

South Dynon Terminal Access Arrangement

Submitted by Pacific National pursuant to section 38W of the Rail Management Act 1996 (Vic)

in June 2012

As amended March 2015

As amended March 2017

As amended June 2018

Contents

- 1. Introduction..... 1**

 - 1.1 Purpose of this document..... 1
 - 1.2 Commencement date and term 1
 - 1.3 Definitions and interpretation 1
 - 1.4 Contact details..... ~~33~~

- 2. Description of services..... ~~33~~**

 - 2.1 Reference services..... ~~33~~
 - 2.2 Provision of Reference Services to Pacific National..... ~~55~~

- 3. Terms and conditions..... ~~55~~**

 - 3.1 Combination of Services..... ~~55~~
 - 3.2 Standard Access Agreement ~~55~~

- 4. Reference price..... ~~55~~**
- 5. Capacity allocation and capacity increase..... ~~55~~**

 - 5.1 Capacity allocation ~~55~~
 - 5.2 Capacity increase..... ~~66~~

- 6. Proposal in relation to account keeping rules ~~88~~**
- 7. Terminal Management Protocol..... ~~88~~**

 - 7.1 Non-Discrimination ~~88~~
 - 7.2 Track Network Management Protocols ~~88~~
 - 7.3 Late Running Trains ~~88~~
 - 7.4 Priority to On-Time Trains..... ~~88~~

- Annexure A..... ~~1010~~**
- Schedule 1 - Diagram of the South Dynon Terminal..... ~~1818~~**
- Schedule 2 - Application Form ~~1919~~**
- Annexure B - Capacity Allocation Protocols ~~2020~~**
- Annexure C: Financial Reporting ~~2424~~**
- Annexure D - Reference Prices for Reference Services ~~2626~~**
- Annexure E - Standard Access Agreement ~~2828~~**
- Schedule 1 Terminal ~~6060~~**
- Schedule 2 Train Specification and Service Details ~~6161~~**
- Schedule 3 Service Charges and Variation ~~6262~~**
- Schedule 4 Terminal Protocols ~~6363~~**
- Schedule 5 Capacity and Throughput ~~7676~~**
- Schedule 6 Agreement Details ~~7777~~**

South Dynon Terminal Access Arrangement

1. Introduction

1.1 Purpose of this document

This document is the Access Arrangement for the South Dynon Terminal and is submitted by Pacific National pursuant to the RMA.

1.2 Commencement date and term

This Access Arrangement will commence on the later of 1 July 2012 or the date on which the decision of the Commission under section 38ZF of the RMA takes effect.

The term of the Access Arrangement is 76 years from the commencement date of this Access Arrangement.

1.3 Definitions and interpretation

Access Agreement means the "Terminal Access and Services Agreement - South Dynon Terminal" between Pacific National and an access seeker for access to Services at the South Dynon Terminal.

Access and Regulation means Pacific National's (ABN 39 098 060 550) Access and Regulation team.

Access Arrangement means an access arrangement approved in a final decision under section 38ZF of the *Railway Management Act 1996* (Vic), or made under section 38ZJ or 38ZL of the *Railway Management Act 1996* (Vic), or a proposed access arrangement that is deemed to be an access arrangement pursuant to section 38ZK of the *Railway Management Act 1996* (Vic).

Access Arrangement Information means information that an access seeker would reasonably require to understand the derivation of the elements of the access arrangement so as to form an opinion as to whether the access arrangement complies with the requirements of Part 2 of the *Railway Management Act 1996* (Vic).

Access Holder means the "Access Holder" as defined under an Access Agreement.

Account Keeping Rules means the Account Keeping Rules made by the Commission in December 2005.

Application and Negotiation Protocol means the Application and Negotiation Protocol contained in Annexure A.

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

Australian Dangerous Goods Code means the Australian Dangerous Goods Code prepared by the National Transport Commission.

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

Business Day means a day not being Saturday, Sunday or public holiday, on which banks are generally open for business in Melbourne, Victoria.

Capacity Allocation Protocols means the Capacity Allocation Protocols for the South Dynon Terminal contained in Annexure B.

Capacity Use Rules means the Capacity Use Rules made by the Commission in December 2005.

Commission means the Essential Services Commission of Victoria.

CPI means the Consumer Price Index (All Groups Index Number, weighted average of 8 Capital Cities) as published by the Australian Bureau of Statistics. In this definition:

- (a) the reference to the Consumer Price Index (All Groups Index Number, weighted average of 8 Capital Cities) means:
 - (i) the same number but with different names at any time;
 - (ii) the same number adjusted mathematically to take account of a change at any time in the base period provided that indices of the same base year are used throughout the calculations; and
- (b) the reference to the Australian Bureau of Statistics includes a reference to:
 - (i) the Australian Bureau of Statistics but with a different name at any time; and
 - (ii) a Governmental Agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

Negotiation Guidelines means the Negotiation Guidelines made by the Commission in December 2005.

Operator Establishment Fee means the fee entitled "Operator Establishment Fee" set out in Annexure D.

Pacific National means Asciano Services Pty Ltd, ACN 052 134 362 / ABN 48 052 134 362 (formerly known as Pacific National (ACT)).

RMA means the *Rail Management Act 1996* (Vic).

Safety Interface Agreement means the requirement (where applicable) for Pacific National to seek to enter into an agreement with the Access Holder for the management of risks to safety arising from the interface of (where applicable):

- a) railway operations carried out by and on behalf of different rail transport operators; and
- b) railway operations with public or private roads, at rail or road crossings,

pursuant to the Rail Safety Act 2006 (Vic) (or in accordance with any other relevant standard or guideline relating to safety or coordination) and which may also incorporate the Train Specification and which may include provisions relating to:

- a) the implementation and maintenance of measures to manage those risks;
- b) the evaluation, testing and, if appropriate, revision of these measures;
- c) the respective roles and responsibilities of each party to the agreement in relation to these measures

- d) the procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
- e) a process for keeping the agreement under review

South Dynon Terminal means the land delineated and coloured blue and red on the plan contained in Schedule 1 to the South Dynon Lease as referred to in the Dynon Terminal Order 2005.

Standard Access Agreement means the Standard Access Agreement contained in Annexure E.

Terminal IT Systems means the IT systems used by Pacific National to operate the South Dynon Terminal.

Terminal Management Protocol means the protocol entitled “Pacific National Terminal Management Protocol for South Dynon”, being Pacific National's operational protocol for the management and operation of the South Dynon Terminal, referred to in clause 7 of the Access Arrangement and attached at Schedule 4 to the Terminal Access Agreement.

Track Network Management Protocols means the relevant track network management and operations protocols and procedures for the ARTC track network, VLine track network and Metro Trains Melbourne track network and any other relevant networks to the extent that they are relevant to South Dynon Terminal and its use.

User's Capacity Allocation means capacity allocated to a user under a Access Agreement where this capacity allocation is consistent with the Capacity Allocation Protocols for the South Dynon Terminal contained in Annexure B.

VLine Passenger means VLine Passenger Pty Ltd, ACN 087 425 269.

1.4 Contact details

Stuart Ronan
Manager, Access and Regulation

Pacific National
Level 16
15 Blue Street
North Sydney NSW 2060
Level 4
476 St Kilda Road
MELBOURNE VIC 3004

2. Description of services

2.1 Reference services

Reference service 1 comprises two components:

- (a) services provided on a one off basis which are necessary for the establishment and ongoing provision of terminal services to the access seeker; and
- (b) loading and unloading services provided to each train which arrives and departs the terminal.
 - (a) **One off services**

The services which are provided on a one off basis are:

- (i) the establishment of an IT system interface between the access seeker and Pacific National; and
 - (ii) system set up services which are provided for by an Operator Establishment Fee.
- (b) Loading and unloading services in respect of trains of up to 1500 metres**

In respect of trains of up to 1500 metres, these services comprise:

- (i) shunting - Break up of trains on arrival of up to four shunts to place onto loading roads or marshalling yard, removal of red cards and marshalling of train for departure. The Access Holder can choose to have either Pacific National provide locomotive(s) and crew for only two of the four shunts (Option A) or for all four shunts (Option B) provided for in this service.
- (ii) truck in-gate process - Process to collect customer booking information, weigh the truck/trailer to obtain accurate container weight, integration of electronic information, inventory management of the container and notification by the Access Holder of the nature and description of any Dangerous Goods (which must be provided on arrival of the Dangerous Goods).
- (iii) unloading of train process - Unloading of containers from wagons onto truck or onto ground, moving of containers to storage area.
- (iv) loading of train process - Unloading containers from truck to ground, moving of containers to storage area if required, load containers from ground or storage area to wagon in compliance with the indicative load plan subject to the terms of the Terminal Protocol.
- (v) attaching and detaching locomotives - Coordination of the detaching of locomotives on arrival and coordination of the attaching of outgoing locomotives before departure. Locomotives are to be crewed by the Access Holder.
- (vi) truck out-gate process - Completion of the truck visit to the terminal, matching of release numbers to container numbers and integration of electronic information for ending possession of the container.
- (vii) ongoing administration related to the management of Access Holder;
- (viii) customer interface; and
- (ix) basic container storage - Provision of an allowance of storage time for a container from time of arrival into the terminal till departure. For outgoing containers by rail 12 hours and incoming containers by rail 24 hours.

Reference service 2 comprises extended container storage beyond the allowance in basic container storage.

Reference service 3 comprises dangerous goods management - Management of dangerous goods in the terminal or on wagons in line with the Australian Dangerous Goods Code.

Reference service 4 comprises locomotive storage - Provision of track space for locomotives during the loading/unloading process.

Reference service 5 comprises wagon storage - Storage of any wagons not required for the outgoing service or any lay-over sets in line with the Access Holder's timetable.

Reference service 6 comprises truck driver induction - Truck driver inductions for any drivers not currently registered with Pacific National.

Reference service 7 comprises locomotive driver induction- Access Holder train driver inductions, yard familiarisation and Safety Interface Agreement procedures.

Reference service 8 comprises shunting in addition to that provided as part of Reference Service 1, with the locomotive and crew either provided by the Access Holder (Option A) or by Pacific National (Option B).

Reference service 9 comprises administration services if additional manual administration is required by the access seeker.

2.2 Provision of Reference Services to Pacific National

Pacific National operates the South Dynon Terminal and in doing so, uses Reference Services 1 to 9.

3. Terms and conditions

3.1 Combination of Services

None of the Reference Services 2 to 9 can be acquired without also acquiring Reference Service 1.

3.2 Standard Access Agreement

The terms and conditions of access for Reference Services 1 to 9 are set out in the Standard Access Agreement, which is Annexure E to this Access Arrangement.

4. Reference price

The reference prices for Reference Services 1 to 9 are set out in Annexure D to this Access Arrangement.

5. Capacity allocation and capacity increase

5.1 Capacity allocation

- (a) In carrying out allocation of Available Capacity for the South Dynon Terminal Pacific National will, subject to all relevant legislation (including in relation to safety):
- (i) not unreasonably favour itself or another person (including any of its related bodies corporate or business units) over any other person;
 - (ii) subject to paragraph (i) carry out capacity allocation of Available Capacity in respect of the South Dynon Terminal:
 - A. so as to encourage the maximum use of the South Dynon Terminal; and
 - B. in accordance with the Capacity Allocation Protocols.

- (b) Pacific National will use all reasonable endeavours to allocate the Available Capacity at the South Dynon Terminal to an access seeker in response to the receipt of an access request.

5.2 Capacity increase

- (a) An access seeker may request Pacific National to undertake an assessment of Works necessary to provide additional capacity to meet the access seeker's request for access.
- (b) "Works" for the purposes of this clause means any step or action intended to increase the capacity of the South Dynon Terminal, including without limitation:
 - (i) alteration of the layout of the South Dynon Terminal;
 - (ii) purchase or lease of equipment (including without limitation lifting or other associated rail equipment) to be used at the South Dynon Terminal;
 - (iii) construction of improvements to the South Dynon Terminal; and
 - (iv) alteration of the manner in which Pacific National manages, conducts or carries out operations at the South Dynon Terminal.
- (c) Within 40 Business Days of receiving a request, Pacific National will prepare and provide to the access seeker an indicative expansion plan for the Works to accommodate the access seeker's access request. The indicative expansion plan will include:
 - (i) an outline of the proposed Works including any alternate proposals for the proposed Works;
 - (ii) a program for the development of detailed assessment of the Works including:
 - A. an estimate of the costs of the Works;
 - B. the cost of preparing the detailed assessment;
 - C. the process for consultation by Pacific National with the access seeker on the detailed assessment;
 - D. the basis upon which Pacific National proposes to allocate the costs incurred in providing the detailed assessment of such Works, which will be fair and reasonable having regard to the nature of the request for access, the work undertaken and the benefits to Pacific National and the access seeker of the Works; and
 - E. the estimated costs of the detailed assessment.
- (d) Within 20 Business Days of receipt of the indicative expansion plan, the access seeker will advise Pacific National in writing if it wishes to proceed with a detailed assessment of the Works.
- (e) If the access seeker notifies Pacific National in accordance with clause 5.2(d), Pacific National will prepare a feasibility assessment which must include:
 - (i) conceptual design for the additional capacity;

- (ii) conceptual costing for the additional capacity;
- (iii) conceptual timeframe for the implementation of the enhancements;
- (iv) consultation and approval requirements;
- (v) physical and financial risks;
- (vi) identification of environmental issues;
- (vii) potential users of the additional capacity enhancements; and
- (viii) a cost estimate for the detailed design and costing of the proposed enhancements.

The timeframe for provision of this feasibility assessment will be advised to the access seeker following Pacific National receiving advice from the access seeker under 5.2 d). This time frame will vary and will depend on the nature and complexity of the proposed works that need to be undertaken to meet the request to increase capacity. This time frame may subsequently be varied with the agreement of the access seeker and Pacific National.

- (f) Pacific National will charge the access seeker a reasonable fee for the costs of undertaking the feasibility assessment as set out in Annexure A, Application and Negotiation Protocol, clause 6.2.
- (g) The decision to undertake the Works and the manner in which such Works are to be undertaken by Pacific National is in Pacific National's absolute discretion provided that it is consistent with these protocols and the terms of the lease pursuant to which Pacific National occupies the South Dynon Terminal.
- (h) Without derogating from Pacific National's discretion, Pacific National will consult with the access seeker in relation to:
 - (i) the manner in which the Works are to be carried out; and
 - (ii) the cost of the Works, the allocation of which will be as agreed between Pacific National and the access seeker.
- (i) Pacific National will not be required to undertake an expansion in any of the following circumstances:
 - (i) the proposed expansion is in breach of any legislation;
 - (ii) if, in order to undertake the expansion, it is necessary for Pacific National to make use of land other than that on which the South Dynon Terminal is located;
 - (iii) Pacific National is, despite its reasonable endeavours, unable to obtain required consents, licences, permits or other approvals required by any legislation or other legal obligation in relation to the design, construction, commissioning, operation and maintenance of the proposed expansion; or
 - (iv) the expansion is in Pacific National's reasonable opinion otherwise unreasonable.

6. Proposal in relation to account keeping rules

The accounting records consistent with the information reasonably required to be provided pursuant to the Account Keeping Rules for the purposes of the Access Arrangement are set out in Annexure C.

7. Terminal Management Protocol

7.1 Non-Discrimination

In carrying out management of trains into and out of the South Dynon Terminal Pacific National will, subject to all relevant legislation (including in relation to safety), not unreasonably favour itself or another person (including any of its related bodies corporate or business units) over any other person.

7.2 Track Network Management Protocols

Pacific National will, to the extent necessary to provide access to the South Dynon Terminal in accordance with this Access Arrangement and comply with the relevant track network management and operations protocols and procedures for the ARTC track network, V/Line track network and Metro Track Melbourne Track network and any other relevant networks to the extent that they are relevant to the South Dynon Terminal. Pacific National will use all reasonable endeavours to maximise the use of the rail network through the optimum use of the South Dynon Terminal.

7.3 Late Running Trains

Pacific National will use its best endeavours to accommodate trains that present at the South Dynon Terminal more than 20 minutes after the designated arrival time.

7.4 Priority to On-Time Trains

Nothing in clause 7.3 above will require Pacific National to disrupt trains which arrive and depart the South Dynon Terminal in accordance with their specified arrival and departure times.

Table of Annexures

- A. Application and Negotiation Protocol
 - Schedule 1: Diagram
 - Schedule 2: Application Form
- B. Capacity Allocation Protocols
- C. Financial Reporting
- D. Reference Prices for Reference Services 1- 9
- E. Standard Access Agreement

Annexure A

Application and Negotiation Protocol

1. Introduction

1.1 Scope of document

This Application and Negotiation Protocol is made pursuant to section 38X of the RMA and details:

- (a) the negotiation guidelines which will apply to any request for access to the South Dynon Terminal;
- (b) the procedure for making applications for access to the South Dynon Terminal;
- (c) the procedure that will be followed by Pacific National when assessing and determining access applications; and
- (d) the procedure and method for negotiating the terms and conditions for access.

1.2 Good faith commitment

When following the procedures and carrying out the obligations specified in this Application and Negotiation Protocol, Pacific National and all access seekers must act in good faith.

1.3 Definitions and interpretation

In this Application and Negotiation Protocol, terms have the same meaning as defined in the Access Arrangement for the South Dynon Terminal.

2. Procedure for making an access application

2.1 Information Pack

- (a) Access and Regulation will prepare and maintain an information pack in relation to access to the South Dynon Terminal that will be made available to an access seeker on request by the access seeker within 5 Business Days of receipt of the request. Such a request may be made by an access seeker prior to submitting an access application.
- (b) The information pack for the South Dynon Terminal will contain:
 - (i) a copy of the Access Arrangement and Access Arrangement Information;
 - (ii) a copy of the detailed diagrammatic map of the South Dynon Terminal set out in Schedule 1 to this Application and Negotiation Protocol which includes the location within the South Dynon Terminal of fixed plant and equipment;
 - (iii) a copy of the Capacity Allocation Protocols;
 - (iv) the name and contact details of the Access and Regulation representative who has primary responsibility for responding to questions from access seekers prior to the lodgment of access applications;

- (v) a copy of the Application Form for access to the South Dynon Terminal, which is set out in Schedule 2 to this Application and Negotiation Protocol;
 - (vi) a copy of the standard terms and conditions for access to the South Dynon Terminal contained in the Standard Access Agreement;
 - (vii) a description of the signalling system, safe working systems and operational systems operative at the South Dynon Terminal; and
 - (viii) a copy of Pacific National's Terminal Management Protocol.
- (c) Access and Regulation will advise the access seeker, at the time of providing the information pack, that further information may be available under clauses 3 and 5 of the Capacity Use Rules.

2.2 Provision of further information

- (a) Following the provision of an information pack under clause 2.1, if requested by the access seeker and if the access seeker provides it with a description of the service it is considering seeking, Pacific National will provide the following additional information:
- (i) whether there is capacity to provide access to the South Dynon Terminal;
 - (ii) a description of the South Dynon Terminal including the layout of the terminal and interface with roads, ports or other relevant infrastructure used to access the terminal and a description of any operational constraints to roadside access to the terminal;
 - (iii) details of the access charges that apply for access to the South Dynon Terminal with reference to the reference tariffs set out in the Access Arrangement;
 - (iv) such other matters as an access seeker may reasonably require for the purpose of making an application for access in accordance with the Access Arrangement.
- (b) Pacific National will use all reasonable endeavours to provide the information requested under clause 2.2(a) to the access seeker in writing within 14 days after receiving the request for further information and the description of the service from the access seeker.

2.3 Application Form and access seeker information

- (a) An access seeker may submit a completed Application Form to Access and Regulation providing details of the access requested. An access application must be in accordance with the Application Form which is set out in Schedule 2 to this Application and Negotiation Protocol.
- (b) In addition to information required by the Application Form, Access and Regulation may require the access seeker to provide information as to:
- (i) the managerial and financial ability to carry out the operations and activities consistent with the access request, including evidence that the access seeker's management and staff have the necessary knowledge and experience or that the access seeker will be able to and will engage the

services of another person whose management and staff have the necessary knowledge and experience to carry out the proposed rail operation and that the access seeker has the necessary financial resources to carry out the proposed activities;

- (ii) the access seeker's requirements in relation to the terminal services required at the South Dynon Terminal;
- (iii) the nature and ability of the access seeker's IT systems to reliably interface with the Terminal IT Systems if the access sought were to be provided;
- (iv) the ability of the access seeker's locomotives to communicate with terminal communication systems in accordance with the Terminal Management Protocol; and
- (v) any other information reasonably required by Access and Regulation to assess and respond to the access application.

3. Procedure for assessing access applications

3.1 Acknowledgement of receipt

- (a) Access and Regulation will acknowledge receipt of an access application within 5 Business Days of receipt.
- (b) Within 10 Business Days of receipt of an access application (or such longer period as may be agreed between Access and Regulation and the access seeker), Access and Regulation will advise the access seeker that either:
 - (i) the access seeker's application is in the form prescribed in the Access Arrangement and contains the information required; or
 - (ii) the access seeker's application is not in the form prescribed in the Access Arrangement or does not contain the information required (in which case Access and Regulation may reject the access application).
- (c) If Access and Regulation rejects an access application in accordance with paragraph (b)(ii) above, Access and Regulation will, in the notice to the access seeker, specify the additional information that it reasonably requires for the access application to be compliant.
- (d) Having received a notification pursuant to the paragraph (b)(ii) above, an access seeker may elect to:
 - (i) give further information to Access and Regulation, in which case, paragraphs (a), (b) and (c) above shall apply to the provision of such further information with such alterations and modifications as are necessary;
 - (ii) refer the matter to the Commission as an access regime dispute under section 38ZV of the RMA; or
 - (iii) accept the rejection and not proceed further with that access application.
- (e) If Access and Regulation does not reject the access application within 10 Business Days of receipt of the access application or such longer period as the parties agree,

Pacific National is deemed to have given an acknowledgement under paragraph (b)(i).

3.2 Assessment of Access Application

- (a) Within 20 Business Days of issuing a notice to the access seeker under clause 3.1(b)(i), or the date on which Access and Regulation is deemed to have done so under clause 3.1 (e), Pacific National will determine, consistent with the Access Arrangement, the Capacity Use Rules and any protocols made under those rules, whether there is sufficient Available Capacity to meet the access seeker's request and, by notice in writing to the access seeker, advise the access seeker accordingly.
- (b) Subject to clause 3.2(e), if Pacific National determines under paragraph (a) that there is sufficient Available Capacity to meet the access seeker's request, Pacific National will include in the notice provided to the access seeker in accordance with paragraph (a) the proposed terms and conditions, including price, upon which the access provider will make the requested service available.
- (c) If Pacific National determines under paragraph (b) that there is not sufficient Available Capacity to meet the access seeker's request (after assessing Available Capacity in accordance with the Capacity Use Rules), Pacific National will, within 25 Business Days of issuing a notice to the access seeker under clause 3.1 (b)(i) or within 25 Business Days of the date on which the Pacific National is deemed to have done so under clause 3.1(b)(e):
 - (i) provide reasons why the service cannot be made available to meet the access seeker's request;
 - (ii) if part but not all of the access seeker's request can be satisfied from Available Capacity, subject to clause 3.2(e) notify the access seeker of the terms and conditions, including price, upon which the Pacific National will make that the service requested available to the extent of Pacific National's Available Capacity; and
 - (iii) if Works are required to provide additional capacity necessary to meet the access seeker's request in full, at the time of providing notice under clause 3.2(c)(ii) offer to undertake an assessment of the Works required and the cost of those Works in accordance with the clause 5.2 of the Access Arrangement.
- (d) Pacific National may reject an access application if:
 - (i) the access seeker does not have or will not have all necessary accreditation lawfully to operate the service it is proposing to operate;
 - (ii) the access seeker's rolling stock does not comply with the requirements for access to the relevant rail network applicable from time to time, where the relevant rail network may include, but is not limited to, ARTC network, VLine Network, Metro Trains Melbourne network, Railcorp network and Brookfield Rail network;
 - (iii) either the management and staff of the access seeker do not have the necessary knowledge and experience to carry on the proposed rail operations, or the access seeker will not be able to engage the services of another person whose management and staff have the necessary knowledge and experience carry on the proposed operations; or

- (iv) in carrying on the proposed operations the access seeker does not have the necessary financial capacity to meet its financial obligations to Pacific National under an Access Agreement and the financial obligations it owes to any other persons (including excesses under insurance policies).
- (e) If Pacific National determines to reject an access application under paragraph (d) it will, within 25 Business Days of issuing a notice to the access seeker under clause 3.1(a) or within 25 Business Days of the date on which it is deemed to be done so under clause 3.1(e) notify the access seeker of its determination and provide reasons why the requested service cannot be made available.

4. Negotiation of terms and conditions of access

4.1 Negotiation process

Following provision by Pacific National of a notice under clause 3.2(a) Pacific National will:

- (a) meet and negotiate in good faith with the access seeker to seek to reach agreement on the terms and conditions, including price, on which it will make the requested service available (including if the notice has been provided under clause 3.2(c)(ii) of availability or part availability of capacity, any works required to provide additional capacity); and
- (b) use all reasonable endeavours to meet the requirements of an access seeker who has complied with its obligations under the Act and this Application and Negotiation Protocol.

4.2 Scope of negotiations

The access negotiations will be conducted on the basis that:

- (a) save for:
 - (i) specific factual details relevant to each individual access application; and
 - (ii) any matters agreed between Pacific National and the access seeker,the Standard Access Agreement will comprise the contractual terms between Pacific National as the operator of the South Dynon Terminal, and the access seeker;
- (b) the price for the services to be provided will be determined in accordance with the Access Arrangement Information and the reference tariffs.

4.3 Timing of negotiations

The negotiation of the contractual terms will be completed within 60 Business Days of Pacific National giving notice under clause 3.2(a).

4.4 Dispute resolution process

- (a) If a dispute arises between Pacific National and the access seeker in connection with the negotiations for the provision of access to the South Dynon Terminal ("**Dispute**") then either party may give a notice ("**Dispute Notice**") to the other specifying the Dispute and requiring it to be dealt with under this clause 4.4.

- (b) Pacific National and the Access Seeker shall use reasonable endeavours and act in good faith to settle the dispute as soon as practicable.
- (c) If the Dispute is not resolved within 10 Business Days from the date on which it is referred to the delegates of the Chief Executive Officers, the Dispute will be referred to the senior Pacific National executive with responsibility for the South Dynon Terminal who will attempt to resolve the Dispute within 20 Business Days from the date of receipt of the Dispute Notice.
- (d) If a Dispute is not resolved in accordance with clause 4.4(c) Pacific National and the access seeker will jointly choose and appoint an independent expert to provide a report containing a recommendation as to the basis on which the Dispute should be resolved;
- (e) In the absence of agreement as to the independent expert within 10 Business Days the independent expert will be appointed on the application of Pacific National by the President of the Institute of Arbitrators and Mediators Australia.
- (f) The independent expert must provide his report as soon as practicable and, if possible, within 20 Business Days of the Dispute being referred to the expert.
- (g) The independent expert will act as an expert and not an arbitrator and may adopt such procedures as he/she thinks fit.
- (h) The costs of the independent expert will be borne equally by Pacific National and the access seeker.
- (i) Pacific National and the access seeker will use their best endeavours to resolve the Dispute on the basis set out in the expert report obtained pursuant to the mechanism provided under paragraph (d) above.
- (j) If either Pacific National or the access seeker refers the Dispute to the Commission, either party may provide the Commission with a copy of the expert report obtained pursuant to the mechanism provided under paragraph (d) above.

5. Confidential Information

5.1 Confidential Information

Information provided by Pacific National or an access seeker in confidence to each other under or in connection with this Application and Negotiation Protocol is “**Confidential Information**” for the purposes of this clause.

5.2 Prohibition on disclosure

Each of Pacific National and the access seeker undertakes to the other that it, its officers, employees, agents and subcontractors will not, without the written consent of the other party (which consent shall not be unreasonably withheld) disclose Confidential Information to any person, unless the disclosure:

- (a) is of Confidential Information already within the public domain other than as a result of a breach of this Application and Negotiation Protocol;
- (b) is of Confidential Information already known to that person (as evidenced by the persons written records) at the date of disclosure;

- (c) is provided to the professional advisers of the disclosing party, on condition that the professional adviser agrees to keep the Confidential Information confidential;
- (d) is to be made to a related body corporate of the disclosing party provided that:
 - (i) the related body corporate agrees to keep the Confidential Information confidential;
 - (ii) the Confidential Information is disclosed solely for the purpose of enabling the disclosing party to undertake its rights and obligations under this Access Arrangement or an Access Agreement made pursuant to it;
 - (iii) if Pacific National is the disclosing party, Pacific National must ensure that the related body corporate complies with section 38ZZZ of the RMA as if that related body corporate were an access provider; and
 - (iv) if the access seeker is the disclosing party, the access seeker must ensure that the related body corporate complies with section 38ZZZA of the RMA as if that related body corporate were an access seeker;
- (e) is required by law (including the act or the guidelines), or any governmental agency acting or purporting to act within its powers and functions, or by the requirements of accreditation;
- (f) is reasonably necessary for the purposes of any mediation, expert determination, arbitration or legal proceeding involving Pacific National or the access seeker; or
- (g) is to the ACCC for the purposes of Part IIIA of the *Competition and Consumer Act 2010* Cth or to the Commission for the purposes of the RMA;

5.3 Confidential Information

- (a) To the extent that compliance with this Application and Negotiation Protocol requires either Pacific National or the access seeker to provide the other party with Confidential Information, each party must take all reasonable steps to ensure that the Confidential Information is kept confidential and only made available to officers, employees, agents or subcontractors (including consultants) who require that Confidential Information (and only to the extent required) to enable the respective parties to comply with their obligations under this Application and Negotiation Protocol.
- (b) Subject to clause 5.3 (c), neither Pacific National nor the access seeker may disclose Confidential Information received from the other party in accordance with this Application and Negotiation Protocol, to any related body corporate without the prior written consent of the other party.
- (c) Nothing in this clause 5 prevents the disclosure of Confidential Information to the Director or any minister, officer, employee, agent, adviser or consultant of the State of Victoria or a governmental agency of that State.
- (d) The obligation of confidentiality under this clause is a continuing obligation and remains in force from the date upon which the access seeker makes a request pursuant to clause 2.1 of this Application and Negotiation Protocol.

5.4 Prohibition on use of access seeker information

- (a) Pacific National must not, without the written consent of the other party, use Confidential Information given to it by an access seeker or user other than solely for one of the following purposes:
 - (i) to assess and respond to a request by the access seeker for the provision of a service made under this Application and Negotiation Protocol; and
 - (ii) to provide the relevant service to the user.
- (b) An access seeker or a user must not, without the written consent of Pacific National, use Confidential Information given to them by Pacific National other than solely for the purpose of seeking to be provided, or using, a service provided by Pacific National pursuant to this Application and Negotiation Protocol.

5.5 Provision of Information to Pacific National

Nothing in this clause prevents Access and Regulation from disclosing all information, other than the name of the access seeker or end customer details, to Pacific National as the operator of the South Dynon Terminal for the sole purpose of enabling Pacific National to assess an application in accordance with this Application and Negotiation Protocol.

6. Fees and Levies

6.1 Fees and levies for the provision of information

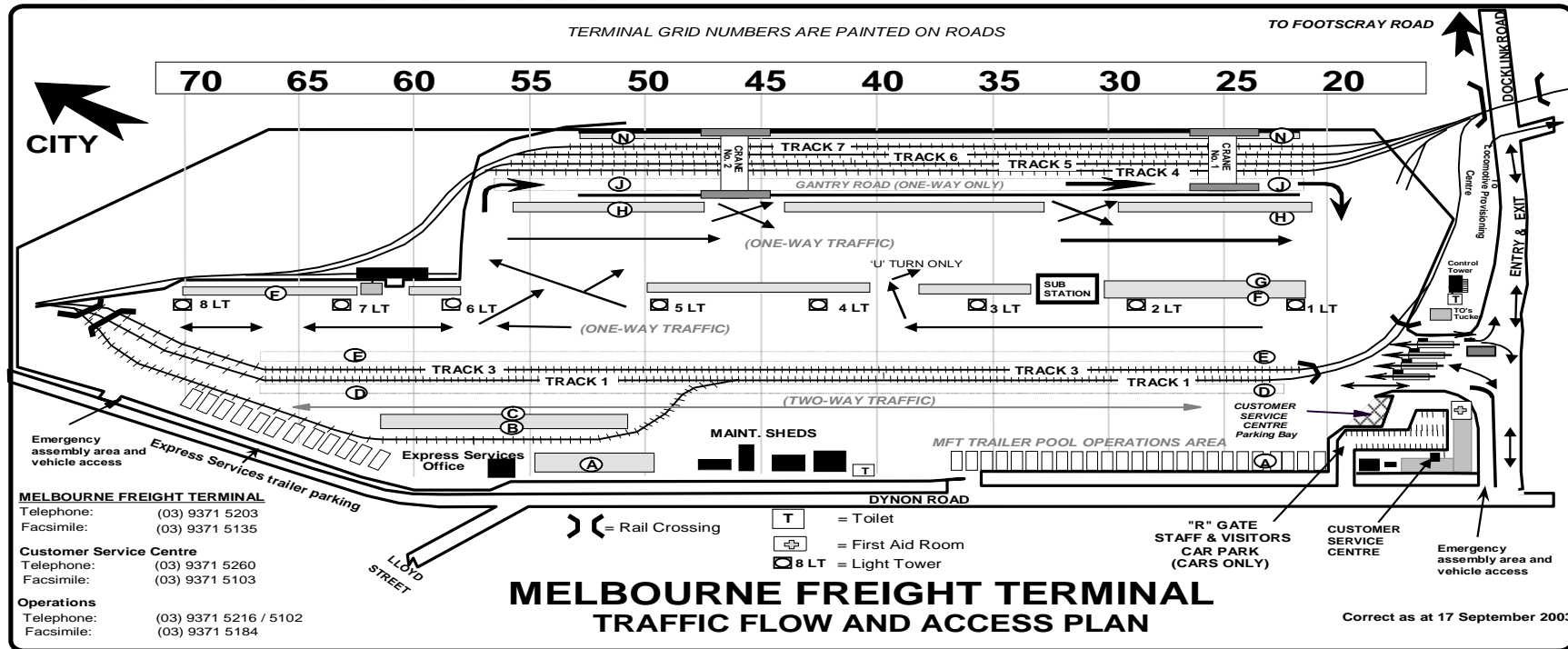
Pacific National may charge the access seeker a fee of \$200 for the provision of (and as a pre-condition to providing) each of:

- (a) an information pack under clause 2.1 (although there will be no fee to download the information pack from Pacific National's extranet site); and
- (b) the additional information required to be provided under clause 2.2.

6.2 Fees and levies for assessing works

- (a) Where an access seeker has accepted Pacific National's offer under clause 3.2(c)(ii) and Pacific National has carried out the detailed assessment of the Works and the cost of the Works, Pacific National may charge a fee for providing such detailed assessment, which will be calculated in accordance with the protocols made by Pacific National as required under section 4.4 of the Negotiation Guidelines and on a basis which will be fair and reasonable having regard to the nature of the request for access, the work undertaken and the benefits to Pacific National and the access seeker of the works.
- (b) Pacific National will, on request by the access seeker, provide to the access seeker in writing a breakdown of the component costs of the fee charged by Pacific National under paragraph (a).

Schedule 1 - Diagram of the South Dynon Terminal



Schedule 2 - Application Form

1.	The access seeker's name and contact details:	
2.	Train arrival specifying: - Day of week: - Time of day:	
3.	Train departure specifying: - Day of week: - Time of day:	
4.	Origin of the train: Destination of the train:	
5.	Length of train:	
6.	Types of containers which will be on trains identifying size and whether any containers will have special handling requirements or processes:	
7.	Estimated number of containers to be unloaded per train:	
8.	Number of sections into which train is to be broken and length of each section:	
9.	Date on which services are to commence:	
10.	Details of any through city section:	
11.	Details of whether any container storage will be required outside delivery and pick up time frames provided for the in the Access Agreement:	
12.	Details of the accreditation of the access seeker or the status of the access seeker's application for accreditation:	
13.	Locomotive and storage requirements:	

Annexure B - Capacity Allocation Protocols

Capacity allocation

1. On receipt of an access application in accordance with clause 2.3 of the Application and Negotiation Protocol, Pacific National will make an assessment as to whether there is sufficient Available Capacity at the South Dynon Terminal to meet the access seeker's request. In making that assessment Pacific National will take account of the factors outlined in the "Train Load / Unload Process Considerations" chart below.
2. If Pacific National determines, in its reasonable opinion, that there is insufficient Available Capacity to satisfy an access seeker's request, it will, in accordance with clause 3.2(c) of the Application and Negotiation Protocol:
 - (a) make an assessment of whether part of the access seeker's request can be satisfied with Available Capacity and an assessment of the works that would be required to satisfy the balance of the access seeker's request, consistently with each protocol referred to in the Application and Negotiation Protocol; and
 - (b) provide a written explanation to the access seeker as to why the access application could not be satisfied in full.
3. If Pacific National determines, in its reasonable opinion, that there is sufficient Available Capacity to satisfy an access seeker's request, it will notify the access seeker in accordance with clause 3.2(a) of the Application and Negotiation Protocol.

Mutually exclusive requests for capacity

4. In circumstances where two or more access seekers are seeking mutually exclusive capacity allocation rights, the rights will be granted to the access seeker who accepts an Access Agreement with Pacific National which, in the opinion of Pacific National, is most favourable to Pacific National. Ordinarily, but without limiting Pacific National's discretion in this regard, Pacific National would make such a decision based on the Access Agreement that represented the highest present value of future returns to Pacific National after considering all risks associated with the Access Agreement.

Access seeker may vary capacity allocation

5. An access seeker or user may apply to Pacific National to vary its allocated capacity entitlements under a Access Agreement. Pacific National will assess the application against the capacity allocation principles and procedures set out in this Capacity Allocation Protocol having regard to the Available Capacity and, will vary the capacity entitlement as sought if able to do so pursuant to those principles and procedures. In varying the capacity entitlement of any access seeker or user under this clause, Pacific National will negotiate with the access seeker or user in good faith and will use all reasonable endeavours to vary the allocated capacity entitlement in accordance with the request of the access seeker or user, provided that such variation does not interfere with the allocated capacity entitlements of another user or the optimum use of the terminal.

Pacific National rights to vary or withdraw capacity entitlements

6. In order to encourage the optimum use of South Dynon Terminal, Pacific National will be entitled to withdraw capacity allocated to a user pursuant to a Access Agreement, and reallocate that capacity to another access seeker, if the user has failed to use at least 65% of the allocated capacity for any calendar month during the term of the Access Agreement, without sufficient justification acceptable to Pacific National acting in good faith and reasonably.

Pacific National must notify the user in writing of its intention to withdraw allocated capacity on the basis of this clause 6, which notice must:

- (a) state that it is a notice given under section 5.6 of the Capacity Use Rules,
- (b) require the user to demonstrate its ability to utilise, or fully utilise that User's Capacity Allocation to the extent contemplated in section 5.6(a)(i) or (ii) of the Capacity Use Rules (as applicable) or otherwise to show cause in writing why Pacific National should not require the surrender of the User's Capacity Allocation the subject of the notice;
- (c) state the date by which the user is required to provide a written response to the access provider (which will not be less than 14 days after the user receives the notice); and
- (d) state that if the user does not show reasonable cause in writing by the stated date, Pacific National may by written notice to the user require the surrender of the User's Capacity Allocation that is the subject of the notice.

Pacific National will provide the user with sufficient opportunity (to be no less than 14 days from the date of the notice) to demonstrate its ability to utilise, or fully utilise that allocated capacity to the extent contemplated under the Terminal access arrangement or otherwise to show cause in writing why Pacific National should not withdraw the allocated capacity the subject of the notice. In considering any response from the user to a notice given by Pacific National under this clause, Pacific National will act reasonably and in good faith.

7. Pacific National may permanently vary or withdraw capacity allocated to a user under a Access Agreement following breach by the user of relevant legislation, or an industry or Pacific National standard (including Pacific National's rolling stock interface standards), or the Terminal Management Protocol or a Pacific National requirement relating to the operation or safety requirements applicable to South Dynon Terminal. Pacific National must notify the user in writing of its intention to permanently vary or withdraw allocated capacity on the basis of this clause 7, which notice must state:

- (a) that it is a notice under section 5.4 of the Capacity Use Rules;
- (b) the alleged breach;
- (c) that the user is required to show cause in writing why Pacific National should not require the permanent variation or surrender of the User's Capacity Allocation the subject of the alleged breach;
- (d) the date by which the user is required to show cause (which will not be less than 14 days after the user receives the notice); and
- (e) that if the user does not show reasonable cause by the stated date, Pacific National may by written notice to the user permanently vary or require the surrender of the User's Capacity Allocation the subject of the notice.

Pacific National will provide the user with sufficient opportunity (to be no less than 14 days from the date of the notice) to show reasonable cause why Pacific National should not vary or withdraw capacity as specified in the notice. However, where such breach creates a risk of injury to persons or damage to property, including damage to equipment or infrastructure at the South Dynon Terminal, Pacific National may withdraw the User's Capacity Allocation immediately until the user has addressed the risk to the reasonable satisfaction of Pacific National acting in good faith and reasonably. In considering any response from the user to a

notice given by Pacific National under this clause, Pacific National will act reasonably and in good faith.

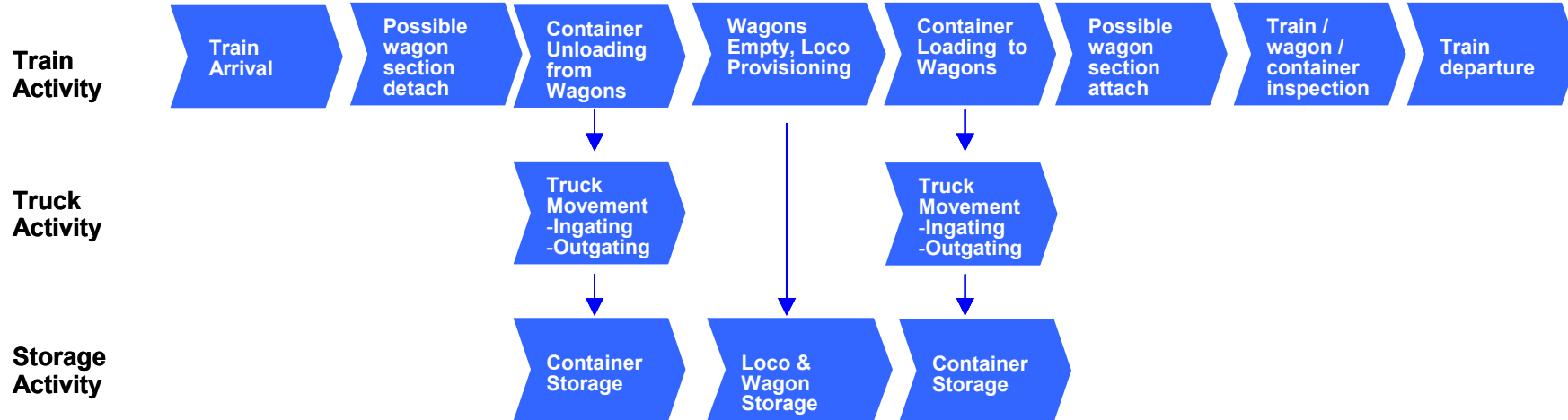
8. Pacific National may vary capacity allocated under a Access Agreement on a temporary basis:
 - (a) to repair, maintain, upgrade, extend, construct or make alterations to the South Dynon Terminal;
 - (b) for reasons of safety or for the prevention of injury or damage to the rail network or South Dynon Terminal or to other persons or property; and
 - (c) following a request in writing from a user.
9. Pacific National must advise the user in writing of its intention to temporarily vary a capacity allocation under clause 8 of this Capacity Allocation Protocol by notice in writing of not less than 14 days. However, a lesser notice period as determined by Pacific National acting in good faith and reasonably may be given if the temporary variation is required to ensure safety in the operation of South Dynon Terminal. Pacific National will consult with the user prior to issuing the notice and during the notice period so as to best accommodate the requirements of the user by temporarily allocating suitable substitute capacity where possible, applying the capacity allocation principles and procedures set out in this Capacity Allocation Protocol.

Complaint handling

10. If an access seeker or user is not satisfied that Pacific National has complied with its obligations under this Capacity Allocation Protocol and provides Pacific National with details of the complaint in writing, Pacific National will investigate and consider the complaint and seek to address the complaint in good faith within 21 days from receipt of the complaint. Pacific National will report to the Commission each such complaint and the measures taken by Pacific National in response to such complaint.

Train Load / Unload Process Considerations

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



Considerations

- Time of day?
- Day of week?
- Length of Train?
- Available track space?
- No of sections to breakup?
- How to manage variations?
- Commencement date?
- Within terminal operating hours?
- How many sections to detach?
- Any through city section?
- Where will sections be placed?
- Are shunt locos available?
- How many containers to be unloaded?
- How many containers to be loaded?
- Sufficient lifting equipment?
- Trucks and containers receipted automatically?
- Sufficient in-gate truck handling capacity?
- Type of containers to be unloaded?
- Trucks scheduled with train arrival?
- How many hours before loading task commences?
- Where will wagons and locos be positioned?
- Are shunt locos available?
- Where will locos be provisioned?
- Will load activity follow unload activity immediately?
- How many containers to be loaded?
- How many containers to be removed from storage?
- Sufficient lifting equipment?
- Trucks and containers receipted automatically?
- Sufficient in-gate truck handling capacity?
- Type of containers to be loaded?
- Trucks scheduled with train arrival?
- How many sections to attach?
- Any through city section?
- Where will incoming sections be sourced?
- Are shunt locos available?
- How will a faulty wagon or container be corrected?
- Who will correct non-loading faults?
- Who will provide information to Track Access providers and other authorities?
- Train departure clashes;
- Sufficient time for variation management?
- What if Track Access provider will not accept train?

Annexure C: Financial Reporting

		South Dynon Financial Statements					
		South Dynon Cost Statement					
Cost Category							
1	Salaries & Related Costs						
2	Outsourced Services						
3	Consultants						
4	Travel						
5	Communications						
6	Personnel Costs						
7	Asset Related Expenses						
8	Occupancy Costs						
9	Insurance Premiums						
10	Other Expenses						
11	Financial Charges and Expenses						
12	Depreciation and Amortisation						Specific to South Dynon Terminal (3)
13	Allocated Corporate/Head Office Costs						Allocated on per head basis (1)
14	Allocated PN Rail Corporate Costs						Allocated on per head basis (2)
		South Dynon Revenue Statement					
Service		Access Seeker 1		Access Seeker 2		Access Seeker 3	
		Volume	Revenue	Volume	Revenue	Volume	Revenue
1	Operator Establishment Fee						
1	Load Unload Basic Service						
2	Container Storage						
3	DG Management						
4	Loco Storage						
5	Wagon Storage						
6	Truck Driver Induction						
7	Loco Driver Induction						
8	Shunting						
9	Administration						
	Total						

Cost allocation method

1. Corporate costs: $\frac{\text{Number of FTE at South Dynon Terminal}}{\text{Total Number of FTEs at National Intermodal}} \times \text{Corporate Charge to National Intermodal}$

Note: National Intermodal is charged 1% of National Intermodal revenue for Corporate Services.

2. Intermodal costs: $\frac{\text{Number of FTE at South Dynon Terminal}}{\text{Total Number of FTEs at National Intermodal}} \times \text{Total Corporate Costs for National Intermodal}$

Note: National Intermodal excludes Pacific National (Queensland)

National Intermodal Corporate costs include allocated costs from PN Corporate for Shared Services to National Intermodal. These costs are allocated as follows: Payroll on headcount, Accounts Payable on invoice numbers, and IT on users.

3. No allocation. Actual costs relating to capital expenditure at South Dynon Terminal.

All other cost categories (i.e., 1-12) are actual costs related to the provision of Terminal Services. There are four sub-cost centres in South Dynon Terminal cost centre. These are:

-) Vic Management;
-) Vic Sales;
-) Melbourne Terminal; and
-) Melbourne Provisioning.

Vic Management and Melbourne Terminal are the only sub-cost centres included in the South Dynon Terminal's costs. Vic Sales and Melbourne Provisioning are excluded as they relate to non access activities.

Annexure D - Reference Prices for Reference Services

Reference service 1:

1(a) One off services

1(a) Operator Establishment Fee: \$94.07 per hour

plus

1(b) Loading and unloading services:

These services comprise:

1(b) Train Processing Charge:

Option A: \$929.00 per train

Option B: \$1,229.00 per train

TEU Handling Charge \$50.89 per TEU loaded/unloaded

Reference service 2 extended container storage. \$42.06 per TEU per day (excluding Sunday)

Reference service 3 dangerous goods management \$200 per TEU

Reference service 4 locomotive storage \$2.16 per 100 metres per hour

Reference service 5 wagon storage \$2.16 per 100 metres per hour

Reference service 6 truck driver induction \$151.62 per induction course of up to a maximum of four attendees

Reference service 7 locomotive driver induction \$431.61 per induction course of up to a maximum of four attendees

Reference service 8 shunting in addition
 Option A: \$160.47 per hour
 Option B: \$460.35 per hour

Reference service 9 administration services \$47.58 per hour

Notes:

1. The prices offered will comply with the Rail Pricing Order namely that terminal service prices will be set with the objective of generating revenue that: (a) at least covers the directly attributable or incremental

costs of providing the services; and (b) does not recover more than the stand alone costs of providing the service.

2. The reference prices set out above will be subject to a price escalation by the greater of 2/3 of CPI or CPI% - 2%.

3. For reference service 1(b)(i) (Option B) and reference service 8 (Option B) the prices will be subject to an additional adjustment equal to the 'Fuel Adjustment Amount'. The Fuel Adjustment Amount is equal to:

Reference Service 1 (b)(i) (Option B)

$$(AFI_t / AFI_{base-1}) \times \$2,074.26 \times 6\%$$

Reference Service 8 (Option B)

$$(AFI_t / AFI_{base-1}) \times \$460.35 \times 6\% \text{ Where:}$$

AFI is the automotive fuel expenditure class index in the Consumer Price Index published by the Australian Bureau of Statistics. AFI_t is the AFI in the most recent CPI publication and AFI_{base} is equal to the March quarter 2011 index value.

The Fuel Adjustment Amount is added to the base price for reference service 1(b)(i) (Option B) and reference service 8 (Option B). The base price is as per the schedule above (\$2,074.26 per train for reference service 1(b)(i) (Option B) and \$460.35 per hour for reference service 8 (Option B) subject to the price escalation specified in Note 2.

For clarity, the Fuel Adjustment Amount is not subject to the escalation formula specified in Note 2.

4. For reference services 1(a), 1(b)(i) (Option A), 1(b)(ii) and reference services 2-9 the prices will be subject to a fee variation effective from 1 July in each year (commencing with 1 July 2012) in accordance with the following formula:

$$R_n = R_o (1 + CPI_g)$$

where:

R_n = The Charges per Reference Service to apply from 1 July of the applicable year.

R_o = The Charges per Reference Service applying on 30 June of the year prior to the applicable year.

CPI_n = CPI (all Groups Index Number, weighted average of 8 Capital Cities) for March in the applicable year.

CPI_o = CPI (all Groups Index Number, weighted average of 8 Capital Cities) for March in the year prior to the applicable year.

CPI_g = Greater of (CPI_n - CPI_o) / CPI_o - 2% or (CPI_n - CPI_o) / CPI_o x 2/3.

Annexure E - Standard Access Agreement

**Terminal Access and Services Agreement -
South Dynon Terminal**

Asciano Services Pty Ltd
ACN 052 134 362

[Insert Name of Access Holder]
ACN [Insert ACN of Access Holder]

Terminal Access and Services Agreement - South Dynon Terminal made at on 20

Parties Asciano Services Pty Ltd, ACN 052 134 362 ("Pacific National")
[Insert name and ACN of Access Holder] ("Access Holder")

Recitals

- A. Pacific National operates and provides access to the Terminal and provides the Services to rail freight operators accessing the Terminal.
- B. Pacific National agrees to grant the Access Holder access to the Terminal and to provide the Services on the terms and conditions of this agreement.

The parties agree

1. Definitions and interpretation

1.1 Definitions

Access and Regulation means Pacific National's Pty Ltd (ABN: 39 098 060 550) Access and Regulation Team.

Acceptable Credit Rating means a minimum long term credit rating of either BBB from Standard & Poors or Baa2 from Moody's.

Accreditation means accreditation in accordance with the *Rail Safety Act 2006* (Vic) (including any regulation, guideline or ordinance made pursuant to that Act), which is required by the Access Holder, its employees, agents, contractors and sub-contractors to operate Trains and conduct the activities contemplated by this agreement.

Additional Monthly Throughput means a number of TEU in a particular month in excess of the Allocated Monthly TEU which is applicable under this agreement for that month.

Allocated Monthly TEU means the number of TEU for each month set out in Schedule 5 as adjusted from time to time in accordance with this agreement.

Arbitrator means a qualified arbitrator who:

- (a) is a member of the Institute of Arbitrators and Mediators (Victorian Chapter);
- (b) is not an interested party to the agreement and is not associated either directly or indirectly with an interested party (unless otherwise agreed in writing by both parties);
- (c) has a detailed understanding of, and experience in, dispute resolution practices and procedures; and
- (d) has an understanding of the rail industry in Australia.

Authority means the Crown, a minister, a government department, a government authority, a government owned entity constituted for a public purpose, a local council or a local government entity.

Business Day means a day not being Saturday, Sunday or public holiday, on which banks are generally open for business in Melbourne, Victoria.

Business Hours means between 9.00 am and 5.00 pm on a Business Day.

Capacity Allocation Protocols means the Capacity Allocation Protocols for the South Dynon Terminal contained in Annexure B to the South Dynon Access Arrangement.

Ceiling TEU means, for a month, the Allocated Monthly TEU which is applicable under this agreement for that month, plus an additional percentage of that Allocated Monthly TEU as specified in Schedule 5 (as varied from time to time in accordance with this agreement).

Change in Control of the Access Holder means that without the prior written consent of Pacific National:

- (a) a relevant interest, as defined in the Corporations Act, in more than 20% of the securities of the Access Holder that in normal circumstances entitle the holder to vote or participate at a meeting of the members of the Access Holder or to vote or participate in the election or appointment of directors of the Access Holder passes to a person or persons who did not have such relevant interest as at the date of this agreement, except in circumstances where the relevant interest passes to a Related Body Corporate of the Access Holder or as part of an internal re-organisation of the Access Holder and its Related Bodies Corporate; or
- (b) the ability to control or the actual control (irrespective of whether such control is exercisable on a passive or active basis and irrespective of whether such control is exercisable solely or jointly or directly or indirectly) of the management and policies of the Access Holder passes to a person or persons who did not have such ability or actual control of the date of this agreement, except as a result of an internal re-organisation of the Access Holder and its Related Bodies Corporate.

Claim includes any claim, demand, remedy, injury, damage, loss, cost, expense, suit, liability, action, proceeding, right of action or claim for compensation.

Commencement Date means the date the conditions precedent set out in clause 2 have been satisfied or such other date as the parties agree in writing.

Confidential Information means the terms of this agreement and all information provided in confidence by one party to another including, without limitation, in the case of the Access Holder, the Train Specification (other than the timetable), being information other than information which:

- (a) at the time of the first disclosure by the disclosing party was already in the lawful possession of the other party and which was not at the time of such disclosure the subject of any obligation of confidentiality;
- (b) is or becomes generally available to the public otherwise than by disclosure in breach of the terms of this agreement or an obligation of confidence owed to the disclosing party by the other party; or
- (c) becomes available to the other party, from a third person legally entitled to possess the information and provide it to the other party, without breaching any obligation of confidentiality in relation to such information or any Law.

Corporations Act means the *Corporations Act, 2001* (Cth).

Dangerous Goods have the meaning given in the *Dangerous Goods Code*.

Dangerous Goods Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail* prepared by the National Transport Commission (or successor body) from time to time.

Default Rate means the interest rate which is 2 percentage points above the prime lending rate charged by the Commonwealth Bank of Australia at the relevant time on overdrafts of \$100,000.00 or more.

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

Environmental Laws means all planning, environmental, health, dangerous goods, pollution laws, environmental protection policies and relevant approved codes of practice and the conditions of all licences, approvals, consents, permissions or permits under them or amended from time to time.

Environmental Management System means a plan of management devised by the Access Holder in consultation with Pacific National to address all environmental risks and to ensure compliance with all applicable Environmental Laws.

Event of Insolvency means, in respect of a party, that:

- (a) a controller (as defined in section 9 of the Corporations Act), manager, trustee, administrator, or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any insolvency provision;
- (e) a moratorium of any debts of a person, or an official assignment or a composition or an arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;

- (h) in respect of a body corporate not incorporated in Australia or any individual not resident in Australia, any other similar event occurs under any foreign laws applying to it relating to that person's solvency or relief from creditors.

Financial Default means:

- (a) that the Access Holder fails to pay any charge or amount due under this agreement in accordance with clause 5; or
- (b) that the Access Holder is or becomes subject to an Event of Insolvency.

Floor TEU means, for a month, the Allocated Monthly TEU which is applicable under this agreement for that month, less a percentage of that Allocated Monthly TEU as specified in Schedule 5 (as varied from time to time in accordance with this agreement).

Force Majeure in relation to a party, means any cause outside the reasonable control of that party.

GST, GST law and other terms used in this agreement (except the term "**Recipient**") have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except that "**GST Law**" also includes any other legislation enacted to validate, recapture or recoup tax collected as GST.

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

- (a) material damage to or interference with the Terminal;
- (b) material damage to infrastructure or equipment used in providing the Services;
- (c) material damage to property at the Terminal;
- (d) personal injury to any person for which Pacific National is responsible;
- (e) an Environmental Hazard that may affect the Terminal, Pacific National or any person for which Pacific National is responsible;
- (f) an incident which requires notification under any Law including Rail Safety Laws or Environmental Laws that may affect the Terminal, Pacific National or any person for which Pacific National is responsible; and
- (g) an incident requiring notification under the Dangerous Goods Code that may affect the Terminal, Pacific National or any person for which Pacific National is responsible.

Instruction means:

- (a) any Train Control Direction or any other instruction or direction issued by Pacific National to the Access Holder from time to time in respect of safety issues; and
- (b) any other instruction or direction issued by Pacific National, acting reasonably, to the Access Holder from time to time,

which is aimed at ensuring, facilitating or encouraging the proper, efficient, safe or lawful use of, access to and egress from the Terminal and which are issued with a view to minimising

disruption to the Access Holder, the activities at the Terminal or the provision by Pacific National of the Services.

Laws means laws, Acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements and directions of any relevant Authority, bodies, instrumentalities and trusts and public authorities, including Environmental Laws and Rail Safety Laws.

Material Change means any change to:

- (a) the scope and/or operation of the access regime established pursuant to Part 2A of the RMA; or
- (b) the Law, or a policy or direction from a Government agency,

provided that the event, taken alone or as a group with other events, materially and substantially affects either the rights or obligations of Pacific National or the Access Holder under this agreement or the cost to Pacific National of performing its obligations under this agreement.

Pacific National means Asciano Services Pty Ltd, ACN 052 134 362 / ABN 48 052 134 362 (formerly known as Pacific National (ACT)).

Permitted Time means the arrival and departure time windows specified at item B of Schedule 6 (as amended from time to time in accordance with this agreement).

Rail Access Regime means the Victorian rail access regime comprised of Part 2A of the RMA, Orders-in-Council issued under Part 2A of the RMA, section 10 of the *Transport Integration Act 2010* and the *Essential Services Commission Act 2001* (Vic), as amended from time to time.

Rail Safety Laws means all applicable occupational health and safety laws, regulations, rules, standards and approved codes of practice and standards including the *Rail Safety Act 2006* (Vic) (and any regulation, guideline or ordinance made pursuant to that Act).

Rail Track means the rail track leading into, through and/or out of the Terminal.

Railway Manager means the entity which is the accredited railway manager of the Rail Track.

RMA means the *Rail Management Act 1996* (Vic).

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

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

Safety Interface Agreement means the requirement (where applicable) for Pacific National to seek to enter into an agreement with the Access Holder for the management of risks to safety arising from the interface of (where applicable):

- (i) railway operations carried out by and on behalf of different rail transport operators; and
- (ii) railway operations with public or private roads, at rail or road crossings,

pursuant to the *Rail Safety Act 2006* (Vic) (or in accordance with any other relevant standard or guideline relating to safety or coordination) and which may also incorporate the Train Specification, and which may include provisions relating to:

- (i) the implementation and maintenance of measures to manage those risks;
- (ii) the evaluation, testing and, if appropriate, revision of these measures;
- (iii) the respective roles and responsibilities of each party to the agreement in relation to these measures;
- (iv) the procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
- (v) a process for keeping the agreement under review.

Safety Regulator means the Director of Transport Safety pursuant to the *Transport Integration Act 2010* (Vic).

Security Deposit means 3 months' Service Charges, calculated on the basis of the Services the Access Holder has forecast it will require from time to time.

Service Charges means the charges set out in **Schedule 3** as varied by Pacific National from time to time in accordance with this agreement.

Services means the services to be provided to the Access Holder set out in **Schedule 2** as varied by Pacific National from time to time in accordance with this agreement.

Term means the period specified at item A of Schedule 6.

Terminal means the South Dynon terminal more particularly outlined in red in the diagram attached at **Schedule 1**.

Terminal Protocols means protocols developed by Pacific National from time to time (acting reasonably) which specify the procedures which the Access Holder must follow when accessing and using the Terminal, including:

the Terminal Management Protocol contained in Schedule 4 (as amended by Pacific National from time to time), which will address the following requirements:

- (i) that the Access Holder provide to Pacific National the proposed times for the arrival and departure of any road vehicles to and from the Terminal, 24 hours in advance of those movements;
- (ii) that the Access Holder provide prompt notification of any Timetable delay so as to ensure that Pacific National can efficiently manage any excess capacity;
- (iii) that the Access Holder provide Pacific National with a description of its container weights; container sizes and notification of the nature and description of any Dangerous Goods (which must be provided on arrival of the vehicles);
- (iv) that the Access Holder provide Pacific National with all necessary written authorities to deal with the containers and goods contained in the Rolling Stock;

- (v) that the Access Holder provide Pacific National with such other documents or information as reasonably required by Pacific National, to enable Pacific National to properly and efficiently manage and operate the Terminal, provide access to and egress from the Terminal, and provide the Services to the Access Holder and other users of the Terminal; and
- (vi) that the Access Holder provide the above documents and information in such format as reasonably required by Pacific National.

TEU means a Twenty Foot Equivalent Unit where 1 TEU equals a 6.1m container.

Third Party Access Holder means any person who:

- (a) holds rights to access the Terminal; and
- (b) is an Accredited railway operator, but does not include Pacific National, the Access Holder or any Related Body Corporate of Pacific National or the Access Holder.

Timetable means the times at which the Access Holder's Trains are scheduled to arrive at and depart from the Terminal and a description of each Train as set out in Schedule 2.

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

Train Control Direction means any instruction or direction (whether given orally or in writing, by means of signal and other similar device) issued by Pacific National or the Railway Manager or on behalf of either of them relating to Train Movements.

Train Movements mean the operation of a Train on the Rail Track by the Access Holder at a time scheduled in the timetable for the predominant purposes of conveying freight and includes the empty movement of such a Train.

Train Path means the series of track segments over a particular time interval through which a Train can travel and may include stopping points and intervals and fuelling stations and other set down or changeover points.

Train Specification means the specification set out in **Schedule 2**, and includes:

- (a) the technical specification for rail operations on a Train Path (including the time of entry to, and exit from, the Train Path and duration of use of the Train Path);
- (b) technical specifications of Trains and Rolling Stock authorised for a particular Train Path or permitted on the Rail Track; and
- (c) the timetable maintained by, or for, Pacific National of all scheduled Train Paths of the Access Holder on the Victorian rail network for Trains which will require the provision of the Services.

Train Window for each of the Access Holder's Trains means the period of time comprised of:

- (a) the times at which the Access Holder's trains are scheduled to arrive at and depart from the Terminal as set out in the Timetable; and
- (b) the Permitted Time.

Untimely Train has the meaning given in clause 6.6.

VLine Passenger means VLine Passenger Pty Ltd, ACN 087 425 269.

1.2 Interpretation

In this agreement:

- (a) schedules to it are an integral part of it and any reference to this agreement includes a reference to the schedules;
- (b) headings are for convenience only and do not affect interpretation;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

2. Conditions precedent

Other than clauses 1, 2, 15 and 17, this agreement shall be of no force or effect and Pacific National will have no obligation to provide the access or Services under this agreement until:

- (a) Pacific National and the Access Holder have entered into a Safety Interface Agreement in accordance with the requirements of the *Rail Safety Act 2006* (Vic); and
- (b) The Access Holder demonstrates to the satisfaction of Pacific National:
 - (i) that it has Accreditation;
 - (ii) that it holds all insurances as required by, and in compliance with, clause 13.1; and
 - (iii) that it has provided the Security Deposit to Pacific National (if required) in compliance with clause 5.7; and

- (iv) that safety issues, IT system interface and other set-up and transition-in requirements of the parties have been addressed in accordance with the Terminal Management Protocol.

3. Term

This agreement commences on the date the agreement is executed by both parties and continues until expiry of the Term, unless terminated earlier in accordance with this agreement.

4. Services

4.1 Supply of Services and Grant of access rights

During the Term, Pacific National agrees:

- (a) to supply the Services, or will arrange for the Services to be supplied by one of its Related Bodies Corporate, to the Access Holder in respect of Train Movements in accordance with the terms of this agreement and the Terminal Protocols; and
- (b) to grant to the Access Holder non-exclusive access to the Terminal (on the basis of applications submitted to and dealt with by Pacific National in accordance with the Terminal access application and negotiation protocol) for Trains described in the Train Specification to the extent necessary for Pacific National (or its contractors or agents) to provide the Services to the Access Holder, under this agreement.

4.2 Nature and scope of access rights

- (a) The access rights granted to the Access Holder are:
 - (i) non-exclusive contractual rights; and
 - (ii) for Train Movements consistent with the Train Specification and the Timetable.
- (b) This agreement:
 - (i) does not confer on the Access Holder any rights of access to any part of the Terminal other than to the extent necessary for Pacific National, or its Related Bodies Corporate, to provide the Services to the Access Holder under this agreement;
 - (ii) does not give rise to a relationship of landlord and tenant between the Access Holder and Pacific National and nothing done pursuant to this agreement shall give rise to any such relationship; and
 - (iii) does not give the Access Holder any exclusive rights to be provided with any services at the Terminal or to any part of the Terminal.
- (c) Subject to its obligations under clause 4.1, Pacific National may grant other rights and entitlements in respect of the Terminal to other users, including rights and entitlements similar to those set out in this agreement.

4.3 Service Standards

Pacific National will provide the Services:

- (a) in a competent, professional and efficient manner;
- (b) in accordance with the Terminal Protocols; and
- (c) to the standard required by, and in satisfaction of, the obligations imposed by any relevant legislation.

4.4 Sub-contract

- (a) Pacific National may, without prior reference to or consent from the Access Holder, sub-contract the performance of any of the Services to any person who is, in the opinion of Pacific National, suitably qualified, experienced and competent to perform that obligation (whether or not a Pacific National Related Body Corporate).
- (b) No such arrangement entered into by Pacific National will release Pacific National from, or reduce the extent of, its obligations under this agreement.

5. Charges and payment

5.1 Charges

In consideration of Pacific National supplying, or arranging for the supply of, the Services to the Access Holder, the Access Holder will pay to Pacific National the Service Charges specified in **Schedule 3**.

5.2 Invoices

Pacific National will render invoices to the Access Holder for the Services provided to the Access Holder in accordance with item C of Schedule 6.

5.3 Payment

- (a) The Access Holder must pay the Service Charges and any other applicable charges or amounts which Pacific National is entitled to charge, or recover from, the Access Holder (including any costs incurred pursuant to clause 7.2) to Pacific National in accordance with item D of Schedule 6.
- (b) If the Access Holder fails to pay any amount payable under this agreement (including any amount in an invoice issued pursuant to clause 5.2) by the due date, the Access Holder must pay interest on that amount at the Default Rate computed from (but excluding) the due date for payment of that amount until (but excluding) the date on which that amount is paid in full.
- (c) The interest will accrue and be recoverable on a daily basis and will be payable on demand by Pacific National.

5.4 Disputes

- (a) If the Access Holder disputes any amount on an invoice, it must pay the non-disputed amounts by the due date for payment of those amounts plus any additional amounts as specified at item E in Schedule 6.
- (b) On resolution of any dispute in accordance with this agreement, Pacific National must credit to the Access Holder in the form of a deduction from the next invoice for Service Charges (or payment within 14 days from resolution of the dispute in the event no next invoice is to be rendered) any amount determined to have been overpaid by the Access Holder to Pacific National and interest on that amount at the

Default Rate computed from (but excluding) the date on which the amount was overpaid until (but excluding) the date on which the credit or payment has been made by Pacific National in accordance with this clause 5.4(b).

- (c) On resolution of any dispute in accordance with this agreement, the Access Holder must pay to Pacific National within 14 days from the date of resolution of the dispute, the amount (if any) determined to be payable by the Access Holder and interest on that amount at the Default Rate computed from (but excluding) the date on which the amount was due to be paid to Pacific National until (but excluding) the date on which the payment has been made by the Access Holder in accordance with this clause 5.4(c).
- (d) Interest payable pursuant to clauses 5.4(b) or (c), will accrue and be recoverable on a daily basis and will be payable on demand in accordance with clauses 5.4(b) or (c) (as applicable) by the party entitled to the interest.

5.5 Variation of Service Charges

Unless otherwise agreed by the parties in writing, Pacific National may only vary the Service Charges in accordance with **Schedule 3**.

5.6 Goods and Services Tax

- (a) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (b) If GST is payable by an entity ("**Supplier**") in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 5.6 ("**Agreed Amount**") is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply ("**Recipient**") equal to the amount of GST payable by the Supplier on that supply;
 - (iii) except to the extent that clause 5.6(b)(ii) is applicable, the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Recipient in respect of that supply, no later than that time; and
 - (iv) where additional amounts are payable between parties to this agreement pursuant to clause 5.6(b)(ii), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to give the other the tax invoice referred to in clause 5.6(b)(ii).
- (c) To the extent, if any, that any consideration (or part of any consideration) is specified in this agreement to be inclusive of GST, that consideration (or the

relevant part) shall be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 5.6(b)(ii).

- (d) If the Supplier determines on reasonable grounds, is advised by the Commissioner of Taxation or otherwise becomes aware that the GST payable on a supply is different from the additional amount paid by the Recipient to the Supplier in accordance with clause 5.6(b)(ii) in relation to that supply (if any) and as a result:
 - (i) the Supplier is required to pay an amount (or further amount) of GST in relation to that supply, the Recipient must pay the Supplier within 7 days after demand that amount or further amount; or
 - (ii) the Supplier receives or becomes entitled to receive a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply, the Supplier must refund or credit the Recipient with a corresponding amount.
- (e) For the purpose of calculating further variations under this clause 5.6, any additional amount referred to in clause 5.6 is taken to be altered by the amount of any earlier variation made under this clause 5.6.
- (f) If any adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.
- (g) This clause survives the completion, rescission or termination of this agreement.
- (h) Any reference in this clause to GST payable by a party includes any GST payable by the representative member of any GST group of which that party is a member. Any reference in this clause to input tax credits to which a party is entitled will include input tax credits to which the representative member of any GST group of which that party is a member is entitled.
- (i) If the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purposes of this clause.

5.7 Security

- (a) If the Access Holder does not have an Acceptable Credit Rating, the Access Holder must provide to Pacific National the Security Deposit, if required by Pacific National, within 10 Business Days of being required by Pacific National to do so.
- (b) If a Security Deposit is required, the Access Holder must deliver to Pacific National security for the performance of the Access Holder's obligations under this agreement in the form of:
 - (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
 - (ii) any other security reasonably acceptable to Pacific National,containing terms and conditions reasonably acceptable to Pacific National.
- (c) If, at any time during the Term, the Security Deposit held by Pacific National is less than the amount specified in the definition of Security Deposit, the Access Holder

must increase the Security Deposit by the amount determined by Pacific National to ensure that the amount of the Security Deposit accords with the amount specified in the definition of Security Deposit and deliver to Pacific National a new or replacement Security Deposit to reflect the change within 10 Business Days after receipt of notice to do so from Pacific National.

- (d) The provision and continuance of the Security Deposit (or of any new or replacement Security Deposit provided by the Access Holder in accordance with this clause 5.7) is a condition of the performance by Pacific National of its obligations under this agreement.
- (e) At the end of the Term, Pacific National will (where applicable) return the Security Deposit to the Access Holder including any necessary releases.

5.8 Exercise of Security

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

6. Variation and Cancellation of Services

6.1 Temporary variation

- (a) Pacific National may vary the Services or access rights, including suspending the Services or the access rights, provided to the Access Holder under this agreement for the purpose of endeavouring to prevent any actual or potential:
 - (i) Incident;
 - (ii) material damage to the Terminal, property or Pacific National's infrastructure or equipment;
 - (iii) injury to any persons; or
 - (iv) material breach of this agreement.
- (b) Any such variation under this clause 6.1 may continue at Pacific National's discretion for so long as the risk specified in clause 6.1(a) continues.

6.2 Material Change

- (a) In the event a Material Change occurs, Pacific National must notify the Access Holder within 10 Business Days of becoming aware of the Material Change.
- (b) Within 10 Business Days after receipt by the Access Holder of a notice referred to in paragraph (a), Pacific National and the Access Holder must meet and negotiate in good faith with a view to addressing the effects of the Material Change, including:
 - (i) any variation to the Services or access rights or the terms of this agreement that may be required to address the effects of the Material Change;

- (ii) the date on which any variation referred to in paragraph (i) will commence; and
 - (iii) the duration of any variation of the type referred to in paragraph (i).
- (c) If following negotiations in accordance with paragraph (b):
- (i) the parties agree on any variation of the type referred to in paragraph(b)(i) and agree on the terms of that variation including as to the matters referred to in paragraphs (b)(ii) and (iii), the access rights and this agreement will be varied in accordance with the variation as agreed in writing between the parties;
 - (ii) if the parties are unable to agree on the terms of the variation within 20 Business Days of the negotiation referred to in paragraph (b), either party may give a Dispute Notice to the other and the Dispute will be dealt with under clause 14.

6.3 General variations

- (a) If either party (the "**First Party**") wishes to vary the Services or access rights, it must send a written notice ("**Variation Notice**") to the other party (the "**Second Party**") specifying:
- (i) the details of the variation proposed;
 - (ii) the reasons for the variations proposed;
 - (iii) the terms of the agreement the First Party is seeking to vary; and
 - (iv) the date on which the variation is to take place.
- (b) If Pacific National is the Second Party, Pacific National will assess the requested variation in accordance with the principles and procedures set out in the Capacity Allocation Protocols (paragraphs 1-4).
- (c) The Second Party must consider the requested variation (acting reasonably) and give the First Party a written notice within 30 days from the Variation Notice specifying whether it:
- (i) accepts the variations specified in the Variation Notice without conditions;
 - (ii) accepts the variations contained in the Variation Notice on conditions which are to be specified in the notice; or
 - (iii) rejects the variations specified in the Variation Notice and the reasons for the rejection.
- (d) If the Second Party accepts the variations specified in the Variation Notice, the Services, the access rights and this agreement will be varied in accordance with, and from the date specified in, the notice given by the Second Party pursuant to clause 6.3(b)
- (e) If the Second Party accepts the variations specified in the Variation Notice, subject to conditions:

- (i) the parties must engage in good faith negotiations for a period of 14 days from the date of the notice given pursuant to clause 6.3(c), to determine whether they will agree on the conditions specified by the Second Party; and
 - (ii) if the parties agree to vary the Services, the Services, the access rights and this agreement will be varied in accordance with the agreement reached by the parties from the date of the parties' agreement.
- (f) If the Second Party rejects the variation specified in the Variation Notice or the parties do not reach agreement on the proposed variation or conditions in accordance with clause 6.3(c), the Services, the access rights and this agreement will not be varied and clause 14 will not apply.

6.4 Cancellation of Train Movements

- (a) The Access Holder must notify Pacific National in accordance with the Terminal Protocols of any proposed temporary cancellation of Train Movements.
- (b) To the extent that the Allocated Monthly TEU is not met, the provisions of item (b) of Schedule 5 will apply.

6.5 Permanent Cancellation of Train Movements

- (a) The Access Holder must give Pacific National prior written notice (in accordance with item F in Schedule 6) of:
 - (i) any Train Movement which is to be cancelled on a permanent basis; and/or
 - (ii) any Services which are to be cancelled on a permanent basis in respect of a Train.
- (b) If:
 - (i) the relevant Train Movement is cancelled on a permanent basis and the Access Holder does not provide notice required by clause 6.5(a)(i); or
 - (ii) the Services to be provided in respect of a Train Movement are cancelled on a permanent basis and the Access Holder does not provide notice required by clause 6.5(a)(ii),

the Access Holder must pay the Service Charges in accordance with clause 5 for the Services which were to be provided in respect of such Train Movements for the balance of the period for which notice should have been given.

6.6 Services for early and late Trains

- (a) If a Train arrives at the Terminal outside a Train Window (the "**Untimely Train**"), Pacific National will use its best endeavours (excluding the payment of any money) to provide the Services to the Untimely Train within the same time intervals for the provision of the Services as those set out in the Timetable, provided that if the provision of such Services will affect or impact upon other Train Movements at the Terminal (whether of Pacific National trains or trains of other operators), the Services to be provided in respect of the Untimely Train will take a lower priority to all other such Trains.

- (b) If the Access Holder's Trains frequently arrive or depart outside the Permitted Time for the Trains (as determined by Pacific National acting reasonably), Pacific National may give the Access Holder a notice requiring the Access Holder to ensure that its Trains arrive and depart the Terminal in accordance with the Train Specification and the Timetable.
- (c) If Pacific National gives the Access Holder a notice pursuant to clause 6.6(b), the Access Holder must prepare and submit to Pacific National a plan for improvement of the on-time running of its Trains and use best endeavours to run Trains in accordance with the Train Specification, the Timetable and the improvement plan.
- (d) The Access Holder acknowledges that Pacific National may recover from the Access Holder all additional costs which Pacific National reasonably incurs in connection with the provision of Services accommodating Untimely Trains in accordance with this clause 6.6.

6.7 Variation of Timetable

The Access Holder may, subject to obtaining the prior written consent of Pacific National (which may not be unreasonably withheld) and giving Pacific National prior written notice in accordance with item G of Schedule 6, vary the Timetable in respect of any Train on a permanent basis.

6.8 Pacific National rights to vary or withdraw Services

- (a) Without limiting Pacific National's rights under sub-clauses 6.8 (b)-(d), in order to encourage the optimum use of the Terminal, Pacific National will be entitled to withdraw Services and reallocate them to another access seeker, to the extent the Access Holder has failed to use in the aggregate at least at least 65% of the allocated Services for any calendar month during the Term of this agreement, without sufficient justification acceptable to Pacific National acting in good faith and reasonably. If Pacific National proposes to withdraw Services, Pacific National must advise the Access Holder in writing of its intention to withdraw Services on the basis of this clause 6.8(a) within 14 days of the end of the month in which the Access Holder does not so use the Services and provide the Access Holder with sufficient opportunity (to be no less than 14 days from the date of the notice) to demonstrate its ability to utilise, or fully utilise the Services or otherwise to show cause in writing why Pacific National should not withdraw the Services the subject of the notice. If the Access Holder fails so to demonstrate, Pacific National may vary allocated Services by reducing them thereafter reflecting such non-use.
- (b) Pacific National may permanently vary or withdraw Services following breach by the Access Holder of relevant legislation, or an industry or Pacific National standard, or the Terminal Protocols or a Pacific National requirement relating to the operation or safety requirements applicable to the Terminal. Pacific National must advise the Access Holder in writing of its intention to permanently vary or withdraw Services on the basis of this clause 6.8(b) and provide the Access Holder with sufficient opportunity (to be no less than 14 days from the date of the notice) to show reasonable cause why Pacific National should not vary or withdraw the Services as specified in the notice. However, where such breach creates a risk of injury to persons or damage to property, including damage to equipment or infrastructure at the Terminal, Pacific National may withdraw the Access Holder's Services immediately until the Access Holder has addressed the risk to the reasonable satisfaction of Pacific National acting in good faith and reasonably.
- (c) Subject to clause 6.8(d), Pacific National may vary Services on a temporary basis:

- (i) to repair, maintain, upgrade, extend, construct or make alterations to the Terminal;
 - (ii) for reasons of safety or for the prevention of injury or damage to the rail network or Terminal or to other persons or property; and
 - (iii) following a request in writing from the Access Holder.
- (d) Pacific National must advise the Access Holder in writing of its intention to temporarily vary the Services under clause 6.8(c) by notice in writing of not less than 14 days. However, a lesser notice period as determined by Pacific National acting in good faith and reasonably may be given if the temporary variation is required to ensure safety in the operation of Terminal. Pacific National will consult with the Access Holder prior to issuing the notice and during the notice period so as to best accommodate the requirements of the Access Holder by temporarily allocating suitable substitute services where possible, applying the Capacity Allocation Protocol.

6.9 Complaint handling

If the Access Holder is not satisfied that Pacific National has complied with its obligations under clause 6.8 and provides Pacific National with details of the complaint in writing, Pacific National will investigate and consider the complaint and seek to address the complaint in good faith within 21 days from receipt of the complaint. Pacific National will report to the Commission each such complaint and the measures taken by Pacific National in response to such complaint.

6.10 Additional throughput

- (a) Upon written request by the Access Holder given in accordance with Schedule 5 prior to 1 July each year during the Term (but not more than once in each calendar year), the Access Holder may request Pacific National to provide Services for Additional Monthly Throughput for the remaining months of the Term commencing 1 January of the following year or such later date nominated by the Access Holder. The rights under this clause 6.10 are in addition to the rights to increase the Allocated Monthly TEU in paragraph (a)(ii) of Schedule 5, however paragraph (a)(ii) of Schedule 5 will no longer apply to any Allocated Monthly TEU that has been increased under this clause 6.10.
- (b) If, in Pacific National's reasonable opinion having regard to:
- (i) the existing capacity of the Terminal;
 - (ii) Pacific National's commitments to other users of the Terminal in accordance with the Capacity Allocation Protocols;
 - (iii) the Additional Monthly Throughput requested by the Access Holder and the impact of that request on the Ceiling TEU definition; and
 - (iv) the extent to which the Services and Pacific National's other operations in the Terminal can be carried out efficiently,

Pacific National is able to provide Services for the Additional Monthly Throughput requested, Pacific National will agree to provide Services for the Additional Monthly Throughput.

- (c) If Pacific National does agree to provide Services for Additional Monthly Throughput pursuant to this clause 6.10, the Allocated Monthly TEU for the

remaining months of the Term will be deemed to be permanently increased by the relevant Additional Monthly Throughput, for the purposes of this agreement, including the definitions of "Ceiling TEU" and "Floor TEU".

7. Management of the Terminal

7.1 Pacific National's obligations

- (a) Pacific National shall be responsible for the management and operation of the Terminal.
- (b) Pacific National must at all times during the Term:
 - (i) ensure that the Access Holder is provided with a current version of the Terminal Protocols, incorporating a current version of the operating handbook;
 - (ii) comply with the Terminal Protocols; and
 - (iii) inform the Access Holder as soon as reasonably practicable if it is not able to provide any of the Services in accordance with this agreement or if a Material Change occurs.

7.2 Repairs and maintenance of the Terminal

- (a) Pacific National (itself or through contractors or agents) will be responsible for the maintenance of the Terminal and the infrastructure and equipment used to provide the Services to the standard reasonably determined by Pacific National as necessary for the safe and reliable provision of the Services.
- (b) In carrying out any repairs or maintenance of the Terminal or infrastructure or equipment used to provide the Services, Pacific National must (and must ensure that any contractors or agents) use reasonable endeavours to minimise any disruption to the Services.
- (c) Subject to clause 7.2(d), where it becomes necessary to make repairs to the Terminal as a result of an act or omission by the Access Holder which causes damage to the Terminal or any infrastructure or equipment used to provide the Services, Pacific National will conduct (itself or through contractors or agents) the necessary repair works arising as a result of the specific act or omission by the Access Holder and recover the costs associated with the repair works (other than maintenance costs that arise in connection with the normal wear and tear of the Terminal) from the Access Holder as a charge payable by the Access Holder to Pacific National.
- (d) The Access Holder must pay Pacific National for, and Pacific National will be entitled to recover from the Access Holder, the costs incurred pursuant to clause 7.2(c) in accordance with clauses 5.3 and 5.4.
- (e) Pacific National will not be liable for any costs incurred by, or Claims made by or against the Access Holder, as a result of Pacific National conducting any repairs or maintenance of the Terminal and any delay caused (including to any Train Movement or to the Timetable) as a result of this clause will not constitute a breach of this agreement by Pacific National.

7.3 Access Holder's obligations

The Access Holder must at all times during the Term:

- (a) comply with the Terminal Protocols;
- (b) comply with the Safety Interface Agreement (where applicable);
- (c) comply with any Instruction given by Pacific National from time to time;
- (d) not interfere with Pacific National's, or any Third Party Access Holder's, operations at the Terminal;
- (e) ensure that it acts in a way that minimises any obstruction of the Terminal or any risk of an Incident occurring at the Terminal;
- (f) comply with all applicable Laws and maintain all Accreditations, licences and approvals as required by Law;
- (g) inform Pacific National as soon as reasonably practicable (but in any event at least 24 hours prior to the scheduled arrival of a Train, or departure of a Train from, the Terminal) if the Access Holder does not require any Services;
- (h) comply with the Environmental Management System;
- (i) provide Pacific National with all reasonable co-operation as reasonably required by Pacific National from time to time; and
- (j) operate the Trains in accordance with the Train Specification and the Timetable.

8. Accreditation

8.1 Accreditation

- (a) The Access Holder will maintain Accreditation to the extent required by the applicable Rail Safety Laws for the Term.
- (b) The Access Holder must notify Pacific National as soon as practicable after it receives any notice of intended or actual material amendment, variation, suspension or cancellation affecting the Access Holder's Accreditation.

8.2 Evidence of Accreditation

Prior to the Commencement Date, and on request by Pacific National during the Term, the Access Holder must provide to Pacific National a copy of the Access Holder's Accreditation.

9. Emergencies

9.1 Notification

Pacific National and the Access Holder will notify each other of any Incident, including an Incident that has caused or may cause an Environmental Hazard, immediately after it comes to their attention.

9.2 Investigation and Remediation

- (a) Incidents will be investigated in accordance with the requirements of the applicable Law.
- (b) Following an Incident, the parties will consult to determine the appropriate action to be taken.
- (c) Each party agrees to co-operate in relation to any investigation of an Incident and agrees to make available records and personnel, as relevant to the investigation.
- (d) In the event an Incident occurs at the Terminal or during the provision of the Services by Pacific National to the Access Holder and without prejudice to Pacific National's other rights under this agreement, Pacific National shall be entitled to take such action as it deems necessary to overcome and alleviate the cause and consequences of the Incident and the Access Holder shall assist Pacific National wherever and however reasonably and practicably possible in the exercise of Pacific National's rights pursuant to this clause 9.2.
- (e) The Access Holder grants to Pacific National, Pacific National's authorised employees, contractors, sub-contractors and agents the right at any time to enter and inspect the Access Holder's locomotives, rolling stock and containers in the event of an Incident.
- (f) To the extent that the Incident occurs as a result of or as a consequence of a breach of this agreement by the Access Holder or any negligent or intentional or unintentional act or omission by or on behalf of the Access Holder, the reasonable costs and expenses directly incurred by Pacific National in the exercise of its rights under this clause 9.2 shall be paid by the Access Holder to Pacific National in accordance with clause 5.3 of this agreement.
- (g) Pacific National shall not be liable for any Claim by the Access Holder against Pacific National as a result of Pacific National attempting to rectify an Incident or its effects.

10. Safety

10.1 Compliance by the Parties

The parties will, in relation to their respective responsibilities and rights under this agreement:

- (a) comply with all applicable Laws; and
- (b) comply with the Dangerous Goods Code.

10.2 Compliance by Access Holder

- (a) The Access Holder must ensure that all Rolling Stock, plant and equipment admitted to the Terminal is safe and is operated in a safe manner.
- (b) The Access Holder must comply with all Instructions given by Pacific National to the Access Holder from time to time to protect the Terminal, property and individuals.
- (c) The Access Holder must provide Pacific National with the information required by the Terminal Protocols, as applicable and appropriate, to enable Pacific National to identify safety risks associated with the provision of the Services.

- (d) In addition to the Access Holder's obligations to maintain Accreditation, the Access Holder must obtain and maintain such additional accreditation, licences and approvals and maintain such additional standards which are required by Law.
- (e) During loading of its containers and Rolling Stock and delivery of the containers and Rolling Stock to the Terminal the Access Holder must:
 - (i) ensure that it does not do or fail to do or allow any of its employees, agents, contractors or sub-contractors to do or fail to do, and must take all reasonable steps to prevent anyone else from doing or failing to do anything which would or might reasonably be expected to cause or contribute to:
 - A. a nuisance, death or injury to any person;
 - B. an Environmental Hazard;
 - C. damage to any real or personal property;
 - D. breach of any Law; and
 - E. an event or circumstance which would entitle an Authority to issue a notice, order or direction under any Law.
 - (ii) ensure that all plant and equipment and goods carried on or in the Access Holder's Rolling Stock comply with all Laws and is maintained and operated in a proper, safe and efficient manner.

11. Suspension and termination

11.1 Suspension

- (a) Pacific National may, by giving written notice to the Access Holder prior to or immediately following the suspension, suspend the Access Holder's rights under this agreement if any of the following occur:
 - (i) a Financial Default occurs and continues for 7 Business Days after notice from Pacific National to the Access Holder providing details of such default;
 - (ii) Pacific National in its reasonable opinion considers that suspension is required in order to avoid material damage to the Terminal, property or Pacific National's infrastructure or equipment, or injury to any person;
 - (iii) Pacific National is unable to provide access to the Terminal or to supply the Services to the Access Holder as a result of an Incident;
 - (iv) the Access Holder fails to comply with clauses 5.7, 6.8(a), 12.6 or 17.5 and such default continues for 7 Business Days after notice from Pacific National to the Access Holder providing details of such default; or
 - (v) the Access Holder fails to perform any other obligation under this agreement and such default continues for 30 Business Days after notice from Pacific National to the Access Holder providing details of such default.

- (b) If Pacific National wishes to suspend the rights of the Access Holder pursuant to this clause 11.1, it must first give written notice to the Access Holder specifying:
 - (i) the rights which are affected by the suspension;
 - (ii) the reasons for the suspension; and
 - (iii) the actions the Access Holder must take in order for the suspension to end.
- (c) Subject to clause 11.1(d), any suspension pursuant to this clause 11.1, will continue until such time as the Access Holder has remedied (where possible) the relevant event which triggered the suspension and, where appropriate, taken action to prevent it from occurring again.
- (d) In the event Pacific National's obligations are suspended for the reason specified in clause 11.1(a)(iii), Pacific National's obligations under this agreement will be suspended during the time, and to the extent, that it is prevented or delayed from complying with its obligations by reason of the Incident.
- (e) Where Pacific National suspends any rights (by notice in writing to the Access Holder in accordance with clause 11.1(a)):
 - (i) pursuant to clauses 11.1(a)(i); 11.1(a)(iv); 11.1(a)(v); or
 - (ii) pursuant to clauses 11.1(a)(ii) and 11.1(a)(iii), where that suspension is caused by an act or omission by the Access Holder,

the suspension does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Service Charges under this agreement and shall be without prejudice to Pacific National's other rights and remedies in respect of the event triggering the suspension or any breach of this agreement.

11.2 Termination by Pacific National

Without limiting any rights of termination in this agreement, Pacific National may, by giving written notice to the Access Holder, immediately terminate this agreement upon the occurrence of any of the following:

- (a) a Financial Default occurs and continues for 30 Business Days after notice from Pacific National to the Access Holder providing details of such default;
- (b) the Access Holder fails to comply in a material respect with any other obligation under this agreement and such failure continues for 30 Business Days after notice from Pacific National to the Access Holder providing details of such default; or
- (c) subject to clause 6.2, a Material Change occurs.

11.3 Termination by the Access Holder

Without limiting any rights of termination contained in this agreement, the Access Holder may, by giving written notice to Pacific National, immediately terminate this agreement upon the occurrence of any of the following:

- (a) an Event of Insolvency in relation to Pacific National occurs and continues for a period of 30 Business Days after notice from the Access Holder providing details of such default;

- (b) Pacific National fails to comply in a material respect with any other obligation under this agreement and such default continues for 30 Business Days after notice from the Access Holder providing details of such default.

11.4 Consequences of termination

Termination of this agreement will not affect the rights, powers, remedies, obligations, duties and liabilities of either party under this agreement that have accrued to the date of termination, which rights, powers, remedies, obligations, duties and liabilities will continue to be enforceable.

12. Liability and indemnities

12.1 Indemnity by Pacific National

Subject to clauses 12.3, 12.4, and 12.6, Pacific National shall indemnify, and keep indemnified, the Access Holder, its employees, officers and agents in respect of all Claims for which the Access Holders, its employees, officers or agents will or may be or become liable, whether during or after the Term, in respect of or arising directly from any loss, damage or injury to property or any person, in or near the Terminal to the extent such loss, damage or injury is caused or contributed to by:

- (a) any negligent or wrongful act or omission; or
- (b) any breach of this agreement,

by or on behalf of Pacific National, its employees, officers or agents.

The Access Holder receives the benefit, and is the agent of its employees, officers and agents for the purpose of receiving on their behalf the benefits of the indemnity given by Pacific National in this clause 12.1 in favour of the Access Holder's employees, officers and agents.

12.2 Indemnity by Access Holder

Subject to clauses 12.3 and 12.4, the Access Holder shall indemnify and keep indemnified, Pacific National, its employees, officers and agents in respect of all Claims for which Pacific National, its employees, officers or agents will or may be or become liable, whether during or after the Term, in respect of or arising directly from any loss, damage or injury to property or any person, in or near the Terminal, to the extent such loss, damage or injury is caused or contributed to by:

- (a) any negligent or wrongful act or omission;
- (b) any breach of this agreement,

by or on behalf of the Access Holder, its employees, officers or agents.

Pacific National receives the benefit, and is the agent of its employees, officers and agents for the purpose of receiving on their behalf the benefits of the indemnity and the release given by the Access Holder in this clause 12.2 and clause 12.6 in favour of Pacific National's employees, officers and agents.

12.3 Limit on liability

- (a) Each party agrees that, subject to clause 12.3(c), it will not make a Claim against the other party under clause 12.1 or 12.2 (as the case may be) if the total loss or damage the subject of the Claim does not exceed the amount set out at item H(a) in

Schedule 6 in respect of any one event or cause of action or series of related events or causes of action.

- (b) In the event that either party proposes making a Claim against the other under clause 12.1 or 12.2 (as the case may be) to recover loss or damages for an amount greater than the amount set out at item H(a) in Schedule 6 in respect of any one event or cause of action or series of related events or causes of action, the party making the Claim must give notice of a dispute under clause 14 and otherwise comply with the terms of clause 14 before taking any other action to prosecute its Claim. Nothing in this clause 12.3(b) prohibits a party from seeking and obtaining appropriate injunctive relief.
- (c) The limitation in clause 12.3(a) will not apply to a Claim made in any 12 Month Period in respect of any loss, damage or injury to property or any person which occurred in that 12 Month Period (**Relevant Claim**) if the loss or damage, the subject of that Relevant Claim, when aggregated with any other Relevant Claims (including Claims for any loss, damage or injury to property or any person which occurred in that 12 Month Period which, but for clause 12.3(a), would be recoverable under clause 12.1 or 12.2 or otherwise) exceeds the amount set out at item H(b) in Schedule 6 for that 12 Month Period. Once the aggregation of Claims under this clause exceeds the amount set out at item H(b) in Schedule 6 for the relevant 12 Month Period, the limitation in clause 12.3(a) does not apply to any further Claims made during that 12 Month Period in respect of any loss, damage or injury to property or any person which occurred in that 12 Month Period.

12.4 No liability for consequential loss

Despite anything else in this agreement, neither party will be liable for any indirect or consequential loss (including for loss of profits of any kind (anticipated or expected), loss of contracts, loss of revenue, economic loss of any kind, loss of production, loss of freight haulage tonnage, loss of use, loss of rent, loss of income or loss of occupation in contract, tort, under any statute or otherwise (including negligence)) suffered by the other party or for which the other party becomes liable.

12.5 Defence of claims

- (a) The parties shall provide all reasonable assistance to each other in the defence of any Claim made against a party by a third party arising out of any incident or other event giving rise to a Claim.
- (b) To the extent that a party (the "**indemnifying party**") is obliged to indemnify the other party (the "**indemnified party**") against a Claim by a third party against the indemnified party, the indemnifying party may, subject only to the terms of any applicable insurance which the indemnified party may have, at its own expense defend and settle any action or proceedings in the name of the indemnified party and execute such documents in the action or proceedings as the indemnifying party sees fit. The indemnifying party indemnifies the indemnified party in respect of all costs, expenses and losses which the indemnified party may incur on account of the action or proceedings.

12.6 Release of Pacific National

The Access Holder agrees to access the Terminal, and use the Services, at its own risk. Pacific National is not liable to the Access Holder for any damage to any property of the Access Holder or to any other property of any description in the possession of the Access Holder, and releases Pacific National from any such Claims, except to the extent that such Claims arise

directly from any negligent act or omission or breach of this agreement by or on behalf of Pacific National. Without limitation, this clause 12.6 applies to any Claims which arise from actions of other users at the Terminal.

13. Insurance

13.1 Insurances required

During the Term, the Access Holder must effect and maintain with a reputable insurance company the insurances set out at item I in Schedule 6, such insurances to note the interests of Pacific National on each policy.

13.2 Disclosure of policies

The Access Holder must provide Pacific National with a certificate of currency for each insurance policy required by this agreement and any other relevant certificate(s) of currency as reasonably requested by Pacific National from time to time.

14. Disputes

- (a) If a dispute arises between Pacific National and the Access Holder in connection with this agreement ("**Dispute**") then either party may give a notice ("**Dispute Notice**") to the other specifying the Dispute and requiring it to be dealt with under this clause 14.
- (b) Pacific National and the Access Holder must use reasonable endeavours and act in good faith to settle the Dispute as soon as practicable.
- (c) The Chief Executive Officers of each party must, within 3 Business Days from the date of receipt of a Dispute Notice, appoint a delegate who will meet and attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within 10 Business Days from the date on which it is referred to the delegates of the Chief Executive Officers, the Dispute will be referred to the Chief Executive Officer of the Access Holder and the Senior designated Victorian executive in the case of Pacific National who will attempt to resolve the Dispute within 20 Business Days from the date of receipt of the Dispute Notice.
- (e) If a Dispute is not resolved in accordance with paragraph (d), Pacific National and the Access Holder will jointly choose and appoint an independent expert to provide a report containing a recommendation as to the basis on which the Dispute should be resolved.
- (f) In the absence of agreement as to the independent expert within 10 Business Days the independent expert will be appointed on the application of Pacific National by the President of the Institute of Arbitrators and Mediators Australia.
- (g) The independent expert must provide his report as soon as practicable and, if possible, within 20 Business Days of the Dispute being referred to the independent expert.
- (h) The independent expert will act as an expert and not an arbitrator and may adopt such procedures as he/she thinks fit.

- (i) The costs of the independent expert will be borne equally by Pacific National and the Access Holder.
- (j) Pacific National and the Access Holder will use their best endeavours to resolve the dispute on the basis set out in the expert report obtained pursuant to the mechanism provided under paragraph (e) above.
- (k) If either Pacific National or the Access Holder refers the Dispute to the Essential Services Commission, either party may provide the Essential Services Commission with a copy of the expert report obtained pursuant to the mechanism provided under paragraph (a) above.

15. Confidentiality

15.1 Obligations

Except as permitted by this clause 15, each party must:

- (a) hold the Confidential Information in strict confidence and not disclose the Confidential Information, nor communicate any opinion regarding the Confidential Information, to any person;
- (b) not without the written consent of the other party make use of any Confidential Information for any purpose other than the purpose of:
 - (i) (in the case of Pacific National) assessing and responding to a request by the Access Holder for the provision of a service or providing the relevant service to the Access Holder; or
 - (ii) (in the case of the Access Holder) seeking to be provided, or using, a service provided by Pacific National;
- (c) take all steps reasonably necessary to safeguard the confidentiality of the Confidential Information;
- (d) not make copies, reproductions, recordings or extracts of the Confidential Information;
- (e) immediately notify the disclosing party of any potential, suspected or actual use, disclosure, copying, reproduction, recording or extracting of the Confidential Information not permitted by this agreement; and
- (f) ensure that each of the persons to whom Confidential Information is disclosed pursuant to clause 15.2 comply with the provisions of this clause.

15.2 Permitted disclosure

A party ("**Receiving Party**") in receipt of the other party's ("**Disclosing Party**") Confidential Information may disclose Confidential Information:

- (a) to its officers, employees and legal, financial or economic advisers (on a need to know basis);
- (b) to the extent required:
 - (i) by any Law;

- (ii) by the Safety Regulator or the Railway Manager;
 - (iii) by the rules of any stock exchange;
 - (iv) to comply with any capacity allocation principles or protocols,
- provided that the Receiving Party:
- (v) unless immediate disclosure is required by Law or the rule of any stock exchange, notifies the Disclosing Party of any actual or anticipated disclosure requirement;
 - (vi) unless immediate disclosure is required by Law or the rules of any stock exchange, consults with the Disclosing Party, prior to disclosure, as to the form and content of any disclosure;
 - (vii) uses its best endeavours at the cost of the Disclosing Party to oppose or restrict disclosure, or to make disclosure on terms which will preserve as far as possible the confidentiality of the Confidential Information; and
 - (viii) at the cost of the Disclosing Party, takes such steps as the disclosing party may reasonably request to permit the Disclosing Party to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means; or
- (c) as ordered by any court, after having, to the extent practicable, consulted with the Disclosing Party with a view to agreeing the form, content, timing and manner of the disclosure.

15.3 Consequences for breach

The provisions of this clause 15 survives termination of this agreement. Each party acknowledges that:

- (a) that the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information and that monetary damages would be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of and to compel specific performance of this clause.

15.4 Return or destruction of Confidential Information

On demand in writing by the Disclosing Party, the Receiving Party must at its own expense:

- (a) deliver to the Disclosing Party, or at its option destroy, all Confidential Information in the possession, power or control of the Receiving Party; and
- (b) delete any Confidential Information that has been entered into a computer, database or other electronic means of data or information storage by or on behalf of the Receiving Party,

provided that the Receiving Party shall be entitled to retain a copy of such Confidential Information if:

- (c) required by Law or the rules of any stock exchange on which its shares or any shares of any of its Related Bodies Corporate are listed; or

- (d) reasonably necessary to enable the Receiving Party to comply with its obligations under any rules or standards of professional conduct applying to it or under any policy of insurance held by it.

15.5 Effect of return of information

The return, destruction or deletion of the Confidential Information in accordance with clause 15.4 does not release the Receiving Party from its obligations under this agreement.

16. Force Majeure

16.1 Suspension of rights and obligations

If a party is unable to perform an obligation (other than an obligation to pay money) under this agreement by reason of Force Majeure, that obligation is suspended for the minimum extent and duration of the Force Majeure provided that the party:

- (a) gives the other party prompt notice of and reasonable details of the Force Majeure and an estimate of the extent and duration of its inability to perform; and
- (b) the party takes all reasonable steps to avoid or limit the effects of the events or circumstances giving rise to the Force Majeure.

16.2 Consequences

- (a) If the Force Majeure continues more than one month after the notice given under clause 16.1, the parties must meet to discuss in good faith a mutually satisfactory resolution to the problem.
- (b) If the Force Majeure continues for more than three months after the notice given under clause 16.1 and the parties have not agreed on a mutually satisfactory resolution to the problem, either party may terminate this agreement by giving the other party 14 days' written notice and this agreement will terminate on expiry of that 14 day notice period.

16.3 No release or discharge

No Force Majeure event will release or discharge:

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

17. General

17.1 Governing law

This agreement is governed by and must be construed according to the law applying in Victoria.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.2(a).

17.3 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

17.4 Variation/amendment

Subject to clause 6.5 and clause 16, this agreement may only be varied by a document signed by or on behalf of each party.

17.5 Assignment/novation

- (a) Pacific National may assign, transfer or novate the whole or any part of its rights or obligations contained in this agreement to any person ("**Pacific National Assignee**"), provided that the Pacific National Assignee agrees, by deed in writing, to be bound by and to perform Pacific National's obligations under this agreement.
- (b) On and from the time Pacific National procures the Pacific National Assignee's agreement under clause 17.5(a), Pacific National will be released and discharged from any further obligation or liability under this agreement.
- (c) Subject to clauses 17.5(d) and (e), the Access Holder shall not assign, transfer or novate its rights or obligations, or any part of them under this agreement, to any person ("**Access Holder Assignee**") without the prior written consent of Pacific National, which consent may not be unreasonably withheld.
- (d) Pacific National will not withhold its consent to an assignment, transfer or novation if:
 - (i) the Access Holder Assignee is a Related Body Corporate of the Access Holder who has satisfied the conditions precedent set out in clause 2 of this agreement, is financially sound and is otherwise capable of performing the Access Holder's obligations under this agreement;
 - (ii) the Access Holder is not in default of any of its obligations under this agreement; and
 - (iii) except in the event of a novation, the Access Holder remains liable for the performance of its obligations under this agreement assumed by the Access Holder Assignee provided however that performance by the Access Holder Assignee will discharge the Access Holder from liability for performance of those obligations.

- (e) Any assignment, transfer or novation by the Access Holder of its rights or obligations under this agreement will be conditional upon and will not take effect until the Access Holder Assignee agrees by deed in writing, to be bound by and to perform the Access Holder's obligations under this agreement.

17.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

17.7 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

17.8 Relationship

Nothing in this agreement shall constitute or be deemed to constitute a partnership between the parties or be deemed to constitute:

- (a) the Access Holder as an agent of Pacific National for any purpose whatever and the Access Holder has no authority or power to bind Pacific National or to contract in its name or create a liability against it in any way or for any purpose; and
- (b) Pacific National as an agent for the Access Holder for any purpose whatever and Pacific National has no authority or power to bind the Access Holder or to contract in its name or create a liability against it in any way or any purpose.

17.9 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a Term of this agreement operates as a waiver of another breach of that Term or of a breach of any other Term of this agreement.

17.10 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Pacific National:

Address:
Fax:
For the attention of:

Access Holder:

Address:
Fax:
For the attention of:

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17.10(b); and
- (e) are taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place that fax is received) that then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 17.10(b), unless that delivery is made outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day.

17.11 Costs

Each Party must bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and carrying into effect and enforcement of this agreement.

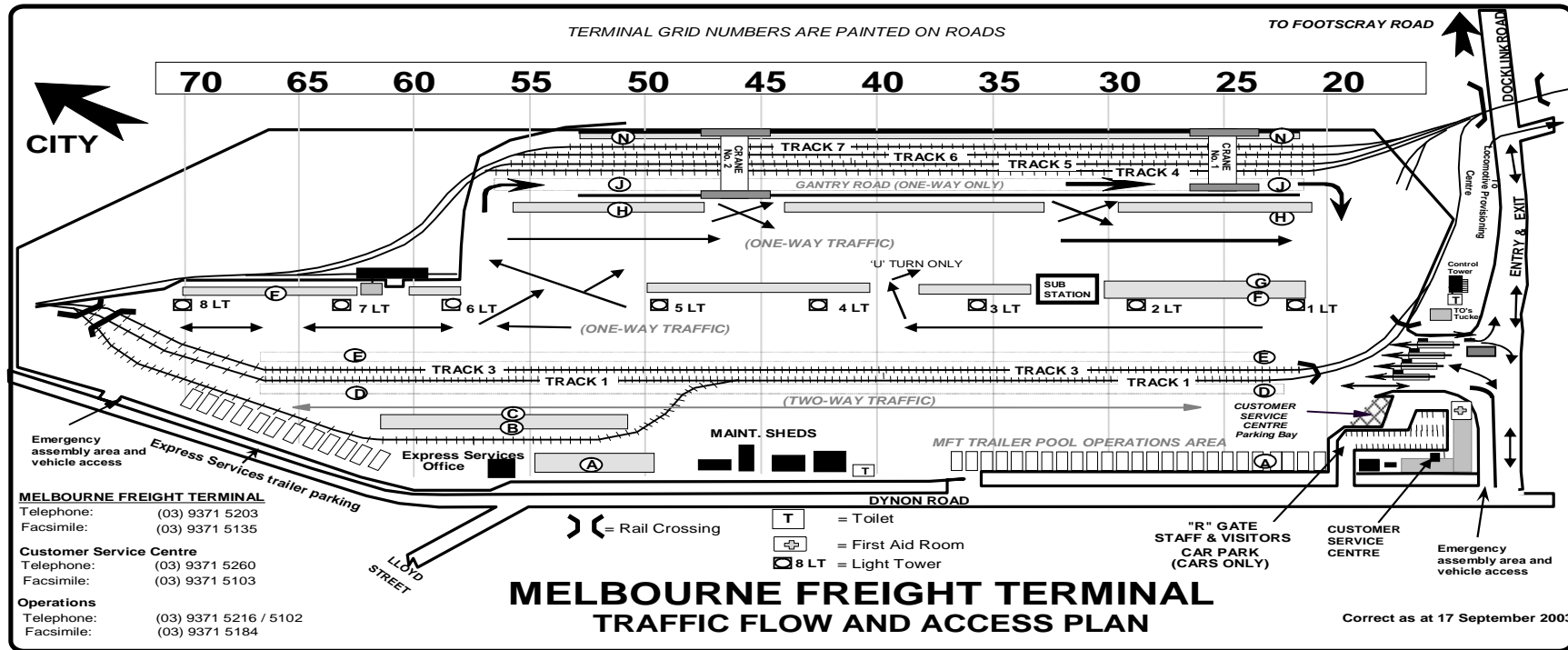
17.12 Stamp duty

The Access Holder must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement.

17.13 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

**Schedule 1
Terminal**



Schedule 2
Train Specification and Service Details

[To be specified once negotiated with the Access Holder]

**Schedule 3
Service Charges and Variation**

[To be included when Reference Services are agreed with the Access Holder]

Schedule 4 Terminal Protocols

Pacific National Terminal Management Protocol for South Dynon

1. Preliminary

- (a) In this document:
- (i) the following definitions apply unless the context requires otherwise:
- (A) ***Cut-Off Time*** means 2 hours, or such other time notified to the Access Holder from time to time before the scheduled departure time of a Train shown in the Timetable;
- (B) ***Load Standards*** means the standards developed in accordance with clause 13;
- (C) ***Terminal Manager*** means Pacific National or its authorised representative;
- (D) ***Train Handover Time*** means the time that the Terminal Manager will handover the loaded train for inspection by the Access Holder prior to departure on the network;
- (E) ***Train Arrival Time*** means the time that the last unit of Rolling Stock in a Train enters the Terminal;
- (F) ***Train Turnaround Time*** means the amount of time from the Train Arrival Time to the Train Handover Time;
- (G) ***Access Agreement*** means the Terminal Access and Services Agreement – South Dynon Terminal between the Terminal Manager and the Access Holder;
- (H) ***Access Arrangement*** means the South Dynon Terminal Access Arrangement made by the Essential Services Commission pursuant to section 38ZJ(1)(a) of the *Rail Management Act 1996*;
- (I) ***Terminal Protocols*** means this document, which is the Pacific National Terminal Management Protocol referred to in clause 8.2 of the Access Arrangement, and clause 8 of the Access Arrangement; and
- (J) ***Container Inventory Checks*** means the checking of container ID's against the containers that are physically in the Terminal,
- (ii) words which are defined in Access Agreement and which are used in the Terminal Protocols have the same meaning in the Terminal Protocols unless the context requires otherwise.
- (b) The Terminal Protocols may be varied from time to time in the following manner:

- (i) if the Terminal Manager determines (in its absolute discretion) that a variation to the Terminal Protocols is necessary or appropriate for the proper, efficient or safe provision of the Services or management of the Terminal:
 - (A) the Terminal Manager will provide the Access Holder with an amended version of the Terminal Protocol for the Access Holder's consideration (*the draft amended Terminal Protocol*) and will meet with the Access Holder to discuss the proposed variations;
 - (B) if the Terminal Manager and the Access Holder agree on the proposed variations, the Terminal Manager will publish an amended Terminal Protocol, which will then be the Terminal Protocol;
 - (C) if the Terminal Manager and the Access Holder do not agree on the proposed variations, within 2 weeks of receipt of the draft amended Terminal Protocol, the Access Holder will make any request for amendments to that document;
 - (D) to the extent that any amendments proposed by the Access Holder interfere with the Terminal Manager's obligations set out in clause 8 of the Access Arrangement, the Terminal Manager is not obliged to take such amendments into consideration.
 - (E) the Terminal Manager will:
 - (1) make a bona fide effort to consider the amendments (other than those discussed in paragraph (D)) proposed by the Access Holder but it is not obliged to make any modification to which it does not agree; and
 - (2) provide to the Access Holder a further amended version of the draft amended Terminal Protocol (*the further amended Terminal Protocol*);
 - (F) if the Terminal Manager and the Access Holder agree on the proposed variations, the Terminal Manager will publish the further amended Terminal Protocol, which will then be the Terminal Protocol
 - (G) if the Terminal Manager and the Access Holder do not agree the General Managers of each party must, within 5 days of the provision of the further amended Terminal Protocol, meet and attempt to come to an agreement on the proposed variations;
 - (H) If no agreement is reached under paragraph (G) above, the proposed variation will be referred to the Commission for approval, and if approved, the Terminal Manager will publish an amended Terminal Protocol, which will then be the Terminal Protocol.
 - (I) Notwithstanding anything in paragraph 1(b)(i) a variation to a part of the Terminal protocol that deals with a matter related to section 4 or section 8

of the Network Management Rules shall take effect only on and from the date the Commission decides to approve a variation pursuant to the section 10.3 of the Network Management Rules, or waives the requirements for approval pursuant to section 11.2 of the Network Management Rules

- (ii) The requirements in paragraphs (i) may be set aside in the case of emergency or variations necessary for the safe provision of the Services or management of the Terminal, but any variation made under this circumstance will be considered to be temporary and the parties will endeavour to consult and agree on a permanent modification as soon as practicable and in accordance with the procedure set out in paragraph 1(b) (i)
- (iii) When the Terminal Manager publishes an amended Terminal Protocol under paragraphs (B) or (F) above, it will provide a copy of the amended Terminal Protocol to the Commission together with a confirmation from the Access Holder that it agrees to the amendments to the Terminal Protocol.
- (iv) The Access Holder acknowledges and agrees that there may be other users at the Terminal with rights of access to the Terminal with whom the Terminal Manager must consult for the purposes of amending the Terminal Protocols and that whilst the Terminal Manager will consult with all relevant Access Holders and users on relevant Terminal Protocol amendments, the Terminal Manager will, in its absolute discretion, determine whether and to what extent a proposed amendment to the Terminal Protocols will be implemented.

2. General

- (a) To enable the Terminal Manager to properly and efficiently manage and operate the Terminal, provide access to and from the Terminal and provide the Services to the Access Holder, the Access Holder will provide the Terminal Manager with such documents or information as reasonably required by the Terminal Manager from time to time, including, for example such documents or information as:
 - (i) up to date rail certificates;
 - (ii) container plating compliance audits;
 - (iii) evidence that the Access Holder's employees, officers and agents who are rail safety workers have the requisite competence required by the Rail Safety Laws;
 - (iv) wagon technical data; and
 - (v) any other documents or information reasonably required by the Terminal Manager.
- (b) The Access Holder will ensure that, at all times, its employees, officers and agents who are Critical Safety Workers as defined in the Rail Safety Laws present fit for duty at the Terminal.

- (c) The Access Holder will ensure that its employees, officers and agents will submit to random and post-Incident drug and alcohol testing as required.
- (d) The Access Holder will provide the information referred to in the preceding subparagraph in such format as reasonably required by the Terminal Manager.
- (e) Prior to the end of each calendar month, the Access Holder will provide the Terminal Manager with its weekly forecasts of the number of TEU in respect of which it requires Services in the next calendar month.
- (f) Prior to the end of each quarter (ending 31 March, 30 June, 30 September and 31 December), the Access Holder will provide the Terminal Manager with its monthly forecasts of the number of TEU in respect of which it requires Services in the next 12 calendar months.
- (g) The Access Holder will provide prompt notification of any Timetable change to the Terminal Manager so as to ensure that the Terminal Manager can efficiently manage any excess or reduced capacity in the Terminal.
- (h) The Terminal Manager will load or unload bottom lift containers that conform to ISO/Australian Standard NZS 3711 as required to provide Services under the Access Agreement.
- (i) The Terminal Manager will reasonably 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 as required to provide Services as required under the Access Agreement.
- (j) The Access Holder must have the capability to run a compatible IT system so that it can interface with the Terminal Manager's IT systems.
- (k) The Access Holder must comply immediately with a direction given by the Terminal Manager.

3. Track Utilisation

- (a) A track utilisation plan is to be prepared by the Terminal Manager which will identify planned occupancy of the terminal.
- (b) The Terminal Manager will use reasonable endeavours to ensure that the track utilisation plan is:
 - (i) accurate with respect to all information known by the Terminal Manager at the time of its preparation; and
 - (ii) consistent with each Access Holder's Timetable.
- (c) The Access Holder will provide the following details upon request by the Terminal Manager to allow preparation of the track utilisation plan:
 - (i) arrival and departure times;
 - (ii) track lengths requirement;

- (iii) shunt requirement (consist movement); and
- (iv) locomotive provisioning times.
- (d) The Terminal Manager will use the track utilisation plan to manage capacity within the Terminal and will use all reasonable endeavours to facilitate the operation of the Terminal in accordance with the Track Utilisation Plan.
- (e) The Access Holder and Terminal Manager will co-operate to meet operational requirements caused by day of operation variations to the track utilisation plan.
- (f) The Terminal Manager may vary the track utilisation plan from time to time in order to improve capacity and efficiency of the Terminal. The Terminal Manager will prepare an amended track utilisation plan and in doing so will use all reasonable endeavours to minimise disruptions to Access Holders. The Terminal Manager will consult with the Access Holder before finalising any amended track utilisation plan.
- (g) The Access Holder may request (*the Request*) the Terminal Manager to vary the track utilisation plan from time to time in order to accommodate temporary variations to the Access Holder's Timetable or permanent variations to the Access Holder's Timetable that have been implemented in accordance with clause 6.7 of the Access Agreement. The Access Holder will provide such information as is reasonably requested by the Terminal Manager to enable the Terminal Manager to consider the Request. The Terminal Manager will consult with the Access Holder in relation to the Request and will vary the track utilisation plan in order to accommodate the Request. For the avoidance of doubt, this clause does not relate to a Request by the Access Holder in respect of Trains or Services not set out in the Access Agreement.

4. Train loading

- (a) At least 12 hours prior to the scheduled departure time of a Train, the Access Holder will provide the Terminal Manager with an indicative load plan which will include:
 - (i) wagon consist;
 - (ii) marshalling requirements; and
 - (iii) container bookings.
- (b) The Access Holder will be responsible for the timely presentation of the wagon consist to allow the Terminal Manager to load containers in accordance with the indicative load plan.
- (c) The Terminal Manager will check containers to ensure they are safe for loading having regard to container integrity, load restraint and compliance plating. The Terminal Manager will advise the Access Holder of containers which are not safe for loading.
- (d) The Terminal Manager will use its best endeavours to load the Train in accordance with the indicative load plan and the Load Standards.

- (e) The Terminal Manager will manage variations to the indicative load plan and will advise the Access Holder of any such variations.
- (f) The Terminal Manager will load the containers within the safety conditions of the wagon consist presented by the Access Holder having regard to axle load, height, drawbar and network restrictions. It is the Access Holder's responsibility to ensure that all containers are fit for travel and the Terminal Manager has no responsibility to secure or adjust contents of containers.
- (g) The Terminal Manager will secure twist locks.
- (h) The Terminal Manager will not be obliged to load a container which is not received in the Terminal prior to the Cut Off Time, but the Terminal Manager will use its best endeavours to do so subject to the Terminal Manager's obligations to other Access Holders and provided the Terminal Manager considers it is efficient to do so (in the Terminal Manager's absolute discretion).
- (i) The Access Holder must comply with the Terminal Manager's direction for the handling of Dangerous Goods, Dangerous Good must be presented fit for travel in accordance with the relevant Australian Dangerous Goods Code.
- (j) The Access Holder will provide the Terminal Manager with notification of the nature and description of any Dangerous Goods (which must be provided on arrival of the Dangerous Goods).
- (k) The Access Holder will provide the Terminal Manager with all necessary written authorities to deal with the containers to be loaded onto the Access Holder'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;
 - (ii) any other documents or information reasonably required by the Terminal Manager.
- (l) The Terminal Manager 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) number of services on that Train;
 - (v) details of Rolling Stock on each service; and
 - (vi) any other service ID's reasonably required by the Terminal Manager.

- (m) The Terminal Manager will provide the train manifest to the Access Holder at the Train Handover Time in order to allow final inspection and pre-departure safety checks to be undertaken by the Access Holder prior to the train's departure.
- (n) The Access Holder will ensure that all 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 Access Holder.
- (o) The Terminal Manager will not be obliged to load containers deemed unfit by the Terminal Manager in its absolute discretion having regard to all relevant safety, compliance and regulatory requirements.

5. Unloading Trains

- (a) At least 12 hours prior to the scheduled arrival time of a Train, the Access Holder will provide the Terminal Manager with notification of the nature and description of any Dangerous Goods and confirm that the Train has been safely loaded in accordance with any required standards prior to its release onto the network.
- (b) The Terminal Manager will check containers to ensure they are safe for unloading having regard to container integrity, load restraint, plating compliance and Dangerous Goods segregation. The Terminal Manager will advise the Access Holder of containers which are not safe for unloading.
- (c) The Access Holder will provide the Terminal Manager with all necessary written authorities to deal with the containers to be unloaded from the Access Holder'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;
 - (ii) any other documents or information reasonably required by the Terminal Manager.
- (d) The Terminal Manager will ensure:
 - (i) containers will be allocated ground location ID's which will describe the grid location of the container within the Terminal in order to assist truck operators to locate freight,
 - (ii) Container Inventory Checks will be undertaken daily,
 - (iii) Any container inventory exceptions will be escalated to the Access Holder upon identification, and
 - (iv) all freight will be unloaded in accordance with the performance measures outlined within the Terminal Protocols.

6. Daily Variations

- (a) The Access Holder will use its best endeavours to provide 12 hours notice to the Terminal Manager if a Train is likely to arrive before or after its scheduled arrival time.
- (b) In respect of arriving Trains:
 - (i) For Train arrivals at or before the scheduled arrival time in the Timetable, the Terminal Manager will provide the Services and use its best endeavours to ensure that the Train departs on time.
 - (ii) For the avoidance of doubt, nothing in paragraph (a) above will require the Terminal Manager to disrupt Trains which arrive and depart in accordance with their specified arrival and departure times.
 - (iii) For train arrivals after the scheduled arrival time in the Timetable:
 - (A) the Terminal Manager and Access Holder will co-operate to forward plan for the arrival of those Trains;
 - (B) where it is possible, the Terminal Manager will allocate resources and amend its operating plan to service the Access Holder's late arriving trains in a timely fashion;
 - (C) the Terminal Manager will use its best endeavours to provide the Services so as to have the train arrived into the Terminal as soon as is practical, subject to the Terminal Manager's obligations to other Access Holders and provided the Terminal Manager considers it is efficient to do so (in the Terminal Manager's absolute discretion);
- (c) In respect of departing Trains:
 - (i) The Access Holder may:
 - (A) request the Terminal Manager to give priority to the provision of Services to certain of the Access Holders Trains;
 - (B) request the Terminal Manager to vary Cut-Off Times or train departure times to accommodate variations; and
 - (C) request the Terminal Manager to prioritise the container loading to meet customer expectations.
 - (ii) The Terminal Manager will:
 - (A) use its best endeavours to comply with such requests subject to the Terminal Manager's obligations to other Access Holders and provided the Terminal Manager considers it is efficient to do so (in the Terminal Manager's absolute discretion); and
 - (B) if it becomes apparent to the Terminal Manager that a train cannot be completed on schedule, the Terminal Manager will advise the Access Holder 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 Terminal, the Terminal Manager will:
 - (i) use all reasonable endeavours to minimise disruptions to other Access Holders; and
 - (ii) as soon as is practical subject to its obligations to other Access Holders, clear the failed Train.

7. In Gate / Out Gate

- (a) The Terminal Manager will publish Terminal Operating Hours from time to time. The Terminal Manager will provide reasonable notice of any change to the Terminal Operating Hours to the Access Holder.
- (b) The Terminal Manager will provide freight opening and closing receival times for each of the Access Holder's train services.
- (c) For the purpose of maximising slot utilisation, the Access Holder may request that the Terminal Manager receive containers prior to the opening and closing times. These containers would be known as pre-receivals.
- (d) The Terminal Manager will notify the Access Holder of any exceptions in data or load integrity that may impact on the successful gating of the Access Holders containers.
- (e) The Access Holder will provide to Pacific National the proposed times for the arrival and departure of any road vehicles to and from the Terminal, 24 hours in advance of those movements.

8. Safety

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

9. Performance Measures

- (a) The Terminal Manager will develop:
 - (i) a set of performance measures and performance targets relevant to the service being provided to the Access Holder together with action plans to achieve those performance targets; and

- (ii) a set of performance measures and performance targets against which the Access Holder's performance will be measured together with action plans designed to assist in achieving the Access Holder's performance targets.
- (b) The Terminal Manager will consult with the Access Holder on the performance measures, performance targets and action plans developed under paragraph (a) above.
- (c) In consulting with the Access Holder in accordance with paragraph (b), the Terminal Manager will take into account any concerns raised by the Access Holder regarding the performance measures, performance targets and action plans and make a bona fide effort to mitigate such concerns however, the Terminal Manager is not obliged to make any modification with which it does not agree.
- (d) The performance measures developed under paragraph (a)(i) and a(ii) may include:
 - (i) *Medical Treatment Injury (MTI)* – injury that requires medical treatment, including all injuries where the employee is placed on alternative duties.
 - (ii) *Lost Time Injury (LTI)* - those occurrences that result in a fatality, permanent disability or time lost from work of one day/shift or more to the Access Holder's persons as a result of the Terminal Manager's failure to adhere to or implement safe working practices and procedures.
 - (iii) *Derailment* - a rolling-stock derailment occurring in the normal movement of a train on a track where one or more rolling stock wheels leave the rail or track during railway operations which affects the Access Holder.
 - (iv) *Collision* - any impact or strike involving trains, vehicles, infrastructure, persons, animals or other obstructions either on the track or within the terminal which affects the Access Holder.
 - (v) *Terminal Load Lifting Incident* - any incident involving terminal lifting equipment that may represent a danger to the safety of the Access Holder's persons or property.
 - (vi) *Terminal Infrastructure Related Incident* - any incident involving the Access Holder as a result of the standard of infrastructure under the Terminal Manager's control.
 - (vii) *Safeworking Irregularities/Breach* - any breach of, irregularity or deficiency in an operational safeworking system or procedure by either party.
 - (viii) *Vandalism/Theft/Attempted Theft* - any willful or malicious destruction or damage to the Access Holder's property, in addition to any theft or attempted theft from trains that are the Access Holder's Property.
 - (ix) On-Time Train Departures affecting the Access Holder.
 - (x) Train Turnaround Times affecting the Access Holder.
 - (xi) Freight Availability affecting the Access Holder.
 - (xii) Truck turnaround and transaction times affecting the Access Holder.

- (xiii) Trains presented late by the Access Holder.
- (xiv) Trains presented early by the Access Holder.
- (xv) Trains with container numbers differing to information provided by the Access Holder to the Terminal Manager.

10. Interface Agreement

- 10.1 Prior to commencement of the service the Terminal Manager will provide to the Access Holder a copy of its standard template Safety Interface Agreement and the Access Holder and the Terminal Manager will use that template to agree an Safety Interface Agreement in compliance with the Rail Safety Laws.
- 10.2 The Safety Interface Agreement which is required pursuant to the Rail Safety Laws will, among other things, deal with communication between the Access Holder and the Terminal Manager.

11. Rolling Stock Standards

- 11.1 The Access Holder must comply with the requirements applicable for access to the relevant rail network applicable from time to time, where the relevant rail network may include, but is not limited to, ARTC network, VLine Network, Metro Train Melbourne network, Railcorp network and Brookfield rail network.
- 11.2 The Access Holder must provide the Terminal Manager with details of the Rolling Stock to be utilised.

12. Customer Communications

- (a) In relation to customer complaints arising from time to time on issues such as truck, trailer or container damage, excessive truck turnaround times, left behinds etc:
 - (i) the Terminal Manager will establish a single point of contact for customer complaints. This will apply for customer related complaints directly from the Access Holder.
 - (ii) the Terminal Manager and the Access Holder will jointly endeavour to provide resolution to the customer issue.
- (b) In relation to customer complaints about an alleged failure of the Terminal Manager to comply with the Terminal Protocol:
 - (i) the Terminal Manager will:
 - (A) establish a single point of contact for such customer complaints;
 - (B) address the complaint in good faith; and

- (C) annually provide to the Commission a report on such complaints received and the measures taken by the Terminal Manager to address each complaint.

13. Load Standards

- (a) The Terminal Manager will develop Load Standards taking into account the following:
 - (i) all rolling-stock and network restrictions applicable for the scheduled train route which include but are not limited to the following criteria:
 - (A) Train Specification as set out in the Access Agreement,
 - (B) Dangerous Goods segregation rules in accordance with the Australian Dangerous Goods Code,
 - (C) Network restrictions as set out by the various track access providers on their websites (including ARTC, RailCorp, VLine Passenger, Metro Trains Melbourne and Brookfield Rail including:
 - (1) network height restrictions,
 - (2) network and rollingstock axle and overall wagon load limits,
 - (3) network and rollingstock drawgear restrictions,
 - (4) network and rollingstock lightly loaded wagon restrictions,
 - (D) rail loading outline requirements (gauge profile) appropriate to the particular corridor over which the container will move,
 - (E) container doors properly closed and secured with a container seal;
 - (ii) any train consist in hard-copy and electronic form (provided by the Access Holder to the Terminal Manager) which accurately depicts the physical load of the train and which does not contain any documentation failure that involves train operation data that may impact on load information for train integrity.
- (b) The Terminal Manager will use best endeavours to load the train in accordance with:
 - (i) the indicative load plan and the Load Standards prior to the Train Handover Time; and
 - (ii) the performance measures outlined within the Terminal Protocols.
- (c) The Access Holder is responsible for the final pre-departure safety checks and Load Standard verification prior to its release onto the network.

14. South Dynon Terminal Operations Communication Protocol

- a) The Terminal Manager requires that the Access Holder establish and maintain a radio communications link with the Terminal Manager at all times that the South Dynon Terminal is open. The operating details of this radio link will be specified by the Terminal Manager.
- b) The Terminal Manager will use the radio communications link to give directions to the Access Holder in relation to operations within South Dynon Terminal.
- c) The Terminal Manager will record all voice and data transmissions relevant to the operations of trains within the South Dynon Terminal, including transmissions to and from the South Dynon Terminal, train operators and the operators of other rail networks.

Schedule 5 Capacity and Throughput

For the purposes of the agreement and this Schedule 5:

Allocated Monthly TEU: []

Ceiling TEU percentage: []%.

Floor TEU percentage: []%.

(a) Services

In consideration of payment of the Services Charges referred to in paragraph (b) below, Pacific National will during each month of the Term provide the Services for the relevant specific Trains listed in the Timetable, provided that those Trains do not carry in aggregate during that month a TEU greater than the Ceiling TEU for that month (subject to paragraph (a)(ii) below and clause 6.10 of this agreement), and provided that no Train exceeds the maximum length specified for that Train in the Timetable.

The Allocated Monthly TEU referred to above as at the date of this agreement may be permanently increased by up to []% in any particular month by the Access Holder by giving Pacific National written notice at least 2 months prior to seeking that increase. Once the Access Holder has given such a notice, the increased figure will be deemed to be the Allocated Monthly TEU for the relevant month for the purposes of this agreement. However, the Allocated Monthly TEU for each month may only be increased under this paragraph (ii) by a maximum of []% above the TEU for that month as listed above as at the date of this agreement. Any other increase will be dealt with under clause 6.10 of this agreement. Calculation of the Ceiling TEU and Floor TEU will be based on the Allocated Monthly TEU as increased under this paragraph from time to time.

Pacific National has no obligation to provide the services in paragraph (i) above for Trains other than those listed in the Timetable, or for Trains which exceed the maximum lengths specified in the Timetable, or once the aggregate TEU for a month exceeds the Ceiling TEU for that month, but Pacific National may agree to do so in its absolute discretion. If Pacific National agrees to accept the additional TEU, it will receive the charges referred to in paragraph (b) below in relation to that additional TEU.

(b) Charges for Services

The Access Holder will pay Pacific National the fee specified in Schedule 3 ("**Rate**") per TEU for the aggregate TEU which is loaded and unloaded at the Terminal in each month, provided that if the total TEU loaded and unloaded in a month is not equal to or more than the Floor TEU (for any reason other than the default of Pacific National under this agreement), the Access Holder will pay the Services Charge under this paragraph as if the TEU loaded and unloaded that month equalled the Floor TEU. The Floor TEU in this paragraph (i) may be increased in a particular month as a result of an increase to the Allocated Monthly TEU as referred to in paragraph (a)(ii) above, or in clause 6.8 of this agreement.

**Schedule 6
Agreement Details**

A. Term

[] year(s)

B. Permitted Time

The time that is 20 minutes before or after the scheduled time for the arrival of a Train and 20 minutes before or after the scheduled time for the departure of a Train as specified in the Timetable.

C. Invoicing

[Details to be provided]

D. Payment Terms

30 days from invoice date

E. Payment - Disputed Amounts

50% of disputed amounts

F. Cancellation Notice

Two months' notice

G. Timetable Variation

One month's notice

H. Claims

- (a) \$20,000
 - (b) \$200,000
-

I. Insurance

- public liability insurance to the amount of \$250,000,000.00;
- insurance for an amount not less than \$150,000,000.00;
- in respect of:
 - (i) damage to real property and personal property; and
 - (ii) injury to or death of any person.

Signed as an agreement.

Signed for and on behalf of **Asciano Services Pty Ltd ACN 0520134 362** by its attorney under a power of attorney dated **[insert date and details]** in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed by **ACN** _____ in the presence of:

Signature

Signature of Witness

Name of Witness in full