



**PORT OF ASTORIA
FACILITIES USE AGREEMENT**

This Facilities Use Agreement (“Agreement”) is entered into this _____ day of _____, 20__ between the Port of Astoria (“Licensor”) and _____ (“Licensee”), (collectively “the parties”).

LICENSEE

[Company Name]
[Contact Person]
[Business Address]
[Phone Number]
[Email Address]

LICENSOR

Port of Astoria
422 Gateway Avenue, Suite 100
Astoria OR 97103
(503) 741-3300
admin@portofastoria.com

In consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. **Description and Use of Premises.** The Licensor hereby authorizes the Licensee, subject to all the terms of this Agreement, to use certain premises located on Licensor’s property (“Premises”), which are further defined and described in the attached Exhibit A, incorporated herein by this reference. The Premises are located at the south end of the Pier 1 parking lot, or at such location designated by Port staff to accommodate changes or increases in use or traffic flow.

The Premises shall be used for passenger loading and unloading to and from tour buses, and for no other purpose without the prior consent of Licensor, which consent shall not be unreasonably withheld.
2. **Scheduled Use.** During the Term of this Agreement, use of the Premises by Licensee shall be based on the most up-to-date Cruise Ship Schedule (“Schedule”), allowing that the current Schedule may be updated from time to time during the term of this Agreement. A copy of the Schedule that is current as of the date of this Agreement is attached as Exhibit C. Licensee may use the Premises only on those days listed in the most up-to-date Schedule during the term of this Agreement. In case of cancellation of a cruise ship visit, Licensee’s rights under this Agreement for that visit only are annulled. In case of re-scheduling of a cruise ship visit, Licensee’s rights under this Agreement automatically transfer to the new cruise ship visit date, provided the new date is within the term of this Agreement.
3. **Term.** The term of this Agreement shall be one year, beginning January 1, 20__ and terminating December 31, 20__.
4. **Usage Fees.** Licensee shall pay the Licensor \$ 100.00 per day for use of the Premises. Licensee shall be billed for all charges due under this Agreement on an annual basis. The Usage Fees may

be changed from time to time by the Licensor upon sixty (60) days prior written notice to the Licensee.

Any Usage Fee or other payment required of Licensee under this Agreement, if not paid within ten (10) days after it is due, shall bear interest at the rate of nine percent (9%) per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid. Licensor may also assess and collect a late charge equal to five percent (5%) of the late payment, in addition to the above-referenced interest, as well as enforce all other remedies available for Licensee's default. Collection of a late charge shall not be in lieu of nor shall it waive the breach caused by the late payment.

5. **Use of the Premises.** Licensee shall abide by all applicable ordinances, rules, and regulations established by any federal, state, or local agency including the Port of Astoria. Licensee shall also abide by the following conditions:
 - a) Cooperation with Port Staff and Cruise Hosts. Licensee shall abide by reasonable requests by Port Security and Clatsop County Cruise Hosts.
 - b) Debris. The Premises shall be kept free and clear of debris at all times.
 - c) Signage. Signage may not be displayed on the Premises, except that Licensee may post identifying signs on its commercial vehicles, and employees of Licensee may carry signs identifying Licensee for cruise ship passengers.
 - d) Fire Hazard. Licensee shall not engage in any activity which would create a fire hazard.
 - e) Other Commercial Activity. Licensee shall not engage in any commercial activity in, from, or around the Premises without the prior approval of the Licensor.
 - f) Offensive Activity. Licensee shall refrain from any use that would be reasonably offensive to Licensor, or to other tenants, owners, or renters of neighboring premises, or that would tend to create a nuisance or damage the reputation of the Premises.
 - g) Hazardous Substances. Licensee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of or otherwise released on or under the Premises. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include without limitation, petroleum oil. The Term "Environmental Law" shall mean any federal, state, or local statute, regulation, ordinance, or any judicial or governmental order pertaining to the protection of the health, and safety of the environment.
6. **Licensee-Cruise Line Agreements.** Licensee shall protect revenue to all cruise lines that anchor or berth in Astoria by arranging, coordinating, or otherwise establishing the tour, excursion, or packaged service by direct contract with the cruise line. Use of the Premises under this Agreement is not available for tours booked independently from the cruise line. It shall be a condition of this Agreement that Licensee shall provide to the Licensor a copy of all current agreements between Licensee and any and all cruise line(s) at or before the time of signing of this Agreement. A redacted agreement will meet the terms of this provision as long as the redacted portions are of the minimum amount necessary to protect Licensee's rights under the agreements.
7. **Renewal.** Whether to renew this Agreement, with the same or modified terms, is within the sole

discretion of Licensor. All amounts owed by Licensee to Licensor must be brought current as a condition of renewal of this Agreement.

8. **Non-Defamation Requirement.** The parties mutually acknowledge that Licensor and Licensee wish to promote positive business relationships with each other, with cruise providers and customers, and with the general business community that provides services to cruise ship customers in and around Astoria. Therefore, it shall be a continuing condition of this Agreement that neither party shall engage in public disparagement of the other when the speaker knows or should know that the statement is untrue, or when the speaker has no regard for the truth or falsity of the statement. Licensor reserves the right to terminate this Agreement upon a credible showing that Licensee has engaged in defamatory speech that is likely to negatively impact Licensor's reputation or business relationships, including but not limited to Licensor's relationships with cruise ship companies, cruise ship customers, and Cruise Hosts. Nothing in this paragraph shall be interpreted to limit Licensee's right to report wrongdoing by Licensor or any representative of Licensor to appropriate regulatory or law enforcement agencies.
9. **Condition of Premises.** Licensee accepts premises AS IS with all faults. Licensee shall make no repairs, improvements or alterations of any kind on or to the Premises.
10. **Termination.** Licensor may terminate this Agreement in the event of default as described in paragraph 16. Licensee may terminate this Agreement at any time by giving thirty (30) days' prior written notice to Licensor. Upon termination of this Agreement, by expiration or otherwise, Licensee shall immediately remove or forfeit, at its sole expense, all personal property thereon, leaving the space in the same condition as when received. In the event of termination under this paragraph, Licensee shall be responsible for paying any Usage Fees incurred up to and including the effective date of termination.
11. **Sublease/Assignment.** Licensee shall not sublease the Premises or assign this Agreement without the prior written approval of the Licensor. Any attempted assignment shall be void.
12. **Travel Expense Liability.** In any circumstance in which Licensee, regardless of fault, is unable to return cruise line passengers to the cruise ship in time for the passenger to board prior to departure from Astoria, Licensee shall be solely responsible for arranging and paying for the full extent of travel accommodations necessary to return the passengers to the cruise ship.
13. **Insurance Required.** Before entering the Premises under this Agreement, Licensee shall procure and thereafter during the term of the Agreement shall continue to carry, at Licensee's cost, comprehensive general liability insurance with an insurance company licensed to do business in Oregon having a Financial Strength Rating (FSR) of not less than 'A' and a Financial Size Category (FSC) of not less than 'X' according to Best's Insurance Guide, with limits of not less than \$1,500,000 per occurrence, \$2,000,000 in the aggregate, and \$500,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Licensee's activities on or any condition of the Premises, shall protect Licensee against the claims of the Port on account of the obligations assumed by Licensee under this Agreement, and shall name the Port as an additional insured.

Certificates evidencing such insurance and bearing endorsements requiring ten (10) days' written notice to the Port prior to any change or cancellation shall be furnished to the Port prior to Licensee's occupancy of the Premises and thereafter on the Port's request. Licensee shall notify Port of any cancellation or change in the insurance coverage within 72 hours of such change or

cancellation, or within 72 hours of receiving notice of such change or cancellation, regardless of whether Licensee or Licensee's insurer cancelled or changed the policy.

15. **Indemnity.** Licensee shall indemnify, hold harmless, and defend Licensor from any claim, loss or liability arising out of or related to any activity of Licensee on the Premises or any condition of the Premises in the possession or under the control of Licensee. Licensor shall indemnify, hold harmless, and defend Licensee from any claim, loss or liability arising out of or related to any activity of Licensor on the Premises or any condition of the Premises in the possession or under the control of Licensor.
16. **Default.** In the event of any default of this Agreement by Licensee the Licensor may, at its option, after not less than 10 days written notice, terminate this Agreement. The following events shall be deemed an event of default:
 - a. Licensee fails to make any payment due under this Agreement within ten (10) days of the due date listed on the invoice issued to Licensee.
 - b. Licensee fails to perform any other covenant herein and such failure shall continue for ten (10) days after receipt by Licensee of notice thereof from the Licensor;
 - c. A petition is filed by or against Licensee under the Bankruptcy Act.
 - d. Licensor receives or obtains credible evidence that Licensee has violated the non-defamation provision in paragraph 8.
 - e. Licensee fails to provide evidence of obtaining/maintaining a Tour Operating Agreement with Cruise Lines and/or the Cruise Line(s) cancels the Tour Operating Agreement
17. **Remedies Cumulative.** The rights and remedies with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies available to either party in law or equity.
18. **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Oregon. In the event a legal proceeding is required to interpret or enforce this Agreement, absent a contrary agreement by the parties hereto, venue shall be in the Circuit Court of Clatsop County, Oregon.
19. **Relationship of Parties.** The relationship between Licensor and Licensee shall always and only be that of Licensor and Licensee. This Agreement gives Licensee no right or authority to act as an agent of Licensor, and Licensor shall not be responsible for the acts or omissions of Licensee.
20. **Notices.** Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by regular, certified return receipt requested, or by registered mail. Notice shall be deemed to have been received three (3) days after the postmark date.
21. **Modification.** Any change or modification of the Agreement must be in writing and signed by both parties.
22. **Waiver.** The waiver by either party of any covenant or condition of this Agreement shall not thereafter preclude such party from demanding performance in accordance with the terms hereof.
23. **Successors Bound.** This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties hereto.

- 24. **Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction over the parties to this Agreement, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- 25. **Entire Agreement.** This Agreement, including all referenced Exhibits, constitutes the entire agreement between the parties and there are no understandings, agreements, or representations, oral or written, not specified herein. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The parties, by signature below of their respective authorized representatives, hereby acknowledge that the parties have read the entire Agreement, understand it, and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day written below.

Port of Astoria

Signature: _____

Print: _____

Title: _____

Date: _____

Licensee

Signature: _____

Print: _____

Title: _____

Date: _____

Signature: _____

Print: _____

Title: _____

Date: _____