

DATED

ASSOCIATED BRITISH PORTS

and

[TUG PROVIDER]

Agreement

relating to the provision of towage services within the inner-docks of ABP's port of Grimsby

ASSOCIATED BRITISH PORTS
25 BEDFORD STREET
LONDON
WC2E 9ES

AN AGREEMENT made the

day of

2020

BETWEEN:

- (1) **ASSOCIATED BRITISH PORTS** whose principal office is at 25 Bedford Street, London WC2E 9ES (“**ABP**”); and
- (2) **[TUG PROVIDER’S FULL COMPANY NAME]** whose registered office is at **[INSERT]** **[company number]** (the “**Tug Provider**”),

each referred to in this Agreement as a “**Party**” and together as the “**Parties**”.

BACKGROUND

- (A) ABP is the owner and operator of the port of Grimsby (“**Port**”).
- (B) The Tug Provider is a towage operator and operates a fleet of tugs.
- (C) ABP wishes to facilitate an improved towage service at the Port, and in particular the Inner-Docks of the Port (as further defined below), for the benefit of ABP’s customers and other users of the Port.
- (D) ABP has determined that, in accordance with Article 6 of the Port Services Regulations 2019 (“**PSR**”), it wishes to appoint the Tug Provider to be the dedicated provider of towage services for ABP’s customers and other third parties operating within the Inner-Docks, in accordance with and subject to the terms and conditions set out below.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings.

“**ABP Regulations**” means all port rules, codes of practice or other directions or regulations issued from time to time by ABP in connection with the Port;

“**ABP Standard Terms & Conditions of Trade**” means ABP’s Standard Terms and Conditions of Trade from time to time in force at the Port, the current version of which is attached as Appendix 1 together with any changes which are notified by ABP to the Tug Provider in writing from time to time;

“Applicable Laws” means all applicable law and legislation of any jurisdiction including all or any statutes, rules, regulations, statutory guidance, treaties, directives, decisions, directions, recommendations, codes of practice, guidance notes, circulars, byelaws, orders, notices, demands, regulations or official guidance issued by any Competent Authority which are applicable to the Tug Provider, the Port and/or any aspect of the performance of this Agreement as the same may be amended or modified from time to time;

“Berth” means the berth within the Inner-Docks known as “Berth 11” or any other berth within the Inner-Docks as may be specified by ABP from time to time;

“Charge” means £2,300 per Permitted Tug per Quarter, as such amount is adjusted from time to time in accordance with Clause 4;

“Commencement Date” means the date of this Agreement;

“Competent Authority” means any supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over the Parties of having responsibility for the regulation or governance of any aspect of the performance of this Agreement and/ or the Port;

“Dangerous Goods” means a substance or article described in regulation 3 of the Dangerous Goods Regulations;

“Dangerous Goods Regulations” means the Dangerous Goods in Harbour Areas Regulations 2016;

“Environment” includes the following (whether alone or in combination);

- a) ecological systems and living organism (including humans);
- b) air (including air within buildings or other structures and whether below or above ground);
- c) land and soil (including buildings and any other structures in, on or under land and soil, anything below the surface of the land and land covered by water); and
- d) water (including water under or within land or within pipe or sewage systems);

“Force Majeure” means any one or more of the following:

- a) war; revolution; civil commotion; blockade of the Port;
- b) closure of the Port or any relevant part of the Port as a result of explosion, fire, radio active contamination, terrorist activity (actual or threatened), extreme weather, natural disaster, impact

by ship or vessel or impact by aircraft or object dropped or falling from them which prevents the berthing and/or handling of Vessels; or

- c) blockage of any shipping channel in the Humber Estuary required to access the Port;

in each case to the extent it is beyond the reasonable control of the Party liable to perform and which prevents the performance by that Party of its obligations or any material part of its obligations under this Agreement, and if to the extent that the effect of those circumstances on that Party could not have been avoided or minimised by that Party taking all reasonable steps to avoid or minimise that occurrence or its effect;

“Good Industry Practice” means the exercise of that degree of skill and care which would reasonably and ordinarily be expected of a skilled and experienced person carrying out the same type of activity under the same conditions and complying with all Applicable Laws;

“Hazardous Materials” means any substance in whatever form whether alone or in combination with any other substance known or reasonably believed to be harmful to human health or the Environment, whether or not for that reason it is subject to statutory controls on production, use, storage or disposal;

“Inner-Docks” means the areas of the Port known as the Alexandra Dock and the Royal Dock;

“Insolvency Event” means any of the following events:-

- a) an order is made or a resolution is passed for the winding up of a Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of a Party;
- b) an order is made for the appointment of an administrator to manage the affairs, business and property of a Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- c) a receiver is appointed of any of a Party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the Party's assets;
- d) a Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
- e) a Party ceases, or threatens to cease, to trade or suspends all or substantially all of its operations or suspends payments of its debts or becomes unable to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- f) a Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt,

provided that any such action under sub-clauses (b), (c) (d) or (f) that is taken in connection with a scheme of reconstruction, reorganisation or arrangement following which that Party remains solvent or that is taken for the purpose of, and followed by, a reconstruction, amalgamation, reorganisation, merger or consolidation that is undertaken in such manner that the entity resulting therefrom agrees to be bound by or assume the obligations imposed on that Party under this Agreement, will not constitute an “Insolvency Event”;

“**Losses**” means any loss, damage, liability, demand, claim, recovery, judgment, execution, penalty, charge and any other cost or expense of any nature or kind whatsoever (including any legal costs and expense and costs of recovery on a full indemnity basis);

“**PSR**” means the Port Services Regulations 2019;

“**Permitted Tugs**” has the meaning given to it in Clause 2.3(a);

“**Pollution Incident**” means a discharge of any Hazardous Material to the Environment in breach of any Applicable Laws;

“**Port**” means the ABP port of Grimsby including the Berth and references to the “Port” are to be construed as if it was immediately followed by the words “or any part of it”;

“**Priority Use**” means the right for the Tug Provider to use the Berth in priority to any other user of the Port in accordance with and subject to Clause 6;

“**Quarter**” means any consecutive three (3) month period in any Year commencing on the Commencement Date or any anniversary of the Commencement Date;

“**Review Date**” means the date which is the first anniversary of the Commencement Date, and each anniversary of that date until this Agreement is terminated according to its terms;

“**RPI**” means the figure shown under the heading “All Items” in the Index of Retail Prices published monthly by the National Statistics Office (or any successor thereto);

“**Services**” means the provision of towage services using one or more of the Permitted Tugs;

“**Term**” means the period from the Commencement Date to the date which is third anniversary of the Commencement Date, unless terminated earlier in accordance with the terms of this Agreement;

“Tug” means a tug used by the Tug Provider to carry out the Services;

“Tug Provider’s Invitees” means the Tug Provider’s officers, employees, contractors, sub-contractors, agents, representatives, and any other persons whom the Tug Provider invites onto the Port;

“Tug Provider’s Tariff” means the charges or amounts payable by ABP’s customers or other third parties to the Tug Provider in respect of the provision of the Services, the current version of which is attached at Schedule 2 together with any changes which are notified by ABP to the Tug Provider in writing from time to time as set out in the in force as at the Commencement Date;

“Tug Specification” means the specifications as set out in Schedule 1; and

“Year” means any consecutive twelve (12) month period commencing on the Commencement Date or any anniversary of the Commencement Date during the term and “annual” will be construed accordingly.

- 1.1 The Interpretation Act 1978 will apply to this Agreement in the same way as it applies to an enactment, except where its provisions are inconsistent with any express terms of this Agreement.
- 1.2 The Schedules will have effect as part of this Agreement.
- 1.3 Any references in this Agreement to Clauses or Schedules or Appendices are to clauses of, or schedules or appendices to, this Agreement.
- 1.4 Headings will be ignored in construing this Agreement.
- 1.5 References to a statute or statutory provision include that provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Agreement and any subordinate legislation made under it.
- 1.6 Unless the context otherwise requires, words importing the singular will include the plural and vice versa and reference to any masculine, feminine or neuter gender will include the other genders.
- 1.7 Words importing individuals or persons will include companies, corporations, firms, unincorporated bodies of person and partnerships. The words “include”, “including”, and “includes” are to be construed as if they were immediately followed by the words “without limitation”.
- 1.8 Save as otherwise provided, in the case of conflict or ambiguity, the order of precedence for this Agreement and the documents attached to or referred to in this Agreement will be as follows:
 - (a) the main body of this Agreement including the Schedules; and
 - (b) Appendix 1 – ABP’s Standard Terms and Conditions of Trade.

2. THE TUG PROVIDER'S OBLIGATIONS

- 2.1 Subject to Clause 2.2 below, the Tug Provider agrees that the amounts that it charges its customers for the provision of the Services shall be in accordance with the Tug Provider's Tariff.
- 2.2 The Tug Provider may review and adjust the charges set out in the Tug Provider's Tariff on the first anniversary of the Commencement Date and each anniversary thereafter in accordance with any changes in RPI.
- 2.3 The Tug Provider shall at all times from the Commencement Date and for the remainder of the Term:
- (a) provide two (2) Tugs which together meet the Tug Specification (being the "**Permitted Tugs**");
 - (b) base the Permitted Tugs at the Berth for the primary purpose of providing the Services to vessels operating within the Inner-Docks;
 - (c) provide the Services using the Permitted Tugs to ABP customers and other third parties where the Tug Provider has been engaged to do so by the agent, master or any other authorised party in relation to such vessel;
 - (d) provide the Services for vessels operating within the Inner-Docks in priority to the provision of Services for vessels operating outside of the Port or in areas of the Port other than the Inner-Docks;
 - (e) allocate sufficient staff and resources to enable it to operate the Permitted Tugs and provide the Services (including in particular having dedicated crews based at the Port and assigned to the Permitted Tugs to enable the Tug Provider to mobilise at short notice for the purpose of providing the Services);
 - (f) provide the Services in accordance with Good Industry Practice and in compliance with any service level requirements agreed between the Parties from time to time; and
 - (g) provide the Services in accordance with all Applicable Laws and ABP Regulations.
- 2.4 The Tug Provider acknowledges that the provision of the Services is essential to the successful operation of the Port and that ABP's objective in entering into this Agreement with the Tug Provider is to facilitate an improved and competitively priced towage service for customers and other third-party users of the Port. The Parties agree to work together in good faith at all times to give effect to this overall objective.
- 2.5 The Tug Provider shall have the right to substitute an existing Permitted Tug with another Tug provided such replacement Tug when together with the other Permitted Tug meets the Tug Specification.

- 2.6 For the avoidance of doubt, ABP and the Tug Provider acknowledge that from time to time the Tug Provider will be required to carry out routine repair and maintenance work to the Permitted Tugs and in such circumstances a Permitted Tug may be taken out of service for a period of time while such work is undertaken.
- 2.7 The Tug Provider will use its best endeavours to ensure that repair and maintenance works to Tugs is undertaken at suitable times to avoid disruption to the Services.
- 5.10 On becoming aware of an event or circumstance which may or will disrupt the provision of the Services, the Tug Provider will:
- (a) notify ABP as soon as reasonably practicable of the nature, extent and circumstances giving rise to the event or circumstance in question;
 - (b) use all reasonable endeavours to mitigate the effects of the event or circumstance and carry out its obligations in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably practicable; and
 - (c) give further notice to ABP as soon as the event or circumstance causing disruption to the Services has come to any end or is believed by the Tug Provider to have come to an end.

3. **CHARGES**

- 3.1 From the Commencement Date the Tug Provider will pay to ABP the Charges (in lieu of ABP's normal charges detailed in ABP's Standard Terms and Conditions of Trade) in relation to the use of the Berth.

4. **INCREASE TO CHARGES**

- 4.1 The Charges and all other monetary amounts payable under this Agreement (each a "**Relevant Charge**") will be reviewed upwards only on each Review Date in accordance with the following formula:

$$\left\{ \begin{array}{l} \text{Amount of Relevant Charge} \\ \text{as at the Commencement Date} \end{array} \right. \times \frac{\text{CI}}{\text{DI}} = \text{New Relevant Charge}$$

where "DI" (Datum Index) is the RPI for month prior to Commencement Date and "CI" (Current Index) is the RPI for the month immediately prior to the Review Date.

- 4.2 If Her Majesty's Government ceases to publish the Index of Retail Prices (All Items) ("**RPI**") the calculation will be based on the nearest equivalent published index as relates to the cost of living in the United Kingdom calculated in substantially the same way. If ABP and the Customer disagree as to whether another published index is the nearest published index to the RPI then

the question as to the amount of each Relevant Charge for any Year will be referred for determination by a single expert appointed in accordance with and subject to Clause 16.2(b) upon the basis that the expert will determine the relevant amount as if the Index of Retail Prices (All Items) were still published.

5. THE PORT SERVICES REGULATIONS

5.1 In accordance with Article 6 of the PSR and subject to the terms of this Agreement, the Tug Provider will have the exclusive right to carry out the Services within the Inner-Docks for the Term.

5.2 If, in the reasonable opinion of ABP, the Tug Provider fails during the Term to provide the Services in accordance with Good Industry Practice and the obligations set out in Clause 2 of this Agreement, ABP shall be entitled to terminate the exclusivity rights granted pursuant to Clause 5.1 and appoint a third party tug provider to carry out the Services for the remainder of the Term.

5.3 For the avoidance of doubt, the Tug Provider will not have any exclusive rights to carry out the Services in relation to any area of the Port other than the Inner-Docks.

6. PRIORITY BERTHING RIGHTS

6.1 The Tug Provider will have Priority Use of the Berth provided that it complies with this Clause 6 and subject as further provided in this Clause 6.

6.2 The Priority Use is for the purpose of berthing Permitted Tugs only in connection with the Tug Provider's provision of the Services as contracted for in this Agreement.

6.3 For the avoidance of doubt, the Tug Provider's use of the Berth is non-exclusive. At times when the Tug Provider is not entitled to Priority Use, ABP will be entitled to use the Berth for any ABP or third-party vessel.

6.4 In the event that the Berth cannot be used because of (i) an emergency, (ii) an event of Force Majeure, (iii) overriding operational need (as determined by ABP in its reasonable discretion) or (iv) the discharge of ABP's statutory obligations, then ABP will allow (subject to availability, Force Majeure and other priority rights which other customer of ABP may have in respect of an alternative berth) Permitted Tugs to be worked at alternative berths within the Port and ABP will provide such priority to Permitted Tugs which would otherwise have been entitled to Priority Use as is reasonably possible in the circumstances.

7. PAYMENT TERMS

7.1 Payments under this Agreement will be made on the following terms: -

- (a) strictly twenty eight (28) days from invoice date provided that the invoice was delivered to such address in the UK as may be notified by the Tug Provider to ABP;

- (b) charges outstanding beyond twenty eight (28) days from invoice date will accrue interest payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
- (c) all payments due and owing to ABP by the Tug Provider will be made without set-off, withholding or deduction of any kind.

7.2 All sums payable under this Agreement are stated exclusive of VAT, which if payable shall be paid against appropriate VAT invoices.

7.3 In the event that the Tug Provider fails to pay any amount owing to ABP when due (“**Outstanding Amount**”) and without prejudice to its other rights or remedies in respect of failure to pay any amount owing to ABP when due, ABP shall have the right to suspend performance of any or all its obligations under this Agreement until the Tug Provider makes full payment of the Outstanding Amount to ABP in cleared funds and ABP shall not be liable for any costs or losses suffered or incurred by the Tug Provider arising directly or indirectly from ABP’s failure or delay to perform any of its obligations under this Agreement as specified in this Clause 7.3.

8. LIABILITY

8.1 ABP will not be liable to the Tug Provider for:

- (a) any loss of profit (direct or indirect);
- (b) loss of business, contracts, anticipated savings or depletion of goodwill; any indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation or indirect economic loss (howsoever caused) whether in contract, tort or breach of statutory duty or otherwise which arises out of or in connection with this Agreement; or
- (c) for any liability incurred by the Tug Provider to any other person for any economic loss, claim for damages or awards howsoever arising from this Agreement or otherwise.

8.2 ABP's total liability in contract, tort (including negligence) or for breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement will be limited to the amount of the Charges payable in any one Year provided that loss or damage to goods or plant will be limited in accordance with ABP's Standard Terms and Conditions of Trade (if lower).

8.3 Nothing in this Agreement excludes or limits the liability of either Party for death or personal injury caused by that Party's negligence, or for fraud or fraudulent misrepresentation.

9. SECURITY

9.1 The Tug Provider agrees and acknowledges that the general security provided by ABP at the Port does not in any way diminish the Tug Provider's responsibility for the security and safe-keeping

of the Permitted Tugs and ABP makes no warranty or representation to the Tug Provider that such security will be adequate or sufficient for the Tug Provider's purpose.

9.2 The Tug Provider will take such steps as are necessary to ensure that all fences, gates, locks and other security items both on the perimeter of the Port.

9.3 Unless otherwise agreed the use of any facilities, not expressly covered by the terms of this Agreement, at the Port is subject to ABP's Standard Terms and Conditions of Trade and the Tug Provider agrees and accepts that the use of any facilities at the Port (whether used either exclusively or jointly with ABP or any other third party), will be at its sole risk and responsibility.

10. HEALTH & SAFETY

10.1 Without prejudice to the terms of Clause 11, the Tug Provider will at all times and at its own expense keep itself informed of, observe and comply with all Applicable Laws and ABP Regulations relating to health and safety affecting its use of and activities at the Port.

11. COMPLIANCE WITH LAW

11.1 Each Party will at all times keep itself informed of and comply with all Applicable Laws relevant to its use of and activities at the Port.

11.2 The Tug Provider will at all times keep itself informed of and comply with all ABP Regulations relevant to its use of and activities at the Port.

11.3 The Tug Provider will, without limitation to the other provisions of this Agreement, carry out risk assessments of its activities at the Port to the full extent required by Good Industry Practice and Applicable Laws (in particular those concerned with environmental protection and health and safety) and will ensure that appropriate action is taken on the basis of those risk assessments.

11.4 The Tug Provider will procure that Tug Provider Invitees conduct their respective activities in compliance with the obligations in this Clause 11.

11.5 The Tug Provider will conduct its activities at the Port at all times in such a way as to minimise any nuisance or disturbance to ABP, any other person at the Port, any other vessel using the Port and the owners and occupiers of other land within or adjacent to the Port.

11.6 Without prejudice to Clause 11.2, the Tug Provider will conduct its activities at the Port at all times in such a way as to:

- (a) prevent any escape of any substance or matter (in whatever form and whether alone or in combination with any other substance) within the possession or control of the Tug Provider from the Berth or from any other area of the Port or from any vessel or other means of transport in the possession or under the control of the Tug Provider or any of the Tug Provider's Invitees into or onto any part of the Port;

- (b) ensure that no Hazardous Materials or substance or matter of which the discharge passage or escape would be contrary to the Environmental Permitting (England and Wales) Regulations 2016 (SI 1154) or any substance or material which may cause an obstruction or damage or pollution or contamination to pass or escape into any sewer drain or watercourse serving the Port or into the Humber Estuary or into the sea or into or onto any part of the Port.

11.7 If a Pollution Incident should occur as a result of the activities of the Tug Provider at the Port, including the escape of any Cargo which might cause damage to the Environment or discharge of any Hazardous Materials or other substance or matter referred to in Clause 11.6(b) in breach of that Clause 11.6(b), the Tug Provider shall, upon becoming aware of the Pollution Incident:

- (a) immediately take all steps necessary to prevent further pollution occurring as a result of the Pollution Incident;
- (b) notify ABP as soon as reasonably practicable and provide ABP with a copy of any notice that has been given to any Competent Authority in connection with the incident;
- (c) as soon as reasonably practicable remediate the consequences of the Pollution Incident to the reasonable satisfaction of ABP and any Competent Authority,
- (d) provided that notwithstanding (c) and without prejudice to any of its other rights or remedies ABP reserves the right to elect to remediate the consequences of the Pollution Incident itself where it is reasonable in the circumstances for ABP to do so and the Tug Provider shall reimburse ABP in full and on demand for all costs or expenses incurred by ABP as a result of undertaking such remediation.

11.8 The Tug Provider irrevocably and unconditionally agrees to indemnify ABP in full and on demand and hold harmless and keep ABP so indemnified against all Losses incurred or suffered by ABP as a result of the breach of Clauses 11.6 or 11.7 by the Tug Provider or the Tug Provider's Invitees.

11.9 Subject to any written agreement with ABP to the contrary:

- (a) the Tug Provider will make proper and adequate arrangements for the removal from the Port and disposal of all trade and other waste in accordance with the requirements of Applicable Laws as often as may be necessary or as reasonably directed by ABP;
- (b) if the Tug Provider fails to remove trade and other waste from the Port to the reasonable satisfaction of ABP then ABP reserves the right (but shall not be obliged) to remove and dispose of the trade or other waste itself and the Tug Provider will reimburse ABP in full for all costs or expenses incurred by ABP in undertaking such removal;
- (c) the Tug Provider will maintain proper and full records of all waste disposals that it undertakes and will, upon request, provide a copy of any such records to ABP.

- 11.10 Hazardous Materials shall not be dealt with at the Port by the Tug Provider except with the prior permission of the Harbour Master of the Port and in accordance with any conditions that may be prescribed by him and all Applicable Laws including the Dangerous Goods Regulations.
- 11.11 The Tug Provider will be responsible for ensuring that any Dangerous Goods stored at the Port as a result of the activities of the Tug Provider do not exceed any limits permitted under the Dangerous Goods Regulations, any licence granted to ABP under regulation 17 of the Dangerous Goods Regulations in respect of the Port or any limits imposed under any other Applicable Laws.
- 11.12 The Tug Provider will ensure that any Dangerous Goods that are present at the Port as a result of the carrying out of its activities are segregated and stored in accordance with all Applicable Laws including the International Maritime Dangerous Goods Code.
- 11.13 The Tug Provider will, upon request, inform ABP of the current status, quantity, type and location of all Dangerous Goods present at the Port or in any vessel or other means of transport within the possession or control of the Tug Provider as a result of the carrying out of its activities at the Port.
- 11.14 The Tug Provider will be responsible for removing any Hazardous Materials or Dangerous Goods, including any radioactive substances or materials, from the Port if reasonably requested to do so by ABP and if the Tug Provider fails to remove any such substances or materials to the reasonable satisfaction of ABP then ABP reserves the right (but shall not be obliged) to remove and dispose of them itself and the Tug Provider will reimburse ABP in full and on demand for all costs or expenses incurred by ABP in undertaking such removal.

12. CONFIDENTIALITY

- 12.1 Each Party will keep and procure to be kept secret and confidential all confidential information belonging to the other Party disclosed or obtained as a result of the relationship of the Parties under this Agreement and will not use nor disclose the same save:
- (a) for the purposes of the proper performance of this Agreement;
 - (b) with the prior written consent of the other Party or of a Party's professional advisors; or
 - (c) as may be required in connection with any financing arrangements.
- 12.2 Where a Party discloses confidential information to its employees, consultants, sub-contractors, professional advisors or agents pursuant to Clause 12.1(a), (b) or (c), such disclosure shall be subject to obligations equivalent to those set out in this Agreement and each Party will use its best endeavours to procure that any such employee, consultant, sub-contractor, professional advisor or agent complies with such obligations. Each Party will be responsible to the other Party in respect of any disclosure or use of any such confidential information by a person to whom disclosure is made.

- 12.3 The obligation of confidentiality under Clause 12.1 will not apply to any confidential information which:
- (a) is in or enters (otherwise than as a result of an unlawful disclosure by the Party receiving such information) the public domain;
 - (b) the Party receiving such information can demonstrate was already lawfully in its possession at the time of disclosure;
 - (c) is disclosed to the Party receiving such information by a third party otherwise than in breach of any confidentiality obligation owed to the Party whose confidential information it is; or
 - (d) is required to be disclosed pursuant to any Applicable Law or Court or arbitral order or by any supervisory or regulatory body to whose rules a Party is subject or with whose rules it is necessary for that Party to comply.

13. DAMAGE

- 13.1 In the event of that any part of the Port which is under the control of or which is used by the Tug Provider or the Tug Provider's Invitees suffering any loss or damage the Tug Provider will give immediate written notification to ABP of such loss or damage together with full particulars thereof.
- 13.2 In the event that the Tug Provider becomes aware of any other part of the Port not covered by Clause 13.1 above suffering loss or damage the Tug Provider will inform ABP immediately in writing.
- 13.3 At the written request of and at the cost of ABP, the Tug Provider will lodge any such claims as may be necessary on behalf of ABP against the person or vessel causing such loss or damage and take such reasonable steps as may be necessary to protect ABP's interest in connection therewith.

14. INSURANCE

- 14.1 The Tug Provider will throughout the Term have and maintain the following insurances with insurers of repute (the "**Insurances**"): -
- (a) employer's liability insurance for a minimum of £10,000,000 (ten million pounds) per claim;
 - (b) public liability insurance (including product liability) for a minimum of £20,000,000 (twenty million pounds) for each occurrence;
 - (c) such other insurances as the Tug Provider reasonably deems appropriate in order to meet its obligations and liabilities under this Agreement or as are required by law or contract.
- 14.2 The payment of the premiums in respect of the Insurances will be the responsibility of the Tug Provider.

- 14.3 Copies of all insurance policies, proofs of payment of premiums and other relevant documents in respect of the Insurances will be provided by the Tug Provider to ABP promptly on request and ABP will be entitled to inspect during normal working hours such original policies of Insurances, and proofs of payment of premiums in respect of the Insurances required under this Clause 14.
- 14.4 The Tug Provider will not take or omit to take any action or permit anything to occur in relation to the Insurances as would entitle the relevant insurer to refuse to pay any claim under the Insurances.

15. FORCE MAJEURE

- 15.1 Neither Party will be liable for any failure to perform or delay in performance of its obligations under this Agreement, other than an obligation to pay monies, caused by an event of Force Majeure provided that if the period of the Force Majeure event continues for more than sixty (60) consecutive days, the other Party will be entitled to terminate this Agreement immediately by notice in writing.
- 15.2 Any Party that is subject to an event of Force Majeure shall, on becoming aware of an event which is or might be a Force Majeure event, give written notice of that event to the other Party as soon as reasonably practicable and such notice shall include details of the nature, extent and circumstances giving rise to the event in question.
- 15.3 Any Party that is subject to an event of Force Majeure will not be in breach of this Agreement in so far as it is prevented or delayed from performing its obligations by that event provided that the Party affected must use all reasonable endeavours to overcome or (if not possible) to mitigate the effects of the event of Force Majeure and to carry out its obligations under this Agreement in any way that is reasonably practicable (without incurring a disproportionate cost) and to resume the performance of its obligations as soon as reasonable practicable;
- 15.4 Unless this Agreement is terminated under this Clause 15, the affected Party must also give further written notice within 48 hours of the date that the Force Majeure event or possible Force Majeure event has come to any end or is believed by the Party to have come to an end.

16. DISPUTE RESOLUTION

- 16.1 Subject to Clause 16.4, in the event that any disagreement or difference of opinion between the Parties arises out of this Agreement (“**Dispute**”), the following dispute resolution procedure will apply in relation to such Dispute:
- (a) the appropriate representatives of the Parties will meet to attempt to resolve the Dispute. Should they not meet within fourteen (14) days of the date on which either Party convenes a meeting to resolve the Dispute, or if the Dispute is not resolved within a reasonable time of first meeting; then

- (b) the Dispute will may be referred by either Party to the managing director of the Tug Provider and the Port Director for ABP for immediate resolution.

16.2 If, within fourteen (14) days of the Dispute being referred to Clause 16.1(b) no agreement has been reached as to the Dispute the Parties:

- (a) will consider whether the Dispute is appropriate for determination by an expert (for the purposes of this provision the Parties should in particular consider whether matters technical or financial should be determined by an expert); and
- (b) the Dispute will if agreed by both Parties, be determined by an independent expert nominated jointly or failing such nomination within seven (7) days after request by either of them by the President for the time being of such appropriate industry body as ABP may determine and the expert so nominated will act as an expert and not as an arbitrator and his decision will be final and binding on the Parties (except in the event of manifest error) and his fees will be borne and paid by the Parties in such proportions as the expert determines and if no such determination is made such fees will be borne and paid equally between them.

16.3 If the Parties:

- (a) have not resolved the Dispute pursuant to the dispute resolution procedure set out in Clause 16.1; or
- (b) do not agree that the Dispute should be determined by an independent expert nominated jointly or otherwise as nominated in accordance with this Clause 16.2,

then the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceedings which may arise out of or in connection with this Agreement (“**Proceedings**”) and, for such purposes, irrevocably submits to the jurisdiction of such courts. Each Party irrevocably waives any objection which it might now or after the date of this Agreement have to the courts of England and Wales being nominated as the forum to hear and determine and Proceedings and to settle any Dispute, and agrees not to claim that any such court is not a convenient or appropriate forum.

16.4 Nothing in this Clause 16 precludes legal proceedings by any Party in the courts of England and Wales at any time:

- (a) for an order (whether interim or final) to restrain the other Party from doing any act or compelling the other Party to do any act; or
- (b) the purpose of which is to prevent a claim from becoming time-barred under any statute of limitations.

17. TERM AND TERMINATION

17.1 This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with the following provisions of this Clause 17 or Clause 15.1, this Agreement will continue for the Term.

17.2 Without prejudice to any rights or remedies which it may have against the Tug Provider or to any other provision of this Agreement, ABP may terminate this Agreement immediately upon written notice to the Tug Provider, if: -

- (a) an Insolvency Event occurs in respect of the Tug Provider;
- (b) the Tug Provider commits a material breach of any of its obligations under this Agreement which is incapable of remedy. Failure by the Tug Provider to pay any sums which may become due to ABP under this Agreement will constitute a remediable material breach of the Tug Provider's obligations;
- (c) the Tug Provider fails, within a reasonable period of being requested to do so and in any event no more than twenty-eight (28) days, to remedy a material breach of its obligations under this Agreement which is capable of remedy;
- (d) there is a change of control of the Tug Provider (within the meaning of section 1124 of the Corporation Tax Act 2010).

17.3 Notwithstanding any termination of the Agreement the Tug Provider will pay any sums due to ABP up to and including the date of termination, the Tug Provider will ensure that any goods or products or waste and if so directed by ABP any plant or equipment in each case belonging to the Tug Provider or any Tug Provider or supplier (other than ABP) of the Tug Provider are removed from the Port. Termination of the Agreement or any other contract between the Parties for whatever reason will not affect the rights or remedies of either Party which may have accrued up to the date of termination.

18. NO ASSIGNMENT

18.1 This Agreement is personal to the Parties. Neither Party will assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or responsibilities under this Agreement without the prior consent of the other Party.

19. NOTICES

19.1 Any notices in writing that under the terms of this Agreement will be in writing and delivered by hand or sent by pre-paid first class post: -

- (a) in case of communications to ABP:
to the Dock Master of the Port; at
Marine Control Centre

Immingham Dock

Immingham

NE Lincolnshire

DN40 2LZ

(b) in the case of the communications to the Tug Provider to:

[Managing Director]; at

[INSERT ADDRESS]

or such other postal address as notified to a Party by the other Party from time to time.

19.2 Communications will be deemed to have been received: -

- (a) if sent by pre-paid first class post, two (2) Working Days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on a Working Day prior to 4.00pm, at the time of delivery and otherwise on the next Working Day.

19.3 Any notice from the Tug Provider relating to a material breach of the Agreement or Force Majeure or a notice purporting to terminate, if sent by electronic mail or fax must also be sent by post for the attention of the Company Secretary at ABP's principal office or such other address as notified.

20. BRIBERY, CORRUPTION, MODERN SLAVERY AND ANTI-FACILITATION OF TAX EVASION

20.1 ABP and the Tug Provider shall not, and shall procure that their directors, employees, agents, representatives, contractors or subcontractors shall not, engage in any activity, practice or conduct which would constitute an offence under any applicable:

- (a) anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010;
- (b) anti-slavery and human trafficking laws, regulations and codes, including the Modern Slavery Act 2015;
- (c) tax evasion facilitation laws, regulations and codes, including the Criminal Finances Act 2017.

20.2 ABP and the Tug Provider shall:

- (a) each have in place adequate procedures designed to prevent any person working for or engaged by them or any third party in any way connected to this Agreement, from engaging in any activity, practice or conduct which would infringe any anti-bribery and/or anti-corruption laws, regulations and codes including ABP's anti-corruption and anti-bribery policy which is available on ABP's website <http://www.abports.co.uk>;

- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (c) each have in place and maintain such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Tug Provider) and for the purposes of this Clause 20.2 (c) the extent to which any prevention procedures are deemed reasonable shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017.

20.3 Without prejudice to the generality of the obligations set out in this Clause 20.3 the Tug Provider must promptly report to ABP:

- (a) any request or demand for any undue financial or other advantage of any kind which it receives in connection with the performance of any obligations under any agreement with ABP;
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the use of the Port by the Tug Provider, this Agreement or any other agreement with ABP;
- (c) any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Agreement.

20.4 Breach of this Clause 20 by a Party shall entitle the other Party to terminate this Agreement with written notice with immediate effect.

21. GENERAL

21.1 This Agreement incorporates ABP's Standard Terms and Conditions of Trade. In the event of any conflict this Agreement will prevail.

21.2 The Parties will bear their own costs and expenses incurred in connection with the negotiation and preparation of this Agreement.

21.3 Nothing in this Agreement will create, or be deemed to create any tenancy or any other proprietary interest whatsoever in or in any part of the Berth or any other part of the Port or create or be deemed to create any partnership or joint venture or relationship of employer/employee between the Parties.

21.4 The Tug Provider will not be entitled to exclusive possession or occupation of the Berth, Port or any part thereof.

21.5 This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and constitutes the whole agreement between

the Parties relating to the subject matter of this Agreement as at the date of this Agreement to the exclusion of any terms implied by law which may be excluded from this Agreement. Each of the Parties represents that it has not entered into this Agreement in reliance on any representation, warranty, undertaking or other statement, expressed or implied, oral or in writing, given or made by or on behalf of any party except in so far as contained in or referred to in this Agreement. This Clause 21.5 will not apply to any representation, undertaking, warranty or statement made fraudulently or which was induced by fraud.

- 21.6 Each Party irrevocably and unconditionally waives any right it may have to claim damages for, and/or rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement unless such misrepresentation was made fraudulently.
- 21.7 No purported alteration or variation of this Agreement will be effective unless it is in writing and it refers specifically to this Agreement and is signed by a duly authorised representative of each of the Parties.
- 21.8 No failure of any Party to exercise, and no delay by it in exercising any right, power or remedy in connection with this Agreement (each a "**Right**"), will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of this Agreement may only be given in writing by the waiving Party and will not be deemed to be a waiver of any subsequent breach.
- 21.9 The Contracts (Rights of Third Parties) Act 1999 will not apply to this Agreement and no person who is not a Party to this Agreement (including any employee, officer, representative or sub-contractor of either Party) will have the right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement which expressly or by implication confers any benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause 21.9.
- 21.10 If any provision in this Agreement or any document referred to in it or to be entered into pursuant to or in connection with it will be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement or the provision will not be affected.
- 21.11 During the Term, the Tug Provider will not erect any lights, signs, placards or advertisements on the Berth or any other part of the Port without the prior written consent of ABP.
- 21.12 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts but will not be effective until each Party has signed at least one counterpart. Each

of such counterparts (when so executed) will constitute an original of this Agreement and all of which will together constitute one and the same document.

21.13 This Agreement will be construed in accordance with and governed by the laws of England and Wales and in the event of any dispute or claim will be dealt with in accordance with Clause 16.

SCHEDULE 1
TUG SPECIFICATION

1. Two (2) Tugs, comprising of one a Class A and one a Class C Tug, both in good working order and maintained in full compliance with Good Industry Practice and Applicable Laws, with all necessary consents (being any agreement, permission permit, licence, consent, exemption or other approval required by Tug Operator under any Applicable Laws in order to lawfully carry out its activities in and around the Port.

2. In respect of the two (2) Tugs, at any one time:
 - (a) one of the Tugs must have a minimum of 30Tonne bollard pull;

 - (b) one of the tugs must have a minimum of 50Tonne bollard pull (tractor type twin ASD or Voith Schneider);

 - (c) the Tugs shall be no longer than 25m to assist maximum size ships in the Alexandra Dock of the Port turning in a circle;

 - (d) the Tugs must have a maximum draft which is no deeper than 5.5m (to comply with tidal timing requirement); and

 - (e) each Tug must be an IACS, Class Permitted Tug and in date.

SCHEDULE 2

TUG PROVIDER'S TARIFF

[INSERT]

This Agreement has been entered into on the date shown on the first page.

**Signed for and on behalf of
ASSOCIATED BRITISH PORTS**

by
Name
Address
.....
Occupation

in the presence of
Name
Address
.....
Occupation

**Signed for and on behalf of
[INSERT NAME OF TUG PROVIDER]**

by
Name
Address
.....
Occupation

in the presence of
Name
Address
.....
Occupation

ASSOCIATED BRITISH PORTS**STANDARD TERMS AND CONDITIONS OF TRADE****IMPORTANT ADVICE**

THE CUSTOMER'S ATTENTION IS DRAWN TO SPECIFIC CONDITIONS WHICH EXCLUDE OR LIMIT THE LIABILITY OF ABP (INCLUDING CONDITIONS 6.4, 11, 14.1, 16, 18.2, 19.2, 20, 22, 23, 24, 25, 26), REQUIRE THE CUSTOMER TO INDEMNIFY OR REIMBURSE ABP IN CERTAIN CIRCUMSTANCES (INCLUDING CONDITIONS 3.2, 4, 5.3, 6.3, 8.2, 9.3, 10.1, 16, 17, 18.2, 19.2) AND LIMIT TIME (INCLUDING CONDITION 25)

ABP UNDERTAKES NO OBLIGATION TO EFFECT INSURANCE (AND MAKES NO CHARGE FOR INSURANCE). CUSTOMERS ARE ADVISED TO EFFECT INSURANCE THEMSELVES.

EXCEPT TO THE EXTENT THAT A BESPOKE WRITTEN AGREEMENT HAS BEEN ENTERED INTO BETWEEN THE CUSTOMER AND ABP, WHERE INCONSISTENT WITH TERMS AND CONDITIONS PREVIOUSLY APPLYING OR UNDERSTOOD TO APPLY, THESE CONDITIONS WILL PREVAIL.

1 Definitions

1.1 In these Conditions the following expressions have the following meanings:

"ABP" means Associated British Ports whose principal office is at 25 Bedford Street, London WC2E 9ES or such other address as may be notified by ABP from time to time;

"ABP Party" means any employee, agent, contractor or sub-contractor of ABP;

"ABP Notify Website" means the ABP portal at <https://abpnotify.co.uk/login.aspx> (or such other portal or web address as ABP may advise from time to time);

"ABP Plant" means any Plant belonging to ABP, including any Plant used by ABP in the provision of Services or which ABP hires to the Customer;

"ABP's Port" means any of ABP's ports of Immingham, Grimsby, Hull, Goole, Southampton, Newport, Port Talbot, Cardiff, Barry, Swansea, Ipswich, Lowestoft, King's Lynn, Teignmouth, Plymouth, Garston, Fleetwood, Barrow, Silloth, Troon and Ayr;

"ABP Regulations" means all Terminal Regulations, codes of practice or other directions, regulations or port rules issued from time to time by ABP in connection with the Port;

"Applicable Laws" means all applicable law and legislation of any jurisdiction including all or any statutes, rules, regulations,

statutory guidance, treaties, directives, decisions, directions, recommendations, codes of practice, guidance notes, circulars, bylaws, orders, notices, demands, regulations or official guidance issued by any Competent Authority which are applicable to the Customer, the Port and/or any aspect of the performance of these Conditions as the same may be amended or modified from time to time;

"Cargo" means cargoes of any description;

"Cargo Services" means any services provided by, or on behalf of, ABP in relation to the Cargo or Containers including unloading or loading Cargo or Containers from or to Vessel or from or to Customer Transport, handling of Cargo or Containers, management of storage and storage of Cargo or Containers at the Port;

"Charges" means all charges, dues, expenses or other sums (including charges for Services, charges for the hire of ABP Plant, and dues and charges for Vessels) which are payable by the Customer to ABP;

"Competent Authority" means any supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over the Customer / ABP or having responsibility for the regulation or governance of any aspect of the performance of these Conditions and/or the Port and/or any activities carried out at the Port;

"Container" means any container which complies with ISO Standards for freight containers, including for example reefer, tank-container and flats which are, or have been, or are able to be carried on a Vessel;

"Customer" means any Person who:

- (a) has or brings any Vessel within the Port including the owner, agent, charterer, master and any crew of a Vessel;
- (b) uses any part of the Port in connection with a business;
- (c) delivers, brings or causes Goods or Passengers to be on the Port or whose Goods or Passengers howsoever come to be on the Port;
- (d) by themselves or their Representative use any facility or ABP Plant at the Port or receive any Services provided by or on behalf of ABP;

"Customer Invitees" mean any Representative or other Person whom the Customer invites onto the Port;

"Conditions" means these standard terms and conditions of trade as may be updated by ABP from time to time;

"Customer Transport" means any road or rail transport supplied or arranged by or on behalf of the Customer or its Representative to transport Goods or Passengers to or from or within the Port;

“Dangerous Substances” means a substance or article described in regulation 3 of the Dangerous Substances Regulations;

“Dangerous Substances Regulations” means the Dangerous Goods in Harbour Areas Regulations 2016;

“Environment” means (whether alone or in combination): (a) ecological systems and living organisms (including humans); (b) air (including air within buildings or other structures and whether below or above ground); (c) land and soil (including buildings and any other structures in, on or under land and soil, anything below the surface of the land and land covered with water); and (d) water (including water under or within land or within pipe or sewage systems);

“Goods” mean Cargo, Plant (excluding ABP Plant) and/or Packaging;

“Good Industry Practice” means the exercise of that degree of skill and care which would reasonably and ordinarily be expected of a skilled and experienced person carrying out the same type of activity under the same conditions and complying with Applicable Laws;

“GRT” means the gross registered tonnage as defined by the International Convention on Tonnage Measurement of Ships, 1969;

“Harbour Master” means the ABP Harbour Master or Dock Master for the Port (as appropriate) or their authorised representative;

“Hazardous Materials” means any substance in whatever form whether alone or in combination with any other substance known or reasonably believed to be harmful to human health or the Environment, whether or not for that reason it is subject to statutory controls on production, use, storage or disposal;

“Insolvency Event” means any of the following events: (a) an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or (c) a receiver is appointed of any of the Customer’s assets or undertaking, or (d) circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer or if any other person takes possession of or sells the Customer’s assets; or (e) the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or (f) the Customer ceases, or threatens to cease, to trade or suspends all or substantially all of its operations or suspends payments of its debts or becomes unable to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (g) the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt or (h) ABP reasonably considers that any of the above events is likely to occur;

“Losses” means any loss, damage, liability, demand, claim, recovery, judgment, execution, fine, penalty, charge and any other cost and expense of any nature or kind whatsoever, including any costs of recovery on a full indemnity basis;

“Luggage” means any property travelling with a Passenger but excludes any Goods contained in or carried on board a Vessel;

“Necessary Consent” means any agreement, permission, permit, licence, consent, exemption or other approval required by the Customer under any Applicable Laws in order to import or export the Cargo through the Port or to otherwise store or handle such Cargo at the Port or for any of the Cargo Services to be lawfully carried out in relation to the Cargo;

“Packaging” means any Container, package, case, pallet or other thing which conveys, carries, contains, protects or supports Goods or is designed or made to do so;

“Passenger” means any person using the Port as the point of embarkation or disembarkation in connection with travelling on a Vessel;

“Passenger Services” means any services or facilities provided by ABP or any ABP Party in connection with Passengers, their Luggage and Passenger Vehicles including: (i) the provision of terminal facilities for the embarkation or disembarkation of Passengers, their Luggage and Passenger Vehicles; (ii) provision of facilities for loading or unloading Passenger Vehicles onto or off Vessels; (iii) clearance through HM Revenue & Customs of Passengers, their Luggage and Passenger Vehicles; and (iv) any other ancillary services related to Passengers, their Luggage and Passenger Vehicles;

“Passenger Vehicle” means any vehicle which is driven by a Passenger onto or off a Vessel;

“Person” includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his or her legal personal representative(s);

“Plant” means any plant, equipment or machinery including any vehicle, trailer (whether or not incorporating any tank or Container), machine, crane, tool, fender, gangway, front loading shovel, telehandler and forklift;

“Port” means the particular port owned by ABP which the Customer is using or intending to use in the circumstances and includes all land, water, quays, jetties, buildings and other structures within ABP’s statutory harbour jurisdiction or otherwise owned or operated by ABP and references to the **“Port”** shall be construed as if it was immediately followed with the words **“or any part of it”**;

“Port Tariff” means the principal rates and charges published by ABP for the Port (as available at the Port Office and as published on www.abports.co.uk) which are prevailing at the time that the Port facilities or Services are actually utilised by the Customer;

“Representative” means the Customer’s officers, employees, contractors, sub-contractors, agents, representatives and any other person engaged by or whom acts on behalf of the Customer;

“**Services**” means the Cargo Services, Passenger Services and any other services or facilities provided by or on behalf of ABP in connection with the Customer’s or Vessel’s use of the Port;

“**Terminal Regulations**” means any regulations issued from time to time by ABP in connection with a particular terminal at the Port;

Vessel” means any ship, boat, raft, lighter, barge or craft of every class or description however navigated or propelled, and includes any hover vehicle (being a vessel however propelled, designed to be supported on a cushion of air), hydrofoil vessel (being a vessel however propelled, designed to be supported on foils), and any other artificial contrivances used, or capable of being used, as a means of transportation on water;

1.2 In these Conditions: (a) unless otherwise provided or unless the context otherwise requires: (i) the singular shall include the plural and words in the plural shall include the singular; (ii) the words “**include**”, “**including**” and “**in particular**” are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them; and (iii) the words “**other**” and “**otherwise**” are not to be construed as being limited by any words preceding them; (b) the headings are to be ignored in construing these Conditions; and (c) reference to any statute or statutory provision includes a reference: (i) to that statute or statutory provision as from time to time consolidated, modified, re enacted (with or without modification) or replaced by any statute or statutory provision; and (ii) any subordinate legislation made under the relevant statutory provision; and (d) the specificity of any particular Condition is without prejudice to the generality of any other Conditions.

2. Application of Conditions

- 2.1 These Conditions shall apply to all legal relationships between ABP and any Customer whether in respect of contract, bailment, licence or tort.
- 2.2 These Conditions cannot be varied other than as agreed in writing between ABP and the Customer (or its Representative).
- 2.3 The acceptance by the Customer of these Conditions, if not express, will be implied from any one or more of the following:
 - (a) request of any Services or ABP Plant to be provided by ABP;
 - (b) delivery of Goods onto the Port or into the custody of ABP;
 - (c) entry of any Vessel into the harbour jurisdiction of ABP;
 - (d) entry of any Customer Transport onto the Port;
 - (e) embarking or disembarking of any Passengers or other individuals onto the Port;

(f) submission of any documentation to ABP in relation to a Vessel, Customer Transport, Goods or Passengers whether via the ABP Notify Website or otherwise;

(g) use of any facility or ABP Plant at the Port by the Customer or its Representative.

3. Warranty of Authority by Customer

- 3.1 The Customer warrants to ABP that the Customer is either the owner or the authorised agent of the owner of the Goods and/or Vessel and further warrants that the Customer accepts these Conditions not only for itself but also as duly authorised agent for and on behalf of every other Person interested in the Goods and/or Vessel. Any finance company, lessor or other Person having or claiming to have title to or an interest in such Goods and/or Vessel are advised that unless ABP is notified in writing of their title or interest in the particular Goods prior to the commencement of any relationship between ABP and the Customer, these Conditions shall be deemed to have been accepted with the authority of such Persons and such Persons’ rights over and in respect of the Goods and/or Vessel shall be subordinated to the rights of ABP under these Conditions.
- 3.2 The Customer shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP arising out of or in connection with any lack of authority or title on the part of the Customer as referred to in Condition 3.1.

4. Services

- 4.1 ABP will only provide Cargo Services or Passenger Services in connection with Cargo or Passengers by prior written agreement with the Customer, either at the time each service is required or in accordance with any contractual arrangement to provide such services over a period of time.
- 4.2 ABP will carry out any Cargo Services or Passengers Services with reasonable skill and care.
- 4.3 Where ABP provides ships agency services in relation to the Port, ABP will do so only by prior written agreement with the Customer in respect of a particular Vessel, and the Customer shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP as a result of acting within the scope of its authority as agent for or on behalf of the Customer.
- 4.4 ABP reserves the right to decline to carry out any Services until ABP is satisfied that any official formalities are complied with including authorisation from the Vessel owner or agents, proof of compliance with all customs and other official formalities and that any Necessary Consents have been obtained.
- 4.5 Unless otherwise agreed in writing, ABP has complete freedom in respect of the way in which any Services are carried out. In the event that the Customer gives ABP any specific instructions, ABP reserves the right to deviate from the Customer’s instructions (whether or not accepted by ABP) in any

respect, where it is reasonable for ABP to do so, and the Customer shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in relation to such deviation.

are necessary or desirable for ABP to perform the Passenger Services and/or comply with its legal duties and Good Industry Practice (including in relation to health and safety and the Environment) in doing so;

5. Information in relation to Cargo, Passengers and Vessels

5.1 In relation to any Cargo, Containers, Passengers or Vessel which the Customer delivers or causes to be at the Port, the Customer shall ensure that the following information is provided in writing, to ABP:

(a) the total number of Passengers which are to (i) embark or disembark the Vessel at the Port; and (ii) stay on board the Vessel in transit while at the Port, together with a copy of the manifest in relation to the Vessel and Passengers and any such other supporting information as ABP may reasonably require;

(b) full particulars of the Cargo/Containers (including weight, volume and a sufficient description to identify the Cargo/Containers) prior to (i) the loading of the Cargo/Containers to Vessel at the Port; (ii) prior to the discharge of Cargo/Containers from the Vessel at the Port; and (iii) as otherwise may be required by ABP including where the Customer is storing Cargo / Containers at the Port before or after its import/export, together with a copy of the manifest or bill of lading and/or any other such supporting information as ABP may reasonably require in relation to such Cargo/Containers;

(c) where ABP is providing Cargo Services:

(i) information as is sufficient to handle the Goods safely and in full compliance with Applicable Laws and Good Industry Practice;

(ii) details of any hazards in connection with the Goods;

(iii) any special precautions or instructions regarding the nature, weight or condition of the Goods and how it should be handled, sorted, loaded, unloaded or stored which are necessary or desirable for ABP to perform the Cargo Services and/or comply with its legal duties and Good Industry Practice (including in relation to health and safety and the Environment) in doing so;

as soon as reasonably practicable before ABP commences any Cargo Services in relation to such Goods;

(d) where ABP is providing Passenger Services:

(i) information as is sufficient for ABP to provide the Passenger Services safely and in full compliance with Applicable Laws and Good Industry Practice;

(ii) any special precautions or instructions regarding the Passenger Services which

as soon as reasonably practicable before ABP commences any Passenger Services in relation to the Passengers.

5.2 The Customer agrees that ABP has the right to share any information provided to ABP under this Condition 5 to any Person ABP deems necessary.

5.3 The Customer shall be deemed to warrant the accuracy of all descriptions, values and other information and particulars provided to ABP pursuant to Condition 5.1 or otherwise in relation to the Goods, Passengers or Vessel. The Customer shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP in relation to any inaccuracy or omission in any information provided to ABP.

5.4 ABP may, but shall not be obliged to, verify the weight or volume of Cargo or Containers by undertaking its own measurements and in the absence of manifest error such measurements shall be deemed to be conclusive.

6. Condition of Goods, Vessel & Customer Transport

6.1 The Customer warrants that any Goods which the Customer delivers to or causes to be at the Port:

(a) will not contaminate or cause danger, injury, pollution or damage to the Environment, any person or any property;

(b) are not overheated, infested, verminous, rotten or subject to fungal attack or liable to become so while on any quayside or hardstanding area or in any building on the Port;

(c) require for their safekeeping no special protection (other than as may be agreed in writing between ABP and Customer) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other Goods or from their inflammability or other hazardous nature;

(d) contain no controlled drugs (unless the Customer is licensed or otherwise lawfully authorised in respect of such controlled drugs), contraband, pornographic or other illegal matter;

(e) are properly and sufficiently packed to ensure the safety of the Goods and to allow mechanical handling without damage or danger;

(f) are properly and sufficiently marked, documented and labelled for all shipping, handling, dispatch, customs and similar purposes;

(g) are properly marked with warnings as to the hazardous nature of any contents and the precautions to be taken in handling the same and with such warnings as may be necessary for ensuring the safety and health of all persons likely to handle or come into contact with the Goods or their contents in the event of the escape of anything injurious from the Goods;

(h) are fully insured at all times including during the provision of any Services and that such insurance covers theft of, or loss or damage to the Goods arising during their presence at the Port or as a result of the provision of any Services;

(i) are in a fit and proper condition to be handled or otherwise dealt with by ABP or any ABP Party and ABP Plant during the provision of any Services.

6.2 The Customer warrants that:

(a) any Vessel which it brings into or causes to be within the Port is:

(i) seaworthy and complies with all Applicable Laws and any Terminal Regulations (where relevant) that it will remain seaworthy and compliant with Applicable Laws and Terminal Regulations (where relevant) throughout the period it is at the Port; and

(ii) covered by Protection and Indemnity insurance with reputable insurers in respect of third party liability risks (including cargo damage, pollution and wreck removal) and for levels of cover as would normally be taken out by a prudent operator of a comparable Vessel in similar trades;

(b) any Customer Transport seeking to enter the Port is road or rail worthy (as applicable) and that it complies with and will remain road or rail worthy (as applicable) and be operated in accordance with all Applicable Laws throughout the period it is at the Port.

6.3 Where ABP incurs or suffers any Losses due to:

(a) the Customer's breach of any of the warranties set out in Conditions 6.1 and 6.2; or

(b) taking any step which ABP considers to have been reasonably required to remedy a breach of any of the warranties set out in this Condition 6 or to comply with the lawful requirements of any Competent Authority in respect to the Goods,

then the Customer shall indemnify ABP in full and on demand for such Losses.

6.4 Without prejudice to any other right or remedy, if ABP reasonably suspects that a breach of any warranty under this Condition 6 has been, or might be, committed, ABP has the right to refuse to accept any Goods onto its Port, and if Goods have already been accepted, ABP reserves the right to require their prompt removal. In such circumstances, the

Customer shall not be entitled to any compensation from ABP other than a refund of Charges pre-paid by the Customer in respect of the Goods less any Losses suffered or incurred by ABP in connection with the Goods (including Charges owing up to the date of the removal of the Goods and any additional handling and operational costs incurred by ABP).

7. Prompt Shipping and Removal of Goods

7.1 Unless otherwise agreed by ABP in writing, the Customer shall ensure that all Goods:

(a) delivered to the Port for loading to a Vessel are loaded to Vessel as soon as reasonably practicable and in any case within twenty four (24) hours of the date of delivery of the Goods to the Port;

(b) discharged from a Vessel at the Port are removed from the Port as soon as reasonably practicable and in any case within twenty four (24) hours of completion of discharge of the Vessel.

7.2 Without prejudice to any other right or remedy and except as otherwise agreed by ABP in writing, any Goods remaining on the Port beyond the time period specified in Condition 7.1 (or such other time period as may be agreed in writing by ABP) shall (i) incur Charges for rent in accordance with the Port Tariff; and (ii) may be dealt with in accordance with these Conditions including under Condition 8, 9, 15, 18, 19.

8. Destruction or Disposal of Harmful Goods

8.1 If any Goods on the Port are, or become, noxious, hazardous, inflammable, explosive or in any way dangerous or otherwise likely to cause damage (including Goods which are infectious, diseased or verminous or likely to harbour or encourage infection or disease or vermin or other pests) whether alone or in combination with other Goods and whether or not by reason of the act or omission of any Person, ABP or any ABP Party in whose custody the Goods are then in, shall be at liberty to destroy or otherwise deal with the Goods as in their discretion may seem desirable for the purpose of rendering the Goods harmless.

8.2 Where this Condition applies the Customer shall indemnify ABP in full and on demand against all Losses suffered or incurred by ABP in connection with the fact or matter referred to in Condition 8.1.

9. Dangerous Substances & Hazardous Materials

9.1 Dangerous Substances and Hazardous Materials of an inflammable, explosive, dangerous or offensive nature shall not be brought into or dealt with at the Port unless and until the Customer has procured that detailed information (including the nature, quality and quantity) regarding such Dangerous Substances or Hazardous Materials has been provided to the Harbour Master for the Port (whether by the ABP Notify Website or otherwise) and the Harbour Master has confirmed to the Customer in writing that it will accept such Dangerous Substances or Hazardous Materials. The acceptance of such Dangerous Substances or Hazardous Materials by ABP shall be subject to such terms as ABP may stipulate.

- 9.2 The Customer will be responsible for ensuring that the tonnage of ammonium nitrate (where applicable) stored at the Port does not exceed that permitted under the Dangerous Substances Regulations or any other Applicable Laws.
- 9.3 The Customer will be responsible for removing any Hazardous Materials or Dangerous Substances, including, any radioactive substances or materials, from the Port if reasonably requested to do so by ABP and if the Customer fails to remove any such substances or materials to the reasonable satisfaction of ABP then ABP reserves the right (but shall not be obliged) to remove and dispose of them itself. The Customer shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in undertaking any removal and disposal of such substances or materials and shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP in connection with such removal or disposal.
- 10. Explosives**
- 10.1 Without prejudice to Condition 9 (Dangerous Substances & Hazardous Materials), where ABP undertakes to handle explosives (defined as substances and articles listed under Class 1 of the International Maritime Dangerous Goods Code as published by the International Maritime Organisation) or consents to the handling of explosives on its Port by others, the Customer shall:
- (a) indemnify ABP in full and on demand against all Losses suffered or incurred by ABP in respect of any death, personal injury or damage to property by reason or in consequence of or in connection with the handling of the explosives (whether or not caused by the negligence or default of ABP or any ABP Party); and
- (b) provide a letter of confirmation from the Customer's insurance company that the indemnity referred to in Condition 10.1(a) is underwritten by a policy of insurance, quoting the policy number and the period of insurance.
- 11. Vessels, Customer Transport, Third Party Service Providers**
- 11.1 ABP is not obliged to admit Customer Transport to its Port or to allow Vessels to berth at the Port except by prior arrangement.
- 11.2 Vessels mooring and arriving at the Port and Customer Transport arriving at the Port will be dealt with in an order determined by ABP at its sole discretion.
- 11.3 ABP shall not be responsible for the acts or omissions of berthing masters or boatmen nor for any Losses suffered or damage caused to any Person, Vessel or Goods in connection with any berthing, mooring, un-berthing or un-mooring operation except to the extent that ABP has expressly agreed in writing to supply berthing masters and/or boatmen in relation to a Vessel in which case these Conditions shall apply to the provision of such Services.
- 11.4 ABP has absolute discretion in the allocation of berths, rail terminal capacity, ABP Plant, labour and covered and uncovered storage space.
- 11.5 Any arrival and departure dates or times provided by ABP are estimates only. Except to the extent that ABP has expressly agreed in writing to any special arrangements, ABP accepts no responsibility or liability with regard to any failure to adhere to agreed arrival or departure dates or times of Goods, Vessels or Customer Transport.
- 11.6 The Customer shall ensure that a Vessel and any Customer Transport arrives and is handled and departs in conformity with the requirements and regulations of ABP and its Harbour Master, and the lawful requirements of any other Competent Authority.
- 11.7 Any Vessel which has completed discharge or loading at a berth may only be permitted to remain in the Port with the Harbour Master's permission and may be required to move to another berth at the Port if directed. Berth rent and any other applicable port Charges (such as pilotage, berthing and mooring charges) shall apply in accordance with the Port Tariff.
- 11.8 Where ABP has issued Terminal Regulations in relation to a terminal at the Port, such Terminal Regulations shall apply to the use of that Terminal and the Customer shall comply with such Terminal Regulations.
- 11.9 Where the Customer uses any Person (other than ABP) to carry out services in the Port ("Third Party Service Provider"), it will satisfy itself as to the competence of such Third Party Service Provider. Notwithstanding the existence of any license given by ABP to any Third Party Service Provider in respect of its operation at the Port, no warranty is given by ABP as to the competence of any Third Party Service Provider and ABP will not be liable for the consequences of any act, failure, omission or breach of statutory duty, whether negligent or otherwise, of any Third Party Service Provider appointed by the Customer.
- 11.10 Vessels receiving bunkers by road tanker, vessel, or shore-side storage facility are required to notify the Harbour Master prior to doing so and, on completion, to notify the Harbour Master of the quantity of bunkers taken. Any fuel spillages must be notified immediately to the Harbour Master.
- 12. Hours of Work**
- The normal hours of work vary depending on the Port, terminal, operation and Services. Further information can be provided on request at the relevant Port.
- 13. Payment of Charges**

- 13.1 The Customer shall be responsible for paying the Charges in accordance with these Conditions. The Charges shall be those published in the Port Tariff for the Port or as otherwise advised by ABP.
- 13.2 Unless stated otherwise, all Charges are exclusive of VAT.
- 13.3 Any quotations by ABP are on the basis of immediate acceptance and are subject to the right of withdrawal or revision at any time. ABP has the right to correct any errors in any quotation given.
- 13.4 All Charges are payable in accordance with ABP's standard terms of payments as set out in Condition 13.5.
- 13.5 **ABP's standard terms of payment are that all Charges are payable on demand and before the Vessel departs the Port. No Vessel will normally be permitted to leave the docks until all Charges have been paid and agreement has been obtained from the Port Manager, Harbour Master or an authorised ABP representative.**
- 13.6 ABP may agree to allow the Customer a credit account in relation to certain Charges, subject to any special conditions which may from time to time be applicable. In the event of such credit agreement and unless otherwise agreed in writing by ABP:
- (a) any credit arrangement shall not include ships dues which shall be payable in advance or on demand and prior to the Vessel leaving the Port;
- (b) all Charges which are subject to such credit arrangement shall be paid within 28 days of the invoice date (unless some other time period is specified by ABP);
- (c) any credit arrangement agreed with the Customer shall at all times be subject to Condition 13.7.
- 13.7 Notwithstanding any credit arrangement in place between ABP and the Customer in accordance with Condition 13.6 or any other provision in these Conditions:
- (a) if ABP (acting reasonably) considers that there is a risk that any Charges levied or any future Charges to be levied may not be paid by the relevant due date, ABP has the right, upon giving the Customer notice, to immediately withdraw any credit arrangement agreed and to require payment in advance (where applicable) or immediate payment on demand of the whole or part of its Charges;
- (b) ABP reserves all its statutory rights in relation to the recovery of amounts owing to it, including rights to detain and arrest vessels for non-payment of amounts owing to ABP; and
- (c) ABP may, subject to any statutory requirements to the contrary, at any time demand prepayment of the whole or part of its Charges.
- 13.8 Without prejudice to any other right or remedy, ABP reserves the right to charge interest at the rate of 8% p.a. above the base rate of The Bank of England on all amounts overdue and such interest shall accrue on a daily basis until payment is received.
- 13.9 No undertaking by ABP to collect from a consignee or any other Person any sum payable to the Customer and no demand by ABP on such Person shall constitute a waiver or release by ABP of any rights against the Customer.
- 13.10 All Charges due and owing to ABP shall be paid without set-off, withholding or deduction of any kind.
- 14. Suspension / Cancellation / Right of Refusal**
- 14.1 Without prejudice to any other right or remedy, ABP reserves the right:
- (a) not to permit a Vessel to berth or to discharge or to load Goods or embark or disembark Passengers at the Port;
- (b) not to permit Customer Transport to enter the Port and/or to load or unload any Goods or Passengers at the Port;
- (c) not to release any Goods and/or accept any new Goods onto the Port; and/or
- (d) to decline to provide, suspend or cancel the performance of all or any part of any Services;
- in the event that any of the following apply:
- (i) the Customer has failed to pay any amount owing to ABP by the due date in respect of any of the ports owned by ABP irrespective of whether it is the same as the current Port;
- (ii) ABP (acting reasonably) considers that there is a risk that any Charges levied or any future Charges to be levied may not be paid by the relevant due date;
- (iii) the Customer is in material, continued or persistent breach of any of its obligations under these Conditions or any other agreement with ABP and the breach is not capable of being remedied or the breach can be remedied but the Customer has failed to remedy the breach on written notice from ABP requiring it to be remedied;
- (iv) ABP reasonably considers it unsafe or unsuitable in the circumstances; or
- (v) the Customer suffers an Insolvency Event,
- and in such circumstances ABP shall not be liable for any Losses suffered or incurred by the Customer arising directly or indirectly from ABP's failure or delay to perform any of its obligations.
- 14.2 In the event of any exercise of ABP's rights pursuant to this Condition 14 and without prejudice to any other

right or remedy, all sums due to ABP by the Customer(b) (including for any Services carried out up to the point of suspension or cancellation) shall become immediately due and payable on demand. For the avoidance of doubt, applicable Charges (such as rent for Goods stored at the Port) will continue to accrue during such period.

15. General Lien with Power of Sale

15.1 Without prejudice to any other right or remedy, ABP may exercise upon all Goods and documents relating to Goods in its possession, a general lien, not only for any Charges due in relation to such Goods, but also for all monies owing by the owners to ABP on any account including any claim by ABP for Losses, (together being the "Debt"). Applicable Charges (such as rent for Goods stored at the Port) will continue to accrue in respect of any Goods detained under lien. In the event of any Debt not being fully paid in cleared funds within fourteen (14) days of the notice of the exercise of any such lien, ABP may sell the Goods and apply the proceeds towards the satisfaction of the Debt on whatsoever account owing as well as any Charges arising during the exercise of any such lien.

15.2 If the Customer has sold or sells the Goods which are the subject of the lien, ABP may, at its option, accept the proceeds of such sale or some interest or charge in or over such proceeds in substitution of the lien as a condition for releasing the Goods. If storing Goods subject to a lien, the limitations and exclusions on ABP's liability as set out in these Conditions shall apply.

16. Hire or use of ABP Plant

16.1 Any hire or use of any ABP Plant shall be governed by these Conditions including the terms of this Condition 16 and Conditions 17, 18, 22 and 23 and the provisions set out in this Condition 16 are without prejudice to the generality of any other terms set out in these Conditions.

16.2 All hire or use of ABP Plant shall be subject to availability and ABP does not guarantee the availability of any ABP Plant at any specified time or accept any liability in relation to ABP Plant not being available in time. ABP reserves the right to limit the hire period for any ABP Plant.

16.3 Unless otherwise advised by ABP, an ABP Plant hire order form should be completed and submitted (in accordance with the directions on the ABP order form) to apply for the hire or use of ABP Plant.

16.4 ABP reserves the right to require that ABP Plant such as cranes are operated by an ABP supplied operator (at the Customer's cost) for the Customer's operation in which case the Customer must not permit any other person to operate the ABP Plant without ABP's prior written consent. Where the operator is:

(a) provided by ABP, ABP shall provide an operator who meets the standard set out in Condition 17.1(c) in regard to operating the ABP Plant;

(b) provided by the Customer (subject to this Condition 16.3), the Customer shall provide an operator: (i) who meets the standard set out in Condition 17.1(c) in regard to operating the ABP Plant; (ii) who has signed the ABP authority with regard to ABP's drug and alcohol testing policy and such authority has been provided to ABP; and (iii) whose details have been provided to ABP in advance.

16.5 The Customer agrees that for any Customer operation involving the hire or use of the ABP Plant:

(a) the operator of the ABP Plant (whether supplied by ABP or the Customer) shall:

(i) be under the direction and control of the Customer; and

(ii) for all purposes in connection with his/her employment in the working of the ABP Plant be regarded as a servant or agent of the Customer;

(b) the Customer shall be fully responsible for all claims arising in connection with the operation of the ABP Plant by the operator (whether supplied by ABP or the Customer) whether arising from the operator's negligence or otherwise (**Claims**) and shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP in relation to any such Claims; and

(c) the Customer shall comply with any additional special conditions which apply to the hire of any ABP Plant which are notified by ABP to the Customer.

16.6 The Customer shall, in respect of any ABP Plant which it hires or uses:

(a) ensure that the ABP Plant is suitable for the proposed use and is not used for any unlawful purpose;

(b) strictly follow any instructions and restrictions given by ABP including any instructions given to ensure that (where relevant) ABP Plant is not taken onto hardstanding where it may be in excess of the load bearing capacity for that hardstanding;

(c) ensure that the ABP Plant is not misused or mishandled (including not loading it in excess of its maximum load capacity (where relevant)), is used only for the purposes for which it is designed, is operated in a proper and lawful manner and in accordance with any instructions given by ABP;

(d) when using ABP Plant to undertake lifting operations involving lifting equipment, comply with the Lifting Operations and Lifting Equipment Regulations 1998 (including carrying out any pre checks of equipment and appointing a competent person to manage the operation);

(e) not part with possession of the ABP Plant to any third party at any time or remove it from the Port (unless otherwise agreed in writing by ABP);

- (f) keep the ABP Plant in a clean condition, and take all reasonable precautions to safeguard it (including the use of locks where provided), not make any alterations to the ABP Plant or remove any existing component(s) from the ABP Plant without the prior written consent of ABP, return it to ABP at the end of the hire in the same condition as it was at the start of the hire (fair wear and tear excepted) and ensure that the area of the Port where the operation took place is left clean, tidy and free of any spillage, debris or dunnage on completion of the operation;
- (g) unless otherwise advised by ABP, where relevant for the particular ABP Plant, supply the Customer's own tested slings and other lifting gear which are in good condition and compliant with Applicable Laws;
- (h) notify ABP as soon as possible of any breakdown, damage or fault in relation to the ABP Plant or in the event that the ABP Plant is involved in any accident resulting in injury to persons or damage to property;
- (i) if requested by ABP, provide access to the ABP Plant during the hire period (whether in operation or not) where ABP (or a party authorised by ABP) requires such access for the purpose of inspecting, testing, adjusting, maintaining, repairing or replacing the ABP Plant or any part of it.
- 16.7 The Customer shall indemnify ABP in full and on demand for any Losses incurred or suffered by ABP which arises out of or in connection with the possession or use of the ABP Plant by the Customer or its Representatives.
- 16.8 The Customer acknowledges that any data logger systems on ABP Plant are indicative only and that ABP strongly recommends that a certificated weighbridge is used to accurately check weights of Goods loaded or unloaded. ABP accepts no liability in connection with any inaccuracy of data provided by the data logger systems.
- 17. Safety, Environment & Compliance with Law**
- 17.1 The Customer shall:
- (a) at all times comply with ABP Regulations and Applicable Laws relevant to its use of and activities at the Port;
- (b) carry out risk assessments of its activities at the Port to the full extent required by Good Industry Practice and Applicable laws, and will ensure that appropriate action is taken on the basis of those risk assessments;
- (c) ensure that all Persons engaged by the Customer in any of its activities at the Port (including its Representatives) are appropriately trained and qualified for the work in which they are engaged, in accordance with Good Industry Practice;
- (d) procure that any Representatives of other persons whom the Customer invites onto the Port conduct their respective activities in compliance with the obligations in this Condition 17;
- (e) where relevant apply for and secure all Necessary Consents necessary in connection with any activity carried out by it at the Port, comply with all conditions and limitations imposed by any such Necessary Consent and upon request provide a copy of any such Necessary Consent to ABP and notify ABP as soon as practicable in the event that there is any material variation to any such Necessary Consent or if the Customer ceases to hold such Necessary Consent;
- (f) conduct its activities at the Port at all times in such a way as to minimise any nuisance or disturbance to ABP, any other Person at the Port, any other Vessel using the Port and the owners and occupiers of other land within or adjacent to the Port;
- (g) immediately inform a representative of ABP in the event:
- (i) that it becomes aware of any occurrence, incident, circumstance or unsafe practice which may affect the safe or efficient operation of the Port or which may present a danger or give rise to a risk to health, security, order, safety, or property or the Environment at the Port;
- (ii) of any accident or incident which would be reportable under the Reporting of Incidents, Diseases and Dangerous Occurrences Regulations (RIDDOR).
- 17.2 Without prejudice to Conditions 17.1(a) and (b), the Customer will conduct its activities at the Port at all times in such a way as to:
- (a) prevent any escape of Goods or any other substance or matter (in whatever form and whether alone or in combination with any other substance) within the possession or control of the Customer from any area of the Port or from any Vessel, or other means of transport in the possession or under the control of the Customer or Customer Invitees into or onto any part of the Port or any adjacent land or watercourse;
- (b) ensure that no Hazardous Materials or substance or matter of which the discharge passage or escape would be contrary to the Environmental Permitting (England and Wales) Regulations 2016 or any substance or material which may cause an obstruction or damage or pollution or contamination to pass or escape into any sewer, drain or watercourse serving the Port or into any river or into the sea or into or onto any part of the Port.
- 17.3 If a Pollution Incident should occur as a result of the activities of the Customer or its Representative or other Person whom the Customer invites onto the Port, including the escape of any Goods which might cause damage to the Environment or discharge of any Hazardous Materials or other substance or matter referred to in Condition 17.2 in breach of that Condition 17.2 the Customer shall, upon becoming aware of the Pollution Incident:

- (a) immediately take all steps necessary to prevent further pollution occurring as a result of the Pollution Incident;
- (b) notify ABP as soon as reasonably practicable and provide ABP with a copy of any notice that has been given to any Competent Authority in connection with the incident;
- (c) as soon as reasonably practicable remediate the consequences of the Pollution Incident to the reasonable satisfaction of ABP and any Competent Authority,

provided that notwithstanding (c) (and without prejudice to any other right or remedy) ABP reserves the right to elect to remediate the consequences of the Pollution Incident itself where it is reasonable in the circumstances for ABP to do so and the Customer shall reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP as a result of undertaking such remediation.

17.4 The Customer shall indemnify ABP in full and on demand for any Losses incurred or suffered by ABP as a result of the breach of Conditions 17.2 or 17.3 by the Customer or its Representatives or any other Person whom the Customer invites onto the Port.

17.5 Without prejudice to any other right or remedy of ABP, ABP has the right to require the removal from the Port of any individual in circumstances where ABP reasonably considers that the behaviour or unsafe practices by that individual may present a danger or give rise to a risk to health, safety, security, property or the Environment at the Port.

18. Waste & Removal of Trade and Packaging from the Port

18.1 Subject to any written agreement with ABP to the contrary:

- (a) the Customer will make proper and adequate arrangements for the removal from the Port and disposal of all:
 - (i) Packaging (whether unused, empty or substantially empty or unused) immediately after the earlier of: (A) the shipment or other removal of Goods; and (B) the Packaging becoming empty or substantially empty (as the case may be); and
 - (ii) any other trade and other waste in accordance with the requirements of Applicable Laws as often as may be necessary or as reasonably directed by ABP.

18.2 If the Customer fails to remove Packaging and/or trade and other waste from the Port to the reasonable satisfaction of ABP, then ABP reserves the right (but shall not be obliged) to remove and dispose of (in any way which ABP sees fit) the Packaging, Containers,

trade or other waste itself and the Customer will reimburse ABP in full and on demand for all costs and expenses suffered or incurred by ABP in undertaking such removal and shall indemnify ABP in full and on demand for any Losses suffered or incurred by ABP in connection with such removal or disposal.. ABP shall not be liable, answerable or accountable to the Customer or any Person interested in such items for so doing or for the proceeds (if any) of any such disposal.

19. Disposal of Perishable Goods & Non Perishable Goods

19.1 Without prejudice to any other right or remedy, where Goods are on ABP's Port which:

- (a) in the opinion of ABP are insufficiently or incorrectly addressed or marked or are otherwise so unidentifiable that ABP cannot determine on what Vessel they should be shipped or to which Person they should be made available for collection; or
- (b) are not taken up immediately upon arrival at the Port or are not accepted by the consignee of the Goods or which ABP has reasonable grounds to consider may have been abandoned;

then in the case of:

- (i) Goods which in the opinion of ABP are likely for any reason to perish before collection, shipment or delivery, ABP shall be entitled to sell or otherwise dispose of such Goods in any way it sees fit, without any notice to the Customer or any other Person;
- (ii) non-perishable Goods of any nature, ABP shall be entitled to sell or otherwise dispose of such Goods in any way it sees fit, after giving 21 days notice in writing of its intention to do so to the Customer (if known) or the publication of such notice in the Port office.

19.2 In the event that ABP sells or otherwise disposes of Goods pursuant to Condition 19.1, the following provisions shall apply:

- (a) all Losses suffered or incurred by ABP in connection with the sale or disposal of the Goods referred to in Condition 19.1 shall be payable by the Customer;
- (b) applicable Charges (including rent) shall continue to accrue in relation to the Goods while they remain on the Port;
- (c) the net proceeds of any sale of Goods shall be payable to the Customer (if known) after the deduction of all amounts owing to ABP under these Conditions; and
- (d) ABP shall have no liability to the Customer or any other Person in respect of the Goods other than the payment of any net proceeds (where applicable) as referred to in Condition 19.2(c).

20. Security & Protection of Goods

20.1. Subject to Condition 24.1, all Goods left or stored at the Port are left or stored at the Customer's sole risk and responsibility including theft, loss or damage to Goods. The Customer is responsible for insuring the Goods as referred to in Condition 6.1(h) whether or not storage of the Goods is provided as part of any Cargo Services.

20.2 The Customer agrees and acknowledges that any general security provided by ABP at the Port does not in any way diminish the Customer's responsibility for the security and safe-keeping of Goods and ABP makes no warranty or representation to the Customer that such security will be adequate or sufficient for the Customer's purpose (including where ABP is providing Cargo Services).

20.3 The Customer will ensure that all of its activities at the Port are undertaken in compliance with the International Ships and Port Facility Security Code (as amended from time to time) (the "ISPS Code") (where relevant) and The Port Security Regulations 2009 and will cooperate with and assist ABP with any security requirements in connection with the Customer's activities at the Port in accordance with the ISPS Code and any requirements of the United Kingdom Department for Transport or any other relevant Competent Authority.

21. Non-ABP Cranes & Overloading

21.1 The Customer must not bring any non-ABP cranes and heavy mobile equipment onto the Port unless the prior written consent of ABP has been obtained. In the event that ABP grants such consent, the Customer shall comply with any conditions of that consent.

21.2. The Customer shall be responsible for ensuring that:
(i) the hardstanding areas of the Port are not loaded in excess of their load bearing capacity; and (ii) any Plant it uses in its operations at the Port is not loaded in excess of its maximum load capacity as specified by the manufacturer of such Plant.

22. Force Majeure

22.1 ABP shall not be liable for any breach of obligation to the extent that performance of that obligation is delayed, hindered or prevented by any event, circumstance or incident which is beyond the reasonable control of ABP including:

- (a) act of God, storm, tempest, flood, or other extreme weather or natural disaster, epidemic or pandemic;
- (b) fire (including steps taken for the extinguishment of fire), explosion, smoke, ionising radiation, radioactive contamination, terrorist activity, cyberattack, nuclear, chemical or biological contamination or sonic boom;
- (c) impact by aircraft or objects dropped or falling from them, impact by Vessel or road or rail vehicle, blockage of any shipping channel or blockage of any access to a berth (including due to breakdown, mechanical failure, disrepair or lack of personnel to

operate the Vessel or vehicle), blockage of any road or rail access to or from or within the Port;

- (d) strikes, lockouts, go-slows or other industrial action by any person or anything done in the furtherance of a trade dispute;
- (e) shortage of labour, ABP Plant, machinery, fuel or power, berthing space, covered / uncovered / secure storage space; interruption or failure of utility service; breakdown or mechanical failure of ABP Plant;
- (f) war, revolution, riot or civil commotion, protest or public demonstration;
- (g) directions or orders given directly or indirectly by any Competent Authority acting in its statutory capacity;
- (h) theft, vandalism, damage or Pollution Incident unless proved by the Customer to have been committed by ABP;
- (i) inherent vice of the Goods;
- (j) vermin, insects, fungal attack, rot or corrosion;
- (k) heat or cold including heat within the Goods themselves and unintended exposure to natural or artificial light;
- (l) improper or insufficient packing, marking, documentation or labelling or any erroneous instructions;
- (m) insufficient depth of water at any berth or the approaches to such berth;
- (n) the total or partial failure of the ABP Notify Website (including communication links) or any other electronic or other systems offered at any time by or on behalf of ABP;
- (o) any act of ABP or any ABP Party which, though deliberate, are reasonably necessary for the safety or preservation of persons, the Port and/or any Goods having taken reasonable steps to mitigate where reasonably practicable to do so in the circumstances;
- (p) late receipt of HM Revenue & Customs entries or delivery or landing orders, disputes in respect of documents or declarations made for entry purposes by or on behalf of any person, delay in passing Customs entries or obtaining clearance of any Goods or omission of information from or a mis-statement in any order to ABP relating to the Goods.

23. Exclusion of ABP's Liability

23.1 ABP shall have no liability whatsoever whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise in connection with:

- (a) any demurrage costs or other compensation or other Losses suffered as a result of the delay or interruption of any Goods, ABP Plant, Plant, Vessels, Customer Transport, Passengers, Luggage, Passenger

<p>Vehicles or Services or for their loss of use or for their not being ready in time;</p> <p>(b) any loss of profit;</p> <p>(c) any loss of business, contracts, opportunity, market, charter, anticipated savings or depletion of goodwill;</p> <p>(d) any indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation or indirect economic loss (howsoever caused);</p> <p>(e) the wrongful act, omission and/or neglect or any breach of these Conditions by the Customer or its Representative;</p> <p>(f) any Goods delivered to the Port which do not meet the specification stated for those Goods;</p> <p>(g) its compliance with any instructions given by the Customer or its Representative or any other Person entitled to give them;</p> <p>(h) the lack or insufficiency of marks, labelling or numbers on Goods, incorrect delivery details or any failure by any consignee to accept delivery of Goods where ABP has obtained proof of delivery acknowledging safe receipt of the Goods;</p> <p>(i) any information or advice given to or by ABP being inaccurate or incomplete where this incompleteness or inaccuracy cannot have been reasonably known to ABP at the time of the provision of the advice or information;</p> <p>(j) any failure or inability of any master or owner of the Vessel, operator of Customer Transport or any other Persons (other than ABP) to comply with their obligations under Applicable Laws or with the directions or orders of the Harbour Master or with any ABP Regulations;</p> <p>(k) improper, insufficient, indistinct or erroneous packaging, marking or addressing of Luggage;</p> <p>(l) any damage to or loss of a Passenger Vehicle:</p> <p style="padding-left: 20px;">(i) where the damage or loss occurs after the Passenger Vehicle has crossed a Vessel's loading ramp to embark the Vessel or before the Passenger Vehicle has left the Vessel's loading ramp to disembark the Vessel;</p> <p style="padding-left: 20px;">(i) resulting from the malfunction or disrepair of any apparatus or equipment belonging to the Vessel or the Vessel not being in the condition specified at Condition 6;</p>	<p>24.2</p> <p>(a)</p> <p style="padding-left: 20px;">(i)</p> <p style="padding-left: 20px;">(ii)</p> <p style="padding-left: 20px;">(iii)</p> <p style="padding-left: 20px;">(iv)</p> <p style="padding-left: 20px;">(v)</p> <p style="padding-left: 20px;">(vi)</p> <p style="padding-left: 20px;">(vii)</p> <p>(b)</p> <p style="padding-left: 20px;">(i)</p> <p style="padding-left: 20px;">(ii)</p> <p style="padding-left: 20px;">(iii)</p> <p style="padding-left: 20px;">(iv)</p> <p style="padding-left: 20px;">(v)</p> <p>(c)</p>	<p>damage has been caused by the negligence of ABP or by a breach of ABP's obligations in relation to the provision of any Services, in which case ABP's liability will be limited in accordance with this Condition 24.</p> <p>ABP's total liability in contract, tort (including negligence) or for breach of statutory duty, misrepresentation or otherwise, arising in connection with the use of the Port, the provision of any Services and/or the performance or contemplated performance of these Conditions will be limited in accordance with the provisions set out below:</p> <p>in the case of loss, misdelivery or damage to Goods ("Affected Item") or Customer Transport the amount which is the lesser of:</p> <p>the cost of the part of the Affected Item which is affected;</p> <p>the market value of the Affected Item at the time of the loss, misdelivery or damage;</p> <p>the reasonable cost of repairing the Affected Item (if practicable);</p> <p>£1,300 per metric tonne of the gross weight of the Affected Item;</p> <p>in the case of the Affected Item being a Container, £2,000 per Container or £5,000 per Container if it is a refrigerated Container;</p> <p>in the case of the Affected Item being Packaging or Plant (excluding Containers) £3,000 per item of Packaging or Plant;</p> <p>in the case of the Affected Item being Customer Transport, £12,000 per Customer Transport;</p> <p>in the case of damage or loss to a Vessel (including any Goods on-board the Vessel) the reasonable cost of repair of the affected part of the Vessel and any affected Goods, up to a limit of:</p> <p>£250,000 where the GRT of the Vessel is up to 300;</p> <p>£750,000 where the GRT of the Vessel is between 301 and 2000;</p> <p>£2,500,000 where the GRT of the Vessel is between 2001 and 10,000;</p> <p>£5,000,000 where the GRT of the Vessel is between 10,001 and 50,000;</p> <p>£10,000,000 where the GRT of the Vessel is over 50,000;</p> <p>in relation to the hire or use of any ABP Plant, the amount of the Charges paid for the hire of the relevant ABP Plant in relation to the particular operation to which the hire or use of ABP Plant relates;</p>
<p>24. Limitation of ABP's Liability</p> <p>24.1 Unless otherwise stated in these Conditions, ABP shall be liable for loss or misdelivery of, or damage to Goods, Vessels, Customer Transport, Luggage or Passenger Vehicles (or any part of them) to the extent that the Customer proves the loss, misdelivery or</p>		

- (d) except for the liability referred to in Condition 24.2(b) ABP's aggregate liability in respect of any one event or series of related events shall not exceed the amount of the Charges paid to ABP by the Customer for any Cargo Services in relation to the relevant Goods to which the event or series of related events relates;
- (e) nothing in these Conditions shall prejudice ABP's right to rely on any applicable statutory provision providing for limitation and/or exclusion of liability; and
- (f) without prejudice to the generality of Condition 24.2(e), the provisions of the Pilotage Act 1987 shall apply to any claim in connection with any pilot or pilotage services provided;
- 24.3 Nothing in these Conditions excludes or limits the liability of ABP for death or personal injury caused by its negligence or for fraudulent misrepresentation or for any other matter which it would be unlawful to exclude or limit ABP's liability. Nothing in Condition 24.2(b) excludes or limits the liability of ABP if it is proved that the loss resulted from ABP's personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.
- 24.4 The following additional terms shall apply where Passenger Services are being provided:
- (a) ABP shall not have any liability for any loss or damage or delay to any item of Luggage which is not in ABP's custody at the time such loss, damage or delay occurs. Luggage shall be deemed to be in the custody of ABP when it is unaccompanied by an embarking or disembarking Passenger from the moment the Luggage:
- (i) passes beyond the check-in desk at the terminal after a Passenger has checked in until the moment the Luggage passes onto the Vessel's loading ramps or otherwise passes onto the Vessel;
- (ii) leaves the Vessel's loading ramp or otherwise leaves the Vessel until the moment the Luggage is removed by the Passenger from the baggage carousels in the terminal,
- (b) where ABP is liable for damage or loss as set out in Condition 24.1, ABP's total liability arising in connection with any loss or damage:
- (i) to Luggage shall in no case be more than £2,000 per Passenger;
- (ii) to a Passenger Vehicle (including any Luggage in or on the Passenger Vehicle) shall in no case be more than £12,000 per Passenger.
- 25. Liability - Time Bar for Claims**
- 25.1 It is a condition precedent to the liability of ABP in relation to Goods under Condition 24 that ABP be notified in writing:
- (a) in the case of damage, deficiency or partial losses, within 7 days of the earlier of the date on which:
- (i) the Goods are either delivered to the Customer or collected from the Port;
- (ii) the Customer or its representative has knowledge of the damage, deficiency or partial losses in relation to the Goods;
- (b) Notwithstanding Condition 25.1(a), ABP shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any claim under or in connection with these Conditions unless court proceedings are issued and written notice of the proceedings are given to ABP within 12 months of the date of the event or occurrence alleged to give rise to a cause of action against ABP.
- 25.2 It is a condition precedent to the liability of ABP in relation to any Luggage or Passenger Vehicle under Condition 24 that ABP be notified in writing of any damage or loss of Luggage or to a Passenger Vehicle prior to the Passenger leaving the Port to enable ABP to inspect any damage or investigate any loss.
- 25.3 It is a condition precedent to the liability of ABP in relation to any Vessel under Condition 24 that ABP be notified in writing of any damage or loss to the Vessel prior to the Vessel leaving the Port to enable ABP to inspect any damage or investigate any loss.
- 26. Liability Limits available to Third Parties**
- By delivering the Goods to ABP, the Customer shall be deemed to confer severally upon ABP and any ABP Party, the benefit of all warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defences, amenities and rights provided under these Conditions for the benefit of ABP, upon any such Person providing any Services in relation to the Goods.
- 27. Disapplication of Additional Small Ship Limit**
- Paragraph 5 of part 2 of Schedule 7 of the Merchant Shipping Act 1995 shall not apply in respect of any claim ABP may have in relation to a Vessel using the Port.
- 28. Bribery / Corruption & Modern Slavery**
- 28.1 ABP and the Customer shall not, and shall each procure that its Representatives shall not, engage in any activity, practice or conduct which would constitute an offence under any applicable:
- (a) anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010;
- (b) anti-slavery and human trafficking laws, regulations and codes, including the Modern Slavery Act 2015.
- 28.2 ABP and the Customer shall each:

- (a) have in place adequate procedures designed to prevent any Person working for or engaged by ABP or the Customer (as the case may be) in connection with the Customer's use of the Port, from engaging in any activity, practice or conduct which would infringe any anti-bribery and/or anti-corruption laws, regulations and codes including ABP's anti-corruption and anti-bribery policy which is available on ABP's website <http://www.abports.co.uk>;
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.
- 28.3 Without prejudice to the generality of the obligations set out in this Condition 28 the Customer must promptly report to ABP:
- (a) any request or demand for any undue financial or other advantage of any kind which it receives in connection with the use of the Port by the Customer or performance of any obligations under these Conditions or any other agreement with ABP;
 - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the use of the Port by the Customer, these Conditions or any other agreement with ABP.

29. Data Protection

- 29.1 Without prejudice to the generality of Condition 17.1(a), in relation to the Customer's use of or activities at the Port the Customer shall at all times comply with all Applicable Laws and ABP Regulations relating to the security, confidentiality, protection or privacy of personal data.
- 29.2 The Customer acknowledges that surveillance systems such as CCTV, Automatic Number Plate Recognition (ANPR) and body worn camera systems may be used at the Port (including for the purposes of safety and security). The Customer further acknowledges that the information processed by such systems may include personal data about the Customer, Customer Invitees, Passengers and other Persons (including any Representative). This information may be shared by ABP with other Persons (including the data subjects themselves, employees, agents or services providers of ABP, police forces, security organisations and Persons making an enquiry) and it may be used in any form of proceedings.
- 29.3 The Customer warrants and agrees that it will make its Customer Invitees, Representatives, Passengers and any other applicable Persons aware that ABP may process personal data relating to data subjects who may enter or use the Port (including in relation to the use of any surveillance systems) and as further described in ABP's privacy notice (as amended from time to time), which can be accessed at http://www.abports.co.uk/Privacy_Notice/
- 29.4. Unless the context otherwise requires, the terms "process", "personal data" and "data subject" used in

this Condition 29 shall be interpreted and construed by reference to any Applicable Laws relating to the security, confidentiality, protection or privacy of personal data.

30. Radio

The Customer shall ensure that any radio equipment used at the Port is licensed and operated in accordance with Applicable Laws.

31. Governing Law and Jurisdiction

These Conditions (and any dispute or claim relating to them, their enforceability or its termination) and any legal relationship between ABP and the Customer shall be governed by and interpreted in accordance with English law, and the Customer submits to the exclusive jurisdiction of the High Court of Justice in England but ABP may enforce any contract between ABP and the Customer in any court of competent jurisdiction.

32. Bylaws, Statutory Powers & Duties

- 32.1 The rights and powers of ABP under these Conditions are in addition to and not in substitution for the rights and powers of ABP conferred by their current By-Laws.
- 32.2 Nothing in these Conditions shall restrict prejudice or affect ABP's powers and duties in the exercise of its functions as the statutory harbour authority for the Port and its approaches or as the competent harbour authority for elsewhere.

33. Notices

Any notice required to be given under these Conditions shall unless otherwise specified or agreed be sufficiently given if sent by post by registered or recorded delivery or left at the principal or registered office for the time being of the party to be served. Any such notice shall be deemed to be served at the time the same is handed to or left at the address of the party to be served and if served by post on the third day (not being a Sunday or public holiday) following the day of posting.

34. Confidentiality

- 34.1 ABP and the Customer will keep and procure to be kept secret and confidential all confidential information belonging to the other party disclosed or obtained as a result of the relationship of the parties under these Conditions and will not use nor disclose the same save: (a) for the purposes of the proper performance of these Conditions; (b) with the prior written consent of the other party or of a party's professional advisors or; (c) as may be required in connection with any financing arrangements.
- 34.2 Where a party discloses confidential information to its employees, consultants, sub-contractors, professional advisors or agents pursuant to Condition 34.1(a), (b) or (c), such disclosure shall be subject to obligations equivalent to those set out in this Condition 34 and the disclosing party will use its best endeavours to procure that any such employee, consultant, sub-contractor, professional advisor or agent complies with such obligations. Each party will

be responsible to the other party in respect of any disclosure or use of any such confidential information by a person to whom disclosure is made.

- 34.3 The obligation of confidentiality under Condition 34.1 will not apply to any confidential information which: (a) is in or enters (otherwise than as a result of an unlawful disclosure by the party receiving such information), the public domain; (b) the party receiving such information can demonstrate was already lawfully in its possession at the time of disclosure; (c) is disclosed to the party receiving such information by a third party otherwise than in breach of any confidentiality obligation owed to the party whose confidential information it is; or (d) is required to be disclosed pursuant to any Applicable Law, Court or arbitral order or by any supervisory or regulatory body to whose rules a party is subject or with whose rules it is necessary for that party to comply.

35. General

- 35.1 If any provision of these Conditions is or becomes invalid or unenforceable, in whole or in part, in any jurisdiction, the validity and enforceability of the other

provisions of these Conditions and its validity and enforceability in any other jurisdiction shall not be affected.

- 35.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (a) waive that or any other right or remedy; or (b) prevent or restrict the further exercise of that or any other right or remedy.
- 35.3 These Conditions together with the Port Tariff are generally issued on an annual basis to take effect on 1 January in each year. However, ABP reserves the right to amend the ABP Standard Terms and Conditions of Trade at any time by publishing the Conditions on ABP's website (www.abports.co.uk).
- 35.4 Except as otherwise provided in these Conditions, a person who is not a party has no right to enforce any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.