
Moorebank IMEX Terminal Access Protocol

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1 Background

- (a) MIC is a wholly owned Australian Government entity established to facilitate the development and oversee the operation of the intermodal terminal at Moorebank.
- (b) Following an invitation from MIC to the private sector for the development of the intermodal terminal at Moorebank, MIC entered into an agreement with three entities which together comprise the PDC to develop and operate the intermodal terminal precinct which is to include an IMEX Terminal and Interstate Terminal.
- (c) The PDC entity which is responsible for the operation and management of the IMEX Terminal, Terminal Operations Co, has commenced operations at the IMEX Terminal, through the appointment of an Operator approved by MIC.
- (d) As part of Terminal Operations Co's agreement with MIC, Terminal Operations Co is required to provide Third Party Operators with open and non-discriminatory access to the IMEX Terminal.
- (e) MIC and Terminal Operations Co have acknowledged that the IMEX Terminal faces competition from other intermodal terminals and road transport, and the IMEX Terminal and its operation are not intended to be subject to monopoly asset regulation.
- (f) Terminal Operations Co, through its appointed Operator, is responsible for operating the IMEX Terminal, including setting prices and the terms and conditions of Access, in accordance with its commercial and operational judgement subject to the Open and Non-Discriminatory Access Obligations.

2 Introduction

2.1 Purpose of this Terminal Access Protocol

- (a) This document is the Terminal Access Protocol for the Moorebank IMEX Terminal.
- (b) The purpose of the Terminal Access Protocol is to provide a framework that facilitates the following objectives:
 - (i) providing Third Party Operators open and non-discriminatory access to the IMEX Terminal in accordance with Open and Non Discriminatory Access Obligations; and
 - (ii) allowing PDC to operate, through the Operator, the IMEX Terminal in accordance with PDC's commercial and operational judgement so as to promote efficiency, productivity and volume through the IMEX Terminal.
- (c) In facilitating the objectives in clause 2.1(b), it is acknowledged that:
 - (i) the IMEX Terminal faces competition from other intermodal terminals and road transport, and that the IMEX Terminal and its operation are not intended to be subject to monopoly asset regulation;
 - (ii) PDC will operate the IMEX Terminal through the appointment of the Operator, including setting prices and the terms and conditions of access, in accordance with PDC's commercial and operational judgement subject to the Open and Non Discriminatory Access Obligations;

- (iii) the IMEX Terminal has been designed as an open access facility and the terms of this Terminal Access Protocol reflect the aims of:
 - (A) promoting competition for the transport of IMEX containerised freight so as to improve supply chain efficiency and encourage a modal shift from road transport to rail; and
 - (B) ensuring the IMEX Terminal is available to all Third Party Operators and customers on non-discriminatory terms, in the form of a Standard Customer Agreement subject to this Terminal Access Protocol;
 - (iv) PDC is, and may continue to be, vertically integrated and the IMEX Terminal will be providing services to competitors of its Associated Operators. The Terminal Access Protocol is designed to ensure that PDC does not discriminate against Third Party Operators in favour of an Associated Operator in providing Reference Services or Ancillary Services;
 - (v) without limiting the rights and obligations of MIC and PDC in respect of each other under any agreement to which they are parties, MIC's role in relation to open access at the IMEX Terminal is as set out under this Terminal Access Protocol;
 - (vi) where an Independent Expert is appointed to resolve a dispute in relation to this Terminal Access Protocol, they will perform that role acting reasonably:
 - (A) only as required and necessary to achieve the objectives in this clause 2.1; and
 - (B) will avoid inconsistency with the requirements of this Terminal Access Protocol; and
 - (vii) enforceability and consequences of non-compliance in relation to this Terminal Access Protocol are to be determined as between PDC and MIC in accordance with the terms of the DOD, and not otherwise.
- (d) All clauses in this Terminal Access Protocol are to be interpreted in accordance with this clause 2.1.

2.2 Open and Non-Discriminatory Access Obligations

- (a) PDC will comply with the Open and Non-Discriminatory Access Obligations through the supply of Reference Services and Ancillary Services to a Third Party Operator as contemplated in this Terminal Access Protocol or as modified by agreement with that Third Party Operator in accordance with any associated access agreement.
- (b) For the purpose of clause 2.2(a), the Open and Non-Discriminatory Access Obligations are that PDC will:
 - (i) permit Access at the IMEX Terminal for Third Party Operators, where such access is, or would be, in accordance with relevant terminal access and operating arrangements (including the Terminal Operating Procedure) and access is available having regard to the Capacity of the IMEX Terminal;
 - (ii) not unreasonably discriminate against Third Party Operators to their competitive detriment in favour of an Associated Operator in providing Reference Services or Ancillary Services, except where this is permitted

under any relevant terminal access and operating arrangements (including this Terminal Access Protocol, the Terminal Operating Procedure or the terms of an access agreement with the relevant Third Party Operator); and

- (iii) offer to provide Access in relation to Reference Services, provided Access is available having regard to the Capacity of the IMEX Terminal, on transparent terms and conditions (including Reference Prices) published in accordance with this Terminal Access Protocol and otherwise as permitted in accordance with relevant terminal and operating arrangements (including this Terminal Access Protocol).
- (c) For clarity:
- (i) unless and to the extent otherwise specified, the Open and Non-Discriminatory Access Obligations apply under this Terminal Access Protocol only in respect of the supply of Reference Services and Ancillary Services; and
 - (ii) this Terminal Access Protocol has been developed and approved on the basis that it sets out those requirements which, provided they are undertaken by PDC, are sufficient to satisfy the Open and Non-Discriminatory Access Obligations.
- (d) PDC will not engage in conduct for the purpose of hindering or preventing access at the IMEX Terminal by a Third Party Operator in the exercise of an access right to which that Third Party Operator would otherwise be permitted under this Terminal Access Protocol and relevant terminal access agreement and the Terminal Operating Procedure.
- (e) For clarity, sub-clause 2.2(d) does not apply to any reasonable restriction of access at the IMEX Terminal imposed by PDC or the Operator in accordance with this Terminal Access Protocol or any relevant terminal access agreement or the Terminal Operating Procedure or:
- (i) to prevent, or to respond to, an Incident or to otherwise seek to prevent injury to persons or damage to the IMEX Terminal or other property;
 - (ii) reasonably necessary for the operation of the IMEX Terminal due to unforeseeable external factors including:
 - (A) network issues including without limitation track possessions, weather, signalling outages, congestion, regulatory actions; track closure;
 - (B) road issues including without limitation weather, congestion, signalling, closure;
 - (C) rail operator issues including late or early arrival or departure from the IMEX Terminal including without limitation locomotive or wagon failures, train crew issues;
 - (D) issues at Port Botany rail terminals or other rail terminals;
 - (E) within the IMEX Terminal the availability of equipment including without limitation mechanical breakdown, the availability of labour or regulatory action affecting the IMEX Terminal;

- (F) the availability of containers for loading or unloading to or from a wagon or truck;
- (G) rolling stock or truck issues including type or defect that causes delay; and
- (iii) where PDC has reasonable grounds to believe that the Third Party Operator would fail, to a material extent, to comply with an access agreement or the Terminal Operating Procedure (for example, evidence that the Third Party Operator is not creditworthy).

2.3 Scope

- (a) This Terminal Access Protocol applies in respect of Access to the IMEX Terminal only.
- (b) For clarity, except where expressly provided, this Terminal Access Protocol does not apply in respect of any area or operations not located within the IMEX Terminal, including (without limitation):
 - (i) warehousing operations undertaken within the Precinct;
 - (ii) the transport of containers, (including by internal transfer vehicle), outside of the IMEX Terminal, including the transport of containers between the IMEX Terminal and a warehouse or other facility located outside the IMEX Terminal lease area; and
 - (iii) any operations associated with an Interstate Terminal.

2.4 Rights and obligations of the Operator

References to the rights or obligations of the Operator under this Terminal Access Protocol mean:

- (a) in respect of the supply of IMEX Terminal Services – the Operator appointed by Terminal Operations Co under the Approved Operations Contract; and
- (b) in respect of all other matters – Terminal Operations Co.

3 Interpretation

3.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

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

4 Commencement and review process

4.1 Protocol Commencement Date

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

4.2 Review of Terminal Access Protocol

- (a) The Operator will undertake a review of the operation of this Terminal Access Protocol:
 - (i) not more than 2 years after the commencement of operations at the IMEX Terminal and at least once every 5 years thereafter; or
 - (ii) at any time if the Operator identifies material concerns with its practical operation.
- (b) In undertaking its review under sub-clause 4.2(a), the Operator will consult with Access Seekers, potential Access Seekers and MIC when reviewing this Terminal Access Protocol.
- (c) Any amendment to this Terminal Access Protocol under this clause 4.2 remains subject to PDC complying with any amendment process required by its commercial arrangements with MIC.

5 Reference Services

5.1 Reference Services

- (a) The following services are Reference Services:
 - (i) **Rail Terminal Access Service** – access for a train to enter into the IMEX Terminal;
 - (ii) **Rail Terminal Loading and Unloading Service** – services to load or unload containers, on and/or from a train to or from a truck or an internal transfer vehicle in the IMEX Terminal (including the provision of short term container storage within the IMEX Terminal area in connection with the Rail Terminal Loading and Unloading Service); and
 - (iii) **Truck Terminal Access Service** – access for a truck to enter the IMEX Terminal to receive or drop off a container at the IMEX Terminal.
- (b) On the successful request for a Reference Service by an Access Seeker in accordance with clause 8, the Operator will offer to provide the requested Reference Services to the Access Seeker:
 - (i) at the Reference Prices published on its website; and

- (ii) on the terms, as amended from time to time, set out in the Standard Customer Agreement and published by the Operator on its website.
- (c) The Operator is only obligated to provide access to successful requests for Reference Services at the Reference Prices and on the Standard Terms and Conditions.
- (d) The Operator may, in its discretion, provide Reference Services:
 - (i) at non-standard Reference Prices provided that such prices do not discriminate against a Third Party Operator in favour of an Associated Operator for that particular business; and
 - (ii) on non-Standard Terms and Conditions provided that such terms and conditions do not discriminate against a Third Party Operator in favour of an Associated Operator for that particular business.
- (e) The Operator may provide Other Services in its discretion.
- (f) The Operator will publish on its website a list of all Services that it offers at the IMEX Terminal and will update the list as soon as reasonably practicable if there is any change in the Services that are offered.

5.2 Non-Reference Services

Non-Reference Services are Ancillary Services or Other Services provided at the IMEX Terminal in accordance with commercially determined prices, terms and conditions as negotiated or notified to Access Seekers and Customers, from time to time, by the Operator.

5.3 Ancillary Services

- (a) Unless otherwise stated in this clause 5, services performed within the IMEX Terminal that are not Reference Services and that are provided by the Operator to an Associated Operator will be Ancillary Services.
- (b) Where the Operator commences to provide Ancillary Services to an Associated Operator, it will:
 - (i) make available the Ancillary Service to Third Party Operators, including by updating the Standard Terms and Conditions to include the terms and conditions applicable to those Ancillary Services;
 - (ii) publish the availability of those Ancillary Services; and
 - (iii) not discriminate against Third Party Operators in favour of an Associated Operator in the provision of those Ancillary Services.
- (c) For the avoidance of doubt, the following services are not Ancillary Services nor Reference Services:
 - (i) the provision of access to a port shuttle service;
 - (ii) any transport of containers, (including by an internal transfer vehicle), to or from the IMEX Terminal, including the transport of containers between the IMEX Terminal and a warehouse or other facility located within the Precinct

that is outside the IMEX Terminal lease area or Interstate Terminal lease area;

- (iii) the provision of a refuelling service; and
 - (iv) the provision of services to a Third Party Operator of a kind that are not supplied by the Operator to an Associated Operator.
- (d) The obligation to not discriminate against Third Party Operators in favour of an Associated Operator only applies to the provision of Reference Services and Ancillary Services.

5.4 Internal transfer vehicle service

- (a) Where the Operator offers to make an internal transfer vehicle service available to a Precinct Customer and the Precinct Customer notifies the Operator that the Precinct Customer is considering the use of an Associated Operator or a Third Party Operator in relation to the transport of containers between the IMEX Terminal and a warehouse or other facility located within the Precinct that is outside the IMEX Terminal lease area or Interstate Terminal lease area, the Operator will offer a standalone price for the internal transfer vehicle service that is the same regardless of whether the Precinct Customer chooses to use a Third Party Operator or Associated Operator to transport containers to or from the IMEX Terminal.
- (b) The internal transfer vehicle service is not a Reference Service or an Ancillary Service.
- (c) The principle of non-discrimination will not apply in relation to the provision of the internal transfer vehicle service.

5.5 Access to a port shuttle service

- (a) The Operator will, until a third party operates a competing port shuttle service, make available spare capacity on any port shuttle service operated by an Associated Operator at a price which is:
 - (i) set so as to recover the efficient costs of providing the service, plus a reasonable commercial return; or
 - (ii) competitive with the provision of a road transport alternative to the terminal.
- (b) The principle of non-discrimination will not apply in relation to the provision of this service.
- (c) The Operator will publish on the website for the IMEX Terminal contact details for any Associated Operator operating a port shuttle services to enable the Access Seeker to enquire about spare capacity on the port shuttle.
- (d) For avoidance of doubt, the provision of access to a port shuttle service is not a Reference Service or an Ancillary Service.

5.6 The provision of a refuelling service

- (a) Where the Operator makes refuelling available to Associated Operators picking up or dropping off freight at the IMEX Terminal, it will make refuelling available to Third Party Operators picking up or dropping off freight at the IMEX Terminal at the

same published prices as the prices at which refuelling is made available to Associated Operators.

- (b) For avoidance of doubt, the provision of a refuelling service is not a Reference Service or an Ancillary Service.

6 Standard Terms and Conditions

6.1 Standard Customer Agreement

The Standard Terms and Conditions of Access for Reference Services and Ancillary Services are set out in the Standard Customer Agreement contained at Annexure 1 of this Terminal Access Protocol as updated or amended by the Operator from time to time.

6.2 Combination of services

None of the Ancillary Services can be acquired without also acquiring a Reference Service.

7 Pricing

7.1 Reference Prices

- (a) The Operator will publish the Reference Prices for Reference Services and Ancillary Services, as applicable from time to time, on the IMEX Terminal website.
- (b) Subject to any process otherwise agreed with an individual Customer under a Standard Customer Agreement, the Operator will review Reference Prices no less than once per year and may vary Reference Prices at any time by publishing a notice of the updated prices on the IMEX Terminal website not less than 30 Business Days' prior to their commencement.
- (c) In setting prices for Reference Services, the Operator:
 - (i) may be required to set prices for Reference Services below the level required to fully recover costs and achieve a commercial return in order to encourage demand and volume through the IMEX Terminal precinct;
 - (ii) may record any such losses and the accumulated amount of losses together with a commercial return as recoverable in subsequent prices for Reference Services; and
 - (iii) may use multi-part pricing and price discrimination to promote volume and efficient utilisation of the IMEX Terminal precinct.

8 Process for making an Access Request

8.1 Negotiations in good faith

- (a) The Operator and each Access Seeker must act reasonably and in good faith in negotiating for Access pursuant to this Terminal Access Protocol.
- (b) Nothing in this Terminal Access Protocol limits or prevents the Operator and an Access Seeker from engaging in a commercial negotiation process which differs

from the standard process for negotiations set out in clause 8, 9 and 10 of this Terminal Access Protocol.

8.2 Information pack for potential Access Seekers

- (a) The Operator will publish on its website an information pack in relation to Access to the IMEX Terminal.
- (b) The information pack for the IMEX Terminal will contain, without limitation:
 - (i) a copy of this Terminal Access Protocol (including the Capacity Allocation Protocol, Terminal Operating Procedure and Complaints Handling System);
 - (ii) the name and contact details of the Operator representative responsible for managing Access Requests;
 - (iii) a copy of the Application Form and any additional information which must be provided by an Access Seeker when making an Access Request (including all technical specifications required under the Terminal Operating Procedure);
 - (iv) a copy of the Standard Customer Agreement; and
 - (v) a copy of, or a website reference to, the current Reference Prices.

8.3 Application Form and Access Seeker information

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

8.4 Eligibility Criteria

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

- (a) is solvent;
- (b) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual potential liabilities under any Standard Customer Agreement, including the ability to pay any charges when they fall due and payment of excesses under insurance policies;
- (c) is able to provide credit support;
- (d) has in place appropriate occupational health and safety standards;
- (e) has or will be able to obtain all necessary accreditations or approvals required to operate the service(s) it is proposing to operate;

- (f) uses, or intends to use, Rolling Stock that complies with the requirements applicable from time to time for access to the IMEX Terminal including (without limitation) having the ability for its locomotives to communicate with IMEX Terminal communication systems;
 - (g) is willing to enter into and is capable of complying with a Safety Interface Agreement with the Operator; and
 - (h) uses, or intends to use, IT systems that will reliably interoperate with those systems used for the operation of the IMEX Terminal.
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9 Procedure for assessing Access Requests

9.1 Acknowledgement of Access Request

- (a) Within 5 Business Days of receipt of an Access Request, the Operator will advise the Access Seeker that either:
 - (i) the Access Seeker's request is complete and contains sufficient information to enable the Operator to respond to the Access Request; or
 - (ii) the Access Seeker's request is incomplete, which may include because:
 - (A) the request was not in the form or did not contain the information specified in the Application Form;
 - (B) the Operator considered that any additional information requested by the Operator under clause 8.2(b) was insufficient to enable it to respond to the Access Request;
 - (C) further information is required in order to consider the Access Request, in which case the Operator will specify what further information is required.
- (b) If an Access Seeker provides further information to the Operator in relation to an incomplete request under sub-clause 9.1(a)(ii), clause 9.1(a) applies to the provision of such further information with such alterations and modifications as are necessary.

9.2 Assessment of Access Requests

- (a) Within 20 Business Days of issuing a notice to the Access Seeker under clause 9.1(a)(i) (unless otherwise agreed between the Operator and the Access Seeker), the Operator will provide a written response to the Access Seeker indicating whether, applying its commercial and operational judgement, the Operator considers that:
 - (i) there is likely to be sufficient Available Capacity to meet all or part of the Access Seeker's Access Request; and
 - (ii) the Access Seeker satisfies the Eligibility Criteria in respect of the Access Request.
- (b) If the Operator determines that an Access Seeker fails to satisfy the Eligibility Criteria, the Operator will include with its written response in accordance with clause 9.2(a) the reasons for its determination.

- (c) If the Operator determines (acting reasonably) that the requirements in clause 9.2(a) are satisfied, and that it is otherwise technically feasible and consistent with the efficient and sound commercial operation of the IMEX Terminal to supply the service(s) requested, the Operator's response to the Access Seeker under clause 9.2(a) will confirm that it is prepared to meet to negotiate Access to part or all of the service(s) requested.
 - (d) The Operator will use reasonable endeavours to provide an Access Seeker with an indicative access proposal setting out the commercial basis on which it is prepared to offer Access to the Access Seeker within 20 Business Days of providing confirmation under clause 9.2(c) (or such longer period as agreed).
 - (e) If the Operator fails to provide an indicative access proposal within the period specified in clause 9.2(d), the starting point for Access negotiations will be:
 - (i) the terms and conditions set out in the Standard Customer Agreement; and
 - (ii) the Reference Prices for Reference Services.
 - (f) In considering whether there is likely to be sufficient Available Capacity pursuant to clause 9.2(a), the Operator is to apply the principles set out in the Capacity Allocation Protocol.
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10 Negotiation of terms and conditions of Access

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

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

12 Terminal Operating Procedure

The Operator will operate the IMEX Terminal in accordance with the Terminal Operating Procedure.

13 Confidential Information and ring-fencing obligations

13.1 Protection of Confidential Information

- (a) Subject to sub-clause (b), the Operator must keep confidential any Confidential Information provided to the Operator by an Access Seeker or Customer and only allow an officer, employee, agent or contractor who works for the Operator or exercises management oversight over or responsibility for the Operator to access that Confidential Information for the purpose of:
 - (i) providing Services to that Access Seeker or Third Party Operator;
 - (ii) resolving a Dispute; or
 - (iii) as otherwise expressly consented in writing by that Access Seeker or Third Party Operator.
- (b) In relation to the Rail Terminal Access Service, the Operator will work in good faith with ARTC to implement mechanisms to allow Third Party Operators to gain access to information on Capacity availability at the IMEX Terminal without disclosing their identity or commercially sensitive information about the freight task to the Operator. The Operator will respond in a timely manner to any request received from ARTC for information in relation to terminal Capacity or operating arrangements and which ARTC considers is reasonably necessary to enable it to develop and make available to Third Party Operators information about network and associated rail Capacity at the IMEX Terminal.

13.2 Permitted disclosure of Confidential Information

The Operator is permitted to disclose Confidential Information:

- (a) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
- (b) to any Independent Expert, mediator or arbitrator appointed for the purposes of resolving a particular Dispute provided they are under a legal obligation not to disclose the Confidential Information publicly or to any third party;
- (c) to MIC, or an independent external investigator appointed by MIC, for the purpose of MIC monitoring the Operator's compliance with its reporting and compliance obligations or investigating a complaint under this Terminal Access Protocol, subject to MIC, (and/or the independent external investigator, as applicable) agreeing to be bound by the same obligations not to disclose the Confidential Information to any third party as the Operator; and
- (d) if, and to the extent required by law, provided that it first consults with the party that provided the Confidential Information in relation to the manner and timing of that disclosure.

14 Complaints

14.1 Complaints Handling System

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

14.2 MIC investigation

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

15 Dispute resolution

15.1 Dispute Resolution Process

- (a) The Operator will comply with the Dispute Resolution Process in this clause 15 to resolve Disputes between the Operator and Access Seekers or Customers in relation to the operation of this Terminal Access Protocol.
- (b) Access Seekers, Customers and Third Party Operators do not have a right to dispute prices for terminal services and dispute resolution may not deal with prices.
- (c) For the avoidance of doubt, the Operator is only obligated to provide access to Reference Services at the Reference Price and on Standard Terms and Conditions. Accordingly, there can be no Dispute where the Operator:
 - (i) offers to provide access to Reference Services at the Reference Price and otherwise on terms consistent with the Standard Customer Agreement; or
 - (ii) in its discretion agrees to provide Reference Services at non-standard Reference Prices or non-Standard Terms and Conditions.
- (d) This dispute process does not apply to any failure by the Operator and an Access Seeker or Customer to agree prices for Services.

15.2 Raising a Dispute

- (a) An Access Seeker or Customer who wishes to raise a Dispute with the Operator must do so:

- (i) only after the matter which is the subject of the Dispute has been lodged as a complaint with the Operator in accordance with clause 14 and Annexure 5; and
 - (ii) the Operator has been given a reasonable opportunity to resolve the complaint in accordance with the Complaints Handling System. For clarity, the Operator may refuse to accept a Dispute under this clause 15.2 in circumstances where an Access Seeker or Customer has not complied with this clause 15.2(a).
- (b) Subject to clause 15.2(a), an Access Seeker or Customer may refer a matter as a Dispute by providing written notice to the Operator (**Dispute Notice**) for the purpose of endeavouring to resolve it.
- (c) The Dispute Notice must include details of:
 - (i) the nature of the Dispute;
 - (ii) the outcome sought by the Access Seeker or Customer in relation to the Dispute; and
 - (iii) the action on the part of the Operator which the Access Seeker or Customer believes is reasonably required in order to resolve the Dispute.
- (d) By lodging a Dispute Notice, the Access Seeker or Customer agrees to comply with this Dispute Resolution Process.

15.3 Negotiation

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

15.4 Referral to Independent Expert determination

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

- (d) The Independent Expert appointed by the Operator and the Access Seeker must have the qualifications and experience necessary to carry out the functions of the Independent Expert as applicable independently of the parties to the Dispute.

15.5 Independent Expert determination

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

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

15.6 Confidentiality

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

16 Compliance and reporting obligations

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

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

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

17 Notices

- (a) All notices issued pursuant to this Terminal Access Protocol (including applications for Access to the IMEX Terminal and Dispute Notices) must be sent to the following:
 - [Insert name]
 - [Title]
 - [Company]
 - [Address]
 - [Telephone]
 - [Email]
- (b) Notices sent by email are taken to be received at the time shown in the email as the time the email was sent.

Schedule 1 Dictionary

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

Access	The use of Reference Services and Ancillary Services in accordance with the Standard Customer Agreement.
Access Request	A request for Access to the IMEX Terminal in accordance with the Access Request process as set out in clause 8 of this Terminal Access Protocol.
Access Seeker	Third Party Operators seeking access to Reference or Ancillary Services.
Account Customer	Access Seekers that have entered into an agreement with the Operator for access to spare available Reference Service capacity on an ad-hoc basis.
Ancillary Service	<p>A non-Reference Service performed within the IMEX Terminal and provided by the Operator to an Associated Operator where there is available Capacity to provide that service to other operators.</p> <p>For the avoidance of doubt, the following services are not Ancillary Services:</p> <ul style="list-style-type: none">• the provision of access to a port shuttle service;• the transport of containers, (including by internal transfer vehicle), to or from the IMEX Terminal, including the transport of containers between the IMEX Terminal and a warehouse or other facility located in the Precinct but outside the IMEX Terminal lease area and Interstate Terminal lease area; or• the provision of a refuelling service.
Application Form	The Application Form prescribed in Annexure 2 of this Terminal Access Protocol as updated or amended by the Operator from time to time.
ARTC	Australian Rail Track Corporation Limited (ACN 081 455 754).
Associated Operator	A related entity of Terminal Operations Co or the Operator which provides rail transport services.
Available Capacity	The capability of providing rail transport services at the IMEX Terminal after taking into account requirements to accommodate users' existing train paths and existing contractual commitments, and any requirements to reserve capacity for the prudent operation of the terminal in

	accordance with all applicable standards and good industry practice.
Business Day	Any day in New South Wales other than a Saturday, Sunday or public holiday and on which banks are open for business generally in the city of Sydney, New South Wales.
Capacity	The operational capacity for the IMEX Terminal under existing configuration and operating procedures to accommodate Reference Services at a given point in time.
Capacity Allocation Protocol	The Capacity Allocation Protocol referred to in Annexure 3 of this Terminal Access Protocol.
Complaints Handling System	The Complaints Handling System referred to in Annexure 5 of this Terminal Access Protocol.
Confidential Information	Information provided to the Operator, Terminal Operations Co, an Access Seeker or a Customer in confidence to each other under or in connection with this Terminal Access Protocol.
Container Inventory Checks	The checking of container ID's against the containers that are physically in the IMEX Terminal.
Contract Customer / Contracted Customer	Access Seekers that have entered into an agreement with the Operator for available Reference Service capacity on a committed take or pay basis.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Customer	An Account Customer or Contract Customer.
Cut-Off Time	2 hours, or such other time notified to the Customer from time to time before the scheduled departure time of a Train.
Dangerous Goods	Has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the National Transport Commission from time to time.
Dispute	A dispute for determination by an Independent Expert as is expressly provided for under this Terminal Access Protocol at clause 15.
Dispute Notice	A Dispute Notice as referred to in clause 15.2.
Dispute Resolution Process	The process for resolving Disputes between the Operator and Customers or Access Seekers at clause 15.
Eligibility Criteria	The eligibility criteria as set out in clause 8.4 of this Terminal Access Protocol.

Final Dispute Notice	A final dispute notice as referred to in clause 15.4 of this Terminal Access Protocol.
IMEX Terminal	Means the area within the Moorebank intermodal terminal precinct leased to Terminal Operations Co for the dedicated purpose of establishing an intermodal terminal and permitting the transport of import / export containers.
Incident	Has the meaning given to that term in the Standard Customer Agreement.
Independent Expert	An expert that is independent of the parties to a Dispute and appointed in accordance with clause 15.4 of this Terminal Access Protocol.
Interstate Terminal	The Moorebank interstate container freight terminal and the relevant rail access infrastructure.
MIC	Moorebank Intermodal Company Limited (ACN 161 635 105).
Non-Reference Services	Ancillary or Other Services provided by the Operator at the IMEX Terminal in accordance with commercially determined prices, terms and conditions as negotiated or notified by the Operator.
Notice of Consist	Notification of the nature and description of goods loaded on the Train, as required by the Terminal Operating Procedure.
Open and Non-Discriminatory Access Obligations	The obligations outlined in clause 2.2 of this Terminal Access Protocol.
Operator	The entity responsible for the operation of the IMEX Terminal as approved by MIC and appointed by Terminal Operations Co.
Other Services	Services that are provided at the IMEX Terminal that are not Reference Services or Ancillary Services, as referred to in clause 5.2.
PDC	Precinct Development Co comprising Terminal Assets Co, Terminal Operations Co and Warehouse Development Co.
Precinct	The precinct known as Moorebank Logistics Park, Moorebank Avenue Moorebank, New South Wales.
Precinct Customer	A user of warehouse facilities in the Precinct.

Protocol Commencement Date	The Protocol Commencement Date referred to in clause 4.1.
Rail Safety Laws	All applicable occupational health and safety laws, regulations, rules, standards and approved codes of practice and standards including the <i>Rail Safety National Law (NSW)</i> (and any regulation, guideline or ordinance made pursuant to that Act).
Rail Terminal Access Service	The provision of access for a train to enter into the IMEX Terminal as referred to at clause 5.1(a)(i).
Rail Terminal Loading and Unloading Service	The provision of services to load or unload containers on or from a train on to a truck or internal transfer vehicle in the IMEX Terminal (including the provision of short term container storage within the IMEX Terminal area in connection with the rail terminal loading and unloading service) referred to at clause 5.1(a)(ii).
Reference Prices	The prices published for Reference Services as referred to at clause 7.1.
Reference Services	The services referred to at clause 5.1(a). Reference Services also include additional IMEX Terminal services nominated by Terminal Operations Co as Reference Services in accordance with this Terminal Access Protocol.
Rolling Stock	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).
Safety Interface Agreement	The safety interface agreement required to be entered into by a Customer with the Operator.
Services	Reference Services, Ancillary Services and Other Services (as applicable).
Standard Customer Agreement	The standard Customer Agreement contained at Annexure 1 of this Terminal Access Protocol.
Standard Terms and Conditions	The terms and conditions contained in the Standard Customer Agreement contained at Annexure 1 of this Terminal Access Protocol.
Terminal Access Protocol	This document, being a terminal access protocol for the IMEX Terminal.

Terminal Assets Co	Qube RE Services (No. 2) Pty Limited in its capacity as trustee of the Moorebank Industrial Terminals Assets Trust (ACN 605 751 782).
Terminal Master Plan	The plan developed in accordance with clause 9.3(b) of the Capacity Allocation Protocol contained at Annexure 3 of this Terminal Access Protocol.
Terminal Operations Co	Qube RE Services (No. 2) Pty Limited in its capacity as trustee of the Moorebank Industrial Terminals Operations Trust (ACN 605 751 782).
Terminal Operating Procedure	The Terminal Operating Procedure referred to in Annexure 4 of this Terminal Access Protocol.
Third Party Operators	Truck and rail operators that are not Associated Operators.
Timetable	The times at which the Customer's Trains are scheduled to arrive at and depart from the IMEX Terminal and a description of each Train.
Train	Several units of Rolling Stock coupled together to operate as a single unit.
Train Handover Time	The time that the Operator will hand over the loaded train for inspection by the Customer prior to departure on the network.
Train Movements	The operation of a Train on the rail track leading into, through and/or out of the IMEX Terminal, by the Customer at a time scheduled in the timetable for the predominant purposes of conveying freight and includes the empty movement of such a Train.
Truck Terminal Access Service	The provision of access for a truck to enter the IMEX Terminal to receive or drop off a container at the IMEX Terminal, referred to at clause 5.1(a)(iii).
TEU	Twenty-foot equivalent unit, where 1 TEU equals a 6.1m container.
VBS	A vehicle booking system, in use in respect of the IMEX Terminal.
Voluntary Reduction	As referred to in clause 4(c) of Annexure 3 of this Terminal Access Protocol.
Warehouse Development Co	Qube RE Services (No. 2) Pty Limited in its capacity as trustee of the Moorebank Industrial Warehouse Trust (ACN 605 751 782).

Annexure 1 - Standard Customer Agreement

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

Annexure 2 - Application Form

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

Annexure 3 - Capacity Allocation Protocol

1 Objective

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

2 Interpretation

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

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

3 Allocation of rail capacity

3.1 General obligations

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

3.2 Procedure for allocation of rail capacity

- (a) On receipt of an Access Request in accordance with clause 8 of the Terminal Access Protocol, the Operator will make an assessment as to whether there is sufficient Available Capacity at the IMEX Terminal to meet the Access Seeker's request.
- (b) In making an assessment as to whether there is sufficient Available Capacity at the IMEX Terminal, the Operator will take into account the factors outlined in the "Train Load/Unload Process Considerations" diagram in **Attachment A**, and the following considerations:
 - (i) the availability of rail windows;
 - (ii) whether there are any specific requirements to accommodate a Customer's existing train paths;
 - (iii) the type of Access Seeker or Customer and whether they have existing contractual commitments with the Operator (see clauses 3.2(c) and 3.2(d) below); and
 - (iv) any requirements to reserve capacity for the prudent operation of the IMEX Terminal in accordance with all applicable standards and good industry practice.

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

3.3 Rail constraints

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

3.4 Mutually exclusive requests for rail capacity

- (a) In circumstances where two or more Access Seekers are seeking mutually exclusive capacity allocation rights, access rights will be granted to the Access Request which, in the opinion of the Operator:
 - (i) is most consistent with the principle of maximising the efficient and most valuable use of the IMEX Terminal; and

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

4 Varying rail capacity

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

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

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

5 Reallocating rail capacity

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

6 Road service capacity allocation

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

7 Insufficient rail service capacity

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

8 Complaint handling

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

9 Capacity planning

9.1 Capacity Expansion Objective

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

9.2 Short term rail capacity allocation and management

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

9.3 Terminal Master Plan

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

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

9.4 **Capacity Expansion Principles**

Terminal Assets Co and the Operator will implement the Terminal Master Plan where each of the following principles (**Capacity Expansion Principles**) occur:

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

9.5 **Publication of capacity related material**

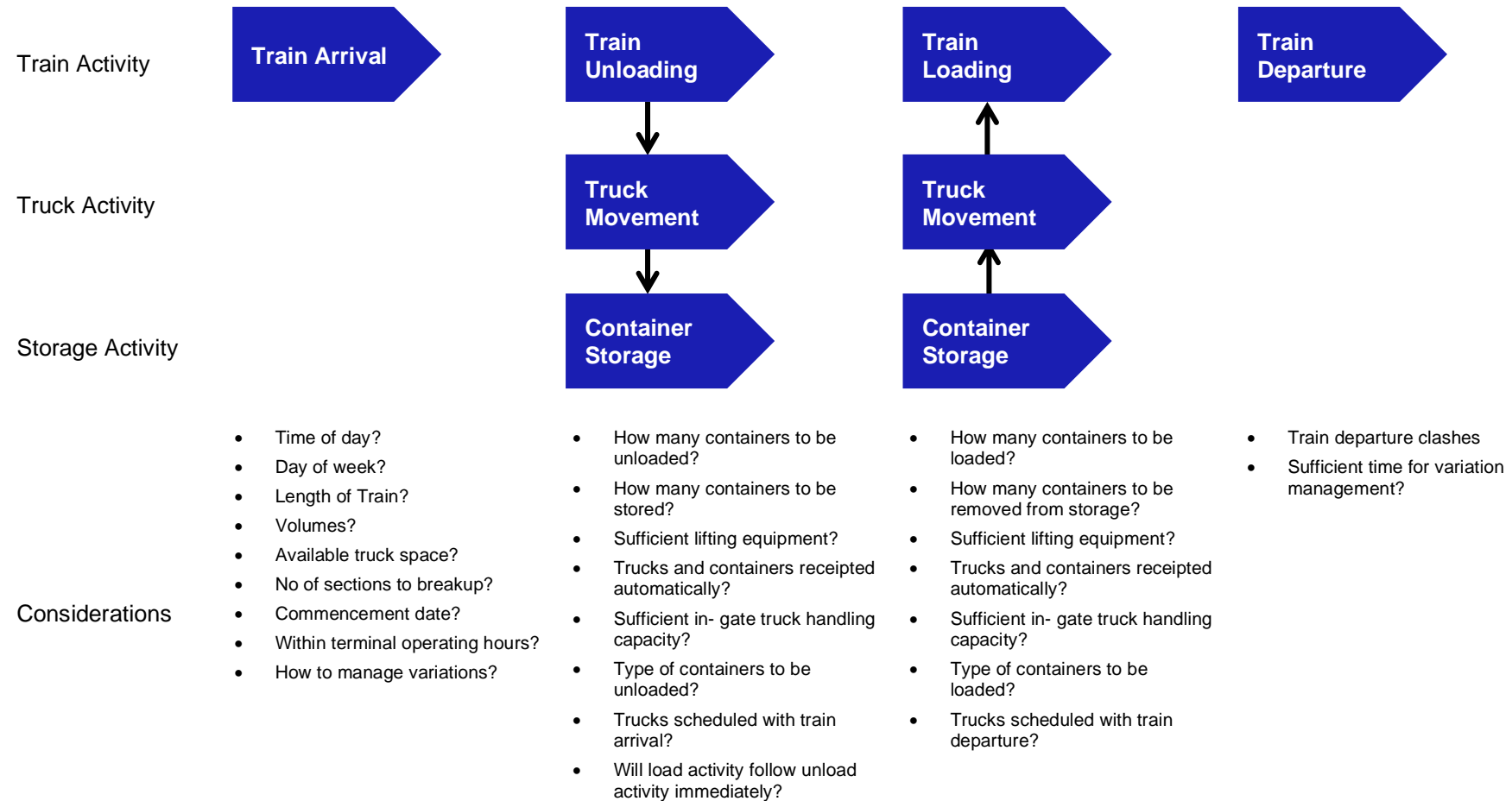
The Operator will publish the following on the IMEX Terminal website (as revised by the Operator from time to time):

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

Attachment A: Train Load / Unload Process Considerations

Load / Unload Process Considerations

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



Annexure 4 - Terminal Operating Procedure

1 Introduction

1.1 Purpose of the Terminal Operating Procedure

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

1.2 Operator's obligations

- (a) The Operator shall be responsible for the management and operation of the IMEX Terminal.
- (b) The Operator must at all times:
 - (i) ensure that the Customer is provided with a current version of this Terminal Operating Procedure; and
 - (ii) comply with this Terminal Operating Procedure.

2 Interpretation

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

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

3 General

3.1 Information required from Customers

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

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

3.2 Accreditation

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

3.3 IT requirements

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

4 Track utilisation plan

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

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

5.1 General

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

5.2 Train Loading

- (a) At least 90 minutes prior to the scheduled departure time of a Train, the Customer will provide the Operator with an indicative load plan which will include:
 - (i) wagon consist;
 - (ii) marshalling requirements; and
 - (iii) container bookings which must specify the type and weight of the container.
- (b) The Customer will be responsible for the timely presentation of the wagon consist to allow the Operator to load containers in accordance with the indicative load plan.
- (c) The Operator will check containers to ensure they are safe for loading having regard to container integrity, load restraint and compliance plating. The Operator will advise the Customer of containers which are not safe for loading.
- (d) The Operator will use reasonable endeavours to load the Train in accordance with the indicative load plan.
- (e) The Operator will manage variations to the indicative load plan and will advise the Customer of any such variations.

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

5.3 Unloading Trains

- (a) At least 90 minutes prior to the scheduled arrival time of a Train, the Customer will provide the Operator with notification of the nature and description of the goods loaded on the Train (**Notice of Consist**) and confirm that the Train has been safely loaded in accordance with any required standards prior to its release onto the network.
- (b) The Operator will check containers to ensure they are safe for unloading, having regard to container integrity, load restraint and plating compliance. The Operator will advise the Customer of containers which are not safe for unloading.

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

5.4 Empty container storage

The Operator may provide for the following services on terms set out in the Standard Customer Agreement:

- (a) empty container storage and aggregation for transport within the IMEX Terminal;
- (b) internal transfers of containers within the IMEX Terminal; and
- (c) temporary storage of empty containers within the IMEX Terminal.

6 Daily Variations

- (a) The Customer must provide the following notice to the Operator if a Train is likely to arrive before or after its scheduled arrival time:
 - (i) 90 minutes' notice for port shuttles operating between the IMEX Terminal and Port Botany; and
 - (ii) 12 hours' notice for all other Trains.
- (b) In respect of arriving Trains:
 - (i) For Train arrivals at or before the scheduled arrival time in the Timetable, the Operator will use reasonable endeavours to ensure that the Reference Services are supplied in a manner that permits the Train to depart on time.
 - (ii) For Train arrivals after the scheduled arrival time in the Timetable:
 - (A) the Operator and Customer will co-operate to forward plan for the arrival of those Trains; and

- (B) where and to the extent that it is practicable to do so, the Operator will amend its operating plan in order to service the Customer's late arriving trains at the earliest convenient point in time, subject always to the Operator's obligations to other Customers and provided the Operator considers it is safe and efficient to do so (in the Operator's absolute discretion).
 - (c) In respect of departing Trains:
 - (i) The Customer may:
 - (A) request the Operator to give priority to the provision of Services to certain of the Customer's Trains;
 - (B) request the Operator to vary Cut-Off Times or Train departure times to accommodate variations; and
 - (C) request the Operator to prioritise the container loading to meet customer expectations.
 - (ii) The Operator will:
 - (A) use reasonable endeavours to satisfy any requests under this sub-clause, subject always to the Operator's obligations to other Customers and provided the Operator considers it is safe and efficient to do so (in the Operator's absolute discretion); and
 - (B) if it becomes apparent to the Operator that a Train cannot be completed on schedule, the Operator will advise the Customer no later than two hours prior to the scheduled departure time of the train in order to allow crewing issues to be addressed.
 - (d) If a Train fails within the IMEX Terminal, the Operator will:
 - (i) use all reasonable endeavours to minimise disruptions to other Customers; and
 - (ii) as soon as is practical, subject to its obligations to other Customers and the safe and efficient operation of the IMEX Terminal, clear the failed Train.
 - (e) The Operator, where reasonably necessary, will liaise with ARTC train controllers in relation to train arrival and departure.
-

7 Gate entry and exit procedures

- (a) The Operator will be responsible for the in-gating and out-gating of the Customer's containers into the Terminal.
- (b) The Operator will provide freight opening and closing receival times for each of the Customer's train services.
- (c) The Operator will immediately notify the Customer of any exceptions in data that impact on the successful in-gating or out-gating of the Operator's containers.

- (d) For the purpose of maximising slot utilisation, the Customer may request that the Operator receive containers prior to the opening and closing times. These containers would be known as pre-receivals.
 - (e) The Customer will be responsible for resolving any data or load integrity exceptions that arise out of the in-gating or out-gating process and immediately notify the Operator once the exception has been resolved.
-

8 Road

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

9 General operations

9.1 Container Damage

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

9.2 Wagon Defects

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

9.3 Other operational arrangements

- (a) **Refrigerated goods:** The Operator will use reasonable endeavours to load and unload refrigerated goods subject to any terms or requirements agreed with the Customer. Where a Train has refrigerated goods that require handling by the Operator, the Customer must (unless otherwise agreed) notify the Operator not less than:

- (i) 24 hours – in respect of any Container on a port shuttle; and
 - (ii) 48 hours – in respect of any other service.
 - (b) **Ancillary Facilities:** The Operator may provide access to ancillary facilities from time to time (including access for operational staff to the café located within the Precinct) as notified by the Operator from time to time.
 - (c) **Customs and Quarantine:** The Customer is solely responsible for, and must comply with, all custom and quarantine requirements in respect of goods or Containers prior to such goods or Containers entering the IMEX Terminal. The Operator may require the Customer to provide documentation relating to customs and quarantine requirements before unloading or loading Containers.
 - (d) **Broken down locomotives:** The Customer is solely responsible for dealing with broken down locomotives. The IMEX Terminal does not provide facilities for the repair of locomotives and an Operator must promptly comply with any direction received from the Operator to remove a broken down locomotive or to otherwise move or relocate it in order to minimise any disruption to access to, or use of, the IMEX Terminal by the Operator or other Customers.
 - (e) **Incidents:** The Operator and the Customer will notify each other of any accident, spillage or other incident involving the Customer's Container(s), as soon as practicable. In the event an accident, spillage or other incident, the Operator shall be entitled to take such action as it deems necessary to overcome and alleviate the cause and consequences of the accident, spillage or other incident and the Customer shall assist the Operator wherever and however reasonably and practicably necessary.
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10 Maintenance

- (a) The Operator will be responsible for the maintenance of the IMEX Terminal and the infrastructure and equipment used to provide the Services to the standard reasonably determined by the Operator as appropriate for the safe and efficient provision of the Services.
- (b) For scheduled maintenance, the Operator will use all reasonable endeavours to provide affected Customers with at least 3 months' notice of the maintenance and any likely impact on the Customer's access or use of the IMEX Terminal.
- (c) For unscheduled maintenance, the Operator will provide notice to affected Customers as soon as reasonably practicable after becoming aware of the need to undertake such maintenance.
- (d) In carrying out maintenance (whether scheduled or unscheduled), the Operator will act reasonably and with the objective of:
 - (i) ensuring safety at all times;
 - (ii) ensuring operations at the IMEX Terminal promote efficiency, productivity and volume handled; and
 - (iii) minimising the extent of any adverse impact on the provision of services to Customers.

- (e) Where maintenance or repairs is required as a result of any act or omission by the Customer (including where this results from damage caused by the Customer or its contractors or agents), the Operator will be entitled to recover the costs associated with such maintenance or repair works (other than maintenance costs that arise in connection with the normal wear and tear of the IMEX Terminal) from the Customer as a charge payable by the Customer to the Operator.
 - (f) The Operator will not be liable for any costs incurred by, or claims made by or against the Customer, as a result of the Operator conducting any repairs or maintenance of the IMEX Terminal and any delay caused (including to any Train Movements or to the Timetable) as a result.
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11 Rolling Stock Standards

- (a) The Operator will have and maintain published and reasonable Rolling Stock Standards, which it will develop and update from time to time having regard to its terminal operations, regulatory requirements, safety requirements and any conditions of its planning or operational approvals.
 - (b) The Operator will notify all Customers of the applicable Rolling Stock Standards (or other applicable standard or requirement) in accordance with this clause 11.
 - (c) Where the Operator determines that changes to the Rolling Stock Standards are required having regard to regulatory requirements, safety requirements or any conditions of its planning or operational approvals, the Operator will provide as much prior notice to Third Party Operators as reasonably practicable in the circumstances.
 - (d) Where the Operator determines that changes to the Rolling Stock Standards are required having regard to its terminal operations, the Operator will comply with the following minimum notice periods for providing notice to Third Party Operators:
 - (i) not less than 3 months' prior notice for any minor changes, being changes to the Rolling Stock Standards that are minor or incidental and do not impose material additional costs on a rail operator in order to comply; or
 - (ii) for all other changes, not less than 6 months' prior notice of any changes (for example, any changes associated with the introduction of automation).
 - (e) The published Rolling Stock Standards will apply to all rail operators using the IMEX Terminal.
 - (f) Each Customer must ensure that all Rolling Stock used by the Customer at the IMEX Terminal comply with any Rolling Stock requirement notified under this clause 11.
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12 Safety

12.1 Safety management plan

- (a) The Operator will prepare a safety management plan for the IMEX Terminal.
- (b) The Operator will provide to the Customer all information necessary for the safe operation of the Customer's Trains within the IMEX Terminal.

- (c) The Customer will develop and provide a safety management plan for its rail operation that is consistent with requirements of the Operator. The Customer's safety management plan will be incorporated into the safety management plan for the IMEX Terminal.
- (d) The Operator and the Customer will comply with the safety management plan for the IMEX Terminal.

12.2 General safety obligations

- (a) The Operator has sole control of the IMEX Terminal site. The Customer is only permitted to enter the IMEX Terminal site with prior permission from the Operator.
- (b) Customers are not permitted to bring any Dangerous Goods into the IMEX Terminal precinct, unless specifically agreed with PDC (at its discretion).
- (c) The Operator has the right to remove or direct the immediate removal of Customers, Containers and/or any other vehicle or property from within the IMEX Terminal on safety grounds.
- (d) The IMEX Terminal has a zero limit for alcohol and other drugs and a policy of random testing.
- (e) The Operator and the Customer will ensure:
 - (i) compliance with the safety management plan for the IMEX Terminal;
 - (ii) all Rolling Stock, plant and equipment admitted to the IMEX Terminal is safe and is operated in a safe manner;
 - (iii) vehicles entering the IMEX Terminal comply with the following:
 - (A) a high vision yellow flashing light (beacon) is mounted on the vehicle roof;
 - (B) vehicle hazard lights are switched on;
 - (C) vehicle headlights are illuminated;
 - (D) maximum speed of 15 kph; and
 - (E) no mobile phone use, including the use of hands free sets, while driving; and
 - (iv) its employees, contractors and site visitors have received the relevant site induction (and PDC will determine the cost of any site inductions acting reasonably);
- (f) The Operator has the authority to enforce that the Customer will ensure its employees, contractors and site visitors entering the IMEX Terminal (excluding any administration buildings) comply with the following personal protective equipment:
 - (i) long sleeved shirt, with sleeves rolled down;
 - (ii) high visibility vest or shirt;
 - (iii) broad brimmed or Legionnaire style hat;

- (iv) protective footwear;
 - (v) protective safety glasses; and
 - (vi) protective safety glove and hearing protection when accessing the locomotive provisioning facility.
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13 Customer communications

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

14.1 Operator may initiate a review of the Terminal Operating Procedure

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

Annexure 5 - Complaints Handling System

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

1 Objectives of the Complaints Handling System

- 1.1 This Complaints Handling System is designed to:
- (a) provide complainants with access to an open and responsive complaints process in relation to the Terminal Access Protocol;
 - (b) manage complaints in an objective and unbiased manner;
 - (c) address complaints raised within a reasonable timeframe and in an equitable manner; and
 - (d) reduce the likelihood of complaints developing into ongoing Disputes.
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2 Guiding principles

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

Table 1 Guiding principles

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

Accessibility	<p>The Operator will ensure that its complaint management system is accessible to everyone, particularly people who might require assistance.</p> <p>The Operator will provide support to people to make a complaint if needed.</p> <p>The Operator will acknowledge that a person or organisation may request that another person or organisation assist or represent them to make and progress their complaint. The Operator will accept complaints from authorised representatives of complainants.</p> <p>Information about the various ways complaints can be made and the types of support available to people will be easily accessible to Third Party Operators.</p>
No charges	A complainant will not be charged a fee to complain.
Managing complaints	
Responsiveness	<p>The Operator will promptly acknowledge each complaint received. The Operator will assess complaints and give appropriate priority in accordance with the urgency of the issues raised.</p> <p>Complainants will be advised, as soon as practicable, where the Operator is unable to deal with either part or all of their complaint.</p> <p>The Operator will deal with complaints efficiently. Where set timeframes cannot be met, internal escalation systems will be used.</p> <p>The Operator will actively manage the expectations of complainants. This includes advising complainants about—</p> <ul style="list-style-type: none"> (a) the complaint process; (b) the expected timeframes for its actions; (c) their likely involvement in the process; and (d) the possible or likely outcome of their complaint, where practicable.
Objectivity and fairness	<p>Each complaint will be managed in an objective and unbiased manner.</p> <p>The Operator will take steps to ensure conflicting interests do not interfere with the management and resolution of complaints.</p> <p>Where appropriate, the Operator will defer actions that might have significant detrimental impact on the complainant until their complaint (or review) has been finalised.</p>

Equity	<p>All complaints will be addressed in an equitable manner and in accordance with this Complaints Handling System.</p> <p>Unreasonable conduct by complainants does not preclude valid issues being addressed by the Operator. However, vexatious and unreasonable behaviour and complaints will be considered by the Operator and managed appropriately.</p>
Privacy and disclosure	Personally identifiable information about any individual will only be disclosed or used in compliance with all relevant privacy laws and ethical obligations when managing a complaint.
Communication	To minimise complaints and facilitate early resolution, the Operator will provide explanations of this Complaints Handling System, and the Terminal Access Protocol to its staff, particularly frontline staff and staff handling complaints.
Managing the parties	
Conduct of parties	The Operator will make clear the behaviour expected of its staff when managing complaints in accordance with this Complaints Handling System.
Work health and safety	The Operator will implement appropriate policies, procedures and practices to ensure the health and safety of its staff involved in complaint management.
Complaint involving multiple parties	When a complaint involves multiple organisations consideration will be given to options for coordinating communication with the complainant. Subject to privacy and confidentiality obligations, communication and information exchange between the organisation should be pre-arranged, where practicable and appropriate, to facilitate investigation and response to a complaint.
Empowerment of staff	<p>The Operator will ensure that its staff are properly empowered to implement its complaint management system as relevant to their role.</p> <p>The Operator will encourage staff feedback as being a valuable source of insight into problems with the Operator, services or the Complaints Handling System.</p>
Accountability, learning and prevention	
Accountability	The Operator will ensure that accountability for the operation of its Complaints Handling System is clear.
Continuous improvement	Responding to and learning from complaints will be an essential part of the Operator's commitment to continual quality improvement.
Prevention of ongoing Disputes	This Complaints Handling System is designed to minimise the possibility of complaints escalating into ongoing Disputes.

3 Lodging a complaint

- 3.1 Complaints can be submitted by the following means:
- (a) in person to an Operator staff member at the IMEX Terminal;
 - (b) via email to *[Insert email]* addressed to the attention of the 'Moorebank IMEX Terminal Complaints Handling Manager'; or
 - (c) via post to *[Insert postal address]* addressed the 'Moorebank IMEX Terminal Complaints Handling Manager'.
- 3.2 Complainants should provide the following information to support their complaint:
- (a) Complainant's details.
 - (b) Who should be contacted regarding the complaint (i.e. complainant's or representative's contact details).
 - (c) Complainant's or representative's preferred contact method.
 - (d) Any special assistance required by the complainant to properly interact with Operator.
 - (e) Details of the service the complaint relates to.
 - (f) Whether the issue has been raised previously by the complainant and they have previously received a response.
 - (g) Details of the complaint including relevant dates and supporting materials.
 - (h) The outcome sought by the complainant.
 - (i) Signature field (if in hardcopy) and date.
- 3.3 The Operator will acknowledge complaints received within:
- (a) 1 month of receipt; or
 - (b) a time period agreed with the complainant.
- 3.4 Complaints must be submitted to the Operator:
- (a) for complaints related to day to day and operational matters and decisions - within 3 months of the relevant event(s) that gave rise to the complaint; or
 - (b) for complaints relating to major terminal-related matters and decisions (including complaints in connection with automation of the terminal) – within 6 months of the relevant event(s).

4 Managing complaints

- 4.1 An Operator staff member will collect and record the following information at the time of receipt of a complaint:
- (a) Date complaint lodged.
 - (b) Complainant's details.
 - (c) Complaint contact (i.e. complainant's or representative's contact details).
 - (d) Preferred contact method (if listed). If not listed, the default contact method will be in the format in which the complaint was made, unless there is a specific reason for not doing so.
 - (e) Any Operator identifier (i.e. customer account number) relating to the complainant (if appropriate).
 - (f) Any special assistance requested by the complainant.
 - (g) The IMEX Terminal service the complaint relates to (if applicable).
 - (h) Complaint owner—the Operator staff member who has been allocated to consider and respond to the complaint.
 - (i) Consideration of whether the content of the complaint requires immediate escalation or immediate action, or both.
 - (j) Complaint details, including any attachments.
 - (k) Outcome sought.
- 4.2 Responsibility for the Operator's complaint management lies with various parties including:
- (a) the Operator's chief executive (or equivalent head of the company);
 - (b) the Operator's manager responsible for complaint management (who will be appointed at the commencement of operations at the Moorebank IMEX Terminal);
 - (c) the Operator's Moorebank IMEX Terminal operational managers; and
 - (d) the staff handling complaints at the Moorebank IMEX Terminal.

5 Resolution of complaints

- 5.1 The Operator will address complaints using the three level model of complaint handling set out in Table 2 below.

Table 2 Three levels of complaint handling

Level 1: Frontline complaint handling	It is in the interests of the Operator that the majority of complaints are addressed by frontline or first point of contact staff.
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	<p>In order to achieve early resolution of a complaint, frontline staff will be adequately equipped to respond to complaints, including being given appropriate authority, training and supervision.</p> <p>Where appropriate, frontline staff will escalate a complaint to the Operator's complaint handling manager.</p>
<p>Level 2: Internal assessment, investigation, facilitated resolution or review</p>	<p>In some circumstances, the seriousness of some complaints or a complainant's dissatisfaction with how their matter has been dealt with may warrant the complaint being dealt with at a more senior level. All complaints referred to the Operator's complaint handling manager, will be dealt with in the following way:</p> <p><i>(a) Internal assessment</i></p> <p>The information provided by the complainant will be assessed to determine whether, and if so how, the complaint can be dealt with by the Operator. Such an assessment might consider such issues as—</p> <ul style="list-style-type: none"> (i) the nature and seriousness of the matters alleged; (ii) the complainant's desired outcome; (iii) whether there is any utility in taking the matter further; (iv) the adequacy of the information provided; (v) the options available to address the complainant's concerns; and (vi) the appropriate level at which the matters alleged or complained about can be addressed by the Operator. <p><i>(b) Internally facilitated resolution</i></p> <p>This will involve a representative of the Operator attempting to talk with a complainant to see if some form of mutually acceptable resolution can be achieved. Where appropriate, this process may include facilitating a discussion between the frontline staff member and the complainant.</p> <p><i>(c) Internal investigation</i></p>

	<p>Where a complaint raises significant issues for either the Operator or complainant, the Operator will undertake an internal investigation.</p> <p>Depending on the circumstances, such investigations may be undertaken by an appropriate manager, staff from an internal audit, ethical standards or investigation unit, or an external investigator under contract.</p> <p><i>(d) Internal review</i></p> <p>Where appropriate, a more senior member of staff or a line manager may review the decision of the frontline staff member or the outcome of any internal assessment or investigation of the complaint. The appropriate senior staff will be given a broad discretion to overturn previous decisions and apply remedies.</p>
<p>Level 3: External assessment and investigation</p>	<p>When a complainant is dissatisfied with the outcome of an internal assessment, investigation, review or resolution process, referral to an external complaint management mechanism may be appropriate.</p> <p>In this circumstance, the Operator may refer the matter for mediation by an alternative dispute resolution specialist elected by the Operator. The mediator, through a formal face-to-face process of discussion, will help the parties to clarify issues and reach a solution acceptable to both sides.</p>