

# Standard Terms and Conditions for Channel Access (effective 8 July 2024)

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## 1. Application of these Standard Terms and Conditions

### 1.1 Application of Standard Terms and Conditions

These Standard Terms and Conditions form part of the Agreement between Port of Melbourne Operations Pty Ltd as Trustee for Port of Melbourne Unit Trust ABN 83 751 315 034 (**Port of Melbourne**) on the one part; and the Shipping Agent and Owner, jointly and severally, on the other part.

The Agreement is established when the Shipping Agent acting as agent for the Owner, or the Owner, submits an Application to access and use the Channel.

### 1.2 Defined Terms and Interpretation

- (a) Capitalised terms used in this Agreement are defined in Schedule 2 and shall be construed in accordance with the provisions in Schedule 2.
- (b) In this Agreement, unless the contrary intention appears:
  - (i) a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
  - (ii) a reference to any State agency or Government agency includes that agency's successors and substitutes or any agency that performs substantially the same functions or powers.

## 2. Joint and several obligations of the Owner and the Shipping Agent

- (a) Save for the clauses identified in Clause 2(b), any obligation imposed on the Owner in this Agreement must be construed as imposing joint and several liability upon the Owner and the Shipping Agent.
- (b) The Shipping Agent is not jointly or severally liable for a breach by the Owner of the following clauses of this Agreement: Clauses 3, 4, 9.4, 11.1, 12, 13.1(a), 13.2(b), 14, 15.2, 16 and 17.
- (c) Any obligation imposed on the Owner in this Agreement must be construed as imposing joint and several liability on the entities comprising the Owner.
- (d) A reference to the Owner is, unless expressly stated otherwise, a reference to each of the entities comprising the Owner separately (so that, for example, a representation and warranty by the Owner is given by each entity comprised in the Owner separately).

## 3. Owner

### 3.1 Owner of the Vessel

The Owner has engaged the Shipping Agent to act as its agent for all relevant purposes concerning the Vessel, including for the duration of the Access Period and while the Vessel

is under the control of the Owner.

### **3.2 Bound to perform this Agreement**

The Owner must perform all the obligations of the Owner in this Agreement.

### **3.3 Owner's obligations survive**

The obligations of the Owner pursuant to this Agreement survive the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent.

### **3.4 Notification of termination of shipping agency**

As soon as practicable after the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent, the Owner must notify Port of Melbourne of that termination and the name of any replacement Shipping Agent appointed or to be appointed.

### **3.5 No other agent for the purpose of Channel Fee collection**

The Owner acknowledges that, until the Owner has notified Port of Melbourne of the termination of its contract or arrangement with the Shipping Agent under Clause 3.4, it has no other Shipping Agent for the Vessel for the purposes of section 81 of the PMA and the collection of the Channel Fee.

## **4. Shipping Agent**

### **4.1 Authority**

The Shipping Agent warrants that it is the shipping agent on behalf of the Owner and is fully authorised to act on behalf of the Owner.

### **4.2 Notification of termination of shipping agency**

As soon as practicable after the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent, the Shipping Agent must notify Port of Melbourne of that termination.

### **4.3 Shipping Agent**

The Shipping Agent must:

- (a) advise the Owner of all Port Charges and rules of entry;
- (b) collect from the Owner and pay to Port of Melbourne all relevant disbursements, fees and charges, including the Port Charges and any Channel Fee (concerning the Cargo for which it is the shipping agent);
- (c) inform the Owner of any directions from the Harbour Master issued under Clause 11.2; and
- (d) within 24 hours of the commencement of the Access Period provide a copy to Port of Melbourne:
  - (i) if requested to do so, of proof, to Port of Melbourne's satisfaction, of current P&I Club and H&M Cover for each Vessel; and
  - (ii) the current Certificate of Registry and Certificate of Tonnage, unless the current Certificate of Registry and Certificate of Tonnage are unamended following the previous visit of the Vessel to Port of Melbourne Waters.

#### **4.4 Understanding Port of Melbourne's security requirements**

The Shipping Agent must:

- (a) use best endeavours to ensure that all its employees and other personnel understand and comply with the security requirements and obligations of Port of Melbourne, including arising from the Port Security Plan;
- (b) use its best endeavours to ensure that all its employees and other personnel understand and comply with their obligations under MTOFSA; and
- (c) advise the Owner of its obligations under MTOFSA.

#### **4.5 Legislative Requirements**

The Shipping Agent must, in accordance with the terms of its agreement with the Owner, co-operate with Port of Melbourne and all other users of the Channel to ensure compliance with all Legislative Requirements.

#### **4.6 Assistance to Port of Melbourne**

The Shipping Agent must cooperate wherever possible with Port of Melbourne and other users of the Channel, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

### **5. Use of Channel**

#### **5.1 Permitted Uses**

- (a) The Owner is permitted to use the Channel for a Permitted Use for the duration of the Access Period.
- (b) The Owner must not use the Channel for any purpose during the Access Period other than a Permitted Use.

#### **5.2 Use subject to this Agreement**

The Owner and the Shipping Agent acknowledge and agree that upon submitting an Application to Port of Melbourne, their access to and use of the Channel for a Permitted Use during the Access Period is subject to and must be in accordance with the terms and conditions of this Agreement.

#### **5.3 No warranty as to suitability**

The Owner agrees that Port of Melbourne has made no representation and gives no warranty concerning the adequacy or suitability of the Channel for the Vessel or the use intended by the Owner.

#### **5.4 No estate or interest**

The Owner and the Shipping Agent acknowledge that their rights to access or use the Channel for a Permitted Use for the duration of the Access Period rest in contract only and this Agreement does not create or confer upon the Owner or the Shipping Agent any tenancy, estate or other interest in the Channel.

#### **5.5 No right of exclusive occupation**

The Owner has no right of exclusive occupation or use of the Channel during the Access Period and Port of Melbourne may at any time exercise all of its rights to, without limiting the generality of this Clause 5.5, enter, use, possess and enjoy the whole or any part of the

Channel.

## **5.6 Access to be exercised in accordance with Melbourne VTS**

The rights of the Owner to occupy, use or access the Channel for the Permitted Uses are subject to the directions of Port of Melbourne, the Harbour Master and Melbourne VTS.

## **6. Anchorage**

The Owner or Shipping Agent must apply to the Harbour Master to anchor in a Designated Anchorage.

## **7. Term of Agreement**

- (a) This Agreement commences when the Owner or the Shipping Agent submits an Application to Port of Melbourne in relation to the Vessel.
- (b) This Agreement expires at the conclusion of the Access Period.

## **8. Withdrawal of access or hire**

### **8.1 Withdrawal before commencement of Access Period**

Port of Melbourne acting reasonably reserves the right to refuse or to withdraw permission for a Vessel to access or use the Channel (or any part of the Channel) when:

- (a) the Channel or any part of the Channel is unsuitable for use;
- (b) a direction is given by the Harbour Master or any authority with jurisdiction over Port of Melbourne Water; or
- (c) the Vessel is unable to be loaded or unloaded at any time prior to the commencement of an Access Period.

### **8.2 No compensation**

If Port of Melbourne withdraws permission for use of or access to the Channel (other than for breach by the Owner of this Agreement), Port of Melbourne shall refund to the Owner or the Shipping Agent (as applicable) any monies paid in advance by the Owner or the Shipping Agent in respect of applicable Port Charges for any proposed Access Period that does not proceed, or for the use of the Channel for which permission for access or use is withdrawn.

The Shipping Agent and the Owner acknowledge and agree that Port of Melbourne is not obliged to pay, and neither the Shipping Agent nor the Owner is entitled to, any other remedy, compensation or damages for any such withdrawal of permission.

## **9. Port Charges**

### **9.1 Acknowledgement of liability**

The Owner agrees that it is liable to pay to Port of Melbourne the Port Charges in accordance with the terms of this Agreement.

### **9.2 Channel Fee**

Port of Melbourne may, in its discretion, recover the Port Charges as, if applicable, a Channel Fee recoverable under section 75 of the PMA.

### **9.3 Payment of Port Charges**

The Port Charges shall be due for payment within thirty (30) days of the date of the relevant invoice issued by Port of Melbourne by electronic transfer as directed in the invoice.

### **9.4 Security costs**

If Port of Melbourne reasonably incurs costs as a result of complying with any Legislative Requirement in relation to a Vessel, including costs concerning the provision of security or security related services, the Owner shall be liable to reimburse Port of Melbourne such costs and those costs shall be recoverable by Port of Melbourne as a debt due and payable by the Owner within thirty (30) days of the date of the relevant invoice issued by Port of Melbourne.

### **9.5 Interest**

If the Owner does not pay an amount owing under this Agreement by the due date, the Owner or the Shipping Agent will be liable to Port of Melbourne for interest on the unpaid Port Charge. Interest will accrue daily at a rate of 4% in excess of the interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic) from the due date until the amount is paid in full.

## **10. Acknowledgments by the Owner**

### **10.1 Rights to use the Channel are personal**

The Owner acknowledges and agrees that the rights conferred upon it by this Agreement to use the Channel may not be transferred or assigned to any other party. This Clause 10.1 does not impact upon any arrangement between the Owner and the Shipping Agent in relation to the Vessel or Cargo.

### **10.2 Acknowledgement of responsibility**

The Owner acknowledges and agrees that it is responsible for the acts and omissions of its agents, including the Shipping Agent, its employees, servants, invitees and contractors concerning the use of the Channel.

### **10.3 General indemnities by Owner**

The Owner must indemnify Port of Melbourne against:

- (a) loss of or damage to the property of Port of Melbourne;
- (b) claims by any person against Port of Melbourne in respect of personal injury or death or loss of or damage to any property;
- (c) loss, damage or costs arising from the carriage of Cargo by the Owner; and
- (d) loss, damage or costs (subject to Clause 10.4, excluding consequential loss such as loss of profit, cost of replacement production and business interruption) incurred by Port of Melbourne due to disturbance to or interference with Port of Melbourne's use of the Port or the carrying on of its business at the Port,

arising out of or as a consequence of the use of the Channel by the Owner, the Shipping Agent, or their servants, agents, employees or contractors.

The Owner's liability to indemnify Port of Melbourne shall be reduced proportionately to the extent that an act or omission of Port of Melbourne contributed to the loss, damage, death or injury.

#### **10.4 Specific environmental indemnities by Owner**

The Owner must indemnify Port of Melbourne for direct and indirect losses incurred by Port of Melbourne arising from any Pollution Incident, Environmental Hazard or Contamination caused by the Owner, the Shipping Agent, or their servants, agents, employees or contractors, including all crew and all personnel engaged by it in relation to a Vessel without prejudice to any defences, exclusions from liability and rights of limitation provided by law.

#### **10.5 Responsibility for damage to the Channel**

The Owner is liable for any and all loss or damage to the Channel, arising from or related to the use of the Channel by the Owner, the Shipping Agent, or their servants, agents, employees or contractors, including all crew and all personnel engaged by it in relation to a Vessel, and occurring during the Access Period.

#### **10.6 Cost of repairing damage**

The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of Port of Melbourne, arises from or is related to the use of the Channel by the Owner, the Shipping Agents, or their servants shall be borne by the Owner or, if such costs are incurred by Port of Melbourne, the Owner is liable to reimburse Port of Melbourne such costs which shall be recoverable by Port of Melbourne as a debt due and payable by the Owner.

#### **10.7 Payment for damage to the Channel**

The Owner must pay to Port of Melbourne the reasonable cost of any repairs referred to in Clause 10.6 carried out by or on behalf of Port of Melbourne not later than 30 days after written demand is made by Port of Melbourne for such payment.

### **11. Compliance with Legislative Requirements and directions**

#### **11.1 Legislative Requirements**

- (a) The Owner must, and must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel, comply with all Legislative Requirements.
- (b) The Shipping Agent must, and must ensure that its servants, agents, employees and contractors comply with all Legislative Requirements.

#### **11.2 Compliance with directions**

The Owner must strictly comply with any:

- (a) direction of the Harbour Master in connection with use of the Channel;
- (b) direction of Port of Melbourne's Security Manager or Port of Melbourne's Security Contractor;
- (c) direction of Port of Melbourne in connection with use of the Channel; and
- (d) direction by any officer authorised by statute to give directions including pursuant to the *Marine Safety Act 2010* (Vic).

## 12. Environmental Obligations

### 12.1 Obligation not to pollute

Whilst accessing or using the Port of Melbourne Waters, the Owner must not:

- (a) cause a Pollution Incident;
- (b) cause an Environmental Hazard; or
- (c) disturb, exacerbate or facilitate the migration of any existing Contamination.

### 12.2 Environmental Incident Reporting

Without limiting the Owner's obligations under Clause 15, the Owner must immediately and no later than one hour after becoming aware of any Pollution Incident give written notice to Port of Melbourne and Melbourne VTS of the occurrence of such a Pollution Incident.

### 12.3 Obligation to clean up

- (a) The Owner must, at its expense, clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident in accordance with any direction issued by Port of Melbourne and within the timeframe specified in the direction.
- (b) Port of Melbourne may, at its discretion and at the Owner's cost, engage an Environmental Auditor pursuant to section 208 of the *Environment Protection Act 2017* (Vic) in respect of the Pollution Incident.

### 12.4 Statutory notices and legal proceedings

Within 48 hours of the Shipping Agent or Owner receiving any notices or legal proceedings in respect of the impact of the Owner's activities on the Environment over, under or on Port of Melbourne Waters, including without limitation notices or proceedings issued by the Environment Protection Authority or any other statutory or governmental body, the Shipping Agent or Owner (as applicable) must give written notice to Port of Melbourne and Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

### 12.5 Obligation to comply with statutory notice

The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in Clause 12.4 and is liable for any costs of compliance with such statutory notices.

### 12.6 Obligations regarding storage of dangerous goods

- (a) The Owner must not, without Port of Melbourne's prior written consent use or allow the Port of Melbourne Waters to be used for the storage (whether temporary or permanent) of dangerous goods (as defined in the *Dangerous Goods Act 1985* (Vic) or the Australian Code for the Transport of Dangerous Goods by Road and Rail) or any other goods the storage of which is prohibited by the Insurance Council of Australia Ltd in non-hazardous stores provided that the consent of Port of Melbourne will not be required where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.
- (b) The Owner must comply, and shall ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a vessel

and the access and use of the Port of Melbourne Waters, comply with all OH&S Laws and current Port Victoria requirements in relation to dangerous goods, as published on Port Victoria's website.

## **12.7 Rights of Port of Melbourne**

Without limiting the foregoing provisions of this Clause 12:

- (a) If Port of Melbourne reasonably believes that a Pollution Incident has occurred or that a condition of Contamination or Environmental Hazard has arisen or is likely to arise as a result of the Owner's activities, Port of Melbourne may issue a direction requiring that specified corrective action be undertaken by the Owner to the satisfaction of Port of Melbourne and within the timeframe specified by Port of Melbourne.
- (b) If the Owner fails to:
  - (i) comply with the terms of a direction under sub-clause (a) to the satisfaction of Port of Melbourne; or
  - (ii) clean-up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of Port of Melbourne, Port of Melbourne may either:
    - (iii) itself undertake the corrective action and recover its costs of undertaking the corrective action as a debt due from the Owner to Port of Melbourne; or
    - (iv) deny the Owner the continuance of any right it would otherwise have had under this Agreement, including without limitation the right to remain in Port of Melbourne Waters.

## **13. Safety**

### **13.1 Occupational Health and Safety responsibility**

- (a) The Owner acknowledges that occupational health and safety on a Vessel during the Access Period is the responsibility of the Owner.
- (b) The Shipping Agent acknowledges that occupational health and safety of the Shipping Agent's employees during the Access Period is the responsibility of the Shipping Agent.

### **13.2 Occupational Health and Safety obligations**

- (a) The Shipping Agent must:
  - (i) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees are not exposed to conditions or practices that have the likely potential to cause personal injury or property damage;
  - (ii) fully comply with all OH&S Laws;
  - (iii) use best endeavours to ensure that its employees and invitees comply with all occupational health and safety requirements; and
  - (iv) immediately notify Port of Melbourne of any incident or dangerous occurrence on the Channel which is notifiable to WorkSafe Victoria and



the Australian Maritime Safety Authority pursuant to the provisions of any OH&S Law.

- (b) The Owner must:
- (i) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees, while on the Vessel, are not exposed to conditions or practices that have the potential to cause personal injury or property damage;
  - (ii) fully comply with all OH&S Laws;
  - (iii) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees while they are on the Vessel comply with all occupational health and safety requirements; and
  - (iv) immediately notify Port of Melbourne of any hazard, incident or dangerous occurrence on the Channel which is notifiable to WorkSafe Victoria and the Australian Maritime Safety Authority pursuant to the provisions of any OH&S Law.

### **13.3 Statutory notices and legal proceedings**

Within 48 hours of the Shipping Agent or Owner receiving any notices or legal proceedings in respect of the impact of the Owner's activities on human health and safety, including without limitation notices or proceedings issued by a statutory or governmental body, the Shipping Agent or Owner (as applicable) must give written notice to Port of Melbourne and Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

### **13.4 Obligation to comply with statutory notice**

The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in Clause 13.3 and is liable for any costs of compliance with such statutory notices.

## **14. Emergencies**

The Owner must, in the event of any emergency, accident or security situation, provide Port of Melbourne and any other relevant agencies including Victoria Police, the Australian Federal Police and medical services with reasonable access to the Vessel.

## **15. Notification of damage and/or injury**

### **15.1 Immediate notification to Port of Melbourne**

During an Access Period, the Owner must, as soon as practicable after becoming aware of any damage to the Channel or any injury to any person or circumstances likely to cause any damage or injury, advise or cause Port of Melbourne and Melbourne VTS to be advised of such damage, injury or circumstances or potential damage, injury or circumstances (as relevant).

### **15.2 Detailed incident report**

No later than 72 hours after the Owner gives notice in accordance with Clause 15.1 the Owner must cause a detailed written report to be lodged with Port of Melbourne and Melbourne VTS in respect of the accident, event or other circumstances giving rise to the

damage or injury or potential damage or injury (as relevant).

## 16. Port Security

### 16.1 Regulatory Compliance

The Owner must ensure that, for the duration of the Access Period, the Owner and its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel:

- (a) strictly comply with the requirements of the MTOFSA;
- (b) comply with all directions of Port of Melbourne's Security Contractor and Port of Melbourne's Security Manager;
- (c) comply with all security obligations under the Security Laws; and
- (d) comply with all biosecurity obligations under the *Biosecurity Act 2015* (Cwlth) and supporting regulations, complete prior to the Access Period the "Seaports FPOE biosecurity awareness eLearning" (as updated from time to time) made available by the Department of Agriculture, Fishers and Forestry (**Department**), and comply with the Department's biosecurity incident response procedure.

### 16.2 Acknowledgment of a Security Regulated Port

The Owner acknowledges that the Port is a 'security regulated port' within the meaning of the MTOFSA and that security measures required by the MTOFSA will be audited by various agencies, including but not limited to Port of Melbourne and the Department of Home Affairs, Aviation and Maritime Security Division.

### 16.3 Financial penalties

The Owner acknowledges that financial penalties apply for breaches of the MTOFSA.

### 16.4 Compliance with Restricted Areas

- (a) The Owner acknowledges that it is an offence:
  - (i) under the MTOFSA, for an unauthorised person to enter a Landside Restricted Zone or for an unauthorised vehicle to enter or remain in a Landside Restricted Zone;
  - (ii) under the MTOFSA, not to display a Maritime Security Identification Card (MSIC) when entering a designated Landside or Waterside Restricted Zone; and
  - (iii) under the PMA, for an unauthorised person to enter a Restricted Access Area, or for an unauthorised vessel to enter or remain in a Restricted Access Area.
- (b) The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel:
  - (i) take all necessary steps to ensure that an unauthorised person, vehicle or vessel does not enter or remain in a Restricted Area; and
  - (ii) do not cause or permit an unauthorised person, vehicle or vessel to enter or remain on a Restricted Area.

## **16.5 Understanding Port of Melbourne's security requirements**

The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel understand and comply with the security requirements of Port of Melbourne.

## **16.6 Assistance to Port of Melbourne**

The Owner must ensure that its servants, agents, employees and contractors cooperate fully with Port of Melbourne and other users of the Channel to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

## **16.7 Access to Vessels**

The Owner agrees that, upon request from Port of Melbourne at any time during the Access Period, it must provide to:

- (a) authorised employees of Port of Melbourne; and
- (b) other persons authorised under the PMA or the *Marine Safety Act 2010* (Vic), access to the Vessel, subject to:
  - (c) those persons carrying appropriate photo ID at all times; and
  - (d) compliance by Port of Melbourne with the reasonable requirements of the master of the Vessels.

## **17. Insurance**

### **17.1 P&I insurance**

Except to the extent of those risks covered by H&M Cover, the Owner must ensure, and it hereby warrants, that each Vessel for which it submits an Application will, for the duration of the Access Period, be covered by P&I Cover with a member club of the International Group of P&I Clubs, including cover against oil pollution claims in the amount and on the terms commonly provided by the International Group of P&I Clubs for that type of Vessel and its terms of entry and membership.

In the event that the Vessel is insured by a P&I Club not a member of the International Group of P&I Clubs, the Owner must inform Port of Melbourne of the details of the Vessel's P&I Cover and the relevant insurer at the time of lodging the Application.

### **17.2 Consent of P&I Insurer**

If required by Port of Melbourne the Owner must submit the Agreement to the P&I Club which has provided P&I Cover in respect of the Vessel and must advise Port of Melbourne if the P&I Club does not consent to the Agreement.

### **17.3 Proof of insurance**

The Owner must produce evidence, to the reasonable satisfaction of Port of Melbourne, of the currency of the insurance policies referred to in this Clause 17 when requested in writing to do so by Port of Melbourne during the Access Period.

## **18. Release**

Notwithstanding anything contained in this Agreement, the Owner and the Shipping Agent release Port of Melbourne from all actions, suits, claims, demands, costs, charges,

damages, liabilities and expenses which the Owner or the Shipping Agent or both of them may have now or in the future for any loss, damage to property or injury to persons, of whatever nature arising directly or indirectly as a consequence of:

- (a) industrial disputes, restraints of labour, strikes, riots, civil commotion, lock outs or stoppages whether involving the employees of Port of Melbourne its agents or contractors or not;
- (b) acts of terrorists, insurgents, war, other hostilities or similar disturbances;
- (c) actions, orders, directions, instructions or requirements of any lawful authority or any person purporting to act on behalf of such authority;
- (d) natural, abnormal or unusual occurrences including earthquake, lightning, flood, fire and/or adverse sea and/or weather conditions; and
- (e) any other cause that Port of Melbourne could not avoid or prevent by the exercise of reasonable care.

## **19. GST**

### **19.1 Interpretation**

Words or expressions used in this Clause 19 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this Clause 19.

### **19.2 Consideration is GST exclusive**

Any consideration to be paid or provided to for a supply made under or in connection with this Agreement unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

### **19.3 Gross up of consideration**

Despite any other provision in this Agreement, if a party ('Supplier') makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this Clause 19.3 ('GST exclusive consideration') is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST ('GST Amount'); and
- (b) subject to Clause 19.5, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### **19.4 Reimbursements (net down)**

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense.

### **19.5 Tax invoices**

The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice

in respect of that taxable supply.

## 20. Notices

### 20.1 Service

Subject to Clause 21, any notice or other communication concerning this Agreement may only be:

- (a) left at or sent to the Owner:
  - (i) if there is no Shipping Agent, if the communication is addressed to the Owner and transmitted by email to the email address given by the Owner in the Application; or
  - (ii) if there is a Shipping Agent, if the communication is addressed to the Owner (c/o the Shipping Agent) and transmitted by email to the email address given by the Shipping Agent in the Application;
- (b) left at or sent to the Shipping Agent if the communication is addressed to the Shipping Agent and transmitted by email to the email address given by the Shipping Agent in the Application; and
- (c) left at or sent to Port of Melbourne if the communication is in writing and addressed to Port of Melbourne and sent by post to the address or by email to the email address given in item 1 of Schedule 1.

### 20.2 Performance of Port of Melbourne's obligations

Port of Melbourne will be taken to have complied with its obligations under the terms of this Agreement if, in respect of any notice or report required to be given or provided by Port of Melbourne to the Owner, the notice or report is issued or provided to the Shipping Agent.

## 21. Dispute Resolution

### 21.1 Notice of Dispute

If a dispute or difference (a 'dispute') between Port of Melbourne, the Owner or the Shipping Agent, or both of them arises out of or in connection with the Agreement, the subject matter thereof or use of the Channel, including a dispute:

- (a) in tort;
- (b) under statute;
- (c) for restitution based on unjust enrichment; or
- (d) for rectification or frustration,

then if a party desires to pursue the dispute, that party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute ('Dispute Notice').

### 21.2 Continue to perform the Agreement

Notwithstanding the existence of a dispute, Port of Melbourne, and the Owner and the Shipping Agent shall continue to perform the Agreement, and the Owner must comply with Clause 9.

### **21.3 Further steps before proceeding**

Within 7 days after service of a Dispute Notice, the parties shall confer at least once to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. Each party must make reasonable efforts to resolve the dispute.

### **21.4 Arbitration – Australian entities**

- (a) If:
- (i) the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 21.3; and
  - (ii) the party involved in the dispute or difference that is not Port of Melbourne is an entity registered under the *Corporations Act 2001* (Cth) or is Australian,
- either party will have the right to notify the other party in writing that it requires the dispute or difference to be referred to arbitration.
- (b) Any arbitration pursuant to this Clause 21.4 shall be administered by the Resolution Institute in accordance with the IAMA Arbitration Rules.
- (c) Any arbitration pursuant to this Clause 21.4 shall apply the substantive law of the state of Victoria and shall apply the rules of procedure as prescribed in the state of Victoria.
- (d) Any arbitration pursuant to this Clause 21.4 shall take place in Melbourne, Australia and shall be conducted in English.

### **21.5 Arbitration – non-Australian entities**

- (a) If:
- (i) the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 21.3; and
  - (ii) one of the parties to the dispute or difference has its place of business outside Australia,
- either party will have the right to notify the other party in writing that it requires the dispute or difference to be referred to arbitration.
- (b) Any arbitration pursuant to this Clause 21.5 shall be in accordance with the UNCITRAL Model Law on International Commercial Arbitration.
- (c) The dispute or difference will be arbitrated by a single arbitrator.
- (d) If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in Clause 21.5(a) the Arbitrator will be appointed in accordance with the requirements of the UNCITRAL Model Law and the *International Arbitration Act 1974* (Cth).
- (e) The arbitral tribunal shall apply the substantive law of the state of Victoria. The arbitral tribunal shall apply the rules of procedure as prescribed in the state of Victoria.
- (f) The arbitration shall take place in Melbourne, Australia.

- (g) The language of the arbitration shall be English.

## **22. Confidentiality**

### **22.1 Confidential Information**

The Owner and the Shipping Agent must:

- (a) only use Confidential Information for the purposes of this Agreement or any other purposes expressly agreed in writing by Port of Melbourne; and
- (b) keep all Confidential Information strictly confidential and not disclose it to any third party except with the prior written approval of Port of Melbourne or as required by law.

## **23. Miscellaneous**

### **23.1 Governing law and jurisdiction**

The law of the State of Victoria governs this Agreement and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of Victoria.

### **23.2 Entire Agreement**

This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements made by the parties and may only be changed in writing signed by the parties.

### **23.3 Severability of provisions**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability but that will not invalidate the remaining provisions of this Agreement or affect the provision in any other jurisdiction.

### **23.4 Survival**

- (a) None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.
- (b) The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clause 10 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- (c) The following clauses of this Agreement survive the expiry of the Access Period: Clauses 9, 18, 21, 22 and 23.

### **23.5 Binding of successors**

Each party enters into this Agreement so as to bind its successors in title, administrators and assigns.

# Schedule 1 – Particulars

Item	Description	Detail
1.	Port of Melbourne's address	Level 19, 839 Collins Street DOCKLANDS VIC 3008 Email: issue to both <a href="mailto:community@portofmelbourne.com">community@portofmelbourne.com</a> and <a href="mailto:arun.rampal@portofmelbourne.com">arun.rampal@portofmelbourne.com</a>
2.	Port of Melbourne's Security Manager	Postal address: Level 19, 839 Collins Street DOCKLANDS VIC 3008 GPO Box 2149 MELBOURNE VIC 3001 Ph: 03 9612 3646 Email: <a href="mailto:security@portofmelbourne.com">security@portofmelbourne.com</a>



## Schedule 2 – Dictionary

In this document, unless the contrary intention appears, the following words and expressions shall be construed in accordance with the meanings given below:

<b>Access Period</b>	means the period commencing from the earliest time at which the Vessel enters the Port of Melbourne Waters and expires when the Vessel departs the Port of Melbourne Waters.
<b>Agreement</b>	means the agreement constituted by the Application and these Standard Terms and Conditions.
<b>Application</b>	means the submission to Port of Melbourne of a properly completed form in the manner prescribed by Port of Melbourne and published on its website concerning the Channel.
<b>Cargo</b>	means 'cargo' as defined by section 3 of the PMA, and includes Empties.
<b>Certificate of Registry</b>	means the certificate issued pursuant to the national law of the Vessel's port of registry.
<b>Certificate of Tonnage</b>	means the tonnage and measurement of the Vessel carried out by, and recorded in a certificate prepared by, class societies or recognised organisation with the equivalent standing of Lloyds Register of Shipping or Det Norske Veritas.
<b>Channel</b>	means 'channel' as defined by section 3 of the PMA and includes both dedicated and shared channels and associated navigational aid infrastructure.
<b>Channel Fee</b>	means 'channel fee' as defined by section 3 of the PMA.
<b>Confidential Information</b>	means any technical, scientific, commercial, financial or other information of, about or in any way related to, Port of Melbourne, including any information designated by Port of Melbourne as confidential, which is disclosed, made available, communicated or delivered to the Owner or the Shipping Agent, but excludes information: <ul style="list-style-type: none"><li>(a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;</li><li>(b) which the Owner or the Shipping Agent can demonstrate was in its possession prior to the date of this Agreement;</li><li>(c) which the Owner or the Shipping Agent can demonstrate was independently developed by the Owner or Shipping Agent; or</li></ul>

- (d) which is lawfully obtained by the Owner or the Shipping Agent from another person entitled to disclose such information.

<b>Contamination</b>	means the presence in the Environment at a level above background levels of any substance which is potentially harmful to human health and comfort, detrimental to the well-being of flora or fauna and/or detrimental to the beneficial uses of the Environment, irrespective of whether the quantity of the substance does or does not exceed statutory or industry criteria applicable to commercial or industrial land use.
<b>Demise Charter</b>	means the hire of a Vessel by which the charterer obtains possession and control of the Vessel and is responsible for the Vessel, its operation and maintenance.
<b>Designated Anchorage</b>	means an anchorage designated in the document titled 'Harbour Master's Directions' as amended from time to time and published on Ports Victoria's website.
<b>Empties</b>	means cargo containers which do not contain any Cargo.
<b>Environment</b>	means the physical factors of the surroundings of human and non-human life forms, including without limitation the land, soil, plants, habitat, waters, atmosphere, climate, sound, odours, tastes, biodiversity and the social and aesthetic values of landscapes.
<b>Environmental Hazard</b>	means a potential danger to human health or the Environment, whether imminent or otherwise, resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious, irritant or otherwise dangerous or damaging characteristics.
<b>H&amp;M Cover</b>	means insurance covering loss and damage to the hull and machinery of a vessel from marine perils including sinking, burning, stranding and collision.
<b>Harbour Master</b>	means the harbour master or assistant harbour master engaged for Port of Melbourne Waters pursuant to section 220 of the <i>Marine Safety Act 2010</i> (Vic).
<b>Landside Restricted Zone</b>	means an area of land or a structure within the boundaries of the Port which is established as a 'land-side restricted zone' (being a type of 'port security zone' as defined by section 10 of the MTOFSA) under the MTOFSA and MTOFSR.
<b>Legislative Requirements</b>	means all of the following: <ul style="list-style-type: none"><li>(a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the state of Victoria;</li><li>(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the</li></ul>

State of Victoria;

- (c) the obtaining or terms of any permit or licence concerning use of the Channel;
- (d) directions of the Harbour Master; and
- (e) directions or guidelines of any statutory bodies or authorities with relevant jurisdiction.

**Melbourne VTS** means the vessel traffic service authority (as defined in section 14 of the *Navigation Act (2012)* (Cth) with responsibility for the Port of Melbourne Waters as authorised under *Marine Order 64 (Vessel Traffic Services) 2013* made under the *Navigation Act 2012 (Cth)* in relation to Port of Melbourne Waters.

**MTOFSA** means the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth), as amended from time to time.

**MTOFSR** means the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Cth), as amended from time to time.

**OH&S Laws** means all legislation, regulations, by-laws, orders and legal requirements concerning the health, safety and welfare of people at work, including but not limited to the:

- (a) *Occupational Health and Safety Act 2004* (Vic);
- (b) *Occupational Health and Safety Regulations 2017* (Vic);
- (c) *Dangerous Goods Act 1985* (Vic);
- (d) *Dangerous Goods (Storage and Handling) Regulations 2012* (Vic); and
- (e) *Marine Safety Act 2010* (Vic).

**Owner** means each of:

- (a) the party identified as the Owner in the Application who is the 'owner of a vessel' as defined by section 4 of the PMA; and
- (b) any charterer, master or operator of a vessel that enters Port of Melbourne Waters.

**P&I Clubs** means those mutual insurance associations which provide P&I Cover.

**P&I Cover** means protection and indemnity insurance that, in the case of Vessel owners, covers liabilities concerning or arising from the following risks:

- (a) death and personal injury to seamen, passengers and third parties;
- (b) in respect of stowaways or persons rescued at sea;
- (c) collisions;

- (d) groundings;
- (e) damage to fixed and floating objects;
- (f) pollution;
- (g) wreck removal;
- (h) towage operations; and
- (i) Cargo damage.

<b>Permitted Use</b>	means occupation and use of the Channel for the end purpose(s) of: <ul style="list-style-type: none"> <li>(c) the embarking and disembarking of passengers;</li> <li>(d) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo;</li> <li>(e) provedoring and bunkering;</li> <li>(f) ship repair and maintenance;</li> <li>(g) crew change; or</li> <li>(h) transiting of vessels greater than 200 GT.</li> </ul>
<b>PMA</b>	means the <i>Port Management Act 1995</i> (Vic) as amended from time to time.
<b>Pollution Incident</b>	means the occurrence of “pollution” within the meaning of the <i>Environment Protection Act 2017</i> (Vic).
<b>Port</b>	means the 'port of Melbourne ' as defined by section 3 of the PMA.
<b>Port Charges</b>	means any fees or charges published on the Reference Tariff Schedule in respect of the activities under this Agreement.
<b>Port of Melbourne</b>	means Port of Melbourne Operations Pty Ltd as Trustee for Port of Melbourne Unit Trust ABN 83 751 315 034.
<b>Port of Melbourne Waters</b>	means 'port of Melbourne waters' as defined by section 3 of the PMA.
<b>Port of Melbourne's Security Contractor</b>	means the contractor engaged by Port of Melbourne from time to time to implement the Port Security Plan and includes its servants, agents and employees.
<b>Port of Melbourne's Security Manager</b>	means the manager whose details are set out in item 2 of Schedule 1, or as notified by Port of Melbourne from time to time.
<b>Port Security Plan</b>	means the port security plan prepared by Port of Melbourne in accordance with the MTOFSA and as amended from time to time.
<b>Ports Victoria</b>	means Ports Victoria and includes any replacement agency that performs substantially the same functions and powers.

<b>Reference Tariff Schedule</b>	means the Port of Melbourne Reference Tariff Schedule, as amended from time to time and published on Port of Melbourne's website, which sets out details of pricing for port charges, including wharfage, tonnage, berth hire, security, area hire, tanker inspection and water supply to ships.
<b>Restricted Access Area</b>	means 'restricted access area' as defined by section 3 of the PMA.
<b>Restricted Area</b>	means: <ul style="list-style-type: none"> <li>(a) an area declared to be a Landside Restricted Zone;</li> <li>(b) an area declared to be a Waterside Restricted Zone; or</li> <li>(c) a Restricted Access Area.</li> </ul>
<b>Security Laws</b>	the security requirements, under the: <ul style="list-style-type: none"> <li>(a) <i>Customs Act 1901</i> (Cwlth);</li> <li>(b) <i>AusCheck Act 2007</i> (Cwlth); and</li> <li>(c) <i>National Anti-Corruption Commission Act 2022</i>, as amended from time to time.</li> </ul>
<b>Shipping Agent</b>	means the shipping agent (if any) set out in the Application, who is authorised by the Owner to manage Vessel on behalf of the Owner.
<b>Time Charter</b>	means the hire of a Vessel by which the charterer obtains possession and control of the Vessel for an agreed period of time or an agreed voyage.
<b>Vessel</b>	means any vessel: <ul style="list-style-type: none"> <li>(a) in relation to which the Owner holds a legal or equitable interest; or</li> <li>(b) which is subject to charter by the Owner (including by way of Demise Charter or Time Charter),</li> </ul> and which calls at or enters Port of Melbourne Waters.
<b>Waterside Restricted Zone</b>	means an area of water within the Port which is established as a 'water-side restricted zone' (being a type of 'port security zone' as defined by section 10 of the MTOFSA) under the MTOFSA and MTOFSR.