

Standard Customer Agreement

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

[insert]
Customer

Contents

Part 1 - Reference Schedule	1
Part 2 - Terminal Services	2
Part 3 - Charges	3
Part 4 - Terms and conditions	5
1. Definitions and interpretation	5
2. Terminal Access Protocol	5
3. Service Provider	5
4. Terminal Services and Charges	5
4.1 Terminal Services to be provided by MITCo	5
4.2 Charges for incidental assistance or services required to obtain Terminal Services	6
4.3 Conditions precedent.....	6
4.4 Charges and payment	6
4.5 Tiered Customer Pricing	6
4.6 Shortfall Amount	7
4.7 Review and variation of Charges.....	7
5. Rights and Obligations	8
5.1 MITCo's rights and obligations	8
5.2 Customer's rights and obligations	9
5.3 Customer forecasts.....	11
6. Receipt and Delivery of Containers	11
6.1 Receive and discharge	11
6.2 Short Term Storage	11
7. Rail Access	12
7.1 Cancellation of Train Movements	12
7.2 Terminal Services for early and late Trains	12
7.3 Allocation and variation of rail capacity and road service capacity	12
7.4 Customer Booking Schedule	13
7.5 Booking Schedule Variation Request.....	13
8. Performance management	13
9. Variation and cancellation of Terminal Services	14
9.1 Temporary variation or suspension	14
9.2 Material Change	14
10. Repairs and maintenance	15
11. Security Deposit	15
11.1 Security Deposit.....	15
11.2 Exercise of Security Deposit.....	16
12. Customer complaints and dispute resolution	16
12.1 Customer complaints	16
12.2 Dispute resolution	16
13. Liability	16
13.1 General	16
13.2 MITCo's liability.....	16
13.3 Release of MITCo.....	17
13.4 Notification of Claim	17
13.5 Customer Indemnities.....	18

13.6	Exclusion of consequential loss.....	18
14.	Insurance	18
14.1	Insurances required.....	18
14.2	Disclosure of policies.....	18
15.	Force Majeure.....	18
15.1	Suspension of rights and obligations.....	18
15.2	Consequences.....	19
15.3	No release or discharge	19
16.	Default and Termination	19
16.1	Events of default.....	19
16.2	Suspension.....	19
16.3	Remedies.....	20
16.4	Termination.....	20
16.5	All rights preserved	20
17.	GST.....	20
17.1	GST.....	20
18.	General Conditions	21
18.1	General conditions.....	21
19.	Miscellaneous.....	22
19.1	No variation.....	22
19.2	Counterparts.....	22
19.3	Further assurance.....	22
19.4	Severability	22
19.5	No merger.....	22
19.6	Assignment of rights	22
19.7	Entire agreement	23
19.8	Governing Law.....	23
19.9	Costs.....	23
19.10	Legal relationship.....	23
19.11	Consents and approvals.....	23
19.12	Confidential information	23
	Schedule 1 - Dictionary.....	24
	Schedule 2 - Vehicle Booking Service	32
	Schedule 3 - KPIs	34

Standard Customer Agreement

Date

Parties

The Party specified in Item 1 of the Reference Schedule (**MITCo**)

The Party specified in Item 2 of the Reference Schedule (**Customer**)

Background

- A. MITCo owns and operates the Interstate Terminal.
- B. The Customer wishes to acquire Terminal Services supplied by MITCo at the Interstate Terminal.
- C. MITCo has appointed the Service Provider to act as its subcontractor in the provision of certain Terminal Services to the Customer under this Agreement.
- D. MITCo has agreed to supply Terminal Services (directly and/or through the Service Provider), and the Customer has agreed to acquire the Terminal Services from MITCo on the terms in this Agreement.

Operative provisions

Introduction

Structure of Agreement

There are 4 parts in this Agreement:

Part 1 Reference Schedule	Part 2 Terminal Services	Part 3 Pricing	Part 4 Terms and conditions
Part 1 specifies the contract particulars.	Part 2 provides a description of the Terminal Services available at the Interstate Terminal (and which Terminal Services MITCo will be providing to the Customer).	Part 3 specifies the Charges.	Part 4 contains the terms and conditions on which MITCo will provide the Terminal Services.

Part 1 - Reference Schedule

Item 1	MITCo details	Name: Moorebank Interstate Terminals Pty Ltd in its capacity as trustee of the Moorebank Interstate Terminals Trust
		ACN: 672 633 279
		Address: Suite 1, Level 21, 200 George Street, Sydney NSW 2000
		Email: nick.mills@nationalintermodal.com.au

Item 2	Customer details	Name:
		ABN:
		Address:
		Email:
Item 3	Commencement Date	[insert]
Item 4	Expiry Date	The date 5 years after the Commencement Date
Item 5	Shortfall Amount	<p>Shortfall Amount means, for a Contract Year, the amount that is equal to the difference between:</p> <p>(a) the Lift Fee at Tier 3 Customer Pricing multiplied by 30,000 TEUs; and</p> <p>(b) the aggregated Lift Fees paid by the Customer, during that Contract Year.</p>
Item 6	Security	[insert]

Part 2 - Terminal Services

Item	Description of available Terminal Services at the Interstate Terminal	MITCo to provide Service [Yes/No]
1.	<p>Rail Terminal Access Service</p> <p>(a) provision of access by a Train into the Interstate Terminal;</p> <p>(b) allocation of the Train to a track for unloading and loading; and</p> <p>(c) facilitating the departure of a Train from the Interstate Terminal.</p>	
2.	<p>Rail Terminal Loading and Unloading Service</p> <p>(a) unloading of containers from wagons onto the ground or to a Truck or an internal transfer vehicle in the Interstate Terminal;</p> <p>(b) internal transfer of containers within the Interstate Terminal;</p> <p>(c) short term container storage within the Interstate Terminal area including aggregation for further transport (for the period specified in clause 6.2(a)); and</p> <p>(d) loading of containers from a Truck or an internal transfer vehicle onto the ground and loading containers from ground or storage area to Train wagons.</p>	
3.	<p>Truck / ITV Terminal Access Service</p> <p>(a) provision of a computer-based booking system;</p> <p>(b) in-gate processing of Trucks / ITVs including collection of Customer booking information, inventory management of containers and notification by the Customer of the nature and description of the goods and other relevant information;</p>	

Item	Description of available Terminal Services at the Interstate Terminal	MITCo to provide Service [Yes/No]
	(c) provision of access by a Truck / ITV to the Interstate Terminal to collect or deliver a container; (d) out-gate processing of Trucks / ITVs, including matching of release numbers to container numbers and integration of electronic information for ending possession of the container; and (e) record keeping of box locations, movements and delays; and (f) provision of on-site incident response services.	
4.	Storage of containers	
5.	Train provisioning (a) provision of diesel at the refuelling point for locomotives at the Provisioning Facility; (b) provision of potable water and/or sand to the Customer upon their request at the Provisioning Facility; and (c) access to the Provisioning Facility to facilitate the Customer provisioning the locomotives at the times set out in the Provisioning Timetable.	

Part 3 - Charges

The following Charges will apply to this Agreement:

Item	Terminal Service	Charge description	Charge (excl GST)	Criteria
1.	Rail Terminal Access Service	Train Access Fee Length of train: <900m 900m-1200m 1200m-1500m >1500m	\$5,211.00 \$5,880.00 \$6,576.00 \$8,105.00	(i) Chargeable per train entry booking (permits up to 12 hours for a train and any of its consist to be within the Interstate Terminal and Moorebank marshalling area). Incurred when booking is accepted by MITCo. This element is non-refundable, even if the booking is later cancelled. (ii) 50% of the fee is payable again for each subsequent 12 hour period (or part period) that any part of a train remains, or is booked to remain, within the Moorebank precinct (providing train operator is on hand to

Item	Terminal Service	Charge description	Charge (excl GST)	Criteria
				shunt as required so as not to hinder or delay other Interstate operations or Interstate customers).
2.	Rail Terminal Loading and Unloading Service	Lift Fee	\$92.00	Per lift, where a lift is per TEU: (i) off an inbound rail wagon, (ii) into an outbound rail wagon (but waived only if the container move is coming directly off an inbound IST wagon), or (iii) retrieval from onsite storage.
3.	Truck / ITV Terminal Access Service	Vehicle Access Fee	\$15.00	Per entry by a Truck / ITV to the Interstate Terminal to collect or deliver an Interstate container.
4.	Storage	Storage Fee	Nil	During the Permitted Storage Period.
			\$50.00	24 - 72 hours after the Permitted Storage Period. Charged per TEU, and per 24 hour period or part thereof.
			\$200.00	> 72 hours after the Permitted Storage Period. Charged per TEU, and per 24 hour period or part thereof.
5.	N/A	Missed Train Slot Fee	\$5,000.00	Charged per train that fails to arrive at the Interstate Terminal within its arrival slot in accordance with the Booking Schedule (slot length determined by ARTC arrival window length)
6.	N/A	Missed Vehicle Fee	\$250.00	Charged per vehicle that arrives at the Interstate Terminal outside its VBS time slot
7.	Train provisioning	Oil/lube Fuel Sand	[insert]	[insert]

Part 4 - Terms and conditions

1. Definitions and interpretation

Capitalised terms used in this Agreement have the meaning given in Schedule 1.

2. Terminal Access Protocol

The Parties acknowledge and agree:

- (a) the terms of the Terminal Access Protocol are deemed to apply to this Agreement; and
 - (b) the Parties must comply with the terms of the Terminal Access Protocol.
-

3. Service Provider

The Parties acknowledge and agree:

- (a) MITCo has appointed the Service Provider to provide certain Terminal Services to the Customer as a subcontractor for MITCo;
 - (b) any reference to MITCo under this Agreement will be taken to include a reference to the Service Provider where acting as a subcontractor for MITCo;
 - (c) the Service Provider may exercise MITCo's rights and obligations under this Agreement in relation to the following:
 - (i) supplying any or all of the Terminal Services;
 - (ii) operating and maintaining all or any part of the Interstate Terminal;
 - (iii) issuing any notice or invoice and receiving payment of amounts payable by the Customer under this Agreement; and
 - (iv) communicating with the Customer in relation to the operation of the Interstate Terminal and the Terminal Services;
 - (d) MITCo will be responsible for the acts or omissions of the Service Provider in performing any obligation under this Agreement; and
 - (e) the Service Provider must comply with the directions of the Rail Infrastructure Manager.
-

4. Terminal Services and Charges

4.1 Terminal Services to be provided by MITCo

MITCo must use best endeavours to:

- (a) provide the relevant Terminal Services to the Customer for the entire Term pursuant to this Agreement;
- (b) perform the Terminal Services with due care and skill; and
- (c) ensure that MITCo's Personnel perform the Terminal Services in a safe manner and are properly qualified and trained.

4.2 Charges for incidental assistance or services required to obtain Terminal Services

Where MITCo requires the Customer to acquire assistance or services from MITCo which are reasonably necessary and incidental to obtaining access to a Terminal Services (for example, safety or site induction courses or assistance to configure IT systems interfaces), MITCo will offer such assistance or services at a reasonable cost to the Customer.

4.3 Conditions precedent

MITCo is not obliged to provide the access or Terminal Services under this Agreement until the Customer demonstrates to the satisfaction of MITCo:

- (a) that the Customer has all necessary accreditations;
- (b) that the Customer has the capability and resources to comply with all applicable Laws relating to work, health and safety; and
- (c) that the Customer holds all insurances as required by, and in compliance with, clause 14.

4.4 Charges and payment

- (a) The Customer must pay MITCo the Charges and all other amounts owing to MITCo pursuant to this Agreement.
- (b) MITCo will invoice the Customer for the Terminal Services after completion of each relevant Terminal Service.
- (c) The Customer must pay into the account notified by MITCo to the Customer the amount invoiced in full within the Payment Term without discount, deduction, counterclaim or set-off.
- (d) If the Customer has not paid an amount due under this Agreement within the Payment Term, the Customer must pay interest on the amount unpaid at the Agreed Rate. The interest payable under this clause 4.4(d) accrues from day to day from and including the due date for payment up to the actual date of payment and may be capitalised by MITCo at monthly intervals.
- (e) The Customer must pay all expenses and charges that are reasonably incurred by MITCo for its compliance with any Laws that are applicable to the Terminal Services or any order or requirement made under them or with the requirement of any market, harbour, dock, wharf, railway, shipping, customs, warehouse, port or any other relevant charges.
- (f) The Customer acknowledges and agrees that the charges in Part 1 and 3 of this Agreement (including the Shortfall Amount) are a realistic assessment of the loss and damage that MITCo will suffer as a result of a failure of the Customer to comply with their obligations under this Agreement and the Terminal Access Protocol.
- (g) Where charges under Part 3 of this Agreement differ from the prices published on MITCo's website, the Charges in this Agreement will apply.
- (h) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST and is pursuant to clause 17 of this Agreement.

4.5 Tiered Customer Pricing

- (a) Unless otherwise agreed by the parties, the Customer is entitled to Tiered Customer Pricing only in accordance with this clause 4.5.

- (b) A Tier 1 Customer is entitled only to receive Tier 1 Customer Pricing.
- (c) If the Customer is a Tier 2 Customer, it may at any time notify MITCo that it intends to receive Tier 3 Customer Pricing on and from the commencement of the following Contract Year.
- (d) If the Customer is a Tier 3 Customer, it may at any time notify MITCo that it intends to receive Tier 2 Customer Pricing on and from the commencement of the following Contract Year.
- (e) Subject to clause 4.5(f), where a Customer has notified MITCo in accordance with clause 4.5(c) or 4.5(d), on and from the commencement of the following Contract Year:
 - (i) the Customer will be entitled to Tier 2 Customer Pricing or Tier 3 Customer Pricing (as applicable); and
 - (ii) MITCo will apply the applicable Tiered Customer Pricing to the Charges when invoicing the Customer under clause 4.4(b).
- (f) If the Customer notifies MITCo under clause 4.5(c) that it intends to receive Tier 3 Customer Pricing:
 - (i) MITCo may request the Customer to provide substantiation of its capability to achieve the Tier 3 Customer Volume Threshold; and
 - (ii) if the Customer is unable to provide such substantiation to MITCo's reasonable satisfaction, the Customer will not be entitled to receive Tier 3 Customer Pricing.
- (g) The Tiered Customer Pricing applicable to the Customer will not change:
 - (i) in respect of the Contract Year in which the Customer notifies MITCo under clause 4.5(c) or 4.5(d); or
 - (ii) in respect of the following Contract Year, except to the extent provided in this clause 4.5.

4.6 Shortfall Amount

- (a) If the Customer is a Tier 3 Customer, within [30] Business Days after the end of each Contract Year, MITCo may determine (acting reasonably) whether the Customer achieved the Tier 3 Customer Volume Threshold during that Contract Year.
- (b) If MITCo determines under clause 4.6(a) that the Customer has not achieved the Tier 3 Customer Volume Threshold, MITCo will invoice the Customer for the Shortfall Amount.
- (c) The Customer must pay the Shortfall Amount within [10] Business Days after receiving an invoice under clause 4.6(b)4.6(b).

4.7 Review and variation of Charges

- (a) On 1 December of each year, the Charges will be adjusted for movements in CPI (**CPI Adjustment Date**), in accordance with the following formula:

$$A(\text{CPI Indexed}) = A \times \frac{\text{CPI}_q}{\text{CPI}_{\text{base}}}$$

Where:

A is the Charge applicable on the date that is immediately prior to the applicable CPI Adjustment Date;

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australian Bureau of Statistics (ABS), or as otherwise determined in accordance with (b);

CPI_{q-2} is the CPI published in June of the same year as the CPI Adjustment Date;

CPI_{Base} is the CPI published in June for the previous CPI Adjustment Date including any year prior to the commencement of this agreement

The "A(CPI Indexed)" Charge calculated in accordance with the formula above will replace the existing Charge (being the Charge applicable on the date immediately prior to the CPI Adjustment Date), except where A(CPI Indexed) is be lower than A, then A(CPI Indexed) remains the same as A.

- (b) If the CPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected by MITCo and any consequential amendments to this clause are to be made as MITCo considers necessary.

5. Rights and Obligations

5.1 MITCo's rights and obligations

- (a) If any identifying document or mark on a container is lost, damaged, destroyed or defaced, then MITCo may open any document, wrapping, package or container to inspect the container or its contents either to determine their nature or condition or to determine their ownership or destination.
- (b) MITCo may exercise a general and/or particular lien over, and a right of sale of, a container or its contents in respect of any amount owed by the Customer to MITCo and any amounts owed by any related entity of the Customer to MITCo.
- (c) Prior to exercising its rights under clause 5.1(b), MITCo will provide the Customer with 10 Business Days' notice in writing.
- (d) The lien referred to in clause 5.1(b) is in addition to any applicable statutory lien.
- (e) If in MITCo's reasonable opinion a container or its contents:
- (i) are or are liable to become Dangerous Goods;
 - (ii) do not comply with all applicable Laws; or
 - (iii) are unsuitable to be handled using the equipment and operating procedures at the Interstate Terminal (including as contemplated by the Terminal Operating Procedure),

MITCo may:

- (iv) refuse to provide the Terminal Services in respect of that container; or
- (v) take whatever measures it considers to be reasonably necessary (including opening the container, weighing and measuring the container or its contents, requiring the container to be repacked or reloaded and delaying or rescheduling their loading and carriage) at the Customer's

risk and expense in order to cause the container, its contents, the vehicle or Train by which the container will be transported or the driver of such vehicle or Train to comply with all applicable Laws and to otherwise be suitable for handling.

- (f) If in MITCo's reasonable opinion the weight of any container materially varies from the weight as declared on the documentation provided to MITCo by the Customer, MITCo may:
 - (i) refuse to provide the Terminal Services in respect of the container;
 - (ii) advise relevant regulatory authorities; and
 - (iii) require the Customer to take the necessary measures to rectify and re-declare the correct weight and amend the documentation at their risk and expense.
- (g) MITCo may (at its own cost) engage an independent third party to conduct an audit or review of the Customer's compliance with its obligations under this Agreement, including compliance with any applicable Laws. If the independent third party discovers a breach or non-compliance by the Customer of its obligations under this Agreement, the Customer must comply at its cost with any reasonable findings or recommendations of such audit or review in relation to the breach or non-compliance.
- (h) MITCo has no obligation to inspect a container and no inspection will increase MITCo's liability under this Agreement.
- (i) If the Customer does not utilise the 'take or pay' capacity listed in Item 5 of the Reference Schedule, or if the Customer provides a notice under clause 5.2(b), then MITCo may reallocate such capacity to other customers in accordance with the Capacity Allocation Protocol and without any cost to MITCo.
- (j) MITCo will be released from its obligations under this Agreement to the extent and for the duration that performance of this Agreement is delayed, hindered or prevented by a Force Majeure Event.
- (k) MITCo is not responsible for and has no liability in respect of any inaccuracy in the description provided by a Customer of a container or its contents.
- (l) MITCo warrants that it:
 - (i) will comply with all applicable Laws; and
 - (ii) to the extent that MITCo is required to load or unload a vehicle, it will use equipment that complies with all relevant safety standards and any Interstate Terminal staff involved in the loading or unloading have the requisite skill, competence, knowledge and experience and will be appropriately licenced, accredited and certified to load and unload the vehicles and/or trains.

5.2 Customer's rights and obligations

- (a) The Customer warrants that it:
 - (i) has a valid RIM Interface Agreement at all times during which it accesses Terminal Services and will comply with that RIM Interface Agreement;

- (ii) is, or is the authorised agent or bailee of, the person owning (or having an interest in) any Container being delivered to or collected from the Interstate Terminal by or on behalf of the Customer;
 - (iii) will provide MITCo with any information that MITCo reasonably requires for the efficient conduct of the provision of the Terminal Services, including any notice, forecast or other information specified in this Agreement or the Terminal Access Protocol, in a timely manner;
 - (iv) is and will remain compliant with all applicable Laws and has and will maintain all accreditations, licences and approvals as required by Law, and provide MITCo with all necessary assistance, information and documentation to enable MITCo to comply with such Laws;
 - (v) will comply with all lawful directions and orders given by the Rail Infrastructure Manager;
 - (vi) will ensure that the Customer's Personnel are aware of and comply with all applicable Laws and all reasonable lawful directions and orders given by MITCo in accordance with this Agreement or any person authorised by Law to give directions to the Customer, including the Rail Infrastructure Manager;
 - (vii) will comply at all times with MITCo's Policies and Procedures;
 - (viii) will comply at all times with the Terminal Access Protocol (including the Capacity Allocation Protocol and the Terminal Operating Procedure);
 - (ix) will provide reasonable assistance to MITCo in order to enable it to perform the Terminal Services (if required);
 - (x) to the extent that it is required to load or unload a vehicle or Train under this Agreement, will ensure that any equipment used complies with all relevant safety standards and any person involved in the loading or unloading will have the requisite skill, competence, knowledge and experience and will be appropriately licensed, accredited and certified;
 - (xi) will allow MITCo to obtain immediate access to any Commercial Document (as that term is defined in the Customs Act 1901 (Cth)) where MITCo is required to produce the Commercial Document at the request of a Government Agency;
 - (xii) ensure that no Dangerous Goods are transported into the Interstate Terminal except and to the extent (including on any applicable terms) approved in advance by the Service Provider;
 - (xiii) ensure all Containers are safely packed, secured and clearly identified and labelled;
 - (xiv) ensure the packaging, identification, labelling and handling of Containers, and any documentation and instructions pertaining to a Container or the handling of the Container, are accurate and comply with all applicable Laws, regulations and standards; and
 - (xv) any temperature controlled container will only be tendered in compliance with the Terminal Operating Procedure.
- (b) The Customer may relinquish a portion of the 'take or pay' capacity listed in Item 5 of the Reference Schedule by providing a notice to MITCo:

- (i) containing details of:
 - A. the portion of the 'take or pay' capacity to be relinquished; and
 - B. a specific time period over which such capacity is relinquished (if any) otherwise the relinquishment takes effect until the Expiry Date; and
- (ii) as soon as it becomes aware that it does not require the full 'take or pay' capacity, and in any event at least two Contract Months before the commencement of the relinquishment.

5.3 Customer forecasts

The Customer will provide MITCo with a forecast of the estimated volume of containerised freight, measured in TEU, that it expects to drop-off or pick-up from the Interstate Terminal for each calendar month at least 7 days prior to the first day of that month.

6. Receipt and Delivery of Containers

6.1 Receive and discharge

MITCo will, when providing the Terminal Services:

- (a) manage the bookings for the arrival of Trucks and ITVs to receive or deliver containers using the Vehicle Booking System (**VBS**) in accordance with Schedule 2 and any standard carrier terms and conditions published by MITCo from time to time; and
- (b) manage and schedule the loading and unloading of Trains in accordance with the track utilisation plan prepared by the Service Provider and managed in accordance with the Terminal Operating Procedure.

6.2 Short Term Storage

- (a) The Customer must remove, or procure the removal of, its containers from the Interstate Terminal within 48 hours of discharge of the container from a Train (or such lesser time as may be required by an Authority).
- (b) If the Customer fails to remove a container within the time specified in clause 6.2(a), MITCo will be entitled to:
 - (i) charge the Customer a short-term storage fee in respect of storage of the Container;
 - (ii) remove the Container to a storage facility; and
 - (iii) treat the Container as abandoned at the Customer's risk and expense, subject to providing notice as contemplated in clause 6.2(c).
- (c) The Customer must not in any circumstances abandon any container and MITCo will be entitled, on 28 days' notice to the Customer, to dispose of an abandoned container or its contents at the Customer's risk and expense (including any costs of storage of the abandoned container or its contents prior to disposal) in any manner MITCo deems reasonable and the Customer will not be entitled to any compensation in respect of the abandoned container or its contents and/or their disposal.

7. Rail Access

7.1 Cancellation of Train Movements

The Customer must notify MITCo in accordance with the Terminal Operating Procedure of any proposed temporary cancellation or modification of Train Movements.

7.2 Terminal Services for early and late Trains

- (a) Train Movements within the Interstate Terminal will be managed by MITCo in accordance with the track utilisation plan developed in accordance with the Terminal Operating Procedures.
- (b) If a Train arrives at the Interstate Terminal outside the window specified for that Train in the track utilisation plan (an **Untimely Train**):
 - (i) MITCo will use its best endeavours (excluding the payment of any money) to provide Terminal Services in respect of the Untimely Train;
 - (ii) if MITCo reasonably considers that the provision of such Terminal Services is likely have an adverse effect upon other Trains or Train Movements at the Interstate Terminal, the Terminal Services to be provided in respect of the Untimely Train will take a lower priority to other Trains and Train Movements; and
 - (iii) the Customer is liable to pay the Missed Train Slot Fee to MITCo.
- (c) If the Customer's Trains frequently arrive or depart outside the allocated window, MITCo may give the Customer a notice requiring the Customer to ensure that its Trains arrive and depart the Interstate Terminal in accordance with the track utilisation plan.
- (d) If MITCo gives the Customer a notice pursuant to clause 7.2(c), the Customer must prepare and submit to MITCo a plan for improvement of the on-time running of its Trains and use best endeavours to run Trains in accordance with the Terminal Operating Procedure.
- (e) The Customer acknowledges that, in addition to the Missed Train Slot Fee, MITCo may recover from the Customer all additional costs which MITCo reasonably incurs in connection with the provision of Terminal Services accommodating Untimely Trains in accordance with this clause 7.2.

7.3 Allocation and variation of rail capacity and road service capacity

- (a) Without limitation to clause 10, MITCo in its sole and absolute discretion may allocate, vary, prioritise and withdraw any rail capacity associated with Train Movements and any road service capacity used or required by the Customer in accordance with the terms of the Terminal Access Protocol.
- (b) All access rights granted under this Agreement, including any take or pay capacity (if listed in Item 5 of the Reference Schedule), scheduled windows for Train Movements and slots booked for Trucks are non-transferable. The Customer (and any carrier retained by the Customer) may not pool or attempt to transfer or re-sell such rights to other rail Service Providers or carriers.

7.4 Customer Booking Schedule

Within [10] Business Days of the Contract Date, or as otherwise agreed between the parties, the Customer must provide to MITCo a schedule of all proposed Customer Train Movements for the Term (**Booking Schedule**).

7.5 Booking Schedule Variation Request

- (a) The Customer may request a variation to the Booking Schedule at any time by written notice to MITCo (**Booking Schedule Variation Request**).
- (b) A Booking Schedule Variation Request must include the following particulars:
 - (i) specific information on which rail window bookings the Customer wishes to vary;
 - (ii) reasons for why the Booking Schedule Variation Request is required; and
 - (iii) any other matters reasonably requested by MITCo to make a decision regarding whether to approve or reject the Booking Schedule Variation Request.
- (c) Within [10] Business Days after receipt of a Booking Schedule Variation Request, MITCo may, acting reasonably:
 - (i) approve or reject the Booking Schedule Variation Request; and
 - (ii) notify the Customer of such decision.
- (d) If MITCo does not notify the Customer in accordance with clause 7.5(c), MITCo will be deemed to have rejected the Booking Schedule Variation Request.
- (e) If MITCo accepts the Booking Schedule Variation Request in accordance with clause 7.5(c):
 - (i) the Booking Schedule is amended to incorporate the Booking Schedule Variation Request; and
 - (ii) MITCo will notify the Customer of any consequential changes arising from the Booking Schedule Variation Request, including any changes to the Charges.

8. Performance management

- (a) MITCo will use best endeavours to comply with the KPIs.
- (b) The parties agree the KPIs are only indicators (and not precise measurements) of performance and many factors impact upon whether the KPIs are achieved.
- (c) Subject to MITCo complying with clause 8(a), in the event of any non-compliance with the KPIs by MITCo, such action will not:
 - (i) constitute a breach of this Agreement; or
 - (ii) otherwise give rise to a Claim by the Customer against MITCo.

9. Variation and cancellation of Terminal Services

9.1 Temporary variation or suspension

- (a) MITCo may vary its provision of the Terminal Services, including immediately suspending Terminal Services or any associated access to the Interstate Terminal by the Customer, where and to the extent reasonably required to:
- (i) mitigate the risk of any actual or potential:
 - A. Incident;
 - B. material damage to the Interstate Terminal, property or MITCo's infrastructure or equipment; or
 - C. injury to any persons;
 - (ii) otherwise to respond to any actual and material breach of this Agreement by the Customer; or
 - (iii) comply with a lawful direction or order given by the Rail Infrastructure Manager.
- (b) Any such variation under this clause 9.1 may continue at MITCo's discretion for so long as the risk specified in clause 9.1(a) continues.

9.2 Material Change

- (a) In the event a Material Change occurs, MITCo must notify the Customer within 10 Business Days of becoming aware of the Material Change.
- (b) Within 10 Business Days after receipt by the Customer of a notice referred to in paragraph (a), MITCo and the Customer must meet and negotiate in good faith with a view to addressing the effects of the Material Change, including:
- (i) any variation to the Terminal Services or access rights or the terms of this Agreement that may be required to address the effects of the Material Change;
 - (ii) the date on which any variation referred to in paragraph (i) will commence; and
 - (iii) the duration of any variation of the type referred to in paragraph (i).
- (c) If following negotiations in accordance with paragraph (b):
- (i) the Parties agree on any variation of the type referred to in paragraph (b)(i) and agree on the terms of that variation including as to the matters referred to in paragraphs (b)(ii) and (iii), the access rights and this Agreement will be varied in accordance with the variation as agreed in writing between the Parties; or
 - (ii) if the Parties are unable to agree on the terms of the variation within 20 Business Days of the negotiation referred to in paragraph (b), either Party may give a Dispute Notice to the other and the Dispute will be dealt with under clause 15 of the Terminal Access Protocol.

10. Repairs and maintenance

- (a) Where maintenance or repairs are required at the Interstate Terminal 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 debt due and payable by the Customer to MITCo.
- (b) 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) as a result.
- (c) The Customer acknowledges that expansion works to the Interstate Terminal and its rail access may occur during the Term and this may give rise to service and access interruptions. MITCo will give the Customer reasonable notice of the anticipated periods of service and access interruption and any period of interruption will be accommodated in any take or pay calculations.

11. Security Deposit

11.1 Security Deposit

- (a) MITCo may require the Customer to provide the Security Deposit to MITCo. If so, the Customer must provide that Security Deposit within 10 Business Days of being notified by MITCo of the requirement to do so. MITCo must not discriminate between any Customers in exercising this right but may require the Security Deposit if a Customer has been late in payment of any amount due under this agreement on 2 occasions.
- (b) If a Security Deposit is required, the Customer must deliver to MITCo security in the amount of the Security Deposit for the performance of the Customer's obligations under this Agreement in the form of:
 - (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
 - (ii) any other security reasonably acceptable to MITCo, containing terms and conditions reasonably acceptable to MITCo.
- (c) If, at any time during the Term, the Security Deposit held by MITCo is less than the amount specified in the definition of Security Deposit (including as a result of an exercise under clause 11.2), the Customer must increase the Security Deposit by the amount determined by MITCo to ensure that the amount of the Security Deposit accords with the amount specified in the definition of Security Deposit and deliver to MITCo a new or replacement Security Deposit to reflect the change within 10 Business Days after receipt of notice to do so from MITCo.
- (d) The provision and continuance of the Security Deposit (or of any new or replacement Security Deposit provided by the Customer in accordance with this clause 11.1) is a condition of the performance by MITCo of its obligations under this Agreement and of the right of the Customer to access Terminal Services.
- (e) At the end of the Term, MITCo will (where applicable) return the balance of the Security Deposit to the Customer.

11.2 Exercise of Security Deposit

Notwithstanding any other rights MITCo has under the Agreement, and without prejudice to them, if the Customer is in financial default, MITCo may, within 10 days of becoming aware of the Customer's financial default (but only in respect of undisputed Charges unpaid), give notice to the Customer of such financial default and if the financial default is not rectified within 30 days from the date of the notice, MITCo may, in addition to any other right it has under this Agreement and without notice to the Customer, apply the whole or any part of the Security Deposit toward making good any loss sustained by MITCo as a result of the financial default.

12. Customer complaints and dispute resolution

12.1 Customer complaints

- (a) Customers may submit a complaint in relation to MITCo's operation of the Interstate Terminal under the Terminal Access Protocol.
- (b) If a complaint is submitted under clause 12.1(a), the complaint will be dealt with in accordance with the Complaints Handling System contained in the Terminal Access Protocol.

12.2 Dispute resolution

If a dispute arises between MITCo and the Customer in connection with this Agreement (**Dispute**), MITCo and the Customer will comply with the dispute resolution mechanism contained in clause 15 of the Terminal Access Protocol.

13. Liability

13.1 General

- (a) To the extent permitted by Law and except as expressly set out in this Agreement, MITCo makes no, and expressly excludes all, warranties and representations with respect to the Terminal Services.
- (b) Where the Customer has the benefit of a warranty or condition regarding the Terminal Services provided under this Agreement which cannot by Law be excluded, MITCo's liability for breach of any such warranty or condition is limited to, at MITCo's sole option, the re-supply of the Terminal Services or the payment of the costs of having those Terminal Services supplied again.
- (c) Each representation and warranty in this Agreement is to be construed independently of each other representation and warranty in, and each other provision of, this Agreement.

13.2 MITCo's liability

- (a) Except to the extent caused or contributed to by a negligent act or omission of MITCo or breach of this Agreement, MITCo will not be liable in tort, contract, bailment or otherwise to the Customer for anything arising out of or relating to any:
 - (i) breach of this Agreement or negligence by the Customer or its Associates;
 - (ii) acts or omissions on the part of any third party (including the Rail Infrastructure Manager);
 - (iii) any Incident, including (without limitation) any spill of a Contaminant;

- (iv) damage to any Rolling Stock (including any locomotive or wagon), Truck or other equipment or vehicle; and
 - (v) damage to any container or its contents.
- (b) MITCo's liability under this Agreement and at Law will be limited in all cases and howsoever arising to loss and damage resulting directly from and only to the extent caused or contributed to by MITCo's negligence or default in accordance with the following limits;
- (i) for any loss or damage to a container, up to a maximum of \$5,000 for any one event or series of related events;
 - (ii) for any loss or damage to any contents of a container, up to a maximum of \$100,000 for any one event or series of related events;
 - (iii) for any loss or damage to transport equipment (including prime movers and trailing equipment), up to a maximum of \$150,00 for any one event or series of related events;
 - (iv) for any loss or damage to Rolling Stock, up to a maximum of \$5 million for any one event or series of related events; and
 - (v) for any other loss or damage, up to a maximum of \$100,000 for any one event or series of related events.
- (c) Subject to this clause 13, the Customer may only make a Claim against MITCo:
- (i) in respect of any loss or damage to Rolling Stock – if the Claim exceeds \$20,000 for any one event or series of events; and
 - (ii) in all other cases – if the Claim exceeds \$500 for any one event or series of related events.

13.3 Release of MITCo

- (a) Without limitation to clause 13.2, the Customer agrees:
- (i) to access the Interstate Terminal, and use the Terminal Services, at its own risk; and
 - (ii) MITCo is not liable to the Customer for any damage:
 - A. to any property of the Customer; or
 - B. to any other property of any description in the possession of the Customer or any third party, and releases MITCo from any such Claims, except to the extent that such Claims arise directly from any negligent act or omission of MITCo or breach by it of this Agreement.
- (b) Without limitation, this clause 13.3 applies to any Claims which arise from actions of other customers or users of the Interstate Terminal.

13.4 Notification of Claim

- (a) MITCo will not be liable for any Claim by the Customer unless notice of the Claim is given to MITCo within 30 days of the Incident giving rise to the Claim.

- (b) Unless otherwise agreed, and subject to paragraph (a), MITCo will be discharged from all Liability for a Claim unless proceedings are commenced within one year of the date that notice of that Claim is given to MITCo.

13.5 Customer Indemnities

The Customer must indemnify and keep indemnified MITCo and its Associates against all losses and costs that any of them may sustain or incur as a result, directly or indirectly, of:

- (a) any breach of this Agreement by the Customer or its Associates;
- (b) any fraud or negligence of any employee, agent or subcontractor of the Customer in relation to this Agreement;
- (c) any breach of the Terminal Access Protocol (including the Capacity Allocation Protocol and the Terminal Operating Procedure); and
- (d) any Third Party Claim, except and to the extent that it directly results from a negligent act or omission of MITCo or breach by it of this Agreement.

13.6 Exclusion of consequential loss

Despite any other provision of this Agreement, neither Party will be liable to the other for any Consequential Loss.

14. Insurance

14.1 Insurances required

During the Term, the Customer must effect and maintain with a reputable insurance company the following insurances which are required to note the interests of MITCo on each policy:

- (a) public liability insurance to the amount of \$20,000,000.00;
- (b) insurance for an amount not less than \$20,000,000.00 in respect of:
 - (i) damage to real property and personal property; and
 - (ii) injury to or death of any person.

14.2 Disclosure of policies

The Customer must provide MITCo with a copy of a certificate of currency of the insurances required by clause 14.1 of this Agreement as reasonably requested by MITCo from time to time.

15. Force Majeure

15.1 Suspension of rights and obligations

- (a) If a Party is unable to perform an obligation (other than an obligation to pay money) under this Agreement by reason of a Force Majeure Event, that obligation is suspended for the minimum extent and duration of the Force Majeure Event provided that:
 - (i) the Party gives the other Party prompt notice of and reasonable details of the Force Majeure Event and an estimate of the extent and duration of its inability to perform; and

- (ii) the Party takes all reasonable steps to avoid or limit the effects of the events or circumstances giving rise to the Force Majeure Event.

15.2 Consequences

- (a) If a Force Majeure Event continues more than one month after the notice given under clause 15.1, the Parties must meet to discuss in good faith a mutually satisfactory resolution to the problem.
- (b) If a Force Majeure Event continues for more than three months after the notice given under clause 15.1 and the Parties have not agreed on a mutually satisfactory resolution to the problem, MITCo may terminate this Agreement by giving the Customer 14 Business Days' written notice and this Agreement will terminate on expiry of that 14 Business Day notice period.

15.3 No release or discharge

No Force Majeure Event will release or discharge:

- (a) the Party affected by it from the obligation to perform the obligation which is so affected if the obligation still exists after the Force Majeure Event has occurred; or
- (b) any Party from any obligation to pay any sum of money pursuant to any obligation under this Agreement.

16. Default and Termination

16.1 Events of default

The Customer will be in default of this Agreement if the Customer:

- (a) fails to pay any amount payable to MITCo under this Agreement within 10 Business Days' of the due date for payment;
- (b) within 10 Business Days after receipt of notice from MITCo under clause 11.1(c), fails to ensure the Security Deposit (if any) held by MITCo is not less than the amount required to be held under clause 11 of this Agreement;
- (c) fails to comply with any material obligation under this Agreement, and does not make good that default within 10 Business Days after receipt of written notice from MITCo;
- (d) goes into liquidation or provisional liquidation or an application is made for it to be wound up; or
- (e) is insolvent under the Corporations Act 2001 (Cth) or stops payment of any of its debts.

16.2 Suspension

If the Customer is in default under clause 16.1, MITCo may suspend:

- (a) the provision of Terminal Services; and
- (b) the Customer's right to access the Interstate Terminal,

until the date on which the Customer resolves the default, or reimburses MITCo under clause 16.3(b).

16.3 Remedies

If any of the events contained in clause 16.1 occurs, subject to any applicable Law, in addition to any other rights it has under this Agreement, MITCo may do any one or more of the following:

- (a) terminate this Agreement; or
- (b) do anything which is the liability or obligation of the Customer under this Agreement, but which liability or obligation the Customer had failed to discharge or undertake on time, and the Customer must reimburse MITCo on demand any reasonable costs incurred by MITCo in doing so.

16.4 Termination

This Agreement terminates on the earlier of:

- (a) the Expiry Date; or
- (b) the date that MITCo terminates this Agreement in accordance with the terms in this Agreement.

16.5 All rights preserved

Termination of this Agreement will be without prejudice to the accrued rights and obligations of MITCo under this Agreement including:

- (a) the right of MITCo to be paid all amounts that are outstanding under this Agreement;
- (b) the right of MITCo to be paid the Charges in respect of Terminal Services up to and including the date of termination; and
- (c) the obligations of confidentiality under clause 19.12.

17. GST

17.1 GST

- (a) If a Party is required under this Agreement to reimburse or pay to another Party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that Party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that Party (or an entity on whose behalf the Party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (b) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this Agreement, the Parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this Agreement other than under this clause 17.1 (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the Party providing consideration for that supply (**Recipient**) equal to the amount of GST payable by the Supplier on that supply;

- (iii) except to the extent that clause 17.1(b)(ii) is applicable, the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Recipient in respect of that supply, no later than that time; and
- (iv) where additional amounts are payable between Parties to this Agreement pursuant to clause 17.1(b)(ii), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each Party shall be obliged only to give the other the tax invoice referred to in clause 17.1(b)(ii).
- (c) To the extent, if any, that any consideration (or part of any consideration) is specified in this Agreement to be inclusive of GST, that consideration (or the relevant part) shall be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 17.1(b)(ii).
- (d) If the Supplier determines on reasonable grounds, is advised by the Commissioner of Taxation or otherwise becomes aware that the GST payable on a supply is different from the additional amount paid by the Recipient to the Supplier in accordance with clause 17.1(b)(ii) in relation to that supply (if any) and as a result:
 - (i) the Supplier is required to pay an amount (or further amount) of GST in relation to that supply, the Recipient must pay the Supplier within 7 days after demand that amount or further amount; or
 - (ii) the Supplier receives or becomes entitled to receive a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply, the Supplier must refund or credit the Recipient with a corresponding amount.
- (e) For the purpose of calculating further variations under this clause 17.1, any additional amount referred to in clause 17.1 is taken to be altered by the amount of any earlier variation made under this Agreement (if applicable).
- (f) If any adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.
- (g) This clause 17.1 survives the completion, rescission or termination of this Agreement.
- (h) Any reference in this clause to GST payable by a Party includes any GST payable by the representative member of any GST group of which that Party is a member. Any reference in this clause to input tax credits to which a Party is entitled will include input tax credits to which the representative member of any GST group of which that Party is a member is entitled.
- (i) If the GST Act treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purposes of this clause.

18. General Conditions

18.1 General conditions

- (a) The access rights granted to the Customer as part of the Terminal Services supplied under this Agreement are non-exclusive contractual rights of access.

- (b) This Agreement and the Terminal Services:
- (i) do not confer on the Customer any rights of access to any part of the Interstate Terminal or any other land other and strictly to the extent necessary for MITCo to provide the Terminal Services to the Customer under this Agreement;
 - (ii) do not give rise to a relationship of landlord and tenant between the Customer and MITCo and nothing done pursuant to this Agreement shall give rise to any such relationship; and
 - (iii) do not give the Customer any exclusive rights to be provided with any Terminal Services offered under this Agreement.
- (c) MITCo may grant other rights, entitlements and Terminal Services to other customers including rights, entitlements and Terminal Services similar to those set out in this Agreement.

19. Miscellaneous

19.1 No variation

This Agreement may only be amended, varied, supplemented or replaced by another written document signed by the Parties.

19.2 Counterparts

This Agreement may be signed in any number of counterparts and exchanged via email PDF with the same effect as if the separate signatures or executions were on the same Agreement.

19.3 Further assurance

Each Party agrees, at its own cost and expense, upon the request of the other Parties, to do and execute or cause to be made done or executed all such acts, instruments, assurances and writings as may be reasonably necessary or desirable to perfect or give effect to the provisions of this Agreement and to use all best endeavours to cause third parties to do likewise.

19.4 Severability

If any provision of this Agreement is determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of this Agreement shall not be affected and the remainder of this Agreement shall continue in full force and effect.

19.5 No merger

None of the provisions of this Agreement will merge in or upon the execution of this or any other agreement, document, act, matter or thing and will continue to remain in full force and effect for so long as is necessary to give effect to the provisions of this Agreement.

19.6 Assignment of rights

The Customer must not assign its rights under this Agreement without the prior written consent of MITCo.

19.7 Entire agreement

What is expressed in this Agreement is the entire agreement between the Parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the Parties including any letter of intent or proposal.

19.8 Governing Law

This Agreement is governed by the Laws in force in New South Wales and each Party submits to the exclusive jurisdiction of the courts of New South Wales and all courts competent to hear appeals from the courts of New South Wales in respect of all proceedings arising in connection with this Agreement.

19.9 Costs

Each Party will bear its own costs and out of pocket expenses (including legal costs) incurred in relation to the negotiation and execution of this Agreement.

19.10 Legal relationship

Nothing contained in this Agreement shall be construed so as to constitute any Party to this Agreement a partner, agent or representative of the other or others or to create any trust or partnership with any person or company or commercial entity for any purpose whatsoever.

19.11 Consents and approvals

Where anything depends on the consent or approval of a Party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that Party.

19.12 Confidential information

Each Party must keep confidential all Confidential Information of the other Party and may only disclose such Confidential Information if allowed under the Disclosure of Confidentiality Rules.

Schedule 1 - Dictionary

1. Definitions and Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

Agreed Rate means 3% above the Reserve Bank of Australia's "Cash Rate Target" at the time the outstanding amount is to be paid.

Agreement means this agreement, inclusive of all schedules and annexures and subject to such modifications as may be agreed in writing by the Parties in accordance with clause 19.1.

Associate means a Party's employees, officers, servants, agents and subcontractors and in the case of the Customer also includes any person who has an interest in the Goods and their employees, officers, servants, agents and subcontractors.

Authority means:

- (a) a government or government department, statutory authority or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who has responsibility and authority in relation to the management of the Interstate Terminal or the administration of a Law.

Booking Schedule has the meaning given in clause 7.4.

Booking Schedule Variation Request has the meaning given in clause 7.5(a).

Business Day means a day (that is not a Saturday, Sunday, public holiday or bank holiday) in New South Wales.

Capacity Allocation Protocol means Annexure 3 of the Terminal Access Protocol.

Carrier Tariff Schedule means the document of that name as published on MITCo's website from time to time.

Charges means the fees or charges payable by the Customer to MITCo for the provision of Terminal Services and including any Shortfall Amount.

Claim means a demand, claim, action or proceeding made or brought by or against a party, however arising and whether present, unascertained, immediate, future or contingent.

Commencement Date has the meaning given in Item 3 of the Reference Schedule.

Confidential Information means the following information in any form:

- (a) the negotiations leading up to, and the terms and conditions contained in, this Agreement (which is confidential information of each Party); and
- (b) information of a confidential nature, or which the Disclosing Party makes the Receiving Party aware that it is considered by the Disclosing Party to be confidential which is communicated by or on behalf of the Disclosing Party to the Receiving Party, before or after the Contract Date including information relating to the financial or trading position of the Disclosing Party and practices, techniques,

processes, trade secrets and know-how relating to the operation of the Interstate Terminal, Truck or Train.

Consequential Loss means any liability or claim suffered or incurred by any person (including under an indemnity) whether arising in contract, tort, under statute or on any other basis in law or equity for:

- (a) loss of profit;
- (b) loss or revenue;
- (c) loss of production;
- (d) loss of goodwill;
- (e) loss or business opportunity; or
- (f) without limiting (a) to (e), losses other than those losses that may fairly and reasonably be considered as naturally flowing from the breach of the Agreement as the probable result of the breach of the Agreement.

Contaminant means a Dangerous Good or noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing material harm to the environment.

Contract Date means the date of this Agreement.

Contract Year means each 12 month period during the Term, with the first 12 month period commencing on the Commencement Date.

Commercial Document is defined in the Customs Act 1901 (Cth).

Customer means the Party named in Item 2 of the Reference Schedule.

Customer Equipment means any equipment or software supplied by or for the Customer to MITCo to enable MITCo to supply the Terminal Services.

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 means dangerous cargo or Goods as defined in the Australian Dangerous Goods Code and any goods that may injure or harm people, property or the environment including but not limited to goods that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive.

Disclosing Party means a Party disclosing Confidential Information to the Receiving Party.

Disclosure of Confidentiality Rules means:

- (a) in respect of MITCo – in accordance with confidentiality obligations set out in the Terminal Access Protocol, from time to time; and
- (b) in respect of any other Party – that Party may disclose Confidential Information:
 - (i) if it is disclosed with the consent of MITCo (which consent is not be unreasonably withheld);
 - (ii) if allowed or required by Law;
 - (iii) in connection with legal proceedings relating to this Agreement;

- (iv) if the information is generally or publicly available;
- (v) to any legal or financial advisor to enable them to advise in connection with this Agreement (including its administration and enforcement); or
- (vi) to any financier or other capital provider for the purpose of procuring capital in connection with the Interstate Terminal.

Dispute has the meaning given to that term in clause 12.2.

Dispute Notice has the meaning given to that term in the Terminal Access Protocol.

Environmental Hazard means a state of danger to human beings or the environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Expiry Date means the date specified in Item 4 of the Reference Schedule.

Force Majeure Event means circumstances where MITCo is delayed or unable, wholly or in part, to deliver any of the Terminal Services, or perform any obligation under this Agreement, due to any circumstances beyond its reasonable control including (without limitation): acts of God, severe weather events, fire, war, sabotage or terrorism, accident, explosion, embargo, epidemic or quarantine, labour dispute, civil commotion, port blockade or closure, restrictions imposed by an Authority.

Goods means:

- (a) the goods in relation to which MITCo agrees to supply the Terminal Services;
- (b) any packaging, pallets or containers for those goods supplied by or for the Customer;
- (c) any merchandise or other property, whether or not in a container, in respect of which MITCo provides the Terminal Services for the Customer; and
- (d) any other products or items that are supplied by the Customer to MITCo.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST has the meaning given to that term in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

Incident means a break down, accident or emergency at the Interstate Terminal or en route to or from the Interstate Terminal which involves MITCo and/or the Customer and which causes or may reasonably be expected to pose a danger of causing any one or more of the following:

- (a) material damage to or interference with the Interstate Terminal;
- (b) material damage to infrastructure or equipment used in providing the Terminal Services;
- (c) material damage to property at the Interstate Terminal;
- (d) material personal injury to any person for which MITCo is responsible;

- (e) an Environmental Hazard that may affect the Interstate Terminal, MITCo or any person for which MITCo is responsible; and
- (f) an incident which requires notification under any Law including any rail safety Laws or environmental Laws that may affect the Interstate Terminal, MITCo or any person for which MITCo is responsible.

Interstate Terminal means the Moorebank Interstate container freight terminal and the relevant rail access infrastructure to the Sydney Southern Freight Line.

ITV means an internal transfer vehicle used to transport a container to or from the Interstate Terminal by road.

KPIs means the key performance indicators set out in Schedule 3

Law means:

- (a) the common law and equity;
- (b) all present and future Acts of the Parliaments of the Commonwealth, States or Territories; and
- (c) all enforceable regulations, subsidiary legislation, codes, ordinances, local laws, by-laws, orders, judgements, licences, rules, permits, agreements and enforceable requirements of any Authority.

Lift Fee has the meaning given in Item 2 of Part 3 of this Agreement.

Material Change means any change to the Law, or a policy or direction from a Government Agency, outside the control of MITCo, provided that the event, taken alone or as a group with other events, materially and substantially affects either the rights or obligations of MITCo or the Customer under this Agreement or the cost to MITCo of performing its obligations under this Agreement.

MITCo means the Party named in Item 1 of the Reference Schedule.

Party means a party to this Agreement and includes that party's successors, legal, personal representatives, and permitted assigns, novates and **Parties** shall have a corresponding meaning.

Payment Term means 30 days following the date of the relevant invoice provided by MITCo to the Customer or as otherwise agreed between MITCo and the Customer.

Personnel means, in relation to a Party, its officers, employees, servants or agents, contractors or sub-contractors.

Permitted Storage Period for containers means:

- (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).

Policies and Procedures means the management plan, safety regulations and any other of MITCo's rules and policies applicable at the Interstate Terminal, or as otherwise instigated by MITCo and which relate to the Terminal Services.

Provisioning Facility means the locomotive provisioning facility located within the marshalling yard.

Provisioning Timetable means the timetable as agreed from time to time between MITCo, the Customer and the Service Provider .

Rail Infrastructure Manager means the person appointed by MITCo from time to time as the "rail infrastructure manager", as that term is defined in the Rail Safety National Law, in respect of the Interstate Terminal.

Rail Safety National Law means the *Rail Safety National Law (NSW) Act 2012* and equivalent legislation in other Australian States and Territories.

Rail Terminal Access Service means terminal access services provided by MITCo to the Customer described in Item 1 of Part 2 of this Agreement.

Rail Terminal Loading and Unloading Service means loading and unloading service provided by MITCo to the Customer described in Item 2 of Part 2 of this Agreement.

Receiving Party means the Party receiving the Confidential Information.

Recipient has the meaning given to that term in clause 17.1(b)(ii).

Regularly Booked Schedule means at least 1 Train Movement per week scheduled for the same window each week during the Term.

RIM Interface Agreement means an agreement between the Customer and the Rail Infrastructure Manager.

Rolling Stock means any vehicle that operates on or uses a railway track including a locomotive, light inspection vehicle, road/rail vehicle, trolley, carriage, diesel multiple unit and wagon (but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track).

Security Deposit means the amount reasonably determined by MITCo and described in Item 6 of Part 1 of this Agreement.

Service Provider means the subcontractor appointed by MITCo to provide some or all of the Terminal Services.

Shortfall Amount has the meaning given to that term Item 5 of Part 1 of this Agreement.

Supplier has the meaning given to that term in clause 17.1(b).

Taxes means, other than GST, all taxes, fees, levies, duties and charges imposed or assessed in respect of this Agreement by any Authority including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty.

Term means the period commencing on and after the Commencement Date and ending on the Expiry Date and, if applicable, includes any further period agreed by the Parties.

Terminal Access Protocol means the document (including the Terminal Operating Procedure and the Capacity Allocation Protocol and any other schedules and attachments) published on the Service Provider's website and titled Moorebank Interstate Terminal Access Protocol, as amended from time to time.

Terminal Operating Procedure means the document forming part of the Terminal Access Protocol and published on MITCo's website and titled Terminal Operating Procedure as amended from time to time.

Terminal Services means the services provided by MITCo to the Customer described in Part 2 of this Agreement.

TEU means a Twenty Foot Equivalent Unit where a TEU equals a 6.1 metre container.

Third Party Claim means any claim by any third person for a loss to any person or property, or economic loss arising out of or relating to any or all of the Goods, the Customer Equipment, the Terminal Services, any delay or failure in supplying the Terminal Services, or this Agreement.

Tier 1 Customer means a Customer that is not a Tier 2 Customer or Tier 3 Customer.

Tier 1 Customer Pricing means no discount on the Lift Fee.

Tier 2 Customer means a Customer that:

- (a) has a Regularly Booked Schedule; and
- (b) is not a Tier 3 Customer.

Tier 2 Customer Pricing means a 5% discount on the Lift Fee.

Tier 3 Customer means a Customer which has:

- (a) notified MITCo that it intends to receive Tier 3 Customer Pricing in accordance with clause 4.5(c); and
- (b) where requested by MITCo in accordance with clause 4.5(f), provided substantiation to MITCo's reasonable satisfaction of its capability to achieve the Tier 3 Customer Volume Threshold.

Tier 3 Customer Pricing means a 24% discount on the Lift Fee.

Tier 3 Customer Volume Threshold means a volume throughput of 30,000 TEUs in respect of the Rail Terminal Loading and Unloading Services during the relevant Contract Year.

Tiered Customer Pricing means:

- (a) Tier 1 Customer Pricing;
 - (b) Tier 2 Customer Pricing; or
 - (c) Tier 3 Customer Pricing,
- (as applicable).

Train means several units of Rolling Stock coupled together to operate as a single unit and complying with the Terminal Operating Procedure.

Train Movements mean the operation of a Train on the rail track at a time scheduled in the timetable for the predominant purposes of conveying freight and includes the empty movement of such a Train.

Truck means a vehicle used to transport a container to or from the Interstate Terminal by road.

Truck Identification Number means the unique identifier of a Truck as registered with MITCo or displayed on the registered number plates of that Truck.

Untimely Train has the meaning given to that term in clause 7.2(b).

Vehicle Booking System or **VBS** means a vehicle booking system in use in respect of the Interstate Terminal.

1.2 Interpretation

In this Agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
 - (vi) this Agreement includes all schedules and attachments to it;
 - (vii) a Law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation under it;

- (ix) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
- (x) a monetary amount is in Australian dollars and all amounts payable under or in connection with this Agreement are payable in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- (i) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (j) in determining the time of day where relevant to this Agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located;
- (k) a day is the period of time commencing at midnight and ending immediately before the next midnight is to occur; and
- (l) if a period of time is calculated from a particular day, act or event (such as the giving of a notice), unless otherwise stated in this Agreement it is to be calculated exclusive of that day, or the day of that act or event.

Schedule 2 - Vehicle Booking Service

1. Background

- (a) MITCo will publish, from time to time, standard carrier terms and conditions (**Carrier Access Terms**) that will govern access by transport carriers (**Carriers**) to the Interstate Terminal.
 - (b) Without limitation to the Carrier Access Terms, this Schedule sets out the terms and conditions on which MITCo will manage access by Carriers to the Interstate Terminal through the use of the VBS.
 - (c) The Customer must procure that any Carrier retained by the Customer complies with the Carrier Access Terms and the terms of this Schedule.
-

2. VBS

2.1 VBS registration

- (a) Carriers must be registered with MITCo in order to access and use the VBS.
- (b) By registering with MITCo, the Carrier warrants that it is a 'bona fide' Carrier.
- (c) In order to register as a VBS user, the Carrier must complete and submit a registration form to MITCo and must pay to MITCo a joining fee and an annual registration fee (which is charged on 1 July each year).
- (d) Upon registration being accepted by MITCo, the Carrier will be issued with a carrier access code which must be used for the purpose of accessing and using the VBS. The Carrier must protect its Carrier Access Code and must ensure that it is only used by authorised personnel.
- (e) The Carrier must ensure that it and its Associates maintain and use no more than one Carrier Access Code to make bookings through the VBS. The Carrier must not use a Carrier Access Code issued to any other Carrier.

2.2 Booking slots

- (a) The Carrier may use the VBS to make a booking. The Carrier must book a slot for every container that it wishes to collect from or deliver to the Interstate Terminal.
- (b) Each booking will constitute a separate and binding agreement between the Carrier and MITCo that commences when the booking is made and expires upon the completion by each Party of its respective obligations under the Carrier Access Terms.
- (c) Additional slots may be advertised from time to time on the VBS, in which case the relevant carriers will be notified by MITCo. Such slots will be available on a first come, first served basis.
- (d) Except as otherwise provided in this Agreement or Carrier Access Terms, slots are non-transferrable. The carrier may not pool slots or attempt to re-sell slots to other carriers.
- (e) The carrier may also use the VBS to view, edit or list existing Bookings and to apply for bulk runs.

- (f) The carrier must comply with all timing and other requirements relating to a booking as confirmed during the booking process. Access to the Interstate Terminal prior to or after the relevant window will be at the discretion of MITCo (subject to any relevant regulatory requirements). A “no show” fee may also be applicable in certain circumstances.

2.3 Information requirements

The carrier must provide all information specified in the VBS by no later than ten minutes before the Truck arrives at the Interstate Terminal. Such information may include, without limitation:

- (a) with respect to the Truck and driver, the Truck Identification Number and the identity of the driver of the Truck in respect of the booking at the Interstate Terminal (including MSIC details); and
- (b) with respect to the relevant container, details about the relevant Train, the container number, the container dimensions / specifications, door direction, the commodity group (including, where relevant, hazardous class), whether the container is full or empty, the PRA / EIDO (as applicable) and the verified gross mass of the container, together with any other information required to be provided in accordance with SOLAS Requirements or any other legal or regulatory requirements.

2.4 VBS fees

- (a) In consideration of allowing the carrier to use the VBS and/or access the Interstate Terminal in accordance with this Agreement, the carrier must pay to MITCo the relevant fees specified in the Carrier Tariff Schedule.
- (b) The Carrier Tariff Schedule may be varied from time to time by MITCo, on 30-days' notice to Carriers, and otherwise in accordance with the Carrier Access Terms.
- (c) The Carrier will not be able to manifest a container on the VBS if the container is subject to unpaid fees or charges, including storage fees. In such circumstances, if the carrier wishes to proceed to manifest the Container in question, the carrier will be required to pay such fees or charges to MITCo.
- (d) MITCo will charge a standard set of VBS fees to all carriers being provided like for like services in accordance with this Clause 2.4.

Schedule 3 - KPIs

Safety	Safety	Lost Time Injury Frequency Rate (LTIFR) based on Service Provider's safety performance, which is the number of new lost time injuries divided by the total hours worked multiplied by 1,000,000 (first calculated after 1 million hours).	<8	
Productivity	Train ready for departure	Percentage of trains that are ready to depart within their scheduled departure time as set by the ARTC plus or minus 30 minutes (will be consistent with the ARTC presentation time window at the South Sydney Freight Line). The KPI excludes: <ul style="list-style-type: none"> all shunt delays or linehaul delays outside of terminal control or influence trains that arrive outside of their scheduled arrival time scheduled times that do not leave a reasonable time period for the scale of unload/load envisaged by the customer; and faulty customer equipment that directly delays the provision of terminal service. 	80%	
	Truck turnaround time	Percentage of trucks spending 40 minutes or less at the Interstate Terminal picking up or delivering freight, measured from the time the truck enters the Interstate Terminal gate to the time when the truck departs the Interstate Terminal through the Interstate Terminal gate. This KPI excludes trucks that do not arrive at the Interstate Terminal within 10 minutes of their scheduled time in the VBS.	80%	
	ITV turnaround time (for precinct warehouse access)	Percentage of ITVs spending 40 minutes or less from their scheduled time at the Interstate Terminal picking up or delivering freight, measured from the time the ITV enters the Interstate Terminal to the time when the ITV departs the Interstate Terminal through the Interstate Terminal gate. This KPI excludes ITVs that do not arrive at the Interstate Terminal within 10 minutes of their scheduled time in the VBS.	80%	
	Transaction times per inbound container	Percentage of containers processed (gated in) within 24 hours of the train handover to the terminal for load/offload.	100%	
	Load to train load plan		Percentage of containers loaded in accordance with the customer's load plan. The KPI excludes containers not received in accordance with the vehicle booking system schedule or containers incorrectly designated.	80%
			Percentage of containers left behind, despite being delivered to the terminal in accordance with the VBS schedule.	5%

Executed as an agreement.

Executed by Moorebank Interstate Terminals Pty Ltd in its capacity as trustee of the Moorebank Interstate Terminals Trust ACN 672 633 279 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of director

Full name of above signatory

Signature of company secretary/director

Full name of above signatory

Executed by [the Customer] ACN [] in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of director

Full name of above signatory

Signature of company secretary/director

Full name of above signatory