

SCHEDULE 6
CLOSING BOND FORM

[ISSUING ENTITY LETTERHEAD]

As of [*date of effectiveness of Closing Bond*]

To: **Puerto Rico Ports Authority** (the “**Authority**”)

Calle Lindbergh 64
Antigua Base Naval Miramar
San Juan, PR 00907
PUERTO RICO

Re: **San Juan Bay Cruise Terminals - PPP Contract - Closing Surety Bond**

Bond number [-] (the “**Bond**”)

1. Whereas San Juan Cruise Port LLC, a limited liability company established under the laws of the Commonwealth of Puerto Rico (the “**Concession Company**”) has entered into the San Juan Bay Cruise Terminals Public-Private Partnership Agreement with the Authority on [*date*] (the “**PPP Contract**”) to repair, design, build, finance, operate and maintain the San Juan Bay Cruise Terminals in Puerto Rico (the “**Project**”). **Except where otherwise defined herein, capitalized terms used in this Bond shall have the meaning ascribed to such terms in the PPP Contract.**
2. We [Issuing Entity] (the “**Surety**”) hereby irrevocably guarantee to the Authority the due and punctual performance by the Concession Company of the Concession Company’s obligations arising through Closing under the relevant provisions of the PPP Contract and, in the event of a Default (as defined in Clause 3 below) in respect of the same, the Surety shall, subject to the provisions of this Guarantee, pay to the Authority the amount of **ten million US Dollars (US\$ 10 million)** (the “**Guaranteed Amount**”) upon written demand by the Authority stating that a Default (defined below) has occurred.
3. The Concession Company shall only be considered to be in default (“**Default**”) if any of the following circumstances occurs:
 - (i) Prior to the earliest of (A) Closing, (B) the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract), and (C) termination of the PPP Contract under Section 2.4(d)(i) to Section 2.4(d)(vi) of the PPP Contract, the Concession Company or the Surety has withdrawn or attempted to withdraw, or altered or attempted to alter, any part or all of the Bond.
 - (ii) The Authority has terminated the PPP Contract pursuant to Section 2.4(d)(iv) thereof because a condition set forth in Section 2.4(b) thereof remains unsatisfied as of the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract) (unless such Section 2.4(b) condition remains unsatisfied solely because a condition set forth in Section 2.4(a) or (c) remains unsatisfied or any such condition remains unsatisfied as a



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result of the occurrence of an event of Force Majeure) and provided that the conditions in Section 2.4(a) have been satisfied (other than any condition (x) the satisfaction of which depends on 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 (y) which has not been satisfied as a result of the Concession Company's failure to comply with the provisions of the PPP Contract).

4. Any demand under this Bond must be served on the Surety in writing and shall be accompanied by:
- (i) in the event of a Default under clause 3(i) above, the original decision issued by the expert appointed under the fast-track Closing Bond or Guaranty Determination Procedure set forth under Appendix 1 of Schedule 6 of the PPP Contract (the "**Expert**") or a certified copy thereof by such Expert or by the Independent Expert or Technical Dispute Panel under a Technical Dispute, if the Expert's decision was challenged pursuant to Section 3.18 of the Closing Bond or Guaranty Determination Procedure and became final (the "**Decision**"), shall state as a minimum that, prior to the earliest of (A) Closing, (B) the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract) or (C) termination of the PPP Contract under Section 2.4(d)(i) to Section 2.4(d)(vi) of the PPP Contract, the Concession Company or Surety has either:
 - (a) withdrawn any or all part of the Bond; or
 - (b) attempted to withdraw any or all part of the Bond; or
 - (c) altered any or all part of the Bond; or
 - (d) attempted to alter any or all part of the Bond;
 - (ii) in the event of a Default under 3(ii) above, the Decision, which shall state as minimum that:
 - (a) a condition set forth in Section 2.4(b) of the PPP Contract remains unsatisfied as of the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract);
 - (b) such condition set forth in Section 2.4(b) of the PPP Contract does not remain unsatisfied solely because a condition set forth in Section 2.4(a) or (c) remains unsatisfied or such condition does not remain unsatisfied as a result of the occurrence of an event of Force Majeure; and
 - (c) the conditions set forth in Section 2.4(a) of the PPP Contract have been satisfied (other than any condition (x) the satisfaction of which depends on an action of the Concession Company or the satisfaction of any condition set forth in Section 2.4(b) or Section 2.4(c) of the PPP Contract; or (y) which has not been satisfied as a result of the Concession Company's failure to comply with the provisions of the PPP Contract);and
 - (iii) a written notification from the Executive Director of the Authority or his/her delegate:
 - (a) stating that a Default has occurred and the PPP Contract has been terminated and the Authority is calling upon this Bond, and



(b) attaching an original or certified copy of the decision from the Expert sustaining the basis for the Authority's action.

5. Without prejudice to Clause 4 above:

(a) the Authority shall not be obliged to pursue any means of recourse against the Concession Company before being entitled to enforce this Bond against the Surety; and

(b) the Authority shall have the right to proceed first and directly against the Surety under this Bond and without proceedings against the Concession Company or exhausting any other remedies against the Concession Company which the Authority may have.

6. Any payments made upon the Authority's request shall be made net and free of and without any present or future deductions such as for the payment of any taxes, executions, duties, expenses, fees, deductions or retentions regardless of the nature thereof or the authority levying the same. Any payment shall be made in US dollars.

7. The undertakings under this Bond constitute direct and irrevocable undertakings on the Surety's part. The Surety shall not be discharged or released from any liability under this Bond by:

(i) any alteration of the terms of the PPP Contract;

(ii) any forbearance, forgiveness, concession, arrangement or other indulgence in respect of any matter or thing concerning the PPP Contract;

(iii) any insolvency of the Concession Company; or

(iv) any other act, event or omission which in the absence of this provision would or might have that effect except a discharge or amendment of this Bond expressly made or agreed by the Authority in writing;

and no allowance of time by the Authority under or in respect of the PPP Contract requirements shall in any way release, reduce or affect the liability of the Surety under this Bond.

8. This Bond shall remain valid and binding on the Surety from the date hereof and shall automatically expire upon the occurrence of the earliest of the following:

(i) the date on which the Guaranteed Amount has been paid under this Bond; or

(ii) the date on which Closing has been achieved under the PPP Contract; or

(iii) the date on which the PPP Contract is terminated pursuant to Section 2.4(d)(i) to Section 2.4(d)(vi) of the PPP Contract other than where such termination constitutes a Default under Clause 3 above; or

(iv) in any case, on the 30th day after the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract), unless within such thirty (30) day period the Authority mails a notice through certified mail (with return receipt) to the Concession Company and the Expert postmarked or received before such 30th day, with copy to the Surety, requesting the Expert to make a determination of Default pursuant to Clause 3 above upon which notice to the Expert and the Concession Company, with copy to the Surety, the expiration shall extend until a final and unappealable decision by the Expert, the Technical Dispute Panel or Independent Expert

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(under Section 19.4 of the PPP Contract), or a Commonwealth Court (pursuant to 19.4(b)(iv)) is made and notified to the Concession Company, the Authority and the Surety, and payments are made to the Authority if the final and unappealable decision is favorable to the Authority, which payments shall be made no later than twenty (20) days from such final and unappealable decision.

9. Whether or not this Bond shall be returned to the Surety, the obligations of the Surety under this Bond shall be released and discharged absolutely upon expiry (as defined in Clause 8 above) save in respect of any Default which has been claimed by the Authority to have occurred and in respect of which a final and unappealable determination has not been made and notified to us.
10. This Bond and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of the Commonwealth of Puerto Rico. The Commonwealth Courts shall have exclusive jurisdiction to settle any dispute arising from or connected with this Bond.

This Clause 10 shall survive the expiration or termination of this Bond.

11. Other than notices given pursuant to Section 8(iv) above, which shall be governed by the specific terms thereof, all notices or communications to be delivered in connection with this Bond shall be deemed to have been properly delivered, given and received (i) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day and, if not on a Business Day, then on the next following Business Day, or (ii) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day and, if not on a Business Day then on the next following Business Day. Such notices or other communications must be sent to each respective Party at the address set forth below (or at such other address as shall be specified by a Party in a notice given in accordance with this clause 11):

(a) *In the case of Surety:*

Address: [•]

Marked for the attention of: [•]

(b) *In the case of the Authority:*

Puerto Rico Ports Authority

Calle Lindbergh 64
Antigua Base Naval Miramar
San Juan, PR 00907

Marked to the attention of: Executive Director and General Counsel

With copy to:

Puerto Rico Public Private Partnership Authority
PO Box 42001 San Juan, PR 00940-2001
Marked for the attention of: Executive Director

[ISSUING ENTITY]
[Authorised Signatory]

Handwritten signature
7