

Standard Terms and Conditions for the hire of VPCM Common User Wharves and Terminals

1. Application of these Standard Terms and Conditions

1.1 Application of Standard terms and Conditions

These Standard Terms and Conditions form part of the Agreement between VPCM, on the one part; and the Shipping Agent and Owner, jointly and severally, on the other part.

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.

1.2 Defined Terms and Interpretation

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 VPCM 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 5.1(c)(ii) of these Standard Terms and Conditions.

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

Certificate of Condition means a certificate issued by VPCM 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 VPCM 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.

Empties 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.

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 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 VPCM 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 VPCM 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 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 VPCM 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.

Permitted Use means:

- (a) the embarking and disembarking of passengers;
- (b) the transit, receipt, delivery, loading, unloading, storage and stevedoring of Cargo;
- (c) providedoring and bunkering;
- (d) ship repair and maintenance; and
- (e) crew change,

as notified by VPCM 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 sections 39(1), 41(1) and 45(1) of the *Environment Protection Act 1970 (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 VPCM, 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 VPCM published on VPCM'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.

Reference Tariff Schedule means the VPCM Reference Tariff Schedule, as amended from time to time and published on the VPCM 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.

VPCM means Victorian Ports Corporation (Melbourne) ABN 22 195 188 658.

VPCM 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 VPCM's website.

VPCM Website means VPCM's Website which can be located at

<https://www.vicports.vic.gov.au/Pages/default.aspx>.

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

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

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. 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 of the Vessel

The Owner 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.

3.2 Bound to perform this Agreement

The Owner must perform all the obligations of the Owner in this Agreement.

3.3 Owner's obligations survives

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.

3.4 Notification of termination of shipping agency

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 VPCM of that termination and the name of any replacement Shipping Agent appointed or to be appointed. In such circumstances, the Owner must cooperate with VPCM in respect of any existing booking in place and procure that the new Shipping Agent promptly accepts the terms of this Agreement. VPCM 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 Authority

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.

4.2 Shipping Agent

The Shipping Agent must:

- (a) advise the Owner of all Port Charges and rules of entry;
- (b) collect from the Owner and pay to VPCM 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 VPCM:
 - (i) proof to VPCM'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 VPCM.

4.3 Understanding Port of Melbourne's security requirements

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.

4.4 Legislative Requirements

The Shipping Agent must co-operate with VPCM and all other users of Port Facilities, the Common User Wharves and Common User Terminals to ensure compliance with all Legislative Requirements.

4.5 Assistance to VPCM

The Shipping Agent must at all times cooperate with VPCM 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. Use of Common User Wharves and Common User Terminals

5.1 Permitted Uses

- (a) Subject to clauses 5.1(b) and 5.1(c), the Owner is permitted to use such part or area of the Common User Wharves and Common User Terminals as directed by VPCM for a Permitted Use for the duration of the Access

Period, unless otherwise directed by VPCM. 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 VPCM only.

- (b) The Owner and/or the Shipping Agent on behalf of the Owner agree that that the Common User Wharves and Common User Terminals must not be used for any purpose other than a Permitted Use during any period other than the Access Period.
- (c) The Owners' right to use the Common User Wharves and Common User Terminals for the Permitted Use pursuant to clause 5.1(a) is subject to:
 - (i) the Owner and/or Shipping Agent submitting a valid Application via PortVIEW;
 - (ii) confirmation in writing from VPCM to the Owner and/or Shipping Agent that the Application has been approved and a booking has been made by VPCM (**Booking Confirmation**); and
 - (iii) any directions given by VPCM 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.

For the avoidance of doubt, the Owner and/or the Shipping Agent will be directed by VPCM 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 VPCM's prior written consent.

5.2 Use subject to this Agreement

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 No warranty as to suitability

The Owner and Shipping Agent acknowledge and agree that:

- (a) VPCM 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 VPCM;
- (c) they have made their own enquiries to satisfy themselves as to the truth and accuracy of any written or oral information provided by VPCM 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.

5.4 No estate or interest

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.

5.5 No right of exclusive occupation

- (a) Subject to Clause 5.5(b), the Owner has no right of exclusive occupation or use of the Common User Wharves and Common User Terminals during the Access Period and VPCM may at any time exercise all of its rights as owner or manager to, without limiting the generality of this clause 5.5, enter, use, possess and enjoy the whole or any part of the Common User Wharves and Common User Terminals.
- (b) Where access to a designated berth is authorised by VPCM for the duration of the Access Period, use of that particular berth may be exclusive (as directed by VPCM or the Harbour Master), but is not guaranteed and is subject to clause 5.1(c)(iii) and clause 7.

5.6 Access to be exercised in accordance with directions

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.

5.7 Common User Wharves and Common User Terminals may change

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 VPCM's complete discretion, including as a consequence of a direction given by the Harbour Master. If there is a change to access arrangements or the status of the Common User Wharves or Common User Terminals, VPCM 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 5.1(c)(iii) and clause 7.

6. Term of Agreement

- (a) This Agreement commences when the Owner or the Shipping Agent submits an Application to VPCM in relation to the Vessel.
- (b) This Agreement expires at the conclusion of the Access Period.
- (c) Despite the commencement of this Agreement on the date that the Application is submitted, VPCM 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 VPCM (and subject to the terms of this Agreement).

7. Withdrawal of access or hire

7.1 Withdrawal before commencement of Access Period

VPCM 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 VPCM 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 VPCM, VPCM 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

- (a) If VPCM withdraws permission for use of or access to the Common User Wharves or Common User Terminals, VPCM 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.
- (b) The Shipping Agent and the Owner acknowledge and agree that VPCM is not obliged to pay, and the Shipping Agent nor the Owner is entitled to, any other remedy, compensation or damages for any such withdrawal of permission.

8. Port Charges

8.1 Acknowledgement of liability

The Owner agrees that it is liable to pay to VPCM the Port Charges in accordance with the terms of this Agreement.

8.2 Wharfage fee

VPCM may, in its discretion, recover the Port Charges as, if applicable, a Wharfage Fee recoverable under section 74 of the PMA.

8.3 Charge on Empties

The Owner agrees to pay VPCM the Port Charges concerning Empties unloaded from or loaded onto a Vessel at the Port of Melbourne.

8.4 Other Port Charges

The Owner agrees to pay VPCM 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.

8.5 Payment of Port Charges

The Port Charges shall be due for payment within thirty (30) days of the date of the relevant invoice issued by VPCM.

8.6 Security costs

If VPCM 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 VPCM such costs and those costs shall be recoverable by VPCM as a debt due and payable by the Owner within thirty (30) days of the date of the relevant invoice issued by VPCM.

8.7 Interest

If the Owner does not pay the relevant Port Charge in accordance with this Agreement, the Owner will be liable to VPCM for interest on the unpaid Port Charge at the interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

9. Cargo Manifests and documentation

9.1 Inward Manifest

The Owner or the Shipping Agent shall cause to be lodged with VPCM an Inward Manifest within 2 days of the arrival of a Vessel in Port of Melbourne Waters.

9.2 Outward Manifest

The Owner or the Shipping Agent shall cause to be lodged with VPCM an Outward Manifest within 5 days of the departure of a Vessel from Port of Melbourne Waters.

9.3 Electronic lodgement of Manifests

Inward Manifests and Outward Manifests shall be electronically lodged with VPCM by email at the address identified in the Schedule.

9.4 Additional information

The Owner and the Shipping Agent must cause to be lodged with VPCM any additional information reasonably requested by VPCM concerning any Cargo referred to on an Inward Manifest or an Outward Manifest within 48 hours of a written request to do so.

9.5 No Cargo discharged or loaded

In the event that a Vessel does not discharge or load any Cargo whilst 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 VPCM

that no Cargo was discharged or loaded, as the case may be.

10. Acknowledgments by the Owner

10.1 Rights to user the Common User Wharves and Common User Terminals are personal

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. This Clause 10.1 does not impact upon any arrangement between the Owner and the Shipping Agent in relation to the Vessel or Cargo.

10.2 Acknowledgment of responsibility

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.

10.3 General indemnity by Owner

The Owner must indemnify VPCM against:

- (a) loss of or damage to the property of VPCM;
- (b) claims by any person against VPCM in respect of personal injury or death or loss of or damage to any property;
- (c) Loss arising from the carriage of Cargo 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 10.4, excluding Consequential Loss) incurred by VPCM due to disturbance to or interference with VPCM'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). The Owner's liability to indemnify VPCM shall be reduced proportionately to the extent that a negligent act or omission of VPCM contributed to the loss, damage, death or injury.

10.4 Specific environmental indemnity by Owner

The Owner must indemnify VPCM for direct and Consequential Loss incurred by VPCM 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.

10.5 Responsibility for damage to the Common User Wharves or Common User Terminals

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).

10.6 Cost of repairing Damage

The cost of repairing any damage (excluding fair wear and tear) which, in the reasonable opinion of VPCM, 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 VPCM, the Owner is liable to reimburse VPCM such costs which shall be recoverable by VPCM as a debt due and payable by the Owner.

10.7 Payment for damage to the Common User Wharves or Common User Terminals

The Owner must pay to VPCM the reasonable cost of any repairs referred to in Clause 10.6 carried out by or on behalf of VPCM not later than 30 days after written demand is made by VPCM for such payment.

11. Compliance with Legislative Requirements and directions

11.1 Legislative Requirements

- (a) 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.
- (b) 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:

- (a) direction of the Harbour Master in connection with access to or use of Port Facilities, Common User Wharves or Common User Terminals;
- (b) direction of VPCM's Security Manager or VPCM's Security Contractor;

- (c) direction of VPCM in connection with access to or use of Port Facilities, Common User Wharves or Common User Terminals; and
- (d) direction by any officer authorised by statute to give directions including pursuant to the *Marine Safety Act 2010 (Vic)*.

12. Environmental Obligations

12.1 Obligation not to pollute

Whilst accessing or using the Port Facilities, Common User Wharves, Common User Terminals or Port of Melbourne Waters, the Owner must not:

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

12.2 Environmental Incident Reporting

Without limiting the Owner's obligations under Clause 15, 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.

12.3 Obligation to clean up

- (a) 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 VPCM and within the timeframe specified in the direction.
- (b) VPCM may, at its discretion and at the Owner's cost, engage an Environmental Auditor pursuant to section 53U of the *Environment Protection Act 1970 (Vic)* in respect of the Pollution Incident.

12.4 Statutory notices and legal proceedings

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.

12.5 Obligation to comply with statutory notice

The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in Clause 12.4 and is liable for any costs of compliance with such statutory notices.

12.6 Obligations regarding storage of dangerous goods

The Owner must not, without VPCM'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 which is prohibited by the Insurance Council of Australia Ltd in non-hazardous stores provided that the consent of the VPCM will not be required where the goods are stored and handled strictly in accordance with the provisions of all Legislative Requirements.

12.7 VPCM Guidelines and Port Rules

- (a) 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 VPCM Guidelines and Port Rules applicable to access and use of Common User Wharves, Common User Terminals or Port Facilities.
- (b) VPCM shall ensure that the VPCM Guidelines and Port Rules as amended from time to time, are published on the VPCM Website.

12.8 Rights of VPCM

Without limiting the foregoing provisions of this Clause 12:

- (a) If VPCM 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, VPCM may issue a direction requiring that specified corrective action be undertaken by the Owner to the satisfaction of VPCM and within the timeframe specified by VPCM.
- (b) If the Owner fails to:
 - (i) comply with the terms of a direction under sub-clause 12.8(a) to the satisfaction of VPCM; or
 - (ii) clean up and otherwise address or rectify a Pollution Incident and/or the cause of a Pollution Incident to the satisfaction of VPCM, VPCM may either:
 - (A) itself undertake the corrective action and recover its costs of undertaking the corrective

- (B) action as a debt due from the Owner to VPCM; or 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

13.1 Occupational Health and Safety responsibility

- (a) 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.
- (b) 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.

13.2 Occupational Health and Safety obligations

- (a) The Shipping Agent must:
 - (i) 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;
 - (ii) fully comply with all OH&S Laws;
 - (iii) use best endeavours to ensure that its employees, subcontractors, agents, consultants, invitees and licensees comply with all occupational health and safety requirements;
 - (iv) immediately notify the VPCM 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.
- (b) The Owner must:
 - (i) 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;

- (ii) fully comply with all OH&S Laws;
- (iii) 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
- (iv) immediately notify the VPCM 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.

13.3 Statutory notices and legal proceedings

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.

13.4 Obligation to comply with statutory notice

The Shipping Agent or Owner (as applicable) must comply with any and all statutory notices referred to in Clause 13.3 and is liable for any costs of compliance with such statutory notices.

14. Emergencies

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

15. Notification of damage and/or injury

15.1 Immediate notification to VPCM

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).

15.2 Detailed incident report

No later than 72 hours after the Owner gives notice in accordance with Clause 15.1 the Owner must cause a detailed written report to be lodged with VPCM in respect of the accident, event or other circumstances giving rise to the damage or injury or potential damage or injury (as relevant).

16. Port Security

16.1 Compliance with MTOFSA

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 VPCM's Security Contractor and VPCM's Security Manager.

16.2 Acknowledgment of a Security Regulated Port

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 VPCM and the Commonwealth Department of Infrastructure and Regional Development and their appointees. The Owner acknowledges and agrees that VPCM may be required to make directions as a consequence of the Port of Melbourne being a security regulated port and in accordance with VPCM's federally approved maritime security plan.

16.3 Financial penalties

The Owner acknowledges that financial penalties apply for breaches of the MTOFSA.

16.4 Compliance with Restricted Areas

- (a) The Owner acknowledges that it is an offence:
 - (i) 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
 - (ii) 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.
- (b) The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it:

- (i) take all necessary steps to ensure that an unauthorised person, vehicle or vessel does not enter or remain in a Restricted Area; and
- (ii) do not cause or permit an unauthorised person, vehicle or vessel to enter or remain on a Restricted Area.

16.5 Understanding VPCM's security requirements

The Owner must ensure that its servants, agents, employees and contractors, including all crew and all personnel engaged by it understand and comply with the security requirements of VPCM.

16.6 Assistance to VPCM

The Owner must ensure that its servants, agents, employees and contractors cooperate fully with VPCM 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.

16.7 Access to Vessels

The Owner agrees that, upon request from VPCM at any time during the Access Period, it must provide to:

- (a) authorised employees of VPCM; and
- (b) other persons authorised by VPCM under the PMA or the Marine Safety Act 2010 (Vic), access to the Vessel, subject to:
 - (i) those persons carrying appropriate photo ID at all times; and
 - (ii) compliance by VPCM with the reasonable requirements of the master of the Vessels.

17. Common User Wharves and Terminals

17.1 Certificate of Condition

Before the commencement of the Access Period, VPCM 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.

17.2 Inspection

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.

17.3 Evidence of condition

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.

17.4 Condition

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.

17.5 Plant and Equipment

The Owner and the Shipping Agent shall ensure that VPCM 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.

17.6 Failure to maintain

If the Owner or the Shipping Agent fails to leave the Common User Wharves or Common User Terminals in the condition required by Clause 17.4 and 17.5, VPCM 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 by Clause 17.4; and
- (b) carry out or cause to be carried out any litter removal, restoration, remediation, cleaning, repairs and other similar work as VPCM thinks fit.

The reasonable cost of any work carried out by VPCM under Clause 17.6(b) shall be a debt due and payable from the Owner or the Shipping Agent to VPCM and shall be paid by the Owner within thirty (30) days of written demand by VPCM.

17.7 No alterations

The Owner and the Shipping Agent must not make any alterations or additions to the Common User Wharves or Common User Terminals.

17.8 No installation

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.

17.9 No guarantee of immediate berth

- (a) 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 VPCM in its discretion in accordance with the dictates of port operations and usage and as notified to the Owner or the Shipping Agent.

- (b) The Owner acknowledges that VPCM'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.

18. Ancillary Service Providers

- (a) 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.
- (b) The Owner may only engaged Ancillary Service Providers who have entered into a valid and binding Ancillary Service Provider Licence Agreement with VPCM.
- (c) The Owner indemnifies VPCM from and against any Loss suffered or incurred by VPCM in connection with any Ancillary Service Provider engaged by the Owner.

19. Supply of water

19.1 Water for personal consumption

Supply of fresh water to Vessels 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.

19.2 Hoses

The Owner must ensure that VPCM's water hoses and equipment are properly attached to the existing fresh water supply fixtures located at the wharf apron.

19.3 Care of equipment

The Owner must ensure that any person engaged by or on behalf of the Owner to collect VPCM's fresh water supply takes good care of them and returns them immediately after use in the same condition as supplied. Without limiting any rights of VPCM 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.

19.4 Water charges

The Owner must pay VPCM for the use of water at Common User Wharves in accordance with Clause 8 (Port Charges).

20. Telephone services

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

21. Insurance

21.1 P&I insurance

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. In the event that the Vessel is insured by a P&I Club not a member of the International Group of P&I Clubs, the Owner must inform VPCM of the details of the Vessel's P&I Cover and the relevant insurer at the time of lodging the Application and VPCM may in its absolute discretion decline the Application and refuse access to the Common User Wharves and Common User Terminals.

21.2 Consent of P&I Insurer

If required by VPCM 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 VPCM if the P&I Club does not consent to the Agreement.

21.3 General liability insurance

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

- (a) be provided by a reputable insurer with a credit worthiness of 'BBB' or higher and approved by VPCM;
- (b) cover both the Owner and VPCM for their respective rights and interests and covers their liabilities to third parties;
- (c) be for an amount in respect of any one occurrence of not less than \$20,000,000 (AUD);
- (d) be on reasonable terms approved in writing by VPCM, which approval shall not be unreasonably withheld; and
- (e) bear an endorsement extending the indemnity under the policy to include the provisions under Clause 10.3 (General Indemnity by Owner).

21.4 Proof of insurance

The Owner must produce evidence, to the reasonable satisfaction of VPCM, of the currency of the insurance policies referred to in this Clause 21 within 24 hours of being requested in writing to do so by VPCM at any time prior to the Application being considered and during the Access Period.

VPCM 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 VPCM is not reasonably satisfied with the adequacy of the insurance held by the Owner and the Vessel.

22. Release

Notwithstanding anything contained in this Agreement, the Owner and the Shipping Agent release VPCM 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:

- (a) industrial disputes, restraints of labour, strikes, riots, civil commotion, lock outs or stoppages whether involving the employees of VPCM its agents or contractors or not;
- (b) acts of terrorists, insurgents, war, other hostilities or similar disturbances;
- (c) actions, orders, directions, instructions or requirements of any lawful authority or any person purporting to act on behalf of such authority;
- (d) natural, abnormal or unusual occurrences including earthquake, lightning, flood, fire and/or adverse sea and/or weather conditions;
- (e) interruption or disruption to the supply of electric, gas, water and/or telecommunication services to the relevant VPCM facilities other than those caused by an act, fault or negligence of VPCM; and
- (f) any other cause that the VPCM could not avoid or prevent by the exercise of reasonable care.

23. GST

23.1 Interpretation

Words or expressions used in this Clause 23 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this Clause 23.

23.2 Consideration is GST exclusive

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.

23.3 Gross up of consideration

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 23.3 ('GST exclusive consideration') 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 23.5, 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.

23.4 Reimbursements (net down)

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.

23.5 Tax invoices

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.

24. Notices

24.1 Service

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 VPCM if the communication is:
 - (i) in writing and addressed to VPCM 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.

24.2 Performance of VPCM's obligations

VPCM 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 VPCM to the Owner, the notice or report is issued or provided to the Shipping Agent.

25. Dispute Resolution

25.1 Notice of Dispute

If a dispute or difference (a 'dispute') between VPCM, the Owner or the Shipping Agent, or any two of them arises out of or in connection with the Agreement, the subject matter thereof or use of the Port Facilities, Common User Wharves or Common User Terminals, including a dispute:

- (a) in tort;
- (b) under statute;
- (c) for restitution based on unjust enrichment; or
- (d) for rectification or frustration,

then if a party desires to pursue the dispute, that party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute ('Dispute Notice').

25.2 Continue to perform the Agreement

Notwithstanding the existence of a dispute, VPCM, the Owner and the Shipping Agent shall continue to perform the Agreement, and the Owner shall comply with Clause 8.

25.3 Further steps before proceeding

Within 7 days after service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. Each party must make reasonable efforts to resolve the dispute.

25.4 Arbitration – Australian entities

- (a) If:
 - (i) the dispute or difference is not resolved as a result of one of the steps arising from the operation of clause 25.3; and
 - (ii) the party involved in the dispute or difference that is not VPCM 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.

- (b) Any arbitration pursuant to this clause 25.4 shall be administered by the Resolution Institute in accordance with the IAMA (Institute of Arbitrators and Mediators Australia) Arbitration Rules.
- (c) Any arbitration pursuant to this clause 25.4 shall apply the substantive law of the state of Victoria and shall apply the rules of procedure as prescribed in the state of Victoria.
- (d) Any arbitration pursuant to this clause 25.4 shall take place in Melbourne, Australia and shall be conducted in English.

25.5 Arbitration – non-Australian entities

- (a) If:
 - (i) the dispute or difference is not resolved as a result of one of the steps arising from the operation of Clause 25.3; and
 - (ii) 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.
- (b) Any arbitration pursuant to this clause 25.5 shall be in accordance with the UNCITRAL Model Law on International Commercial Arbitration.
- (c) The dispute or difference will be arbitrated by a single arbitrator.
- (d) If the parties cannot agree on an Arbitrator within fourteen (14) days of the written notification referred to in clause 3.2 the Arbitrator will be appointed in accordance with the requirements of the Model Law and the International Arbitration Act 1974 (Cth).
- (e) The arbitral tribunal shall apply the substantive law of the state of Victoria. The arbitral tribunal shall apply the rules of procedure as prescribed in the state of Victoria.
- (f) The arbitration shall take place in Melbourne, Australia.
- (g) The language of the arbitration shall be English.

26. Miscellaneous

26.1 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.

26.2 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.

26.3 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.

26.4 Survival

- (a) None of the warranties, indemnities nor any other provision of this Agreement merges on the completion of this Agreement.
- (b) The indemnities contained in this Agreement, including but not limited to the indemnities provided in Clauses 10 (Acknowledgements by the Owner), 12 (Environmental Obligations) and 18 (Ancillary Service Providers) of this Agreement, are continuing obligations and remain in full force and effect following the expiry of the Access Period.
- (c) The following clauses of this Agreement survive the expiry of the Access Period:

Clauses 8 (Port Charges), 10 (Acknowledgements by the Owner), 12 (Environmental Obligations), 25 (Dispute Resolution) and 26 (Miscellaneous).

26.5 Binding of successors

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

Schedule - Particulars

Details

Item	Description	Detail
1.	VPCM's address	Level 5, 530 Collins Street MELBOURNE VIC 3000
2.	VPCM's Security Manager	Name: Jeff Bazelmans Address: Level 5, 530 Collins Street MELBOURNE VIC 3000 Tel: +61 3 8347 8300 Email: PortSecurity@vicports.vic.gov.au
3.	Lodgement of Manifests	robert.eagle@vicports.vic.gov.au

Common User Wharves

Inner East Berth, Station Pier

Inner West Berth, Station Pier

Outer East Berth, Station Pier

Outer West Berth, Station Pier

Common User Terminals

Outer terminal which sits between the Outer East Berth and the Outer West Berth at Station Pier