

Patrick Terminals

National Terminal Access Terms & Conditions

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Background

- (a) These National Terminal Access Terms & Conditions set out the terms and conditions on which Patrick agrees to allow Carriers and their Associates to use the VBS and / or to access a Terminal. The aim of these National Terminal Access Terms & Conditions is to keep all parties safe and to make Patrick's landside interface, and the provision by Patrick of its Landside Services, as efficient as possible.
- (b) On each occasion that a Carrier uses the VBS to make a Booking and / or accesses a Terminal, the Carrier will enter into a separate and binding contract with Patrick for that Booking and / or access which incorporates these National Terminal Access Terms & Conditions (each an **Agreement**) and, by doing so, will be deemed to have accepted and agreed to be bound by this Agreement.

1. The VBS

1.1. VBS Registration

- (a) Carriers must be registered with Patrick in order to access and use the VBS.
- (b) By registering with Patrick, the Carrier warrants that it is a 'bona fide' Carrier.
- (c) In order to register as a VBS user, the Carrier must complete and submit a registration form on the 1-Stop Site and must pay to 1-Stop the Joining Fee and the Annual Registration Fee (which is charged on 1 July each year).
- (d) Upon registration, the Carrier will be issued with a Carrier Access Code which must be used for the purpose of accessing and using the VBS. The Carrier must protect its Carrier Access Code and must ensure that it is only used by authorised personnel.
- (e) The Carrier must ensure that it and its Associates maintain and use no more than one Carrier Access Code to make bookings through the VBS. The Carrier must not use a Carrier Access Code issued to any other Carrier.

1.2. Booking Slots

- (a) The Carrier may use the VBS to make a Booking. The Carrier must book a Slot for every Container that it wishes to collect from or deliver to a Terminal.
- (b) Each Booking represents a separate and binding Agreement between the Carrier and Patrick that commences when the Booking is made and expires upon the completion by each party of its respective obligations under the Agreement.
- (c) Additional Slots may be advertised from time to time on the VBS, in which case the relevant Carriers will be notified via the 1-Stop Site. Such Slots will be available on a first come, first served basis.
- (d) Except as otherwise provided in this Agreement, Slots are non-transferrable. The Carrier may not pool Slots or attempt to re-sell Slots to other Carriers.
- (e) The Carrier may also use the VBS to view, edit or list existing Bookings and to apply for bulk runs.
- (f) In certain circumstances, Patrick may be required to close a Terminal (including, for example, by reason of a Force Majeure Event). In such circumstances, Patrick will endeavour to give the Carrier at least twenty-four (24) hours' prior notice wherever reasonably practicable via publication on the 1-Stop Site and on the Customer Portal. If Patrick is unable to give the Carrier at least twenty-four (24) hours' prior notice of

the closure of a Terminal, Patrick will still endeavour to give the Carrier as much notice as is reasonably possible.

- (g) The Carrier must comply with all timing and other requirements relating to a Booking as confirmed during the Booking process. Access to the Terminal prior to or after the relevant Time Zone will be at the discretion of Patrick (subject to any relevant regulatory requirements, including the Port Botany Landside Improvement Strategy) which access may be subject to further terms and conditions as advised by Patrick. A No Show Fee may also be applicable in certain circumstances.

1.3. Information Requirements

- (a) The Carrier must provide all information specified in the VBS by no later than ten (10) minutes before the Truck arrives at the Terminal. Such information may include, without limitation:
 - (i) with respect to the Truck and driver, the Truck Identification Number and the identity of the driver of the Truck that will complete the Truck Trip in respect of the Booking at the Terminal (including MSIC details); and
 - (i) with respect to the relevant Container, details about the relevant vessel (including the ship code and voyage number), the container number, the container dimensions / specifications, door direction, the commodity group (including, where relevant, hazardous class), whether the Container is full or empty, the PRA / EIDO (as applicable) and the verified gross mass of the Container, together with any other information required to be provided in accordance with SOLAS Requirements or any other legal or regulatory requirements.

1.4. VBS Fees

- (a) In consideration of allowing the Carrier to use the VBS and / or access a Terminal in accordance with this Agreement, the Carrier must pay to Patrick the relevant fees specified in the Public Tariff Schedule.
- (b) Subject to clause 10.3, the Carrier acknowledges that the Public Tariff Schedule may be updated by Patrick from time to time.
- (c) The Carrier will not be able to manifest a Container on the VBS if the Container is subject to unpaid fees or charges, including storage fees. In such circumstances, if the Carrier wishes to proceed to manifest the Container in question, the Carrier will be required to pay such fees or charges to Patrick. All payments made under this clause 1.4(c) must be received by Patrick in cleared funds prior to the Carrier's arrival at the Terminal for the relevant Truck Trip.

1.5. Payment (Rates and Interest)

- (a) The Carrier must pay each tax invoice issued by Patrick within thirty (30) days of the date of the tax invoice without discount, deduction, counterclaim or set-off (subject to any relevant regulatory requirements, including the Port Botany Landside Improvement Strategy). Payments must be made in accordance with the payment instructions specified on the relevant tax invoice (unless otherwise agreed by Patrick in writing).
- (b) If the Carrier disputes any aspect of a tax invoice issued by Patrick, the Carrier must notify Patrick of the issue, in writing, within fourteen (14) days of the date of the tax invoice.

- (c) If the Carrier defaults in the payment of any moneys payable under this Agreement for a period of five (5) Business Days after receiving a written notice of demand from Patrick, Patrick may, at its discretion, charge the Carrier Interest on the amount of any money not paid under this Agreement. The Interest payable under this clause will accrue daily and will include all days from the due date for payment up to the actual date of payment and may be compounded by Patrick at monthly intervals.

2. The Landside Services

2.1. Patrick Rights and Responsibilities

- (a) Patrick is not a common carrier and accepts no liability as such and may, therefore, agree or refuse to contract with the Carrier in its absolute discretion.
- (b) Patrick relies on the details of a Container that are supplied to it by the Carrier and / or by other third parties. Patrick has no ability nor obligation to inspect a Container and no such inspection will increase Patrick's liability under this Agreement.
- (c) If, in Patrick's reasonable opinion, the provision of the Landside Services is (or could possibly be) unsafe for any reason or the Container or Truck does not comply with all applicable laws and regulations (including, without limitation, the Health and Safety Laws, the Chain of Responsibility Laws, the Dangerous Goods Laws, the Heavy Vehicle National Law and / or the SOLAS Requirements) or the Container is unsuitable to be handled using the equipment and operating procedures normally used by Patrick in providing Landside Services, Patrick may:
 - (i) refuse to provide the Landside Services; and / or
 - (ii) take whatever measures it considers to be reasonably practicable at the Carrier's risk and expense in order to cause the Container or Truck and / or the Landside Services to comply with all applicable laws and regulations or suitability requirements for handling by Patrick; and / or
 - (iii) store the Container at the Carrier's risk and expense until the Carrier has made suitable arrangements (in Patrick's reasonable opinion) for its collection.

2.2. Carrier's Rights and Responsibilities

- (a) The Carrier's access to the relevant Terminal is conditional upon the Carrier and each of its Associates:
 - (i) complying with the terms of this Agreement;
 - (ii) complying with all applicable laws and regulations, with the Patrick Systems and with the Patrick Code of Conduct;
 - (iii) complying with the reasonable directions of Patrick personnel;
 - (iv) having successfully completed the relevant Terminal's Driver Induction and Accreditation Training (which must be conducted annually unless refresher training is required earlier as determined by Patrick in its discretion);
 - (v) holding and maintaining a current, valid licence to operate the Truck in the Jurisdiction; and
 - (vi) obtaining and maintaining a current and valid MSIC.
- (b) The Carrier must ensure that it has a sufficient number of Trucks and Associates to adequately and safely perform its obligations in this Agreement and must ensure that its Trucks are maintained in good, suitable and roadworthy condition in compliance

with all laws and regulations, including in respect of road registration and speed limiting devices.

- (c) The Carrier must ensure that neither it, nor any of its Associates, enter a Terminal under the influence of, or with the presence of, alcohol or illicit drugs in their system, nor drink, smoke or consume alcohol or illicit drugs while at a Terminal. The Carrier and its Associates may be required to participate in drug and alcohol testing carried out by or on behalf of Patrick at the Terminal.
- (d) The Carrier must comply with all applicable legal and regulatory obligations with respect to the provision of information relating to Containers and their cargo (including by lodging PRAs and EIDOs within the required timeframes) and the Carrier warrants that all information supplied to Patrick is complete and accurate in all respects.
- (e) The Carrier is responsible for verifying that each relevant Container is available and clear of any holds for delivery prior to the arrival of the Carrier at the Terminal.
- (f) The Carrier must ensure that the correct Container is loaded onto the Truck prior to departure from the Terminal (including by verifying the Container number) and must also secure all twist-locks to ensure that the Container is correctly seated on all four corners.
- (g) The Carrier must immediately report to Patrick all incidents involving damage or injury to any property or person or any hazard or potential hazard identified by the Carrier or any of its Associates at or near the Terminal. The Carrier must promptly complete an incident statement detailing what occurred / was observed (a copy of which must be provided to Patrick within five (5) Business Days) and must thereafter co-operate and make itself or its Associates reasonably available for subsequent investigations into such matters.
- (h) If, in Patrick's reasonable opinion, an Associate of the Carrier is not acting in accordance with the requirements of this Agreement, Patrick may require the Carrier to replace such Associate. If the Carrier or the relevant Associate does not comply with this requirement, Patrick may at its discretion require the Carrier or the relevant Associate to complete refresher training or declare an Event of Default, in which case clause 9 will be applicable.

3. Health and Safety, Chain of Responsibility, Dangerous Goods and Environmental Protection

- (a) Patrick and the Carrier acknowledge and agree that each of them have obligations under the Health and Safety Laws, the Chain of Responsibility Laws, the Dangerous Goods Laws and the Environmental Protection Laws.
- (b) Without limiting any other provision of this Agreement, the Carrier must comply with, and ensure that its Associates comply with, the Health and Safety Laws, the Chain of Responsibility Laws, the Dangerous Goods Laws and the Environmental Protection Laws and must retain proper, complete and accurate records of such compliance.
- (c) The Carrier must implement, maintain, enforce and regularly review its own Carrier Systems and must take all reasonably practicable steps to ensure that its Associates are adequately trained in and understand the Carrier Systems. If requested by Patrick, the Carrier must produce to Patrick a copy of its Carrier Systems together with reasonable evidence of compliance with the same.

- (d) Insofar as the Chain of Responsibility Laws are concerned, and without limiting its other obligations under this clause 3, the Carrier must ensure, and must procure that its Associates ensure, that:
 - (i) goods packed inside a Container do not exceed the Container's gross weight or safety approval rating and must provide to Patrick a 'complying container weight declaration' (as defined in the Heavy Vehicle National Law);
 - (ii) all equipment used to transport Containers to and from the Terminal complies with all legal and regulatory requirements and weight restrictions and is adequately maintained and fit for purpose in all respects;
 - (iii) the individual axle group weights and gross mass of its Trucks are within the legal limits required for the transportation of goods by road;
 - (iv) the dimensions of its Trucks (and the Containers / goods that they carry) are within the legal limits required for the transportation of goods by road;
 - (v) drivers do not exceed their maximum regulated hours for driving and working; and
 - (vi) Trucks are driven safely and that drivers comply with all applicable speed limits, routes, permits and other laws and regulations applicable to heavy vehicles.
- (e) The Carrier must immediately report to Patrick any instance where the Carrier has received a notice or penalty from a relevant regulator (including any Governmental Agency) relating to non-compliance or potential non-compliance with the Health and Safety Laws, the Chain of Responsibility Laws, the Dangerous Goods Laws and / or the Environmental Protection Laws.
- (f) In certain circumstances, Patrick may be legally obligated to report serious breaches (or near-misses) of the Health and Safety Laws, the Chain of Responsibility Laws, the Dangerous Goods Laws and / or the Environmental Protection Laws to a relevant regulator or to a Government Agency.

4. Transport for NSW Requirements (applicable to the Port Botany Terminal only)

4.1. Application of Port Botany Landside Improvement Strategy

- (a) Both Patrick and the Carrier are subject to mandatory performance standards under the Port Botany Landside Improvement Strategy.
- (b) Carriers should familiarise themselves with these mandatory performance standards and should note that penalties are applicable in certain circumstances.

5. Liability and Indemnities

5.1. Indemnity

- (a) Subject to clauses 5.2 and 5.3, each party (an **Indemnifying Party**) will be liable for, and agrees to indemnify the other party and its Associates (**Those Indemnified**) in respect of any Liability arising from an act or omission by the Indemnifying Party or any of its Associates which gives rise to:
 - (i) where Patrick is the Indemnifying Party, damage to a Truck, a Container or goods while at a Terminal;
 - (ii) where the Carrier is the Indemnifying Party:
 - A. damage to a Terminal and / or the surrounding environment;
 - B. any discharge, spill or release of a Contaminant; or

- C. damage to, deterioration or contamination of any tangible property;
 - (iii) personal injury (including sickness or death);
 - (iv) a breach of any law or regulation;
 - (v) a breach of this Agreement; or
 - (vi) a claim by a third party,
- except to the extent that the Liability was caused or contributed to by an act or omission by Those Indemnified.

5.2. Limitations on Liability

- (a) A party may only make a Claim against the other party if the Claim exceeds the Liability Floor Amount for any one event.
- (b) Patrick's Liability to the Carrier arising in connection with this Agreement, whether in tort (including in negligence), contract, bailment, under an indemnity or otherwise, is limited as follows:
 - (i) insofar as the Liability relates to damage to a Container or goods while at a Terminal, up to a maximum of AU\$15,000.00 for any one event;
 - (ii) insofar as the Liability relates to damage to a Truck while at a Terminal, up to a maximum of AU\$100,000.00 for any one event; and
 - (iii) insofar as the Liability relates to any Liability not covered in (i) or (ii) above, including in respect of personal injury or death, AU\$5,000,000.00 for any one event.

5.3. Consequential Loss

- (a) Notwithstanding anything else in this Agreement, neither party shall have any Liability to the other in connection with this Agreement, whether in tort (including in negligence), contract, bailment, under an indemnity or otherwise, for Consequential Loss.

5.4. Notification of Claims

- (a) A party will not be liable for any Claim by the other party unless notice of the Claim is given to the first party within fourteen (14) days of the date of the relevant incident giving rise to the Claim.
- (b) A party will be discharged from all Liability for a Claim unless proceedings are commenced within one (1) year of the date that notice of that Claim was given to the first party.

5.5. Non-excludable rights

- (a) To the extent permitted by law, and except as expressly set out in this Agreement, Patrick makes no and expressly excludes all warranties and representations with respect to the Landside Services.
- (b) Patrick's liability to the Carrier for a breach of any warranty, statutory guarantee or condition regarding the Landside Services that cannot by law be excluded is limited, at Patrick's option and where permitted by law, to:
 - (i) supplying the Landside Services again; or
 - (ii) the payment of the cost of having the Landside Services supplied again.

6. Insurance

- (a) The Carrier must, at its own expense, effect the following minimum insurances with a reputable insurer(s) (i.e. with a minimum Standard & Poors rating of at least 'A') on or before the commencement of this Agreement until its cessation:
 - (i) third party property insurance and public risk liability insurance (including in respect of third party property damage and injury to persons) to a minimum value of AU\$20,000,000.00 for any one occurrence and unlimited in the aggregate; and
 - (ii) motor vehicle insurance in respect of all Trucks; and
 - (iii) employer's liability and workers' compensation insurance (including common law liability) as required under any applicable workers' compensation law; and
 - (iv) such other insurances as are required by law or good industry practice.
- (b) The Carrier must produce evidence to Patrick of the valid insurance policies referred to in this clause 6 on reasonable request.
- (c) The Carrier warrants to Patrick that it will maintain all of the insurances required by this clause 6 for the term of this Agreement and, in the case of insurance policies entered into on a claims-made basis, for a further six (6) years following the expiry or termination of this Agreement.

7. Dispute Resolution

- (a) The parties must attempt to resolve any Dispute arising in relation to this Agreement in accordance with this clause 7 and must not commence any court proceedings until the process set out in this clause 7 has been exhausted.
- (b) If a Dispute arises, a party claiming the Dispute must promptly notify the other party in writing of the existence and nature of the dispute and the parties will endeavour to settle the Dispute in good faith within ten (10) Business Days of written notification of the Dispute.
- (c) Where a Dispute cannot be settled in accordance with clause 7(b) and the quantum of that dispute is over AU\$15,000.00, the parties will endeavour to settle the matter with the assistance of a mediator agreed by the parties or, if such appointment cannot be agreed within five (5) Business Days, a mediator appointed by the Institute of Arbitrators and Mediators Australia. Either party may request the president of the Institute of Arbitrators and Mediators Australia to appoint a mediator to the Dispute and must, at the time of making that request, provide a copy of that request to the other party.
- (d) The mediator may adopt such procedures as he or she sees fit to resolve the Dispute.
- (e) Where the Dispute is mediated, each party will be liable for half of the total costs of the mediation (excluding each party's own legal costs).
- (f) If the Dispute is not resolved within one (1) Month of the appointment of a mediator, either party may commence court proceedings.
- (g) Until the Dispute is resolved, the parties must continue to observe their obligations under this Agreement. However, if the Dispute relates to an amount payable under a tax invoice, the Carrier's obligation to pay the invoice is suspended to the extent of the Disputed amount until such time as the Dispute is resolved.

- (h) Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

8. Force Majeure

- (a) Subject to any applicable regulatory requirements (including the Port Botany Landside Improvement Strategy), a party will be released from its obligations under this Agreement (except an obligation to pay monies) to the extent and for the duration that performance of this Agreement is delayed, hindered or prevented by a Force Majeure Event.
- (b) If a Force Majeure Event occurs or is likely to occur, the affected party must give prompt notice of the Force Majeure Event to the other party and must detail what action is being taken to overcome its effects in writing (including by email or facsimile).
- (c) The effected party must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform as soon as possible. However,
 - (i) nothing will oblige the effected party to settle any strike or other industrial dispute on terms contrary to the effected party's wishes; and
 - (ii) nothing will oblige the effected party to contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- (d) The non-affected party will provide reasonable assistance to the affected party if a Force Majeure Event occurs.
- (e) The affected party must resume its obligations under this Agreement as soon as it is no longer affected by a Force Majeure Event.

9. Default and Termination

9.1. Default and Termination

- (a) Without prejudice to its other rights against the Carrier under this Agreement, Patrick may at any time after an Event of Default occurs:
 - (i) suspend the Carrier's right (or the right of a specific Associate of the Carrier) to use the VBS and / or access a Terminal (in the case of all Events of Default); or
 - (ii) terminate this Agreement (or indefinitely prevent a specific Associate of the Carrier from using the VBS and / or accessing a Terminal) (in the case of Events of Default that fall within paragraphs (c) to (g) of the definition of Event of Default),

in each case with immediate effect by giving notice in writing to the Carrier (a '**Default Notice**').

- (b) If an Event of Default relates only to a specific Associate of the Carrier, Patrick may restrict the exercise of its rights under clause 9.1(a) to that specific Associate, where Patrick considers that doing so would be sufficient to address the Event of Default and adequately protect Patrick's business interests (including having regard to whether that Associate's failure is indicative of any broader failure of the Carrier to impose and enforce the Carrier Systems and otherwise require compliance by its Associates with this Agreement).
- (c) If Patrick exercises a right of suspension or termination under this Agreement, Patrick may also exercise a corresponding right of suspension or termination in relation to any Other Agreements with immediate effect by giving a notice in writing to the Carrier.

- (d) If Patrick exercises a right of suspension or termination under any Other Agreement, then Patrick may also exercise a corresponding right of suspension or termination under this Agreement with immediate effect by giving a notice in writing to the Carrier.
- (e) In circumstances where Patrick commits an act of default under this Agreement, the Carrier may terminate this Agreement by notice to Patrick in writing, in which case the Carrier shall have no future obligations to Patrick under this Agreement.

9.2. Suspension

- (a) If Patrick elects to suspend the Carrier's right (or the right of a specific Associate of the Carrier) to use the VBS and / or to access a Terminal under clause 9.1(a)(i), the Default Notice must state:
 - (i) the reason that Patrick has elected to suspend the relevant rights;
 - (ii) acting reasonably, the steps that the Carrier and / or the relevant Associate must take to remedy the breach in order for the suspension to be removed; and
 - (iii) the date (the '**Remedy Date**') by which the Carrier must take those steps.

9.3. After Expiry or Termination

- (a) On expiry or termination, each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

10. Miscellaneous Provisions

10.1. Notices

- (a) Subject to clause 10.1(b), a notice, consent or other communication by a party under this Agreement must be in writing and must either be delivered by hand, sent by pre-paid registered mail or courier to the registered head office of the other party or sent by facsimile or email (in which case the machine from which the communication was sent must produce a report that confirms that the message was successfully delivered, in full).
- (b) A notice, consent or other communication by a party under this Agreement in relation to Liabilities which have or may have arisen under this Agreement must not be given by facsimile or by email.
- (c) A notice, consent or other communication that complies with this clause is regarded as being given and received:
 - (iv) if it is delivered by hand, by pre-paid registered mail, by courier or by other similar traceable form of delivery - on actual receipt; or
 - (v) if it is delivered by facsimile or email, on the Business Day on which it was received (or, if received after 5:00pm local time in the place of receipt, on the next Business Day).

10.2. Governing Law and Jurisdiction

- (a) This Agreement will be governed and construed in accordance with the law applying in the Jurisdiction and each party irrevocably submits to the exclusive jurisdiction of the courts in the Jurisdiction.

10.3. Amendment

- (a) Patrick may amend this Agreement, the National Terminal Access Terms & Conditions and / or the Public Tariff Schedule (the '**Varied Documents**') from time to time.

- (b) Prior to amending the Varied Documents in accordance with this clause, Patrick must provide the Carrier with reasonable notice in writing of the proposed amendment to the Varied Documents, being at least one (1) months' notice, unless a shorter period of time is required in response to changes to (or the introduction of) any law or regulation or for urgent operational reasons.
- (c) No other variation to the Varied Documents will be of any effect unless agreed between the parties in writing.

10.4. Assignment

- (a) The Carrier's rights, interests, entitlements and obligations under this Agreement are not capable of being assigned or transferred without the prior written consent of Patrick.
- (b) Patrick may assign or transfer this Agreement without the Carrier's consent.

10.5. Waiver of rights

- (a) Failure to or delay in enforcing or exercising, or the partial exercise or enforcement of a right, power or remedy provided by law or under this Agreement does not preclude a party from exercising or enforcing that right, power or remedy in future.
- (b) Any waiver of a breach of this Agreement must be in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver. A waiver of a breach of any term of this Agreement will be limited to that term and instance specified.

10.6. Severability

- (a) Any provision in this Agreement that is prohibited or unenforceable (or found to be so) in the Jurisdiction is ineffective in that Jurisdiction to the extent of the prohibition or unenforceability.
- (b) Such prohibition or unenforceability shall not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other Jurisdiction.

10.7. Relationship

- (a) Nothing in this Agreement creates a relationship of employer and employee, principal and agent, partnership or similar between the parties.

10.8. Rights

- (a) All rights, immunities, indemnities and limitations of Liability in this Agreement will continue to have their full force and effect in all circumstances and notwithstanding any breach of this Agreement by a party or any other person entitled to the benefit of such provisions, or termination of this Agreement.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

10.9. Goods and Services Tax

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (b) If GST is payable by a supplier, or by the representative member for a GST Group of which the supplier is a member, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

- (c) The recipient will pay the amount referred to in clause 10.9(b) in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.
- (d) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 10.9(b). The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- (e) If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under clause 10.9(b) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (g) In this clause 10.9, words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law, have the same meaning as in the GST Law.

10.10. Entire Agreement

- (a) Nothing in this Agreement limits or excludes any Liability either party may have in connection with any representations or other communications (either oral or written) made prior to or during the term of these Agreement, where such liability cannot be limited or excluded.
- (b) Subject to paragraph (a), this Agreement supersedes all previous agreements, understandings, negotiations, representations and warranties about its subject matter and embodies the entire agreement between the parties about its subject matter.

11. Definition and Interpretation

11.1. Definitions

In this Agreement:

Agreement has the meaning given in the background section.

Annual Registration Fee means the annual registration fee payable to 1-Stop as is set out in the Public Tariff Schedule.

Associate means a party's employees, officers, servants, agents, invitees, subcontractors, customers and Related Body Corporate.

Booking means an arrangement between a Carrier (or any of its Associates) and Patrick for Patrick to provide Landside Services at a Terminal for a Truck operated by the Carrier (or any of its Associates).

Business Day means a day that is not a Saturday, Sunday, Closed Port Day or public holiday in the place where the Landside Services are being carried out or, in the event that the Landside Services are carried out in more than one Australian State or Territory, in Sydney, New South Wales.

Carrier means a person or entity engaged in a business of scheduling (as road transport company) or transporting Containers to or from a Port by Truck.

Carrier Access Code means the unique code assigned to a Carrier by 1-Stop after successful registration on the VBS and which is to be used when accessing and using the VBS.

Carrier Systems means the comprehensive policies, procedures and systems in relation to compliance with and management of the Carrier's various obligations under the Health and Safety Laws, the Chain of Responsibility Laws, the Dangerous Goods Laws and the Environmental Protection Laws (and all other applicable laws and regulations).

Chain of Responsibility Laws means any law or regulation relating to chain of responsibility obligations, including laws and regulations relating to driver fatigue, fatigue management, speed management, vehicle mass and dimension, vehicle maintenance, loading requirements (including load restraint), towing and coupling requirements, vehicle permits, transport documentation for goods, Container weight declarations, dangerous goods and / or any other matters relating to the safe operation of vehicles, and includes the Heavy Vehicle National Law.

Claim includes a notice, demand, claim, action, litigation, judgment, damage, loss, cost, expense or proceeding however arising, made or brought by or against any person, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or other legal doctrine and whether involving a third party or a party to this Agreement.

Closed Port Day means any days which the relevant port authority or port operator designates as closed port days including, but not limited to, Christmas Day, Good Friday, Anzac Day, Labour Day and Maritime Union of Australia Picnic Day.

Consequential Loss means any indirect, consequential, special or incidental loss or damage.

Contaminant means a noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing or presenting risk of material harm to human health or any other aspect of the environment.

Container means any shipping, freight or intermodal container or other like transport and storage unit for moving goods between locations.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Portal means the online customer portal for Carriers, which is available at <https://vbs.1-stop.biz/SignIn.aspx?ReturnUrl=%2F>.

Damage Notification Procedure means the procedure by which loss / damage (whether suspected or actual) must be reported to Patrick as notified to Carriers via the Driver Induction and Accreditation Training and / or updated by Patrick from time to time.

Dangerous Goods means dangerous goods as defined in the International Maritime Dangerous Goods (IMDG) Code or the Australian Dangerous Goods Code (7th Edition) and any goods / cargo which are or which may become dangerous, volatile, explosive, flammable or offensive or which are or may become harmful to any person, property or the environment.

Dangerous Goods Law means, insofar as it applies to the Jurisdiction, any law or regulation relating to the carriage or storage of Dangerous Goods or hazardous substances.

Dispute means any controversy, Claim or dispute arising out of or in relation to this Agreement.

Driver Induction and Accreditation Training means the Terminal-specific safety and access training provided by Patrick and required to be completed on the 1-Stop Site by the Carrier and each of its Associates who propose to access the Terminal.

EIDO means an Electronic Import Delivery Order.

Environmental Protection Laws means any law or regulation relating to the protection of the environment and / or natural resources, and includes the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

Event of Default means any one or more of the following:

- (a) the Carrier fails to comply with any provision of this Agreement (including the payment of the Annual Registration Fee and any other Rates advertised on the Public Tariff Schedule) which failure is capable of remedy and the Carrier does not remedy that failure within five (5) Business Days after receipt of written notice from Patrick requiring it to be remedied;
- (b) the Carrier fails to comply with any provision of this Agreement (including the payment of the Annual Registration Fee and any other Rates advertised on the Public Tariff Schedule) which failure is not capable of remedy;
- (c) the Carrier repeatedly or persistently breaches this Agreement, regardless of whether those breaches are capable of, or are, remedied;
- (d) the Carrier fails to materially comply with this Agreement, irrespective of whether that failure is capable of remedy (which includes a failure to participate in post incident drug and alcohol testing);
- (e) Patrick has suspended the Carrier's right (or the right of a specific Associate of the Carrier) to use the VBS and / or to access a Terminal under clause 9.1(a)(i), and the Carrier and / or the relevant Associate fails to remedy the breach to Patrick's reasonable satisfaction by the Remedy Date;
- (f) there is a change in control of the Carrier;
- (g) the Carrier is subject to an Insolvency Event; and
- (h) any other event occurs or circumstance arises which, in the reasonable opinion of Patrick, is likely to materially and adversely affect the ability of the Carrier to comply with this Agreement, and that event or those circumstances continue for five (5) Business Days after receipt of written notice to the Carrier from Patrick.

Force Majeure Event means acts of god (storms, cyclones, epidemics, natural disasters etc.), strikes, terrorism, acts of a public enemy, riots, malicious damage, sabotage, and / or any production or operational shutdown which is ordered by a Government Agency or by law or regulation (albeit which is not due to the act or default of the affected party) and other similar events or circumstances, which cause a party to be delayed or unable, wholly or in part, to perform any obligations under this Agreement but which the affected party is not able to prevent or

overcome, or the effects of which the affected party is not reasonably able to predict and take measures to avoid by the exercise of reasonable operational, technical and commercial diligence and prudence.

Government Agency means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law or regulation.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Health and Safety Law means, insofar as it applies to the Jurisdiction, any law or regulation relating to workplace health and safety including the Chain of Responsibility Laws and the SOLAS Requirements.

Heavy Vehicle National Law means the Heavy Vehicle National Law applicable in the relevant Jurisdiction.

Insolvency Event means being in liquidation or provisional liquidation or under administration, having a controller or receiver (as defined in the Corporations Act) or analogous person appointed to it or any of its property (other than for the purpose of restructuring whilst solvent), being taken under section 459F(1) of that Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent.

Interest means the aggregate of the relevant Reserve Bank of Australia Cash Rate Target plus two percent (2%).

Joining / Rejoin Fee means the fee to join or rejoin the VBS as set out in the Public Tariff Schedule.

Jurisdiction means the Australian State or Territory in which the relevant Terminal is located.

Landside Services means the loading or unloading of Containers onto or from Trucks at a Terminal and includes any / all services that are incidental to that loading or unloading.

Liability means any Claim, loss, liability, cost or expense of any kind and however arising (whether in contract, negligence, another tort, the general law, under statute or otherwise), including damages, penalties, fines and interest, whether actual or contingent, known or unknown and including those which are prospective or contingent and those the amount of which, for the time being, is not ascertained or ascertainable. Liable has a corresponding meaning.

Liability Floor Amount means the amount of AU\$1,000.00.

MSIC means a Maritime Security Identification Card.

Month means a calendar month.

No Show Fee means the applicable 'no show fee' charged to a Carrier by the relevant Terminal as specified in the Public Tariff Schedule.

Other Agreement means any other contract incorporating the National Terminal Access Terms & Conditions entered into between the parties and which is in effect at the relevant time.

Patrick means Patrick Stevedores Operations Pty Limited (ABN 33 065 375 840).

Patrick Code of Conduct means the code of conduct applicable to employees and contractual counterparties of Patrick, a copy of which is available on the Patrick website.

Patrick Group means any entity (as defined in the Corporations Act) in which PTH No 1 Pty Ltd (ABN 43 611 116 155) has an equity interest (direct or indirect) of more than 50%.

Patrick Systems means the Patrick Driver Induction and Accreditation Training and all other policies and procedures applicable to the Terminal, including the Terminal Traffic Regulations, and all reasonable directions issued by Patrick including (without limitation) with respect to health and safety matters and drug and alcohol testing.

PPE means personal protective equipment.

PRA means a pre-receival advice.

Port means the port at which the Terminal is located.

Public Tariff Schedule means the schedule of rates / tariffs published on the Patrick website (<http://www.patrick.com.au/conditionsofcontract>) as may be updated by Patrick from time to time.

Rates means the fees, rates, charges and/or tariffs payable by the Carrier to Patrick for the provision of the Landside Services, as set out in the Public Tariff Schedule or as otherwise agreed.

Related Body Corporate has the same meaning as in the Corporations Act.

Remedy Date has the meaning given in clause 9.2(a)(iii).

Slot means the opportunity for the making of a booking within a Time Zone.

SOLAS Requirements means any law or regulation introduced pursuant to the *Safety of Life at Sea (SOLAS) Convention* of the International Maritime Organisation.

Terminal means either of Patrick's Terminals at the Port of Brisbane, Port Botany, the Port of Melbourne or the Port of Fremantle.

Terminal Traffic Regulations means the policies and procedures for the regulation of traffic within a Terminal which are outlined in the Driver Induction and Accreditation Training and displayed at various locations throughout the Terminals and may include, amongst other things:

- (a) specified speed limits;
- (b) requirements that drivers remain inside the Truck cabin whilst inside the Terminal at all times (unless in a designated safe zone, in which case appropriate PPE must be worn);
- (c) a requirement to give way to all Terminal vehicles or emergency vehicles at all times;
- (d) a prohibition on driving under suspended loads;
- (e) a prohibition on driving through Container stacks and cutting corners;
- (f) a requirement to remain on the main roadways; and
- (g) a requirement to maintain awareness of heavy machinery whilst within the Terminal.

Time Zone means the result of the division of each day (other than a Closed Port Day) into twenty-four (24) periods within which a Truck is required to arrive at a Terminal for the purpose of being provided with Landside Services pursuant to a Booking.

Truck means a vehicle used to transport a Container to or from a Terminal by road. A Truck is operated by a Carrier if the Truck is used for the purposes of the business of the Carrier, by the Carrier or by any of its Associates.

Truck Identification Number means the unique identifier of a Truck as registered with Patrick and / or the number of a Truck as displayed on the registered number plates of that Truck.

Truck Trip means the entry and subsequent exit of a Truck into a Terminal pursuant to a Booking for the purpose of receiving Landside Services.

VBS means the vehicle booking system operated by Patrick through the 1-Stop Site.

1-Stop means 1-Stop Connections Pty Ltd (ACN 102 573 544).

1-Stop Site means <https://www.1-stop.biz/tracking/1-stop-gateway/>, being the website platform through which 1-Stop operates the VBS.

11.2. Rules for interpreting this document

The following rules apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
 - (i) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
 - (ii) legislation or a code is to that legislation or code as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) A singular word includes the plural, and vice versa.
- (d) A reference to dollars, AUD or \$ is to an amount in Australian currency (unless the Services Quotation or Rates provide otherwise).
- (e) "Include" and "including" are not words of limitation.
- (f) Where the Carrier is prohibited from acting or omitting to act in a certain way, the Carrier must ensure that each of its Associates complies with such prohibition.
- (g) This agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.
- (h) Time is of the essence in respect of all timeframes set out in this Agreement.
- (i) If a provision or part of a provision of this Agreement is illegal, invalid or unenforceable, then that part or part is severed from this Agreement and this Agreement otherwise remains unaffected.

11.3. Relationship of Patrick entities

- (a) Where more than one entity in the Patrick Group provides the Landside Services, each such entity:
 - (i) will hold the benefit of all rights, indemnities, defences, exclusions, limitations, conditions and liberties of whatever nature under this Agreement for and on behalf of each other entity in the Patrick Group; and
 - (ii) is entitled to enforce those rights for and on behalf of that other entity.
- (b) Where Patrick is deemed to be acting as agent or trustee on behalf of and for the benefit of another entity in the Patrick Group or its Associates, those entities in the Patrick Group or their Associates are, to this extent, deemed to be party to this Agreement and may enforce the terms of this clause 11.3 against the Carrier.