

Appendix 2

ABP'S BERTHING AND MOORING TERMS AND CONDITIONS

These Conditions relate to the provision of berthing and mooring services at ABP's ports by third parties for parties other than ABP, and should be read in conjunction with the completed Licence Application Form.

Contractors working for ABP do not complete this / the application form – they are subject to ABP's contractor compliance pre-qualification process.

IMPORTANT ADVICE

THESE CONDITIONS CONTAIN PROVISIONS WHICH EXCLUDE OR LIMIT THE LIABILITY OF ABP AND REQUIRE THE LICENSEE TO INDEMNIFY ABP.

1. INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this Licence.

ABP: means Associated British Ports whose principal office is at 25 Bedford Street, London WC2E 9ES;

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

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

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

Conditions: means these ABP terms and conditions in relation to the provision of berthing and mooring services by third party providers, as updated from time to time by ABP;

Environment: includes the following (whether alone or in combination):

- (a) ecological systems and living organisms (including humans);
- (b) air (including air within buildings or other structures and whether below or above ground);

- (c) land and soil (including buildings and any other structures in, on or under land and soil, anything below the surface of the land and land covered with water); and
- (d) water (including water under or within land or within pipe or sewage systems);

Fee: means the fee of £250 payable by the Licensee to ABP in consideration of the grant of a licence to provide berthing and mooring services at the Port;

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

- (a) war; revolution; civil commotion; blockade of the Port;
- (b) closure of the Port or any relevant part of the Port as a result of explosion, fire, radio active contamination, terrorist activity (actual or threatened), extreme weather, natural disaster, action of any Government or Competent Authority, impact by ship or vessel or impact by aircraft or object dropped or falling from them;
- (c) damage to the Port or any relevant part of the Port by explosion, fire, radioactive contamination, terrorist activity (actual or threatened), extreme weather, natural disaster, impact by ship or vessel or impact by aircraft or object dropped or falling from them which prevents the berthing and/or handling of Vessels;
- (d) blockage of any shipping channel required to access the Port;

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

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

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

Insolvency Event means any of the following events:-

- (a) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other

- (c) party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt,

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

Licence: means these Conditions, together with the completed Application Form;

Licensee: means any Person whom ABP has granted the right to provide Services at the Port in accordance with and incorporating these Conditions;

Licensee Invitees: means the Licensee's officers, Port Operatives, employees, contractors, sub-contractors, agents, representatives and any other persons whom the Licensee invites onto the Port;

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

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

Port: means the ABP Port of [];

Port Operative: means any person engaged by the Licensee in the provision of the Services;

Reportable Injuries or Occurrences: means any injuries or dangerous occurrences reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

Services: means the berthing and mooring services to be provided by the Licensee, as further detailed in **Schedule 1**;

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

- 1.2 The Interpretation Act 1978 will apply to this Licence in the same way as it applies to an enactment, except where its provisions are inconsistent with any express terms of this Licence.
- 1.3 The Schedules will have effect as part of this Licence.
- 1.4 Any references in this Licence to Clauses or Schedules or Appendices are to clauses of, or schedules or appendices to, this Licence.
- 1.5 Headings will be ignored in construing this Licence.
- 1.6 References to a statute or statutory provision include that provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Licence and any subordinate legislation made under it.
- 1.7 Unless the context otherwise requires, words importing the singular will include the plural and vice versa and reference to any masculine, feminine or neuter gender will include the other genders.
- 1.8 Words importing individuals or persons will include companies, corporations, firms, unincorporated bodies of person and partnerships. The words "include", "including", and "includes" are to be construed as if they were immediately followed by the words "without limitation".

2. GRANT OF LICENCE AND LICENCE FEE

- 2.1 In consideration of the payment of the Fee, ABP grants to the Licensee a non-exclusive licence to provide the Services at the Port, subject to the terms and conditions of this Licence.
- 2.2 The Licensee shall pay to ABP the Fee within twenty eight days of the date of signature of this Licence by the Licensee.
- 2.3 All payments due and owing to ABP by the Licensee will be made without set-off, withholding or deduction of any kind.

- 2.4 All sums, including the Fee, payable under this Licence will be exclusive of VAT which if payable will be paid against appropriate VAT invoices.
- 2.5 Nothing in this Licence shall prejudice ABP's entitlement to levy dues on ships, dues on cargo, quay or shed rental charges in accordance with its published tariff and terms for the time being in force or in accordance with any special arrangements which may be agreed in lieu thereof.

3. RIGHTS AND OBLIGATIONS OF THE LICENSEE

- 3.1 The Licensee shall carry out the Services and any ancillary activities at the Port in accordance with all Applicable Laws, Good Industry Practice and the provisions of this Licence (see Schedule 1 for any specific service requirements).
- 3.2 The Licensee will provide the Services during working hours appropriate to the requirements of its customers and of the trade of the Port and will use its best endeavours to provide the Services to the satisfaction of its customers.
- 3.3 This Licence does not permit the Licensee to use any of ABP's goods or equipment, unless otherwise agreed [update as necessary].
- 3.4 The Licensee shall be responsible for the tidy upkeep of any part of the Port used or occupied by the Licensee, its agents and sub-contractors, including the cleaning and/or removal of spillages/debris arising directly or indirectly from the activities of the Licensee.
- 3.5 Nothing in this Licence shall be deemed to confer upon the Licensee any interest in land at the Port other than a licence to temporarily enter onto common user areas from time to time as required for the provision of the Services. Nothing in this Licence grants any rights to the Licensee to enter any part of the Port other than the common user areas, nor any exclusive rights over any particular berth, quay or other location at the Port.
- 3.6 This Licence does not grant or imply to the Licensee any exclusive rights to provide Services to any particular customer.
- 3.7 The Licensee shall, when requested, provide in a manner approved by ABP regular full and accurate documentary records of vessels handled by the Licensee. ABP shall have the right to examine relevant documentation to verify such records on reasonable notice to the Licensee.
- 3.8 ABP shall be entitled to audit the Licensee's compliance with the provisions of this Licence on an annual basis on reasonable prior notice to the Licensee. The Licensee agrees to give access to its records, documentation and premises to ABP on reasonable request from ABP in order for ABP to carry out such audit.

4. HEALTH AND SAFETY

- 4.1 The Licensee shall observe all health and safety rules and regulations that apply at the Port and shall comply with all directions of ABP and with all relevant ABP policies and procedures and co-operate with ABP in all matters relating to the Services.
- 4.2 All Licensee Invitees shall be properly and adequately supervised by the Licensee at all times when carrying out the Services, to ensure adherence to the Licensee's risk assessments and safe systems of work.
- 4.3 Under no circumstances shall the Licensee permit any Licensee Invitee to operate any vehicle or equipment, or carry out any activity unless and until such Licensee Invitee has been properly trained and is qualified in accordance with Good Industry Practice to operate such vehicle or equipment or carry out such activity.
- 4.4 Without limitation to the other provisions of this Licence, the Licensee will carry out risk assessments of its activities at the Port, devise safe systems of work and will ensure that appropriate action is taken on the basis of its risk assessments so as to comply at all times with Applicable Laws.
- 4.5 The Licensee shall plan and execute the Services to the highest possible standard and in such a manner so as to ensure that so far as is reasonably practicable no person is exposed to danger.
- 4.6 At the end of the Term the Licensee will carry out a health and safety audit and will submit a copy of the report to ABP. In addition, the Licensee will submit to ABP details of any Reportable Injuries or Occurrences which have occurred throughout the Year and will submit an accident statistics report in a form prescribed by ABP relating to the Licensee's activities at the Port.
- 4.7 The Licensee shall inform ABP in writing of the name of its appointed competent person for health and safety matters and shall update ABP should the relevant person change.
- 4.8 ABP will be entitled to require any Licensee Invitee to cease provision of the Services and to leave the Port immediately where ABP considers that the Licensee Invitee is not carrying out the Services in accordance with the terms of this Licence.

5. COMPLIANCE WITH LAW

- 5.1 Each Party will at all times keep itself informed of and comply with all Applicable Laws relevant to its use of and activities at the Port.
- 5.2 The Licensee will at all times keep itself informed of and comply with all ABP Regulations relevant to its use of and activities at the Port.

- 5.3 The Licensee will procure that the Licensee Invitees conduct their respective activities in compliance with the obligations in this Clause 5.
- 5.4 The Licensee will conduct its activities at the Port at all times in such a way as to minimise any nuisance or disturbance to ABP, any other person at the Port, any other vessel using the Port and the owners and occupiers of other land within or adjacent to the Port. In the event that ABP reasonably considers that any of the activities of the Licensee are causing a nuisance or are contrary to the interests of health and safety, ABP may require the Licensee to cease such activities until the Licensee has remedied the offending circumstances to the reasonable satisfaction of ABP.
- 5.5 Without prejudice to Clause 5.2, the Licensee will conduct its activities at the Port at all times in such a way as to:
- (a) prevent any escape of customer cargo or any other substance or matter (in whatever form and whether alone or in combination with any other substance) within the possession or control of the Licensee from the berth or from any other area of the Port or from any vessel or other means of transport in the possession or under the control of the Licensee or Licensee Invitees into or onto any part of the Port; and
 - (b) ensure that no Hazardous Materials or substance or matter of which the discharge passage or escape would be contrary to the Environmental Permitting (England and Wales) Regulations 2016 (SI 1154) or any substance or material which may cause an obstruction or damage or pollution or contamination to pass or escape into any sewer drain or watercourse serving the Port or into the River Humber or into the sea or into or onto any part of the Port.
- 5.6 If a Pollution Incident should occur as a result of the activities of the Licensee at the Port, including the escape of any customer cargo which might cause damage to the Environment or discharge of any Hazardous Materials or other substance or matter referred to in Clause 5.5(b) in breach of that Clause 5.5(b), the Licensee shall, upon becoming aware of the Pollution Incident:
- (a) immediately take all steps necessary to prevent further pollution occurring as a result of the Pollution Incident;
 - (b) notify ABP as soon as reasonably practicable and provide ABP with a copy of any notice that has been given to any Competent Authority in connection with the incident;

- (c) as soon as reasonably practicable remediate the consequences of the Pollution Incident to the reasonable satisfaction of ABP and any Competent Authority.

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

- 5.7 The Licensee irrevocably and unconditionally agrees to indemnify ABP in full and on demand and hold harmless and keep ABP so indemnified against all Losses incurred or suffered by ABP as a result of the breach of Clauses 6.7 or 6.8 by the Licensee or Licensee's Invitees.
- 5.8 Subject to any written agreement with ABP to the contrary the Licensee will make proper and adequate arrangements for the removal from the Port and disposal of all trade and other waste in accordance with the requirements of Applicable Laws as often as may be necessary or as reasonably directed by ABP.

6. LIABILITY AND INDEMNITY

- 6.1 The Licensee acknowledges that ABP places particular reliance upon the provisions of this Licence and in addition to any other remedy available to ABP, the Licensee irrevocably and unconditionally agrees to indemnify ABP in full and on demand and hold harmless and keep ABP so indemnified from and against all losses including all economic loss whether direct or indirect (including loss of profit, loss of business or loss of future revenue, loss of reputation or goodwill and loss of anticipated savings) which are made or brought against or incurred or suffered by ABP, its officers, employees, representatives, agents or subcontractors directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or consequences of the matters listed below were foreseeable at the date of the entering into of this Licence:-
 - (a) any act or omission of the Licensee or any of the Licensee Invitees in connection with the use of the Port;
 - (b) any claim made against ABP by a third party for death, personal injury or damage to property arising out of or in connection with the provision of Services by the Licensee under this Licence;
 - (c) any breach by the Licensee of any of its obligations under this Licence.
- 6.2 ABP's total liability in contract, tort (including negligence) or for breach of statutory duty, misrepresentation or otherwise, arising in connection with this Licence will be limited to £50,000.00 (fifty thousand pounds) in any one Year, provided that loss or

damage to goods or plant will be limited in accordance with ABP's Standard Terms and Conditions of Trade for the Port (if lower).

- 6.3 ABP shall not be liable to the Licensee for any loss of profit, revenue, business, contracts, anticipated savings or other economic loss (direct or indirect), indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) or consequential loss or damage (contractual, tortious, breach of statutory duty or otherwise) which arises out of or in connection with this Licence, or for any liability incurred by the Licensee to any other person for any economic loss, claim for damages or awards howsoever arising from this Licence or otherwise.

7. TERMINATION

- 7.1 Without prejudice to any rights that have accrued under this Licence or any of its rights or remedies, either Party may at any time terminate this Licence with immediate effect by giving written notice to the other Party if:

- (a) the other Party fails to pay any amount due under this Licence on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the other Party commits a material breach of any of its obligations under this Licence which is incapable of remedy; or
- (c) the other Party fails, within a reasonable period of being requested to do so and in any event no more than twenty eight (28) days, to remedy a material breach of its obligations under this Licence which is capable of remedy; or
- (d) an Insolvency Event occurs in respect of either Party.

- 7.2 Without prejudice to any other rights or remedies ABP may have, in the event that ABP (acting reasonably) considers that any acts or omissions of the Licensee or any Licensee Invitee gives rise to a risk to health, safety, security, property or the Environment at the Port, ABP shall have the right to immediately suspend the Licence granted to the Licensee, until such time as ABP (acting reasonably) is satisfied that the acts or omissions giving rise to the risk have been satisfactorily addressed and ABP shall not be liable for any costs or losses suffered or incurred by the Licensee arising directly or indirectly from the suspension of the Licence as specified in this Clause 7.2..

8. CONSEQUENCES OF TERMINATION

- 8.1 Notwithstanding any termination of the Licence the Licensee will pay any sums due to ABP up to and including the date of termination.

- 8.2 The Licensee will ensure that any goods or products or waste and if so directed by ABP any plant or equipment in each case belonging to the Licensee or any customer or supplier (other than ABP) of the Licensee are removed from the Port.
- 8.3 Termination of the Licence or any other contract between the Parties for whatever reason will not affect the rights or remedies of either Party which may have accrued up to the date of termination.

9. FORCE MAJEURE

- 9.1 Neither Party will be liable for any failure to perform or delay in performance of its obligations under this Licence, other than an obligation to pay monies, caused by an event of Force Majeure provided that if the period of default continues for more than sixty (60) consecutive days, the other Party will be entitled to terminate this Licence immediately by notice in writing.
- 9.2 Any Party that is subject to an event of Force Majeure will not be in breach of this Licence in so far as it is prevented or delayed from performing its obligations by that event provided that:
- (a) on becoming aware of an event which is or might be a Force Majeure event the affected Party must give written notice of that event to the other Party as soon as reasonably practicable and in any event within 48 hours of becoming aware of the event notifying the other Party of the nature, extent and circumstances giving rise to the event in question;
 - (B) the Party affected must use all reasonable endeavours to mitigate the effects of the event of Force Majeure and to carry out its obligations under this Licence in any way that is reasonably practicable (without incurring a disproportionate cost) and to resume the performance of its obligations as soon as reasonable practicable;
 - (C) unless this Licence is terminated under Clause 9.1, the affected Party must also give further written notice within 48 hours of the date that the Force Majeure event or possible Force Majeure event has come to any end or is believed by the Party to have come to an end.

10. INSURANCE

- 10.1 The Licensee will throughout the Term have and maintain the following insurances with insurers of repute (“Insurances”): -
- (a) employer’s liability insurance for a minimum of £5,000,000 (five million pounds) per claim;

- (b) public liability insurance for a minimum of £5,000,000 (five million pounds) for each occurrence;
- (c) such other insurances as the Licensee reasonably deems appropriate in order to meet its obligations and liabilities under this Licence or as are required by law or contract.

10.2 Copies of all certificates policies, proofs of payment of premiums and other relevant documents in respect of the Insurances will be provided by the Licensee to ABP promptly on request.

10.3 The Licensee will not take or omit to take any action or permit anything to occur in relation to the Insurances as would entitle the relevant insurer to refuse to pay any claim under the Insurances.

11. BRIBERY AND CORRUPTION ISSUES

11.1 The Parties shall not, and shall procure that their directors, employees, agents, representatives, contractors or subcontractors shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010.

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

11.3 Without prejudice to the generality of the obligations set out in Clause 11.1 and Clause 11.2 above, the Licensee must promptly report to ABP any request or demand for any undue financial or other advantage of any kind which it receives in connection with the performance of any obligations under any agreement with ABP.

11.4 Breach of this Clause 11 shall entitle ABP to terminate this Licence with written notice with immediate effect.

12. NOTICE

12.1 Any notice or other communication required to be given under this Licence shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier:

- (a) In respect of communications to ABP:

[CONTACT] [ADDRESS].

(b) In respect of communications to the Licensee:

[CONTACT] [ADDRESS].

or as otherwise specified by the relevant Party by notice in writing to the other Party.

12.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13. GENERAL

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

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

13.3 The Licensee will not be entitled to exclusive possession or occupation of any part of the Port.

13.4 This Licence supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this Licence and constitutes the whole agreement between the Parties relating to the subject matter of this Licence as at the date of this Licence to the exclusion of any terms implied by law which may be excluded from this Licence. Each of the Parties represents that it has not entered into this Licence in reliance on any representation, warranty, undertaking or other statement, expressed or implied, oral or in writing, given or made by or on behalf of any party except in so far as contained in or referred to in this Licence. This Clause 13.5 will not apply to any representation, undertaking, warranty or statement made fraudulently or which was induced by fraud.

13.5 Each Party irrevocably and unconditionally waives any right it may have to claim damages for, and/or rescind this Licence because of breach of any warranty not

contained in this Licence, or any misrepresentation whether or not contained in this Licence unless such misrepresentation was made fraudulently.

- 13.6 No purported alteration or variation of this Licence will be effective unless it is in writing and it refers specifically to this Licence and is signed by a duly authorised representative of each of the Parties.
- 13.7 No failure of any Party to exercise, and no delay by it in exercising any right, power or remedy in connection with this Licence (each a “**Right**”), will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of this Licence may only be given in writing by the waiving Party and will not be deemed to be a waiver of any subsequent breach.
- 13.8 Save in respect of the third party rights granted in Clause 6 (Liability and Indemnity), the Contracts (Rights of Third Parties) Act 1999 will not apply to this Licence and no person who is not a Party to this Licence (including any employee, officer, representative or sub-contractor of either party) will have the right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Licence which expressly or by implication confers any benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause.
- 13.9 If any provision in this Licence or any document referred to in it or to be entered into pursuant to or in connection with it will be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of this Licence but the legality, validity and enforceability of the remainder of this Licence or the provision will not be affected.
- 13.10 This Licence will be construed in accordance with and governed by the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings which may arise out of or in connection with this Licence.

Schedule 1

[REDACTED]