

## **SCHEDULE D:**

### **SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (hereinafter referred to as “**SUBLEASE**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the **GUAM POWER AUTHORITY** (hereinafter referred to as “**GPA**”), and \_\_\_\_\_, (hereinafter referred to as “**CONTRACTOR**”). **GPA** is the lessee for the Storage Lease Agreement under TTGI-SA-2018-001, dated January 1, 2018, (hereinafter referred to as “**MASTER LEASE AGREEMENT**”), from Tristar Terminals Guam, Inc (hereinafter referred to as “**OWNER**”) for the lease of Storage Tank 1906 (hereinafter referred to as “**LEASED PREMISES**”) located at Agat, Guam.

### **W I T N E S S E T H :**

## **1. LEASED PREMISES**

### **Section 1.01. LEASED PREMISES.**

- (a) **GPA** hereby leases to **CONTRACTOR**, and **CONTRACTOR** hereby leases from **GPA**, storage tank located at Tristar Storage FACILITY (hereinafter referred the “**FACILITY**”). Storage tank 1906 hereby leased to **CONTRACTOR** is depicted and designated as “**LEASED PREMISES**”, with a safe storage capacity of One Hundred Ninety-Six Thousand Barrels (196,000 bbls) and shall be utilized for storage of Diesel Fuel Oil No.2.
- (b) Monthly storage lease fee shall be waived by **GPA**. **CONTRACTOR** shall be solely responsible for all other expenses under this **SUBLEASE**, to include, but not limited to, dock fees, pipeline fees, and TriStar administrative fees (if overtime is incurred).
- (c) **CONTRACTOR** shall oversee, manage and administer the **LEASED PREMISES** and terms of this **SUBLEASE**.

### **Section 1.02. Use Rights of OWNER and GPA.**

**OWNER** and **GPA** may from time to time, in coordination with **CONTRACTOR**, shall be allowed to use the tank, and grant to any party, person or entity the non-exclusive right, to the extent permitted under this **SUBLEASE**.

### **Section 1.03. MASTER LEASE AGREEMENT.**

**GPA** is the Customer under the **MASTER LEASE AGREEMENT** with the **OWNER** identified above. **GPA** represents and warrants to **CONTRACTOR** that:

- (a) **GPA** has delivered to **CONTRACTOR** a full and complete copy of the **MASTER LEASE AGREEMENT** and all other agreements between **OWNER** and **GPA** relating to the leasing and use of the **LEASED PREMISES**;
- (b) the **MASTER LEASE AGREEMENT** is, as of the date hereof, in full force and effect; and
- (c) no event of default has occurred under the **MASTER LEASE AGREEMENT** and, to **GPA**'s knowledge, no event has occurred and is continuing which would constitute an event of default but for the requirement of the giving of notice and/or the expiration of the period of time to cure.

## **2. LEASE TERM**

### **Section 2.01. Term.**

The "Commencement Date" of the Lease shall be January 01, 2019 and shall continue until the termination of the **MASTER LEASE AGREEMENT** or **GPA's** Fuel Supply Contract with the **CONTRACTOR**, whichever occurs first.

### **3. USE OF LEASED STORAGE FACILITY**

#### **Section 3.01. Permissible Use and Restrictions.**

(a) The **LEASED PREMISES** shall be continuously used solely for Diesel Fuel Oil No.2 storage and for no other purpose without **OWNER** and **GPA's** prior written consent during the term of the lease.

(b) Scheduling. **GPA** and **CONTRACTOR** desire to optimize use of the **LEASED PREMISES**, and so agree to cooperate and communicate regarding scheduling of the **FACILITY**. **CONTRACTOR** shall manage the inventory and be responsible for scheduling and booking of fuel shipments to the **LEASED PREMISES**, but shall share with **GPA** not less frequently than on a monthly basis the proposed shipment schedule 18 months into the future. **GPA's** goal is to optimize use of the **FACILITY**.

#### **Section 3.02. Rules and Regulations.**

**CONTRACTOR** shall comply with the rules and regulations adopted by **OWNER** of the **FACILITY**. **OWNER** shall have the right at all times to change and amend the rules and regulations in any reasonable manner as it may deem advisable for safety, care, cleanliness, preservation of good order and operation or use of the **FACILITY**.

#### **Section 3.03. Hazardous Substances.**

**CONTRACTOR** shall not place or use tanks, drums or other containers of any kind in, on, at or under the **LEASED PREMISES**, the contents of which are unknown to **OWNER** or **GPA**. **CONTRACTOR** shall not engage in any activities involving the use, treatment, transportation, generation, storage or disposal of any Hazardous Substances (as hereinafter defined) in hazardous quantities and no Hazardous Substances in hazardous quantities shall be released on, at or from the **LEASED PREMISES** or elsewhere in the **FACILITY**.

**CONTRACTOR** shall indemnify, defend, and hold harmless **OWNER** and **GPA** from and against:

- (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (herein referred to as "Remedial Work") required by, or incurred by, **OWNER** or **GPA** or any other person or party in a reasonable belief that such Remedial Work is required by any applicable federal, state or local law, rule, regulation or order, or by any governmental agency, authority, or political subdivision having jurisdiction over the **LEASED PREMISES** as a result of or arising from the use or occupancy by **CONTRACTOR** or its agents, employees, or invitees of the **LEASED PREMISES**, and
- (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Substances on, under, in, above, to or from the **LEASED PREMISES** as a result of or arising from the use or occupancy by **CONTRACTOR** or its agents, employees, or invitees of the **LEASED PREMISES**.

#### **Section 3.04. Hold Harmless.**

**OWNER** and **GPA** shall not be liable to **CONTRACTOR** or to **CONTRACTOR's** customers, employees, agents, guests or invitees, or to any other person whomsoever, for any injury to person or damage to property on or about the **LEASED PREMISES** or the **FACILITY**, including, but not limited to, consequential damage:

(1) caused by any act or omission of **CONTRACTOR**, its employees, subcontractors, licensees, invitees and concessionaires invited by **CONTRACTOR** or of any other person entering the **FACILITY** or the **LEASED PREMISES** by express or implied invitation of **CONTRACTOR**; or

(2) arising out of the use of the **LEASED PREMISES** or the **FACILITY** by **CONTRACTOR**, its employees, subcontractors, licensees, concessionaires invited by **CONTRACTOR** or invitees. **CONTRACTOR** hereby agrees to indemnify and hold **OWNER** and **GPA** harmless from any liability, loss, expense or claim (including, but not limited to, attorneys' fees) arising out of any such damage or injury. **OWNER** and **GPA** shall not be liable to **CONTRACTOR** for any loss or damage that may be occasioned by or through the acts or omissions of other **CONTRACTORS** of the **FACILITY** or of any other persons whomsoever. Further, any **CONTRACTOR** specifically agrees to be responsible for and indemnify and hold **OWNER** and **GPA** harmless from any and all damages or expenses of whatever kind arising out of or caused by a burglary, theft, vandalism, malicious mischief or other illegal acts performed in, at or from the **LEASED PREMISES**. **CONTRACTOR**'s obligations under this Section shall survive the expiration or earlier termination of this Lease.

#### **4. MAINTENANCE AND ALTERATIONS**

##### **Section 4.01. OWNER's Obligations.**

**OWNER** shall keep in good repair, operate and maintain the **LEASED PREMISES**.

##### **Section 4.02. CONTRACTOR's Obligations.**

**CONTRACTOR** shall not suffer or permit any injury to the **LEASED PREMISES**. **CONTRACTOR** shall immediately notify **GPA** of any damage, injury, or disrepair of any part of the **LEASED PREMISES** caused by or known to **CONTRACTOR**.

##### **Section 4.03. Alterations and Additions.**

**CONTRACTOR** shall make no alterations or additions to any part of the **LEASED PREMISES**.

#### **5. INDEMNIFICATION AND INSURANCE**

##### **Section 5.01. Indemnification.**

**CONTRACTOR** assumes all risks and responsibilities for accidents, injuries, or damages to persons or property (other than as provided in Section 5.02 below with respect to damage by fire and casualty), and agrees to indemnify and hold harmless **GPA** from any and all claims, liabilities, losses, costs, and expenses (including attorneys' fees), arising from or in connection with **CONTRACTOR**'s use of the **LEASED PREMISES** during the Lease Term.

##### **Section 5.02. CONTRACTOR Insurance.**

**CONTRACTOR** shall, during the Lease Term, keep in full force and effect policies of public liability insurance (with contractual liability endorsement covering the matters set forth in Section 5.01 above), in companies and in a form acceptable to **OWNER** and **GPA**, with respect to the **LEASED PREMISES**, in which both **CONTRACTOR** and **GPA** shall be named as parties covered thereby (covering **CONTRACTOR** as the named insured and identifying **OWNER** and **GPA** as an "additional insured"), providing for insurance and minimum limits provided under Section 11 of the **MASTER LEASE AGREEMENT**. All insurance maintained by **CONTRACTOR** as required pursuant to this Section shall be carried in favor of **OWNER**, **GPA** and **CONTRACTOR**, as their respective interests may

appear. **CONTRACTOR** shall furnish **OWNER** and **GPA** with certificates of insurance, and all such insurance shall carry a provision providing that it will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to **GPA**. If **CONTRACTOR** fails to comply with the above requirements, **GPA** may obtain such insurance and keep same in effect, and **CONTRACTOR** shall pay **GPA** all premium costs thereof upon demand.

### **Section 5.03. Waiver of Subrogation.**

All insurance policies maintained by **CONTRACTOR** as provided in this Article shall contain an agreement by the insurer waiving the insurer's right of subrogation against the other party to this Lease or agreeing not to acquire any rights of recovery which the insured has expressly waived prior to loss. Each of the parties hereto agrees that if the provision waiving subrogation in any of such policies of insurance requires that notice of such waiver be served upon the insurer, such notice shall be promptly served by the party obtaining such insurance.

## **6. DEFAULT AND REMEDIES**

### **Section 6.01. Events of Default.**

Each of the following shall be deemed a default by **CONTRACTOR** unless the same has been cured within sixty (60) calendar days following the default:

- (a) **CONTRACTOR**'s failure to perform or observe any other terms, conditions, or covenants of this Lease to be performed or observed by **CONTRACTOR**;
- (b) Any change or modification in the use of the **LEASED PREMISES** or any substantial change in the quality of character of such use if such change adversely affects the **FACILITY** to be solely determined by **OWNER**;
- (c) The adjudication of **CONTRACTOR** as a bankrupt;
- (d) The making by **CONTRACTOR** of a general assignment for the benefit of creditors;
- (e) The appointment of a receiver in equity for **CONTRACTOR**'s property if such appointment is not vacated or otherwise terminated within sixty (60) days from the date of such appointment;
- (f) **CONTRACTOR**'s filing of a voluntary petition in bankruptcy or for reorganization or arrangement;
- (g) **CONTRACTOR**'s filing of an answer admitting bankruptcy or agreeing to reorganization or arrangement;
- (h) Issuance of a criminal indictment or charge against **CONTRACTOR**; or
- (i) Dissolution or other termination of **CONTRACTOR**'s corporate charter.

### **Section 6.02. OWNER and GPA's Rights Upon CONTRACTOR's Default.**

In the event of any default provided in the foregoing Section 6.01, not cured within the applicable cure period, without any further demand or notice **GPA**, in addition to pursuing any other rights or remedies available at law or in equity, may:

- (a) Collect the past due amounts by withdrawing such amount from the **CONTRACTOR**;
- (b) Elect to terminate this Lease;
- (c) In the event that **CONTRACTOR** has failed to perform any of its covenants under this Lease to perform the covenant or covenants of **CONTRACTOR** which are in default at **CONTRACTOR**'s cost and expense (entering upon the **LEASED PREMISES** for such purpose, if necessary); and **GPA**'s performance of any such covenant shall neither subject **OWNER** and **GPA** to liability for any loss, inconvenience, or damage to **CONTRACTOR** nor be constructed as a waiver of **CONTRACTOR**'s default or of any other right or remedy of **GPA** in respect of such default, or as waiver of any covenant, term, or condition of this Lease; or

- (d) immediately re-enter upon the **LEASED PREMISES**, remove all persons and property therefrom, at the sole cost and for the account of **CONTRACTOR**, all without service of notice or resort to legal process, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and without such re-entry being deemed to terminate this Lease.

### **Section 6.03. Remedies Cumulative.**

The remedies of **OWNER** and **GPA** hereunder shall be cumulative, and no one of them shall be construed as exclusive or any other or of any remedy provided by law or in equity. The exercise of any one such right or remedy by **OWNER** and **GPA** shall not impair its standing to exercise any other such right or remedy.

## **7. ACCESS TO LEASED PREMISES**

**CONTRACTOR** shall permit **OWNER** and **GPA** and its agents and employees to enter in and upon the **LEASED PREMISES** at all reasonable times to inspect and examine the **LEASED PREMISES**, or to make such repairs that **OWNER** or **GPA** may deem necessary or desirable, provided **OWNER** or **GPA** shall have access to the **LEASED PREMISES** without advanced notice and should an emergency situation occur at the **LEASED PREMISES**.

## **8. LIMITATION OF GPA'S LIABILITY**

**CONTRACTOR** agrees that **CONTRACTOR** shall look solely to **OWNER's** and **GPA's** interest in and to the **FACILITY**, in the event of default or breach by **OWNER** or **GPA** of any of the covenants, terms or conditions of this Lease to be observed or performed by **OWNER** or **GPA**, and that no other assets of **OWNER** and **GPA** shall be subject to levy, execution, or of the process for satisfaction of **CONTRACTOR's** remedies. The term "**GPA**", as used in this Lease in relation to covenants, agreements, and conditions to be observed and performed by **GPA**, shall be limited to mean and include only the **OWNER** or **OWNERS** from time to time of **GPA's** interest in this Lease. In the event of any transfer or transfers of such interest (except a transfer for security), **GPA** named herein (or the transferor, in the case of a subsequent transfer) shall, after the date of such transfer, be released from all liability for the performance of any covenant, agreement, and conditions under this **SUBLEASE**, occurring prior to the date of such transfer. This Lease shall bind **GPA**, its successors and assigns only during and in respect of their respective successive periods of ownership of the **FACILITY**.

## **9. MISCELLANEOUS**

### **Section 9.01. Sublease.**

This Sublease and all the rights of parties hereunder are subject and subordinate to the **MASTER LEASE AGREEMENT**. Each party agrees that it will not, by its act or omission to act, cause a default under the **MASTER LEASE AGREEMENT**. In furtherance of the foregoing, the parties hereby confirm, each to the other, that it is not practical in this **SUBLEASE** to enumerate all of the rights and obligations of the various parties under the **MASTER LEASE AGREEMENT** and specifically to allocate those rights and obligations in this Sublease. Accordingly, in order to afford to **CONTRACTOR** the benefits of this Sublease and of those provisions of the **MASTER LEASE AGREEMENT** which by their nature are intended to benefit the party in possession of the **LEASED PREMISES**, and in order to protect **GPA** against a default by **CONTRACTOR** which might cause a default or event of default by **GPA** under the **MASTER LEASE AGREEMENT**:

- A. Provided **CONTRACTOR** shall timely pay all charges as due under this Sublease. **GPA** shall pay, when and as due, the monthly tank rent lease fee, payable by **GPA** to **OWNER** under the **MASTER LEASE AGREEMENT**;
- B. Except as otherwise expressly provided herein, **GPA** shall perform its covenants and obligations under the **MASTER LEASE AGREEMENT** which do not require for its performance possession of the **LEASED PREMISES** and which are not otherwise to be performed hereunder by **CONTRACTOR** on behalf of **GPA**.
- C. Except as otherwise expressly provided herein, **CONTRACTOR** shall perform all affirmative covenants and shall refrain from performing any act which is prohibited by the negative covenants of the **MASTER LEASE AGREEMENT**, where the obligation to perform or refrain from performing is by its nature imposed upon the party in possession of the Premises. If practicable, **CONTRACTOR** shall perform affirmative covenants which are also covenants of **GPA** under the **MASTER LEASE AGREEMENT** at least five (5) days prior to the date when **GPA**'s performance is required under the **MASTER LEASE AGREEMENT**. **GPA** shall have the right to enter the Premises to cure any default by **CONTRACTOR** under this Section.
- D. **GPA** hereby grants to **CONTRACTOR** the right to receive all of the services and benefits with respect to the **LEASED PREMISES** which are to be provided by **OWNER** under the **MASTER LEASE AGREEMENT**. **GPA** shall have no duty to perform any obligations of **OWNER** which are, by their nature, the obligation of an **OWNER** or manager of real property. For example, **GPA** shall not be required to provide the services or repairs which the **OWNER** is required to provide under the **MASTER LEASE AGREEMENT**. **GPA** shall have no responsibility for or be liable to **CONTRACTOR** for any default, failure or delay on the part of **OWNER** in the performance or observance by **OWNER** of any of its obligations under the **MASTER LEASE AGREEMENT**, nor shall such default by **OWNER** affect this Sublease or waive or defer the performance of any of **CONTRACTOR**'s obligations hereunder except to the extent that such default by **OWNER** excuses performance by **GPA**, under the **MASTER LEASE AGREEMENT**. Notwithstanding the foregoing, the parties contemplate that **OWNER** shall, in fact, perform its obligations under the **MASTER LEASE AGREEMENT** and in the event of any default or failure of such performance by **OWNER**, **GPA** agrees that it will, upon notice from **CONTRACTOR**, make demand upon **OWNER** to perform its obligations under the **MASTER LEASE AGREEMENT** and, provided that **CONTRACTOR** specifically agrees to pay all costs and expenses of **GPA** and provides **GPA** with security reasonably satisfactory to **GPA** to pay such costs and expenses, **GPA** will take appropriate legal action to enforce the **MASTER LEASE AGREEMENT**.

**Section 9.02. Assignment and Subletting.**

**CONTRACTOR** shall not assign this Lease or sublet the whole or any part of the **LEASED PREMISES**.

**Section 9.03. No Option.**

The submission of this Lease for examination by **CONTRACTOR** shall not constitute a reservation of or option for the **LEASED PREMISES**. This Lease shall become effective only upon execution and delivery thereof by **GPA** and **CONTRACTOR**.

**Section 9.04. Relationship of Parties.**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating between the parties hereto the relationship of principal an agent, partnership, joint venture, or any relationship other than the relationship of **GPA** and **CONTRACTOR**.

**Section 9.05. Waiver.**

The parties hereto may, by a writing signed by both of the parties, waive the performance by any party of any of the provisions to be performed by such party under this Lease. The failure of any party hereto at any time to insist upon the strict performance of any provision of this Lease shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provision at a future time. The waiver by either party hereto of a breach of or noncompliance with any provision of this Lease shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

**Section 9.06. Severability.**

The invalidity or unenforceability of any particular provision of this Lease shall not affect the other provisions, and this Lease shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

**Section 9.07. Binding Effect**

This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon, the respective heirs, executors, administrators, successors and assigns of **GPA** and **CONTRACTOR** except as otherwise expressly provided herein. Nothing in this Lease, express or implied, is intended to confer upon any person, other than the parties hereto, except as provided above, any rights, remedies, obligations, or liabilities under or by reason of this Lease.

**Section 9.08. Construction.**

This Lease shall be construed and governed in accordance with the laws of the Territory of Guam, without regard to its conflict of law provisions. Whenever in this Lease a singular word is used, it shall also include the plural wherever required by the contract and vice versa.

All references in this Lease to periods of days shall be construed to refer to calendar, not business, days. The captions in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease. The Exhibits hereto are incorporated by reference and made a part hereof with the same effect as if set out in fully herein.

**Section 9.10. Entire Agreement; Amendments.**

This instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such parties are merged into and expressed in this instrument, and any and all prior agreements between such parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both **GPA** and **CONTRACTOR**.

**Section 9.11. Survival and Assignment.** The terms and Conditions of this agreement shall survive any change in **GPA** and shall govern the relationship between the **GPA** and the **CONTRACTOR**. **CONTRACTOR** shall not transfer, convey, or sell to a third party any right or obligation under this Lease.

**Section 9.12. Notices.**

Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or by a reputable courier service (with all expenses of delivery being prepaid) or sent by e-mail, registered or certified mail, postage prepaid, as follows:

**GPA:**

Guam Power Authority  
P.O. Box 2977

Hagatna, Guam 96931  
Attn: John M. Benavente, General Manager

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the earlier of actual receipt or two (2) business days after being so delivered or mailed.

**Section 9.12. Counterparts.**

This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute one and the same instrument.

**Section 9.13. Brokers.**

**GPA** and **CONTRACTOR** covenant, warrant and represent that no broker was involved in bringing about or consummating this Lease, and that **GPA** and **CONTRACTOR** had no conversations or negotiations with any broker concerning the leasing of the **LEASED PREMISES**. **CONTRACTOR** agrees to indemnify and hold harmless **OWNER** and **GPA** against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith including, but not limited to, attorneys' fees and expenses arising out of any conversations or negotiations had by **CONTRACTOR** with any broker. **GPA** agrees to indemnify and hold harmless **CONTRACTOR** against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith including, but not limited to, attorneys' fees and expenses arising out of any conversations or negotiations had by **GPA** with any broker.

IN WITNESS WHEREOF, **GPA** and **CONTRACTOR** have executed this Lease as of the day and year first above written.

For the **Guam Power Authority (GPA)**:

\_\_\_\_\_  
**John M. Benavente, P.E.**  
**General Manager**

\_\_\_\_\_  
**DATE**

For **(CONTRACTOR)**:

(Company Name and Seal)

\_\_\_\_\_



**CONTRACTOR, Duly Authorized  
REPRESENTATIVE OF COMPANY**

**DATE**

**APPROVED AS TO FORM:**

For the **Guam Power Authority (GPA):**

\_\_\_\_\_  
**Graham Botha, Legal Counsel**

\_\_\_\_\_  
**DATE**

For the **OWNER (Tristar Terminal Guam, Inc):**

\_\_\_\_\_  
**Kazhakuttam Vikraman, General Manager**

\_\_\_\_\_  
**DATE**