
Appendix H – Pro forma AAT stevedoring licence

Stevedoring Licence Agreement

Australian Amalgamated Terminals Pty Ltd
ABN 13 098 458 229

and

Stevedore
ABN XXXXXXXX

Bell Bay

Middletons Lawyers
Sydney office
Ref: SMAC.FTAN.

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Stevedoring Licence Agreement

Date 2006

Parties

1. **Australian Amalgamated Terminals Pty Ltd** ABN 13 098 458 229 of Unit 11 3 Westside Avenue Port Melbourne Victoria 3207 (AAT)
2. **Stevedore** ABN XXXXXXXX of XXXXXXXXXXXXXXXXXXXX (Stevedore)

Background

A. Facility

AAT has incurred considerable expense in acquiring the Facility and the acquisition of the Facility by AAT should permit increased volumes of trade to be efficiently and safely processed through the Port of Launceston. The Facility is to be operated as a multi-user facility managed by AAT. To ensure the efficient and safe use of the Facility it is necessary to ensure that all stevedores that use the Facility are aware of the rules governing such use.

B. Principal Objective

It is the principal objective of AAT to maximise the safe and efficient utilisation of the Facility and related equipment and services and to manage the Facility in such a way that facilitates the prompt turn around of vessels that berth at the Facility. AAT and the Stevedore agree to carry out their activities at the Facility in such a way that assists to achieve this objective.

C. Other people

AAT and the Stevedore both acknowledge that other people will be using the Facility in addition to the Stevedore and AAT. AAT and the Stevedore agree to use their best endeavours to ensure that they do not impede the proper use of the Facility by such other people. AAT will not Discriminate in favour of or against the Stevedore in relation to its use of the Facility. This Agreement contains provisions to resolve any disputes between the parties in a timely and effective manner.

D. Tariff Schedule

The Stevedore acknowledges that before signing this Agreement it received a copy of the Tariff Schedule and any Interberth Priority Rules that are in force as at the date of this Agreement.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

AAT's Facility People means AAT's employees or contractors who work at the Facility and whose job is either to provide receipt and delivery services or to act as the on-site manager of the Facility;

AAT Mobile Equipment means all transit vehicles, trailers, forklifts, ramp runners, Cranes and other mobile equipment provided by AAT at the Facility;

Accountant means a properly qualified accountant who does not work for a firm of accountants which provides services to AAT or any related or affiliated body corporate of AAT;

Access Period means the period which AAT (acting reasonably) agrees from time to time is the Access Period and which in general will be the period during which the relevant Vessel is berthed at the Facility;

Additional Equipment means handsets, switches, communications racks, cabling infrastructure and any other related equipment provided by AAT;

Additional Equipment Charges means the charges notified by AAT to the Stevedore and which the Stevedore must pay under clause 6.6(a);

Amenities means any amenities that AAT has agreed in writing to make available to the Stevedore;

Area means the area specified in the attached plan comprising Schedule 3 (but does not include any areas identified as Amenities or Office Space or AAT's maintenance shed);

Authority means any authority with jurisdiction in relation to the Area or the Stevedoring Operations;

Business Day means any day except Saturday or Sunday or a day that is a public holiday in Brisbane;

Cargo means motor vehicles and other cargo which is loaded or unloaded (or to be loaded or unloaded) by the Stevedore;

Claim means any claim, cost, demand, debt, account, action, expense, cost, lien, liability and proceeding of any nature whatsoever;

Commencing Date means the date specified in Item 1;

Container means any package, case, pallet, container or other unit of transport which contains, carries, protects or supports cargo;

Crane Storage Area means that part of the Facility that AAT from time to time notifies the Stevedore is the area for the storage of the Cranes;

Cranes means cranes provided by AAT at the Facility but does not include any personnel to operate such cranes;

Default Rate means the rate 2% pa above the overdraft rate published by the Commonwealth Bank of Australia on overdrafts in excess of \$100,000;

Delay Fees means the fees calculated in accordance with Item 3;

Discriminate means to act in a manner that in respect of the provision of access to, and use of, the Facility and all other services and subject matter as set out in this Agreement:

- (a) treats a stevedore more favourably in a material respect than the Stevedore;
- (b) treats the Stevedore less favourably in a material respect than any other stevedore; or
- (c) has the purpose of materially restricting, materially preventing or materially limiting the Stevedore from competing against another stevedore in a material respect,

but AAT will be taken not to have Discriminated (even if paragraphs (a), (b) or (c) above apply) where the relevant conduct by AAT was necessary having regard to the operational imperatives of the Facility and AAT's conduct was reasonable in all the circumstances;

Discriminatory shall have a meaning that corresponds to Discriminate;

EDI means electronic data interface;

Facility means AAT's facility at the Port of Brisbane of which the Area forms a part;

Fees means the fees calculated in accordance with Item 3;

GST has the meaning given in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Input Tax Credit has the meaning given in the GST Act;

Interberth Priority Rules means such interberth priority rules (dealing with the order in which vessels berth at the Facility and the location at which a particular Vessel might be required to berth at the Facility) which apply from time to time to the Facility;

Interest Rate means 2% above the Commonwealth Bank of Australia overdraft rate on amounts in excess of \$100,000 calculated on daily rests and compounded monthly;

Item means an item of Schedule 1;

Jurisdiction means the jurisdiction specified in Item 4;

Law includes any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise and includes the requirements of all Authorities;

Lease means any lease or other occupancy arrangement under which AAT is entitled to use or occupy any premises which includes the Area;

Office Space means any office space that AAT has agreed in writing to make available to the Stevedore;

Other Equipment means equipment that is not AAT Mobile Equipment, Stevedoring Equipment or Additional Equipment;

PDI Operator means any pre-delivery and inspection operator that AAT has permitted to use part of the Facility for carrying out such activities as pre-delivery and inspection operators generally carry out from time to time;

Policies means:

- (a) all policies from time to time of AAT concerning safety, security and/or the efficient use of the Facility; and
- (b) all procedures concerning the use of AAT's Mobile Equipment, Additional Equipment or Other Equipment (as applicable);

Port Corporation means the entity specified in Item 5;

Schedule means a schedule to this Agreement;

Stacking Area means that part of the Area that AAT has from time to time notified the Stevedore is the area for the temporary storage of Cargo that is to be loaded onto the Vessel or has been unloaded from the Vessel, by the Stevedore;

Stevedoring Equipment means cones, mats and any other equipment approved by AAT ;

Stevedoring Operations means the loading and unloading of a Vessel by the Stevedore and movement of Cargo to and from the Stacking Area;

Stevedore Visitor means:

- (a) all employees, agents or subcontractors of the Stevedore; and
- (b) any other person whom the Stevedore allows, directs or invites to enter the Area;

Tariff Schedule means the tariff schedule comprising Schedule 2;

Tax Invoice has the meaning given in the GST Act;

Term means the period specified in Item 2; and

Vessel means any vessel that the Stevedore is loading or unloading or is contracted to load or unload.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (c) a reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it;
- (d) unless stated otherwise, one word or provision does not limit the effect of another;

- (e) a reference to the whole includes part;
- (f) all obligations must be performed duly and punctually;
- (g) words importing "do" include do, permit, omit, or cause to be done or omitted;
- (h) if a party consists of more than one person this Agreement binds them jointly and each of them severally;
- (i) where a party is prohibited from acting or omitting to act in a certain way that party must ensure that each of its employees, agents and contractors complies with such prohibition;
- (j) a reference to "writing" includes a fax, letter, email and any other means of reproducing words in a tangible and visible form;
- (k) a reference to a "clause" is a reference to a clause of this Agreement unless otherwise specified;
- (l) if a provision or part of a provision of this Agreement is illegal, invalid or unenforceable, then that provision or part is severed from this Agreement and this Agreement otherwise remains unaffected; and
- (m) a vessel is considered to be berthed at the Facility as soon as it has been safely and adequately secured alongside the Facility.

2. Non-exclusive Licence

2.1 Agreement

- (a) AAT grants the Stevedore a non-exclusive licence for the Term, to use (but not occupy) the Area during each Access Period for the purpose of carrying out Stevedoring Operations on the terms of this Agreement. The Stevedore must not use the Area for any purpose other than that specified in this clause 2.1 or at any time outside an Access Period.
- (b) If AAT permits the Stevedore to carry out Stevedoring Operations on the Area following expiry of the Term, then the terms of this Agreement continue to apply as between the Stevedore and AAT on a month to month basis and either party can terminate this Agreement on one month's notice to the other and expiring on any day. If a party terminates this Agreement under this clause 2.1(b), neither party has any other rights or remedies against the other in respect of any matter arising under this Agreement, its termination or the reasons for its termination, but the termination does not affect any right or remedy of either party arising out of this Agreement prior to such termination.

2.2 Relationship

Nothing in this Agreement creates a relationship of employer and employee, principal and agent or partnership between any of the parties to this Agreement.

2.3 No interest

The right of the Stevedore to use the Area in accordance with this Agreement does not create any interest in the Area (or anything else which the Stevedore is permitted to have access to or use under this Agreement) in favour of the Stevedore.

2.4 No occupation or exclusive use

The Stevedore has no right of occupation and no right of exclusive use of the Area during the Access Period and AAT may at any time exercise all of its rights in relation to the Area including (without limitation) its rights to enter, use, possess and occupy the whole or any part of the Area or authorise others to do the same.

2.5 Other Stevedores

AAT will permit other stevedores to access the Facility and the Area to conduct Stevedoring Operations on a non-exclusive basis in accordance with a stevedoring licence in the form of this Agreement. The Stevedore will not impede or interfere with the activities of other stevedores or users of the Facility and will cooperate fully with AAT in resolving any disputes with any person as to use of the Facility.

3. AAT'S obligations

3.1 AAT's Obligations

AAT must during the Access Period and on the terms of this Agreement:

- (a) permit the Stevedore to use any available AAT Mobile Equipment and to bring onto the Area during the Access Period such Stevedoring Equipment as is permitted by AAT;
- (b) provide the Stevedore with access to a carpark in the vicinity of the Facility where personal vehicles of the employees of the Stevedore may be parked;
- (c) Allocate to the stevedore yard slots in the stacking area for export cargo to be stacked and confirm with stevedore on closure of receipt for particular ship yard allocation of all export cargo. Allocate to the stevedore yard slots in the stacking area for import cargo. Stevedore to confirm with AAT yard allocation of all import cargo prior to commencement of delivery;
- (d) provide stevedore with access to the operational cargo control computer systems for the receipt, delivery and management of all cargo stevedored through the site. Manage the receipt and delivery of all cargo through the operational computer systems supplying stevedore and shipping company appropriate documentation confirming transfer of cargo. Manage the interface with Australian Customs Service and Australian Quarantine Inspection Service to ensure all import/export requirements are met.
- (e) provide the Stevedore with the use of Office Space;
- (f) if required by the Stevedore, provide to the Stevedore barcode scanners to be used by the Stevedore in the Stevedoring Operations;
- (g) permit the Stevedore to have non-exclusive use of the Amenities; and

- (h) provide machinery, clerical and waterside services to enable the prompt receipt and delivery of cargo passing through the site including completion and distribution of all manifests/declarations/reports required by authorities and clients in connection with that cargo.

3.2 Performance of AAT's Obligations

- (a) Subject always to AAT needing to make decisions in an impartial, effective and timely manner, to reconcile any conflicting operational needs of the Stevedore, other stevedores and other people about the use of the Facility and AAT Mobile Equipment, AAT will not Discriminate against any stevedore, including the Stevedore in relation to any matter under this Agreement.
- (b) The Stevedore acknowledges that in allocating yard slots in the Stacking Area as contemplated in clause 3.1(c), AAT will allocate those slots in such a way that promotes the efficient use of the Facility. In general, this will mean that AAT will allocate those available yard slots that are either closest to the relevant Vessel or closest to any relevant PDI Operator. This is always subject to any special considerations for the handling of dangerous Cargo.
- (c) The access to the computer system referred to in clause 3.1(d) will be on the following terms:
 - (i) Upon the Stevedore satisfying AAT that it is providing Stevedoring Operations for a Vessel, AAT will provide the Stevedore with a password protected right to computer access to a list of Cargo unloaded (or to be unloaded) from that Vessel or Cargo loaded (or to be loaded) onto that Vessel;
 - (ii) the computer access will be provided in the Office Space; and
 - (iii) the Stevedore must keep any information it receives from the centralised computer system completely confidential.
- (d) AAT must ensure that:
 - (i) only AAT's Facility People have access to the shipping line manifest for the relevant Vessel and will be required to keep that information confidential and not disclose it to any other person except where access is required for the purposes of determining a dispute or as required by Law or for any audit of AAT's records or reporting by AAT to the Port Corporation (and then only to the extent necessary to resolve that dispute, comply with that Law, or for the purposes of that audit or reporting); and
 - (ii) any information extracted from shipping line manifests and made available to persons employed by or contracted to AAT must not include any details of the relevant consignors or consignees.
- (e) AAT will do all things reasonably necessary to adopt and comply with the Interberth Priority Rules.

4. Termination of Agreement

4.1 AAT may terminate Agreement immediately

AAT may terminate this Agreement immediately by notice to the Stevedore if the Stevedore:

- (a) repudiates this Agreement; or
- (b) is in default of its other obligations under this Agreement and has not remedied such default within 30 days of AAT giving notice to the Stevedore of the default.

5. Lease or Licence of area

5.1 AAT retains rights to lease

Nothing in this Agreement limits AAT's ability or right to lease or licence the Area to any other person. The Stevedore agrees that it does not have and will not make any claim against AAT if the Area is unavailable for whatever reason (including without limitation, AAT relinquishing control over the Area, or if the Area is sold or leased).

6. Stevedore to request AAT

6.1 Advance notice of Access Period

The Stevedore must give AAT a written request seeking AAT's consent for the Stevedore to have access to the Area together with the use of such AAT Mobile Equipment specified in the request for the purpose of carrying out Stevedoring Operations. This request must be given to AAT by the Stevedore as far in advance of the commencement of the Access Period as is reasonably practicable and in any event at least 5 days prior to the arrival of the relevant Vessel.

6.2 Request to contain certain information

The Stevedore's request must specify the:

- (a) proposed Access Period (commencing at least 5 days following the time that the request is given) including the estimated times of arrival and departure of the Vessel and any additional time before arrival and after departure of the Vessel;
- (b) Vessel to be loaded/unloaded;
- (c) nature and details of Cargo to be loaded/unloaded;
- (d) overall length of the Vessel;
- (e) bow to bridge length of the Vessel;
- (f) position of ramps (if any) on the Vessel intended to be used for the Stevedoring Operations;
- (g) AAT Mobile Equipment which the Stevedore proposes to use during the Access Period; and

- (h) Additional Equipment which the Stevedore proposes to use during the Access Period.

6.3 Further Information

The Stevedore must promptly inform AAT as soon as it receives any information relating to the matters referred to in clause 6.2 (including, without limitation, the estimated times of arrival and departure of the Vessel) which is different to the information specified in the Stevedore's request made pursuant to clause 6.2.

6.4 Dangerous Cargo

If the Stevedore proposes to load or unload or otherwise handle dangerous Cargo on the Area, the Stevedore must provide AAT with copies of written procedures that specify how the dangerous cargo is to be handled by the Stevedore and any other special instructions concerning the care, control, storage and handling of the Cargo, having regard to its nature and packaging. The Stevedore must also comply strictly with all Policies in relation to the storage and handling of dangerous Cargo.

6.5 Only authorised personnel

The Stevedore must ensure that all persons taking part in the Stevedoring Operations or present on the Area (or using the Amenities or Office Space) in connection with such operations hold and display at all times a current photo identification card and security access swipe card. These will be supplied to the Stevedore by AAT (on request by the Stevedore made a reasonable time prior to access being required for relevant personnel) provided that the relevant personnel have supplied a current photo and correct details for AAT to include on the photo identification card. The Stevedore must also supply to AAT a list of persons working on the Vessel.

6.6 AAT to notify whether request granted

- (a) AAT must inform the Stevedore as soon as practicable after receiving a request (and where the Stevedore has complied with all of clause 6.2, not less than 5 days prior to the estimated time of arrival of the relevant Vessel) under clause 6.1:
 - (i) whether the Stevedore may have access to the Area (and use of the AAT Mobile Equipment) as requested and the reasons for any refusal; and
 - (ii) AAT's proposed Additional Equipment Charges (if applicable),

and the Stevedore must notify AAT as soon as practicable following the day on which AAT informs the Stevedore of the Additional Equipment Charges whether it still requires the Additional Equipment. If the Stevedore still requires the Additional Equipment it must pay to AAT the Additional Equipment Charges on or before the commencement of the relevant Access Period.

- (b) AAT may (acting reasonably) refuse the access and use sought in a request made by the Stevedore, impose further and additional conditions on the grant of access, or grant access to the Area at dates and times that are different to those originally requested by the Stevedore (including in relation to the Access Period). The Stevedore acknowledges that AAT must comply with its obligations under Background clause C and that AAT cannot grant access or use which is likely to impede access or use already granted to another stevedore or user of the Facility.

- (c) To facilitate the efficient use of the Facility, AAT and the Stevedore agree that once a Vessel has berthed at the Facility, the Stevedore must immediately commence Stevedoring Operations and perform Stevedoring Operations continuously (all shifts) until those Stevedoring Operations have been completed. The Stevedore and AAT agree that AAT may charge Delay Fees if the Stevedore does not comply with this clause 6.6(c), unless it is not the fault of the Stevedore, or otherwise as agreed by AAT.
- (d) The Stevedore must ensure that the relevant Vessel departs as soon as possible following completion of the relevant Stevedoring Operations in respect of that Vessel.
- (e) AAT must ensure that it applies the Berthing Priority Rules to decide in which order Vessels are berthed at the Facility and at which location at the Facility they are berthed.

6.7 Cargo Documentation

At least 48 hours prior to the berthing of the Vessel at the Facility the Stevedore must provide (to such AAT Facility People as nominated by AAT) all documentation reasonably required by AAT concerning the Cargo including dangerous, overlength, overwidth or reefer Cargo.

6.8 Cranes

The Stevedore must:

- (a) collect any Cranes it needs to carry out Stevedoring Operations from the Crane Storage Area at the commencement of the Access Period and return the Cranes to the Crane Storage Area on or before the earlier of:
 - (i) completion of the Stevedoring Operations; or
 - (ii) expiry of the Access Period;
- (b) liaise with and follow the directions of AAT in relation to the Cranes including collecting and returning of the Cranes from and to the Crane Storage Area;
- (c) operate the Cranes in accordance with all Laws and Policies; and
- (d) report any malfunction with or damage done to any Crane it uses as soon as it becomes aware of such malfunction or damage.

7. Fees and charges

7.1 Fees and charges

The Stevedore must pay AAT the Fees and Additional Equipment Charges within 14 days following the date of the relevant invoice from AAT to the Stevedore.

7.2 Failure to pay Fees or charges

Without affecting AAT's other rights, if the Stevedore fails to pay the Fees or Additional Equipment Charges as required under clause 7.1 (other than where there is a bona fide dispute concerning the calculation of Fees or Additional Equipment Charges), AAT may

refuse any further request by the Stevedore for access to the Area while money remains due and payable under this Agreement from the Stevedore to AAT. AAT may charge interest at the Default Rate on all moneys owed by the Stevedore to AAT, such interest to be calculated daily and compounded monthly.

7.3 Storage of Cargo

The Stevedore may store the Cargo in the Stacking Area for a period not exceeding 3 days. Cargo remaining in the Stacking Area in excess of 3 days is subject to additional storage fees calculated in accordance with Item 3. This storage period may be reviewed from time to time on reasonable notice given to the Stevedore.

8. Insurances

8.1 Insurances to be maintained

During the Term the Stevedore must, in connection with its use of the Area, AAT's Mobile Equipment, the Amenities and the Office Space and anything else the Stevedore does under or in relation to this Agreement (including its use of the Stevedoring Equipment), maintain with an insurer acceptable to AAT (acting reasonably) and containing terms acceptable to AAT (acting reasonably):

- (a) a policy of public risk insurance noting the interest of AAT for an amount of not less than \$20 million in respect of any single occurrence or such higher amount as AAT may from time to time reasonably require;
- (b) workers compensation insurance; and
- (c) all other insurances which are required by Law.

8.2 Evidence of insurance

The Stevedore must promptly following a request from AAT from time to time give to AAT a certificate of currency in relation to all insurances effected under clauses 8.1(a) and 8.1(c).

8.3 Notify AAT

The Stevedore must notify AAT immediately if an insurance policy required by clause 8.1 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy referred to in clause 8.1.

9. Occupational health and safety

9.1 Risk Assessment

The Stevedore must perform regular occupational health and safety risk assessments for Stevedoring Operations and its use of the Area during the Access Period, at its own cost and in accordance with all Laws. The results of all of these assessments must be provided to AAT promptly following a demand for the same.

10. Release and indemnity

10.1 Use of the Area at Stevedore's own risk

- (a) Subject to clause 10.1 (b) the Stevedore uses the Area and stores the Cargo in the Stacking Area at its own risk.
- (b) If AAT physically damages the Cargo by some positive act carried out by AAT (rather than omission by AAT), then it is responsible for any damage which this act causes to the Cargo.

10.2 Stevedore indemnifies AAT

The Stevedore must indemnify AAT in relation to any breach of this Agreement and all Claims against AAT to the extent that those Claims:

- (a) relate to loss of or damage to the Cargo; or
- (b) are caused or contributed to by the negligence or wilful acts or omissions of the Stevedore or any Stevedore Visitor including, but not limited to, Claims in respect of:
 - (i) loss of life or personal injury to any person; or
 - (ii) loss of or damage to the property of any person

10.3 Stevedore liable for damage

The Stevedore must ensure that no damage to the Area, the Facility, the AAT Mobile Equipment, Additional Equipment or any other property on the Area or Facility (whether or not the property belongs to AAT or any third party) is caused by the Stevedore, any Stevedore Visitor or by any plant or equipment owned or operated by the Stevedore or any Stevedore Visitor. The Stevedore is liable for any such damage.

10.4 AAT not liable for force majeure

AAT will not be liable for any delay or failure to provide access to the Area, AAT Mobile Equipment and Additional Equipment to the Stevedore in accordance with this Agreement (or failure to perform any other obligation under this Agreement) if such failure or delay is due to the Port Corporation or the Stevedore's act or omission or any act, omission or circumstance over which AAT could not reasonably have exercised control, including but not limited to war, terrorism, civil unrest, sabotage, civil commotion, national emergency, breakdown of plant, machinery or equipment, strike or other labour difficulty or industrial unrest, earthquake, tsunami, storm, tempest, hurricane and other adverse weather conditions or act of God.

11. Stevedore's other obligations

11.1 Compliance with Laws and Policies

- (a) The Stevedore must ensure that, at all times, it complies with all applicable Laws (including but not limited to environmental and occupational health and safety legislation) and all Policies provided by AAT to the Stevedore.

- (b) The Stevedore must ensure that, at all times, it has all necessary authorisations required by any authority or by Law in relation to the loading, unloading, handling and storage of the Cargo.

11.2 Stevedore must comply with AAT's requests

The Stevedore must comply with all reasonable requests and directions by AAT in relation to matters concerning safety, security, compliance with Laws, compliance with this Agreement and the efficient use of the Facility.

11.3 Area to be kept clean

The Stevedore must at all times during its use of the Area (including, without limitation, the Amenities) keep it clean and tidy to the reasonable satisfaction of AAT.

11.4 Stevedore not to obstruct

The Stevedore must:

- (a) not obstruct or permit to be obstructed or otherwise impeded any fire fighting equipment or appliances on the Area; and
- (b) report any damage or accident which occurs on the Area to the relevant AAT Manager immediately.

11.5 Information

The Stevedore must ensure that:

- (a) information detailing Cargo (including, without limitation, the shipping line manifest, volume and identification marks of Cargo) is sent to such of AAT's Facility People as are nominated by AAT, via EDI at least 72 hours prior to Vessel arrival;
- (b) any hazardous Cargo is clearly identified; and
- (c) the customs clearance of all Cargo is sent to such of AAT's Facility People as are nominated by AAT, via EDI so that delivery of Cargo can be effected.

11.6 Stacking of Cargo

The Stevedore must not park, place or stack (as appropriate) Cargo in any location except the yard slots specified by AAT, unless otherwise agreed by AAT's Facility People.

11.7 Employee Consumables

The Stevedore is to provide its own tea, coffee and any other consumables it requires. The Amenities will be cleaned by AAT once in every 24 hour period.

11.8 Other Equipment

The Stevedore must not use Other Equipment at the Facility without the prior written consent of AAT. Such consent from AAT will not be unreasonably withheld if AAT

(acting reasonably) determines that it is not able to supply equipment which is capable of performing the task for which the Other Equipment is required.

12. Dispute resolution

12.1 General

AAT and the Stevedore agree that any dispute in relation to this Agreement must be submitted to dispute resolution under this clause 12. Neither AAT nor the Stevedore may commence legal proceedings against the other party unless it has first complied with this clause 12. The dispute and any terms for its resolution are to be kept strictly confidential by AAT and the Stevedore at all times except to the extent that disclosure is required by Law.

12.2 Local level

If either AAT or the Stevedore has a dispute with the other, they must first use all reasonable endeavours to resolve it at a local level as soon as possible. A person nominated by the Stevedore must enter into good faith discussions with the relevant on-site manager of the Facility employed by or contracted to AAT with a view to resolving the dispute.

12.3 CEO/General Manager level

If the dispute is not resolved under clause 12.2 within seven days following written notice from either party to the other that a dispute exists and that party wishes to resolve that dispute under clause 12.1, each party shall nominate its general manager (or chief executive officer if it has a chief executive officer) to enter into good faith discussions to resolve the dispute. Each party must ensure that its general manager (or chief executive officer if applicable) acts in good faith and uses all reasonable endeavours to resolve the relevant dispute as soon as practicable.

12.4 Mediation

If the dispute is not resolved under clause 12.3 within seven days, it will be referred to mediation under this clause 12.4. AAT must provide a choice of three mediators and the Stevedore may choose which of those mediators should carry out mediation under this clause 12.4. Both parties will use all reasonable endeavours to ensure that a mediation occurs under this clause 12.4 within 14 days of one party notifying the other in writing that it wishes to refer a dispute to mediation which has not been resolved under clause 12.3.

12.5 Expert determination

If the relevant dispute is not resolved under clause 12.4, then (subject to clause 12.6) either party may refer the dispute to be determined by a retired Federal Court judge who is practising in dispute resolution (the initial appointee being Mr Justice John Lockhart QC) (**Expert**). The Expert shall decide the dispute as an expert not an arbitrator and his decision shall be final and binding on both AAT and the Stevedore.

12.6 Dispute about fees

Both AAT and the Stevedore acknowledge that in the absence of manifest error, all Fees shall be calculated with reference to shipping manifests. If there is any dispute about the calculation of Fees, clause 12.5 will apply to such a dispute except that the Expert will be

an Accountant agreed by the parties and failing agreement nominated by the president from time to time of the Institute of Chartered Accountants. The Expert must also agree to keep confidential such shipping manifests as are provided to him or her to decide the dispute.

12.7 Dispute about Discrimination

In respect of any dispute claiming that AAT has engaged in Discriminatory conduct, AAT and the Stevedore will provide such information to the mediator and to the Expert as may be required by him or her to decide the dispute. To the extent that AAT provides information about other stevedores, this information may be shown only to the mediator and Expert and will not be shown to the Stevedore. The mediator and the Expert may make recommendations as to steps that might be taken by a party to avoid a repetition of the dispute.

13. GST

- (a) A recipient of a taxable supply made under this Agreement must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply.
- (b) The recipient must pay the GST to the supplier at the same time as the consideration is payable.
- (c) A party's obligation to reimburse another party for an amount paid or payable to a third party includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an Input Tax Credit for that GST.
- (d) Each party making a taxable supply under this Agreement must issue a Tax Invoice to the other party for each taxable supply at or before the time it makes the taxable supply.
- (e) Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this Agreement.
- (f) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (g) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an Input Tax Credit).
- (h) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

14. General

14.1 Notices

- (a) A notice, request, demand, consent or approval served by one party on another under this Agreement must be in writing, addressed to the recipient at the address specified in this Agreement (or to the address designated by a party by written notice).

- (b) A notice is treated as being duly served if it is signed by an officer or under the common seal of the sender and:
 - (i) left at that party's address;
 - (ii) sent by pre-paid mail to that party's address; or
 - (iii) transmitted by facsimile to that other party's address.
- (c) A notice is treated as having been duly served and received:
 - (i) when delivered (if left at that party's address);
 - (ii) on the third Business Day after posting (if sent by pre-paid mail); or
 - (iii) in the case of a facsimile transmission, when the transmission has been completed, except if:
 - (A) the sender's facsimile machine indicates a malfunction in transmission or the recipient notifies the sender of an incomplete transmission within 2 hours of receipt in which case the facsimile transmission is regarded as not having been given or made; or
 - (B) the time of dispatch is after 5.00 pm in the place in which the notice is received, in which case the notice is regarded as received at the commencement of business on the next Business Day in that place.

14.2 Variation

A variation or waiver of a provision or any amendment of this Agreement is effective only if in writing and signed by all parties. A variation or waiver is effective only to the extent to which it is made or given.

14.3 No waiver

- (a) In this clause "power" includes any right, authority or discretion or remedy.
- (b) A failure, delay, relaxation or indulgence on the part of a party in exercising any power conferred upon that party by this Agreement does not operate as a waiver of that power.
- (c) A single or partial exercise of any power does not preclude any other or future exercise of it, or the exercise of any other power under this Agreement.
- (d) Waiver of a breach of this Agreement or any power arising under this Agreement must be in writing signed by the party granting the waiver.

14.4 Entire agreement

This Agreement constitutes the sole and entire agreement between the parties with regard to its subject matter and a warranty, representation, guarantee or other term or condition of any nature not contained in this Agreement is of no force or effect.

14.5 Severance

Part or all of any clause in this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

14.6 Assignment

The Stevedore must not transfer or assign or otherwise dispose of the Stevedore's rights and obligations under this Agreement or attempt to do so, without the written consent of AAT.

14.7 Costs and stamp duty

- (a) The Stevedore must pay stamp duty and any additional stamping and any penalties and fines (excluding penalties and fines due to the default of AAT) on this Agreement.
- (b) The parties must otherwise pay their own costs of, and incidental to, the negotiation, preparation and completion of this Agreement.

14.8 Further assurances

Each party must do all things and execute all documents necessary to give full effect to this Agreement.

14.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

14.10 Governing Law

This Agreement is governed by the Laws of the Jurisdiction. The parties submit to the non-exclusive jurisdiction of the courts of that Jurisdiction and any court hearing appeals from those courts.

Schedule 1: General

Item 1 **Commencing Date**

2008

Item 2 **Term**

1 year

Item 3 **Fees**

The Fees and Delay Fees are to be calculated in accordance with the Tariff Schedule or such other tariff schedule provided to the Stevedore by AAT on not less than 2 months written notice to the Stevedore

Item 4 **Jurisdiction**

Tasmania

Item 5 **Port Corporation**

Tasports - Launceston

Schedule 2: Tariff Schedule

Schedule 3: Plan identifying the Area

Executed as an Agreement

Executed by Australian Amalgamated)
Terminals Pty Ltd ABN 13 098 458 229 in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

Executed by Stevedore ABN XXXXXXXXXX in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)
)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

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Stevedoring Licence Agreement

Australian Amalgamated Terminals Pty Ltd
ABN 13 098 458 229

Stevedore
ABN XXXXXXXX

Fisherman Islands Cargo Terminal

Middletons Lawyers
Sydney office
Ref: SMAC.FTAN.

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Stevedoring Licence Agreement

Date 2006

Parties

1. **Australian Amalgamated Terminals Pty Ltd** ABN 13 098 458 229 of Unit 11 3 Westside Avenue Port Melbourne Victoria 3207 (**AAT**)
2. **Stevedore** ABN XXXXXXXX of XXXXXXXXXXXXXXXXXXXX (**Stevedore**)

Background

A. Facility

AAT has incurred considerable expense in acquiring the Facility and the acquisition of the Facility by AAT should permit increased volumes of trade to be efficiently and safely processed through the Port of Brisbane. The Facility is to be operated as a multi-user facility managed by AAT. To ensure the efficient and safe use of the Facility it is necessary to ensure that all stevedores that use the Facility are aware of the rules governing such use.

B. Principal Objective

It is the principal objective of AAT to maximise the safe and efficient utilisation of the Facility and related equipment and services and to manage the Facility in such a way that facilitates the prompt turn around of vessels that berth at the Facility. AAT and the Stevedore agree to carry out their activities at the Facility in such a way that assists to achieve this objective.

C. Other people

AAT and the Stevedore both acknowledge that other people will be using the Facility in addition to the Stevedore and AAT. AAT and the Stevedore agree to use their best endeavours to ensure that they do not impede the proper use of the Facility by such other people. AAT will not Discriminate in favour of or against the Stevedore in relation to its use of the Facility. This Agreement contains provisions to resolve any disputes between the parties in a timely and effective manner.

D. Tariff Schedule

The Stevedore acknowledges that before signing this Agreement it received a copy of the Tariff Schedule and any Interberth Priority Rules that are in force as at the date of this Agreement.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

AAT's Facility People means AAT's employees or contractors who work at the Facility and whose job is either to provide receipt and delivery services or to act as the on-site manager of the Facility;

AAT Mobile Equipment means all transit vehicles, trailers, forklifts, ramp runners, Cranes and other mobile equipment provided by AAT at the Facility;

Accountant means a properly qualified accountant who does not work for a firm of accountants which provides services to AAT or any related or affiliated body corporate of AAT;

Access Period means the period which AAT (acting reasonably) agrees from time to time is the Access Period and which in general will be the period during which the relevant Vessel is berthed at the Facility;

Additional Equipment means handsets, switches, communications racks, cabling infrastructure and any other related equipment provided by AAT;

Additional Equipment Charges means the charges notified by AAT to the Stevedore and which the Stevedore must pay under clause 6.6(a);

Amenities means any amenities that AAT has agreed in writing to make available to the Stevedore;

Area means the area specified in the attached plan comprising Schedule 3 (but does not include any areas identified as Amenities or Office Space or AAT's maintenance shed);

Authority means any authority with jurisdiction in relation to the Area or the Stevedoring Operations;

Business Day means any day except Saturday or Sunday or a day that is a public holiday in Brisbane;

Cargo means motor vehicles and other cargo which is loaded or unloaded (or to be loaded or unloaded) by the Stevedore;

Claim means any claim, cost, demand, debt, account, action, expense, cost, lien, liability and proceeding of any nature whatsoever;

Commencing Date means the date specified in Item 1;

Container means any package, case, pallet, container or other unit of transport which contains, carries, protects or supports cargo;

Crane Storage Area means that part of the Facility that AAT from time to time notifies the Stevedore is the area for the storage of the Cranes;

Cranes means cranes provided by AAT at the Facility but does not include any personnel to operate such cranes;

Default Rate means the rate 2% pa above the overdraft rate published by the Commonwealth Bank of Australia on overdrafts in excess of \$100,000;

Delay Fees means the fees calculated in accordance with Item 3;

Discriminate means to act in a manner that in respect of the provision of access to, and use of, the Facility and all other services and subject matter as set out in this Agreement:

- (a) treats a stevedore more favourably in a material respect than the Stevedore;
- (b) treats the Stevedore less favourably in a material respect than any other stevedore; or
- (c) has the purpose of materially restricting, materially preventing or materially limiting the Stevedore from competing against another stevedore in a material respect,

but AAT will be taken not to have Discriminated (even if paragraphs (a), (b) or (c) above apply) where the relevant conduct by AAT was necessary having regard to the operational imperatives of the Facility and AAT's conduct was reasonable in all the circumstances;

Discriminatory shall have a meaning that corresponds to Discriminate;

EDI means electronic data interface;

Facility means AAT's facility at the Port of Brisbane of which the Area forms a part;

Fees means the fees calculated in accordance with Item 3;

GST has the meaning given in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Input Tax Credit has the meaning given in the GST Act;

Interberth Priority Rules means such interberth priority rules (dealing with the order in which vessels berth at the Facility and the location at which a particular Vessel might be required to berth at the Facility) which apply from time to time to the Facility;

Interest Rate means 2% above the Commonwealth Bank of Australia overdraft rate on amounts in excess of \$100,000 calculated on daily rests and compounded monthly;

Item means an item of Schedule 1;

Jurisdiction means the jurisdiction specified in Item 4;

Law includes any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise and includes the requirements of all Authorities;

Lease means any lease or other occupancy arrangement under which AAT is entitled to use or occupy any premises which includes the Area;

Office Space means any office space that AAT has agreed in writing to make available to the Stevedore;

Other Equipment means equipment that is not AAT Mobile Equipment, Stevedoring Equipment or Additional Equipment;

PDI Operator means any pre-delivery and inspection operator that AAT has permitted to use part of the Facility for carrying out such activities as pre-delivery and inspection operators generally carry out from time to time;

Policies means:

- (a) all policies from time to time of AAT concerning safety, security and/or the efficient use of the Facility; and
- (b) all procedures concerning the use of AAT's Mobile Equipment, Additional Equipment or Other Equipment (as applicable);

Port Corporation means the entity specified in Item 5;

Schedule means a schedule to this Agreement;

Stacking Area means that part of the Area that AAT has from time to time notified the Stevedore is the area for the temporary storage of Cargo that is to be loaded onto the Vessel or has been unloaded from the Vessel, by the Stevedore;

Stevedoring Equipment means cones, mats and any other equipment approved by AAT ;

Stevedoring Operations means the loading and unloading of a Vessel by the Stevedore and movement of Cargo to and from the Stacking Area;

Stevedore Visitor means:

- (a) all employees, agents or subcontractors of the Stevedore; and
- (b) any other person whom the Stevedore allows, directs or invites to enter the Area;

Tariff Schedule means the tariff schedule comprising Schedule 2;

Tax Invoice has the meaning given in the GST Act;

Term means the period specified in Item 2; and

Vessel means any vessel that the Stevedore is loading or unloading or is contracted to load or unload.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (c) a reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it;
- (d) unless stated otherwise, one word or provision does not limit the effect of another;

- (e) a reference to the whole includes part;
- (f) all obligations must be performed duly and punctually;
- (g) words importing "do" include do, permit, omit, or cause to be done or omitted;
- (h) if a party consists of more than one person this Agreement binds them jointly and each of them severally;
- (i) where a party is prohibited from acting or omitting to act in a certain way that party must ensure that each of its employees, agents and contractors complies with such prohibition;
- (j) a reference to "writing" includes a fax, letter, email and any other means of reproducing words in a tangible and visible form;
- (k) a reference to a "clause" is a reference to a clause of this Agreement unless otherwise specified;
- (l) if a provision or part of a provision of this Agreement is illegal, invalid or unenforceable, then that provision or part is severed from this Agreement and this Agreement otherwise remains unaffected; and
- (m) a vessel is considered to be berthed at the Facility as soon as it has been safely and adequately secured alongside the Facility.

2. Non-exclusive Licence

2.1 Agreement

- (a) AAT grants the Stevedore a non-exclusive licence for the Term, to use (but not occupy) the Area during each Access Period for the purpose of carrying out Stevedoring Operations on the terms of this Agreement. The Stevedore must not use the Area for any purpose other than that specified in this clause 2.1 or at any time outside an Access Period.
- (b) If AAT permits the Stevedore to carry out Stevedoring Operations on the Area following expiry of the Term, then the terms of this Agreement continue to apply as between the Stevedore and AAT on a month to month basis and either party can terminate this Agreement on one month's notice to the other and expiring on any day. If a party terminates this Agreement under this clause 2.1(b), neither party has any other rights or remedies against the other in respect of any matter arising under this Agreement, its termination or the reasons for its termination, but the termination does not affect any right or remedy of either party arising out of this Agreement prior to such termination.

2.2 Relationship

Nothing in this Agreement creates a relationship of employer and employee, principal and agent or partnership between any of the parties to this Agreement.

2.3 No interest

The right of the Stevedore to use the Area in accordance with this Agreement does not create any interest in the Area (or anything else which the Stevedore is permitted to have access to or use under this Agreement) in favour of the Stevedore.

2.4 No occupation or exclusive use

The Stevedore has no right of occupation and no right of exclusive use of the Area during the Access Period and AAT may at any time exercise all of its rights in relation to the Area including (without limitation) its rights to enter, use, possess and occupy the whole or any part of the Area or authorise others to do the same.

2.5 Other Stevedores

AAT will permit other stevedores to access the Facility and the Area to conduct Stevedoring Operations on a non-exclusive basis in accordance with a stevedoring licence in the form of this Agreement. The Stevedore will not impede or interfere with the activities of other stevedores or users of the Facility and will cooperate fully with AAT in resolving any disputes with any person as to use of the Facility.

3. AAT'S obligations

3.1 AAT's Obligations

AAT must during the Access Period and on the terms of this Agreement:

- (a) permit the Stevedore to use any available AAT Mobile Equipment and to bring onto the Area during the Access Period such Stevedoring Equipment as is permitted by AAT;
- (b) provide the Stevedore with access to a carpark in the vicinity of the Facility where personal vehicles of the employees of the Stevedore may be parked;
- (c) Allocate to the stevedore yard slots in the stacking area for export cargo to be stacked and confirm with stevedore on closure of receipt for particular ship yard allocation of all export cargo. Allocate to the stevedore yard slots in the stacking area for import cargo. Stevedore to confirm with AAT yard allocation of all import cargo prior to commencement of delivery;
- (d) provide stevedore with access to the operational cargo control computer systems for the receipt, delivery and management of all cargo stevedored through the site. Manage the receipt and delivery of all cargo through the operational computer systems supplying stevedore and shipping company appropriate documentation confirming transfer of cargo. Manage the interface with Australian Customs Service and Australian Quarantine Inspection Service to ensure all import/export requirements are met.
- (e) provide the Stevedore with the use of Office Space;
- (f) if required by the Stevedore, provide to the Stevedore barcode scanners to be used by the Stevedore in the Stevedoring Operations;
- (g) permit the Stevedore to have non-exclusive use of the Amenities; and

- (h) provide machinery, clerical and waterside services to enable the prompt receipt and delivery of cargo passing through the site including completion and distribution of all manifests/declarations/reports required by authorities and clients in connection with that cargo.

3.2 Performance of AAT's Obligations

- (a) Subject always to AAT needing to make decisions in an impartial, effective and timely manner, to reconcile any conflicting operational needs of the Stevedore, other stevedores and other people about the use of the Facility and AAT Mobile Equipment, AAT will not Discriminate against any stevedore, including the Stevedore in relation to any matter under this Agreement.
- (b) The Stevedore acknowledges that in allocating yard slots in the Stacking Area as contemplated in clause 3.1(c), AAT will allocate those slots in such a way that promotes the efficient use of the Facility. In general, this will mean that AAT will allocate those available yard slots that are either closest to the relevant Vessel or closest to any relevant PDI Operator. This is always subject to any special considerations for the handling of dangerous Cargo.
- (c) The access to the computer system referred to in clause 3.1(d) will be on the following terms:
 - (i) Upon the Stevedore satisfying AAT that it is providing Stevedoring Operations for a Vessel, AAT will provide the Stevedore with a password protected right to computer access to a list of Cargo unloaded (or to be unloaded) from that Vessel or Cargo loaded (or to be loaded) onto that Vessel;
 - (ii) the computer access will be provided in the Office Space; and
 - (iii) the Stevedore must keep any information it receives from the centralised computer system completely confidential.
- (d) AAT must ensure that:
 - (i) only AAT's Facility People have access to the shipping line manifest for the relevant Vessel and will be required to keep that information confidential and not disclose it to any other person except where access is required for the purposes of determining a dispute or as required by Law or for any audit of AAT's records or reporting by AAT to the Port Corporation (and then only to the extent necessary to resolve that dispute, comply with that Law, or for the purposes of that audit or reporting); and
 - (ii) any information extracted from shipping line manifests and made available to persons employed by or contracted to AAT must not include any details of the relevant consignors or consignees.
- (e) AAT will do all things reasonably necessary to adopt and comply with the Interberth Priority Rules.

4. Termination of Agreement

4.1 AAT may terminate Agreement immediately

AAT may terminate this Agreement immediately by notice to the Stevedore if the Stevedore:

- (a) repudiates this Agreement; or
- (b) is in default of its other obligations under this Agreement and has not remedied such default within 30 days of AAT giving notice to the Stevedore of the default.

5. Lease or Licence of area

5.1 AAT retains rights to lease

Nothing in this Agreement limits AAT's ability or right to lease or licence the Area to any other person. The Stevedore agrees that it does not have and will not make any claim against AAT if the Area is unavailable for whatever reason (including without limitation, AAT relinquishing control over the Area, or if the Area is sold or leased).

6. Stevedore to request AAT

6.1 Advance notice of Access Period

The Stevedore must give AAT a written request seeking AAT's consent for the Stevedore to have access to the Area together with the use of such AAT Mobile Equipment specified in the request for the purpose of carrying out Stevedoring Operations. This request must be given to AAT by the Stevedore as far in advance of the commencement of the Access Period as is reasonably practicable and in any event at least 5 days prior to the arrival of the relevant Vessel.

6.2 Request to contain certain information

The Stevedore's request must specify the:

- (a) proposed Access Period (commencing at least 5 days following the time that the request is given) including the estimated times of arrival and departure of the Vessel and any additional time before arrival and after departure of the Vessel;
- (b) Vessel to be loaded/unloaded;
- (c) nature and details of Cargo to be loaded/unloaded;
- (d) overall length of the Vessel;
- (e) bow to bridge length of the Vessel;
- (f) position of ramps (if any) on the Vessel intended to be used for the Stevedoring Operations;
- (g) AAT Mobile Equipment which the Stevedore proposes to use during the Access Period: and

- (h) Additional Equipment which the Stevedore proposes to use during the Access Period.

6.3 Further Information

The Stevedore must promptly inform AAT as soon as it receives any information relating to the matters referred to in clause 6.2 (including, without limitation, the estimated times of arrival and departure of the Vessel) which is different to the information specified in the Stevedore's request made pursuant to clause 6.2.

6.4 Dangerous Cargo

If the Stevedore proposes to load or unload or otherwise handle dangerous Cargo on the Area, the Stevedore must provide AAT with copies of written procedures that specify how the dangerous cargo is to be handled by the Stevedore and any other special instructions concerning the care, control, storage and handling of the Cargo, having regard to its nature and packaging. The Stevedore must also comply strictly with all Policies in relation to the storage and handling of dangerous Cargo.

6.5 Only authorised personnel

The Stevedore must ensure that all persons taking part in the Stevedoring Operations or present on the Area (or using the Amenities or Office Space) in connection with such operations hold and display at all times a current photo identification card and security access swipe card. These will be supplied to the Stevedore by AAT (on request by the Stevedore made a reasonable time prior to access being required for relevant personnel) provided that the relevant personnel have supplied a current photo and correct details for AAT to include on the photo identification card. The Stevedore must also supply to AAT a list of persons working on the Vessel.

6.6 AAT to notify whether request granted

- (a) AAT must inform the Stevedore as soon as practicable after receiving a request (and where the Stevedore has complied with all of clause 6.2, not less than 5 days prior to the estimated time of arrival of the relevant Vessel) under clause 6.1:
 - (i) whether the Stevedore may have access to the Area (and use of the AAT Mobile Equipment) as requested and the reasons for any refusal; and
 - (ii) AAT's proposed Additional Equipment Charges (if applicable),

and the Stevedore must notify AAT as soon as practicable following the day on which AAT informs the Stevedore of the Additional Equipment Charges whether it still requires the Additional Equipment. If the Stevedore still requires the Additional Equipment it must pay to AAT the Additional Equipment Charges on or before the commencement of the relevant Access Period.

- (b) AAT may (acting reasonably) refuse the access and use sought in a request made by the Stevedore, impose further and additional conditions on the grant of access, or grant access to the Area at dates and times that are different to those originally requested by the Stevedore (including in relation to the Access Period). The Stevedore acknowledges that AAT must comply with its obligations under Background clause C and that AAT cannot grant access or use which is likely to impede access or use already granted to another stevedore or user of the Facility.

- (c) To facilitate the efficient use of the Facility, AAT and the Stevedore agree that once a Vessel has berthed at the Facility, the Stevedore must immediately commence Stevedoring Operations and perform Stevedoring Operations continuously (all shifts) until those Stevedoring Operations have been completed. The Stevedore and AAT agree that AAT may charge Delay Fees if the Stevedore does not comply with this clause 6.6(c), unless it is not the fault of the Stevedore, or otherwise as agreed by AAT.
- (d) The Stevedore must ensure that the relevant Vessel departs as soon as possible following completion of the relevant Stevedoring Operations in respect of that Vessel.
- (e) AAT must ensure that it applies the Berthing Priority Rules to decide in which order Vessels are berthed at the Facility and at which location at the Facility they are berthed.

6.7 Cargo Documentation

At least 48 hours prior to the berthing of the Vessel at the Facility the Stevedore must provide (to such AAT Facility People as nominated by AAT) all documentation reasonably required by AAT concerning the Cargo including dangerous, overlength, overwidth or reefer Cargo.

6.8 Cranes

The Stevedore must:

- (a) collect any Cranes it needs to carry out Stevedoring Operations from the Crane Storage Area at the commencement of the Access Period and return the Cranes to the Crane Storage Area on or before the earlier of:
 - (i) completion of the Stevedoring Operations; or
 - (ii) expiry of the Access Period;
- (b) liaise with and follow the directions of AAT in relation to the Cranes including collecting and returning of the Cranes from and to the Crane Storage Area;
- (c) operate the Cranes in accordance with all Laws and Policies; and
- (d) report any malfunction with or damage done to any Crane it uses as soon as it becomes aware of such malfunction or damage.

7. Fees and charges

7.1 Fees and charges

The Stevedore must pay AAT the Fees and Additional Equipment Charges within 14 days following the date of the relevant invoice from AAT to the Stevedore.

7.2 Failure to pay Fees or charges

Without affecting AAT's other rights, if the Stevedore fails to pay the Fees or Additional Equipment Charges as required under clause 7.1 (other than where there is a bona fide dispute concerning the calculation of Fees or Additional Equipment Charges), AAT may

refuse any further request by the Stevedore for access to the Area while money remains due and payable under this Agreement from the Stevedore to AAT. AAT may charge interest at the Default Rate on all moneys owed by the Stevedore to AAT, such interest to be calculated daily and compounded monthly.

7.3 Storage of Cargo

The Stevedore may store the Cargo in the Stacking Area for a period not exceeding 3 days. Cargo remaining in the Stacking Area in excess of 3 days is subject to additional storage fees calculated in accordance with Item 3. This storage period may be reviewed from time to time on reasonable notice given to the Stevedore.

8. Insurances

8.1 Insurances to be maintained

During the Term the Stevedore must, in connection with its use of the Area, AAT's Mobile Equipment, the Amenities and the Office Space and anything else the Stevedore does under or in relation to this Agreement (including its use of the Stevedoring Equipment), maintain with an insurer acceptable to AAT (acting reasonably) and containing terms acceptable to AAT (acting reasonably):

- (a) a policy of public risk insurance noting the interest of AAT for an amount of not less than \$20 million in respect of any single occurrence or such higher amount as AAT may from time to time reasonably require;
- (b) workers compensation insurance; and
- (c) all other insurances which are required by Law.

8.2 Evidence of insurance

The Stevedore must promptly following a request from AAT from time to time give to AAT a certificate of currency in relation to all insurances effected under clauses 8.1(a) and 8.1(c).

8.3 Notify AAT

The Stevedore must notify AAT immediately if an insurance policy required by clause 8.1 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy referred to in clause 8.1.

9. Occupational health and safety

9.1 Risk Assessment

The Stevedore must perform regular occupational health and safety risk assessments for Stevedoring Operations and its use of the Area during the Access Period, at its own cost and in accordance with all Laws. The results of all of these assessments must be provided to AAT promptly following a demand for the same.

10. Release and indemnity

10.1 Use of the Area at Stevedore's own risk

- (a) Subject to clause 10.1 (b) the Stevedore uses the Area and stores the Cargo in the Stacking Area at its own risk.
- (b) If AAT physically damages the Cargo by some positive act carried out by AAT (rather than omission by AAT), then it is responsible for any damage which this act causes to the Cargo.

10.2 Stevedore indemnifies AAT

The Stevedore must indemnify AAT in relation to any breach of this Agreement and all Claims against AAT to the extent that those Claims:

- (a) relate to loss of or damage to the Cargo; or
- (b) are caused or contributed to by the negligence or wilful acts or omissions of the Stevedore or any Stevedore Visitor including, but not limited to, Claims in respect of:
 - (i) loss of life or personal injury to any person; or
 - (ii) loss of or damage to the property of any person.

10.3 Stevedore liable for damage

The Stevedore must ensure that no damage to the Area, the Facility, the AAT Mobile Equipment, Additional Equipment or any other property on the Area or Facility (whether or not the property belongs to AAT or any third party) is caused by the Stevedore, any Stevedore Visitor or by any plant or equipment owned or operated by the Stevedore or any Stevedore Visitor. The Stevedore is liable for any such damage.

10.4 AAT not liable for force majeure

AAT will not be liable for any delay or failure to provide access to the Area, AAT Mobile Equipment and Additional Equipment to the Stevedore in accordance with this Agreement (or failure to perform any other obligation under this Agreement) if such failure or delay is due to the Port Corporation or the Stevedore's act or omission or any act, omission or circumstance over which AAT could not reasonably have exercised control, including but not limited to war, terrorism, civil unrest, sabotage, civil commotion, national emergency, breakdown of plant, machinery or equipment, strike or other labour difficulty or industrial unrest, earthquake, tsunami, storm, tempest, hurricane and other adverse weather conditions or act of God.

11. Stevedore's other obligations

11.1 Compliance with Laws and Policies

- (a) The Stevedore must ensure that, at all times, it complies with all applicable Laws (including but not limited to environmental and occupational health and safety legislation) and all Policies provided by AAT to the Stevedore.

- (b) The Stevedore must ensure that, at all times, it has all necessary authorisations required by any authority or by Law in relation to the loading, unloading, handling and storage of the Cargo.

11.2 Stevedore must comply with AAT's requests

The Stevedore must comply with all reasonable requests and directions by AAT in relation to matters concerning safety, security, compliance with Laws, compliance with this Agreement and the efficient use of the Facility.

11.3 Area to be kept clean

The Stevedore must at all times during its use of the Area (including, without limitation, the Amenities) keep it clean and tidy to the reasonable satisfaction of AAT.

11.4 Stevedore not to obstruct

The Stevedore must:

- (a) not obstruct or permit to be obstructed or otherwise impeded any fire fighting equipment or appliances on the Area; and
- (b) report any damage or accident which occurs on the Area to the relevant AAT Manager immediately.

11.5 Information

The Stevedore must ensure that:

- (a) information detailing Cargo (including, without limitation, the shipping line manifest, volume and identification marks of Cargo) is sent to such of AAT's Facility People as are nominated by AAT, via EDI at least 72 hours prior to Vessel arrival;
- (b) any hazardous Cargo is clearly identified; and
- (c) the customs clearance of all Cargo is sent to such of AAT's Facility People as are nominated by AAT, via EDI so that delivery of Cargo can be effected.

11.6 Stacking of Cargo

The Stevedore must not park, place or stack (as appropriate) Cargo in any location except the yard slots specified by AAT, unless otherwise agreed by AAT's Facility People.

11.7 Employee Consumables

The Stevedore is to provide its own tea, coffee and any other consumables it requires. The Amenities will be cleaned by AAT once in every 24 hour period.

11.8 Other Equipment

The Stevedore must not use Other Equipment at the Facility without the prior written consent of AAT. Such consent from AAT will not be unreasonably withheld if AAT

(acting reasonably) determines that it is not able to supply equipment which is capable of performing the task for which the Other Equipment is required.

12. Dispute resolution

12.1 General

AAT and the Stevedore agree that any dispute in relation to this Agreement must be submitted to dispute resolution under this clause 12. Neither AAT nor the Stevedore may commence legal proceedings against the other party unless it has first complied with this clause 12. The dispute and any terms for its resolution are to be kept strictly confidential by AAT and the Stevedore at all times except to the extent that disclosure is required by Law.

12.2 Local level

If either AAT or the Stevedore has a dispute with the other, they must first use all reasonable endeavours to resolve it at a local level as soon as possible. A person nominated by the Stevedore must enter into good faith discussions with the relevant on-site manager of the Facility employed by or contracted to AAT with a view to resolving the dispute.

12.3 CEO/General Manager level

If the dispute is not resolved under clause 12.2 within seven days following written notice from either party to the other that a dispute exists and that party wishes to resolve that dispute under clause 12.1, each party shall nominate its general manager (or chief executive officer if it has a chief executive officer) to enter into good faith discussions to resolve the dispute. Each party must ensure that its general manager (or chief executive officer if applicable) acts in good faith and uses all reasonable endeavours to resolve the relevant dispute as soon as practicable.

12.4 Mediation

If the dispute is not resolved under clause 12.3 within seven days, it will be referred to mediation under this clause 12.4. AAT must provide a choice of three mediators and the Stevedore may choose which of those mediators should carry out mediation under this clause 12.4. Both parties will use all reasonable endeavours to ensure that a mediation occurs under this clause 12.4 within 14 days of one party notifying the other in writing that it wishes to refer a dispute to mediation which has not been resolved under clause 12.3.

12.5 Expert determination

If the relevant dispute is not resolved under clause 12.4, then (subject to clause 12.6) either party may refer the dispute to be determined by a retired Federal Court judge who is practising in dispute resolution (the initial appointee being Mr Justice John Lockhart QC) (**Expert**). The Expert shall decide the dispute as an expert not an arbitrator and his decision shall be final and binding on both AAT and the Stevedore.

12.6 Dispute about fees

Both AAT and the Stevedore acknowledge that in the absence of manifest error, all Fees shall be calculated with reference to shipping manifests. If there is any dispute about the calculation of Fees, clause 12.5 will apply to such a dispute except that the Expert will be

an Accountant agreed by the parties and failing agreement nominated by the president from time to time of the Institute of Chartered Accountants. The Expert must also agree to keep confidential such shipping manifests as are provided to him or her to decide the dispute.

12.7 Dispute about Discrimination

In respect of any dispute claiming that AAT has engaged in Discriminatory conduct, AAT and the Stevedore will provide such information to the mediator and to the Expert as may be required by him or her to decide the dispute. To the extent that AAT provides information about other stevedores, this information may be shown only to the mediator and Expert and will not be shown to the Stevedore. The mediator and the Expert may make recommendations as to steps that might be taken by a party to avoid a repetition of the dispute.

13. GST

- (a) A recipient of a taxable supply made under this Agreement must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply.
- (b) The recipient must pay the GST to the supplier at the same time as the consideration is payable.
- (c) A party's obligation to reimburse another party for an amount paid or payable to a third party includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an Input Tax Credit for that GST.
- (d) Each party making a taxable supply under this Agreement must issue a Tax Invoice to the other party for each taxable supply at or before the time it makes the taxable supply.
- (e) Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this Agreement.
- (f) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (g) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an Input Tax Credit).
- (h) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

14. General

14.1 Notices

- (a) A notice, request, demand, consent or approval served by one party on another under this Agreement must be in writing, addressed to the recipient at the address specified in this Agreement (or to the address designated by a party by written notice).

- (b) A notice is treated as being duly served if it is signed by an officer or under the common seal of the sender and:
 - (i) left at that party's address;
 - (ii) sent by pre-paid mail to that party's address; or
 - (iii) transmitted by facsimile to that other party's address
- (c) A notice is treated as having been duly served and received:
 - (i) when delivered (if left at that party's address);
 - (ii) on the third Business Day after posting (if sent by pre-paid mail); or
 - (iii) in the case of a facsimile transmission, when the transmission has been completed, except if:
 - (A) the sender's facsimile machine indicates a malfunction in transmission or the recipient notifies the sender of an incomplete transmission within 2 hours of receipt in which case the facsimile transmission is regarded as not having been given or made; or
 - (B) the time of dispatch is after 5.00 pm in the place in which the notice is received, in which case the notice is regarded as received at the commencement of business on the next Business Day in that place.

14.2 Variation

A variation or waiver of a provision or any amendment of this Agreement is effective only if in writing and signed by all parties. A variation or waiver is effective only to the extent to which it is made or given.

14.3 No waiver

- (a) In this clause "power" includes any right, authority or discretion or remedy.
- (b) A failure, delay, relaxation or indulgence on the part of a party in exercising any power conferred upon that party by this Agreement does not operate as a waiver of that power.
- (c) A single or partial exercise of any power does not preclude any other or future exercise of it, or the exercise of any other power under this Agreement.
- (d) Waiver of a breach of this Agreement or any power arising under this Agreement must be in writing signed by the party granting the waiver.

14.4 Entire agreement

This Agreement constitutes the sole and entire agreement between the parties with regard to its subject matter and a warranty, representation, guarantee or other term or condition of any nature not contained in this Agreement is of no force or effect.

14.5 Severance

Part or all of any clause in this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

14.6 Assignment

The Stevedore must not transfer or assign or otherwise dispose of the Stevedore's rights and obligations under this Agreement or attempt to do so, without the written consent of AAT.

14.7 Costs and stamp duty

- (a) The Stevedore must pay stamp duty and any additional stamping and any penalties and fines (excluding penalties and fines due to the default of AAT) on this Agreement.
- (b) The parties must otherwise pay their own costs of, and incidental to, the negotiation, preparation and completion of this Agreement.

14.8 Further assurances

Each party must do all things and execute all documents necessary to give full effect to this Agreement.

14.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

14.10 Governing Law

This Agreement is governed by the Laws of the Jurisdiction. The parties submit to the non-exclusive jurisdiction of the courts of that Jurisdiction and any court hearing appeals from those courts.

Schedule 1: General

Item 1 **Commencing Date**

2006

Item 2 **Term**

1 year

Item 3 **Fees**

The Fees and Delay Fees are to be calculated in accordance with the Tariff Schedule or such other tariff schedule provided to the Stevedore by AAT on not less than 2 months written notice to the Stevedore

Item 4 **Jurisdiction**

Queensland

Item 5 **Port Corporation**

Port of Brisbane Corporation

Schedule 3: Plan identifying the Area

Executed as an Agreement

Executed by Australian Amalgamated)
Terminals Pty Ltd ABN 13 098 458 229 in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

Executed by Stevedore ABN XXXXXXXXXX in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)
)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

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