

## 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 Shipping Agent and Owner, jointly and severally, on the other part.
- 1.1.2. The Agreement is established when the Shipping Agent acting as agent for the Owner, or the Owner, submits an Application to access and use the Common User Wharves and Common User Terminals.

### 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) portorage;
- (e) tour operators;
- (f) provedoring and chandlery;
- (g) waste services;
- (h) Vessel repair and maintenance services; and
- (i) bunkering services,

provided by Licensed Providers.

**Application** means the submission of an application to access the Common User Wharves and Common User Terminals via PortVIEW.

**Booking Confirmation** has the meaning given in clause 5.2.3(a) of these Standard Terms and Conditions.

**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.

**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.

**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.

**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.

**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, the Common User Wharves or Common User Terminals;
- (d) directions of the Harbour Master;
- (e) directions of the Port Authorised Officer;
- (f) requirements of the Port Rules;
- (g) directions of any statutory bodies or authorities with relevant jurisdiction; and
- (h) the 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.

**OH&S Laws** means all legislation, regulations, by- laws, orders and legal requirements concerning the health, safety and welfare of people at work, including but not limited to the:

- (a) *Occupational Health and Safety Act 2004* (Vic);
- (b) *Occupational Health and Safety Regulations 2007* (Vic);
- (c) *Dangerous Goods Act 2000* (Vic);
- (d) *Dangerous Goods Regulations 2000* (Vic); and
- (e) any other Laws concerning occupational health and safety in connection with the Common User Wharves and Common User Terminals.

**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 identified as the Owner in the Application who is the 'owner of a vessel' as defined by section 4 of the PMA.

**P&I Clubs** means those mutual insurance associations which provide P&I Cover.

**P&I Cover** means protection and indemnity insurance that, in the case of Vessel owners, covers liabilities concerning or arising from the following risks:

- (a) death and personal injury to seamen, passengers and third parties;
- (b) in respect of stowaways or persons rescued at sea;
- (c) collisions;

- (d) groundings;
- (e) damage to fixed and floating objects;
- (f) pollution;
- (g) wreck removal;
- (h) towage operations; and
- (i) Cargo damage.

**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; and
- (e) crew change,

as notified by PV to the Shipping Agent and/or Owner in the Booking Confirmation.

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

**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.

**Port Facilities** means the Channel, Port of Melbourne Land and all other facilities owned, managed or controlled by PV, but does not include the Common User Wharves or Common User Terminals.

**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** means the Port of Melbourne Waters.

**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.

**PV** 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. 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** 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.

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

## **2.2. Joint and several obligations of the Owner and the Shipping Agent**

Any obligation imposed on Owner or Shipping Agent contained in this Agreement must be construed as imposing joint and several liability upon the Owner and the Shipping Agent.

## **3. Owner**

### **3.1. Owner Obligations**

- 3.1.1. The Owner agrees that it has engaged the Shipping Agent to act as its agent for all relevant purposes concerning the Vessel, including for the duration of the Access Period and while the Vessel is under the control of the Owner.
- 3.1.2. The Owner must perform all the obligations of the Owner in this Agreement.
- 3.1.3. The obligations of the Owner pursuant to this Agreement survive the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent.
- 3.1.4. As soon as practicable after the termination of any contract or other arrangement or agreement between the Owner and the Shipping Agent, the Owner must notify PV of that termination and the name of any replacement Shipping Agent appointed or to be appointed. In such circumstances, the Owner 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.
- 3.1.5. PV may cancel any existing booking made by the previous Shipping Agent without liability if the new Shipping Agent has not confirmed it agrees to be bound by this Agreement prior to any existing booking being confirmed with a Booking Confirmation.

## 4. Shipping Agent

### 4.1. Shipping Agent Obligations

- 4.1.1. The Shipping Agent warrants that 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.
- 4.1.2. The Shipping Agent must:
- (a) advise the Owner of all Port Charges and rules of entry;
  - (b) collect from the Owner and pay to PV all relevant disbursements, fees and charges, including the Port Charges and any Wharfage Fee (concerning the Cargo for which it is the shipping agent);
  - (c) inform the Owner of any directions from the Harbour Master or any other person issued under Clause 11.2; and
  - (d) 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 each Vessel;
    - (ii) the current Certificate of Registry and Certificate of Tonnage, unless the current Certificate of Registry and Certificate of Tonnage are unamended following the previous visit of the Vessel to Port of Melbourne Waters; and
    - (iii) any other documents reasonably requested by PV.
- 4.1.3. The Shipping Agent must:
- (a) use best endeavours to ensure that its Personnel understand and comply with the security requirements of the Port of Melbourne;
  - (b) use its best endeavours to ensure that its Personnel understand and comply with their obligations under MTOFSA;
  - (c) ensure that its Personnel comply with the Shipping Agent's obligations under these Standard Terms and Conditions; and
  - (d) advise the Owner of its obligations under MTOFSA.
- 4.1.4. The Shipping Agent must co-operate with PV and all other users of Port Facilities, the Common User Wharves and Common User Terminals to ensure compliance with all Legislative Requirements.
- 4.1.5. The Shipping Agent must at all times cooperate with PV and other users of Port Facilities, the Common User Wharves and Common User Terminals, at least to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.

## 5. Grant of Use of Common User Wharves and Common User Terminals

### 5.1. Grant of Permitted Uses

- 5.1.1. The Owner is permitted to use such part or area of the Common User Wharves and Common User Terminals as directed by PV for a Permitted Use for the duration of the Access Period, unless otherwise directed by PV.
- 5.1.2. The Vessel shall be permitted to berth at the Common User Wharves and the Owner or the Shipping Agent 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 Owner or the Shipping Agent.
- 5.1.3. The Owner acknowledges that PV's approval of an Application does not guarantee that the Common User Wharves will be available to be accessed or used by the Vessel on the date nominated in that Application.

## **5.2. Acknowledgement by Owner and or Shipping Agent**

- 5.2.1. The Owner and/or Shipping Agent on behalf of the Owner acknowledge and agree that all references to use and access to the Common User Wharves and Common User Terminals throughout these Standard Terms and Conditions is a reference to such part or area directed by PV only.
- 5.2.2. The Owner and/or the Shipping Agent on behalf of the Owner agree that the Common User Wharves and Common User Terminals must not be used for any purpose other than a Permitted Use.
- 5.2.3. The Owners' right to use the Common User Wharves and Common User Terminals for the Permitted Use is subject to:
  - (a) confirmation in writing from PV to the Owner and/or Shipping Agent that the Application has been approved and a booking has been made by PV (Booking Confirmation); and
  - (b) any directions given by PV either at the time of the Booking Confirmation or at any time prior to berthing of the Vessel regarding the specific Common User Wharf and/or Common User Terminal to which the Owner will be granted access.
  - (c) the Owner and/or Shipping Agent submitting a valid Application via PortVIEW;
  - (d) payment of the Port Charges;
- 5.2.4. For the avoidance of doubt, the Owner and/or the Shipping Agent will be directed by PV to use only part of the area of the Common User Wharves and Common User Terminals and the Owner and Shipping Agent must strictly comply with such directions and must not access any other part or area except with PV's prior written consent.

## **5.3. Use subject to this Agreement**

- 5.3.1. The Owner and the Shipping Agent acknowledge and agree that their access to and use of Common User Wharves and Common User Terminals is subject to and in accordance with the terms and conditions of this Agreement.
- 5.3.2. The Owner and Shipping Agent acknowledge and agree that:
  - (a) PV has made no representation and gives no warranty concerning the adequacy or suitability of the Common User Wharves or Common User Terminals for the Vessel or the use intended by the Owner;
  - (b) they have not entered into these Standard Terms and Conditions in reliance on any representation expressly or impliedly given by PV;
  - (c) they have made their own enquiries to satisfy themselves 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) they have made their own enquiries and are fully acquainted with their obligations under this Agreement, including all information available by making reasonable enquiries which are relevant to the risks and other circumstances which could affect the Permitted Use.
- 5.3.3. The Owner and the Shipping Agent acknowledge that their rights under this Agreement rest in contract only and this Agreement does not create or confer upon the Owner or the Shipping Agent any tenancy, estate or other interest in the Common User Wharves and Common User Terminals.
- 5.3.4. The Owner has no right of exclusive occupation or use of the Common User Wharves and Common User Terminals 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 the Common User Wharves and Common User Terminals.
- 5.3.5. Where access to a designated berth is authorised by PV for the duration of the Access Period, use of that particular berth may be exclusive (as directed by PV or the Harbour Master), but is not guaranteed and is subject to clause 5.2.3(b), 5.4 and clause 7.
- 5.3.6. The Owner acknowledges that the Common User Wharves and Common User Terminals available for access by the Owner may change from time to time in PV's complete discretion, including as a consequence of a direction given by the Harbour Master.

- 5.3.7. If there is a change to access arrangements or the status of the Common User Wharves or Common User Terminals, PV will give notice of such change to the Owner or the Shipping Agent (as applicable) as soon as reasonably practicable (which for the avoidance of doubt may be any time prior to the berthing of the Vessel) and is subject always to clause 5.2.3(b), 5.4 and clause 7.

#### **5.4. Access to be exercised in accordance with directions**

- 5.4.1. The rights of the Owner to occupy, use or access the Common User Wharves and Common User Terminals for the Permitted Use are subject to the directions of the Harbour Master, the Port Authorised Officer and Melbourne VTS, which directions may include the Common User Wharves and Common User Terminals 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.

## **6. Term of Agreement**

### **6.1. Term**

- 6.1.1. This Agreement commences when the Owner or the Shipping Agent submits an Application to PV in relation to the Vessel.
- 6.1.2. This Agreement expires at the conclusion of the Access Period.
- 6.1.3. 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 the Common User Wharves or Common User Terminals to the Owner unless and until a Booking Confirmation is issued by PV, with all Booking Confirmations being subject to the terms of this Agreement.

## **7. Withdrawal of access or hire**

### **7.1. Withdrawal before commencement of Access Period**

- 7.1.1. PV acting reasonably reserves the right to refuse or to withdraw permission for a Vessel to access or use the Common User Wharves (or any part of the Common User Wharves) or the Common User Terminals (or any part of the Common User Terminals) when:
- (a) the Common User Wharves or any part of the Common User Wharves are unsuitable for use;
  - (b) the Common User Terminals or any part of the Common User Terminals are unsuitable for use;
  - (c) a direction is given by the Harbour Master; or
  - (d) the Vessel is unable to be loaded or unloaded at any time prior to the commencement of an Access Period.

### **7.2. Withdrawal for the purposes of Lay-up**

The Owner acknowledges that PV may give priority to any Vessel carrying Cargo 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 any time.

### **7.3. Approved immobilisation**

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



## **7.4. No compensation**

- 7.4.1. If PV withdraws permission for use of or access to the Common User Wharves or Common User Terminals, PV shall refund to the Owner or the Shipping Agent (as applicable) any monies paid in advance by the Owner or the Shipping Agent in respect of applicable Port Charges for any proposed Access Period that does not proceed, or for the use of the Common User Wharves or Common User Terminals for which permission for access or use is withdrawn.
- 7.4.2. The Shipping Agent and the Owner acknowledge and agree that PV is not obliged to pay, and neither the Shipping Agent nor the Owner is entitled to any other remedy, compensation or damages for any such withdrawal of permission.

## **8. Port Charges and Interest**

### **8.1 Port Charges and Interest**

- 8.1.1. The Owner agrees that it is liable to pay to PV the Port Charges in accordance with the terms of this Agreement.
- 8.1.2. PV may, in its discretion, recover the Port Charges as, if applicable, a Wharfage Fee recoverable under section 74 of the PMA.
- 8.1.3. The Owner agrees to pay PV the Port Charges concerning Empty Containers unloaded from or loaded onto a Vessel at the Port of Melbourne.
- 8.1.4. The Owner agrees to pay PV all other Port Charges concerning the use by the Owner or the Vessel of the Common User Wharves or the Common User Terminals in accordance with the Reference Tariff Schedule.
- 8.1.5. The Port Charges shall be due for payment within thirty (30) days of the date of the relevant invoice issued by PV.
- 8.1.6. 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 Owner shall be liable to reimburse PV such costs and those costs shall be recoverable by PV as a debt due and payable by the Owner within thirty (30) days of the date of the relevant invoice issued by PV.
- 8.1.7. If the Owner does not pay the relevant Port Charges in accordance with this Agreement, the Owner 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)*.

## **9. Cargo and Passenger Manifests and documentation**

### **9.1 Manifests and documentation**

- 9.1.1. The Owner or the Shipping Agent shall cause to be lodged with PV an Inward Manifest within 2 days of the arrival of a Vessel in Port of Melbourne Waters.
- 9.1.2. The Owner or the Shipping Agent shall cause to be lodged with PV an Outward Manifest within 5 days of the departure of a Vessel from Port of Melbourne Waters.
- 9.1.3. Inward Manifests and Outward Manifests shall be electronically lodged with PV by email at the address identified in the Schedule.
- 9.1.4. The Owner and the Shipping Agent must cause to be lodged with PV 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.
- 9.1.5. In the event that a Vessel does not discharge or load any Cargo or Passenger while in Port of Melbourne Waters, the Owner or the Shipping Agent 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.

## 10. Owner Acknowledgment and Indemnity

### 10.1. Owner Acknowledgement

- 10.1.1. Rights to use the Common User Wharves and Common User Terminals are personal and in contract only.
- 10.1.2. The Owner acknowledges and agrees that the rights conferred upon it by this Agreement to use the Common User Wharves and Common User Terminals may not be transferred or assigned to any other party.
- 10.1.3. This Clause 10.1 does not impact upon any arrangement between the Owner and the Shipping Agent in relation to the Vessel, Cargo or Passenger.
- 10.1.4. The Owner acknowledges and agrees that it is responsible for the acts and omissions of its agents, including the Shipping Agent, its employees, servants, invitees, contractors and any Ancillary Service Provider engaged by the Owner or its Shipping Agent on behalf of the Owner.

### 10.2. General indemnity and liability by Owner

- 10.2.1. The Owner 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 Owner;
  - (d) loss suffered or incurred in connection with the engagement of any Ancillary Service Provider by the Owner or as a consequence of any act or omission of any Ancillary Service Provider; and
  - (e) loss, subject to clause 10.2.3, 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 at the Port of Melbourne,

arising out of or as a consequence of the access, occupation or use of the Common User Wharves or Common User Terminals by the Owner, the Shipping Agent, or their servants, agents, employees or contractors (including any Ancillary Service Provider).

- 10.2.2. The Owner'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, damage, death or injury.
- 10.2.3. The Owner indemnifies PV for direct and Consequential Loss incurred by PV arising from any Pollution Incident, Environmental Hazard or Contamination caused by the Owner, the Shipping Agent, or their servants, agents, employees or contractors, including all crew, Ancillary Service Providers and all personnel engaged by it in relation to a Vessel without prejudice to any defences, exclusions from liability and rights of limitation provided by law.
- 10.2.4. The Owner is liable for any and all Loss or damage to the Common User Wharves or Common User Terminals, arising from or related to the hire or use of the Common User Wharves or Common User Terminals by the Owner, the Shipping Agent, or their servants, agents, employees or contractors, including all crew, Ancillary Service Provider and all personnel engaged by it in relation to a Vessel (whether during the Access Period or otherwise).

### 10.3. Damage to PV Property

- 10.3.1. 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 the Common User Wharves or Common User Terminals by the Owner, the Shipping Agents, or their servants shall be borne by the Owner or, if such costs are incurred by PV, the Owner is liable to reimburse PV such costs which shall be recoverable by PV as a debt due and payable by the Owner.

- 10.3.2. The Owner must pay to PV the reasonable cost of any repairs referred to in Clause 10.3.1 carried out by or on behalf of PV not later than 30 days after written demand is made by PV for such payment.

## 11. Compliance with Legislative Requirements and directions

### 11.1. Legislative Requirements

- 11.1.1. The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel (including any Ancillary Service Providers), comply with all Legislative Requirements.
- 11.1.2. The Shipping Agent must ensure that its servants, agents, employees and contractors comply with all Legislative Requirements.

### 11.2. Compliance with directions

The Owner must strictly comply with any:

- 11.2.1. direction of the Harbour Master in connection with access to or use of Port Facilities, Common User Wharves or Common User Terminals;
- 11.2.2. direction of PV's Security Manager or PV's Security Contractor;
- 11.2.3. direction of PV in connection with access to or use of Port Facilities, Common User Wharves or Common User Terminals; and
- 11.2.4. direction by any officer authorised by statute to give directions including pursuant to the *Marine Safety Act 2010* (Vic).
- 11.2.5. If the Owner does not comply with a direction issued or given under clause 11.2.1, PV may, at its absolute discretion:
- (a) without further notice take whatever steps it considers necessary to ensure compliance by the Owner. Any costs incurred in connection with this clause are recoverable by PV as a debt due and payable by the Owner;
  - (b) by written notice to the Owner, immediately terminate this Agreement or require the Owner to show cause why this Agreement should not be terminated.

### 11.3. PV Guidelines and Port Rules

- 11.3.1. The Owner must comply, and shall ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it in relation to a Vessel, comply with all current PV Guidelines and Port Rules applicable to access and use the Common User Wharves, Common User Terminals or Port Facilities.
- 11.3.2. The parties acknowledge that the PV Guidelines and Port Rules, as amended from time to time, are published on the PV Website.

## 12. Environmental Obligations

### 12.1. Obligation not to pollute

- 12.1.1. Whilst accessing or using the Port Facilities, Common User Wharves, Common User Terminals or Port of Melbourne Waters, the Owner must not:
- 12.1.2. cause a Pollution Incident;
  - 12.1.3. cause an Environmental Hazard; or
  - 12.1.4. disturb, exacerbate or facilitate the migration of any existing Contamination.

## 12.2. Environmental Incidents

- 12.2.1. Without limiting the Owner's obligations under Clause 14 or under Environmental Laws, the Owner 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.
- 12.2.2. The Owner must, at its expense, clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident in accordance with any direction issued by PV and within the timeframe specified in the direction.
- 12.2.3. PV may, at its discretion and at the Owner's cost, engage an Environmental Auditor pursuant to Chapter 8 of *the Environment Protection Act 2017 (Vic)* in respect of the Pollution Incident.
- 12.2.4. Within 48 hours of the Shipping Agent or Owner receiving any notices or legal proceedings in respect of the impact of the Owner's activities on the Environment over, under or on Port Facilities, the Common User Wharves, Common User Terminals or Port of Melbourne Waters, including without limitation notices or proceedings issued by the Environment Protection Authority or any other statutory or governmental body, the Shipping Agent or Owner (as applicable) must give written notice to Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.
- 12.2.5. The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in this clause 12.2.4 and is liable for any costs of compliance with such statutory notices.

## 12.3. Dangerous goods

The Owner must not, without PV's prior written consent, use or allow the Port Facilities, the Common User Wharves, Common User Terminals or Port of Melbourne Waters to be used for the storage (whether temporary or permanent) of dangerous goods (as defined in the *Dangerous Goods Act 1985 (Vic)* or the Australian Code for the Transport of Dangerous Goods by Road and Rail) or any other goods the storage of 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.

## 12.4. Rights of PV

Without limiting the foregoing provisions of this Clause 12:

- 12.4.1. 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 Owner's activities, PV may issue a direction requiring that specified corrective action be undertaken by the Owner to the satisfaction of PV and within the timeframe specified by PV.
- 12.4.2. If the Owner fails to:
  - (a) comply with the terms of a direction under sub-clause 12.4.1 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:
    - (i) itself undertake the corrective action and recover its costs of undertaking the corrective action as a debt due from the Owner to PV; or
    - (ii) deny the Owner the continuance of any right it would otherwise have had under this Agreement, including without limitation the right to remain in Port of Melbourne Waters.

# 13. Safety and Emergencies

## 13.1. Occupational Health and Safety Obligations

- 13.1.1. The Owner acknowledges that occupational health and safety on a Vessel and on a Common User Terminal during the Access Period is the responsibility of the Owner.

13.1.2. The Shipping Agent acknowledges that occupational health and safety of the Shipping Agent's employees, subcontractors, agents, consultants, invitees and licensees during the Access Period is the responsibility of the Shipping Agent.

13.1.3. The Shipping Agent must:

- (a) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees are not exposed to conditions or practices that have the likely potential to cause personal injury or property damage;
- (b) fully comply with all OH&S Laws;
- (c) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees comply with all occupational health and safety requirements;
- (d) immediately notify the PV of any incident or dangerous occurrence at Port Facilities, the Common User Wharves or the Common User Terminals which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law.

13.1.4. The Owner must:

- (a) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees (which includes without limitation any Ancillary Service Providers engaged by the Owner), while on the Vessel or Common User Terminal, are not exposed to conditions or practices that have the potential to cause personal injury or property damage;
- (b) fully comply with all OH&S Laws;
- (c) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees (which includes without limitation any Ancillary Service Providers engaged by the Owner) while they are on the Vessel or Common User Terminal comply with all occupational health and safety requirements; and
- (d) immediately notify the PV of any hazard, incident or dangerous occurrence at Port Facilities, the Common User Wharves or Common User Terminals which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any OH&S Law.

13.1.5. Within 48 hours of receipt of the Shipping Agent or Owner receiving any notices or legal proceedings in respect of the impact of the Owner's activities on human health and safety, including without limitation notices or proceedings issued by a statutory or governmental body, the Shipping Agent or Owner (as applicable) must give written notice to Melbourne VTS of the issue of that notice or legal proceedings, together with a copy of such notice or proceedings.

13.1.6. The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in this clause 13.1 and is liable for any costs of compliance with such statutory notices.

## 14. Emergencies and Notification of Incidents

### 14.1. Emergencies

The Owner 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.

### 14.2. Notification of Incidents

14.2.1. During an Access Period, the Owner must, as soon as practicable after becoming aware of any damage to Port Facilities, the Common User Wharves or the Common User Terminals 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).

14.2.2. No later than 72 hours after the Owner gives notice in accordance with Clause 14.2.1, the Owner 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).

## 15. Port Security

### 15.1. Compliance with MTOFSA and PMA

- 15.1.1. The Owner acknowledges that 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.
- 15.1.2. The Owner acknowledges and agrees that PV may be required to make directions as a consequence of the Port of Melbourne being a security regulated port and in accordance with PV's federally approved maritime security plan.
- 15.1.3. The Owner must ensure that, for the duration of the Access Period, its servants, agents, employees and contractors (including any Ancillary Service Providers engaged by the Owner), including all crew and all 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.
- 15.1.4. The Owner acknowledges that financial penalties apply for breaches of the MTOFSA.
- 15.1.5. The Owner 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.
- 15.1.6. The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it:
- (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.
- 15.1.7. The Owner must ensure that its servants, agents, employees and contractors cooperate fully with PV and other users of Port Facilities, the Common User Wharves and the Common User Terminals to the extent that such cooperation is necessary to ensure compliance with all Legislative Requirements, including the MTOFSA.
- 15.1.8. The Owner 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)**
- 15.1.9. 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.

## 16. Common User Wharves and Terminals Base Condition

### 16.1. Base Condition

- 16.1.1. 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.
- 16.1.2. 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.
- 16.1.3. The Owner or the Shipping Agent 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.
- 16.1.4. The Owner and the Shipping Agent 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.
- 16.1.5. In the event of a dispute between Owner or Shipping Agent and PV regarding the condition of the Common User Wharves and Common User Terminals, the Certificate of Condition shall prevail.

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

- 16.2.1. The Owner and the Shipping Agent shall ensure that PV plant and equipment, if used by the Owner during the Access Period, is left in the same condition and state as at the commencement of the Access Period.
- 16.2.2. The Owner and the Shipping Agent must not make any alterations or additions to the Common User Wharves or Common User Terminals.
- 16.2.3. The Owner and the Shipping Agent must not install fixed plant or equipment including, without limitation, any fuel storage tanks on, over or under the Common User Wharves or Common User Terminals.

### 16.3. Failure to Maintain

- 16.3.1. If the Owner or the Shipping Agent fails to leave the Common User Wharves or Common User Terminals in the condition required by Clause 16.1.4 and 16.2.1, PV may:
  - (a) direct the Owner or the Shipping Agent 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.
- 16.3.2. The reasonable cost of any work carried out by PV under clause 16.3.1(b) shall be a debt due and payable from the Owner and or the Shipping Agent to PV and shall be paid to PV within thirty (30) days of written demand by PV.

## 17. Ancillary Service Providers

### 17.1. Acknowledgment of Ancillary Service Providers

- 17.1.1. The parties acknowledge that the Owner and or Shipping Agents may require Ancillary Services Providers to provide the Vessel with services during the Access Period.
- 17.1.2. The Owner may only engage Ancillary Service Providers who have entered into a valid and binding Ancillary Service Provider Licence Agreement with PV.

- 17.1.3. The Owner is liable for the acts and omissions of each of its Ancillary Service Providers as if such acts or omissions were its own.
- 17.1.4. The Owner indemnifies PV from and against any Loss suffered or incurred by PV in connection with any Ancillary Service Provider engaged by the Owner and or Shipping Agent.

## 18. Supply of water

### 18.1. Supply of Water for Personal Consumption

- 18.1.1. 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 Owner must ensure that the water supplied is not used for industrial or commercial purposes, including washing down decks or for ballast purposes.
- 18.1.2. The Owner must pay PV for the use of water at Common User Wharves in accordance with Clause 8.
- 18.1.3. The Owner must ensure that PV's water hoses and equipment are properly attached to the existing fresh water supply fixtures located at the wharf apron.
- 18.1.4. The Owner must ensure that any person engaged by or on behalf of the Owner to collect PV's fresh water supply takes good care of them and returns them immediately after use in the same condition as supplied.
- 18.1.5. Without limiting any rights of PV under Clause 10, the Owner is responsible for any damage to fresh water supply equipment and will bear the cost of any repair and/or replacement of such equipment.

## 19. Telephone services

- (a) The Owner must, for safety reasons and at its own cost, provide Australian telephone services to all Vessels berthed at Common User Wharves.
- (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.

## 20. Insurance

### 20.1. P&I insurance

- 20.1.1. Except to the extent of those risks covered by H&M Cover, the Owner 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.
- 20.1.2. 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 Owner 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 the Common User Wharves and Common User Terminals.
- 20.1.3. If required by PV the Owner 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.

### 20.2. General liability insurance

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

- 20.2.1. be provided by a reputable insurer with a credit worthiness of 'BBB' or higher and approved by PV;



- 20.2.2. cover both the Owner and PV for their respective rights and interests and covers their liabilities to third parties;
- 20.2.3. be for an amount in respect of any one occurrence of not less than \$20,000,000 (AUD);
- 20.2.4. be on reasonable terms to cover the requirements of PV set out in this Agreement;
- 20.2.5. bear an endorsement extending the indemnity under the policy to include the provisions under clause 10.2.

### **20.3. Proof of insurance**

- 20.3.1. The Owner must produce evidence, to the reasonable satisfaction of PV, of the currency of the insurance policies referred to in this Clause 20 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.
- 20.3.2. PV may in its absolute discretion, and without liability, decline the Application and refuse access to the Common User Wharves and Common User Terminals if the Owner 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.

## **21. Release**

Notwithstanding anything contained in this Agreement, the Owner and the Shipping Agent release PV from all actions, suits, claims, demands, costs, charges, damages, liabilities and expenses which the Owner or the Shipping Agent or both of them may have now or in the future for any loss, damage to property or injury to persons, of whatever nature arising directly or indirectly as a consequence of:

- 21.1.1. 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;
- 21.1.2. acts of terrorists, insurgents, war, other hostilities or similar disturbances;
- 21.1.3. actions, orders, directions, instructions or requirements of any lawful authority or any person purporting to act on behalf of such authority;
- 21.1.4. natural, abnormal or unusual occurrences including earthquake, lightning, flood, fire and/or adverse sea and/or weather conditions;
- 21.1.5. interruption or disruption to the supply of electric, gas, water and/or telecommunication services to the relevant PV facilities other than those caused by an act, fault or negligence of PV; and
- 21.1.6. any other cause that the PV could not avoid or prevent by the exercise of reasonable care.

## **22. GST**

### **22.1. GST**

- 22.1.1. 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.
- 22.1.2. 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.
- 22.1.3. 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 22.1.5, 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.
- 22.1.4. 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.
- 22.1.5. 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.

## 23. Notices

### 23.1. Service

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

- (a) left at or sent to the Owner:
    - (i) if there is no Shipping Agent, if the communication is addressed to the Owner and transmitted by email to the email address given by the Owner in the Application; or
    - (ii) if there is a Shipping Agent, if the communication is addressed to the Owner (via the Shipping Agent) and transmitted by email to the email address given by the Shipping Agent in the Application;
  - (b) left at or sent to the Shipping Agent if the communication is addressed to the Shipping Agent and transmitted by email to the email address given by the Shipping Agent in the Application; and
  - (c) left at or sent to 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.
- 23.1.2. 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 Owner, the notice or report is issued or provided to the Shipping Agent.

## 24. Dispute Resolution

### 24.1. Dispute Notice

- 24.1.1. 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.
- 24.1.2. A Dispute cannot be the subject of litigation until the provisions of clauses 24.2 to 24.4 (Australian entities, or 24.2, 24.3 and 24.5 (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.

### 24.2. 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.

### 24.3. Resolution by senior executives

If the Dispute is not resolved under clause 24.2 (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.

### 24.4. Arbitration – Australian entities

24.4.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 24.2 or 24.3; 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.

24.4.2. Any arbitration pursuant to this clause 24.4 shall be administered by the Resolution Institute in accordance with the Institute of Arbitrators and Mediators Australia (**IAMA**) Arbitration Rules.

24.4.3. Any arbitration pursuant to this clause 24.4 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.

### 24.5. Arbitration – non-Australian entities

24.5.1. If:

- (a) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 24.2 or 24.3; 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.

24.5.2. Any arbitration pursuant to this clause 24.5 shall:

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

24.5.3. If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in clause 24.5.1 the Arbitrator will be appointed in accordance with the requirements of the *Model Law and the International Arbitration Act 1974 (Cth)*.

24.5.4. 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.

24.5.5. The arbitration shall

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

## **24.6. 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).

## **24.7. Litigation**

If the Dispute is not resolved under clauses 24.4 or 24.5 (as the context permits) within 40 Business Days after the date of the Dispute Notice, either party may commence litigation proceedings.

# **25. Miscellaneous**

## **25.1. 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.

## **25.2. 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.

## **25.3. Assignment**

The Owner 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.

## **25.4. Severability of provisions**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability but that will not invalidate the remaining provisions of this Agreement or affect the provision in any other jurisdiction.

## **25.5. Survival**

- 25.5.1. None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.
- 25.5.2. The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clauses 10, 12 and 17 of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- 25.5.3. Clauses 8, 10, 12, 17, 24, 25 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:

## **25.6. 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: <a href="mailto:station_pier@ports.vic.gov.au">station_pier@ports.vic.gov.au</a>
Item 3.	Lodgement of Manifest email:	<a href="mailto:cruise@ports.vic.gov.au">cruise@ports.vic.gov.au</a>
Item 4.	Common User Wharves	<ul style="list-style-type: none"><li>• Inner West Berth, Station Pier</li><li>• Outer East Berth, Station Pier</li><li>• Outer West Berth, Station Pier</li></ul>
Item 5.	Common User Terminals	Outer Terminal which sits between the Outer East Berth and the Outer West Berth at Station Pier