

KIMBERLEY PORTS AUTHORITY
PORT STANDARDS AND PROCEDURES
PORT OF BROOME

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VARIATION RECORD:

Version No.	Version Date:	Brief Description of Change:
7.0	11 May 2010	Complete overhaul of all Port's Terms and Conditions, rolled into one comprehensive document – Commercial Manager.
7.1	August 2015	Update Broome Port Authority to Kimberley Ports Authority.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In these Port Standards and Procedures:

Access Cards means any identification cards required by the KPA for security purposes and any identity cards required under the Maritime Transport and Offshore Facilities Security Act 2003.

Act means the Port Authorities Act 1999 (WA).

AMSA mean the Australian Maritime Safety Authority established under the Australian Maritime Safety Authority Act 1990 (Cth).

Application for Credit means the KPA form "Application for Credit" as amended from time to time. AQIS means the Australian Quarantine and Inspection Service.

Associates means:

- a. in the case of a Port User's associates, all employees, invitees, contractors and agents of a Port User who have entered the Port for any purposes associated with the Port User's interests, business or other activities; and
- b. in the case of the KPA, the KPA's officers and employees.

Berth means a berth allocated by the KPA to the Port User or any other berth in the Port.

Cargo means any solid, liquid or gaseous product, substance or material that is loaded or is intended to be loaded onto or unloaded from or kept aboard a Vessel while it is in the Port.

Costs and Losses means all losses, damages, costs, charges, expenses and other expenditure of whatever nature (including all legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against a party) whether:

- a. arising from or in connection with any demand, notice proceeding or claim or not;
- b. liquidated or not;
- c. present, prospective or contingent; or
- d. owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Cyclone Contingency Plan means the Kimberley Ports Authority Cyclone Contingency Plan available on the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

Emergency means an event, threat or contingency that the KPA considers imminent and will or may adversely affect or endanger any one or more of:

- a. the health or safety of any person;
- b. private or public property of any kind; or
- c. the environment,

in or around the Port.

Emergency Response Plan means the Kimberley Ports Authority Emergency Response Plan available on the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

EPA means the Environmental Protection Authority of Western Australia as established under the EPA Act.

EPA Act means the Environmental Protection Act 1986 (WA).

Equipment means any plant, machinery, equipment or property which is owned, vested in, managed, leased or otherwise controlled by the KPA and made available for use by Port Users.

Facilities means any land, buildings, berths, wharves, jetties, laydown areas and any associated plant, equipment and infrastructure of any kind that is owned, vested in, managed, leased or otherwise controlled by the KPA and made available for use by Port Users including any cranes, loaders, unloaders and conveyors.

Fees and Charges means the Kimberley Ports Authority Schedule of Fees and Charges as amended from time to time, copies of which may be available from the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

Gross Default means any willful or deliberate act or omission on the part of the KPA that is so malicious, calculated, reckless, fraudulent, deceitful or criminal in nature that it amounts to a knowing, fundamental and complete disregard for the commercial interests of a Port User.

Harbour Master means the Port's harbour master and any deputy harbour master, acting harbour master or other person authorised to carry out any harbour master's functions or duties in relation to the Port.

Marine Accident means any event where damage of any kind is caused to any Vessel, person or property.

Marine Incident means any event occurring, which gives rise to a hazardous or potentially hazardous situation, including any pollution occurring within the Port.

Marine Safety Plan means the Marine Safety Plan: Broome available on the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

Mooring Standards means the Kimberley Ports Authority Mooring Standards available on the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

Port means the Port of Broome in Western Australia and any land, water or seabed that is owned by, vested in, occupied or controlled by the KPA from time to time.

Port Standards and Procedures means the rules, rights, powers, obligations, standards, procedures and other provisions contained in this document.

Port User means any person or entity:

- a. in the Port at any time;
- b. using Facilities or Equipment;
- c. who is bound by a lease, licence or other contract with the KPA under which they promise to comply with these Port Standards and Procedures; or
- d. who is the owner, charterer or master of any Vessel in the Port.

Slipway Area means the part of the Port known as the slipway area including the slipway and storage and laydown areas within the slipway area (and being the area shown on the plan attached as Annexure 1).

Slipway Terms means the Kimberley Ports Authority Terms and Conditions for Use of the Slipway and Storage Yard available on the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

Vessel means any vessel visiting the Port.

Vehicle means any:

- a. motor vehicle within the meaning of the Road Traffic Act 1974 (WA); and
- b. any trailer, cart, wagon or other like item attached to a motor vehicle.

Works means any work or service to be performed for the benefit of the KPA or a Port User that requires any Work Permit.

Work Permit means a permit issued by the KPA pursuant to the Work Permit System permitting a Port User to perform works or services in the Port.

Work Permit System means the KPA's work permit system available on the KPA's website at www.kimberleyports.wa.gov.au or from the KPA at the request of a Port User.

1.2. Interpretation

In these Port Standards and Procedures:

- a. an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- b. the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- c. a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- d. a reference to any document (including these Port Standards and Procedures) is to that document as varied, novated, ratified or replaced from time to time;
- e. a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- f. words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- g. references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of these Port Standards and Procedures, and a reference to these Port Standards and Procedures includes any schedule, exhibit or annexure to these Port Standards and Procedures;
- h. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- i. the words "include" and "including" are not words of limitation; and
- j. a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable.

1.3. Port Authorities Act

- a. The Port Standards and Procedures shall augment the KPA's rights, powers, defences, immunities or limitations of liability under the Act. Nothing in or arising out of the Port Standards and Procedures:
 - i. in any way diminishes the KPA's rights, powers, defences, immunities, indemnities or limitations of liability under the Act;
 - ii. in any way fetters any discretions that the KPA has under the Act; or
 - iii. in any way precludes the KPA from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under the Act in relation to any matter concerning the Port, the Port User or any matter arising out of the Port Standards and Procedures.
- b. If there is any inconsistency between anything in the Port Standards and Procedures and anything in the Act, then the Act will prevail to the extent of the inconsistency.

2. APPLICATION OF PORT STANDARDS AND PROCEDURES

- a. Port Users enter the Port on the condition that they agree to observe and be bound by these Port Standards and Procedures.
- b. Any rights that KPA may have that arise out of these Port Standards and Procedures are in addition to any other rights that KPA has at law and in equity.
- c. If any provision in these Port Standards and Procedures is inconsistent with a term in any contract entered into between KPA and the relevant Port User then the provision in the contract will prevail to the extent of any inconsistency.
- d. Where KPA's consent or approval is required by these Port Standards and Procedures, then KPA may in its absolute discretion grant or withhold its consent or approval subject to any conditions that it considers appropriate. In giving or withholding its consent, KPA, shall not under any circumstances be taken as acting as an expert or expressing an opinion on or approving the subject matter of the consent or approval.
- e. KPA may, in its absolute discretion from case to case, enforce, ignore or otherwise deal with any rights that it may have as a consequence of any breach of these Port Standards and Procedures by any Port User.

3. DUTIES OF PORT USERS

3.1. Activities in the Port

With respect to all activities carried on in the Port by a Port User or any of its Associates, the Port User must ensure that it and its Associates:

- a. have all the training and expertise that is necessary to perform the activity;
- b. are properly supervised;
- c. obtain and keep current all necessary consents, approvals, licences and permits relating to the activity;
- d. use procedures, systems and techniques that minimise the risk of injury to persons or property in the Port as far as is reasonably practicable;
- e. do not cause any damage to the Facilities, Equipment or anything else in the Port;
- f. do not injure any person;
- g. conduct the activity in a way that minimises any risk of damage, injury or disruption to the environment in the Port;
- h. do not obstruct or interfere with:

- i. KPA;
- ii. any other activities or operations in the Port; or
- iii. any other Port User, Vessel, person or property in the Port,

except to the extent absolutely necessary to carry out the particular activity (**Necessary Activities**) in a lawful manner; and

- i. carry out all Necessary Activities in consultation with KPA and other Port Users.

3.2. No nuisance

A Port User shall not do or permit anything to be done which may reasonably be considered noxious, noisome, offensive or a nuisance to the KPA or any other Port User.

3.3. Compliance

- a. A Port User must ensure that it and all its Associates at all times comply with:
 - i. all federal and state statutes and all regulations, by-laws, ordinances or orders made under them and the lawful requirements for any public, municipal or other authority so far as they may affect or apply to the Port User or the Port;
 - ii. any directions given by any regulatory authority having jurisdiction over anything done within the Port, including, the police, customs, AMSA, the EPA and AQIS;
 - iii. KPA's directions concerning anything in or relating to the Port, including directions including:
 - A. security, safety, environmental protection or any Emergency; and
 - B. the use of any part of the Port;
 - iv. the Harbour Master's directions concerning anything in or relating to the Port; and
 - v. all requirements set out in the Port Standards and Procedures.
- b. For the purposes of clause 3.3 a iii, a direction given by an Associate of KPA shall be deemed to be a direction given by KPA.

3.4. KPA's access

A Port User must ensure that it and all its Associates permit KPA and its Associates prompt access to:

- a. any Vessel to which the Port User has access rights while it is in the Port;
- b. any property or area of the Port being used, occupied or controlled by the Port User; and
- c. any information that KPA reasonably requires in order to check and monitor compliance with the Port User's obligations under the Port Standards and Procedures.

3.5. Induction

If required by the KPA, Port Users must ensure that it and its Associates undertake appropriate induction procedures or courses prior to entering the Port or particular areas of the Port. The Port User must pay KPA's costs of preparing and presenting each individual course.

3.6. Notification of accidents and incidents

As soon as the Port User or any of its Associates become aware of any Marine Accident, Marine Incident or contamination in or around the Port, damage to the Port, damage to any Facilities or Equipment or injury to any person or any circumstances likely to cause any damage or injury (**Event**):

- a. the Port User shall ensure that KPA is informed of the details immediately; and
- b. if the Port User or any of its Associates are involved in any Event, then the Port User must provide a detailed written report to KPA in respect of the Event and the report shall be provided to KPA within 24 hours of the Port User or any of its Associates becoming aware of the Event.

3.7. Responsibility for operations

The Port User:

- a. will be exclusively responsible for managing and controlling all activities and operations conducted in the Port by it and any of its Associates (**Operations**);
- b. will, while any Operations are being carried out, be exclusively responsible for managing and controlling all areas of the Port that are used in connection with the Operations (**Working Areas**); and
- c. will be exclusively responsible for managing and controlling all of its Associates during Operations and the Port User will be exclusively responsible for managing and controlling all issues and risks associated with the workplace health and safety of its Associates while they are in Working Areas while Operations are being carried out.

Nothing in this clause affects the Port User's obligation to comply with any orders or directions that may be given by KPA or any of its Associates from time to time pursuant to the terms of these Port Standards and Procedures (**Orders and Directions**) and nothing relating to the Orders and Directions in any way diminishes the Port User's exclusive responsibility for management and control of Operations and the Working Areas while any Operations are being carried out.

4. PAYMENT OF FEES AND CHARGES

4.1. Fees and Charges

- a. Unless otherwise agreed in writing, the Fees and Charges will apply with respect to the Port User's use of the Port or any Facilities, services or Equipment.
- b. Unless otherwise agreed or provided for in Fees and Charges, the Port User must pay any amount due to KPA within 14 days of an invoice being issued.

4.2. Application for Credit

If requested by the KPA, the Port User must submit for the KPA's approval a completed Application for Credit. The Port User must ensure that neither it nor any of its Associates uses any Facilities unless the KPA has notified the Port User that the Application for Credit has been approved.

4.3. Provision of security

If requested by the KPA, the Port User must provide a bond, guarantee or other security (**Security**) as security for the performance of the Port User's obligations under these Port Standards and Procedures including the payment of any Fees and Charges for which the Port User is liable. The Security must be in a form acceptable to the KPA and provided promptly upon the request being made.

4.4. Interest on overdue money

The Port User shall pay the KPA interest on all Fees and Charges that are not paid to the KPA by the date that they are due for payment. Interest on all outstanding amounts shall accrue daily at the rate per annum prescribed from time to time by Regulation 119 of the Port Authorities Regulations 2001 (WA) pursuant to section 136 of the Act (**Interest**). Interest may be capitalised by the KPA on the last day of each month and Interest shall be payable by the Port User to the KPA as a debt due on demand.

5. GOODS AND SERVICES TAX

5.1. Definitions

Unless clearly indicated to the contrary, GST and other terms used in this clause 5 (and in other provisions of the Port Standards and Procedures where the GST meanings are expressly intended) have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 or any replacement or other relevant legislation and regulations.

5.2. GST Payable

If GST becomes payable by the supplier of any supply that it makes under, in connection with or resulting from Port Standards and Procedures (**Supplier**), the parties agree that

- a. any consideration provided for that supply under the Port Standards and Procedures other than under this clause 5.2 or any value deemed for GST purposes in relation to that supply (**Agreed Amount**) is exclusive of GST;
- b. an additional amount shall be payable by the recipient of the supply (**Recipient**) equal to the Agreed Amount for that supply multiplied by the applicable rate of GST;
- c. the additional amount is payable in the same manner as for the Agreed Amount and at the same time as any part of the Agreed Amount is to be first provided for that supply; and
- d. the Supplier shall provide, on or prior to the due date for payment, a tax invoice to the Recipient that complies with the requirements of relevant legislation.

5.3. Variation

If, following the payment of an additional amount pursuant to clause a in relation to a supply made by the Supplier, the GST payable by the Supplier to the Australian Taxation Office in respect of that supply varies from the total consideration provided by the Recipient to the Supplier on account of GST on that supply such that:

- a. the Supplier is required to pay a further amount of GST in respect of that supply; or
- b. the Supplier receives a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply,

then the Supplier shall provide a corresponding refund or credit to or shall be entitled to receive the amount of that variation from the Recipient (as appropriate). For the purposes of calculating variations under this clause, any additional amount referred to in clause 5.2 is taken to be amended by the amount of any earlier variation made under this clause.

6. BERTH, FACILITIES AND EQUIPMENT

6.1. Application

A Port User must ensure that neither it nor any of its Associates uses any Berth, Facilities or Equipment, unless such a request has been made to and accepted by KPA or the Harbour Master.

6.2. Availability

- a. Allocation of Berths, Facilities and Equipment is always subject to availability and suitability. KPA will determine availability and suitability in its absolute discretion.
- b. If KPA considers it necessary for any reason, KPA may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify any usage or access rights that are granted with respect to any Berth, Facilities or Equipment.
- c. If KPA exercises any of its rights under clause 6.2 b, nothing will relieve the Port User from any liability accrued nor entitle the Port User to any Costs and Losses.
- d. If KPA considers that a Port User should use certain services, extra resources or equipment in order to ensure safety, security, operational efficiency, general expediency or Port User compliance with any laws or industry standards (**Extra Requirements**) then the Port User must promptly utilise and otherwise comply with any Extra Requirements that are imposed by KPA and the Port User shall pay any applicable usage costs for the Extra Requirements in accordance with the Fees and Charges.

6.3. No warranty

KPA makes no warranty:

- a. about the suitability of the Facilities or Equipment for any use; or
- b. that any of the Facilities or Equipment are clean and free from contaminants.

6.4. Port User's duties

If a Port User uses any Berth, Equipment or Facilities, the Port User must ensure that it and its Associates:

- a. have checked the Berth, Equipment or Facilities prior to their use and are satisfied that the Equipment or Facilities to be used are:
 - i. free from any substances which may damage or contaminate its Cargo or other goods or materials; and
 - ii. in all respects safe to operate,

and the Port User bears all risk associated with any contamination of any Cargo or other goods or materials including any contamination arising in circumstances where KPA or any of its Associates have undertaken any cleaning, wash down, maintenance or other work concerning the Berth, Equipment or Facilities;

- b. follow all operating instructions posted on the Berth, Equipment or Facilities or any directions given by KPA;
- c. treat and care for the Berth, Equipment or Facilities as would a careful and prudent owner in order to prevent any damage to the Berth, Equipment or Facilities;
- d. do not remove any identification marks on the Berth, Equipment or Facilities;

- e. have all the training, expertise, licences and permits necessary to use the Berth, Equipment or Facilities;
- f. only use the Berth, Equipment or Facilities in the manner and for the purpose the Berth, Equipment or Facilities were constructed and in accordance with the manufacturer's specifications and instructions;
- g. keep the Berth, Equipment or Facilities at all times in the exclusive possession, control and operation of the Port User or any of its Associates;
- h. permit KPA and its Associates to inspect the Berth, Equipment or Facilities at any reasonable time;
- i. do not abandon or permit to be abandoned any part of the Equipment or Facilities in any location;
- j. keep the Berth, Equipment or Facilities free from any distress, execution or other legal process and take all reasonable steps to safeguard KPA's title, rights and interests in the Berth, Equipment or Facilities, and not do or permit anything which might reasonably be expected to expose the Berth, Equipment or Facilities to penalty, forfeiture, impounding, detention or destruction;
- k. if the Equipment or Facilities are seized, notify any person seizing the Equipment or Facilities of KPA's interest and immediately notify KPA in writing of the seizure; and
- l. clean and remove any contaminates from the Berth, Equipment or Facilities when the Berth, Equipment or Facilities are no longer required to be used.

6.5. Damage or malfunction

- a. If a Port User or any of its Associates suspect that any damage or malfunction has occurred to any Berth, Equipment or Facilities, the Port User must ensure that:
 - i. the Berth, Equipment or Facilities are not used by the Port User or any of its Associates; and
 - ii. KPA is immediately notified of the damage or malfunction.
- b. KPA shall not be liable to the Port User or any other person for any Costs and Losses that arise from the damage or malfunction of the Berth, Equipment or Facilities for any reason, including any negligence or other tortious conduct on the part of KPA or any of its Associates.
- c. A Port User must at its own cost, repair any damage caused to the Berth, Equipment or Facilities by it or any of its Associates.
- d. If KPA is not satisfied with the condition of Berth, Equipment or Facilities after they have been used by the Port User or any repairs made to the Berth, Equipment or Facilities by the Port User, then KPA and its Associates may do everything necessary to put the Berth, Equipment or Facilities into the condition that they were in prior to their use by the Port User.
- e. Without limiting any of KPA's other rights or remedies, the Port User shall promptly reimburse KPA for all of its Costs and Losses that arise out of anything done by KPA or any of its Associates under clause 6.5 d.

6.6. No proprietary interest

Nothing in these Port Standards and Procedures create any tenancy, estate or proprietary interest of any kind in or over the Berth, Facilities or Equipment.

7. MOORINGS

- a. A Port User must ensure that neither it nor any of its Associates uses or sets any mooring buoys, tackle or other mooring equipment, unless such a request has been made to and accepted by the KPA or the Harbour Master (**Mooring Licence**).
- b. If the KPA grants the Port User a Mooring Licence, the Port User must ensure that it and its Associates comply with the Mooring Standards at all times.

8. SLIPWAY AREA

- a. A Port User must ensure that neither it nor any of its Associates uses or enters the Slipway Area, unless such a request has been made to and accepted by the KPA or the Harbour Master (**Slipway Licence**).
- b. If the KPA grants the Port User a Slipway Licence, the Port User must ensure that it and its Associates comply with the Slipway Terms at all times.

9. WORKS

9.1. Work permits and applications

- a. A Port User must ensure that neither it nor any of its Associates carries out any Works of any kind in the Port without a Work Permit.
- b. If KPA considers it necessary for any reason, KPA may at any time withdraw, suspend, reallocate, terminate or otherwise vary or modify the terms of any Work Permit.
- c. If KPA exercises any of its rights under clause 9.1 b, nothing will relieve the Port User from any liability accrued nor entitle the Port User to any Costs and Losses.

9.2. Port user's duties

If KPA grants a Work Permit to a Port User to perform Works in the Port, the Port User must ensure that it and its Associates:

- a. comply with the Work Permit System;
- b. complete the Works within the time required by KPA;
- c. perform Works in a conscientious, expeditious and workmanlike manner with a high degree of skill, competence and professionalism;
- d. where required by KPA, do not permit or cause any person to provide any part of the Works unless that person is approved by KPA;
- e. do not interfere with any Port User's property or operations in the Port except with KPA's permission;
- f. provide progress reports and any other information concerning the Works as required by KPA;
- g. do not vary, modify or exceed the Works permitted under the Work Permit without KPA's permission;
- h. remove, re-execute, replace or amend any aspects of the Works if required by KPA;
- i. take all necessary precautions to ensure the safety of people and property in the Port; and
- j. supply and wear any safety gear and clothing required to be worn by KPA.

9.3. Notifications required

If KPA grants a Work Permit to a Port User to conduct Works in the Port, the Port User must ensure that KPA is notified:

- a. when the Works have been commenced, suspended or completed;
- b. when the Port User is unable to provide the Works; and

- c. of any accident or incident that occurs in relation to the Works.

10. SAFETY AND SECURITY

10.1. Safety

A Port User must ensure that it and its Associates comply with:

- a. the Cyclone Contingency Plan;
- b. the Marine Safety Plan; and
- c. any other safety procedures or requirements communicated by the KPA to the Port User.

10.2. Security

The Port User must ensure that it and its Associates comply with the KPA's security rules, procedures and requirements relating to the Port, cargo, Vessels, Facilities, Equipment and access to and from the Port when such procedures and requirements are communicated to them. For the purposes of this clause 10.2, where the KPA places the relevant procedures and requirements on its website, it shall be deemed to have communicated those procedures and requirements to the Port User and Port User's Associates.

10.3. Maritime Transport and Offshore Facilities Security Act

The provisions of these Port Standards and Procedures relating to access and security are in addition to the provisions of the Maritime Transport and Offshore Facilities Security Act 2003 which must be observed by all Port Users to whom that Act applies.

10.4. Port Access Cards

- a. A Port User must ensure that it and its Associates:
 - i. wear (if required) or carry valid and current Access Cards;
 - ii. do not cause or permit their Access Cards to be:
 - A. lost;
 - B. damaged;
 - C. used by any other person; or
 - D. worn or carried by any other person;
 - iii. immediately inform KPA of the loss or theft of the Port User's Access Cards; and
 - iv. produce their Access Cards to KPA or its Associates on demand.
- b. KPA and its Associates may do everything necessary to remove a person from the Port if that person does not have any Access Cards.

11. EMERGENCIES

11.1. Emergency Response Plan

A Port User must ensure that it and all of its Associates are aware of and obey the Emergency Response Plan.

11.2. Directions

KPA and its Associates may do everything KPA considers necessary in relation to any Emergency in the Port.

11.3. Port User's duties

In an Emergency, a Port User must ensure that it and all of its Associates:

- a. obey KPA's directions; and
- b. do not obstruct or interfere with any effort by KPA and its Associates to combat or mitigate the effects of the Emergency.

11.4. Interference with emergency equipment

Except in an Emergency, or as directed by KPA, a Port User must ensure that neither it nor any of its Associates deactivates or interferes with any emergency facility or equipment in the Port including any:

- a. life saving and first-aid equipment; or
- b. alarm or signalling device.

11.5. False alarms

- a. A Port User must ensure that neither it nor any of its Associates deliberately raises any false alarm.
- b. Without limiting any of KPA's other rights or remedies, a Port User shall promptly reimburse KPA for all of its Costs and Losses that arise out of or in connection with any deliberate false alarm raised by the Port User or any of its Associates.

12. CONDUCT OF PORT USERS IN THE PORT

12.1. Social functions

The Master or Owner of a Vessel must not permit any social functions (other than functions involving the Vessel's Master and crew and less than 5 invited guests) to occur on the Vessel without KPA's permission.

12.2. Intoxication by drugs or alcohol

- a. A Port User must ensure that neither it nor any of its Associates enter or remain in the Port if intoxicated by drugs or alcohol.
- b. If a person in the Port appears to KPA or its Associates to be intoxicated by drugs or alcohol, then KPA and its Associates may do everything necessary to refuse entry to or remove that person from the Port.
- c. A Port User shall ensure that it and its Associates undergo random drug and alcohol testing immediately at the request of KPA or its Associates.

13. VEHICLES IN THE PORT

13.1. Road legislation

The provisions of these Port Standards and Procedures in relation to Vehicles in the Port are in addition to any State or Federal legislation relating to roads, Vehicles and traffic.

13.2. Drive with care

A Port User must ensure that neither it nor any of its Associates operate a Vehicle in the Port unless it and its Associates:

- a. have all the training, expertise, licences and permits necessary to operate the Vehicle;
- b. drive at a safe speed and within all sign posted speed limits;
- c. drive with due care and attention; and
- d. wear seat belts at all times.

13.3. Insurance

If required by the KPA, a Port User must ensure that neither it nor any of its Associates operates a Vehicle in the Port unless the Port User has insurance on terms acceptable to the KPA.

13.4. Accidents involving Vehicles

If a collision or accident occurs in the Port involving any Vehicle in the possession, custody or control of the Port User or any of its Associates, the Port User must ensure that KPA is notified as soon as possible of the collision or accident specifying:

- a. the time and location of the collision or accident;
- b. the persons involved in the collision or accident;
- c. the events leading up to and during the collision or accident;
- d. any damage to Vehicles, property or people in the Port; and
- e. any other matter that may affect the efficient or safe operation of the Port.

14. ENVIRONMENT

14.1. Environmental legislation

The provisions of these Port Standards and Procedures relating to environmental protection are in addition to the provisions of any State or Federal legislation that relate to the environment.

14.2. Pollution and contamination

- a. A Port User must ensure that it and all of its Associates:
 - i. do all things reasonably necessary to prevent pollutants or contaminants from escaping onto KPA's land or into the Port waters or into the air surrounding the Port;
 - ii. do all things reasonably necessary to contain, minimise the effect of and remove pollutants and contaminants from KPA's land or the Port waters if any pollutants or contaminants escape because of any act or omission by the Port User or any of its Associates;
 - iii. comply with in the event of an oil spill, any directions given by the KPA or the Harbour Master; and

- iv. comply with any requirements relating to pollution and contamination set out in the Marine Safety Plan and Emergency Response Plan.
- b. The Port User must ensure that KPA, the Harbour Master and the EPA is immediately notified of any pollution or contamination that has occurred in the Port.
- c. If KPA is not satisfied with anything done by a Port User under clause 14.2 a KPA may do everything necessary to contain, clean-up and mitigate the effect of any contamination or pollution.
- d. KPA is not liable to any person for Costs and Losses that arise out of or in connection with any contamination or any pollution, including anything done by KPA or any of its Associates under clause 14.2 c.
- e. Without limiting KPA's other rights or remedies, the relevant Port User shall promptly reimburse KPA for all of its Costs and Losses that arise out of anything done by KPA or any of its Associates under clause 14.2 c.

14.3. Duty to notify

A Port User must ensure that it and all of its Associates:

- a. give KPA immediate notice of actual or potential environmental hazard that the Port User or any of its Associates becomes aware of in relation to anything in the Port; and
- b. produce on demand any information reasonably required by KPA in relation to any actual or potential environmental hazard in the Port.

14.4. Interference with marine life

- a. Subject to clause 14.4(b) below, a Port User must ensure that neither it nor any of its Associates remove, kill, damage or otherwise interfere with any form of animal or plant marine life from anywhere in the Port without KPA's permission.
- b. A Port User may fish on the link bridge walkway and outside the Maritime Security Zone (save for the shipping channels used to access the wharf). Bag limits and other legislation governing fishing and the operation of vessels continue to apply.

15. INSURANCE

15.1. Insurance cover

If required by the KPA, the Port User shall effect and maintain any insurance cover designated by the KPA and the Port User shall comply with any requirements promptly.

15.2. Claims

If requested by the KPA, the Port User shall make and pursue a claim under its insurance policies in circumstances where:

- a. a breach of the Contract has occurred and some or all of the resulting loss or damage (**Loss or Damage**) is covered under the Port User's insurance policies;
- b. there are reasonable prospects of the claim succeeding; and
- c. some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,

however, this clause shall not apply in circumstances where the Port User is ready willing and able to pay for the Loss or Damage on its own account.

16. LIABILITY LIMITED

Except to the extent that any rights or warranties cannot be excluded or limited at law, the liability of the KPA to the Port User for anything arising out of the Port Standards and Procedures or any agreement incorporating the Port Standards and Procedures will be limited at the election of the KPA to:

- a. the resupply of equivalent services, Facilities or Equipment; or
- b. the payment of the cost of having the services, Facilities or Equipment supplied again.

Nothing in this clause in any way limits any of the KPA's immunities under the Act.

17. LIMITATIONS AND EXCLUSIONS

17.1. *Limitations*

Regardless of any contributing acts or omissions on the part of the KPA or any of its employees, agents or contractors (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be), the KPA does not and will not owe any Port User any duty of care in relation to, or be responsible for or liable to the Port User for:

- a. anything arising out of the activities, acts or omissions (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be) of any other Port User;
- b. anything arising out of circumstances where any Equipment or Facilities are being used, have been used or are going to be used to handle different products or materials from time to time (regardless of any product or materials incompatibility, regardless of any product or materials contamination and regardless of the risk of cross product or cross material contamination);
- c. anything arising out of any access or egress delays or delays of any other kind that occur in relation to anything concerning the Port including any Vessel delays and delays caused by shutdowns, construction works, earth works, road closures or product or materials handling exclusion zones;
- d. anything arising out of the temporary or permanent closure of any part of the Port for any reason;
- e. anything arising out of theft or disappearance of anything that is in the possession, custody or control of the Port User or its Associates while that property is in the Port (excluding theft by any KPA employee);
- f. anything arising out of any security breach, security failure or lack of security anywhere in the Port;
- g. any interruption to the supply of water, gas, electricity, phone service, lighting or other services; or
- h. any loss or damage suffered by the Port User as a consequence of any breakage, blockage or overflow of any sewer, storm water drain, waste drain or pipe or any water runoff from any other parts of the Port or any neighboring land.

17.2. *Acknowledgments*

Nothing in any circumstances whatsoever:

- a. obliges the KPA to stop (either temporarily or permanently) any third party from carrying on any activity in the Port in order to enable the Port User to do anything or to protect a Port User's interests or protect any property owned by or in the possession, custody or control of the Port User;

- b. precludes the KPA from granting third parties rights to use any part of the Port or anything in the Port for any purpose;
- c. is intended to create any duty of care on the KPA's part in favour of the Port User; or
- d. is intended to incorporate into these Port Standards and Procedures any implied obligations or implied responsibilities of any kind on the KPA's part in favour of the Port User.

17.3. Qualifications and Clarifications

- a. Nothing in clause 17.1 is intended to relieve the KPA from liability in relation to anything that arises out of Gross Default on the KPA's part.
- b. Clauses 17.1 and 17.2 are intended to provide KPA with absolute and complete defences and limitations to any claims that a Port User may have against KPA at law or in equity in relation to the matters covered in those clauses (**Excluded Matters**) and the defences and limitations shall be available to KPA as complete defences and absolute bars to any claims that any Port User may have or make with respect to the Excluded Matters including breach of contract or indemnity claims, claims in tort and claims pursuant to any other cause of action available to a Port User at law or in equity.

17.4. Act and Regulations

All provisions in the Act and its regulations that state that a port authority is not liable or does not become liable in relation to anything are deemed to be incorporated into these Port Standards and Procedures as contractual provisions and shall limit the KPA's liability.

18. LIABILITY OF KPA DIRECTORS

The Port User will not under any circumstances take action, sue or initiate any proceedings of any kind against any director of the KPA for damages or compensation or any other remedy at law or in equity arising out of or relating to the death of or injury to any person while they are in the Port. However, this clause does not apply in circumstances where the death of or injury to a person is personally and physically inflicted by a director of the KPA. It is the intention of this clause to provide each director of the KPA from time to time with:

- a. an absolute and complete defence and bar to all claims that the Port User may have against the director at law or in equity in relation to the death of or injury to any person while they are in the Port including claims based on negligence or any other tort or cause of action; and
- b. a direct and personal benefit and the intention is that each director of the KPA from time to time may personally enforce the provisions of this clause in the same manner as if the director was a party to this agreement.

19. RIGHTS OVER PORT USER'S PROPERTY

- a. The KPA may exercise a right of lien and retention (**Right of Lien**) over the property of a Port User to secure:
 - i. payment of all Fees and Charges for which the Port User is liable and for which a demand for payment has been made by the KPA; or
 - ii. the Port User's performance of all its obligations under the Port Standards and Procedures or any agreement in which the Port Standards and Procedures have been incorporated.



- b. In exercising the Right of Lien, the KPA may seize and detain the Port User's property until all monies owing are paid and all costs and expenses associated with the Right of Lien are recovered from the Port User as a debt due on demand.

20. GENERAL

20.1. *Governing law*

The agreement formed between the Port User and the KPA incorporating the Port Standards and Procedures is governed by and will be construed in accordance with the laws of Western Australia and the Port User irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.