



**KIMBERLEY
PORTS**
AUTHORITY

PORT STANDARDS AND PROCEDURES

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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.
8.0	December 2018	Various changes throughout document.
9.0	September 2021	Various changes throughout document.

1 Definitions and interpretation

1.1 Definitions

In these Port Standards and Procedures:

Access Cards means any identification cards required:

- (a) by KPA for security or induction purposes; or
- (b) under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth), commonly known as MSIC.

Act means the *Port Authorities Act 1999* (WA).

Affiliate means a Related Corporation or any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to "control" another if it owns directly or indirectly more than fifty per cent of either of the following:

- (a) the shares entitled to vote at a general election of directors of such other entity; and
- (b) the voting interest in such other entity if such entity does not have either shares or directors.

Alcohol and Other Drugs Procedure means any KPA alcohol and other drugs procedure for the Port that is made available on the Website from time to time or provided by KPA at the request of a Port User.

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

Application for Credit means KPA's form "Credit Application Form" which is published on the Website from time to time or provided by KPA at the request of a Port User.

Application for a Berth, Facilities or Services means KPA's standard form headed "Berth Request Application", together with any other document that has the same purpose published on the Website from time to time or provided by KPA at the request of a Port User.

Associates means:

- (a) in the case of a Port User:
 - (i) all Affiliates, employees, officers, contractors, agents, invitees and consultants of the Port User; and
 - (ii) all Affiliates, employees, officers, contractors, agents, invitees and consultants of the Port User's Affiliates, contractors, agents and consultants,

excluding:

- (A) any of the Port User's invitees or the invitees of any Port User's Affiliate who are not in, or were not in, the Port at any relevant time;
- (B) any of the Port User's contractors, agents or consultants that are not performing services for or contractually required to be performing services for, or were not performing services for or were not contractually required to be performing services for, the User at any relevant time;
- (C) any contractors, agents or consultants of a Port User's Affiliate that are not performing services for or contractually required to be performing services for, the Port User's Affiliate at any relevant time; and
- (D) KPA and all of KPA's Associates,

and for the purposes of (B) and (C), "services" includes supplying goods and any directly related pre-services commencement activities and post-services completion activities carried out in the Port such as rubbish removal, truck or equipment wash-downs, storage or pack-up services concerning service related equipment or materials and exiting the Port; and

- (b) in the case of KPA, KPA's officers and employees.

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

Cargo means any products, minerals, commodities, articles, goods, materials, machinery, plant, equipment, merchandise, food or wares (whether solid, liquid or gas), carried or to be carried on board any Vessel and includes containers, fuel and water.

Claim means any action, suit, claim, proceeding, demand or counterclaim for loss, damages or compensation of any nature whatsoever, and howsoever arising out of, or relating to, or connected with any event or set of facts whether:

- (a) present, unascertained, intermediate, future or contingent;
- (b) in tort (including negligence), or under any statute, or by reason of any other principle, whether legal, equitable or statutory; or
- (c) arising or resulting directly or indirectly, from any conduct, statement, representation, information or advice done, made or given, or omitted to be done, made or given, whether negligently or otherwise, in relation to that event or set of facts.

Consequential Loss means any incidental, punitive, special or economic loss, expense or damage including loss of profit, loss of revenue, loss of opportunity or demurrage charges, whether direct or indirect, suffered by anyone (including third parties) as a result of any act or omission that arises out of or in connection with any person's access to or use of the Port or the provision of any Services by KPA or any of its Associates or contractors.

Contamination has a meaning consistent with the meaning given to "contaminated" in the *Contaminated Sites Act 2003* (WA).

Costs and Losses means all losses, damages, costs, charges, expenses and other expenditure of whatever nature (including all legal fees, costs and disbursements) 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.

Credit Limit means, with respect to a Port User, the credit limit stipulated in the approved Application for Credit with respect to that Port User.

Cyclone Contingency Procedure means the Kimberley Ports Authority Cyclone Contingency Procedure published on the Website from time to time or provided by KPA at the request of a Port User.

Dangerous Goods Rules has the meaning given in clause 7.8(b).

DAWE means the Department of Agriculture, Water and Environment.

Delay means:

- (a) any delay in the commencement of or performance of all or any aspect of the Services; or

- (b) any delay to the berthing, loading, unloading or departure of any Vessel or Vehicle; or
- (c) any delay in the receipt or delivery of anything,

however arising including delays arising out of any breach of any agreement for KPA to provide any Services and including delays arising out of any negligent or wrongful acts or omissions on the part of KPA or any of its Associates or contractors.

Emergency means an event, threat, contingency or concern that KPA considers present or imminent and considers will or may:

- (a) adversely affect or endanger any one or more of.
 - (i) the health or safety of any person;
 - (ii) private or public property of any kind; or
 - (iii) the Environment,
 in or around the Port,
- (b) have a materially adverse effect on, or interfere with, the safe or efficient operation of any ongoing, scheduled or planned activity in the Port; or
- (c) compromise security in relation to anything in the Port.

Emergency Response Procedures means any KPA Emergency Response Procedures for the Port that are made available on the Website from time to time or provided by KPA at the request of a Port User.

Environment has the same meaning as given in the *Environmental Protection Act 1986 (WA)*.

Environmental Incident means:

- (a) any spill, Contamination, Pollution or Environmental hazard in the Port or any surrounding areas; or
- (b) any situation that is potentially hazardous to the Environment which poses or is likely to pose an imminent threat to the Environment in the Port or any surrounding areas.

Environmental Management Plan has the meaning given in clause 16.9(a)(i).

EPA means the Environmental Protection Authority of Western Australia as established under 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 KPA or any of its Associates or contractors.

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 KPA or any of its Associates or contractors including the Slipway Area and any cranes, loaders, unloaders and conveyors.

Fees and Charges means any KPA Schedule of Fees and Charges for the Port published on Website from time to time or provided by KPA at the request of a Port User.

Force Majeure Event means any situation beyond the reasonable control of KPA or any of its Associates or contractors which interferes with or prevents the performance of any Services work.

Good Industry Practice means adherence to a high standard of practice which includes:

- (c) the exercise of the degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified Port user under similar circumstances applicable to the Port User in accessing and using the Port; and

- (d) the exercise of reasonable judgment and decision making in a manner that promotes operational reliability and efficiency, safety, security, Environmental protection and expedition.

Gross Default means any wilful or deliberate act or omission on the part of 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 the 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.

Hazardous Substance includes any radioactive substances, industrial waste, volatile, inflammable or explosive substances, chemicals, and associated items of a hazardous or potentially hazardous nature.

Intoxicated State means a person who is under the influence of alcohol or drugs other than drugs properly used for medical purposes.

Kimberley Ports Authority Contractor's Handbook means any contractor's handbook published on the Website from time to time or provided by KPA at the request of a Port User.

KPA means Kimberley Ports Authority ABN 56 780 427 150 being the entity operating under the Act in which the Port is vested.

KPA Traffic Management SOP means KPA's traffic management standard operating procedure as issued and amended by KPA from time to time or provided by KPA at the request of the Port User.

Marine Accident means any event where material damage of any kind is caused to any Vessel, person or property during the course of using the Port.

Marine Incident means an event occurring during the course of the Port User or any of its Associates using the Port that gives rise to a hazardous or potentially hazardous situation on, in or in the vicinity of the Port waters that would not normally occur during the course of using the Port.

Marine Safety Plan means any marine safety plan which is provided by KPA at the request of a Port User from time to time.

Maritime Security Zone means the security zone delineated on the security zone maps, published on the Website from time to time or provided by KPA at the request of a Port User.

Mooring Procedures means any mooring procedures which are published on the Website from time to time or provided by KPA at the request of a Port User.

Owner means the owner of a Vessel and includes any charterer of the Vessel.

Permissible Delay means any Delay (other than a Delay to the extent that it is caused by a Gross Default on the part of KPA or any of its Associates) including, without limitation, any Delay to the extent that it is caused by or contributed to or arises out of:

- (a) the Facilities or anything else that is necessary to provide Services;
- (b) the unavailability of Berths for any reason;
- (c) Equipment loading or unloading rates;
- (d) prior reservations or extended use of Facilities or Equipment or anything in the Port by KPA or any of its Associates or any other Port users;
- (e) strikes, stoppages or any other industrial disturbances affecting the Port;
- (f) Port congestion of any kind (including Vessel or Vehicle queues that arise for any reason);

- (g) any act or omission on the part of the Port User or any of its Associates or the beneficiary of any Services work;
- (h) any act, omission, decision or direction of the Harbour Master or any Vehicle traffic controller;
- (i) any act, omission, decision or requirement of the master or crew of any Vessel or any truck driver;
- (j) any damage to or the breakdown or shut down of any of the Facilities, any item of Equipment or anything else in the Port;
- (k) any circumstances arising out of any breach by the Port User of any of its obligations under these Port Standards and Procedures; and
- (l) any Delay to the extent that it arises as a consequence of any act, omission, decision or direction on the part of KPA or any of its Associates or contractors relating to:
 - (i) the safety of any person, Vessel, truck or property;
 - (ii) any security issue, security concern or any Emergency;
 - (iii) the compliance with any law or any ministerial direction or Ministerial request;
 - (iv) any Vessel, berthing, mooring or navigation matter;
 - (v) any issue concerning the Environment;
 - (vi) any Dangerous Goods Rules; or
 - (vii) any maintenance, repair, upgrade, capital or replacement works including any shut downs for any kind of maintenance, repair or other works purpose regardless of how long those shut downs might be.

Permit to Work System means any work permit system or rules adopted by KPA published on the Website from time to time or provided by KPA at the request of a Port User.

Plan means each of the Safety and Response Plan, Environmental Management Plan, Security Plan and Traffic Management Plan.

Pollution has the meaning given in the *Environmental Protection Act 1986* (WA).

Port means the Port of Broome in Western Australia and any land, water or seabed that is owned by, vested in, occupied or controlled or managed by KPA in that port from time to time. Where the context permits, the expression "Port" includes any part thereof.

Port and Terminal Handbook means the document prepared by KPA and published on the Website from time to time or provided by KPA at the request of a Port User.

Port Development Guidelines means all development guidelines pertaining to the Port and published on the Website from time to time or provided by KPA at the request of a Port User.

Port HSE Slipway Guidelines means all guidelines pertaining to health, safety and environment at the Slipway Area.

Port Standards and Procedures means the rules, rights, powers, obligations, standards, procedures and other provisions contained in this document as amended by KPA from time to time.

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 any other contract with KPA under which they promise to comply with these Port Standards and Procedures; or
- (d) who is the owner, charterer, master or vessel manager of any Vessel in the Port.

Port User's Contract means:

- (a) the contract between KPA and the Port User that is formed pursuant to clause 3(a); or
- (b) any other contract under which a Port User promises to comply with these Port Standards and Procedures.

Port User's Vessel means the Vessel specified in an Application for a Berth, Facilities or Services that is submitted to KPA and any subsequent Vessel that is owned by, chartered by or managed by the Port User that enters the Port at any time.

Related Corporation means a related body corporate as defined in the *Corporations Act 2001* (Cth).

Safety and Response Plan has the meaning given in clause 16.9(a)(i).

SDR means Special Drawing Right (being the unit of currency of the International Monetary Fund as used, amongst other things, to calculate payment for lost or damaged goods under the *Carriage of Goods by Sea Act 1999* (Cth)).

Security Plan has the meaning given in clause 16.9(a)(iii).

Security Procedures means any other document pertaining to security policies, procedures or standards applicable to the use of the Port which is published on the Website or provided by KPA at the request of a Port User.

Services means any services that are provided by or arranged by KPA including any stevedoring or Cargo handling services of any kind.

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 A.

Slipway Area Application means KPA's standard form headed "Slipway Area Application Form and Contract Formation", together with any other document that has the same purpose published on the Website from time to time or provided by KPA at the request of a Port User.

Traffic Management Plan has the meaning given in clause 16.9(a)(iv).

Transport Provider means any Truck transport provider engaged by the Port User or any of its Associates to deliver goods or Cargo to the Port or to haul goods or Cargo from the Port.

Truck means any truck that is used or is to be used for the purposes of transporting good or Cargo to the Port or hauling goods or Cargo from the Port.

Vessel has the meaning given in the Act.

Vehicle means any:

- (a) motor vehicle within the meaning of the *Road Traffic (Administration) Act 2008* (WA); and
- (b) any trailer, cart, wagon or other like item attached to a motor vehicle.

Website means the website found at www.kimberleyports.wa.gov.au containing information about the Port or any other website advised by KPA from time to time.

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

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

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, amended, novated, ratified or replaced from time to time and, in the case of any KPA plan, policy, standard or procedure, includes any replacement plan, policy, standard or procedure addressing substantially the same subject matter and whatever that replacement plan, policy, standard or procedure is called;
- (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) where KPA places procedures, requirements, policies, rules, standards, provisions, systems, guides, plans or other information (**Information**) or documents on the Website, it shall be deemed to have communicated the Information or the content of those documents to the Port User as soon as the information is placed on the Website;
- (j) the words "include" and "including" are not words of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency;
- (l) any provision of these Port Standards and Procedures which is stated to, or otherwise intended (on its face) to, operate or continue to operate after termination survives termination of the Port User's Contract into which they are incorporated, along with any other provisions of these Port Standards and Procedures which are necessary to give effect to such surviving provision in order to interpret or enforce it; and
- (m) 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) All of KPA's rights, powers, defences, immunities, indemnities or limitations of liability under the Act augment KPA's rights and powers under these Port Standards and

Procedures and the Port User and KPA agree that nothing in or arising out of these Port Standards and Procedures in any way:

- (i) diminishes KPA's rights, powers, defences, immunities, indemnities or limitations of liability under the Act;
 - (ii) fetters any discretions that KPA has under the Act; or
 - (iii) precludes 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 concerning the Port or any matter arising out of or relating to these Port Standards and Procedures.
- (b) If there is any inconsistency between anything in these Port Standards and Procedures and anything in the Act, then the Act always prevails and overrides the terms of these Port Standards and Procedures.

2 Application of Port Standards and Procedures

- (a) In consideration for and as a strict condition of KPA allowing anyone entry into the Port, everyone who enters the Port is bound to observe and comply with 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 and augment any other rights that KPA has at law or in equity.
- (c) If any provision in these Port Standards and Procedures is inconsistent with any other provision in any Port User's Contract then the other provision in the Port User's Contract will prevail to the extent of the 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.
- (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 Contract formation

- (a) The Port User is automatically and irrevocably bound by a contract with KPA, which comprises the Port User's Application for a Berth, Facilities or Services (if applicable) or Application for Credit (if applicable), the Port Standards and Procedures and the Fees and Charges as soon as one of the following events occur or arise:
 - (i) the Port User's Vessel enters the Port following lodgement of an Application for a Berth, Facilities or Services;
 - (ii) the Port User or a Port User's Associate enters the Port following lodgement of an Application for a Berth, Facilities or Services;
 - (iii) the Port User utilises any Berth, Services, Facilities or Equipment;
 - (iv) the Port User lodges an Application for Credit and it is approved by KPA; or
 - (v) the Port User lodges a Slipway Area Application and it is approved by KPA.
- (b) The provisions of this clause 3 shall survive the termination or expiry of every Port User's Contract.

4 Duties of Port Users

4.1 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, property or the Environment 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) 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 Interference**) in a lawful manner and the Port User must consult with KPA and affected Port Users before causing any Necessary Interference.

4.2 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 KPA or any other Port User.

4.3 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 DAWE;
 - (iii) KPA's directions (which may be given by KPA's Associates) concerning anything in or relating to the Port, including directions:
 - (A) relating to security, safety, Environmental protection or any Emergency;
 - (B) the use of any part of the Port including any Equipment or Facilities;
 - (C) to comply with any of the User's obligations under these Port Standards and Procedures; and
 - (D) given by KPA from time to time in relation to the day to day control of Vehicle and pedestrian traffic in the Port; and
 - (iv) the Harbour Master's directions concerning anything in or relating to the Port including marine notices issued by the Harbour Master; and

- (v) all requirements set out in these Port Standards and Procedures.
- (b) If the Port User or any of its Associates fails to comply with a direction given by KPA, KPA, its Associates and contractors may do anything that KPA considers necessary to give effect to the direction.
- (c) Without limiting KPA's other rights and remedies, the Port User must reimburse KPA for all its reasonable costs, losses and damages that arise out of anything done by KPA or its Associates under clause 4.3(b).
- (d) For the purposes of clauses 4.3(a)(iii) and 4.3(b), a direction given by an Associate of KPA shall be deemed to be a direction given by KPA.

4.4 **KPA's access**

A Port User must ensure that it and all its Associates permit KPA and its Associates, contractors and agents 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;
- (c) all areas of the Berth and all Equipment and Facilities that are being used occupied or controlled by the Port User; and
- (d) any information that KPA reasonably requires,

in order to check and monitor compliance with the Port User's obligations under these Port Standards and Procedures.

4.5 **Induction**

If required by KPA, the Port User 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.

4.6 **Notification of accidents and incidents**

The Port User must promptly notify KPA in writing and must comply with all statutory requirements to give prompt notice of any of the following events as soon as it or any of its Associates become aware of their occurrence:

- (a) any Marine Accident;
- (b) any Marine Incident;
- (c) any Environmental Incident;
- (d) any suspected security breach or security threat; or
- (e) any material accident or any circumstances likely to cause any material danger, risk or hazard to:
 - (i) in the Port; or
 - (ii) to any person in the Port.

(each an **Event**).

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 within 24 hours of the Port User or any of its Associates becoming aware of the Event.

5 Payment of Fees and Charges

5.1 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 the Fees and Charges, the Port User must pay any amount due to KPA within 14 days of an invoice being issued.
- (c) If any of the Port User's Associates seek to charge KPA a collection fee, charge or impost of any kind on KPA's Fees and Charges, then KPA may issue a further invoice to recoup the costs of the collection fee.

5.2 Application for Credit

- (a) If requested by KPA, the Port User must submit for KPA's approval a completed Application for Credit. Where the Port User is required to submit an Application for Credit, the Port User must ensure that neither it nor any of its Associates uses any Equipment or Facilities unless KPA has notified the Port User that the Application for Credit has been approved.
- (b) KPA agrees to review and assess any Application for Credit that is lodged.
- (c) If KPA approves and Application for Credit in respect of the Port User, the Port User must not exceed the Credit Limit without KPA's prior written agreement.
- (d) If a Port User wants to, or wants a Port User's Vessel or any of the Port User's Associates to, enter the Port or utilise any Berth, Services Facilities or Equipment, without an approved Application for Credit, KPA may require the Port User to pay for such entry or utilisation in advance by cash, credit card or electronic funds transfer (as KPA directs).

5.3 Provision of security

If requested by 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 KPA and provided promptly upon the request being made. If the Port User does not provide and maintain any Security required in accordance with this clause, KPA may terminate or suspend:

- (a) the provision of any Services; or
- (b) the Port User's access to and use of the Port.

5.4 Interest on overdue money

The Port User shall pay KPA interest on all Fees and Charges that are not paid to 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 KPA on the last day of each month and interest shall be payable by the Port User to KPA as a debt due on demand.

5.5 Costs of recovery of overdue money

The Port User indemnifies KPA from and against all costs, losses and expenses (including legal expenses) incurred in collecting money due but unpaid under the Port User's Contract.

5.6 Fees and Charges immediately payable

Despite anything to the contrary contained elsewhere in the Port User's Contract or any invoice rendered by KPA, all Fees and Charges become immediately due and payable as soon as any of the following events occurs:

- (a) if the Port User (or any person or entity comprising the Port User) goes into bankruptcy or enters into liquidation or a receiver, administrator or controller is appointed with respect to the Port User whether compulsory or voluntary (except for the purposes of amalgamation or reconstruction); or
- (b) the Port User fails to comply with any of its obligations under the Port User's Contract.

6 Goods and Services Tax

6.1 Definitions

Unless clearly indicated to the contrary, GST and other terms used in this clause 6 (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* (Cth) or any replacement or other relevant legislation and regulations.

6.2 GST Payable

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

- (a) any consideration provided for that supply under these Port Standards and Procedures other than under this clause 6.2 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.

6.3 Variation

If, following the payment of an additional amount pursuant to clause 6.2(b) 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 the Recipient 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 6.2 is taken to be amended by the amount of any earlier variation made under this clause.

7 Berth, other Facilities, Equipment and Services

7.1 Application

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

7.2 Availability

- (a) Allocation of Berths, other Facilities, Services 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, other Facilities, Services or Equipment.
- (c) If KPA exercises any of its rights under clause 7.2(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.

7.3 Change of Berth

KPA may in its sole discretion require the Port User's Vessel to change Berth. Any such change of Berth will be at the Port User's cost.

7.4 No warranty

KPA makes no warranty:

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

7.5 Port User's duties

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

- (a) have checked the Berth, other Facilities or Equipment 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, contractors or agents have undertaken any cleaning, wash down, maintenance or other work concerning the Berth, other Facilities or Equipment;

- (b) follow all operating instructions posted on the Berth, other Facilities or Equipment or any directions given by KPA;

- (c) treat and care for the Berth, other Facilities or Equipment as would a careful and prudent owner in order to prevent any damage to the Berth, other Facilities or Equipment;
- (d) do not remove any identification marks on the Berth, other Facilities or Equipment;
- (e) have all the training, expertise, licences and permits necessary to use the Berth, other Facilities or Equipment;
- (f) only use the Berth, other Facilities or Equipment in the manner and for the purpose the Berth, other Facilities or Equipment were constructed and in accordance with the manufacturer's specifications and instructions;

7.6 **Damage or malfunction**

- (a) If a Port User or any of its Associates suspect that any damage or malfunction has occurred to any Berth, other Facilities or Equipment, the Port User must ensure that:
 - (i) the Berth, other Facilities or Equipment 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, other Facilities or Equipment 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 not repair any damage caused to the Berth, other Facilities or Equipment. If any damage to the Berth, other Facilities or Equipment is caused by a Port User or any of its Associates then KPA may repair all or part of the damage in its absolute discretion and KPA's costs with respect to any repairs must be paid by the Port User within 30 days of KPA issuing a written demand for payment to the relevant Port User together with a summary of the relevant repair costs.
- (d) A Port User must ensure that any Berth, other Facilities or Equipment used by the Port User or any of its Associates is left in a clean condition after use (having regard to the state of cleanliness immediately prior to use). If KPA is not satisfied with the cleanliness of any Berth, other Facilities or Equipment after they have been used by a Port User or any of its Associates then KPA may carry out clean-up works to put the Berth, other Facilities or Equipment into the condition that they were in prior to their use by the Port User and KPA's costs with respect to any clean up works must be paid by the Port User within 30 days of KPA issuing a written demand for payment to the relevant Port User together with a summary of the relevant clean-up costs.

7.7 **No proprietary interest**

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

7.8 **Dangerous Goods in Port**

The Port User acknowledges and agrees that:

- (a) other Port users import and export Hazardous Substances to and from the Port (**Dangerous Goods**);
- (b) as a consequence of the movement of Dangerous Goods in the Port, KPA may make or be required to make rules (**Dangerous Goods Rules**), which may affect other Port Users' access to or efficient use of the Port;
- (c) as a consequence of Dangerous Goods Rules and the movement of Dangerous Goods through the Port, the Port User may incur delays or may be restricted from accessing

certain parts of the Port or the Port waters, resulting in costs and expenses being incurred by the Port User, such as demurrage fees;

- (d) it will promptly comply with Dangerous Goods Rules; and
- (e) KPA is not liable for anything arising out of the application of any Dangerous Goods Rules or the movement of any Dangerous Goods in the Port.

7.9 Port User's plant, equipment and Vessel's gear

If KPA or any of KPA's Associates use any plant or equipment provided by the Port User or any of its Associates (including cranes, lifting gear or Vessel gear of any kind) (**Non-KPA Equipment**) to carry out any Services for the benefit of the Port User, the Port User must ensure that the Non-KPA Equipment:

- (a) is fit for the purpose it is to be used for;
- (b) is in a good, safe and operable condition; and
- (c) complies with all relevant Australian standards and laws,

and the Port User must notify KPA or the KPA's Associates who are scheduled to use the Non-KPA Equipment of the safe methods of operation and any operational constraints of the Non-KPA Equipment prior to the Non-KPA Equipment being used by KPA or any of its Associates.

8 Moorings

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

9 Slipway Area

9.1 Use at own risk

The Port User enters and uses the Slipway Area entirely at its own risk and will have no legal recourse against KPA or any of KPA's Associates in cases where any person is injured or where any property is damaged (regardless of any cause of action that may exist for occupiers liability or negligence and regardless of any cause of action that may arise out of any wrongful acts or omissions on the part of KPA or any of its Associates, contractors or agents).

9.2 No warranties or duty of care

KPA does not:

- (a) owe the Port User any duty of care in relation to the Slipway Area; or
- (b) warrant, represent or otherwise hold out that the Slipway Area or anything in the Slipway Area:
 - (i) is safe; or
 - (ii) is suitable for any use or purpose.

9.3 Slipway indemnity

The Port User must indemnify KPA and keep KPA indemnified from and against all actions, Claims, notices, demands, Costs and Losses that KPA may suffer or incur as a result of anything arising out of the death of or injury to any person or the damage to or loss of any property

including any Claims for negligence, Claim based on occupiers' liability or any other Claims in tort made by anyone against KPA to the extent that the Claim relates to anything concerning the Slipway Area.

9.4 **Slipway works**

A Port User must ensure that it and its Associates comply with the Permit for Work System and the Port HSE Slipway Guidelines with respect to any use of the Slipway.

10 **Development applications and guidelines**

A Port User must not commence any construction, demolition, alterations or installations until it has submitted and had approved by KPA an application for development approval as required by the Port Development Guidelines. All applications for development approval must comply with the Port Development Guidelines.

11 **Licence to use Slipway Area**

If, pursuant to the Port User's Contract, the Port User is entitled to access the Slipway, the Port User has a contractual licence to enter and use the Slipway Area and the term of the licence, unless the Port User's Contract provides otherwise, runs for the following period (unless terminated earlier):

- (a) the term designated by KPA in any authorisation or permit or Slipway Area Application (**Fixed Term**); or
- (b) a term that runs at the will of KPA, being a term that KPA can terminate with immediate effect at any time and for any reason by KPA giving the User notice of termination (being a notice that KPA may give verbally or in writing at KPA's discretion) (**Ad Hoc Term**).

In cases where a Fixed Term or an Ad Hoc Term has expired or has been terminated, the Port User's Contract continues to bind the Port User every time the Port User or any of its Associates enters the Slipway Area after the time of expiry or termination (**Expiry Point**). In the absence of any new Fixed Term being designated by KPA after an Expiry Point, the Ad Hoc Term applies on every occasion that the User or any of its Associates enters the Slipway Area.

12 **Works**

12.1 **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 12.1(b), nothing will relieve the Port User from any liability accrued nor entitle the Port User to any Costs and Losses.

12.2 **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 Permit to Work System;
- (b) comply with the Kimberley Ports Authority Contractor's Handbook;
- (c) complete the Works within the time required by KPA;
- (d) perform the Works in a conscientious, expeditious and workmanlike manner with a high degree of skill, competence and professionalism;

- (e) 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;
- (f) do not interfere with any Port User's property or operations in the Port except with KPA's permission;
- (g) provide progress reports and any other information concerning the Works as required by KPA;
- (h) do not vary, modify or exceed the Works permitted under the Work Permit without KPA's permission;
- (i) remove, re-execute, replace or amend any aspects of the Works if required by KPA;
- (j) take all necessary precautions to ensure the safety of people and property in the Port, including not allowing its Associates to fish from any Vessel whilst it is berthed at the wharf; and
- (k) supply and wear any safety gear and clothing required to be worn by KPA.

12.3 **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 promptly notified:

- (a) when the Works have been commenced, suspended or completed;
- (b) when the Port User is unable to provide or conduct the Works; and
- (c) of any accident or incident that occurs in relation to the Works.

13 **Safety and security**

13.1 **Safety**

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

- (a) the Cyclone Contingency Plan;
- (b) Port and Terminal Handbook;
- (c) the Marine Safety Plan;
- (d) KPA Traffic Management SOP;
- (e) the Alcohol and Other Drugs Procedure; and
- (f) any other safety procedures or requirements communicated by KPA to the Port User.

13.2 **Security**

The Port User must ensure that it and its Associates comply with KPA's security rules, procedures and requirements (including the Security Procedures) relating to the Port, Cargo, Vessels, Facilities, Equipment and access to and from the Port when such procedures and requirements are communicated to them.

13.3 **Smoking**

The Port User must ensure that neither it nor any of its Associates smoke anywhere in the Port other than in areas designated as smoking areas by KPA from time to time. Without limiting this obligation in any way, smoking is prohibited in:

- (a) all indoor areas in the Port, including rest rooms;

- (b) all work areas in the Port wharves and jetties (including any gatehouses);
- (c) in the Port maintenance yards whilst undertaking any works (unless smoking areas have been designated);
- (d) all KPA Vehicles, forklifts, cranes and other mobile equipment; and
- (e) near any flammable substance, including but not limited to any fuel tanks, tank farms and pipelines.

As KPA deals with different types of Cargo and Hazardous Substances, KPA may designate a total smoking ban on any wharf or jetty while operations are taking place. Information on whether there is a total smoking ban will be displayed at the gatehouse when entering. For Vessels, the Harbour Master will send through a notice advising of the total smoking ban.

13.4 **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* (Cth) and *Customs Act 1901* (Cth) which must be observed by all Port Users to whom those Acts apply.

13.5 **Port Access Cards**

- (a) A Port User must obtain and pay for Access Cards for it and each of its Associates who are in the Port.
- (b) 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.
- (c) KPA and its Associates may do everything necessary to remove a person from the Port if that person does not have the required Access Cards.

14 **Threats and Emergencies**

14.1 **Emergency Response**

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

14.2 **Port User's duties**

The Port User must:

- (a) give KPA immediate notice of any material actual or potential threat, emergency or hazard that the Port User becomes aware of in relation to the Facilities.
- (b) ensure that it and its Associates comply with all notices and directions given by KPA, the Harbour Master or any KPA incident controller in any Emergency.

14.3 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.

14.4 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 must 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.

15 Conduct of Port Users in the Port

15.1 Social functions

With the exception of large cruise and charter Vessels, a Port User 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 any Vessel whilst berthed at the Port without KPA's permission.

15.2 Intoxication by drugs or alcohol

- (a) A Port User must ensure that:
 - (i) neither it nor any of its Associates remain in the Port in an Intoxicated State or in breach of the Alcohol and Other Drugs Procedure; and
 - (ii) it and its associates undergo random drug and alcohol testing immediately at the request of KPA or its Associates.
- (b) If a person in the Port appears to KPA or its Associates to be in an Intoxicated State or in breach of KPA's Alcohol and Other Drugs Procedure, then KPA, its Associates and its contractors may do everything necessary to refuse entry to or remove that person from the Port.

16 Vehicles in the Port

16.1 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. Window tinting must not exceed the legally permitted level in Western Australia and KPA retains the right to refuse access to any Vehicle which does not allow easy inspection of passengers or Cargo.

16.2 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;
- (d) do not use a mobile phone when driving;

- (e) have ensured that the Vehicle is road worthy in Western Australia;
- (f) use a spotter when necessary to ensure that a reversing Vehicle is not a hazard to Port users or property; and
- (g) wear seat belts at all times.

16.3 **Complying with traffic signs and directions**

A Port User must ensure that it and all of its Associates when operating a Vehicle in the Port observe and obey:

- (a) all traffic signs in the Port; and
- (b) any of KPA's and its Associates' traffic directions.

16.4 **Parking**

- (a) A Port User must ensure that, unless KPA has given its prior consent, neither it nor any of its Associates parks or stops a Vehicle in any area:
 - (i) designated by a sign or notice as a no parking or no stopping area;
 - (ii) that obstructs Port traffic;
 - (iii) that interferes with the efficient or safe operation of the Port; or
 - (iv) in which it is dangerous to do so.
- (b) A Port User must ensure that:
 - (i) neither it nor any of its Associates park a Vehicle on any Berth, wharf or jetty for a period that exceeds 4 hours without the prior consent of KPA; and
 - (ii) any Vehicle brought onto any Berth, wharf or jetty by the Port User or any of its Associates is removed if KPA directs at any time and for any reason that the Vehicle be removed from the Berth, wharf or jetty.
- (c) If KPA determines that a Vehicle should be removed from any area in the Port, then KPA, its Associates or contractors may do everything necessary to remove the Vehicle, in which case:
 - (i) KPA is not liable to any person for any Costs and Losses that arise out of in connection with the removal of the Vehicle; and
 - (ii) without limiting any of KPA's other rights and remedies, the Port User must promptly reimburse KPA for all of its Costs and Losses that arise out of or in connection with the removal of the Vehicle.
- (d) For more information regarding Vehicles at the Port, refer to the KPA Traffic Management SOP.

16.5 **Insurance**

Port Users must ensure that neither they nor any of their Associates operate a Vehicle in the Port unless the Port User has Vehicle insurance on terms acceptable to KPA.

16.6 **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 or property or injury to people in the Port; and
- (e) any other matter that may affect the efficient or safe operation of the Port.

16.7 **Truck Transport Providers**

The Port User must ensure that:

- (a) each Transport Provider is compliant with all laws relating to haulage and truck load constraints at all times while it or any of its Trucks are in the Port; and
- (b) each Truck operated by a Transport Provider that is in the Port is in a good and safe operational condition and otherwise complies with all relevant laws, codes of practice and standards.

16.8 **Directions to move Trucks**

The Port User must ensure that it and its Associates comply with all directions given by KPA with respect to the removal of Trucks from any truck receival facilities or the Port in circumstances where a Truck is unable to unload or load within the time allotted by KPA (**Removal Directions**). KPA must use its reasonable endeavours to ensure that any Truck that is the subject of a Removal Direction is allowed to re-enter and use the truck receival facilities for unloading or loading as soon as practicable taking into account:

- (a) the needs of other users of the truck receival facilities who have trucks at the truck receival facilities or scheduled to use the truck receival facilities;
- (b) any maintenance or other works that are taking place or are scheduled to take place in relation to the truck receival facilities or any associated infrastructure; and
- (c) anything else that KPA (acting in good faith) considers relevant.

16.9 **Safety and Response Plan, Environmental Management Plan, Security Plan and Traffic Management Plan**

- (a) If KPA directs, the Port User must prepare in accordance with Good Industry Practice and provide to KPA within the period KPA directs (which must not be less than 7 days):
 - (i) a detailed safety and emergency response plan (**Safety and Response Plan**) that sets out:
 - (A) a detailed outline of the risks associated with the Port User's and its Associates' activities in the Port;
 - (B) the systems, practices and procedures that the Port User will apply to govern:
 - (I) all of the Port User's activities in the Port;
 - (II) the compliance monitoring and reporting protocols for the Port User's safety systems, practices and procedures in relation to the Port User's activities in the Port; and
 - (C) the Port User's emergency response plans in relation to any risks associated with any of the Port User's activities in the Port;
 - (ii) a detailed Environmental management plan (**Environmental Management Plan**) that sets out;

- (A) how the Port User will manage the Environmental aspects of its operations in the Port in accordance with Good Industry Practice; and
 - (B) the compliance monitoring and reporting protocols for the Port User's Environmental practices and procedures in the Port;
- (iii) a detailed security management plan (**Security Plan**) that sets out the systems, practices and procedures that the Port User will apply to govern:
 - (A) the surveillance and security of all plant, equipment, improvements and infrastructure owned, operated or controlled by the Port User or any of its Associates in the Port; and
 - (B) the compliance monitoring and reporting protocols for the Port User's surveillance and security systems, practices and procedures in the Port;
- (iv) a detailed traffic management plan (**Traffic Management Plan**) that reflects Good Industry Practice and sets out the systems, practices and procedures that the Port User must apply to govern the safe movement and operation of Trucks or other Vehicles in the Port,

and the Port User must incorporate any of KPA's required changes, additions or variations from time to time into the plans immediately provided that the changes, additions or variations are matters reasonably required by KPA from time to time in the interests of safety, Environmental risk management or security in the Port. If revisions or alterations are made to the plans, the Port User must provide a revised copy of each of the plans to KPA within 7 days of the revision being made.

16.10 Implementation review and audit of the Plans

As soon as each Plan has been prepared pursuant to clause 16.9 the Port User must promptly implement, comply with and commence the maintenance and monitoring of all systems, practices, procedures and protocols set out in the relevant Plan.

16.11 Truck information

If requested to do so by KPA, the Port User must give KPA any information that KPA requires by way of advance notice in relation to Trucks and the delivery of goods and Cargo to the Port or the load-out of Cargo from the Port and the Port User must provide KPA that information promptly and in any event, if required by KPA, prior to any specified Truck arriving at the Port.

17 Hazardous Substances

The Port User must not, and must ensure that its Associates do not:

- (a) bring any Cargo that constitutes a Hazardous Substance into the Port without KPA's prior written approval; and
- (b) permit any Vessel in respect of which it is the owner, charterer or person in possession, custody or control to enter the Port carrying any Cargo that constitutes a Hazardous Substance without KPA's prior written approval

18 Environment

18.1 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.

18.2 Pollution and contamination

- (a) A Port User must ensure that it and all of its Associates:

- (i) do not cause any spills, Pollution or Contamination of any kind in the Port or any surrounding land, air, waterway, water table or sea bed;
 - (ii) do not handle any industrial waste or potentially Hazardous Substance in a manner that is likely to cause an Environmental Incident;
 - (iii) do all things reasonably necessary to contain, minimise the effect of and remove Pollution and Contamination from the Port and any surrounding land, air, waterway, water table or sea bed if any Pollution or Contamination escapes because of any act or omission by the Port User or any of its Associates;
 - (iv) comply with, in the event of an oil spill, any directions given by KPA or the Harbour Master; and
 - (v) comply with any requirements relating to Pollution and Contamination set out in the Marine Safety Plan, the Emergency Response Procedures and any other policies, procedures, standards, plans, systems or guides communicated by KPA to the Port User.
- (b) If KPA is not satisfied with anything done by a Port User under clause 18.2(a), KPA, its Associates or contractors may do everything necessary to contain, clean-up and mitigate the effect of any Contamination or Pollution.
 - (c) KPA, its Associates and contractors are not liable to any person for Costs and Losses that arise out of or in connection with anything done by KPA, its Associates or contractors under clause 18.2(b).
 - (d) Without limiting KPA's other rights or remedies, the Port User shall promptly reimburse KPA for all of its Costs and Losses that arise out of or in connection with anything done by KPA, any of its Associates or contractors under clause 18.2(b).

18.3 Interference with marine life

- (a) Subject to clause 18.3(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.

18.4 Litter, rubbish and debris

A Port User must ensure that neither it nor any of its Associates cause or permit any litter, rubbish or debris to be left anywhere in the Port except in the receptacles provided in the Port for this purpose.

19 Insurance

19.1 Insurance cover

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

19.2 Vessel related insurance

The Port User must ensure that when a Port User's Vessel enters the Port, that the Port User is insured and remains insured, or ensure its contractors or agents are insured and remain insured:

- (a) against all claims and liabilities arising (whether at common law or under statute) in relation to workers compensation;

- (b) against all claims and liabilities with respect to Pollution damage (if required by the *Protection of the Sea (Civil Liability) Act 1981* (Cth));
- (c) for public liability for at least AU\$25,000,000 (or such other amount as is reasonably required by the KPA from time to time) in relation to any one occurrence; and
- (d) against any injury or illness to any person or damage to any property for such amounts as reasonably required by the KPA from time to time.

The Port User must ensure that the Port User's Vessel is covered by a marine protection and indemnity policy including coverage for 4/4th collision liability, spillage, Pollution and wreck removal.

19.3 Facilities, Equipment and Services related insurance

The Port User, its contractors, agents and consultants using Facilities, Equipment or Services without a Port User's Vessel must insure and remain insured:

- (a) against all claims and liabilities arising (whether at common law or under statute) in relation to workers compensation;
- (b) for public and products liability for at least AU\$25,000,000 (or such other amount as is reasonably required by KPA from time to time) in relation to any one occurrence; and
- (c) for motor vehicle third party liability insurance.

19.4 Evidence of insurance

The Port User must upon the request of KPA, provide KPA with certificates of currency or other evidence that KPA may require to demonstrate the Port User's compliance with this clause 19.

19.5 Claims

If requested by KPA, the Port User must (and must ensure that its contractors, agents and consultants who have effected insurance pursuant to this clause 19) promptly make and pursue a claim under its insurance policies in circumstances where:

- (a) liability, loss or damage has occurred and is covered under the Port User's (or its contractor's, agent's or consultant's where they have effected insurance pursuant to this clause 19) insurance policies (**Loss or Damage**);
- (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 (or its contractor, agent or consultant where it has effected insurance under this clause 19) is ready willing and able to pay for the Loss or Damage on its own account (including circumstances where the Port User (or its contractor, agent or consultant where it has effected insurance under this clause 19) has procured a third party to pay for the Loss or Damage).

20 Effect of insurance

- (a) The taking out of insurance by a Port User or any of its Associates does not in any way affect or limit its contractual rights, obligations and liabilities under these Port Standards and Procedures.
- (b) Without limiting clause 20(a), the Port User agrees that its insurance policies are primary and not secondary to the indemnities under these Port Standards and Procedures. The Port User acknowledges that regardless of whether its insurance policies respond or not, and regardless of the reason why the insurance policies respond or fail to respond, the

Port User is not released (in whole or part) from any of its obligations under the indemnities in these Port Standards and Procedures.

21 Services

Without limiting anything else contained in these Port Standards and Procedures, the following provisions apply to all Services and Services related work provided to the Port User or any of its Associates by KPA or any of its Associates or contractors.

21.1 Directions

- (a) KPA must use its reasonable endeavours to comply with all reasonable directions given by the Port User in relations to the provision of Services by KPA or any of its Associates. However, KPA is not obliged to comply with any Port User direction or request (**Direction**) in circumstances where:
 - (i) compliance is likely to expose any person or any property to risks that are unacceptable to KPA (acting reasonably);
 - (ii) compliance is likely to give rise to an Environmental risk that is unacceptable to KPA (acting reasonably);
 - (iii) compliance would be contrary to any law;
 - (iv) compliance would be contrary to the directions given by the Harbour Master, or contrary to any right, power or benefit that is given to KPA under the Act or in these Port Standards and Procedures;
 - (v) compliance would entitle any insurers of KPA to deny cover or otherwise refuse to indemnify KPA under any of KPA's insurance policies;
 - (vi) compliance requires a third party to do something in circumstances where KPA, having been given the relevant Direction and having made reasonable attempts to obtain third party compliance, has no legal power to compel the third party to comply;
 - (vii) compliance would constitute a departure from the scope of the relevant Services work;
 - (viii) compliance would render KPA in breach of any lease, licence or agreement entered into by KPA with anyone;
 - (ix) compliance would require KPA to spend money or incur expenses that it is not entitled to recover from the Port User; or
 - (x) KPA considers that compliance is not reasonably practicable having regard to the resources that KPA has at its disposal.

21.2 Suspension of Services

- (a) If KPA, acting in good faith, considers it necessary to suspend Services for reasons concerned with safety, security, damage to anything in the Port or for reasons connected with any Emergency, then KPA may suspend all or any part of the Services until such time as KPA considers the suspension is no longer necessary.
- (b) KPA shall use its reasonable endeavours to keep any period of suspension of the Services to a minimum and shall promptly notify the Port User when the suspension has been lifted.

21.3 Port User to provide relevant information

The Port User must ensure that it promptly provides KPA with any information (including copies of relevant documents) that KPA reasonably requests (**Relevant Information**):

- (a) in order to carry out any aspect of Services work;
- (b) in order to identify the nature and risks associated with any Cargo that is to be loaded, unloaded or handled by KPA or any of its Associates as part of any Services work (including all necessary Hazardous Substance information); or
- (c) in order to ensure that Services work can be carried out safely, without harm to the Environment and in an efficient manner.

If KPA considers that it does not have any Relevant Information then KPA may elect not to commence any Services work or elect to stop any Services work that is underway until such time as KPA obtains the Relevant Information.

21.4 **Payment for Services**

The Port User must pay KPA the invoiced fees and charges for all Services work within 14 days of receiving KPA's invoice and payment must be made by electronic funds transfer to the bank account nominated by KPA unless otherwise directed by KPA.

21.5 **KPA's obligations and limited liability in relation to Delays**

Subject to clause 21.6, KPA's obligations and KPA's and its Associates' liabilities and the Port User's rights and remedies in respect of any Delay in relation to Services that comprise stevedoring services, Cargo handling services or Vessel berthing or unberthing services are strictly limited in all circumstances to the obligations, liabilities, rights and remedies set out below:

- (a) if the Delay is a Permissible Delay:
 - (i) KPA must use its reasonable endeavours to resolve the Delay and mitigate the effect of the Delay on the Port User as soon as reasonably practicable. However:
 - (A) to the extent that the Permissible Delay affects the interests of Port users or customers other than the Port User, nothing is intended to give the interests of the Port User any priority over the interests of any other Port user or customer; and
 - (B) nothing in this clause 21.5(a)(i) is intended to oblige KPA to incur any expenses in order to resolve any Delay unless KPA considers (in its absolute discretion):
 - (I) that it has the money readily available to it; and
 - (II) that the expenditure is warranted in the circumstances; and
 - (ii) KPA and its Associates have no liability to the Port User for Costs and Losses (including any consequential demurrage) or compensation of any kind in respect of anything arising out of the Permissible Delay other than any liability that KPA may have as a consequence of KPA breaching any of its obligations under clause 21.5(a)(i); and
- (b) if the Delay arises out of any Gross Default on the part of KPA or any of its Associates (**Gross Default Delay**) then:
 - (i) KPA must use its best endeavours to resolve the Delay as quickly as possible and mitigate the effect of the Delay on the Port User as quickly as possible. However, to the extent that a Gross Default Delay affects the interests of Port users or customers other than the Port User, nothing in this clause 21.5(b)(i) is intended to give the interests of the Port User any priority over the interests of any other affected Port user or customer; and
 - (ii) except to the extent provided for elsewhere in these Port Standards and Procedures or elsewhere in the Port User's Contract:

- (A) KPA has no restriction on its liability (if any) to the Port User with respect to anything arising out of a Gross Default Delay; and
- (B) the Port User has no restriction on its rights, remedies or recourse available to it at law or in equity with respect to anything arising out of a Gross Default Delay.

21.6 Other Limitations of liability

- (a) Despite anything to the contrary in clause 21.5 and subject to clauses (c) and (d), KPA is not liable in tort, contract, bailment or otherwise (regardless of how negligent or otherwise wrongful any act or omission may be) to the Port User under any circumstances for:
 - (i) anything arising out of any acts or omissions on the part of any third party towage, lines or mooring service providers;
 - (ii) anything arising out of any acts or omissions on the part of any marine pilot (whether employed or supplied by KPA or anyone else); or
 - (iii) any Claims for demurrage or any Claims for compensation in relation to any demurrage that may be charged to the Port User or anyone else for any reason.
- (b) KPA's liability to the Port User for any incident or series of related incidents arising out of a single event resulting in loss or damage to goods, a Vessel or any Cargo or other property, is limited in all circumstances (regardless of how negligent, tortious or otherwise wrongful the relevant acts or omissions of KPA or any of its Associates or contractors may be) as follows:
 - (i) for goods or Cargo, the least of:
 - (A) the insured value of any goods or Cargo lost;
 - (B) the reduction in value of any goods or Cargo damaged;
 - (C) 2.75 SDR per kilogram gross weight of any goods or Cargo lost or damaged; or
 - (D) \$100,000;
 - (ii) for a Vessel, the least of:
 - (A) the depreciated value of the Vessel;
 - (B) the market value of the Vessel;
 - (C) the reasonable cost of repairing the Vessel; or
 - (D) \$500,000; and
 - (iii) for other property, the least of:
 - (A) the depreciated value of the property;
 - (B) the market value of the property;
 - (C) the reasonable cost of repairing the property; or
 - (D) \$50,000.
- (c) Clauses 21.6(a) and (b) do not apply to the extent that the Port User suffers loss or damage as a consequence of Gross Default on the part of KPA or any of KPA's Associates.

- (d) Despite anything to the contrary in or arising out of any term in these Port Standards and Procedures:
 - (i) KPA is not be liable for Consequential Loss in any circumstances; and
 - (ii) neither KPA nor the Port User is liable for anything to the extent that the event or circumstances giving rise to the relevant loss, damage or Claim falls within the definition of a Force Majeure Event.

21.7 Non-excludable rights

Subject to clause 21.8, the parties exclude from the Port User's Contract all conditions, warranties and terms implied by statute, general law or custom.

21.8 Non-Excludable Rights

- (a) The parties acknowledge that:
 - (i) under applicable state, territory and Commonwealth law (including the *Competition and Consumer Act 2010* (Cth)), certain guarantees, conditions and warranties may be implied in any agreement and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (**Non-Excludable Rights**); and
 - (ii) notwithstanding any clause in these Port Standards and Procedures, the Non-Excludable Rights are not excluded, restricted or modified by these Port Standards and Procedures except to the extent permitted by law.
- (b) The liability of KPA to the Port User for a breach of any Non-Excludable Right will be limited to either:
 - (i) supplying the Services (or the relevant item of Services work) again; or
 - (ii) payment of the cost of having the Services (or the relevant item of Services work) supplied again,
 at KPA's election.

21.9 Complete defences

- (a) The provisions in clauses 21.5 to 21.6 are intended to provide KPA with absolute and complete defences and limitations with respect to any Claims that the Port User may have against KPA at law or in equity in relation to the matters covered in those provisions (**Excluded Matters**) and the defences and limitations specified shall be available to KPA as complete defences and absolute bars to any Claims that the Port User may have or make with respect to the Excluded Matters including breach of contract or indemnity Claims (including Claims for breach of the Port User's Contract), Claims in negligence or any other tort and Claims pursuant to any other cause of action available at law or in equity.
- (b) Clause 21.9(a) is intended to have reciprocal application for the benefit of the Port User in relation to clause 21.6(d)(ii).

22 Limitations and exclusions

22.1 Limitations

Regardless of any contributing acts or omissions on the part of KPA or any of its Associates, agents or contractors (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be), 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 of any Port customer, Port user or Port entrant while they or any of their employees, agents or contractors are in the Port (regardless of how negligent, tortious or otherwise wrongful the acts or omissions may be);
- (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 Port 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 any lawful order or direction given by KPA under these Port Standards and Procedures or under the Act;
- (f) 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 while on duty);
- (g) anything arising out of any security breach, security failure or lack of security anywhere in the Port;
- (h) any interruption or breakdown with respect to the supply of water, gas, electricity, phone service, lighting or other services in the Port;
- (i) any loss or damage suffered by the Port User as a consequence of any breakage, blockage or overflow of any sewer, stormwater drain, waste drain or pipe or any water runoff from any other parts of the Port or surrounding land;
- (j) any loss or damage suffered by the Port User as a consequence of any contamination of fuel or other products in the Port; or
- (k) anything arising out of the loss of any Port customer or any temporary or permanent downturn in trade, Vessel visits or the loss of any business opportunities in the Port.

22.2 Acknowledgments

- (a) Nothing obliges KPA to stop (either temporarily or permanently) any third party from commencing or carrying on any activity in the Port in order:
 - (i) to enable the Port User to do anything; or
 - (ii) to protect the Port User's interests or protect any property owned by or in the possession, custody or control of the Port User.
- (b) Nothing precludes KPA from granting third parties rights to use any part of the Port or anything in the Port for any purpose (excluding any part of the Port or anything in the Port over which the Port User has exclusive possession).
- (c) Nothing in these Port Standards and Procedures creates any duty of care in favour of the Port User or creates or imports any implied obligations or implied responsibilities of any kind on KPA's part.

22.3 Qualifications and Clarifications

- (a) Nothing in clause 22.1 is intended to relieve KPA from liability in relation to anything that arises out of Gross Default on KPA's part.
- (b) Clauses 22.1 and 22.2 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.

22.4 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 KPA's liability.

23 Liability of KPA directors

The Port User must not under any circumstances take action, sue or initiate any proceedings of any kind against any director of 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 caused or inflicted by a director of KPA. It is the intention of this clause to provide each director of 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 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 Port User's Contract.

24 Port User's property

24.1 Rights over Port User's property

- (a) 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 KPA; or
 - (ii) the Port User's performance of all its obligations under the Port User's Contract.
- (b) In exercising the Right of Lien, 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.

24.2 Abandoned property

- (a) KPA may deem any property of a Port User or any of its Associates that remains on the Slipway Area or in the Port after:
 - (i) the relevant permitted period of Slipway Area use or Port use has expired; or
 - (ii) 30 days of KPA giving the Port User written notice requesting the Port User to remove the property,

to be abandoned (**Abandoned Property**) and the Port User shall be deemed to have unequivocally and irrevocably waived their right to assert any property rights to the Abandoned Property as against KPA.

- (b) KPA may in its absolute discretion deal with any Abandoned Property as if it were the owner including removing the Abandoned Property and storing, selling, gifting or disposing of the Abandoned Property free of all encumbrances and interests.
- (c) KPA is not liable to any Port User, the owner of the property or anyone else for Costs and Losses that arise out of or in connection with any Abandoned Property, including any act or omission (negligent, tortious or otherwise) on the part of KPA or its Associates while exercising KPA's rights under this clause.
- (d) Without limiting any of KPA's other rights and remedies, any Port User who is responsible for any Abandoned Property shall reimburse KPA for all of its Costs and Losses that arise out of or in connection with the Abandoned Property, including any act or omission (tortious or otherwise) by KPA or any of its Associates while exercising any rights under this clause.
- (e) If KPA sells any of the Abandoned Property, the proceeds after deducting KPA's Costs and Losses (**Net Proceeds**) will be kept aside for the Port User or owner of the Abandoned Property for at least 12 months from the date the Abandoned Property is sold (**12 Month Period**). KPA will, within the 12 Month Period, use its reasonable endeavours to contact and notify the Port User or owner of the sale of the Abandoned Property and of KPA's possession of the Net Proceeds. If the Net Proceeds are not claimed by the Port User or owner of the property within the 12 Month Period then, on expiry of the 12 Month Period, KPA may deal with the Net Proceeds in any way it sees fit and KPA shall not be liable to anyone who later claims any rights to the Net Proceeds.
- (f) Nothing in this clause shall be interpreted to:
 - (i) require KPA to sell any property in preference to any other thing KPA is entitled to do under this clause; or
 - (ii) make KPA a trustee or bailee in relation to any property.

25 Review

No review (or failure to review), consent, approval, statement of satisfaction or comment by or on behalf of KPA of any document, proposal, or anything else waives or varies any of the Port User's obligations under the Port User's Contract.

26 General right to information

KPA may, from time to time, request the Port User to provide it with any information and documents relating to goods, Cargo, its access to and use of the Port or the Port User's compliance with these Port Standards and Procedures and the Port User must comply with such a request by providing the information and documents to KPA as soon as practicable (and in any event within 7 days).

27 Termination of Port User Contracts

27.1 KPA may terminate

Without prejudice to any other rights or remedies KPA may have under the Port User's Contract or at law or in equity, KPA may terminate the Port User's Contract with immediate effect:

- (a) subject to Chapter 5 of the *Corporations Act 2001* (Cth) if any of the events specified in clause 5.6(a) occurs; or
- (b) if the Port User is in breach of its obligations under the Port User's Contract at any time.

27.2 No release

On termination of the Port User's Contract:

- (a) nothing releases or discharges the Port User or from liability to the KPA in relation to anything occurring prior the date of termination;
- (b) nothing releases or discharges the Port User from liability for any Fees and Charges imposed by the KPA in relation to anything occurring prior the date of termination; and
- (c) nothing releases or discharges the Port User from any obligation that survives termination.

28 General

28.1 Governing law

The Port User's Contract, 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.

28.2 Application of the Personal Property Security Act to Equipment

- (a) In this clause:
 - (i) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
 - (ii) **PPS Register** means the Personal Property Securities Register established under the PPSA; and
 - (iii) **Security Interest** has the meaning given to it in the PPSA.
- (b) The Port User acknowledges that the hire of Equipment under the Port User's Contract may give rise to a Security Interest in the Equipment.
- (c) KPA may register any Security Interest created under the Port User's Contract on the PPS Register in any manner it chooses. The Port User must provide KPA with any information it requires for the purposes of effecting such registration.
- (d) The Port User irrevocably and unconditionally waives its right to receive any verification statement or other notice from KPA in connection with the registration of a Security Interest arising under the Port User's Contract.
- (e) The Port User agrees to take any such steps as KPA reasonably requires to perfect or otherwise ensure the enforceability and priority of any Security Interest created under the Port User's Contract.
- (f) Unless otherwise agreed in writing, the Port User agrees to ensure that the Equipment does not become a fixture to any land.
- (g) The Port User and KPA agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply in relation to a Security Interest in the Equipment to the extent, if any, mentioned:
 - (i) section 123 (right to seize collateral);
 - (ii) section 125 (obligation to dispose of or retain collateral);
 - (iii) section 126 (apparent possession);
 - (iv) section 128 (secured party may dispose of collateral);
 - (v) section 129 (disposal by purchase);

- (vi) sections 130, 132(3)(d) and 132(4) (right to be provided with a statement of account);
 - (vii) subsection 134(1) (retention of collateral); and
 - (viii) section 135 (notice of retention).
- (h) Neither the Port User nor KPA may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a confidentiality agreement within the meaning of the PPSA. The Port User waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

