

Moorebank Interstate Terminal Access Protocol

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Moorebank Interstate Terminal Access Protocol

1. Background

- A. National Intermodal Corporation Limited (**National Intermodal**) is a wholly owned Australian Government entity established to facilitate the development and oversee the operation of the intermodal terminal at Moorebank.
- B. MITCo has commenced operations at the Interstate Terminal, including through the appointment of the Service Provider, to provide some of the services at the Interstate Terminal.
- C. As part of MITCo's agreement with National Intermodal, MITCo is required to provide Access Seekers and Customers with open and non-discriminatory access to the Interstate Terminal.
- D. MITCo, through the Service Provider where applicable, is responsible for operating the Interstate Terminal, including setting prices and the terms and conditions of access, in accordance with the Open and Non-Discriminatory Access Obligations.

2. Introduction

2.1 Purpose of this Terminal Access Protocol

- (a) This document is the Terminal Access Protocol for the Moorebank Interstate Terminal.
- (b) The purpose of the Terminal Access Protocol is to provide a framework that facilitates the following objectives:
 - (i) providing Customers open and non-discriminatory access to the Interstate Terminal in accordance with Open and Non Discriminatory Access Obligations; and
 - (ii) allowing MITCo to allocate capacity and otherwise operate the Interstate Terminal in accordance with MITCo's commercial and operational judgement so as to promote efficiency, productivity and volume through the Interstate Terminal.
- (c) In facilitating the objectives in clause 2.1(b), it is acknowledged that:
 - (i) the Interstate Terminal faces competition from other intermodal terminals and road transport, and that the Interstate Terminal and its operation are not intended to be subject to monopoly asset regulation;
 - (ii) MITCo will operate the Interstate Terminal (whether itself or through its duly appointed Service Provider) including publishing a rate card and a standard, non-discriminatory customer agreement with prices and other terms and conditions governing access to Terminal Services;
 - (iii) the Interstate Terminal has been designed as an open access facility and the terms of this Terminal Access Protocol reflect the aims of:
 - A. promoting competition for the transport of Interstate containerised freight so as to improve supply chain efficiency and encourage a modal shift from road transport to rail; and

- B. ensuring the Interstate Terminal is available to all Customers on transparent, standardised and non-discriminatory terms, in the form of a Standard Customer Agreement incorporating the terms of this Terminal Access Protocol;
- (iv) National Intermodal's role in relation to open access at the Interstate Terminal is as set out under this Terminal Access Protocol;
- (v) where an Independent Expert is appointed to resolve a dispute in relation to this Terminal Access Protocol, they will perform that role acting reasonably:
 - A. as required and necessary to achieve the objectives in this clause 2.1 and to determine that dispute; and
 - B. will avoid inconsistency with the requirements of this Terminal Access Protocol; and
- (vi) enforceability and consequences of non-compliance in relation to this Terminal Access Protocol are to be determined as between MITCo and National Intermodal in accordance with the terms of the IST Obligations Deed, and not otherwise.
- (d) All clauses in this Terminal Access Protocol are to be interpreted in accordance with this clause 2.1.

2.2 Open and Non-Discriminatory Access Obligations

- (a) MITCo will comply with the Open and Non-Discriminatory Access Obligations through the supply of Terminal Services to a Customer as contemplated in this Terminal Access Protocol or as modified by agreement with that Customer in accordance with any associated access agreement.
- (b) For the purpose of clause 2.2(a), the Open and Non-Discriminatory Access Obligations are that MITCo will:
 - (i) facilitate access at the Interstate Terminal for Customers and Access Seekers, where such access is, or would be, in accordance with this Terminal Access Protocol (including the Terminal Operating Procedure and the Capacity Allocation Protocol);
 - (ii) not discriminate as between Customers in offering and providing Terminal Services, except where necessary and only to the extent permitted in accordance with this Terminal Access Protocol, the Capacity Allocation Protocol and Terminal Operating Procedure; and
 - (iii) offer to provide access in relation to Terminal Services on standardised, non-discriminatory and published terms and conditions for all Customers and Access Seekers, including prices.
- (c) For clarity:
 - (i) unless and to the extent otherwise specified, the Open and Non-Discriminatory Access Obligations apply under this Terminal Access Protocol only in respect of the supply of Terminal Services;
 - (ii) MITCo will not engage in conduct for the purpose of hindering or preventing access to the Terminal Services by a Customer or Access

- Seeker in the exercise of an access right to which that Customer or Access Seeker would otherwise be permitted under this Terminal Access Protocol (including the Terminal Operating Procedure and the Capacity Allocation Protocol) and the relevant terminal access agreement; and
- (iii) this Terminal Access Protocol has been developed and approved on the basis that it sets out those requirements which, provided they are undertaken by MITCo, are sufficient to satisfy the Open and Non-Discriminatory Access Obligations.
- (d) Sub-clause 2.2(b) does not apply to any reasonable restriction of access at the Interstate Terminal imposed by MITCo in accordance with this Terminal Access Protocol, the Standard Customer Agreement or any relevant terminal access agreement, or the Terminal Operating Procedure or:
- (i) to prevent, or to respond to, an Incident or to otherwise seek to prevent injury to persons or damage to the Interstate Terminal or other property;
 - (ii) reasonably necessary for the operation of the Interstate Terminal due to unforeseeable external factors including:
 - A. network issues including without limitation track possessions, weather, signalling outages, congestion, regulatory actions; track closure;
 - B. road issues including without limitation weather, congestion, signalling, closure;
 - C. rail operator issues including late or early arrival or departure from the Interstate Terminal including without limitation locomotive or wagon failures, train crew issues;
 - D. issues at Port Botany rail terminals or other rail terminals;
 - E. within the Interstate Terminal the availability of equipment including without limitation mechanical breakdown, the availability of labour or regulatory action affecting the Interstate Terminal;
 - F. the availability of containers for loading or unloading to or from a wagon or truck; and
 - G. rolling stock or truck issues including type or defect that causes delay; and
 - (iii) where MITCo has reasonable grounds to believe that the Customer would fail, to a material extent, to comply with an access agreement or the Terminal Operating Procedure (for example, evidence that the Customer is not creditworthy).

2.3 Scope

- (a) This Terminal Access Protocol applies in respect of Access to the Interstate Terminal only.
- (b) For clarity, except where expressly provided, this Terminal Access Protocol does not apply in respect of any area or operations not located within the Interstate Terminal, including (without limitation):

- (i) warehousing operations;
- (ii) the transport of containers (including by internal transfer vehicle), outside of the Interstate Terminal, including the transport of containers between the Interstate Terminal and a warehouse or other facility located outside the Interstate Terminal lease area; and
- (iii) any operations associated with the IMEX Terminal.

2.4 Rights and obligations of MITCo and the Service Provider

- (a) MITCo may subcontract the performance of some or all of the Terminal Services to the Service Provider.
- (b) References to the rights or obligations of MITCo under this Terminal Access Protocol mean, in respect of the supply of Terminal Services, MITCo or the Service Provider (as the context requires).

3. Interpretation

3.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary, has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

4. Commencement and review process

4.1 Protocol Commencement Date

- (a) This Terminal Access Protocol comes into effect on and from the date that MITCo commences operations at the Interstate Terminal (**Protocol Commencement Date**).
- (b) MITCo will provide not less than 30 calendar days' prior notice to National Intermodal of the Protocol Commencement Date.

4.2 Review of Terminal Access Protocol

- (a) MITCo will undertake a review of the operation of this Terminal Access Protocol:
 - (i) not more than 2 years after the commencement of operations at the Interstate Terminal and at least once every 5 years thereafter; or
 - (ii) at any time if MITCo identifies material concerns with its practical operation.
- (b) In undertaking its review under sub-clause 4.2(a), MITCo will consult with Customers, Access Seekers, potential Access Seekers and National Intermodal when reviewing this Terminal Access Protocol.

- (c) Any amendment to this Terminal Access Protocol under this clause 4.2 remains subject to MITCo complying with any amendment process required by its commercial arrangements with National Intermodal.

5. Terminal Services

5.1 Terminal Services

- (a) The Terminal Services supplied by MITCo to Customers at the Interstate Terminal will be as set out in a rate card published by MITCo from time to time.
- (b) The Terminal Services comprise the following:
 - (i) **Rail Terminal Access Service** – access for a train to enter into the Interstate Terminal;
 - (ii) **Rail Terminal Loading and Unloading Service** – services to load or unload containers, on and/or from a train to or from a truck or an internal transfer vehicle in the Interstate Terminal (including the provision of short term container storage within the Interstate Terminal area in connection with the Rail Terminal Loading and Unloading Service);
 - (iii) **Storage** - of containers within the Permitted Storage Period and storage of containers outside the Permitted Storage Period;
 - (iv) **Supply of consumables** - fuel, sand, lubricant;
 - (v) **Truck Terminal and Internal Transfer Access Service** – access for a truck or internal transfer vehicle to enter the Interstate Terminal to receive or drop off a container at the Interstate Terminal; and
 - (vi) **Management of Missed Slots** - rail and road.
- (c) On the successful request for a Terminal Service by an Access Seeker in accordance with clause 8, MITCo will offer to provide the requested Terminal Services to the Access Seeker:
 - (i) at the Charges published on its website; and
 - (ii) on the terms, as amended from time to time, set out in the Standard Customer Agreement and published by MITCo on its website.
- (d) MITCo is only obligated to provide access to successful requests for Terminal Services at the Charges and on the standard terms and conditions contained in the Standard Customer Agreement.
- (e) MITCo can negotiate variations to the non-price terms of the Standard Customer Agreement with Access Seekers and Customers, provided that such variations are consistent with this Terminal Access Protocol.
- (f) MITCo will publish on its website a list of all Terminal Services that it offers at the Interstate Terminal and will update the list as soon as reasonably practicable if there is any change in the Terminal Services that are offered.

6. Standard Terms and Conditions

6.1 Standard Customer Agreement

The standard terms and conditions of Access for Terminal Services are set out in the Standard Customer Agreement referred to at Annexure 1 of this Terminal Access Protocol as updated or amended by MITCo from time to time.

7. Pricing

7.1 Charges

- (a) MITCo will publish the Charges, as applicable from time to time to any new Customer Agreement, on the Interstate Terminal website.
- (b) Subject to the process for annual CPI price escalation, as set out in the Standard Customer Agreement, MITCo will review the Charges no less than once per year and may vary the Charges at any time by publishing a notice of the updated Charges on the Interstate Terminal website not less than 30 Business Days' prior to their commencement.
- (c) Notwithstanding clauses 7.1(a) and 7.1(b), Charges applicable under a current Customer Agreement will not be varied during the term of that Customer Agreement, except in accordance with annual CPI increases as set out in that Customer Agreement.
- (d) In setting prices for Terminal Services, MITCo:
 - (i) may be required to set prices for Terminal Services below the level required to fully recover costs and achieve a commercial return in order to encourage demand and volume through the Interstate Terminal precinct; and
 - (ii) may record any such losses and the accumulated amount of losses together with a commercial return as recoverable in subsequent prices for Terminal Services.
 - (iii) may use multi-part pricing to promote volume and efficient utilisation of the Interstate Terminal and/or the Interstate Terminal precinct.

8. Process for making an Access Request

8.1 Negotiations in good faith

- (a) MITCo and each Access Seeker must act reasonably and in good faith in negotiating for Access pursuant to this Terminal Access Protocol.
- (b) Nothing in this Terminal Access Protocol limits or prevents MITCo and an Access Seeker from engaging in a commercial negotiation process which differs from the standard process for negotiations set out in clause 8, 9 and 10 of this Terminal Access Protocol.

8.2 Information pack for potential Access Seekers

- (a) MITCo will publish on its website an information pack in relation to access to the Interstate Terminal.

- (b) The information pack for the Interstate Terminal will contain, without limitation:
 - (i) a copy of this Terminal Access Protocol (including the Capacity Allocation Protocol, Terminal Operating Procedure and Complaints Handling System);
 - (ii) the name and contact details of MITCo's representative responsible for managing Access Requests;
 - (iii) a copy of the Application Form and any additional information which must be provided by an Access Seeker when making an Access Request (including all technical specifications required under the Terminal Operating Procedure);
 - (iv) a list of the current Terminal Services available at the Interstate Terminal;
 - (v) a copy of the Standard Customer Agreement; and
 - (vi) a copy of, or a website reference to, the current Charges.

8.3 Application Form and Access Seeker information

- (a) An Access Seeker may make an Access Request by submitting a valid and completed Application Form to MITCo providing details of the services requested.
- (b) In addition to information required by the Application Form, MITCo may also require the Access Seeker to provide additional information which MITCo considers, applying business and commercial judgement, would reasonably assist it to respond to the Access Request including to assess whether the Access Seeker satisfies the Eligibility Criteria.

8.4 Eligibility Criteria

MITCo must ensure that every Access Seeker can demonstrate, to MITCo's reasonable satisfaction, that it:

- (a) is solvent;
- (b) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual potential liabilities under any Standard Customer Agreement, including the ability to pay any charges when they fall due and payment of excesses under insurance policies;
- (c) is able to provide credit support;
- (d) has in place appropriate occupational health and safety standards;
- (e) has or will be able to obtain all necessary accreditations or approvals required to operate the service(s) it is proposing to operate;
- (f) uses, or intends to use, Rolling Stock that complies with the requirements applicable from time to time for access to the Interstate Terminal including (without limitation) having the ability for its locomotives to communicate with Interstate Terminal communication systems;

- (g) is willing to enter into and is capable of complying with a Safety Interface Agreement with MITCo; and
- (h) uses, or intends to use, IT and any other operational systems that will reliably interoperate with those systems used for the operation of the Interstate Terminal.

9. Procedure for assessing Access Requests

9.1 Acknowledgement of Access Request

- (a) Within 5 Business Days of receipt of an Access Request, MITCo will advise the Access Seeker that either:
 - (i) the Access Seeker's request is complete and contains sufficient information to enable MITCo to respond to the Access Request; or
 - (ii) the Access Seeker's request is incomplete, which may include because:
 - A. the request was not in the form or did not contain the information specified in the Application Form;
 - B. MITCo considered that any additional information requested by MITCo under clause 8.3(b) was insufficient to enable it to respond to the Access Request;
 - C. further information is required in order to consider the Access Request, in which case MITCo will specify what further information is required.
- (b) If an Access Seeker provides further information to MITCo in relation to an incomplete request under sub-clause 9.1(a)(ii), clause 9.1(a) applies to the provision of such further information with such alterations and modifications as are necessary.

9.2 Assessment of Access Requests

- (a) Within 20 Business Days of issuing a notice to the Access Seeker under clause 9.1(a)(i) (unless otherwise agreed between MITCo and the Access Seeker), MITCo will provide a written response to the Access Seeker indicating whether, acting reasonably, MITCo considers that:
 - (i) there is likely to be sufficient Available Capacity to meet all or part of the Access Seeker's Access Request; and
 - (ii) the Access Seeker satisfies the Eligibility Criteria in respect of the Access Request.
- (b) If MITCo determines, acting reasonably, that an Access Seeker fails to satisfy the Eligibility Criteria, MITCo will include with its written response in accordance with clause 9.2(a) the reasons for its determination.
- (c) If MITCo determines, acting reasonably, that the requirements in clause 9.2(a) are satisfied, MITCo's response to the Access Seeker under clause 9.2(a) will confirm that it is prepared to meet to negotiate Access to part or all of the service(s) requested.

- (d) MITCo will use reasonable endeavours to provide an Access Seeker with an indicative access proposal setting out the commercial basis on which it is prepared to offer Terminal Services to the Access Seeker within 20 Business Days of providing confirmation under clause 9.2(c) (or such longer period as agreed).
- (e) If MITCo fails to provide an indicative access proposal within the period specified in clause 9.2(d), the starting point for Access negotiations will be the terms and conditions set out in the Standard Customer Agreement.
- (f) There will be no negotiation of the Charges (as published on the website).
- (g) In considering whether there is likely to be sufficient Available Capacity pursuant to clause 9.2(a), MITCo is to apply the principles set out in the Capacity Allocation Protocol.

10. Negotiation of terms and conditions of Access

- (a) As soon as reasonably practicable following the date for provision of an indicative access proposal under clause 9.2(d), MITCo and Access Seeker will meet to negotiate in good faith in order to seek to reach agreement on the terms and conditions on which MITCo will supply part or all of the requested service(s). The parties will use all reasonable endeavours to complete negotiations within 3 months of the date that negotiations commenced.
- (b) Each of MITCo and Access Seeker must seek to accommodate all reasonable requirements of the other party regarding the timetable for negotiations.
- (c) Once an Access Seeker has notified MITCo that it is satisfied with the terms and conditions set out in the Standard Customer Agreement (or any negotiated access agreement):
 - (i) MITCo will, as soon as reasonably practicable, provide a final form of the access agreement (or, if applicable, an amendment to an existing access agreement) to the Access Seeker for execution; and
 - (ii) both parties will use reasonable endeavours to execute the access agreement as soon as reasonably practicable following such notice.

11. Capacity allocation

- (a) MITCo will determine Available Capacity and allocate Capacity to Access Seekers in accordance with the Capacity Allocation Protocol.
- (b) In relation to the Truck Terminal Access Service, Capacity allocation and availability will be managed through the VBS and MITCo's standard carrier access terms.

12. Terminal Operating Procedure

MITCo will operate the Interstate Terminal in accordance with the Terminal Operating Procedure.

13. Confidential Information and ring-fencing obligations

13.1 Protection of Confidential Information

- (a) Subject to sub-clause (b), MITCo must keep confidential any Confidential Information provided to MITCo by an Access Seeker or Customer and only allow an officer, employee, agent or contractor who works for MITCo or exercises management oversight over or responsibility for MITCo to access that Confidential Information for the purpose of:
 - (i) providing Terminal Services to that Customer or otherwise as reasonably required in order to operate the Interstate Terminal;
 - (ii) processing or negotiating an Access Request from that Access Seeker;
 - (iii) resolving a Dispute; or
 - (iv) as otherwise expressly consented in writing by that Access Seeker or Customer.
- (b) If, at any time, the Service Provider is directly or indirectly through a Related Body Corporate vertically integrated such that it provides services in an above rail services market, MITCo must ensure the agreement appointing the Service Provider contains ring-fencing obligations on the Service Provider to ensure that confidential information of Access Seekers and Customers is not given, made available to or accessible by any Service Provider personnel who are engaged in the Service Provider's above rail services business.

13.2 Permitted disclosure of Confidential Information

MITCo is permitted to disclose Confidential Information:

- (a) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
- (b) to the Service Provider only to the extent necessary for the provision of Terminal Services, provided they are under a legal obligation:
 - (i) not to disclose the Confidential Information to any third party; and
 - (ii) to ring-fence Confidential Information to the effect set out in clause 13.1(b) (if applicable);
- (c) to any Independent Expert, mediator or arbitrator appointed for the purposes of resolving a particular Dispute provided they are under a legal obligation not to disclose the Confidential Information publicly or to any third party;
- (d) to National Intermodal, or an independent external investigator appointed by National Intermodal, for the purpose of National Intermodal monitoring MITCo's compliance with its reporting and compliance obligations or investigating a complaint under this Terminal Access Protocol, subject to National Intermodal, (and/or the independent external investigator, as applicable) agreeing to be bound by the same obligations not to disclose the Confidential Information to any third party as MITCo; and

- (e) if, and to the extent required by law, provided that it first consults with the party that provided the Confidential Information in relation to the manner and timing of that disclosure.

14. Complaints

14.1 Complaints Handling System

- (a) MITCo acknowledges the importance of managing and responding to any complaints from Customers, Access Seekers and potential Access Seekers in a timely, efficient and reasonable manner.
- (b) MITCo will comply with sub-clause (a) by responding to complaints in accordance with the Complaints Handling System in Annexure 5.

14.2 National Intermodal investigation

- (a) Customers, Access Seekers and potential Access Seekers may complain to National Intermodal if they have any concerns about MITCo's compliance with this Terminal Access Protocol and MITCo's Open and Non-Discriminatory Access Obligations.
- (b) National Intermodal can investigate, or appoint an Independent Expert to investigate, any potential non-compliance with this Terminal Access Protocol and MITCo's Open and Non-Discriminatory Access Obligations at any time. MITCo will provide all necessary materials and assistance to be used for the sole purpose of that investigation.

15. Dispute resolution

15.1 Dispute Resolution Process

- (a) MITCo will comply with the Dispute Resolution Process in this clause 15 to resolve Disputes between MITCo and Access Seekers or Customers in relation to the operation of this Terminal Access Protocol.
- (b) Access Seekers and Customers do not have a right to dispute Charges for Terminal Services and dispute resolution may not deal with Charges.
- (c) For the avoidance of doubt, the MITCo is only obligated to provide access to Terminal Services at the published Charges (subject to annual increase under any Customer Agreement for CPI) and on standard terms and conditions contained in the Standard Customer Agreement. Accordingly, there can be no Dispute where MITCo offers to provide access to Terminal Services at the published Charges and otherwise on terms consistent with the Standard Customer Agreement.

15.2 Raising a Dispute

- (a) An Access Seeker or Customer who wishes to raise a Dispute with MITCo must do so:
 - (i) only after the matter which is the subject of the Dispute has been lodged as a complaint with MITCo in accordance with clause 14 and Annexure 5; and

- (ii) MITCo has been given a reasonable opportunity to resolve the complaint in accordance with the Complaints Handling System. For clarity, MITCo may refuse to accept a Dispute under this clause 15.2 in circumstances where an Access Seeker or Customer has not complied with this clause 15.2(a).
- (b) Subject to clause 15.2(a), an Access Seeker or Customer may refer a matter as a Dispute by providing written notice to MITCo (**Dispute Notice**) for the purpose of endeavouring to resolve it.
- (c) The Dispute Notice must include details of:
 - (i) the nature of the Dispute;
 - (ii) the outcome sought by the Access Seeker or Customer in relation to the Dispute; and
 - (iii) the action on the part of MITCo which the Access Seeker or Customer believes is reasonably required in order to resolve the Dispute.
- (d) By lodging a Dispute Notice, the Access Seeker or Customer agrees to comply with this Dispute Resolution Process.

15.3 Negotiation

- (a) Within 7 days of the Access Seeker or Customer providing MITCo a Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute expeditiously by joint discussion.
- (b) If the Dispute is not resolved in accordance with clause 15.3(a) within 21 days of the Access Seeker or Customer providing a Dispute Notice to MITCo then either party may within 7 days refer the Dispute to Independent Expert determination in accordance with clause 15.4.

15.4 Referral to Independent Expert determination

- (a) A party may, by notice to the other (**Final Dispute Notice**) refer a Dispute which remains unresolved by negotiation to an Independent Expert for determination in accordance with clause 15.5, within 7 days after the conclusion of the 21 day negotiation period for the Dispute under clause 15.3(b), where the parties have not agreed to attempt to resolve the Dispute through mediation.
- (b) Within 7 days of the issue of a Final Dispute Notice, the Access Seeker or Customer and MITCo will agree on the identity of the Independent Expert to be appointed to conduct the Independent Expert determination.
- (c) In the event that MITCo and Access Seeker or Customer cannot agree on the identity of the person to conduct the Independent Expert determination, then a person nominated by the Resolution Institute who accepts appointment as the Independent Expert will determine those matters.
- (d) The Independent Expert appointed by MITCo and the Access Seeker must have the qualifications and experience necessary to carry out the functions of the Independent Expert as applicable independently of the parties to the Dispute.

15.5 Independent Expert determination

If a Dispute is referred to an Independent Expert for determination pursuant to clause 15.4, the following provisions will apply:

- (a) MITCo and the Access Seeker or Customer will use all reasonable endeavours to ensure that the Independent Expert provides the Independent Expert's determination on the Dispute within 60 days of referral under clause 15.4(a).
- (b) The Independent Expert will decide the Dispute as an Independent Expert, and the Independent Expert's directions or determinations in relation to whether MITCo has complied with MITCo's Open and Non-Discriminatory Access Obligations and the Terminal Access Protocol requirements will be final and binding on both MITCo and the Access Seeker or Customer.
- (c) MITCo must take all steps within its power to ensure that the Independent Expert's decision is fulfilled or otherwise given effect to, including by enforcing MITCo's contractual rights against third parties.
- (d) The cost of the Independent Expert determination will be shared equally between MITCo and the Access Seeker or Customer, unless agreed otherwise.
- (e) MITCo and the Access Seeker or the Customer will use all reasonable endeavours to ensure that the Independent Expert is provided with:
 - (i) all relevant information available to MITCo and the Customer or Access Seeker; and
 - (ii) all reasonable assistance, in a timely manner, to enable the Independent Expert to make a determination in relation to the Dispute within 60 days of referral under clause 15.4(a).
- (f) Before the Independent Expert can make a direction or determination in relation to a Dispute, the Independent Expert must have regard to relevant Interstate Terminal access and operating arrangements (which shall include the provision of Access and the operation of the Interstate Terminal in accordance with the this Terminal Access Protocol including the Capacity Allocation Protocol, the Terminal Operating Procedure and the Standard Customer Agreement) and availability of Access having regard to the Capacity of the Interstate Terminal.
- (g) Subject to the terms of this clause 15.5, the Independent Expert must make the determination in accordance with the Resolution Institute Expert Determination Rules, as published by the Resolution Institute from time to time.

15.6 Confidentiality

- (a) The Dispute and any terms of resolution are to be kept strictly confidential by the Access Seeker or Customer and MITCo.

16. Compliance and reporting obligations

MITCo will publish on its website on an annual basis the following information:

- (a) applications for contracted rail windows received and applications satisfied, by number of windows and TEU per annum;
- (b) total rail capacity in TEU per annum;

- (c) total truck pick-up slots provided per annum;
- (d) list of Terminal Services provided to Customers within the reporting period;
- (e) total number of rail windows requested by Customers and the number allocated per annum (a request for a rail window is a request from a Customer who has secured in principle the necessary train paths from ARTC to be able to use the requested Interstate Terminal rail window);
- (f) total number of trains arriving on time received and loaded/unloaded at the Interstate Terminal within the allocated rail window per annum; and
- (g) average truck turnaround time for trucks delivering/receiving containers at the Interstate Terminal.

17. Notices

- (a) All notices issued pursuant to this Terminal Access Protocol (including applications for Access to the Interstate Terminal and Dispute Notices) must be sent to the following:
 - Party name:** [Party name]
 - Attention: [Name]
 - Address (for hand delivery or delivery by courier or post):
[Address]
 - Email address: [Email]
- (b) Notices sent by email are taken to be received at the time shown in the email as the time the email was sent.

Schedule 1 - Dictionary

Unless the contrary intention appears, the following words or phrases have the corresponding meaning.

Access means the provision by MITCo of access to the Interstate Terminal in the form of the Terminal Services.

Access Request means a request for access to the Interstate Terminal in accordance with the Access Request process as set out in clause 8 of this Terminal Access Protocol.

Access Seeker means a person requesting access to Terminal Services in accordance with the process outlined in Clauses 8, 9 and 10 of this Terminal Access Protocol.

Account Customer means Access Seekers that have entered into an agreement with MITCo for access to spare available Terminal Service capacity on an ad-hoc basis.

Application Form means the Application Form prescribed in Annexure 2 of this Terminal Access Protocol as updated or amended by MITCo from time to time.

ARTC means Australian Rail Track Corporation Limited (ACN 081 455 754).

Available Capacity means the capability of providing rail transport services at the Interstate Terminal after taking into account requirements to accommodate users' existing train paths and existing contractual commitments, and any requirements to reserve capacity for the prudent operation of the terminal in accordance with all applicable standards and good industry practice.

Business Day means any day in New South Wales other than a Saturday, Sunday or public holiday and on which banks are open for business generally in the city of Sydney, New South Wales.

Capacity means the operational capacity for the Interstate Terminal under existing configuration and operating procedures to accommodate Terminal Services at a given point in time.

Capacity Allocation Protocol means the Capacity Allocation Protocol referred to in Annexure 3 of this Terminal Access Protocol.

Charges means the fees or charges payable by a Customer to MITCo for the provision of Terminal Services.

Complaints Handling System means the Complaints Handling System referred to in Annexure 5 of this Terminal Access Protocol.

Confidential Information means information provided to MITCo, an Access Seeker or a Customer in confidence to each other under or in connection with this Terminal Access Protocol.

Container Inventory Checks means the checking of container ID's against the containers that are physically in the Interstate Terminal.

Contract Customer / Contracted Customer means Access Seekers that have entered into an agreement with MITCo for available Terminal Service capacity on a committed take or pay basis.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means an Account Customer or Contract Customer.

Customer Agreement means the standard form agreement entered into between MITCo and a Customer in respect of the supply by MITCo of Terminal Services to that Customer.

Cut-Off Time means 2 hours, or such other time notified to the Customer from time to time before the scheduled departure time of a Train.

Dangerous Goods has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the National Transport Commission from time to time.

Dispute means a dispute for determination by an Independent Expert as is expressly provided for under this Terminal Access Protocol at clause 15.

Dispute Notice means a Dispute Notice as referred to in clause 15.2.

Dispute Resolution Process means the process for resolving Disputes between MITCo and Customers or Access Seekers at clause 15.

Eligibility Criteria means the eligibility criteria as set out in clause 8.4 of this Terminal Access Protocol.

Final Dispute Notice means a final dispute notice as referred to in clause 15.4 of this Terminal Access Protocol.

Interstate Terminal means the intermodal terminal within the Moorebank intermodal terminal precinct for the transport of interstate containers.

Incident has the meaning given to that term in the Standard Customer Agreement.

Independent Expert means an expert that is independent of the parties to a Dispute and appointed in accordance with clause 15.4 of this Terminal Access Protocol.

MITCo means Moorebank Interstate Terminals Pty Ltd in its capacity as trustee of the Moorebank Interstate Terminals Trust.

National Intermodal means National Intermodal Corporation Limited (ACN 161 635 105).

Notice of Consist means Notification of the nature and description of goods loaded on the Train, as required by the Terminal Operating Procedure.

Open and Non- Discriminatory Access Obligations means the obligations outlined in clause 2.2 of this Terminal Access Protocol.

Permitted Storage Period for containers means: **[CU Note: Customer Agreement to be aligned with these time periods.]**

- (a) for containers loaded with Dangerous Goods, the day of arrival and/or departure of the Train at the Terminal;
- (b) otherwise:
 - (i) for out-bound containers, the period 24 hours before the Cut-Off Time (excluding Sundays and public holidays); and
 - (ii) for in-bound containers, the day of arrival of the Train at the Terminal plus 24 hours from 11.59pm on the day of arrival (excluding Sundays

and public holidays) (for Trains arriving between 9pm and midnight, the day of arrival is deemed to be the day following the day on which the Train arrives).

Precinct means the precinct known as Moorebank Logistics Park, Moorebank Avenue Moorebank, New South Wales.

Precinct Customer means a user of warehouse facilities in the Precinct.

Protocol Commencement Date means the Protocol Commencement Date referred to in clause 4.1.

Rail Safety Laws means all applicable occupational health and safety laws, regulations, rules, standards and approved codes of practice and standards including the Rail Safety National Law (NSW) (and any regulation, guideline or ordinance made pursuant to that Act).

Rail Terminal Access Service means the provision of access for a train to enter into the Interstate Terminal as referred to at clause 5.1(b)(i).

Rail Terminal Loading and Unloading Service means the services referred to at clause 5.1(b)(ii).

Rolling Stock means locomotives, carriages, wagons, railcars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses rail track.

Safety Interface Agreement means the safety interface agreement required to be entered into by a Customer with MITCo.

Service Provider means a subcontractor engaged by MITCo to perform some or all of the Terminal Services.

Standard Customer Agreement means the standard Customer Agreement referred to at Annexure 1 of this Terminal Access Protocol.

Terminal Access Protocol means this document, being a terminal access protocol for the Interstate Terminal.

Terminal Master Plan means the plan developed in accordance with clause 9.3(b) of the Capacity Allocation Protocol contained at Annexure 3 of this Terminal Access Protocol.

Terminal Operating Procedure means the Terminal Operating Procedure referred to in Annexure 4 of this Terminal Access Protocol.

Terminal Services means all services provided by MITCo to a Customer within the Interstate Terminal for the purpose of that Customer conducting road or rail transport operations through the Interstate Terminal.

Timetable means the times at which a Customer's Trains are scheduled to arrive at and depart from the Interstate Terminal and a description of each Train.

Train means several units of Rolling Stock coupled together to operate as a single unit.

Train Handover Time means the time that MITCo will hand over the loaded train for inspection by the Customer prior to departure on the network.

Train Movements means the operation of a Train on the rail track leading into, through and/or out of the Interstate Terminal, by the Customer at a time scheduled in the timetable for the predominant purposes of conveying freight and includes the empty movement of such a Train.

Truck Terminal and Internal Transfer Access Service means the provision of access for a truck or internal transfer vehicle to enter the Interstate Terminal to receive or drop off a container at the Interstate Terminal, referred to at clause 5.1(b)(v).

TEU means Twenty-foot equivalent unit, where 1 TEU equals a 6.1m container.

VBS means a vehicle booking system, in use in respect of the Interstate Terminal.

Voluntary Reduction as referred to in clause 4(c) of Annexure 3 of this Terminal Access Protocol.

Annexure 1 - Standard Customer Agreement

See Standard Customer Agreement as published from time to time on the website for the Interstate Terminal.

Annexure 2 - Application Form

See Application Form as published from time to time on the website for the Interstate Terminal.

Annexure 3 - Capacity Allocation Protocol

1. Objective

This Capacity Allocation Protocol provides for the transparent and efficient allocation of Available Capacity at the Interstate Terminal in accordance with MITCo's Open and Non-Discriminatory Access Obligations.

2. Interpretation

In this Capacity Allocation Protocol, a term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 to the Terminal Access Protocol for the Interstate Terminal, has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.
-

3. Allocation of rail capacity

3.1 General obligations

The procedure for the allocation of Available Capacity involves the provision of scheduled rail windows at the Interstate Terminal. MITCo may determine and adjust the scheduling of rail windows to optimise the use of the Interstate Terminal including for operational efficiency and safety reasons or as otherwise agreed between MITCo and Customers who are to be or have been allocated the Available Capacity.

3.2 Procedure for allocation of rail capacity

- (a) On receipt of an Access Request in accordance with clause 8 of the Terminal Access Protocol, MITCo will make an assessment as to whether there is sufficient Available Capacity at the Interstate Terminal to meet the Access Seeker's request.
 - (b) In making an assessment as to whether there is sufficient Available Capacity at the Interstate Terminal, MITCo will take into account the factors outlined in the "Train Load/Unload Process Considerations" diagram in Attachment A, and the following considerations:
 - (i) the availability of rail windows;
 - (ii) whether there are any specific requirements to accommodate a Customer's existing train paths;
 - (iii) the type of Access Seeker or Customer and whether they have existing contractual commitments with MITCo (see clauses 3.2(c) and 3.2(d) below); and
 - (iv) any requirements to reserve capacity for the prudent operation of the Interstate Terminal in accordance with all applicable standards and good industry practice.
 - (c) In respect of Contracted Customers:
 - (i) Contracted Customers can request access to any Available Capacity not already allocated to existing Contracted Customers, subject to:
-

- A. the availability of relevant train paths;
 - B. their acceptance of the terms of and compliance with the Terminal Operating Procedure; and
 - C. MITCo's ability to adjust the scheduling of rail windows to optimise the use of the Interstate Terminal.
- (ii) If MITCo, acting reasonably, determines that there is insufficient Available Capacity to satisfy a Contracted Customer's request it will:
- A. make an assessment of whether part of the Contracted Customer's request can be satisfied by the Available Capacity; and
 - B. provide a written explanation to the Contracted Customer as to why the application cannot be satisfied in full (including providing information in relation to any relevant expansions).
- (d) Account Customers can request access to Available Capacity not already committed to Contracted Customers and not already booked by other Account Customers, subject to:
- (i) the availability of train paths;
 - (ii) their acceptance of the Terminal Operating Procedure; and
 - (iii) MITCo's ability to adjust the scheduling of rail windows to optimise the use of the Interstate Terminal.
- (e) If MITCo determines, acting reasonably, that there is sufficient Available Capacity to satisfy all or part an Access Seeker's request, it will notify the Access Seeker in accordance with clause 9.2 of the Terminal Access Protocol.

3.3 Rail constraints

- (a) MITCo will consult with ARTC in the process of allocating Available Capacity and, to the extent that any rail constraints impact the capacity available at the Interstate Terminal, MITCo will use its best endeavours to coordinate with ARTC in relation to such constraints.
- (b) For avoidance of doubt, the phrase 'best endeavours' in sub-clause (a) does not require MITCo to bear any of the costs relating to the resolution or relief of such constraints.

3.4 Mutually exclusive requests for rail capacity

- (a) In circumstances where two or more Access Seekers are seeking mutually exclusive capacity allocation rights, access rights will be granted to the Access Request which, in the opinion of MITCo:
 - (i) is most consistent with the principle of maximising the efficient and most valuable use of the Interstate Terminal; and
 - (ii) best reflects the commercial impact on MITCo's business of the relative potential consumption of capacity.

- (b) When determining the priority of allocation of Available Capacity for mutually exclusive requests, including the commercial impact of access on its business, MITCo may have regard to the following considerations:
 - (i) volume of service;
 - (ii) promotion of competition for the transport of interstate freight so as to improve supply chain efficiency and encourage a modal shift from road to rail;
 - (iii) operational efficiency;
 - (iv) safety;
 - (v) security and duration of commitment;
 - (vi) system wide factors such as path availability;
 - (vii) promotion of utilisation of the Interstate Terminal;
 - (viii) promotion of the longer term utilisation and development of the Interstate Terminal precinct, including in relation to those customers using or seeking to use warehousing in the Interstate Terminal precinct area; and
 - (ix) the present value of future returns to MITCo and Terminal precinct operations after considering all risks associated with each access request (including, without limitation, any credit risk).
- (c) After making a determination of priority in accordance with clauses 3.4(a) and 3.4(b), MITCo will provide to each unsuccessful Access Seeker written reasons for its determination, unless alternative arrangements are made with the unsuccessful Access Seeker.
- (d) If additional rail capacity subsequently becomes available due to an expansion of capacity at the Interstate Terminal, MITCo will notify each unsuccessful Access Seeker that was unsuccessful due to the unavailability of capacity from the previous 6 months of the available capacity generated from the expansion.

4. Varying rail capacity

- (a) MITCo will allocate rail capacity to an Access Seeker on a “use it or lose it” basis and any Customer will not be permitted to bank access windows to prevent use by other Access Seekers.
- (b) MITCo may vary capacity, at any time, including to:
 - (i) repair, maintain, upgrade, extend, construct or make alterations to the Interstate Terminal;
 - (ii) for reasons of safety or for the prevention of injury or damage to the rail network or the Interstate Terminal or to other persons or property; or
 - (iii) following a request in writing from an Access Seeker.
- (c) Contracted Customers may offer to MITCo to voluntarily relinquish any capacity which the Contracted Customer has contracted pursuant to its agreement with MITCo to access the Interstate Terminal in excess of its requirements for a

specified period of time (**Voluntary Reduction**) for reallocation by MITCo in accordance with the following principles:

- (i) MITCo may in its sole discretion determine whether to reallocate any part or all of the amount of the Voluntary Reduction;
- (ii) if any or all of the Voluntary Reduction is reallocated by MITCo to other Access Seekers or Customers, MITCo will reduce the Contracted Customer's rail capacity for the period of time for which the rail capacity is reallocated; and
- (iii) the Contracted Customer will retain and will remain liable to pay for, any portion of the Voluntary Reduction that is not reallocated.

5. Reallocating rail capacity

- (a) Only MITCo has the right to allocate or reallocate rail capacity.
- (b) MITCo can adjust the scheduling of rail windows to optimise the use of the Interstate Terminal and can reallocate rail service capacity in accordance with the Terminal Operating Procedure or in accordance with the Standard Customer Agreement or as otherwise agreed with a Customer.
- (c) In order to encourage the optimum use of the Interstate Terminal, and subject to MITCo complying with the Open and Non-Discriminatory Access Obligations, MITCo can withdraw capacity allocated to a Customer, and reallocate that capacity where:
 - (i) the Customer does not use, over any 3 month period, 65% of its allocated capacity under its Standard Customer Agreement without sufficient justification acceptable to MITCo acting reasonably (subject to MITCo allowing the Customer to demonstrate its ability to fully utilise its capacity above the minimum threshold for the remainder of the term of the Standard Customer Agreement); or
 - (ii) there are repeated breaches of safety requirements of the Standard Customer Agreement, relevant legislation, or a standard specified in Terminal Operating Procedure by the Customer; or
 - (iii) a temporary variation is required to accommodate the maintenance, repair or upgrade of the Interstate Terminal.
- (d) In respect of clauses 5(c)(i) and 5(c)(ii) above, MITCo will provide the Customer with no less than 14 days to show cause why its allocation should not be reduced. MITCo will only reduce a Customer's allocation in accordance with this clause if it is not satisfied, acting reasonably, with the Customer's show cause response and must provide reasons for its decision.

6. Road service capacity allocation

MITCo will manage the capacity allocation or scheduling of truck access at the Interstate Terminal through a vehicle booking system or VBS and MITCo's standard carrier access terms, subject to MITCo's Open and Non-Discriminatory Access Obligations.

7. Insufficient rail service capacity

- (a) Where the ultimate capacity limit of the Interstate Terminal has been reached, all Access Seekers will be notified if capacity subsequently becomes available.
- (b) In making available any additional capacity, it will be allocated by MITCo to the request that is most consistent with the principle of maximising the efficient and valuable use of the Interstate Terminal and in accordance with the Open and Non-Discriminatory Access Obligations.
- (c) When determining the priority of capacity allocation for mutually exclusive requests, MITCo may have regard to:
 - (i) volume of service;
 - (ii) promotion of competition for the transport of interstate freight so as to improve supply chain efficiency and encourage a modal shift from road to rail;
 - (iii) operational efficiency;
 - (iv) security and duration of commitment;
 - (v) system wide factor such as path availability;
 - (vi) promotion of utilisation of the Interstate Terminal; and
 - (vii) promotion of the longer term utilisation and development of the Interstate Terminal area.

8. Complaint handling

- (a) If an Access Seeker or Customer is not satisfied that MITCo has complied with its obligations under this Capacity Allocation Protocol, it can complain to National Intermodal at any time in accordance with clause 14 of the Terminal Access Protocol.
- (b) MITCo will cooperate with National Intermodal in relation to its investigation of any complaint, including providing materials and assistance and provided that such materials are kept confidential and are used by National Intermodal solely for the purpose of that investigation.

9. Capacity planning

9.1 Capacity Expansion Objective

- (a) It is the objective of the capacity planning process that the capacity of the Interstate Terminal is allocated, managed and expanded efficiently and prudently including in anticipation of sustainable increases in demand, so far as practicable, to avoid capacity constraints (**Capacity Expansion Objective**).
- (b) In seeking to facilitate and plan for the achievement of the Capacity Expansion Objective, MITCo may, in its absolute discretion, expand the capacity of the Interstate Terminal and associated infrastructure at any time.

9.2 Short term rail capacity allocation and management

MITCo will allocate, plan for and manage short term rail capacity through the track utilisation plan to be prepared by MITCo in accordance with clause 4 of the Terminal Operating Procedure.

9.3 Terminal Master Plan

- (a) MITCo will plan its capacity allocation requirements at the Interstate Terminal over the medium and long term, including any potential expansion of the Interstate Terminal having regard to:
 - (i) MITCo's commercial and operational requirements (including the requirements, from time to time, specified by the Terminal Operating Procedure);
 - (ii) the safe and reliable operation of the Interstate Terminal (including all rail and other infrastructure);
 - (iii) the short, medium and long term demand for capacity at the Interstate Terminal;
 - (iv) the need to maximise the efficient use of the Interstate Terminal; and the Capacity Expansion Principles (see 9.4 below).
- (b) MITCo will develop a Terminal Master Plan that will set out:
 - (i) the forecast annual TEU capacity for the different stages of development of the Interstate Terminal and an indicative timeline for the commencement of those stages (**Capacity Expansion Profile**);
 - (ii) options for increasing the capacity of the Interstate Terminal;
 - (iii) any further capital investment anticipated to be required to deliver the ultimate capacity of the Interstate Terminal;
 - (iv) the current annualised capacity and annualised capacity utilisation of the Interstate Terminal;
 - (v) any capacity constraints (including operational or other constraints) identified including any capacity constraints that may exist outside the Interstate Terminal;
 - (vi) an assessment of demand conditions, having regard to:
 - A. forecast changes in the volume of freight that is reasonably likely to utilise the Interstate Terminal;
 - B. any Access Requests;
 - (vii) any planned or anticipated expansions of the relevant rail network;
 - (viii) any change in government policy that may reasonably impact on demand for Terminal Services;
 - (ix) any other market circumstances that MITCo considers relevant; and

- (x) for any capacity expansion, an assessment of its consistency with the Capacity Expansion Objective and Capacity Expansion Principles.
- (c) In developing the Terminal Master Plan, MITCo will consult with and have regard to any views expressed by Customers and other stakeholders (including current and prospective Access Seekers and the ARTC, NSW Ports and the Port Botany stevedores).
- (d) MITCo will review and update the Terminal Master Plan from time to time, if it considers it necessary, including:
 - (i) if circumstances change that may materially affect the Terminal Master Plan;
 - (ii) at the completion of any major expansion of any capacity expansion; and
 - (iii) if there is a material change in market conditions affecting likely use of the Interstate Terminal.

9.4 Capacity Expansion Principles

MITCo will implement the Terminal Master Plan where each of the following principles (**Capacity Expansion Principles**) occur:

- (a) the incremental revenue that is anticipated to be generated by the expansion is sufficient to cover the incremental cost of the expansion plus a reasonable commercial return, having regard to the business, commercial and regulatory risks for the Interstate Terminal development and operation;
- (b) sufficient capacity is available on relevant rail networks and at the Port Botany precinct to support the increased utilisation of the Interstate Terminal allowed by the expansion; and
- (c) reasonably anticipated demand for additional Terminal Service capacity is sufficient to support the expansion under the Terminal Master Plan.

9.5 Publication of capacity related material

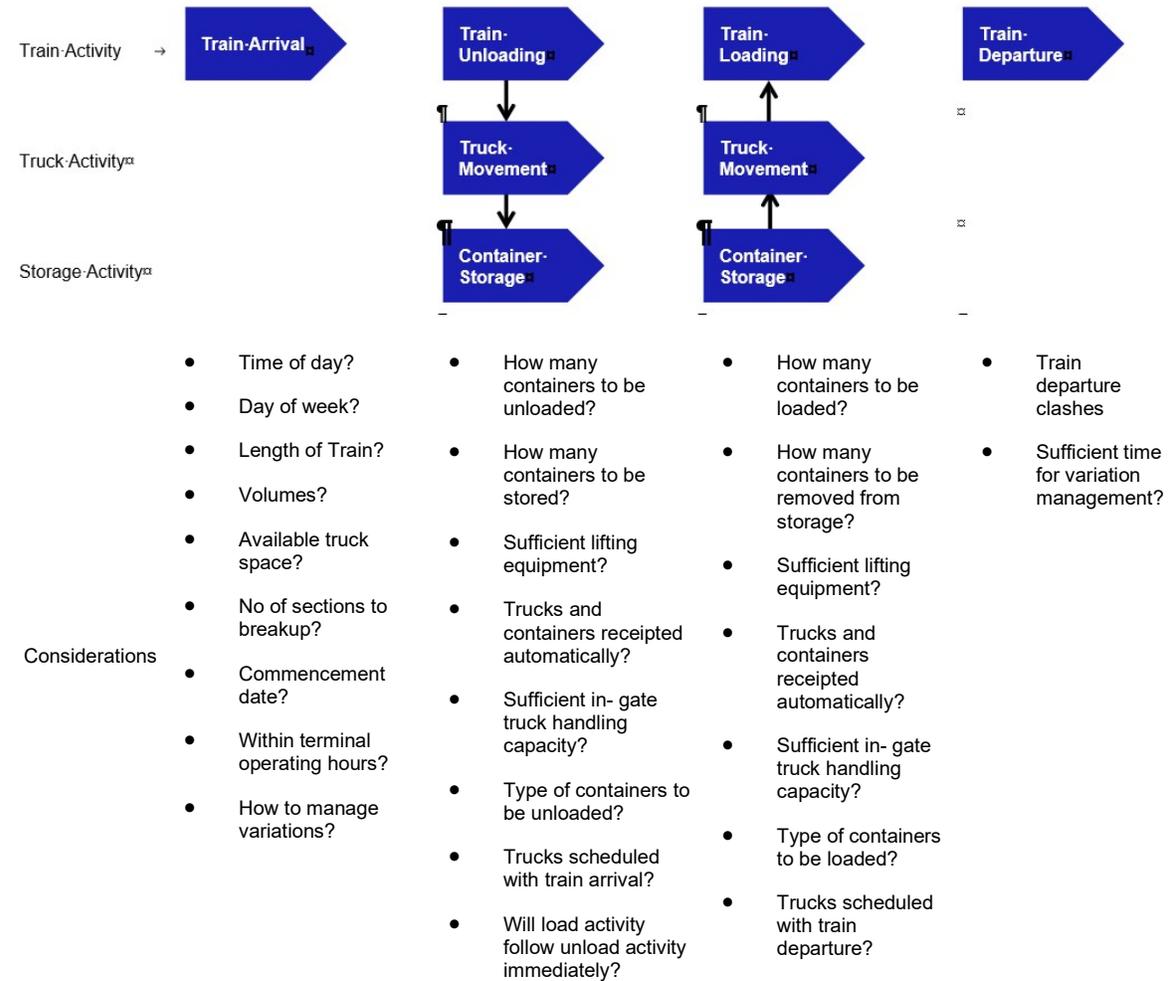
MITCo will publish the following on the Interstate Terminal website (as revised by MITCo from time to time):

- (a) the Capacity Expansion Principles;
- (b) the Capacity Expansion Profile; and
- (c) the Capacity Expansion Objective.

Attachment A - Train Load / Unload Process Considerations

Load / Unload Process Considerations

(Process to fill available capacity, ie does not require investment for expansion)



Annexure 4 - Terminal Operating Procedure

1. Introduction

1.1 Purpose of the Terminal Operating Procedure

This Terminal Operating Procedure provides for the safe, transparent and efficient management of the Interstate Terminal in accordance with the principles of open and non-discriminatory access.

1.2 MITCo's obligations

- (a) MITCo shall be responsible for the management and operation of the Interstate Terminal, including through the engagement of a Service Provider as MITCo's subcontractor to carry out some or all of the Terminal Services.
- (b) MITCo must at all times:
 - (i) ensure that the Customer is provided with a current version of this Terminal Operating Procedure; and
 - (ii) comply with this Terminal Operating Procedure.

2. Interpretation

In this Terminal Operating Procedure, a term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 to the Terminal Access Protocol for the Interstate Terminal, has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

3. General

3.1 Information required from Customers

- (a) To enable MITCo to properly and efficiently manage and operate the Interstate Terminal, provide Access to and from the Interstate Terminal, and provide Terminal Services to the Customer, the Customer will provide MITCo with such documents or information as reasonably required by MITCo from time to time, including (but not limited to):
 - (i) up to date rail certificates;
 - (ii) container plating compliance audits;
 - (iii) wagon technical data; and
 - (iv) any other documents or information reasonably required by MITCo.
- (b) The Customer will provide the information referred to in clause 3.1(a) above in the format reasonably required by MITCo.

- (c) The customer will provide MITCo with its forecasts of the number of TEU in respect of which it requires services as reasonably required in the Standard Customer Agreement.
- (d) The Customer will provide prompt notification of any Timetable change to MITCo so as to ensure that MITCo can efficiently manage any excess or reduced capacity in the Interstate Terminal.

3.2 Accreditation

- (a) The Customer must hold and maintain any accreditation, license or approval (and will maintain any technical or other standard) required in order to undertake the activities contemplated under its Standard Customer Agreement, including, without limitation, all Rail Safety Laws.
- (b) The Customer must notify MITCo as soon as practicable after it receives any notice of intended, or actual amendment, variation, suspension or cancellation affecting its accreditation.
- (c) At least once every 12 months, and on request by MITCo, the Customer must provide to MITCo, a copy of their current accreditation.

3.3 IT requirements

The Customer must have the IT and operational systems capability to interface with MITCo's IT systems, from time to time.

4. Track utilisation plan

- (a) A track utilisation plan will be prepared by MITCo which will identify planned occupancy of the Interstate Terminal. MITCo will use the track utilisation plan to manage and allocate short term capacity within the Interstate Terminal.
- (b) MITCo will use reasonable endeavours to ensure that the track utilisation plan is prepared in order to be consistent with:
 - (i) information known by MITCo regarding the operation of the Interstate Terminal at the relevant point in time; and
 - (ii) each Customer's Timetable.
- (c) The Customer will provide the following details upon request by MITCo to allow preparation of the track utilisation plan:
 - (i) arrival and departure times;
 - (ii) track lengths requirement;
 - (iii) shunt requirement (consist movement);
 - (iv) cut off times;
 - (v) locomotive provisioning times (if applicable); and
 - (vi) cargo types.

- (d) The Customer and MITCo will work together in good faith in order to seek to respond to and address any operational requirements caused by day of operation variations to the track utilisation plan.
- (e) MITCo may vary the track utilisation plan from time to time if it considers that doing so would be reasonably likely to improve the capacity, efficiency or safe operation of the Interstate Terminal. MITCo will consult with the Customer before finalising any amended track utilisation plan.
- (f) The Customer may request (**the Request**) MITCo to vary the track utilisation plan from time to time in order to accommodate either temporary or permanent changes in the Customer's requirements otherwise agreed and implemented in accordance with the Customer Agreement.
- (g) The Customer will provide such information as is reasonably requested by MITCo to enable MITCo to consider a Request under sub-clause (f) above.
- (h) MITCo will consult with the Customer in relation to the Request and may vary the track utilisation plan in order to accommodate the Request. For clarity, nothing in this clause 4 permits a Request, or requires MITCo to consider a Request, that is inconsistent with the terms of the relevant Customer Agreement.

5. Loading and unloading trains

5.1 General

MITCo will take reasonable steps to make available sufficient equipment to lift maximum container weights as shown on compliance plates of certified containers that conform to ISO/Australian Standard NZS 3711, where and to the extent required to provide Terminal Services.

5.2 Train Loading

- (a) At least 3 hours prior to the scheduled departure time of a Train, the Customer will provide MITCo with an indicative load plan which will include:
 - (i) wagon consist;
 - (ii) marshalling requirements; and
 - (iii) container bookings which must specify the type and weight of the container.
- (b) The Customer will be responsible for the timely presentation of the wagon consist to allow MITCo to load containers in accordance with the indicative load plan.
- (c) MITCo will check containers to ensure they are safe for loading having regard to container integrity, load restraint and compliance plating. MITCo will advise the Customer of containers which are not safe for loading.
- (d) MITCo will use reasonable endeavours to load the Train in accordance with the indicative load plan.
- (e) MITCo will manage variations to the indicative load plan and will advise the Customer of any such variations.

- (f) MITCo will load the containers within the safety conditions of the wagon consist presented by the Customer having regard to axle load, height, drawbar and network restrictions.
- (g) MITCo will not be obliged to load a container which is not received in the Interstate Terminal prior to the Cut-Off Time, but MITCo will use reasonable endeavours to do so subject to MITCo's obligations to other Customers and provided MITCo considers it is efficient to do so (in MITCo's absolute discretion).
- (h) The Customer will provide MITCo with all necessary written authorities to deal with the containers to be loaded onto the Customer's Trains, including, for example:
 - (i) written authorities enabling access to containers for the purposes of:
 - A. inspecting containers to check that they are within specification;
 - B. checking the safety of the container; and
 - (ii) any other documents or information reasonably required by MITCo.
- (i) MITCo will load containers in accordance with the specific service ID's that make up the overall train consist, including for example such service ID's as:
 - (i) day of travel;
 - (ii) place of origination of Train;
 - (iii) destination of Train;
 - (iv) details of Rolling Stock on each service; and
 - (v) any other service ID's reasonably required by MITCo.
- (j) MITCo will provide the train manifest to the Customer at the Train Handover Time in order to allow final inspection and pre-departure safety checks to be undertaken by the Customer prior to the Train's departure.
- (k) The Customer will ensure that any loading standards, marshalling requirements and network restrictions have been met during the pre-departure check. For avoidance of any doubt, the ultimate responsibility for the Train to be safely loaded in accordance with any required standards prior to its release onto the network remains with the Customer.

5.3 Unloading Trains

- (a) At least 90 minutes prior, or as otherwise agreed, to the scheduled arrival time of a Train, the Customer will provide MITCo with notification of the nature and description of the goods loaded on the Train (**Notice of Consist**) and confirm that the Train has been safely loaded in accordance with any required standards prior to its release onto the network.
- (b) MITCo will check containers to ensure they are safe for unloading, having regard to container integrity, load restraint and plating compliance. MITCo will advise the Customer of containers which are not safe for unloading.
- (c) The Customer will provide MITCo with all necessary written authorities to deal with the containers to be unloaded from the Customer's Trains, including, for example:

- (i) written authorities enabling access to containers for the purposes of:
 - A. inspecting containers to check that they are within specification;
 - B. checking the safety of the container; and
- (ii) any other documents or information reasonably required by MITCo.
- (d) MITCo will ensure:
 - (i) containers will be allocated ground location ID's which will describe the grid location of the container within the Interstate Terminal in order to assist truck operators to locate freight;
 - (ii) Container Inventory Checks will be undertaken daily; and
 - (iii) Any container inventory exceptions will be escalated to the Customer upon identification.

6. Daily Variations

- (a) The Customer must provide the following notice to MITCo if a Train is likely to arrive before or after its scheduled arrival time:
 - (i) 6 hours' notice for port shuttles operating between the Interstate Terminal and Port Botany; and
 - (ii) 12 hours' notice for all other Trains.
- (b) In respect of arriving Trains:
 - (i) For Train arrivals at or before the scheduled arrival time in the Timetable, MITCo will use reasonable endeavours to ensure that the Terminal Services are supplied in a manner that permits the Train to depart on time.
 - (ii) For Train arrivals after the scheduled arrival time in the Timetable:
 - A. MITCo and Customer will co-operate to forward plan for the arrival of those Trains; and
 - B. where and to the extent that it is practicable to do so, MITCo will amend its operating plan in order to service the Customer's late arriving trains at the earliest convenient point in time, subject always to MITCo's obligations to other Customers and provided MITCo considers it is safe and efficient to do so (in MITCo's absolute discretion).
- (c) In respect of departing Trains:
 - (i) The Customer may:
 - A. request MITCo to give priority to the provision of Services to certain of the Customer's Trains;

- B. request MITCo to vary Cut-Off Times or Train departure times to accommodate variations; and
 - C. request MITCo to prioritise the container loading to meet customer expectations.
- (ii) MITCo will:
- A. use reasonable endeavours to satisfy any requests under this sub- clause, subject always to MITCo's obligations to other Customers and provided MITCo considers it is safe and efficient to do so (in MITCo's absolute discretion); and
 - B. if it becomes apparent to MITCo that a Train cannot be completed on schedule, MITCo will advise the Customer no later than two hours prior to the scheduled departure time of the train in order to allow crewing issues to be addressed.
- (d) If a Train fails within the Interstate Terminal, MITCo will:
- (i) use all reasonable endeavours to minimise disruptions to other Customers; and
 - (ii) as soon as is practical, subject to its obligations to other Customers and the safe and efficient operation of the Interstate Terminal, clear the failed Train.
- (e) MITCo, where reasonably necessary, will liaise with ARTC train controllers in relation to train arrival and departure.

7. Gate entry and exit procedures

- (a) MITCo will be responsible for the in-gating and out-gating of the Customer's containers into the Terminal.
- (b) MITCo will provide freight opening and closing receival times for each of the Customer's train services.
- (c) MITCo will immediately notify the Customer of any exceptions in data that impact on the successful in-gating or out-gating of MITCo's containers.
- (d) For the purpose of maximising slot utilisation, the Customer may request that MITCo receive containers prior to the opening and closing times. These containers would be known as pre-receivals.
- (e) The Customer will be responsible for resolving any data or load integrity exceptions that arise out of the in-gating or out-gating process and immediately notify MITCo once the exception has been resolved.

8. Road

- (a) The Customer will provide to MITCo the proposed times for the arrival and departure of any road vehicles to and from the Terminal, 24 hours in advance of those movements.
- (b) MITCo will manage the scheduling of windows for the arrival of trucks to receive or deliver containers at the Interstate Terminal through a VBS.

9. General operations

9.1 9.1 Container Damage

- (a) MITCo and the Customer will, to the extent it is practicable to do so, check for damage to containers arriving in the Interstate Terminal on a Train. MITCo and the Customer will advise each other of containers which are damaged.
- (b) In the event of an incident within the Terminal, which may have caused damage to the contents of a container, MITCo will notify the Customer immediately of the incident.
- (c) MITCo will consult with the Customer in relation to the recovery of the contents of containers, but any decision in relation to such recovery will be at MITCo's discretion.
- (d) MITCo will have no liability for containers once they have been collected and have been pinned by the Customer.

9.2 Wagon Defects

- (a) A Customer must use best endeavours to prevent the entry of defective wagons into the Interstate Terminal.
- (b) If a Customer identifies a defective wagon, it must immediately notify MITCo and follow directions from MITCo in order to remove the defective wagon from the Interstate Terminal. For clarity, MITCo may refuse to load or unload a defective wagon.
- (c) If necessary, the Customer will amend its wagon consist for the departing Train.

9.3 Other operational arrangements

- (a) **Refrigerated goods:** MITCo will use reasonable endeavours to load and unload refrigerated goods subject to any terms or requirements agreed with the Customer. Where a Train has refrigerated goods that require handling by MITCo, the Customer must (unless otherwise agreed) notify MITCo not less than 48 hours in advance.
- (b) **Ancillary Facilities:** MITCo may provide access to ancillary facilities from time to time (including access for operational staff to the café located within the Precinct) as notified by MITCo from time to time.
- (c) **Customs and Quarantine:** The Customer is solely responsible for, and must comply with, all custom and quarantine requirements in respect of goods or Containers prior to such goods or Containers entering the Interstate Terminal. MITCo may require the Customer to provide documentation relating to customs and quarantine requirements before unloading or loading Containers.
- (d) **Broken down locomotives:** The Customer is solely responsible for dealing with broken down locomotives. The Interstate Terminal does not provide facilities for the repair of locomotives and a Customer must promptly comply with any direction received from MITCo to remove a broken down locomotive or to otherwise move or relocate it in order to minimise any disruption to access to, or use of, the Interstate Terminal by MITCo or other Customers.

- (e) **Incidents:** MITCo and the Customer will notify each other of any accident, spillage or other incident involving the Customer's Container(s), as soon as practicable. In the event an accident, spillage or other incident, MITCo shall be entitled to take such action as it deems necessary to overcome and alleviate the cause and consequences of the accident, spillage or other incident and the Customer shall assist MITCo wherever and however reasonably and practicably necessary.

10. Maintenance

- (a) MITCo will be responsible for the maintenance of the Interstate Terminal and the infrastructure and equipment used to provide the Services to the standard reasonably determined by MITCo as appropriate for the safe and efficient provision of the Services.
- (b) For scheduled maintenance, MITCo will use all reasonable endeavours to provide affected Customers with at least 3 months' notice of the maintenance and any likely impact on the Customer's access or use of the Interstate Terminal.
- (c) For unscheduled maintenance, MITCo will provide notice to affected Customers as soon as reasonably practicable after becoming aware of the need to undertake such maintenance.
- (d) In carrying out maintenance (whether scheduled or unscheduled), MITCo will act reasonably and with the objective of:
 - (i) ensuring safety at all times;
 - (ii) ensuring operations at the Interstate Terminal promote efficiency, productivity and volume handled; and
 - (iii) minimising the extent of any adverse impact on the provision of services to Customers.
- (e) Where maintenance or repairs is required as a result of any act or omission by the Customer (including where this results from damage caused by the Customer or its contractors or agents), MITCo will be entitled to recover the costs associated with such maintenance or repair works (other than maintenance costs that arise in connection with the normal wear and tear of the Interstate Terminal) from the Customer as a charge payable by the Customer to MITCo.
- (f) MITCo will not be liable for any costs incurred by, or claims made by or against the Customer, as a result of MITCo conducting any repairs or maintenance of the Interstate Terminal and any delay caused (including to any Train Movements or to the Timetable) as a result.

11. Rolling Stock Standards

- (a) MITCo will have and maintain published and reasonable Rolling Stock Standards, which it will develop and update from time to time having regard to its terminal operations, regulatory requirements, safety requirements and any conditions of its planning or operational approvals.
- (b) MITCo will notify all Customers of the applicable Rolling Stock Standards (or other applicable standard or requirement) in accordance with this clause 11.
- (c) Where MITCo determines that changes to the Rolling Stock Standards are required having regard to regulatory requirements, safety requirements or any conditions of

its planning or operational approvals, MITCo will provide as much prior notice to Customers as reasonably practicable in the circumstances.

- (d) Where MITCo determines that changes to the Rolling Stock Standards are required having regard to its terminal operations, MITCo will comply with the following minimum notice periods for providing notice to Customers:
 - (i) not less than 3 months' prior notice for any minor changes, being changes to the Rolling Stock Standards that are minor or incidental and do not impose material additional costs on a rail operator in order to comply; or
 - (ii) for all other changes, not less than 6 months' prior notice of any changes (for example, any changes associated with the introduction of automation).
- (e) The published Rolling Stock Standards will apply to all rail operators using the Interstate Terminal.
- (f) Each Customer must ensure that all Rolling Stock used by the Customer at the Interstate Terminal comply with any Rolling Stock requirement notified under this clause 11.

12. Safety

12.1 Safety management plan

- (a) MITCo will prepare a safety management plan for the Interstate Terminal.
- (b) MITCo will provide to the Customer all information necessary for the safe operation of the Customer's Trains within the Interstate Terminal.
- (c) The Customer will develop and provide a safety management plan for its rail operation that is consistent with requirements of MITCo. The Customer's safety management plan will be incorporated into the safety management plan for the Interstate Terminal.
- (d) MITCo and the Customer will comply with the safety management plan for the Interstate Terminal.

12.2 General safety obligations

- (a) MITCo has sole control of the Interstate Terminal site. The Customer is only permitted to enter the Interstate Terminal site with prior permission from MITCo.
- (b) Customers are not permitted to bring any Dangerous Goods into the Interstate Terminal precinct, unless specifically agreed with MITCo (at its discretion).
- (c) MITCo has the right to remove or direct the immediate removal of Customers, Containers and/or any other vehicle or property from within the Interstate Terminal on safety grounds.
- (d) The Interstate Terminal has a zero limit for alcohol and other drugs and a policy of random testing.
- (e) MITCo and the Customer will ensure:

- (i) compliance with the safety management plan for the Interstate Terminal;
 - (ii) all Rolling Stock, plant and equipment admitted to the Interstate Terminal is safe and is operated in a safe manner;
 - (iii) vehicles entering the Interstate Terminal comply with the following:
 - A. a high vision yellow flashing light (beacon) is mounted on the vehicle roof;
 - B. vehicle hazard lights are switched on;
 - C. vehicle headlights are illuminated;
 - D. maximum speed of 20 kph; and
 - E. no mobile phone use, including the use of hands free sets, while driving; and
 - (iv) its employees, contractors and site visitors have received the relevant site induction (and MITCo will determine the cost of any site inductions acting reasonably);
- (f) MITCo has the authority to enforce that the Customer will ensure its employees, contractors and site visitors entering the Interstate Terminal (excluding any administration buildings) comply with the following personal protective equipment:
- (i) long sleeved shirt, with sleeves rolled down;
 - (ii) high visibility vest or shirt;
 - (iii) broad brimmed or Legionnaire style hat;
 - (iv) protective footwear;
 - (v) protective safety glasses; and
 - (vi) protective safety glove and hearing protection when accessing the locomotive provisioning facility.

13. Customer communications

- (a) MITCo will establish a single point of contact for customer complaints. This will apply for customer related complaints from the Customer channelled through MITCo; or directly from MITCo.
- (b) MITCo will establish a communication protocol including a requirement for Customers to establish and maintain a radio communications link with MITCo at all times with the operating details of the radio link to be specified by MITCo.
- (c) At all times, MITCo will endeavour to provide resolution to the Customer issues.

14. Right to review of the Terminal Operating Procedure

14.1 MITCo may initiate a review of the Terminal Operating Procedure

- (a) MITCo can review the Terminal Operating Procedure at any time.
- (b) MITCo will consult with National Intermodal and Access Seekers and Customers, when reviewing the Terminal Operating Procedure.
- (c) Following any review, MITCo may implement changes to the Terminal Operating Procedure that are not inconsistent with the Open and Non- Discriminatory Access Obligations.
- (d) MITCo will promptly notify National Intermodal and Access Seekers and Customers of any changes it makes to this Terminal Operating Protocol.
- (e) If National Intermodal considers that a proposed change is not consistent with the Open and Non- Discriminatory Access Obligations, following consultation with MITCo, National Intermodal can refer the matter for dispute resolution provided that the revised Terminal Operating Procedure may not be implemented subject to, and pending the outcome of, dispute resolution.

Annexure 5 - Complaints Handling System

This document provides a complaints system for the handling of complaints from Customers, Access Seekers and potential Access Seekers (referred to as 'complainants') in relation to MITCo's operation of the Terminal Access Protocol, including compliance with the Open and Non-Discriminatory Access Obligations or any other matter in relation to access to the Interstate Terminal.

1. Objectives of the Complaints Handling System

1.1 This Complaints Handling System is designed to:

- (a) provide complainants with access to an open and responsive complaints process in relation to the Terminal Access Protocol;
- (b) manage complaints in an objective and unbiased manner;
- (c) address complaints raised within a reasonable timeframe and in an equitable manner; and
- (d) reduce the likelihood of complaints developing into ongoing Disputes.

2. Guiding principles

This Complaints Handling System will be guided by the principles set out at **Table 1**.

Table 1 Guiding principles

Enabling complaints	
People focus	Everybody has a right to complain. MITCo will adopt a people-focused and proactive approach to seeking and receiving feedback and complaints, and demonstrate a strong commitment to addressing any issues raised within a reasonable timeframe. MITCo will seek clarification on whether feedback or general concern is intended to be handled as a complaint, where appropriate. Complainants will be treated with respect, and they will be actively involved in the complaints process as far as practicable and appropriate in the circumstances.
Ensuring no detriment to complainant	MITCo will take all reasonable steps to ensure that complainants are not adversely affected because of a complaint made by them or on their behalf.
Visibility and transparency	MITCo will ensure that information about how and where a complaint may be made to or about MITCo is well-publicised on the Interstate Terminal website through its Access Seeker Information Pack.
Accessibility	MITCo will ensure that its complaint management system is accessible to everyone, particularly people who might require assistance.

	<p>MITCo will provide support to people to make a complaint if needed.</p> <p>MITCo will acknowledge that a person or organisation may request that another person or organisation assist or represent them to make and progress their complaint. MITCo will accept complaints from authorised representatives of complainants.</p> <p>Information about the various ways complaints can be made and the types of support available to people will be easily accessible to Customers.</p>
No charges	A complainant will not be charged a fee to complain.
Managing complaints	
Responsiveness	<p>MITCo will promptly acknowledge each complaint received. MITCo will assess complaints and give appropriate priority in accordance with the urgency of the issues raised.</p> <p>Complainants will be advised, as soon as practicable, where MITCo is unable to deal with either part or all of their complaint.</p> <p>MITCo will deal with complaints efficiently. Where set timeframes cannot be met, internal escalation systems will be used.</p> <p>MITCo will actively manage the expectations of complainants. This includes advising complainants about—</p> <ul style="list-style-type: none"> (a) the complaint process; (b) the expected timeframes for its actions; (c) their likely involvement in the process; and (d) the possible or likely outcome of their complaint, where practicable.
Objectivity and fairness	<p>Each complaint will be managed in an objective and unbiased manner.</p> <p>MITCo will take steps to ensure conflicting interests do not interfere with the management and resolution of complaints.</p> <p>Where appropriate, MITCo will defer actions that might have significant detrimental impact on the complainant until their complaint (or review) has been finalised.</p>
Equity	<p>All complaints will be addressed in an equitable manner and in accordance with this Complaints Handling System.</p> <p>Unreasonable conduct by complainants does not preclude valid issues being addressed by MITCo. However, vexatious and unreasonable behaviour and complaints will be considered by MITCo and managed appropriately.</p>
Privacy and disclosure	<p>Personally identifiable information about any individual will only be disclosed or used in compliance with all relevant privacy laws and ethical obligations when managing a complaint.</p>

Communication	To minimise complaints and facilitate early resolution, MITCo will provide explanations of this Complaints Handling System, and the Terminal Access Protocol to its staff, particularly frontline staff and staff handling complaints.
Managing the parties	
Conduct of parties	MITCo will make clear the behaviour expected of its staff when managing complaints in accordance with this Complaints Handling System.
Work health and safety	MITCo will implement appropriate policies, procedures and practices to ensure the health and safety of its staff involved in complaint management.
Complaint involving multiple parties	When a complaint involves multiple organisations, consideration will be given to options for coordinating communication with the complainant. Subject to privacy and confidentiality obligations, communication and information exchange between the organisation should be pre-arranged, where practicable and appropriate, to facilitate investigation and response to a complaint.
Empowerment of staff	MITCo will ensure that its staff are properly empowered to implement its complaint management system as relevant to their role. MITCo will encourage staff feedback as being a valuable source of insight into problems with MITCo, services or the Complaints Handling System.
Accountability, learning and prevention	
Accountability	MITCo will ensure that accountability for the operation of its Complaints Handling System is clear.
Continuous improvement	Responding to and learning from complaints will be an essential part of MITCo's commitment to continual quality improvement.
Prevention of ongoing Disputes	This Complaints Handling System is designed to minimise the possibility of complaints escalating into ongoing Disputes.

3. Lodging a complaint

- (a) Complaints can be submitted by the following means:
- (i) in person to a MITCo staff member at the Interstate Terminal;
 - (ii) via email to *[Insert email]* addressed to the attention of the 'Moorebank Interstate Terminal Complaints Handling Manager'; or

- (iii) via post to [*Insert postal address*] addressed the 'Moorebank Interstate Terminal Complaints Handling Manager'.
- (b) Complainants should provide the following information to support their complaint:
 - (i) Complainant's details.
 - (ii) Who should be contacted regarding the complaint (i.e. complainant's or representative's contact details).
 - (iii) Complainant's or representative's preferred contact method.
 - (iv) Any special assistance required by the complainant to properly interact with MITCo.
 - (v) Details of the service the complaint relates to.
 - (vi) Whether the issue has been raised previously by the complainant and they have previously received a response.
 - (vii) Details of the complaint including relevant dates and supporting materials.
 - (viii) The outcome sought by the complainant.
 - (ix) Signature field (if in hardcopy) and date.

3.2 MITCo will acknowledge complaints received within:

- (a) 1 month of receipt; or
- (b) a time period agreed with the complainant.

3.3 Complaints must be submitted to MITCo:

- (a) for complaints related to day to day and operational matters and decisions - within 3 months of the relevant event(s) that gave rise to the complaint; or
- (b) for complaints relating to major terminal-related matters and decisions (including complaints in connection with automation of the terminal) – within 6 months of the relevant event(s).

4. Managing complaints

- (a) A MITCo staff member will collect and record the following information at the time of receipt of a complaint:
 - (i) Date complaint lodged.
 - (ii) Complainant's details.
 - (iii) Complaint contact (i.e. complainant's or representative's contact details).
 - (iv) Preferred contact method (if listed). If not listed, the default contact method will be in the format in which the complaint was made, unless there is a specific reason for not doing so.

- (v) Any MITCo identifier (i.e. customer account number) relating to the complainant (if appropriate).
 - (vi) Any special assistance requested by the complainant.
 - (vii) The Interstate Terminal service the complaint relates to (if applicable).
 - (viii) Complaint owner—MITCo staff member who has been allocated to consider and respond to the complaint.
 - (ix) Consideration of whether the content of the complaint requires immediate escalation or immediate action, or both.
 - (x) Complaint details, including any attachments.
 - (xi) Outcome sought.
- (b) Responsibility for MITCo's complaint management lies with various parties including:
- (i) MITCo's chief executive (or equivalent head of the company);
 - (ii) MITCo's manager responsible for complaint management (who will be appointed at the commencement of operations at the Moorebank Interstate Terminal);
 - (iii) MITCo's Moorebank Interstate Terminal operational managers; and
 - (iv) the staff handling complaints at the Moorebank Interstate Terminal.

5. Resolution of complaints

- (a) MITCo will address complaints using the three level model of complaint handling set out in Table 2 below.

Table 2 Three levels of complaint handling

Level 1: Frontline complaint handling	<p>It is in the interests of MITCo that the majority of complaints are addressed by frontline or first point of contact staff.</p> <p>In order to achieve early resolution of a complaint, frontline staff will be adequately equipped to respond to complaints, including being given appropriate authority, training and supervision.</p> <p>Where appropriate, frontline staff will escalate a complaint to MITCo's complaint handling manager.</p>
Level 2: Internal assessment, investigation, facilitated resolution or review	<p>In some circumstances, the seriousness of some complaints or a complainant's dissatisfaction with how their matter has been dealt with may warrant the complaint being dealt with at a more senior level. All complaints referred to MITCo's complaint</p>

	<p>handling manager, will be dealt with in the following way:</p> <p>(a) <i>Internal assessment</i></p> <p>The information provided by the complainant will be assessed to determine whether, and if so how, the complaint can be dealt with by MITCo. Such an assessment might consider such issues as—</p> <ul style="list-style-type: none">(i) the nature and seriousness of the matters alleged;(ii) the complainant's desired outcome;(iii) whether there is any utility in taking the matter further;(iv) the adequacy of the information provided;(v) the options available to address the complainant's concerns; and(vi) the appropriate level at which the matters alleged or complained about can be addressed by MITCo. <p>(b) <i>Internally facilitated resolution</i></p> <p>This will involve a representative of MITCo attempting to talk with a complainant to see if some form of mutually acceptable resolution can be achieved. Where appropriate, this process may include facilitating a discussion between the frontline staff member and the complainant.</p> <p>(c) <i>Internal investigation</i></p> <p>Where a complaint raises significant issues for either MITCo or complainant, MITCo will undertake an internal investigation.</p> <p>Depending on the circumstances, such investigations may be undertaken by an appropriate manager, staff from an internal audit, ethical standards or</p>
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	<p>investigation unit, or an external investigator under contract.</p> <p>(d) <i>Internal review</i></p> <p>Where appropriate, a more senior member of staff or a line manager may review the decision of the frontline staff member or the outcome of any internal assessment or investigation of the complaint. The appropriate senior staff will be given a broad discretion to overturn previous decisions and apply remedies.</p>
<p>Level 3: External assessment and investigation</p>	<p>When a complainant is dissatisfied with the outcome of an internal assessment, investigation, review or resolution process, referral to an external complaint management mechanism may be appropriate.</p> <p>In this circumstance, MITCo may refer the matter for mediation by an alternative dispute resolution specialist elected by MITCo. The mediator, through a formal face-to-face process of discussion, will help the parties to clarify issues and reach a solution acceptable to both sides.</p>