

**SCHEDULE 4A  
PORT USER AGREEMENT  
(EXISTING USERS)**

**THIS AGREEMENT** is made as of <@>, 2020

**BETWEEN:**

**GODERICH PORT MANAGEMENT CORPORATION,**  
a corporation incorporated under the laws of Canada

("GPMC")

- and -

[Insert Name of User],

(the "User")

**BACKGROUND:**

1. The Town owns all of the land forming the Port.
2. GPMC is a not-for-profit corporation under the *Canada Not-not-Profit Corporations Act* incorporated for the purposes of a national character to which the legislative authority of the Parliament of Canada extends.
3. Pursuant to such purposes, GPMC has entered into an agreement with the Town to operate, manage and maintain a portion of the Port on behalf of the Town pursuant to an Operating, Management and Maintenance Agreement made as of January 1, 2020.
4. The User is a commercial user of the Port and wishes to sign a Port User Agreement with GPMC with respect to its use of the Port.

**IN CONSIDERATION** of the mutual covenants and agreements herein contained and of other consideration, the parties hereto agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless there is something in the subject matter which is inconsistent therewith the following terms have the following meanings.

“**ADR Institute**” means the ADR Institute of Canada, Inc. or any successor thereto or if there is no such successor, a body in Ontario with a comparable mandate.

“**Affiliate**” when used to indicate a relationship with a specified Person, means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person and a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly, and whether through the ownership of securities, a trust, a contract or otherwise.

“**Agreement**” means this port user agreement and all attached schedules, as supplemented, amended, restated or replaced from time to time.

“**Annual Infrastructure Improvement and Management Plan**” has the meaning ascribed thereto in the OMM Agreement.

“**Applicable Law**” means in respect of any Person, property, transaction or event, all present and future applicable laws, statutes, ordinances, rules, by-laws, treaties and regulations, and all applicable directives, rules, standards, requirements, policies, guidelines, orders, judgments, injunctions, awards and decrees of Governmental Authorities having the force of law.

“**Arbitration Rules**” means the provisions of Article 5 and the rules of procedure for arbitration established from time to time by ADR Institute or any successor thereto, or if there is no such successor, a body in Ontario with a comparable mandate.

“**Arbitrator**” means a single arbitrator appointed pursuant to the Arbitration Rules to resolve a Dispute.

“**Business Day**” means a day, other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario, on which banks are open for business in Goderich, Ontario.

“**Compass Minerals**” means Compass Minerals Canada Corp., an unlimited company amalgamated under the laws of Nova Scotia, formerly Sifto Canada Corp.

“**Consumer Price Index**” means the consumer price index (all items) for Canada as published by Statistics Canada or any successor organization.

“**Contaminant**” means any pollutant, dangerous substance or goods, gaseous solid and liquid waste, special wastes, industrial waste, hazardous or toxic chemicals, hazardous wastes, hazardous materials, hazardous substance and petroleum and other hydrocarbons and their derivatives and by-products, asbestos,

pcbs, and radioactive waste or materials or any constituent thereof or any term of similar import under any Environmental Law.

“**Da-Lee**” means Da-Lee Dust Control Limited, a corporation incorporated under the laws of Ontario.

“**Defaulting Party**” has the meaning set forth in Section 3.2.

“**Disputes**” includes all disputes, controversies, claims, counterclaims or similar matters which relate to or arise out of or in connection with this Agreement including the validity, existence, construction, meaning, performance or effect of this Agreement or the rights and liabilities of the parties to this Agreement, whether they arise during the term of this Agreement or thereafter.

“**Electronic Transmission**” has the meaning set forth in Section 6.2.

“**Environmental Laws**” includes all Applicable Laws relating in whole or in part to the environment or its protection and includes those laws relating to the storage, generation, use, handling, manufacture, processing, transportation, import, export or treatment of any Contaminant or to releases or threatened releases of Contaminants into the environment.

“**Environmental Orders**” includes applicable Orders rendered by any Governmental Authority relating in whole or in part to the environment or its protection.

“**Existing Users**” means, collectively, Compass Minerals, Parrish & Heimbecker and Da-Lee, and their respective successors and assigns.

“**Fiscal Year**” means the 12 month fiscal year of GPMC commencing January 1 and ending on December 31 in each year.

“**Force Majeure**” has the meaning ascribed thereto in Section 4.1.

“**Governmental Authority**” means any federal, provincial, regional, municipal or local government or authority or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions.

“**Harbour Area**” has the meaning ascribed thereto in Section 2.4.1.

“**including**” means “including, without limitation,” and shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it.

“**Infrastructure Improvement and Major Maintenance Plan**” has the meaning ascribed thereto in the OMM Agreement.

“**Loss**” means any and all losses actually suffered or incurred by a party which arises by reason of the failure of the other party to observe and perform its covenants and obligations under this Agreement, including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise relating thereto, but

- (a) excluding indirect and consequential damages and loss of profits and revenue and excluding any contingent liability until it becomes actual; and
- (b) reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person.

“**Major Maintenance Account**” has the meaning ascribed thereto in the OMM Agreement.

“**Notice**” shall mean any citation, directive, Order, Environmental Order, claim, litigation, inspection, report, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any Person including, without limitation, any Governmental Authority.

“**OMM Agreement**” means the Operating, Management and Maintenance Agreement for the Port of Goderich between GPMC and the Town dated as of January 1, 2020.

“**Orders**” means all applicable decisions, directions, declarations, decrees, injunctions, writs, judgments, rulings, awards, requests or the like rendered by any Governmental Authority, court or arbitrator.

“**Parrish & Heimbecker**” means Parrish & Heimbecker, Limited, formerly Southpier Terminals Limited and Goderich Elevators Limited, a corporation incorporated under the laws of Canada.

“**Person**” shall be broadly interpreted and includes an individual, body corporate, partnership, joint venture, trust, association, unincorporated organization, legal representative, the Crown, any Governmental Authority or any other entity.

“**Port**” means the port lands owned by the Town now and in the future and which GPMC is authorized to manage on behalf of the Town pursuant to the OMM Agreement and the buildings, wharves, piers, break walls, erections and fixtures located thereon now and in the future which are owned by the Town.

“**Related Party**” of a Person means employees, agents, representatives, invitees and subcontractors of such Person, or others for whom such Person is in law responsible.

“**Town**” means The Corporation of the Town of Goderich, a corporation incorporated under the laws of Ontario.

“**US Anti-Terrorism Laws**” means the United States Customs-Trade Partnership Against Terrorism Act and all other laws of the United States applicable to marine and port security and anti-terrorism and any successor laws, rules and regulations dealing with the same subject matter.

**1.2 Statutes**

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

**1.3 Headings**

The division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Subsections are to Articles, Sections and Subsections of this Agreement.

**1.4 Number, Gender**

Words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders.

**1.5 Entire Agreement**

Subject to the terms of the OMM Agreement, this Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties.

**1.6 Amendment**

This Agreement may be amended, modified or supplemented only by a written agreement signed by each party.

**1.7 Schedules**

The following Schedules form part of this Agreement:

<b>Schedule</b>	<b>Description of Schedule</b>
Schedule 1	Port User Fees

**1.8 Waiver of Rights**

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure

on the part of any party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

### 1.9 **Applicable Law**

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any rule or principle of the conflict of laws which might refer such interpretation to the laws of another jurisdiction). Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

### 1.10 **Performance on Holidays**

If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

### 1.11 **Calculation of Time**

In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (local time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall terminate at 5:00 p.m. (local time) on the next Business Day.

## **ARTICLE 2 USE OF PORT**

### 2.1 **Use of Port**

GPMC, on behalf of the Town, hereby grants to the User the right to use the Port for the following purposes: **[Describe nature and extent of use]**. Except as provided in this Agreement, no use of the Port by User shall be permitted without the prior written consent of GPMC, which consent may be withheld in its sole discretion.

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### 2.2 **Fees**

2.2.1 The fees payable by User are set out in Schedule 1. Such fees shall remain in effect for the duration of this Agreement, including each renewal period of this Agreement, except that, unless the Town and GPMC mutually agree, that such fees will not increase, such fees will be increased annually on January 1<sup>st</sup> of each year of the Term, commencing on January 1, 2024, being the fifth (5th) year of the Term of this Agreement, by an amount equal to the Consumer Price Index increase for the immediately preceding year, provided that the maximum Consumer Price Index in any year shall not exceed 1.5%. For certainty, it is expressly acknowledged and agreed that the fees of the Existing Users shall not be increased in the first four (4) years of the Term of this Agreement without the unanimous written consent of the Existing Users. Any surplus funds in any year not required to satisfy Port Expenses for that year shall be deposited into the Major

Maintenance Account to be used for future specific identified projects in the Infrastructure Improvement and Major Maintenance Plan and to accrue during the term of the Agreement.

- 2.2.2 The current wharfage, berthage, storage or other fees relating to the use of the Port are set forth in Schedule 1. Except as permitted and subject to this Section 2.2, including Section 2.2.1, GPMC shall not change wharfage, berthage, or other fees relating to the use of the Port which are set forth in Schedule 1, without the prior written consent of the Town and a majority of the directors of GPMC, one of which must include Compass Minerals.
- 2.2.3 With respect to storage and land use fees currently in Schedule 1, GPMC will conduct a review of these types of fees charged by other ports on the Great Lakes in order to determine appropriate competitive rates for the Port. These rates will be updated as necessary from time to time to ensure that such rates remain competitive, provided that any such update shall not result in an increase in the fees of the Existing Users except as expressly contemplated in this Agreement.
- 2.2.4 In determining whether to consent to any increase or decrease in fees referred to in Section 2.2.1, the Town shall act reasonably and shall have regard to the forecasted expenses and revenues in the most recently approved Annual Infrastructure Improvement and Management Plan and Infrastructure Improvement and Major Maintenance Plan.
- 2.2.5 The Town agrees that GPMC may grant up to a 5% reduction in fees otherwise payable by Port Users if they are members of GPMC, other than Compass Minerals and any other Port User for whom fixed fees were settled at the time the Port User Agreement was entered into.

The User acknowledges that any changes to the fees to be charged for the use of the Port as set forth in Schedule 1, other than with respect to inflationary increases as described herein, are, in addition to the terms hereof, also subject to the prior consent of the Town given pursuant to the OMM Agreement. The User shall pay all fees charged by GPMC for the use of the Port within 30 days of invoice therefor. Interest shall accrue and be payable on overdue fees at the prime rate of the Canadian Imperial Bank of Commerce plus 3%, calculated and payable monthly.

### **2.3 Compliance with Laws and Port Rules, Security and Maintenance**

- 2.3.1 The User shall comply with all Applicable Laws in its use of the Port and shall conduct its operations in and at the Port in compliance with all rules established from time to time by GPMC for use of the Port or by-laws passed by the Town in respect of the Port and its use.
- 2.3.2 GPMC shall develop and implement a security plan for the Port that includes such measures as are required by the laws of Canada applicable to marine and port security and anti-terrorism, or their successor laws, rules and regulations. Compliance with such security plan shall enable the User to take advantage at U.S. ports of the benefits of complying with the US Anti-Terrorism Laws if the User is required or desires to be in

compliance with such laws. If such security plan does not permit User to take advantage at U.S. ports of the benefits of complying with the US Anti-Terrorism Laws, then GPMC shall develop and implement a modified security plan that would allow for that.

- 2.3.3 GPMC shall keep the Port, including any and all wharves, dock walls, piers and breakwalls in good repair in order to facilitate and support commerce and to allow for efficient access and safe docking and loading and unloading of vessels, and GPMC shall perform all other maintenance and repair obligations required under the OMM Agreement.

## **2.4 Environmental Responsibilities of User**

- 2.4.1 The User shall not discharge, or cause or permit to be discharged, onto the Port including land, air or water (the “**Harbour Area**”), any Contaminant, to the extent such discharge is in violation of any Environmental Laws. If at any time and from time to time during the term of this Agreement, any Contaminant is discharged into the Port lands or the Harbour Area in violation of Environmental Laws, by reason or as a result of the operations of the User, the User shall forthwith upon receipt of a notice in writing from GPMC and to the extent required by Environmental Laws undertake, prosecute without interruption and complete the work of removal of such Contaminant from the Harbour Area, at the cost and expense of the User. In case the User fails to carry out its obligations under this Section 2.4.1 to remove such Contaminant from the Harbour Area, GPMC may cause such work to be undertaken, prosecuted and completed, all at the cost of the User, and the User shall, forthwith upon demand thereof, reimburse GPMC for all cost and expense reasonably incurred by GPMC in the performance of such work.
- 2.4.2 Without limitation of its obligations under Section 2.4.1, the User shall undertake all action required by Environmental Laws to correct any conditions on the Port lands resulting in the migration of the User’s salt or other roadway deicers into the Harbour Area that is in violation of Environmental Laws, except to the extent such migration is caused by (i) GPMC’s or the Town’s breach of any of its obligations under this Agreement, (ii) the activities or omissions of GPMC, the Town, or their respective Related Parties, or (iii) any other Person using the Port land (except the User’s Related Parties).
- 2.4.3 The User shall use reasonable efforts to include in any and all written agreements for the use of the Port a requirement that all Persons acting under its authority (including any ship owner, subcontractor, invitee, occupant or tenant of or on the Port or any part thereof) comply with all Environmental Laws relating to its use of the Port.
- 2.4.4 The User shall promptly, after becoming aware, notify GPMC of: (i) any event or occurrence relating to the Port which, in the opinion of GPMC, acting reasonably, is likely to give rise to a Notice of non-compliance with any Environmental Laws; (ii) any material violation of any Environmental Laws relating to the Port; or (iii) any Notice of non-compliance whether actual or, to the knowledge of the User, threatened, including any investigation, non-routine inspection or material inquiry by any Governmental Authority in connection with any Environmental Laws relating to the Port.



## 2.5 Indemnity

- (a) The User shall indemnify GPMC for any Loss suffered or incurred by GPMC as a result of any failure by the User to observe and perform its covenants and obligations under this Agreement.
- (b) GPMC shall indemnify the User for any Loss suffered or incurred by the User as a result of any failure by GPMC to observe and perform its covenants and obligations under this Agreement, and any action by GPMC in granting any rights that are inconsistent in any material respect with User's rights under this Agreement.
- (c) Each party shall use reasonable efforts to mitigate any Loss which may be suffered or incurred by it.

## 2.6 Insurance

2.6.1 User shall secure on its own account and at its sole expense, policies of insurance with insurers duly licensed to do business in the Province of Ontario and having an AM Best Rating of B+++ or above, of the following types and limits:

- (a) general liability including products and completed operations and including broad form property damage, blanket contractual coverage sufficient to cover obligations assumed in this Agreement and in 'occurrence' form in an amount not less than \$3 million;
- (b) motor vehicle liability insurance covering all owned, non-owned and borrowed licensable highway vehicles which are or may from time to time be operated by the User on Port lands in an amount not less than \$2 million; and
- (c) wharfinger and stevedore liability insurance where applicable to operations and/or terminal operators' liability insurance where applicable to operations in an amount of not less than \$5 million.

The foregoing coverages may be satisfied through a combination of primary and excess/umbrella policies. All such policies (other than motor vehicle liability insurance) shall include GPMC and the Town as additional insureds as their interests may appear. The issuer of such policies shall provide GPMC as certificate holder and additional insured with at least 30 days' notice of any material alteration or amendment to, or the cancellation or non-renewal of, such policies and shall provide a waiver of subrogation in favour of GPMC and the Town with respect to any insurance proceeds paid under such policies.

User shall supply to GPMC as a condition precedent to the use of or access to the Port, a certificate of insurance evidencing full compliance with the insurance coverage requirements specified above. User shall supply to GPMC no later than 10 Business Days prior to the expiration of each and all policies specified above, a renewal certificate as required above, evidencing renewal of policies; provided, however, if such certificate

is not then available the User shall supply to GPMC a certification from an officer of the User that such policies have been renewed and thereafter, a renewal certificate from the issuer as soon as it becomes available. In the event of cancellation or lapse of any policies specified above whether for nonpayment of premium, non-renewal or for any other reason, User shall replace any such cancelled policies as soon as practicable but in no event later than the effective date of cancellation.

GPMC shall reserve the right from time to time to review the insurance needs and requirements pursuant to this Agreement and require additional or other insurance which GPMC determines to be reasonably required to meet reasonable exposure to loss.

- 2.6.2 GPMC shall secure on its own account and at its sole expense, policies of insurance of the following types and limits with insurers duly licensed to do business in the Province of Ontario and having an AM Best Rating of B+++ or above: comprehensive general liability and automobile liability insurance covering bodily injury, including death, and property damage liability. Such policies shall: (i) contain a contractual liability endorsement covering the obligations of GPMC hereunder; and (ii) provide for coverage in the following limits:

<b>Comprehensive General Liability</b>	<b>Minimum Limits</b>
(1) Bodily Injury Liability and property damage liability whose limit should be combined for each occurrence	\$1,000,000
(2) Umbrella liability for bodily injury and property damage in excess of the primary policies for automobile and general liability	\$9,000,000
(3) Marine General Liability	\$5,000,000
(4) Marine Excess Liability	\$5,000,000
(5) Property	\$20,000,000
(6) Property	\$51,000
(7) Directors' and Officers' Liability	\$5,000,000
(8) Pollution Liability	\$1,000,000

The foregoing coverages may be satisfied through a combination of primary and excess/umbrella policies. The issuer of such policies shall provide the User as certificate holder with at least 30 days' notice of any material alteration or amendment to, or the cancellation or non-renewal of, such policies and shall provide a waiver of subrogation in favour of the User to the extent insurance proceeds are paid under such policies.

Upon execution of this Agreement, GPMC shall supply to the User, a certificate of insurance evidencing full compliance with the insurance coverage requirements specified above. GPMC shall supply to the User no later than 10 Business Days prior to the expiration of each and all policies specified above, a renewal certificate as required above, evidencing renewal of policies; provided, however, if such certificate is not then available GPMC shall supply to the User a certification from an officer of GPMC that such policies have been renewed and thereafter, a renewal certificate from the issuer as

soon as it becomes available. In the event of cancellation or lapse of any policies specified above whether for nonpayment of premium, non-renewal or for any other reason, GPMC shall replace any such cancelled policies as soon as practicable but in no event later than the effective date of cancellation.

### **ARTICLE 3 TERM AND TERMINATION**

#### **3.1 Term**

The term of this Agreement shall commence on the date hereof and shall end on January 1, 2040, subject to renewal as hereinafter provided. The existing agreement between the User and GPMC is terminated concurrent with the execution and delivery of this Agreement, without prejudice to the rights of the parties under such existing agreement, accrued to the date of termination. If the User is not in default under this Agreement, the term of this Agreement shall automatically renew for an additional term of ten (10) years, and for successive periods of ten (10) years on the same terms and conditions, unless the User gives at least six (6) months prior notice of non-renewal to GPMC. GPMC may terminate this Agreement upon notice to the User if User and/or its Affiliates or their successors permanently abandon operations at Goderich.

#### **3.2 Default by User**

The occurrence of any one or more of the following events with respect to a party (“**Defaulting Party**”) shall constitute a default (“**Default**”) under this Agreement:

- (a) if User fails to make any payment of any amount due to GPMC under this Agreement and such default continues unremedied for a period of 30 days following notice thereof from GPMC to the User; or
- (b) if a Defaulting Party fails to perform or observe any of its material obligations or covenants under this Agreement and such failure continues unremedied for a period of 30 days following notice thereof (giving particulars of the failure in reasonable detail) from the non-Defaulting Party to the Defaulting Party or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Defaulting Party has demonstrated to the satisfaction of the non-Defaulting Party, acting reasonably, that
  - (i) the User is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, and
  - (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the non-Defaulting Party, acting reasonably, and

such failure is in fact cured within such period of time; or

- (c) if the User takes any action for its dissolution or winding-up, other than as part of any *bona fide* corporate reorganization with one or more of its Affiliates; or
- (d) if a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other Person with similar powers is appointed in any manner in respect of the Defaulting Party or in respect of all or a substantial portion of its property or assets and such appointment continues unstayed and in effect and is not withdrawn, overturned, set aside or revoked within the period of 30 days following the appointment; or
- (e) if the Defaulting Party becomes insolvent, admits its inability to pay or fails to pay its debts generally as they become due, acknowledges its insolvency, makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, or files any proposal, notice of intention or petition or otherwise commences or consents to or acquiesces in the commencement of any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, extension of time, moratorium or adjustment of liabilities of the User under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency, moratorium, reorganization or analogous law of any applicable jurisdiction, or consents to or acquiesces in the appointment in any manner of a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator, provisional liquidator, agent for a secured creditor or other Person with similar powers in respect of the Defaulting Party or in respect of all or a substantial portion of its property or assets; or
- (f) if any policies of insurance required to be obtained by the Defaulting Party pursuant to Section 2.6.1 or Section 2.6.2, as applicable, are cancelled and not replaced within the time period specified by Section 2.6.1 or Section 2.6.2, as applicable.

### **3.3 Remedies of the Non-Defaulting Party**

Upon the occurrence of a Default, the non-Defaulting Party may by notice to the Defaulting Party declare the Defaulting Party to be in default and may do any or all of the following as the non-Defaulting Party, in its sole and absolute discretion, shall determine:

- (a) the non-Defaulting Party may terminate this Agreement by giving 30 days' prior notice to the Defaulting Party; or
- (b) the non-Defaulting Party may seek specific performance, injunction or other legal or equitable remedies, it being acknowledged that damages may not be an adequate remedy for a Default.

If the question of the occurrence of a Default under Section 3.2(b) has been submitted to arbitration in accordance with Section 5.1, neither party shall exercise any of the remedies provided for in this Section 3.3 except as permitted by the Arbitrator or until a decision by the Arbitrator on the matter in dispute is made.

**ARTICLE 4  
FORCE MAJEURE**

**4.1 Suspension of Obligations**

If a party is unable to carry out any of its obligations under this Agreement due to an act of God or a Governmental Authority, war, riot, blockade, insurrection, labour dispute, flood, nuclear emergency, epidemic, landslide, lightning, earthquake, drought, fire, explosion, or similar cataclysmic occurrence, government pre-emption of materials from third parties, failure or want of any necessary equipment, supplies, fuel, products (including water), or services (including oil storage) not within the control of such party and not resulting from such party's fault, or any denial or revocation of, or delay in obtaining, any permit, (except where such denial or delay results from failure to diligently prosecute application therefor or from non-compliance with the standards for issuance thereof), or other events not within the reasonable control of such party and not resulting from such party's fault (hereinafter "**Force Majeure**"), this Agreement shall remain in effect, but the obligations that such party is unable to carry out shall be suspended for the period that such party is unable to carry out such obligations as a result of such disabling circumstances.

**ARTICLE 5  
ARBITRATION**

**5.1 Arbitration**

Any Dispute between the parties (other than whether a Default has occurred under Section 3.2(a) and Section 3.2(c) to 3.2(f) inclusive, and other than with respect to a breach or alleged breach of the provisions of Section 6.7), shall be submitted to arbitration in accordance with the provisions of this Section 5.1.

- (a) The arbitration shall be held before the Arbitrator. Any arbitration shall be held at Goderich, Ontario unless the parties otherwise agree.
- (b) The law to be applied in connection with the arbitration shall be the law of Ontario, excluding its conflict of law rules.
- (c) The arbitration shall be governed by the Arbitration Rules. It shall be a condition precedent to the bringing of any legal proceedings that are contemplated by the Arbitration Rules that the parties will have concluded the arbitration process as provided by the Arbitration Rules. The provisions of the *Arbitration Act, 1991* (Ontario) shall apply to the extent that they are not inconsistent with this Article or with such Arbitration Rules.
- (d) Any arbitration may include any other Person substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that such other Person has agreed to be bound by such arbitration.

- (e) The pendency of any dispute resolution procedure shall not in and of itself relieve any party from its duty to observe and perform its obligations and covenants under this Agreement.

## **ARTICLE 6 GENERAL MATTERS**

### **6.1 Assignment**

- (a) Subject to the provisions of this Section 6.1, neither this Agreement nor any of the rights, entitlements, duties and obligations arising from it shall be assignable in whole or in part by the User.
- (b) The User may assign this Agreement and its rights hereunder (i) to an Affiliate or (ii) to a Person who acquires all or substantially all of the assets and business of the User provided that such Affiliate or Person agrees with GPMC to be bound by the provisions of this Agreement to the same extent as User hereunder and agrees to continue to use the Port for the business formerly operated by the User.
- (c) GPMC shall have the right to assign its interest in this Agreement or any of its rights under this Agreement to the Town without the consent of the User, and in such event the Town may enforce all rights assigned to it against the User in the name of the Town.
- (d) Subject to the terms and provisions of this Section 6.1, this Agreement and all rights, entitlements, duties and obligations from it shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

### **6.2 Notice**

Any notice, demand or other communication (in this Section, a “**notice**”) required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person during normal business hours on a Business Day and left with the recipient or a responsible employee of the recipient at the applicable address set forth below; or
- (b) sent by any electronic means of sending messages (“**Electronic Transmission**”), including e-mail (including attachments in pdf format), during normal business hours on a Business Day, but notice by Electronic Transmission shall only be sufficient if the notice includes or is accompanied by the sender’s name, address, telephone number and e-mail address, the date and time of transmission and the name and telephone number of a person to contact in the event of transmission problems and if acknowledgement of the transmission is transmitted to the sender by the recipient or the recipient’s electronic system;

For GPMC:

North Harbour Road  
P.O. Box 415  
Goderich, Ontario  
N7A 4C6  
Attention: President

For the User:

<@>  
<@>  
<@>

Attention: <@>

or at such other address as the party to whom such notice is to be given shall have last notified (in the manner provided in this Section 6.2) the party giving such notice. Each notice sent in accordance with this Section shall be deemed to have been received:

- (i) in the case of personal delivery, if delivered before 5:00 p.m., on the day it was delivered; otherwise, on the first Business Day thereafter; or
- (ii) in the case of Electronic Transmission, on the same day that it was sent if sent on a Business Day and the acknowledgement of receipt is received by the sender before 5:00 p.m. (recipient's time) on such day, and otherwise on the first Business Day thereafter.

### **6.3 Further Assurances**

Each of the GPMC and the User shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **6.4 Time of the Essence**

Time shall be of the essence of this Agreement.

### **6.5 No Partnership**

Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability, or a landlord and tenant or, except as expressly provided herein, an agency relationship on or with regard to either party. Except as expressly provided herein, each party shall be individually and severally liable for its own obligations under this Agreement.

**6.6 Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail attaching an executed copy of this Agreement in PDF format or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**6.7 Confidentiality**

Each party shall keep confidential any confidential information disclosed to it by the other party unless required by Applicable Law to make such disclosure or such party must rely on such confidential information in any legal proceedings between the parties.

*The remainder of this page intentionally left blank; signatures follow on next page*



**DRAFT - May 13, 2020**

hereto. **IN WITNESS WHEREOF** this Agreement has been executed by the parties

**GODERICH PORT MANAGEMENT  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

<@>

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**DRAFT - May 13, 2020**

**SCHEDULE 1  
PORT USER FEES**

