

PORT USER OPERATING LICENCE – TERMS AND CONDITIONS

These are the conditions on which port users are licensed to use the Multi-User Area.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these conditions, the following expressions have the following meanings, unless the context indicates otherwise:

Adjacent Areas has the meaning given in clause 7.6(c)(iii).

Applicable Laws means all Laws applying from time to time in relation to the access to or use of the Port or the Port User's operations in the Port.

Business Day means a day (not being a Saturday, Sunday or public holiday) in Melbourne, Victoria.

Claim includes (without limitation) any action, claim, demand, proceeding, order, judgement, loss, damage, liability or expense (including, without limitation, legal expense).

Contamination means the presence in, on or under a location (including waterways) of a substance at a concentration above the concentration at which the substance is normally present in, on or under a location in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment and **Contaminate** has a corresponding meaning.

Employee means any employee, agent or contractor of the Port User or other person under the control of the Port User.

Environmental, Security and OH&S Legislation means any Applicable Law addressing environmental, security and/or occupational health & safety matters.

Environmental, Security and OH&S Obligations means all obligations of a person arising under Environmental, Security and OH&S Legislation.

Equipment means the equipment used, supplied by or associated with the Port User for use in connection with its Operations in the Multi User Area.

Heavy Load means a load which, if applied to a particular wharf deck, pavement, road, shed floor or other surface would cause damage to, or exceed the allowable load for, that area.

Hot Work means work involving the risk of fire, including but not limited to, welding, cutting and grinding.

Incident Controller means a person appointed by POPL from time to time for the management, reporting, supervision and investigation of any incident, accident or claim which occurs in the Port.

Insolvent means, in relation to the Port User, when:

- (a) a receiver, receiver and manager, administrator, trustee (including trustee in bankruptcy) or similar official is appointed in respect of the Port User or over the whole or a substantial part of the assets or undertaking of the Port User and is not removed within 7 days;
- (b) the Port User suspends payment of its debts generally;
- (c) the Port User, being a corporation is insolvent within the meaning of the Corporations Act 2001 (Cth);
- (d) the Port User is otherwise unable to pay its debts when they fall due.

Laws means all laws, statutes, regulations and the common law and all requirements which may be made or notices or orders which may be given by any governmental authority, in force from time to time.

Licence has the meaning given in clause 3.1.

Multi User Area means the area of the Port to which the Port User and other users of the Port are allowed by POPL to non-exclusively use and/or access (as may be modified by POPL from time to time in its absolute discretion) and which, for the avoidance of doubt, does not include any area in which another port user is carrying out Stevedoring Operations in a manner consistent with that contemplated by clause 4, for the duration of those operations.

Operational Area has the meaning given in Schedule 1.

Operations means operations:

- (a) agreed in writing between POPL and the Port User for the purposes of the Licence and operations which are reasonably incidental to such operations agreed in writing;
- (b) where paragraph (a) does not apply, being reasonably incidental to the exercise by the Port User of its rights under a Related Occupation Agreement; or
- (c) where paragraphs (a) and (b) above do not apply, that are lawful and which in all of the circumstances the Port User reasonably requires to carry on at the Port.

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Policies & Procedures means all policies & procedures and rules and conditions of any kind of POPL (as amended from time to time) and provided to the Port User from time to time (including by way of publication on the Port website) with respect to the Port including but not limited to:

- (a) POPL Emergency Procedures Manual;
- (b) POPL Safety and Environment Management Plan (SEMP); and
- (c) Port of Portland Maritime Security Plan.

POPL means Port of Portland Pty Ltd (ABN 37 072 507 012).

Port means the Port facility in Portland in Victoria which is operated and/or controlled by POPL.

Port Entry Permit has the meaning given in clause 7.3(a)(i).

Port Entry Permit Induction Training means such training and other induction requirements as applying from time to time that POPL requires port users to complete or satisfy as a condition of access to the Port.

Port User means a person (other than POPL) in respect of whom the Licence comes into effect in the manner contemplated by clause 2.

Rail Infrastructure means the rail Infrastructure installed within the Port from time to time including all tracks, sidings and signals which, for the avoidance of doubt, forms part of the Multi User Area.

Rail Operations means the operation of Trains on or using the Rail Infrastructure.

Rail Safety Interface Agreement means any agreement entered into between POPL and the Port User in relation to the safe conduct of Rail Operations, including the safe management of rail interfaces.

Related Occupation Agreement means any lease or licence (apart from the Licence) granted by POPL to the Port User at the Port.

Rolling Stock means a locomotive, carriage, wagon or other vehicle for use on a railway.

Safe System of Work means a work method statement that:

- (a) describes how work is to be carried out;
- (b) identifies if work activities have health or safety hazards and/or environmental risks;

- (c) quantifies the health or safety hazards and environmental risks; and

- (d) describes the control measures that will be applied to the activities, to minimise or eliminate the risk in these activities.

Special Permit has the meaning given in clause 7.5(a).

Stevedore means a Port User who carries out Stevedoring Operations at the Port.

Stevedoring Operations means the loading and unloading of vessels, containers, and/or trucks and all related and associated activities and includes supervision of the foregoing.

Train means one or more units of Rolling Stock coupled together, at least one of which is a locomotive or other self-propelled unit.

Visitor means any person not being an Employee whom the Port User allows, directs or invites to enter the Multi User Area.

Visitors Permit means a permit issued by POPL to allow the entry of a Visitor to the Port on such terms and conditions as POPL may from time to time deem appropriate.

1.2 Interpretation

(a) In these conditions unless the context otherwise requires:

- (i) a reference to the singular includes the plural and vice versa;
- (ii) a reference to a given gender includes all other genders;
- (iii) other parts of speech and grammatical forms of a word or phrase defined in these conditions have a corresponding meaning;
- (iv) use of the word “including” and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (v) a reference to a person includes a natural person, a company or other entities recognised by law;
- (vi) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision;
- (vii) a reference to any governmental or statutory body includes any body which

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replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as, such body;

(viii) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(ix) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

(x) a reference to writing includes any mode of reproducing words, figures or symbols in a tangible and permanently visible form and includes fax transmission;

(xi) all references to parties are to the parties to the Licence;

(xii) a reference to a party includes the party's executors, administrators, successors and permitted assigns;

(xiii) where any obligation is imposed on, or any benefit enures for, two or more persons, the obligation binds or enures for the benefit of (as the case may be) those persons jointly and each of them severally;

(xiv) a reference to time is to local time in Portland in the State of Victoria;

(xv) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

(xvi) if the time for performing an obligation under the Licence expires on a day which is not a Business Day, then time is extended until the next Business Day; and

(xvii) any obligation of the Port User under the Licence to do or not to do any act, matter or thing includes a further obligation that it will not permit or allow a breach of such obligation by another person.

(b) The language in all parts of these conditions shall be in all cases construed in accordance with its fair and common meaning and not strictly for or against any of the parties (including POPL as the party responsible for the drafting of these conditions).

(a) These conditions shall be interpreted so that they comply with all Laws having application thereto and if any provision does not so comply then it must be read down so as to give it as much effect as possible.

(b) If it is not possible to give that provision any effect at all then it is to be severed from these conditions in which case the remainder of these conditions will continue to have full force and effect.

1.4 Headings

Headings are for ease of reference only and do not affect the interpretation of these conditions.

2 APPLICATION OF LICENCE

The Licence comes into effect upon a person:

(a) Entering into a Related Occupation Agreement with POPL; or

(b) Otherwise agreeing with POPL a licence of the Multi User Area subject to these conditions, whether in writing or by conduct.

For the avoidance of doubt, a person who enters into a Related Occupation Agreement or otherwise agrees with POPL a licence of the Multi User Area subject to these conditions in the manner contemplated in the preceding part of this clause shall be a **Port User** for the purposes of these conditions.

3 MULTI USER AREA –GRANT OF LICENCE

3.1 POPL grants to the Port User (and the Port User accepts) a non-exclusive licence to use the Multi User Area for the purposes of carrying on its Operations (**Licence**).

3.2 The Licence extends to the Employees and Visitors subject to the right of POPL (exercisable in its discretion) to deny access to any particular Employees or Visitors. The Port User is responsible for all acts and omissions of the Employees and Visitors and must ensure that the Employees and Visitors do not do anything, which if done by the Port User, would give rise to a breach of these conditions.

3.3 The Port User acknowledges that POPL has granted and will grant non-exclusive access to and use of the Multi User Area to other port users. The Port User will co-operate with other port users in connection with its use of the Multi User Area and shall make no Claim against POPL for any

1.3 Compliance with Law

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inconvenience, interference, obstruction or hindrance in any way caused to it by POPL or any other port user in its use of the Multi User Area.

3.4 The Port User shall use the Multi User Area only for the purposes of its Operations.

4 STEVEDORING OPERATIONS

If the Port User carries on Stevedoring Operations, it must comply with the requirements set out in Schedule 1 for the duration of those operations.

5 RAIL OPERATIONS

If and when the Port User carries on Rail Operations, it must comply with the requirements set out in Schedule 2 for the duration of those operations.

6 TERM

6.1 Commencement

The Licence shall commence on the date that it comes into effect in accordance with clause 2 and, subject to earlier termination in accordance with these conditions, shall continue, in circumstances where the Licence comes into effect in accordance with:

- (a) clause 2(a), for so long as the relevant Related Occupation Agreement remains in force, including during any period of permissible overholding in accordance with the terms of the Related Occupation Agreement; and
- (b) clause 2(b), for the term agreed in writing by POPL and the Port User or, where, there is no such agreement in writing, until terminated by either party giving to the other party 14 days prior written notice of termination.

7 OCCUPATIONAL HEALTH & SAFETY, SECURITY AND THE ENVIRONMENT

7.1 Object of this Clause

The object of this clause is to specify the allocation of responsibility for Environmental, Security and OH&S Obligations between POPL and the Port User in relation to the exercise by the Port User of its rights under the Licence.

7.2 Co-ordination of OH&S Responsibilities

The Port User acknowledges that POPL and the Port User each have a responsibility to co-ordinate the discharge of their respective Environmental, Security and OH&S Obligations.

7.3 Port Entry Permit Induction Training

(a) The Port User must:

- (i) ensure that, prior to entering the Multi User Area, each Employee that the Port User requires to have access to the Multi User Area successfully completes Port Entry Permit Induction Training and is supplied with a valid Port entry permit issued by POPL (and which may be subject to such terms and conditions as POPL thinks fit)(**Port Entry Permit**); and
- (ii) pays, in respect of each relevant Employee, the applicable training and/or permit fee charged by POPL for the conduct of the training and the issue of the Port Entry Permit;

(b) Visitors entering the Multi User Area must be issued with a valid Visitor's Permit and must at all times be accompanied by a holder of a valid Port Entry Permit;

(c) Without limiting any other provision of these conditions, the Port User must ensure that its Employees and all Visitors comply with all conditions and procedures arising out of the Port Entry Permit Induction Training and the issuing of a Port Entry Permit or a Visitors Permit.

7.4 Conditions of Entry

- (a) From time to time, POPL may issue specific conditions of entry applicable to all parties entering the Port. These conditions of entry may be displayed at entrances to the Port and elsewhere in the Port and/or issued to Port Users.
- (b) The Port User agrees that it will comply with all conditions of entry and will at all times ensure that all of its Employees and Visitors also comply.

7.5 Special Permits

- (a) The Port User will not be permitted to carry on the activities listed in clause 7.5(c) until such time as a permit to carry out those activities has been issued by POPL (**Special Permit**). Nothing in this clause limits POPL's entitlement to ban the carrying out of any particular activities at the Port, which POPL shall be entitled to do in its discretion from time to time (by notification on the Port website or otherwise by POPL from time to time), and in this circumstance the Port User must not carry out any banned activities.

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(b) In issuing a Special Permit, authorised POPL staff will give consideration to the effect the proposed use or access will have on other port users. POPL may in its absolute discretion decline to issue a Special Permit and may issue Special Permits subject to such terms and conditions as POPL thinks fit. POPL's determination of whether in fact a Special Permit is required is final and binding on the Port User.

(c) Special Permits are required for the following activities:

- (i) Hot Work;
- (ii) Excavation, digging or trenching anywhere within the Port;
- (iii) working at heights;
- (iv) discharging a Heavy Load over wharves or when Heavy Loads are worked;
- (v) Crane operations:
 1. where the crane is required to be at maximum outrigger;
 2. where track or wheel loads exceed legal highway loads;
 3. for all works close to power lines;
 4. when using man cages;
 5. when exceeding 85% of the rated maximum crane load;
 6. for works over occupied buildings;
 7. for works from berths or jetties and adjacent to a sheet piling edge; and
 8. for works involving multiple crane lifts;
- (vi) abrasive blasting;
- (vii) commercial diving involving working underwater;
- (viii) confined space entry;
- (ix) fumigation on Port land or in Port waters, including in-transit fumigation of cargo; and
- (x) any other activities as notified on the Port website or otherwise by POPL from time to time.

(d) Special Permits are only issued from the POPL administration building during normal business hours (8am to 5pm) on Business Days or via the online application procedure available through the POPL website.

7.6 Security, Safety and Environmental Obligations

(a) Security

The Port User must ensure that its Employees and Visitors strictly comply with POPL's security measures as applying from time to time including as implemented under the Maritime Transport and Offshore Facilities Security Act 2003 (Cth) and as published on the Port website or otherwise made known by POPL to the Port User from time to time.

(b) Safe Systems of Work

The Port User must prior to commencement of its Operations undertake the necessary measures and develop a Safe System of Work in accordance with all Applicable Laws. The Port User must also ensure that its Safe System of Work is:

- (i) readily available for review by POPL (provided that POPL is under no obligation to review and any review by POPL in no way relieves the Port User from any of its responsibilities under these conditions or under Applicable Laws);
- (ii) maintained and kept up to date (including so as to comply with all Applicable Laws as they apply from time to time); and
- (iii) available for inspection by any person carrying out or intending to carry out, or being involved in, Operations.

During all Operations the Port User must ensure that:

- (i) Its Operations are carried out in accordance with the Safe System of Work;
- (ii) If a risk to health, safety or the environment arises and is not covered by a Safe System of Work, that work is stopped immediately and not resumed until it is safe to do so;
- (iii) All Equipment in use complies with Applicable Laws and all applicable Australian or International standards and is regularly inspected and maintained; and
- (iv) Equipment is operated only by suitably qualified and licensed persons.

(c) Environment

- (i) The Port User must carry out its Operations and access the Multi User Area in a safe and environmentally responsible manner.

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- (ii) The Port User must, where required by POPL (acting reasonably), participate in all POPL pollution and safety hazard minimisation activities and programs as POPL may deem appropriate from time to time.
- (iii) The Port User must not Contaminate the Multi User Area or the land, waters or ground water adjacent to the Multi User Area (**Adjacent Areas**) and must not do or permit to be done any act or omission which results or may result in Contamination of the Multi User Area or Adjacent Areas.
- (iv) The Port User must immediately clean-up to the reasonable satisfaction of POPL any Contamination caused or contributed to by the Port User, its Employees or its Visitors to the Multi User Area and Adjacent Areas.
- (v) The Port User must indemnify POPL against any Claims arising from, or in respect of any loss, damage, disability, injury, disease or death in respect of or arising (directly or indirectly) from Contamination of the Multi User Area or Adjacent Areas caused or contributed to by the Port User or its Employees or Visitors.

(d) Policies & Procedures

The Port User must comply with the responsibilities of a Port user as set out in the Policies & Procedures. The Port User acknowledges the right of POPL to amend or revise the Policies & Procedures as it sees fit from time to time and will comply with all such amendments or revisions upon POPL publishing the amended Policies & Procedures on the Port website or otherwise communicating them to the Port User in writing.

(e) Incident Notification

The Port User must ensure that its designated supervisor/manager immediately notifies POPL of:

- (i) any security, safety or environmental incident or near-miss that occurs within the Multi User Area or Adjacent Areas; and
- (ii) any incident, damage or accident in the Multi User Area or Adjacent Areas or of any circumstances likely to endanger any person or property in the Multi User Area or Adjacent Areas or cause any risk or hazard

within the Multi User Area or Adjacent Areas.

The initial notification can be a verbal notification but this must be followed by a written report within 48 hours of the relevant incident.

(f) Compliance

- (i) Without limiting any other provision of these conditions, the Port User must comply with all reasonable requests and directions by POPL in relation to matters concerning safety, security and the environment, compliance with Applicable Laws and use of the Multi User Area.
- (ii) The Port User's obligation to comply with POPL's requests and directions does not otherwise release the Port User's obligation to comply with any other provision of these conditions.
- (iii) The Port User must comply with all Applicable Laws.
- (iv) The Port User must ensure that, at all times, it has and all of its Employees have all necessary and current authorisations, permits, licences or other approvals required by any authority or by Applicable Laws in relation to the use of the Multi User Area or the carrying out of its Operations, and ensure that such authorisations, permits, licences or other approvals are complied with at all times.
- (v) The Port User must not use the Multi User Area for any illegal purpose or do anything which does or could annoy, offend or be a nuisance to POPL or other port users.
- (vi) The Port User will be liable for any fines or imposts imposed by any authority as a result of action or inaction of the Port User on the Port.

7.7 Emergency Response Obligations

- (a) In the event of an emergency within the Multi User Area, the Port User must immediately comply with all instructions received from the Incident Controller.
- (b) The Port User agrees to co-operate with POPL in the annual Port security/emergency exercise and such other security and emergency exercises as POPL may in its absolute discretion deem to be required. POPL will reasonably endeavour to

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keep disruption to a Port User's operations during any exercise to a maximum of 2 (two) hours.

7.8 Multi User Areas to be Kept Clean

- (a) The Port User must keep the Multi User Area clean and tidy at all times to the reasonable satisfaction of POPL, but in no circumstances shall the Port User be required to clean up the Multi User Area where third parties, not controlled by or for whom the Port User is responsible, have caused the Multi User Area to be left unclean or untidy.
- (b) The Port User must not do anything that might damage the Multi User Area and must promptly or as directed by POPL, repair the Multi User Area to POPL's satisfaction where the Multi User Area is damaged by the Port User or persons for whom the Port user is responsible.

7.9 Port User not to Obstruct

The Port User must not obstruct or permit to be obstructed any access to fire fighting appliances, bollards, emergency equipment, service points, walkways or other facilities that may cause disruption to the safe or proper operations of the Port or Port employees or third parties in the Multi User Area. The Port User must not interfere with, hinder or restrict the use of the Port by POPL or any other person authorised by POPL.

7.10 Removal of Port User's Property

The Port User must immediately remove Equipment from the Multi User Area and leave the Multi User Area clean and tidy, ready for use by other port users upon the cessation of relevant Operations.

7.11 Parking

The Port User must not park any vehicle in the Multi User Area unless POPL has made parking available for the Port User, and POPL is not under any obligation to provide such parking. Where parking is available in the Multi User Area for the Port User, the Port User, its Employees and Visitors shall only use the areas designated by POPL for parking in the Multi User Area, subject to the following conditions:

- (a) the Port User must ensure that any vehicles of the Port User or its Employees or Visitors do not interfere with, hinder or restrict the use of the Port by any other person;
- (b) the Port User must comply with any directions by POPL in relation to the parking area;

(c) the Port User must immediately remove any vehicle from the Multi User Area on request by POPL; and

(d) the parking of any such vehicles is at the risk of the Port User, and the Port User releases (to the extent permitted by law) POPL from, and must indemnify POPL in respect of, any Claims arising (directly or indirectly) from the use of the parking area.

7.12 Inspection of Records

The Port User will, upon request from POPL, make available to POPL all records and information, howsoever stored, relating to its obligations under this Clause 7 to verify that the Port User is complying with such obligations.

7.13 24 Hour Contact Number

The Port User must provide POPL with a list of persons and their contact numbers which POPL can contact at all times in relation to its Operations (including in relation to issues concerning cleanliness, damage, safety, security and the environment).

8 SALE OR LEASE OF AREAS WITHIN THE MULTI USER AREA

8.1 POPL retains rights to restrict access

- (a) Nothing in the Licence limits POPL's ability or right to sell, lease, exclusively licence or otherwise restrict access to (**Deal With**) any part of the Multi User Area.
- (b) Notwithstanding any other provision of these conditions, in the event that POPL Deals With any part of the Multi User Area then, upon POPL giving to the Port User notice in writing or it otherwise being practically made known to the Port User (e.g. through signage or restrictions on access), that part of the Multi User Area which is the subject of the relevant dealing be deleted from the definition of Multi User Area and will accordingly no longer be available for use by the Port User under the Licence.

8.2 Consequences of Dealing

The Port User agrees that it will not make any Claim against POPL if any part of the Multi User Area is Dealt With in the manner contemplated by the preceding provisions of this clause.

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9 INSURANCES

9.1 Insurances to be Maintained

During the currency of the Licence, the Port User must maintain with insurers and on terms reasonably approved by POPL:

- (a) A policy of public liability insurance for an amount of not less than \$20 million (\$50 million in the case of a Port User engaged in Stevedoring Operations) in respect of any one single action or event, with such policy to note the interest of POPL;
- (b) Workers compensation insurance;
- (c) Other insurances which are required by Applicable Laws; and
- (d) Such other insurances as POPL may (acting reasonably) deem appropriate from time to time having regard to the Operations of the Port User conducted in the Multi User Area.

9.2 Notify POPL

The Port User must notify POPL immediately if an insurance policy required by clause 9.1 is cancelled or an event occurs which may allow a Claim or affect rights under an insurance policy.

9.3 Currency and Inspection

At any time, upon reasonable request by POPL, the Port User will provide to POPL a copy of its insurance policies and certificates of currency relating to all insurances required under this clause 9. Failure to keep all required insurances current and/or to provide POPL with the necessary certificates of currency is deemed to be a breach of an essential term of the Licence.

9.4 No Voiding

The Port User must not do anything which may increase the premium payable under, or invalidate or render void or voidable, any insurance policy taken out by POPL.

10 TERMINATION OF LICENCE

10.1 When POPL may terminate

In addition to any rights of termination contained elsewhere in these conditions, POPL may terminate the Licence immediately by written notice to the Port User if:

- (a) the Port User is or becomes Insolvent; or

- (b) the Port User breaches the Licence and does not rectify the breach within seven (7) Business Days of being provided with written notification of such breach; or
- (c) the Port User is in breach of an essential term of the Licence; or
- (d) the Port User is in default under a Related Occupation Agreement.

For the purposes of this clause 10, **essential term** includes clauses 7 and 9 of the Licence.

If POPL terminates the Licence under this clause 10.1, the Port User indemnifies POPL against all Claims incurred by POPL or its associates as a result of the termination of the Licence.

10.2 Elective Termination

- (a) Either party may terminate the Licence by giving not less than three months written notice to the other.
- (b) If a party terminates the Licence under this clause 10.2, neither party has any rights or remedies against the other party in respect of such termination, but without prejudice to any Claim arising or relating to any act or omission by the other party prior to the termination.

10.3 Removal

Upon the expiry or termination of the Licence the Port User must immediately:

- (a) remove its Equipment and property from the Port, and make good any damage caused; and
- (b) leave the Multi User Area clean and tidy and in a condition consistent with the performance of its obligations under these conditions.

11 LIABILITY

11.1 Exclusion of implied terms

Except as otherwise expressly provided in the Licence, all terms, conditions, warranties, undertakings, inducements or representations implied, by Law or otherwise, relating in any way to the Multi User Area or access to and use of the Multi User Area by the Port User are excluded to the fullest extent permitted by Law.

11.2 Release

To the fullest extent permitted by Law, the Port User uses and accesses the Multi User Area at its own risk and releases POPL from all Claims in connection with

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the Multi User Area except to the extent that such Claims arise out of the negligence of POPL.

11.3 Indemnity

(a) The Port User will indemnify and keep POPL indemnified at all times against:

(i) any Claims to the extent those Claims are caused or contributed to by the acts or omissions of the Port User (including its Employees) or its Visitors including, but not limited to, Claims in respect of:

- A. Loss of life or injury to any person; and
- B. Loss of or damage to the property of any person (including POPL); and

(ii) any Claims arising (directly or indirectly) from the Port User's use of the Multi User Area or a default by the Port User under the Licence,

except to the extent that any such Claims arise out of POPL's negligence.

11.4 Consequential Loss

To the fullest extent permitted by Law, POPL shall not be liable whether in contract, tort (including negligence) or otherwise for any:

- (a) loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or for any wasted expenditure, ex gratia payments made to third parties or for bank charges incurred; or
- (b) form of special, indirect or consequential losses whatsoever.

11.5 No compensation

Without limiting any other provision of these conditions, POPL is not liable to the Port User for any Claim due to:

- (a) Any damage to the Port (including the Multi User Area);
- (b) The failure of any POPL improvements or equipment to operate properly;
- (c) The interruption of or damage to any utilities (including electricity, gas or water) of the Port (including the Multi User Area); or
- (d) The interruption or damage to any services supplied to the Port (including the Multi User Area).

12 SELF HELP

If the Port User does not perform any obligation required under the Licence after 7 days written notice by POPL to the Port User (or any lesser period if required by law or in the case of an emergency), then POPL may (but is not obliged to) remedy that breach. The Port User must pay or reimburse POPL on demand for its costs and expenses incurred in connection with remedying the breach.

13 GENERAL

13.1 Assignment

The Port User must not transfer or assign or otherwise dispose of its rights and obligations under the Licence or attempt to do so without the prior written agreement of POPL.

13.2 Governing Law

The Licence shall be governed and interpreted in accordance with the law of the State of Victoria and the parties agree to submit to the exclusive jurisdiction of the Federal Court of Australia or the courts of Victoria and courts having appellate jurisdiction from all such courts.

13.3 Further Assurances

Each party will promptly execute all documents and do all things that a party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of the Licence and any transaction contemplated by it.

13.4 Entire Agreement

The Licence (and the documents to which it refers) embodies the entire agreement and understanding between the parties concerning its subject matter and supersedes all other agreements and understandings concerning that subject matter and any warranty, representation, guarantee or other term and condition of any nature not contained in the Licence or the documents to which it refers is of no force or effect.

13.5 Approvals and Consents

Except to the extent expressly provided to the contrary in the Licence, POPL may conditionally or unconditionally give or withhold any consent or approval to be given under the Licence in its absolute discretion and is not obliged to give its reasons for so giving or withholding its consent.

13.6 Indemnities

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If a party is required to indemnify another party under the Licence, that party must pay on demand the amount the other party is liable to pay by the time the other party is required to make payment. Nothing in any indemnity in the Licence derogates from or limits the rights of POPL to seek recovery of damages or exercise any rights or remedies POPL has under the Licence, at law or otherwise.

13.7 Expiry or Termination

Expiry or termination of the Licence does not affect any party's rights in respect of a breach arising before the expiry or termination and does not operate to terminate any of the continuing obligations under the Licence and such obligations will remain in full force and effect.

13.8 Special Conditions

The Licence includes any conditions agreed in writing between POPL and the Port User to be "Special Conditions" for the purposes of the Licence. Such Special Conditions prevail in circumstances where they are inconsistent with any of the other provisions of the Licence.

13.9 Related Occupation Agreement and Inconsistency

The provisions of the Licence and the Related Occupation Agreement (if any) must be given effect to the fullest extent possible. Where there is an inconsistency between the terms of the Licence and any Related Occupation Agreement, the terms of the Related Occupation Agreement will prevail to the extent necessary to resolve the inconsistency.

13.10 Amendments

POPL may amend these conditions from time to time by giving notice in writing to the Port User. The amendments take effect on and from the date that is 14 days after the date that such notice is given.

14 NOTICES

14.1 Manner of giving notices

Notice to be given by a party under the Licence must be:

- (a) in writing;
- (b) directed to the recipient's address;
- (c) left or sent by pre-paid registered post, hand delivered, or facsimile to that address;

and will be deemed to be duly given:

(d) in the case of hand delivery, on the day of delivery;

(e) three (3) days after the date of posting by pre-paid registered post; or

(f) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight business hours after that transmission, the recipient informs the sender that it has not received the entire notice,

as the case may be.

14.2 Addresses

For the purposes of clause 14.1, the parties addresses and facsimile numbers are as set out in the Related Occupation Agreement or, if there is no Related Occupation Agreement, are as agreed in writing between the parties and, failing such agreement notices may be given at or sent to the registered office of a party.

PORT USER OPERATING LICENCE – TERMS AND CONDITIONS

SCHEDULE 1 – STEVEDORING OPERATIONS ADDITIONAL REQUIREMENTS

1 Stevedoring – Operational Area

1.1 Use of the Operational Area

- (a) The Stevedore shall be entitled to perform Stevedoring Operations at the Port at times approved by POPL from time to time (acting reasonably).
- (b) When performing Stevedoring Operations, the Port User shall, for the duration of those operations, define and mark out an area within the Multi User Area, to be used by the Port User for those operations and which provides a safe work place for the operational activity at hand (**Operational Area**). Without in any way limiting any other responsibility of the Port User, the Port User must comply with any directions given by POPL in relation to the marking out of this area which relate to workplace safety and /or the flow of operations or activity within the Port.

1.2 Control of the Operational Area

- (a) Whilst Stevedoring Operations are being performed by the Stevedore, the Stevedore shall have the right to, and must, exclude all third parties (excluding POPL) from the Operational Area. The Stevedore must ensure that signage is prominently displayed in and about the Operational Area advising persons who are not authorised to access the Operational Area that they must keep out of the Operational Area whilst Stevedoring Operations are being performed.
- (b) The requirements of paragraph (a) immediately above shall not apply to Employees whose presence within the Operational Area is necessary for the performance of the Stevedoring Operations or to contractors and agents of the vessel or representatives of a Government agency that require access to the vessel, all of whom, for the avoidance of doubt, shall be deemed to constitute “Visitors” under the Licence. Nothing in this paragraph shall in any way limit the Stevedore’s responsibilities and liabilities any other provision of the Licence.

- (c) The Stevedore shall be deemed to be in effective control of the Operational Area for the duration of the performance of the Stevedoring Operations from time to time and shall, during that time, occupy the Operational Area at its risk entirely. Without limiting this or any other provision of the Licence, the Stevedore shall be responsible for the safety of all persons (including Employees and Visitors) and Equipment located within the Operational Area whilst Stevedoring Operations are being performed, whether such persons or equipment are permitted to be within the Operational Area or otherwise.
- (d) Whilst Stevedoring Operations are being performed the Stevedore will be the Terminal Representative as defined in AMSA Marine Orders Part 34 *Solid Bulk Cargoes* or the Person in Charge as defined in AMSA Marine Orders Part 32 *Cargo Handling Equipment* in relation to the Operational Area.

2 Stevedoring Operations

Without limiting any obligations contained elsewhere in the Licence, the Stevedore must:

- (a) Comply with all of the Policies & Procedures in relation to the flow of traffic within the Port and not block access to any common user roads.
- (b) Comply with all load limits applicable to each berth at which Stevedoring Operations are performed (including berth total maximum load limits and particular point load limits and/or per square metre load limits) as advised by POPL from time to time.
- (c) Not store any equipment or goods, and not park any motor vehicles, anywhere within the Port unless expressly licensed to do so by POPL in writing. For the avoidance of doubt, equipment necessary for the performance of the Stevedoring Operations may be located and used within the Operational Area for the duration of the period during which those operations are performed.
- (d) Undertake Stevedoring Operations according to Best Practice except to the extent that the Policies & Procedures require a higher standard in which case the Stevedore shall comply with the Policies & Procedures.

PORT USER OPERATING LICENCE – TERMS AND CONDITIONS

- (e) At all times during its use of the Operational Area keep it free and clear of all debris and other materials to the reasonable satisfaction of POPL and remove such debris and other materials away from the Port such that at the conclusion of Stevedoring Operations the Operational Area must be clean and free of all cargo residues, debris and other materials.
- (f) If the Stevedore proposes to load or unload or otherwise handle Dangerous Goods, the Stevedore must provide POPL with copies of written procedures that specify how the Dangerous Goods are to be handled by the Stevedore prior to the commencement of loading or unloading. The Stevedore must store and handle the Dangerous Goods safely, according to Best Practice and strictly comply with all relevant laws and regulations and any Policies & Procedures. Nothing in this paragraph in any way limits the Stevedore's liability in respect of its handling of Dangerous Goods.
- (g) Perform the Stevedoring Operations in a manner that ensures that no Contamination is caused onto or about any area of the Port or Adjacent Areas including any waterway.
- (h) Ensure that all equipment used in the carrying out of Stevedoring Operations is maintained in accordance with Best Practice, is safe and is fit for its relevant purpose of use including so as to prevent materials that are being transported, loaded or unloaded from being discharged onto or about any area of the Port or Adjacent Areas including any waterway.

Dangerous Goods means any goods to which the IMDG Code is expressed to apply, whether specifically listed in the IMDG Code or not and, otherwise, means any substances, mixtures or articles that, because of their physical, chemical (physicochemical) or acute toxicity properties, present an immediate hazard to people, property or the environment.

IMDG Code means the version of the International Maritime Dangerous Goods Code that is published by the IMO and known as the 'IMDG Code 2010 Edition incorporating Amendment 35-10' (including all corrigenda and errata to the IMDG Code 2010 edition).

3 Definitions

In this schedule the following expressions have the following meanings unless the context otherwise requires:

Australian Standard means a standard published, adopted or approved by Standards Australia.

Best Practice means in relation to the Stevedoring Operations, the practices, methods, equipment and acts which are equal to or better than those practices, methods, equipment and acts that a competent and experienced reputable contractor would reasonably be expected to follow, implement and use provided always that this standard is equal to or better than the standard required under any Applicable Law or Australian Standard.

PORT USER OPERATING LICENCE – TERMS AND CONDITIONS

SCHEDULE 2 – RAIL OPERATIONS REQUIREMENTS

1 Rail Operations

- 1.1 Access to the Rail Infrastructure and the conduct of Rail Operations within the Multi User Area will at all times be subject to any directions given by POPL.
- 1.2 The Rail Operator must ensure that:
 - (a) The operation of Trains within the Multi User Area complies with the *Rail Safety Act 2006* (Vic), the *Rail Safety Regulations 2006* (Vic) and any protocols and guidelines published or notified by POPL from time to time in relation to use of Rail Infrastructure.
 - (b) No vehicles (including Rolling Stock) or plant and equipment are brought into the Multi User Area or onto any Rail Infrastructure if such vehicles or plant and equipment are likely to cause structural or other damage to the Multi User Area (including any Rail Infrastructure).
 - (c) It holds and maintains valid and current safety accreditations as required by relevant authorities from time to time.

2 Notification of defects

The Rail Operator must give POPL prompt notice in writing of any damage to or defect in the Rail Infrastructure or of any circumstance which is likely to result in an damage to or defect in the Rail Infrastructure.

3 Rail Safety Interface Agreement

The parties must comply with their respective obligations under the Rail Safety Interface Agreement. The parties agree that clause 11 of the conditions to which this schedule is attached applies in full in respect, and notwithstanding any breach, of the Rail Safety Interface Agreement.