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BY ELECTRONIC MAIL

February 24, 2025

Mr. Norberto Negrón Díaz
Executive Director
Puerto Rico Ports Authority

Re: S2 Services Puerto Rico, LLC

Dear Mr. Negrón Díaz:

In accordance with the Contract Review Policy (the “Policy”) of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the proposed amendment to the contract between the Puerto Rico Ports Authority (the “PRPA”) and S2 Services Puerto Rico, LLC (the “Proposed Amendment”).

After reviewing the Proposed Amendment, the Oversight Board concludes “Approved with **Conditions.**” Conditions and observations related to the Proposed Amendment are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Amendment with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the Oversight Board does not constitute a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local; and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local.

In addition, the Oversight Board has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements

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Recipient: Mr. Negrón Díaz

under the applicable contract. Any material changes to the Proposed Amendment or the original contract must be submitted to the Oversight Board for review and approval **prior to execution**.

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information the Oversight Board was not directed to when the review was conducted. In addition, during the course of our review, we may receive information that we may refer to the relevant authorities.

This letter is issued only to the PRPA and solely with respect to the Proposed Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jaime A. El Koury', with a stylized flourish at the end.

Jaime A. El Koury
General Counsel

APPENDIX A

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PRPA – S2 SERVICES PUERTO RICO, LLC

Fiscal Plan Alignment

This review covers the Proposed Amendment to the contract between the PRPA and S2 Services Puerto Rico, LLC (the “Contractor”).

The original contract (2010-000076) was between the PRPA and Rapiscan Systems, Inc. (“Rapiscan”), and stems from a competitive procurement process issued on August 6, 2009 for the provision of inbound cargo scanning services at the Port of San Juan. It was executed on December 17, 2009, and has a term lasting up to 10 years from the Operations Start Date, as defined therein.¹ Payments under the original contract stem from scanner service fees for each scan performed. The base fee amounts to \$48 for containers of 20 feet or smaller and \$60 for containers of 40 feet or larger.²

The first amendment to the contract assigned Rapiscan’s rights and obligations under the contract to the Contractor, pursuant to Section 21.12.³ This amendment did not alter the term or scanner service fees.

The second amendment to the contract amended the original terms and conditions.⁴ It did not alter the term or scanner service fees.

The third amendment to the contract modified the scanner service fee to a fixed base fee of \$57 per container. Further, the Contractor has the right to increase the base fee annually, starting on December 17, 2012, by the greater of (i) 3%; or (ii) the percentage increase in the consumer price index between the date of the most recent increase of the base fee.

¹ Section 1(i) of the original contract states that Rapiscan will certify to the PRPA the start of its operations and such certification will be attached to the contract establishing the Operations Start Date.

² These amounts can increase to \$52 and \$64 respectively, if the scanner certification fee is made after 8 days from the date of the scan.

³ See § 21.12 (“Rapiscan shall be permitted to assign or sub license all or part of its rights and obligations under this Agreement to any subsidiary of Rapiscan, or to any parent corporation of Rapiscan, or to any subsidiary of any parent corporation of Rapiscan, provided that Rapiscan notifies the [PRPA] and represents that the parent corporation or its wholly owned subsidiary, or its parent's subsidiary meets and complies with any and all requirements contained herein. The notification of assignment and or sublicense must be informed to the [PRPA] at least 30 days prior to the effective date of such action”).

⁴ See § 1.(i) (modifying the definition of the Operations Start Date to mean the “first day [the Contractor] commences to provide the Designated Services at a Premise in the Port of San Juan with the approval of the [PRPA] under the procedure set forth here. When the [PRPA] substantially completes the Site Preparation for the first Premise, which shall not exceed, unless otherwise agreed to by the parties, one hundred (120) days from the Execution Date, it shall notify [the Contractor] that the first Premise is available and ready for the start of operations. Upon receiving that notice, [the Contractor] will inspect the Premise, notify (if any) any punch list items that need to be addressed by the [PRPA] and notify to the [PRPA] at least fifteen (is) days in advance a proposed Operations Start Date, which shall be subject to the written approval of the [PRPA]. After the Operations Start Date has happened, [the Contractor] will certify to the [PRPA] the start of its operations on that date and such certification will be attached to this contract establishing the Operations Start Date.”).

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The fourth and fifth amendments to the contract extended the term such that it expires **11 years and 9 months** from the Operations Start Date, as defined therein.

The Proposed Amendment, which constitutes the sixth amendment to the contract, restates the terms of the contract to define an alternative payment structure, address new equipment and technology updates, and provide additional back-office support with regards to the collection of the scanning fees which are assessed by the PRPA on ocean freight carriers or their agents arriving and unloading cargo in the Port of San Juan. Likewise, the PRPA has requested the Contractor to build the site formerly known as the “Trailer Bridge Inspection Site” at no cost to PRPA and thus comply with the contract’s original purpose and increase the amount of the inbound cargo scanned.

The Oversight Board, in a request for information (“RFI”) sent on September 12, 2024, requested clarification on the term, given that it should have expired on September 14, 2021. The PRPA’s RFI response indicated that the Operations Start Date, as defined in the contract, required the Contractor to certify the Operations Start Date to the PRPA. According to PRPA, its failure to complete its obligations, such as preparing the cargo inspection sites, the Contractor did not certify an Operations Start Date. Consequently, the parties do not consider that the contract has expired or lapsed, given that the conditions of the Phase-In Period were not met by the PRPA and the Operations Start Date had never been certified. The parties ultimately agreed to certify June 1, 2021, as the Operations Start Date.

Assuming an Operation Start Date of June 1, 2021, the contract’s term would last until March 1, 2033, considering the previous amendments which extended the initial term to 11 years and 9 months. The Proposed Amendment establishes a shorter duration expiring on **June 1, 2031**, with the option to extend for two additional five-year terms.

Pursuant to the Proposed Amendment, the Contractor shall be entitled to a monthly scanning fee of **\$1,165,360.25**, assuming the Contractor’s capability to scan 100% of inbound cargo. The monthly scanning fee shall remain fixed until the third year from Proposed Amendment’s date of execution. Thereafter, the Contractor shall have the right to increment the base fee annually by a percentage equal to the greater of (i) 3%; or (ii) the percentage increase in the consumer price index between the date of the most recent increase of the monthly scanning fee. In response to an RFI, the PRPA provided projections stipulating that the Proposed Amendment’s maximum payable amount, assuming an execution date of March 1, 2025, amounts to **\$91,720,330.20**.

The PRPA has certified that the funds required for payments under the Proposed Amendment shall stem from the enhanced scanning fees allocated under **Account No. 018835392**, which is a **pass-through account** the PRPA uses to recognize the scanning fees, which are then transferred to the Contractor. As such, the Oversight Board’s review indicates that the PRPA has sufficient budgeted funds in Fiscal Year 2025 to cover the cost of the Proposed Amendment as of the date of this letter.

This determination does not consider the extent to which total available funds will be subsequently encumbered by the PRPA throughout the Proposed Amendment’s term. Consequently, we rely on the PRPA’s budget certification for purposes of this review. In the event that the Proposed Amendment causes the PRPA to exceed its budget, it must find savings in other areas to cover any

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overspent amounts and submit a budget reprogramming request in order to ensure compliance with the Certified Fiscal Year 2025 Commonwealth Budget.

Insofar as the Proposed Amendment will be funded with future certified budgets, the PRPA must ensure that such budgets incorporate all costs related to the Proposed Amendment.

Finally, we note that the Proposed Amendment allows the Contractor to continue its services under the contract until 2041, which amounts to 32 years from the contract's date of execution in December 2009 without a competitive procurement process for the services. The Oversight Board, therefore, is currently not able to ensure that the Proposed Amendment promotes market competition, as mandated by PROMESA and the Policy. Accordingly, the Oversight Board's approval is **conditioned** upon (i) the PRPA modifying the term of the Proposed Amendment such that it expires on **December 31, 2025**, and (ii) the PRPA conducting a new competitive procurement process for the provision of inbound cargo scanning services.

The PRPA is expected to inform the Oversight Board of any budgetary differences other than those specified in Appendix A to the Policy (Contract Submission Questionnaire) and to request a re-review of the Proposed Amendment should any changes occur.

This review was conducted on the basis of information submitted by PRPA. The Oversight Board has not independently verified the information included in the submission. Should the Oversight Board become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.