

NO. _____

ACCESS AGREEMENT

VANCOUVER FRASER PORT AUTHORITY

AND

AUTHORITY: _____

SUBMISSION: _____

APPROVAL DATE: _____

DATE: _____

SUBJECT: Access Agreement – Truck Licensing System

TERM: TWO YEARS

CONTRACT AMOUNT: \$_____

Access Agreement
June 1, 2016

SAMPLE

Table of Contents

1.0 GRANT TO ACCESS AREA.....	5
2.0 TERM	6
3.0 USE	6
4.0 CHARGES	6
5.0 CONDITION OF ACCESS AREA	7
6.0 DAMAGE DEPOSIT	8
7.0 USER'S COVENANTS	8
8.0 RELATIONSHIP	15
9.0 SUSPENSION, MODIFICATION OR EARLY TERMINATION	15
10.0 BREACH OF AGREEMENT	16
11.0 AUTHORITY'S RESERVATIONS	19
12.0 INTEREST ON OVERDUE ACCOUNTS	20
13.0 FEES	20
14.0 LABOUR OR OTHER DISPUTE	20
15.0 DAY-TO-DAY CONTACT AND FORMAL NOTICE.....	20
16.0 EXCLUSION OF LIABILITY OF AUTHORITY	22
17.0 MISCELLANEOUS	22
SCHEDULE "A" – Plan of Access Area	
SCHEDULE "B" – Insurance	
SCHEDULE "C" – Required Information	
SCHEDULE "D" – Joinder Application	
SCHEDULE "E" – Consent to Disclose	
SCHEDULE "F" – Minimum Damages	

SAMPLE

ACCESS AGREEMENT

THIS AGREEMENT is effective as of June 1, 2016

BETWEEN:

VANCOUVER FRASER PORT AUTHORITY, a corporation established pursuant to the *Canada Marine Act*, having an office at 100 The Pointe, 999 Canada Place, Vancouver, British Columbia V6C 3T4

(the "**Authority**")

AND:

◆, a body corporate, with a place of business at ◆

(the "**Primary FSO**")

AND:

◆, a body corporate, with a place of business at ◆

(singularly, "◆" and together and jointly and severally with the Primary FSO, the "**User**")

WHEREAS:

A. The Authority manages and/or owns certain property and interests in property vested in Her Majesty the Queen in Right of Canada and certain other property and interests in property vested in the Authority (collectively, the "**Lands**");

B. The Authority has established a truck licensing system ("**TLS**") in respect of trucking companies, trucks, and drivers wishing to access and use certain roadways and lands within the Lands for the delivery, pick-up, and movement of containers;

C. Pursuant to the TLS, only drayage companies that:

- a) enjoy direct relationships with cargo interests (shippers, consignees, shipping companies and their agents);
- b) provide a complete dispatch service; and
- c) have access to sufficient private land to ensure provision of secure parking facilities for all of their equipment, including truck, trailer and chassis assets,

(the "**Full Service Operators**")

may utilize the appointment and reservation systems and protocols of the Authority or, if adopted by the Authority, its terminal operators (collectively, the "**Reservation System**") to gain access to the Lands;

D. The User is comprised of one or two Full Service Operators both of whom have jointly and severally indicated a desire to provide port-related container drayage services using their own respective fleets and employees and/or using the services of persons who operate, either directly and/or through the use of their own employees, their own container truck(s) ("**Independent Operators**"), and who have a direct contractual relationship with the User (if the User is a legally recognized entity, or by one of the Full Service Operators comprising the User, if the User is not a legally recognized entity), and who have been authorized for joinder to the User, or one of them, by the Authority ("**Joined Independent Operators**"). Any reference hereunder to Joined Independent Operators shall include the employees of that Joined Independent Operator who undertake Port-Related Drayage on behalf of or at the behest of the User and/or the Joined Independent Operator;

E. The User holds or is eligible to hold and is in the process of securing a document, ("**BC Licence**") from the British Columbia Container Trucking Commissioner appointed pursuant to the *Container Trucking Act*, SBC 2014, chapter 28, and regulations, Orders and Rules of Practice and Procedure made under that Act, (collectively, the "**Container Trucking Legislation**"), authorizing the User and a specific number of vehicles utilized by the User to participate in the port-related movement of marine containers; and

F. The Authority has agreed to grant to the User a right to access and use certain roadways and lands within the Lands for the sole purpose of loading, unloading and transporting marine containers into, within and out of the Access Area (as defined herein) on the terms and conditions hereinafter contained.

NOW THEREFORE, in consideration of covenants and agreements reserved and contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by each party to the other, the parties hereto covenant and agree as follows:

1.0 GRANT TO ACCESS AREA

- 1.1 Subject to the User fully complying with the terms and conditions of this Agreement, including all Schedules to this Agreement, at all times throughout the Term, the Authority hereby grants the User the non-exclusive and revocable right to access and use, at the User's own risk, certain roadways, designated staging areas and lands within the jurisdiction and control of the Authority, all as shown on Sketch Plans No.'s 2014-267, 2014-259 and 2014-260, all dated November 14, 2014, copies of which are collectively attached as Schedule "A" (the "**Access Area**"), in common with the Authority and any other person having a right to do so, and to the extent required for the User's authorized, Port-Related Drayage services, on the terms and conditions set out in this Agreement. Access to the terminal footprints as reflected on Schedule "A" is also subject to approval of the respective terminal operator.
- 1.2 Notwithstanding any other term of this Agreement, the area comprising the Access Area and rights of access therein is subject to change and may be amended by the Authority at any time and from time to time at its sole discretion. The Authority reserves the right, at all times and from time to time, to make alterations, additions, improvements, replacements or repairs to the Lands, including the Access Area (the "**Alterations**") and in making the Alterations, the Authority may cause such obstructions of, and interference with the User's use thereof as may be necessary, in the sole discretion of the Authority. The Authority shall not be liable to the User in any way for any loss, costs, damages, or expenses, whether direct or consequential, paid, permitted, or incurred by the User as a result of the Alterations, nor will the User be entitled to compensation for any inconvenience, nuisance, or discomfort caused by the Alterations at all times.

2.0 TERM

- 2.1 The User shall be permitted to use the Access Area from June 1, 2016, (the "Commencement Date") to May 31, 2018, (the "**Term**"), subject to the reservations, terms and conditions described in this Agreement.

3.0 USE

- 3.1 The User shall be permitted to access and use the Access Area solely for the purpose of loading, unloading and transporting drayage containers into, within and out of the Access Area upon the terms and conditions herein contained ("**Port-Related Drayage**") and for no other purpose or use whatsoever without the prior written consent of the Authority, which consent may be withheld for any reason, in the Authority's sole discretion.

4.0 CHARGES

4.1 Amount of Charges

In addition to any other amount required to be paid hereunder, the User shall pay the following to the Authority:

- (a) For the period June 1, 2016 to May 31, 2017, (the "**First Period**"), the amount of _____ DOLLARS (\$_____), plus Goods and Services Tax and such other taxes as may be imposed or required from time to time, (collectively, "**GST**") prior to the Commencement Date (the "**Initial Annual Instalment**"); and
- (b) For each consecutive twelve month period following the First Period (each a "**Subsequent Period**"), if any, the amounts payable under this section shall be determined in accordance with Section 4.2 below. The amounts set forth in subsection 4.1(a) and those amounts determined pursuant to section 4.2 are collectively referred to herein as the "**Charges**". All Charges, shall be due and payable prior to the commencement of each Subsequent Period and each annual instalment, together with the Initial Annual Instalment, shall be referred to herein as an "**Annual Instalment**".

4.2 Charges Review

- (a) The Authority shall be entitled to review the calculation of Charges prior to the commencement of each Subsequent Period and the Authority may, by notice in writing to the User (the "**4.2(a) Notice**") at any time at least thirty (30) days prior to the commencement of a Subsequent Period, amend the amount of the Charges and establish revised Charges for all or any part of that Subsequent Period ("**Revised Charges**") and, subject to paragraph 4.2(b), such Revised Charges shall be effective for such Subsequent Period or part thereof specified by the Authority in the 4.2(a) Notice. In reviewing and considering any amendment to the amount of the Charges pursuant to this paragraph 4.2(a), the Authority, having regard to cost-recovery objectives, may take into consideration such matters as, without limitation, changes in costs of the Authority related to the drayage sector, any TLS costs reported by the British Columbia Container Trucking Commissioner to the Authority, any costs incurred by the Authority specifically related to the User and its operations, and any other costs or matters which the Authority deems

relevant to the determination of the Revised Charges. The User acknowledges that this review may result in Revised Charges for such User that are different than charges required to be paid by other users pursuant to other Access Agreements. The Authority may include with the 4.2(a) Notice such information as the Authority deems appropriate to support the Authority's determination of the Revised Charges;

- (b) Within fourteen (14) days of receipt of the 4.2(a) Notice, the User may provide written submissions to the Authority with respect to the Revised Charges. The Authority will consider the User's written submissions and will provide the User with the Authority's final determination of the Revised Charges (the "**Final Determination**") for that Subsequent Period within fourteen (14) days of receipt of all of the information which the Authority requires from the User in connection with the User's written submissions, provided that notwithstanding delivery or non-delivery of such information, the Authority may at any time and at its discretion issue a Final Determination. The Final Determination shall be effective for such Subsequent Period or part thereof as specified by the Authority in the Final Determination. In the event that the Authority does not issue a Final Determination prior to the commencement of the Subsequent Period, the Revised Charges and any other terms set forth in the 4.2(a) Notice shall be deemed to be the Final Determination;
- (c) In the event the Authority fails to notify the User in writing of the Revised Charges within SIX (6) months after the commencement of a Subsequent Period, then the Charges payable during such Subsequent Period shall be equal to the Charges paid during the TWELVE (12) months preceding the commencement of such Subsequent Period; and
- (d) Notwithstanding any other provision set forth in this Agreement, the Authority may, but is under no obligation to, at any time and from time to time, by written notice to the User (the "**4.2(d) Notice**"), amend the Charges payable by the User hereunder in the event that the number of tags issued by the British Columbia Container Trucking Commissioner to the User changes. The amended Charges set forth in a 4.2(d) Notice shall be effective for such period specified by the Authority in the 4.2(d) Notice.

5.0 **CONDITION OF ACCESS AREA**

- 5.1 The User acknowledges and agrees to the condition of the Access Area and knowingly accepts the Access Area in its present condition on an "as is, where is" basis and agrees that the use of the Access Area and all improvements, accessions, and appurtenances thereto are at the sole risk of the User without any recourse against the Authority. The User confirms that the Authority makes no representation or warranty, express or implied, as to the suitability of the Access Area for the User's use described herein throughout the Term or that the Authority will do any work or provide any materials whatsoever to or in respect of the User's use of the Access Area.

6.0 DAMAGE DEPOSIT

- 6.1 The User shall lodge with the Authority a damage deposit, in advance, prior to the commencement of the Term and in a form and content satisfactory to the Authority in the amount of _____ DOLLARS (\$_____) (the "**Damage Deposit**"). The provision of the Damage Deposit in favour of the Authority shall not operate as a waiver of the terms and conditions contained in this Agreement. At all times the Damage Deposit shall stand charged with a lien in favour of the Authority. The Authority may satisfy any claims it may have against the User arising under this Agreement, whether for arrears of the Charges, costs of repair, costs of cleaning or otherwise, by forthwith applying the Damage Deposit or any portion thereof to payment of such claims.
- 6.2 The Authority shall not be obligated to apply any or all of the Damage Deposit to any claims it may have against the User before terminating this Agreement. More specifically, but without limitation, if at any time sums payable by the User to the Authority are overdue and unpaid, or if the User fails to keep, observe or perform any of the terms, covenants and conditions of this Agreement to be kept, observed and performed by the User, then the Authority, at its option, may, in addition to any and all other rights and remedies provided for in this Agreement or by law, appropriate and apply the entire Damage Deposit, or so much thereof as is necessary to compensate the Authority for loss or damage sustained or suffered by the Authority due to such breach on the part of the User. No exercise of its rights under this clause shall disentitle the Authority from claiming for damages resulting from any breach of this Agreement any negligent act or omission by the User, nor limit the quantum of any such claim.
- 6.3 If the entire Damage Deposit, or any portion thereof is appropriated and applied by the Authority as aforesaid, then the User shall, upon written demand of the Authority, forthwith remit to the Authority sufficient funds to restore the Damage Deposit to the full amount, and the User's failure to do so within the five (5) calendar days after receipt of such demand constitutes a default of this Agreement. If the User complies with all of the terms, covenants and conditions and promptly pays all of the amounts herein provided or otherwise payable by the User to the Authority hereunder or under any other agreement between the parties, then the Damage Deposit (or such amount thereof that may then be remaining and held by the Authority having not been applied toward payment of amounts hereunder) shall be returned to the User, without interest, within sixty (60) calendar days after the end of the Term.

7.0 USER'S COVENANTS

- 7.1 The User covenants and agrees with the Authority as follows:
- a) The User shall use the Access Area in a manner that ensures that the Access Area and the Lands remain in a clean and tidy condition. If the User or persons for whom the User is responsible in law breach this provision, in addition to the other remedies of the Authority, the User shall restore the Access Area and the Lands to a clean and tidy condition. Alternatively, the Authority may in its sole discretion undertake the required maintenance, cleaning, janitorial services, repairs or restoration of the Access Area or the Lands, as the case may be, and the cost of such maintenance, cleaning, janitorial services, repairs or restoration shall, in addition to the other

remedies of the Authority, be payable by the User to the Authority forthwith upon demand;

- b) Not to commit any waste or create any nuisance or damage on the Access Area or Lands or to lands and/or communities adjacent to the Lands. Notwithstanding Section 3 of this Agreement, the User shall not use the Access Area or Lands for any purpose which the Authority deems to be a nuisance to or an interference with any existing use of the Lands, including the Access Area, or to lands and/or communities adjacent to the Lands as the Authority may determine from time to time in its sole discretion;
- c) Not to construct, erect, leave or place any structures, equipment, machinery or other improvements on or make any alterations or renovations to the Access Area, without the prior written consent of the Authority, which consent may be withheld for any reason, and upon such terms and conditions as the Authority may require;
- d) To pay all costs and expenses arising out of the User's use of the Access Area pursuant to this Agreement, including, but not limited to, utilities, equipment, Authority contracted security and Authority personnel. Payment of additional Authority costs and expenses shall be made by the User directly to the invoicing department of the Authority, immediately upon receipt of an invoice;
- e) Not to bring any claims or demands of any nature or kind in respect of loss, injury or damage to the User's property, business, employees, Joined Independent Operators, contractors or otherwise howsoever against the Authority;
- f) To accept full responsibility, risk for and control over all drivers of the User, whether employees or contractors including, without limitation, Joined Independent Operators;
- g) To comply with and abide by all applicable statutes, laws, bylaws, rules and regulations and orders of any lawful governmental authority from time to time in force and effect, including, without limiting the generality of the foregoing, all applicable environmental, labour, health and safety laws and regulations, which apply to the User, its operations, or which in any way affect or apply to the Access Area and the use and occupation thereof;
- h) To cooperate in a timely manner with all requests made by the Authority and to comply with and abide by all rules, regulations, bylaws, notices, directions and requirements which may from time to time be established by the Authority, including, without limitation, all safety, operations, security and navigational directions or requirements of the Authority's And and Marine Operations and Security departments, including, but not limited to, ensuring that all employees, Joined Independent Operators and contractors of the User have a valid Port Pass before accessing the Access Area;
- i) Not to cause or permit anything to be done on or to the Access Area which results in contamination or environmental damage to the Access Area. The User shall not permit the Access Area to be used for the storage, treatment, generation, transportation, handling or disposal of any hazardous or contaminated materials or substances;

- j) To indemnify and save the Authority harmless in respect of all actions, proceedings, losses, damages, costs, claims, and liabilities, including without limitation claims against the Authority by third parties and fees of lawyers and other professional advisors arising for any reason whatsoever including, without limitation, damage to property both within and outside of the Access Area, or arising out of or in any way connected with:
1. any breach, violation, negligent performance, or non-performance of any covenant, condition, or agreement in this Agreement by the User or any person for whom the User is responsible in law, including, without limitation, each and every employee, Joined Independent Operator and contractor of the User and every occupant of any vehicle operating at the behest of or on behalf of the User;
 2. any personal injury, death, or damage to the Access Area occurring on or outside the Access Area or any loss or damage arising out of or in any way connected with the User's, or its agents', employees', Joined Independent Operators' and/or contractors' use and occupation of the Access Area;
 3. the Access Area not being suitable for use by the User; and
 4. the transportation of any contaminated or hazardous material or substance on, of or from the Access Area by the User, or by any agent, employee, Joined Independent Operator, contractor, or any other party for whom the User is responsible in law.

The foregoing indemnity shall survive the termination of this Agreement;

- k) To permit the Authority, municipal Police, RCMP, Authority contracted security, and/or Canada Border Services Agency and their respective employees, servants, contractors, subcontractors and representatives to enter into any vehicle in the Access Area or the Lands for any reasonable purpose including, without limitation, the examination of the condition of the vehicle and the User's compliance with and observance of the terms and conditions of this Agreement;
- l) To ensure that access roads to the Access Area and Lands are kept open and unobstructed at all times and that traffic is not impeded, halted or otherwise denied the ability to move along access roads to or on the Access Area and Lands as a result of the use of the Access Area by, on or behalf of the User except as specifically authorized in advance by the Authority;
- m) To be responsible for all traffic management matters relating to the use of the Access Area and/or Lands by the User and to ensure that the User's employees, Joined Independent Operators and contractors only stage and/or park vehicles in designated vehicle authorized areas;
- n) To ensure that all assets and equipment, including, without limitation, all trucks, trailers and chassis used by the User in the furtherance of Port-Related Drayage, are stored, staged or parked and left only on private lands to which the User has duly secured authorization in advance;
- o) To ensure that normal business operations of those businesses and residents in the vicinity of the Access Area and Lands are not disturbed or affected by

the User's activities;

- p) To provide a copy of these covenants to all employees and contractors of the User, including without limitation, Joint Independent Operators, prior to their entry into the Access Area and to ensure all recipients have reviewed and understand the said covenants and their obligation to comply with same;
- q) To actively and cooperatively participate in periodic reviews of the User's operational performance, having regard to Agreement compliance, Port-Related Drayage and to other factors, as those factors may impact Port-Related Drayage ("**Performance Reviews**");
- r) Not to book or attempt to book reservations under the Reservation System in excess of the reasonable business needs of the User. For greater clarity, regularly booking more than ten percent (10%) more reservation slots than the User ultimately meets or needs would constitute excessive bookings in breach of this provision;
- s) Forthwith upon request by the Authority, to provide to the Authority evidence of all applicable regulatory approvals and to provide evidence of any third party consents as reasonably required by the Authority in its sole discretion, respecting the User's use of the Access Area, including, without limitation, from special interest groups and neighbouring municipalities. More specifically, but without limitation, if requested by the Authority, the User shall provide the Authority with a copy of its current, valid BC Licence;
- t) To maintain a valid BC Licence, at all times during the Term and to advise the Authority, forthwith, if the User's BC Licence or any fleet allotment and/or tractor tag, (a "**Tag**"), issued or authorized pursuant to that BC Licence is modified, suspended, terminated, expired or otherwise rendered invalid, whether temporarily or permanently. For greater clarity, if the User is comprised of two companies, then the User shall hold either a joint BC Licence in the name of both companies that form the User, or each company that forms the User must hold its own valid BC Licence;
- u) To access the Access Area and operate within the Access Area only using tractors or other road transportation equipment that meet all of the requirements of this Agreement, including, without limitation, that such equipment has, prior to entering the Access Area, been properly and duly:
 - 1. maintained in good condition and is in compliance with all of the requirements set out herein and all statutes, regulations, policies, recommendations and directives relating to the safety and operation of such equipment including, without limitation, all applicable ICBC and Worksafe BC policies and guidelines;
 - 2. accurately described and identified in advance and in writing by the User to the Authority;
 - 3. registered and insured in accordance with the *Motor Vehicle Act of British Columbia* and the *Insurance (Vehicle) Act of British Columbia* or in accordance with comparable, relevant legislation of another province of Canada or state of the United States of America;

4. submitted and passed AirCare On-Road Program ("**ACOR**"), testing and procedures and the Authority's opacity testing and procedures; and
 5. designated in writing as "approved" by the Authority,
- (each an "**Approved Vehicle**" and collectively, "**Approved Vehicles**");
- v) To ensure that all Approved Vehicles that enter onto the Access Area by or on behalf of the User, display proper identification, readily reflecting that the Approved Vehicle is accessing the Access Area on behalf of the User;
 - w) To ensure that every Approved Vehicle displays a visible, valid TLS decal (a "**TLS Decal**") at the top of the driver-side windshield, indicating that the vehicle is duly authorized by the Authority under the TLS to provide local Port-Related Drayage within the Lower Mainland of British Columbia, as defined in the Container Trucking Legislation, ("**Local Drayage**");
 - x) To maintain the insurance described in Schedule "B" attached hereto throughout the Term;
 - y) To produce any Approved Vehicle for interim testing during the Term as may be required by the Authority in its sole discretion and, if requested by the Authority in its sole discretion, to provide written certification in a form acceptable to the Authority from a pre-approved mechanic or authorized dealer regarding the mechanical and environmental condition of the Approved Vehicle. Any Approved Vehicle that fails to meet the emission standards or requirements of ACOR, or any standards established by the Authority or other applicable emission standards, may have its Approved Vehicle status cancelled or suspended without notice;
 - z) To maintain at all times a valid Canadian National Safety Code Certificate ("**NSC**") or equivalent US certification, and to advise the Authority forthwith if the NSC is cancelled, terminated or otherwise expires and to immediately cease any attempt to access the Access Area and Reservation Systems;
 - aa) To provide the Authority with any information required by the Authority in the Authority's sole and absolute discretion, including, without limitation, the information described in Schedule "C" attached hereto and as may be amended from time to time (the "**Required Information**") and to provide the Authority with timely notice of any changes to the Required Information, such notice to be given concurrent with the User becoming aware of any such change;
 - bb) that all information, including Required Information, provided pursuant to this Agreement, the BC Licence, and/or provided in the course of obtaining and maintaining a port-related security pass (a "**Port Pass**"), including personal information, is gathered and required for the purpose of enhancing safety, security, order, and operational efficiencies within the Access Area and those communities adjacent to the Access Area and for stabilizing the Local Drayage market (the "**Stated Purpose**"). In furtherance of the Stated Purpose, the User acknowledges and agrees that the Authority may disclose any or all information related to the User and/or its activities to third parties, including, without limitation, law enforcement, government, regulatory agencies, other port users and terminal operators (collectively, "**Third Parties**"). More

specifically, but without limitation, the User further acknowledges and agrees that the Authority may disclose information regarding any alleged or suspected breach of this Agreement, the BC Licence or the Port Pass program, or any remedy, including, without limitation, suspension, termination or modification of this Agreement or any of the privileges granted hereunder, the BC Licence, or a Port Pass, to the Third Parties and/or to the public at large. In the furtherance of the Stated Purpose, the User further acknowledges that the Third Parties may share with the Authority comparable information, including, without limitation, information respecting the User's operations and alleged or suspected activities that might constitute violations and/or breaches of the terms of this Agreement, the BC Licence or the Port Pass program;

- cc) To maintain at least one current, active, ongoing, duly executed contract with a third party shipping entity, which contract requires the User to provide sufficient Port-Related Drayage to support a User fleet of Approved Vehicles of no less than five trucks (the "**Shipping Contracts**"), and to advise the Authority forthwith, should the User no longer maintain this minimum requirement. Upon receipt of a written request from the Authority, the User shall provide the Authority with copies of all of its Shipping Contracts. If the Authority determines that the User's Shipping Contracts do not meet the provisions set forth in this section, the Authority's opinion shall be final and binding on the User;
- dd) To conduct its operations and provide container trucking services in a safe, secure and first-class manner, as determined by the Authority in its sole discretion;
- ee) To ensure that its drivers, whether employees or Joined Independent Operators, do not use engine brakes within the Access Area, save and except in an emergency. The Authority's determination of what constitutes and emergency shall be final and binding on the User, its employees, and Joined Independent Operators;
- ff) To ensure every Approved Vehicle is properly maintained and is in good condition and repair. More specifically, but without limitation, all emission control equipment, whether retrofitted or original factory-installed, must be continually maintained and in good operating order;
- gg) To clearly and accurately identify to the Authority, all trucks that are duly registered, and both legally and beneficially owned or leased to and by the User, if the User is a legally recognized entity, otherwise, by one of the two entities that together comprise the User ("**Company Trucks**"), and to ensure that Company Trucks are driven only by employees of the User or by the respective legal entity of the User that owns the Company Truck, and no other parties;
- hh) Subject to Section 7.1 (mm), not to contract with, retain or employ any person or company, other than the User's own employees, for Port-Related Drayage unless the User and the said person or company have jointly applied to the Authority, using the form attached hereto as Schedule "D", and received from the Authority prior, written joinder authorization ("**Joinder**");
- ii) To comply in all respects and at all times with the TLS and with any other appointment or reservation protocols, procedures, or systems, whether

centralized or mandatory or otherwise, that may be established by the Authority or established by a container terminal operator within the Access Area and adopted by the Authority;

- jj) To participate in and comply with all of the Authority's programs and requirements respecting the identification of tractors and other road transportation equipment, and the tracking, monitoring, location and movement of an Approved Vehicle into, within, and out of the Access Area;
- kk) At the Authority's request, install such radio frequency or other vehicle identification equipment as may be designed or otherwise required by the Authority from time to time in every Approved Vehicle used by the User to undertake Port-Related Drayage, all at the sole cost and expense of the User;
- ll) To ensure any tracking or radio frequency equipment provided to the User by the Authority is properly maintained in good condition and repair as would a prudent owner, to not tamper with that equipment in any manner that would affect the operation of the equipment and to return that equipment upon termination of this Agreement or upon earlier request by the Authority;
- mm) Not to employ or otherwise contract for Local Drayage with any contractor or company, including, without limitation, the User itself, unless that entity has been duly approved and authorized by the Authority and licensed by the BC Container Trucking Commissioner to provide Local Drayage;
- nn) To update and provide to the Authority any and all information relating to this Agreement, the BC Licence, the User and its employees, Joined Independent Operators, Joinder, Approved Vehicles, Shipping Contracts and Company Trucks promptly and in a timely manner, should changes occur, to ensure accuracy and currency of the Authority's records;
- oo) To ensure that every driver or operator of an Approved Vehicle that is accessing the Access Area on behalf of or at the behest of the User, whether employed by the User or a Joined Independent Operator, complies with all of the covenants of the User contained herein;
- pp) To ensure that every driver or operator of an Approved Vehicle that is accessing the Access Area on behalf of or at the behest of the User, whether employed by the User or a Joined Independent Operator, duly completes, executes and delivers to the User a Consent to Disclose respecting the collection, use and disclosure of personal information by the Authority, in the form attached hereto as Schedule "E";
- qq) Without set-off or deduction of any kind, to remit to all drivers remunerated by the User on a per trip basis, (whether employees or Joined Independent Operators, (including the employees of Joined Independent Operators), all funds received by the User from terminal operators, the Authority or third parties respecting terminal wait times experienced by those drivers;
- rr) To continuously, actively and diligently deliver, pick up, or move containers into, within, or out of the Access Area throughout the Term and not to stop in the Access Area except when necessary, as determined by the Authority in its sole discretion; and
- ss) To participate and to ensure the participation of its employees and Joined

Independent Operators in company and driver education programs offered periodically by the Authority.

8.0 RELATIONSHIP

- 8.1 Nothing in this Agreement shall be interpreted as giving the User exclusive use or possession of, or access to, the Access Area or legal demise of any interest thereon or creating any joint venture, partnership, master-servant or principal agent relationship as between the Authority and the User.

9.0 SUSPENSION, MODIFICATION OR EARLY TERMINATION

- 9.1 The Authority may suspend this Agreement and/or access to the Access Area granted pursuant to this Agreement at any time (a "**Suspension**") and in its sole discretion, if the Authority believes that an urgent circumstance involving security, operational efficiency, good order or environmental condition of persons or property within the Access Area is occurring or may imminently occur (each, an "**Urgent Circumstance**"). If the Authority believes an Urgent Circumstance is occurring or may occur and that a Suspension is appropriate, then it will make reasonable commercial efforts to give notice of such Urgent Circumstance and Suspension to the User in the manner set out in Section 15 herein. Failure to provide such notice shall not be a default on the part of the Authority and the Authority shall not be liable to the User in any way for any loss, costs, damages, or expenses, whether direct or consequential, paid, permitted, or incurred by the User as a result of an Urgent Circumstance or Suspension, nor will the User be entitled to compensation for any inconvenience, nuisance, or discomfort caused by an Urgent Circumstance or Suspension. Upon the Authority, in its sole discretion, determining that the Urgent Circumstance no longer exists, the Authority may discontinue the Suspension or give notice of its intention to proceed further to modify, suspend or terminate this Agreement, in accordance with its terms.
- 9.2 If at any time during the Term the Authority wishes to replace this Agreement with a new form of Agreement, the Authority may terminate this Agreement without complying with the other provisions of this Agreement by giving thirty (30) calendar days' notice to the User as set out in Section 15 herein. If such termination becomes effective at some time other than a date which is concurrent with the end of the Initial Period or a Subsequent Period, as the case may be, then the Authority will adjust the relevant Annual Instalment to coincide with payment up to and including the date of termination. The Authority's determination of such adjustment will be binding on the parties.
- 9.3 The User may terminate this Agreement at any time with or without cause by giving notice to the Authority as set out in Section 15 herein. If the User terminates this Agreement at some time other than a date which is concurrent with the end of the Initial Period, provided the User is in compliance with all of its obligations under this Agreement, then the Authority may (but is not obliged to) adjust the relevant Annual Instalment to coincide with payment up to and including the date of termination, plus the amount of one quarter (1/4) of the amount of that Annual Instalment. The Authority's determination of such adjustment will be binding on the parties.
- 9.4 If the User has not engaged in the delivery, pick up, or movement of containers into, within, or out of the Access Area for a period of **thirty (30) consecutive calendar days**, then the Authority, at its sole option, without prejudice to its other remedies, may terminate this Agreement by written notice to the User and, forthwith upon the

giving of such termination notice (or upon such later effective date of termination as the Authority may specify in such notice), this Agreement shall, at the sole option of the Authority, cease and the Term shall immediately become forfeited and void. No adjustment to any Annual Instalment or reimbursement will be paid by the Authority in the event of such termination.

- 9.5 The Authority may terminate this Agreement at any time without cause by giving written notice of such termination to the User in the manner set out in Section 15 hereof at least ninety (90) calendar days prior to the effective date of such termination. If the Authority terminates this Agreement at some time other than a date which is concurrent with the end of the Initial Period or a Subsequent Period, as the case may be, then the Authority shall adjust the relevant Annual Instalment to coincide with payment up to and including the date of termination. The Authority's determination of such adjustment will be binding on the parties.
- 9.6 In any event of termination of this Agreement, the User shall remain liable to the Authority for, and shall pay to the Authority on or before the date of termination, any amounts due and payable hereunder in respect of the period up to and including the said date of termination.

10.0 BREACH OF AGREEMENT

- 10.1 The User expressly acknowledges and agrees that it shall be in default under this Agreement in the event of any of the following:

- a) if any goods and chattels of the User are at any time seized in execution or attachment by any creditor of the User;
- b) if the User makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors;
- c) if any order is made for the winding up of the User or other dissolution of the User; or
- d) if a receiver or receiver-manager is appointed to control the business or any assets of the User,

(singularly, an "**Immediate Termination Default**" and collectively, the "**Immediate Termination Defaults**").

In the event of an Immediate Termination Default hereunder, the Agreement shall automatically and without notice be terminated and any current Charges owing, together with an amount equal to one-quarter (1/4) of the last Annual Instalment shall immediately become due and payable to the Authority, without prejudice to all other rights and remedies of the Authority.

- 10.2 The User also expressly acknowledges and agrees that it shall be in default under this Agreement in the event the User:
- a) Fails to pay any Charge hereby reserved on the day appointed for payment thereof, whether lawfully demanded or not;
 - b) Fails to provide the Damage Deposit or restore the same on demand therefor as contemplated herein;

- c) Fails to have and hold a valid BC Licence at all times during the Term; or
- d) Compromises the safety, security, good order or integrity of TLS, the port, the Authority or Port-Related Drayage, in the Authority's sole opinion and discretion, including, without limitation, by:
 - i) providing to the Authority or to the British Columbia Container Trucking Commissioner, a false statutory declaration;
 - ii) by refusing to provide or not provided in a timely manner information reasonably requested by the Authority or by the British Columbia Container Trucking Commissioner or by providing information that is false or incomplete; or
 - iii) by attempting to access or accessing the Access Area in a drayage vehicle that is not an Approved Vehicle in accordance with this Agreement,

(singularly, a "**Specified Termination Default**" and collectively, the "**Specified Termination Defaults**").

In the event of a Specified Termination Default, the Authority may at its sole discretion and without prejudice to all other rights and remedies of the Authority, immediately suspend access to the Access Area, with or without notice, or terminate this Agreement forthwith upon notification, and in either case any current Charges owing, together with an amount equal to one-quarter (1/4) of the last Annual Instalment and all costs, expenses and damages of the Authority associated with the User's breach shall immediately become due and payable to the Authority.

- 10.3 In the event the User breaches any term of this Agreement other than an Immediate Termination Default or a Specified Termination Default, then, subject to the express rights of the Authority as contained elsewhere in this Agreement, the Authority may terminate this Agreement, upon providing the User with seven (7) calendar days' written notice. The User shall be liable for all costs, expenses and damages of the Authority associated with the User's breach.
- 10.4 No termination of this Agreement shall relieve the User from any of its obligations hereunder, including its obligations regarding waiver and indemnity, nor shall the Authority's election to terminate this Agreement preclude the Authority from exercising any other remedies available to it at law for the User's breach of the Agreement.
- 10.5 No consideration by the Authority permitting the User to rectify any breach or default shall be taken as a waiver of the User's covenants or agreements or shall in any way defeat or affect the rights of the Authority to terminate this Agreement on the terms as set out in this Section 10, for a subsequent breach or default of the Agreement.
- 10.6 In the event the Agreement hereunder shall be terminated in accordance with Section 10 of this Agreement, then the Authority may remove from the Access Area any property of the User at the User's cost without liability for loss or damage occasioned thereby, notwithstanding anything contained in this Agreement to the contrary, and without prejudice to all other rights and remedies of the Authority to claim any and all losses and damages sustained by the Authority by reason of any default of the User.

- 10.7 The User expressly acknowledges that in the event that the User or any person accessing the Access Area on behalf of the User (including, without limitation, each and every employee and contractor of the User and every occupant of any vehicle operating at the behest of or on behalf of the User, and any other person for whom the User is responsible in law) fails to observe or perform any of the covenants, agreements, provisions or conditions contained herein applicable to the User, then that breach shall be deemed to be a default committed by the User under this Agreement and that there is an economic loss and a damage suffered by the Authority for such defaults. Attached hereto as Schedule "F" is a non-exhaustive list of minimum damages ("**Minimum Damages**") payable by the User to the Authority. The User agrees that the Minimum Damages listed in Schedule "F" represents a genuine pre-estimate of minimum liquidated damages that the Authority would actually suffer in the events described in Schedule "F". Furthermore, the User also agrees that in certain cases such events may give rise to greater damages than are listed in Schedule "F" and in the event the Authority indicates to the User that its actual losses and/or damages are higher than those listed in Schedule "F", the User agrees to pay such higher damages amount to the Authority on request. Without limiting the foregoing, if the User defaults in observance or performance of its obligations under this Agreement, the Authority may (but shall have no obligation to) rectify the default, and the User shall pay to the Authority, on demand, as Charges under this Agreement, all costs in connection with the Authority so rectifying.
- 10.8 No termination of this Agreement as a result of the User's breach shall relieve the User from any of its obligations hereunder, including its obligations regarding waiver and indemnity, nor shall the Authority's election to terminate this Agreement preclude the Authority from exercising any other remedies available to it at law for the User's breach of the Agreement.
- 10.9 The User hereby waives and renounces the benefit of any statute or law taking away or limiting the Authority's rights against the property of the User, including any right of the Authority to levy distress for arrears of Charges. The User agrees that notwithstanding any statute or laws, and in addition to all rights of the Authority pursuant to the *Canada Marine Act*, the Authority may seize and sell any and all goods and chattels of the User within the Access Area or at any place to which the User or any other person may have removed them, in the same manner as if such goods and chattels had remained within the Access Area.
- 10.10 Any default by the User under this Agreement shall constitute a default of the same nature and amount by the User under any other agreement or licence between the User and the Authority, and any default by the User under any other agreement or licence between the User and the Authority shall constitute a default of the same nature and amount by the User under this Agreement. Accordingly, all amounts payable by the User pursuant to this Agreement shall also be added to and form part of the amounts payable by the User under any other agreement or licence between the User and the Authority, and all amounts payable by the User under any other agreement or licence between the User and the Authority shall be added to and form part of the amounts payable by the User under this Agreement. For greater clarity, the terms pursuant to which the Authority issues its Port Passes will be considered to be a licence for the purposes of this section.
- 10.11 Any default by any person, corporation or other legal entity that shares a common controlling interest and/or common directing mind (a "Directing Mind") with any of the parties comprising the User (each, a "Related Party") under any agreement or licence with the Authority shall be deemed to be a default by the User under this Agreement and a default by the User under this Agreement shall be deemed to be a

default under any other agreement or licence between the Authority and the Related Party. The Authority may determine, in its sole discretion, who is a Related Party or Directing Mind, having regard to such factors as whether the person is part of management of any of the parties comprising the User or participates in setting or developing policy and practices for any of the parties comprising the User or has the capacity to exercise decision-making authority for any of the parties comprising the User. The Authority's determination regarding who constitutes a Related Party or Directing Mind shall be final and binding on the parties hereto. For greater clarity, the terms pursuant to which the Authority issues its Port Passes will be considered to be a licence for the purposes of this section.

11.0 AUTHORITY'S RESERVATIONS

- 11.1 The Authority reserves the continuing right to use, occupy, and/or grant to third parties the right to access, use and/or occupy the Access Area from time to time, in common with the User.
- 11.2 Notwithstanding the grant of access or anything else set forth in this Agreement, the Authority reserves the continuing right, exercising its reasonable discretion at any time and from time to time to deny the User, any Approved Vehicle or any driver or operator, employee, Joined Independent Operator or otherwise, access to the Access Area. In deliberations regarding the User, the Authority reserves the right to consider all conduct of the User and/or its principals, and/or all sanctions imposed on the User from time to time and/or its principals, including, without limitation, letters of warning, directions to make restitution and/or pay costs, damages or interest, or the imposition of suspensions, modifications, and terminations of all agreements, licences, and/or BC Licences, either current or historical, as entered into by, the User, and/or principals and/or Directing Minds of the User.
- 11.3 Notwithstanding anything to the contrary contained herein, the Authority reserves the right at all times and from time to time, in its sole discretion, to determine if any tractor or other road transportation equipment is or remains an Approved Vehicle for the purpose of this Agreement. The Authority's decision in this regard will be final and binding on the User.
- 11.4 During Performance Review and otherwise, the Authority reserves the right to consider, without limitation, such factors as:
 - (a) The User's operational efficiencies related to Port-Related Drayage, including fleet and Tag utilization;
 - (b) The compliance record of the User respecting this Agreement, the BC Licence and historical TLS records of the User and each of them;
 - (c) The quality of Approved Trucks operated by or on behalf of the User;
 - (d) The volume, level and nature of administrative support provided by the Authority to the User;
 - (e) The User's status as a SmartWay Partner, (a federal government environmental program); and
 - (f) Whether the User holds a Certificate of Recognition (COR) for high safety standards.

The determinations reached by the Authority pursuant to Performance Review, in its sole and absolute discretion, may inform recommendations to the BC Container Trucking Commissioner and/or decisions of the Authority regarding the User and its future Port-Related Drayage opportunities pursuant to the Agreement, the BC Licence or future agreements or BC Licences.

12.0 INTEREST ON OVERDUE ACCOUNTS

- 12.1 The User shall pay to the Authority simple interest at the rate of EIGHTEEN PERCENT (18%) per annum on all sums required to be paid under this Agreement, which have become overdue and remain unpaid.

13.0 FEES

- 13.1 The User shall pay to the Authority forthwith and on demand all reasonable costs associated with the preparation, execution and delivery of this Agreement, and any permitted amendment or assignment thereof, in accordance with the then current Documentation Fee as listed in the Authority's Fee Document posted on its website.
- 13.2 The Authority reserves the further right to set and/or collect fees in accordance with its statutory authority pursuant to the *Canada Marine Act* and the User shall pay such fees (plus any applicable taxes) forthwith upon demand.

14.0 LABOUR OR OTHER DISPUTE

- 14.1 Notwithstanding anything contained herein, it is acknowledged and agreed by the User that, in the sole discretion of the Authority, this Agreement will immediately and without the requirement for notice in connection therewith terminate in the event any of the persons or parties comprising the User are directly or indirectly involved in:
- a) any labour dispute, including a lawful or unlawful strike, lockout, picketing, leafleting, blockading, or tortious activity, exercise of non-affiliation rights or any other lawful or unlawful labour dispute; or
 - b) any other lawful or unlawful dispute, protest, demonstration, or other disruptive activity

that adversely affects the Access Area, the Authority, or any of the Authority's activities or operations.

15.0 DAY-TO-DAY CONTACT AND FORMAL NOTICE

- 15.1 The User expressly acknowledges and agrees that, whether the User is a legally recognized entity or is a joint venture or other combination of legally recognized entities, for day-to-day contract administration matters and for meeting formal notice ("**Formal Notice**") requirements pursuant to this Agreement, the Authority will only be obliged to communicate with the Primary FSO contact(s) as provided below and the Authority may discuss any and all matters related to the User and each of them with that primary contact. Notwithstanding the primary contact(s) identified below, the Authority may, but it is not obliged to, communicate with any person representing either entity whom together comprise the User. It is the obligation of the Primary FSO contact listed below to communicate on all matters

with all other parties comprising the User, including employees and Joined Independent Operators.

- 15.2 The contact for contract administration communications with the User throughout the Term of this Agreement shall be:

[Company] _____
 [Address] _____

Attention: _____
 Telephone: _____
 Facsimile: _____
 Email: _____

- 15.3 The contact for contract administration communications with the Authority throughout the Term of this Agreement shall be:

Vancouver Fraser Port Authority
 100 The Pointe, 999 Canada Place
 Vancouver, British Columbia V6C 3T4

Attention: Mandy Chan, Operations Communications Facilitator
 Telephone: (604) 665-9333
 Facsimile: 1(888) 529-2560
 Email: tls@portmetrovancover.com

- 15.4 Any Formal Notice required or permitted to be given to a party hereunder will be deemed to be duly delivered for all purposes, upon transmission to the ONE e-mail address as provided BELOW by the other party, notwithstanding whether the User is comprised of more than one entity or not. It is both the User's and the Authority's respective sole responsibility to provide and maintain an electronic mail (e-mail) address for delivery of all Formal Notices in respect of this Agreement. The User waives the right to expect or receive any other form of notice, including notice by mail, delivery or facsimile. It is the User's responsibility to check the electronic mail address listed in Section 15.6 for formal Notices related to this Agreement. Notice of any order, direction, rule, and/or regulation to the User affecting the use of the Access Area by the User as herein contemplated may be sent to the electronic mail address for delivery provided by the User. However, the User is also encouraged to regularly review the Authority's website ensure receipt of current drayage-related information.
- 15.5 The User's electronic mail address for the purpose of providing Formal Notice pursuant to the terms of this Agreement is: _____.
- 15.6 The Authority's electronic mail address for the purpose of providing Formal Notice pursuant to the terms of this Agreement is: tls@portmetrovancover.com, Attention: Director, Land Operations.

- 15.7 The User hereby waives any claim for costs or damages that may be occasioned or caused by any disruption or interference in the Authority's or any other electronic mail system.

16.0 EXCLUSION OF LIABILITY OF AUTHORITY

- 16.1 Notwithstanding any other provision in this Agreement and notwithstanding any statements, representations, agreements or conduct to the contrary, in no event will the Authority be liable to the User, or anyone claiming through or under it, for any claim, whether in contract or in tort, or based on any other theory of law whatsoever, arising from or connected in any way with this Agreement, including, without limitation, any claim for loss of profits, indirect costs or consequential damages.

Without limiting the generality of the foregoing, the Authority will have no liability whatsoever for any claim arising from or connected in any way with:

1. any action taken by the Authority in furtherance of any of its rights under this Agreement;
2. the exercise by the Authority of its discretion under any provision of this Agreement;
3. any termination, modification or suspension of this Agreement;
4. the disclosure or release of any information by the Authority to any Third Party; or
5. any delays in relation to the User's ability to access or use the Access Area under this Agreement.

17.0 MISCELLANEOUS

- 17.1 In addition to those provisions of this Agreement that by their terms are specifically stated to survive termination of this Agreement, (a) all provisions of this Agreement that by their nature are intended to survive; and (b) sections 4, 6, 7.1(d) through (g), 7.1(j), 7.1(o), 7.1(s), 7.1(aa), 7.1(bb), 7.1(ll), 7.1(nn), 7.1(qq), sections 8 through 10, sections 11.2 through 11.4, 12, 13, 16 and 17 of this Agreement, shall survive the expiration or earlier termination of this Agreement and shall also survive any bankruptcy or insolvency on the part of the User.
- 17.2 No waiver of any right or obligation is a waiver of any other right or obligation under this Agreement. Failure of the Authority to complain and/or to insist upon the strict performance of any covenant or condition contained in this Agreement or to exercise any right under this Agreement shall not be construed or operate as a waiver of the covenant or condition, and no waiver will be inferred from or implied by anything done or omitted to be done by the Authority.
- 17.3 Whenever the term "**User**" is used in this Agreement it shall be deemed to include each and every entity, whether corporate or otherwise, that jointly and severally constitute the User, and the User's employees, agents, contractors, subcontractors, invitees, licensees, permittees and any party for whom the User is responsible in law, including, without limitation, every driver providing Port-Related Drayage on behalf of the User, whether that driver is an employee, Joined Independent Operator, employee of a Joined Independent Operator, or otherwise.

- 17.4 A reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute.
- 17.5 The User acknowledges that there have been no representations, warranties, or covenants made by the Authority in any manner whatsoever other than as provided herein, and without restricting the generality of the foregoing, there is no representation or warranty by the Authority as to the validity of its title to the Access Area and there is no obligation on the Authority to pave, maintain, or otherwise improve the Access Area or ready it in any manner for use and occupation by the User and/or the parties for whom the User is responsible at law.
- 17.6 The Authority may in its sole discretion and with or without notice, remove any Approved Vehicle or unauthorized vehicles and/or equipment on the Access Area at the User's risk and sole cost and expense and the User will, on demand, compensate the Authority as invoiced for all costs incurred by the Authority in connection with such removal. The Authority shall be entitled but not limited to accessing the Damage Deposit to pay any and all such costs and expenses.
- 17.7 Time is of the essence.
- 17.8 Except as set out herein, this Agreement may not be amended, save and except where said amendment is expressly acknowledged in writing by both parties.
- 17.9 This Agreement will be governed in all respects by the laws of the province of British Columbia and the applicable laws of Canada.
- 17.10 The User shall not, under any circumstances, transfer, assign, mortgage or otherwise dispose of this Agreement or any of the rights and privileges granted herein, without the express, prior, written consent of the Authority, and any such action may, at the Authority's sole option, result in an immediate termination of the Agreement. For purposes of this section, a Change in Control (as defined below) of a body corporate or a partnership will be deemed to be an assignment of this Agreement. **"Change in Control"** means the transfer by sale, assignment, transmission on death, mortgage, trust, or otherwise of any shares, voting rights, or interest which could or would result in either:
- a) a change of beneficial ownership of any one or more of the parties making up the User hereunder without the consent of the Authority, which consent may be withheld; or
 - b) a change of the identity of the person or persons exercising, or who might exercise, effective control of such corporation or partnership.
- 17.11 Each of the provisions contained in this Agreement is distinct and severable from the others and a judicial determination of illegality, invalidity, or unenforceability of any such provision or part hereof will not affect the validity or enforceability of any other provision hereof.
- 17.12 In the event there is more than one person or entity comprising the User hereunder, all of the persons or entities comprising the User hereby agree that all of the covenants and agreements of the User contained herein shall be construed and enforced as joint and several obligations of such persons or entities.

17.13 This Agreement shall enure to the benefit of and be binding upon the Authority and the User and their respective successors and permitted assigns.

17.14 This Agreement may be executed in one or more counterparts and, subject to the directions of the Authority to the contrary, may be transmitted by electronic means, including facsimile and email, and each such counterpart will be deemed to be an original and together such counterparts will constitute one Agreement.

17.15 All references to Charges, sums, funds or amounts owing under this Agreement refer to Canadian funds. All Charges, sums, funds and payments to be made to the Authority shall be made by certified cheque, money order or pre-authorized bank transfer of immediately available funds, and shall be made without prior demand, deduction, abatement or set-off. The Authority may apply any such payments received firstly towards amounts then outstanding hereunder, and in such a manner as the Authority may see fit.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED on)
behalf of **VANCOUVER FRASER PORT**)
AUTHORITY)by its authorized signatories:)

_____)
_____)
Corporate Secretary)

SIGNED, SEALED AND DELIVERED on)
behalf of **[Insert User**)
Name]_____by its)
authorized signatory(ies):)

_____)
Print title: _____))
_____)
Print title: _____))

SIGNED, SEALED AND DELIVERED on)
behalf of **[Insert User**)
Name]_____by its)
authorized signatory(ies):)

_____)
Print title: _____))
_____)
Print title: _____))

SCHEDULE "A"

PLAN

SKETCH PLAN NO. 2014-267, 2014-259 and 2014-260, all DATED November 14, 2014

[Attached]

SCHEDULE "B"

INSURANCE

1. The User covenants and agrees to maintain the following insurance throughout the Term:
 - (a) Commercial General Liability Insurance in an amount not less than **FIVE MILLION DOLLARS (\$5,000,000)**, per occurrence to cover the User's use and occupancy of the Access Area pursuant to the terms of this Agreement . Such insurance shall include a cross liability and non-owned automobile endorsement;
 - (b) Automobile Liability Insurance in an amount not less than **FIVE MILLION DOLLARS (\$5,000,000)** per accident for all vehicles owned, leased, rented or used, either directly or indirectly, by the User in conjunction with the use and occupancy of the Access Area pursuant to the terms of this Agreement ;
 - (c) Motor Truck Cargo Insurance in an amount not less than **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** per incident for all cargo carried by the User in the furtherance of Port-Related Drayage; and
 - (d) Such other insurance as the Authority may reasonably require from time to time.
2. The above-specified insurance shall:
 - (a) Be primary and not require the sharing of any loss by the Authority or by an insurer of the Authority;
 - (b) With respect to items 1.(a), name the Authority and Her Majesty the Queen in Right of Canada as Additional Insureds with cross liability and severability of interest clauses;
 - (c) With respect to items 1.(a), include a waiver of subrogation clause; and
 - (d) be endorsed to provide the Authority with thirty (30) calendar days advance written notice of cancellation or any change or amendment that may restrict coverage.
3. The User shall provide certificate(s) of insurance evidencing such insurance to the Authority prior to the commencement of the Term.
4. The insurance described hereunder shall be in a form and with insurers satisfactory to the Authority.
5. The limits of insurance specified hereunder in no way define or limit the obligations of the User to indemnify the Authority in the event of loss.
6. The User shall not meet any of the insurance obligations hereunder through a program of self-insurance without the prior written consent of the Authority, in its sole discretion.

SCHEDULE "C"
REQUIRED INFORMATION

Without limiting the generality of Section 7 of this Agreement, upon request the User will provide to the Authority (or, where applicable, authorize the Authority to be provided with):

- (a) complete, accurate, and up to date Required Information regarding the User, every Approved Vehicle and every employee and Joined Independent Operator who will be accessing the Access Area;
- (b) all authorizations in proper form as may be required by the Authority in connection with obtaining or accessing Required Information;
- (c) a copy of the User's current NSC;
- (d) the User's Carrier Profile as filed with the Ministry of Transportation;
- (e) the NSC and/or I.C.B.C abstracts for the User and all employees and Joined Independent Operators accessing the Access Area and, if the Authority has, in its sole opinion, grounds of apprehension regarding the safety status, history and/or operating practises of the User or its employees and/or Joined Independent Operators, the relevant BC eID and access code. Provision of the access code shall be deemed to be authorization by the User and/or the holder of the NSC for the Authority to access and review the information stored within the NSC system;
- (f) corporate and company records of the User, its subsidiaries, affiliates, successor companies, and corporate Related Parties;
- (g) payroll records, as defined and required by section 28 of the *Employment Standards Act*, RSBC 1996, c. 113, of the User, its subsidiaries, affiliates, successor companies, and corporate Related Parties;
- (h) records of the User, its subsidiaries, affiliates, successor companies, and corporate Related Parties that pertain to engagement and remuneration of contractors working in any capacity in the container truck industry;
- (i) collective agreements signed by the User, its subsidiaries, affiliates, successor companies, and corporate Related Parties and any related terms and/or letters of agreement or other agreements, formal or otherwise, that govern the User and drivers of container trucks who provide Port-Related Drayage;
- (j) confirmation that the User retains records described in subsections (a) to (d) related to a person, company or entity that may be a substitution for, a new corporate entity of, an assignee of the User, or of which any principal of the User may be the controlling mind or a Directing Mind; and
- (k) a record of any claim made against the User a person, company, entity or Related Party that may be a substitution for or a new corporate entity of either of: (a) an assignee of the User, or of any principal of the User; or (b) an entity of which any principal is the controlling mind, or a Directing Mind or Related Party, regarding non-payment of prescribed rates of remuneration of container truck drivers and proof that the claim has been satisfactorily resolved.

SCHEDULE "D"
APPLICATION TO JOIN AN INDEPENDENT OPERATOR TO A USER'S DRIVER FLEET

Name(s) of User (or names of both companies, if the User is made up of two companies) (jointly and severally, the "User")

Primary Company: _____

Secondary Company (if applicable): _____

Name and Port Pass # of the joined Independent Operator, (together with any eligible employees of the joined Independent Operator, the "Joined IO")

Name: _____

Port Pass #: _____

Email address: _____

Telephone #: _____

Capitalized terms not otherwise defined herein have the meanings given to them in the Access Agreement.

Pursuant to the Access Agreement that the User has entered into or wishes to enter into with the Authority, the User and the Independent Operator identified above hereby apply to the Authority for authorization to join the Independent Operator to the User, for the purpose of provided Port-Related Drayage.

The User and the Joined IO hereby agree and confirm that:

1. the Joinder will not be effective unless and until the Authority confirms its approval of same in writing;
2. a copy of the covenants contained in the Access Agreement has been provided to the Joined IO;
3. the Joined IO is bound by all of the covenants of the User contained in the Access Agreement entered into by the User and the Authority;
4. if the Joined IO uses the services of any other person to undertake Port-Related Drayage, that person must be an employee of the Joined IO and listed in the form attached as Appendix 1;
5. all data respecting trucks must be provided in accordance with the prescribed application process;
6. all data must be submitted to the Authority and kept current. It is the User's obligation to notify the Authority forthwith if any of the information of the User, the Joined IO or the Joined IO's employees' changes;
7. either the User or the Joined IO may terminate the Joinder at any time, upon notice to the other party, the Authority and the British Columbia Container Trucking Commissioner;
8. the Joined IO and any driver employed by the Joined IO to undertake Port-Related Drayage has submitted to the User a completed Access Agreement Consent to Disclose in the form as attached as Schedule "E" to the Access Agreement; and

9. the Authority reserves the right to terminate this Joinder immediately upon notice for breach of the terms contained herein, for breach of the Access Agreement, or if the sponsorship authorized by the BC Container Trucking Commissioner terminates for any reason.

By signing in the space provided below, the User and the Joined Independent Operator confirm that they agree to the terms and conditions set out above.

Dated this ____ day of _____, 201____.

<p>USER, by its duly authorized signatory or signatories, if more than one company</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name (please print)</p> <p>_____</p> <p>Primary Company Name (please print)</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name (please print)</p> <p>_____</p> <p>Secondary Company Name (please print)</p> <p>_____</p>	<p>WITNESS</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name (please print)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Address</p>
<p>JOINED INDEPENDENT OPERATOR, by its duly authorized signatory or signatories, if a corporate entity</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name (please print)</p> <p>_____</p>	<p>WITNESS</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name (please print)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Address</p>

JOINDER APPLICATION

[illegible]

FORM 2.2 - PAGE 3 OF 3

SCHEDULE "E"

CONSENT TO DISCLOSE

1. I, _____ (please print clearly) hereby acknowledge and agree that:

(A) _____, (the "**User**") has entered into an Agreement with the Vancouver Fraser Port Authority, (the "**Authority**"), respecting certain drayage services, (the "**Agreement**");

(B) The User has also applied for or has been issued a licence by the British Columbia Container Trucking Commissioner (the "**Commissioner**"), to carry out container trucking services, (the "**BC Licence**");

(C) I am:

i) an employee of the User (or one of them);

ii) an Independent Operator joined (or seeking authorization from the Authority to be joined, ("**Joinder**") to the User; or

iii) an employee of an Independent Operator joined (or seeking to be joined) to the User;

(D) The User (or one of them) and/or I have or have applied for port-related access passes, ("**Port Passes**"); and

(E) In order to apply for the Agreement, the BC Licence, Joinder and/or Port Passes, and during the respective terms of same, the User and/or I must provide certain information, including personal information respecting companies, vehicles and vehicle operators and the activities of same to the Authority, (the "**Required Information**"). The Required Information is collected for the purpose of enhancing safety, security, order, drayage industry stability, and operational efficiencies within the Access Area and those communities adjacent to the Access Area, (the "**Purpose**").

2. In furtherance of the Purpose, I hereby acknowledge, consent and agree:

(A) to provide the Required Information to the User and/or the Authority as requested;

(B) that the User (and, if applicable, each of them) may disclose any or all of the Required Information, including, without limitation any personal information to third parties, including law enforcement, government, and regulatory agencies, other port users, and terminal operators, (collectively, "**Third Parties**");

(C) that the Authority may disclose any or all of the Required Information and any information regarding any alleged breach of the terms of the BC Licence, the Agreement, the Port Pass program and/or any proposed or actual suspension, modification, or termination of the BC Licence, Agreement or Port Pass program, to Third Parties; and

(D) that Third Parties may share with the Authority comparable information about me and/or my vehicles and companies, including, without limitation, information respecting my activities and/or operations and alleged or suspected activities, (including personal information), that might constitute violations and/or breaches of the terms of the BC Licence, Agreement and/or Port Pass program.

Dated this ____ day of _____, 20__

SIGNED & DELIVERED in the presence of:

Signature of Consenting Party

Witness Name (please print)

Witness Occupation

Witness Signature

SCHEDULE "F"

GENUINE PRE-ESTIMATED, NON-EXHAUSTIVE LIST OF MINIMUM DAMAGES:

Property Damage:

1. rail crossing gates and/or electrical equipment, (minor damage: \$500 - more than minor damage: \$1500)
2. rail guards, fences, bollards, concrete abutments (minor: \$500 - more than minor damage: \$1500)
3. lamp/light standards/ traffic signals, poles (minor: \$1500 - more than minor damage: \$5000)
4. Vehicle Access Control System, ("VACS") cabinets/equipment, (minor scrape/damage repairs: \$500; moderate, repairable damage: \$3000; major, repairable damage - \$12,000; full VACS cabinet replacement required-\$25,000);
5. Portable washrooms, (minor damage: \$300; moderate, repairable damage: \$750; irreparable: \$1500) Substantial damage to or failure to return GPS unit upon demand damage, (\$500)
6. Other types of property damage, actual costs plus Authority Fees, including, without limitation, Maintenance Fees and Overhead Fees as reflected in the Authority's then current Fee Document, which Fee Document can be found on the Authority's website.

Other Breaches of the Agreement:

7. Failure to present proper documentation upon arrival at the Access Area, (\$500)
8. Failure to follow directions of Authority, (\$500)
9. Attempted or actual access of Access Area in unauthorized vehicle, (\$1000)
10. Failure to display valid decal, (\$500)
11. Other breaches, actual costs plus Authority Fees, including, without limitation, Operations & Security Fees and Overhead Fees as reflected in the Authority's then current Fee Document which Fee Document can be found on the Authority's website.