

### SCHEDULE 3 OPEN ACCESS REGIME

#### Introduction

This Schedule 3 consists of (a) the principles for open and non-discriminatory access to the Cruise Piers, which includes Section 1 through Section 12 immediately below (referred in this Schedule 3 as the “Open Access Regime”); (b) definitions of terms in Section 13 immediately below; (c) Appendix A to this Schedule 3, the “Access Protocol Framework”; (d) Appendix B to this Schedule 3, the “Capacity Allocation Protocol”; (e) Appendix C to this Schedule 3, the “Operating Utilization Framework”; and (f) Appendix D to this Schedule 3, the “Open Access Reporting and Compliance Regime”, which includes Attachment 1, the “Table of Demerit Points”, Attachment 2, the “Administrative Obligations” and Attachment 3, the “Reporting Obligations”.

#### 1 Purpose of this document

##### 1.1 The purpose of the Open Access Regime

- (a) The purpose of the Open Access Regime is to provide a framework that facilitates the following policy objectives:
  - (i) providing all Cruise Lines, including Third Party Cruise Lines, open and non-discriminatory access to the Cruise Piers in accordance with the open and non-discriminatory access obligations of the Concession Company under this Agreement; and
  - (ii) allowing the Concession Company to operate the Cruise Port Facility in accordance with its commercial and operational judgment so as to promote efficiency, productivity and patronage through the Cruise Piers.
- (b) The Authority and the Concession Company acknowledge and agree that:
  - (i) the Cruise Port Facility faces competition from other cruise ports, and the Cruise Piers and their operation are not intended to be subject to monopoly asset regulation;
  - (ii) the Concession Company will operate the Cruise Port Facility, including setting Passenger Fees and Dockage Rates and the terms and conditions of access, in accordance with its commercial and operational judgment subject to the open and non-discriminatory access obligations and the pricing restrictions set out in this Agreement;
  - (iii) where this Open Access Regime imposes obligations on, or confers rights, benefits or privileges on, Concession Company, those obligations will be performed and the interpretation and definition of the provisions of this Open Access Regime shall apply consistently;

1 Purpose of this document

- (iv) the Cruise Piers and Cruise Pier Buildings are intended by the Parties to be an open access facility and the terms of the Open Access Regime reflect the aims of the Authority and the Concession Company to:
  - (A) promote increased touristic visits to the Commonwealth; and
  - (B) ensure the Cruise Piers are available to all Cruise Lines, including Third Party Cruise Lines, on non-discriminatory terms;
- (v) The Open Access Regime is designed to ensure that the Concession Company does not discriminate against Third Party Cruise Lines in favor of an Affiliated Cruise Line, or against one Cruise Line in favor of another Cruise Line, in providing Reference Services (as described in Section 3 of this Open Access Regime, "Reference Services") or Ancillary Services (as described in Section 3 of this Open Access Regime, "Ancillary Services");
- (vi) The Open Access Regime is also designed to ensure that the Concession Company does not discriminate against any Person that is not an Affiliated Service Provider (the "Non-Affiliated Service Providers") in favor of Affiliated Service Providers with respect to the Ancillary Services that the Concession Company is not authorized pursuant to Schedule 15 to provide exclusively (the "Non-Exclusive Ancillary Services");
- (vii) the Authority's role in relation to the Open Access Regime is as set out under this Open Access Regime; and
- (viii) enforceability and consequences of non-compliance in relation to the Open Access Regime are to be determined in accordance with the terms of this Open Access Regime and the Open Access Reporting and Compliance Regime and the other provisions of this Agreement.
- (c) All Sections in this Open Access Regime are to be interpreted in accordance with Section 1.1 of this Open Access Regime.

**1.2 Part of the Agreement between the Concession Company and the Authority**

- (a) This Open Access Regime applies to the Cruise Port Facility, including the Cruise Piers and Cruise Pier Buildings.
- (b) The Concession Company will either directly or through an Approved Operator (as defined in Section 13 of this Open Access Regime), comply with all aspects of this Open Access Regime. All references in this Schedule 3 to the Concession Company are intended to include and refer to the Approved Operator in the event one is appointed by the Concession Company and Approved by the Authority. The Concession Company shall cause the Approved Operator to comply with all aspects of this Open Access Regime. With respect to Reference Services and Ancillary Services



2 Open and non-discriminatory access obligation

that are provided by an Affiliated Service Provider, the Concession Company shall cause such Affiliated Service Provider to comply with all applicable aspects of this Open Access Regime.

**1.3 Preferential Berthing Agreements**

- (a) This Open Access Regime is subject to the Preferential Berthing Agreements.

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**2 Open and non-discriminatory access obligations**

**2.1 Open and non-discriminatory access**

- (a) The Concession Company will provide open and non-discriminatory access to the Cruise Piers and Cruise Pier Buildings for all Cruise Lines in accordance with this Open Access Regime.
- (b) Open and non-discriminatory access applies to all services provided by the Concession Company under this Agreement, including Reference Services and Ancillary Services.
- (c) Providing open and non-discriminatory access means that, subject to the terms of this Open Access Regime, the Concession Company shall:
  - (i) permit access at the Cruise Piers and Cruise Pier Buildings for all Cruise Lines where such access is, or would be, otherwise in accordance with relevant Cruise Pier access and operating arrangements and access is available having regard to the capacity of the Cruise Piers;
  - (ii) not unreasonably discriminate against any Cruise Lines to their competitive detriment in favor of an Affiliated Cruise Line or any other Cruise Line in providing Reference Services or Ancillary Services, or discriminate against any Non-Affiliated Service Provider in favor of any Affiliated Service Provider in connection with the provision of Non-Exclusive Ancillary Services, other than as permitted under this Agreement; and
  - (iii) offer to provide access in relation to Reference Services, provided access is available having regard to the capacity of the Cruise Port Facility, on transparent and published terms and conditions and in accordance with published Reference Prices or otherwise as permitted in accordance with this Open Access Regime and relevant Cruise Piers and Cruise Pier Buildings access and operational arrangements.

**2.2 Prohibition on hindering access**

- (a) The Concession Company will not engage in conduct for the purpose of hindering or preventing access at the Cruise Port Facility by a Cruise Line in

### 3 Services

the exercise of access rights to which it would otherwise be permitted under the Open Access Regime and relevant Cruise Pier or Cruise Pier Building access and operating arrangements. The Concession Company also will not engage in conduct for the purpose of hindering or preventing the provision of Ancillary Services by any Person other than the Concession Company or an Affiliate, or a Contractor of either, as provided in Schedule 15.

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### 3 Services

#### 3.1 Reference Services and Ancillary Services

- (a) Cruise Port Facility Services are services provided by the Concession Company (either directly or through an Approved Operator) to a Cruise Line within the Cruise Port Facility for the purposes of servicing Cruise Vessels at the Cruise Piers and Cruise Pier Buildings and consists of Reference Services and Ancillary Services. The Concession Company shall provide the Reference Services and the Ancillary Services to all Cruise Line Vessels and Other Shipping Lines in accordance with this Agreement.

#### 3.2 Reference Services

- (a) The following are Reference Services:
  - (i) port of call access service;
  - (ii) home-port access service; and
  - (iii) demurrage.
- (b) The Concession Company may nominate other Reference Services, which may be provided by the Concession Company subject to the Approval of the Authority.
- (c) The prices charged for Reference Services shall be only the Passenger Fee and the Dockage Rates, as adjusted pursuant to Schedule 15, and the demurrage fee (as provided in Schedule 15), and the Concession Company shall not set or collect from any Cruise Line or other Person any other fee or charge for Reference Services.

#### 3.3 Ancillary Services

- (a) All other services under this Agreement are Ancillary Services. These are described in Schedule 15.
- (b) Where the Concession Company provides an Ancillary Service within the Cruise Piers, the Concession Company:
  - (i) is required to make that service available to all Cruise Lines (whether or not Affiliates of the Concession Company), on an equal basis where doing so is, or would be, otherwise in accordance with relevant Cruise



#### 4 Information to be published

Pier access and operational arrangements, having regard to the Capacity of the Cruise Port Facility; and

- (ii) shall not unreasonably discriminate against any Cruise Line to their competitive detriment in favor of an Affiliated Cruise Line or any other Cruise Line in the provision of that Ancillary Service.
- (c) The prices charged for Ancillary Services shall be set in accordance with Schedule 15 of this Agreement and Section 6 of this Open Access Regime, and shall be applied as an equal basis to all Cruise Lines without discrimination in favor of any Cruise Line.
- (d) In connection with the provision of the Non-Exclusive Ancillary Services the Concession Company shall not discriminate against any Non-Affiliated Service Providers in favor of any Affiliated Service Providers.

#### 4 Information to be published

##### 4.1 Information published for the Cruise Port Facility

- (a) the Concession Company will make publicly available, including through internet access, for the Cruise Port Facility:
  - (i) the Reference Prices and the prices for Ancillary Services (with respect to Ancillary Services, to the extent provided in Schedule 15);
  - (ii) a list of the Ancillary Services available at the Cruise Port Facility, including a list of the Non-Exclusive Ancillary Services;
  - (iii) the Contract which is the standard form of Contract used by the Concession Company for Cruise Lines utilizing the Cruise Port Facility ("Cruise Line Contract");
  - (iv) the Access Protocol; and
  - (v) the Cruise Port Facility Utilization Procedure.

##### 4.2 Cruise Line Contract

- (a) the Concession Company shall make publicly available, including through internet access, for the Cruise Port Facility the Cruise Line Contract containing the standard terms and conditions for Reference Services and Ancillary Services (including applicable prices). For the avoidance of doubt, the Cruise Line Contract shall not apply to the provision by Non-Affiliated Service Providers of Non-Exclusive Ancillary Services.
- (b) The Cruise Line Contract shall:
  - (i) specify the minimum service standards to be delivered at the Cruise Piers and Cruise Pier Buildings;

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- (ii) provide for the Cruise Line to pay charges for the Reference Services;
  - (iii) be of reasonable duration and in line with normal commercial practice, having regard to the Concession Company's investment in the Cruise Port Facility;
  - (iv) provide for the removal of entitlements to contracted Capacity in the event of non-use (**use it or lose it regime**);
  - (v) provide a mechanism for contracted Capacity to be relinquished by the Customer if it is not required and reallocated by the Concession Company for a specified time period;
  - (vi) make it clear that only the Concession Company can vary, allocate and reallocate Capacity and that Cruise Lines cannot reallocate Capacity allocated to them to someone else directly;
  - (vii) contain confidentiality obligations regarding information provided by Customers;
  - (viii) incorporate and be subject to the Access Protocol and the Cruise Piers Utilization Procedures (**PUP**);
  - (ix) include financial consequences for the non-compliance of each party with the Cruise Line Contract provided that the Cruise Line Contract can still be terminated where the non-compliance amounts to a termination event as defined in the Cruise Line Contract;
  - (x) include a dispute resolution mechanism to deal with Cruise Line disputes consistent with Section 10 of this Open Access Regime.
  - (xi) be consistent with the principle of open and non-discriminatory access and, if it is not, the Authority may trigger a dispute in accordance with Section 10 of this Open Access Regime.
- (c) the Concession Company is only obligated to provide access to Reference Services at the applicable price provided in this Agreement and on standard terms and conditions, subject to available Capacity.
  - (d) the Concession Company can negotiate variations to the Cruise Line Contract with Access Seekers and Customers, provided variations are consistent with the open and non-discriminatory access obligations.
  - (e) the Concession Company may, in its discretion, provide Reference Services:
    - (i) at non-standard Reference Prices provided that such prices do not discriminate against any Cruise Line to their competitive detriment in favor of any other Cruise Line for that particular business;



## 5 Access Protocol

- (ii) on non-standard terms and conditions provided that such terms and conditions do not discriminate against any Third Party Cruise Line to its competitive detriment in favor of an Affiliated Cruise Line or any other Cruise Line for that particular business; and
- (iii) based on a methodology for non-standard Reference Prices and terms and conditions Approved by the Authority, in its discretion. Examples of non-standard Reference Prices include volume discounts, provided that such discounts are available equally to all Cruise Lines.

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## 5 Access Protocol

### 5.1 Access in accordance with the published Access Protocol

- (a) The Concession Company will provide access in accordance with the Access Protocol which it will make publicly available, including through internet access, for the Cruise Port Facility within 10 Business Days of being Approved by the Authority.
- (b) The published Access Protocol will be developed in accordance with the framework set out in the Appendix A to this Schedule 3 and will contain:
  - (i) a list of the Reference Services to which Access Seekers may seek access;
  - (ii) the procedure for making, assessing, negotiating and finalising access applications by Access Seekers;
  - (iii) the Capacity Allocation Protocol;
  - (iv) the Concession Company's commitment to ring-fence confidential Access Seeker information from customers, including any other Cruise Line;
  - (v) the process for resolving disputes with Access Seekers; and
  - (vi) the process for resolution of disputes by Cruise Lines (whether as Access Seekers or Customers) in relation to non-discriminatory access to Ancillary Services.

### 5.2 The Authority to approve Access Protocol

- (a) The Concession Company will provide the initial Access Protocol to the Authority no later than 3 months after the Closing Date.
- (b) The Authority will have 6 weeks to Approve the initial Access Protocol. The Authority may make its Approval of the initial Access Protocol subject to the Concession Company making specified amendments. The Authority will not unreasonably request amendments or withhold its Approval. The Authority will explain and provide reasons to the

## 5 Access Protocol

Concession Company for any requested amendments and the Concession Company will provide reasonable co-operation (including promptly considering any amendments proposed by the Authority and providing reasons if it does not agree to implement those amendments).

- (c) If after 6 weeks the Authority has not Approved the initial Access Protocol, the matter may be referred for dispute resolution.
- (d) Once the initial Access Protocol has been Approved, the Authority will consult for 6 weeks with Access Seekers on the initial Access Protocol and allow Access Seekers to make submissions.
- (e) Following consultation, the Authority and the Concession Company will meet to discuss relevant submissions made in the consultation process and negotiate in good faith with respect to whether any changes should be made to the initial Access Protocol. If the Authority and the Concession Company cannot agree on whether changes should be made and the content of those changes within 6 weeks, the matter may be referred for dispute resolution provided that the Concession Company may implement the initial Access Protocol Approved by the Authority subject to and pending the outcome of the dispute resolution.

**5.3 The Access Protocol is to be periodically reviewed**

- (a) The Concession Company will initiate a review of the Access Protocol in accordance with the consultation mechanisms in Section 11 of this Open Access Regime and including the Authority:
  - (i) 2 years after the Closing Date (**the first review**); and
  - (ii) every 2 years after the completion of the first review.
- (b) The Authority or the Concession Company may propose amendments to the Access Protocol in accordance with Sections 5.4 and 5.5 of this Open Access Regime, and any dispute between the Authority and the Concession Company shall be resolved as provided in Section 5.5(e) of this Open Access Regime.

**5.4 The Concession Company may initiate a review of the Access Protocol**

- (a) In addition to the periodic reviews described above, the Concession Company may propose changes to the Access Protocol at any time if it has material concerns with its practical operation.

**5.5 Changes to the Access Protocol**

- (a) The Authority can require amendments to the Access Protocol and can make its Approval of changes to the Access Protocol proposed by the Concession Company subject to the Concession Company making certain



## 6 Pricing and revenues

amendments provided that the Authority explains and provides reasons for the amendments.

- (b) The Concession Company must consult with the Authority, Customers, and Access Seekers when reviewing the Access Protocol in accordance with Section 11 of this Open Access Regime.
- (c) The Authority will have 10 weeks to Approve the changes to the Access Protocol proposed by the Concession Company.
- (d) The Authority will not unreasonably request amendments or withhold its Approval of Access Protocol changes and the Concession Company will provide reasonable co-operation (including promptly considering any amendments proposed by the Authority and providing reasons if it does not agree to implement those amendments).
- (e) If after 10 weeks the Authority has not Approved the changes to the Access Protocol proposed by the Concession Company or if the Concession Company disagrees with an amendment to the Access Protocol required by the Authority, the Concession Company can refer the matter for dispute resolution in accordance with Section 10 of this Open Access Regime.

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## 6 Pricing and revenues

### 6.1 Reference Service pricing principles

For Reference Services, Cruise Lines shall only be charged the Passenger Fee and the Dockage Rates, as adjusted from time to time as provided in Schedule 15, and the demurrage fee (as provided in Schedule 15).

### 6.2 Ancillary Service pricing principles

- (a) The Concession Company will prepare a pricing protocol which includes the methodology for establishing Ancillary Service prices consistent with the following principles set forth in Section 8 of Schedule 15 and that otherwise complies with Schedule 15. For the avoidance of doubt, such pricing protocol and resulting Ancillary Service prices shall not be applicable to the prices that Non-Affiliated Service Providers charge for Non-Exclusive Ancillary Services.
- (b) The Concession Company will make publicly available, including through internet access, the pricing principles listed in Section 6.2 of this Open Access Regime for the Cruise Port Facility.
- (c) The Concession Company can review Ancillary Services prices at any time but may not review Ancillary Services prices more than once a year; provided, however, that at all times the prices for Ancillary Services will comply with Schedule 15. The Concession Company will notify the

## 7 Capacity Allocation

Authority of any variation to the Ancillary Services prices 10 Business Days before such changes take effect.

### 6.3 Non-standard pricing principles for Reference Services and Ancillary Services

- (a) Notwithstanding the provisions of Section 6.1 and Section 6.2, the Concession Company shall comply with the provisions of the Preferential Berthing Agreements regarding pricing and may set other prices that do not comply with the provisions of Section 6.1 and Section 6.2 of this Open Access Regime with the Approval of the Authority.

### 6.4 Lease of Cruise Pier Buildings

- (a) The Concession Company may lease any portion of the Cruise Port Facility (including the Cruise Pier Buildings) in its commercial discretion and at applicable market rates; provided, however, that any such lease shall only be for Cruise Port Purposes and not discriminate against any Cruise Line in favor of any other Cruise Line or against any Non-Affiliated Service Provider in favor of any Affiliated Service Provider.
- (b) The Concession Company will provide the Authority with a copy of each such lease of any portion of the Cruise Port Facility promptly following its execution by the parties thereto.

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## 7 Capacity Allocation

### 7.1 Cruise Piers capacity allocation

- (a) Cruise Piers Capacity will be allocated in accordance with the Capacity Allocation Protocol which the Concession Company will make publicly available, including through internet access. The Capacity Allocation Protocol shall be consistent with the Capacity Allocation Protocol framework in Appendix B to this Schedule 3.
- (b) The Capacity Allocation Protocol will include arrangements for:
  - (i) allocating and reallocating Capacity;
  - (ii) dealing with mutually exclusive requests for Capacity;
  - (iii) dealing with access requests when there is insufficient uncommitted Capacity to satisfy the request/s;
  - (iv) varying Capacity allocation;
  - (v) reallocating Capacity which has not been used within a defined period from allocation;



## 8 Cruise Piers Utilization Procedure (PUP)

- (vi) planning Capacity allocation in the short, medium and long-term, in consultation with relevant stakeholders to maximize the efficient use of the Cruise Piers and the Cruise Pier Buildings; and
- (vii) distinguishing between Cruise Vessel sizes/configurations and consequential impacts on Capacity.

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## 8 Cruise Piers Utilization Procedure (PUP)

### 8.1 Requirement to develop and publish a PUP

- (a) The Concession Company will develop and make publicly available, including through internet access, a PUP consistent with the PUP framework in Appendix C to this Schedule 3.

### 8.2 The Authority to approve initial PUP

- (a) The Concession Company will provide the initial PUP to the Authority no later than 3 months after the Closing Date.
- (b) The Authority will have 6 weeks to Approve the initial PUP. The Authority may make its Approval of the initial PUP subject to the Concession Company making certain amendments. The Authority will not unreasonably request amendments or withhold its Approval. The Authority will explain and provide reasons to the Concession Company for any requested amendments and the Concession Company will provide reasonable co-operation (including promptly considering any amendments proposed by the Authority and providing reasons if it does not agree to implement those amendments).
- (c) If after 6 weeks, the Authority has not Approved the initial PUP, the matter may be referred for dispute resolution.
- (d) Once the initial PUP has been Approved, the Authority will consult for 6 weeks with Access Seekers on the initial PUP and allow Access Seekers to make submissions.
- (e) Following consultation, the Authority and the Concession Company will meet to discuss relevant submissions made in the consultation process and negotiate in good faith with respect to whether any changes should be made to the initial PUP. If the Authority and the Concession Company cannot agree on whether changes should be made and the content of those changes within 6 weeks, the matter may be referred for dispute resolution provided that the initial PUP Approved by the Authority may be implemented subject to and pending the outcome of the dispute resolution.

### 8.3 The Authority may request a review of the PUP

## 9 Confidential Information

- (a) The Authority can request that the Concession Company review the PUP where, following three relevant findings of Non-Compliance under the Open Access Reporting and Compliance Regime schedule, the Authority reasonably considers that the PUP's operation is inconsistent with the open and non-discriminatory access obligations.
- (b) Following a review conducted in accordance with Sections 8.3(a) of this Open Access Regime, the Authority will not request the Concession Company to conduct another review of the PUP unless there are an additional three relevant findings of Non-Compliance under the Open Access Reporting and Compliance Regime provided in Appendix D to this Schedule 3. In any event, the Concession Company will not be required to review the PUP more than once per year.

### 8.4 The Concession Company may initiate a review of the PUP

- (a) The Concession Company may propose revisions to the PUP at any time.

### 8.5 Changes to the PUP

- (a) The Concession Company cannot be required by the Authority to amend the PUP except as provided in Section 8.3 of this Open Access Regime.
- (b) The Concession Company can make changes to the PUP that are not inconsistent with the open and non-discriminatory access obligations.
- (c) The Concession Company will notify the Authority of proposed changes.
- (d) If the Authority considers that a proposed change is not consistent with the open and non-discriminatory access obligations, the Authority can refer the matter for dispute resolution provided that the revised PUP may be implemented subject to and pending the outcome of the dispute resolution.

### 8.6 The Concession Company consultation when reviewing the PUP

- (a) The Concession Company will consult with the Authority, Access Seekers, potential Access Seekers and Customers when reviewing the PUP in accordance with Section 11 of this Open Access Regime.

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## 9 Confidential Information

### 9.1 Isolation of confidential information

- (a) The Concession Company will keep confidential any confidential information provided to the Concession Company by any Cruise Line and only allow authorized persons to access that confidential information for the purpose of:
  - (i) providing Cruise Port Facility Services to an Access Seeker;



## 10 Complaints and dispute resolution

- (ii) resolving an Access Dispute; or
- (iii) as otherwise expressly consented in writing by that Access Seeker.
- (b) The standard Cruise Line Contract will contain standard terms regarding the protection and use of confidential information.

### 9.2 Permitted disclosure of confidential information

- (a) The Concession Company is permitted to disclose confidential information:
  - (i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the confidential information to any third party;
  - (ii) to any expert, mediator or arbitrator appointed for the purposes of resolving a particular dispute or to any independent expert appointed under Section 1.3(b) of the Open Access Reporting and Compliance Regime, provided they are under a legal obligation not to disclose the confidential information publicly or to any third party;
  - (iii) to the Authority, or an independent external investigator appointed by the Authority, for the purpose of the Authority monitoring compliance with its reporting and compliance obligations or investigating a complaint under the Open Access Regime, subject to the Authority (and/or the independent external investigator, as applicable) agreeing to be bound by the same obligations not to disclose the confidential information to any third party as the Concession Company; and
  - (iv) to the extent required by Law, provided that, where it lawfully can, it first consults with the party that provided the confidential information in relation to the manner and timing of that disclosure.

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## 10 Complaints and dispute resolution

- (a) Without limiting the procedures for Non-Compliance or alleged Non-Compliance provided in Appendix D to this Schedule 3, the Concession Company will establish a complaints system for handling Cruise Line complaints in relation to the Access Protocol, including compliance with the open and non-discriminatory access obligations in Section 2 of this Open Access Regime or any other matter in relation to access to the Cruise Piers and the Cruise Pier Buildings, provided that the Concession Company may determine its own processes to avoid vexatious complaints.
- (b) An Access Seeker may make a complaint to the Authority in relation to compliance with the Access Protocol, including in relation to compliance with the obligation to provide open and non-discriminatory access to

## 10 Complaints and dispute resolution

Reference Services and Ancillary Services or any other matter in relation to access to the Cruise Piers and the Cruise Pier Buildings, provided that the Authority may determine its own processes to avoid vexatious complaints.

- (c) Customers of the Concession Company can raise disputes in accordance with the dispute mechanism provided for in the Cruise Line Contract, provided however, that all Access Disputes under any Cruise Line Contract are to be resolved by negotiation and, where not so resolved, are to be resolved by the Access Protocol Independent Expert.
- (d) Without limiting the right of Access Seekers to make a complaint to the Authority, as provided in Section 10(b) of this Open Access Regime, disputes between Access Seekers and the Concession Company which are not subject to a Cruise Line Contract, are to be resolved by negotiation, and where not resolved may be referred for binding independent expert determination by an Access Protocol Independent Expert, where the Access Protocol Independent Expert has the power to make directions in relation to compliance with non-discriminatory access and Access Protocol requirements in accordance with the published procedure in the Access Protocol.
- (e) The Concession Company will publish in the Access Protocol:
  - (i) a procedure for Cruise Lines, including Third Party Cruise Lines, to raise an Access Dispute with the Concession Company;
  - (ii) a procedure for attempting to resolve the Access Dispute by negotiation between the parties; and
  - (iii) a procedure for final resolution of the Access Dispute by the Access Protocol Independent Expert.
- (f) Subject to complying with the open and non-discriminatory access obligations, the Concession Company is only obligated to provide access to Reference Services at the Reference Price and on standard terms and conditions contained in the standard Cruise Line Contract ("Standard Terms and Conditions"). Accordingly, there can be no dispute where the Concession Company complies with the open and non-discriminatory access obligations and;
  - (i) offers to provide an Access Seeker with access to Reference Services at the Reference Price and on Standard Terms and Conditions; or
  - (ii) subject to Section 4.2(e) and Section 6.3(a), as applicable, of this Open Access Regime, agrees with an Access Seeker to provide Reference Services at non-Reference Prices or non-Standard Terms and Conditions.



## 10 Complaints and dispute resolution

- (g) Cruise Lines may refer complaints in relation to compliance with the non-discrimination principle in respect of prices for Reference Services and Ancillary Services to the Authority under Section 10(b) of this Open Access Regime, subject to Section 10(f) of this Open Access Regime.
- (h) Disputes regarding the Open Access Regime, including the Access Protocol and all Appendices and Attachments to this Schedule 3, and the Concession Company's compliance with it ("Access Disputes") between the Authority and the Concession Company are to be resolved by negotiation by the Designated Person of each Party as provided in Section 19.2 of this Agreement followed by binding determination by an Access Protocol Independent Expert as provided in this Schedule 3, subject to Section 3(g) of Appendix D to this Schedule 3 with respect to Major Non-Compliance Notices and the Concession Company Default, which may be resolved under Article 19 of this Agreement.
- (i) Any Access Dispute between the Concession Company and an Access Seeker, which cannot be resolved by negotiation, shall be referred to the Access Dispute Resolution Board (comprised of the Designated Person of the Authority and the Designated Person of Concession Company, the "Access Dispute Resolution Board"), which will appoint an agreed independent expert with the relevant technical expertise (the "Access Protocol Independent Expert").
- (j) The Access Dispute Resolution Board is responsible for:
  - (i) maintaining a panel of Access Protocol Independent Experts for resolution of Access Disputes, which the parties can select from by agreement in relation to a particular Access Dispute;
  - (ii) the standard terms of reference for the appointment of an Access Protocol Independent Experts; and
  - (iii) the standard procedures for the Access Dispute resolution process.
- (k) The Access Dispute Resolution Board must unanimously agree the matters in Sections 10(j)(i) to 10(j)(iii) of this Open Access Regime no later than 3 months after the Closing Date.
- (l) Any of the procedures adopted under Sections 10(j)(i) to 10(j)(iii) of this Open Access Regime can be amended at any time with the unanimous approval of the Access Dispute Resolution Board.
- (m) If the parties fail to select an Access Protocol Independent Expert from the Access Dispute Resolution Board panel by agreement, an Access Protocol Independent Expert will be appointed from the panel by the Access Dispute Resolution Board. If the Access Dispute Resolution Board cannot agree on the Access Protocol Independent Expert it will select a third party to appoint an Access Protocol Independent Expert from the Access Dispute Resolution Board panel.

## 11 Consultation with Access Seekers

- (n) Any Access Protocol Independent Expert may, at any time during its consideration of an Access Dispute, refer any suspected Non-Compliance to the Authority in accordance with Section 1.1(g)(3)(D) of the Open Access Reporting and Compliance Regime schedule, Appendix D to this Schedule 3.
- (o) The Concession Company will be responsible for the costs of the Access Dispute Resolution Board in relation to a particular Access Dispute, provided that a reasonable application fee will apply to notify an Access Dispute which reflects a reasonable allowance for anticipated costs of the Access Protocol Independent Expert and any costs in addition to the application fee will be recoverable through prices for Reference Services.
- (p) The Concession Company, Access Seekers and Customers will each be required to bear their own costs.
- (q) The Concession Company will be responsible for the costs of establishing and maintaining the Access Dispute Resolution Board.

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## 11 Consultation with Access Seekers

- (a) Where the Concession Company is required to undertake consultation with Customers and Access Seekers in accordance with this Open Access Regime, it shall adopt a consultation process which is practically effective, and shall contain:
  - (i) advising relevant parties of the proposed consultation by email; and
  - (ii) providing details of the proposed consultation in a publicly available manner, including through internet access.
- (b) Details of the proposed consultation will contain:
  - (i) details of the subject matter of the consultation (i.e. the proposed amendments to the Access Protocol or PUP, as applicable); and
  - (ii) the time for providing submissions.
- (c) The Concession Company will provide:
  - (i) a reasonable period of time for submissions;
  - (ii) notice to the Authority of any consultation;
  - (iii) the Authority with copies of all submissions received; and
  - (iv) the Authority with a report setting out the Concession Company's conclusions and proposed actions.



## 12 The Authority monitoring of compliance

**12 The Authority monitoring of compliance**

- (a) The Authority will monitor compliance with this Open Access Regime, including but not limited to, the Concession Company's open and non-discriminatory access obligations and the Access Protocol requirements.
- (b) The Authority can investigate non-compliance with the open and non-discriminatory access obligations and the Access Protocol requirements at any time and can request information from the Concession Company to be used only for the specific purpose of that investigation (including non-compliance with the obligation not to discriminate against any Non-Affiliated Service Provider in favor of any Affiliated Service Provider in connection with the provision of Non-Exclusive Ancillary Services). The Concession Company will provide the requested information to the Authority as soon as practicable and, subject to the Authority entering into appropriate confidentiality arrangements, the information will include details about the terms and conditions on which the Concession Company provides access to Affiliated Cruise Lines or other Cruise Lines.
- (c) The Concession Company will provide the Authority with an annual compliance report in relation to the Concession Company's open and non-discriminatory access obligations and Access Protocol requirements covering the previous calendar year including:
  - (i) details of any deviations from the standard Cruise Line Contract;
  - (ii) details and an explanation for any deviations from the Reference Prices, other than in accordance with the non-standard reference pricing methodology, or for any deviation from the Ancillary Service pricing principals set forth in Section 6.2(a) of the Open Access Regime;
  - (iii) KPIs that demonstrate performance in providing Reference Services; and
  - (iv) information on any Cruise Line complaints or disputes.
- (d) Information relating to the Open Access Regime will be subject to audit by the Authority and an Authorized Auditor as provided in Article 8 of this Agreement.
- (e) The Authorized Auditor may, at any time during its review, refer any suspected Non-Compliance to the Authority in accordance with Section 1.1(g)(3)(C) of the Open Access Reporting and Compliance Regime schedule, Appendix D to this Schedule 3.
- (f) The Concession Company will make publicly available, including through internet access, a summary of the conclusions of each Audit after any confidential commercial information has been removed.

## 13 Definitions and interpretation

- (g) A demerit point system for established non-compliance will be agreed upon with consequences once demerit points pass agreed thresholds and will be consistent with the agreed principles for the compliance and reporting regime set out in a schedule to this Open Access Regime
- (h) Where there is a breach in respect of the open and non-discriminatory access obligations, it will be dealt with in accordance with the Open Access Reporting and Compliance Regime schedule, Appendix D to this Schedule 3.
- (i) The consequences for non-compliance with or breach of this Open Access Regime are as set out in the Open Access Reporting and Compliance Regime, Appendix D to this Schedule 3.

## 13 Definitions and interpretation

## 13.1 Definitions

Unless otherwise specified or the context otherwise requires for the purposes of this Agreement, the following terms have the following meanings. Capitalized terms used in this Schedule 3 and not defined in this Section 13.1 have the respective meanings provided in Section 1.1 of this Agreement.

<b>Access</b>	The use of Reference Services or Ancillary Services.
<b>Access Dispute</b>	A dispute for determination by an Access Protocol Independent Expert as is expressly provided for under this <u>Schedule 3</u> , as further described in <u>Section 10(h)</u> of the Open Access Regime.
<b>Access Protocol Independent Expert</b>	Has the meaning ascribed thereto in <u>Section 10(i)</u> of the Open Access Regime.
<b>Access Seeker</b>	Cruise Lines seeking access to Reference Services or Ancillary Services. For the avoidance of doubt, a Cruise Line that has entered into a Cruise Line Contract shall constitute an "Access Seeker".
<b>Ancillary Service</b>	A non-Reference Services performed within the Cruise Port Facility provided by Concession Party to a Cruise Line, as described in <u>Schedule 15</u> .



13 Definitions and interpretation

**Affiliated Cruise Line**

A Cruise Line that is an Affiliate of the Concession Company or a Contractor to, or an Affiliate of a Contractor to, the Concession Company.

**Approved Operator**

A Contractor Approved by the Authority which has entered into a Contract with the Concession Company for the operation, maintenance and management of the Cruise Port Facility or the provision of Cruise Port Facility Services.

**Capacity**

The operational capacity for the Cruise Piers and Cruise Pier Buildings, as applicable, under existing configuration and operating procedures to accommodate Reference Services at a given point in time.

**Complainant**

Has the meaning ascribed thereto in Section 1.4 of Appendix D to this Schedule 3.

**Cruise Line Contract**

Has the meaning ascribed thereto in Section 4.1(a) of the Open Access Regime.

**Cruise Port Facility Access Document**

An operational document required to be prepared by the Concession Company in relation to the provision of Access under this Open Access Regime and including the Access Protocol, non-standard reference pricing methodology, Cruise Port Facility Utilization Procedure, Capacity Allocation Protocol, standard Cruise Line Contract and cost allocation methodology.

**Cruise Port Facility Services**

Services provided by the Concession Company to a Cruise Line within the Cruise Port Facility for the purposes of conducting Cruise Port Facility Operations through the Cruise Port Facility and consisting of Reference Services and Ancillary Services.

## 13 Definitions and interpretation

<b>Customer</b>	A Cruise Line that has entered into a Cruise Line Contract.
<b>Non-standard reference pricing methodology</b>	The methodology formulated in accordance with <u>Section 6.3(a)</u> of the Open Access Regime.
<b>Open and non-discriminatory access obligations</b>	The obligations in <u>Section 2</u> of this Open Access Regime.
<b>PUP</b>	The Pier Utilization Procedure provided for in <u>Section 8</u> of this Open Access Regime.
<b>Reference Prices</b>	The prices published for Reference Services.
<b>Reference Pricing Principles</b>	The principles contained in <u>Section 6.1</u> of this Open Access Regime.
<b>Reference Services</b>	The following terminal services: <ul style="list-style-type: none"><li>• Port of call cruise calls</li><li>• Home-port cruise calls</li></ul>
<b>Remedy Plan</b>	Has the meaning ascribed thereto in <u>Section 2.2</u> of <u>Appendix D</u> to this <u>Schedule 3</u> .
<b>Standard Terms and Conditions</b>	Has the meaning ascribed thereto in <u>Section 10(f)</u> of the Open Access Regime.
<b>Third Party Cruise Lines</b>	Cruise Lines that are not Affiliated Cruise Lines.



**APPENDIX A TO SCHEDULE 3**  
**Access Protocol Framework**

**1 Introduction**

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The Access Protocol will incorporate and be consistent with the elements of this Appendix A to Schedule 3 to the Open Access Regime.

- (a) The Access Protocol is to provide for open and non-discriminatory access to the Cruise Piers and the Cruise Pier Buildings by setting out:
- the Reference Services and Ancillary Services to which Access Seekers may seek Access;
  - the procedures for making, assessing, negotiating and finalising Access applications;
  - the process for allocating Capacity to Access Seekers;
  - the Concession Company's commitment to ring-fence Confidential Information from Cruise Lines; and
  - the process for resolving Access Disputes.
- (b) The Access Protocol will be reviewed:
- (1) 2 years after the Closing Date and every 2 years thereafter; or
  - (2) by the Concession Company at any time if it has material concerns with its practical operation.
- (c) All revisions require Approval by the Authority.
- (d) The Concession Company will consult with Access Seekers, Customers and the Authority when reviewing the Access Protocol.

**2 Services and prices**

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- (a) The Access Protocol will set out that the following services are Reference Services:
- (1) Port of call cruise line calls; and
  - (2) Home-port cruise line calls
- (b) On the successful request for a Reference Service by an Access Seeker in accordance with Section 3 of this Open Access Regime, the Concession Company will offer to provide the requested Reference Services to the Access Seeker:
- at the Reference Prices which are publicly available, including through internet access; and

- on the terms in the standard Cruise Line Contract made publicly available, including through internet access.
- (c) The Concession Company is only obligated to provide Access to successful requests for Reference Services at the Reference Price and on Standard Terms and Conditions contained in the Cruise Line Contract.
- (d) The Concession Company may, with the Approval of the Authority, provide Reference Services:
  - (1) at non-standard Reference Prices provided that such prices do not discriminate against a Cruise Line in favor of any other Cruise Line for that particular business;
  - (2) on non-Standard Terms and Conditions provided that such terms and conditions do not discriminate against a Cruise Line in favor of any other Cruise Line for that particular business.
- (e) The Concession Company may provide Cruise Port Facility Services other than those listed in this Schedule 3 with the Approval of the Authority and provided that they are consistent with Cruise Port Purposes.
- (f) The Concession Company will review Reference Prices as provided in Schedule 15.
- (g) All other Cruise Port Facility Services, other than the Reference Services, performed within the Cruise Piers and Cruise Pier Buildings and provided to a Cruise Line will be "Ancillary Services". Where the Concession Company provides Ancillary Services to a Cruise Line, it will publish the availability of Ancillary Services, not discriminate against any Cruise Line in favor of any other Cruise Line in the provision of Ancillary Services, and not discriminate against any Non-Affiliated Service Provider in favor of any Affiliated Service Provider in connection with the provision of Non-Exclusive Ancillary Services.
- (h) The Concession Company will make publicly available, including through internet access, a list of all services offered at the Cruise Port Facility and will update the list as soon as reasonably practicable if there is any change in the services that are offered.
- (i) The obligation not to discriminate against any Cruise Line, including against any Third Party Cruise Line in favor of an Affiliated Cruise Line, applies to the provision of Reference Services and Ancillary Services.
- (j) The Concession Company shall comply with the requirements of Schedule 15 for the provision of Ancillary Services by any Person other than the Concession Company or an Affiliate, or a Contractor to either, and will permit any such Person to provide Ancillary Services as provided in Schedule 15.



### 3 Process for negotiating access

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The Access Protocol will make provision for the following:

- (a) The procedure for making applications for Access to the Reference Services and Ancillary Services in respect of the Cruise Port Facility, which must include:
  - (1) a form for making an application for access and any additional information which must be provided by an Access Seeker in support of an application for Access (including all technical specifications required in accordance with the Cruise Piers Utilization Procedures);
  - (2) details of the information that will be provided in response to a request for Access; and
  - (3) a guideline of the time frames for each step in the process by which the Concession Company will assess and respond to an Access application.
- (b) The negotiation guidelines which will apply to any request for access to the Cruise Port Facility.
- (c) The procedure that will be followed by the Concession Company when assessing and determining requests for Access.
- (d) The procedure and method for concluding a Cruise Line Contract for Access.
- (e) A requirement for the Concession Company to act reasonably and in good faith in negotiating for Access.

### 4 Capacity allocation

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The Access Protocol will provide that the Concession Company will allocate Capacity to Access Seekers in accordance with the Capacity Allocation Protocol set out in Appendix B to this Schedule 3.

### 5 Confidential information and ring-fencing obligations

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The Access Protocol will make provision for the following:

- (a) The Concession Company must keep confidential any confidential information provided to the Concession Company by an Access Seeker and only allow an officer, employee, agent or contractor who works for the Concession Company or exercises management oversight over or responsibility for the Concession Company (**authorized persons**) to access that confidential information for the purpose of:
  - (1) providing Cruise Port Facility services to that Access Seeker

- (2) resolving an Access Dispute; or
  - (3) as otherwise expressly consented in writing by that Access Seeker
- (b) The standard Cruise Line Contract will contain standard terms regarding the protection and use of confidential information.
- (c) The Concession Company is permitted to disclose confidential information:
  - (1) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the confidential information to any third party;
  - (2) to any expert, mediator or arbitrator appointed for the purposes of resolving a particular dispute provided they are under a legal obligation not to disclose the confidential information publicly or to any third party;
  - (3) to the Authority, or an independent external investigator appointed by the Authority, for the purpose of the Authority monitoring the Concession Company's compliance with its reporting and compliance obligations or investigating a complaint under the Open Access Regime, subject to the Authority, (and/or the independent external investigator, as applicable) agreeing to be bound by the same obligations not to disclose the confidential information to any third party as the Concession Company; and
  - (4) if, and to the extent required by Law provided that it first consults with the party that provided the confidential information in relation to the manner and timing of that disclosure.

## 6 Dispute resolution

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The Access Protocol will make provision for the following:

- (a) a mechanism for the raising and resolution of Access Disputes between the Concession Company and Access Seekers in relation to the operation of the Access Protocol.
- (b) Disputes between Access Seekers and the Concession Company will be resolved by negotiation, followed by binding Access Protocol independent Expert determination, where the expert has the power to make directions or determinations in relation to whether the Concession Company has complied with the Concession Company's open and non-discriminatory access obligations and the Access Protocol requirements.
- (c) The Access Protocol will note that the Concession Company is only obligated to provide access to Reference Services at the Reference Price and to Ancillary Services at prices consistent with the pricing principles



in Section 6.2 of the Open Access Regime, and on Standard Terms and Conditions contained in the standard Cruise Line Contract. Accordingly, there can be no dispute where the Concession Company or the Approved Operator (if applicable):

- (1) offers to provide Access to Reference Services at the Reference Price and on Standard Terms and Conditions; or
- (2) subject to Section 4.2(e) and Section 6.3(a), as applicable, of the Open Access Regime, agrees to provide Reference Services at non-standard reference prices or non-standard terms and conditions.

However, an Access Seeker or Customer has the right to notify a complaint to the Authority in relation to compliance with the Access Protocol, including in relation to compliance with the obligation to provide open and non-discriminatory access to Reference Services and Ancillary Services in accordance with the Open Access Regime.

## 7 Compliance

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### 7.1 The Authority investigation

The Access Protocol will make provision for the following:

- (a) Customers and Access Seekers may complain to the Authority if they have any concerns about the Concession Company's compliance with the Access Protocol and the Concession Company's open and non-discriminatory access obligations.
- (b) The Authority can investigate, or appoint an independent expert to investigate, any potential non-compliance with the Access Protocol and the Concession Company's open and non-discriminatory access obligations at any time. The Concession Company will provide all necessary materials and assistance to be used for the sole purpose of that investigation.

### 7.2 Reporting requirements

The Concession Company is required to make publicly available, including through internet access, agreed public reporting requirements in accordance with the compliance regime.

**APPENDIX B TO SCHEDULE 3**  
**Capacity Allocation Protocol**

**1 Introduction**

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- (a) The Capacity Allocation Protocol will incorporate and be consistent with the elements of the Open Access Regime.
- (b) The objective of the Capacity Allocation Protocol is to provide for the transparent and efficient allocation of Capacity at the Cruise Port Facility in accordance with the Concession Company's open and non-discriminatory access obligations.

**2 Capacity allocation**

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**2.1 Procedure for allocation of Cruise Pier capacity**

- (a) The Capacity Allocation Protocol is to make provision for the following in relation to the process of allocating Capacity:
  - (1) Capacity allocation is the provision of scheduled Cruise Line berthing windows at the Cruise Piers. The Concession Company may determine and adjust the scheduling of Cruise Pier berthing windows to optimize the use of the Cruise Piers including for operational efficiency and safety reasons or as otherwise agreed between the Concession Company and the Cruise Lines who are to be or have been allocated the relevant Capacity.
  - (2) On receipt of an Access application in accordance with the Access Protocol, the Concession Company will make an assessment as to whether there is sufficient available Capacity at the Cruise Piers to meet the Access Seeker's request.
- (b) Available Cruise Pier Capacity is determined by the availability of Cruise Line windows and the capability of providing the requested Reference Services at the Cruise Piers after taking into account requirements to accommodate existing Cruise Line calls and existing Cruise Line Contract commitments, and any requirements to reserve Capacity for the prudent operation of the Cruise Piers in accordance with all applicable standards and Good Industry Practice.
- (c) In respect of Access Seekers:
  - (1) Access Seekers will be able to request access to available Capacity not already allocated to existing Customers subject to the availability of relevant Cruise Vessel berthing windows, their acceptance of the terms of the PUP and Concession





Company's ability to adjust the scheduling of Cruise Vessel berthing windows to optimize the use of the Cruise Piers.

- (2) If the Concession Company, in its reasonable opinion, determines that there is insufficient available Capacity to satisfy an Access Seeker's request it will:
  - (A) make an assessment of whether part of the Access Seeker's request can be satisfied by the available Capacity;
  - (B) provide a written explanation to the Access Seeker as to why the application cannot be satisfied in full.

## **2.2 Mutually exclusive requests for Capacity**

- (a) The Capacity Allocation Protocol will provide that available Capacity will be allocated to the request that is most consistent with the principle of maximising the efficient and most valuable use of the Cruise Piers.
- (b) When determining the priority of Capacity allocation for mutually exclusive requests, the Concession Company may have regard to:
  - (1) Volume of service;
  - (2) Operational efficiency;
  - (3) Safety;
  - (4) Security and duration of commitment;
  - (5) Promotion of utilization of the Cruise Piers or Cruise Pier Buildings;
  - (6) Promotion of the longer term utilization and development of the Cruise Piers or Cruise Pier Buildings; and
  - (7) the present value of future returns to the Concession Company and Cruise Port Facility operations after considering all risks associated with each Access request.
- (c) After making a determination of priority of Capacity allocation for mutually exclusive requests, the Concession Company is required to explain in writing to the unsuccessful Access Seekers reasons for making its determination unless alternative arrangements are made with the unsuccessful Access Seeker.
- (d) If additional Capacity subsequently becomes available due to the availability of new Capacity at the Cruise Port Facility, the Concession Company will notify each unsuccessful Access Seeker that was unsuccessful due to the unavailability of Capacity from the previous 6 months of the available Capacity generated from the expansion in accordance with Section 2.2 of this Appendix B to Schedule 3.

## **2.3 Varying Cruise Pier capacity**

- (a) The Capacity Allocation Protocol will provide that the Concession Company will provide access to Capacity on a 'use it or lose it' basis and

any Cruise Line will not be permitted to bank Access berthing windows to prevent use by other Access Seekers.

- (b) The Capacity Allocation Protocol will provide for a mechanism allowing:
  - (1) the removal of entitlements to contracted Capacity in the event of non-use (a use it or lose it regime); and
  - (2) the Concession Company the ability to, in its discretion, reallocate some or all of any contracted service capacity voluntarily relinquished by the customer if it is not required,
 subject to the Concession Company complying with the open and non-discriminatory access obligations.
- (c) The Capacity Allocation Protocol is to provide that Cruise Line Customers may offer to voluntarily relinquish to the Concession Company any Capacity which the Customer has contracted pursuant to its Cruise Line Contract in excess of its requirements for a specified period of time for reallocation by the Concession Company in accordance with the following principles (a "Voluntary Reduction"):
  - (1) the Concession Company may in its sole discretion determine whether to reallocate any part or all of the amount of the Voluntary Reduction; and
  - (2) if any or all of the Voluntary Reduction is reallocated by the Concession Company to other Access Seekers, the Concession Company will reduce the Customer's Capacity under its Cruise Line Contract for the period of time for which the Capacity is reallocated.
- (d) The Concession Company can vary Capacity:
  - (1) To repair, maintain, upgrade, extend, construct or make alterations to the Cruise Piers or Cruise Pier Buildings, in accordance with the minimum performance levels set out in Schedule 12 to this Agreement;
  - (2) for reasons of safety or for the prevention of injury or damage to the Cruise Piers or Cruise Pier Buildings or to other persons or property;
  - (3) as necessitated to comply with requirements of Governmental Authorities to address emergency public health situations, such as COVID-19; and
  - (4) following a request in writing from a Customer.

## 2.4 Reallocating Cruise Pier capacity

- (a) The Capacity Allocation Protocol will make provision for the following in relation to the reallocation of Capacity:
  - (1) Only the Concession Company has the right to allocate or reallocate Capacity.



- (2) The Concession Company can adjust the scheduling of Cruise Vessel berthing windows to optimize the use of the Cruise Piers and Cruise Pier Buildings and can reallocate capacity in accordance with the PUP or in accordance with the standard Cruise Line Contract or as otherwise agreed with a Customer.
- (3) In order to encourage the optimum, safe and efficient use of the Cruise Piers and Cruise Pier Buildings and subject to complying with open and non-discriminatory access obligations, the Concession Company can, subject to Section 2.4(b) of this Appendix B to Schedule 3, withdraw Capacity allocated to a Cruise Line and reallocate that Capacity where:
  - (A) subject to the Concession Company allowing the Customer a reasonable opportunity to demonstrate its ability to fully utilize its Capacity about the minimum threshold for the remainder of its Cruise Line Contract;
  - (B) there are repeated breaches of safety requirements of the Customer's Cruise Line Contract, relevant legislation, or a standard specified in the Cruise Port Facility Operating Procedure by the Customer;
  - (C) necessitated to comply with requirements of Governmental Authorities to address emergency public health situations, such as COVID-19; or
  - (D) a temporary variation is needed to accommodate maintenance, in accordance with the minimum performance levels set out in Schedule 12 to this Agreement.
- (b) In respect of Sections (a)(3)(A) and (B) above the Concession Company will provide the Customer with no less than 14 days to show cause why its allocation should not be reduced. The Concession Company will only reduce Customer's allocation in accordance with this Section if it is not satisfied, acting reasonably, with the Customer's show cause response and must provide reasons for its decision.

### 3 Insufficient Cruise Pier Capacity

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- (a) Where the ultimate Capacity limit of the Cruise Piers has been reached, all Access Seekers will be notified once Capacity becomes available.
- (b) Capacity will be allocated to the request that is most consistent with the principle of maximizing the efficient and valuable use of the Cruise Piers and in accordance with open and non-discriminatory access.
- (c) When determining the priority of Capacity allocation for mutually exclusive requests, the Concession Company may have regard to:
  - (1) volume of service;
  - (2) operational efficiency;

- (3) security and duration of commitment;
- (4) promotion of utilization of the Cruise Port Facility;
- (5) promotion of the longer term utilization and development of the Cruise Port Facility area.

#### 4 Reporting and Compliance

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In relation to reporting and compliance, the Capacity Allocation Protocol will provide that:

- (a) Customers, Access Seekers and potential Access Seekers can complain to the Authority about compliance with the Capacity Allocation Protocol at any time.
- (b) The Authority can investigate non-compliance with the Capacity Allocation Protocol requirements for the purpose of investigating the Concession Company's compliance with its open and non-discriminatory access obligations at any time and the Concession Company will provide all necessary materials and assistance to be used for the sole purpose of that investigation.

#### 5 Planning capacity allocation

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- (a) The Capacity Allocation Protocol will provide details for planning capacity allocation in the short, medium and long term in consultation with stakeholders to maximize the efficient use of the Cruise Piers and the Cruise Pier Buildings.
- (b) The Concession Company will make publicly available, including through internet access, the capacity expansion profile, capacity expansion objective and capacity expansion principles, including any revisions from time to time.



**APPENDIX C TO SCHEDULE 3**  
**Operating Utilization Framework**

**1 Introduction**

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The Cruise Pier Utilization Procedure will incorporate and be consistent with the elements of this schedule to the Open Access Regime.

- (a) The objective of the Cruise Pier Utilization Procedure is to provide for the safe, transparent and efficient management of the Cruise Piers and the Cruise Pier Buildings in accordance with the principle of open and non-discriminatory access.
- (b) The Authority can require a review of the Cruise Pier Utilization Procedure, no more than once per year, if it reasonably considers the specifications or the operation of the Cruise Pier Utilization Procedure is inconsistent with non-discriminatory access.
- (c) The Concession Company can review the Cruise Pier Utilization Procedure at any time. Following review, the Cruise Pier Utilization Procedure will remain consistent with principle of non-discriminatory access.
- (d) The Concession Company must consult with Customers and the Authority when reviewing the Cruise Pier Utilization Procedure.

**2 General**

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The Cruise Pier Utilization Procedure is to make provision for items with respect to general issues relating to access to the Cruise Piers and the Cruise Pier Buildings and contain:

- (a) Accreditation and compliance with the safety management system.
- (b) Cruise Line accreditation.
- (c) Information required by the Concession Company from Access Seekers.
- (d) IT or other capability requirements.
- (e) Cruise Vessel berthing procedures.

**3 General Operations**

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The Cruise Pier Utilization Procedure is to make provision for the following items in relation to managing vessel handling at the Cruise Piers:

- (a) Protocols for loading and unloading passengers.
- (b) Protocols for connecting to shore power.

- (c) Protocols for bunkering and restocking of supplies.
- (d) Protocols for removal of waste and collection of wastewater.
- (e) Protocols for managing late running Cruise Vessels and procedures for handling and rescheduling cancelled Cruise Line calls.

#### 4 Maintenance

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The Cruise Pier Utilization Procedure is to make provision for the following items in relation to maintenance at the Cruise Piers:

- (a) Scheduled Cruise Pier and Cruise Pier Buildings maintenance and loss of capacity for the next 24 months.
- (b) Unscheduled maintenance and outages at the Cruise Piers.
- (c) Arrangements for planning capacity allocation in the short, medium and long-term, in consultation with relevant stakeholders, to maximize efficient use of the Cruise Piers.

#### 5 Safety

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The Cruise Pier Utilization Procedure shall comply with the Safety and Safety Management Systems Plan as described in Schedule 12 to this Agreement.

#### 6 Administration

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The Cruise Pier Utilization Procedure is to make provision for items in relation to administrative procedures and contain the:

- (a) establishment of a contact person and procedure for all Access Seeker complaints; and
- (b) establishment of a communication protocol including a requirement for Access Seekers to establish and maintain a radio communications link with the Concession Company at all times with the operating details of the radio link to be specified by the Concession Company.



**APPENDIX D TO SCHEDULE 3**  
**Open Access Reporting**  
**and Compliance Regime**

1. Non-Compliance

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**1.1 Identifying Non-Compliance**

- (a) The Concession Company will either operate the Cruise Port Facility directly or ensure that an Approved Operator is engaged to operate the Cruise Port Facility and ensure that the Approved Operator complies with all aspects of this Schedule 3.
- (b) Failure to comply with the obligations set out in the Open Access Regime, as referred to in Attachment 1, Attachment 2 and Attachment 3 of this Appendix D to Schedule 3 is a **Non-Compliance**. Non-Compliance will lead to the consequences set out in this Appendix D to Schedule 3 and no other consequences.
- (c) Non-Compliances with the obligations referred to in the table 1 of Attachment 1 of this Appendix D to Schedule 3 under "Open Access Regime Obligations" are each a **Minor Non-Compliance**, unless the relevant Non-Compliance is a Major Non-Compliance under Section 1.1(e)(1) of this Appendix D to Schedule 3.
- (d) Non-Compliance with the obligations referred to in Attachment 2 of this Appendix D to Schedule 3 under "Administrative Obligations" is an **Administrative Non-Compliance**.
- (e) **Major Non-Compliance** is:
  - (1) Non-Compliance with the open and non-discriminatory access obligations in Sections 2.1(c) and 2.2 of the Open Access Regime being:
    - (A) not permitting access at the Cruise Piers or the Cruise Pier Buildings for any Cruise Line, where such access is, or would be, otherwise in accordance with relevant Cruise Pier or Cruise Pier Building access and operating arrangements and access is available having regard to the capacity of the Cruise Piers and the Cruise Pier Buildings;
    - (B) unreasonably discriminating against a Cruise Line to their competitive detriment in favor of any other Cruise Line in providing Reference Services or Ancillary Services, or other services under this Agreement, or discriminating against any Non-Affiliated Service Provider in favor of any Affiliated Service Provider in connection with the provision of Non-



Exclusive Ancillary Services, other than as permitted under this Agreement;

- (C) not offering to provide access to Reference Services, provided access is available having regard to the Capacity of the Cruise Port Facility, on transparent and published terms and conditions and in accordance with published Reference Prices, or otherwise as permitted in accordance with this Open Access Regime, and under relevant Cruise Port Facility access and operating arrangements;
  - (D) engaging in conduct for the purpose of hindering or preventing access at the Cruise Piers or Cruise Pier Buildings by any other Cruise Line in the exercise of access rights to which it would otherwise be permitted under the Open Access Regime and relevant Cruise Port Facility access and operating arrangements, or engaging in conduct for the purpose of hindering or preventing the provision of Ancillary Services by any Person other than the Concession Company or an Affiliate, or a Contractor of either, as any such Person is permitted to provide Ancillary Services as provided in Schedule 15; and
- (2) Non-Compliance within a two year period by the Concession Company with:
- (A) 2 separate Approved Remedy Plans; or
  - (B) 1 Approved Remedy Plan on 2 separate occasions,
- (3) but only where such Non-Compliance:
- (A) is material having regard to the policy objectives in Section 1.1(a) of the Open Access Regime, including that any Non-Compliance with the open and non-discriminatory access obligations in Sections 2.1(c) and 2.2 of the Open Access Regime is unreasonable and materially detrimental to competition;
  - (B) was not materially contributed to or caused by the non-compliance of the Complainant with relevant Cruise Pier access and operating arrangements; and
  - (C) was not due to events or circumstances outside of the reasonable control of the Concession Company provided that the Concession Company has taken all reasonable actions that a prudent Cruise Pier operator would take to minimize the occurrence and effects of that Non-Compliance.



- (f) The Authority and the Concession Company acknowledge and agree that this Appendix D to Schedule 3 deals with all matters relating to Non-Compliance and that unless expressly stated no matter arising under this Schedule 3 can be referred to dispute resolution under Section 10 of the Open Access Regime.
- (g) Non-Compliance with the Open Access Regime can only be identified in the following ways:
  - (1) by the Concession Company in the Compliance and Performance Report provided under Section 4.2 of this Appendix D to Schedule 3;
  - (2) by written notice from the Concession Company to the Authority at any time;
  - (3) subject to Sections 1.2 and 1.3(a) of this Appendix D to Schedule 3, a finding of Non-Compliance identified by the Authority as a result of:
    - (A) the Authority's general compliance monitoring activities under Section 12(a) of the Open Access Regime;
    - (B) an investigation by the Authority, or an independent external investigator appointed by the Authority, following a written complaint from a Customer or Access Seeker under Section 10(b) of the Open Access Regime;
    - (C) a referral to the Authority of a suspected Non-Compliance by an appointed external Auditor, as part of the external auditor audit functions under Section 12(d) of the Open Access Regime; or
    - (D) a referral to the Authority of a suspected Non-Compliance by an Access Protocol Independent Expert appointed to resolve a dispute between the Concession Company and either the Authority or an Access Seeker under Section 10 of the Open Access Regime; or
  - (4) a determination by the Access Protocol Independent Expert, with the Open Access Regime between the Concession Company and either the Authority or an Access Seeker under Section 10 of the Open Access Regime containing a finding of Non-Compliance, provided that:
    - (A) the Concession Company has been afforded an opportunity to respond to the alleged Non-Compliance within the Access Protocol Independent Expert or determination procedure; and
    - (B) the Access Protocol Independent Expert complies with Sections 1.3(d), 1.3(e) and 1.3(f) of this Appendix D to Schedule 3.

## 1.2 Non-Compliance Notice

- (a) Where the Authority becomes aware of a suspected Non-Compliance with the obligations referred to in table 1 of Attachment 1 under Section 1.1(g)(3) of this Appendix D to Schedule 3, it will provide written notice to the Concession Company within 5 Business Days, providing details of the suspected Non-Compliance. In such notice, the Authority may, in its discretion, either (1) designate the Access Dispute Independent Expert to investigate such suspected Non-Compliance and make a finding as provided in Section 1.1(g)(4) or Section 1.3 of this Appendix D to Schedule 3 or (2) retain jurisdiction over the suspected Non-Compliance. In the event the Authority retains jurisdiction over the suspected Non-Compliance, the Authority will provide the Concession Company with a reasonable opportunity to respond and will consider Concession Company's response before making a finding on Non-Compliance under Section 1.2(b) of this Appendix D to Schedule 3.
- (b) Where the Authority finds that there has been a material Non-Compliance with the obligations referred to in table 1 of Attachment 1 identified under Section 1.1(g)(3) of this Appendix D to Schedule 3, it will provide written notice to the Concession Company within 5 Business Days of making such a finding, providing details of the Non-Compliance including: whether such Non-Compliance is Major Non-Compliance or Minor Non-Compliance and the Authority's reasons (**Non-Compliance Notice**).
- (c) A Non-Compliance Notice shall not be issued by the Authority where the Authority considers (acting reasonably) that the Concession Company has resolved the complaint or issue in respect of the Non-Compliance, prior to a finding of Non-Compliance.
- (d) A Non-Compliance Notice issued by the Authority shall be of no effect where an Access Protocol Independent Expert appointed under Section 1.3 of this Appendix D to Schedule 3 considers (acting reasonably) that the Concession Company has resolved the complaint or issue in respect of the Non-Compliance prior to a finding of Non-Compliance.

### 1.3 Review by Access Protocol Independent Expert

- (a) Where a Non-Compliance with the obligations referred to in table 1 of Attachment 1 is identified under Section 1.1(g)(3) of this Appendix D to Schedule 3, the Concession Company can by written notice to the Authority, within 10 Business Days of receipt of a Non-Compliance Notice, refer the finding of Non-Compliance to be reviewed by the Access Protocol Independent Expert. In addition, where the Authority becomes aware of a suspected Non-Compliance and designates the Access Dispute Independent Expert to investigate and make a finding regarding it, as provided in Section 1.2 of this Appendix D to Schedule 3, the Access Protocol Independent Expert shall investigate the suspected Non-Compliance and make a finding regarding it as provided in this Section 1.3 of Appendix D to Schedule 3.



- (b) The Access Protocol Independent Expert will be appointed as provided in Section 10(i) of the Open Access Regime.
- (c) The Concession Company and the Authority will provide the Access Protocol Independent Expert with all necessary relevant materials and assistance to be used for the sole purpose of that review.
- (d) The Access Protocol Independent Expert shall not make a finding of Non-Compliance unless the Access Protocol Independent Expert finds on the available evidence and having regard to those matters specified in Section 1.3(e) of this Appendix D to Schedule 3, that a material Minor Non-Compliance or Major Non-Compliance with a specific obligation or obligations listed in table 1 of Attachment 1 or Section 1.1(e) of this Appendix D to Schedule 3 has occurred.
- (e) Before the Access Protocol Independent Expert can make a finding of Non-Compliance the Access Protocol Independent Expert shall have regard to:
  - (1) the full terms of the Open Access Regime in respect of an alleged Non-Compliance;
  - (2) relevant Cruise Piers access and operating arrangements (which for the purpose of this Schedule 3 shall include the provision of access and the operation of the Cruise Piers in accordance with the Open Access Regime, the Cruise Line Contract, Capacity Allocation Protocol, Access Protocol and the Cruise Piers Utilization Procedures) and availability of access having regard to the capacity of the Cruise Piers;
  - (3) whether the Non-Compliance was materially contributed to or caused by the failure of the complainant to comply with Cruise Piers access and operating arrangements under the Open Access Regime. If the Non-Compliance was materially contributed to or caused by such a failure no finding of Non-Compliance will be made;
  - (4) whether the Non-Compliance was due to events or circumstances outside of the reasonable control of the Concession Company provided that the Concession Company has taken all reasonable actions that a prudent cruise pier operator would take to minimize the occurrence and effects of that Non-Compliance; and
  - (5) whether in relation to a Major Non-Compliance, the Access Protocol Independent Expert at its discretion (acting reasonably) considers it should not make a finding of Major Non-Compliance, because the Non-Compliance is being or has been resolved by the Concession Company in a timely manner.
- (f) The Access Protocol Independent Expert shall provide a written report setting out its reasons for determining whether Non-Compliance has occurred, within a

period determined by the Access Dispute Resolution Board. Where the Access Protocol Independent Expert finds Non-Compliance, the report shall specify and provide relevant particulars as to the Non-Compliance (including whether such Non-Compliance is Major Non-Compliance or Minor Non-Compliance).

- (g) Any finding by the Access Protocol Independent Expert shall be final and binding; provided, however, that any finding regarding a Major Non-Compliance or resulting in a Concession Company Default may be referred by the Concession Company for dispute resolution under Article 19 of this Agreement, as provided in Section 3(g) of this Appendix D to Schedule 3. For the avoidance of doubt, (1) Demerit Points will accrue based on findings by the Access Protocol Independent Expert of Non-Compliance, as applicable, and (2) upon designation of the Access Protocol Independent Expert as provided in Section 1.2(a) of this Appendix D to Schedule 3, the Access Protocol Independent Expert may exercise the rights of the Authority under Section 1.2, Section 2.2 and Section 3 of this Appendix D to Schedule 3, including issuing a Non-Compliance Notice and a Major Non-Compliance Notice and determining that a finding by the Access Protocol Independent Expert of material Minor Non-Compliance may include a requirement for a Remedy Plan, as provided in Section 2.2 of this Schedule D to Appendix 3, with the Approval of the Designated Person of the Authority.
- (h) The Concession Company will be responsible to pay all costs of the Access Protocol Independent Expert.

#### 1.4 Managing Complaints

- (a) The Authority will, when determining, in its discretion, whether to investigate a complaint (whether under Section 10(b) of the Open Access Regime, Section 12(a) of the Open Access Regime or any other provision of the Open Access Regime, or in any other circumstance, including referring suspected Non-Compliance to the Access Dispute Independent Expert) in relation to alleged Non-Compliance with the Open Access Regime, take into account whether the Person making the complaint (**Complainant**) has made other complaints within the last 2 years and the outcome of those complaints.
- (b) In addition to Section 1.4(a) of this Appendix D to Schedule 3, the Authority will not investigate a complaint, or refer a complaint to the Access Protocol Independent Expert for investigation, unless the Authority determines (acting reasonably) that the Complainant has:
  - (1) complied, or otherwise demonstrated it is capable of complying, and has agreed to comply, with applicable Cruise Port Facility access and operating arrangements in accordance with the Open Access Regime, including the Cruise Line Contract, Capacity Allocation Protocol, Access Protocol and the Cruise Piers Utilization Procedures; and



- (2) first notified the Concession Company of its complaint, provided all reasonable assistance and cooperation to the Concession Company in seeking to resolve its complaint and allowed a sufficient and reasonable period for the Concession Company to resolve the complaint.
- (c) The Authority will require a Complainant to set out its complaint in writing and will provide a copy of any accepted complaint to Concession Company, subject to the Authority removing any information reasonably claimed by the Complainant to be confidential or commercially sensitive.
- (d) The Authority will levy an administration fee on the Complainant in order to recover the reasonably incurred costs of the Authority (including any costs of the Access Protocol Independent Expert) in considering a complaint it receives in relation to alleged Non-Compliance with the Open Access Regime. the Authority may, in its discretion, return part, or all, of this administration fee to the Complainant if, after following the procedures set out in the Open Access Regime and this Schedule 3, there is a finding of Non-Compliance in respect of the complaint.
- (e) In all cases, the Authority will assess, or request the Access Protocol Independent Expert to assess, any complaint as to alleged Non-Compliance for materiality before initiating any review or requesting any response to the complaint.

## 2. Minor Non-compliance

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### 2.1 Demerit Points

- (a) If Non-Compliance is identified under Section 1.1(g) of this Appendix D to Schedule 3 (and in respect of Non-Compliance under Section 1.1(g)(3) of this Appendix D to Schedule 3 the review period under Section 1.3(a) of this Appendix D to Schedule 3 has expired), the Concession Company will accrue points to the value listed for the relevant Non-Compliance in Attachment 1 (**Demerit Points**), provided that:
  - (1) where the relevant Non-Compliance is dealt with as a Major Non-Compliance, no Demerit Points shall accrue, except as provided in Table 1 to this Appendix D to Schedule 3;
  - (2) where a single course of conduct leads to a finding of multiple Non-Compliances, Demerit Points for that conduct will only accrue for the Non-Compliance that incurs the highest Demerit Points;
  - (3) a finding of Non-Compliance will not accrue any Demerit Points if the Authority or the Access Protocol Independent Expert (as applicable) considers that:



- (A) the Concession Company has resolved the complaint in respect of the Non-Compliance, to the satisfaction of the Authority or the Access Protocol Independent Expert (as applicable), prior to a finding of Non-Compliance by the Authority under Section 1.1(g)(3) of this Appendix D to Schedule 3 or an Access Protocol Independent Expert under Section 1.1(g)(4) of this Appendix D to Schedule 3;
  - (B) the Non-Compliance was materially contributed to or caused by the Non-Compliance of the Complainant with Cruise Piers access and operating procedures under the Open Access Regime; or
  - (C) the Non-Compliance was due to events or circumstances outside of the reasonable control of the Concession Company and the Concession Company has taken all reasonable actions that a prudent Cruise Piers operator would take to minimize the occurrence and effects of that Non-Compliance.
- (b) Where Minor Non-Compliance is reviewed under Section 1.3 of this Appendix D to Schedule 3, Demerit Points will only accrue if the Access Protocol Independent Expert makes a finding that there has been Minor Non-Compliance and the conditions in Section 2.1(a)(1) of this Appendix D to Schedule 3 and Section 2.1(a)(3) of this Appendix D to Schedule 3 have not been satisfied. Where the review involves multiple Non-Compliances that have occurred from a single course of conduct Section 2.1(a)(2) of this Appendix D to Schedule 3 applies.
- (c) Demerit Points accrued count towards the totals in Section 2.3(a) of this Appendix D to Schedule 3 from the date the relevant Minor Non-Compliance occurred. Demerit Points will reduce in value by one-third each year, and will expire 3 years, after the date the relevant Minor Non-Compliance occurred.
- (d) Where the Concession Company reports Non-Compliance under Sections 1.1(g)(1) or 1.1(g)(2) of this Appendix D to Schedule 3 the Concession Company will accrue Demerit Points listed in the 'Self reporting' column in Attachment 1, provided that:
- (1) in respect of Minor Non-Compliance which would otherwise have been identified under Section 1.1(g)(3)(C) of this Appendix D to Schedule 3, it is reported before the commencement of the relevant external audit;
  - (2) in respect of Minor Non-Compliance which would otherwise have been identified under Section 1.1(g)(3)(D) of this Appendix D to Schedule 3 or Section 1.1(g)(4) of this Appendix D to Schedule 3 it is reported before the independent expert or arbitrator is appointed; and

- (3) for all other Non-Compliances, it is reported by the Concession Company or the Approved Operator to the Authority before the Authority issues a notice of suspected Non-Compliance in accordance with Section 1.2(a) of this Appendix D to Schedule 3.
- (e) Where Minor Non-Compliance is identified by the Authority or notified to the Authority by a party other than the Concession Company in accordance with Sections 1.1(g)(3) and 1.1(g)(4) of this Appendix D to Schedule 3 the Concession Company will accrue the Demerit Points listed in the 'Identified externally' column of Attachment 1.
- (f) The total number of accrued Demerit Points (regardless of whether these relate to Major Non-Compliance, Minor Non-Compliance or Administrative Non-compliance) may be reset to zero if the Concession Company engages an Approved Operator or a current Approved Operator is replaced with another Approved Operator, and if such reset is Approved by the Authority.
- (g) Following each review of the Cruise Piers Utilization Procedures or Access Protocol under the Open Access Regime, the Concession Company and the Authority will meet in good faith to determine whether any changes are necessary to the categories of Minor Non-Compliance and the number of Demerit Points that apply to each category. The objectives which must be considered during this negotiation are whether:
  - (1) the list of Minor Non-Compliance obligations is accurate, complete and appropriate;
  - (2) the number of Demerit Points for each type of Minor Non-Compliance is appropriate to the severity of the Minor Non-Compliance and consequences; and
  - (3) the number of Demerit Points for each type of Minor Non-Compliance, and the duration for which Demerit Points remain active is appropriate.

If the Authority and the Concession Company cannot agree in writing, following a review, regarding the necessary changes to the categories of Minor Non-Compliance and the number of Demerit Points that apply to each category, the categories and Demerit Points that were in effect prior to that review commencing will remain in force.

## 2.2 Remedy Plan

- (a) The Authority may issue the Concession Company with a written notice in respect of any finding of material Minor Non-Compliance determined in accordance with Sections 1.1(g) and 1.3 of this Appendix D to Schedule 3 (**Remedy Plan Trigger Notice**).
- (b) A Remedy Plan Trigger Notice must identify the Minor Non-Compliance for which it has been issued.



- (c) Unless a finding of Non-Compliance and a recommendation to the Authority for a Remedy Plan is made by the Access Protocol Independent Expert, the Concession Company can include the decision to issue a Remedy Plan Trigger Notice for dispute resolution, as part of a review of the Non-Compliance Notice (described in Section 1.2 of this Appendix D to Schedule 3), and the issuing of all components of that notice shall be dealt with in the one dispute resolution process.
- (d) Where there have been at least 3 Remedy Plan Trigger Notices issued within 2 years in respect of material contraventions within the same category of Minor Non-Compliance in table 1 of Attachment 1, the Authority may, at its discretion, include a requirement in the third Remedy Plan Trigger Notice in that category that a plan is provided:
  - (1) to remedy the Minor Non-Compliances and to prevent future Minor Non-Compliances in that category; or
  - (2) in the case of Minor Non-Compliance which is not capable of being remedied, to prevent future Minor Non-Compliance in that category,

(each a **Remedy Plan**).
- (e) A draft Remedy Plan must be developed within 15 Business Days of receipt of a Remedy Plan Trigger Notice requiring a Remedy Plan. The Remedy Plan must contain:
  - (1) the steps which the Concession Company will take to rectify the Minor Non-Compliance (if applicable) and prevent future Minor Non-Compliance with the Open Access Regime;
  - (2) the timeframes for carrying out each step in Section 2.2(e)(1) of this Appendix D to Schedule 3;
  - (3) the procedure and timeframes for the Concession Company to report to the Authority on its compliance with the Remedy Plan; and
  - (4) any other information reasonably specified by the Authority in its Remedy Plan Trigger Notice.
- (f) If a Non-Compliance requiring a Remedy Plan is reviewed under Section 1.3 of this Appendix D to Schedule 3, the time limit in Section 2.2(e) of this Appendix D to Schedule 3 will be suspended until this review has been completed.
- (g) The Authority shall, within 10 Business Days of receipt of a draft Remedy Plan, notify the Concession Company whether it Approves the draft Remedy Plan or whether it requires amendments to be made before Approval is given subject to those amendments being reasonable, consistent with the Open



Access Regime and only as required and necessary to achieve the objectives in Section 1.1 of the Open Access Regime and to achieve compliance with the relevant non-compliance. The Concession Company shall make the amendments requested by the Authority within 10 Business Days of being notified.

- (h) The timeframes in Sections 2.2(e) and 2.2(g) of this Appendix D to Schedule 3 may be extended by written agreement between the Authority and Concession Company.
- (i) Once the Authority Approves a Remedy Plan, it must be implemented by the Concession Company in accordance with its terms.
- (j) The Authority may, in its discretion, by written notice waive any requirement of the Concession Company in an Approved Remedy Plan.

### 2.3 Consequences of Demerit Points

- (a) If the Concession Company accrues the following total numbers of Demerit Points, the relevant consequence will apply:
  - (1) 40 Demerit Points, the Concession Company will be required to submit Compliance and Performance Reports quarterly for two years from the date the Demerit Point threshold is reached (or until the next Demerit Points threshold is reached);
  - (2) 80 Demerit Points, the Concession Company will be required to submit its Compliance and Performance Reports quarterly and undertake half-yearly external audits of its compliance under Section 12(d) of the Open Access Regime for two years from the date the Demerit Point threshold is reached (or until the next Demerit Points threshold is reached);
  - (3) 100 Demerit Points, the Concession Company will be required to submit its Compliance and Performance reports monthly and undertake quarterly external audits of its compliance under Section 12(d) of the Open Access Regime for two years from the date the Demerit Point threshold is reached (or until the next Demerit Points threshold is reached).

### 3. Major Non-Compliance

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- (a) The Authority may issue a **Major Non-Compliance Notice** in relation to a Major Non-Compliance.
- (b) The Authority may choose at its discretion (acting reasonably) not to issue a Major Non-Compliance Notice if the relevant Major Non Compliance is resolved by the Concession Company in a timely manner.

- (c) Where the Authority chooses not to issue a Major Non-Compliance Notice, the Non-Compliance will be a Minor Non-Compliance. The relevant Demerit Points in table 1 of Attachment 1 will accrue in accordance with Section 2.1 of this Appendix D to Schedule 3 and the Authority may choose to issue a Remedy Plan Trigger Notice under Section 2.2(a) of this Appendix D to Schedule 3.
- (d) Before a Major Non-Compliance Notice is issued, a draft of the Notice shall be provided to the Concession Company and the Concession Company shall be provided with a reasonable opportunity to make submissions to the Authority as to why the Major Non-Compliance Notice should not be issued.
- (e) A Major Non-Compliance Notice shall contain:
- (1) a statement specifying, and providing particulars of, the Major Non-Compliance; and
  - (2) the Authority's reasons in respect of the matters set out in Sections 1.1(e), 1.2(c) and 3(b) of this Appendix D to Schedule 3.
- (f) The occurrence of any of the following will trigger a Concession Company Default for the purpose of Section 16.1(a) of this Agreement:
- (1) within a period of 1 year, 3 Major Non-Compliance Notices have been issued; or
  - (2) if when assessed over a period of 2 years, 5 Major Non-Compliance Notices have been issued,
- and having regard to the overall compliance of the Concession Company with the open and non-discriminatory access obligations in Sections 2.1(c) and 2.2 of the Open Access Regime and the performance of the Concession Company in meeting the policy objectives in Section 1.1(a) of the Open Access Regime, the Authority determines (acting reasonably) that the Concession Company is persistently not complying with those obligations and satisfying those objectives.
- (g) Notwithstanding that a finding by the Authority of Non-Compliance has already been reviewed by an Access Protocol Independent Expert under Section 1.3(a) of this Appendix D to Schedule 3 and that review considered and determined the question of whether the Non-Compliance is major, or an Access Protocol Independent Expert has considered and determined the question of whether the Non-Compliance is major under Section 1.1(g)(4) of this Appendix D to Schedule 3, the Concession Company may refer for dispute resolution under Article 19 of this Agreement (1) the issuance of a Major Non-Compliance Notice and (2) whether a Concession Company Default for the purpose of Section 16.1(a) of this Agreement has been triggered. Concession



Company Default will not be triggered until, in the event of such a dispute, a binding determination to that effect is made in accordance with Article 19 of this Agreement.

#### 4. Administrative Non-compliance

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##### 4.1 Administrative non-compliance notice

- (a) Where the Authority becomes aware of a suspected Administrative Non-Compliance under Section 1.1(g)(3) of this Appendix D to Schedule 3, it will provide written notice to the Concession Company within 5 Business Days, providing details of the suspected Administrative Non-Compliance. The Authority will provide the Concession Company with a reasonable opportunity to respond and will consider the Concession Company's response.
- (b) If after 10 Business Days of receipt of the notice, the Authority, acting reasonably, considers that the Concession Company has not rectified or dealt with the Administrative Non-Compliance, the Authority may seek an Access Protocol Independent Expert direction for the Concession Company to comply with the administrative obligations referred to in Attachment 2.
- (c) The Access Protocol Independent Expert may issue a direction to comply with the relevant administrative obligation where it is satisfied, acting reasonably, that the Concession Company has not complied or otherwise rectified or dealt with the Administrative Non-Compliance referred to it under Section 4.1(b) of this Appendix D to Schedule 3.
- (d) Non-compliance with an Access Protocol Independent Expert direction to comply will result in the consequences set out in table 2 of Attachment 1.

#### Reporting requirements

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##### 4.2 Compliance and Performance report

- (a) The Concession Company will provide the Authority, as part of its annual reporting obligations provided in Schedule 12, a report detailing compliance with the obligations of the Open Access Regime in accordance Section 12(c) of the Open Access Regime no less than 2 months following the end of each Reporting Year (**Compliance and Performance Report**).
- (b) The Concession Company will be responsible for paying all the costs of preparing the Compliance and Performance Report.
- (c) The Compliance and Performance Report must contain the following information:

- (1) details of any deviations from the standard Cruise Line Contract during the relevant period (including identity of the customer, the nature of the changes made to the contract and reasons for those changes);
- (2) details and an explanation for any deviations from the Reference Prices or Ancillary Prices made during that year other than in accordance with the non-standard reference pricing methodology;
- (3) the information required in the 'Reporting requirement' column in Attachment 3 of this Appendix D to Schedule 3; and
- (4) information on any Customer or Access Seeker disputes or complaints recorded in the complaints management system required under Section 10(a) of the Open Access Regime and how each complaint was resolved.

#### 4.3 Publishing obligations

- (a) Upon providing the Authority with the Compliance and Performance Report under Section 4.2 of this Appendix D to Schedule 3, the Concession Company will ensure that the information in Attachment 3 for the relevant year which is listed for public reporting is made publicly available, including through internet access.
- (b) The Concession Company will ensure that all information which has been made publicly available, including through internet access, under Section 4.3(a) of this Appendix D to Schedule 3 in previous years continues to be publicly available, including through internet access, but such information can be corrected if it is inaccurate.
- (c) If the Concession Company believes that certain information required to be published is commercially sensitive, the Concession Company can seek written notice from the Authority waiving the requirements to publish that information under Section 4.3(a) of this Appendix D to Schedule 3.



Attachment 1  
TO APPENDIX D TO SCHEDULE 3

Table of Demerit Points

This Attachment contains a summary of the Open Access Regime obligations only and reference must be made to the terms of the Open Access Regime itself in interpreting this Attachment.

**Table 1 – Open Access Regime Obligations**

Open Access Regime Obligations	Demerit points for Non-Compliance		
	Self reporting	Identified externally	Note
<b>Category – Provision of open and non-discriminatory access, in accordance with the Open Access Regime<sup>1</sup>.</b>			
1. Section 2.1(c)(i) of the Open Access Regime: Permit access at the Cruise Piers and the Cruise Pier Buildings, where such access is, or would be, otherwise in accordance with the Open Access Regime.	10	20	
2. Section 2.1(c)(ii) of the Open Access Regime: Not unreasonably discriminate, against any Cruise Line, including Third Party Cruise Lines, to their competitive detriment in favor of an Affiliated Cruise Line or any other Cruise Line in relation to Reference Services and Ancillary Services, or discriminate against any Non-Affiliated Service Provider in favor of any Affiliated Service Provider in connection with the provision of Non-Exclusive Ancillary Services, otherwise than in accordance with the Open Access Regime.	10	20	
3. Section 2.1(c)(iii) of the Open Access Regime: Offer to provide access to Reference Services on published terms, conditions and prices, where such access is, or would be, otherwise in accordance with the Open Access Regime.	10	20	
4. Section 2.2(a) of the Open Access Regime: Not engage in conduct for the purpose of hindering or preventing access by any Cruise Line, where such access is, or would be, otherwise in accordance with the Open Access Regime, and not engage in conduct for the purpose of hindering or preventing the provision of Ancillary Services by any Person other than the Concession Company or an Affiliate, or a Contractor of either, as any such Person is permitted	10	20	

<sup>1</sup>Provision of access in accordance with the Open Access Regime includes access in accordance with the Cruise Line Contract, Capacity Allocation Protocol, Access Protocol, the Cruise Pier Utilization Procedure and provided access is available having regard to the capacity of the Cruise Piers.

Open Access Regime Obligations		Demerit points for Non-Compliance	
	Self reporting	Identified externally	Note
to provide Ancillary Services as provided in Schedule 15.			
<b>Category – Provision of Ancillary Services</b>			
5. Section 3.3(b) and Section 3.3(c) of the Open Access Regime: Make Ancillary Services and prices charged for Ancillary Services available to all Cruise Lines on an equal basis.	5	10	
<b>Category – Access Protocol</b>			
6. Section 5.1(a) of the Open Access Regime: Providing access in accordance with the published Access Protocol.	5	10	
<b>Category – Capacity Allocation</b>			
7. Section 7.1(a) of the Open Access Regime: Allocating Cruise Pier Capacity in accordance with the published Capacity Allocation Protocol.	5	10	
<b>Category – Publication of required documents</b>			
8. Section 4.1(a) of the Open Access Regime: Publishing: <ul style="list-style-type: none"> <li>a. the Reference Prices;</li> <li>b. a list of the Ancillary Services available at the Cruise Port Facility;</li> <li>c. the standard Cruise Line Contract;</li> <li>d. the Access Protocol; and</li> <li>e. the PUP.</li> </ul>	1	2	Per item for each week of Non-Compliance. After every 5 weeks an additional 5 demerit points will be incurred.
9. Sections 6.1 and 6.2 of the Open Access Regime: Making publicly available, including through internet access, the pricing for Reference Services and the pricing principles for Ancillary Services.	1	2	For each week of Non-Compliance. After every 5 weeks an additional 5 demerit points will be incurred.
10. Section 7.1(a) of the Open Access Regime: Publishing the Capacity Allocation Protocol.	1	2	For each week of Non-Compliance. After every 5 weeks an additional 5 demerit points will be incurred.
<b>Category – Protection of Confidential Information</b>			
11. Section 9.1(a) of the Open Access Regime: Keeping confidential any confidential information provided by an Access Seeker in accordance with Section 9 of the Open Access Regime.	10	20	
<b>Category – Complaint and dispute systems</b>			
12. Section 10(a) of the Open Access Regime: Establishing a complaint handling system.	1	2	For each week of Non-Compliance. After every 5 weeks an additional 5 demerit points will be incurred.



Open Access Regime Obligations	Demerit points for Non-Compliance		
	Self reporting	Identified externally	Note
13. Section 10(e): Publishing a dispute resolution procedure for Third Party Operator and Access Seeker disputes.	1	2	For each week of Non-Compliance. After every 5 weeks an additional 5 demerit points will be incurred.
<b>Category – Access Seeker and Third Party Operator Consultation</b>			
14. Section 5.5(b) of the Open Access Regime: Consulting with Customers and Access Seekers when reviewing the Access Protocol.	5	10	
15. Section 8.6(a) of the Open Access Regime: Consulting with Access Seekers when undertaking a review of the PUP in accordance with the procedures in Section 11 of the Open Access Regime.	5	10	
16. Section 12(a) of the Open Access Regime: Adopting the required consultation process.	5	10	

Table 2 – Administrative Obligations

Administrative Obligations	Demerit points for Non-Compliance	
	Points	Note
1. Compliance with an Access Protocol Independent Expert direction to comply with the administrative obligations referred to in Attachment 2 to this Appendix D to Schedule 3.	5	

Attachment 2  
TO APPENDIX D TO SCHEDULE 3

Administrative obligations

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This Attachment 2 contains a summary of the administrative obligations in the Open Access Regime only and reference must be made to the terms of the Open Access Regime itself in interpreting this Attachment 2.

No.	Administrative obligation
1.	Section 5.3(a) of the Open Access Regime: Reviewing the Access Protocol 2 years after commencement of operation of the terminal and then every 2 years after the completion of the first review.
2.	Section 5.5(b) of the Open Access Regime: Consulting with the Authority when reviewing the Access Protocol.
3.	Section 6.2(a) of the Open Access Regime: Prepare a pricing protocol including a methodology for calculating Ancillary Prices.
4.	Section 6.3 of the Open Access Regime: Obtain the Authority Approval for deviations from Reference Prices.
5.	Section 12(c) of the Open Access Regime: Provide the Authority with an annual compliance report in relation to its open and non-discriminatory access obligations and Access Protocol requirements.
6.	Section 12(f) of the Open Access Regime: Publishing a summary of the annual audit report's conclusions on the Concession Company's website after any confidential information has been removed.



Attachment 3  
TO APPENDIX D TO SCHEDULE 3

Reporting obligations

Open Access Regime element	Reporting requirement	Public reporting
Access application process	Applications for contracted berthing windows received and applications satisfied, by number of windows and passengers per annum.	Yes
Cruise Piers utilization	Total Cruise Piers capacity in calls and passengers per annum.	Yes
	Total Cruise Piers throughput in calls and passengers per annum	No
	Percentage Cruise Piers capacity utilization (throughput/capacity)	No
	Total Cruise Piers access provided to Affiliated Cruise Lines by calls and passengers per annum.	No
	Total Cruise Piers access provided to Third Party Cruise Lines by calls and passengers per annum.	No
Pricing	Average price per relevant unit of service actually charged to Affiliated Cruise Lines and each of the other largest 10 (by Cruise Piers volume used) Third Party Cruise Lines for each of the Reference Services.	No
Ancillary Services	List of Ancillary Services provided to Affiliated Cruise Lines and to Third Party Cruise Lines within the reporting period.	Yes

Open Access Regime element	Reporting requirement	Public reporting
Berthing window allocation	Total number of berthing windows requested by Customers and the number allocated per annum.	Yes
	Total number of berthing windows requested by Affiliated Cruise Lines and the number allocated per annum.	No
	Total number of berthing windows requested by Third Party Cruise Lines and the number allocated per annum.	No
Cruise ship access	Total number of Cruise Vessels arriving on time received and departed at the Cruise Piers within the allocated berthing window per annum.	Yes
	Total number of Affiliated Cruise Lines Cruise Vessels arriving on time received and departed at the Cruise Piers within the allocated berthing window per annum.	No
	Total number of Third Party Cruise Lines Cruise Vessels arriving on time received and departed at the Cruise Piers within the allocated berthing window per annum.	No
Disputes	<p>Number of Access Seeker Access Disputes referred to the Access Protocol Independent Expert and proportion determined in the applicant's favor.</p> <p>Number of Customer Access Disputes referred to the Access Protocol Independent Expert and proportion determined in the Customer's favor.</p>	No