



Access Authority

Date: (PoM Legal Services to date)

Parties

Name	Port of Melbourne Operations Pty Ltd as trustee for the Port of Melbourne Unit Trust
ACN	610 925 178
ABN	83 751 315 034
Short form name	PoM
Notice details	Level 4, 530 Collins Street, Melbourne, Victoria 3000 Fax: (03) 9683 1570 Attention: [Insert name]

Company Name	[Insert Name]
ACN	[Insert ACN]
ABN	[Insert ABN]
Short form name	Licensee
Notice details	[Insert Notice details] Fax: [Insert Fax No] Attention: [Insert name of person to whom notices should be addressed]

Recitals

- A. By virtue of the Order given under section 29 of the *Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016* (Vic) the land to which this Access Authority relates vested in Melbourne Port Lessor Pty Ltd ACN 610 924 626 as at 1 July 2016.
- B. Melbourne Port Lessor Pty Ltd ACN 610 924 626 has granted Lonsdale Asset Property Pty Limited ACN 614 295 582 as trustee for the Lonsdale Asset Property Trust a concurrent lease of the land to which the Access Authority relates.
- C. Lonsdale Asset Property Pty Limited ACN 614 295 582 as trustee for the Lonsdale Asset Property Trust has granted the PoM a concurrent sublease of the land to which the Access Authority relates.



Definitions

The meanings of the terms used in this document are set out below.

Access Area means [Insert description of area] shown for indicative purposes on the plan attached to this agreement;

Access Fee means \$[Insert access fee] (excluding GST) [*if fee is nominal include, 'if demanded'*];

Access Period means the period commencing at [Insert time] on [Insert date] and expiring at [Insert time] on [Insert date];

OH&S Laws means all laws and requirements concerning the health, safety and welfare of people at work, including but not limited to the *Occupational Health and Safety Act 2004* (Vic) and all regulations made thereunder and the *Dangerous Goods Act 1985* (Vic) and all regulations made thereunder;

OH&S Regulations means the Occupational Health and Safety Regulations 2017 (Vic) or any replacement regulations from time to time;

Permitted Activity means use of the Access Area for:

- (a) [Insert description of permitted activity].

Terms and Conditions

1. PoM grants a non-exclusive licence to the Licensee during the Access Period for the Licensee to perform the Permitted Activity at the Access Area on the terms and conditions set out in this document.
2. The Licensee will pay the Access Fee to PoM within 14 days of receiving a tax invoice for the Access Fee from PoM.
3. In addition to the Access Fee, the Licensee must also pay to PoM (at the same time and in the same manner) an amount equal to the GST payable in respect of the Access Fee (being the Access Fee multiplied by the rate of GST prevailing at the time).
4. Prior to the Access Period, the Licensee must submit to PoM in a form required by PoM a copy of the following documents:
 - (a) the Licensee's occupational health and safety plans and policies (if any);
 - (b) a hazard risk assessment/job safety analysis/work method statement for the Permitted Activity;
 - (c) a site-specific environmental management plan (**SSEMP**) that details, as a minimum, how all potential contamination issues will be addressed and managed to ensure that the site is reinstated to the condition of the site prior to the Access Period;
 - (d) a traffic management plan for the management of traffic on the roadways affected by the Permitted Activity; and
 - (e) any other document requested by PoM.



5. PoM may, from time to time, comment on the SSEMP submitted by the Licensee under clause 4(c). If PoM comments on the SSEMP, the Licensee must amend the plan to incorporate PoM's comments. The Licensee must comply with the SSEMP as amended under this clause 5 from time to time.
6. The Licensee enters into and uses the Access Area wholly at its own risk.
7. The Licensee must comply with all relevant laws and regulations and the requirements of all authorities (including, without limitation, OH&S Laws and all OH&S Regulations) in accessing the Access Area and in carrying out the Permitted Activity.
8. The Licensee must:
 - (a) keep the Access Area and adjoining areas clean and tidy; and
 - (b) remove any rubbish or waste from the Access Area and adjoining areas.
9. The Licensee must comply with any direction given by PoM to the Licensee relating to accessing the Access Area and/or undertaking the Permitted Activity.
10. Without limiting clause 9, the Licensee agrees to abide by all safety, security, navigational and other measures, instructions, directions and protocols issued to it by PoM prior to and during the Access Period.
11. If any event of emergency or threat to security or safety occurs during the Access Period, which in the opinion of PoM affects or may affect the safety of the Access Area, PoM may prevent access to the Access Area for as long as deemed necessary in PoM's sole discretion.
12. The Licensee must immediately notify PoM as soon as the Licensee is aware of:
 - (a) damage to or defects in the Access Area, PoM's equipment or services;
 - (b) any circumstances likely to cause a danger to the Access Area or any person in or near them; or
 - (c) any serious injury or death of any person.
13. The Licensee acknowledges and agrees that:
 - (a) the Access Area may be used by PoM or any other person authorised by PoM from time to time during the Access Period;
 - (b) the Licensee will not interfere with, obstruct or hinder the operations or business conducted on the Access Area by PoM or any other person authorised by PoM from time to time; and
 - (c) the Licensee will not interfere with any property or assets belonging to PoM or any other person stored or located in, on or around the Access Area.
14. The Licensee must:
 - (a) not cause, contribute to or exacerbate any contamination or pollution relating to the Access Area;
 - (b) comply with all laws relating to contamination, pollution and/or the environment; and
 - (c) abide by EPA "Bunding Guidelines" publication No.347 for the storage of fuels.



15. The Licensee must ensure that its contractors, employees and agents comply with the terms of this agreement. A breach of a term of this agreement by the Licensee's contractors, employees or agents is deemed to be a breach by the Licensee as if the act or omission was that of the Licensee.
16. The Licensee acknowledges that PoM makes no warranty as to the suitability of the Access Area or any property located on the Access Area for the Permitted Activity.
17. The Licensee:
 - (a) is liable for; and
 - (b) irrevocably and unconditionally indemnifies PoM against,
all liability, loss, penalties, payments, costs, charges and expenses directly or indirectly arising from or incurred (whether before or after this agreement expires or is terminated) in connection with this agreement, accessing the Access Area and/or carrying out the Permitted Activity including without limitation:
 - (c) damage to or loss of any property or injury to or the death of any person:
 - (i) caused or contributed to by the act, omission, negligence or default of the Licensee or the Licensee's subcontractors, employees and agents; or
 - (ii) occurring on or caused or contributed to by anything occurring on the Access Area except to the extent it is caused or contributed to by the negligence of PoM provided that if Part IVAA of the *Wrongs Act 1958 (Vic)* applies, the Licensee's liability to PoM under this clause will be the same as that prescribed by or determined in accordance with Part IVAA of the *Wrongs Act 1958 (Vic)*;
 - (d) PoM doing anything which the Licensee must do under this agreement but which the Licensee has not done or which PoM considers the Licensee has not done properly;
 - (e) PoM doing anything PoM is required or permitted to do under this agreement except to the extent it is caused or contributed to by the negligence of PoM;
 - (f) the Licensee's default under this agreement;
 - (g) for any claims made against PoM by the Victorian WorkCover Authority under section 138 of the *Accident Compensation Act 1985 (Vic)* in respect of any injury or death associated with the Permitted Activity during the Access Period;
 - (h) the termination of this agreement because the Licensee is in default under this agreement (including without limitation PoM's loss of the benefit of the Licensee complying with its obligations under this agreement from the date PoM terminates this agreement until the expiration of the Access Period).

The costs, charges and expenses referred to in this clause 17 include legal costs, charges and expenses on a full indemnity basis whether incurred by or awarded against PoM.

This indemnity is independent from the Licensee's other obligations under this agreement and does not come to an end when this agreement expires or is terminated. It is not necessary for PoM to incur expense or make a payment before enforcing this indemnity



18. Trustee Capacity

- (a) For the purposes of this clause 18:
 - (i) Trust means the Port of Melbourne Unit Trust ABN 83 751 315 034; and
 - (ii) Trustee means Port of Melbourne Operations Pty Limited ACN 610 925 178.
- (b) The Trustee enters into this Contract solely in its capacity as trustee of the Trust and in no other capacity.
- (c) A liability arising under or in connection with this Contract can be enforced against the Trustee only to the extent to which it can be satisfied out of the property of the Trust out of which the Trustee is actually indemnified for the liability.
- (d) The limitation of the Trustee's liability contained in this clause applies notwithstanding any other provisions of this Contract and extends to all liabilities and obligations of the Trustee in connection with this Contract.
- (e) The other parties to this Contract may not sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment to the Trustee of a receiver (except in relation to the property of the Trust), a liquidator, administrator or any other similar person.
- (f) The provisions of this clause will not apply to any liability or obligation of the Trustee to the extent there is a reduction in the extent of its indemnification out of the Trust as a result of the Trustee's fraud, negligence, breach of trust or to the extent that the Trustee fails to exercise any right of indemnity it has out of the assets of the Trust in relation to the relevant liability.

19. The Licensee releases PoM from and agrees that PoM is not liable for liability, loss, penalties, payments, costs, charges and expenses directly or indirectly arising from or incurred in connection with this agreement, accessing the Access Area and/or carrying out the Permitted Activity including without limitation:

- (a) damage to or loss of any property or injury to or the death of any person (except to the extent it is caused or contributed to by the negligence of PoM);
- (b) PoM doing anything PoM is required or permitted to do under this agreement except to the extent it is caused or contributed to by the negligence of PoM; and
- (c) a service or any part of PoM's equipment not being available or not working properly.

This clause 19 does not lapse on the expiration of the Access Period or sooner termination of this agreement.

20. The Licensee acknowledges and agrees that if the Permitted Activity includes construction works to which Part 5.1, Subdivision 2 of the OH&S Regulations applies, the following provisions apply:

- (a) for the purposes of the OH&S Regulations it is deemed to be the Principal Contractor in relation to the Permitted Activity at the Access Area during the Access Period, and the Licensee further agrees to be responsible for and to fulfil the functions of the Principal Contractor as set out in Part 5.1 of the OH&S Regulations; and



- (b) it will not be entitled to make any claim for additional payment to PoM, and that PoM will not be obliged to make any additional payment to the Licensee on account of the Licensee being responsible for and fulfilling the functions of a Principal Contractor.
21. The Licensee is responsible for procuring and paying for appropriate insurance during the Access Period. On request by PoM, the Licensee will provide PoM with proof of appropriate insurances including but not limited to:
- (a) WorkCover insurance under the *Accident Compensation Act 1985 (Vic)*;
 - (b) public liability insurance to a minimum amount of \$[20] million per occurrence;
 - (c) professional indemnity insurance (if relevant); and
 - (d) all other insurances required by PoM and/or law.
- The Licensee must not do anything which may prejudice an insurance policy effected by the Licensee or PoM.
22. On or before the expiry of the Access Period, the Licensee must:
- (a) reinstate the Access Area to a clean and neat state having regard to the condition of the Access Area prior to the Access Period;
 - (b) remove all equipment and goods brought onto the Access Area by the Licensee;
 - (c) remove all hazardous materials and pollutants brought on, affected or disturbed by the Licensee; and
 - (d) make good any damage caused by the Licensee its subcontractors, employees and agents in accessing the Access Area and carrying out the Permitted Activity to the satisfaction of PoM.
23. The Licensee acknowledges that the condition of the Access Area prior to the Access Period may be evidenced by a photographic condition report prepared by PoM shortly prior to the commencement of the Access Period.
24. The Licensee acknowledges that if further access is required after the Access Period, the Licensee will be required to submit to PoM a new request for access. PoM will consider such application at the relevant time. PoM makes no representation or warranty as to whether:
- (a) a further access authority will be granted by PoM to the Licensee; or
 - (b) the Licensee will be granted access to the Access Area after the Access Period expires.
25. The Licensee must not transfer or otherwise deal with its interest in this agreement.
26. PoM may terminate this agreement with immediate effect if the Licensee defaults in any of its obligations and undertakings under this agreement.
27. This agreement is governed by the laws of the State of Victoria, Australia.



EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of the **PORT OF MELBOURNE OPERATIONS PTY LTD ACN 610 925 178** as trustee for the **PORT OF MELBOURNE UNIT TRUST ABN 83 751 315 034** by:

Signature of Authorised Officer ←

Name of Authorised Officer

Title

Dated: / /

EXECUTED by [INSERT NAME AND ACN or ABN] in accordance with section 127(1) of the *Corporations Act 2001* (Cth)

Signature of Director ←

Name of Director

Dated: / /

Signature of Director/Company Secretary ←

Name of Director/Company Secretary



ATTACHMENT – PLAN OF ACCESS AREA

FORM ISSUED BY POM AFTER RECEIPT
OF COMPLETED APPLICATION FORM