

# Access and Hire Ports Victoria Facilities (Geelong and Hastings)

## Applicable sets of terms which, together with this Agreement, form part of the Contract

With reference to the Portview Terms and Conditions and clause 2.1 of this Agreement, the Contract is made up of the separate sets of terms depending on the Vessel's transit through the applicable Port Waters and the destination and is used here as an illustrative table and guide and not as an Agreement Term.

Contract made up of the following Terms and Conditions:	Transit Through Port Waters of:			
	Melbourne	Geelong	Hastings	
	Destination			
	Port of Melbourne	Station Pier / Anchorage	All	All
Application	✓	✓	✓	✓
Portview Terms and Conditions	✓	✓	✓	✓
NaP Services Terms	✓	✓	✓	✓
PoMO Terms - Channel Access	✓	✓	✓*	
(as applicable):				
PoMO Terms - Berthing at Common User Wharves	✓			
PoMO Terms - Hirers access to Common User Terminals	✓			
PoMO Terms - Berthing at Melbourne Dedicated Facilities	✓			
(as applicable)				
Access and Hire of Ports Victoria's Facilities (Geelong and Hastings) Terms			✓	✓
Hire of Ports Victoria's Facilities (Melbourne)		✓		

\* shared

For the purpose of the above illustrative table:

**Application** is defined at clause 2.1 of the Standard Terms and Conditions below.

**Port View Terms and Conditions** is defined at clause 2.1 of the Standard Terms and Conditions below and found [here](#).

**NaP Services Terms** is defined at clause 2.1 of the Standard Terms and Conditions below.

**PoMO Terms – Channel Access** means the Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Channel Access found [here](#).

**PoMO Terms – Berthing at Common User Wharves** means the Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Berth Hire at Common User Wharves found [here](#)

**PoMO Terms – Hirers access to common user terminals** means Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Hirer's Access to Common User Terminals found [here](#)

**PoMO Terms - Berthing at Melbourne Dedicated Facilities** means Port of Melbourne Operations Pty Ltd Standard Terms and Conditions for Owners Berthing at Dedicated Facilities found [here](#).

**Access and Hire of Ports Victoria's Facilities (Geelong and Hastings) Terms** means Ports Victoria's Standard Terms and Conditions for Access and Hire of Ports Victoria's Facilities (Geelong and Hastings) set out below.

**Hire of Ports Victoria's Facilities (Melbourne) Terms** means Ports Victoria's Standard Terms and Conditions for the hire of Ports Victoria Common User berth and Terminal Hire (Ports Victoria's Facilities (Melbourne)) found [here](#).

## Standard Terms and Conditions

### 1. Application

#### 1.1. Application of these Standard Terms and Conditions

- 1.1.1. These Standard Terms and Conditions form part of the Agreement and accordingly the Contract between Ports Victoria, on the one part; and the Applicant, on the other part.
- 1.1.2. The Agreement is established when the Applicant submits an Application with a Destination of Regional Waters.

### 2. Defined Terms and Interpretation

#### 2.1. Definitions

The following terms used in these Standard Terms and Conditions are defined as follows:

**Access Period** means the period commencing from the earliest time at which the Vessel enters the Regional Waters to which the Application refers and expires when the Vessel departs the relevant Regional Waters.

**Agreement** means the agreement constituted by the Application and these Standard Terms and Conditions.

**Applicant** means the user of PortVIEW submitting the Application, being limited to the Owner or Shipping Agent for the Vessel to which the Application relates or affects and includes.

**Application** means the submission of an application to access Ports Victoria's Facilities via PortVIEW.

**Booking Confirmation** means confirmation in writing from Ports Victoria to the Applicant that the Application has been approved and a booking has been made by Ports Victoria.

**Certificate of Registry** means the certificate issued pursuant to the national law of the Vessel's 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.

**Channel** means 'channel' as defined by section 3 of the PMA and for the purpose of this agreement includes the Regional Channels.

**Channel Fee** means 'channel fee' as defined in section 3 of the PMA.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, Ports Victoria, including any information designated by Ports Victoria as confidential, which is disclosed, made available, communicated or delivered to Applicant, 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 Applicant can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the Applicant can demonstrate was independently developed by the Applicant; or
- (d) which is lawfully obtained by the Applicant from another person entitled to disclose such information.

**Consequential Loss** means any indirect or consequential loss, including without limitation loss of profits, loss of opportunity, loss of productivity, business interruption and any other indirect loss or damage.

**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.

**Contract** has the meaning given to it in the Portview Terms and Conditions.

**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.

**Designated Anchorage** means the anchorage designated in the document titled 'Harbour Master's Directions' as amended from time to time and published on Port Victoria's website.

**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 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.

**Environmental Laws** means any Legislative Requirement relating to the Environment including any law relating to:

- (a) land use and planning, including but not limited to the *Planning and Environment Act 1987 (Vic)*;
- (b) pollution of air, water, soil or groundwater, including but not limited to the *Environment Protection Act 2017 (Vic)*;
- (c) chemicals, waste, and the transport, storage or handling of dangerous goods, including but not limited to the *Dangerous Goods Act 1985 (Vic)* and *Industrial Chemicals Act 2019 (Cth)*;
- (d) the health or safety of any person, including but not limited to the *Occupational Health and Safety Act 2004 (Vic)* and other OH&S Laws; and
- (e) any other matters relating to but not limited to the protection of the Environment, health or property.

**Financial Security** means a parental guarantee, a pre-payment of money to Ports Victoria, a letter of undertaking or other financial arrangement as requested of the Applicant by Ports Victoria.

**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 a 'harbour master' as defined by section 3 of the MSA.

**Legislative Requirements** means:

- (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 Port Facilities, the Common User Wharves or Common User Terminals;
- (d) directions of the Harbour Master;
- (e) directions of the Port Authorised Officer;
- (f) requirements of the Port Rules;

- (g) directions of any statutory bodies or authorities with relevant jurisdiction; and
- (h) the Ports Victoria Guidelines.

**Loss** means any and all liability, loss, damage, penalties, payments, costs (including the cost of any settlement and legal costs and expenses on a solicitor- client basis), charges and expenses.

**MSA** means the *Marine Safety Act 2010* (VIC)

**NaP Services** has the meaning given to it in the RTS and expressly do not relate to any services or access for which Port Charges are payable under this Agreement.

**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 2007* (Vic);
- (c) *Dangerous Goods Act 2000* (Vic);
- (d) *Dangerous Goods Regulations 2000* (Vic); and
- (e) any other Laws concerning occupational health and safety in connection with the Common User Wharves and Common User Terminals.

**Owner** means the party or parties identified as the Applicant in the Application who is

- (i) the 'owner of a vessel' as defined by section 4 of the PMA; and includes
- (ii) any charterer (including but not limited to by way of Demise Charter or Time Charter) or operator of a vessel that enters Regional Waters.

A reference to the Owner is a reference to each of the entities comprising the Owner jointly and severally.

**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;
- (b) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo;
- (c) provedoring and bunkering;
- (d) ship repair and maintenance;
- (e) crew change;
- (f) occupation and use of the Designated Anchorage in Regional Waters for the anchoring of a vessel, marine structure or marine installation

as notified by Ports Victoria to the Applicant in the Booking Confirmation.

**Personnel** means any agent, representative, officer, employee, contractor or subcontractor and all crew and personnel engaged by the Applicant in relation to a Vessel

**PMA** means the *Port Management Act 1995* (Vic) as amended from time to time.

**Pollution Incident** means the occurrence of pollution within the meaning of *Environment Protection Act 2017* (Vic).

**PortVIEW** means the online management system for ship berth bookings within Port Waters which is located at <https://www.portview.com.au/PortView/start/index.php>.

**PortVIEW Terms and Conditions** means the terms and conditions that apply to the access and use of PortVIEW.

**Port Authorised Officer** means an authorised officer as defined in Part 5C of the PMA.

**Port Charges** means any fees or charges published on the Reference Tariff Schedule and or provided for in this Agreement in respect of the activities under in this Agreement and expressly do not include NaP Services fees

**Ports Victoria's Facilities** means the Regional Channels, Regional Anchorages, and all other facilities owned, managed or controlled by Ports Victoria within Port Waters,

**Port of Geelong** means the 'port of Geelong' as defined by section 3 of the PMA.

**Port of Hastings** means the 'port of Hastings' as defined by section 3 of the PMA.

**Port Rules** means the port rules of Ports Victoria published on Ports Victoria's Website, as amended from time to time.

**Ports Victoria or PV** means Ports Victoria ABN 51 347 220 146

**Ports Victoria Guidelines** means:

- (a) Bunker and (non-cargo) Liquid Transfer Management Guidelines (incorporating ship/road vehicle liquid transfers);
- (c) other guidelines as listed on Ports Victoria's website as amended from time to time,

**Ports Victoria's Website** means [www.ports.vic.gov.au](http://www.ports.vic.gov.au).

**Port Waters** means the Regional Waters and where the context permits, the port of Melbourne waters as that term is defined in section 3 of the PMA.

**Reference Tariff Schedule or RTS** means the current Ports Victoria Reference Tariff Schedule, as amended from time to time and published on the Ports Victoria Website.

**Regional Anchorages** means anchorages within Regional Waters designated in the document titled Harbour Masters Directions as amended from time to time and published on Ports Victoria's Website.

**Regional Channels** means the Channels in Regional Waters.

**Regional Ports** means Port of Geelong and Port of Hastings or each separately as the context permits.

**Regional Waters** are the port waters declared under section 3 of the PMA as port waters of the port of Geelong and the port of Hastings and includes the Regional Channels, Regional Anchorages and Port Victoria's Facilities.

**Shipping Agent** means the shipping agent (if any) set out in the Application, who is authorised by the Owner to manage the Vessel on behalf of the Owner.

**Standard Terms and Conditions** means the terms and conditions as set out in this document.

**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:

- (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.

**Vessel Traffic Services or VTS** means the VTS Authority with responsibility for the Port safety infrastructure as defined under the MSA.

## 2.2. Interpretation

In this Agreement:

- (a) headings and subheadings are for convenience only and do not affect interpretation;
- (b) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) a reference to a party, clause or Schedule is a reference to a party, clause or Schedule, of or to this Agreement
- (d) a reference to any document, deed, agreement or instrument means a reference to such document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of a permitted novation and, in the case of a trustee, includes a substituted or additional trustee;
- (f) a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the legislation or delegated legislation; and
  - (ii) consolidations, amendments, re-enactments and replacements;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) 'include', 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (j) the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) a reference to '\$', AUD or dollar is to Australian currency;
- (l) a reference to time is a reference to time in Melbourne, Victoria, Australia;
- (m) unless PV is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, PV can exercise any power, right or remedy in its absolute and unfettered discretion and PV has no obligation to do so;
- (n) without limiting clause 2.2(m), unless Ports Victoria is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by Ports Victoria, means that Ports Victoria can exercise that power, right or remedy in its absolute and unfettered discretion and Ports Victoria has no obligation to do so;
- (o) where there is a reference to an authority, institute or association referred to in this Agreement which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
  - (ii) ceases to exist, this Agreement deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity; and
- (p) each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision.

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

- (a) Any obligation imposed on the Applicant contained in this Agreement must be construed:
  - (i) as imposing joint and several liability upon the Owner and the Shipping Agent (if the Applicant is the Shipping Agent);

- (ii) **is** acknowledged as a reference to the Owner where the context is and Environmental Hazard, Pollution Incident or other obligation caused by act or omission of the Vessel.
- (b) Where the context permits, any reference to and obligation on the Applicant includes its Personnel, and the Applicant is liable for the acts and omissions of its Personnel as if such acts or omissions were its own.

### 3. Applicant

#### 3.1. Obligations

- 3.1.1. Where the Applicant is identified in the Application as the Owner, the Applicants represents and warrants that:
  - (a) it agrees that, where it has also engaged a Shipping Agent, it 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.
  - (b) It acknowledges and agrees that it is responsible for the acts and omissions of it and its Personnel, including the Shipping Agent and the Shipping Agent's Personnel.
- 3.1.2. Where the Applicant is identified in the Application as the Shipping Agent, the Applicants represents and warrants that:
  - (a) it is the shipping agent on behalf of the Owner and is fully and legally authorised to act on behalf of the Owner and to bind the Owner to these Standard Terms and Conditions.
  - (b) It will advise the Owner of all Port Charges and rules of entry;
  - (c) where the Owner has not already done so, collect from the Owner and pay to Ports Victoria all relevant fees which are due and payable arising from or in connection with this Agreement including disbursements, fees, and other charges;
  - (d) inform the Owner of any directions from the Harbour Master.
- 3.1.3. The Applicant must perform all the obligations of the Owner in this Agreement.
- 3.1.4. The obligations of the Applicant pursuant to this Agreement survive the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent.
- 3.1.5. As soon as practicable after the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent, the Applicant must notify Ports Victoria of that termination and the name of any replacement Shipping Agent appointed or to be appointed. The Owner may request to novate the Application to a replacement shipping agent, In such circumstances, the Applicant must cooperate with Ports Victoria in respect of any existing booking in place and procure that the new Shipping Agent promptly accepts the terms of this Agreement.
- 3.1.6. Despite clause 3.1.5, the Applicant is not release from the terms of this Agreement on any novation.
- 3.1.7. The Applicant must:
  - (a) at the time of submitting an Application, provide a copy to Ports Victoria:
    - (i) proof to Ports Victoria's satisfaction, of current P&I Club and H&M Cover for each Vessel;
    - (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 Waters; and
    - (iii) any other documents reasonably requested by Ports Victoria.
  - (b) provide to PV any Financial Security or documents reasonably required or requested by PV.
  - (c) ensure that it and its Personnel understand and comply with any security requirements of the Ports Victoria's Facilities.
  - (d) ensure that it and its Personnel comply with the Applicant's obligations under this Agreement.



- (e) co-operate with Ports Victoria and all other users of Ports Victoria's Facilities to ensure compliance with all Legislative Requirements.
- 3.1.8. The Applicant acknowledges that Ports Victoria's approval of an Application and Booking Confirmation does not guarantee that Ports Victoria's Facilities will be available to be accessed or used by the Vessel on the date nominated in that Application.

## 4. Grant of Use of Ports Victoria's Facilities

### 4.1. Grant of Permitted Uses

- 4.1.1. The Applicant is permitted to use such part or area of Ports Victoria's Facilities as directed by Ports Victoria for a Permitted Use for the duration of the Access Period, unless otherwise directed by Ports Victoria.
- 4.1.2. The Vessel shall be permitted to access Ports Victoria's Facilities and the Applicant shall be granted access to use Ports Victoria's Facilities on the dates and times determined by Ports Victoria in its discretion in accordance with the dictates of port operations and usage and as notified to the Applicant.

### 4.2. Acknowledgement by Applicant

- 4.2.1. The Applicant acknowledges and agrees that
  - (a) all references to use and access to Ports Victoria's Facilities throughout this Agreement is a reference to such part or area directed by Ports Victoria only.
  - (b) access to and use of Ports Victoria's Facilities is subject to and in accordance with the Standard Terms and Conditions.
  - (c) Ports Victoria's Facilities must not be used for any purpose other than a Permitted Use.
  - (d) Its right to use Ports Victoria's Facilities for a Permitted Use is subject to:
    - (i) a Booking Confirmation; and
    - (ii) any directions given by Ports Victoria either at the time of the Booking Confirmation or at any time prior to berthing of the Vessel regarding the specific Ports Victoria's Facilities to which the Vessel will be granted access.
    - (iii) the Applicant submitting a valid Application via PortVIEW;
    - (iv) payment of the Port Charges;
- 4.2.2. For the avoidance of doubt, the Applicant will be directed by Ports Victoria to use only part of the area of Ports Victoria's Facilities and Applicant must strictly comply with such directions and must not access any other part or area except with Ports Victoria's prior written consent.
- 4.2.3. The Applicant acknowledges and agree that:
  - (a) Ports Victoria has made no representation and gives no warranty concerning the adequacy or suitability of Ports Victoria's Facilities for the Vessel or the use intended by the Applicant;
  - (b) It has not entered into this Agreement in reliance on any representation expressly or impliedly given by Ports Victoria;
  - (c) It has made its own enquiries to satisfy itself as to the truth and accuracy of any written or oral information provided by Ports Victoria and have therefore not relied on such information; and
  - (d) It has made its own enquiries and is fully acquainted with its obligations under this Agreement, including all information available by making reasonable enquiries which are relevant to the risks and other circumstances which could affect the Permitted Use.
  - (e) its rights under this Agreement rest in contract only and this Agreement does not create or confer on the Applicant any tenancy, estate or other interest in Ports Victoria's Facilities.



- (f) It has no right of exclusive occupation or use of Ports Victoria's Facilities during the Access Period and Ports Victoria may at any time exercise all of its rights as owner or manager to, without limiting the generality of this clause, enter, use, possess and enjoy the whole or any part of Ports Victoria's Facilities.
- (g) Where access to a designated Regional Anchorage is authorised by Ports Victoria for the duration of the Access Period, use of that particular Regional Anchorage may be exclusive (as directed by Ports Victoria or the Harbour Master), but is not guaranteed and is subject to clause 4.2.1(d)(ii), and clause 6.
- (h) Ports Victoria's Facilities available for access by the Applicant may change from time to time in Ports Victoria's complete discretion, including as a consequence of a direction given by the Harbour Master.
- (i) If there is a change to access arrangements or the status of Ports Victoria Facilities, Ports Victoria will give notice of such change to the Applicant (as applicable) as soon as reasonably practicable (which for the avoidance of doubt may be any time prior to the use of Ports Victoria's Facilities by the Vessel) and is subject always to clause 4.2.1(d)(ii), and clause 6.
- (j) The rights of the Vessel to occupy, use or access Ports Victoria's Facilities for a Permitted Use are subject to the directions of the Harbour Master, the Port Authorised Officer and VTS, which directions may include Ports Victoria's Facilities to which access is permitted, the method of control and the dates and time of control. The Harbour Master's directions will take priority over any direction given by the Port Authorised Officer or VTS.

## 5. Term of Agreement

### 5.1. Term

- 5.1.1. This Agreement commences when the Applicants submits an Application to Ports Victoria in relation to the Vessel.
- 5.1.2. This Agreement expires at the earliest of:
  - (a) the conclusion of the Access Period.
  - (b) termination or withdrawal of permission to access Ports Victoria's Facilities as set out in this Agreement.
- 5.1.3. Despite the commencement of this Agreement on the date that the Application is submitted, Ports Victoria is not bound to grant access to a part or area of Ports Victoria's Facilities to the Applicant unless and until a Booking Confirmation is issued by Ports Victoria, with all Booking Confirmations being subject to the terms of the Agreement.
- 5.1.4. In the event that a Booking Confirmation is not provided by Ports Victoria or is cancelled by Ports Victoria, or if permission is withdrawn for the Vessel in accordance with clause 6 or this Agreement is termination, then the end date is date that Ports Victoria confirms that:
  - (a) the Booking Confirmation will not be issued;
  - (b) that the Booking Confirmation is cancelled;
  - (c) that access has been withdrawn in accordance with clause 6; or
  - (d) the Agreement is terminated in accordance with its rights under this Agreement.

## 6. Withdrawal of access

### 6.1. Withdrawal before commencement of Access Period

- 6.1.1. Ports Victoria, acting reasonably, reserves the right to refuse or to withdraw permission for a Vessel to access or use Ports Victoria's Facilities (or any part of Ports Victoria's Facilities) when:
  - (a) Ports Victoria's Facilities or any part of Ports Victoria's Facilities are unsuitable for use;

- (b) a direction is given by the Harbour Master.

## **6.2. Approved immobilisation**

In the event that a Vessel is temporarily immobilised within Ports Victoria's Facilities with prior approval of Ports Victoria, Ports Victoria shall provide the Applicant with reasonable notice of its requirement that the Vessel vacate Ports Victoria Facilities.

## **6.3. No compensation**

- 6.3.1. If Ports Victoria withdraws permission for use of or access to Ports Victoria Facilities, Ports Victoria shall refund to the Applicant any monies paid in advance or Financial Security provided by the Applicant in respect of applicable Port Charges for any proposed Access Period that does not proceed, or for the use of Ports Victoria's Facilities for which permission for access or use is withdrawn prior to the Access Period.
- 6.3.2. The Applicant acknowledge and agree that Ports Victoria is not obliged to pay, and the Applicant is not entitled to any other remedy, compensation or damages for any such withdrawal of permission or decision not to issue a Booking Confirmation.

# **7. Port Charges and Interest**

## **7.1. Port Charges and Interest**

- 7.1.1. The Applicant agrees that it is liable to pay to Ports Victoria the Port Charges in accordance with the terms of this Agreement.
- 7.1.2. Ports Victoria may, in its discretion, recover the Port Charges, if applicable, as fees recoverable under Part 5 of the PMA.
- 7.1.3. The Applicant agrees to pay Ports Victoria all other Port Charges concerning the use by the Vessel of Ports Victoria's Facilities in accordance with the Reference Tariff Schedule.
- 7.1.4. The Port Charges shall be due for payment within thirty (30) days of the date of the relevant invoice issued by Ports Victoria.
- 7.1.5. If Ports Victoria 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 Applicant shall be liable to reimburse Ports Victoria such costs and those costs shall be recoverable by Ports Victoria as a debt due and payable by the Applicant within thirty (30) days of the date of the relevant invoice issued by Ports Victoria.
- 7.1.6. If the Applicant does not pay the relevant Port Charges in accordance with this Agreement, the Applicant will be liable to Ports Victoria for interest on the unpaid Port Charges at the interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983* (Vic).

# **8. Acknowledgment and Indemnity**

## **8.1. General indemnity and liability**

- 8.1.1. The Applicant indemnifies and keeps indemnified Ports Victoria against:
- (a) Loss of or damage to the property of Ports Victoria;
  - (b) claims by any person against Ports Victoria in respect of personal injury or death or loss of or damage to any property;
  - (c) Loss arising from the carriage of Cargo or Passengers from the Vessel;
  - (d) subject to clause 8.1.3, Loss (excluding Consequential Loss) incurred by Ports Victoria due to disturbance to or interference with Ports Victoria's use of Ports Victoria's Facilities or the carrying on of its business within Ports Victoria's Facilities,

arising out of or as a consequence of the access, occupation or use of Ports Victoria's Facilities by the Applicant.

- 8.1.2. The Applicant's liability to indemnify Ports Victoria shall be reduced proportionately to the extent that a negligent act or negligent omission of Ports Victoria contributed to the Loss, damage, death or injury.
- 8.1.3. The Applicant indemnifies Ports Victoria for direct and Consequential Loss incurred by Ports Victoria arising from any Pollution Incident, Environmental Hazard or Contamination caused by the Applicant in relation to a Vessel without prejudice to any defences, exclusions from liability and rights of limitation provided by law.
- 8.1.4. The Applicant is liable for any and all Loss or damage to Ports Victoria's Facilities, arising from or related to the use of Ports Victoria's Facilities by the Applicant in relation to a Vessel (whether during the Access Period or otherwise).

## **8.2. Damage to Ports Victoria Property**

- 8.2.1. The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of Ports Victoria, arises from or is related to the use of Ports Victoria's Facilities by the Vessel shall be borne by the Applicant or, if such costs are incurred by Ports Victoria, the Applicant is liable to reimburse Ports Victoria such costs which shall be recoverable by Ports Victoria as a debt due and payable by the Applicant.
- 8.2.2. The Applicant must pay to Ports Victoria the reasonable cost of any repairs referred to in Clause 8.2.1 carried out by or on behalf of Ports Victoria not later than 30 days after written demand is made by Ports Victoria for such payment.

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

## **9.1. Legislative Requirements**

- 9.1.1. The Applicant must comply with all Legislative Requirements.

## **9.2. Compliance with directions**

- 9.2.1. The Applicant must strictly comply with any:
  - (a) direction of the Harbour Master in connection with access to or use of Ports Victoria's Facilities;
  - (b) direction of Ports Victoria in connection with access to or use of Ports Victoria's Facilities; and
  - (c) direction by any officer authorised by statute to give directions including pursuant to the MSA.
- 9.2.2. If the Applicant does not comply with a direction issued or given under clause 9.2.1(a), Ports Victoria may, at its absolute discretion:
  - (a) without further notice take whatever steps it considers necessary to ensure compliance by the Applicant. Any costs incurred in connection with this clause are recoverable by Ports Victoria as a debt due and payable by the Applicant;
  - (b) by written notice to the Applicant, immediately terminate this Agreement or require the Applicant to show cause why this Agreement should not be terminated.
- 9.2.3. the Applicant will not be entitled to make (and Ports Victoria will not be liable for) any Claim against Ports Victoria arising out of or in connection with any requirements or directions of the Harbour Master or otherwise in relation to the Applicant's compliance with any direction under this clause 9.2

### 9.3. Ports Victoria Guidelines and Port Rules

- 9.3.1. The Applicant must comply, and shall ensure that its Personnel engaged by it in relation to a Vessel, comply with all current Ports Victoria Guidelines and Port Rules applicable to access and use Ports Victoria Facilities.

## 10. Environmental Obligations

### 10.1. Obligation not to pollute

- 10.1.1. While accessing or using Ports Victoria's Facilities the Applicant must not:

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

### 10.2. Environmental Incidents

- 10.2.1. Without limiting the Applicant's obligations under Clause 12 or under Environmental Laws, the Applicant shall immediately and no later than one hour after becoming aware of any Marine Pollution (MARPOL) Incident or other environmental incident give written notice to VTS of the occurrence of such a Pollution Incident.
- 10.2.2. The Applicant 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 Ports Victoria and within the timeframe specified in the direction.
- 10.2.3. Ports Victoria may, at its discretion and at the Applicant's cost, engage an Environmental Auditor pursuant to Chapter 8 of the *Environment Protection Act 2017 (Vic)* in respect of the Pollution Incident.
- 10.2.4. Within 48 hours of the Applicant receiving any notices or legal proceedings in respect of the impact of the Applicant's activities on the Environment over, under or on Ports Victoria's Facilities, including without limitation notices or proceedings issued by the Environment Protection Authority or any other statutory or governmental body, the Applicant must give written notice to the VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.
- 10.2.5. The Applicant must comply with any and all statutory notices referred to in this clause 10.2.3 and is liable for any costs of compliance with such statutory notices.
- 10.2.6. Where requested by Ports Victoria, the Applicant will provide an undertaking or direct its insurer to provide an undertaking to guarantee the clean up or other costs associated with rectifying the Pollution Incident.

### 10.3. Dangerous goods

The Applicant must not, without Ports Victoria's prior written consent, use or allow Ports Victoria's Facilities to be used for the storage (whether temporary or permanent) of:

- (a) 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 the International Maritime Dangerous Goods Code; or
  - (b) any other goods which is prohibited by the Insurance Council of Australia Ltd
- in non-hazardous stores, provided that the consent of Ports Victoria will not be required where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.

### 10.4. Rights of Ports Victoria

Without limiting the foregoing provisions of this Clause 10:

10.4.1. If Ports Victoria 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 Applicant's activities, Ports Victoria may issue a direction requiring that specified corrective action be undertaken by the Applicant to the satisfaction of Ports Victoria and within the timeframe specified by Ports Victoria.

10.4.2. If the Applicant fails to:

- (a) comply with the terms of a direction under clause 10.4 to the satisfaction of Ports Victoria; or
- (b) clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of Ports Victoria,

Ports Victoria may either:

- (c) itself undertake the corrective action and recover its costs of undertaking the corrective action as a debt due from the Applicant to Ports Victoria; or
- (d) deny the Applicant the continuance of any right it would otherwise have had under this Agreement, including without limitation the right to remain in Port Waters or to terminate this Agreement.

## 11. Safety and Emergencies

### 11.1. Occupational Health and Safety Obligations

11.1.1. The Applicant acknowledges that occupational health and safety on a Vessel within Port Waters during the Access Period is the responsibility of the Applicant.

11.1.2. The Applicant must:

- (a) use best endeavours to ensure that it and its Personnel are not exposed to conditions or practices that have the likely potential to cause personal injury or property damage;
- (b) fully comply with all OH&S Laws;
- (c) use best endeavours to ensure that it and its Personnel comply with all occupational health and safety requirements;
- (d) immediately notify Ports Victoria of any incident or dangerous occurrence within Ports Victoria's Facilities via the VTS including those which are notifiable to the Victorian WorkCover Authority, and or Commonwealth OHS legislation pursuant to the provisions of any OH&S Law.

11.1.3. Within 48 hours of receipt of the Applicant receiving any notices or legal proceedings in respect of the impact of the Applicant's activities under this Agreement on human health and safety, including without limitation notices or proceedings issued by a statutory or governmental body, the Applicant must give written notice to the VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

11.1.4. The Applicant must comply with any and all statutory notices referred to in this clause 11.1 and is liable for any costs of compliance with such statutory notices.

## 12. Emergencies and Notification of Incidents

### 12.1. Emergencies

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

### 12.2. Notification of Incidents

12.2.1. During an Access Period, the Applicant must, as soon as practicable after becoming aware of any damage to Ports Victoria's Facilities or any injury to any person, property or other circumstances likely

to cause any damage or injury, advise or cause the VTS to be advised of such damage, injury or circumstances or potential damage, injury or circumstances (as relevant).

- 12.2.2. No later than 72 hours after the Applicant gives notice in accordance with Clause 12.2, the Applicant must cause a detailed written report to be lodged with Ports Victoria in respect of the accident, event or other circumstances giving rise to the damage or injury or potential damage or injury (as relevant).

## 13. Telephone services

The Applicant must, for safety reasons and at its own cost, provide Australian compatible telephone services to all Vessels using Ports Victoria's Facilities.

## 14. Insurance

### 14.1. P&I insurance

- 14.1.1. Except to the extent of those risks covered by H&M Cover, the Applicant must ensure, and it warrants, that the Applicant and 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 but not limited to cover against oil pollution, wreck removal, property damage and personal injury 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.
- 14.1.2. In the event that the Vessel is insured by a P&I Club that is not a member of the International Group of P&I Clubs, the Applicant must inform Ports Victoria of the details of the Vessel's P&I Cover and the relevant insurer at the time of lodging the Application and Ports Victoria may in its absolute discretion decline the Application and refuse access to Port Waters.
- 14.1.3. If required by Ports Victoria the Applicant must submit the Agreement to the P&I Club which has provided P&I Cover in respect of the Vessel and must advise Ports Victoria if the P&I Club does not consent to the Agreement.

### 14.2. General liability insurance

The Applicant must, for the duration of the Access Period, ensure that a general liability insurance policy for the Owner and Vessel is effected and maintained which must:

- (a) be provided by a reputable insurer with a credit worthiness of 'BBB' or higher and approved by Ports Victoria;
- (b) cover both the Owner and Ports Victoria for their respective rights and interests and covers their liabilities to third parties;
- (c) be for an amount in respect of any one occurrence of not less than \$20,000,000 (AUD);
- (d) be on reasonable terms to cover the requirements of Ports Victoria set out in this Agreement;
- (e) bear an endorsement extending the indemnity under the policy to include the provisions under clause 8.1.

### 14.3. Proof of insurance

- 14.3.1. The Applicant must produce evidence, to the reasonable satisfaction of Ports Victoria, of the currency of the insurance policies referred to in this Clause 14 within 24 hours of being requested in writing to do so by Ports Victoria at any time prior to the Application being considered and during the Access Period.
- 14.3.2. Ports Victoria may in its absolute discretion, and without liability, decline the Application, not issue or cancel a Booking Confirmation and refuse access to Ports Victoria's Facilities if the Applicant fails to comply with this clause or Ports Victoria is not reasonably satisfied with the adequacy of the insurance held by the Owner and the Vessel.

## 15. Release

Notwithstanding anything contained in this Agreement, the Applicant releases Ports Victoria from all actions, suits, claims, demands, costs, charges, damages, liabilities and expenses which the Applicant 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 Ports Victoria 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 Ports Victoria's Facilities other than those caused by an act, fault or negligence of Ports Victoria; and
- (f) any other cause that Ports Victoria could not avoid or prevent by the exercise of reasonable care.

## 16. Confidentiality

The Applicant must:

- 16.1.1. Only use Confidential Information for the purpose of this Agreement or any other purpose expressly agreed in writing by Ports Victoria to be confidential; and
- 16.1.2. Keep all Confidential Information strictly confidential and not disclose to any third party without the express written consent of Ports Victoria or as required by law.

## 17. GST

### 17.1. GST

- 17.1.1. Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause.
- 17.1.2. 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.
- 17.1.3. 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 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 17.1.5, 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.
- 17.1.4. 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.



- 17.1.5. 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.

## 18. Notices

### 18.1. Service

- 18.1.1. Any notice or other communication concerning this Agreement may only be:

- (a) left at or sent to the Applicant:
  - (i) if the communication is addressed to the Applicant and transmitted by email to the email address given by the Applicant in the Application;
- (b) left at or sent to Ports Victoria if the communication is:
  - (i) in writing and addressed to Ports Victoria and sent by post to the address or by email to the email address identified in the Schedule;

- 18.1.2. Ports Victoria 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 Ports Victoria to the Applicant, the notice or report is issued or provided to the Applicant.

## 19. Dispute Resolution

### 19.1. Dispute Notice

- 19.1.1. For the purpose of this clause, non-payment of an un-disputed debt is not a dispute for the purpose of this clause and this clause does not apply.
- 19.1.2. If a party claims that a dispute has arisen under or in connection with this Agreement (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party specifying the nature of the Dispute.
- 19.1.3. A Dispute cannot be the subject of litigation until the provisions of clauses 19.2 to 19.4 (Australian entities, or 19.2, 19.3 and 19.5 (non Australian entities), have been complied with, except where a party seeks urgent interlocutory relief from a court, in which case that party does not need to comply with these clauses before seeking such relief.

### 19.2. Resolution by parties

Within three Business Days of the date of the Dispute Notice (or such other period as agreed between the parties to the Dispute) each of the parties to the Dispute must meet and use their reasonable endeavours to resolve the Dispute.

### 19.3. Resolution by senior executives

If the Dispute is not resolved under clause 19.2 (Resolution by parties) within 10 Business Days (or such other period agreed between the parties to the Dispute) after the date of the Dispute Notice, the Dispute must be referred to the senior executives of each of the parties to the Dispute, who must meet and use their reasonable endeavours to resolve the Dispute.

### 19.4. Arbitration – Australian entities

- 19.4.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 19.2 or 19.3; and
- (b) the party involved in the dispute or difference that is not Ports Victoria 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.

19.4.2. Any arbitration pursuant to this clause 19.4 shall be administered by the Resolution Institute in accordance with the Institute of Arbitrators and Mediators Australia (**IAMA**) Arbitration Rules.

19.4.3. Any arbitration pursuant to this clause 19.4 shall:

- (a) apply the substantive law of the state of Victoria and shall apply the rules of procedure as prescribed in the state of Victoria;
- (b) take place in Melbourne, Australia; and
- (c) be conducted in English.

## **19.5. Arbitration – non-Australian entities**

19.5.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 19.2 or 19.3; and
  - (b) 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.

19.5.2. Any arbitration pursuant to this clause 19.5 shall:

- (a) be in accordance with the UNCITRAL Model Law on International Commercial Arbitration; and
- (b) be arbitrated by a single arbitrator.

19.5.3. If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in clause 19.5.1 the Arbitrator will be appointed in accordance with the requirements of the *Model Law and the International Arbitration Act 1974 (Cth)*.

19.5.4. The arbitral tribunal shall:

- (a) apply the substantive law of the state of Victoria.
- (b) apply the rules of procedure as prescribed in the state of Victoria.

19.5.5. The arbitration shall

- (a) take place in Melbourne, Australia; and
- (b) The language of the arbitration shall be English.

## **19.6. Parties' obligations**

Pending resolution of any Dispute, the parties must continue to perform their obligations under this Agreement without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).

# **20. Miscellaneous**

## **20.1. 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.

## **20.2. 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 acknowledged by the parties.

### **20.3. Assignment**

The Applicant must not assign its rights under this Agreement, grant any sub-licence or otherwise transfer any of its rights under this Agreement without first receiving the prior written consent from Ports Victoria, which consent must not be unreasonably withheld but Ports Victoria may impose conditions if it grants consent to any such dealing as it sees fit.

### **20.4. Rights**

Rights to use Ports Victoria's Facilities are in accordance with statute and or personal and in contract only as the context permits.

### **20.5. Severability of provisions**

20.5.1. 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.

20.5.2. The separate documents that make up the Contract are severable and:

- (a) any provision of this Agreement or the separate documents making up the Contract 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 the Contract or affect the provision in any other jurisdiction; and
- (b) If one separate document that makes up the Contract ends or is terminated, then the remaining documents remain in force as the Contract.

### **20.6. Survival**

20.6.1. None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.

20.6.2. The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clauses 8 and 10 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.

20.6.3. Clauses 7, 8, 10, 19, 20 26.5 and any or any other provision which, by its nature, are intended to survive termination or expiry of this Agreement, survive the expiry of the Access Period:

### **20.7. Binding of successors**

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

## Schedule – Particulars

Item	Description	Details	
Item 1.	Ports Victoria Address for notices	Postal:	East 1E, 13-35 Mackey Street, North Geelong VIC 3215 VIC
		Email:	<a href="mailto:legal@ports.vic.gov.au">legal@ports.vic.gov.au</a> and to <a href="mailto:GeelongVTS@ports.vic.gov.au">GeelongVTS@ports.vic.gov.au</a>
		Attention:	Legal Counsel and to Vessel Traffic Services