

## **PREAMBLE**

The Digital Container Shipping Association (**DCSA**) is a non-profit, independent organisation established in 2019 by several of the largest container shipping companies. DCSA envisions to enable transparent, reliable, easy to use, secure and environmentally friendly container transportation services. The DCSA Just in Time Port Call project (labelled P6) initiative promotes the use of digital communication via a standardised format. From this initiative, a uniform standard for the timestamps that are used in the port call process has been developed and published late 2020. Building on this standard, standardised message formats and APIs have been developed.

DCSA and its members now intend to conduct a test implementation of exchanging timestamps with other key stakeholders in the port call ecosystem (amongst others, but not limited to, ports and terminals) to validate the timestamps, data message format and API standards (the test implementation). The test implementation seeks to validate the effectiveness of the abovementioned standards and the extent to which they yield benefits for all stakeholders. In order to execute the test implementation, DCSA has prepared a simple tool to visualise and to facilitate the data exchange among participants. The data exchange tool will be provided free of charge and will only be used during the test implementation. The test implementation is meant to mimic the port call in a digital manner, meaning that the actual port call will be executed on the basis of the existing way of working. As this is a test implementation, the data exchange tool will be made available for certain time periods during the trial period (and therefore not during the entire trial period, but only limited periods) as communicated by DCSA and, as such, the data exchange will not always be available and may be updated and revised by DCSA from time-to-time (the **Active Period**).

Moreover this data exchange tool (also known as WebGUI) is not intended to become a production-ready solution (unless DCSA members explicitly agree otherwise as a group) and anyone using the data exchange tool is therefore not permitted to use the data exchange tool as its sole means of communication with the other users. As such, the below terms of use addresses the rights and obligations for the use of the data exchange tool during the test implementation period only.

## **TERMS OF USE**

The terms of use constitute a legal agreement (**Agreement**) between you (**User**) and the Digital Container Shipping Association (**DCSA**) pursuant to which you may access and use the Just In Time data exchange accessible through its website (<https://participant.port-call.dcsa.org> or similar) and/or the application programming interface (**API**), for its intended purpose of logging, communicating and registering real time berthing information for the use in connection with the supported means of transport (including but not limited to sea faring ships), together referred to as the **Data Exchange**. Through the use of the data exchange tool you accept, and you are bound by the Agreement. The controlling language of this Agreement is English.

- 1. GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement DCSA hereby grants you a nonexclusive, non-transferable license to use the Data Exchange. This Agreement does not grant you any rights in connection with any trademarks or service marks of DCSA. The license is granted for an definite term, until the Agreement is terminated in accordance with section 9, after which access to the data exchange tool is revoked.
- 2. RESTRICTIONS ON USE.** The data exchange tool may only be used by employees of your organisation or others that support the port call process on your Company's behalf. You will not permit others to use the data exchange tool. No copies shall be made of the Data Exchange without DCSA's prior written consent. DCSA explicitly reserves the right to upgrade and/or amend the Data Exchange and DCSA does not guarantee nor confirm that any interface and/or API is compatible with such new version or upgraded version of the Data Exchange.

3. You shall not: (i) transfer, sell, assign or otherwise convey the data exchange tool to another party without DCSA's prior written consent; (ii) translate or otherwise prepare any derivative works of the data exchange tool; (iii) disclose any information related to the data exchange tool, including without limitation diagnostic tests, screen images, printed output, or results of any performance or benchmark tests of any Data Exchange to any third party without DCSA's prior written approval; (iv) copy the data exchange tool and market as a commercial product, except for already existing projects. You also agree not to cause or permit the Data Exchange to be dumped, traced, disassembled, decompiled or otherwise reverse engineered except to the extent (a) applicable law expressly requires that you be permitted to decompile, (b) it is essential to do so in order to achieve interoperability of the Data Exchange with another software program, and (c) you have first requested DCSA to provide the information necessary to achieve such interoperability and DCSA has not made such information available in accordance herewith. Any information supplied by DCSA or obtained by you, as permitted hereunder, may only be used by you for the use of the Data Exchange and may not be disclosed to any third party or used to create any software which is substantially similar to or competitive with the Data Exchange.
4. **ACCESS AND ACCOUNT.** Subject to section 5, DCSA will use commercially reasonable efforts to make the Data Exchange accessible to the User during the Active Period of the test implementation. DCSA will use reasonable efforts to provide advance notice to User as for any maintenance (whether routine or emergency) and/or repair downtime. Access to the data exchange tool is at all times subject to the third-party contracts that are required in order to operate and provide the Data Exchange to the Users (including, but not limited to, any agreements with respect to the provision of cloud services).

To use the data exchange tool and access any data within the Data Exchange, User and/or its employees (if any) will receive a login Username and Password. When logging into the data exchange tool, you are subject to this Agreement being in full force and effect.

5. **COPYRIGHT/OWNERSHIP OF SOFTWARE.** The data exchange tool is licensed, not sold. The Data Exchange is the proprietary product of DCSA and is protected by copyright, trade secret, patent and other intellectual property laws and international treaties. You only acquire the right to use the data exchange tool as set out in this Agreement and you do not acquire any rights (such as but not limited to the right to have the data exchange tool available to you in the future), express or implied, in the data exchange tool or media containing the data exchange tool other than those specified in this Agreement. DCSA or its suppliers shall at all times retain all rights, title, and interest, including intellectual property rights, in the data exchange tool. You agree not to challenge the validity of DCSA's or its suppliers' copyright or trademark rights in and to the data exchange tool.
6. **OWNERSHIP OF DATA.** User understands and accepts that all data provided by it to the data exchange tool is legally collected and is used to operate the Data Exchange. DCSA hereby explicitly states that it will not analyse or use for any purposes other than for the operation and optimisation of the Data Exchange and the underlying processes, any of the data provided by User. User declares that it will not analyse or use provided data for any other purpose than the intent of the test implementation. DCSA will under no circumstances share data with third parties. Any other use of User's data by DCSA will only take place when such use has been clearly defined and agreed to by DCSA and User. DCSA reserves the right to analyse any data of the information provided to the Data Exchange by User and User herewith grants DCSA the right to do so. User will at all times keep control over and ownership of any of the data submitted to the data exchange tool, however, User agrees and understands that any data or messages shared with other Users may be retained by such Users. In the data exchange tool the data owner can specify the recipient and data will only be accessible by the recipient and DCSA. User will at all times be allowed to request the removal, return or

destruction of any data submitted by it to the data exchange tool. Any data shared by the User will only be shared with DCSA and the indicated recipient. Each User will reasonably fulfil any request by another User to delete User data received from such other User, provided however, that any User may retain any data received from another User if and to the extent a User is entitled or obligated to do so by any law applicable to a User. DCSA shall, upon first request of a User, delete any data within 7 calendar days, received from such User through the data exchange tool that is stored by or available to DCSA, provided however that DCSA may retain any data received from the User if and to the extent DCSA is entitled or obligated to retain such data by any law applicable to DCSA and in addition thereto DCSA is always entitled to retain any aggregated data that it has compiled based on data that is submitted to the data exchange tool by any User. Parties acknowledge that no personal data according to art. 4 para. 1 no. 1 GDPR will be used and/or provided to and/or is intended to be used within the data exchange tool in any manner.

DCSA agrees to use in accordance with best industry practises: (i) firewalls and other technology generally used in the trade to prevent unauthorized access by third parties to its computer systems that store User's data; and (ii) available encryption technology generally used in the trade to prevent unauthorized access by third parties to User's data transmissions. Notwithstanding the foregoing, DCSA shall not be liable to User in the event that (a) its use of firewalls and other technology generally used in the trade fails to prevent unauthorized third party access to the User's data or (b) its use of encryption technology generally used in the trade fails to prevent unauthorized third party access to the User's data transmission. Nothing in this provision shall constitute a representation or warranty by DCSA that User's data storage and/or transmission will be inaccessible to unauthorized third parties.

- 7. RESPONSIBILITY OF USER.** User understands and accepts that it is not the responsibility of DCSA to update the data exchange tool or to ensure that the Data Exchange meets any requirements. The Data Exchange tool is explicitly provided "as is" without any use or characteristics being guaranteed or available.

Apart from any condition or warranty implied by statute which cannot be excluded, restricted or modified by agreement and any warranty expressly set forth in this agreement, dcsa makes no warranties in relation to the data exchange tool including, without limitation, any implied warranty of fitness for a particular purpose, that the data exchange tool will operate in the combinations which user may select for use, that the data exchange tool will operate uninterrupted or error free or that all data exchange tool errors will be corrected. No warranty is made regarding the results of usage of the data exchange tool or that the data exchange's functionality will meet user's requirements. This section shall survive the termination of this agreement.

In any event, DCSA reserves the right to cease support of the data exchange tool and to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Data Exchange in its sole discretion.

- 8. LIMITATION OF LIABILITY.** DCSA and its suppliers and affiliates shall not be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or data use, incurred by user or any third party, whether in an action in contract or tort, even if they have been advised of the possibility of such damages, except where DCSA is acting wilfully or gross negligently.
- 9. INDEMNIFICATION.** User shall indemnify, defend and hold DCSA harmless from any claims, demands, liabilities, losses, damages, judgments or settlements, including all reasonable costs and expenses related thereto including attorneys' fees directly or indirectly resulting from: (a) any claimed infringement or violation by User of any copyright, patent or other intellectual property right with respect to any materials or services used or supplied by or on behalf of User, except to the extent such infringement or violation is attributable

solely to the data exchange tool as originally provided to User by DCSA or its authorized resellers without any modifications, alterations or combinations with other materials; and/or (b) the use of the data exchange tool and the actions undertaken by an employee of a User as a result of or in connection with using the data exchange tool; and/or (c) the manner in which an employee performed its work whereby such employee based its actions on the data exchange tool or the use thereof.

- 10. BINDING AGREEMENT.** This Agreement is a legally binding agreement between you and DCSA, and this Agreement contains all of the terms and conditions that apply to your right to use the data exchange tool. In the event of any termination of this Agreement herein, the provisions of sections 5 (*Copyright/Ownership of Software*), 6 (*Ownership of Data*), 7 (*Responsibility of User*), 10 (*Binding Agreement*), 11 (*Confidential Information*), and 14 (*Applicable Law and Jurisdiction*) will continue to be applicable.

Without prejudice to any other rights, DCSA or User may terminate this Agreement if the other party fails to comply with any of the terms and conditions of this Agreement and if such breach has not been remedied within 14 days after a notice requesting such breach to be remedied was sent. Each Party may always terminate this Agreement for convenience taking into account a notice period of 30 days. In case of termination of this Agreement for whatever reason, User must destroy any and all copies of the data exchange tool and all of its component parts, within 10 days after the termination of this Agreement except for copies which have to be kept for statutory archiving reasons.

- 11. CONFIDENTIAL INFORMATION.** Neither party shall use or disclose any Confidential Information of the other party. A party receiving Confidential Information from the other shall use the highest commercially reasonable degree of care to protect that Confidential Information.

The data exchange tool, including methods or concepts utilised therein and all information identified by the disclosing party as proprietary or confidential (**Confidential Information**), shall remain the sole property of the disclosing party and shall not be disclosed to any third party without the express written consent of the disclosing party (except solely for each party's internal business needs, to employees or consultants who are bound by a written agreement with such party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement).

Items will not be considered to be Confidential Information if (i) available to the public other than by a breach of an agreement with DCSA; (ii) rightfully received from a third party not in breach of an obligation of confidentiality; (iii) independently developed by one party without access to the Confidential information of the other; (iv) known to the recipient at the time of disclosure as evidenced by written records; or (v) produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

- 12. SEVERABILITY.** If any provision, or portion thereof, of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted. Any provision or position so omitted will be (and can be) replaced by DCSA by a provision or portion thereof that achieves (to the maximum extent permissible) the intention of the omitted provision or part thereof.

- 13. AMENDMENTS.** DCSA is free to update and change the content of this Agreement by notifying such changes through the data exchange tool to User one calendar month before the moment when such changes will come into force and effect. In case a User does not agree to the changes to this Agreement as notified by DCSA to User, then User may terminate this Agreement within one month after the changes have become effective, by sending an electronic notice to DCSA (either through the data exchange tool or otherwise) that User wishes to terminate the Agreement.

- 14. APPLICABLE LAW AND JURISDICTION.** The governing Law for any claim arising under or in connection with this agreement or the (use of the) data exchange tool shall be the Laws of the Netherlands. The parties hereby agree to the exclusive jurisdiction of the courts located in Amsterdam, The Netherlands with respect to any dispute following from or related to this Agreement, the data exchange tool or the use thereof. The Parties agree that the United Nations Convention on Contract for the International Sale of Goods shall not apply to this Agreement.