

SCHEDULE D:

SUBSTORAGE AGREEMENT

THIS SUBSTORAGE AGREEMENT (hereinafter referred to as “**SUBSTORAGE AGREEMENT**”) 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**”) in reference to the following facts:

1. **GPA** is the party to a certain “Throughput, Operating and Pipeline Use Agreement for Wet Stock” executed December 28, 2017 made with **TRISTAR TERMINALS GUAM, INC.** (hereinafter referred to as “**OWNER**”), for a term commencing on January 1, 2018, and concluding on December 31, 2018, which Agreement has been extended on a year-to-year basis for a period not to exceed four (4) successive yearly extensions (the “**TOPA**”).

2. The **TOPA** includes, among other things, provision by **OWNER** of Storage Facilities as provided in Section C.1 thereof which provides that **OWNER** “agrees to provide one (1) storage tank, Tank No. 1906, to **Customer [GPA]** with a total nominal capacity of one hundred ninety-six thousand (196,000) barrels for the storage of Diesel product.”

3. Tank 1906 (the “**STORAGE FACILITY**”) is located at the Terminal, as defined in the **TOPA**.

4. Pursuant to the **TOPA**, **OWNER** further provides to **GPA** certain other facilities as more fully described in the **TOPA**, including, but not limited to, certain pipelines used for receipt and the delivery of fuel from the F-1 Dock to the **STORAGE FACILITY**. These rights are collectively referred to herein as the “**OTHER FACILITIES**”.

5. **GPA** has also entered into with **OWNER**, in **OWNER**’s capacity as Manager of the F-1 Dock a certain Facility User Agreement F-1 Dock relative to the use by **GPA** of the F-1 Dock in relation to the unloading of fuel (the “**F-1 DOCK AGREEMENT**”).

6. **GPA** has entered into with **CONTRACTOR** a fuel supply contract (the Fuel Supply Contract) providing for the supply by **CONTRACTOR** to **GPA** of diesel fuel and enters into this **SUBSTORAGE AGREEMENT** in relation to the Fuel Supply Contract.

WITNESSETH:

1. USE OF STORAGE FACILITY

Section 1.01. GRANT OF RIGHT OF USE.

- (a) **GPA** hereby grants to **CONTRACTOR**, and **CONTRACTOR** accepts from **GPA**, the right to use of the **STORAGE FACILITY** for storage of Diesel Fuel Oil No.2 and along with the use of the other facilities in relation to supply of fuel pursuant to the storage contract.
- (b) Nothing contained herein shall constitute a lease or delegation of rights to the use of any of the **OTHER FACILITIES**. **GPA** shall be the holder and user of **OTHER FACILITIES** under the **TOPA**.
- (c) **GPA** shall exercise such rights in respect to the **OTHER FACILITIES** to facilitate the transport of fuel from the F-1 Dock, to the **STORAGE FACILITY** in relation to the fuel supplied by **CONTRACTOR** to **GPA** under the fuel supply contract. **GPA** may additionally use the **OTHER FACILITIES** to facilitate the transport of fuel to the **STORAGE FACILITY** to exercise its right to utilize the **STORAGE FACILITY** for **GPA**'s other purposes including permitting use thereof by third parties.
- (d) **CONTRACTOR** shall oversee, manage and administer the **STORAGE FACILITY**.

Section 1.02. Use Rights of GPA.

GPA from time to time, in coordination with **CONTRACTOR**, be allowed to use the tank, and grant to any party, person or entity the non-exclusive right to use the **STORAGE FACILITY**, to the extent permitted under this **SUBSTORAGE AGREEMENT**.

Section 1.03. TOPA.

GPA represents and warrants to **CONTRACTOR** that:

- (a) **GPA** has delivered to **CONTRACTOR** a full and complete copy of the **TOPA** and all other agreements between **OWNER** and **GPA** relating to the **STORAGE FACILITY**;
- (b) the **TOPA** is, as of the date hereof, in full force and effect; and
- (c) no event of default has occurred under the **TOPA** 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. SUBSTORAGE TERM

Section 2.01. Term.

The “Commencement Date” of this **SUBSTORAGE AGREEMENT** shall be January 01, 2019 and shall continue until the termination of the **TOPA** or **GPA**’s Fuel Supply Contract with the **CONTRACTOR**, whichever occurs first.

3. USE OF STORAGE FACILITY

Section 3.01. Permissible Use and Restrictions.

(a) The **STORAGE FACILITY** shall be continuously used solely for Diesel Fuel Oil No.2 storage for **GPA** and for no other purpose without **OWNER** and **GPA**’s prior written consent.

(b) Scheduling. **GPA** and **CONTRACTOR** desire to optimize use of the **STORAGE FACILITY**, and so agree to cooperate and communicate regarding scheduling of use of the **STORAGE FACILITY**. **CONTRACTOR** shall manage the inventory and be responsible for scheduling and booking of fuel shipments to the **STORAGE FACILITY**, 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 **STORAGE FACILITY**.

Section 3.02. Rules and Regulations.

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

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 **STORAGE FACILITY** or the **TERMINAL**, 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 by **CONTRACTOR** on, at or from the **STORAGE FACILITY** or elsewhere in the **TERMINAL**. **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 **STORAGE FACILITY** or the **TERMINAL** as a result of or arising from the use or occupancy by **CONTRACTOR** or its agents, employees, or invitees of the **STORAGE FACILITY**, or the **TERMINAL**.

(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 **STORAGE FACILITY** or the **TERMINAL** as a result of or arising from the use or occupancy by **CONTRACTOR** or its agents, employees, or invitees of the **STORAGE FACILITY** or the **TERMINAL**.

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 **STORAGE FACILITY** or the **TERMINAL**, 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 **TERMINAL** or the **STORAGE FACILITY** by express or implied invitation of **CONTRACTOR**; or

(2) arising out of the use of the **STORAGE FACILITY** or the **TERMINAL** 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** at the **TERMINAL** 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 **STORAGE FACILITY**. **CONTRACTOR**'s obligations under this Section shall survive the expiration or earlier termination of this **SUBSTORAGE AGREEMENT**.

4. MAINTENANCE AND ALTERATIONS

Section 4.01. CONTRACTOR's Obligations.

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

Section 4.02. Alterations and Additions.

CONTRACTOR shall make no alterations or additions to any part of the **STORAGE FACILITY**.

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 **STORAGE FACILITY** or the **TERMINAL** during the Term of this **SUBSTORAGE AGREEMENT**.

Section 5.02. CONTRACTOR Insurance.

CONTRACTOR shall, during the Term of this **SUBSTORAGE AGREEMENT**, 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 **STORAGE FACILITY** or as otherwise required of **GPA** under the **TOPA**, 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 **TOPA**. 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** and **OWNER**. 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 **SUBSTORAGE AGREEMENT** or **OWNER** 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 **SUBSTORAGE AGREEMENT** to be performed or observed by **CONTRACTOR**;
- (b) Any change or modification in the use of the **STORAGE FACILITY**;
- (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**;

(i) Dissolution or other termination of **CONTRACTOR**'s corporate charter; or

(j) The performance by **CONTRACTOR** of any act, or the failure of **CONTRACTOR** to perform any act, that in either case may result in breach by **GPA** of its obligations to **OWNER** under the **TOPA**.

Section 6.02. 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 **SUBSTORAGE AGREEMENT**;

(c) In the event that **CONTRACTOR** has failed to perform any of its covenants under this **SUBSTORAGE AGREEMENT** to perform the covenant or covenants of **CONTRACTOR** which are in default at

CONTRACTOR's cost and expense (entering upon the **STORAGE FACILITY** 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 **SUBSTORAGE AGREEMENT**; or

(d) immediately re-enter upon the **STORAGE FACILITY**, 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 **SUBSTORAGE AGREEMENT**.

Section 6.03. Remedies Cumulative.

The remedies of **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 STORAGE FACILITY

CONTRACTOR shall permit **OWNER** and **GPA** and their respective agents and employees to enter in and upon the **STORAGE FACILITY** at all reasonable times to inspect and examine the **STORAGE FACILITY**, or to make such repairs that **OWNER** or **GPA** may deem necessary or desirable, or be required of **OWNER** under the **TOPA**, provided **OWNER** or **GPA** shall have access to the **STORAGE FACILITY** without advance notice should an emergency situation occur at the **STORAGE FACILITY** or the **TERMINAL**.

8. LIMITATION OF GPA'S LIABILITY

CONTRACTOR agrees that no assets of **GPA**, including without limitation the **SUBSTORAGE AGREEMENT**, the **TOPA** or the **F-1 DOCK AGREEMENT** shall be subject to levy, execution, or of the process for satisfaction of **CONTRACTOR**'s remedies. In the event of any transfer or transfers of this **SUBSTORAGE AGREEMENT** (except a transfer for security), **GPA** (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 **SUBSTORAGE AGREEMENT**, occurring prior to the date of such transfer. This **SUBSTORAGE AGREEMENT** shall bind **GPA**, its successors and assigns only during and in respect of their respective successive periods of ownership of this **SUBSTORAGE AGREEMENT**.

9. MISCELLANEOUS

Section 9.01. SUBSTORAGE AGREEMENT Subordinate to TOPA.

This **SUBSTORAGE AGREEMENT** and all the rights of parties hereunder are subject and subordinate to the **TOPA**. Each party agrees that it will not, by its act or omission to act, cause a default by **GPA** under the **TOPA**.

GPA shall pay, when and as due, all charges payable by **GPA** to **OWNER** under the **TOPA** and **CONTRACTOR** shall reimburse **GPA** for payment of such charges other than with respect to Tank Storage;

Except as otherwise expressly provided herein, **GPA** shall perform its covenants and obligations under the **TOPA** which do not require for its performance possession of the **STORAGE FACILITY** and which are not otherwise to be performed hereunder by **CONTRACTOR** on behalf of **GPA**.

Section 9.02. Assignment and Subletting.

CONTRACTOR shall not assign this **SUBSTORAGE AGREEMENT** or sublet the whole or any part of the **STORAGE FACILITY**.

Section 9.03. No Option.

The submission of this **SUBSTORAGE AGREEMENT** for examination by **CONTRACTOR** shall not constitute a reservation of or option for the **STORAGE FACILITY**. This **SUBSTORAGE AGREEMENT** 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 and 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 **SUBSTORAGE AGREEMENT**. The failure of any party hereto at any time to insist upon the strict performance of any provision of this **SUBSTORAGE AGREEMENT** 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 **SUBSTORAGE AGREEMENT** 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 **SUBSTORAGE AGREEMENT** shall not affect the other provisions, and this **SUBSTORAGE AGREEMENT** shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

Section 9.07. Binding Effect

This **SUBSTORAGE AGREEMENT** 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 **SUBSTORAGE AGREEMENT**, 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 **SUBSTORAGE AGREEMENT**.

Section 9.08. Construction.

This **SUBSTORAGE AGREEMENT** 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 **SUBSTORAGE AGREEMENT** a singular word is used, it shall also include the plural wherever required by the contract and vice versa.

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

Section 9.09. Entire SUBSTORAGE AGREEMENT; Amendments.

This **SUBSTORAGE AGREEMENT** 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 **SUBSTORAGE AGREEMENT**, and any and all prior agreements between such parties are hereby canceled. The

agreements contained in this **SUBSTORAGE AGREEMENT** shall not be amended, modified, or supplemented except by a written agreement duly executed by both **GPA** and **CONTRACTOR**.

Section 9.10. Survival and Assignment.

The terms and Conditions of this **SUBSTORAGE 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 **SUBSTORAGE AGREEMENT**.

Section 9.11. 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 **SUBSTORAGE AGREEMENT** 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 **SUBSTORAGE AGREEMENT**, and that **GPA** and **CONTRACTOR** had no conversations or negotiations with any broker concerning the **STORAGE FACILITY**.

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 **SUBSTORAGE AGREEMENT** 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