



## Ancillary Service Provider Licence Agreement

Victorian Ports Corporation (Melbourne)

ABN 22 195 188 658

**Insert name and ABN** XXX

SAMPLE

## 1. Ancillary Service Provider Licence Agreement

---

Date: to be inserted

## 2. Parties

---

**Victorian Ports Corporation (Melbourne)** ABN 22 195 188 658 of Level 5, 530 Collins Street Melbourne Victoria 3000 (**VPCM**)

Insert name and ABN XXXXXXX of [insert address] (**Provider**)

## 3. Recitals

---

Ancillary Services at Station Pier and West Finger Pier include the following activities and services provided by ancillary service providers for vessels alongside the wharf or other activities:

- vessel mooring and unmooring,
- stevedoring,
- passenger ground handling,
- portage,
- tour operators,
- providedoring and chandlery,
- waste services,
- vessel repair and maintenance services, and
- bunkering services.

Ancillary service providers are those firms and organisations that are contracted by vessels and facility hirers to perform support services during periods of berth or facility access at VPCM common user facilities and berths, primarily at Station Pier and West Finger Pier.

Licence agreements will replace any existing access agreements and licences that have been in place at Station Pier and West Finger Pier.

The licensing arrangements will encompass access conditions, insurance, health and safety, security, environment management and the operational performance standards required by VPCM.

Ancillary service providers will normally operate in the VPCM common user areas of Station Pier and West Finger Pier in support of berth, terminal and facility hirers.

Entering into a valid licence agreement is a condition of access to Station Pier and West Finger Pier to support vessel operators, agents or other parties that hire the common user berths and terminals.

VPCM and the Provider both acknowledge that other people will be using the common user areas of Station Pier and West Finger Pier in addition to VPCM and the Provider. VPCM and the Provider undertake to use their best endeavours to ensure that they do not impede the proper use of the common user areas of Station Pier and West Finger Pier by such people. VPCM will not discriminate in favour or against the Provider in relation to its use of common user areas of Station Pier and West Finger Pier.

## 4. Definitions and interpretation clauses

---

### 4.1 Definitions

In this Licence Agreement:

**Ancillary Services** means the ancillary services provided by the Provider as described in Item 4 of the Application Form.

**Applicant** means the business or entity described in Item 1 of the Application Form.

**Application Form** means the Ancillary Services Provider Application Form accepted by VPCM (in writing) and attached as Schedule 2 of this Agreement.

**Authorisations** means any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption issued by any Governmental Agency.

**Business Day** means a day on which banks are open for business in Melbourne, Victoria excluding a Saturday, Sunday or public holiday in that city.

**Commencement Date** has the meaning given in Item 1 of Schedule 1 (General).

**Environment** means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.

**Environmental Laws** means a Law relating to the Environment, including any Law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, soil or groundwater contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades, or any other aspect of protection of the Environment or person or property.

**Environmental Management System** means the Provider's environmental management system provided to VPCM by the Provider and attached to the Application Form.

**Equipment** means any plant or equipment, including any motor vehicle, listed in Item 5 of the Application Form.

**Force Majeure Event** means:

- (a) an act of God;
- (b) war;
- (c) revolution;
- (d) any unlawful act against public order or authority;
- (e) a national or state-wide strike or industrial dispute; or
- (f) a government restraint.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, court, department, commission, authority, tribunal, agency or entity.

**Harbour Master** means a 'harbour master' as defined by section 3 of the *Marine Safety Act 2010 (Vic)*.

**Insolvency Event** means the occurrence of any of the following events:

- (g) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
- (h) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
- (i) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (j) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (k) a body corporate is or states that it is insolvent as that term is defined in section 95A of the Corporations Act;
- (l) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;
- (m) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (n) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
- (o) a body corporate ceases to carry on business; or
- (p) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Law** means:

- (q) the present or future requirements of any statute, regulation, order, rule, by-law, ordinance, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity;
- (r) the lawful requirements, directions or instructions of any Governmental Agency; and
- (s) the listing rules of any recognized stock exchange.

**Licence Agreement** means this document in conjunction with any attached Schedules or Annexures.

**Licensed Area** means all common user areas at Station Pier and West Finger Pier as identified at Schedule 3 (Plan Identifying Licensed Area) unless directed otherwise by VPCM.

**Licence Fee** means the licence fee notified to the Provider by VPCM and payable by the Provider to VPCM in respect of the licence created under this Licence Agreement, as set out at Item 3 (Licence Fee) of Schedule 1 (General) and any fees set out in Schedule 4 (Tariff Schedule).

**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.

**Maritime Security Guard** means a maritime security guard as defined in the *Maritime Transport and Offshore Facilities Security Act 2003* (Vic).

**Occupational Health and Safety Laws** means the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2007* (Vic) and any other Laws concerning occupational health and safety in connection with the Ancillary Services.

**OH&S Management System** means the Provider's occupational health & safety management system provided to VPCM by the Provider and attached to the Application Form.

**Personnel** means any agent, representative, officer, employee, contractor or subcontractor of a party.

**Port Authorised Officer** means an authorised officer as defined in Part 5C of the *Port Management Act 1995* (Vic).

**Port Facility Security Officer** means the person appointed as the port facility security officer by VPCM pursuant to the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

**Port Rules** means the port rules of VPCM published on VPCM's website, as amended from time to time.

**Station Pier** means the station pier precinct in Port Melbourne, Victoria.

**Tariff Schedule** means the tariff schedule at Schedule 4.

**Term** means the period at Item 2 of Schedule 1 (General).

**VPCM** means the Victorian Ports Corporation Melbourne (ABN 22 195 188 658) of Level 5, 530 Collins Street Melbourne 3000, and includes its successors in title, assignors, servants, agents and employees.

**VPCM Drugs and Alcohol Policy** means VPCM's policy found at <https://www.vicports.vic.gov.au/safety-and-security/safety/Pages/safety.aspx>, as amended from time to time.

**VPCM Safety and Environment Management Plan** means VPCM's safety and environment management plan, which can be located at <https://www.vicports.vic.gov.au/publications/Pages/SEMP.aspx>, as amended from time to time.

**VPCM Policies and Procedures** includes any policy, procedure, publication or guideline of VPCM (as amended from time to time), including but not limited to the policies and procedures of VPCM that are publicly available and relevant to the carrying out of Ancillary Services under this Licence Agreement on VPCM's website at: <http://www.vicports.vic.gov.au/Pages/default.aspx>.

**West Finger Pier** means the west finger precinct in Port Melbourne, Victoria.

#### 4.2 Interpretation

In this Licence Agreement, unless a contrary intention is expressed:

- (a) other parts of speech and grammatical forms of a word or phrase defined in this Licence Agreement have a corresponding meaning;
- (b) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (c) a reference to anything (including any right) includes a part of that thing, but nothing in this clause 4.2 (c) 4.2(b) implies that performance of part of an obligation constitutes performance of the obligation;
- (d) a reference to a document (including this Licence Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (e) a reference to a party to any document includes that party's successors and permitted assigns;
- (f) a reference to any statute, regulation, proclamation, ordinance, binding instrument or by-law includes all statutes, regulations, proclamations, ordinances, binding instruments or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances, binding instruments or by-laws issued under that statute;
- (g) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;

- (h) a provision of this document may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this document or the preparation or proposal of that provision;
- (i) a reference to a body (including an institute, association or authority) whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (j) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Licence Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (k) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (l) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

#### 4.3 Business Day

Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

### 5. **Grant of licence**

---

- (a) In consideration of payment of the Licence Fee by the Provider, VPCM grants to the Provider a non-exclusive licence to access (but not occupy) the Licensed Area for the Term to the extent necessary to carry out the Ancillary Services.
- (b) The Provider must not use the Licensed Area:
  - (i) for any purpose other than to perform the Ancillary Services;
  - (ii) at any time outside the Term; or
  - (iii) otherwise than strictly in accordance with this Licence Agreement.
- (c) VPCM may permit any other ancillary service provider or any other person or entity to access the Licensed Area in its discretion. The Provider must cooperate with any other person or entity in the Licensed Area and must always conduct itself (and procure that its agents, employees, officers, contractors and subcontractors conduct themselves) in a polite and professional manner.
- (d) The rights granted to the Provider under this Licence Agreement are personal to the Provider and must not be transferred, sub-licensed, assigned, charged or otherwise dealt with by the Provider. Any purported transfer, sub-licence, assignment, charge or other dealing in breach of this clause will result in the immediate cancellation of this Licence Agreement.
- (e) The rights conferred on the Provider in respect of this Licence Agreement rest in contract only and do not create in or confer upon the Provider any interest in the Licensed Area.
- (f) Other fees, charges and requirements may apply in respect of the Provider's access to the Licensed Area, depending on the activities carried out by the Provider and any Equipment brought into the Licensed Area by the Provider. The Provider must inform itself of these fees, charges and requirements and ensure that it complies with them.

### 6. **Directions**

---

- (a) The Provider must comply with any direction issued or given (whether in writing or verbally) by VPCM, the Harbour Master and the Port Authorised Officer (whichever is applicable) including, without limitation, any direction concerning matters relating to occupational health and safety, security or quality assurance. The Harbour Master's direction will take priority over any direction given by VPCM or the Port Authorised Officer.
- (b) If the Provider does not comply with a direction issued or given under clause 6(a), VPCM may, without further notice, take whatever steps it considers necessary to ensure compliance by the Provider. Any costs incurred in connection with this clause are recoverable by VPCM as a debt due and payable from the Provider.

## 7. Provider Obligations

---

### 7.1 General Obligations

The Provider must:

- (a) acquire and maintain all Authorisations necessary for the provision of the Ancillary Services;
- (b) comply with all applicable Laws relating to the provision of the Ancillary Services;
- (c) procure that each of its Personnel entering the Licensed Area, each time they enter the Licensed Area, present a valid VPCM Station Pier access card or have their details entered into the VPCM Pier Access Management System and present an original copy of a government issued photo identification document (for example, a driver's licence or passport);
- (d) comply with all of VPCM Policies and Procedures (as are applicable to the Ancillary Services);
- (e) comply with VPCM's Safety and Environment Management Plan;
- (f) comply with any other documentation reasonably required by VPCM;
- (g) only use the Licensed Area designated by VPCM for use by the Provider;
- (h) pay all stamp duty, taxes (including GST) and any other governmental or statutory charges payable or assessed on this Licence Agreement and any other related documentation;
- (i) ensure that all Equipment is in good order and a proper state of repair;
- (j) ensure that Equipment is only operated by properly qualified and licensed persons;
- (k) participate in, and ensure that all of its Personnel participate in, any induction programs or training required by VPCM;
- (l) ensure that all Ancillary Services are performed by properly trained, qualified and, where relevant, licensed Personnel;
- (m) not bring or permit to be brought on or into the Licensed Area any machinery, plant or equipment except the Equipment without the prior written consent of VPCM;
- (n) not permit or allow any cargo, machinery, plant or equipment that exceeds the design loadings referred to in the Port Rules (VPCM Safe Load Chart) to be brought on or into the Licensed Area;
- (o) not do or allow anything to be done that might damage the Licensed Area (such as storing flammable substances or bring heavy equipment onto the Licensed Area except for the Equipment);
- (p) promptly notify VPCM of any damage caused to the Licensed Area and repair such damage according to any reasonable directions provided by VPCM;
- (q) keep the Licensed Area in a clean and tidy condition, free from rubbish, litter and fire hazards;
- (r) not make any alteration or addition to (including erecting any signs on) any part of the Licensed Area without VPCM's prior written consent;
- (s) not cause any nuisance, damage, obstruction, annoyance or inconvenience to the occupiers or users of any adjoining premises or the Licensed Premises;
- (t) comply with any reasonable security and fire safety requirements of VPCM and the Harbour Master in relation to the Licensed Area;
- (u) comply, on time, with all requirements, orders and notices of Authorities and any insurers and all laws concerning the Provider's use or occupation of the Licensed Area, and the Provider's property;
- (v) ensure that it and its Personnel:
  - (i) cooperate with all other ancillary service providers and other persons or entities in the Licensed Area; and
  - (ii) do not obstruct the activities of any other person or entity in the Licensed Area;
- (w) keep the Licensed Area, and any areas used in connection with the Licensed Area, clean and tidy at all times during and at the completion of their use by the Provider;
- (x) at the completion of the Licence Agreement, surrender and deliver to VPCM all keys, access cards and other items enabling access to or use of any facilities situated in or around the Licensed Area;
- (y) make good any damage caused or contributed to by the Provider and its Personnel in the Licensed Area;
- (z) not carry on from, permit to be carried on from, bring onto, or permit to be brought onto the Licensed Area, any offensive or illegal activity or practice or do or permit to be done any matter or thing, which constitutes a nuisance or harm to VPCM or any other person;
- (aa) comply with the Port Rules;

- (bb) remove any Equipment from the Licensed Area at the direction of VPCM;
- (cc) on request, provide the information to VPCM as set out at Item 4 of Schedule 1 (General); and
- (dd) on request, attend the coordination meetings, planning meetings and personnel training sessions set out at Item 5 of Schedule 1 (General).

7.2 Quality Assurance Obligations

The Provider must, at all times, establish and maintain a documented quality assurance system in respect of all Ancillary Services performed by the Provider. The Provider's quality assurance system must comply with best industry practice and any applicable Australian Standards.

7.3 Audit

- (a) The Provider must allow VPCM and its agents, representatives and officers to access all premises, Personnel and materials to enable VPCM to audit the Provider's compliance with this Licence Agreement including all obligations set out in this clause.
- (b) VPCM will, except in circumstances where it determines (acting reasonably) that the Provider may or is in breach of this Licence Agreement, provide the Provider with reasonable prior notice before requesting access to any premises, Personnel and materials under clause 7.3(a).
- (c) The Provider must ensure that an appropriately authorised representative of the Provider attends any audit conducted by VPCM.

7.4 Equipment Obligations

- (a) The Provider must, in respect of any Equipment:
  - (i) only bring onto the Licensed Area the Equipment as detailed in the Application Form (as relevant);
  - (ii) ensure that all Equipment is stored in accordance with any directions provided by VPCM and in accordance with all Laws;
  - (iii) ensure that all Equipment is fit for purpose, properly licensed and certified (as required) and that all required servicing and maintenance requirements have been performed on the Equipment in accordance with supplier or manufacturer guidelines;
  - (iv) insure and keep insured that Equipment to its full value on a replacement or reinstatement basis (the amount of which shall be as reasonably nominated by the Provider);
  - (v) bear the risk of any loss or damage to the Equipment and releases VPCM in respect of any liability for damage, loss, failure or theft of any Equipment or contents of any Equipment;
  - (vi) comply with any reasonable direction provided by VPCM to move, remove, relocate or clear Equipment from the area (or any other area or areas so designated by VPCM);
  - (vii) comply with any reasonable direction provided by VPCM to repair any faulty or equipment posing a risk to public health and safety or a risk of damage to any property;
  - (viii) store Equipment in designated areas only;
  - (ix) ensure that the Provider's contact details are appropriately visible on all Equipment;
  - (x) maintain appropriate spill control equipment required to manage leaks associated with Equipment malfunctions;
  - (xi) permit VPCM or its Personnel to inspect all Equipment; and
  - (xii) except through appropriately licensed ancillary service providers, not carry out repair or maintenance work on any Equipment without VPCM's prior written consent.
- (b) The use of the Equipment in the Licensed Area may be subject to any other permits, licences, fees or charges imposed in respect of the use of such Equipment in the Licensed Area, and this Licence Agreement does not derogate from such obligations. The Provider is responsible for making all enquiries and ensuring it has such arrangements in place prior to bringing any Equipment into the Licensed Area.

7.5 Occupational health and safety obligations

The Provider must:

- (a) comply with the VPCM Safety and Environment Management Plan, unless otherwise directed by VPCM;
- (b) comply with the OH&S Management System;
- (c) comply with Occupational Health and Safety Laws;
- (d) comply with the VPCM Drugs and Alcohol Policy.

- (e) ensure that all of its Personnel who access the Licensed Area are comprehensively instructed regarding the content of the VPCM Safety and Environment Management Plan; and
- (f) participate in, and procure that each of its Personnel engaged in performing the Ancillary Services and/or who access the Licensed Area participate in any VPCM safety, environment, emergency and security induction sessions, training or information sessions as required by VPCM from time to time.

#### 7.6 Environmental matters

The Provider must:

- (a) comply at all times with all Environmental Laws;
- (b) comply with the VPCM Safety and Environment Management Plan, unless otherwise directed by VPCM;
- (c) comply with the Environment Management System;
- (d) immediately notify VPCM of any failure to comply with any Environmental Laws;
- (e) not store or keep on or permit to be stored or kept upon or around the Licensed Area any petrol or other flammable fuel or hazardous materials; and
- (f) notify VPCM in writing of any environmental incidents that occur on site as soon as practicable and follow up with a written report detailing what occurred, contributing factors and what processes or procedures have been put in place to prevent a reoccurrence of the incident within 10 Business Days of the date the environment incident occurred.

### 8. **Termination of Licence Agreement**

---

#### 8.1 Immediate Termination

VPCM may, to the extent permitted by Law, terminate this Licence Agreement immediately by notice to the Provider:

- (a) in accordance with clause 13(b);
- (b) if the Provider is in default of its obligations under this Licence Agreement and has not remedied such default within 7 days of VPCM giving notice to the Provider of the default;
- (c) if VPCM no longer has the right at Law to grant the Licence Agreement to the Provider in accordance with its terms; or
- (d) if the Provider enters into an Insolvency Event.

#### 8.2 VPCM may rectify

If the Provider does not comply with any term of this Licence Agreement, then without limiting any other right or remedy of VPCM, VPCM may (but is not obligated to), without notice, remedy that breach. The Provider must pay or reimburse VPCM on demand for any reasonable costs incurred by VPCM in connection with remedying the breach.

#### 8.3 Termination for Force Majeure Event

Either party may terminate this Licence Agreement immediately by providing notice in writing to the other party if a Force Majeure Event continues for at least two months.

#### 8.4 Consequences of termination

Termination of this Licence Agreement in accordance with clause 8 (Termination of Licence Agreement) is without prejudice to any accrued rights or claims available to either party for any prior breaches of this Licence Agreement.

### 9. **Security**

---

- (a) The Provider acknowledges that the Licensed Area includes security regulated ports in accordance with the *Maritime Transport and Offshore Facilities Security Act 2003 (Cth)*.
- (b) The Provider acknowledges and understands that VPCM is subject to a federally approved marine safety plan. The Provider may be required to comply with directions given by VPCM in respect of that marine safety plan.
- (c) The Provider shall comply, and shall procure that all of its Personnel comply, with all directions made by VPCM including VPCM's Port Facility Security Officer (or their delegate) or the Maritime Security Guard in respect to security matters in the Licensed Area. Any direction given by the VPCM Port Facility Security Officer (or their delegate) will prevail over any direction given by the Maritime Security Guard.



- (d) The Provider must, and must procure that its Personnel, report any breaches of security, criminal activity or suspicious behaviours to at least one of the following:
- (i) Victoria Police Emergency
  - (ii) Melbourne - VTS;
  - (iii) the Port Facility Security Officer; or
  - (iv) the Maritime Security Guard.

## 10. Insurance

---

### 10.1 Insurances to be maintained by Provider

- (a) During the Term, the Provider must maintain:
- (i) liability insurance for the Provider's business activities, being public risk and/or professional indemnity as required, for an amount of not less than \$20 million public risk in respect of any single occurrence and \$5m professional indemnity in respect of any claim, or such higher amount as VPCM may from time to time reasonably require;
  - (ii) workers compensation insurance;
  - (iii) insurance covering the full replacement value of any Equipment (including where relevant motor vehicle insurance); and
  - (iv) all other insurances, which are required by Law.
- (b) The Provider must ensure that each insurance policy (except for statutory insurance policies):
- (i) is maintained with an insurer reasonably acceptable to VPCM;
  - (ii) includes having VPCM's interest noted as a third party beneficiary for all VPCM contracts;
  - (iii) provides that the insurer will provide to VPCM at least 15 Business Days written notice if the policy is to lapse or be cancelled; and
  - (iv) is on terms specified in this Licence Agreement or, if not so specified, provides a reasonable and appropriate level of cover having regard to the risks assumed by the parties in relation to the performance of this Licence Agreement.

### 10.2 Proof of Insurance

If requested by VPCM, the Provider must provide VPCM with a copy of any certificates of currency as evidence of each insurance policy required under this Licence Agreement.

### 10.3 Subcontractors

The Provider must procure that any subcontractor engaged by the Provider strictly complies with the requirements set out in this clause and provides VPCM with copies of certificates of currency and policy schedules relating to such insurances on request.

## 11. Indemnity and release

---

- (a) The Provider uses and occupies the Licensed Area and performs the Ancillary Services at its own cost and risk.
- (b) To the fullest extent permitted by Law, the Provider releases (and must procure that the Provider's Personnel release) VPCM and its Personnel from all claims, demands, actions, proceedings, damages, losses, liabilities, costs and expenses of every kind in respect of or resulting from any accident, damage, death, loss or injury in connection with the Licensed Area or the Provider's use or occupation of the Licensed Area except to the extent caused by the wilful acts or negligence of VPCM.
- (c) The Provider indemnifies VPCM at all times from and against all claims, demands, actions, proceedings, liabilities, costs and expenses of every kind and all loss and damage suffered or incurred by VPCM as a result of or in connection with:
- (i) any accident, damage, death, loss or injury in connection with the Licensed Area or the Provider's use or occupation of the Licensed Area to the extent caused by the Provider;
  - (ii) any loss of or damage to any property; and
  - (iii) a breach by the Provider of any of this Licence Agreement.
- (d) The Provider's obligations to release and indemnify VPCM under this clause 11 will be reduced proportionately to the extent caused or contributed to by VPCM or any of its Personnel.

- (e) The indemnity and release set out in this clause are independent from the other obligations of the Provider under this Licence Agreement and do not come to an end when the Licence Agreement terminates or expires.

## 12. Goods and Services Tax (GST)

---

### 12.1 Preliminary

Words or expressions used in this clause are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

### 12.2 GST exclusive

Unless otherwise stated, any amount specified in this Licence Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

### 12.3 Liability to pay GST

If a party makes a taxable supply under this Licence Agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

### 12.4 Tax invoice

Notwithstanding the foregoing, the Recipient is not obliged under this Licence Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

### 12.5 Adjustment event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this Licence Agreement, the amount paid or payable by the Recipient pursuant to clause 12.3 (Liability to pay GST) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

### 12.6 Reimbursement of expenses

If a third party makes a taxable supply and this Licence Agreement requires a party to this Licence Agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit, to which the other party is entitled in respect of the expense or liability

### 12.7 Non-merger

This clause does not merge on completion and will continue to apply after expiration or termination of this Licence Agreement.

## 13. Change of Provider Information

---

- (a) The Provider warrants that all information provided by it to VPCM for the purposes of the Application Form is and shall remain accurate, complete and correct in all respects.
- (b) If VPCM, in its absolute discretion, forms the view that any change or alteration advised by the Provider or otherwise ascertained by VPCM may adversely affect the safe or orderly operation of the Licensed Area, then VPCM may immediately terminate this Licence Agreement by written notice to the Provider or require the Provider to show cause why this Licence Agreement should not be terminated.

## 14. Assignment

---

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

## 15. Dispute Resolution

---

### 15.1 Dispute Notice

- (a) If a party claims that a dispute has arisen under or in connection with this Licence Agreement (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party specifying the nature of the Dispute.

- (b) A Dispute cannot be the subject of litigation until the provisions of clauses 15.2 (Resolution by parties), 15.3(Resolution by senior executives), 15.4 (Mediation) and 15.5 (ADC Mediation Guidelines) 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 clauses 15.2 (Resolution by parties), 15.3((Resolution by senior executives), 15.4 (Mediation) and 15.5 (ADC Mediation Guidelines) before seeking such relief).

15.2 [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.

15.3 [Resolution by senior executives](#)

If the Dispute is not resolved under clause 15.2(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.

15.4 [Mediation](#)

If the Dispute is not resolved under clause 15.3(Resolution by senior executives) within 15 Business Days (or such other period agreed between the parties to the Dispute) after the date of the Dispute Notice, the parties to the Dispute must refer the Dispute to mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.

15.5 [ADC Mediation Guidelines](#)

- (a) The mediation under clause 15.4 (Mediation) must be conducted in accordance with the ADC Guidelines for Commercial Mediation, which are operating at the time the matter is referred to the ADC (**Guidelines**). The Guidelines set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved.
- (b) The terms of the Guidelines are deemed to be incorporated into this Licence Agreement.

15.6 [Parties' obligations](#)

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

15.7 [Litigation](#)

If the Dispute is not resolved under clause 15.4 (Mediation) within 40 Business Days after the date of the Dispute Notice, either party may commence litigation proceedings.

**16. General**

---

16.1 [Waiver](#)

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A party does not waive its rights under this Licence Agreement because it grants an extension or forbearance to the other party.
- (d) A waiver given by a party in accordance with clause 16.1(a):
- (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
  - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this Licence Agreement, nor is it to be construed as a waiver of any other obligation or breach.

16.2 [Relationship](#)

Nothing in this Licence Agreement creates a relationship of employer and employee, principal and agent or partnership between any of the parties to this Licence Agreement.

16.3 [Further Assurances](#)

- (a) Each party, at its own expense will do all things and execute all further documents necessary to give full effect to this Licence Agreement.

- (b) This Licence Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

16.4 Counterparts

- (a) This Licence Agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together continue one document.
- (b) A party that has executed a counterpart of this document may exchange that counterpart with another party by faxing or emailing it to the other party or the other party's legal representative and it is intended that such exchange is to take effect as delivery of this Licence Agreement.

16.5 Costs

Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this Licence Agreement and any other related documentation.

16.6 Governing Law

- (a) This document is governed by and is to be construed under the laws in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this document. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

16.7 Subcontracting

- (a) The Provider must not subcontract the performance of the Ancillary Services (or any part of them) except with the express written consent of VPCM.
- (b) The Provider is liable for the actions of any subcontractor engaged by the Provider as if they were actions of the Provider.
- (c) The Provider must ensure that each subcontractor strictly complies with the requirements set out in this Licence Agreement, and will be liable for any failure by a subcontractor to do so.

## **Schedule 1: General**

### Item 1 Commencement date

The date on which this agreement is executed by both parties.

### Item 2 Term

The period from the Commencement Date to 30 June 2020.

### Item 3 Licence Fee

\$1 (if demanded) for the period from the Commencement Date to 30 June 2020.

### Item 4 Information to be provided by the Provider

When requested by VPCM from time to time, the Provider is to provide the following information in order to ensure coordination of activity within the Licensed Area:

- Details of the Equipment to be bought into the Licensed Area including the time of arrival and departure.
- Details of the volume of victuals, ships stores or other cargo to be handled, picked up, dropped off or marshalled in any way within the Licensed Area including the time of arrival and departure.
- Details of the volume of passengers to be handled, picked up, dropped off or marshalled in any way within the Licensed Area including the time of arrival and departure.
- Details of **any** specialised communications equipment (equipment that receives or transmits communications) and information technology equipment or apparatus to be used within the Licensed Area (including without limitation mobile phones).

The information is to be provided to VPCM in the format requested within two Business Days of the request or sooner where it is specified and applies to a planned activity within the Licensed Area.

### Item 5 Attendance by an Provider at Coordination Meetings, Planning Meetings and Personnel Training Sessions

When requested by VPCM the Provider is to attend coordination meetings, planning meetings or personnel training sessions that are applicable to the operation, security or safe working of the Licensed Area or access/egress of the Licensed Area.

### Item 6 Specialist Requirements

Reserved

## **Schedule 2: Ancillary Service Provider Application Form**

**(Note: Please attach the relevant signed and dated Provider Application Form)**

SAMPLE

## Schedule 3: Plan Identifying Licensed Area

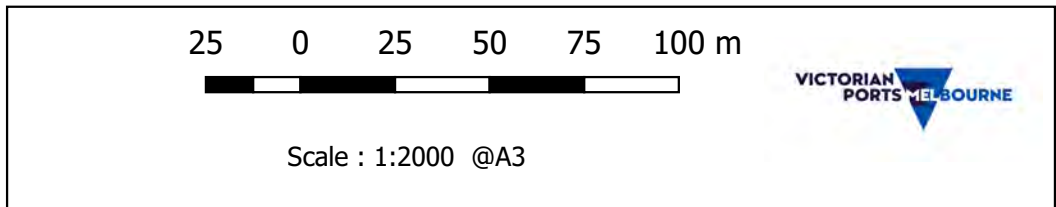
SAMPLE



Ancillary Service Provider Area

- TT-Line Leased Area
- ASP Licenced Area (Centre Road Way)
- ASP Licenced Area Boundary

## Ancillary Service Providers (ASP) Licensed Area



Disclaimer Notice: Victorian Ports Corporation (Melbourne) gives no representation or warranty as to the accuracy, currency or completeness of the information it makes available. All liability is expressly disclaimed and excluded.



## Schedule 4: Tariff Schedule

Reserved

SAMPLE

## Executed as an Agreement

**SIGNED** for and on behalf of the **VICTORIAN PORTS CORPORATION (MELBOURNE) ABN 22 195 188 658** by:

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

Dated \_\_\_/\_\_\_/\_\_\_

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

Dated \_\_\_/\_\_\_/\_\_\_

SAMPLE