



PORT CONCESSION DEED

EXTRACT OF CLAUSE 18 & 19 AND RELEVANT DEFINITIONS

Port of Melbourne





18. REVIEWS OF RENT PAYABLE BY PORT TENANTS

18.1 Rent Review Opportunity

- (a) Unless Port Lessor agrees otherwise in writing, if after the Lease Commencement Date Port Manager or Port Lessee offers to grant a Sublease of any part of the Port Lease Land to any New Port Tenant for a duration of more than five years (including options in favour of the New Port Tenant), Port Manager must procure that it or Port Lessee (as the case may be) offers the following terms (**Rent Review Opportunity**) to that New Port Tenant as part of the terms of the Sublease:
 - (i) a rent under that Sublease that does not exceed a Reasonable Market Rent for the relevant land and any existing improvements to the land;
 - (ii) if the Sublease has a duration of more than eight years (including options in favour of the New Port Tenant), the rent under that Sublease will be reviewed under the Rent Review Opportunity (**Rent Review**) on each fifth anniversary of the commencement of the Sublease, to reflect a Reasonable Market Rent for the relevant land; and
 - (iii) for the purposes of each Rent Review, the New Port Tenant will have the right to refer the determination of what is a Reasonable Market Rent to an Independent Valuer applying principles consistent with those in clause 18.1(c), with the costs of the Independent Valuer to be paid in equal shares by the New Port Tenant and the Port Manager.
- (b) The terms of a Rent Review Opportunity may provide that the Reasonable Market Rent determined by a Rent Review must not be less than the rent payable under the relevant Sublease immediately before the date of the Rent Review unless Port Manager and the tenant under that Sublease agree otherwise.
- (c) For the purposes of this clause 18.1, a **Reasonable Market Rent** in respect of a Sublease means the rent that would reasonably be expected to be realised if the relevant land was offered for lease in the open market by a willing but not anxious lessor to a willing but not anxious lessee and assuming the land will be used for the use permitted under the Sublease, and having regard to:
 - (i) the condition that the relevant land and any existing improvements to the land are in at the time;
 - (ii) the location and area of the land and the proximity to relevant facilities and transport links;
 - (iii) the cost of reclaiming or otherwise developing the land (including constructing improvements) and the value of any other works to be performed or incentives offered by Port Lessee or Port Manager;
 - (iv) the nature of the proposed use by the New Port Tenant of the land;
 - (v) the whole term of the Sublease, excluding options in favour of the New Port
 - (vi) Tenant; and
 - (vii) information that can reasonably be obtained about rents then applicable for tenants of Port Lease Land and tenants of comparable land or premises and the value of the Port Lease Land and that comparable land or premises.
- (d) Clause 18.1(a) does not apply to:
 - (i) the offer of a Sublease or extension of the term of an Existing Tenant Lease due to the exercise of an option under an Existing Tenant Lease;



- (ii) grant of a Sublease to an Option Tenant or AFL Tenant in satisfaction of an obligation under an Option Lease or Agreement for Lease;
- (iii) the offer of a Sublease to a person who was an Existing Port Tenant but whose Existing Tenant Lease expired, where the offer is made before the date that is 180 days after the Existing Tenant Lease expired, in respect of the same area of land and on substantially the same terms as to rent and reviews and escalation of rent as applied under the Existing Tenant Lease;
- (iv) the offer of a Sublease in response to Port Manager and an Existing Port Tenant or an existing New Port Tenant, negotiating and agreeing (during the term of the relevant Existing Tenant Lease or relevant existing Sublease) amendments to, extension of the term of, or the replacement of, the Existing Tenant Lease or existing Sublease, on terms that provide for rents no greater than the rents (as escalated from time to time) applicable under the Existing Tenant Lease or existing Sublease, and for reviews of rents on the same terms as provided in the Existing Tenant Lease or existing Sublease;
- (v) the offer of a Sublease to a person identified by Port Manager as offering the highest rent to Port Manager, as a result of the conduct by Port Manager of a bona fide competitive tender process for the grant of the Sublease;
- (vi) the assignment by an Existing Port Tenant of their Existing Tenant Lease to another person; or
- (vii) the offer to a person of a Sublease where:
 - (A) at the time of the offer, none of that person nor any of its Associates has a lease, Sublease or licence, or agreement to obtain a lease, Sublease or licence of any Port Lease Land, and none of those persons is seeking or anticipated to seek a Sublease or licence of other Port Lease Land; and
 - (B) the annual rental income under that Sublease is less than the amount of \$100,000 increased by the CPI Rate on each anniversary of 30 June 2016.
- (e) Clause 18.1(a)(i) does not apply to the offer of a Sublease that is offered due to the making or acceptance of a Renewal Offer under clause 19, if clause 19.2(b) is complied with in respect of that Renewal Offer.
- (f) Port Manager will not breach clause 18.1(a) merely because:
 - (i) a New Port Tenant declines to accept terms offered in accordance with this clause 18.1;
 - (ii) Port Manager offers a Sublease as required by this clause 18, but the New Port Tenant negotiates alternative terms with Port Manager at arms' length;
 - (iii) Port Manager offers a Sublease that requires that rents escalate by more than increases in the CPI, between Rent Reviews;
 - (iv) the New Port Tenant does not pursue a rent review or an independent valuation offered in accordance with this clause 18.1;
 - (v) Port Manager or Port Lessee agree with the New Port Tenant to give effect to a prior independent valuation sourced by the proposed or existing Port Tenant, Port Manager or Port Lessee;
 - (vi) the terms of an Existing Tenant Lease (as those terms exist at the date of this Deed) do not provide for a Rent Review Opportunity; or



- (vii) the terms of a Sublease provide for rental amounts to be payable by a reasonable separate rent, or reasonable increase to the Reasonable Market Rent, for improvements agreed to be made by Port Lessee or Port Manager to the relevant land for the benefit of the New Port Tenant.

18.2 Provision of information about Subleases and to assist Port Lessor with valuation of its land for its own and the State's purposes

- (a) Port Manager must procure that it and Port Lessee use their reasonable endeavours from time to time to obtain current data about rents applicable to tenants of the Port Lease Land and to tenants of comparable land or premises and about the value of that land or premises.
- (b) Port Manager must procure that it and Port Lessee make available to an Independent Valuer referred to in clause 18.1, material relevant data obtained by Port Manager or Port Lessee about rents applicable to tenants of the Port Lease Land and to tenants of comparable land and premises and about the value of that land and premises.
- (c) Port Manager must procure that it and Port Lessee from time to time provide to the Port Lessor:
 - (i) a copy of any new Sublease entered into by Port Manager or Port Lessee with any Port Tenant as soon as practicable after it is entered into;
 - (ii) copies of material amendments to Subleases agreed by Port Manager or Port Lessee with any Port Tenant as soon as practicable after the amendments are made;
 - (iii) copies of material amendments to Existing Tenant Leases agreed to by Port Manager or Port Lessee as soon as practicable after they are made;
 - (iv) at the written request of Port Lessor, information in the possession of Port Manager or Port Lessee about the current rents applicable under Subleases and under Existing Tenant Leases; and
 - (v) at the written request of Port Lessor, material data in the possession of Port Manager or Port Lessee that is:
 - (A) about rents applicable to Existing Port Tenants or New Port Tenants of the Port Lease Land and to tenants of comparable land and premises and about the value of the Port Lease Land and that comparable land and premises; or
 - (B) otherwise relevant to determining the value of the Port Lease Land.
- (d) Port Manager must procure that it and Port Lessee do not agree to any undertaking of confidentiality that would prevent them from disclosing information to Port Lessor and the Independent Valuer as required by this clause 18.2.

18.3 Notice of default

If Port Manager fails to offer or procure the offer of a Rent Review Opportunity as required by clause 18.1, Port Lessor may give written notice to Port Manager requiring Port Manager to offer the Rent Review Opportunity within 30 days after the date of the notice. If Port Manager disputes that it has failed to offer or procure the offer of a Rent Review Opportunity as required by clause 18.1, it may give a Dispute Notice under clause 44. Port Lessor must procure that no attorney appointed under clause 18.4 takes any action until such dispute is determined in accordance with clause 44 or by a court of competent jurisdiction.



18.4 Grant of power of attorney to Port Lessor for enforcement

- (a) Port Manager irrevocably appoints Port Lessor and each of Port Lessor's directors separately and together as the attorney of Port Manager to, if Port Manager fails to comply with a notice given in accordance with clause 18.3 within the time specified in that notice:
 - (i) offer the Rent Review Opportunity on behalf of Port Manager; and
 - (ii) execute on behalf of Port Manager any documents or instruments that Port Lessor reasonably considers necessary or desirable to give effect to the offer of the Rent Review Opportunity.
- (b) Port Manager must ratify and confirm everything an attorney lawfully does on behalf of Port Manager under this clause 18.4.
- (c) Port Manager indemnifies and must keep indemnified and hold harmless each attorney against any and all demands, Liability, Claims, suits, actions, damages, Costs and expenses caused or contributed to by any lawful exercise of the attorney's powers under this clause 18.4.
- (d) Port Lessor holds the benefit of this clause 18.4 on trust for each attorney.

19. COODE ISLAND RENEWALS

19.1 Notifications

- (a) Port Manager must promptly notify Port Lessor in writing of:
 - (i) the grant, amendment of the term, surrender, termination or expiry of a Hazardous Bulk Liquid Lease;
 - (ii) Port Manager determining that it intends to grant, amend the term of or terminate a Hazardous Bulk Liquid Lease; and
 - (iii) the acceptance or rejection of a Renewal Offer.
- (b) Port Manager must promptly provide a copy to Port Lessor of each Hazardous Bulk Liquid Lease granted by Port Manager (and a copy of any amendments made to its terms from time to time).
- (c) Port Lessor must promptly provide a copy to Port Manager of each Hazardous Bulk Liquid Lease resulting from acceptance of a Renewal Offer made on behalf of Port Manager by an attorney under clause 19.5(d).

19.2 Direction to make Renewal Offer

- (a) Port Lessor may at any time at least 24 months prior to the due date for expiration of any Hazardous Bulk Liquid Lease, give a written direction (**Renewal Direction**) to Port Manager to offer the Hazardous Bulk Liquid Tenant a subsublease of the land the subject of their Hazardous Bulk Liquid Lease for a term of (at the election of the Hazardous Bulk Liquid Tenant) up to 10 years commencing on the expiration of their Hazardous Bulk Liquid Lease (**Renewal Offer**) and otherwise on the terms required by this clause 19.
- (b) Subject to clause 19.2(c), Port Manager must ensure that, except with the prior written consent of Port Lessor, the terms of a Renewal Offer (and any Alternative Sublease Offer) must offer a rent that would reasonably be expected to be realised if the relevant land was offered for lease in the open market by a willing but not anxious lessor to a willing but not anxious lessee and assuming the land will be used for the use permitted under the subsublease, and having regard to:
 - (i) the condition that the relevant land and any existing improvements to the land are in at the time;



- (ii) the location and area of the land and the proximity to relevant facilities and transport links;
 - (iii) the cost of reclaiming or otherwise developing the land (including constructing improvements);
 - (iv) the nature of the proposed use by the Hazardous Bulk Liquid Tenant of the land;
 - (v) the whole term of the subsublease, excluding options in favour of the Hazardous Bulk Liquid Tenant; and
 - (vi) information that can reasonably be obtained about rents then applicable for tenants of Port Lease Land and tenants of comparable land or premises and the value of that land or premises.
- (c) Clause 18 (other than clause 18.1 (a)(i)) applies to a subsublease that is the subject of a Renewal Offer or Alternative Sublease Offer with a duration of more than five years (including options in favour of the tenant).

19.3 Alternative Sublease to another person for same use

Subject to complying with clause 19.4, Port Manager may comply with a Renewal Direction by granting a subsublease (**Alternative Sublease**) of the land the subject of the relevant Hazardous Bulk Liquid Lease to a person other than the relevant Hazardous Bulk Liquid Tenant, for a term of at least 10 years and otherwise on terms no less favourable (taken as a whole) to that person than the term of the relevant Renewal Offer would have been to the relevant Hazardous Bulk Liquid Tenant, if that person:

- (a) at the time the subsublease is granted, holds all necessary Approvals to carry on the activities conducted by the relevant Hazardous Bulk Liquids Tenant at the time the Renewal Direction was given;
- (b) at the time the subsublease is granted, has the financial and technical capacity to carry on those activities; and
- (c) agrees under the subsublease to carry on the same type of activities on the land as the relevant Hazardous Bulk Liquids Tenant carried on at the time the Renewal Direction is given and would have been required to carry on under the Renewal Offer, for the term of the subsublease.

19.4 Deadline for making offers

Subject to this clause 19, Port Manager must at its cost:

- (a) within 20 Business Days after the receipt by Port Manager of a Renewal Direction notify Port Lessor in writing of whether or not Port Manager wishes to have the flexibility to make an offer of an Alternative Sublease (**Alternative Sublease Offer**), and the process that Port Manager proposes to use to identify a person to whom it will make an Alternative Sublease Offer;
- (b) within 40 Business Days after the receipt by Port Manager of a Renewal Direction, prepare in good faith and deliver to Port Lessor for its approval:
 - (i) a draft of the terms of the Renewal Offer, including the rent payable under the Renewal Offer;
 - (ii) a draft of the terms of any Alternative Sublease Offer, including the rent payable under the Alternative Sublease Offer;
 - (iii) a written report setting out the methodology used by Port Manager for determining the rent payable under the Renewal Offer and Alternative Sublease Offer (if any); and
 - (iv) a written certificate from an Independent Valuer, expressed to be for the benefit and reliance of Port Lessor, confirming:



- (A) the appropriateness of, and accuracy of application of, the methodology described in the report referred to in clause 19.4(b)(ii); and
 - (B) that the rent payable under the Renewal Offer and Alternative Sublease Offer (if any) satisfies the requirements of clause 19.2(b); and
- (c) within 60 Business Days after Port Lessor approves or is taken to approve the draft terms of the Renewal Offer and Alternative Sublease Offer (if any) or the terms are determined under clause 44, either:
 - (i) grant an Alternative Sublease on those terms (or such other terms as Port Lessor may approve in writing) to a person who satisfies the conditions of clause 19.3; or
 - (ii) make a Renewal Offer in those terms to the relevant Hazardous Bulk Liquid Tenant, and provide copy to Port Lessor.

19.2 Port Lessor's approval

- (a) Port Lessor must not unreasonably withhold its approval of the terms of a Renewal Offer and Alternative Sublease Offer that complies with this clause 19.
- (b) If Port Lessor does not notify Port Manager in writing within 20 Business Days after receipt of the draft Renewal Offer and Alternative Sublease Offer (if any) from Port Manager that Port Lessor objects to the draft Renewal Offer submitted by Port Manager, Port Lessor will be taken to have approved those terms.
- (c) If Port Lessor notifies Port Manager in writing within 20 Business Days after receipt of the draft Renewal Offer and Alternative Sublease Offer (if any) from Port Manager that Port Lessor objects to the draft Renewal Offer or Alternative Sublease Offer submitted by Port Manager, and Port Lessor and Port Manager fail to agree on the terms of the Renewal Offer and Alternative Sublease Offer (if any) within 20 Business Days after Port Manager receives that objection, the dispute must be determined, and the Renewal Offer and Alternative Sublease Offer (if any) must be finalised, in accordance with clause 44.
- (d) Port Lessor must not unreasonably withhold its consent for the purposes of clause 19.2(b) to terms of a Renewal Offer or Alternative Sublease Offer that are more favourable to the Hazardous Bulk Liquid Tenant or relevant person than the terms of the then current Hazardous Bulk Liquid Lease held by that Hazardous Bulk Liquid Tenant.

19.3 Notice of default

If Port Manager fails to comply with clause 19.4(c), Port Lessor may give written notice to Port Manager requiring Port Manager to offer the Renewal Offer within 30 days after the date of the notice. If Port Manager disputes that it has failed to comply with clause 19.4(c), it may give a Dispute Notice under clause 44. Port Lessor must procure that no attorney appointed under clause 19.7 takes any action until such dispute is determined in accordance with clause 44 or by a court of competent jurisdiction.

19.4 Grant of power of attorney to Port Lessor for enforcement

- (a) Port Manager irrevocably appoints Port Lessor and each of Port Lessor's directors separately and together as the attorney of Port Manager to on behalf of Port Manager, if Port Manager fails to comply with a notice given in accordance with clause 19.6 within the time specified in that notice:
 - (i) make a Renewal Offer to the Hazardous Bulk Liquid Tenant and grant a subsublease in those terms to the Hazardous Bulk Liquid Tenant;
 - (ii) execute and procure the stamping (if applicable) such a subsublease;



- (iii) execute all documents that Port Lessor reasonably considers necessary or desirable to give effect to the Renewal Offer and subsublease; and
 - (iv) use the name of Port Manager in connection with any such Renewal Offer and subsublease.
- (b) Port Manager must ratify and confirm everything an attorney lawfully does on behalf of Port Manager under this clause 19.
- (c) Port Manager indemnifies and must keep indemnified and hold harmless each attorney against any and all demands, Liability, Claims, suits, actions, damages, Costs and expenses caused or contributed to by any lawful exercise of the attorney's powers under this clause 19 on and after the Lease Commencement Date.
- (d) Port Lessor holds the benefit of this clause 19.7 on trust for each attorney.
- (e) Port Lessor must, before an attorney makes a Renewal Offer to a Hazardous Bulk Liquid Tenant, prepare in good faith and deliver to Port Manager for its approval:
 - (i) a draft of the terms of the Renewal Offer, including the rent payable under the Renewal Offer;
 - (ii) a written report setting out the methodology used by Port Lessor for determining the rent payable under the Renewal Offer; and
 - (iii) a written certificate from an Independent Valuer, expressed to be for the benefit and reliance of Port Manager, confirming:
 - (A) the appropriateness of, and accuracy of the application of the methodology described in the report referred to in clause 19.4(b)(ii); and
 - (B) that the rent payable under the Renewal Offer satisfies the requirements of clause 19.2(b).
- (f) Port Manager must not unreasonably withhold its approval of the terms of a Renewal Offer that complies with this clause 19.7.
- (g) If Port Manager does not notify Port Lessor in writing within 15 Business Days after receipt of the draft of the proposed Renewal Offer from Port Lessor that Port Manager objects to the draft Renewal Offer submitted by Port Lessor, Port Manager will be taken to have approved those terms.
- (h) If Port Manager notifies Port Lessor in writing within 15 Business Days after receipt of the draft Renewal Offer from Port Lessor that Port Manager objects to the draft Renewal Offer submitted by Port Lessor, and Port Lessor and Port Manager fail to agree on the terms of the Renewal Offer within 20 Business Days after Port Lessor receives that objection, the dispute must be determined, and the Renewal Offer must be finalised, in accordance with clause 44.

19.2 Other agreement with Hazardous Bulk Liquid Tenant

Nothing in this clause 19 prevents:

- (a) Port Manager from entering into any arrangement with a Hazardous Bulk Liquid Tenant with respect to the land the subject of its Hazardous Bulk Liquid Lease provided the Hazardous Bulk Liquid Tenant is first made aware of this clause 19; or
- (b) Port Manager from entering into any arrangement with a Hazardous Bulk Liquid Tenant with respect to land that is different to the land that is the subject of its Hazardous Bulk Liquid Lease as at the date of this Deed provided the Hazardous Bulk Liquid Tenant is first made aware of this clause 19.



DEFINITIONS

Some relevant terms are defined in the Port Lease rather than the Port Concession Deed. The below list is taken from both documents. Where appropriate, some complex or cross-referring definitions have been summarised for simplicity. In those cases, the summary is provided in square brackets. **AFL Tenant** means a tenant under an Agreement for Lease.

Agreement for Lease [means one of two specified development agreements entered into in 2014.]

Associate means:

- (a) in relation to an entity that is not a natural person:
 - (i) each of that entity's related bodies corporate (as that term is defined in the Corporations Act);
 - (ii) each person who has a relevant interest (as that term is defined in the Corporations Act) in 20% or more of the voting shares in that entity;
 - (iii) each other entity in which that entity has a relevant interest (as that term is defined in the Corporations Act) in 20% or more of the voting shares in that other entity as if that other entity were a 'company' as defined in the Corporations Act and its securities were shares;
 - (iv) each other entity that Controls that entity;
 - (v) each other entity that is Controlled by that entity;
 - (vi) each trust of which the entity or a person or entity described in paragraphs (a)(i), (ii), (iii), (iv) or (v) is a trustee; and
 - (vii) each trust under which that entity holds 20% or more of voting rights of voting securities, as if that trust were a 'company' as defined in the Corporations Act and its securities were shares; and
 - (viii) each director and officer of an entity, or of the trustee of an entity, described in any of paragraphs (a)(i) to (vii), and each of their respective Associates, except that, for the purposes of this Deed a relevant interest (as that term is defined in the Corporations Act) that has arisen solely as a result of the relevant parties having entered into, and being bound by the terms of, a shareholders' agreement or consortium agreement in respect of their investment in Port Lessee or Port Manager, will be disregarded; and
- (b) in relation to a natural person, any:
 - (i) spouse;
 - (ii) relative by blood or adoption of that person or that person's spouse;
 - (iii) body corporate in which that person and an Associate (as determined by another application of this definition) of that person hold in aggregate more than 20% of the voting shares; and
 - (iv) trust of which that person or a person described in paragraphs (b)(i), (ii) or (iii) is a trustee,

where a reference to the Corporations Act in this definition is to that Act as in force at 1 January 2016.

Business Day means [...] a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria, Australia.

Control of any entity means the definition of 'Control' in section 50AA of the Corporations Act and:

- (a) in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation; and
- (b) in the case of a unit trust, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the appointment or removal of the trustee of the trust, the composition of the board of



directors of the trustee, the voting rights of the majority of the units of the trust or the management of the affairs of the trust or the business operated by the trust,

and **Controlled** has a corresponding meaning, where a reference to the Corporations Act in this definition is to that Act as in force at 1 January 2016.

CPI means the Australian All Groups consumer price index (or All Groups CPI) published by the Australian Statistician, or if the Australian Statistician stops publishing the CPI, then CPI means the index recommended by the Property Council of Australia Ltd (or if that organisation ceases to exist, the organisation that replaced it or substantially performs the same role and function) as the index that most appropriately replaces the Australian All Groups consumer price index.

CPI Rate means, at any time, the greater of:

- (a) the amount that is the CPI last published for the most recent Quarter ending before that time, divided by the CPI last published for the same Quarter last ended before the Lease Commencement Date; and
- (b) one.

Existing Port Tenant means a person or entity which holds an estate, interest or occupancy right in the Total Concession Area pursuant to an Existing Tenant Lease.

Existing Tenant Leases means all the leases, subleases, licences, permits to occupy or other occupancy rights (written or oral) which:

- (a) exist in relation to the Total Concession Area as at the Lease Commencement Date; or
- (b) are Option Leases or AFL Leases under the Port Lease.

Hazardous Bulk Liquid Land means the land the subject of the Hazardous Bulk Liquid Leases.

Hazardous Bulk Liquid Lease means:

- (a) each of the following leases:
 - (i) Lease 20527 to Terminals Pty Ltd of 54-60 and 70-78 Mackenzie Road, Footscray and Rear No. 1, Maribyrnong Berth;
 - (ii) Lease 20528 to Pacific Terminals (Australia) Pty Ltd of 64-68 & 80-84 McKenzie Road, Footscray;
 - (iii) Lease 20529 to Gordon Brandon (Victoria) Pty Ltd of 80 McKenzie Road, Footscray;
 - (iv) Lease 20530 to Anchor Tank Pty Ltd of 40-44 Mackenzie Road, Footscray; and
 - (v) Lease 20566 to Marstel Terminals Goode Island Pty Ltd of 42-52 Mackenzie Road, Footscray; and
- (b) any sublease or subsublease of Hazardous Bulk Liquid Land for the Hazardous Bulk Liquid Permitted Use, between Port Lessee or Port Manager and any person other than Port Manager or a State Agency.

Hazardous Bulk Liquid Permitted Use means the storage of bulk volatile organic compounds in quantities greater than 1000 tonnes.

Hazardous Bulk Liquid Tenant means a lessee of sublessee of a Hazardous Bulk Liquid Lease and its successors and permitted assigns of that Hazardous Bulk Liquid Lease or sublease.

Improvements means all fixtures, Core Port Infrastructure or buildings affixed to any part of the Total Concession Area, and other improvements to the Total Concession Area of any nature, whether constructed before or after the grant of this Deed, but does not include:

- (a) Tenant's Improvements; or
- (b) fixtures that are owned by, or used primarily by, a Port Regulator.

Independent Valuer means a person who is:



- (a) independent of Port Lessor and Port Manager;
- (b) suitably qualified, competent and appropriately experienced for the purpose of carrying out the function in clause 18, clause 19.4(b)(iv) or clause 19.7(e)(iii), as the case may be; and
- (c) has a current professional indemnity insurance policy for at least \$10 million as increased by the CPI Rate on each anniversary of the Lease Commencement Date.

Lease Commencement Date [means 11.15am on 31 October 2016.]

Leased Assets means all Improvements affixed to any part of the Port Lease Land, and any other improvements to the Port Lease Land of any nature, whether constructed before or after the grant of this Deed, but does not include:

- (a) Tenant's Improvements; or
- (b) fixtures that are owned by, or used primarily by, a Port Regulator.

New Port Tenant means a person, other than Port Manager, who takes a Sublease or proposes to take a Sublease of any part of the Port Lease Land from Port Lessee, Port Manager or another Port Tenant, after the Lease Commencement Date.

Option Existing Tenant Lease means an Existing Tenant Lease which contains an option for an additional term [as specifically listed in the Port Lease].

Option Lease means a lease of part of the Leased Area which is required by an Option Existing Tenant Lease to be granted by Port Lessor to an Option Tenant.

Option Tenant means a tenant under an Option Existing Tenant Lease.

Port Lease means [the lease agreement between the Port Lessor and Port Lessee.]

Port Lease Land means at any time the land that is at that time the subject of [a number of specific lease and licence agreements relating to the Port.]

Port Lessee means the lessee under the Port Lease from time to time.

Port Lessor means Melbourne Port Lessor Pty Ltd.

Port Manager means Port of Melbourne Operations Pty Ltd as trustee for Port of Melbourne Unit Trust.

Port Regulator means:

- (a) [a Government Authority regulating or administering in relation to the Port];
- (b) the Harbour Master; and
- (c) the Safety Director;

but excludes Port Lessor.

Port Tenants means the Existing Port Tenants and the New Port Tenants.

Quarter means a period of three consecutive calendar months ending on 30 June, 30 September, 31 December or 31 March.

State Agency means any of:

- (a) the State;
- (b) any Minister of the State;
- (c) any Department, agency or authority of the State;
- (d) Port Corporation;
- (e) a body corporate owned by the State; and



(f) a subsidiary of a body corporate owned by the State.

Sublease means any of:

- (a) a sublease or other parting with possession of all or part of the Port Lease Land or any Leased Assets by Port Lessee or Port Manager;
- (b) a concurrent sublease of all or part of the Port Lease Land or any Leased Assets by Port Lessee or Port Manager; or
- (c) the granting of any licence, franchise or concession in relation to the Port Lease Land or any Leased Assets by Port Lessee or Port Manager.

Tenant's Improvements means all fixtures (including buildings, wharves, services and other improvements or infrastructure of whatever nature) affixed to the Port Lease Land, whether constructed before or after the date of this Deed, which are owned by a Port Tenant, or which a Port Tenant has a right (or obligation) to remove or demolish at the end of its lease or other occupancy.

Total Concession Area [means the total area leased, subleased, licensed or otherwise controlled by the Port of Melbourne.]