

PENANG PORT SDN BHD

TERMS AND CONDITIONS OF BUSINESS FOR CRUISE TERMINAL SERVICES

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## TERMS AND CONDITIONS OF BUSINESS FOR CRUISE TERMINAL SERVICES

### PREAMBLE

#### Conditions of Business Offer

- A. Penang Port Sdn Bhd ("PPSB") is authorised and licensed by Penang Port Commission ("PPC") to provide, manage, operate and maintain adequate and efficient services and facilities to all Cruise Terminal Users (as herein defined below) at the Cruise Terminal (as herein defined below).
- B. This Terms and Conditions of Business are for the Cruise Terminal Services ("**Cruise Terminal BTC**") shall be read and construed as an integral part of PPSB's Terms and Condition of Business (which may be downloaded from PPSB's website, [www.penangport.com.my](http://www.penangport.com.my)) ("**BTC**"). Save and subject to the provisions contained in this Cruise Terminal BTC, all other provisions of the BTC shall remain the same and be in full force and effect.
- C. This Cruise Terminal BTC shall also be read, taken and construed as part of the contract or agreement entered with PPSB and govern any transaction for the usage of the Cruise Terminal offered and provided by PPSB to the Cruise Terminal User.
- D. The Cruise Terminal User is deemed to accept PPSB's offer for the Cruise Terminal Services:
  - (a) upon giving notification to PPSB on its intention to use the Cruise Terminal Services at the Cruise Terminal;
  - (b) upon the Cruise Terminal User entering into any business or transaction with PPSB whether by agreement or otherwise; or
  - (c) upon usage of any facility and/or services at the Cruise Terminal and/or entering into the Cruise Terminal.
- E. In the event of any inconsistency between the provision of the BTC and this Cruise Terminal BTC, the provisions in this Cruise Terminal BTC shall prevail to the extent of such inconsistency.

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## PART I

### TERMS OF BUSINESS OFFER

#### 1.0 Standing Offer

- 1.1 This Cruise Terminal BTC as notified in PPSB's website (which can be downloaded) or through hard copy distributed by PPSB to the Cruise Terminal User or by any manner deemed appropriate by PPSB, shall constitute a standing offer upon which PPSB makes its Cruise Terminal Services available to the Cruise Terminal User (hereinafter known as "**Standing Offer**").
- 1.2 The Standing Offer shall be deemed to be accepted either upon:
- (a) giving notification to PPSB on its intention to use the Cruise Terminal Services at the Cruise Terminal;
  - (b) the Cruise Terminal User entering into any business or transaction with PPSB whether by agreement or otherwise; or
  - (c) usage of any facility and/or services at the Cruise Terminal and/or entering into the Cruise Terminal.
- 1.3 For avoidance of the doubt, PPSB shall have the right to decline the Cruise Terminal User's request for the Cruise Terminal Services or any part thereof by providing a written notice to the Cruise Terminal User but without obligation to assign any reasons whatsoever.

#### 2.0 Definition and Interpretation

- 2.1 Except where the context otherwise requires, or unless this Cruise Terminal BTC otherwise provides, all words and expressions defined in the BTC when used or referred to in this Cruise Terminal BTC shall have the same meaning as that provided for in the BTC.
- 2.1.1 "**Cruise Terminal**" means Swettenham Pier Cruise Terminal or any other designated terminal as may be determined by PPSB and/or Appropriate Authority from time to time.
  - 2.1.2 "**Cruise Terminal Business**" means any business of operating, managing, maintaining and providing the Cruise Terminal Services.
  - 2.1.3 "**Cruise Terminal Rates**" means tariff, dues and charges applicable for the Cruise Terminal Services as set out in Schedule A of the Cruise Terminal BTC, which may be revised from time to time.
  - 2.1.4 "**Cruise Terminal User**" means any of the shipping agent, owner, part owner, master, charterer, or mortgagee in possession of the vessel including

any other third party or persons and their respective representatives, who are engaged in or using any of the Cruise Terminal Services or having transaction with PPSB in relation to the Cruise Terminal Services.

2.1.5 "Cruise Terminal Services" means the services provided by PPSB in accordance with Clause 5.0 of this Cruise Terminal BTC.

### 3.0 Construction and Savings

- 3.1 In the construction of this Cruise Terminal BTC, no condition nor any clause or paragraph of any condition shall be taken to derogate from the generality of any other condition clause or paragraph. If the whole or any part of any provision of this Cruise Terminal BTC is or becomes illegal, invalid or unenforceable for any reason whatsoever (including by reason of any statutory provision or by reason of any decision of any court or any other body or authority having jurisdiction over PPSB and the Cruise Terminal User or the Cruise Terminal Business), the said provision shall be deemed to be deleted from this Cruise Terminal BTC and shall not affect any other paragraph which shall remain valid, applicable and enforceable throughout.
- 3.2 All Cruise Terminal Business conducted by PPSB is subject to the exclusions and limitations of liability set out in the BTC. The liability of the Cruise Terminal User and PPSB under this Cruise Terminal BTC shall be deemed to operate in addition to and in no way derogate from any liability which would have arisen by contract, in tort, by statute or otherwise on the part of the Cruise Terminal User or PPSB.

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## PART II

### APPLICABILITY OF BTC

#### 4.0 Applicability of the BTC

4.1 Save and except as provided in this Cruise Terminal BTC, the following clauses as provided in the BTC shall be applicable and have the same effects:

- a) Part II (Port Services and/or Facilities), Clause 7.0 until Clause 24.0;
- b) Part IV (Finance) – Clause 27.0 until Clause 37.0;
- c) Part V (Limitations of Liability) – Clause 38.0;
- d) Part VI (Exclusion of Liability) – Clause 39.0; and
- e) Part VII (General Conditions) – Clause 40.0 until 56.0.

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### PART III

#### CRUISE TERMINAL SERVICES

##### **5.0 Cruise Terminal Services**

5.1 PPSB may provide the following Cruise Terminal Services to the Cruise Terminal User in accordance with the Cruise Terminal BTC, including but not limited to:

- a) Any services and/or facilities in relation to berthing.
- b) Anchorage area for temporary anchoring and long term anchoring (Lay Up).
- c) Loading and/or discharging of cargo and/or spare parts.
- d) Embarking and/or disembarking of passenger.
- e) Taking bunker.
- f) Taking ship supply.
- g) Changing crew.
- h) Other afloat activities.

5.2 PPSB shall not be liable to the Cruise Terminal User's passengers for any damage, loss, personal injury and/or death. The Cruise Terminal User shall indemnify its passengers against any damage, loss, personal injury and/or death which the passengers may suffer, arising during or in the course of, or in connection with the Cruise Terminal Services provided to the Cruise Terminal User.

##### **6.0 ISPS Code Compliance**

6.1 The Cruise Terminal is an ISPS Code Compliance Port and any Cruise Terminal User is required to be fully aware of all the necessary ISPS Code requirements prior to entering into the port area.

6.2 PPSB is not responsible in the event:

- a) Any vessel which has berthed at the Cruise Terminal that do not comply with ISPS Code are not allowed to berth at the Cruise Terminal and any such vessel detained for not having a valid certificate may be detained at the Cruise Terminal until it gets a valid certificate.
- b) Any vessel which calls but has failed to comply with ISPS Code, although they may hold a valid International Ship Security Certificate, such vessel may be subject to additional security requirements at a subsequent port of call, leading to delay and possibly denial of port entry.

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## 7.0 Berthing

### 7.1 Application for Berthing

- (a) Any Cruise Terminal User who intends to call at the Cruise Terminal shall, as early as possible and in any case not less than seventy-two (72) hours prior to the estimated time of arrival of the vessel, provide adequate notice in writing to PPSB of the expected time and date of arrival and supply information relating to such as may reasonably require by PPSB. The Cruise Terminal User who supplies such information shall ensure that the information provided is reliable and accurate.
- (b) PPSB shall not be responsible for changes in berthing schedules and delays of the vessel or other vessel arising from inaccurate information provided by the Cruise Terminal User and PPSB shall not be liable for any damage whatsoever resulting therefrom, and the Cruise Terminal User may be penalized in accordance with the Applicable Law and this Cruise Terminal BTC.
- (c) Notwithstanding the above, PPSB shall have the right to reject any berthing application without assigning any reasons thereto and shall not be liable for any costs and expenses incurred by the Cruise Terminal User due to the said rejection.
- (d) In the event the Cruise Terminal User decides to cancel the berthing application before the date of berthing, the Cruise Terminal User shall pay all damages, costs and expenses incurred and/or suffered by PPSB.

### 7.2 Allotment of Berth

- (a) No vessel shall be allocated a berth or berthed or unberthed alongside the Cruise Terminal wharf without approval of PPSB.
- (b) The allotment of berth shall be at the discretion of PPSB whereby it has the right to change, vary and amend the order of berthing if PPSB considers it is advisable and reasonable to do so from time to time.
- (c) Notwithstanding the above, PPSB is not responsible in the event where the vessel could not berth at any of the Cruise Terminal wharf and PPSB shall not be liable for any costs and expenses incurred by the Cruise Terminal User due to the said unberthing.
- (d) In the event that berthing is unavailable due to any unforeseen circumstances or conditions beyond PPSB's control or upon the occurrence of any of the Force Majeure Events, all berth confirmation shall be automatically cancelled without any form of notice being sent to the Cruise Terminal User.

### 7.3 Vessel Berthing, Unberthing Alongside and Anchoring

- (a) The master shall at all material time be and remain in command of his vessel whilst manoeuvring or while laying alongside the wharf or in the port premise and shall take all necessary step to preserve the vessel's safety and

security at its own risk, costs and expenses.

- (b) The master shall ensure and maintain at all material time, that the vessel:
  - i. will be navigated and manoeuvred safely and in compliance with all Applicable Law prevailing and in accordance with PPSB's operating procedures and safety requirements;
  - ii. will not ground while manoeuvring or laying alongside the wharf;
  - iii. will not break adrift from its mooring;
  - iv. will not cause any damage, howsoever occasioned, to the wharf, the port premise, equipment either fixed or portable, fenders, mooring bollards and other property belonging to PPSB or third parties during or arising from the act of manoeuvring or laying alongside;
  - v. will be properly and safely berthed alongside the wharf to the satisfaction of PPSB;
  - vi. will discharge or load its cargo or container safely and with reasonable despatch complying with the requirements of the Applicable Law; and
  - vii. will leave the wharf when so directed by PPSB whom may direct the master of the berthed vessel at any wharf or anchored in the port premise to leave the wharf or the anchored area or shift to a new position at the sole risk and expense of the Cruise Terminal User, its servants or appointed agent.
- (c) Unless authorised by PPSB, no vessel shall:
  - i. lay alongside a berth after it has completed loading or discharging or disembarking the passengers;
  - ii. wait alongside a berth for goods; or
  - iii. remain idle.
- (d) A vessel shall be allowed to anchor at the anchorage area when transacting Cruise Terminal Business with PPSB within any area of the Cruise Terminal. If no Cruise Terminal Business is transacted by the vessel, or upon approval by PPSB, the Cruise Terminal User may request for temporary anchorage. Otherwise, PPSB at its own discretion shall alert the Appropriate Authority to order the vessel's immediate departure from the anchorage area.
- (e) PPSB will provide without prejudice to the foregoing berthing or unberthing personnel and mooring crew at the Cruise Terminal's wharf to render assistance under instruction from the master of the vessel for the purpose of expediting or casting off the vessel's hawsers and mooring ropes and all costs and expenses incurred thereto shall be entirely borne by the Cruise Terminal User, its servant or their appointed agents without any liability on PPSB (be it delay, loss, injury or damage to persons or property, direct or consequential) arising therefrom.



## PART IV

### CRUISE TERMINAL RATES AND CHARGES

#### 8.0 Charges

8.1 The Cruise Terminal User shall be responsible to pay PPSB the followings: -

- (a) The Cruise Terminal Rates, any other charges imposed by PPSB and/or pursuant to the mutual agreement between parties from time to time;
- (b) All costs and expenses incurred by PPSB arising out of or incidental to the failure by the Cruise Terminal User to observe this Cruise Terminal BTC;
- (c) All rates for the supply of fresh water, provided that it shall be understood at all time that fresh water is supplied by PPSB directly from the water supply company licensed by the Government of Malaysia, and therefore PPSB shall not be held responsible and accountable for any contamination and/or for the quality of the fresh water so supplied and to any discrepancies arise between Cruise Terminal's gauge and the vessel's measurement;
- (d) All taxes payable by the Cruise Terminal User based on the prevailing percentage as shall be determined under any applicable tax imposed by the Government of Malaysia; and
- (e) All other charges in relation to the use of the Cruise Terminal Services as may be imposed on the Cruise Terminal User by PPSB and/or the Appropriate Authority,

(collectively referred as "Cruise Charges").

8.2 All amount due and payable to PPSB shall be paid in Ringgit Malaysia ("RM") and shall be paid into a bank account held with a bank established in Malaysia as may be advised by PPSB from time to time.

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## SCHEDULE A

(which shall be taken, read and construed as an integral part of this Cruise Terminal BTC)

### Cruise Terminal Rates and Charges

1. Penang Port Commission (Penang Port) (Scale of Rates) By Laws (which can be downloaded from PPSB's website, [www.penangport.com.my](http://www.penangport.com.my)).
2. Any other rates that may be imposed by PPSB and/or any Appropriate Authority from time to time.

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