

Standard Terms and Conditions for Owners Berthing at Port of Melbourne Dedicated Facilities (effective 25 September 2019)

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 Dedicated Facility.

1.2 Defined Terms & Interpretation

Capitalised terms used in this Agreement are defined in the dictionary in Schedule 2 and shall be construed in accordance with the provisions in Schedule 2.

2. Joint and several liability

- (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, 8.4, 8.6, 10, 11.1, 11.2, 12, 13.1(a), 13.2(b), 14, 15.2, 16, 18, 19 and 20.

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 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 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.

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 between the Owner and the Shipping Agent, the Shipping Agent must notify Port Manager 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 Wharfage 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 Certificates 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 its best endeavours to ensure that all its employees and other personnel understand and comply with the security requirements of Port of Melbourne, including but not limited to 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 agency with the Owner, co-operate with Port of Melbourne and other users of the Port Facilities 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 Port Facilities and the Dedicated Facility, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

5. Use of the Dedicated Facility

5.1 Permitted Uses

- (a) The Owner is permitted to use the Dedicated Facility for a Permitted Use for the duration of the Access Period.
- (b) The Owner must not use the Dedicated Facility 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 Dedicated Facility 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 Dedicated Facility for the Vessel or the use intended by the Owner.

5.4 No estate or interest

The Owner and the Shipping Agent agree that their rights to access or use the Dedicated Facility 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 Dedicated Facility.

5.5 No right of exclusive occupation

- (a) Subject to Clause 5.5(b), the Owner has no right of exclusive occupation or use of the Dedicated Facility 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, enter, use, possess and enjoy the whole or any part of the Dedicated Facility.
- (b) Where for the duration of the Access Period the access to a designated berth is authorised by Port of Melbourne, use of that particular berth may be exclusive.

5.6 Access to be exercised in accordance with Melbourne VTS

The rights of the Owner to occupy, use or access the Dedicated Facility for the Permitted Uses are subject to the directions of the Harbour Master and Melbourne VTS, which directions may include the Dedicated Facility to which access is permitted, the method of control and the dates and time of control.

5.7 Dedicated Facility may change

The Owner acknowledges that the Dedicated Facility available for access by the Owner or the Shipping Agent may change from time to time in Port of Melbourne's complete

discretion. If there is a change to access arrangements or the status of a facility listed in Schedule 3, Port of Melbourne will give notice of such change to the Owner or the Shipping Agent (as applicable).

6. Term

- (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.

7. Withdrawal or access or hire

7.1 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 Dedicated Facility (or any part of the Dedicated Facility) when:

- (a) the Dedicated Facility or any part of the Dedicated Facility is unsuitable for use;
- (b) a direction is given by the Harbour Master; or
- (c) the Vessel is unable to be loaded or unloaded at any time prior to the commencement of an Access Period.

7.2 Withdrawal for the purposes of Lay-up

The Owner acknowledges that Port of Melbourne may give priority to any Vessel carrying Cargo over a Vessel that is Laying-Up concerning access or use of a Dedicated Facility during an Access Period and reserves the right to refuse or withdraw permission for Laying-Up at any time.

7.3 Approved immobilisation

In the event that a Vessel is temporarily immobilised at a Dedicated Facility with prior approval of Port of Melbourne, Port of Melbourne must provide the Owner or the Shipping Agent with reasonable notice of its requirement that the Vessel vacate a Dedicated Facility.

7.4 No compensation

If Port of Melbourne withdraws permission for use of or access to the Dedicated Facility, 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 relevant Port Charges for any proposed Access Period that does not proceed, or for the use of the Dedicated Facility 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 the Shipping Agent nor the Owner is entitled to, any other remedy, compensation or damages for any such withdrawal of permission.

8. Port Charges

8.1 Acknowledgment 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.

8.2 Wharfage fee

Port of Melbourne may, in its discretion, recover the Port Charges as, if applicable, a Wharfage Fee recoverable under section 74 of the PMA.

8.3 Charge on Empties

The Owner agrees to pay Port of Melbourne the Port Charges concerning Empties unloaded from or loaded onto a Vessel at the Port.

8.4 Other Port Charges

The Owner agrees to pay Port of Melbourne all other Port Charges concerning the use by the Owner or the Vessel of the Dedicated Facility in accordance with the Reference Tariff Schedule.

8.5 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.

8.6 Security costs

If Port of Melbourne reasonably incurs costs as a result of complying with any Legislative Requirement in relation to a Vessel, including 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.

8.7 Interest

If the Owner does not pay the relevant Port Charge in accordance with this Agreement, the Owner or the Shipping Agent will be liable to Port of Melbourne for interest on the unpaid Port Charge 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).

9. Cargo Manifests and documentation

9.1 Inward Manifest

The Owner or the Shipping Agent shall cause to be lodged with Port of Melbourne an Inward Manifest within 1 day of the arrival of a Vessel in Port of Melbourne Waters.

9.2 Outward Manifest

The Owner or the Shipping Agent shall cause to be lodged with Port of Melbourne an Outward Manifest within 2 days of the departure of a Vessel from Port of Melbourne Waters.

9.3 Electronic lodgement of Manifests

Inward Manifests and Outward Manifests shall be electronically lodged with Port of Melbourne by email at the address identified at item 3 in Schedule 1.

9.4 Additional information

The Owner and the Shipping Agent must cause to be lodged with Port of Melbourne any additional information reasonably requested by Port of Melbourne concerning any Cargo referred to on an Inward Manifest or an Outward Manifest within 48 hours of a written request to do so.

9.5 No Cargo discharged or loaded

In the event that a Vessel does not discharge or load any Cargo whilst in Port of Melbourne Waters, the Owner or the Shipping Agent shall, within 48 hours of the departure of the Vessel from Port Waters, cause written notice to be provided to Port of Melbourne that no Cargo was discharged or loaded, as the case may be.

10. Acknowledgments by the Owner

10.1 Rights to use the Dedicated Facility are personal

The Owner acknowledges that the rights conferred upon it by this Agreement to use the Dedicated Facility 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 Acknowledgment 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 hire and use of the Dedicated Facility.

10.3 General indemnity 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 access, occupation or use of the Dedicated Facility 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 indemnity 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 Dedicated Facility

The Owner is liable for any and all loss or damage to the Dedicated Facility arising from or related to the hire or use of the Dedicated Facility 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 hire or use of the Dedicated Facility 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 Dedicated Facility

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 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 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 access to or use of Port Facilities or the Dedicated Facility;
- (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 access to or use of Port Facilities or the Dedicated Facility; 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 Facilities, the Dedicated Facility or 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 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 53U of the *Environment Protection Act 1970* (Vic) in respect of the Pollution Incident.

12.4 Statutory notices and legal proceedings

Within 48 hours of the Shipping Agent or the 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 Facilities, the Dedicated Facility or 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 Facilities, the Dedicated Facility or 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 under this clause 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 Dedicated Facility or Port Facilities, comply with all OH&S Laws and current VPCM requirements in relation to dangerous goods, as published on VPCM's website.

12.7 Port of Melbourne Guidelines and VPCM Guidelines

- (a) 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, comply with all current Port of Melbourne Guidelines applicable to access and use of Dedicated Facility or Port Facilities.
- (b) Port of Melbourne shall ensure that the Port of Melbourne Guidelines as amended from time to time are published on Port of Melbourne's website.
- (c) 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 Dedicated Facility or Port Facilities, comply with all current VPCM Guidelines.

12.8 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, including the occupational health and safety management plan and induction training (if any), of the Lessee of the Dedicated Facility;
 - (iv) immediately notify Port of Melbourne of any incident or dangerous occurrence at Port Facilities and the Dedicated Facility 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 its 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 its 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, including the occupational health and safety management plan and induction training (if any), of the Lessee of the Dedicated Facility; and
 - (iv) immediately notify Port of Melbourne of any incident or dangerous occurrence at Port Facilities and the Dedicated Facility 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 shall, 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 Port Facilities or the Dedicated Facility 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 the Lessee of the Dedicated Facility concerning security;
- (c) comply with all security obligations under the *Customs and Auscheck Legislation Amendment (Organised Crime and Other Measures) Act 2013* (Cwlth); and
- (d) comply with all biosecurity obligations under the *Biosecurity Act 2015* (Cwlth) and supporting regulations, complete prior to the Access Period the "Seaports Biosecurity Awareness eLearning Package" made available by the Department of Agriculture and Water Resources (**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 Zones; 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 shall 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 on 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 Dedicated Facility and Port Facilities 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. Provision of Ancillary Services

The Owner or Shipping Agent must not engage a third party to provide Ancillary Services unless that third party has been given permission by Port of Melbourne to access Port of Melbourne Land to provide the relevant Ancillary Service. A list of third party Ancillary Service providers that have been granted access permission can be found on Port of Melbourne's website.

18. Supply of potable water

18.1 Water for personal consumption

Supply of fresh potable water to Vessels shall be for the purpose of personal consumption

by the crew and other visitors to the Vessel (e.g. drinking, washing, and cooking) and the Owner must ensure that the supplied water is not used for industrial or commercial purposes, including washing down decks or for ballast purposes.

18.2 Hoses

The Owner must ensure that Port of Melbourne's fresh water hoses and equipment are properly attached to the existing fresh potable water supply fixtures located at the wharf apron.

18.3 Care of equipment

The Owner must ensure that any person engaged by or on behalf of the Owner to collect Port of Melbourne's fresh potable water supply takes good care of them and returns them promptly after use in the same condition as supplied. Without limiting any rights of Port of Melbourne under Clause 10, the Owner is responsible for any damage to fresh potable water supply equipment and will bear the cost of any repair and/or replacement of such equipment.

18.4 Water charges

The Owner must pay:

- (a) the relevant Lessee for the use of water at Swanson Dock East, Swanson Dock West, Webb Dock East, Webb Dock West, 5 Yarraville and Gellibrand Pier; and
- (b) Port of Melbourne for the use of water at other facilities in accordance with Clause 8.

19. Telephone services

The Owner must ensure for safety reasons, at its own cost, that Australian telephone services are provided to a Vessel whilst the Vessel is berthed at a wharf in the Port.

20. Insurance

20.1 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 Vessels P&I Cover and the relevant insurer at the time of lodging the Application.

20.2 Consent of P&I Insurer

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

20.3 Proof of insurance

The Owner shall provide evidence, to the reasonable satisfaction of Port of Melbourne,

of the currency of the insurance policies referred to in this Clause 20 when requested in writing to do so by Port of Melbourne during the Access Period.

21. 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;
- (e) interruption or disruption to the supply of electric, gas, water and/or telecommunication services to the relevant Port of Melbourne facilities other than those caused by an act, fault or negligence of Port of Melbourne; and
- (f) any other cause that Port of Melbourne could not avoid or prevent by the exercise of reasonable care.

22. GST

22.1 Interpretation

Words or expressions used in this Clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

22.2 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.

22.3 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 ('**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 22.5, 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.

22.4 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.

22.5 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.

23. Notices

23.1 Service

Subject to Clause 24, 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:
 - (i) 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; or
 - (ii) an Inward or Outward Manifest and sent by email to the email address given in item 3 of Schedule 1.

23.2 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 in writing to the Shipping Agent.

24. Dispute Resolution

24.1 Notice of Dispute

If a dispute or difference (a '**dispute**') between Port of Melbourne and 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 Port Facilities or the Dedicated Facility, 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**').

24.2 Continue to perform the Agreement

Notwithstanding the existence of a dispute, Port of Melbourne, the Owner and the Shipping Agent shall continue to perform their respective obligations under the Agreement, and the Owner shall comply with Clause 8.

24.3 Further steps before proceeding

Within 7 days after service of a notice of dispute, 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 in an attempt to resolve the dispute.

24.4 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 24.3; 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 24.4 shall be administered by Resolution Institute in accordance with the IAMA Arbitration Rules.
- (c) Any arbitration pursuant to this Clause 24.4 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 24.4 shall take place in Melbourne, Australia and shall be conducted in English.

24.5 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 24.3; 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 24.5 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 24.5(a) the Arbitrator will be appointed in accordance with the requirements of the 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.

25. Confidentiality

25.1 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.

26. Miscellaneous

26.1 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.

26.2 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.

26.3 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.

26.4 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 8, 21, 24, 25 and 26.

26.5 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
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: security@portofmelbourne.com
3.	Lodgement of Manifests	manifest@portofmelbourne.com

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:

Access Period	means the period which starts from the earliest time at which the Vessel enters the Port of Melbourne Waters and ends when the Vessel departs the Port of Melbourne Waters
Agreement	means the agreement constituted by the Application and these Standard Terms and Conditions.
Ancillary Services	means: (a) stevedoring services; and (b) mooring services.
Application	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 Dedicated Facilities.
Bulk Liquid Facilities	means Holden Dock, No 1 Maribyrnong and 6 Yarraville.
Cargo	means 'cargo' as defined by section 3 of the PMA, and includes Empties.
Certificate of Registry	means the certificate issued pursuant to the national law of the Vessels port of registry.
Certificate of Tonnage	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.
Confidential Information	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: (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement; (b) which the Owner or the Shipping Agent can demonstrate was in its possession prior to the date of this Agreement;

- (c) which the Owner or the Shipping Agent can demonstrate was independently developed by the Owner or Shipping Agent; or
- (d) which is lawfully obtained by the Owner or the Shipping Agent from another person entitled to disclose such information.

Contamination	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.
Dedicated Facility	means a facility (or facilities) listed in Schedule 3 that are designated by Port of Melbourne as the Dedicated Facility for the purposes of the Application.
Demise Charter	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.
Empties	means a Cargo container which does not contain any Cargo.
Environment	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 landscape.
Environmental Hazard	means a state of 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.
H&M Cover	means insurance covering loss and damage to the hull and machinery of a vessel from marine perils including sinking, burning, stranding and collision.
Harbour Master	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).
Inward Manifest	means an inward manifest in an UN/EDIFACT-IFCSUM format,

for all cargo intended to be discharged at the Port which includes:

- (a) accurate and complete particulars of the Cargo mass and Cargo volume; and
- (b) all other information prescribed by Port of Melbourne from time to time.

Landside Restricted Zone 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.

Laying-up means the process of a Vessel being 'laid up' or temporarily not in service.

Legislative Requirements means all of the following:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the state of Victoria;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in the State of Victoria;
- (c) the obtaining or terms of any permit or licence concerning use of the Port Facilities or the Dedicated Facility;
- (d) directions of the Harbour Master;
- (e) directions or guidelines of any statutory bodies or authorities with relevant jurisdiction; and
- (f) the Port of Melbourne Guidelines and VPCM Guidelines.

Lessee means the ultimate lessee or licensee of a particular Dedicated Facility.

Melbourne Vessel Traffic Services or Melbourne VTS means the VTS Authority 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).

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 (Plant) Regulations 1995* (Vic);
- (c) *Dangerous Goods Act 1985* (Vic);
- (d) *Dangerous Goods (Storage and Handling) Regulations 2012* (Vic); and
- (e) *Marine Safety Act 2010* (Vic).

Outward Manifest

means an outward manifest in an UN/EDIFACT-IFCSUM format, for all Cargo loaded onto the Vessel at the Port, which includes:

- (a) accurate and complete particulars of Cargo mass and Cargo volume; and
- (b) all other information prescribed by Port of Melbourne from time to time.

Owner

means the party identified as the Owner in the Application who is the 'owner of a vessel' within the meaning of section 4 of the PMA.

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.

Permitted Use

means:

- (a) the embarking and disembarking of passengers;

	<ul style="list-style-type: none"> (b) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo; (c) provedoring and bunkering; (d) ship repair and maintenance; and (e) crew change.
PMA	means the <i>Port Management Act 1995</i> (Vic) as amended from time to time.
Pollution Incident	means the occurrence of pollution within the meaning of sections 39(1), 41(1) and 45(1) of the <i>Environment Protection Act 1970</i> (Vic).
Port	means the 'port of Melbourne', as defined in section 3 of the PMA.
Port Charges	means any fees or charges published on the Reference Tariff Schedule in respect of the activities under this Agreement.
Port Facilities	means the channel, Port of Melbourne Land and any and all other facilities owned, managed or controlled by Port of Melbourne, but does not include the Dedicated Facility.
Port of Melbourne	means Port of Melbourne Operations Pty Ltd as Trustee for Port of Melbourne Unit Trust ABN 83 751 315 034.
Port of Melbourne Guidelines	<p>means:</p> <ul style="list-style-type: none"> (a) Port of Melbourne's port rules, including "Port Rule No. 1 - Handling of Dry Bulk Cargoes at Shipping Terminals in the Port of Melbourne"; (b) Tank Washing and Gas Freeing at Tanker Berths Guide; (c) Tanker Facilities Operations Manual; (d) Port of Melbourne's Port Load Chart; (e) Tankers Docked at Non-Tanker Berths – minimum requirements; (f) Ship/Shore Safety and Operational Agreement; and (g) other rules and guidelines published on Port of Melbourne's website as amended from time to time.
Port of Melbourne Land	means 'port of Melbourne land' as defined by section 3 of the PMA.
Port of Melbourne Waters	means 'port of Melbourne waters' as defined by section 3 of the PMA.

Port of Melbourne's Security Contractor	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.
Port of Melbourne's Security Manager	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.
Port Security Plan	means the port security plan prepared by Port of Melbourne in accordance with the MTOFSA and as amended from time to time.
Reference Tariff Schedule	means the Port of Melbourne Reference Tariff Schedule, as amended from time to time and published on Port of Melbourne website's, which sets out details of pricing for port charges including wharfage, tonnage, berth hire, security, area hire, tanker inspection and water supply to ships.
Restricted Access Area	means 'restricted access area' as defined by section 3 of the PMA.
Restricted Area	means: <ul style="list-style-type: none"> (a) an area declared to be a Landside Restricted Zone; or (b) an area declared to be a Waterside Restricted Zone; or (c) a Restricted Access Area.
Shipping Agent	means the shipping agent (if any) set out in the Application Form, who is authorised by the Owner to manage the Vessel on behalf of the Owner.
Tanker Facilities Operations Manual	means the manual setting out procedures for operations at Bulk Liquid Facilities, which is available from Port of Melbourne upon request by the Owner or the Shipping Agent.
Time Charter	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.
Vessel	means any vessel: <ul style="list-style-type: none"> (a) in relation to which the Owner holds a legal or equitable interest; or (b) which is subject to charter by the Owner (including by way of Demise Charter or Time Charter), and which calls at or enters Port of Melbourne Waters.
VPCM	means Victorian Ports Corporation (Melbourne).

VPCM Guidelines

means:

- (a) VPCM's port rules;
 - (b) VPCM's guidelines and requirements for hazardous port activities; and
 - (c) other rules and guidelines,
- published on VPCM's website as amended from time to time.

Waterside Restricted Zone

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.

Wharfage Fee

means 'wharfage fee' as defined by section 3 of the PMA.

Schedule 3 - Dedicated Facilities

ABBV.	WHARF
APPB	B Appleton Dock
APPC	C Appleton Dock
APPD	D Appleton Dock
APPE	E Appleton Dock
GELI	Gellibrand Pier
SDIE	Swanson Dock 1 East
SD2E	Swanson Dock 2 East
SD3E	Swanson Dock 3 East
SD4E	Swanson Dock 4 East
SD1W	Swanson Dock 1 West
SD2W	Swanson Dock 2 West
SD3W	Swanson Dock 3 West
SD4W	Swanson Dock 4 West
SW26	26 South Wharf
SW27	27 South Wharf
VD24	24 Victoria Dock
WD1E	Webb Dock 1 East
WD2E	Webb Dock 2 East
WD4E	Webb Dock 4 East
WD5E	Webb Dock 5 East
WD1W	Webb Dock 1 West
WD2W	Webb Dock 2 West
WD3W	Webb Dock 3 West
YVL5	5 Yarraville