



# Port Operations Licence

---

## Consultation Document

### Channel Islands Competition and Regulatory Authorities

**Document No: CICRA 15/26**

**June 2015**

Guernsey Competition & Regulatory Authority  
Suite 4, 1<sup>st</sup> Floor, Plaiderie Chambers  
St Peter Port, Guernsey, GY1 1WG  
Tel: +44 (0)1481 711120  
Web: [www.cicra.gg](http://www.cicra.gg)

Jersey Competition Regulatory Authority  
2nd Floor Salisbury House, 1-9 Union Street,  
St Helier, Jersey, JE2 3RF  
Tel: +44 (0)1534 514990  
Web: [www.cicra.je](http://www.cicra.je)

## Contents

1. Introduction .....	3
2. Structure of the Consultation .....	4
3. JCRA’s duties and approach .....	5
4. Licensed port operations .....	6
5. Proposed licence structure .....	9
6. Next Steps .....	12
7. Appendix I: Six principles of better regulation.....	13
8. Appendix II: Draft Port Operations licence .....	15

## 1. Introduction

The States of Jersey approved the Air and Sea Ports (Incorporation) (Jersey) Law 201- (the **Law**) on 2<sup>nd</sup> June 2015. The Law requires that any person carrying out port operations must have a licence issued by the Jersey Competition Regulatory Authority<sup>1</sup> (**JCRA**). To that end this document consults on a proposed licence for port operations.

The Law also makes provision for the States of Jersey to make Regulations for the licensing of 'Lifeline Services'. At present, no such Regulations have been proposed and these are therefore not the subject of consultation at this time.

Licensing by the JCRA of port operations is carried out based on the roles and duties of the JCRA under the Law. The policy framework underpinning the incorporation of Ports of Jersey is also a vital consideration in applying the licensing framework since clarity around the policy outcomes sought by the States of Jersey is critical to the successful application of the regulatory framework.

In fulfilling its role and duties, it is the JCRA's intention to apply standard principles of economic regulation, and this is relevant to its approach in price setting as well as quality standards and promotion of competition. However, the States of Jersey may in some cases wish to have regard to other priorities or factors. In these circumstances, policy direction is required and a settled policy framework would need to be established to achieve that.

In finalising a licence for port operations, the JCRA will take into account the objectives given to Ports of Jersey Limited (**PoJL**), the company created under the Law.

The JCRA is also mindful of the Public Service Obligations (**PSO**) required of the Company in accordance with any agreement between the Minister and PoJL or as directed by the Minister. It is the JCRA's understanding that the PSOs are in the process of being finalised and when these are publicly available they will be taken into account in the regulatory framework. In particular the basis for funding such obligations will be particularly relevant to the JCRA's consideration of pricing by PoJL.

This consultation is based on the definition of port operations as outlined in the Law and sets out the proposed draft licence conditions. Given the legal requirement for a licence, those persons engaged in activities that are covered by the definition of port operations are particularly invited to respond to this consultation. The wider group of stakeholders including users of port operations also have a key role in informing the licensing framework and are invited to provide their views.

---

<sup>1</sup> Exceptions are provided for under the Law

## 2. Structure of the Consultation

This paper is structured as follows:

Section 3	references the JCRA's duties and principles of better regulation the JCRA proposes to draw on
Section 4	Sets out the definition of port operations licensable by the JCRA under the Law and the scope of licensing activities based on that legal definition
Section 5	Provides an overview of the licence structure and the purpose of each section
Section 6	Sets out the next steps in finalising the port operation licence

Respondents are requested to comment on the proposed terms and conditions, and to respond to the questions set out through the paper, in relation to the rationale and wording of the conditions, their appropriateness and whether they achieve the stated objectives.

All comments should be submitted before 5.00pm on Friday 20<sup>th</sup> July 2015 to:

Jersey Competition Regulatory Authority  
2<sup>nd</sup> Floor, Salisbury House  
1-9 Union Street  
St Helier  
Jersey  
JE2 3RF

Email: [info@cjra.je](mailto:info@cjra.je)

All comments should be clearly marked 'Comments on the Port Operations Licence Conditions - Consultation Document'.

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document.

The JCRA intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

### 3. JCRA's duties and approach

In general, in applying an economic regulatory framework the JCRA will be guided by the six principles of better regulation which are attached at Appendix I. The economic regulatory framework forms part of a wider framework of regulation of port operations, including that of safety at sea and in the air, the safe operation of ports and other international standards.

#### Duties of the JCRA

Under the Law, the JCRA has a duty to perform its functions:

*So as best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations; and*

*So as best to ensure –*

- (i) That provision is made to satisfy all reasonable demands, both current and prospective, for port operations*
- (ii) That port operations are provided efficiently and effectively, and*
- (iii) That a company (in particular including Ports of Jersey Limited), to the extent that it is or is to be licensed under the Law, has sufficient financial resources to discharge its liabilities under securities issued by the company to the States*

*In so far as consistent with the paragraphs above, the JCRA has a duty to perform its duties under the Law:*

- (a) So as best to encourage sustainable growth in the economy of Jersey in the medium to long term*
- (b) So as to impose a minimum of restriction on persons engaging in commercial activities*
- (c) With due regard to any relevant policies of the States*
- (d) With due regard to preserving and maximizing the benefits of Jersey's resources; and*
- (e) With due regard to the special needs of persons who are disabled.*

The experience of the JCRA in the Channel Islands and regulators in other jurisdictions is that the effectiveness of economic regulation of state-owned enterprises can be significantly affected by governance structures of commercialised businesses. This structure is a responsibility of government, with its policy-setting authority and in its shareholding

role. At the present time there is no formal policy statement that suggests standard principles of economic regulation would not be applied in relation to economic regulation of port operations.

**Question 1: Views are sought on the JCRA's approach and the role of policy informing its approach to economic regulation of port operations.**

## 4. Licensed port operations

### Port Operations

When the Law comes into force, no person may carry out port operations in Jersey unless that person is a licensee under a licence issued by the JCRA<sup>2</sup>. The Law defines 'Port Operations' as:

*(1) In this Law, 'port operations' –*

*(a) means –*

- (i) The provision of facilities and services for and in relation to commercial passenger travel and freight transport into and out of Jersey, by air or by sea*
- (ii) The provision of facilities and services for and in relation to non-commercial travel and leisure pursuits around, into and out of Jersey, by air or by sea, and specifically (in the case of harbour operations) within Jersey territorial waters, and*
- (iii) The management, maintenance and operation of such facilities and services.*

### Licence Categories

Given the drafting of the law, the licence regime is not limited to Ports of Jersey Limited (PoJL). Any person in Jersey carrying out port operations will be required to be licensed. However, in preparing the draft licence conditions the JCRA has taken account of the better regulation principles, its duties under the law and in particular its role to protect and further the interests of users of port operations. In particular the JCRA is mindful that it has a duty to impose a minimum of restriction on persons engaging in commercial activities, and the approach must be proportionate.

To this end, The JCRA proposes to interpret the scope of the activities covered by the requirement to be licensed as:

---

<sup>2</sup> Article 7

## **Port facilities and services provided by a Principal Port Operator within a Designated Sea Port Area or Airport Area in Jersey**

A person is the Principal Port Operator if that person has overall responsibility for the management of all of the area. A person will be considered as having overall responsibility for the management of an air or sea port area by consideration of factors such as:

- The types of facilities or services that are or may be provided in the area
- The prices that are or may be charged for facilities or services provided in the area
- The quality of service provided in the area
- Access to the area
- Development of the area

A Sea Port Area is an area that forms part of a sea port, including:

- Land, buildings and other structures used for the purpose of the shipping or unshipping of goods or passengers, manoeuvring and serving of sea-going vessels at the port
- Passenger terminals
- Freight processing areas
- Marinas and moorings
- Within marine port limits

An Airport Area is an area that consists or forms part of an airport, including:

- Land, buildings and other structures used for the purpose of the landing, taking off, manoeuvring and servicing of aircraft at the airport
- Passenger terminals
- Freight processing areas

**Question 2: Views are sought on the JCRA's interpretation of the scope of ports operations required by law to have a licence?**

### **Article 7(7) Exemption**

The new Law provides that the JCRA may grant an exemption from the requirement to hold a licence subject. The question of whether all port facilities and services provided by persons other than a Principal Port Operator should be exempted arises and views are sought whether an exemption may be appropriate in the circumstances.

**Question 3: Where persons engaged in activities are likely to be caught by the legal definition of port operations, there may be arguments that it is more appropriate that certain activities should be exempted from the licensing obligation. Views are sought on whether exemptions from licensing should apply and on what basis?**

## **Ports of Jersey Limited Licence**

On incorporation, land and other assets will be transferred to the new company. In the first instance, the JCRA proposes to designate as Airport and Sea Port Areas those areas transferred to PoJL by Regulation.

PoJL will be a monopoly company with little prospect of direct competition to its core role in the immediate future. This licence is therefore mainly concerned with how PoJL performs, as if it were a performance contract between the JCRA and PoJL, unilaterally determined by the JCRA to reflect legislation enacted by the States.

A central objective of increasing a licensee's efficiency and protecting customers will be achieved by setting price controls. The licence would therefore include conditions that enable the JCRA to set either maximum prices for particular services or an overall capped revenue requirement, or a combination of the two. There are related conditions require the provision of information to the JCRA.

Other licence conditions prescribe various standards of behaviour in serving users of port operations. In particular, licence conditions provide that PoJL should support the establishment of a strong independent representative body of the main PoJL customers, including airlines and shipping companies, and should consult it regularly on a range of issues.

This approach is particularly suited to a small jurisdiction such as Jersey by increasing transparency and accountability. It will further contribute to constructive stakeholder pressures on PoJL to ensure it is effective and efficient. As with other utilities, the licence will include requirements for complaint / dispute handling and the setting of minimum service standards.

The licence also introduces certain competition related prescriptions, such as the prohibition of undue discrimination.

**Question 4: Views are sought on the appropriate structure and role of representative bodies that might inform the JCRA's regulatory duties and functions?**



## 5. Proposed licence structure

The table below explains the conditions in the draft licence. The draft Licence can be found at Appendix II.

Condition	Heading	Purpose
<b>Part I</b>	<b>Establishment and Enforcement</b>	
1	Definitions	Sets out the meanings attributed to certain terms used throughout the licence document.
2	Scope of the Licence	Establishes to whom the licence is issued, the nature of the licence, the requirements with regard to the control of the Licensee and obligations with respect to any changes in control of the Licensee that may take place.
3	Licence Fee	Requires the Licensee to pay a fee for the licence.
4	Compliance	States that the Licensee must comply with any and all directions issued by the JCRA or as set down in law
5	Provision of Information	This condition sets out how information required by the JCRA may be obtained and obliges the Licensee to comply with requests and provide all relevant information and assistance to obtain information. This is a crucial condition as the information requested will allow the JCRA to make informed determinations in the best interests of users and the market as a whole.
6	Modification	The licence should be viewed as a living document and changes may be necessary over the term of the licence to take account of developments in the market. This condition provides for such modifications. The Law sets out in more specific detail the process to be followed in making modifications.
7	Enforcement and Revocation	This clause provides for the JCRA to revoke the licence in accordance with the process and procedures set out in the Law, and for the Licensee's obligations with respect to the provision of service to its customers at the time that any such revocation takes place.
8	Exceptions and Limitations	While it is assumed that the Licensee will at all times make every endeavour to comply with its licence and any directions given to it by the JCRA, if such compliance is prevented by force majeure, the Licensee must inform the JCRA, set out the impact on its duty to comply with the licence and set out how it intends to rectify the situation. The JCRA will consider such matters on a case by

		case basis.
9	Integrity of Port Operations	This condition provides for the Licensee to take steps necessary to ensure the integrity of port operations. This is important so as to make sure that services to the public are not interrupted.
10	Interests of Jersey	Requires the Licensee to take all reasonable steps to prevent its network and services from being used to harm the interest of Jersey.
11	Term and Renewal	Provides for the length of validity of the licence and for the Licensee to seek renewal of the licence. The term of the licence is 10 years.
<b>Part II</b>	<b>General Conditions</b>	
12	Public Service Obligations (Ports of Jersey only)	This condition refers to the obligation under Article 6 of the Law for Ports of Jersey Limited to discharge certain functions in accordance with an agreement for the purpose with the Minister.
13	Directions or Guidance to the JCRA from the Minister	Requires the Licensee to assist with the implementation of any guidance to the JCRA by the Minister
14	Consumer Protection	Requires the licensee to publish certain information with regard to its services and conditions, the manner in which it will deal with customer complaints, and the publication of a Consumer Code for the resolution of disputes. It also requires licensees to prepare a draft statement on its minimum service levels for customers.
15	Development of Port Operations	The Licensee is required to provide a development plan setting out its targets for the on-going development of port operations, and a monitoring plan which measures achievement of those targets. This is designed to ensure the on-going development of port operations and to ensure that Jersey is provided with the highest level of infrastructure and service.
16	Cessation of Licenced Port Operations	Provides for the manner in which a Licensee may cease service and the steps required of it in doing so. This is designed to ensure continuity of supply for the licensee's customers.
<b>Part III</b>	<b>Additional Conditions</b>	
17	Equal Access	The licensee, where requested by another operator, must grant 'equal access'. This is designed to facilitate the introduction of competitive service providers whose services can be used by

		customers.
18	Separation of Accounts	To aid the JCRA in ensuring compliance with other conditions, the ability of the licensee to show that there is no below cost and/or subsidisation of any element of the business will be paramount. Keeping separate accounts for different activities is essential to calculate this.
19	Cross Subsidisation	This condition prohibits unfair cross-subsidisation and is intended to aid new entrants in assuring them that they are competing on a fair and equitable basis.
20	Undue Preference and Unfair Discrimination	This condition requires the licensee to treat all classes of customers in a similar manner and provide them with similar terms and conditions
21	Linked Sales	This condition prevents the licensee from 'bundling' services or products so that a user or new entrant must purchase products of services which it does not require
22	Price Regulated Services	This condition requires the licensee to publish details of new services or prices, discounts on services or special offers and submit information relating to the proposal to the JCRA. The purpose of this is to ensure that any such changes/introductions are compliant with the requirement to be transparent, non-discriminatory and cost-justified.
23	Fair Competition	Requires the licensee to behave in a fair way and not to engage in anti-competitive practices

**Question 5: Respondents are asked for their views on the proposed licence structure and appropriateness of the conditions as set out. We would particularly welcome respondents' views on whether there are omissions or amendments required to the proposed structure and conditions that support the JCRA's duties and functions**

## **6. Next Steps**

Respondents are requested to comment on the matters set out in this paper. It would assist in the consideration of responses if the question numbers in the above sections were quoted in any replies.

Respondents are also requested to comment on the appropriateness of the conditions in Appendix II. Comments on any additional conditions which respondents believe should be included are also welcome. The JCRA will consider all responses in finalising a port operations licence.

## **7. Appendix I: Six principles of better regulation**

The JCRA follow the six principles of good regulation as set down by the UK Department for Business, Innovation and Skills, modified to suit the characteristics of the Channel Islands. These principles are explained below:

### **1) Accountability**

Independent regulation needs to take place within a framework of duties and policies set by the democratically accountable States Assemblies of Jersey and Guernsey.

Roles and responsibilities between the States of Jersey, the States of Guernsey and us should be allocated in such a way as to ensure that regulatory decisions are taken by the body that has the legitimacy, expertise and capability to arbitrate between the required trade-offs.

Our decision-making powers should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.

### **2) Focus**

Our role should be concentrated on protecting the interests of end users by ensuring the operation of well-functioning and contestable markets where appropriate, or by designing a system of incentives and penalties that replicate as far as possible the outcomes of competitive markets.

We should have clearly defined, articulated and prioritised responsibilities focussed on outcomes rather than specified inputs or tools.

We should have adequate discretion to choose the tools that best achieve these outcomes.

### **3) Predictability**

The framework of regulation that we adopt should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence.

The framework of regulation that we adopt should not unreasonably unravel past decisions, and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets.

### **4) Coherence**

Regulatory frameworks should form a logical part of the broader policy context of the States of Jersey and States of Guernsey, consistent with established priorities.

Regulatory frameworks should enable cross-sector delivery of policy goals where appropriate.

## **5) Adaptability**

The framework of economic regulation needs capability to evolve and respond to changing circumstances and continue to be relevant and effective over time.

## **6) Efficiency**

Where we intervene, policy interventions must be proportionate and cost-effective and our decision making should be timely, and robust.

## 8. Appendix II: Draft Port Operations licence

### PART I: ESTABLISHMENT AND ENFORCEMENT

#### 1. Definitions and Interpretation

- 1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Air and Sea Ports (Incorporation) (Jersey) Law 2015 has, except where the context otherwise requires, the same meaning in the Licence and the Conditions as it has in the relevant Law. In addition, the expressions set out below have the same meanings given to them below:

*'Access'*: means the ability to obtain a required service, facility or function

*'Associated Company'*: means a company that is an Associated Company of the Licensee where one of the two has control of the other, or both are under the control of the same person or persons

*'Conditions'*: means Conditions 1 through 23 of this Licence, as may be amended, revoked or added to by the JCRA from time to time

*'Direction'*: means a written statement issued by the JCRA with which a Licensee must comply

*'JCRA'*: means the Jersey Competition Regulatory Authority

*'Licence'*: means this Licence to run Port Operations, subject to the Conditions

*'Licence Commencement Date'*: means the date on which this Licence is signed by the JCRA

*'Licence Fee'*: means the fee prescribed by the JCRA under Article 16 of the Law and payable by the Licensee

*'Licensed Port Operator'*: means a person with overall responsibility for the management of all of the Air or Sea Port Area, as designated by the JCRA.

*'Licensee'*: means Ports of Jersey Limited

*'Sea Port Area'*: means an area, designated by the JCRA, that forms part of an air or sea port, including

- Land, buildings and other structures used for the purpose of shipping or unshipping of goods or passengers, manoeuvring and serving of sea-going vessels at the port
- Passenger Terminals
- Freight processing areas
- Marinas and moorings
- Within port limits

*'Airport Area'*: means an area, designated by the JCRA, that consists of or forms part of an airport, including

- Land, buildings and other structures used for the purpose of the landing, taking off, manoeuvring and servicing of aircraft at the airport
- Passenger terminals
- Freight processing areas

*'Port Operator'*: means a person or organisation that has overall management of all of a Port Area

*'Term'*: means, subject to Condition 11, a period of ten (10) years from the Licence Commencement Date

*'User'*: means a person, organisation or other entity that is a consumer of Port Operations

1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:

- (a) References to Conditions, paragraphs and subparagraphs are to Conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
- (b) A document will be incorporated into and form part of the Conditions if it is referred to in the Conditions, and reference to such a document is to that document as varied from time to time;
- (c) Headings used for Conditions, paragraphs and subparagraphs are for ease of reference only and will not effect the interpretation of the Conditions;
- (d) References to any law, rule, regulation, ordinance, order or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;
- (e) Use of the word 'includes' or 'including' should be construed as being without limitation; and
- (f) The masculine gender shall include the feminine and neuter, and the singular shall include the plural, and visa versa, and words importing persons shall include firms or companies.

2. Scope of Licence

2.1 This Licence authorises the Licensee to carry out Port Operations in Jersey for the Term.

2.2 The Licensee shall ensure the provision of safe, secure and efficient Port Operations for Jersey, whether by itself or by any other person acting as its subsidiary, agent, employee or subcontractor.

2.3 Article 5 of the Law provides that, in carrying out commercial port operations, the Licensee shall act in the manner best calculated to secure economic growth in the economy of Jersey in the medium to long term.

2.4 For the avoidance of doubt, this Licence shall be non-exclusive

2.5 The Licence is personal to the Licensee and the Licensee shall not:

- (a) Sub-licence, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
- (b) Sell or pledge any of its assets which are necessary to provide the Licensed Port Operations which the Licensee is obliged to provide under this Licence, unless such assets are immediately replaced with equivalent assets, without the prior written consent of the JCRA, such consent not to be unreasonably withheld.



Condition 2.5 does not apply to:

- (i) A mortgage or other transaction entered into for the purpose of securing borrowing of the Licensee or a subsidiary of the Licensee, being borrowings for the purpose of the Licenced Port Operations or the provision thereof or anything incidental thereto; or
- (ii) A transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the Licence, or
- (iii) A transfer, assignment or other disposal of assets made in the ordinary course of business.

2.6 Subject to Condition 8, the Licensee shall notify the JCRA of the occurrence of any of the following:

- (a) Any fact or event likely to materially affect the Licensee's ability to comply with any Condition including any change to the Licenced Port Operations which may detrimentally affect the permanence, availability or quality of the Licenced Port Operations;
- (b) An insolvency-related event in respect of the Licensee or a Subsidiary of the Licensee or a Joint Venture, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon the Licensee becoming aware of the event.

2.7 The Licensee shall notify the JCRA:

- (a) Of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and
- (b) In any event, on the occurrence of any Change of Control of the Licensee, within thirty days of that event.

2.8 On receipt of notification of Change of Control, the JCRA may:

- (a) Approve, in writing, the change or the proposed change;
- (b) Disapprove, in writing, the change or the proposed change, giving reasons; or
- (c) Approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under the Law.

And, or in addition to any of the above measures, the JCRA may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the JCRA considers necessary or appropriate.

In taking such action under this section, the JCRA may have regard to whether or not the JCRA would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

2.9 In this Condition 2, 'Control' shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event. A person or group of persons shall be deemed to Control the Licence if:

- (a) He or they exercise or controls the exercise of fifty percent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or
- (b) He is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or
- (c) He or they exercises or controls the exercise of fifty percent or more of the partnership or other ownership interests of the Licensee.

And, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and 'Change of Control' shall mean any change as a result of which any person or group or persons acquires Control.

- 2.10 The Licensee shall advise the JCRA of any change of Chairman or Chief Executive Officer.
- 2.11 The Licensee shall supply to the JCRA, in relation to itself and any subsidiary company which is controlled by the Licensee:
  - (a) A copy of its annual return on the same date on which it is required to be filed in accordance with Jersey Law,
  - (b) A copy of its annual report and accounts on the same date on which it is circulated to shareholders of the relevant body corporate; and
  - (c) Where the relevant body corporate is not incorporated in Jersey, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the JCRA, analogous or equivalent to the above, at such times and in such forms as the JCRA directs from time to time.
- 2.12 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licenced Port Operations and for the exercise of its rights or discharge of its obligations under this Licence.
- 2.13 The Licensee shall ensure that:
  - (a) The administration and management of the business associated with the running (including establishment, maintenance and operation) of the Licenced Port Operations shall be conducted from Jersey; and
  - (b) Its business is conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or subsidiaries or joint ventures.

### 3. Licence Fee

- 3.1 The Licensee shall pay the Licence Fee in the manner directly by the JCRA
- 3.2 Without prejudice to any remedies of the JCRA under this Licence or the Laws, if the Licensee fails to pay any amount to the JCRA under this Condition by the due date, the unpaid amount will accrue

interest daily from the due date to the date of payment at four percentage points above the published rate of the Bank of England.

#### 4. Compliance

4.1 In addition to the Conditions, the Licensee shall comply with:

- (a) Any obligation imposed on it by the Laws or by any law, regulation, rule, ordinance or order; and
- (b) Any direction duly issued by the JCRA under the Laws or by any law, regulation, rule, ordinance or order of the States of Jersey or this Licence.

#### 5. Provision of Information

5.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the Laws, the Licensee shall provide to the JCRA in the manner and at the times required by the JCRA, any documents, accounts, returns, estimates, reports or other information (whether financial, operational, technical or otherwise) including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.

5.2 The Licensee shall, within ninety days of the Licence Commencement Date, provide the JCRA with a comprehensive report on its provision of port facilities and services, and the anticipated future use, and provide updates on the report as requested by the JCRA from time to time.

5.3 The JCRA may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Licenced Port Operations or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the JCRA in relation to any such examination, investigation or audit. The JCRA may issue directions with regard to the manner in which such an examination, investigation or audit is carried out, including the creation of financial and/or technical specifications or documentation.

5.4 In particular, the JCRA may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination, investigation or audit of any aspect of the Licenced Port Operations to ensure compliance with the Conditions. The Licensee shall allow the JCRA's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its subsidiaries or joint ventures' control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its subsidiaries or joint ventures, as may be required in order to carry out the examination, investigation or audit.

5.5 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit connected under this Condition.

#### 6. Modification

6.1 The JCRA may from time to time modify, delete or add to any Condition in this Licence. Any modification, deletion or addition to the Conditions shall be made in accordance with Article 17 of the Law and any other requirements under any applicable Law.

#### 7. Enforcement and Revocation

- 7.1 The JCRA may at any time revoke this Licence in accordance with the provisions and procedures set out in Articles 21 of the Law. The JCRA may also take any action to enforce any Condition of this Licence in accordance with Article 19 and 20 of the Law or any direction issued relating to this Licence.
8. Exceptions and Limitations of the Licensee's Obligations
- 8.1 If the Licensee is prevented from performing any of its obligations under this Licence because of force majeure:
- (a) The Licensee shall notify the JCRA of those obligations it is prevented from performing and the reason why as soon as reasonably practicable; and
  - (b) The JCRA may suspend those obligations and the Licensee will not be liable to perform those obligations, for so long as the force majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternative sources, work-around plans or other means.
9. Integrity of Port Operations
- 9.1 The Licensee shall take all reasonable steps to ensure the integrity of Port Operations and may refuse to carry out operations or provide services which it is obliged to a particular User if providing those services would or would be likely to cause damage or interference to Port Operations for Jersey.
- 9.2 The Licensee shall provide details with regard to any proposed refusal to the JCRA. The JCRA shall issue a determination on the matter.
10. Matters of Interest to Jersey
- 10.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Licensed Port Operations take reasonable steps to prevent any Port Operations from being used in, or in relation to, the commission of offences against the laws of Jersey.
11. Term and Renewal
- 11.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Laws and subject to any revocation or suspension by the JCRA, for the Term.
- 11.2 At any time after the ninth (9th) anniversary but prior to the eleventh (11th) anniversary of the Licence Commencement Date, the Licensee may serve notice on the JCRA requesting a renewal of this Licence.
- 11.3 Within fifty six (56) days of the receipt of this notice under condition 11.2 or such further notice period as may be agreed with the Licensee, the JCRA shall notify the Licensee whether or not it agrees to a renewal of the Licence subject to the same Conditions or any modified, amended or additional Conditions, subject to the Licence providing all necessary information to the JCRA to enable it to make the notification within the required time.

## **PART II: GENERAL CONDITIONS**

12. Public Service Obligations (Ports of Jersey Limited Only)
  - 12.1 Ports of Jersey Limited is responsible for discharging certain functions referred to in the Law as 'Public Service Obligations' (PSO). The Licensee shall comply with any Agreement with the Minister for the purpose or, in the absence of an agreement, as directed by the Minister.
  - 12.2 The PSO functions may be amended by Order of the Minister, and the Licensee shall advise the JCRA of any such amendments.
  - 12.3 For the avoidance of doubt, the PSO do not form part of port operations covered by this licence.
13. Directions or Guidance to the JCRA from the Minister
  - 13.1 The licensee may be required to assist with the implementation of any directions or guidance given to the JCRA under Article 27 of the Law which can only be implemented by, or with the assistance of, the licensee.
14. Consumer Protection
  - 14.1 The Licensee shall, in the manner and at the times specified by the JCRA, publish the standard terms and conditions, including tariffs, under which it provides each category of Port Operations to Users. In the absence of any other direction from the JCRA, the Licensee shall ensure that a current statement of all applicable terms and conditions is:
    - (a) Filed with the JCRA; and
    - (b) Promptly made available for inspection at the request of any member of the public or promptly sent to them by post and/or electronic means on request.
  - 14.2 The JCRA may direct the Licensee to change the Licensee's standard terms and conditions from time to time.
  - 14.3 The licensee shall within three months of the Licence Commencement Date publish an appropriate code of practice ('Consumer Code') for the resolution of User disputes. The JCRA may from time to time issue directions to the Licensee specifying any modifications or additions that it considers should be made to the Consumer Code.
  - 14.4 The Consumer Code shall identify a transparent, simple, inexpensive procedure in order to address, inter alia, the following:
    - (a) The appointment of a representative of the Licensee to be the first point of contact for Users
    - (b) A means of recording complaints against and disagreements with the Licensee
    - (c) The procedure and timeframe in which the Licensee will respond to complaints and disagreements
    - (d) The method and duration of retention of records of complaints and disagreements; and

- (e) The level of any compensation that the Licensee may offer where complaints have been upheld or not satisfactorily resolved.

If a complaint or disagreement remains unresolved for 3 months, either party may refer it to the JCRA for determination.

- 14.5 The Consumer Code may be amended by the Licensee from time to time, provided that the Licensee shall notify the JCRA and publish the proposed changes 28 days in advance of their coming into effect. The JCRA may issue directions to the Licensee as to the changes, including but not limited to directions not to make the changes, directions to amend the changes further or directions as to the timing of the changes.
- 14.6 The Licensee shall participate in good faith in any dispute resolution procedure established by the JCRA for the resolution of disputes.
- 14.7 The Licensee shall publish within three months of the Licence Commencement Date a statement setting out the minimum service levels for Users in respect of each category of Port Operations it offers, and exceptions to these, and the compensation or refunds it will offer to Users where service levels are not met. The Licensee shall also submit the statement to the JCRA.
- 14.8 The JCRA may consult publicly on the statement provided in accordance with Condition 14.7 and issue directions to the Licensee specifying any modifications or additions that it considers should be made to the statement. The Licensee shall then re-publish the statement in the agreed form, in accordance with any directions as to publication made by the JCRA, and shall forthwith implement the same. The JCRA may from time to time issue further directions requiring modifications or additions to the statement and as to its re-publication and implementation.
- 14.9 The Licensee shall submit at the end of every six month period or at such intervals as the JCRA directs, a written report to the JCRA setting out:
  - (a) The extent to which the Licensee has succeeded in meeting the targets described in Condition 14.7;
  - (b) The compensation that has been paid in relation to complaints or disagreements where the Users complaints were upheld and why complaints were dismissed; and
  - (c) Such other matters that the JCRA directs should be included in the report
- 14.10 The JCRA may require the Licensee to set up, at its expense, a User Council or Councils for the specific purpose of obtaining and representing the views of customers.
- 15. Development of Port Operations Facilities and Services
  - 15.1 The Licensee shall develop and operate the Licensed Port Operations so as progressively to achieve standards in line with international best practice, relevant standards and other benchmarks as the JCRA may direct from time to time.
  - 15.2 In order to meet the objectives set out in this Condition, the Licensee shall, within three months of the Commencement Date submit to the JCRA a plan setting out the target levels it will achieve for Port Operations (to be known as the 'Port Operations Development Plan') and a monitoring plan (to be known as the 'Port Operations Monitoring Plan') which provides for accurate measurement of each of the target levels.

- 15.3 The Plans will describe:
- (a) How actual performance will be monitored;
  - (b) The process for the collection and analysis of suitable data; and
  - (c) The procedures for internal review and performance improvement planning by the Licensee
- 15.4 The JCRA may direct the Licensee to update and resubmit the Plans from time to time.
- 15.5 The JCRA may direct the Licensee as to matters to be included in the Plans and may amend or replace such direction from time to time.
- 15.6 The JCRA may include as a Condition of this Licence the targets specified by the Licensee in the Plan and the Licensee shall be deemed to be in breach of its Licence if the target levels are not achieved.
- 15.7 Within forty-five days of the end of each six month period during the Term, the Licensee shall provide the JCRA with a written report in a form required by the JCRA on its achievements under the Development Plans during the preceding six months
- 15.8 The Licensee shall comply with any directions issued by the JCRA from time to time regarding any other quality of service indicators and measurement methods for Port Operations and shall, as and when required, supply to the JCRA in a form specified by the Authority, the results of its measurements of actual performance against any quality or service indicators and measurements so specified, and the JCRA may publish or require publication of such information as it considers appropriate.
- 15.9 The Licensee shall provide such information as is required by the JCRA for the purpose of assessing Service Levels and Port Development.
16. Cessation of the provision of the Licensed Port Operations
- 16.1 If the Licensee proposes to cease to provide all or a material part of the Licenced Port Operations it shall give not less than four months notice in writing to the JCRA of the proposal and plans in relation to the cessation. Such cessation shall be effected only with the consent of the JCRA in relation thereto and the Licensee shall comply with any such directions.
- 16.2 At any time within four months before the expiry of the Licence or if the JCRA receives a notice under this Condition or if the JCRA has made a decision pursuant to Article XX of the Law to suspend or revoke the Licence, the JCRA may, after consultation with the Licensee, direct it in writing to take such steps as are specified in the direction, being steps the JCRA considers necessary or expedient to ensure the safety of the Licensed Port Operations or the continuity and continuation of the provision of Port Services or any constituent parts thereof, and the Licensee shall comply with any such directions.

### **PART III: ADDITIONAL CONDITIONS**

17. Equal Access

- 17.1 The Licensee shall at the request of an Other Licensed Operator or if directed by the JCRA make Equal Access available to that Other Licensed Operator. The JCRA may direct the terms upon which such Equal Access shall be provided and the JCRA may make subsequent decisions modifying or supplementing the regulation of Equal Access. In this Condition, 'Equal Access' means a facility provided whereby a User can access the Port Operations offered by another Licensed Operator.
18. Separation of Accounts
- 18.1 Within six (6) months of the Licence Commencement Date, the Licensee shall confirm to the JCRA that it maintains accounting records in a form that enables the activities specified in any direction given by the JCRA to be separately identifiable, and which the JCRA considers to be sufficient to show and explain the transactions of each of those activities.
- 18.2 The JCRA may require reports on the accounting records and/or activities from time to time. The JCRA may direct the Licensee as to the basis and timing of such reports as the JCRA may require.
19. Cross Subsidisation
- 19.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Port Operations.
- 19.2 To enable the JCRA to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, costs, rights or liabilities between a part and any other part of its business, and between it and any Subsidiary or Joint Venture, and shall comply with any directions issued by the JCRA for this purpose.
20. Undue Preference and Unfair Discrimination
- 20.1 The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User regarding the provision of any Port Operations. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or a Subsidiary or Joint Venture or Other Licenced Operator so as to place Other Licenced Operators competing with that business at an unfair advantage in relation to any licensed activity.
21. Linked Sales
- 21.1 The Licensee shall not make it a condition of providing any Port Operations, or providing Access that a User or Other Licensed Operator should acquire from the Licensee, or any person specified by the Licensee, any Port Services other than one that is specifically required by the person concerned, unless the Licensee has:
- (a) Notified the JCRA of its intention to do so; and
  - (b) Has satisfied them that either there is a technical reason why such a bundling of Port Operations should occur, or that there is a sufficient economic benefit to the Users to justify the bundling.
- 21.2 The provisions of this Condition shall not prevent the Licensee from offering discounts in accordance with any discount scheme which complies with the Condition relating to Price Regulated Services.
22. Price Regulated Services



22.1 Where the Licensee intends to introduce:

- (a) New prices for any Port Operations, or prices for new Port Operations to be introduced by the Licensee;
- (b) Any discounts or premiums to published prices for Port Operations within a relevant market in which the Licensee has been found to be dominant, or for any Users to whom additional services or goods are provided by the Licensee or any of its Subsidiaries or Joint Ventures; or
- (c) Special offers to all or any of its customers for particular categories of Port Operations where those Port Operations have been found to be within a relevant market in which the Licensee has been found to be dominant

It shall publish the same at least twenty-one (21) days prior to their coming into effect or otherwise as required by the Law, and provide full details of the same to the JCRA.

22.2 The JCRA may determine the maximum level of charges the Licensee may apply for Port Operations within a relevant market in which the Licensee has been found to be dominant. A determination may:

- (a) Provide for the overall limit to apply to such Port Operations or categories of Port Operations or any combination of Port Operations
- (b) Restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
- (c) Provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.

22.3 All published prices, discount schemes and special offers of, or introduced by, the Licensee for Port Operations shall be transparent and non-discriminatory; all prices and discount schemes shall be cost-justified and all special offers shall be objectively justifiable.

22.4 If the JCRA, after consulting the Licensee and such other persons as it may determine, is satisfied that any published price, discount scheme or special offer is in breach of the Law or this Licence, the JCRA may, by issuing a direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with the Laws and/or requirements of this Licence.

23. Fair Competition

23.1 The Licensee shall:

- (a) Not abuse any position of Significant Market Power and/or established position in any port operations
- (b) Not engage in any practice or enter into any agreement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Port Operations
- (c) Comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Port Operations.