LEASE AND SERVICES AGREEMENT

THIS LEASE AND SERVICES AGREEMENT (this “Lease”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between RIVER PORT, LLC, a limited liability company, with its principal office at 1201 Terminal Avenue, Newport News, Virginia 23607, and its successors and assigns, herein called the LESSOR, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_, with its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, herein called the LESSEE.

Lessee hereby agrees to lease from Lessor an **approximately \_\_\_ linear-foot berthing station on Pier \_\_ (the “Pier”), \_\_\_\_\_ side and immediately adjacent topside space**, located at 1201 Terminal Avenue, Newport News, Virginia 23607, (the “Premises”) in “as is” condition with no improvements provided by Lessor unless otherwise expressly stated herein. The Premises shall also include the parking spaces and lay-down storage area that Lessor shall provide in accordance with ECR Newport News Tariff Schedule attached hereto as Exhibit A (the “Rate Sheet”). The Premises shall be leased in gross and not by the acre, upon the following terms and conditions:

# **Term and Rent**.

## Lessor demises the above Premises for a term (the “Term”) beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Commencement Date”), and terminating on the date that is \_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) days following the Commencement Date for the daily lay berth rate set forth on the Rate Sheet (the “Base Rent”), payable in accordance with the provisions of Section 4 below.

## Lessee recognizes and acknowledges that if any Base Rent payment is not received when due, Lessor will suffer damages and additional expense thereby and Lessee therefore agrees that a late charge equal to ten percent (10%) of the late Base Rent may be assessed by Lessor as additional rent if Lessor has not received any monthly installment of Base Rent or additional rent within five (5) days following the date when due pursuant to this Lease.

## Lessee also agrees to pay, as additional rent (“Additional Rent”), as and when invoiced by Lessor, all costs incurred by Lessor, by agreement of the parties, in maintaining the Premises pursuant to Section 3 below.

## Notwithstanding any provision herein to the contrary, by giving written notice to Lessee, Lessor may elect to defer the Commencement Date of the Term, or to cancel and terminate this Lease, all without liability to Lessee, in the event of damage or destruction to all or any part of the Premises, or the reasonably anticipated threat thereof due to hurricane, storm or other severe weather, accident, vessel collision, terrorist act, sabotage, hostilities, act of God or other casualty or other occurrence beyond the reasonable control of Lessor (“Event of Force Majeure”). In the event the Commencement Date is deferred, this Lease and Lessee’s obligations hereunder shall remain in full force and effect, with the Term deemed to commence on the date that Lessor designates as the new Commencement Date and to end on the expiration date designated in Lessor’s notice. If Lessor elects to cancel and terminate this Lease, then all obligations of the parties hereunder shall be null, void and terminated. If the Event of Force Majeure is reasonably anticipated to occur or actually occurs after the Commencement Date, then Lessee shall comply with all reasonable instructions of Lessor with respect to securing Lessee’s equipment, tools and vessels (and the vessels of third parties) or removing its equipment, tools and vessels (and the vessels of third parties) to a safer location, failing which the Lessee shall indemnify and save harmless Lessor from and against all liabilities, costs, expenses, claims and other losses incurred by Lessor (including repair and reconstruction costs) resulting from Lessee’s failure to comply with Lessor’s instructions. No Event of Force Majeure shall excuse Lessee’s nonpayment or late payment of Base Rent, Additional Rent, Service Fees (defined below) and/or TPSA (defined below) otherwise coming due hereunder.

# **Use**. Lessee shall use and occupy the Premises for ship repair and fabrication services and associated lawful uses. The Premises shall be used for no other purposes without Lessor’s prior written permission. Lessee shall not cause or permit the Premises to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order which annoys or interferes with the rights of occupants of Lessor’s property of which the Premises is part, or which constitutes a nuisance or waste. Lessee shall take all substantial and non-substantial actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the particular use by Lessee of the Premises, including the Occupational Safety and Health Act. If Lessee pays the rent and complies with all other terms of this Lease, Lessee may occupy and enjoy the Premises for the full Lease Term, subject to the provisions of this Lease.

# **Alterations and Maintenance of Premises**.

## Except as otherwise agreed in writing by Lessor, the Premises are leased in “as is” condition. Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions or improvements, in, to or about the Premises. If Lessor and Lessee have agreed that certain improvements to the Premises are required in order for Lessee to occupy and use the Premises for its ship repair and fabrication business, such improvements shall be described in Exhibit B attached hereto (the “Improvements”). The Improvements (if any) shall be made in accordance with all applicable building and fire codes and other applicable laws and regulations. Except as otherwise agreed by Lessor in writing, Lessee shall not begin to conduct its ship-repair and fabrication business at the Premises until any such Improvements are substantially completed, with all necessary temporary or permanent certificates of occupancy having been issued permitting Lessee’s ship repair and fabrication services at the Premises. Responsibility for making the Improvements, if any, shall be allocated between Lessor and Lessee in Exhibit B. If and to the extent any such Improvements are made by Lessor or made by others at Lessor’s expense, then in consideration of Lessor’s expense incurred in making such Improvements, Lessor shall be entitled to adjust the Base Rent to amortize the cost of such Improvements over the remainder of the Term. Lessor shall give written notice to Lessee of the amount and effective date of the adjusted Base Rent pursuant to this Section 3(a).

## Except as otherwise provided in Section 3(c) below, Lessee shall, at all times, maintain the Premises (including the Improvements thereon and all portions) in good and safe condition, including reasonable care and repair of asphalt (if any) and concrete; perimeter fencing (if any); plumbing lines, fixtures and equipment; gas and electric lines, fixtures, and equipment; including making such capital replacements of the foregoing elements as may be necessary from time to time. Lessee shall, at Lessee’s sole cost and expense, keep the Premises (including the Pier) clean and free from obstruction, garbage, debris, spills and dirt. Lessee shall store all garbage in fully closed containers in the area designated by Lessor, and Lessee shall pay all costs incident to the removal thereof. Lessee shall not burn or otherwise dispose of any garbage in or about the Premises. Lessee shall prevent emissions, wastewater, garbage, fuel, oil, paint, debris, hazardous materials, cargo residues, preservatives and other substances and items from spilling onto the Pier and/or into the water and shall, at Lessee’s expense, (i) deploy and maintain booms and other spill containment devices as directed by Lessor or as required by applicable laws and regulations and (ii) immediately take all actions necessary (including the use of skimmers) to clean up any spills or releases into the water. Lessee covenants to do and to pay for those things reasonably necessary, or required by law, to keep the Premises free of rodents and other pests, and Lessee agrees that Lessor shall not be liable for any damage caused thereby.

## Subject to the provisions of Section 1(c), the parties may agree in writing that Lessor will perform certain specified portions of Lessee’s maintenance and repair obligations under Section 3(b) above, in which case Lessor’s cost of providing such specified maintenance or repair services shall be added to and incorporated in the Additional Rent payable by Lessee hereunder. Absent such a written agreement, Lessee shall be obligated to perform all such maintenance and repair, at Lessee’s sole cost and expense. In all events Lessee shall promptly repair at its sole expense any damage or destruction to the Premises (including the Pier) arising out of, resulting from or relating to Lessee’s occupancy, use or improvement of, or the conduct of any of Lessee’s or its subcontractors’ activities or the mooring of any vessel at, the Premises, with it Lessee’s responsibility to restore the Premises to the same condition as the Premises were in prior to the Commencement Date, ordinary wear and tear excepted.

# **Service Fees; Payment Terms and TPSA**.

## Lessee acknowledges that Lessor and/or certain of its affiliates may, upon Lessee’s request, furnish certain services to Lessee as identified on the Rate Sheet (the “Services”) at the rates set forth on the Rate Sheet, as same may be modified by Lessor from time to time by giving thirty (30) days advance written notice thereof to Lessee (the “Service Fees”).

## Lessor shall invoice Lessee for each partial and full calendar month of Base Rent and Service Fees no later than the tenth (10th) day of the following calendar month. Such invoices shall be due and payable to Lessor by Lessee, without setoff or deduction, within ten (10) days after the date of Lessor’s monthly invoice.

## Should Lessee procure ship-repair services from a third-party contractor other than Lessor’s affiliates, Lessee shall provide accurate and complete documentation of all charges and costs incurred by Lessee for labor and materials furnished by such third-party contractor, and a Third Party Service Adjustment (“TPSA”), as a mark-up of the third-party’s charges and costs for labor and materials, shall be immediately due and payable to Lessor in accordance with the provisions of the Rate Sheet. Lessor shall have the right to deny or approve, and reserves the right at all times to suspend or terminate, the privilege of any third-party contractor to come onto Lessor’s property to perform ship-repair services.

## All payments of Base Rent, Service Fees and/or TPSA shall be made to Lessor at 929 Glenrock Road, Norfolk, Virginia 23502.

# **Ordinances and Statutes; Lessor’s Rules and Regulations**. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee. Moreover, Lessee accepts and agrees to enter into and comply with the Newport News Tenant and Third Party Guidelines and Hold Harmless Agreement, a copy of which is attached hereto as Exhibit C and incorporated by reference herein (the “Rules and Regulations”). In the event of Lessee’s noncompliance with such Rules and Regulations, such noncompliance shall constitute a default by Lessee under this Lease

# **Assignment and Subletting**. Lessee shall not and cannot assign this Lease or sublet any portion of the Premises without Lessor’s prior written consent. If for any reason substantially all of the assets of Lessee are sold, Lessee merges or consolidates with any other entity, or Lessee undergoes a change in control by virtue of a change in majority ownership or management control, Lessor shall have the right, at Lessor’s sole election, to terminate this Lease, to take effect on the date set forth in a written notice thereof to Lessee.

# **Utilities**. Except for Services furnished by Lessor, all applications and connections for necessary utility services on the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for gas, electricity, refuse disposal, sewer service, water, and telecommunications and internet services.

# **Entry and Inspection**. Lessee shall permit Lessor or Lessor’s agents to enter upon the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, furnishing the Services and enforcing Lessee’s obligations hereunder. Without limitation of the foregoing, Lessor shall at all times have free and unobstructed access to all portions of the Pier included in the Premises.

# **Insurance**. Lessor carries certain casualty insurance in respect of its property, including the Premises. At all times, Lessee shall procure and maintain insurance coverage satisfying the Insurance Requirements for tenants attached hereto as Exhibit D, which is incorporated by reference herein. Lessee hereby waives, and shall cause its insurance company to waive, any rights of subrogation against Lessor.

# **Eminent Domain**. If the Premises or any part thereof or any estate therein, or any other part of the property materially affecting Lessee’s use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking. The Base Rent and any Additional Rent shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee.

# **Destruction of Premises**. In the event of a total or partial destruction of the Premises due to fire or other casualty during the term hereof, Lessor may elect to repair the same, provided that such repairs can be made within ninety (90) days under existing governmental laws and regulations, and such total or partial destruction shall not terminate this Lease, except that Lessee shall be entitled to a proportionate reduction of Base Rent while such repairs are being made based upon the extent to which the damage or the making of such repairs shall interfere with the business of Lessee on the Premises. In the event that Lessor cannot or does not make such repairs within ninety (90) days of the destruction, this Lease may be terminated at the option of either party, by giving written notice thereof to the other party. If the Pier berthing station included in the Premises is totally or substantially destroyed by any cause whatsoever, then either Lessor or Lessee may, by written notice given to the other within thirty (30) days of such destruction, terminate this Lease effective as of the date of such notice, regardless of whether Lessor receives any insurance proceeds. Notwithstanding the foregoing, Lessee shall not be entitled to any abatement of Base Rent if the total or partial destruction of the Premises is the fault, in whole or in part, of Lessee or any of its affiliates, employees, agents, invitees, contractors, subcontractors or vendors.

# **Lessor’s Remedies on Default**. If Lessee defaults in the timely payment of Base Rent, Additional Rent, Service Fees or TPSA, or if Lessee defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee written notice of such default and if Lessee does not cure any such default within ten (10) days after the giving of such notice, or if Lessor determines that such default constitutes an imminent danger to the property or safety of others, within such shorter period of time as Lessor shall designate in such written notice, then Lessor may immediately terminate this Lease and Lessee’s right to possession. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall quit and surrender the Premises to Lessor in the same condition as in existence on the Commencement Date, but Lessee shall remain liable for Base Rent, Additional Rent, Services Fees and TPSA as hereinafter provided. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. Lessor may, at its sole option, also remove any vessel(s) from the Premises and, at Lessee’s sole risk and expense, move the vessel(s) to a different slip, mooring space, anchorage site or dry land storage. Lessor shall be entitled to recover from Lessee: (i) the amount at the time of such termination of the sum of unpaid Base Rent, Additional Rent, Services Fees and TPSA which were due and payable by Lessee at the time of the termination; plus (ii) on a monthly basis thereafter, the amount by which the Base Rent and Additional Rent payable by Lessee (or which would have been payable by Lessee) each month over the balance of the Term exceeds the amount, if any, of the Base Rent and Additional Rent actually collected by the Lessor from a substitute tenant each month over the balance of the Term. Lessor shall also be entitled to recover any reasonable costs or expenses incurred by Lessor in removing or relocating any vessel, repairing or preserving the Premises, the reasonable cost of recovering possession of the Premises, reasonable expenses of re-letting, Lessor’s reasonable attorneys’ fees incurred in connection therewith, and any reasonable real estate commission paid to an unrelated third party real estate brokerage firm upon re-letting the Premises with respect to the lease period until at the end of the Term.

# **Attorneys’ Fees**. In case suit should be brought by Lessor for recovery of possession of the Premises, or for any sum due hereunder, or because of any act or omission of Lessee during its possession of the Premises, Lessor shall be entitled to recover from Lessee all costs by Lessor incurred in connection with such enforcement action, including reasonable attorneys’ fees.

# **Waiver**. No failure of Lessor to enforce any term hereof shall be deemed to be a waiver thereof.

# **Notices**. Any notice which Lessor may or is required to give to Lessee, shall be given by mailing the same, postage prepaid, to Lessee at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Any notice which Lessee may or is required to give to Lessor shall be given by delivering same to River Port, LLC, 1201 Terminal Avenue, Newport News, Virginia 23607, Attention: Manager, or at such other place as may be designated by the parties from time to time.

# **Assigns, Successors**. This Lease is binding upon and inures to the benefit of the successors and permitted assigns of the parties hereto.

# **Environmental Compliance**. Lessee agrees as follows: (a) to bring, use or dispose of any hazardous materials or commodities on the Premises only with Lessor’s prior written consent (in which case the provisions of Section 29 shall govern Lessee’s responsibility therefor) and (b) not to violate any federal, state, or local environmental statutes, rules or regulations. Any such violations shall be deemed a default under this Lease. Lessee shall indemnify and hold Lessor harmless from any liability, loss, damages, claims or expenses suffered by the Lessor resulting from any such violation, including but not limited to, any fines, remedial costs, or reasonable attorneys’ fees incurred in defending or settling any suits or actions arising out of such violation.

# **Subordination**.

## Lessor shall have the right to subordinate this Lease to any deed of trust or mortgage encumbering the Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Lessee shall execute and deliver such instruments of subordination as Lessor shall request in order to effectuate such subordination. However, Lessee’s right to quiet possession of the Premises during the Term shall not be disturbed or impaired if Lessee pays the rent and performs all of Lessee’s obligations under this Lease and is not otherwise in material default. If any deed of trust beneficiary or mortgagee elects to have this Lease prior to the lien of its deed of trust or mortgage and gives written notice thereof to Lessee, this Lease shall be deemed prior to such deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said deed of trust or mortgage or the date of recording thereof.

## If Lessor’s interest in the Premises is acquired by any beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Lessee shall attorn to the transferee of or successor to Lessor’s interest in the Premises and recognize such transferee or successor as Lessor under this Lease. Lessee waives the protection of any statute or rule of law which gives or purports to give Lessee any right to terminate this Lease or surrender possession of the Premises upon the transfer of Lessor’s interest.

## Lessee shall sign and deliver any reasonable and customary instrument or documents necessary or appropriate to evidence the above attornment and subordination. Such attornment and subordination documents may contain such provisions as are customarily and reasonably required by any ground lessor, beneficiary under a deed of trust or mortgagee, and shall include reasonable non-disturbance provisions.

## Upon Lessor’s written request during the Term, Lessee shall execute, acknowledge and deliver to Lessor a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Lessor is not in default under this Lease (or, if Lessor is claimed to be in default, stating why); and (v) such other matters as may be reasonably required by Lessor or the holder of a mortgage, deed of trust or lien to which the Premises is or becomes subject. Lessee shall deliver such statement to Lessor within ten (10) days after Lessor’s request. Any such statement by Lessee may be given by Lessor to any prospective purchaser or encumbrancer of the Premises. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct. In addition, Lessee agrees to deliver to any lender with whom Lessor is refinancing the Premises, on a strictly confidential basis, the Lessee’s most current financial statements then available, for the purpose of facilitating such lender’s refinance of the Premises.

# **Broker**. Lessor and Lessee each represents and warrants to the other that neither party has engaged or had any conversations or negotiations with any broker, finder or other third party concerning the matters set forth in this Lease who would be entitled to any commission or fee based on the execution of this Lease. Lessor and Lessee each hereby indemnifies the other against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys’ fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination of the lease for any reason.

# **Real Estate Taxes**. Lessor shall be responsible for payment of any Real Estate Taxes applicable to the real estate parcel of which the Premises are a part. The term “Real Estate Taxes” shall mean all taxes and assessments (special or otherwise) levied or assessed directly or indirectly against the Premises and applicable to the real estate parcel of which the Premises are a part and other taxes arising out of the use and/or occupancy of the Premises and/or applicable to the real estate parcel of which the Premises are a part imposed by any taxing authority having jurisdiction over the Premises and the real estate parcel of which the Premises are a part, and shall include expenses and reasonable attorney’s fees incurred by Lessor in contesting the validity or amount of any such taxes or assessments or in seeking a rebate of taxes or assessments.

# **Personal Property Tax**. Lessee shall pay promptly when due or make reimbursement to Lessor for all taxes imposed upon Lessee’s business operation, equipment, trade fixtures and personal property, including all machinery and tools tax, business personal property tax, sales taxes, value added taxes, documentary taxes, stamp taxes and other taxes assessed upon the business or assets of Lessee. Lessee shall try to have personal property taxed separately from the Premises.

# **Parking**. Lessee and its employees and customers shall have the right to park up to \_\_\_\_ automobiles on Lessor’s property, subject to such reasonable rules and regulations as Lessor may impose from time to time, including the designation of specific areas in which automobiles of Lessee, its employees, guests, subcontractors and customers must be parked. Lessee shall maintain its designated parking areas in good repair and condition, free of any obstruction, garbage, debris, spills or dirt.

# **Ingress and Egress**. For ingress and egress to and from the Premises, Lessee shall have the right to use, in common with Lessor and others authorized by Lessor, the existing driveway(s) on Lessor’s adjacent property, including the existing private driveway know as Harbor Road, together with the existing walkway(s) or other property designated by Lessor as means of ingress to and egress from the Premises. Upon written demand by Lessor, Lessee shall immediately cease any other use of Lessor’s adjoining property beyond ingress and egress to the Premises. Except for the enforcement of Lessor’s security policies and practices, Lessor shall not prohibit Lessee’s ingress and egress to and from the Premises at any time during the Term to the extent necessary for Lessee to perform its contractual obligations; provided, however, Lessee acknowledges and agrees that Lessor may require such proof of identity and other customary access credentials for entry onto Lessor’s property (including the Premises) as Lessor determines are necessary to (a) comply with Lessor’s facility security obligations to the government or other customers or (b) otherwise protect the safety, security and property of Lessor, its customers, tenants, contractors and visitors.

# **Liens**. Lessee is specifically denied the right, authority or power to create a lien upon the Premises or any right, title, interest or portion thereof and shall not permit or suffer any lien to be placed upon the Premises in connection with any (a) construction, erection, installation, alteration, maintenance or repair of any building or other improvements on the Premises or (b) any and all claims for payment, whether or not reduced to a lien, asserted or filed by any of Lessee’s contractors, subcontractors, vendors, suppliers or other persons performing any work on, or supplying any labor or materials to, the Premises or any vessel moored at the Premises. Lessee shall pay all debts incurred to, and shall satisfy all liens of, all such contractors, subcontractors, mechanics, laborers and material suppliers and shall indemnify and hold Lessor harmless against all legal costs and charges, including reasonable counsel fees, in any suit involving any lien, the enforcement or removal thereof, or encumbrance caused by the same, with respect to the Premises or any vessel moored at the Premises.

# **Environmental Tests**. Lessor and Lessee shall conduct a joint walk-through of the Premises prior to the Commencement Date, and Lessee shall give written notice to Landlord identifying any visible environmental contamination prior to the Commencement Date. If any contamination not identified in Lessee’s notice is or becomes visible at the expiration or termination of this Lease, then, at the sole option of Lessor, not later than thirty (30) days after expiration or termination of this Lease, Lessor may obtain, at Lessee’s cost, the services of an independent, qualified consultant and state-approved laboratory to sample and test any visibly-contaminated area of the Premises to ensure that the Premises are returned to Lessor free from any environmental contamination not present thereon prior to the Commencement Date. However, failure by Lessor to sample and/or test shall not be construed as a waiver of any claim established by law, or of any other provision or condition of this Lease.

# **Holdover**. If Lessee must continue to occupy the Premises after expiration of the Term in order to complete work on a ship availability, Lessee shall hold the Premises only as a hold-over tenant on a month-to-month basis, at a Base Rent (not less than the Base Rent in effect during the Term), equitably adjusted to the extent necessary to compensate Lessor for lost revenue from other tenants attributable to such hold-over tenancy, but subject to all the other terms and conditions of this Lease, with such hold-over tenancy terminable upon no more than thirty (30) day notice from Lessor.

# **Risk, Liability, Indemnity**. Lessee hereby assumes, releases and waives any right to ask for or demand payment of damages for or on account of, and agrees to protect, save harmless, defend and indemnify Lessor from and against all fines, suits, damages, claims, demands, losses, actions, liabilities and costs (including reasonable attorneys’ fees and court costs, whether at trial or on appeal) arising from or relating to:

## Any loss, damage or injury attributable to the act or omission of Lessee, its employees, agents, contractors, subcontractors, guests and invitees whether or not such loss, damage or injury was contributed to by any negligent act or omission of Lessor;

## Loss or damage to the Premises or any property on or about, or to any vessel moored to, the Premises whatsoever, including property of Lessor and of all other persons whomsoever, and the loss of or interference with any use or service thereof;

## Injury to or death of any person whomsoever on or about the Premises, including but not limited to invitees, guests, agents, contractors, subcontractors, and employees of Lessee;

## Loss or damage to any property or injury or death to any person whomsoever arising out of or resulting in any manner from performance of any maintenance, repair or supply of any vessel moored at the Premises;

## Any claims, liens, attachments or other encumbrances asserted against Lessor or the Lessor’s property by any contractor, subcontractor, supplier or vendor of Lessee;

## Any breach of Lessee’s obligations under this Lease, including all obligations of Lessee with respect to the maintenance and repair of the Premises;

## Loss or damage to any property or injury or death to any person whomsoever occurring off the Premises but arising from or relating to Lessee’s use or occupancy of the Premises or acts or omissions by Lessee, its employees, agents, contractors, subcontractors, guests and invitees, on or about the Premises; and

## All costs and expenses caused by, arising out of or resulting in any manner from Lessee’s use or occupancy of the Premises or the use of the parking area(s), driveway(s) and walkway(s) of Lessor for parking, ingress and egress, and any adjoining lands used by Lessee or Lessee’s guests, invitees, agents, subcontractors, or employees, regardless of cause (other than the gross negligence or willful misconduct of Lessor).

For the avoidance of all doubt, Lessor shall not be liable or responsible for any loss or damage to any property or the death or injury to any person occasioned by an Event of Force Majeure. Lessee shall have no claim against Lessor or any of its affiliates or any person acting for or on behalf of Lessor or any of its affiliates, together with its respective employees, agents, partners, shareholders, members, managers, directors, officers, and assigns for the acts or omissions of Lessor or any of its affiliates or any person acting for or on behalf of Lessor or any of its affiliates unless loss or damage result solely from Lessor’s gross negligence or willful misconduct; and should this exculpatory clause be declared invalid or unenforceable by law, such invalidity or unenforceability shall in no manner affect or invalidate any or the other provisions in this Section 27. Under no circumstances shall Lessor be liable for special, incidental, punitive, or consequential damages. It is expressly understood and agreed that the indemnification of Lessor by Lessee as set forth in this Section 27 above shall include and extend to any and all fines, suits, damages. claims, demands, losses, actions, liabilities and costs (including reasonable attorneys’ fees and court costs, whether at trial or on appeal) incurred by Lessor associated with allegations, claims, actions, causes of action and suits brought by any person employed directly or indirectly by Lessor, any of its affiliates or Lessee, or anyone for whose acts Lessors, its affiliate or Lessee may be liable, and such indemnification obligation shall not be subject to any limitation, bar, immunity, defense or other impediment arising from or relating to worker’s compensation acts, disability benefit laws or regulations or other employee benefit laws or regulations.

# **Pollution**. Notwithstanding any other provision hereof, Lessee agrees to defend, indemnify and hold Lessor harmless from all claims, costs and expenses (including reasonable attorney fees) as a consequence of any incident resulting in the pollution of air, water, land and/or ground water arising from or in connection with this Lease or Lessee’s use of the Premises or property adjacent to the Premises, including any claim or liability arising under Federal or State law dealing with the pollution of air, water, land and/or ground water or the remedy thereof or from Lessee’s failure to secure and comply with permits required hereunder.

# **Hazardous Commodities and Conditions**.

## Lessee shall fully comply with all federal, state and local governmental regulations pertaining to the presence, use, disposal, storage, loading, unloading and/or handling of any dangerous or hazardous materials or commodities on or off the Premises, and shall be solely liable for any damages, penalties, costs or charges incurred by Lessor for Lessee’s failure to so comply.

## Lessee shall defend, indemnify and hold harmless Lessor, its successors and assigns, from and against all losses, damages, costs, expenses (including reasonable attorney fees), claims, suits and judgments, whatsoever arising from or growing out of any injuries to or death of persons, or losses or damages to property, which may be caused or contributed to by the presence on said Premises of such dangerous or hazardous materials or commodities.

## In the event of leakage or spillage of such dangerous or hazardous materials or commodities, Lessee shall notify Lessor and, at Lessee’s sole expense, promptly undertake to clean the Premises to the satisfaction of Lessor and any public body having jurisdiction over said leakage or spillage. Should said leakage or spillage result in a fine, penalty, cost or charge being incurred by Lessor, Lessee shall promptly and fully reimburse and indemnify Lessor on account thereof.

## The indemnification provisions of this Section 29 shall apply during the term of this Lease and at any time thereafter that a claim is made against Lessor for any damages alleged to have been caused during the term of this Lease from/by any dangerous or hazardous commodity moved, stored or handled by Lessee, regardless of whether Lessor then owns the Premises, has leased the Premises to another party, or has conveyed the Premises to another party in the interim.

## All obligations of Lessee hereunder to release, indemnify and hold Lessor harmless shall also extend to the members, managers, officers, agents and employees of Lessor, and to companies and other legal entities that control, or are controlled by, or are affiliated with Lessor.

# **Miscellaneous**. The foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof and may be modified only by a writing signed by both parties. The covenants, conditions and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns as may be permitted hereunder. Nothing contained in this Lease shall be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint ventures or any other relationship between the parties hereto other than the relationship of lessor and lessee. The word “including” shall be construed to mean “including but not limited to”. The parties hereto agree (a) to furnish upon request to each other such information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of effectuating the intent of this Lease and any documents executed pursuant hereto or in connection herewith or of complying with any law, rule, regulation, or other requirement of any governmental entity. The failure of any party to insist in any one or more instances upon strict performance of any obligation of another party under this Lease shall not be deemed to be a waiver of the performance of any such obligation or a relinquishment of any rights hereunder for the future. This Lease shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. Lessor shall be entitled to enforce this Lease in any federal or state court of competent jurisdiction in Newport News, Virginia. Lessee irrevocably submits to the jurisdiction and venue of such court(s). This Lease may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which taken together shall constitute one agreement binding on all parties hereto, notwithstanding that the parties shall not have signed the same counterpart. Counterparts may be delivered via facsimile, email (including PDF or any electronic signature complying with the U.S. federal E-SIGN Act of 2000) or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes. Each party consents to the use of electronic signatures and agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Lease are intended to authenticate this writing, to have the same force and effect as manual signatures and shall be legally binging upon the parties.  Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the said parties to this Lease have set their hands and seals the day and year set forth below.

 **LESSOR:**

 **RIVER PORT, LLC**,

 a Virginia limited liability company

 By:

 Name:

 Its:

 **LESSEE:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,
a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By:

 Name:

 Its:

*[Signature Page to Lease and Services Agreement]*

EXHIBIT A

RATE SHEET

(See ECR Newport News Tariff Schedule attached hereto)

EXHIBIT B

THE IMPROVEMENTS

(See attached, if applicable)

Applicable ⬜

Not Applicable ⬜

*(Check one)*

EXHIBIT C

NEWPORT NEWS TENANT & THIRD PARTY GUIDELINES

(See attached)

EXHIBIT D

**INSURANCE REQUIREMENTS**

1. Insurance Company Criteria

Lessee agrees to procure and maintain for the term of the Lease and two (2) years after the completion of the Lease, at its expense, insurance with insurance companies authorized and licensed to do business in the state, province or country where the services or work will be performed having at least an A.M. Best’s rating of A – VIII, covering all operations under this contract, with the kinds and in the minimum amounts required, under the contract as set forth below.

2. Coverage Requirements

| **COVERAGE** | **MINIMUM LIMITS** |
| --- | --- |
| i. Marine Comprehensive General Liability including:

|  |
| --- |
| [x] Bodily Injury and Property Damage |
| [x] Contractual Liability |
| [x] Ship Repairer’s Legal Liability |
| [x] Other |

 |

|  |
| --- |
| [x] $1,000,000 Combined Single Limit (CSL) occurrence |
| [x] Other - $1,000,000 for the following endorsements:Sudden & Accidental PollutionThird Party Action OverTraveling Workmen  |

 |
| ii. Vessel and Crew Liability (where O*wned or Chartered* vessels are used in the Lessee’s operations\*) including: [x] Protection & Indemnity [x] Collision Liability [x] Vessel Pollution Liability (per OPA and CERCLA) [x] Other\*  | [x] $1,000,000 per occurrence[x] Other - \*Only required if *Owned or Chartered Vessels* are used in the Lessee’s operations: $1,000,000 for each of the following endorsements:Wharfingers’ Legal LiabilityTerminal Operators Legal LiabilityRemoval of WreckIn Rem |
| iii. Vessel/Hull and Physical Damage Coverage including Machinery & Equipment for *Owned or Chartered Vessels\**  | \*Only required if *Owned or Chartered Vessels* are used in the Lessee’s operations: Full Value of Vessel and her machinery & equipment. |
| v. Umbrella, Bumbershoot, and/or Excess Liability, which will extend to cover excess limits over Employers Liability, Commercial General Liability and Commercial Auto Liability coverages above

|  |
| --- |
| [x] Yes |
| [ ] No |
|  |
|  |

 |  If needed to meet required limit:

|  |
| --- |
| [ ] 1,000,000 |
| [ ] 2,000,000 |
| [ ] 3,000,000 |
| [x] 5,000,000 |
| [x] Other$50,000 per linear foot of vessel, subject to a $9,000,000 minimum for *Owned Vessel Operations*  |

 |
| vi. Worker’s Compensation including:[x] All States Coverage/Endorsement[ ] Where work or service will be performed on a US base, the following is required:* Defense Base Act

[x] Where maritime employment is involved the following are required:[x] Longshore and Harbor Workers Compensation[ ] Outer Continental Shelf Act[x] Maritime Employers Liability (for “non-owned vessel” crew)[x] Jones Act (for “owned” vessel crew) | Statutory coverage as required by the laws of the state(s), province(s) or country(s) in which the services or work are to be performed.Employers Liability:

|  |
| --- |
| [x] 1,000,000 – bodily injury by accident |
| [x] 1,000,000 – bodily injury by disease – each accident |
| [x] 1,000,000 – bodily injury by disease - aggregate |

Federal coverage as required by the laws and regulations of United States Department of Labor |
|  |  |

| **COVERAGE** | **MINIMUM LIMITS** |
| --- | --- |
| vii. Professional Liability, covering the Prime Contractor for the negligent performance of its Engineering/Design Services, Gas Freeing Services, other Professional Services, whichever is applicable.

|  |
| --- |
| [x] Yes |
| [ ] No |

 |

|  |
| --- |
| [x] $1,000,000 each claim |
| [x] $1,000,000 aggregate |

 |

3. Requirements that must appear in the “Description of Operations” box on the certificate of insurance:

* Additional Insured Wording:

Lessee shall include **S23 Holdings, LLC / River Port, LLC & Affiliates** as additional insured under its Marine General Liability, and Umbrella, Excess, or Bumbershoot Liability policies.

* Waiver of Subrogation Requirement:

Lessee and insurer shall waive subrogation against **S23 Holdings, LLC / River Port, LLC & Affiliates** under its Marine General Liability, Umbrella, Excess, or Bumbershoot Liability and Workers Compensation policies.

* Primary and Non-Contributory Requirement:

Lessee’s Marine General Liability and Umbrella, Excess, or Bumbershoot Liability policies shall be considered primary and non-contributory of any other valid and collectible insurance carried by **S23 Holdings, LLC / River Port, LLC & Affiliates**.

* Cancellation Provision

Lessee agrees that each insurance policy shall contain an endorsement that provides for at least thirty (30) days prior notice to **S23 Holdings, LLC / River Port, LLC & Affiliates**, in the event of any cancellation or modification of coverage. Where services provided are for Government contracts of an Affiliate of S23 Holdings, LLC, the policies shall also contain an endorsement that cancellation or material change in the policies, adversely affecting the interest of the Government in such insurance, shall not be effective unless the Task Order Contracting Officer approves such cancellation or change. Lessee agrees not to amend or modify its insurance policies or certificates of insurance where such amendments or modifications would reduce coverage amounts below the requirement of this agreement.

4. Evidence of Insurance

Prior to Occupying the Premises, Lessee shall furnish **S23 Holdings, LLC / River Port, LLC & Affiliates** with certificates of insurance to evidence Lessee’s compliance with the insurance requirements of this Lease. Renewal certificates of insurance shall be provided to **S23 Holdings, LLC / River Port, LLC & Affiliates** prior to the expiration dates of the required insurance. The Certificate Holder shall be **S23 Holdings, LLC / River Port, LLC & Affiliates**.

5. Additional Requirements for Government Contractors

If applicable, Lessee shall also comply with any terms set forth in FAR clause 52.228-7 entitled “Insurance-Liability to Third Persons”, which are in addition to those requirements contained in this agreement.

In addition, based on the services or work rendered, **S23 Holdings, LLC / River Port, LLC & Affiliates** may reasonably require additional insurance coverages and/or limits.

Neither failure of Prime Contractor to comply with any or all of the insurance provisions of these security services nor the failure to secure endorsements or policies as may be necessary to carry out the terms and provisions of this contract, shall be construed to limit or relieve the Prime Contractor from any of its obligations under this Lease.

6. No Relief

Neither failure of Lessee to comply with any or all of the insurance provisions of this Lease, nor the failure to secure endorsements or policies as may be necessary to carry out the terms and provisions of this Lease, shall be construed to limit or relieve the Lessee from any of its obligations under this Lease.

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