

Standard Customer Agreement

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

[insert]
Customer

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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 identifies which Terminal Services MITCo will provide to the Customer under this Agreement).	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	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: [insert]	
		ABN: [insert]	
		Address: [insert]	
		Email: [insert]	
Item 3	Commencement Date	[insert]	
Item 4	Expiry Date	The date 3 years after the Commencement Date, or such other period as agreed between MITCo and the Customer.	
Item 5	Security	MITCo may, at its sole discretion, require the Customer to provide a Security Deposit if the Customer has failed to pay any undisputed amount under this Agreement on two or more occasions in any three month period during the Term.	
Item 6	Terminal Operating Hours	Week Day	Terminal Operating Hours
		Public Holiday	Hours to be determined pending Customer Booking Schedule
		Sunday	By agreement
		Monday	05:00 to 23:59, earlier start by agreement
		Tuesday	00:01 to 23:59
		Wednesday	00:01 to 23:59
		Thursday	00:01 to 23:59
		Friday	00:01 to 23:59
		Saturday	00:01 to 15:00, extended by agreement

Part 2 - Terminal Services

Item	Description of available Terminal Services at the Interstate Terminal	MITCo to provide Service [Yes/No]
1	Rail Terminal Access Service (a) provision of access by a Train into the Interstate Terminal; (b) allocation of the Train to a track for unloading and loading; and (c) facilitating the departure of a Train from the Interstate Terminal.	
2	Rail Terminal Loading and Unloading Service (a) unloading of Containers from wagons onto the ground or to a Truck or an ITV in the Interstate Terminal; (b) internal transfer of Containers within the Interstate Terminal; (c) short term Container storage within the Interstate Terminal area including aggregation for further transport (for the period specified in clause 6.2(a)); (d) loading of Containers from a Truck or an ITV onto the ground or to a Train wagon and loading Containers from ground or storage area to Train wagon in accordance with the applicable VBS Booking and the Booking Schedule; (e) loading of Containers from the ground or storage area to a Truck or ITV; (f) arrival checks; and (g) providing written report to the Customer of any damaged containers as soon as MITCo or the Service Provider becomes aware.	
3	Truck / ITV Terminal Access Service (a) provision of a computer-based booking system; (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; (c) Container acceptance including using reasonable endeavours, based on external inspection, to check for compliance with the Customer's freight loading standards (as provided by the Customer) on presentation to the Interstate Terminal; (d) weighing Containers and, using information provided by the Customer, providing the Customer with the weight of each Container loaded from or to a Train using the terminal weigh-in-motion device; (e) provision of access by a Truck / ITV to the Interstate Terminal to collect or deliver a Container; (f) 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; (g) using reasonable endeavours to ensure truck turnaround is efficient, measurable and monitored; (h) record keeping of box locations, movements and delays; and	

Item	Description of available Terminal Services at the Interstate Terminal	MITCo to provide Service [Yes/No]
	(i) provision of on-site incident response services.	
4	Storage of Containers Short-term storage in accordance with clause 6.2.	
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	As listed in the Reference Pricing Principles	Chargeable in accordance with the Reference Pricing Principles and subject to any applicable cap specified in the Reference Pricing Principles. This Train Access Fee is charged once only per Train accessing for the purpose of Rail Terminal Loading and Unloading Services. This element is non-refundable once a Train has a scheduled arrival slot confirmed under clause 7.2, or presents for, Rail Terminal Loading and Unloading Services. A Train accessing the Interstate Terminal for Rail Terminal Loading and Unloading Services may remain at the Interstate Terminal for a maximum period of 24 hours, unless otherwise agreed by MITCo. If a Train accessing the Interstate Terminal for Rail Terminal Loading and Unloading Services remains at the Interstate Terminal for longer than 24 hours (or such other longer period agreed by MITCo), then from the expiry of that 24-hour period (or such agreed longer period), the applicable Train Storage Fee applies as an ancillary charge in accordance with the Reference Pricing Principles.
2	Rail Terminal Loading and Unloading Service	Lift Fee	As listed in the Reference Pricing Principles	A Lift Fee is chargeable per TEU handled at the Interstate Terminal, including: (i) unloading of Containers from wagons onto the ground or to a Truck or an ITV in the Interstate Terminal; (ii) internal transfer of Containers within the Interstate Terminal; (iii) short term Container storage within the Interstate Terminal area including aggregation for further transport (for the period specified in clause 6.2(a));

Item	Terminal Service	Charge description	Charge (excl GST)	Criteria
				(iv) loading of Containers from a Truck or ITV onto the ground and loading Containers from ground or storage area to a Train wagon; and (v) loading of Containers from the ground or storage area to a Truck or ITV. For the avoidance of doubt, where a Container is transferred directly between inbound (Inbound Containers) and outbound (Outbound Containers) modes including intermediate storage or handling, only one Lift Fee will apply. (By way of example, a TEU lifted from a Train to a terminal pad, and subsequently lifted from the terminal pad to a Truck, will be charged one Lift Fee only.
3	Truck Terminal Access Service	Vehicle Access Fee	As listed in the Reference Pricing Principles	Per TEU per entry by a Truck to the Interstate Terminal to collect or deliver an interstate Container, payable when the Customer is a Landside Transport Operator.
4	Storage	Storage Fee	As listed in the Reference Pricing Principles	Storage Charges apply in respect of Inbound Containers that remain at the Interstate Terminal beyond the Permitted Storage Period. Storage Charges are payable by the Landside Transport Operator that makes a VBS Booking through the Vehicle Booking System to collect the relevant Inbound Container.
5	N/A	No Show Fee	An amount equal to the maximum Train Access Fee cap applicable under the Reference Pricing Principles.	Charged per Train that fails to arrive at the Interstate Terminal (whether within its scheduled arrival slot as specified in the Booking Schedule or at all, subject to the exemptions in clause 7.4(c)). For the avoidance of doubt: - a Train that arrives at the Interstate Terminal outside of its scheduled arrival slot is an Untimely Train and does not incur a No Show Fee. - cancellations made more than 24 hours before the

Item	Terminal Service	Charge description	Charge (excl GST)	Criteria
				scheduled arrival slot incur the Cancellation Fee. cancellations made within 24 hours of the scheduled arrival slot, or after the scheduled slot has passed, incur the No Show Fee.
6	N/A	Cancellation Fee	An amount equal to 50% of the maximum Train Access Fee cap applicable under the Reference Pricing Principles.	Charged per Train that is cancelled by the Customer more than 24 hours prior to its scheduled arrival slot as specified in the Booking Schedule (slot length determined by ARTC arrival window length).
7	N/A	Missed Vehicle Fee	[TBA]	Charged per vehicle that arrives at the Interstate Terminal outside its VBS time slot, payable when the Customer is a Landside Transport Operator.
8	N/A	Vehicle No Show Fee	[TBA]	Charged per vehicle that fails to arrive at all at the Interstate Terminal for its VBS time slot, payable when the Customer is a Landside Transport Operator.
9	Train provisioning	Oil/lube Fuel Sand	[TBA]	[TBA]
10	Ancillary Charges		As listed in the Reference Pricing Principles	To the extent that any service, activity, access, use of facilities or equipment, or other ancillary or incidental service is provided in connection with the Interstate Terminal and is not otherwise expressly dealt with in this Part 3, the Charges applicable to that service are as set out in the Reference Pricing Principles.

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, provided that all tax invoices are issued in MITCo's name; 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 will, to the extent applicable to the Customer:

- (a) use its best endeavours to 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 Service (for example assistance to configure IT systems interfaces), MITCo will offer such assistance or services at a reasonable cost to the Customer, provided that:

- (a) MITCo gives prior written notice of the nature and estimated cost of such services; and
- (b) MITCo receives written acceptance of the estimated costs from the Customer before providing the services.

4.3 Conditions precedent

MITCo is not obliged to provide access to, or provide any 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 reasonably required by MITCo from time to time; 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, provided that:
 - (i) such charges are not already included in the Charges;
 - (ii) MITCo discloses the nature and amount of such charges to the Customer in advance by written notice.
 - (iii) MITCo receives written acceptance of the estimated costs from the Customer before providing the services.
- (f) If the Customer disputes any amount invoiced under this clause 4.4, the Customer must notify MITCo in writing within the Payment Term, and the dispute will be resolved in accordance with clause 12. The Customer must pay any undisputed portion of the invoice in accordance with clause 4.4(c).
- (g) 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 Rebates

- (a) MITCo will offer rebates, credits or incentives in respect of Terminal Services to the extent provided for in the Reference Pricing Principles, as notified by MITCo from time to time.
- (b) Unless expressly stated otherwise in the Reference Pricing Principles or agreed in writing:
 - (i) any rebate or incentive is subject to the eligibility criteria and conditions set out in the Reference Pricing Principles;
 - (ii) rebates do not form part of the Charges and do not reduce, vary or otherwise affect the Charges payable under this Agreement;
 - (iii) rebates are applied by way of credit or adjustment in accordance with the Reference Pricing Principles or the relevant rebate terms; and
 - (iv) MITCo may vary, suspend or withdraw any rebate at any time.

4.6 Review and variation of Charges

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

$$A(\text{CPI Indexed}) = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

A is the Charge applicable on the date that is immediately prior to the applicable CPI Adjustment Date, as set out in the Reference Pricing Principles;

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 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.

4.7 Published Charges and Pricing Parity

- (a) MITCo will publish the Charges applicable to new customer agreements from time to time in the Reference Pricing Principles.
- (b) If MITCo reduces its published Charges for any Terminal Service and applies those reduced Charges to new in force customer agreements, MITCo must offer the same reduced Charges to the Customer under this Agreement, provided that:
 - (i) the Customer agrees to any new terms, conditions, or service scope reasonably associated with the reduced Charges;

- (ii) the reduced Charges relate to the same Terminal Services and service levels as those provided under this Agreement; and
 - (iii) the Customer is not in material breach of this Agreement at the time the reduced Charges are offered.
 - (c) MITCo must notify the Customer in writing within 10 Business Days of any reduction in published Charges that are applicable to the Terminal Services provided under this Agreement.
 - (d) Any adjustment to Charges under this clause 4.7 will take effect from the later of:
 - (i) the date the Customer accepts the applicable new terms and conditions; or
 - (ii) where no new terms and conditions are required, the date specified in MITCo's notice under clause 4.7(c).
 - (e) Nothing in this clause 4.7 limits MITCo's rights to adjust Charges in accordance with clause 4.6 or any other provision of this Agreement.
-

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)
- (c) 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.
- (d) 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.
- (e) MITCo may (at its own cost), where it reasonably suspects material non-compliance, 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.
- (f) MITCo has no obligation to inspect a Container and no inspection will increase MITCo's liability under this Agreement.
- (g) 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.
- (h) 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.
- (i) 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

The Customer warrants that it:

- (a) has a valid RIM Safety Interface Agreement at all times during which it accesses Terminal Services and will comply with that RIM Safety Interface Agreement, where the Customer is acting as a Rail Operator;
- (b) will comply with all lawful directions and orders given by the Rail Infrastructure Manager, where the Customer is acting as a Rail Operator;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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;

- (g) will comply at all times with MITCo's Policies and Procedures, including those published on its website at <https://moorebankintermodalprecinct.com.au/terminals/interstate/>, and any reasonable directions issued by the Service Provider or Rail Infrastructure Manager in accordance with this Agreement; in relation to safety or safe operation of the Interstate Terminal;
- (h) will comply at all times with the Terminal Access Protocol (including the Capacity Allocation Protocol and the Terminal Operating Procedure);
- (i) will provide reasonable assistance to MITCo in order to enable it to perform the Terminal Services (if required);
- (j) 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;
- (k) 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;
- (l) will adhere with the Dangerous Goods management obligations in clause 5.4 and will 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;
- (m) ensure all Containers are safely packed, secured and clearly identified and labelled;
- (n) 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
- (o) any temperature controlled Container will only be tendered in compliance with the Terminal Operating Procedure.

5.3 Customer forecasts

Where the Customer is acting as a Rail Operator, the Customer will provide MITCo with a forecast of the estimated volume of containerised freight, measured in TEU, that it expects to load in or out from the Interstate Terminal for each calendar month at least 7 days prior to the first day of that month.

5.4 Dangerous Goods Management

- (a) The Customer must comply with the Australian Dangerous Goods Code and all applicable Laws when presenting Dangerous Goods at the Interstate Terminal.
- (b) The Customer must provide MITCo with a minimum of 12 hours prior written notice for any Dangerous Goods consignment, including details of the goods, container specifications, and handling requirements.
- (c) Security Sensitive Ammonium Nitrate (SSAN), High-Consequence Dangerous Goods (HCDG), or Schedule 15 Major Hazard Facility substances may only be transferred directly between road and rail transport. The Interstate Terminal is not licensed to store these materials, and such containers must not be placed on the ground within the Interstate Terminal.
- (d) Failure to comply with this clause 5.4 may result in MITCo notifying the relevant Authority and recovering any costs incurred in connection with compliance, including directives or penalties.

- (e) The Customer indemnifies MITCo against all losses, costs, and expenses arising from any breach of this clause or any Dangerous Goods-related incident caused by the Customer, including any fines, penalties, or directives imposed by an Authority.

5.5 Statutory Storage Lien

- (a) The Parties acknowledge that, where Containers or their contents are stored at the Interstate Terminal in connection with the provision of the Terminal Services and Charges remain unpaid, MITCo may have a lien and associated rights arising by operation of Law, including under the *Storage Liens Act 1935* (NSW) or equivalent legislation.
- (b) Upon written request by MITCo, the Customer must, to the extent the information is within its possession or control:
 - (i) provide the name and address of the owner of the Goods; and
 - (ii) provide details the name and address of the person who placed the Goods into the possession of the Customer.

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 this Agreement, the Terminal Access Protocol, and the Landside Transport Operator Access Terms; 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 Storage

- (a) The Customer must remove, or procure the removal of, its Inbound Containers from the Interstate Terminal within the Permitted Storage Period.
- (b) Where an Inbound Container is not removed within the Permitted Storage Period and Storage Charges apply:
 - (i) the Storage Charges are payable by the Landside Transport Operator seeking to collect the Inbound Container through the Vehicle Booking System; and
 - (ii) MITCo may refuse to permit a VBS Booking to be made, confirmed or released in respect of that Container unless and until all applicable Storage Charges have been paid.
- (c) MITCo is not obliged to release, or permit the collection of, any Inbound Container where applicable Storage Charges relating to that Inbound Container remain unpaid.
- (d) Storage will not be charged on Sundays for any week of the year, unless otherwise agreed between the Parties.
- (e) The Customer must not abandon any Inbound Container or its contents at the Interstate Terminal.

- (f) Where an Inbound Container or its contents remain uncollected after the expiry of the Permitted Storage Period and applicable Storage Charges remain unpaid, MITCo may deal with the Container and its contents in accordance with clause 5.5.

7. Rail Access

7.1 Application

This clause 7 applies only when the Customer is a Rail Operator.

7.2 Request and confirmation of Train Movements

- (a) MITCo will allocate and manage rail capacity, including service windows and scheduled arrival slots, in accordance with the Capacity Allocation Protocol. Customers acknowledge that MITCo may adjust the scheduling of rail windows to optimise the use of the Interstate Terminal, including for operational efficiency, safety, or as otherwise agreed with affected Customers. MITCo will consult with Customers prior to making any material changes to window allocations.
- (b) The Rail Operator must request access for, and provide all operational information required in relation to, Train Movements in accordance with the Terminal Access Protocol (including the Terminal Operating Procedure and any track utilisation planning process) and any reasonable directions of MITCo or its agents issued from time to time under those documents.
- (c) MITCo or its agents will confirm the scheduled arrival slot (and, where applicable, the scheduled departure time) for each Train Movement by notifying the Rail Operator in writing, which notification may be given by issuing or updating the track utilisation plan or otherwise in accordance with the Terminal Access Protocol.
- (d) A Train Movement is taken to have a scheduled arrival slot only once it has been confirmed under clause 7.2(c).
- (e) The schedule of confirmed recurring service windows and scheduled arrival slots for Train Movements allocated to the Rail Operator under clause 7.2(c) forms the Booking Schedule for the purposes of this Agreement.

7.3 Cancellation of Train Movements

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

7.4 Terminal Services for early and late Trains and cancellation

- (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 Procedure.
- (b) If a Train arrives at the Interstate Terminal outside its scheduled arrival slot as specified in the Booking Schedule (slot length determined by ARTC arrival window length), but does arrive (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) no No Show Fee will apply.
- (c) If a Train fails to arrive at the Interstate Terminal at all in accordance with its scheduled arrival slot in the Booking Schedule, the Rail Operator is liable to pay the No Show Fee to MITCo, except where the delay is caused by:
 - (i) a Force Majeure Event;
 - (ii) any act or omission of MITCo or the Service Provider that prevented the Rail Operator from accessing the Terminal Services;
 - (iii) any unavailability of the Interstate Terminal or relevant Terminal Services not caused by the Rail Operator; or
 - (iv) any rail capacity withdrawn by MITCo under clause 7.3(a), to the extent such withdrawal prevented the Rail Operator from presenting Trains as scheduled.
- (d) If a Train is cancelled by the Rail Operator more than 24 hours prior to its scheduled arrival slot as specified in the Booking Schedule (slot length determined by ARTC arrival window length), the Rail Operator is liable to pay the Cancellation Fee. For the cancellation to be valid, the Rail Operator must notify MITCo of the cancellation in writing.
- (e) If the Rail Operator's Trains frequently arrive or depart outside the allocated window, MITCo may give the Rail Operator a notice requiring the Rail Operator to ensure that its Trains arrive and depart the Interstate Terminal in accordance with the track utilisation plan.
- (f) If MITCo gives the Rail Operator a notice pursuant to clause 7.4(e), the Rail Operator 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.

7.5 Allocation and variation of rail capacity and road service capacity

- (a) Subject to clauses 7.2 and 7.6, and without limitation to clause 7.4, MITCo in its sole and absolute discretion acting reasonably may allocate, vary, prioritise and withdraw any rail capacity associated with Train Movements and any road service capacity used or required by the Rail Operator in accordance with the terms of the Terminal Access Protocol.
- (b) All access rights granted under this Agreement, including scheduled windows for Train Movements and slots booked for Trucks are non-transferable. The Rail Operator must not, and must ensure that any carrier or contractor engaged by it does not pool or attempt to transfer or re-sell such rights to any other person.

7.6 Booking Schedule Variation Request

- (a) The Rail Operator 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 Rail Operator 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 Rail Operator of such decision.
- (d) If MITCo does not notify the Rail Operator in accordance with clause 7.6(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 7.6(c):
 - (i) the Booking Schedule is amended to incorporate the Booking Schedule Variation Request; and
 - (ii) MITCo will notify the Rail Operator of any consequential changes arising from the Booking Schedule Variation Request, including any changes to the Charges.

8. Vehicle Booking System and Landside Access

8.1 Application

This clause 8 applies only to the extent that a Customer is acting as a Landside Transport Operator.

8.2 Access Agreement

- (a) The Landside Transport Operator is an 'Access Seeker' and an 'Account Customer' for the purposes of the Terminal Access Protocol.
- (b) Subject to the Landside Transport Operator satisfying the 'Eligibility Criteria' set out in the Terminal Access Protocol and being registered as a VBS user, MITCo grants the Landside Transport Operator a non-exclusive contractual right to access the Interstate Terminal from time to time, on and subject to this Agreement and the Landside Transport Operator Access Terms.

8.3 Landside Transport Operator Access Terms

- (a) Access to, and conduct at, the Interstate Terminal by Landside Transport Operators is subject to the Landside Transport Operator Access Terms published by MITCo from time to time.
- (b) The terms of the Landside Transport Operator Access Terms are deemed to apply to this Agreement
- (c) The Customer must comply with, and must procure that its Personnel and contractors comply with, the Landside Transport Operator Access Terms.

8.4 VBS Registration

- (a) A Landside Transport Operator must be registered with MITCo or its nominated Service Provider in order to access and use the VBS.
- (b) By registering, the Landside Transport Operator warrants that it is a bona fide operator engaged in the business of transporting Containers to or from the Interstate Terminal by road.
- (c) In order to register as a VBS user, the Landside Transport Operator must complete and submit a registration form to MITCo and must pay to MITCo a joining fee and an annual registration fee (if applicable).
- (d) Upon successful registration, the Landside Transport Operator will be issued with a Landside Transport Operator Access Code which must be used for the purpose of accessing and using the VBS. The Landside Transport Operator must protect its Landside Transport Operator Access Code and must ensure that it is only used by authorised Personnel.
- (e) The Landside Transport Operator must ensure that it and its Related Bodies Corporate maintain and use no more than one Landside Transport Operator Access Code to make bookings through the VBS. The Landside Transport Operator must not use a Landside Transport Operator Access Code issued to any other Customer.
- (f) MITCo may suspend or revoke VBS access or access rights to the Interstate Terminal where it reasonably suspects that a registered user is not a bona fide Landside Transport Operator or has failed to comply with this Agreement or the Landside Transport Operator Access Terms.

8.5 Booking and slots

- (a) The Landside Transport Operator must book a time slot through the VBS for each Container it wishes to collect from or deliver to the Interstate Terminal.
- (b) Each VBS Booking constitutes a separate binding agreement between the Landside Transport Operator and MITCo in respect of the relevant Truck Terminal Access Service that commences when the VBS Booking is made and expires upon the completion by each Party of its respective obligations under this Agreement.
- (c) VBS Bookings and slots are non-transferable and must not be pooled, resold or otherwise dealt with.
- (d) The Landside Transport Operator must comply with all timing, arrival and information requirements applicable to a VBS Booking, whether imposed through the VBS or under this Agreement.

8.6 Closures and Cancellations

- (a) MITCo may close the Interstate Terminal or cancel VBS Bookings where reasonably required for safety, operational efficiency or due to a Force Majeure Event.
- (b) Where practicable, MITCo will provide affected Landside Transport Operators with reasonable notice of closures via the VBS.
- (c) If a Landside Transport Operator fails to arrive at the Interstate Terminal at all within its booked time slot for a VBS Booking, the Landside Transport Operator is liable to pay the applicable No Show Fee to MITCo, except where the failure to arrive is caused by:

- (i) A Force Majeure Event;;
- (ii) any act or omission of MITCo or the Service Provider that prevented the Landside Transport Operator from accessing the Truck Terminal Access Service; x
- (iii) any unavailability of the Interstate Terminal or the relevant Truck Terminal Access Service not caused by the Landside Transport Operator; or
- (iv) any suspension or closure implemented by MITCo under clause 8.6(a).

8.7 VBS fees and payment

- (a) The Landside Transport Operator will pay the Charges relating to each VBS Booking made through the VBS and is responsible to pay any other charges in accordance with this Agreement.
- (b) The Landside Transport Operator must pay all invoices issued by MITCo in accordance with clause 4.4.
- (c) The Landside Transport Operator 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 Landside Transport Operator wishes to proceed to manifest the Container in question, the Landside Transport Operator will be required to pay such fees or charges to MITCo.

8.8 Suspension and termination of landside access

- (a) MITCo may suspend or terminate a Landside Transport Operator's access to the VBS or the Interstate Terminal where the Landside Transport Operator:
 - (i) is in material breach of this Agreement, the Terminal Access Protocol, or the Landside Transport Operator Access Terms;
 - (ii) poses a material risk to the health or safety of persons, property or operations at the Interstate Terminal; or
 - (iii) repeatedly breaches this Agreement, the Terminal Access Protocol or the Landside Transport Operator Access Terms, or fails to remedy a breach within a reasonable period after receiving written notice from MITCo specifying the breach and the steps required to remedy it.
- (b) Suspension or termination under this clause 8.8 does not affect accrued rights or payment obligations.

8.9 Liability and Indemnity

- (a) Without limiting clause 13, where the Customer is acting as a Landside Transport Operator, the Customer indemnifies and holds harmless MITCo and its Associates from all Claims arising out of:
 - (i) the operation of Trucks or ITVs at the Interstate Terminal;
 - (ii) acts or omissions of the Landside Transport Operator's Personnel; and
 - (iii) any breach of this clause 8,except to the extent caused by MITCo's negligence or breach of this Agreement.

- (b) The Landside Transport Operator is responsible for all loss or damage to Trucks, Containers and cargo once Containers are secured to a Truck and depart the Interstate Terminal.

9. Performance management

- (a) MITCo will use best endeavours to comply with the KPIs and will use best endeavours to ensure that the Service Providers assist MITCo in complying 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 9(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.
- (d) MITCo will convene monthly operational and performance review meetings at the Interstate Terminal to discuss performance against the KPIs, operational issues and any other matters reasonably requested by Customers.
- (e) MITCo will determine, acting reasonably and in consultation with its agents, whether such meetings are held collectively with all Customers or separately with individual Customers.
- (f) Where relevant to a particular operational or performance issue, MITCo will engage with other Interstate Terminal Customers in respect of that issue.
- (g) Any meetings held under this clause 9 are for the purposes of performance review and operational discussion only and do not limit the application of clause 9(c).

10. Variation and cancellation of Terminal Services

10.1 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 10.1 may continue at MITCo's discretion for so long as the risk specified in clause 10.1(a) continues.

10.2 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 clause 10.2(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 clause 10.2(b)(i) will commence; and
 - (iii) the duration of any variation of the type referred to in clause 10.2(b)(i).
- (c) If following negotiations in accordance with clause 10.2(b):
 - (i) the Parties agree on any variation of the type referred to in clause 10.2(b)(i) and agree on the terms of that variation including as to the matters referred to in clauses 10.2(b)(ii) and 10.2(b)(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 clause 10.2(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.

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 undisputed amount due under this Agreement on two or more occasions in any three month period.
- (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 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 by its contractors or agents) that causes damage requiring maintenance or repair (excluding damage arising from normal wear and tear), MITCo will be entitled to recover the reasonable costs of such maintenance or repair works from the Customer as a debt due and payable.
- (b) MITCo will not be liable for any costs incurred by, or claims made by or against, the Customer, arising from MITCo conducting any repairs or maintenance at the Interstate Terminal, or from any resulting delay (including to Train Movements), except to the extent such costs or claims result from MITCo's breach of this Agreement or its failure to act reasonably in performing such repairs or maintenance.
- (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. For the avoidance of doubt, where a Train arrives late due to reasons unrelated to the terminal access or works, and where MITCo has provided reasonable notice of the interruption, the Train will be treated as an Untimely Train. MITCo must use best endeavours to minimise any such interruptions of access.

13.2 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 and access provided under this Agreement.
- (b) Where the Customer has the benefit of a warranty or condition regarding the Terminal Services or access not expressly set out in this Agreement or 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 or access supplied again, provided such limitation is permitted by Law.
- (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.

13.3 MITCo's liability

- (a) MITCo is liable to the Customer for any loss or damage suffered by the Customer to the extent that such loss or damage is caused or contributed to by:
 - (i) a breach of this Agreement by MITCo;
 - (ii) a negligent act or omission on the part of MITCo, the Service Provider, or the Rail Infrastructure Manager (but only to the extent that the Service Provider or Rail Infrastructure Manager is acting as a subcontractor to MITCo);
 - (iii) a failure by MITCo, the Service Provider, or the Rail Infrastructure Manager (but only to the extent that the Service Provider or Rail Infrastructure Manager is acting as a subcontractor to MITCo) to comply with applicable Laws in the performance of the Terminal Services.
- (b) MITCo's liability for loss or damage to property (including Containers, Rolling Stock, Trucks, or other equipment) is limited to the reasonable repair or replacement cost of the damaged property, subject to a maximum of:
 - (i) \$5,000 per Container;
 - (ii) \$100,000 per Container's contents;
 - (iii) \$500,000 per Truck or other transport equipment;
 - (iv) \$5 million for any Train or Rolling Stock unit; and
 - (v) \$100,000 for any other property.
- (c) Subject to this clause 13.3, 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.

13.4 Release of MITCo

Without limitation to clause 13.3, the Customer agrees:

- (a) to access the Interstate Terminal, and, where applicable, use the Terminal Services, at its own risk; and
- (b) subject to clause 13.3, MITCo is not liable to the Customer for any damage:
 - (i) to any property of the Customer; or
 - (ii) to any other property of any description in the possession of the Customer or any third party, except to the extent that such damage arises from:
 - A. a breach of this Agreement by MITCo;
 - B. a negligent act or omission of MITCo, the Service Provider, or the Rail Infrastructure Manager; or
 - C. a failure by MITCo, the Service Provider, or the Rail Infrastructure Manager to comply with applicable Laws in the performance of the Terminal Services.

13.5 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.

13.6 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.

13.7 Maintenance and Provisioning Activities

- (a) The Customer acknowledges and agrees that:
 - (i) MITCo permits Customers and their contractors to undertake minor maintenance activities at the Interstate Terminal, including but not limited to inspections, repairs, and servicing of Rolling Stock or other equipment, either in designated areas or on existing roads and sidings; and
 - (ii) MITCo provides access to provisioning facilities, including fuel, water, sand, and other consumables, for use by Customers and their contractors.

- (b) The Customer must ensure that all maintenance and provisioning activities conducted by the Customer or its contractors:
 - (i) comply with all applicable Laws, MITCo's Policies and Procedures, and any directions issued by MITCo or the Rail Infrastructure Manager;
 - (ii) are undertaken safely and without causing damage to the Interstate Terminal, MITCo's infrastructure, or any third party property; and
 - (iii) do not interfere with the operation of the Terminal Services or the safety of other users of the Interstate Terminal.
- (c) To the maximum extent permitted by Law, MITCo is not liable for any loss, damage, injury, or Claim arising out of or in connection with any maintenance or provisioning activity undertaken by the Customer or its contractors at the Interstate Terminal, except to the extent caused by MITCo's negligence or breach of this Agreement.
- (d) The Customer indemnifies and must keep indemnified MITCo and its Associates against all losses, liabilities, costs, and expenses arising out of or in connection with:
 - (i) any maintenance or provisioning activity undertaken by the Customer or its contractors at the Interstate Terminal;
 - (ii) any breach of clause 13.7(b); or
 - (iii) any injury to persons or damage to property caused by or attributable to such activities,except to the extent that such losses arise from MITCo's negligence or breach of this Agreement.

13.8 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

- (a) 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:
 - (i) public liability insurance to the amount of \$20,000,000.00;
 - (ii) insurance for an amount not less than \$20,000,000.00 in respect of:
 - A. damage to real property and personal property; and
 - B. injury to or death of any person.
- (b) Where the Customer is acting as a Landside Transport Operator, the Customer must also maintain:
 - (i) comprehensive motor vehicle insurance in respect of all Trucks, trailers, ITVs and associated equipment used to access the Interstate Terminal, for their full replacement value; and

- (ii) workers' compensation insurance as required by Law.

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.
- (b) The Customer 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.

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, either Party may terminate this Agreement by giving 14 Business Days' written notice.

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. However, the Customer is not required to pay any Charges that relate to Terminal Services or access that MITCo is unable to provide to the extent and for the duration they are affected by the Force Majeure Event.

16. Default and Termination

16.1 Events of default

- (a) The Customer will be in default of this Agreement if the Customer:
 - (i) fails to pay any amount payable to MITCo under this Agreement within 10 Business Days' of the due date for payment;

- (ii) 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;
 - (iii) fails to comply with any material obligation under this Agreement, and does not make good that default within 10 Business Days after receiving written notice from MITCo specifying the breach and the steps required to remedy it;
 - (iv) repeatedly or persistently breaches this Agreement, regardless of whether those breaches are capable of remedy or are remedied;
 - (v) goes into liquidation or provisional liquidation or an application is made for it to be wound up; or
 - (vi) is insolvent under the Corporations Act 2001 (Cth) or stops payment of any of its debts.
- (b) MITCo will be in default of this Agreement if MITCo commits a material breach of this Agreement and fails to remedy that breach within 30 Business Days after receiving written notice from the Customer specifying the breach and the steps required to remedy it.

16.2 Suspension

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

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

until the date on which the Customer resolves the default.

16.3 Remedies

If any of the events contained in clause 16.1 occurs, subject to any applicable Law, the non-defaulting Party's sole remedy under this Agreement is to terminate this Agreement.

16.4 Termination

This Agreement terminates on the earlier of:

- (a) the Expiry Date;
- (b) termination by MITCo following a Customer default under clause 16.1(a);
- (c) termination by the Customer following a MITCo default under clause 16.1(b); or
- (d) 14 Business Days after a notice has been provided in accordance with 15.2(b).

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 and access provided 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 than 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.
- (d) To the extent that any obligation under this Agreement is performed by a Related Body Corporate of the Customer, such performance will be deemed to be compliance by the Customer, provided that the Customer remains fully liable for all acts and omissions of that Related Body Corporate.

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 Personnel 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.

Australian Dangerous Goods Code means the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time, and adopted as the national standard for the transport of dangerous goods by road and rail in Australia.

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 means the schedule of recurring service windows and scheduled arrival slots for Train Movements allocated to the Customer and confirmed by MITCo under clause 7.2.

Booking Schedule Variation Request has the meaning given in clause 7.6(a).

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

Cancellation Fee has the meaning given to it in Item 6 of Part 3.

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

Charges means the fees or charges payable by the Customer to MITCo for the provision of Terminal Services as set out in the Reference Pricing Principles.

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.

Commercial Document has the meaning given to it in the Customs Act 1901 (Cth).

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.

Container means a standardised freight unit designed for the intermodal transport of goods, including but not limited to ISO Containers suitable for rail, road, and sea transport.

Contract Date means the date of this Agreement.

Customer means the Party named in Item 2 of the Reference Schedule and includes, as applicable, a Rail Operator and/or a Landside Transport Operator.

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 a circumstance beyond the reasonable control of a Party which occurs without the negligence of that Party and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, sabotage, terrorism and security matters, nuclear ionisation, executive or administrative order or act of either general or particular application of any government prohibition or restriction by domestic or foreign laws, regulations or policies (other than laws specifically for that purpose passed by the Commonwealth), quarantine, epidemic or pandemic whether declared or not, or customs restrictions, strike, lockout or industrial dispute, break-down or damage to or confiscation of property, or a physical failure of, or damage to, rail track infrastructure not owned, operated or controlled by MITCo (including third-party rail network track outages) but does not include breakdown or delay of any Trains operated by the Customer or Terminal equipment managed by MITCo.

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.

Inbound Container means a Container that is arriving Interstate Terminal by train and leaving by truck.

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 2.

Landside Transport Operator means a Customer that operates, or arranges for the operation of Trucks or ITVs accessing the Interstate Terminal.

Landside Transport Operator Access Code means any unique code, credential or identifier issued to a Landside Transport Operator (or its authorised Personnel) for the purpose of accessing and using the Vehicle Booking System.

Landside Transport Operator Access Terms means the terms and conditions published by MITCo from time to time governing access to, and conduct at, the Interstate Terminal by Landside Transport Operators.

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.

Missed Vehicle Fee has the meaning given to it in Item 7 of Part 3.

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

No Show Fee has the meaning given to it in Item 5 of Part 3.

Outbound Container means a Container that is arriving to the Interstate Terminal by truck and leaving by train.

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.

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 Outbound Containers, the period 24 hours before the Cut-Off Time (excluding Sundays and public holidays); and
 - (ii) for Inbound 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).

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

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 Operator means a Customer that operates Trains or track vehicles accessing 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).

Reference Pricing Principles means the pricing principles published by MITCo on its website, as updated from time to time and subject to CPI, currently available at: https://moorebankintermodalprecinct.com.au/wp-content/uploads/2025/03/6_0_IST-pricing.pdf.

Reference Schedule means the schedule set out in Part 1 of this Agreement.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

RIM Safety 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 5 of Part 1 of this Agreement.

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

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.

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

Train Access Fee has the meaning given to it in Item 1 of Part 3.

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 Terminal Access Service means the provision of access for a Truck or ITV to enter the Interstate Terminal as set out in Part 3 Item 3.

Untimely Train has the meaning given to that term in clause 7.4(b).

VBS Booking means an arrangement between a Landside Transport Operator and MITCo for the provision of the Truck Terminal Access Service at the Interstate Terminal for a Truck or ITV operated by, or on behalf of, the Landside Transport Operator.

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

Vehicle No Show Fee has the meaning given to it in Item 5 or Item 8 of Part 3 as the context applies.

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 - 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: - 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. Percentage of Containers left behind, despite being delivered to the terminal in accordance with the VBS schedule.	80% 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