Authority intends to utilize Government Contributions to pay the Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions, then the Authority and the Concession Company shall use Reasonable Efforts to obtain the Government Contributions necessary to pay the Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions. If the Government Contributions are insufficient to pay a portion of the Cruise Pier Improvement Projects Cost or are delayed or denied, then the Concession Company, at the request of the Authority, shall, subject to the requirements of Section 10.1, proceed with the issuance of such Concession Mortgage Debt for the payment of all Cruise Pier Improvement Projects Cost which are not eligible for receipt of Government Contributions or with respect to which Government Contributions are delayed or denied. For the avoidance of doubt, amounts not eligible for receipt of Government Contributions shall include any cost sharing amount for which the Authority would be responsible but which the Concession Company, at the request of the Authority, would include in the amount of Concession Mortgage Debt.

(e) At any time following receipt by the Authority of a Government Contributions Authorization with respect to the Pan American Piers Wharf Structure Project, the Pier 4 Reconstruction or the Phase Two Projects (or any portion of the Phase Two Projects, including the Piers 13-14 Wharf Project), as applicable, for Government Contributions in an amount sufficient to pay the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions, the Authority may elect to require the Concession Company to design, engineer, procure, construct, equip and complete the Pan American Piers Wharf Structure Project, the Pier 4 Reconstruction or the Phase Two Projects (or portion thereof, including the Piers 13-14 Wharf Project), as applicable, by giving notice to the Concession Company of such election; *provided, however*, that with respect to the Phase Two Projects other than that portion of the Phase Two Projects consisting of the Piers 13-14 Wharf Project, one of the conditions set forth in Section 3.24(f) for the implementation of the Phase Two Projects has been satisfied and with respect to the Pan American Piers Wharf Structure Project or the Pier 4 Reconstruction such notice shall have been given by the Authority within the period provided in Section 4.12(c); and *provided, further*, that with respect to the portion of the Phase Two Projects consisting of the Piers 13-14 Wharf Project the provisions of the last sentence of Section 3.24(f) shall apply. Such notice shall (i) identify the Government Contributions Authorization, including the amount of the Government Contributions, and (ii) direct the Concession Company to commence the design, engineering, procurement, construction, equipping and completion of the

Pan American Piers Wharf Structure Project, the Pier 4 Reconstruction and the Phase Two Projects (or applicable portion thereof), as applicable. Promptly following receipt by the Concession Company of the notice provided in this Section 4.12(e), the Concession Company shall implement the Pan American Piers Wharf Structure Project, the Pier 4 Reconstruction or the Phase Two Projects (or applicable portion thereof), as applicable, as provided in Section 4.1 through Section 4.11.

(f) The Annual Authority Revenue Share shall be adjusted as provided in Section 10.6 and section 12 of Schedule 15.

Section 4.13 Implementation of the Expansion Investment Projects and Extension of Term.

(a) The Concession Company shall design, engineer, procure, construct, equip and complete the Expansion Investment Projects upon (x) the occurrence of the Expansion Investment Projects Trigger Event or the determination by the Concession Company to implement the Expansion Investment Projects pursuant to Section 3.25(c) even though the Expansion Investment Projects Trigger Event has not occurred and (y) satisfaction of the Expansion Investment Projects Requirements. In addition, the Expansion Investment Projects shall be implemented as provided in Section 3.25(i). Following the occurrence of the Expansion Investment Projects Trigger Event, and subject to the provisions of Section 3.25, the Concession Company shall promptly obtain the following, which shall constitute the Expansion Investment Projects Requirements: (i) the issuance by the Concession Company, using Reasonable Efforts, pursuant to Section 10.1, of Concession Mortgage Debt, on the terms set forth in Schedule 13 and pursuant to a Concession Mortgage and related Documents Approved by the Authority, in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects (other than such portion of such Cruise Pier Improvement Projects Cost that is paid from Government Contributions), (ii) the Authorizations for the implementation of the Expansion Investment Projects described in Section C of Schedule 17 and (iii) confirmation by GeoConsult LLC, San Juan, Puerto Rico (or any other Person Approved by the Authority, and the fees and expenses of GeoConsult LLC or such other Person to be paid by the Concession Company and not with Government Contributions) in a geotechnical investigation report commissioned by the Concession Company with respect to the analysis of the physical properties and characteristics of the subsurface material at Piers 11-12 (the "Piers 11-12 Geotechnical Report") that the classification of such subsurface material at Piers 11-12 is Class D (as such classification is defined by Codes ASCE/SEI 7-16 of the American Society of Civil Engineers and was determined in the reports listed in Appendix M to Schedule 13). In the event the 30% Design and Technical Specifications for the Piers 11-12 Project require modifications in connection with the issuance of the Authorizations for the Piers 11-12 Project or otherwise to comply with applicable Law, (A) such modifications shall be subject to the Approval of the Authority before any application for an Authorization is submitted to the applicable Governmental Authority or, in the event no such Authorization is required, before any construction work is commenced, and (B) the cost and expense of making such modifications and any cost and expense of implementing the Piers 11-12 Project as a result of such modifications shall be paid by the Concession Company and shall not constitute a Compensation Event. If the Piers 11- 12 Geotechnical Report does not confirm that the classification of the subsurface material at Piers 11-12 is Class D (as such classification is defined by Codes

ASCE/SEI 7-16 of the American Society of Civil Engineers and was determined in the reports listed in Appendix M to Schedule 13), the Parties shall meet promptly following the issuance of the Piers 11-12 Geotechnical Report and (1) if a Government Contributions Authorization with respect to the Expansion Investment Projects for Government Contributions in an amount sufficient to pay the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions for all or a part of the Expansion Investment Projects (including all or part of the Piers 11-12 Wharf Project) has been received by the Authority or is expected to be received by the Authority, the Authority and the Concession Company shall confirm the effect of the subsurface material classification on the 30% Design and Technical Specifications and that there are sufficient Government Contributions, together with Concession Mortgage Debt, to implement the Expansion Investment Projects or the applicable portion thereof expected to be implemented, and, subject to such confirmation, the Expansion Investment Projects Requirement shall be deemed to be satisfied, or (2) if a Government Contributions Authorization with respect to the Expansion Investment Projects for Government Contributions in an amount sufficient to pay the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions for all or a part of the Expansion Investment Projects (including all or part of the Piers 11-12 Wharf Project) has not been received by the Authority and is not expected to be received by the Authority, or if the confirmation provided in item (1) above is not made by the Authority and the Concession Company, then such Expansion Investment Projects Requirement shall be deemed not to be satisfied and the Parties shall discuss in good faith an alternative technical and/or financial solution for the Expansion Investment Projects. The Concession Company acknowledges that, as provided in Section 1.6, any such good faith discussion shall not be construed as an obligation of the Authority to agree to any alternative technical and/or financial solution for the Expansion Investment Projects.

(b) The Concession Company shall use Reasonable Efforts to obtain the Authorization described in Section C of Schedule 17 from the Office of Management of Permits of the Commonwealth or the Puerto Rico Planning Board, as necessary, provided that the Authority shall use its Reasonable Efforts to assist the Concession Company in obtaining such Authorization, including without limitation executing any necessary approval or consent for the Concession Company to obtain such Authorization. The Concession Company shall be entitled to a Delay Event to the extent the Concession Company complied with its Reasonable Efforts obligation but such Authorization is not timely obtained, *provided* that any delay in obtaining or failure to obtain such Authorization shall not constitute a Compensation Event or an Adverse Action.

(c) Following the occurrence of the Expansion Investment Projects Trigger Event or the Concession Company otherwise determining to implement the Expansion Investment Projects pursuant to Section 3.25(c) even though the Expansion Investment Projects Trigger Event has not occurred, or following the election of the Authority provided in Section 3.25(i), subject to the provisions of Section 10.1, the Concession Company shall use Reasonable Efforts to obtain a binding commitment from Institutional Lenders for the issuance of Concession Mortgage Debt on the terms set forth in Schedule 13 and in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects (or a portion thereof in the case of the implementation of the Expansion Investment Projects pursuant to Section 3.25(i)). In the event the Concession Company obtains such binding commitment from such Institutional Lenders and the other Expansion Investment Projects

Requirements are achieved, the Concession Company shall promptly (i) implement the Expansion Investment Projects, as provided in Section 4.1 through Section 4.11, as applicable, and (ii) proceed with the issuance of such Concession Mortgage Debt.

(d) Upon the satisfaction, or waiver by the Authority, of the following conditions, following the occurrence of the Expansion Investment Projects Trigger Event (or the Concession Company otherwise determining to implement the Expansion Investment Projects pursuant to Section 3.25(c) even though the Expansion Investment Projects Trigger Event has not occurred), or following the election of the Authority provided in Section 3.25(i) but excluding the situation provided in Section 3.25(i) in which a portion of the Expansion Investment Projects has been fully funded by Government Contributions but the balance of the Expansion Investment Projects has not been implemented, and issuance of the Authorizations referred to in item (ii) of Section 4.13(a) and subject to the provisions of Section 3.25, the Term shall be extended to expire thirty (30) years from the satisfaction of the following conditions without any further approval required by any Person: (i) issuance of the Concession Mortgage Debt in an amount sufficient to pay the Cruise Piers Improvement Projects Cost with respect to the Expansion Investment Projects, on the terms set forth in Schedule 13, and (ii) the Concession Mortgage pursuant to which the Concession Mortgage Debt is issued having no material conditions to the use of such Concession Mortgage Debt to pay such Cruise Piers Improvement Projects Cost (as determined by the Authority, acting reasonably); *provided, however*, that any extension of the Term effected by this Section 4.13(d) or any other provision of this Agreement (other than an election by the Authority to provide Concession Compensation by extending the Term pursuant to Section 15.1(c)(i)(B)) shall not result in the Term expiring after 11:59 p.m. on the 35th anniversary of the Closing Date. For the avoidance of doubt, if (A) the Expansion Investment Projects Trigger Event pursuant to which the Expansion Investment Projects are implemented occurs after the fifth (5th) anniversary of the Closing Date or the Concession Company otherwise determines after the fifth (5th) anniversary of the Closing Date to implement the Expansion Investment Projects pursuant to Section 3.25(c) even though the Expansion Investment Projects Trigger Event has not occurred, or other circumstances occur, and (B) an extension of the Term as calculated in accordance with this Section 4.13(d) would result in the expiration of the Term after 11:59 p.m. on the 35th anniversary of the Closing Date, then the Authority would have no obligation to extend the Term beyond 11:59 p.m. on the 35th anniversary of the Closing Date, but, at the request of the Concession Company, the Parties shall discuss in good faith an extension of the Term beyond 11:59 p.m. on the 35th anniversary of the Closing Date in order to facilitate the implementation of the Expansion Investment Projects. Such discussion shall include discussion of the consideration for such extension, which consideration may include payment by the Concession Company to the Authority of a fee to be agreed by the Parties. The Concession Company acknowledges that, as provided in Section 1.6, any such good faith discussion shall not be construed as an obligation of the Authority to agree to any such extension of the Term.

Section 4.14 Pier 3 EPIC Repairs.

(a) The Concession Company acknowledges that it: (i) has reviewed information regarding the bids from potential Contractors in respect of the Pier 3 EPIC Repairs and the documents and other material listed in Appendix H of Schedule 13 (the "Pier 3 EPIC Repairs Design") and (ii) is intended that as of or after the Date of this Agreement the Pier 3

EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract have been or will be executed by the Authority.

(b) The Authority shall provide the Concession Company with any materially more detailed design documents regarding the Pier 3 EPIC Repairs Design promptly following their receipt by the Authority from the Contractor for the Pier 3 EPIC Repairs. The Concession Company may, no later than 10 days following receipt of such design documents, provide the Authority with its comments on such design documents; *provided, however*, that such comments shall be limited to those aspects of the design documents which, in the reasonable judgment of the Concession Company, are materially inconsistent with the Pier 3 EPIC Repairs Design. The Authority shall use its Reasonable Efforts to make modifications to the Pier 3 EPIC Repairs Design based upon such comments of the Concession Company; *provided, however*, that any decision regarding modifications to the Pier 3 EPIC Repairs Design may be made by the Authority in its discretion. The Authority shall provide the Concession Company a copy of the Pier 3 EPIC Repairs Design as the same may be modified form time to time.

(c) No later than ten (10) days following the Closing Date the Authority shall notify the Concession Company regarding the status of the Pier 3 EPIC Repairs, including whether the Pier 3 EPIC Repairs are completed, and shall meet with the Concession Company in order to respond to any questions of the Concession Company. The Authority shall provide the Concession Company with such information regarding the Pier 3 EPIC Repairs as the Concession Company reasonably requests. No later than twenty (20) days following the Closing Date the Concession Company shall notify the Authority in writing either that the Concession Company will or will not accept the assignment of the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract. If the Concession Company notifies the Authority that the Concession Company will accept the assignment of the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract, then the Authority and the Concession Company shall promptly execute an assignment of the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract and the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract shall constitute Assigned Port Facility Contracts and the relevant part of Pier 3 constructed as the Pier 3 EPIC Repairs shall become part of the Cruise Port Facility and an Assumed Liability. The assignment of the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract shall not require payment by the Authority of any amount to the Concession Company and shall contain a provision that the Concession Company waives any claim against the Authority for loss of Cruise Port Revenues or for other damages or negative impact on Cruise Port Facility Operations caused by or related to the Pier 3 EPIC Repairs.

(d) If the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract are not assigned to the Concession Company as provided in Section 4.14(c), the Authority shall continue to administer the implementation of the Pier 3 EPIC Repairs under the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract. Upon completion of the Pier 3 EPIC Repairs, and as a condition to the relevant part of Pier 3 constructed as the Pier 3 EPIC Repairs becoming part of the Cruise Port Facility and an Assumed Liability, (i) the Authority shall assign to the Concession Company the benefit of all warranties and guarantees provided under the Pier 3 EPIC Repairs Contract which are permitted to be assigned pursuant to the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project

Management Contract and (ii) the Concession Company shall waive any claim against the Authority for loss of Cruise Port Revenues or for other damages or negative impact on Cruise Port Facility Operations caused by or related to such completed Pier 3 EPIC Repairs.

(e) Between the Date of this Agreement and the Closing Date or subsequent assignment of the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract to the Concession Company, the Authority shall use Reasonable Efforts to ensure that the Pier 3 EPIC Repairs are performed in a good and workmanlike manner, in accordance with the Pier 3 EPIC Repairs Contract and using Reasonable Efforts to minimize interference with the Cruise Port Facility Operations and further damage to the Cruise Port Facility. The Authority and the Concession Company shall meet as reasonably requested by either Party prior to the Closing Date to discuss the status of the Pier 3 EPIC Repairs.

(f) As from the assignment of the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract pursuant to Section 4.14(c), the Concession Company shall use Reasonable Efforts to ensure that the Pier 3 EPIC Repairs are performed in a good and workmanlike manner, in accordance with the Pier 3 EPIC Repairs Contract and using Reasonable Efforts to minimize interference with the Cruise Port Facility Operations and further damage to the Cruise Port Facility.

(g) The failure of the Contractor to achieve substantial completion of the Pier 3 EPIC Repairs in all material respects by the date specified in the Pier 3 EPIC Repairs Contract as the substantial completion date for the Pier 3 EPIC Repairs shall constitute a Delay Event and a Compensation Event; *provided*, *however*, that the Concession Compensation, notwithstanding anything to the contrary in Article 15, and without limiting the remedies of the Concession Company under the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract or any warranties or guarantees assigned to the Concession Company with respect to the Pier 3 EPIC Repairs Contract, shall be limited to liquidated damages (if any) and the proceeds of other remedies of the Authority under the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract.

Section 4.15 Duty Free Building.

(a) The Authority has provided the Concession Company, on or prior to the Date of this Agreement, copies of the Pier 3 Duty Free America Agreement and any design or technical information and submissions prepared in connection with the same and received by the Authority from DFA for the Concession Company's review and comment. The Authority shall provide the Concession Company with copies of any further design or technical information and submissions received by the Authority from DFA prepared in connection with the Pier 3 Duty Free America Agreement after the Date of this Agreement for the Concession Company's review and comment. Any such shared design or technical information or submissions shall be treated confidentially by the Concession Company and not be used for any purpose other than reviewing and providing comments to the Authority.

(b) The Concession Company may, no later than 10 days following receipt of each of the Pier 3 Duty Free America Agreement and any design or technical information and submissions, provide the Authority with its comments and suggested modifications to the design

or other technical requirements under the Pier 3 Duty Free America Agreement. Such comments and suggested modifications to such design or other technical requirements shall be limited to provisions of the same which, in the reasonable judgment of the Concession Company, (i) are materially inconsistent with the scope of the duty free works described in Schedule 13 or (ii) would otherwise materially adversely impact the Cruise Port Facility Operations, including in respect of design, safety or operational considerations. If the Authority agrees, acting reasonably, that the comments and suggested modifications of the Concession Company are limited to items (i) or (ii), and correct the scope of the duty free works or alleviate the material adverse impact, as the case may be, then the Authority shall use its Reasonable Efforts, in consultation with the Concession Company, to cause the DFA to agree to modify the applicable design or technical requirements as proposed by the Concession Company as aforesaid and shall permit the Concession Company to participate in discussions with DFA in respect of the same.

(c) Except as provided in Section 4.14(b), the Authority may only make modifications to the scope of the Pier 3 Duty Free America Agreement or design or other technical requirements thereunder in accordance with the terms of the Pier 3 Duty Free America Agreement, subject to the approval of the Concession Company, acting reasonably. Furthermore, the Authority shall not terminate, assign, amend, modify or agree to a waiver of the terms of the Pier 3 Duty Free America Agreement on the Date of this Agreement and before the Closing Date or before the assignment is completed at Closing, without the approval of the Concession Company, acting reasonably.

ARTICLE 5
MODIFICATIONS

Section 5.1 Agreed Modifications.

(a) Either the Authority or the Concession Company may propose a Modification. Promptly after any proposal of a Modification by the Authority or the Concession Company, the Concession Company shall prepare and deliver to the Authority a written statement setting forth (i) a description of the Modification and any services, obligations, rights or work related to the Modification, (ii) if applicable, a schedule for the implementation of the Modification, (iii) if applicable, a firm price for implementing the Modification and (iv) the impact the Modification would have on (A) Cruise Port Facility Operations, (B) related changes to the Operating Standards, if any, and increases or decreases to the forecasted cost of operation and maintenance of the Cruise Port Facility following completion of the Modification and (C) any other obligations of either Party under this Agreement related to the proposed Modification. The costs of preparing such written statement shall be borne by the Party proposing the Modification.

(b) If the Concession Company proposes a Modification (i) for which the Concession Company will bear the cost, (ii) that does not require (A) any Government Contributions or other contribution from the Authority or any other Governmental Authority or (B) any related changes to the Authority's obligations under this Agreement, (iii) that does not produce revenue not otherwise permitted under applicable Law or the terms of this Agreement as of the Date of this Agreement and (iv) that does not reduce the obligations of the Concession Company, or prejudice the rights of the Authority, under this Agreement, then, upon receipt by

the Authority of the Concession Company's written statement of the Modification, the Concession Company shall be entitled to implement the Modification, subject to any rights of any Cruise Line under the Preferential Berthing Agreements.

(c) For all Modifications proposed by the Concession Company not subject to Section 5.1(b), upon receipt by the Authority of the Concession Company's written statement of the Modification, and for all Modifications proposed by the Authority, the Authority and the Concession Company will negotiate in good faith to determine the following: (i) the final scope of the Modification and any work related to the Modification, (ii) if applicable, the contribution to the cost of implementing the Modification to be made by each of the Authority and the Concession Company including the availability of any Government Contribution, (iii) if applicable, the schedule for implementing the Modification and the Scheduled Completion Date for the Modification, (iv) if applicable with respect to Modifications proposed by the Authority, the compensation for any decrease in fees, charges or revenues from the Cruise Port Facility projected to be incurred during the implementation of the Modification to be paid to the Concession Company by the Authority, (v) any additional consideration or share of additional revenues (to the extent the Modification relates to revenues not otherwise permitted under applicable Law as of the Date of this Agreement) to be paid to the Authority following implementation of the Modification, (vi) related changes to the Operating Standards, if any, and (vii) any other related changes in the Parties' obligations under this Agreement (including any obligation to pay monies with respect to such Modification or any of the matters contemplated in this Section 5.1).

(d) If the Parties agree on the terms of the Modification in accordance with Section 5.1(c), they shall memorialize their agreements in a written document (an "Agreed Modification") that shall take effect when executed by the Parties or as otherwise agreed to by the Parties. Unless otherwise agreed by the Parties, all Modifications shall be implemented as provided in Section 4.1 through Section 4.11. To the extent applicable, an Agreed Modification shall provide for the receipt of all necessary Authorizations by the Concession Company as a condition precedent to the commencement of any such Modification.

Section 5.2 Required Modifications.

(a) If the Authority and the Concession Company cannot agree on the terms of a Modification proposed pursuant to Section 5.1, then the Authority shall have the right to require the Concession Company to implement the Modification under terms set forth by the Authority, and the Authority shall provide the Concession Company with Concession Compensation related thereto pursuant to Section 15.1(b) (a "Required Modification"); provided that the Concession Company shall not be required to commence any work related to the Required Modification, (i) if such Required Modification would have a Material Adverse Effect on the Concession Company Interest, the Cruise Port Facility, the Cruise Port Facility Operations or the Cruise Port Revenues and which would not be reasonably remedied through Concession Compensation or (ii) until (A) the Authority has provided to the Concession Company evidence reasonably satisfactory to the Concession Company of the Authority's ability to finance such Required Modification and, if the Concession Company has requested the Authority to advance funds necessary to implement the Required Modification, the Concession Company has received such funds from the Authority (provided that, for the avoidance of doubt, this obligation to

advance funds shall not apply to any Required Modification to be funded with Government Contributions), (B) the Concession Company (acting as the construction manager for the Authority for any Required Modification funded with Government Contributions) has obtained all Authorizations required to begin work on the Required Modification and the Concession Company (or the Authority in the case of any Required Modification funded with Government Contributions) has no reason to believe that other required Authorizations that cannot be obtained until a later date will not be obtained when needed and (C) the Concession Company and the Authority have agreed to the terms of the Required Modification (including, as applicable, the amount of Concession Compensation payable pursuant to this Section 5.2(a) and any additional consideration or share of additional revenues to be paid to the Authority following implementation of such Required Modification), or if not, the terms of the Required Modification and the amount of such Concession Compensation payable pursuant to this Section 5.2(a) (or additional Concession Fee, Annual Authority Revenue Share or other share of additional revenues to be paid to the Authority) have been resolved pursuant to Article 19. Any Concession Compensation provided pursuant to this Section 5.2 shall include any costs incurred by the Concession Company in connection with the preparation of the written statement described in Section 5.1 and shall be payable pursuant to Section 15.1(b). The Concession Compensation in respect of any Required Modification shall be in the form of monetary compensation or a Revenue Share Credit pursuant to Section 15.1(b) or Section 15.1(c), but shall not be compensated through the extension of the Term unless agreed by the Concession Company.

(b) If a Compensation Event necessitates a Modification, the Parties shall first proceed under this Article 5 to attempt in good faith to negotiate an Agreed Modification that resolves the effects of the Compensation Event. If the Parties are unable to agree on an Agreed Modification within 60 days (or such longer period of time as the Parties may agree), the Concession Company shall be entitled to complete the necessary Modification and receive Concession Compensation and shall not be required to pay additional consideration or to provide any other compensation related thereto. For the avoidance of doubt, a Modification implemented as provided in this Section 5.2(b) shall not constitute a Required Modification.

(c) If a Modification is reasonably required as a result of (i) the enactment of a new law or the modification, amendment or change in enforcement or interpretation of a law (including a change in the application by any Governmental Authority) after the Bid Date that does not constitute an Adverse Action, or (ii) any other event or circumstance that does not constitute a Compensation Event, including a Modification reasonably required in order for the Concession Company to perform its obligations under this Agreement (including the Operating Standards), the Parties shall first proceed under this Article 5 to attempt in good faith to negotiate an Agreed Modification that resolves the event or circumstance necessitating the Modification. If the Parties are unable to agree on an Agreed Modification within 60 days (or such longer period of time as the Parties may agree), the Concession Company shall, at its sole cost and expense, complete the Modification, and no change in the Annual Authority Revenue Share, the Incremental Authority Revenue Share, extension of the Term or increase in the Passenger Fee or any other fee or charge provided in Schedule 15 shall be made. For the avoidance of doubt, a Modification implemented as provided in this Section 5.2(c) shall not constitute a Required Modification.

Section 5.3 Implementation of Modifications. The Concession Company shall (a) ensure that any work or construction performed in connection with a Modification is performed in a good and workmanlike manner, (b) ensure the terms of an Agreed Modification or a Required Modification are diligently complied with and implemented in such manner that the costs and delays relating to a Modification are minimized and (c) with respect to any Required Modification, as directed by the Authority, and, with respect to Modifications to be funded with Government Contributions, as required by applicable Law, conduct a competitive process for the services of any Contractor to be engaged in connection with a Modification based on commercially reasonable criteria for contract award (including such Contractor's technical qualifications, bid price and relevant experience). Without limiting the generality of the foregoing, the Concession Company shall comply with applicable Law, Good Industry Practice and, to the extent not superseded by the terms of the relevant Agreed Modification or Required Modification, the provisions of the Operating Standards with respect to the manner in which Modifications are implemented.

Section 5.4 Certain Government Contributions Modifications. Notwithstanding anything in this Agreement to the contrary, without limiting Modifications that the Authority may propose pursuant to Section 5.1 or require pursuant to Section 5.2, or the election of the Authority following receipt of any Government Contributions Authorization as provided in Section 3.25(i) or Section 4.12(e), and regardless of whether the Expansion Investment Projects Trigger Event or the Phase Two Trigger Event, as applicable, has occurred, it is agreed that, subject to the applicable Government Contributions Authorization and to approval of applicable design documents by the Parties, which approval shall not be unreasonably withheld, conditioned or delayed, (a) the Authority may at any time propose pursuant to Section 5.1 or require pursuant to Section 5.2, as applicable (i) the demolition of buildings and other structures on Pier 1, Pier 13 and Pier 14, (ii) the installation of water, sewer and other utility lines on Pier 13 and Pier 14, (iii) the preparation of the site of Pier 13 and Pier 14 preliminary to the implementation of the Phase Two Projects and (iv) any other change to Pier 1, Pier 13 or Pier 14 which is consistent with Cruise Port Purposes, (b) no such change shall require Concession Compensation or any other compensation to the Concession Company, and any such change is hereby deemed not to have a Material Adverse Effect on the Concession Company Interest, the Cruise Port Facility, the Cruise Port Facility Operations or the Cruise Port Revenues, (c) the Concession Company shall reasonably cooperate with the Authority, including providing access to Pier 1, Pier 13 and Pier 14 (if applicable) and a construction laydown area on Pier 13 for construction work, at no cost to the Authority, and (d) the Authority and the Concession Company shall negotiate an adjustment to the Annual Authority Revenue Share pursuant to Section 12 of Schedule 15 in consideration of the funding of any such Modification with Government Contributions. For purposes of this Section 5.4 and the adjustment to the Annual Authority Revenue Share pursuant to Section 12 of Schedule 15, any change referred to in this Section 5.4 with respect to Pier 14 shall, at the election of the Authority made by the Authority giving written notice of such election to the Concession Company, be deemed to constitute a Modification, regardless of whether at the time of such election Pier 14 constitutes part of the Cruise Port Facility and the Concession.

ARTICLE 6
OPEN ACCESS REGIME AND OTHER OPERATING STANDARDS

Section 6.1 Compliance with Operating Standards. The Concession Company shall, and shall cause the Cruise Port Facility Operations to, comply with and implement the Operating Standards in all material respects at all times during the Term, including the Open Access Regime and any changes or modifications to the Open Access Regime or other Operating Standards made pursuant to the terms of this Agreement; *provided* that the Concession Company shall have a reasonable period of time (a) following the Closing Date to carry out changes to the operations of the Cruise Port Facility in order to cause the Cruise Port Facility to comply with the Operating Standards in effect as of the Closing Date, to the extent the Cruise Port Facility is not in compliance therewith as of the Closing Date (which period of time shall not exceed 180 days; *provided* that such 180-day period will be extended for a reasonable period of time for the Concession Company to cure such noncompliance (i) if such noncompliance cannot be cured within 180 days, (ii) if such noncompliance is susceptible to a cure and (iii) for long as the Concession Company is proceeding with diligence and in good faith to cure such noncompliance), and (b) from time to time to comply with the introduction of changes or modifications to the Operating Standards that are made in accordance with the terms of this Agreement (which period of time shall not exceed 90 days, except as otherwise may be provided in the revised Operating Standards; *provided* that such 90-day period will be extended for a reasonable period of time for the Concession Company to cure such noncompliance (i) if such noncompliance cannot be cured within 90 days, (ii) if such noncompliance is susceptible to a cure and (iii) for long as the Concession Company is proceeding with diligence and in good faith to cure such noncompliance). The Authority and the Concession Company acknowledge and agree that the Operating Standards shall be construed flexibly in light of their objectives. The Concession Company shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards. The Operating Standards shall not be deemed to be violated by occasional, isolated acts or omissions, including any occasional, isolated failure to comply with specific requirements set forth therein; *provided*, *however*, that any non-compliance by the Concession Company with any obligations of the Open Access Regime or other Operating Standards shall have the consequence set forth in Schedule 3 and Schedule 12, respectively. Without limiting the generality of the foregoing, except with regard to non-compliance by the Concession Company with any such obligation, any non-recurring failure to meet specific time limits, durations or frequencies set forth in the Operating Standards shall not constitute a violation; *provided* that the Concession Company is not deliberately violating or failing to comply with such requirements; and *provided* further that any such violation or failure is not inconsistent with procedures and immediate affirmative corrective steps that are reasonably designed to achieve, through the Concession Company's best efforts, compliance with the requirements set forth in the Operating Standards. Except as specifically set forth in this Agreement (including the Operating Standards), the Concession Company shall perform all work required to comply with and implement the Operating Standards as part of the Cruise Port Facility Operations and at its sole cost and expense. To the extent that any term or provision of the Operating Standards conflicts with any term or provision otherwise specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision in the Operating Standards.

Section 6.2 Modified Operating Standards.

(a) The Authority shall have the right, at any time during the Term, to modify or change the Operating Standards upon reasonable notice to the Concession Company to

comply with any Law issued, promulgated or otherwise enacted during the Term applicable to the Cruise Port Facility. In the event that the Authority modifies or changes the Operating Standards in accordance with the immediately preceding sentence, the Concession Company, at its cost and expense (subject to Article 14 in relation to Adverse Actions, where applicable), shall perform all work required to implement such modification or changes and shall comply with all such modifications or changes and in no event shall the Concession Company be excused from compliance with any such modification or change. For the avoidance of doubt, the Concession Company will have the right to challenge any modified Operating Standard pursuant to Article 19 on the basis that it does not meet the requirement set forth above.

(b) The Authority shall have the right, at any time during the Term, to propose a change to the Operating Standards upon reasonable notice to the Concession Company to conform the Operating Standards to standards or practices generally adopted at Comparable Cruise Ports. Promptly upon receipt of such proposed change, the Concession Company shall in good faith engage the Authority to determine whether such proposed change is necessary to satisfy the requirement set forth above in this Section 6.2(b). If the Concession Company does not agree that such proposed change is necessary to satisfy the requirement set forth above in this Section 6.2(b), the Concession Company shall provide prompt written notice of such disagreement to the Authority. Following the receipt by the Authority of such notice from the Concession Company, the Parties shall work together in good faith to resolve such disagreement, including by discussing alternative changes to the Operating Standards and examining the standards or practices generally adopted at Comparable Cruise Ports. If the Concession Company and the Authority are unable to resolve such disagreement, the matter may be submitted to dispute resolution under the provisions of Article 19.

(c) If, during the Term, the Authority is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.2(a) or Section 6.2(b), the Authority may upon reasonable notice to the Concession Company modify or change the Operating Standards; *provided, however*, that the Authority shall pay the Concession Compensation, if any, to the Concession Company with respect thereto at the time such modification or change is implemented. The Concession Company shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concession Company be excused from compliance with any such modification or change.

(d) If the Concession Company, at its cost and expense, wishes to modify the Operating Standards, the Concession Company must obtain the Approval of the Authority in accordance with the following:

(i) The Concession Company shall submit the proposed modifications to the Authority for Approval, together with an explanation of the Concession Company's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concession Company's proposed modifications are reasonably designed to achieve the objectives of the applicable Operating Standards. The Authority may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably

required to determine if the Concession Company's proposed modifications are reasonably designed to achieve the objectives of the applicable Operating Standards.

(ii) Approval of the Concession Company's proposed modifications may be withheld, delayed or conditioned only if there is a reasonable basis to determine that the Concession Company's proposed operating standards are not reasonably designed to achieve the objectives of the applicable Operating Standards. Until the modifications are Approved by the Authority, the Concession Company shall not implement the proposed modifications. The Concession Company's proposed modifications shall be deemed incorporated into the Operating Standards upon Approval by the Authority in accordance with the terms hereof. If the Authority refuses to Approve any proposed modifications and the Concession Company disagrees with such refusal, the Concession Company may submit the matter to dispute resolution under the provisions of Article 19.

(iii) Notwithstanding anything to the contrary, the Authority may not withhold, delay or condition the Approval of any proposed modification to the Operating Standards if the modification proposed by the Concession Company is necessary (A) to comply with any new Law or Governmental Authority directive or requirement applicable to the Cruise Port Facility or (B) in the event the proposed modification to the Operating Standards is required directly as a result of COVID-19, to comply with procedures that are considered Good Industry Practice under the circumstances (provided that such procedures comply with applicable Law and are implemented for such appropriate period of time as the Authority and the Concession Company jointly determine, acting reasonably); *provided* that the Authority reserves the right to contest any such proposed modification to the extent that the Authority reasonably believes that such proposed modification is not reasonably designed to achieve the objective of compliance with any such new Law or Governmental Authority directive or requirement or COVID-19 circumstance applicable to the Cruise Port Facility. Any such contest shall be asserted by the Authority by giving the Concession Company prompt notice thereof. Following the receipt by the Concession Company of such notice, the Concession Company and the Authority shall work together in good faith to resolve such contest. If the Concession Company and the Authority are unable to resolve such contest, the matter may be submitted to dispute resolution under the provisions of Article 19. The Concession Company may not implement (or continue to implement) any proposed modification to the Operating Standards while it works in good faith with the Authority to resolve any contest regarding the implementation of such modification.

ARTICLE 7
CRUISE PORT FEES AND REVENUES

Section 7.1 Generally. The Concession Company shall, at all times during the Term, have the right to establish, collect, retain and enforce payment of all Cruise Port Revenues for use of or in connection with the Cruise Port Facility and Cruise Pier Buildings as set forth in Schedule 15 and to the fullest extent permitted by Section 10(c) of the Act, subject to and in accordance with all applicable requirements of Law and the terms and conditions of Schedule 15 and any applicable Assigned Port Facility Contract or Preferential Berthing Agreement.

ARTICLE 8
REPORTING; AUDITS; INSPECTIONS

Section 8.1 Reports.

(a) *Incident Management and Notifications*. The Concession Company shall promptly notify the Authority of all material emergencies upon receiving knowledge thereof, promptly notify the Authority of all material accidents and incidents occurring on or at the Cruise Port Facility within 24 hours of receiving knowledge of the occurrence of such material accident or incident and promptly notify the Authority of all material claims made by or against the Concession Company of which the Concession Company has knowledge, or potential material claims that the Concession Company reasonably expects to make against, or to be made against it by, third parties.

(b) *Environmental Incident Management and Notifications*. Upon receiving knowledge thereof, the Concession Company shall promptly report to the Authority, on a per occurrence basis, the discharge, dumping, spilling (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances and the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and the remedial action taken or to be taken. Notice of any such incident, if initially delivered orally, shall be delivered in writing promptly following the Concession Company's knowledge of such incident. This reporting obligation shall be in addition to any other reporting obligation under Environmental Laws.

(c) *Financial Reports*. Until the End Date, the Concession Company, at its sole cost and expense, shall deliver to the Authority (i) within 60 days after the end of each six-month period following the first day of each Reporting Year, a copy of the unaudited balance sheets of the Concession Company at the end of each such six-month period and the related unaudited statements of income, changes in equity and cash flows for such six-month period, in a manner and containing information consistent with the Concession Company's current practices and (ii) within 120 days after the end of each Reporting Year a copy of the audited balance sheets of the Concession Company at the end of each such Reporting Year, and the related audited statements of income, changes in equity and cash flows for such Reporting Year, including in each case all Cruise Port Revenues and the notes to all such statements and sheets, in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States and certified by the Concession Company's chief financial officer that such financial statements fairly present, in all material respects, the financial condition and the results of operations, changes in equity and cash flows of the Concession Company as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied; *provided* that any interim financial statements shall be subject to year-end adjustments. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. In addition to the foregoing, together with the financial statements identified in clause (ii) of this Section 8.1(c), the Concession Company shall provide an opinion thereon of an independent public accountant of national stature in the United States of America engaged by the Concession Company.

Section 8.2 Information.

(a) *Information; Inspection*. At the request of the Authority or any other Governmental Authority of competent jurisdiction (each, an "Authorized Auditor"), the Concession Company shall (at the sole cost and expense of the Concession Company and at all reasonable times during the Term) (i) make available or cause to be made available (and, if requested by such Authorized Auditor, furnish or cause to be furnished) to such Authorized Auditor all Information related to this Agreement or the Cruise Port Facility as may be specified in such request and as shall be in the possession or control of the Concession Company or its Representatives, (ii) permit such Authorized Auditor, after having provided 10 Business Days' prior notice to the Concession Company (which notice shall identify the persons such Authorized Auditor requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview; *provided, however*, that in the case of investigations of possible criminal conduct or violations of regulations promulgated by the Authority or another Governmental Authority no prior notice shall be required by such Authorized Auditor), to discuss the obligations of the Concession Company under this Agreement with any of the directors, chief executive officer and chief financial officer of the Concession Company and its Representatives, for the purpose of enabling such Authorized Auditor to determine whether the Concession Company is in compliance with this Agreement and applicable Law, and (iii) cooperate with the Authority, the Puerto Rico Public-Private Partnerships Authority and any Authorized Auditor in connection with the preparation and submittal of annual reports with respect to this Agreement to the Governor, the Legislative Assembly of Puerto Rico, and the Comptroller of Puerto Rico in compliance with Act No. 136-2003, as amended.

(b) *Confidentiality*. Unless disclosure is required by applicable Law, the Authority shall keep confidential any Information obtained from the Concession Company or its Representatives that (i) constitutes trade secrets or commercial or financial information (A) where the trade secret or commercial or financial information are proprietary, privileged or confidential or (B) where the disclosure of the trade secrets or commercial or financial information may cause competitive harm and (ii) is designated as confidential by the Concession Company in writing to the Authority. In the event that the Concession Company requests the Authority to defend an action seeking the disclosure of Information that the Authority determines to be confidential pursuant to this Section 8.2(b), the Concession Company shall reimburse the Authority for the reasonable costs and expenses incurred by the Authority in defending such action. This Section 8.2(b) shall not apply to any Information that (w) is already in the possession of the Authority; *provided* that such information is not known by the Authority to be subject to another confidentiality agreement with or other obligation of secrecy to the Concession Company or another party; (x) becomes generally available to the public other than as a result of a disclosure by the Authority or their Representatives in violation of the terms of this Section 8.2(b); (y) becomes available to the Authority on a non-confidential basis from a source other than the Concession Company or its advisors, *provided* that such source is not known by the Authority to be bound by a confidentiality agreement with or other obligation of secrecy to the Concession Company or another party or (z) is independently developed by the Authority or its Representatives.

Section 8.3 Inspection, Audit and Review Rights of the Authority.

(a) *Audit Right*. In addition to the rights set out in Section 8.1, any Authorized Auditor may, at all reasonable times, upon 48 hours' prior notice, or may cause a Representative designated by it to, carry out subject to Section 8.2(b) (i) an Audit of the Information required to be maintained or delivered by the Concession Company under this Agreement in connection with the performance of the Cruise Port Facility Operations for the purpose of verifying the information contained therein; and (ii) any Audit required by the Act. The Concession Company, at the cost and expense of the Concession Company, shall, at reasonable times, make available or cause to be made available to such Authorized Auditor or its designated Representative such reasonable information and material as may reasonably be required by such Authorized Auditor or its designated Representative for purposes of such Audit and otherwise provide such cooperation as may reasonably be required by such Authorized Auditor in connection with the same. Such Authorized Auditor shall be entitled to make copies of the Information related to the conduct of such Audit and to take extracts therefrom at such Authorized Auditor's expense, subject to the terms of Section 8.2(b) regarding confidentiality of Information.

(b) *Inspection Right*. Each Authorized Auditor and its Representatives shall, at all times, have access to the Cruise Port Facility and every part thereof and the Concession Company, at the reasonable cost and expense of the Concession Company, shall, and shall cause its Representatives to, furnish each Authorized Auditor with every reasonable assistance for inspecting the Cruise Port Facility and the Cruise Port Facility Operations for the purpose of Auditing the Information or ascertaining compliance with this Agreement.

(c) *Tests*. Any Authorized Auditor and its Representatives shall, with the prior consent of the Concession Company be entitled, at the sole cost and expense of such Authorized Auditor, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Cruise Port Facility or the Cruise Port Facility Operations as such Authorized Auditor may determine to be reasonably necessary in the circumstances; and the Concession Company, at the cost and expense of the Concession Company, shall, and shall cause its Representatives to, furnish such Authorized Auditor or its Representatives with every reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations. In connection with the foregoing, such Authorized Auditor and its Representatives shall, with the prior consent of the Concession Company, be entitled to install machines, equipment, systems, monitors, counters and other devices in, on, under, over or adjacent to the Cruise Port Facility to permit and facilitate any test, study, monitor, review or investigation of or relating to the Cruise Port Facility Operations to the extent that the same does not materially interfere with the Cruise Port Facility Operations or damage the Cruise Port Facility.

(d) *No Waiver*. Failure by any Authorized Auditor or any of its Representatives to inspect, review or Audit the Concession Company's responsibilities under this Agreement or any part thereof or the Information, shall not constitute a waiver of any of the rights of any Authorized Auditor hereunder or any of the obligations or liabilities of the Concession Company hereunder. Inspection, review or Audit not followed by a notice of Concession Company Default shall not constitute a waiver of any Concession Company Default

or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(e) *No Undue Interference*. In the course of performing its inspections, reviews and Audits hereunder, each Authorized Auditor shall use its Reasonable Efforts, except as necessary in the case of the Authority when performing investigations of possible criminal conduct, to avoid (and to cause any auditor appointed pursuant to Section 8.2(a) or Section 8.3(a) to avoid) any disruption to the Cruise Port Facility Operations or the Concession Company's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews and Audits being performed.

Section 8.4 Audits, Assistance, Inspections and Approvals. Wherever in this Agreement reference is made to any Authorized Auditor or its Representatives providing assistance, services, Approvals or Consents to or on behalf of the Concession Company or its Representatives or to any Authorized Auditor or its Representatives performing an Audit or inspecting, reviewing or examining the Cruise Port Facility, the Cruise Port Facility Operations or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concession Company or its Representatives, such undertaking by such Authorized Auditor or its Representatives shall not relieve or exempt the Concession Company from, or represent a waiver of, any requirement, liability, Concession Company Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on any Authorized Auditor or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

Section 8.5 Reimbursement of Costs. Except as otherwise provided herein, the Concession Company shall reimburse each Authorized Auditor for all documented costs and expenses reasonably incurred by such Authorized Auditor during the Term (including employment costs and related overhead expenses allocable thereto, as reasonably determined by such Authorized Auditor based on the time expensed by the employees who tender such services to the Authorized Auditor) in monitoring the Cruise Port Facility Operations and the Concession Company's compliance with its obligations and duties hereunder (including any Audits, tests, reviews or exams of the Cruise Port Facility, the Cruise Port Facility Operations (or any part thereof), any information or the proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concession Company or its Representatives required or permitted to be provided or undertaken hereunder); *provided, however*, that the aggregate amount payable by the Concession Company pursuant to this Section 8.5, and any other provision set forth in this Agreement that requires the Concession Company to reimburse such Authorized Auditor for costs and expenses incurred in connection with the matters set forth in this Agreement (including Section 8.3(b), but excluding payments described in Section 3.7(a)(ii) and (iii), Section 3.16(d)(v), and Section 8.2(b)) shall not exceed $250,000 per calendar year, Adjusted for Inflation (and, for the avoidance of doubt, shall not include the obligations of the Concession Company under Article 12).

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

Section 9.1 Representations and Warranties of the Authority. The Authority makes the following representations and warranties to the Concession Company, and the Authority acknowledges that the Concession Company and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization.* The Authority is an instrumentality of the Commonwealth.

(b) *Power and Authority*. The Authority has the power and authority to enter into this 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 it in accordance with the terms hereof.

(c) *Enforceability*. This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof, subject only to (i) the effect of a Proceeding, or other similar requirements of Law and judicial decisions now or hereafter in effect generally affecting the enforcement of creditors' rights and remedies and (ii) the effect of requirements of Law governing equitable remedies and defenses and the discretion of any court of competent jurisdiction in awarding equitable remedies.

(d) *Title*. As of the Time of Closing, the Authority has good and sufficient title to and/or sufficient rights to grant to the Concession Company the rights described in Section 2.1 with respect to the Cruise Port Facility and the Cruise Port Facility Assets, subject only to Permitted Authority Encumbrances, Permitted Concession Company Encumbrances created, incurred, assumed or suffered to exist by the Concession Company or any Person claiming through it (other than the Permitted Concession Company Encumbrances specified in clause (ix) of the definition of the term "Permitted Concession Company Encumbrances") and any recorded or unrecorded restrictions, exceptions, easements, rights-of-way, reservations, limitations and interests that do not have a material adverse effect on the Concession Company's ability to operate the Cruise Port Facility. Subject to any and all Permitted Authority Encumbrances, Permitted Concession Company Encumbrances created, incurred, assumed or suffered to exist by the Concession Company or any Person claiming through it (other than the Permitted Concession Company Encumbrances specified in clause (ix) of the definition of the term "Permitted Concession Company Encumbrances") and any recorded or unrecorded restrictions, exceptions, easements, rights-of-way, reservations, limitations and interests that do not have a material adverse effect on the Concession Company's ability to operate the Cruise Port Facility, at the Time of Closing there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Authority to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the Cruise Port Facility or the Cruise Port Facility Assets or any material portion thereof. The recorded or unrecorded restrictions, exceptions, easements, rights-of-way, reservations, limitations, interests and other matters that affect title to the Cruise Port Facility or the Cruise Port Facility Assets (or any portion thereof) do not materially adversely affect the Concession

Company's ability to operate the Cruise Port Facility in accordance with the terms hereof. Following the Authority's satisfaction of the condition set forth in Section 2.4(a)(iii), no obligation of the Authority or other Governmental Authority of the Commonwealth will be secured by any interest in the Cruise Port Facility (or any revenues generated therefrom) or the Cruise Port Facility Assets and no Person will have any claim or right to, or interest in, any income, profits, grants, rents or revenue derived from or generated with respect to the Cruise Port Facility (other than the Concession Company under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concession Company).

(e) *No Conflicts*. The execution and delivery of this Agreement by the Authority, the consummation of the transactions contemplated hereby (including the operation of the Cruise Port Facility in accordance with the terms of this Agreement) and the performance by the Authority of the terms, conditions and provisions hereof do not and/or will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Authority or give rise to a right of termination, cancellation or augmentation of any obligation or loss of a material benefit under or result in the creation of any material Encumbrance (other than a Permitted Authority Encumbrance) under (i) any applicable Law or (ii) any agreement, instrument or document to which the Authority is a party or by which the Authority is bound.

(f) *Consents*. Except for (i) the prescription period notice required to be delivered pursuant to Section 2.5(m), (ii) the filing required pursuant to Section 2.4(a)(vii), (iii) the Authorization of FOMB required pursuant to Section 2.4(a)(xi), (iv) the release or authorization of the FAA required pursuant to Section 2.4(c)(iii)(A) and (v) if applicable, the satisfaction of one of the occurrences required pursuant to Section 2.4(c)(iii)(B), each of which shall be received or satisfied by the Time of Closing, 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 Governmental Authority) in connection with the execution, delivery and performance by the Authority of this Agreement or the consummation of the transactions contemplated hereby.

(g) *Compliance with Law; Litigation*. The Authority has operated and is operating the Cruise Port Facility in compliance, in all material respects, with all applicable Laws and the Authority is not in material breach of any applicable Law; *provided, however*, that the foregoing representations of the Authority are qualified in their entirety by the COVID-19 Adverse Effect. Except for those matters disclosed on Schedule 4, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Authority's knowledge, threatened against the Cruise Port Facility, the Cruise Port Facility Assets, or the Authority or any agency thereof in respect of the Cruise Port Facility prior to or at the Time of Closing, which (i) would reasonably be expected to have a Material Adverse Effect on the operations of the Cruise Port Facility or (ii) would affect the power of the Authority to enter into this Agreement or the validity or enforceability of this Agreement or the transactions contemplated hereby. The Authority has complied with all applicable Laws related to the negotiation, authorization and execution of this Agreement.

(h) *Environmental Matters*. The Authority has made available to the Concession Company the reports listed in Appendix O of Schedule 13, which are the reports

readily available in records of the Authority as of the Date of this Agreement relating to material Releases of Hazardous Substances originating from the Cruise Port Facility ("Environmental Reports"), and, to the best knowledge of the Executive Director after reasonable inquiry, except as disclosed in the Environmental Reports and during the period commencing on the start of the period covered in such Environmental Reports to the date on which this representation and warranty is given in accordance with Section 2.4(a)(i), there have been no material Releases of Hazardous Substances originating from the Cruise Port Facility, excluding (for the avoidance of doubt) Releases of Hazardous Substances from vessels of any size or type.

(i) *Cruise Port Facility Contracts*.

(i) Each Cruise Port Facility Contract has been made available for review by the Concession Company and, to the extent not constituting an Assigned Port Facility Contract or Preferential Berthing Agreement, has been terminated on or prior to the Closing Date; *provided, however*, that the Pier 3 EPIC Repairs Contract shall be dealt with as provided in Section 4.14. As of the Date of this Agreement, each Cruise Port Facility Contract is valid and is in full force and effect, and as of the Closing Date, each Assigned Port Facility Contract is valid and in full force and effect, any consent required to assign such Assigned Port Facility Contract has been obtained, neither party to any Assigned Port Facility Contract is in default or breach thereof, and the rights and obligations of the Authority under the Preferential Berthing Agreements shall be performed by the Concession Company as provided in Schedule 2. Other than the Pier 3 EPIC Repairs Contract as provided in Section 4.14, the Cruise Port Facility Contracts are all of the material contracts and agreements (A) to which the Authority is a party that relate to the Cruise Port Facility Operations, (B) that bind the Cruise Port Facility or (C) that are necessary for provision of utilities or other third-party services for the continued operation of the Cruise Port Facility by the Concession Company immediately following the Time of Closing, except that the Cruise Port Facility Contracts do not include those immaterial contracts and agreements which do not constitute Assumed Liabilities and to which the Authority is a party involving the provision of goods and services in the ordinary course of business that are used in connection with the Cruise Port Facility as well as by various other Authority departments, none of which will be applicable or binding on the Concession Company, and all of which will be terminated at or prior to the Closing Date (at least as they relate to the Cruise Port Facility).

(ii) The Authority has provided true and complete copies of each of the Cruise Port Facility Contracts listed on Section 1 of Schedule 2, each of which shall be an Assigned Port Facility Contract, and the Preferential Berthing Agreements. As of the Date of this Agreement, there are no contracts pursuant to which a counterparty to such contract is claiming exclusivity rights or preferential rights with respect to the Cruise Piers, except for those contracts set forth in Section 1 of Schedule 2 and the Preferential Berthing Agreements. From and after the Bid Date, unless otherwise agreed to or consented by the Concession Company, the Authority has not entered into any amendments, supplements, side agreements or other understandings with the counterparties to those Cruise Port Facility Contracts listed on Section 1 of Schedule 2 or the Preferential Berthing Agreements.

(j) *Insurance Policies*. All insurance policies in effect as of the Bid Date are in full force and effect and shall continue in full force and effect until the Time of Closing.

(k) *Brokers*. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Authority who might be entitled to any fee or commission from the Authority in connection with the transactions contemplated by this Agreement.

(l) *Accuracy of Information*. To the knowledge of the Authority, the factual and past historical information regarding the Cruise Port Facility and the Cruise Port Facility Operations that the Authority provided to the Concession Company in the virtual data room for this transaction at https://www.imprimarooms.net was complete and accurate in all material respects at the time such information was provided. As of the Time of Closing, the Authority does not have actual knowledge of any material misstatement in respect of any such information as of the time such information was provided. The Authority makes no additional representation or warranty with respect to such information.

(m) *Operation of the Cruise Port Facility*. Since the Bid Date (unless another date is specified), the Authority (i) has caused the Cruise Port Facility to be operated in the ordinary course in a manner consistent with past practice, (ii) has used all Reasonable Efforts to preserve the goodwill of the Cruise Port Facility and to maintain good business relationships with the Cruise Lines and others having business dealings with the Authority in connection with the Cruise Port Facility, (iii) has performed (or caused to be performed) in all material respects all of the Authority's obligations under the Cruise Port Facility Contracts, (iv) other than the Pier 3 EPIC Repairs Contract and the Pier 3 EPIC Repairs Project Management Contract, has not entered into any material contracts relating to the Cruise Port Facility or the Cruise Port Facility Operations unless such contracts are terminable by the Concession Company on the Closing Date (at no cost to the Concession Company) or have been approved or consented to in writing by the Concession Company prior to the execution thereof, (v) has not terminated, assigned, amended, modified, or agreed to a waiver (which individually or in the aggregate has had a Material Adverse Effect) of, the terms of any material Assigned Port Facility Contract or Preferential Berthing Agreement after the Bid Date and before the Time of Closing (or in the case of any material Assigned Port Facility Contract that has not been assigned or transferred to the Concession Company as contemplated herein, before such assignment or transfer is completed) and (vi) has caused the Cruise Port Facility to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all with the purpose that the Cruise Port Facility as a going concern shall be unimpaired at the Closing in a condition substantially similar to the condition as of the Bid Date; *provided, however*, that the foregoing representations of the Authority are qualified in their entirety by the COVID-19 Adverse Effect and *provided, further*, that such qualification excludes any negligence or intentional misconduct of the Authority and any failure of the Authority to use its Reasonable Efforts to minimize the effect and duration of the COVID-19 Adverse Effect.

(n) *Public Private Partnerships Act*. The Legislative Assembly of Puerto Rico has duly enacted into law the Act, which remains in full force and effect. As of the Date of this Agreement, the Act (i) authorizes the Authority to enter into this Agreement and grant the Concession, and (ii) provides that the Concession Company shall have the authority to establish charges and fees in connection with the Cruise Port Facility, pursuant to this Agreement. This

Agreement is a "Partnership Contract" under the Act and a Concession, and as such, is recordable under Title X of the P.R. Mortgage and Property Registry Law.

(o) *Material Adverse Effect*. Since the Bid Date, through and including the Closing Date, other than the COVID-19 Adverse Effect, no transaction or occurrence has taken place that has resulted or is reasonably likely to result in a Material Adverse Effect. For the avoidance of doubt, it is agreed by the Parties that the construction of the Pier 3 Duty Free Building, including any extension granted by the Authority to the beginning of the construction period for the Pier 3 Duty Free Building, does not result in a Material Adverse Effect.

(p) *Financial Statements*. The audited financial statements of the Authority, dated as of June 30, 2017, 2016 and 2015, fairly present in all material respects the financial position and results of operations of the Authority as of the date and for the periods stated in such financial statements in accordance with generally accepted accounting principles, as applied to governmental units. The Authority has not, since June 20, 2017, created or incurred, any Indebtedness, except in accordance with the provisions of PROMESA, including Section 207 of PROMESA.

Section 9.2 Representations and Warranties of the Concession Company. The Concession Company makes the following representations and warranties to the Authority, and the Concession Company acknowledges that the Authority and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization*. The Concession Company is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to conduct business in the Commonwealth. Except as disclosed in the written certification that the Concession Company delivered to the Authority on or prior to that date which is no less than ten (10) days prior to the Date of this Agreement, no Person owns, directly or indirectly, 10% or more of the capital stock, units, partnership or membership interests and other equity interests or securities of the Concession Company (including options, warrants and other rights to acquire any such equity interests).

(b) *Power and Authority*. The Concession Company has the power and authority to enter into this 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 it in accordance with the terms hereof.

(c) *Enforceability*. This Agreement has been duly authorized, executed and delivered by the Concession Company and constitutes a valid and legally binding obligation of the Concession Company, enforceable against it in accordance with the terms hereof, subject only to (i) the effect of Proceeding or other similar requirements of Law and judicial decisions now or hereafter in effect generally affecting the enforcement of creditors' rights and remedies and (ii) the effect of requirements of Law governing equitable remedies and defenses and the discretion of any court of competent jurisdiction in awarding equitable remedies.

(d) *No Conflicts*. The execution and delivery of this Agreement by the Concession Company, the consummation of the transactions contemplated hereby and the

performance by the Concession Company 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 Concession Company under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concession Company or any Equity Participant is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concession Company and each of the Equity Participants.

(e) *Consents; Authorizations*. Except as set forth in Section 2.4(c), no Consent or Authorization is required to be obtained by the Concession Company or any Equity Participant from, and no notice or filing is required to be given by the Concession Company or any Equity Participant to or made by the Concession Company or any Equity Participant with, any Person (including any Governmental Authority) in connection with the execution and delivery by the Concession Company of this 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 Date of this Agreement or such other Consents that are not required to be obtained as at the Date of this Agreement and are expected to be obtainable following the Date of this Agreement.

(f) *Compliance with Law; Litigation*. The Concession Company is not in breach of any applicable Law that could reasonably be expected to have a material adverse effect on the ability of the Concession Company to comply with its obligations under this Agreement. Neither the Concession Company nor any Affiliate of the Concession Company is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, or any other list of Persons with which the Authority may not do business under applicable Law. Furthermore, the Concession Company, the Equity Participants and each Person controlled by the Equity Participants will not engage, or be deemed pursuant to Sanction Laws to engage, in any activity that would cause the Authority or the Concession Company or their respective personnel to be in violation of the Puerto Rico Executive Order No. 2022-018 or the United States sanctions and export control laws, regulations or orders, including those issued pursuant to Executive Order 14024 and 31 CFR Part 587, Russian Harmful Foreign Activities Sanctions Regulations (collectively, the "Sanction Laws"), based on any action or inaction of the Concession Company, the Equity Participants or any Person controlled by the Equity Participants. The Concession Company shall not, and will cause the Equity Participants and each Person controlled by the Equity Participants to not, engage in any transaction or dealing that would cause the Authority to be in violation of any such laws, regulations or orders. Neither the Concession Company nor the Equity Participants or any Person controlled by the Equity Participants is 50% or more owned, nor is it controlled, individually or in the aggregate, by an entity or individual that is on, or otherwise blocked pursuant to, the Specially Designated Nationals and Blocked Persons (SDN) List of the United States of America, or any equivalent list of sanctioned or blocked parties designation in any other jurisdiction, including in the European Union or the United Kingdom, nor will it be during the Term. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concession Company's knowledge, threatened against the Concession Company or any Equity Participant that (i) would

reasonably be expected to have a material adverse effect on the transactions contemplated by this Agreement or the Concession Company's ability to operate the Cruise Port Facility or (ii) would affect the validity or enforceability of this Agreement.

(g) *Accuracy of Information*. To the knowledge of the Concession Company following due inquiry, all of the information relating to the Concession Company or any Equity Participant delivered by or on behalf of the Concession Company to the Authority in connection with the execution of this Agreement was true, accurate and correct in all material respects when delivered. At the Time of Closing, the Concession Company does not have actual knowledge of any material misstatement in respect of any such information. The Concession Company makes no additional representation or warranty with respect to such information.

(h) *Brokers*. Except for any broker or advisor whose fees will be paid by the Concession Company, any Equity Participant or any of their respective Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concession Company, any Equity Participant or any of their respective Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(i) *Foreign Corrupt Practices Act*. To the Concession Company's knowledge, (i) no Governmental Authority in the United States has notified the Concession Company in writing of any actual or alleged violation or breach by the Concession Company of the Foreign Corrupt Practices Act, (ii) the Concession Company has not undergone nor is undergoing any audit, review, inspection, investigation, survey or examination of records relating to compliance with the Foreign Corrupt Practices Act, (iii) the Concession Company has not been and is not now under any administrative, civil or criminal investigation or indictment and is not party to any litigation involving alleged false statements, false claims or other improprieties relating to the Concession Company's compliance with the Foreign Corrupt Practices Act, nor is there any basis for such an investigation or indictment and (iv) there are no situations with respect to the business of the Concession Company that involved or involves (w) the illegal use of any corporate funds or unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (x) the making of any direct or indirect unlawful payments to government officials or others from corporate funds or the establishment or maintenance of any unlawful unrecorded funds to be used for such purposes, (y) the violation of any of the provisions of the Foreign Corrupt Practices Act (or any rules or regulations promulgated thereunder) that apply to the Concession Company or (z) the receipt of any illegal discounts or rebates or any other violation of United States antitrust laws.

(j) *Code of Ethics*. The Concession Company acknowledges, represents and warrants that no official or employee of the Authority has a direct or indirect economic interest in the Concession Company's rights under this Agreement in accordance with the provisions of Title III of Act No. 2-2018, also known as the Code of Ethics for Contractors Suppliers and Applicants for Economic Incentives of the Government of Puerto Rico (the "Code of Ethics"), which Code of Ethics the Concession Company herein certifies it has received a copy of, read, understood and complied with at all times previous to the execution of this Agreement and will subsequently comply with it in its entirety.

(k) *Criminal Proceedings.*

(i) The Concession Company warrants and certifies that as of the Date of this Agreement and for the preceding 20 years, (i) neither it, nor any of its president, vice presidents, executive director, directors, members of its board of directors (or any person that holds a position with the Concession Company functionally equivalent to any of the foregoing), nor any of its subsidiaries (each a "Covered Party"), nor any of its Equity Participants, has been convicted, has entered a plea of guilty or *nolo contendere* or has been indicted in any criminal procedure in any State, Commonwealth or federal court or in any foreign country for criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property, or for the felonies or misdemeanors mentioned in Act No. 2-2018, as amended, and (ii) each Covered Party is complying and shall continue to comply at all times with laws that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to the Concession Company under State, Commonwealth or federal Law, including the Foreign Corrupt Practices Act. If a Covered Party after the Date of this Agreement becomes indicted or convicted in a criminal procedure for any type of offense described in this Section 9.2(k), the Concession Company shall immediately notify the Authority thereof in writing as required by Act No. 2-2018, as amended.

(ii) Neither the Concession Company nor, to the knowledge of the Concession Company, any of its officers, directors or Equity Participants has been convicted of offenses against public integrity, as defined in the P.R. Penal Code, or of embezzlement of public funds, and neither the Concession Company nor any of its officers, directors or Equity Participants has been found guilty of any such type of offense in the Courts of the Commonwealth of Puerto Rico, the federal courts or any court of any jurisdiction of the United States of America.

(l) *Representation in FOMB Certification.* The information included in the Contractor Certification Requirement, as included in Appendix C of the FOMB's Contract Submission Questionnaire dated May 10, 2022 (the "Certification"), completed by the Concession Company, is complete, accurate and correct. Without limiting the foregoing in any respect, the Concession Company acknowledges and agrees that the Authority, in consultation with the FOMB, shall have the right to declare this Agreement null and void in the event of any misrepresentation, inaccuracy, or falseness with respect to a material fact in the Certification. In addition, the Authority, after disclosure to and consultation with the FOMB, may provide in its discretion an opportunity to the Concession Company to attempt to cure such misrepresentation, inaccuracy, or falseness and the Authority, after disclosure to and consultation with the FOMB, shall have the discretion to determine whether any such cure is acceptable. In the event that the Authority declares this Agreement null and void in accordance with the foregoing, the Concession Company shall have the obligation to reimburse immediately to the Authority or the Commonwealth, as applicable, any amounts, payments or benefits received from the Authority or the Commonwealth under this Agreement. The obligation to reimburse any amounts, payments, or benefits received from the Authority or the Commonwealth under this Agreement shall not include any amounts received by the Concession Company as Government Contributions which the Concession Company has proven were utilised in connection with the Cruise Pier Improvement Projects.

Section 9.3 Tax Filings.

(a) The Concession Company for itself and each of its Equity Participants (if the Concession Company is a partnership under the P.R. Revenue Code) represents that as of the Date of this Agreement (i) neither it nor any of its Equity Participants has any outstanding debts for unemployment insurance, temporary disability (workmen's compensation), chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, income taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center or (ii) it or its Equity Participants have a payment plan in place with respect to any outstanding debt for the foregoing items and have complied therewith.

(b) The Concession Company acknowledges and agrees that it shall obtain and deliver to the Authority, in each case dated not earlier than 60 days prior to the Closing Date, the following:

(i) A certification of filing of income tax returns, issued by the Internal Revenue Division of the Department of Treasury of the Commonwealth or a certification by the Concession Company and each of its Equity Participants (if the Concession Company is a partnership under the P.R. Revenue Code) that as of the Date of this Agreement it does not have and has not had to submit income tax returns and pay taxes in the Commonwealth during the past five years.

(ii) A "no taxes debt due" certificate, or payment plan and compliance therewith, issued by the Internal Revenue Division of the Department of Treasury of the Commonwealth.

(iii) A certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the Municipal Revenues Collection Center.

(iv) A certificate of no debt, or payment plan and compliance therewith, for unemployment insurance, temporary disability (workmen's compensation) and chauffeur's social security issued by the Department of Labor and Human Resources of the Commonwealth.

Section 9.4 Non-Waiver. No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

Section 9.5 Survival.

(a) *Authority's Representations and Warranties*. The representations and warranties of the Authority contained in Section 9.1 shall survive and continue in full force and effect for the benefit of the Concession Company as follows: (i) as to the representations and

warranties contained in Section 9.1(a) through Section 9.1(h), inclusive, and Section 9.1(n) without time limit and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim under Section 12.2 shall have been given, in writing in accordance with Section 20.1, prior to the expiry of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; *provided* such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) *Concession Company's Representations and Warranties.* The representations and warranties of the Concession Company contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the Authority as follows: (i) as to the representations and warranties contained in Section 9.2(a) through Section 9.2(f), inclusive, and Section 9.2(l), without time limit and (ii) as to all other matters, but without limiting the express obligation included in the last sentence of Section 9.2(k)(i), for a period of 24 months following the Closing Date unless a bona fide notice of a Claim under Section 12.2 shall have been given, in writing in accordance with Section 20.1, prior to the expiry of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; *provided* such determination or settlement is being pursued diligently and in good faith by the applicable Party. .

ARTICLE 10
FINANCE OBLIGATIONS

Section 10.1 Concession Company's Obligations. Except in those instances in which the Authority is required to provide the funding of costs and expenses under Section 2.5(i)(i) or related to Required Modifications as contemplated by Section 5.2, or unless the Authority first elects to utilize Government Contributions for (a) the Pier 4 Reconstruction, the Pan American Piers Wharf Structure Project, the Expansion Investment Projects or the Phase Two Projects under Section 4.12 or Section 4.13, as applicable, (b) the Additional Cruise Port Facilities Projects under Section 3.18 or (c) capital projects under Section 10.5, the Concession Company shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement. With regard to any Cruise Pier Improvements Project or Modification constituting a capital improvement project the Concession Company's responsibility for obtaining financing shall consist of the Concession Company's use of Reasonable Efforts to obtain a binding commitment from Institutional Lenders for the issuance of Concession Mortgage Debt on the terms set forth in Schedule 13 and in an amount sufficient to pay the applicable Cruise Pier Improvement Projects Cost and to cause the issuance of such Concession Mortgage Debt; *provided, however*, that the Concession Company's obligation for providing financing for the Initial Investment Projects shall not be limited by its use of Reasonable Efforts. For the avoidance of doubt, the use of Reasonable Efforts by the Concession Company to obtain financing as provided above shall only apply to obtaining financing for the construction of any Cruise Pier Improvements Project or Modification constituting a capital improvement (other than the Initial Investment Projects), and shall not apply to obtaining financing for any other purpose under this Agreement, including the payment of costs relating to the operation, maintenance, repair and replacement of the Cruise Port Facility.

Section 10.2 Authority's Obligations.

(a) The Authority shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concession Company, cooperate with the Concession Company with respect to documentation reasonably necessary to obtain, maintain, syndicate and replace financing (including refinancings) for the performance of the obligations of the Concession Company hereunder. The Authority's cooperation may include reviewing, approving and executing documents which substantiate the terms of this Agreement (including any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Concession Mortgage Debt), assisting the Concession Company in obtaining consents required for any collateral assignment of the Concession Company's rights with respect to the Assigned Port Facility Contracts and the Preferential Berthing Agreements, and responding to reasonable requests for available information and material to furnish to any proposed Concession Mortgagee to facilitate financing to the extent permitted by applicable Law and contractual obligations with third-parties; *provided, however*, that (i) nothing herein shall obligate the Authority to consent to service of process, to become subject to any legal process in any jurisdiction other than in the Commonwealth, or to enter into any agreement not governed by the Laws of the Commonwealth and (ii) the Authority gives no assurance that the Concession Company will obtain consents required for any such collateral assignment of the Concession Company's rights. Any agreement entered into under this Section 10.2(a) shall be subject to review for form and legality by the General Counsel of the Authority. If requested to do so by the Concession Company, the Authority shall, at the sole cost and expense of the Concession Company, use its Reasonable Efforts to cause the Authority's independent public accountants to consent to the use and inclusion of certain financial information regarding the Cruise Port Facility in connection with the Concession Company's public or private offering of securities, as the case may be.

(b) The Authority shall, promptly upon the request of the Concession Company or any Concession Mortgagee, execute, acknowledge and deliver to the Concession Company, or any of the parties specified by the Concession Company, standard consents and estoppel certificates with respect to this Agreement (including consents with respect to Operating Agreements, Construction Contracts and Plans assigned to any Concession Mortgagee) that may be qualified to the best of the knowledge and belief of a designated representative of the Authority. Nothing herein shall require the Authority to incur any additional obligations or liabilities (unless the Authority shall have received indemnification, as determined in the Authority's discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with or in violation of any applicable Law or the provisions of this Agreement.

(c) The Authority, upon the request of the Concession Company, shall use Reasonable Efforts to cooperate in the Concession Company's efforts to obtain debt financing assistance through the issuance of bonds or from other financing programs for which the Concession Company may be eligible; *provided* that the Concession Company shall reimburse the Authority for all costs and expenses incurred by the Authority in connection therewith. Nothing in this Section 10.2(c) shall obligate the Authority (i) to advocate or recommend the enactment or adoption of any federal or Commonwealth legislation or regulations, (ii) to make or recommend an allocation of the Authority's private activity bond authorization under Section 146 of the U.S. Revenue Code or any similar provision, including authorizations related

to other forms of private activity bonds or of tax credit bonds or (iii) to cooperate with the Concession Company in connection with obtaining any such debt financing if the Authority (A) has, or reasonably expects to have, a competing application for such financing, (B) is required to commit to the expenditure or allocation of Authority funds in connection with such request or (C) such finance would have a material adverse effect on the credit rating of the Authority.

(d) The Authority, upon the request of the Concession Company, shall also use Reasonable Efforts to cooperate in any other respects in the Concession Company's efforts to obtain debt financing; provided that the Concession Company shall reimburse the Authority for all costs and expenses incurred by the Authority in connection therewith.

Section 10.3 Concession Company's Obligation for Estoppel Certificates. The Concession Company shall, promptly upon the request of the Authority, execute and deliver to the Authority, or any of the parties specified by the Authority, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Concession Company. Nothing herein shall require the Concession Company to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with applicable Law and the provisions of this Agreement.

Section 10.4 Prohibited Tax Shelter Transactions. The Concession Company covenants and agrees that it shall not enter into any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction that would cause the Authority to become a party to a "prohibited tax shelter transaction" within the meaning of section 4965 of the U.S. Revenue Code (it being agreed that, for purposes of this Section 10.4, the Authority shall not be treated as having become a party to such transaction solely by virtue of the execution of this Agreement or any future or ancillary agreements between the Authority and the Concession Company relating to this Agreement). A violation of this Section 10.4 by the Concession Company shall entitle the Authority to (a) recover from the Concession Company, to the extent permitted by applicable Law, the amount of any Tax liability to which the Authority and/or any Authority official is subject as a result of any agreement contemplated by this Section 10.4 and (b) require the Concession Company, at the Concession Company's expense, to prepare timely all statements and returns, and to maintain all lists and similar information that the Authority becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

Section 10.5 Government Contributions. Except in the case of the Initial Investment Projects (other than the Pan American Piers Wharf Structure Project, if applicable), if Government Contributions are authorized by the applicable Governmental Authority for the funding of capital projects related to the Cruise Port Facility, the Authority may, by notice to the Concession Company, elect to utilize such Government Contributions for payment of the costs of such capital projects or, if such capital projects are completed, for the payment of any debt (including Breakage Costs) incurred by the Concession Company to pay the costs of such capital projects if permitted by the terms and conditions of the applicable Government Contributions. Without limiting the generality of the foregoing, the Authority may elect to utilize Government Contributions for the Expansion Investment Projects under Section 3.25(i), for the Pier 4

Reconstruction, the Pan American Piers Wharf Structure Project and the Phase Two Projects under Section 4.12, for the Additional Cruise Port Facilities Projects under (and subject to) Section 3.18 and for Modifications under Article 5.

Section 10.6 Adjustments to Annual Authority Revenue Share.

(a) *Concession Company Financing and No Revenue Share Adjustment.* If the Concession Company provides financing (whether utilizing debt or equity) for any Cruise Pier Improvement Project, or otherwise pays any Cruise Pier Improvement Projects Cost, the Initial Dredging Payment, the Annual Dredging Payment and the Annual Authority Revenue Share shall not be adjusted; *provided, however*, that, in the case of the provision of financing by the Concession Company for any Cruise Pier Improvement Project as provided in Section 4.6(b) or Section 4.6(c), the Annual Authority Revenue Share shall be adjusted for partial financing as provided in Schedule 15.

(b) *Government Contributions Authorization but No Trigger Event.* If at the time the notice provided in Section 4.12(e) is given in respect of the Phase Two Projects the Phase Two Trigger Event described in clause (ii) of the definition of such term has not occurred, or if at the time the notice provided in Section 3.25(i) is given in respect of the Expansion Investment Projects the 2,000,000 Passenger Movements Expansion Investment Projects Trigger Event has not occurred, as the case may be, the Annual Authority Revenue Share shall not be adjusted under Schedule 15 to increase the share of the Authority, notwithstanding that Government Contributions pursuant to the Government Contributions Authorization are used to pay the applicable Cruise Pier Improvement Projects Cost which are eligible for receipt of Government Contributions; *provided, however*, that (i) if, following the time the notice provided in Section 4.12(e) is given the Phase Two Trigger Event described in clause (ii) of the definition of such term occurs, then, effective from the date of such occurrence the Annual Authority Revenue Share shall be adjusted as provided in Schedule 15 to increase the share of the Authority or (ii) if following the time the notice provided in Section 3.25(i) is given the 2,000,000 Passenger Movements Expansion Investment Projects Trigger Event occurs, then, either the Annual Authority Revenue Share shall be subject to adjustment or the Incremental Authority Revenue Share shall be paid, as provided in Section 12 of Schedule 15 or Section 13 of Schedule 15, as applicable. For the avoidance of doubt, if the Phase Two Projects are implemented pursuant to Section 4.12(e) before the occurrence of the Phase Two Trigger Event described in clause (ii) of the definition of such term, or if the Expansion Investment Projects are implemented pursuant to Section 3.25(i) before the occurrence of the 2,000,000 Passenger Movements Expansion Investment Projects Trigger Event, and the Concession Company pays a portion of the Cruise Pier Improvement Projects Cost before the occurrence of the Phase Two Trigger Event described in clause (ii) of the definition of such term or the 2,000,000 Passenger Movements Expansion Investment Projects Trigger Event, as the case may be, as a result of the Government Contributions provided pursuant to the Government Contributions Authorization being less than the Cruise Pier Improvement Projects Cost for the Phase Two Projects or the Expansion Investment Projects, respectively, or for any other reason, then the Annual Authority Revenue Share shall not be decreased for the amount of the Cruise Pier Improvement Projects Cost which is paid by the Concession Company. If the Authority first elects to use Government Contributions to fund any Cruise Pier Improvement Projects Cost as provided in this Section 10.6(b), the Authority may authorize the Concession Company to issue Concession Mortgage

Debt on the terms set forth in Schedule 13 and in the amount sufficient to complete the work, to be reimbursed by Government Contributions. In that event, the Annual Authority Revenue Share may be increased or the Incremental Authority Revenue Share may become payable as provided in Schedule 15, and the Government Contributions shall be paid to the Concession Company to pay the debt incurred by the Concession Company or for equity of the Concession Company that was used to pay the applicable Cruise Pier Improvement Projects Cost, as provided in Section 10.5.

(c) *No Extension of Term or Increase in Fees*. In those circumstances under this Agreement where the Concession Company pays any Cruise Pier Improvement Projects Cost and it is provided that the Annual Authority Revenue Share shall not be adjusted or shall be adjusted to increase the share of the Authority, the Term of this Agreement shall not be extended except as provided in Section 4.13(d) and the Concession Company shall not increase any fee or charge provided in Schedule 15 other than as provided in Schedule 15.

(d) *No Effect on Compensation Events*. This Section 10.6 shall in no manner affect the rights of the Concession Company with respect to Compensation Events.

ARTICLE 11
COMPLIANCE WITH LAWS

Section 11.1 Compliance with Laws. The Concession Company shall, at all times and at its own cost and expense, observe and comply with, in all material respects, and cause the Cruise Port Facility Operations to observe and comply with, in all material respects, all applicable Laws now existing or later in effect that are applicable to it or such Cruise Port Facility Operations, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of the Concession Company's obligations under this Agreement; *provided* that nothing in this Article 11 shall be interpreted to limit the rights of the Concession Company under Article 14; and *provided, further,* that the Concession Company shall not be considered to be in breach of this covenant with respect to any failure of the Authority to comply in any material respect with any applicable Law on the Closing Date in connection with the Authority's operation of the Cruise Port Facility that continues after the Closing Date and is caused by the COVID-19 Adverse Effect. It is expressly acknowledged and agreed that the obligations of the Concession Company to comply with the provisions of this Article 11 shall be subject to applicable Law, for so long as such Law remains in effect and only to the extent required thereunder as the same may be amended from time to time. The Concession Company shall notify the Authority within seven days after receiving notice from a Governmental Authority that the Concession Company may have violated any of the above.

Section 11.2 Non-Discrimination Laws.

(a) The Concession Company shall comply with all applicable Commonwealth and federal Laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq*. (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and

by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*. (1990); (viii) Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq*., as amended; (ix) Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq*., as amended; and (x) Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq*., as amended.

(b) Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq*., the Concession Company understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. The Concession Company agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Authority through contracts with outside contractors. The Concession Company shall be responsible for and agrees to indemnify and hold harmless the Authority from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Authority as a result of the Concession Company's failure to comply with the provisions of this Section 11.2(b).

Section 11.3 Commonwealth Non-Discrimination/Sexual Harassment Clause. Pursuant to Act No. 100 of the Legislative Assembly of Puerto Rico, enacted on June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.*, as amended (Non-Discrimination Act), Act No. 17 of the Legislative Assembly of Puerto Rico, enacted on April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.*, as amended (Sexual Harassment Act), and Act No. 69 of the Legislative Assembly of Puerto Rico, enacted on June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.*, as amended (Sexual Discrimination Act), the Concession Company agrees as follows during the Term:

(a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, the Concession Company, any Contractor or any Person acting on behalf of the Concession Company or a Contractor shall not by reason of gender, race, creed, or color discriminate against any person who is qualified and available to perform the work to which the employment relates.

(b) Neither the Concession Company nor any Contractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed, or color.

(c) The Concession Company and all Contractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) The Concession Company shall not discriminate by reason of gender, race, creed, or color against any Contractor or supplier who is qualified to perform the work to which the contract relates.

(e) The Concession Company shall include the provisions of this Section 11.3 in every subcontract so that such provisions will be binding upon each Contractor.

(f) In the event that any Concession Company Default results from a violation of the terms and conditions of this Section 11.3, the Authority may cancel or terminate this Agreement in accordance with Section 16.1(b)(iii) (for the avoidance of doubt, subject to the cure periods set forth in Section 16.1(a)(i) and Section 16.1(b)(iii)). In addition, the Authority may proceed with debarment or suspension and may place the Concession Company in any contractor responsibility file maintained by the Authority in accordance with the Authority's normal practice in matters of suspension and debarment.

Section 11.4 Non-Collusion and Acceptance. The Concession Company attests, subject to the penalties for perjury, that no Representative of the Concession Company, directly or indirectly, to the best of the Concession Company's knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement; provided, however, that the Concession Company may compensate any Person who provided legal, financial or strategic advice to the Concession Company in connection with the Transaction based upon the condition that Closing occurs, so long as any action of any such Person with regard to the Transaction complied with applicable Law.

Section 11.5 Local Goods and Services. As required by Article 10 of Act No. 14 of the Legislative Assembly of Puerto Rico, enacted on January 8, 2004, 3 P.R. Laws Ann. § 930 *et seq.*, the Concession Company shall use, to the extent available and applicable to the services provided hereunder, and to the extent permitted by applicable Law, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth; *provided, however*, that if Government Contributions are intended to fund the purchase of such goods, and the conditions for such Government Contributions so require, then the cost of such goods shall be considered by the Concession Company to be reasonable.

Section 11.6 Concession Company Integrity.

(a) The Concession Company shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of Commonwealth or federal Laws, regulations, or other requirements that govern contracting with the Authority. The Concession Company certifies that it does not represent particular interests in cases or matters that would imply a conflict of interest or public policy between the Authority and the interests it represents.

(b) The Concession Company shall not disclose to others any confidential information gained by virtue of this Agreement in violation of the confidentiality agreement described in Section 2.5(g).

(c) The Concession Company shall not, in connection with this Agreement or any other agreement with the Authority, directly or indirectly, offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any officer or employee of the Authority.

(d) The Concession Company shall not, in connection with this Agreement or any other agreement with the Authority, directly or indirectly, offer, give or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Authority.

(e) The Concession Company shall not accept or agree to accept from, or give or agree to give to, any Representative of the Authority, any gratuity from any person in connection with this Agreement that is intended by the provider thereof to be a material inducement to enter into this Agreement or any other agreement.

(f) The Concession Company, upon being informed that any violation of the provisions of this Section 11.6 has occurred or may occur, shall immediately notify the Authority in writing.

(g) The Concession Company, by execution of this Agreement and any request for compensation pursuant hereto, certifies and represents that it has not violated any of the provisions of this Section 11.6.

(h) The Concession Company, upon the inquiry or request of the Comptroller of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Comptroller of the Commonwealth. Such information may include the Concession Company's business or financial records, documents or files of any type or form that refers to or concerns this Agreement. Such information shall be retained by the Concession Company for a period of five years unless otherwise provided by Law.

(i) In the event that any Concession Company Default results from a violation of any of the provisions of this Section 11.6, the Authority may terminate this Agreement in accordance with Section 16.1(b)(iii) (for avoidance of doubt, subject to the cure periods set forth in Section 16.1(a)(i) and Section 16.1(b)(iii)) and any other agreement with the Concession Company, and debar and suspend the Concession Company from doing business with the Authority. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Authority may have under Law, statute, regulation, or otherwise.

(j) For purposes of this Section 11.6 only, the words "confidential information," "consent," "Concession Company" and "gratuity" shall have the following definitions:

(i) "confidential information" means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Authority;

(ii) "consent" means written permission signed by a duly authorized officer or employee of the Authority; *provided* that where the material facts have been disclosed, in writing, by prequalification, bid, proposal or contractual terms, the Authority shall be deemed to have consented by virtue of execution of this Agreement;

(iii) "Concession Company" means the entity that has entered into this Agreement with the Authority; and

(iv) "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

Section 11.7 Commonwealth Tax Liabilities. The Concession Company shall inform the Authority if, at any time during the Term, it becomes delinquent in the payment of Taxes imposed by any Governmental Authority of the Commonwealth.

Section 11.8 Contractor and Supplier Contracts. To the extent permitted by applicable Law, the Concession Company shall include the provisions of this Article 11 and Section 9.3 in every subcontract and supply contract so that they shall be binding on each Contractor.

Section 11.9 Practice of Engineering, Architecture and Other Professions in the Commonwealth. To the extent that performance of the Cruise Port Facility Operations involves performance of architectural, engineering, land surveying, and landscape architecture services governed by Act No. 173 of the Legislative Assembly of Puerto Rico, enacted on August 12, 1988, 20 P.R. Laws Ann. § 711 *et seq.*, as amended, then (a) the Concession Company shall comply (and shall require its subcontractors or agents, if any, to comply) with such Act No. 173 and (b) the Concession Company shall monitor compliance by its subcontractors and agents with such Act No. 173. Any reference in this Agreement to the provision of design or engineering by the Concession Company, Enka or any other party or Contractor, shall be understood to mean that such design and engineering shall be performed by a locally licensed firm, architect or engineer, as applicable, even if such contractual relationship with the locally licensed architect, engineer or firm shall be the responsibility of the Concession Company, Enka or the named party, as applicable. Under no circumstances such references shall be deemed to mean an offering or acceptance of engineering or architectural services by unauthorized entities or persons. As part of its Approvals, the Authority shall evaluate and enforce the appropriate compliance with Act No. 173.

Section 11.10 Governmental Contractor Code of Ethics. Concession Company shall comply with the requirements of the Code of Ethics.

Section 11.11 Certifications Required by Commonwealth Contractor Requirements. The Concession Company has (i) certified that it has complied and is in compliance with the provisions of the Public-Private Partnerships Authority's Ethical Guidelines and (ii) delivered the Sworn Statement herewith.

Section 11.12 Duty to Inform of Criminal Investigations. The Concession Company shall inform the Authority if, at any time during the Term, it becomes subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.

Section 11.13 Disadvantaged Business Enterprise Program. To the extent the Concession Company receives federal financial assistance from the DOT with respect to the Cruise Port Facility pursuant to 49 U.S.C. § 47101 *et seq.*, the Concession Company shall establish a Disadvantaged Business Enterprise ("DBE") program in accordance with regulations of the DOT, 49 C.F.R. Part 26.

(a) *General Requirements*. The Concession Company shall provide for the participation of DBEs, as defined in 49 C.F.R. Part 26, in its Cruise Port Facility Operations. To this end, the Concession Company shall establish a policy for the utilization of DBEs, goals for the annual utilization of DBEs, and a reporting procedure agreeable to the Concession Company and the Authority.

(b) *Policy*. The following statement shall represent the Concession Company's policy regarding a DBE program: The Concession Company is committed to ensuring that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

(c) *Liaison*. To ensure compliance and the successful management of the Concession Company's DBE program, the Concession Company shall establish a DBE liaison for the Cruise Port Facility with the DOT.

ARTICLE 12
INDEMNIFICATION

Section 12.1 Indemnification with Regard to Third Party Claims.

(a) *Indemnification by the Concession Company*. To the fullest extent permitted by Law, the Concession Company shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative as a result of any Third Party Claims arising from (i) any Assumed Liabilities or (ii) any tax or mortgage recording charge attributable to any Transfer of the Concession Company Interest or any part thereof; *provided however*, that such Third Party Claims are made in writing within a period of three years from the expiration of the Term or

earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

(b) *Indemnification by the Authority*. To the fullest extent permitted by Law, the Authority shall indemnify and hold harmless the Concession Company and each of its Representatives from and against any Losses actually suffered or incurred by the Concession Company or any such Representative as a result of any Third Party Claims arising from any Excluded Liabilities; *provided, however,* that such Third Party Claims are made in writing within a period of three years following the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

(c) *Notice of Third Party Claim*. If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(d) *Defense of Third Party Claim*. The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the "Notice Period"); *provided, however,* that the Indemnifier shall not be permitted to assume the defense of such Third Party Claim to the extent such assumption would adversely impact any defense asserted by the Indemnified Party. The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential responsibility with respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall cooperate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(e) *Assistance for Third Party Claims*. The Indemnifier and the Indemnified Party will use all Reasonable Efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the "Defending Party") (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim and (ii) to the extent permitted by Law, all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise cooperate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any

employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

(f) *Settlement of Third Party Claims*. If an Indemnifier elects to assume the defense of any Third Party Claim in accordance with Section 12.1(d), the Indemnifier shall not be responsible for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 days after receiving notice from the Indemnified Party that the Indemnified Party believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any responsibility to, and does not require any action on the part of, the Indemnifier and does not in any way adversely affect the Indemnifier.

Section 12.2 Indemnification with Regard to Breaches of Covenants, Representations or Warranties.

(a) *Indemnification by the Concession Company*.

(i) The Concession Company shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative arising from (i) any failure by the Concession Company, its Affiliates or their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or (ii) any breach by the Concession Company of its representations or warranties set forth in Section 9.2; *provided, however*, that such representations and warranties continue to survive at such time as provided in Section 9.5(b) and a notice of a Claim shall have been given, in writing in accordance with Article 200, prior to the expiry of such survival period as provided in Section 9.5(b).

(ii) In addition to any other right of the Authority contemplated in this Section 12.2(a) and elsewhere in this Agreement, and without prejudice to (or diminishment of) any of the Authority's other rights and entitlements under this Agreement, the Concession Company shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative arising from failure of the Concession Company to comply with the laws, regulations, terms and conditions related to obtaining and administering any Government Contributions, including FEMA or HUD procurement requirements, or with any failure of the Concession Company to fulfill the obligations more fully described in Schedule 13 and related to the Government Contributions. For the avoidance of doubt, and without limitation, Losses under this Section 12.2(a) includes any amounts the Authority incurs as a result of a denial, reduction or de-obligation in the amount of Government Contributions as may have been previously provided to

the Concession Company for any Cruise Pier Improvement Project including pursuant to any subsequent change in the applicable Government Contributions Authorization.

(b) *Indemnification by the Authority*.

(i) The Authority shall indemnify and hold harmless the Concession Company and each of its Representatives from and against any Losses actually suffered or incurred by the Concession Company or any such Representative arising from (A) any failure by the Authority or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or (B) any breach by the Authority of its representations or warranties set forth in Article 9; *provided, however,* that such representations and warranties continue to survive at such time as provided in Section 9.5(a) and a notice of a Claim shall have been given, in writing in accordance with Article 200, prior to the expiry of such survival period as provided in Section 9.5(a).

Section 12.3 Losses Net of Insurance; Reductions and Subrogation.

(a) For purposes of this Article 12, the amount of any Losses for which indemnification is provided hereunder shall be reduced by any amounts actually recovered by the Indemnified Party under insurance policies with respect to such Losses, it being understood that the obligations of the Indemnifier hereunder shall not be so reduced to the extent that any such recovery results in an increase in the Indemnified Party's insurance premiums, or results in any other additional cost or expense to any such Indemnified Party.

(b) If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of a payment required under this Article 12 on account of such Losses (an "Indemnity Payment") is reduced by any subsequent recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred or increased in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier.

(c) Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party's rights against such third party.

Section 12.4 Payment and Interest. All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss or expense in respect of a Loss for which the Indemnifier is responsible to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

Section 12.5 Offset Rights; Limitations on Certain Damages.

(a) Any other provision herein notwithstanding, each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights hereunder (to the extent permitted hereunder) as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets; *provided that* in no event shall any Party's right to Offsets permit such Party to exercise such right in a manner that would reduce the Cruise Port Facility Concession Value to an amount that is less than the Concession Mortgage Debt.

(b) In no event shall either Party be responsible to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims by the Authority against the Concession Company for fraud or for intentional misrepresentation or intentional breach), nor shall a Party be obligated to indemnify the other Party or any other Person with respect to any Losses or damages caused by the fraud of such other Party or Person. The Parties agree that (i) payment for lost revenues generated at the Cruise Port Facility as part of Concession Compensation or the Cruise Port Facility Concession Value shall not constitute consequential, indirect, exemplary or punitive damages under the Act or otherwise and (ii) payments made by a Party to any third party shall always constitute indemnifiable losses hereunder notwithstanding whether such amounts represent consequential, indirect, exemplary or punitive damages for such third party.

(c) Except (i) in the event of a termination of this Agreement pursuant to Section 2.4(d), Section 14.2 or Section 16.2, (ii) in cases involving fraud or intentional misrepresentation subject to all of the terms and conditions hereof or (iii) with respect to any Compensation Event, the provisions of this Article 12 shall constitute the sole and exclusive right and remedy available to any Party hereto for any Third Party Claim or for any actual or threatened breach of any representation, warranty, covenant or agreement contained herein.

(d) This Section 12.5 shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

Section 12.6 Agency for Representatives. Each of the Authority and the Concession Company agrees that it accepts each indemnity under the terms of this Agreement in favor of any of its Representatives, as applicable, as agent and trustee of such Representative, as applicable, and agrees that each of the Authority and the Concession Company may enforce any such indemnity in favor of its Representatives, as applicable, on behalf of such Representative.

ARTICLE 13
INSURANCE

Section 13.1 Insurance Coverage Required. The Concession Company shall provide and maintain at the Concession Company's own expense, or cause to be maintained, during the Term and during any time period following expiration during which the Concession Company is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the Cruise Port Facility and all Cruise Port Facility Operations (the "Required Coverages").

(a) *Employment Practices Liability*. The Concession Company shall maintain employment practices liability in a limit of not less than $5,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Date of this Agreement. Policies written on a claims-made basis shall remain in force for at least three years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(b) *Workers' Compensation Insurance*. The Concession Company shall maintain the required workers' compensation insurance with the Corporación del Fondo del Seguro del Estado, and under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, if applicable.

(c) *Commercial Marine Liability (Primary and Excess)*. The Concession Company shall provide commercial marine liability insurance or equivalent with limits of not less than $50,000,000 per occurrence and $100,000,000 aggregate for bodily injury (including death) and property damage liability. Coverage shall include the following: all premises and operations, products liability, host liquor liability, completed operations, explosion, collapse, underground, separation of insureds, defense, independent contractors, terrorism war liability, excess auto liability, pier and wharf liability, baggage liability, cargo liability, mobile equipment, contractual liability, personal injury and advertising injury with limits of not less than $1,000,000 per occurrence and aggregate, incidental medical malpractice with limits of not less than $1,000,000 per occurrence and aggregate and excess employers liability with limits of not less than $1,000,000 per occurrence and aggregate. The Authority is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

(d) *Automobile Liability (Primary and Excess)*. The Concession Company shall provide or cause to be provided automobile liability insurance with limits of not less than $1,000,000 per occurrence and $5,000,000 aggregate for bodily injury and property damage for any owned, non-owned or hired autos/motor vehicles. The Authority is to be named as an additional insured on a primary, non-contributory basis.

(e) *Builder's Risk*. When the Concession Company undertakes any construction, maintenance or repairs to the Cruise Port Facility, including improvements and betterments pursuant to this Agreement, the Concession Company shall provide or cause to be provided, all risk builder's risk insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Cruise Port Facility. Customary sublimits and aggregated sublimits for perils including flood and earthquake are permitted in amounts

consistent with market practice at Comparable Cruise Ports. Coverage shall include the following: right to partial occupancy, boiler and machinery, earth movement, flood, water (including overflow), windstorm, leakage, sewer backup, utility services, debris removal, testing, mechanical-electrical breakdown, resulting damage arising out of faulty or defective workmanship or material, business income (where an exposure exists and where the Authority has an insurable interest in such exposure), valuable papers and other consequential loss, when applicable. The Authority is to be named as an additional insured and, subject to the claims of any Concession Mortgagee, as a loss payee with respect to the property proceeds.

(f) *Professional Liability*. When any architects, engineers, project managers, construction managers or other professional consultants perform work in connection with this Agreement, professional liability insurance covering acts, errors or omissions shall be maintained with limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy that is not renewed or replaced shall have an extended reporting period of two years.

(g) *Property*. The Concession Company shall obtain all risk of direct physical loss real and personal of every kind and description property insurance coverage on a full replacement basis (no margin clause is to be included), covering all loss, damage or destruction to the Cruise Port Facility, including improvements and betterments, which amount shall not be less than eighty percent (80%) of the full replacement cost of the Cruise Port Facility; *provided, however*, that, for the avoidance of doubt, (x) such obligation shall not apply in respect of materials, supplies, equipment, machinery and fixtures that are or will be part of the Cruise Port Facility for which all builder's risk insurance shall be taken out in accordance with Section 13.1(e) and (y) in accordance with Section 13.1(g), the full replacement cost of the Cruise Port Facility shall not include Pan American Pier 1, Pan American Pier 2 and Pier 4 during the periods prior to the commencement of each of the Pan American Piers Wharf Structure Project and the Rehabilitation Pier 4 Wharf, respectively, which are to be insured by the Authority pursuant to Section 13.4. At the request of the Authority, the Concession Company shall, at is sole cost and expense, from time to time but not more frequently than once every five (5) years, utilize an independent third party appraiser reasonably acceptable to the Authority to determine the full replacement cost of the Cruise Port Facility. Such appraiser shall, no later than one hundred twenty (120) days following such request by the Authority, prepare and deliver to the Concession Company and the Authority a report, based on standard industry practice for appraisers, setting forth such full replacement cost of the Cruise Port Facility. Such full replacement cost shall be Adjusted for Inflation and the amount of insurance required under this Section 13.1(g) shall be adjusted accordingly, as required. Coverage shall include, but not be limited to, the following: (i) such risks as may now or in the future be included under an all risk policy form of real and personal property insurance (subject to standard policy terms, conditions and exclusions) as may now or in the future be prescribed by the Commonwealth as of the effective date of the policy under which such insurance is provided and (ii) fire, smoke, windstorm, cyclone, tornado, hail, explosion, riot, civil commotion, equipment breakdown, flood, earth movement, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law (coverages A, B and C) for increased cost of construction, business income (including contingent) extra expense, berth blockage, boiler and machinery, valuable papers ingress and egress, civil and military authority

and, if available, terrorism. Customary sublimits and aggregated sublimits for perils including flood and earthquake may be permitted in amounts consistent with market practice at Comparable Cruise Ports, except to the extent that any Government Contributions are provided for the Cruise Port Facility, or for any Cruise Pier or Cruise Pier Improvement Project, in which case the minimum sublimit for any property covered by such Government Contributions is equal to the type and extent of insurance that is reasonably available, adequate, necessary and required to protect against future loss to the property as confirmed by the Governmental Authority issuing or administering the subject Government Contributions and associated Government Contributions Agreements. The Concession Company acknowledges that the type and extent of coverage required as a condition to receipt of any Government Contributions is generally equal to the actual eligible costs of the work as submitted on the associated Government Contributions Agreements, prior to any reductions and including both the Federal and non-Federal cost share, if applicable; *however*, the Concession Company is responsible for confirming the type and extent of coverage required including whether the total property insurance coverage including any applicable sublimits or aggregate sublimits is adequate to cover all such requirements. Coverage shall also include blanket business income coverage. In addition, the Concession Company shall, during the Term, procure at its own expense comprehensive fire, theft and property damage all risk insurance for, and keep insured to the extent of the full replacement value thereof (if replaceable; otherwise, the value thereof), all personal property of the Authority in the care, custody and control of the Concession Company, including materials, fixtures/contents, equipment, tools, supplies and art work. The Concession Company shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools, supplies and art work) of the Concession Company unless caused by the Authority or its Representatives. The Authority is to be named as an additional insured on all property insurance policies. Subject to the claims of any Concession Mortgagee, the Authority and the Depositary are to be named as loss payees. Failure of the Concession Company to obtain and maintain the type and extent of insurance coverage as required by this Section 13.1, including specifically the coverage amounts required in connection with Government Contributions, will constitute a breach of this Agreement. The Concession Company will be responsible for all costs incurred by the Authority as a result of such breach, including the total amount required to restore any loss, damage or destruction to the Cruise Port Facility.

(h) *Pollution Legal Liability*. Pollution legal liability insurance shall be provided covering first party claims and third-party bodily injury, property damage and other losses caused by pollution occurrences during the Term with limits of not less than $5,000,000 per occurrence and $25,000,000 aggregate. Coverage shall include environmental cleanup, remediation, and transported cargo and non-owned disposal sites extensions. When policies are renewed or replaced, the policy retroactive date shall, if practicable, coincide with or precede, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two years. The Authority is to be named as an additional insured.

(i) *Business Interruption Insurance*. The Concession Company shall obtain business interruption insurance (including contingent, berth blockage, utility off premises interruption) against interruption or loss of projected Cruise Port Revenues for at least six months from the occurrence of the risk, resulting from direct physical damage and/or indirect damages (such as utilities interruption) to the Cruise Port Facility; *provided*, that the limits of

such coverage may be based on a maximum foreseeable loss analysis, subject to the Authority's approval of such maximum foreseeable loss analysis by an independent third party that is reasonably acceptable to the Authority, with such approval of the Authority not to be unreasonably withheld.

(j) *Owners' Contractors Protective Liability Insurance*. The Concession Company shall obtain owners' contractors protective liability insurance or equivalent coverage with a limit of not less than $2,000,000 per occurrence. Such insurance shall include coverage against any negligent acts or omissions of independent contractors or subcontractors of the Concession Company, whether resulting in bodily injury or injury to property of third parties. The Authority is to be named as an additional insured, on a primary non contributory basis.

(k) *Boiler & Machinery Insurance*. The Concession Company shall maintain comprehensive boiler and machinery coverage or equipment breakdown coverage for completed structures housing pressure vessels, machinery, equipment and electrical systems with a total replacement value of $25,000 or more. Such insurance shall (i) include a limit at least equal to the total replacement cost of the equipment, plus 10%; (ii) include business interruption insurance in an amount reasonably acceptable to the Authority; (iii) include the Authority as an insured and (iv) include law and ordinance coverage.

(l) *Fiduciary Liability*. The Concession Company shall maintain fiduciary liability in a limit of not less than $3,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Date of this Agreement. Policies written on a claims-made basis shall remain in force for at least three years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(m) *Other*. With respect to the periods prior to commencement of each of the Pan American Piers Wharf Structure Project and the Rehabilitation Pier 4 Wharf, as further described in Schedule 13, the Concession Company shall request and provide the insurance coverages required in this Article other than those coverages to be provided by the Authority pursuant to Section 13.4).

Section 13.2 Additional Requirements.

(a) *Evidence of Insurance*. The Concession Company shall deliver or cause to be delivered to the Authority original certificates of insurance on the Authority's insurance certificate form copies of policies declaration pages, or equivalent evidencing the Required Coverages on or before the Closing Date, and shall provide or cause to be provided, renewal certificates of insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the Authority that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the Authority to obtain certificates or other insurance evidence from the Concession Company shall not be deemed to be a waiver by the Authority. Non-conforming insurance shall not relieve the Concession Company of the obligation to provide insurance as specified herein. Except as otherwise expressly set forth herein, each Required Coverage may be reviewed by the Authority for compliance with the

terms of this Agreement. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or by the insurer's authorized representative. All Required Coverages shall be placed with insurers that, at a minimum, have a rating of A-(VII) or better by A.M. Best Company or an equivalent rating by another Rating Agency (unless the Authority consents to waive this requirement, which consent shall be subject to Section 13.2(o)). All Required Coverages shall be placed with insurers properly authorized/licensed by the Puerto Rico Insurance Commissioner to conduct insurance business in Puerto Rico; *provided, however*, that to the extent Required Coverages cannot be placed with such insurers in Puerto Rico with terms and conditions that are commercially reasonable (including rates, insured limits, deductibles and exclusions) ("Commercially Reasonable Insurance Terms"), then the Concession Company may place such Required Coverages with insurers outside Puerto Rico (i) if such insurers (A) are properly authorized/licensed to conduct insurance business in their jurisdiction, (B) have a rating of A-(VII) or better with A.M. Best Company or an equivalent rating by another Rating Agency, (C) agree that the Required Coverages provided by such insurers shall be governed by and construed in accordance with the Law of the Commonwealth, and (D) agree to submit to the exclusive jurisdiction of the Commonwealth Court, and (ii) subject to compliance with the Insurance Code of the Commonwealth and related regulations applicable to non-authorized insurers.

(b) *Notice of Cancellation, Material Change or Violation*. All Required Coverages shall provide for 30 days' (or in the case of cancellation for non-payment of premiums, 10 days') prior notice to be given to the Authority by the insurer in the event coverage is substantially changed, canceled or non-renewed. The Authority shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect and the Concession Company shall reimburse the Authority for any delinquent premiums paid by the Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Authority hereunder. The Concession Company shall not cancel, terminate, materially change to the detriment of the Authority or replace any Required Coverage.

(c) *Deductibles*. All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts consistent with market practice at Comparable Cruise Ports. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the Concession Company or its Contractors.

(d) *Inflation Adjustment*. The amounts of coverage required by Section 13.1 shall be Adjusted for Inflation each succeeding fifth anniversary of the Closing Date.

(e) *Waiver of Subrogation by Insurers*. Each of the Required Coverages shall include a waiver by the insurer of its rights of subrogation against the Authority, its employees, elected officials, agents or representatives.

(f) *Authority's Right to Insure*. If the Concession Company fails to obtain and maintain or cause to be obtained and maintained the insurance required by this Article 13, the Authority shall have the right (without any obligation to do so), upon two Business Days' notice to the Concession Company in a non-emergency situation or forthwith in an emergency

situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the Authority in connection therewith shall be payable by the Concession Company to the Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Authority hereunder. Such insurance taken out by the Authority shall not relieve the Concession Company of its obligations to insure hereunder and the Authority shall not be liable for any loss or damage suffered by the Concession Company in connection therewith.

(g) *No Limitation as to Concession Company Liabilities*. The Concession Company expressly understands and agrees that any coverages and limits furnished by the Concession Company shall in no way limit the Concession Company's liabilities and responsibilities specified within this Agreement or by Law.

(h) *No Contribution by Authority*. The Concession Company expressly understands and agrees that any insurance or self-insurance programs maintained by the Authority shall not contribute with insurance provided by the Concession Company under this Agreement.

(i) *Insurance Not Limited by Indemnification*. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of Law.

(j) *Insurance Requirements of Contractors and Subtenants*. The Concession Company shall require in each contract with any Contractor or subtenant (where such Contractor or subtenant is not covered by the Required Coverages) that such Contractor or subtenant obtain coverages reasonably comparable to the Required Coverages that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor or subtenant. Such coverages shall insure the interests of the Authority, its employees, elected officials, agents and representatives, the Concession Company and any other Contractors or subtenants in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concession Company pursuant to this Agreement. When requested to do so by the Authority, the Concession Company shall provide or cause to be provided to the Authority certificates of insurance with respect to such insurance coverages or such other evidence of insurance, reasonably acceptable in form and content to the Authority.

(k) *Joint Venture and Limited Liability Company Policies*. If the Concession Company or any Contractor required to obtain an insurance policy hereunder is a joint venture or limited liability company, all insurance policies required to be obtained by the Concession Company or such Contractor shall specifically name the joint venture or limited liability company as a named insured.

(l) *Other Insurance Obtained by Concession Company*. If the Concession Company or its Contractors or subtenants desire coverages in addition to the Required Coverages, the Concession Company and each Contractor or subtenant shall be responsible for the acquisition and cost of such additional coverages. If the Concession Company or its Contractors or subtenants obtain any property, liability or other insurance coverages in addition

to the Required Coverages ("Additional Coverages"), then the Concession Company or its Contractors shall (i) notify the Authority as to such Additional Coverages, (ii) provide the Authority with any documentation relating to the Additional Coverages, including certificates of insurance, that the Authority reasonably requests and (iii) at the Authority's election, cause the Authority elected or appointed officials, agents and representatives to be named as additional insureds under such Additional Coverages.

(m) *Cooperation*. The Authority and the Concession Company shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.

(n) *[Not Used]*

(o) *Commercial Availability*. Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available on Commercially Reasonable Insurance Terms, the Concession Company shall have the right to request that the Authority consent to waive such requirement. If consented to by the Authority, any such waiver shall be effective only so long as such insurance shall not be available on Commercially Reasonable Insurance Terms; *provided* that during the period of such waiver, the Concession Company maintains the maximum amount of such insurance otherwise available on Commercially Reasonable Insurance Terms. The Authority shall reasonably consider a request by the Concession Company for a waiver under this Section 13.2(o) if the request is supported by a determination by an internationally recognized independent insurance consultant (i) that such insurance is not available on Commercially Reasonable Insurance Terms and (ii) of the amount of such insurance, if any, which is available on Commercially Reasonable Insurance Terms. Such independent insurance consultant shall discuss such conclusions with the Authority and, at the request of the Authority, shall present the Concession Company and the Authority alternative insurance coverage options that are available on Commercially Reasonable Insurance Terms.

Section 13.3 Damage and Destruction.

(a) *Obligations of Concession Company*. If all or any part of the Cruise Port Facility shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concession Company shall: (i) give the Authority notice thereof promptly after the Concession Company receives actual notice of such casualty; (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding of the Cruise Port Facility (the "Casualty Cost"), proceed diligently to Restore the same and (iii) deposit all insurance proceeds received by the Concession Company in connection with any Restoration with a Depositary; *provided, however,* that if at any time the Casualty Cost exceeds the net insurance proceeds deposited with the Depositary or reasonably anticipated to be actually deposited with the Depositary, then the Concession Company shall also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (such net insurance proceeds and such additional cash, together with any

interest earned thereon, the "Restoration Funds"); *provided further* that the procedures of this clause (iii) of this Section 13.3(a) shall only apply to casualty events in which the cost of Restoration exceeds $5,000,000, as Adjusted for Inflation, and, *provided further*, that notwithstanding the foregoing, (A) until the commencement of the Rehabilitation Pier 4 Wharf or such other arrangement as may be agreed by the Concession Company and the Authority pursuant to Section 2.4(g), the Authority shall be responsible for the difference between the Casualty Cost for Restoring Pier 4 and any available net insurance proceeds from the property insurance coverage to be maintained by the Authority in accordance with Section 13.4 for any casualty loss, destruction or damage of Pier 4; *provided, however,* that it is acknowledged and agreed by the Concession Company that (w) the Concession Company shall conduct Cruise Port Facility Operations with respect to Pier 4 beginning at the Time of Closing, and (x) the conduct of Cruise Port Facility Operations during the Term with respect to Pier 4, including all debts, liabilities and obligations related thereto, shall constitute an Assumed Liability, except for the structural condition of Pier 4 below the non-structural surface covering the deck of Pier 4 during the period set forth above, and that, accordingly, the Concession Company shall be responsible for any Casualty Cost for Restoring Pier 4 that result from the failure of the Concession Company to conduct Cruise Port Facility Operations in accordance with the Operating Standards and Good Industry Practice, (B) until the commencement of the Pan American Piers Wharf Structure Project for Pan American Pier 1 and Pan American Pier 2, as applicable and considered separately (the boundary between Pan American Pier 1 and Pan American Pier 2 to be agreed by the Parties prior to the commencement of the works of the Pan American Piers Wharf Structure Project, and any survey required to determine such boundary to be at the cost and expense of the Concession Company), or such other arrangement as may be agreed by the Concession Company and the Authority pursuant to Section 2.4(g), the Authority shall be responsible for the difference between the Casualty Cost for Restoring Pan American Pier 1 and Pan American Pier 2, as applicable and considered separately, and any available net insurance proceeds from the property insurance coverage to be maintained by the Authority in accordance with Section 13.4 for any casualty loss, destruction or damage of Pan American Pier 1 and Pan American Pier 2, as applicable and considered separately; *provided, however,* that it is acknowledged and agreed by the Concession Company that (y) the Concession Company shall conduct Cruise Port Facility Operations with respect to Pan American Pier 1 and Pan American Pier 2 beginning at the Time of Closing, and (z) the conduct of Cruise Port Facility Operations during the Term with respect to Pan American Pier 1 and Pan American Pier 2, including all debts, liabilities and obligations related thereto, shall constitute an Assumed Liability, except for the structural condition of Pan American Pier 1 and Pan American Pier 2 below the non-structural surface covering Pan American Pier 1 pier and Pan American Pier 2 pier during the period set forth above, and that, accordingly, the Concession Company shall be responsible for any Casualty Cost for Restoring Pan American Pier 1 and Pan American Pier 2 that result from the failure of the Concession Company to conduct Cruise Port Facility Operations in accordance with the Operating Standards and Good Industry Practice, and (C) until the completion of the Pier 3 EPIC Repairs (as described in Schedule 13) in accordance with the terms of the Pier 3 EPIC Repairs Contract, the Authority shall be responsible for the difference between the Casualty Cost for restoring the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs (but, for the avoidance of doubt, the Authority shall not be responsible for the Casualty Cost for Restoring any portion of Pier 3 that is not affected by the Pier 3 EPIC Repairs) and available net insurance proceeds for any casualty, loss, destruction or damage of Pier 3 arising from the Pier 3 EPIC Repairs; *provided however*,

that it is acknowledged and agreed by the Concession Company that (x) the Concession Company shall conduct Cruise Port Facility Operations with respect to Pier 3 beginning at the Time of Closing, (y) the conduct of Cruise Port Facility Operations during the Term with respect to Pier 3, including all debts, liabilities and obligations related thereto, shall constitute an Assumed Liability, except for the Pier 3 EPIC Repairs during the period set forth above, and that, accordingly, the Concession Company shall be responsible for any Casualty Cost for restoring Pier 3 that result from the failure of the Concession Company to conduct Cruise Port Facility Operations in accordance with the Operating Standards and Good Industry Practice, and *provided, further*, that the obligation of the Authority for the difference between the Casualty Cost for Restoring the portion of Pier 3 that is affected by the Pier 3 EPIC Repairs and available net insurance proceeds for any casualty, loss, destruction or damage of Pier 3 arising from the Pier 3 EPIC Repairs shall be limited to the liquidated damages (if any) and the proceeds of other remedies of the Authority under the Pier 3 EPIC Repairs Contract. To the extent the Concession Company or a company selected by the Concession Company is not allowed to directly perform the Restoration (as a result of a requirement of the insurance carrier or for some other reason), the Concession Company shall, at the request of the Authority, act as the construction manager (at the Authority's cost) for the Restoration and provide such design and construction services and comply with such procurement requirements as directed by the Authority. In the event of the occurrence of a Restoration exceeding the Insured Amount, Adjusted for Inflation, the financing of the Casualty Cost above such Insured Amount, Adjusted for Inflation, shall be discussed in good faith by the Parties to obtain financing for such Casualty Cost in excess of the Insured Amount, Adjusted for Inflation, at the lowest cost under then prevailing market conditions if Government Contributions are not approved for the payment of such Casualty Costs. For the avoidance of doubt, the provisions relative to Restoration Funds in this Section 13.3 shall not apply to those circumstances in which Casualty Costs are equal to or less than the Insured Amount, Adjusted for Inflation, and the obligation of the Concession Company to Restore shall not be reduced in any manner by the unavailability of insurance proceeds.

(b) *Rights of Authority*. If (i) the Concession Company shall fail or neglect to commence the diligent Restoration of the Cruise Port Facility or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concession Company shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concession Company, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the Authority may, but shall not be required to, complete such Restoration at the Concession Company's expense and shall be entitled to be paid out of the Restoration Funds for the relevant Restoration costs incurred by the Authority (which shall be equal to the total costs incurred by the Authority for the relevant Restoration and in no event be less than the amount of the Casualty Cost). In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concession Company shall (A) account to the Authority for all amounts spent in connection with any Restoration which was undertaken, (B) immediately pay over or cause the Depositary to pay over to the Authority the remainder, if any, of the Restoration Funds received by the Concession Company prior to such termination or cancellation and (C) pay over or cause the Depositary to pay over to the Authority, within 30 days after receipt thereof, any Restoration Funds received by the Concession Company or the Depositary subsequent to such termination or cancellation. The Concession Company's obligations under this Section 13.3(b) shall survive for a period of

three (3) years following the expiration or termination of this Agreement. To the extent the Authority is a loss payee with respect to any such insurance proceeds or otherwise receives insurance proceeds with respect to the destroyed or damaged portions of the Cruise Port Facility, the Authority shall deposit (or cause to be deposited) all such insurance proceeds with the Depositary for application pursuant to this Agreement.

(c) *Payment of Restoration Funds to Concession Company*. Subject to the satisfaction by the Concession Company of all of the terms and conditions of this Section 13.3 and the requirements of the Concession Mortgagee, the Depositary shall pay to the Concession Company from time to time any Restoration Funds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Authority, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and the Authority in the collection of such monies, to be utilized by the Concession Company solely for the Restoration, such payments to be made as follows:

(i) prior to commencing any Restoration, the Concession Company shall furnish to the Authority for its Approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect or engineer;

(ii) the Restoration Funds shall be paid to the Concession Company in installments as the Restoration progresses, subject to Section 13.3(c)(iii), based upon requisitions to be submitted by the Concession Company to the Depositary and the Authority in compliance with Section 13.3(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concession Company; *provided, however,* that if any lien, other than any Permitted Concession Company Encumbrance, is filed against the Cruise Port Facility or any part thereof in connection with the Restoration, the Concession Company shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); *provided further* that notwithstanding the foregoing, but subject to the provisions of Section 13.3(c)(iii), the existence of any such lien shall not preclude the Concession Company from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concession Company receives such installment the Concession Company delivers to the Authority and the Depositary a release of such lien executed by the lienor and in recordable form;

(iii) the amount of each installment to be paid to the Concession Company shall be the aggregate amount of Casualty Costs thereto for incurred by the Concession Company minus the aggregate amount of Restoration Funds thereto for paid to the Concession Company in connection therewith, less 10% of such amount as a retainage (which 10% retainage shall be released to the Concession Company upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work, *provided* that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; *provided, however,* that all disbursements to the Concession Company shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and

disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and *provided* that the unapplied portion of the funds held by the Depositary is sufficient to complete the Restoration; and

(iv) except as provided in Section 13.3(b), upon completion of and payment for the Restoration by the Concession Company, subject to the rights of any Concession Mortgagee, the Depositary shall pay the balance of the Restoration Funds, if any, to the Concession Company; *provided, however,* that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concession Company shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.3(c)(iii).

(d) *Conditions of Payment*. The following shall be conditions precedent to each payment made to the Concession Company as provided in Section 13.3(c):

(i) the Concession Company shall have furnished the Authority with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 13.3(c)(i);

(ii) at the time of making such payment, no Concession Company Default exists;

(iii) the Restoration shall be carried out under the supervision of the relevant architect or engineer (which has been Approved by the Authority), and there shall be submitted to the Depositary and the Authority the certificate of such architect or engineer stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Cruise Port Facility (except with respect to requisitions for advance deposits permitted under Section 13.3(c)(iii)), free and clear of all Encumbrances, other than Permitted Concession Company Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition *(provided* that a release of such lien is delivered to the Depositary in accordance with Section 13.3(c)(ii), (B) the sum then requested to be withdrawn either has been paid by the Concession Company or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concession Company, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depositary or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concession Company, the Restoration has been completed in accordance with this Agreement.

(e) *Payment and Performance Bonds*. If the Concession Company obtains payment or performance bonds related to a Restoration (which the Concession Company may or may not obtain in its discretion), the Concession Company shall name the Authority and the Concession Company and the Concession Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the Authority promptly upon obtaining them.

(f) *Benefit of Authority*. The requirements of this Section 13.3 are for the benefit only of the Authority and the Concession Company, and no Contractor or other Person (other than the Concession Company, as applicable) shall have or acquire any direct claim against the Authority as a result of any failure of the Authority actually to undertake or complete any Restoration as provided in this Section 13.3 or to obtain the evidence, certifications and other documentation provided for herein.

(g) *Investment of Restoration Funds*. Restoration Funds deposited with a Depositary shall be invested and reinvested in Eligible Investments at the direction of the Concession Company, and all interest earned on such investments shall be added to the Restoration Funds.

(h) *Rights of Concession Mortgagee*. The provisions of Section 13.3 are subject to the rights of any Concession Mortgagee under the documents relating to any Concession Mortgage Debt. The Authority acknowledges and agrees that any Restoration Funds prior to the applicable to a Restoration or not applied to a Restoration as provided in this Section 13.3 shall be subject to the lien or liens of any Concession Mortgage and the rights and requirements of the Concession Mortgagee.

Section 13.4 Insurance Coverage Required by Authority. The Authority shall maintain at the Authority's sole cost and expense:

(a) general liability insurance for claims from third parties for bodily injury (including death) and property damage liability (whether such claims are made against the Authority or the Concession Company) arising out of or in connection with the premises and/or operations of Pier 4, Pan American Pier 1 and/or Pan American Pier 2, prior in each case to the commencement of the Rehabilitation Pier 4 Wharf and the Pan American Piers Wharf Structure Project for Pan American Pier 1 and Pan American Pier 2 (as applicable). Such coverage is to be maintained on the same terms as the Authority's general liability insurance for the period of June 30, 2019 to June 30, 2020, as provided to the Concession Company prior to the Date of this Agreement, except that the Concession Company is to be named as an additional insured on such insurance policy;

(b) property insurance coverage on a replacement basis (no margin clause is to be included but subject to applicable loss limits), covering loss, damage or destruction to (i) the Cruise Port Facility until Closing and (ii) Pier 4, Pan American Pier 1 and Pan American Pier 2, including improvements and betterments, prior in each case to the commencement of the Rehabilitation Pier 4 Wharf and the Pan American Piers Wharf Structure Project, as applicable, with the Concession Company named as an additional insured on such insurance policy; and

(c) failure of the Authority to maintain the insurance coverage required by this Section 13.4 will constitute a breach of this Agreement. The Authority shall deliver or cause to be delivered to the Concession Company original certificates of insurance evidencing such insurance coverage on or before the Closing Date, and shall provide or cause to be provided, renewal certificates of insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring prior to the commencement of the Rehabilitation Pier 4 Wharf and the Pan American Piers Wharf Structure Project for Pan American Pier 1 and Pan American Pier 2. Such insurance coverage shall provide for 30 days' prior notice to be given to the Concession Company by the insurer in the event coverage is substantially changed, canceled or non-renewed. Any and all deductibles or self-insured retentions on such insurance coverage shall be borne by the Authority. The insurance coverages required by this Section 13.4 shall include a waiver by the insurer of its rights of subrogation against the Concession Company, its employees, officials, agents or representatives.

ARTICLE 14
ADVERSE ACTIONS

Section 14.1 Adverse Action.

(a) An "Adverse Action" shall occur if the Authority or any other Governmental Authority established under the Laws of the Commonwealth takes action or actions at any time during the Term (including enacting any Law) and the effect of such action or actions, individually or in the aggregate, is reasonably expected (i) to be (or is in fact) principally borne by the Concession Company in relation to other Persons (including, for the avoidance of doubt, an amendment of Article 12 of the Act relating to Taxes described in Section 2.8(b)), or to be (or is in fact) principally borne by cruise ports whose design, construction, financing and facilities management are procured by a contract similar to this Agreement (that is, on a public-private partnership model or an equivalent model) in relation to other similar cruise ports or to be (or is in fact) principally borne by Persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to this Agreement in relation to other Persons undertaking similar projects procured on a different basis and (ii) to have a material adverse effect on the fair market value of the Concession Company Interest, except where (A) such action is in response to any act or omission on the part of the Concession Company that (1) is illegal (before taking into account the applicable government action) or (2) constitutes nonperformance by the Concession Company or (B) such action is otherwise permitted under this Agreement (including under Section 3.7(a)(iii)); *provided, however*, that none of the following shall be an Adverse Action: (x) the exercise of law enforcement, subpoena or investigatory powers of the Authority or any Governmental Authority as permitted under this Agreement or applicable Law; (y) the imposition of a Tax or an increase in Taxes of general application, including Taxes of general application imposed as part of their general application on Cruise Lines with regard to passengers on cruise vessels utilizing the Cruise Port Facility or (z) the development, redevelopment, construction, maintenance, modification or change in the operation of any port in the Commonwealth outside of San Juan Bay that results in the reduction of any revenues generated at the Cruise Port Facility or in the number of users using the Cruise Port Facility. For the avoidance of doubt, no enactment of a new Law or modification, amendment or change in enforcement or interpretation of a Law (including a change in the application or interpretation thereof by any Governmental Authority) after the Bid Date shall

constitute an Adverse Action except to the extent the conditions set forth in clauses (i) and (ii) of this Section 14.1(a) are satisfied and the exceptions to an Adverse Action provided in clauses (A) or (B) of this Section 14.1(a) do not apply.

(b) If an Adverse Action occurs, the Concession Company shall have the right to receive Concession Compensation from the Authority with respect thereto (such Concession Compensation, the "AA-Compensation"); *provided, however*, that if the Adverse Action constitutes an expropriation, sequestration or requisition of all or a material part of the Cruise Port Facility, the Cruise Port Facility Assets, and the Concession Company Interest (or any of them), or materially impedes, substantially frustrates or renders impossible the Concession Company's ability to perform its obligations hereunder continuously for 90 days, then the Concession Company shall have the right either (i) to be paid the AA-Compensation with respect thereto or (ii) to terminate this Agreement and be paid by the Authority any AA-Termination Damages, in each case by giving notice in the manner described in Section 14.1(c).

(c) Within 90 days following the date on which the Concession Company first became aware of the Adverse Action, the Concession Company shall give notice (the "AA-Preliminary Notice") to the Authority stating that an Adverse Action has occurred. Within 180 days following the date of delivery of the AA-Preliminary Notice, the Concession Company shall give the Authority another notice (the "AA-Notice") setting forth (i) details of such Adverse Action, (ii) details of the material adverse effect of such Adverse Action on the fair market value of the Concession Company Interest, (iii) a statement as to which right referred to in Section 14.1(b) the Concession Company elects to exercise, and (iv) if the Concession Company elects to exercise the right to Concession Compensation under Section 14.1(b), the amount claimed as AA-Compensation and details of the calculation thereof. The Authority shall, after receipt of the AA-Notice, be entitled by notice to require the Concession Company to provide such further supporting particulars as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, it shall give notice of dispute (the "AA-Dispute Notice") to the Concession Company within 30 days following the date of receipt by it of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within 30 days following the date of receipt of the AA-Dispute Notice by the Concession Company, the matter shall be submitted to the dispute resolution procedure in Article 19.

(d) If the Concession Company has elected to exercise its right to AA-Compensation, the Authority shall pay the amount of Concession Compensation claimed by the Concession Company within 60 days following the date of receipt of the AA-Notice, or if a AA-Dispute Notice has been given, then not later than 60 days following the date of determination of the AA-Compensation (together with interest at the rate set forth in Section 20.9 from the date of receipt of the AA-Dispute Notice to the date on which payment is made); provided that the Authority shall provide the AA-Compensation in accordance with Section 15.1(b) as if the related AA-Notice were a CE-Notice and the Authority may elect to pay the amount owed as Concession Compensation in accordance with Section 15.1(c) and provided further that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the Authority may defer any such payment for an additional 120

days if the Authority determines, in its discretion, that such additional period is necessary in order to obtain financing or otherwise to obtain the necessary funds to make such a payment.

Section 14.2 Termination.

(a) If the Concession Company has the right to terminate this Agreement in connection with an Adverse Action pursuant to Section 14.1, and the Concession Company has exercised such right, this Agreement, subject to Section 14.3, shall terminate 120 days following the date of receipt of the AA-Notice by the Authority, and on the Reversion Date the Authority shall pay an amount (which amount shall be paid from all funds of the Authority available for such payment under applicable Law, including general Authority funds and Cruise Port Facility revenues) equal to the aggregate, without duplication, of (i) the Cruise Port Facility Concession Value as of the date of termination (which shall be determined as if no Adverse Action has occurred), plus (ii) the reasonable out-of-pocket and documented costs and expenses incurred by the Concession Company as a direct result of such termination, plus (iii) the Concession Compensation calculated for the period between the date of the Adverse Action and the Reversion Date, less (iv) any insurance or condemnation proceeds payable to the Concession Company (or that should have been payable to the Concession Company but for (x) the insurer's inability to pay, (y) the breach by the Concession Company of an obligation to take out or maintain insurance under this Agreement or (z) the invalidity or breach of any insurance policy caused by the Concession Company under which such policy proceeds would have been paid) with respect to all or any portion of the Cruise Port Facility as a result of the occurrence of such Adverse Action (collectively, the "AA-Termination Damages") to the Concession Company on the Reversion Date or, if the AA-Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 60 days following the date of determination of the AA-Termination Damages (together with interest at the rate set forth in Section 20.9 from the Reversion Date to the date on which payment is made); provided that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such a payment; *provided, however*, that any amounts received by the Concession Company or any Concession Mortgagee from any insurance policies payable as a result of damage or destruction to the Cruise Port Facility that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Authority to the Concession Company so long as the Authority has not received any such amounts pursuant to Article 13.

(b) Any dispute arising out of the determination of the AA-Termination Damages shall be submitted to the dispute resolution procedure in Article 19.

(c) No AA-Notice given by the Concession Company to the Authority in which the Concession Company states that it elects to exercise its right of termination of this Agreement shall be valid for any purpose unless, if any Concession Mortgage Debt remains outstanding and if and to the extent required by the terms of any Concession Mortgage, the Concession Company has first obtained and delivered to the Authority the written consent of the Concession Mortgagee to such AA-Notice.

(d) Payment of the entire sum of AA-Termination Damages or the AA-Compensation, as the case may be, by the Authority to the Concession Company, shall constitute full and final satisfaction of all amounts that may be claimed by the Concession Company for and with respect to the occurrence of the Adverse Action and, upon such payment, the Authority shall be released and forever discharged by the Concession Company from any and all liability with respect to such Adverse Action.

Section 14.3 Right of Authority to Remedy an Adverse Action. If the Authority wishes to remedy the occurrence of an Adverse Action, the Authority shall give notice thereof to the Concession Company within 30 days following the date of receipt of the AA-Notice. If the Authority gives such notice, it must remedy the Adverse Action within 180 days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within 180 days following the final award pursuant to Article 19 to the effect that an Adverse Action occurred or, in either case, within such longer period as may be agreed to by the Concession Company. If the Authority remedies the occurrence of an Adverse Action within the applicable period of time, the right of the Concession Company shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

ARTICLE 15
CONCESSION COMPENSATION; DELAY EVENTS

Section 15.1 Payment of Concession Compensation.

(a) *Notice*. Except as otherwise provided herein, if a Compensation Event occurs, the Concession Company shall give notice (the "CE-Preliminary Notice") to the Authority within 90 days following the date on which the Concession Company first became aware of the Compensation Event stating that a Compensation Event has occurred. Within 30 days following the date of delivery of the CE-Preliminary Notice, the Concession Company shall give the Authority a further notice (the "CE-Notice") setting forth (i) details of the Compensation Event, including a specific explanation of the reasons that the event constitutes a Compensation Event under the terms of this Agreement and (ii) the amount claimed as Concession Compensation and details of the calculation thereof. If the Authority wishes to dispute the occurrence of a Compensation Event or the amount of the Concession Compensation claimed in the CE-Notice, it shall give notice of dispute (the "CE-Dispute Notice") to the Concession Company within 60 days following the date of receipt by it of the CE-Notice stating the grounds for such dispute. If neither the CE-Notice nor the CE-Dispute Notice has been withdrawn within 30 days following the date of receipt of the CE-Dispute Notice by the Concession Company, the matter shall be submitted to the dispute resolution procedure in Article 19.

(b) *Payment*. Within 60 days following the date of receipt of a CE-Notice, or if a CE-Dispute Notice has been given as provided in Section 15.1(a) and not withdrawn (and the CE-Notice is not otherwise withdrawn by the Concession Company), then not later than 60 days following the date of determination of the related Concession Compensation (the later of such dates being referred to herein as a "Compensation Date"), the Authority (except to the extent the Authority elects to provide the related Concession Compensation in accordance with Section 15.1(c)), shall pay the related Concession Compensation in cash, which Concession Compensation shall be then due and payable to the Concession Company (except as otherwise

provided in Section 15.1(e) and together with interest at the rate set forth in Section 20.9 from the date of receipt of the CE-Dispute Notice to the date on which payment is made); *provided* that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the Concession Compensation owed by the Authority from the date of receipt of the CE-Dispute Notice to the date on which payment is made, the Authority may defer the provision of any such Concession Compensation for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to provide such Concession Compensation to the Concession Company. Notwithstanding the foregoing and except as provided in Section 15.1(e), in the event of a dispute regarding the amount of Concession Compensation, the Authority shall pay to the Concession Company any undisputed portion of such Concession Compensation and any portion of such Concession Compensation that is subsequently agreed between the Parties, in each case not later than 60 days following the date that the Parties have agreed to such portion (together with interest at the rate set forth in Section 20.9 from the date of receipt of the CE-Dispute Notice to the date on which payment is made) (even if a dispute regarding a portion of the amount claimed by the Concession Company is still pending); *provided that* the Authority shall have the right to defer providing such Concession Compensation for an additional 120 days under the terms set forth in the preceding sentence; *provided further* that the Authority may elect to provide the undisputed portion of such Concession Compensation in accordance with Section 15.1(c).

(c) *Revenue Share Credit and Term Options*.

(i) Notwithstanding anything to the contrary in this Agreement, and to the extent such Concession Compensation is not payable as part of Termination Damages and is not otherwise paid pursuant to Section 15.1(b), the Authority may (except where there are available funds in the Escrow Account – Initial Investment Projects Sub-Account to pay the Concession Compensation due to the Concession Company) elect to provide any Concession Compensation due to the Concession Company hereunder by (A) permitting the Concession Company to retain for the Concession Company's own benefit, and not to pay the Authority, the relevant amount from the Annual Authority Revenue Share or the Incremental Authority Revenue Share that would otherwise be payable to the Authority pursuant to Section 2.1(c) (the "Revenue Share Credit") or (B) except when stated to the contrary in this Agreement, extending the Term for a period of time that would be sufficient to restore the Concession Company to the same economic position in which it would have been had such Compensation Event not occurred (subject to the prior receipt of any approval or Authorization necessary to extend the Term under the Act and otherwise in compliance with applicable Law). Any Concession Compensation which the Authority elects to provide to the Concession Company under clauses (A) or (B) of this Section 15.1(c) but which is not so provided to the Concession Company due to limitations on the amount of Concession Compensation that can be recovered by the Concession Company under clauses (A) or (B) of this Section 15.1(c) shall be paid by the Authority in cash in accordance with Section 15.1(b).

(ii) To the extent any Concession Compensation is not otherwise paid pursuant to Section 15.1(b), the Authority shall first elect to permit the Revenue Share Credit pursuant to Section 15.1(c)(i)(A); *provided, however*, that (A) if at the time of such election the Concession Compensation in the aggregate for each Compensation Event for which the

Authority elected to permit the Revenue Share Credit (including the Compensation Event under consideration at the time of such election) and which was not otherwise paid pursuant to Section 15.1(b) (the "Aggregate Concession Compensation") is greater than the amount of the Annual Authority Revenue Share and the Incremental Authority Revenue Share reasonably estimated by the Authority to be payable by the Concession Company to the Authority pursuant to Section 2.1(c) during the remainder of the Term (the "Estimated Revenue Share Credit"), then with respect to the excess of the Aggregate Concession Compensation over the Estimated Revenue Share Credit, the Authority may elect to extend the Term pursuant to Section 15.1(c)(i)(B), except where stated to the contrary in this Agreement; and (B) notwithstanding Section 15.1(c)(i)(B), the Authority may not provide Concession Compensation pursuant to Section 15.1(c)(i)(B) in an amount that (1) cumulatively with all other amounts of Concession Compensation previously provided pursuant to Section 15.1(c)(i)(B), would exceed $25,000,000 during the Term, (2) cumulatively with all other amounts of Concession Compensation previously provided pursuant to Section 15.1(c)(i)(B), would exceed $10,000,000 prior to the fifth anniversary of the Closing, or (3) in any year after the fifth anniversary of the Closing, cumulatively with all other amounts of Concession Compensation previously provided in such year pursuant to Section 15.1(c)(i)(B), would exceed $1,000,000 in such year and each of the foregoing dollar amounts shall be Adjusted for Inflation on each anniversary of the Closing during the Term and may be adjusted further by written agreement between the Authority and the Concession Company. The proviso in this Section 15.1(c)(ii)(B) and its limitations in this Section 15.1(c)(ii)(B) do not apply to Concession Compensation due pursuant to a Delay Event Remedy.

(iii) The Authority shall make such election by notice delivered to the Concession Company not later than the related Compensation Date, which notice shall specify (A) the Estimated Revenue Share Credit and, if the Estimated Revenue Share Credit is greater than the Aggregate Concession Compensation, the election of the Authority to permit the Revenue Share Credit for the Concession Compensation with respect to the applicable Compensation Event not otherwise paid pursuant to Section 15.1(b), up to the amount of the Estimated Revenue Share Credit in excess of the Aggregate Concession Compensation and (B) the amount of the Concession Compensation with respect to the applicable Compensation Event to be provided pursuant to Section 15.1(c)(i)(B). Such notice shall include the basis for the Estimated Revenue Share Credit and the Aggregate Concession Compensation in reasonable detail. In the event the Authority elects in such notice to pay any portion of Concession Compensation pursuant to Section 15.1(c)(i)(B), then not later than 20 Business Days following receipt of such notice by the Concession Company the Concession Company shall provide the Authority in reasonable detail a calculation of the period of time required to extend the Term that would be sufficient to restore the Concession Company to the same economic position in which it would have been had the applicable Compensation Event not occurred. The Concession Company shall promptly provide the Authority such additional information the Authority reasonably requests with respect to such calculation. Not later than 20 days following the receipt by the Authority of such calculation (or, if the Authority has requested additional information, not later than 20 days following receipt of such additional information), the Authority shall notify the Concession Company that the Authority either accepts such calculation or disputes it. Any dispute regarding the Estimated Revenue Share Credit or the Aggregate Concession

Compensation, or the extension of the Term, shall be submitted to the dispute resolution procedure in Article 19.

(iv) In each Reporting Year to which the Revenue Share Credit is applicable, the Concession Company may retain the Annual Authority Revenue Share and the Incremental Authority Revenue Share that would otherwise be payable to the Authority pursuant to Section 2.1(c) until the Reporting Year in which Aggregate Concession Compensation for which the Authority elected to permit the Revenue Share Credit is paid, at which time the Concession Company shall resume payment of the Annual Authority Revenue Share and the Incremental Authority Revenue Share pursuant to Section 2.1(c). During each Reporting Year to which the Revenue Share Credit is applicable, the Concession Company shall include in the audited annual financial report prepared as required by Section 8.1(c)(ii) for each such Reporting Year (A) the Aggregate Concession Compensation and (B) the Estimated Revenue Share Credit, including the amount of the Annual Authority Revenue Share and the Incremental Authority Revenue Share that would have been payable to the Authority but for the Authority's election of the Revenue Share Credit, the amount of such Annual Authority Revenue Share or Incremental Authority Revenue Share retained by the Concession Company as the Revenue Share Credit, and the amount of Aggregate Concession Compensation remaining during the Term to be paid by the Revenue Share Credit.

(v) In the audited annual financial report prepared as required by Section 8.1(c)(ii) for the Reporting Year immediately preceding the last Reporting Year of the Term, the Concession Company shall include (A) the Estimated Revenue Share Credit used in determining the extension of the Term elected by the Authority pursuant to Section 15.1(c)(i)(B) with respect to each Compensation Event for which such election was made and (B) the actual amount of the Annual Authority Revenue Share or the Incremental Authority Revenue Share retained by Concession Company as the Revenue Share Credit (the "Actual Revenue Share Credit"). If (x) such Estimated Revenue Share Credit is greater than the Actual Revenue Share Credit, then the Term shall be extended for a period of time that would be sufficient to restore the Concession Company to the same economic position in which it would have been had such Estimated Revenue Share Credit been equal to the Actual Revenue Share Credit (subject to the prior receipt of any approval or Authorization necessary to extend the Term under the Act and otherwise in compliance with applicable Law) and (y) such Estimated Revenue Share Credit is less than the Actual Revenue Share Credit, then the extension of the Term for which the Authority made an election pursuant to Section 15.1(c)(i)(B) shall be reduced to that period of time that would be sufficient to restore the Concession Company to the same economic position in which it would have been had such Estimated Revenue Share Credit been equal to the Actual Revenue Share Credit. Any dispute regarding the Estimated Revenue Share Credit or the Actual Revenue Share Credit, or the extension or reduction of the Term, shall be submitted to the dispute resolution procedure in Article 19.

(vi) Notwithstanding Section 15.1(c)(i)(B) the Authority may not provide Concession Compensation pursuant to Section 15.1(c)(i)(B) in respect of the Compensation Events contemplated by Section 5.2(a).

(vii) The terms and conditions of this Agreement shall remain in full force and effect, and shall continue to apply to the Parties, during any extension of the Term as

provided in this Section 15.1(c), and (for the avoidance of doubt) the Annual Authority Revenue Share and the Incremental Authority Revenue Share (if applicable) shall be payable to the Authority during any extension of the Term, and the Concession Company shall not have the right to retain any of such Annual Authority Revenue Share or Incremental Authority Revenue Share , except with regard to any Compensation Event which occurs during the last year of the Term or during any extension of the Term which is not otherwise paid pursuant to Section 15.1(b) and as to which the Authority makes an election to permit the Revenue Share Credit pursuant to Section 15.1(c)(i)(A).

(d) *Calculation*. Concession Compensation shall be sufficient to compensate the Concession Company for (i) all documented Losses (including increased operating, financing and capital and maintenance costs, but excluding any costs and expenses that the Concession Company would otherwise expend or incur in order to comply with this Agreement or in the ordinary course of the performance of the Cruise Port Facility Operations or the carrying on of business in the ordinary course) that are reasonably attributable to such Compensation Event and (ii) any documented Losses of the Concession Company's present and future revenues generated at the Cruise Port Facility that are reasonably attributable to such Compensation Event, after taking into account any insurance proceeds payable to the Concession Company (or that should have been payable but for (A) the insurer's inability to pay, (B) the breach of an obligation by the Concession Company to take out or maintain insurance under this Agreement or (C) the invalidity or breach of any insurance policy caused by the Concession Company under which policy such proceeds would have been paid) in connection with the Compensation Event, if applicable; *provided, however,* that unless otherwise specified in this Agreement, notice of any claim for Concession Compensation shall be made in writing to the Authority within 120 days of the date that the Concession Company first became aware of such Compensation Event. If the Concession Company is required to expend its own funds (whether from operating cash flows or the proceeds of any debt or equity financing or otherwise) with respect to any Compensation Event prior to receipt or financing of the corresponding Concession Compensation or if the payment of Concession Compensation is deferred under Section 15.1(b), then the determination of Concession Compensation shall, in addition to the components described above, include such additional amounts as may be necessary to permit the Concession Company to maintain the after-Tax economic position which is no better and no worse than the after-Tax economic position the Concession Company would have enjoyed if such Compensation Event had not occurred.

(e) *Future Losses*. Any Concession Compensation payable pursuant to Section 15.1(b) with respect to Losses or lost revenues generated at the Cruise Port Facility or documented Losses (including increased operation, financing and capital and maintenance costs) that will not occur until the future shall be due solely when such losses would otherwise become due or are actually incurred or suffered or promptly thereafter. If the Authority elects, notwithstanding the foregoing, to pay Concession Compensation with respect to Losses or lost revenues generated at the Cruise Port Facility that will occur in the future as a lump sum payment, the amount of such lump sum payment shall be based on a determination of the net present value of the impact of such Compensation Event over the remainder of the Term utilizing a discount factor that is reasonably determined by the Concession Company (subject to the confirmation as to its reasonableness by the Authority).

(f) *Minimum Claim*. Notwithstanding the foregoing provisions of this Section 15.1, the Concession Company may not make a claim for Concession Compensation unless the amount of such claim exceeds $25,000, Adjusted for Inflation.

Section 15.2 Delay Events.

(a) *Notice*. If a Party is affected by a Delay Event, it shall give notice as soon as practicable and in no event later than 10 Business Days following the date on which it first obtains knowledge of such Delay Event to the other Party *(provided that* in the case of the same Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The Party receiving notice of a Delay Event shall, after receipt of such notice, be entitled by notice to require the Party affected by the Delay Event to provide such further supporting information or details as the Party receiving notice of the Delay Event may reasonably consider necessary. The Party affected by the Delay Event shall notify the other Party as soon as practicable and in no event later than 10 Business Days following the date on which the Party affected by the Delay Event first became aware that a Delay Event has ceased.

(b) *Excused*. Subject to the Party affected by the Delay Event giving the notice required in Section 15.2(a), a Delay Event shall excuse the Party affected by the Delay Event from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of days as the Authority and the Concession Company jointly determine, each acting reasonably. If the Authority and the Concession Company cannot agree upon the period of delay or upon the occurrence of the Delay Event, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Article 19. This Section 15.2(b) shall neither (i) excuse the Concession Company from the performance and observance under this Agreement of any obligations and covenants not affected by the Delay Event nor (ii) prevent any of the Authority or its Representatives (or their respective designee) from exercising its rights under Section 3.7. Notwithstanding the occurrence of a Delay Event, the Party affected by the Delay Event shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its Reasonable Efforts to minimize the effect and duration of the Delay Event. Except as contemplated in the definition of Delay Event, nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(c) *Compensation*. If a Delay Event occurs that has the effect of causing physical damage or destruction to the Cruise Port Facility that results in the Cruise Port Facility being substantially unavailable for Cruise Port Purposes and such effect continues for a period in excess of 120 consecutive days and has a material adverse effect on the fair market value of the Concession Company Interest, and insurance proceeds payable or condemnation or other similar proceeds are insufficient to restore the Concession Company to the same economic position as it would have been in the absence of such event, then the Delay Event shall be a Compensation Event for which the Concession Company (without in any way limiting its obligations pursuant to Section 13.3) shall be entitled to Concession Compensation (a "Delay Event Remedy") and the Authority may elect to provide Concession Compensation pursuant to Section 15.1(c)(i)

without regard to the limitations in Section 15.1(c)(ii)(B). Payment of the entire sum of the Delay Event Remedy by the Authority to the Concession Company shall constitute full and final satisfaction of all amounts that may be claimed by the Concession Company for and with respect to the occurrence of the Delay Event and, upon such payment, the Authority shall be released and forever discharged by the Concession Company from any and all liability with respect to such Delay Event. This provision shall not limit the Concession Company's entitlement to Concession Compensation for any Delay Events which also qualify as Compensation Events nor shall it limit any remedy available to the Concession Company under Section 16.7; *provided, however*, that there shall be no double recovery of Concession Compensation with respect to a Delay Event that entitles the Concession Company to a Delay Event Remedy and which also separately qualifies as a Compensation Event.

(d) *Delay Event Notice*. If the Concession Company elects to exercise the right to the Delay Event Remedy, the Concession Company shall give notice ("Delay Event Notice") to the Authority within 30 days following the date on which the Concession Company first became aware of its right to the Delay Event Remedy, setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Cruise Port Facility that results in the Cruise Port Facility being substantially unavailable for Cruise Port Purposes and (ii) the amount claimed as compensation to restore the Concession Company to the same economic position in which it would have been had such Delay Event not occurred (including the details of the calculation thereof). The Authority shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concession Company to provide such further supporting information as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the Authority shall give notice of dispute (the "Delay Event Dispute Notice") to the Concession Company within 30 days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within 30 days following the date of receipt of the Delay Event Dispute Notice by the Concession Company, the matter shall be submitted to the dispute resolution procedure in Article 19.

ARTICLE 16
DEFAULTS; LETTERS OF CREDIT

Section 16.1 Default by the Concession Company.

(a) *Events of Default*. The occurrence of any one or more of the following events during the Term shall constitute a "Concession Company Default" under this Agreement:

(i) other than as described in Section 16.1(a)(ii), (iii), (iv) or (v), if the Concession Company fails to comply with, perform or observe (A) any material obligation, covenant, agreement, term or condition in this Agreement (including, for the avoidance of doubt, the Operating Standards) or (B) the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concession Company; *provided, however*, that such failure shall not constitute a Concession Company Default if (x) the Concession Company within

90 days following such initial notice, has demonstrated to the satisfaction of the Authority, acting reasonably, that (1) the Concession Company is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure and (2) the Concession Company's actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Authority, acting reasonably, and (y) such failure is in fact cured by the Concession Company within such period of time;

(ii) if the Concession Company fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement (including, for the avoidance of doubt, the Operating Standards or the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19), which failure creates a material danger to the safety of Cruise Port Facility Operations or a material impairment to the Cruise Port Facility or to the continuing use of the Cruise Port Facility for Cruise Port Purposes, or fails to pay amounts owed to the Authority when due (including the Annual Dredging Payment, the Annual Authority Revenue Share or the Incremental Authority Revenue Share) and, in either case, such failure remains unremedied for a period of 10 Business Days following initial notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concession Company;

(iii) if the Concession Company fails either (A) to comply in any material respect with a work plan approved by the Authority in accordance with Section 16.1(b)(iii) or (B) to achieve Completion of any Cruise Pier Improvement Project or Modification by no later than 270 days following the applicable Scheduled Completion Date;

(iv) if (A) the Concession Company fails to comply with any specified performance requirements set forth in the Operating Standards three or more times within any calendar month, (B) notwithstanding the cure periods provided in Section 16.1(a)(i), any three such failures continue unremedied for a period of 30 days (or such longer period as may be reasonably necessary to cure such failure to the extent that the Concession Company is diligently pursuing such cure) following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concession Company and the Concession Company has not provided to the Authority a remediation plan therefor reasonably acceptable to the Authority (each calendar month during which such three failures shall have continued unremedied or unaddressed by a remediation plan, as aforesaid, a "Persistent Breach Month"), and (C) 12 Persistent Breach Months shall have occurred during any period of 24 calendar months; *provided* that no Persistent Breach Month shall result from the failure by the Concession Company to comply with such specified performance requirements if such failure occurs prior to the first anniversary of the Closing and *provided further* that, for the avoidance of doubt, any cure of any Concession Company Default under this Section 16.1(a)(iv) shall require the cure of each failure that has occurred during any Persistent Breach Month;

(v) if this Agreement or all or any portion of the Concession Company Interest or any interest (direct or indirect) in Global Ports Holding PLC is Transferred in contravention of Article 17;

(vi) if the Concession Company files, acquiesces in the filing of, or otherwise becomes the subject of, a Proceeding (other than as described in Section 16.1(a)(vii)), or takes any action for the purpose of effecting a Proceeding;

(vii) if within 90 days after the commencement of any involuntary Proceeding against the Concession Company such involuntary Proceeding continues undismissed with respect to the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official such appointment is not vacated within 90 days after such appointment;

(viii) if the Concession Company admits in writing its inability to, or publicly declares its intention not to, pay its debts as they become due;

(ix) if a levy under execution or attachment has been made against all or any material portion of the Cruise Port Facility or any material interest therein as a result of any Encumbrance (other than a Permitted Concession Company Encumbrance) created, incurred, assumed or suffered to exist by the Concession Company or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 days after the Concession Company becomes aware of such levy or attachment, unless such levy or attachment resulted from actions or omissions of the Authority, its Representatives or any Governmental Authority established under the Laws of the Commonwealth; or

(x) if any of the events described in Section 3(f) of Appendix D to Schedule 3 as triggering a Concession Company Default occurs, subject to Section 3(g) of Appendix D to Schedule 3.

(b) *Remedies of the Authority Upon Concession Company Default*. Upon the occurrence of and during the continuance of a Concession Company Default, the Authority may, by notice to the Concession Company and the Concession Mortgagee in accordance with the terms hereof, declare the Concession Company to be in default and may, subject to the rights of the Concession Mortgagee pursuant to Section 18.3, Section 18.4 and Section 18.5 and the provisions set forth in Article 18, Article 19 and Article 200, do any or all of the following as the Authority, in its discretion, shall determine:

(i) upon the occurrence of a Concession Company Default described in Section 16.1(a)(ii), the Authority is entitled to terminate this Agreement (without the need for any other action on behalf of the Authority) upon notice to the Concession Company, which may be given immediately upon the expiration of the 10-Business-Day period described in Section 16.1(a)(ii) (for the avoidance of doubt, the entitlement of the Concession Company to cure such Concession Company Default by the delivery of an approved work plan, as described in Section 16.1(b)(iii), shall not apply thereto);

(ii) upon the occurrence of a Concession Company Default described in Section 16.1(a)(iii), the Authority is entitled to terminate this Agreement (without the need for any other action on behalf of the Authority) by giving 90 days' prior notice to the Concession Company (for the avoidance of doubt, the entitlement of the Concession Company to cure such

Concession Company Default by the delivery of an approved work plan, as described in Section 16.1(b)(iii), shall not apply thereto);

(iii) upon the occurrence of a Concession Company Default other than one described in Section 16.1(a)(ii) or Section 16.1(a)(iii), the Authority is entitled to terminate this Agreement (without the need for any other action on behalf of the Authority) by giving 90 days' prior notice to the Concession Company; *provided, however,* that the Concession Company shall be entitled to cure such a curable Concession Company Default by providing the Authority with a written work plan within such 90-day period, which work plan shall be Approved by the Authority, outlining the actions by which the Concession Company will ensure future compliance with either the obligation, covenant, agreement, term or condition in this Agreement or the requirements or directives of the issued final award in accordance with Article 19 that the Concession Company failed to perform or observe; *provided further* that the Authority shall not exercise the remedy provided in this Section 16.1(b)(iii) if the Concession Company Default consists solely of a violation of any of the provisions of Article 11 unless such violation is systematic or persistent or the exercise of such remedy is required by Law (but any violation of such Article 11 shall nonetheless subject the Concession Company to such fines or penalties otherwise applicable to such violation as they be imposed by the appropriate Governmental Authority or to the imposition of a requirement on the Concession Company to demonstrate to the Authority that the Concession Company has or will implement all actions considered necessary by the Authority (which may include a remedial plan) to ensure that such violations do not become systematic or persistent); *provided further* that the remedies for rescission or termination of this Agreement required by Act No. 2 of the Legislative Assembly of Puerto Rico enacted on January 4, 2018, as amended, and Act No. 237 of the Legislative Assembly of Puerto Rico enacted on August 31, 2004, as amended, shall be exclusively as provided in Section 16.6;

(iv) if the Concession Company Default is by reason of the failure to pay any monies, the Authority is entitled to (without obligation to do so) make payment on behalf of the Concession Company of such monies, and any amount so paid by the Authority shall be payable by the Concession Company to the Authority within three Business Days after written demand therefor;

(v) subject to the cure rights of the Concession Mortgagee set forth in Section 18.3, the Authority is entitled to cure the Concession Company Default (but this shall not obligate the Authority to cure or attempt to cure a Concession Company Default or, after having commenced to cure or attempted to cure a Concession Company Default, to continue to do so), and all costs and expenses reasonably incurred by the Authority in curing or attempting to cure the Concession Company Default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the Concession Company to the Authority within three Business Days following written demand therefor; *provided, however,* that (A) the Authority shall not incur any liability to the Concession Company for any act or omission of the Authority or any other Person in the course of remedying or attempting to remedy any Concession Company Default (other than as a result of gross negligence or willful misconduct) and (B) the Authority's cure of any Concession Company Default shall not affect the Authority's rights against the Concession Company by reason of the Concession Company Default;

(vi) the Authority is entitled to seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concession Company Default;

(vii) the Authority is entitled to seek to recover its Losses arising from such Concession Company Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt under applicable Law;

(viii) the Authority is entitled to, subject to applicable Law, distrain against any of the Concession Company's goods situated at the Cruise Port Facility and the Concession Company waives any statutory protections and exemptions in connection therewith;

(ix) the Concession Company may be debarred or suspended for 10 years in accordance with Section 10(a)(xv)(C) of the Act;

(x) in the case of a Concession Company Default described in Section 16.1(a)(iii) with respect to violations of Sanction Laws, the Authority is entitled to terminate this Agreement immediately (without the need for any other action on behalf of the Authority and, for the avoidance of doubt, Concession Company right to cure such Concession Company Default shall not apply thereto); and

(xi) the Authority is entitled to exercise any of its other rights and remedies provided for hereunder or at law or in equity.

Section 16.2 Defaults by the Authority.

(a) *Events of Default*. The occurrence of any one or more of the following events during the Term shall constitute a "Authority Default" under this Agreement:

(i) other than as described in Section 16.2(a)(ii) or (iv), if the Authority fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) or the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure or breach continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Concession Company to the Authority; *provided, however,* that such failure shall not constitute an Authority Default if (A) the Authority within 90 days following such initial notice, has demonstrated to the satisfaction of the Concession Company, acting reasonably, that (1) the Authority is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure and (2) the Authority's actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concession Company, acting reasonably, and (B) such failure is in fact cured by the Authority within such period of time;

(ii) if the Authority fails to comply in any material respect with a work plan approved by the Concession Company in accordance with Section 16.2(b)(iii);

(iii) if a levy under execution or attachment has been made against all or any material portion of the Cruise Port Facility or the Concession Company Interest as a result of any Encumbrance (other than a Permitted Authority Encumbrance) created, incurred, assumed or suffered to exist by the Authority or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 days after the Authority becomes aware of such levy or attachment, unless such levy or attachment resulted from actions or omissions of the Concession Company or its Representatives or if all or any material portion of the Cruise Port Facility shall be subject to a condemnation or similar taking by the Authority or any Governmental Authority;

(iv) the Authority Transfers any or all of its interest in the Cruise Port Facility or this Agreement other than in compliance with Section 17.4;

(v) if the Authority files, acquiesces in the filing of, or otherwise becomes the subject of, a Proceeding, or takes any action for the purposes of effecting a Proceeding, the Authority seeks to reject or disaffirm the Concession or the court determines that the Concession Company is not entitled to remain in possession of its rights as provided in this Agreement;

(vi) if the Authority admits in writing its inability to, or publicly declares its intention not to, pay its debts as they become due (provided that nothing in any financial reporting required under PROMESA shall be considered such an admission or declaration); or

(vii) If the Authority seeks to reject or disaffirm the Concession, whether in a Proceeding or otherwise.

(b) *Remedies of Concession Company Upon Authority Default*. Upon the occurrence and during the continuance of an Authority Default, the Concession Company may, by notice to the Authority in accordance with the terms hereof, declare the Authority to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concession Company, in its discretion, shall determine:

(i) the Concession Company is entitled to be paid by the Authority the Concession Compensation with respect thereto;

(ii) upon the occurrence of an Authority Default described in Section 16.2(a)(ii), the Concession Company is entitled to terminate this Agreement (without the need for any other action on behalf of the Concession Company) by giving 90 days' prior notice to the Authority (the "Initial Termination Notice") (for the avoidance of doubt, the entitlement of the Authority to cure such Authority Default by the delivery of an approved work plan, as described in Section 16.2(b)(iii), shall not apply thereto); and upon such termination the Authority shall be obligated to pay to the Concession Company an amount (which amount shall be paid from general Authority funds and not from Cruise Port Facility revenues) calculated in accordance with Section 16.2(c);

(iii) upon the occurrence of an Authority Default other than one described in Section 16.2(a)(ii), the Concession Company is entitled to terminate this Agreement (without the need for any other action on behalf of the Concession Company) by giving 90 days' prior notice to the Authority (like the notice described in Section 16.2(b)(iii), also the "Initial Termination Notice"); *provided, however,* that the Authority shall be entitled to cure an Authority Default pursuant to Section 16.2(a)(i) by providing the Concession Company with a written work plan within such 90-day period, which work plan shall be approved by the Concession Company (which approval shall not be unreasonably withheld, delayed or conditioned), outlining the actions by which the Authority will ensure future compliance with either the obligation, covenant, agreement, term or condition in this Agreement or the requirement or directive of the final award in accordance with Article 19 that the Authority failed to perform or observe; and upon such termination the Authority shall be obligated to pay to the Concession Company an amount (which amount shall be paid from general Authority funds and not from Cruise Port Facility revenues) calculated in accordance with Section 16.2(c);

(iv) the Concession Company is entitled to seek to recover its Losses arising from such Authority Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt under applicable Law;

(v) the Concession Company is entitled to seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an Authority Default;

(vi) the Concession Company is entitled to exercise any of its other rights and remedies provided for hereunder or at law or in equity; and

(vii) if this Agreement is rejected or disaffirmed, or if the Concession is otherwise rejected or disaffirmed, in whole or in part, in a Proceeding, the Concession Company may retain its rights under such Concession (including rights such as those relating to the amount and timing of payment and other amounts payable by the Concession Company and any rights of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the Concession for the balance of the Term of this Agreement and for any renewal or extension of such rights to the extent provided for herein and to the extent permitted under applicable Law. If the Concession Company elects to retain its rights to the Concession, the Concession Company may offset against the payments otherwise due to the Authority for the balance of the term after the date of the rejection or disaffirmance of the Concession and for any renewal or extension of the Term of this Agreement, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the Authority under this Agreement, but the Concession Company shall not have any other right against the Authority on account of any damage occurring after such date caused by such nonperformance. The Concession Company shall provide an accounting of any offset taken by the Concession Company against the payments otherwise due to the Authority, and the Concession Company shall disgorge any amounts offset by the Concession Company that are finally determined by a court of competent jurisdiction to not have been damages caused by the Authority's nonperformance after the date of such rejection. Notwithstanding anything to the contrary in this

Agreement, the rights granted to the Concession Company under this Agreement and the rights provided to the Concession Company in this paragraph are integrated and non-severable.

(c) *Calculation of Termination Damages*. Upon termination in accordance with Section 16.2(b)(ii) or Section 16.2(b)(iii), the Authority shall be obligated to pay on the Reversion Date to the Concession Company an amount (which amount shall be paid from general Authority funds and not from Cruise Port Facility revenues) equal to the aggregate, without duplication, of (i) the Cruise Port Facility Concession Value as of the date of termination, plus (ii) the reasonable out-of-pocket and documented costs and expenses incurred by the Concession Company as a direct result of such termination, plus (iii) the Concession Compensation calculated for the period between the date of the Authority Default and the date of termination, less (iv) any insurance or condemnation proceeds payable to the Concession Company (or that should have been payable to the Concession Company but for (x) the insurer's inability to pay, (y) the breach by the Concession Company of an obligation to take out or maintain insurance under this Agreement or (z) the invalidity or breach of any insurance policy caused by the Concession Company under which such policy proceeds would have been paid) with respect to all or any portion of the Cruise Port Facility as a result of the occurrence of such Authority Default (collectively, the "AD-Termination Damages") to the Concession Company or, if the AD-Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 60 days following the date of determination (which determination shall not be unreasonably delayed) of the AD-Termination Damages (together with interest at the rate set forth in Section 20.9 from the Reversion Date to the date on which payment is made); *provided* that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing to make such a payment; *provided further* that, subject to (A) the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date (or, if earlier, the 60th day after the giving of the Initial Termination Notice) to the date on which payment is made and (B) the Authority providing written notice of such deferral (a "Deferral Notice") to the Concession Company no later than 30 days after the date on which the Concession Company gives the Initial Termination Notice, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines (which determination shall be certified to in the Deferral Notice) that such additional period is necessary to obtain financing to make such a payment (it being agreed by the Authority and the Concession Company that if the Authority gives a Deferral Notice, then the Concession Company shall have the option (by giving written notice thereof to the Authority) to postpone the termination of this Agreement from the date of termination set forth in the Initial Termination Notice to any date that is on or prior to the expiration of such additional 120-day period and such postponement shall not further defer the date on which any such payment is required to be made by the Authority); *provided, however, that* any amounts received by the Concession Company or any Concession Mortgagee from any insurance policies payable as a result of damage or destruction to the Cruise Port Facility that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Authority to the Concession Company so long as the Authority has not received any such amounts pursuant to Article 13.

(d) Any dispute arising out of the determination of the AD-Termination Damages shall be submitted to the dispute resolution procedure in Article 19.

(e) No notice given by the Concession Company to the Authority in which the Concession Company states that it elects to exercise its right of termination of this Agreement shall be valid for any purpose unless, if any Concession Mortgage Debt remains outstanding and if and to the extent required by the terms of any Concession Mortgage, the Concession Company has first obtained and delivered to the Authority the written consent of the Concession Mortgagee to such notice.

Section 16.3 Letters of Credit; Capital Costs Reserve.

(a) The Concession Company shall deliver no later than the first day of the Term Year that is five years prior to the final Term Year of the Term, a Letter of Credit in the amount that the Independent Engineer reasonably determines is appropriate to cover all costs of capital improvements for the remainder of the Term as set forth in the capital improvement requirements included in the Operating Standards.

(b) Subject to Section 16.3(c), such Letter of Credit shall be replaced on every anniversary of such Term Year until the date that is three years after the later of (i) the expiration of the Term and (ii) such time as there is no unresolved dispute with respect to the Concession Company's compliance with or performance or observation of any obligation, covenant, agreement, term or condition in this Agreement with a Replacement Letter of Credit in the amount of the undrawn balance of such Letter of Credit plus the amount of interest that would have been earned on such balance if invested for the next 12-month period at the Bank Rate. The required amount of any Letter of Credit may be adjusted from time to time (at intervals that may be shorter than one Term Year) by the amount that the Independent Engineer reasonably determines is appropriate (taking into account progress by the Concession Company made toward the completion of capital improvements and changes in costs of remaining capital improvements) such that the amount of the Letter of Credit after such adjustment remains sufficient to cover all costs of capital improvements for the remainder of the Term as required by the Operating Standards. Upon the occurrence and continuance of a Concession Company Default (or if there is a dispute as to the occurrence of a Concession Company Default, upon a final decision pursuant to Article 19 that a Concession Company Default has occurred), the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn, and without the Authority's exercise of such right being deemed a waiver or a cure of the Concession Company's failure to perform and whether or not this Agreement is thereby terminated), with three Business Days' prior notice to the Concession Company, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority with respect to such Concession Company Default.

(c) The Concession Company shall replace each Letter of Credit with a replacement Letter of Credit (the "Replacement Letter of Credit") at least 60 days prior to the expiry date of a Letter of Credit which is expiring. If the Concession Company does not deliver

to the Authority a Replacement Letter of Credit within such time period, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concession Company's failure to perform and whether or not this Agreement is thereby terminated) to draw immediately the full amount of the Letter of Credit upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft; provided that any drawings under such Letter of Credit must be used by the Authority solely for the purposes of covering the cost of capital improvements for the remainder of the Term as required by the Operating Standards. After the Concession Company delivers to the Authority a Replacement Letter of Credit complying with the provisions of this Agreement, the Authority shall deliver in accordance with the Concession Company's reasonable instructions the Letter of Credit being replaced (provided that at such time no sight draft under such Letter of Credit is outstanding and unpaid) and, if applicable, shall return to the Concession Company any proceeds of any drawings under such Letter of Credit pursuant to the preceding sentence. Any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced and satisfy the requirements for a Letter of Credit, but in any event (i) the amount of each Replacement Letter of Credit, except as provided in Section 16.3(b), shall equal or exceed the amount of the Letter of Credit being replaced at the time of replacement and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced or such other shorter period acceptable to the Authority as required hereunder.

(d) If this Agreement is terminated by the Authority prior to the expiration of the Term as a result of a Concession Company Default in accordance with the terms hereof, the Authority shall have the right, but without duplication to Section 16.3(b) (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages recoverable by the Authority may be reduced by the amount so drawn, and without the Authority's exercise of such right being deemed a waiver or a cure of the Concession Company's failure to perform), with three Business Days' prior notice to the Concession Company, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority pursuant to the terms of this Agreement with respect to such Concession Company Default, including the amount of the Return Condition Works Cost.

(e) The Authority will accept the Letters of Credit to be delivered pursuant to this Section 16.3 (and pursuant to Section 2.3) as security for the Concession Company's obligations under this Agreement, in place of a cash deposit in the same amount. The Concession Company's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be the right to obtain from the Authority a refund of the amount of any sight draft the proceeds of which were drawn inappropriately or misapplied and the reasonable costs incurred by the Concession Company as a result of such draw or misapplication (including, for the avoidance of doubt, interest thereupon); provided, however, that at the time of such refund, the Concession Company increases the amount of the Letter of Credit to the amount (if any) then required under the applicable provisions of this Agreement. The Concession Company acknowledges that the presentment of sight drafts drawn

under the Letter of Credit could not under any circumstances cause the Concession Company injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. The Concession Company shall not request or instruct the issuer of the Letter of Credit to refrain from paying any sight draft drawn under a Letter of Credit.

(f) If the Authority desires to assign its rights and obligations in accordance with Section 17.4 of this Agreement, the Concession Company shall cooperate so that concurrently with the effectiveness of such assignment, either Replacement Letters of Credit as described in Section 16.3(c) for, or appropriate amendments to, the Letters of Credit then held by the Authority, in either case identifying as beneficiary the appropriate party after the assignment becomes effective, shall be delivered to the Authority, at no cost to the Concession Company.

(g) The Concession Company shall obtain and furnish all Letters of Credit and Replacement Letters of Credit at its sole cost and expense (except as noted above) and shall pay all charges imposed in connection with the Authority's presentation of appropriate sight drafts and drawing against the Letters of Credit or Replacement Letters of Credit.

(h) In lieu of any Letter of Credit to be provided by the Concession Company pursuant to the terms of this Section 16.3, whether in whole or in part, the Concession Company shall, at the Concession Company's discretion, have the option:

(i) to provide a Surety Bond or to deposit with a Depositary for the benefit of the Authority, as collateral security, cash or Eligible Investments in an amount equal to the amount of such Letter of Credit, or relevant part thereof, at the time of such deposit, or

(ii) to create and maintain a reserve account (the "Capital Costs Reserve") in such amount as may be required by, and under the control of, the Concession Mortgagee for the purpose of providing for the payment, whether in whole or in part, of the costs of the Return Condition Works and other capital improvements required by the Operating Standards (including the Return Condition Works Program) for the remainder of the Term; *provided* that the terms under which such Capital Costs Reserve is established and maintained under the applicable financing agreements will ensure its availability to the Authority in the case of a Concession Company Default or failure to implement the Return Condition Works Program, subject only to the rights of the Concession Mortgagee. In the event the Concession Company opts to establish a deposit pursuant to Section 16.3(h)(i), the Depositary shall invest and reinvest such amounts in Eligible Investments at the direction of the Concession Company and any earnings thereon shall be paid to the Concession Company. If, at any time during the Term, the Authority would have the right to draw any amount on a Letter of Credit for which the Concession Company has substituted cash or Eligible Investments or the Capital Costs Reserve pursuant to this Section 16.3(h), the Concession Company shall cause the Depositary to pay such amount to the Authority from such cash deposit or Eligible Investments or the Concession Company shall cause the Concession Mortgagee to pay such amount to the Authority from the Capital Costs Reserve, as the case may be, in accordance with the terms of this Section 16.3, and all rights and remedies of the Authority and the Concession Company with respect to such cash deposits or Eligible Investments, if any, and Capital Costs Reserve (subject to the rights of the Concession Mortgagee in the Capital Costs Reserve) shall be the same as those provided in this

Section 16.3 with respect to any Letter of Credit; *provided, however*, that the certification that would have been provided by the Authority with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depositary and delivered to the Depositary together with the Authority's written demand for payment.

(i) If Letters of Credit shall not in the future be available at commercially reasonable terms and rates or shall not be a commercially reasonable form of security in similar transactions, the Concession Company shall furnish the Authority with comparable security instruments or Eligible Investments that then are commonly used in similar transactions and which are Approved by the Authority; and if no such security instruments shall be available, the Concession Company shall deposit with the Authority cash as security.

(j) In the event that the issuer of a Letter of Credit, a Replacement Letter of Credit or a Surety Bond no longer meets the credit rating requirements for such issuer set forth in this Agreement, then the Concession Company shall have the obligation to replace such Letter of Credit, Replacement Letter of Credit or Surety Bond with an instrument that meets the requirements set forth in this Agreement. If the Concession Company shall not have replaced such Letter of Credit, Replacement Letter of Credit or Surety Bond with an instrument that meets the requirements set forth in this Agreement within 30 days, the Authority shall have the right (in addition to all other rights and remedies provided for in this Agreement, without the Authority's exercise of such right to be deemed a waiver or cure of the Concession Company's failure to perform and whether or not this Agreement is thereby terminated), with two Business Days' prior notice to the Concession Company, to draw against such Letter of Credit, Replacement Letter of Credit or Surety Bond in accordance with its terms in the full amount available thereunder, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn.

(k) Any Letter of Credit, Replacement Letter of Credit or Surety Bond shall provide that the Authority may draw on such Letter of Credit, Replacement Letter of Credit or Surety Bond in accordance with its terms in the circumstances set forth in Section 16.3(j).

Section 16.4 Consequences of Termination or Reversion.

Upon the expiration of the Term or the earlier termination of this Agreement and, in the event of termination pursuant to Section 14.1, Section 16.2(b)(ii), Section 16.2(b)(iii), Section 16.5, Section 16.6, or Section 16.7, concurrently with the payment to the Concession Company of all Termination Damages due as a result of such termination (notwithstanding any claims the Parties may have against each other and subject to Section 16.2(b)(iv) and Article 18), the following provisions shall apply:

(a) the Concession Company shall, without any action whatsoever being necessary on the part of the Authority, well and truly surrender and deliver to the Authority the Cruise Port Facility (including all improvements to the Cruise Port Facility), the Cruise Port Facility Assets and all tangible and intangible personal property (including inventories) located at the Cruise Port Facility or used in connection with the Cruise Port Facility Operations (except in the case of a termination in the circumstances contemplated by Section 13.3(b)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances created,

incurred, assumed or suffered to exist by the Concession Company or any Person claiming through it other than (i) Permitted Concession Company Encumbrances set forth in clause (v), clause (viii) and clause (ix) as it pertains to clauses (v), (viii) and clause (ix) of the definition of that term, (ii) Permitted Authority Encumbrances, (iii) those created by or suffered to exist or consented to by the Authority or any Person claiming through it and (iv) with respect to any property added to the Cruise Port Facility after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Cruise Port Facility;

(b) the Concession Company hereby waives any notice now or hereafter required by Law with respect to vacating the Cruise Port Facility on the Reversion Date;

(c) the Authority shall, as of the Reversion Date, assume full responsibility for the Cruise Port Facility Operations; *provided that* the Authority shall not be obligated to assume all or any portion of any Operating Agreement or Construction Contract that is entered into after the Closing Date which does not comply with Section 3.2(d) or Section 20.15(a) and (e), and as of the Reversion Date, the Concession Company shall have no liability or responsibility for Cruise Port Facility Operations occurring after such date and the Authority shall be responsible for satisfying all applicable Governmental Authority requirements;

(d) the Concession Company shall be liable for all costs, expenses and other amounts for which it is expressly liable or responsible hereunder incurred up to but not including the Reversion Date, and the Authority shall be liable for all costs, expenses and amounts incurred in connection with the Cruise Port Facility Operations on and after the Reversion Date;

(e) the Authority shall have the option by providing notice to the Concession Company of requiring that the Concession Company assign, without warranty or recourse to the Concession Company, all of its right, title and interest in, to and under all or any of the Operating Agreements and Construction Contracts then in effect and all Authorizations to the Authority or its nominee for the remainder of their respective terms (and the Concession Company during the Term shall require and ensure that all Principal Contracts contain appropriate assignment provisions that will allow the Concession Company and the other party thereto to effectuate the foregoing); provided, however, that if the Authority exercises such option, the right, title and interest of the Concession Company in, to and under such Operating Agreements, Construction Contracts and Authorizations shall be assigned to the Authority or its designee as of the Reversion Date and the Concession Company shall surrender the Cruise Port Facility to the Authority and shall cause all Persons claiming under or through the Concession Company to do likewise, and the Authority shall assume in writing, pursuant to an assumption agreement reasonably satisfactory to the Concession Company, the Concession Company's obligations under the Operating Agreements and Construction Contracts that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; provided further that if the Authority does not exercise such option, the Concession Company shall, unless the Authority has granted to a Concession Mortgagee or its nominee a new concession or public-private partnership agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements and the Construction Contracts;

(f) all plans, drawings, specifications and models prepared in connection with construction at the Cruise Port Facility and in the Concession Company's possession and all "as-

built" drawings shall become the sole and absolute property of the Authority, and the Concession Company shall promptly deliver to the Authority all such plans, drawings, specifications and models and all such as-built drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concession Company or its Representatives);

(g) the Concession Company, at its sole cost and expense, shall promptly deliver to the Authority copies of all records and other documents relating to the revenues generated at the Cruise Port Facility that are in the possession of the Concession Company or its Representatives and all other than existing records and information relating to the Cruise Port Facility as the Authority, acting reasonably, may request;

(h) the Concession Company shall execute and deliver to the Authority a release or other instrument reasonably required by the Authority to evidence such expiration or termination;

(i) the Concession Company shall assist the Authority in such manner as the Authority may reasonably require to ensure the orderly transition of control, operation, management, improvement, enhancements, development, maintenance and rehabilitation of the Cruise Port Facility, and shall, if appropriate and if requested by the Authority, take all steps as may be necessary to enforce the provisions of the Operating Agreements and Construction Contracts pertaining to the surrender of the Cruise Port Facility;

(j) the Authority and the Concession Company shall make appropriate adjustments, including adjustments relating to any Operating Agreements and Construction Contracts assigned to the Authority, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 days following the Reversion Date; *provided, however,* that the Authority and the Concession Company acknowledge that certain adjustments or readjustments may have to be made when a third-party provides to the Authority or the Concession Company a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended;

(k) in the event that, at the time of expiration of the Term (but not the earlier termination in accordance with the terms of this Agreement), the Concession Company had constructed, or commenced construction on, any Modifications constituting capital improvement projects required to be completed in accordance with the terms of this Agreement (including in respect of the Operating Standards, but, for the avoidance of doubt, excluding the Cruise Pier Improvement Projects), for which reimbursement was anticipated by the Concession Company pursuant to Section 5.2(a), or pursuant to any written document with respect to an Agreed Modification, but for which the Concession Company had not received, as of the date of such expiration of the Term, such anticipated reimbursement for the amounts incurred by the Concession Company on such Modifications constituting capital improvement projects, the Authority shall provide reimbursement to the Concession Company on the Reversion Date in an amount equal to the amount of the anticipated reimbursements not yet received by the

Concession Company as of the Reversion Date; *provided* that, with respect to any project that is commenced after the last day of the Term Year that is ten years prior to the final Term Year of the Term, this provision shall be applicable only to the extent that (i) such project is a Required Modification; and *provided further* that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing to make such a payment; and *provided further, however*, that, the Concession Company shall use its Reasonable Efforts to cooperate with the Authority with respect to transferring (to the extent practicable) any Concession Company financing in respect of such Modifications constituting capital improvement projects secured by or payable from Passenger Fees, Government Contributions or other revenues of the Cruise Port Facility or otherwise effectuating substitute financing for such Concession Company financing secured by or payable from such Passenger Fees, Government Contributions or other revenues;

(l) if this Agreement is terminated as a result of an Adverse Action, the payment by the Authority to the Concession Company of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concession Company may have against the Authority for and in respect of the termination of this Agreement and upon such payment, the Concession Company shall execute and deliver all such releases and discharges as the Authority may reasonably require to give effect to the foregoing; *provided, however*, that any liability of either Party to the other that arose prior to such termination (but not from the termination itself or the events leading to such termination), to the extent such liability has not already been set-off or paid or taken into account in the termination payment, shall not be discharged by such termination;

(m) the Authority hereby covenants and agrees that in the event of any termination of this Agreement and reversion of the Cruise Port Facility to the Authority, or in the event the Concession Company should abandon and cease to perform its obligations at any time prior to such termination, the Authority will take all reasonable actions, subject to all necessary Governmental Authority approvals, to assume responsibility for the management of the Cruise Port Facility in order to permit its continued operation without interruption in accordance with the Operating Standards and all applicable Law; and

(n) the Concession Company shall make any final payment of any outstanding Annual Dredging Payment, Annual Authority Revenue Share or Incremental Authority Revenue Share required in accordance with Section 2.1.

This Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

Section 16.5 Termination Other Than Pursuant to Agreement. If this Agreement is terminated by the Authority other than pursuant to Article 16 or is canceled, rescinded or voided by the Authority during the Term for any reason over the objection and without action by the Concession Company, any Concession Mortgagee or their respective Affiliates (other than by reason of the application of Section 16.6), the Authority shall pay to the Concession Company the AD-Termination Damages as of the date of termination in accordance with Section 16.2.

The Authority hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience.

Section 16.6 Termination Required by Act No. 2-2018 and Public Integrity Crimes.

(a) *This Agreement shall automatically be rescinded by operation of Act No. 2* of the Legislative Assembly of Puerto Rico, enacted on January 4, 2018, as amended, if the Concession Company or any subsidiary or alter ego thereof is convicted or enters a plea of guilty in respect of any Act No. 2-2018 Crime, or if any other Covered Party, while in the employ of the Concession Company, is convicted or enters a plea of guilty in respect of any Act No. 2-2018 Crime.

(b) *This Agreement shall terminate as required by Act No*. 237 of the Legislative Assembly of Puerto Rico, enacted on August 31, 2004, as amended, or the Code of Ethics, if the Concession Company is convicted of a Public Integrity Crime that is not an Act No. 2-2018 Crime.

(c) If this Agreement is rescinded or terminated during the Term pursuant to Section 16.6(a) and, in the case of a rescission caused by the conviction or the entering of a plea of guilty for an Act No. 2-2018 Crime, such crime was not committed in connection with the procurement of this Agreement, then the Authority shall be obligated to pay to the Concession Company an amount equal to the lesser of (i) the Cruise Port Facility Concession Value and (ii) the Unamortized Concession Fee, in each case calculated as of the End Date (the "PIC-Termination Damages"); provided that, (x) subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the End Date to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such payment and (y) if the amount of the PIC-Termination Damages is less than or equal to the sum of the Concession Mortgage Debt and any related Breakage Costs as of the End Date, then the Authority shall enter into a New Agreement with the Concession Mortgagee, or its designee or nominee, subject to and in accordance with Section 18.5 (and subject to clause (e) of this Section 16.6), and the Authority shall be released from any obligation to pay PIC-Termination Damages or any other compensation to the Concession Company in connection with such rescission or termination.

(d) If this Agreement is rescinded during the Term pursuant to Section 16.6(a) as a result of an Act No. 2-2018 Crime committed in connection with the procurement of this Agreement, then the Authority shall enter into a New Agreement with the Concession Mortgagee, or its designee or nominee, subject to and in accordance with Section 18.5 (and subject to Section 16.6(e)), and the Concession Company shall not be entitled to receive any PIC-Termination Damages or other compensation of any form or amount from the Authority in connection with such rescission.

(e) Notwithstanding anything to the contrary herein, in the event the Authority is required to enter into any New Agreement pursuant to Section 16.6(c) or (d), the Authority may elect, in its sole option by notice to the Concession Company at any time prior to

the execution and delivery of such New Agreement, to pay to the Concession Company a sum equal to the Concession Mortgage Debt and any related Breakage Costs, and upon such notice the Authority shall be (i) released from the obligation to enter into such New Agreement and (ii) obligated to pay such sum to the Concession Company in cash; provided that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the End Date to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such payment.

(f) If this Agreement is rescinded or terminated during the Term pursuant to this Section 16.6, then the Authority shall recover from the Concession Company all of the Authority's reasonable out-of-pocket expenses and Financing Costs, if any, arising in connection with such rescission or termination, together with any reasonable Re-Tender Costs relating to any Re-Tender of the Cruise Port Facility following such rescission or termination.

(g) Without limiting the obligation of the Concession Company to make any payment in accordance with Section 16.6(f) or any other payment then expressly due under any other provision of this Agreement, the Authority and the Concession Company acknowledge and agree that if this Agreement is rescinded or terminated pursuant to this Section 16.6, the Concession Company shall not be liable as a result of such rescission or termination to return any revenues generated at the Cruise Port Facility or other amounts received by it in accordance with this Agreement during the Term. The provisions of this Section 16.6 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 16.6 were a separate and independent contract made by the Authority with each of the Concession Mortgagee and the Concession Company.

Section 16.7 Force Majeure Termination.

(a) If a Force Majeure occurs that results in the Cruise Port Facility being substantially unavailable for Cruise Port Purposes (whether or not such Force Majeure caused physical damage or destruction to the Cruise Port Facility) and such effect continues for a period in excess of 360 consecutive days and has a material adverse effect on the fair market value of the Concession Company Interest, and insurance proceeds payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concession Company) are insufficient to restore the Concession Company to the same economic position as it would have had in the absence of such event, the Concession Company shall have the right to terminate this Agreement (such termination, the "Force Majeure Termination") by giving notice in the manner described in Section 16.7(b).

(b) If the Concession Company elects to exercise the right to the Force Majeure Termination, the Concession Company shall give notice ("Force Majeure Termination Notice") to the Authority within 30 days following the date on which the Concession Company first became aware of its right to the Force Majeure Termination, setting forth the details of the Force Majeure and its effect on the Cruise Port Facility that results in (i) the Cruise Port Facility being substantially unavailable for Cruise Port Purposes for a period in excess of 360 continuous days and (ii) a material adverse effect on the fair market value of the Concession Company

Interest as to which insurance proceeds are insufficient to effect restoration of the Concession Company's economic position. The Authority shall, after receipt of the Force Majeure Termination Notice, be entitled by notice to require the Concession Company to provide such further supporting information as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of a Force Majeure or the Force Majeure Termination claimed in the Force Majeure Termination Notice, the Authority shall give notice of dispute (the "Force Majeure Termination Dispute Notice") to the Concession Company within 30 days following the date of receipt of the Force Majeure Termination Notice stating the grounds for such dispute, and if neither the Force Majeure Termination Notice nor the Force Majeure Termination Dispute Notice has been withdrawn within 30 days following the date of receipt of the Force Majeure Termination Dispute Notice by the Concession Company, the matter shall be submitted to the dispute resolution procedure in Article 19.

(c) If the Concession Company has the right to terminate this Agreement in connection with a Force Majeure pursuant to this Section 16.7, and the Concession Company has exercised such right, this Agreement shall terminate 120 days following the date of receipt of the Force Majeure Termination Notice by the Authority.

(d) Upon termination in accordance with Section 16.7(a), the Authority shall be obligated to pay on the Reversion Date to the Concession Company an amount equal to the aggregate, without duplication, of (i) the Concession Mortgage Debt and the Qualified Debt as of the date of termination, plus (ii) the Concession Compensation for any Delay Event Remedy calculated for the period applicable to such Delay Event Remedy to the date of termination which has not already been paid, less (iii) any insurance proceeds payable to the Concession Company (or that should have been payable to the Concession Company but for (x) the insurer's inability to pay, (y) the breach by the Concession Company of an obligation to take out or maintain insurance under this Agreement or (z) the invalidity or breach of any insurance policy caused by the Concession Company under which such policy proceeds would have been paid) with respect to all or any portion of the Cruise Port Facility as a result of the occurrence of the applicable Force Majeure (but, for the avoidance of doubt, excluding (1) any out-of-pocket costs and expenses incurred by the Concession Company as a result of such termination, including costs and expenses of terminating Contracts or any other de-mobilization costs and expenses and (2) any other loss, cost or expense of the Concession Company) (collectively, the "FM – Termination Damages") (together with interest at the rate set forth in Section 20.9 from the Reversion Date to the date on which payment is made); *provided* that, subject to the right of the Concession Company to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary to obtain financing to make such a payment; *provided*, however, that any amounts received by the Concession Company or any Concession Mortgagee from any insurance policies payable as a result of damage or destruction to the Cruise Port Facility that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Authority to the Concession Company so long as the Authority has not received any such amounts pursuant to Article 13.

(e) Upon a Force Majeure Termination, (i) all Claims which the Concession Company may have against the Authority for and in respect of such Force Majeure Termination

shall be deemed to be fully and finally settled, and (ii) the Authority shall be released and forever discharged by the Concession Company from any and all liability with respect to such Force Majeure Termination.

(f) It is acknowledged by the Concession Company that as a result of COVID-19 the originally considered Outside Closing Date was extended to the Outside Closing Date now provided in this Agreement and other accommodations were made to the Concession Company by the Authority and, accordingly, notwithstanding anything in this Agreement to the contrary, the occurrence of the COVID -19 pandemic which was a declared a pandemic by the World Health Organization on or about March 11, 2020, shall not (i) be considered a Delay Event or Force Majeure, except as provided below, or a Compensation Event, (ii) be the basis for a Delay Event Remedy, or (iii) be the basis for an extension of the Outside Closing Security Delivery Date; *provided, however,* that (A) the Concession Company may be entitled to an extension to the Outside Closing Date in accordance with Section 2.2(a)(C) in respect of COVID-19, (B) the continuing effects of such COVID-19 pandemic after Closing may be considered a Delay Event to the extent the circumstances in clause (xvii) of such term, and the other requirements for a Delay Event, are satisfied, and (C) any material adverse change after the Date of this Agreement occurring in respect of the continuing effects of the COVID-19 pandemic, including in respect of any Laws or other requirements of any Governmental Authority after the Date of this Agreement, may constitute a Force Majeure for the purposes of this Agreement to the extent that the requirements for a Force Majeure are satisfied under this Agreement, but provided that (1) if the condition to Closing set forth in Section 2.4(c)(i)(B) has not been satisfied but has been waived by the Concession Company, any such Force Majeure arising from such a material adverse change after the Date of this Agreement occurring in respect of the continuing effects of the COVID-19 pandemic occurring prior to the second anniversary of the Closing Date shall be excluded for purposes of the period of Force Majeure referred to in Section 16.7(a), and the period after which the Concession Company has the right of Force Majeure Termination shall begin to be counted no earlier than the day following the second anniversary of the Closing Date and (2) if the condition to Closing set forth in Section 2.4(c)(i)(B) has been satisfied, any such Force Majeure arising from such a material adverse change after the Date of this Agreement occurring in respect of the continuing effects of the COVID-19 pandemic occurring prior to the Closing Date shall be excluded for the purposes of the period of Force Majeure referred to in Section 16.7(a) and the period after which the Concession Company has the right of Force Majeure Termination shall begin to be counted no earlier than the day following the Closing Date.

Section 16.8 Return of Cruise Port Facility.

(a) In furtherance of the obligations of the Concession Company in Section 16.4(a), not less than three (3) Term Years and not more than five (5) Term Years before the expiry of the Term, an Independent Engineer shall carry out an inspection of the Cruise Port Facility to determine: (i) what works ("Return Condition Works") need to be undertaken in order to bring the Cruise Port Facility to a condition which is consistent with the proper performance by the Concession Company of its maintenance obligations under this Agreement, and to ensure that, at the expiry of the Term, the condition of the Cruise Port Facility complies with and meets the requirements contained in this Agreement, including Schedule 12, (ii) a reasonable program for carrying out the Return Condition Works ("Return Condition Works

Program"), and (iii) the likely cost of carrying out the Return Condition Works in accordance with the Return Condition Works Program plus a contingency of 10% of such cost ("Return Condition Works Cost"). The Concession Company shall cooperate with the Authority and provide all access and other assistance required to enable the Independent Engineer to carry out such inspection. In addition, the Concession Company will provide copies of all records, reports and other information requested by the Authority for the purpose. If, within 30 days after the Authority requests access to the Cruise Port Facility for the purposes of an inspection under this Section 16.8(a), the Parties are unable to agree on any of the matters specified in this Section 16.8(a), the Authority may request that that matter be determined under Article 19.

(b) The Concession Company shall carry out the Return Condition Works in accordance with the Return Condition Works Program. The Concession Company shall obtain all necessary Authorizations in connection with the Return Condition Works, and must carry out the Return Condition Works in accordance with all applicable Laws and Authorizations, using Good Industry Practice, and so that, at the end of the Term, the condition of the Cruise Port Facility complies with and meets the requirements of this Agreement. Notwithstanding anything in this Agreement to the contrary, the Concession Company is required to ensure that, at the end of the Term, the condition of the Cruise Port Facility complies with and meets the requirements of this Agreement, and acknowledges and agrees that its obligations under this Agreement in that regard are not affected in any way by any approval or acceptance, on the part of the Authority, of the Return Condition Works, the Return Condition Works Program or the Return Condition Works Cost. The Authority shall have no liability with respect to the Return Condition Works and the Concession Company shall may make no claim against the Authority with regard to the Return Condition Works.

(c) Any Letter of Credit, Replacement Letter of Credit or Capital Costs Reserve provided in Section 16.3 may be drawn by the Authority to pay the Return Condition Works Cost.

(d) If the Concession Company is of the reasonable opinion that the Return Condition Works, or any of them ("Relevant Return Condition Works") have been performed in accordance with the requirements of Section 16.8(b) then the Concession Company may give a written notice to that effect to the Authority ("Return Condition Works Completion Notice"). Within 10 Business Days after receipt by the Authority of a Return Condition Works Completion Notice, the Authority shall inspect the Relevant Return Condition Works and issue to the Concession Company a notice stating: (i) whether or not the Authority is satisfied that the Relevant Return Condition Works have been completed in accordance with this Agreement, and (ii) if the Authority notifies it is not satisfied, the reasons for such opinion. If the Authority's notice issued under this Section 16.8(d) states it is not satisfied that the Relevant Return Condition Works have been completed, then, unless the Parties can resolve that dispute within 10 Business Days, either Party may refer that dispute for resolution in accordance with Article 19. If the determination under Article 19 is that the Relevant Return Condition Works have not been completed in accordance with this Agreement, the Concession Company shall continue with the performance of the Relevant Return Condition Works, having regard to the reasons provided in the notice under this Section 16.8(d)(ii) or the determination under Article 19, as applicable, and shall give such further notice required under this Section 16.8(d) as is necessary until the Authority notifies the Concession Company under Section 16.8(d)(i) that it is satisfied that the

Relevant Return Condition Works have been completed in accordance with this Agreement, or, if the matter is referred for resolution under Article 19, the determination is that the Relevant Return Condition Works have been completed in accordance with this Agreement.

ARTICLE 17
RESTRICTIONS ON TRANSFERS

Section 17.1 Transfers by the Concession Company.

(a) The Concession Company shall not Transfer, or otherwise permit the Transfer of, any or all of the Concession Company Interest to or in favor of any Person (a "Transferee"), unless (i) the Authority has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is the Concession Mortgagee or its designee or nominee permitted under Article 18) and (ii) the proposed Transferee (unless it is the Concession Mortgagee or its designee or nominee permitted under Article 18) enters into an agreement with the Authority in form and substance reasonably satisfactory to the Authority wherein the Transferee acquires the rights and assumes the obligations of the Concession Company and agrees to perform and observe all of the obligations and covenants of the Concession Company under this Agreement, including the obligations to (y) comply in all material respects with all applicable Laws (including Sanction Laws) with respect to the Cruise Port Facility and (z) maintain in full force and effect all qualifications necessary to carry on its business pertaining to the Cruise Port Facility. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect; *provided* that, while any Concession Mortgage is outstanding, the Authority shall not agree to any Transfer of any or all of the Concession Company Interest to or in favor of any Person without the previous written confirmation from the Concession Mortgagee that such Transfer is permitted under all outstanding Concession Mortgages.

(b) The Approval of the Authority of a proposed Transferee may be withheld (i) for the period from the Date of this Agreement to that date on which Concession Mortgage Debt is issued in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects as provided in Section 4.13, but in any event no later than the sixth anniversary of the Closing Date, in the discretion of the Authority and (ii) for the period from that date on which Concession Mortgage Debt is issued in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects as provided in Section 4.13, but in any event no later than the sixth anniversary of the Closing Date, to the End Date, only if the Authority reasonably determines that (A) the proposed Transfer is prohibited by or would result in a violation of applicable Law (including applicable Sanction Laws) or (B) such proposed Transferee is not capable of performing the obligations and covenants of the Concession Company under this Agreement, which determination shall be based upon and take into account one or more of the following factors: (1) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the experience of the proposed Transferee or any proposed managers or operating partners to be engaged by the proposed Transferee in operating cruise vessel ports and performing other relevant projects; and (3) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors

and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects).

(c) No Transfer of all or any of the Concession Company Interest (except a Transfer to a Concession Mortgagee or its nominee upon the Concession Mortgagee's exercise of remedies under its Concession Mortgage provided in Article 18 and any subsequent Transfer to the Transferee of the Concession Mortgagee or its nominee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred and is continuing a Concession Company Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concession Company Default.

Section 17.2 Transfers of Equity Holder Interests or Other Change in Control Transactions. Nothing contained in the foregoing shall be deemed to prohibit or limit, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, Transfers of direct or indirect ownership interests in the Concession Company by any Equity Participant or its beneficial owner(s) to any Person; *provided* that (i) for the period from the Date of this Agreement to that date on which Concession Mortgage Debt is issued in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects as provided in Section 4.13 or a Government Contributions Authorization is received confirming Government Contributions in an amount sufficient to pay one hundred percent (100%) of the Cruise Pier Improvement Projects Cost of the Expansion Investment Projects, but in any event no later than the sixth anniversary of the Closing Date, the Approval of the Authority, in its discretion, shall be required for any such Transfer, and (ii) for the period from that date on which Concession Mortgage Debt is issued in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects as provided in Section 4.13 or a Government Contributions Authorization is received confirming Government Contributions in an amount sufficient to pay one hundred percent (100%) of the Cruise Pier Improvement Projects Cost of the Expansion Investment Projects, but in any event no later than the sixth anniversary of the Closing Date, to the End Date, if any such Transfer results in a Change in Control of the Concession Company (other than a Change in Control occasioned by the exercise by any Concession Mortgagee of its remedies under any pledge of shares, limited liability company interests or partnership interests), the Approval of the Authority shall be required for any such Transfer in accordance with Section 17.1, including that the Transfer would not violate any Governmental Authority requirement. Any other transaction that results in a Change in Control of the Concession Company (other than a Change in Control occasioned by the exercise by any Concession Mortgagee of its remedies under any pledge of shares, limited liability company interests or partnership interests) shall also require the Approval of the Authority. For the avoidance of doubt, Global Ports Holding PLC shall be considered beneficial owners of Equity Participants in the Concession Company, and accordingly Global Ports Holding PLC may not Transfer such beneficial ownership of Equity Participants in the Concession Company for the period from the Date of this Agreement to that date on which Concession Mortgage Debt is issued in an amount sufficient to pay the Cruise Pier Improvement Projects Cost with respect to the Expansion Investment Projects as provided in Section 4.13, but in any event no later than the sixth anniversary of the Closing Date, without the Approval of the Authority, in its discretion. Notwithstanding the foregoing, as Global Ports

Holding PLC shall be considered beneficial owners of Equity Participants in the Concession Company as aforesaid, the Approval of the Authority shall not be required for any Transfer of any interest in Global Ports Holding PLC and any such Transfer of any interest in Global Ports Holding PLC shall be deemed not to result in a Change in Control of the Concession Company for the purposes of this Agreement; *provided, however*, that no Transfer of any interest (direct or indirect) in Global Ports Holding PLC shall be made which violates any Sanction Laws, and any such Transfer shall constitute a Concession Company Default pursuant to Section 16.1(a)(v), provided that the prior *proviso* shall not apply to any Transfer of shares of Global Ports Holding PLC or the direct or indirect shareholders of Global Ports Holding PLC pursuant to open market transactions on the London Stock Exchange, the New York Stock Exchange, NASDAQ, or other comparable foreign securities exchange to the extent Global Ports Holding PLC or the direct or indirect shareholders of Global Ports Holding PLC are neither controlling nor promoting such Transfer of shares.

Section 17.3 Other Corporate Actions.

(a) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concession Company from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership); provided that such change in organizational form or status does not result in a Change in Control of the Concession Company.

(b) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Authority under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concession Company's economic interest under this Agreement to another entity shall be deemed to be a Transfer of the Concession Company Interest for purposes of Section 17.1(a).

Section 17.4 Assignment by the Authority. During the Term, the Authority shall have the right to Transfer any or all of the Authority's interest in the Cruise Port Facility and this Agreement; *provided* that (a) it shall be jointly and severally obligated with the Transferee (unless the Transferee is the Authority's successor) for the performance and observance of the obligations and covenants of the Authority under this Agreement and any agreement entered into by the Authority under this Agreement (including agreeing directly with any Concession Mortgagee to be bound by the agreement entered into in accordance with Section 18.5), (b) any such Transfer by the Authority shall not materially limit or reduce any of the Concession Company's other rights, benefits, remedies or privileges under this Agreement or negatively affect the fair market value of the Concession Company Interest, and (c) any such Transfer is in compliance with applicable Law, and the Authority has obtained all necessary consents, including from any Governmental Authorities. Without limiting the generality of the foregoing, the Concession Company acknowledges and agrees that any action that may be taken under this Agreement by the Authority may be taken by the Authority or any other department, instrumentality or agency of the Commonwealth and that any action taken by the Authority or any other department, instrumentality or agency of the Commonwealth shall be deemed to have been taken by the Authority for purposes of this Agreement; *provided* that the Authority or any

such other department, instrumentality or agency shall comply with the obligations of the Authority as set forth in this Agreement and under applicable Law.

ARTICLE 18
LENDER'S RIGHTS AND REMEDIES

Section 18.1 Concession Mortgages. The Concession Company shall have the right, at its sole cost and expense, to grant one or more (subject to Section 18.7) Concession Mortgages, if at the time any such Concession Mortgage is executed and delivered to the Concession Mortgagee, no Concession Company Default exists unless any such Concession Company Default will be cured pursuant to Section 18.3 in connection with entering into such Concession Mortgage, and upon and subject to the following terms and conditions:

(a) the Concession Company shall have provided the form of the Concession Mortgage to the Authority and the Authority shall have determined that each such Concession Mortgage is in compliance with this Section 18.1;

(b) a Concession Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concession Company (or a financial institution providing a financial guaranty or similar credit enhancement in respect of any debt of the Concession Company); provided that it may cover shares or equity interests in the capital of the Concession Company and any cash reserves or deposits held in the name of the Concession Company;

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

(d) no Concession Mortgage or other instrument purporting to mortgage, pledge, encumber or create a lien, charge or security interest on or against any or all of the Concession Company Interest shall extend to or affect the fee simple interest in the Cruise Port Facility, the Authority's interest hereunder or its reversionary interest and estate in and to the Cruise Port Facility or any part thereof (other than a Permitted Concession Company Encumbrance);

(e) the Authority shall have no liability whatsoever for payment of the principal sum secured by any Concession Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the Authority of the express obligations to the Concession Mortgagee set forth in this Article 18 and for any remedies of the Concession Mortgagee provided by Law, the Concession Mortgagee shall not be entitled to seek any damages or other amounts against the Authority for any or all of the same;

(f) the Authority shall have no obligation to any Concession Mortgagee in the enforcement of the Authority's rights and remedies herein and by Law provided, except as expressly set forth in this Agreement and unless such Concession Mortgagee has provided the Authority with notice of its Concession Mortgage in accordance with the Concession Mortgagee Notice Requirements;

(g) each Concession Mortgage shall provide that if an event of default under the Concession Mortgage has occurred and is continuing and the Concession Mortgagee gives notice of such event of default to the Concession Company, then the Concession Mortgagee shall give notice of such default to the Authority;

(h) subject to the terms of this Agreement and except as specified herein, all rights acquired by a Concession Mortgagee under any Concession Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Authority hereunder and to all of the rights of the Signatory Cruise Lines under the Preferential Berthing Agreements;

(i) while any Concession Mortgage is outstanding, the Authority shall not agree to any amendment to or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Concession Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concession Company without the consent of the Concession Mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned;

(j) notwithstanding any enforcement of the security of any Concession Mortgage, the Concession Company shall remain liable to the Authority for the payment of all sums owing to the Authority under this Agreement and the performance and observance of all of the Concession Company's covenants and obligations under this Agreement, unless otherwise satisfied;

(k) a Concession Mortgagee shall not, by virtue of its Concession Mortgage, acquire any greater rights or interest in the Cruise Port Facility than the Concession Company has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Section 18.2, Section 18.3, Section 18.4 or Section 18.5; and

(l) each Concession Mortgagee, the Authority and the Concession Company shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of this Agreement to an agent in connection with the financing of the Concession Mortgage; provided that such consent agreement shall be in a customary form and shall include only the rights and protections provided to the Concession Mortgagee in this Agreement (including those provided in Section 16.6 and this Article 18). Nothing herein shall obligate the Authority to consent to service of process, become subject to any legal process in any jurisdiction other than in the Commonwealth, or enter into any agreement not governed by the Laws of the Commonwealth.

Section 18.2 Notices and Payments to Concession Mortgagees. Whenever a Concession Mortgage exists as to which the Authority has been provided notice by the holder thereof in accordance with the Concession Mortgagee Notice Requirements, the Authority shall, simultaneously with providing the Concession Company any required notice under this Agreement, provide a copy of such notice to such Concession Mortgagee, and no such notice to the Concession Company shall be effective against the Concession Mortgagee until a copy thereof is duly provided to such Concession Mortgagee at its address specified in its notice given to the Authority in accordance with the Concession Mortgagee Notice Requirements (or any subsequent change of address notice given to the Authority pursuant to the requirements of Section 20.1). With respect to a Concession Mortgage regarding which the Authority has been provided notice in accordance with the Concession Mortgagee Notice Requirements, unless the Concession Mortgagee recognized by the Authority pursuant to Section 18.7 has otherwise advised the Authority in writing, and solely to the extent so required pursuant to the terms of the financing secured by such Concession Mortgage, all payments to the Concession Company to be made by the Authority under this Agreement shall be made to the Concession Mortgagee or to the institution acting as the collateral agent or depositary under the financing provided by such Concession Mortgagee.

Section 18.3 Concession Mortgagee's Right to Cure. The Concession Mortgagee shall have a period of 270 days with respect to any Concession Company Default beyond any cure period expressly provided to the Concession Company herein, in which to cure or cause to be cured any such Concession Company Default; *provided, however,* that such 270-day period shall be extended if the Concession Company Default is nonmonetary, is not a Concession Company Default described in Section 16.1(a)(v), Section 16.1(a)(vi), or Section 16.1(a)(viii), and may be cured but cannot reasonably be cured within such period of 270 days, and the Concession Mortgagee begins to cure such default within such 270-day period (or if possession is necessary in order to effect such cure, the Concession Mortgagee, within such 270-day period, files the appropriate legal action to commence foreclosure on the liens of the Concession Mortgage) and thereafter proceeds with all due diligence to cure such Concession Company Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the Authority, acting reasonably; *provided, further,* that if any Concession Mortgagee is prohibited from curing any Concession Company Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any Proceeding involving the Concession Company, then the time periods specified in this Section 18.3 for curing such Concession Company Default shall be extended for the period of such prohibition; and *provided, further*, that if upon a Concession Company Default under Section 16.1(a)(v), any Concession Mortgagee is prohibited under Sanction Laws from curing such Concession Company Default, the Concession Mortgagee and the Authority shall in good faith discuss and determine if there are other lawful alternatives for the Concession Mortagee to (i) acquire the Concession Company Interest or (iii) in any lawful way take possession of and manage the Cruise Port Facility. If a Concession Mortgagee is acting to cure a Concession Company Default in accordance with this Section 18.3 then the Authority shall not exercise its right to terminate this Agreement by reason of such Concession Company Default; *provided, however,* that the Authority may exercise any of its other rights and remedies provided for hereunder at law or in equity so long as the exercise of such rights does not interfere with the Concession Mortgagee's

rights hereunder. In furtherance of the foregoing, the Authority shall permit the Concession Mortgagee and its Representatives the same access to the Cruise Port Facility as is permitted to the Concession Company hereunder and permit the Concession Mortgagee or its Representatives to take all actions and exercise all rights of the Concession Company under this Agreement (all at the Concession Company's sole cost and expense); *provided* that any actions taken by a Concession Mortgagee or its Representatives pursuant to this Section 18.3 shall be undertaken in accordance with the provisions of this Agreement that would be applicable to the Concession Company were it taking such actions. The Authority shall accept any such performance by a Concession Mortgagee or its nominee as though the same had been done or performed by the Concession Company. Any payment to be made or action to be taken by a Concession Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Concession Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Concession Mortgagee. Any exercise of the Concession Mortgagee's rights to cure hereunder shall not result in the assumption by such Concession Mortgagee of the Concession Company's obligations hereunder.

Section 18.4 Rights of the Concession Mortgagee.

(a) Subject to the provisions of this Agreement (including all necessary approvals and exemptions in accordance with Section 17.1(a)(i) and (ii)), a Concession Mortgagee may (i) enforce any Concession Mortgage in any lawful way, (ii) acquire the Concession Company Interest in any lawful way or (iii) take possession of in any lawful way and manage the Cruise Port Facility. Upon foreclosure of the Concession Mortgage (or without foreclosure upon exercise of any contractual or statutory power of sale under such Concession Mortgage or an assignment in lieu) and subject to the provisions of Article 17 (applied to the Concession Mortgagee as if it were the Concession Company), a Concession Mortgagee may Transfer the Concession Company Interest; provided, however, that no Transfer by a Concession Mortgagee shall be effective unless the Transfer is made in accordance with Article 17. Any Person to whom the Concession Mortgagee Transfers the Concession Company Interest (including such Concession Mortgagee) shall take the Concession Company Interest subject to any of the Concession Company's obligations under this Agreement (including the obligations to (y) comply in all material respects with all applicable Laws with respect to the Cruise Port Facility and/or (z) maintain in full force and effect all qualifications necessary to carry on its business pertaining to the Cruise Port Facility). The Concession Mortgagee is not permitted in connection with its enforcement of its lien to do anything that would materially and adversely affect the Cruise Port Facility, the Cruise Port Facility Operations or the rights of the Signatory Cruise Lines under the Preferential Berthing Agreements, in each case that is inconsistent or otherwise not permitted by this Agreement. Moreover, in the event that the Concession Mortgagee forecloses on the Concession Mortgage or otherwise exercises any rights in connection with any lien encumbering the Cruise Port Facility, the Cruise Port Facility Operations or the rights of the Signatory Cruise Lines under the Preferential Berthing Agreements, the Concession Mortgagee acknowledges and agrees that the Preferential Berthing Agreements with respect to each Signatory Cruise Line will remain in full force and effect and will be fully enforceable against the Concession Mortgagee in accordance with its respective terms. The Authority agrees that if requested by a Concession Mortgagee that is exercising its rights under this Section 18.4, the Authority will, subject to the receipt of any necessary approvals from any Governmental Authority, assume the obligation to manage and operate the

Cruise Port Facility by agreement with such Concession Mortgagee or with any Person to whom such Concession Mortgage may Transfer the Concession Company Interest hereunder; *provided* that such agreement provides for the payment to the Authority of its reasonable costs of performing such obligation, including a reasonable administrative charge and *provided further* that, except with the consent of the Authority, the Concession Mortgagee shall use its best efforts to retain a qualified third-party to assume such obligation, and obtain any necessary approvals for such assumption, as soon as reasonably practicable.

(b) Except as provided in Section 18.3, unless and until a Concession Mortgagee (i) forecloses or has otherwise taken ownership of the Concession Company Interest or (ii) has taken possession or control of the Concession Company Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concession Company Interest by reference to the Concession Mortgage, the Concession Mortgagee shall not be liable for any of the Concession Company's obligations under this Agreement or be entitled to any of the Concession Company's rights and benefits contained in this Agreement, except by way of security. During any period in which the Concession Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession, of the Concession Company Interest, it shall be bound by all liabilities and obligations of the Concession Company accruing under this Agreement during such period. Once the Concession Mortgagee goes out of possession or control of the Concession Company Interest or Transfers the Concession Company Interest to another Person in accordance with the provisions of this Agreement, the Concession Mortgagee shall cease to be liable for any of the Concession Company's obligations under this Agreement accruing thereafter, and to the extent assumed by any Transferee or any other Person acceptable to the Authority in accordance with this Agreement, for any of the Concession Company's obligations under this Agreement accrued during the period in which the Concession Mortgagee itself or by an agent or a receiver and manager was the owner, or was in control or possession, of the Concession Company Interest, and shall cease to be entitled to any of the Concession Company's rights and benefits contained in this Agreement, except, if the Concession Mortgage remains outstanding, by way of security.

Section 18.5 Authority's Termination of this Agreement; New Agreement.

(a) Without prejudice to the rights of a Concession Mortgagee under Section 18.3, if this Agreement is (i) terminated prior to the expiration of the Term due to a Concession Company Default (in which case the Authority shall notify the Concession Mortgagee of such termination and deliver to the Concession Mortgagee, together with such notice, a Statement of Estimated Liabilities), (ii) rejected or disaffirmed pursuant to any bankruptcy Law or Proceeding or other similar Law or proceeding affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concession Company or otherwise or (iii) is rescinded or terminated pursuant to Section 16.6 as a result of a Public Integrity Crime or an Act No. 2-2018 Crime in circumstances where the provisions of Section 16.6(c) or Section 16.6(d) are applicable, then the Authority agrees, if there are outstanding obligations to a Concession Mortgagee (subject to the receipt of all necessary approvals and exemptions in accordance with Section 17.1(a)(i) and (ii) and, in the case of circumstances described in Section 18.5(a)(iii), subject to Section 16.6(e)), upon the written request of the Concession Mortgagee, to enter into a new lease agreement of the Cruise Port Facility (the "New Agreement") with the Concession

Mortgagee (or its designee or nominee) and any ancillary documents or agreements as may be necessary or desirable to give full effect to the New Agreement; provided that such designee or nominee either is controlled by the Concession Mortgagee (or is Approved by the Authority as Transferee under Section 17.1) for the remainder of the Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement, effective as of the date of such termination.

(b) The Authority's obligation to enter into a New Agreement pursuant to Section 18.5(a) is subject to the satisfaction of all of the following requirements and conditions: (i) such Concession Mortgagee commits in writing to the Authority, in a notice delivered to the Authority, within 60 days after the Authority delivers the termination notice and Statement of Estimated Liabilities to the Concession Mortgagee (or, if later, upon the termination of any cure period granted to the Concession Mortgagee pursuant to Section 18.3) or within 10 Business Days after the effective date of such rejection or disaffirmance (referred to in Section 18.5(a)(ii)) or such rescission or termination (referred to in Section 18.5(a)(iii)), as the case may be, that the Concession Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Concession Mortgagee (or its designee or nominee); (ii) reasonably in advance of the execution of any New Agreement pursuant to Section 18.5(a)(i), the Concession Mortgagee (or its designee or nominee) pays or causes to be paid to the Authority, at the time of the execution and delivery of such New Agreement, (A) all amounts set forth in the Statement of Estimated Liabilities which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination and (B) all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements set forth in the Statement of Estimated Liabilities paid or incurred by the Authority in connection with such defaults and termination, the recovery of possession from the Concession Company, and the preparation, execution and delivery of the New Agreement and related agreements; and (iii) in the case of any New Agreement pursuant to Section 18.5(a)(i), such Concession Mortgagee (or its designee or nominee), at the time of such written request, cures all Concession Company Defaults under this Agreement (curable by the payment of money) of which the Concession Mortgagee has been notified by the Authority in writing that are existing immediately prior to the termination of this Agreement set forth in the Statement of Estimated Liabilities, or, if such defaults cannot be cured by the payment of money, such Concession Mortgagee (or its designee or nominee) commits to the Authority in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Concession Company Defaults (to the extent curable) set forth in the Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Concession Company Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults to the extent curable (and such cure shall be a covenant of the Concession Mortgagee in the New Agreement). The omission from a Statement of Estimated Liabilities of (x) any amounts payable to the Authority under this Agreement, (y) any unperformed obligations of the Concession Company hereunder or (z) any other costs of the Authority shall not excuse the payment of such amounts or costs or the performance of such unperformed obligations.

(c) Nothing contained in this Section 18.5 shall be deemed to limit or affect the Authority's interest in and to such Cruise Port Facility upon the expiration of the Term of the

New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the Authority, the Concession Company and the Concession Mortgagee and, if the Concession Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Concession Mortgagee may use and enjoy the Concession created by this Agreement (and all other rights and benefits provided to the Concession Company hereunder) without hindrance by the Authority, but only on and subject to the terms and provisions of this Agreement.

Section 18.6 Right to Dispute Resolution. In each case specified in this Agreement in which resort to dispute resolution is authorized, the Concession Mortgagee shall have the right and privilege if an event of default under the Concession Mortgage then exists and notice has been given to the Authority as contemplated by Section 18.1(f), in the Concession Company's name, place and stead, to obtain and participate in such dispute resolution upon notice to the Authority in accordance with Article 19; *provided* that the Concession Mortgagee agrees to be bound by the outcome of the dispute resolution process.

Section 18.7 Recognition by the Authority of Concession Mortgagee. Notwithstanding anything in this Agreement to the contrary, if there is more than one Concession Mortgagee, only that Concession Mortgagee, to the exclusion of all other Concession Mortgagees, whose notice was earliest received by the Authority pursuant to the Concession Mortgagee Notice Requirements, shall have the rights as a Concession Mortgagee under this Article 18, or otherwise under this Agreement, unless such Concession Mortgagee has designated in writing another Concession Mortgagee to exercise such rights; *provided, however,* that such notice may name more than one Concession Mortgagee and the rights referred to in this Section 18.7 may extend to all Concession Mortgagees named therein if such notice is submitted by a representative of all such Concession Mortgagees (which representative may itself be a Concession Mortgagee). Any references in this Agreement to the "Concession Mortgagee" shall be references to the Concession Mortgagee or representative of more than one Concession Mortgagee, acting on behalf of such Concession Mortgagees, whose notice was earliest received by the Authority pursuant to the Concession Mortgagee Notice Requirements unless the context otherwise requires.

Section 18.8 Authority's Right to Purchase Concession Mortgage.

(a) If (i) any event of default by the Concession Company has occurred under a Concession Mortgage and is continuing and (ii) the Concession Mortgagee recognized by the Authority pursuant to Section 18.7 is entitled, pursuant to the intercreditor arrangements then in force and effect, to declare all or part of the indebtedness secured by a Concession Mortgage to be immediately due and payable (or, in the case of a Concession Mortgage that is a lease, to terminate the lease), then, for 30 days commencing on the date that is 10 days after the date on which such Concession Mortgagee shall serve notice upon the Authority with a copy to all other Concession Mortgagees (the "Concession Mortgagee's Notice") that such Concession Mortgagee intends and is entitled to, pursuant to the intercreditor arrangements then in force and effect, to commence proceedings to foreclose the Concession Mortgage (stating the calculation of the purchase price pursuant to Section 18.8(c)) during such 30-day period, the Authority shall have

the right and option (the "Authority's Option") to purchase from all Concession Mortgagees their Concession Mortgages, upon the terms and subject to the conditions contained in this Section 18.8.

(b) The Authority's Option shall be exercised by written notice served upon the Concession Company and all Concession Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of the Authority's Option. If the Authority's Option is duly and timely exercised, the Authority shall purchase all Concession Mortgages and all Concession Mortgagees shall assign their Concession Mortgages to the Authority (or its designee) on the date which is 60 days after the date on which a Concession Mortgagee's Notice is served upon the Authority. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the Authority shall be 100% of the aggregate amounts secured by or due under such Concession Mortgages (including principal, interest, fees, premiums, Breakage Costs, termination value and other costs and expenses (including attorneys' fees) and any other amounts secured thereby or due thereunder) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the Authority to each respective Concession Mortgagee, to be applied by the Concession Mortgagee to the amounts secured by the Concession Mortgage owed to such Concession Mortgagee, subject to the priorities of lien of such Concession Mortgages.

(d) At the closing and upon payment in full of the purchase price each Concession Mortgagee shall assign its Concession Mortgage to the Authority, together with any security interest held by it in the Concession Company's Concession interest in the Cruise Port Facility, without recourse, representations, covenants or warranties of any kind, provided that such Concession Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the Authority to all Concession Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 18.8(d). Each such assignment shall be in form for recordation or filing, as the case may be. The Authority shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment.

(e) Any Concession Mortgage shall contain an agreement of the Concession Mortgagee to be bound by the provisions of this Section 18.8.

(f) The Authority shall have the right to receive (and each Concession Mortgage shall contain an agreement of the Concession Mortgagee to deliver) all notices of default under any Concession Mortgage contemporaneously with the delivery of such notices to the Concession Company, but the Authority shall not have the right to cure any default under any Concession Mortgage, except to the extent provided in this Section 18.8.

ARTICLE 19
DISPUTE RESOLUTION

Section 19.1 Scope. Except as otherwise expressly provided in this Agreement, any dispute among the Parties arising out of, relating to or in connection with this Agreement or the

existence, interpretation, breach, termination or validity thereof shall be resolved in accordance with the procedures set forth in this Article 19, which shall constitute the sole and exclusive procedures for the resolution of such disputes (the "Dispute Resolution Procedure"), including as to the validity of any termination or effective date of any termination. The Concession Company acknowledges and agrees that the Authority (or any Designated Person appointed by the Authority) shall be authorized to participate in or act for and on behalf of the Authority in any Dispute Resolution Procedure contemplated by this Article 19; *provided, however*, that mediation shall not apply to Access Disputes and the Access Protocol Independent Expert shall resolve all Access Disputes as provided in Schedule 3.

Section 19.2 Commencement of the Dispute Resolution Procedure.

(a) *Notice*. If a dispute arises, any Party may initiate the Dispute Resolution Procedure by giving a written notice of the dispute to the other Party (the "Notice of Dispute"). The Notice of Dispute shall contain a brief statement of the nature of the dispute, set out the relief requested and request that the Dispute Resolution Procedure of this Article 19 be commenced.

(b) *Tolling*. Any limitation period imposed by this Agreement or by applicable Law in respect of a dispute shall be tolled upon the delivery of a Notice of Dispute pursuant to this Article 19 for the duration of any Dispute Resolution Procedure pursuant to this Article 19. For the avoidance of doubt, any notice period required by this Agreement, including any written notice to terminate, shall not be tolled.

Section 19.3 Negotiation.

(a) *Generally*. Upon receipt of a Notice of Dispute from a Party, the Parties will refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith and attempt to resolve the dispute within thirty (30) days after the date on which the Notice of Dispute was issued or such longer period as the Designated Persons may otherwise agree. All communications, negotiations and discussions pursuant to this Section 19 shall be (i) confidential, (ii) without prejudice privileged, (iii) treated as compromise settlement discussions and negotiations and (iv) not used, offered or admissible as evidence in any subsequent proceeding without the mutual consent of the Parties.

(b) *Negotiation Period*.

(i) If the dispute remains unresolved thirty (30) days after the Notice of Dispute is issued (or such longer period as the Concession Company and the Authority may mutually agree in writing) (the "Negotiation Period"), then any disputes arising pursuant to Section 1.17(b) (*Approved Documents*), Section 2.3(d) (*Closing Security Delivery Date*), Section 4.5 (*Design and Construction Standards and Procedures*), Sections 4.6(f) and (h) (*Government Contributions and Role of Concession Company*); Section 4.7 (*Milestone Inspection and Completion Inspection; Title*), Section 4.8 (*Milestone Certificate and Completion Certificate*), Section 6.2 (*Modified Operating Standards*), Section 14.1 (*Adverse Action*), Article 15 (*Concession Compensation; Delay Events*), Section 16.7 (*Force Majeure Termination*), Section 16.8 (*Return of Cruise Port Facilities*), Section 2(d) of Schedule 15 regarding any proposed

change of the pricing methodology in the Passenger Fee for round-trips, Section 3.18 of Appendix 1 to Schedule 6 for any Closing Bond or Guaranty Determination, or which concern whether or not the Expansion Investment Projects Trigger Event or the Phase Two Trigger Event has occurred or whether the Expansion Investment Projects Requirements or the Phase Two Projects Requirements have been satisfied (each a "Technical Dispute"), or any engineering or technical dispute the Concession Company and the Authority mutually agree in writing is a Technical Dispute, shall be referred to the Expert Technical Determination procedure set forth in Section 19.4 for a final and binding determination. In addition, it is acknowledged and agreed that a Closing Bond or Guaranty Determination will be considered initially by the Closing Bond Expert (as defined in Appendix 1 to Schedule 6), as provided in Schedule 6.

(ii) If the dispute, other than a Technical Dispute, remains unresolved after the end of the Negotiation Period, then the dispute shall proceed to mediation pursuant to Section 19.5, and if necessary, litigation pursuant to Section 19.6 for a final and binding determination.

Section 19.4 Expert Technical Determination Procedure for Technical Disputes.

(a) *Generally*. Any Technical Disputes unresolved within the Negotiation Period shall be referred to a panel of three (3) independent experts (a "Panel") or, by agreement of the Parties in accordance with Section 19.4(b), to a single independent expert (each an "Independent Expert") for a final and binding determination ("Expert Technical Determination"). The Parties hereby agree to submit to the Expert Technical Determination procedure and this submission will have the same effect as an arbitration submission agreement, including enforceability and irrevocability. It is agreed and acknowledged that an Expert Technical Determination procedure shall constitute an arbitration in accordance with the Puerto Rico Arbitration Act, Act No. 376 of May 8, 1951, 32 L.P.R.A. §3201 *et seq*.

(b) *Procedures*.

(i) For the purposes of this Section 19.4, each Independent Expert shall be a reputable Person or Persons possessing expert knowledge and experience for the Expert Technical Determination of the Technical Dispute in question and shall be independent of and impartial as among the Parties. Unless the Parties agree that a particular Technical Dispute should be referred to a single Independent Expert, each of the Concession Company and the Authority shall nominate within ten (10) Business Days of the expiry of the Negotiation Period, a person as Independent Expert, and those Independent Experts shall jointly nominate the third Independent Expert to form the Panel for the Expert Technical Determination, such third Independent Expert to act as chairperson of the Panel. If the Parties agree that a particular Technical Dispute should be referred to a single Independent Expert, the Concession Company and the Authority shall, in the first instance, attempt to agree on an Independent Expert through their respective Designated Persons. If (A) the Concession Company and the Authority cannot so agree on the Independent Expert, in the case of a Expert Technical Determination by a single Independent Expert, within ten (10) Business Days after the end of the Negotiation Period, or (B) in the case of a three (3) person expert Panel for the Expert Technical Determination, the nominated Independent Experts fail to nominate the third Independent Expert to form the Panel for the Expert Technical Determination within ten (10) Business Days of the nomination of the

Independent Experts by the Parties, then the Parties shall promptly (and in any event within five (5) Business Days) apply to the ICC International Centre for ADR (the "ICC") for the appointment of an Independent Expert in accordance with the ICC Rules for the Appointment of Experts and Neutrals.

(ii) Once selected by the Concession Company and the Authority, neither Party shall communicate independently with the Independent Experts, and all communications the Parties make with the Independent Experts, or the Independent Expert(s) make with the Parties, must be simultaneously copied to all other Parties.

(iii) The Independent Expert(s) shall, in consultation with the Parties, determine the procedure to be undertaken in the Expert Technical Determination, provided that, if the Independent Expert(s) in consultation with the Parties do not agree on specific procedures for the relevant Expert Technical Determination within ten (10) Business Days of the appointment of the Independent Expert(s), the procedures set out in Schedule 11 shall apply to such Expert Technical Determination. The Independent Expert(s) shall determine the Technical Dispute within sixty (60) days after the appointment of the Panel or single Independent Expert, as applicable, or as otherwise agreed by the Parties. This sixty (60) day time period may be extended by the Independent Expert(s) for reasonable cause, after consultation with the Parties, or by the agreement of the Parties. A failure to determine the matter within sixty (60) days shall not be a ground to challenge any award or determination by the Independent Expert(s).

(iv) The determination by the Independent Expert(s) on any Technical Dispute shall be final and binding on the Parties hereto, and shall constitute an arbitration award, and will be enforceable without the need of judicial confirmation. Notwithstanding any other provisions of this Article 19, enforcement of any determination of the Independent Expert(s) may be sought by either of the Parties before any court of competent jurisdiction. However, the Parties may not request the review of the merits or substantive aspects of the Expert Technical Determination. To the extent permitted by Law, any rights to appeal from or cause a review of any such determination by any Independent Expert(s) are hereby waived by the Parties. The Parties may only challenge the enforceability of the Expert Technical Determination, within ninety (90) days from issuance of the Expert Technical Determination, before the Commonwealth Court (as defined in Section 19.6) on the basis established in Article 22(a) to (d) of the Puerto Rico Arbitration Act, Act No. 376 of May 8, 1951, 32 L.P.R.A. §3222. If the Expert Technical Determination is revoked on such grounds, the court may order to submit the Technical Dispute to another Independent Expert, selected under the provisions of this Article 19.

(v) The costs of the Independent Experts shall be borne by the Concession Company, to the extent that the Independent Experts resolve any dispute in the Authority's favor, and by the Authority, to the extent that the Independent Experts resolve any dispute in the Concession Company's favor, or as determined by the Independent Experts if the dispute is not resolved entirely in favor of the Concession Company or the Authority.

(vi) If the Independent Experts find in favor of the Concession Company in an Expert Technical Determination, any compensation or damages payable by the Authority to the Concession Company in respect of such Expert Technical Determination shall,

if the Concession Company so elects in writing to the Authority, be payable as Concession Compensation pursuant to this Agreement or, if the Concession Company does not so elect, shall be payable by the Authority as a debt due to the Concession Company.

(c) *Confidentiality*. The Parties agree that any Expert Technical Determination carried out pursuant to this Section 19.4 shall be kept private and confidential and that the existence of the Expert Technical Determination and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon in the Expert Technical Determination, all materials created for the purposes of the Expert Technical Determination, all testimony or other oral submissions in the Expert Technical Determination, and all documents produced by a Party in connection with an Expert Technical Determination that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the Expert Technical Determination, (iii) where disclosure is lawfully required by a legal duty, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the Technical Dispute for any purpose other than in connection with the Expert Technical Determination.

Section 19.5 Mediation.

(a) *Generally*. If a dispute, other than a Technical Dispute or one relating to the Open Access Regime or one resolved pursuant to a Closing Bond or Guaranty Determination, remains unresolved after the Negotiation Period, either the Concession Company or the Authority may refer the dispute to mediation through a written notice of mediation (the "Notice of Mediation"). Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 19.6 (other than provisional relief sought on an expedited basis) unless (i) the matter in question has first been submitted to mediation in accordance with the provisions of this Section 19.5(a) or (ii) such Party would be barred from asserting its claim in a civil action if it were required to submit to mediation pursuant to Section 19.3.

(b) *Procedures*.

(i) The Parties shall, in the first instance, attempt to agree on a mediator through their respective Designated Persons. If the Parties cannot so agree within thirty (30) days after the Notice of Mediation is sent, either of the Parties may promptly apply to the ICC for appointment of a single mediator in accordance with the Mediation Rules of the International Chamber of Commerce (the "Mediation Rules"). Absent any written agreement to the contrary by the Parties, the mediator shall be an attorney or mediator authorized to practice law in the United States or in the Commonwealth. The mediator shall be paid for the mediation services, and shall be reimbursed for all reasonable and documented out-of-pocket costs incurred in carrying out the mediation duties hereunder, including the costs of consultants. All fees and costs of the mediation (including payment for the services of the mediator and reimbursement of all out-of-pocket costs, including costs of consultants, of the mediator) shall be shared equally by the Parties. The Parties shall request that the mediator schedule the mediation within thirty (30) days of the mediator's appointment, and shall comply with all procedures the mediator establishes for the conduct of the mediation. Absent any written agreement to the contrary by

the Parties, if the dispute is not resolved within ninety (90) days of the Notice of Mediation, the mediation shall be terminated.

(ii) For the avoidance of doubt, absent the written agreement of the Parties, the Mediation Rules shall not apply to any mediation carried out pursuant to this Section 19.5(b). Rather, the reference to the ICC and the Mediation Rules above should be understood as referring solely to the designation of the ICC as an appointing authority to appoint a mediator pursuant to the procedures set forth in the Mediation Rules in the event the Parties are unable to agree on a mediator within the timeframe specified.

(c) *Confidentiality*.

The Parties agree that any mediation carried out pursuant to this Section 19.5 shall be kept private and confidential, and that the existence of the mediation and any element of it (including the identity of the Parties, the identity of all witnesses and experts who may be called upon at the mediation, all materials created for the purposes of the mediation, all testimony or other oral submissions at the mediation, and all documents produced by a Party in connection with a mediation that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in *bona fide* judicial proceedings relating to the mediation, (iii) where disclosure is lawfully required by a legal duty and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties also agree not to use any information disclosed to them during the mediation for any purpose other than in connection with the mediation.

Section 19.6 Litigation as a Final Resort.

(a) *Civil Action*. In the event that the Parties fail to resolve any dispute, other than a Technical Dispute or one relating to the Open Access Regime or one resolved pursuant to a Closing Bond or Guaranty Determination, within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 19.5(b) (or such longer period as the Parties may mutually agree), either Party may initiate a civil action in the Commonwealth Court and in accordance with all applicable rules of civil procedure. The Parties acknowledge and understand that, to resolve any and all claims arising out of this Agreement (other than any Technical Dispute), they may file a civil action, including actions in equity, in the Commonwealth Court of First Instance, San Juan Part or (as determined by the Party initiating the action and subject to such court having jurisdiction) the United States District Court for the District of Puerto Rico (as applicable, the "Commonwealth Court"). The Concession Company and the Authority each irrevocably consents to the exclusive jurisdiction of such courts in any such actions or proceedings. The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely, fairly and thoroughly negotiated.

(b) *Costs and Expenses*. Except as required by Concession Company's indemnity obligations under Article 12, each Party shall bear its own costs and expenses in any legal proceeding where it is the named defendant or in any legal proceeding among the Parties. Notwithstanding the foregoing, each Party retains its rights to bring any legal proceeding or to implead the other Party as to any matter arising hereunder.

Section 19.7 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING BROUGHT UNDER THIS AGREEMENT. Each Party (a) certifies that no representative of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, and (b) acknowledges that it and each other Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Agreement.

Section 19.8 Provisional Relief. Notwithstanding any other provision in this Agreement, no Party shall be precluded from initiating a proceeding in the Commonwealth Court 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 Agreement, including temporary and preliminary injunctive relief, restraining orders and other remedies to avoid imminent irreparable harm, provide uninterrupted electrical and other services, or preserve the status quo pending the conclusion of such negotiation, mediation or litigation. The commencement of or participation in an action for provisional relief with regard to Technical Disputes shall not constitute a waiver of the requirements or procedures of Section 19.5.

Section 19.9 Continuing Obligations. The Parties agree that during the resolution of a dispute pursuant to the Dispute Resolution Procedure, the Parties shall continue to perform their obligations under this Agreement, provided that such performance shall (i) be without prejudice to the rights and remedies of any of the Parties and (ii) not be read or construed as a waiver of a Party's right to claim for recovery of any loss, costs, expenses or damages suffered as a result of the continued performance of this Agreement.

Section 19.10 Request for Documents; Subpoena Duces Tecum. If the Concession Company is presented with a request for documents by an administrative agency or with a subpoena *duces tecum* regarding any documents that may be in its possession by reason of this Agreement, the Concession Company shall, to the extent permitted by Law, give prompt notice to the Authority at the addresses specified for the Authority in Article 200. The Authority may contest such process by any means available to it before such records or documents are submitted to a court or other third party; *provided, however*, that the Concession Company shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

ARTICLE 20
MISCELLANEOUS

Section 20.1 Notice. All notices, requests for approvals, approvals and other communications and approvals required or permitted by this Agreement shall be in English and in writing and shall be delivered, sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

(a) *in the case of the Authority*:

Puerto Rico Ports Authority
P.O. Box 362829
San Juan, Puerto Rico 00936-2829
Attention: Executive Director
Telephone: (787) 729-8715 ext. 2281
Facsimile: (787) 722-7867

with copies to:

Puerto Rico Ports Authority
P.O. Box 362829
San Juan, Puerto Rico 00936-2829
Attention: General Counsel
Telephone: (787) 729-8552
Facsimile: (787) 729-8835

and:

Puerto Rico Public-Private Partnerships Authority
Puerto Rico Fiscal Agency and Financial Advisory Authority Building
(former GDB Building)
3rd Floor Roberto Sanchez Vilella Government Center
De Diego Avenue, Stop 22
San Juan, Puerto Rico 00940-2001
Attention: Executive Director
Telephone: (787) 722-2525
Telecopy: (787) 728-0963
E-mail: prcruiseterminals@p3.pr.gov

(b) *in the case of the Concession Company*:

San Juan Cruise Port LLC
270 Avenida Munoz Rivera, Suite 1100
San Juan, Puerto Rico 00918
Attention: President
Telephone:
Telecopy:
E-mail:

with copies to:

Global Ports Holding PLC
34 Brook Street, 3rd Floor
London W1K 5DN
United Kingdom
Attention: Dr. Ece Gursoy, CLO
Telephone: +44 203 911 2315
Email: legal@globalportsholding.com

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours, the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

Section 20.2 Entire Agreement. This Agreement, including all schedules and other documents executed herewith, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

Section 20.3 Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Concession Company and the Authority.

Section 20.4 Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and

signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Section 20.5 Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the Authority to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the Authority shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable; *provided* that the rights of the Concession Company or any Concession Mortgagee shall in no event be diminished by any such Law.

Section 20.6 Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Commonwealth (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction), except where the Federal Supremacy Clause requires otherwise.

Section 20.7 Further Acts. The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement, including submission of this Agreement for filing with the Office of the Comptroller of the Commonwealth, pursuant to the provisions of Act. No. 18 of the Legislative Assembly of Puerto Rico, approved October 30, 1975, as amended. The obligations pursuant to this Agreement shall not be enforceable until it shall have been submitted for filing with the Office of the Comptroller of the Commonwealth as provided by such Act No. 18. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution or delivery of this Agreement.

Section 20.8 Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

Section 20.9 Interest. Any amount payable under this Agreement and not paid when due under this Agreement shall bear interest before and after judgment at the legal rate of interest provided for under Regulation No. 78-1 (Puerto Rico Regulation No. 3702 of October 25, 1988) of the Office of the Commissioner of Financial Institutions of the Commonwealth, from the date such payment is due until payment.

Section 20.10 Inurement and Binding Effect. This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

Section 20.11 No Partnership or Third-Party Beneficiaries. Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Authority and the Concession Company. Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Concession Mortgagee or any Indemnified Party pursuant to this Agreement), no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to or in any Person not a Party to this Agreement.

Section 20.12 Cumulative Remedies. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 20.13 Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This 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 Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

Section 20.14 Waiver of Sovereign Immunity. The Authority acknowledges that under its enabling act, it is not entitled to raise the defense of sovereign immunity with respect to claims arising out of this Agreement. Under its enabling act, the Authority does not have sovereign immunity (and any defense based thereon) as to it and its property in respect of the enforcement and execution of any award or other relief (pecuniary or otherwise) rendered against it in accordance with the provisions of this Agreement.

Section 20.15 Contractors.

(a) The Concession Company shall not enter into, and shall cause any Contractor not to enter into, any Operating Agreement or Construction Contract with any Person who, to the best of the Concession Company's knowledge after due inquiry, under applicable Law (i) has any record of felony criminal convictions or pending felony criminal investigations, (ii) has any final judicial or administrative finding or adjudication of illegal employment discrimination (iii) has any unpaid Commonwealth or other Taxes, (iv) has any final judicial or administrative findings or adjudication of non-performance in contracts with the Authority or the

Commonwealth or (v) is debarred, suspended or disqualified from Commonwealth contracting for any services within the scope of the applicable Construction Contract or Operating Agreement.

(b) The Concession Company shall furnish the Authority written notice of its or its Contractors intention to enter into any Principal Contract no less than thirty (30) days prior to entering into any such Principal Contract, and such notice shall include an Officer's Certificate certifying that, to the best of the Concession Company's knowledge after due inquiry, any such Principal Contract and each Contractor under any such Principal Contract complies with the requirements of Section 20.15(e) and Section 20.15(a), respectively. In addition, the Concession Company shall no later than 10 days after the end of each Reporting Year deliver an Officer's Certificate to the Authority certifying that each Principal Contract in effect during the immediately preceding Reporting Year and each Contractor under any such Principal Contract complies with the requirements of Section 20.15(e) and Section 20.15(a), respectively.

(c) The Concession Company shall pay or cause to be paid all Contractors all undisputed amounts due in accordance with their respective Construction Contract or Operating Agreement. No Contractor shall have any right or Claim against the Authority under or by virtue of this Agreement for labor, services, materials or equipment furnished in connection with this Agreement, including under any Construction Contract or Operating Agreement. The Concession Company acknowledges that its indemnity obligations under Section 12.1(a) shall extend to all Claims for payment or damages by any Contractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with this Agreement, including under any Construction Contract or Operating Agreement.

(d) The Concession Company shall notify the Authority promptly of any material breach or event of default occurring under any Principal Contract and the probable effect on the obligations of the Concession Company under this Agreement. The Concession Company shall keep the Authority apprised of the course of the dispute and shall notify the Authority of its ultimate resolution.

(e) No Operating Agreement or Construction Contract shall relieve the Concession Company from the performance of any obligation under this Agreement, including any obligation to be performed by any Contractor. Each Operating Agreement and Construction Contract shall (i) contain or specifically reference the provisions of this Agreement to be performed by the applicable Contractor, (ii) acknowledge and agree that the Contractor shall have no right or Claim against the Authority under or by virtue of this Agreement or the applicable Operating Agreement or Construction Contract, (iii) contain a representation and warranty of the applicable Contractor as to the items in Section 20.15(a), (iv) with respect to any Principal Contract, contain an agreement by the applicable Contractor to the collateral assignment by the Concession Company to the Authority and use by the Authority pursuant to Section 3.15 of the applicable Principal Contract, (v) with respect to any Operating Agreement or Construction Contract that does not constitute a Principal Contract contain an agreement by the applicable Contractor that such Operating Agreement or Construction Contract is terminable by the Authority upon three (3) Business Days' notice to such Contractor from the Authority at any time following termination of this Agreement, without any liability of the Authority for such termination, (vi) acknowledge and agree to the rights of the Authority under this Agreement,

including the Authority's rights under Section 3.7, and (vii) except to the extent prohibited by applicable Law, include the provisions of Article 11 and Section 9.3.

Section 20.16 Commonwealth Obligations. THE OBLIGATIONS OF THE AUTHORITY UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN THE AUTHORITY.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Authority and the Concession Company each has caused this Agreement to be duly executed as of the day and year first above written.

PUERTO RICO PORTS AUTHORITY

By: _____
Name: _____
Title: _____

SAN JUAN CRUISE PORT LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____