

Hire of Ports Victoria Facilities (Melbourne)

(Hire of Ports Victoria Common User Wharves and Terminals)

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 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 set out below.

Port View Terms and Conditions is defined at clause 2.1 of the Standard Terms and Conditions set out below.

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 Facilities (Geelong and Hastings) Terms means Ports Victoria's Standard Terms and Conditions for Access and Hire of Ports Victoria Facilities (Geelong and Hastings) found [here](#).

Hire of Ports Victoria Facilities (Melbourne) Terms means Ports Victoria's Standard Terms and Conditions for the hire of Ports Victoria's Facilities (Melbourne) set out below.

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 between PV, on the one part; and the Applicant on the other part.
- 1.1.2. The Agreement is established when the Applicant submits an Application which requests access and use the Ports Victoria Facilities.

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 Port of Melbourne Waters and expires when the Vessel departs the Port of Melbourne Waters.

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

Ancillary Service Provider means a person or entity which is authorised pursuant to an Ancillary Service Provider Licence Agreement to provide Ancillary Services.

Ancillary Service Provider Licence Agreement means an agreement by that name entered into between an Ancillary Service Provider and PV in respect of the Ancillary Service Provider's access to the Station Pier precinct.

Ancillary Services means:

- (a) Vessel mooring and unmooring;
- (b) stevedoring services;
- (c) passenger ground handling;
- (d) portering;
- (e) tour operators;
- (f) provedoring and chandlery;
- (g) waste services;
- (h) Vessel repair and maintenance services; and

(i) bunkering services,
provided by Licensed Providers.

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 which requests access to Ports Victoria's Facilities via PortVIEW.

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

Cargo means 'cargo' as defined by section 3 of the PMA and includes Empty Containers.

Certificate of Condition means a certificate issued by PV which records the state or repair and condition of the Common User Wharves and/or Common User Terminals (as applicable), including any discernible pre-existing contamination.

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.

Cleared Zone means an area of land or water within the Port of Melbourne which is established as a 'cleared zone' (being a type of 'port security zone' as defined by section 10 of the MTOFSA) under the MTOFSA and MTOFSR.

Common User Terminals means the PV terminals that are adjacent to Common User Wharves listed in the Schedule.

Common User Wharves means a wharf (or wharves) listed in the Schedule (and includes a berth or berths listed in the Schedule), and Common User Wharf has a corresponding meaning.

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.

Empty Containers means cargo containers which do 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 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 *Marine Safety Act 2010 (Vic)*.

Inward Manifest means an inward manifest in an UN/EDIFACT-IFCSUM format, for all Cargo and Passengers intended to be discharged at the Port of Melbourne, which includes:

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

Landside Restricted Zone means an area of land or a structure within the boundaries of the Port of Melbourne 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:

- (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 and Ports Victoria's Facilities;
- (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 PV 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.

Melbourne Vessel Traffic Services or **Melbourne VTS** means the VTS Authority with responsibility for the Port of Melbourne VTS Area 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.

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 Ports Victoria's Facilities.

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

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

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

- (a) the 'owner of a vessel' within the meaning of that term in section 4 of the PMA; and includes
- (b) any charterer (including but not limited to by way of Demise Charter or Time Charter) or operator of a vessel that enters Port 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.

Passengers means a traveller on a public or private Vessel other than the driver, pilot, or crew.

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; and
- (f) occupation and use of the Designated Anchorage in Port of Melbourne Waters for the anchoring of a vessel, marine structure or marine installation.

as notified by PV to the Applicant in the Booking Confirmation.

Personnel means any agent, representative, officer, employee, contractor or subcontractor, (including any Ancillary Service Provider) and all personnel including crew 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 at the Port of Melbourne 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 in respect of the activities under in this Agreement and expressly do not include any activities for NaP Services.

Port Facilities means the Channel, Port of Melbourne Land and all other facilities owned, managed or controlled by PV, but does not include the Ports Victoria Facilities.

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

Port of Melbourne Land means 'port of Melbourne land' as defined by section 3 of the PMA.

Port of Melbourne VTS Area has the meaning given to it by the Australian Maritime Safety Authority under Marine Order 64, made pursuant to the Navigation Act 2012 (Cth).)

Port of Melbourne Waters means the 'port of Melbourne waters' as defined by section 3 of the PMA.

Port Rules means the port rules of PV published on PV's Website, as amended 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.

Ports Victoria Facilities means each of:

- (c) Common User Wharves;
- (d) Common User Terminals;
- (e) Designated Anchorages.

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

PV Guidelines means:

- (a) Bunker and (non-cargo) Liquid Transfer Management Guidelines (incorporating ship/road vehicle liquid transfers);
- (b) Port Load Chart; and
- (c) other guidelines

as listed on PV's website, as amended from time to time,

PV Website means PV's Website which can be located at <https://www.vicports.vic.gov.au/Pages/default.aspx>.

PV's Security Contractor means the contractor engaged by PV from time to time to implement the PV Maritime Security Plan and includes its servants, agents and employees.

PV's Security Manager means the manager named in the Schedule, or as notified by PV from time to time.

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

Restricted Area means either:

- (a) an area declared to be a Landside Restricted Zone; or
- (b) an area declared to be a Cleared Zone; or
- (c) a 'restricted access area' as defined by section 3 of the PMA.

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.

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.

Waterside Restricted Zone means an area of water within the Port of Melbourne 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.

Website means ports.vic.gov.au or any replacement website identified by PV.

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

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 PV 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 PV, means that PV can exercise that power, right or remedy in its absolute and unfettered discretion and PV 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 an Environmental Hazard, Pollution Incident or other obligation caused by act or omission of the Vessel.
 - (iii) is taken as referring to the Vessel to which the Application relates.
- (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. Applicant Obligations

- 3.1.1. Where the Applicant is the Owner,
 - (a) It agrees that where it has engaged a Shipping Agent, as set out in its Application, the Shipping Agent has been engaged 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 its Personnel, including the Shipping Agent and the Shipping Agent's Personnel.
- 3.1.2. Where the Applicant is 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 arising from or in connection with 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 PV 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 PV 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 released 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 PV:
 - (i) proof to PV's satisfaction, of current P&I Club and H&M Cover for the 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 of Melbourne Waters; and
 - (iii) any other documents reasonably requested by PV.
- (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 PV.
- (d) ensure that it and its Personnel comply with the Applicants obligations under these Standard Terms and Conditions including the MTOFSA obligations;
- (e) co-operate with PV and all other users of Port Facilities and the Ports Victoria's Facilities to ensure compliance with all Legislative Requirements, including the MTOFSA.

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 the Ports Victoria's Facilities as directed by PV for a Permitted Use set out in the Booking Confirmation for the duration of the Access Period, unless otherwise directed by PV.
- 4.1.2. The Vessel shall be permitted to berth or anchor at Ports Victoria's Facilities and the Applicant shall be granted access to use the Common User Wharves on the dates and times determined by PV in its discretion in accordance with the dictates of port operations and usage and as notified to the Applicant.
- 4.1.3. The Applicant acknowledges that PV'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.

4.2. Acknowledgement by Applicant

- 4.2.1. The Applicant acknowledge and agrees that
 - (a) all references to use and access to the Ports Victoria's Facilities throughout these Standard Terms and Conditions is a reference to such part or area directed by PV only.
 - (b) the Ports Victoria's Facilities must not be used for any purpose other than a Permitted Use agreed by PV in the Booking Confirmation.
 - (c) it is responsible for the acts and omissions of Personnel.
 - (d) its right to use Ports Victoria's Facilities for the Permitted Use is subject to:
 - (i) the Applicant submitting a valid Application via PortVIEW;
 - (ii) A Booking Confirmation;;
 - (iii) any directions given by PV either at the time of the Booking Confirmation or at any time prior to berthing or anchorage of the Vessel regarding the specific Ports Victoria's Facilities to which the Vessel will be granted access.
 - (iv) payment of the relevant Port Charges;

- 4.2.2. For the avoidance of doubt, the Applicant will be directed by PV to use only part of the area of the Ports Victoria's Facilities for only part of the Permitted Use and the Applicant must strictly comply with such directions and must not access any other part or area, or for any other use except with PV's prior written consent.

4.3. Use subject to this Agreement

- 4.3.1. The Applicant acknowledges and agree that their access to and use of Ports Victoria's Facilities is subject to and in accordance with this Agreement.
- 4.3.2. The Applicant acknowledge and agree that:
- (a) PV 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 PV;
 - (c) It has made its own enquiries to satisfy itself as to the truth and accuracy of any written or oral information provided by PV and have therefore not relied on such information; and
 - (d) It has made its own enquiries and are 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 agreed Permitted Use.
- 4.3.3. The Applicant acknowledges that its rights under this Agreement rest in contract only and this Agreement does not create or confer upon the Applicant any tenancy, estate or other interest in Ports Victoria's Facilities.
- 4.3.4. The Applicant has no right of exclusive occupation or use of Ports Victoria's Facilities during the Access Period and PV 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.
- 4.3.5. Where access to a designated berth or Designated Anchorage is authorised by PV for the duration of the Access Period, use of that particular berth or anchorage may be exclusive (as directed by PV or the Harbour Master), but is not guaranteed and is subject to clause 4.2.1(d)(iii), 4.4 and clause 6.
- 4.3.6. The Applicant acknowledges that Ports Victoria's Facilities available for access by the Applicant may change from time to time in PV's complete discretion, including as a consequence of a direction given by the Harbour Master.
- 4.3.7. If there is a change to access arrangements or the status of Ports Victoria's Facilities, PV will give notice of such change to the Applicant as soon as reasonably practicable (which for the avoidance of doubt may be any time prior to the berthing or anchorage of the Vessel) and is subject always to clause 4.2.1(d)(iii), 4.4 and clause 6.

4.4. Access to be exercised in accordance with directions

- 4.4.1. The rights of the Applicant, for the Vessel to occupy, use or access Ports Victoria's Facilities for the Permitted Use are subject to the directions of the Harbour Master, the Port Authorised Officer and Melbourne 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 Melbourne VTS.

5. Term of Agreement

5.1. Term

- 5.1.1. This Agreement commences when the Applicant submits an Application to PV in relation to the Vessel.
- 5.1.2. Subject to clause 23.6, this Agreement expires at the early of:
- (a) the conclusion of the Access Period; or

- (b) termination or withdrawal of permission in accordance with clause 5.1.4, 10.1.2 or any other clause of this Agreement allowing termination.
- 5.1.3. Despite the commencement of this Agreement on the date that the Application is submitted, PV is not bound to grant access to a part or area of Ports Victoria's Facilities to the Vessel unless and until a Booking Confirmation is issued by PV, with all Booking Confirmations being subject to the terms of this Agreement.
- 5.1.4. In the event that a Booking Confirmation is not provided; or is cancelled by PV, or if permission is withdrawn for the Vessel to access Ports Victoria's Facilities, then the end date is date that PV 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;
 - (d) the Agreement is terminated in accordance with its rights under this Agreement.

6. Withdrawal of access or hire

6.1. Withdrawal before commencement of Access Period

- 6.1.1. PV 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; or
 - (c) the Vessel is unable to be loaded or unloaded at any time prior to the commencement of an Access Period.

6.2. Withdrawal for the purposes of Lay-up

The Applicant acknowledges that PV may give priority to any Vessel carrying Cargo or Passengers over a Vessel that is Laying-Up concerning access or use of the Common User Wharves and Common User Terminals during an Access Period and reserves the right to refuse or withdraw permission for Laying-up at Common User Wharves at any time.

6.3. Approved immobilisation

In the event that a Vessel is temporarily immobilised at the Common User Wharves or Designated Anchorage with prior approval of PV, PV shall provide the Applicant with reasonable notice of its requirement that the Vessel vacate the Common User Wharves or Designated Anchorage.

6.4. No compensation

- 6.4.1. If PV withdraws permission for use of or access to Ports Victoria's Facilities, or does not issue, or cancels a Booking Confirmation, PV 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 the Ports Victoria's Facilities for which permission for access or use is withdrawn prior to the Access Period.
- 6.4.2. The Applicant acknowledges and agrees that PV 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 PV the Port Charges in accordance with the terms of this Agreement.
- 7.1.2. PV may, in its discretion, recover the Port Charges as, if applicable, a Wharfage Fee recoverable under section 74 of the PMA.
- 7.1.3. The Applicant agrees to pay to PV:
 - (a) the Port Charges concerning Empty Containers unloaded from or loaded onto a Vessel at the Port of Melbourne.
 - (b) all other Port Charges concerning the use by the Applicant or 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 PV.
- 7.1.5. If PV 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 pay as Port Charges or reimburse PV such costs and those costs shall be recoverable by PV as a debt due and payable by the Applicant within thirty (30) days of the date of the relevant invoice issued by PV.
- 7.1.6. If the Applicant does not pay the relevant Port Charges in accordance with this Agreement, the Applicant will be liable to PV 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. Cargo and Passenger Manifests and documentation

8.1. Manifests and documentation

- 8.1.1. The Applicant shall cause to be lodged with PV
 - (a) an Inward Manifest within 2 days of the arrival of a Vessel in Port of Melbourne Waters and
 - (b) an Outward Manifest within 5 days of the departure of a Vessel from Port of Melbourne Waters; and
 - (c) any additional information reasonably requested by PV concerning any Cargo referred to on an Inward Manifest or an Outward Manifest within 48 hours of a written request to do so.
- 8.1.2. Inward Manifests, Outward Manifests and additional information shall be electronically lodged with PV by email at the address identified in the Schedule.
- 8.1.3. In the event that a Vessel does not discharge or load any Cargo or Passenger while in Port of Melbourne Waters, the Applicant shall, within 48 hours of the departure of the Vessel from Port of Melbourne Waters, cause written notice to be provided to PV that no Cargo or Passenger were discharged or loaded, as the case may be.

9. Applicant Indemnity

9.1. General indemnity and liability

- 9.1.1. The Applicant must indemnify PV against:
 - (a) Loss of or damage to the property of PV;
 - (b) claims by any person against PV 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 by the Applicant;

- (d) Loss suffered or incurred in connection with the engagement of any Ancillary Service Provider by the Applicant or as a consequence of any act or omission of any Ancillary Service Provider; and
- (e) subject to clause 9.1.2, Loss (excluding Consequential Loss) incurred by PV due to disturbance to or interference with PV's use of the Port of Melbourne or the carrying on of its business within the Port of Melbourne,

arising out of or as a consequence of the access, occupation or use of Ports Victoria's Facilities by the Applicant. The Applicant's liability to indemnify PV shall be reduced proportionately to the extent that a negligent act or negligent omission of PV contributed to the Loss.

- 9.1.2. The Applicant indemnifies PV for direct and Consequential Loss incurred by PV 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.
- 9.1.3. The Applicant is liable for any and all Loss or damage to Ports Victoria's Facilities, arising from or related to the hire or use of the Ports Victoria's Facilities by the Applicant in relation to a Vessel (whether during the Access Period or otherwise).

9.2. Damage to PV Property

- 9.2.1. The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of PV, arises from or is related to the hire or use of Ports Victoria's Facilities by the Applicant shall be borne by the Applicant or, if such costs are incurred by PV, the Applicant is liable to reimburse PV such costs which shall be recoverable by PV as a debt due and payable by the Applicant.
- 9.2.2. The Applicant must pay to PV the reasonable cost of any repairs referred to in Clause 9.2.1 carried out by or on behalf of PV not later than 30 days after written demand is made by PV for such payment.

10. Compliance with Legislative Requirements and directions

10.1. Compliance

10.1.1. The Applicant must strictly comply with any:

- (a) direction of the Harbour Master in connection with access to or use of Port Facilities and Ports Victoria's Facilities;
- (b) direction of PV's Security Manager or PV's Security Contractor;
- (c) direction of PV in connection with access to or use of Port Facilities and Ports Victoria's Facilities;
- (d) direction by any officer authorised by statute to give directions including pursuant to the *Marine Safety Act 2010* (Vic).
- (e) Legislative Requirements; and
- (f) current PV Guidelines and Port Rules applicable to access and use Ports Victoria's Facilities or Port Facilities

10.1.2. If the Applicant does not comply with a direction issued or given under clause 10.1.1, PV 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 PV 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.

11. Environmental Obligations

11.1. Obligation not to pollute

- 11.1.1. Whilst accessing or using the Port Facilities, Ports Victoria's Facilities or Port of Melbourne Waters, the Applicant must not and ensure that the Vessel does not:
- (a) cause a Pollution Incident;
 - (b) cause an Environmental Hazard; or
 - (c) disturb, exacerbate or facilitate the migration of any existing Contamination.

11.2. Environmental Incidents

- 11.2.1. Without limiting the Applicant's obligations under Clause 13 or under Environmental Laws, the Applicant shall immediately and no later than one hour after becoming aware of any Pollution Incident give written notice to Melbourne VTS of the occurrence of such a Pollution Incident.
- 11.2.2. 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 PV and within the timeframe specified in the direction.
- 11.2.3. PV 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.
- 11.2.4. 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 Port Facilities, Ports Victoria's Facilities 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 Applicant must give written notice to Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.
- 11.2.5. The Applicant must comply with any and all statutory notices referred to in clause 11.2.4 and is liable for any costs of compliance with such statutory notices.
- 11.2.6. Where requested by PV, 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.

11.3. Dangerous goods

The Applicant must not, without PV's prior written consent, use or allow the Port Facilities, the Ports Victoria's Facilities or Port of Melbourne Waters 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
 - (b) any other goods which is prohibited by the Insurance Council of Australia Ltd
- in non-hazardous stores, provided that the consent of the PV will not be required where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.

11.4. Rights of PV

Without limiting the foregoing provisions of this Clause 11:

- 11.4.1. If PV 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, PV may issue a direction requiring that specified corrective action be undertaken by the Applicant to the satisfaction of PV and within the timeframe specified by PV.
- 11.4.2. If the Applicant fails to:
- (a) comply with the terms of a direction under clause 11.4.1 to the satisfaction of PV; or

- (b) clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of PV,

PV 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 PV; or
- (d) terminate this Agreement and 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 of Melbourne Waters.

12. Safety and Emergencies

12.1. Occupational Health and Safety Obligations

12.1.1. The Applicant acknowledges

- (a) that occupational health and safety on a Vessel and Ports Victoria's Facilities during the Access Period is the responsibility of the Applicant.
- (b) The Applicant acknowledges that occupational health and safety of the Applicant's Personnel during the Access Period is the responsibility of the Applicant.

12.1.2. The Applicant must:

- (a) use best endeavours to ensure that 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 its Personnel comply with all occupational health and safety requirements;
- (d) immediately notify the PV of any incident or dangerous occurrence at Port Facilities and Ports Victoria's Facilities which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law.

12.1.3. 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 (as applicable) must give written notice to Melbourne VTS and PV of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

12.1.4. The Applicant must comply with any and all statutory notices referred to in this clause 12.1 and is liable for any costs of compliance with such statutory notices.

13. Emergencies and Notification of Incidents

13.1. Emergencies

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

13.2. Notification of Incidents

13.2.1. During an Access Period, the Applicant must, as soon as practicable after becoming aware of any damage to Port Facilities, Ports Victoria's Facilities or any injury to any person or circumstances likely to cause any damage or injury, advise or cause the Melbourne VTS to be advised of such damage, injury or circumstances or potential damage, injury or circumstances (as relevant).

13.2.2. No later than 72 hours after the Applicant gives notice in accordance with Clause 13.2.1, the Applicant must cause a detailed written report to be lodged with PV in respect of the accident, event or other circumstances giving rise to the damage or injury or potential damage or injury (as relevant).

14. Port Security

14.1. Compliance with MTOFSA and PMA

14.1.1. The Applicant acknowledges and agrees that

- (a) the Port of Melbourne 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 PV and the Commonwealth Department of Infrastructure and Regional Development and their appointees.
- (b) PV may be required to make directions and take security measures, and the Applicant may be required to comply with directions and accept security measures as a consequence of the Port of Melbourne including Station Pier being a security regulated port and in accordance with PV's federally approved maritime security plan.
- (c) that financial penalties apply for breaches of the MTOFSA.

14.1.2. The Applicant must ensure that, for the duration of the Access Period, it and Personnel engaged by it in relation to a Vessel:

- (a) strictly comply with the requirements of the MTOFSA; and
- (b) comply with all directions of PV's Security Manager and PV's Security Contractor.

14.1.3. The Applicant acknowledges that it is an offence:

- (a) 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; or
- (b) 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.

14.1.4. The Applicant must ensure that its Personnel:

- (a) understand and comply with the security requirements of PV.
- (b) take all necessary steps to ensure that an unauthorised person, vehicle or vessel does not enter or remain in a Restricted Area; and
- (c) do not cause or permit an unauthorised person, vehicle or vessel to enter or remain on a Restricted Area.

14.1.5. The Applicant must

- (a) ensure that it cooperates fully with PV and other users of Port Facilities and Ports Victoria's Facilities to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA;
- (b) pay PV for Port Charges incurred to comply with MTOFSA in accordance with Clause 7.

14.1.6. The Applicant agrees that, upon request from PV at any time during the Access Period, it must provide access to a Vessel to:

- (a) authorised employees of PV; and
- (b) other persons authorised by PV under the PMA or the *Marine Safety Act 2010 (Vic)*

(Authorised Persons)

14.1.7. The Authorised Persons must:

- (a) carry appropriate photo ID at all times; and
- (b) comply with the reasonable requirements of the master of the Vessels.

15. Common User Wharves and Terminals

15.1. Base Condition

- 15.1.1. Before the commencement of the Access Period, PV may undertake an inspection of the Common User Wharves and Common User Terminals and record the state of repair and condition of the Common User Wharves and Common User Terminals, including any discernible pre-existing Contamination, in a Certificate of Condition.
- 15.1.2. The Certificate of Condition in respect of the Common User Wharves or Common User Terminals (as applicable) at the commencement of the Access Period shall be evidence of the condition of the Common User Wharves or Common User Terminals (as applicable) at the commencement of the Access Period.
- 15.1.3. The Applicant shall, upon request, be afforded a reasonable opportunity to inspect the Common User Wharves and Common User Terminals prior to the commencement of the Access Period.
- 15.1.4. The Applicant must ensure that the Common User Wharves and Common User Terminals are left in the same condition and state as at the commencement of the Access Period.
- 15.1.5. In the event of a dispute between Applicant and PV regarding the condition of the Common User Wharves and Common User Terminals, the Certificate of Condition shall prevail.

15.2. Use of and alterations to the Common User Wharves or Common User Terminals

- 15.2.1. The Applicant shall ensure that PV plant and equipment, if used by the Applicant during the Access Period, is left in the same condition and state as at the commencement of the Access Period.
- 15.2.2. The Applicant must not
 - (a) make any alterations or additions to the Common User Wharves or Common User Terminals.
 - (b) install fixed plant or equipment including, without limitation, any fuel storage tanks on, over or under the Common User Wharves or Common User Terminals.

15.3. Failure to Maintain

- 15.3.1. If the Applicant fails to leave the Common User Wharves or Common User Terminals in the condition required by Clause 15.1.4 and 15.2.1, PV may:
 - (a) direct the Applicant to return that Common User Wharves or Common User Terminals (as applicable) to the condition required; and
 - (b) carry out or cause to be carried out any litter removal, restoration, remediation, cleaning, repairs and other similar work as PV thinks fit.
- 15.3.2. The reasonable cost of any work carried out by PV under clause 15.3.1(b) shall be a debt due and payable from the Applicant to PV and shall be paid to PV within thirty (30) days of written demand by PV.

15.4. Ancillary Service Providers

- 15.4.1. The parties acknowledge that the Applicant may require Ancillary Services Providers to provide the Vessel with services during the Access Period.
- 15.4.2. The Applicant may only engage Ancillary Service Providers who have entered into a valid and binding Ancillary Service Provider Licence Agreement or such other alternate induction or agreement as required with PV.
- 15.4.3. As expressly set out at clause 2.3(b) The Applicant is liable for the acts and omissions of each of its Ancillary Service Providers as if such acts or omissions were its own.
- 15.4.4. The Applicant indemnifies PV from and against any Loss suffered or incurred by PV in connection with any Ancillary Service Provider engaged by the Applicant.

15.5. Supply of water

- 15.5.1. Supply of fresh water to Vessels by PV 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 Applicant must ensure that the water supplied is not used for industrial or commercial purposes, including washing down decks or for ballast purposes.
- 15.5.2. The Applicant must
- (a) pay PV for the use of water at Common User Wharves in accordance with Clause 7.
 - (b) ensure that PV's water hoses and equipment are properly attached to the existing fresh water supply fixtures located at the wharf apron.
- 15.5.3. ensure that any person engaged by or on behalf of the Applicant to collect PV's fresh water supply takes good care of them and returns them immediately after use in the same condition as supplied.
- 15.5.4. Without limiting any rights of PV under Clause 9, the Applicant is responsible for any damage to fresh water supply equipment and will bear the cost of any repair and/or replacement of such equipment.

16. Telephone services

- (a) The Applicant must, for safety reasons and at its own cost, provide Australian compatible telephone services to all Vessels berthed or anchored at Ports Victoria's Facilities.
- (b) At Station Pier a mobile phone and handheld radio will be provided to the appropriate delegate of the Vessel after arrival. This equipment must be returned to PV prior to departure of the Vessel from Station Pier.

17. Insurance

17.1. P&I insurance

- 17.1.1. Except to the extent of those risks covered by H&M Cover, the Applicant must ensure, and it hereby warrants, that the Owner 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.
- 17.1.2. 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 PV of the details of the Vessel's P&I Cover and the relevant insurer at the time of lodging the Application and PV may in its absolute discretion decline the Application and refuse access to Ports Victoria's Facilities..
- 17.1.3. If required by PV 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 PV if the P&I Club does not consent to the Agreement.

17.2. General liability insurance

The Applicant must, for the duration of the Access Period, effect and maintain a general liability insurance policy which must:

- (a) be provided by a reputable insurer with a credit worthiness of 'BBB' or higher and approved by PV;
- (b) cover both the Owner and PV 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 PV set out in this Agreement;

- (e) bear an endorsement extending the indemnity under the policy to include the provisions under clause 9.1.

17.3. Proof of insurance

- 17.3.1. The Applicant must produce evidence, to the reasonable satisfaction of PV, of the currency of the insurance policies referred to in this Clause 17 within 24 hours of being requested in writing to do so by PV at any time prior to the Application being considered and during the Access Period.
- 17.3.2. PV may in its absolute discretion, and without liability, decline the Application and refuse access to Ports Victoria's Facilities if the Applicant fails to comply with this clause or PV is not reasonably satisfied with the adequacy of the insurance held by the Owner and the Vessel.

18. Release

Notwithstanding anything contained in this Agreement, the Applicant releases PV 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 PV 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 PV; and
- (f) any other cause that the PV could not avoid or prevent by the exercise of reasonable care.

19. Confidentiality

The Applicant must:

- 19.1.1. 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
- 19.1.2. 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.

20. GST

20.1. GST

- 20.1.1. 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.
- 20.1.2. 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.
- 20.1.3. 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 20.1.5, 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.
- 20.1.4. 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.
- 20.1.5. 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.

21. Notices

21.1. Service

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

- (a) left at or sent to the Applicant:
 - (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 Applicant in the Application; or
 - (ii) if there is a Shipping Agent, if the communication is addressed to the Owner (via the Shipping Agent) and transmitted by email to the email address given by the Applicant in the Application;
- (b) left at or sent to the Applicant if the communication is addressed to the Applicant and transmitted by email to the email address given by the Applicant in the Application; and
- (c) left at or sent to PV if the communication is:
 - (i) in writing and addressed to PV and sent by post to the address or by email to the email address identified in the Schedule;
 - (ii) an Inward or Outward Manifest and sent by email to the email address identified in the Schedule.

21.1.2. PV 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 PV to the Applicant, the notice or report is issued or provided to the Applicant.

22. Dispute Resolution

22.1. Dispute Notice

- 22.1.1. 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.
- 22.1.2. 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.
- 22.1.3. A Dispute cannot be the subject of litigation until the provisions of clauses 22.2 to 22.4 (Australian entities, or 22.2, 22.3 and 22.5 (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.

22.2. 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.

22.3. Resolution by senior executives

22.3.1. If the Dispute is not resolved under clause 22.2 (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.

22.3.2. If senior executives cannot resolve the dispute within 20 Business Days from the date of the Dispute Notice, or if the Dispute is not escalated to senior executives within 20 Business Days from the date of the Dispute Notice, the following clauses apply.

22.4. Arbitration – Australian entities

22.4.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 22.2 or 22.3; and
- (b) the party involved in the dispute or difference that is not PV 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.

22.4.2. Any arbitration pursuant to this clause 22.4 shall be administered by the Resolution Institute in accordance with the Institute of Arbitrators and Mediators Australia (**IAMA**) Arbitration Rules.

22.4.3. Any arbitration pursuant to this clause 22.4 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.

22.5. Arbitration – non-Australian entities

22.5.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 22.2 or 22.3; 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.

22.5.2. Any arbitration pursuant to this clause 22.5 shall:

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

22.5.3. If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in clause 22.5.1 the Arbitrator will be appointed in accordance with the requirements of the *Model Law and the International Arbitration Act 1974 (Cth)*.

22.5.4. 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.

22.5.5. The arbitration shall

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

22.6. 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).

23. Miscellaneous

23.1. Governing law and jurisdiction

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

23.2. Entire Agreement

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

23.3. 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 PV, which consent must not be unreasonably withheld but PV may impose conditions if it grants consent to any such dealing as it sees fit, including but not limited to cancelling the Booking Confirmation or requiring Financial Security.

23.4. Rights

The rights of the Applicant under this Agreement in accordance with statute and/or personal and in contract only as the context permits

23.5. Severability of provisions

23.5.1. 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.

23.5.2. 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.

23.6. Survival

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

- 23.6.2. The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clauses 9, 11 and 15.4 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- 23.6.3. Clauses 7, 9, 11, 15.4, 22, 23, 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:

23.7. 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.	PV Address	East 1B, 13-35 Mackey Street, North Geelong VIC 3215 VIC
Item 2.	PV Security Manager	Name: Glen Colaco Address: 9 Waterfront Place, Port Melbourne VIC 3207 Tel: +61 3 8347 8300 Email: station.pier@ports.vic.gov.au
Item 3.	Lodgement of Manifest email:	cruise@ports.vic.gov.au
Ports Victoria Facilities:		
Item 4.	Common User Wharves	<ul style="list-style-type: none"> • Inner West Berth, Station Pier • Outer East Berth, Station Pier • Outer West Berth, Station Pier
Item 5.	Common User Terminals	Outer Terminal which sits between the Outer East Berth and the Outer West Berth at Station Pier
Item 6.	Designated Anchorages	Has the meaning given to it in the Harbour Master's Directions.