



Qube Standard Access Agreement (SAA)

Port Melbourne - Victoria Dock Rail
Terminal

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Standard Access Agreement

1 Background

Date of Agreement: 24 April 2020

Parties

- 1 The Party specified in Item 1 of the Reference Schedule (**Qube**).
- 2 The Party specified in Item 2 of the Reference Schedule (the **Customer**).

Background

- (a) An open access regime operates at the Port of Melbourne and provides for Open and Non-Discriminatory Access to port rail terminals and container interchange facilities, including the Terminal.
- (b) Qube is responsible for operating the Terminal at Victoria Dock.
- (c) The Customer wishes to acquire Services supplied by Qube at the Terminal.
- (d) Qube has agreed to supply the Services and the Customer wishes to acquire the Services from Qube on the terms in this Agreement.

Agreed terms:

2 Introduction

Structure of Agreement

There are 4 parts in this Agreement:

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

PART 1: Reference Schedule

Item 1	Qube details	Name:
		ABN:
		Address:
		Email:
Item 2	Customer details	Name:
		ABN:
		Address:
		Email:
Item 3	Commencement Date	[insert]
Item 4	Expiry Date	[insert]
Item 5	Insurances	<p>(a) public liability insurance to the amount of \$20,000,000.00 for any one event;</p> <p>(b) insurance covering liability that may arise at common law or by virtue of workers compensation legislation; and</p> <p>(c) insurance for an amount not less than \$20,000,000.00 in respect of any one loss arising from:</p> <p style="padding-left: 40px;">(i) damage to real property and personal property; and</p> <p style="padding-left: 40px;">(ii) injury to or death of any person.</p>
Item 6	Security	[insert]

PART 2: Services

Services			
Item	Service	Description of available Services at the Terminal	Qube to provide Service [Yes/No]
1	Reference Services	<p>Terminal Access Service</p> <p>(a) allocation of a Window;</p> <p>(b) provision of access by a Train into the Licensed Area; and</p> <p>(c) facilitating departure of the Train from the Licensed Area.</p>	
		<p>Terminal Loading and Unloading Service</p> <p>(a) unloading of containers (either full or empty) from a Train; or</p> <p>(b) loading of containers (either full or empty) on to a Train;</p> <p>in each case inclusive of storage of Containers within the Licensed Area for a period not exceeding the Short Term Storage Allowance (but, for clarity, does not include any storage of Containers for periods exceeding the Short Term Storage Allowance).</p>	
		<p>Truck Terminal Access Service</p> <p>(a) in-gate processing of trucks;</p> <p>(b) provision of access by a truck to the Terminal to collect or deliver a container; and</p> <p>(c) out-gate processing of Trucks.</p>	
2	Ancillary Services	Nil	

All Reference Services and Ancillary Services are made available subject to the operating requirements and restrictions applicable, from time to time, under the Terminal Access Arrangement and Terminal Operating Protocol.

PART 3: Service Charges

The following Services Charges will apply to this Agreement:

Fee for Reference Service	Service Charges
Terminal Access Service Fee	\$900 plus GST per scheduled 3-hour 600m train Window (take or pay)
Terminal Loading Service Fee for loading (full or empty) Fee for unloading (full or empty)	\$60 plus GST per TEU \$60 plus GST per TEU
Truck Terminal Access Service	Nil

Description of Ancillary Service	Service Charges

PART 4: Terms and conditions

1 Access

- (a) Qube will provide non-exclusive access to the Terminal to the Customer by virtue of the provision of the Services in accordance with:
 - (i) the terms of this Agreement;
 - (ii) the Port Rail Access Principles;
 - (iii) the Capacity Allocation Protocol; and
 - (iv) the Terminal Operating Protocol.
- (b) To the extent that the terms of this Agreement are inconsistent with any of the other documents in clause (1)(a), the terms of this Agreement apply.

2 Services and Services Charges

2.1 Services to be provided by Qube

Qube will:

- (a) provide relevant Services to the Customer at the Terminal for the Term pursuant to this Agreement;
- (b) ensure that sufficient approved, accredited and serviceable equipment and appropriately skilled and appropriately licensed labour are available at to supply the Services, from time to time; and
- (c) provide the Services in a competent, professional and efficient manner and to any standard required by legislation;
- (d) levy Service Charges that, to the extent that they do not reflect current Reference Prices, will otherwise comply with the Non-Discriminatory Pricing Principles.

2.2 Conditions precedent

Qube will have no obligation to provide the access or Services under this Agreement until the Customer demonstrates to the satisfaction of Qube:

- (a) that the Customer has all necessary accreditations;
- (b) that the Customer holds all insurances as required by, and in compliance with, clause 15; and
- (c) that the Customer has provided the Security to Qube (if required) in compliance with clause 10.

2.3 Services Charges, invoices and payments

- (a) The Customer must pay Qube the Services Charges and all other amounts owing to Qube pursuant to this Agreement.

- (b) Qube will invoice the Customer for the Services after completion of each relevant Service (i.e. per Train serviced) and or for every missed window.
- (c) The Customer must pay into the account notified by Qube to the Customer the amount invoiced in full within the Payment Term without discount, deduction, counterclaim or set-off.
- (d) If the Customer has not paid an amount due under this Agreement within the Payment Term, the Customer must pay interest on the amount unpaid at the Agreed Rate. The interest payable under this clause 2.3(d) accrues from day to day from and including the due date for payment up to the actual date of payment and may be capitalised by Qube at monthly intervals.
- (e) The Customer must pay all expenses and charges that are reasonably incurred by Qube for its compliance with any Laws that are applicable to the Services or any order or requirement made under them or with the requirement of any market, harbour, dock, wharf, railway, shipping, customs, warehouse, port or any other relevant charges; and
- (f) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST and is pursuant to clause 18 of this Agreement.

2.4 Review and variation of Service Charges for Reference Services

Qube may review and vary Service Charges for Reference Services at any time by publishing a notice of the updated Service Charges on Qube's website not less than 30 Business Days' prior to their commencement.

2.5 Non-Discriminatory Pricing Principles

- (a) If, or to the extent that, Qube supplies any Reference Service or Ancillary Service to the Customer at Service Charges that are different from Reference Prices, Qube warrants that such non-standard pricing will comply with the Non-Discriminatory Pricing Principles.
- (b) In formulating any non-standard Service Charges for Reference Services, Qube will be permitted to discriminate as between different Customers (including its own operations), where this reflects:
 - (i) differences in costs (direct or indirect) of supplying the Reference Services to the Customer;
 - (ii) differences in risks associated with the supply of the Reference Services to the Customer;
 - (iii) demand for the services and prevailing market conditions at the time of entering into this Agreement and any other relevant agreement(s); or
 - (iv) discounting pricing behaviour of Qube that is consistent with outcomes in a competitive environment,

(Non-Discriminatory Pricing Principles).

- (c) For clarity, the Non-Discriminatory Pricing Principles apply only in respect of the supply of Reference Services and Ancillary Services.

3 Term

3.1 Interdependence

- (a) If the Rail Management Agreement expires or is terminated, this Agreement will be taken to have been terminated with immediate effect. Qube will not be liable for any loss or damage caused by early termination of this Agreement under this clause 2.1(a).
- (b) If Qube is prevented or restricted for any period in its ability to Access the Port Rail Network for any reason or if Qube is otherwise prevented or restricted from providing Services for any period as a consequence of steps taken by POM under the Rail Management Agreement:
 - (i) any obligations of Qube related to the supply of Services will be suspended during the applicable period; and
 - (ii) Qube is not liable to the Customer for loss or damage arising from any such failure to provide Services.

3.2 Term

- (a) This Agreement commences on the Commencement Date and expires on the Expiry Date, unless terminated earlier in accordance with the terms of this agreement.
- (b) If the Customer wishes to renew or extend the Term, the Customer must give Qube written notice at least 12 months' prior to the end of the Term. The parties will negotiate any proposed renewal or extension of the Term in good faith, provided that any such renewal or extension shall be at the discretion of Qube (acting reasonably).

4 Rights and Obligations

4.1 Qube's rights and obligations

- (a) If any identifying document or mark on a container is lost, damaged, destroyed or defaced, then Qube may open any document, wrapping, package or container to inspect the container or its contents either to determine their nature or condition or to determine their ownership or destination.
- (b) Subject to clause 4.1(c) and 4.1(d), Qube shall be entitled to exercise a general and/or particular lien over, and a right of sale of, a container or its contents in respect of any amount owed by the Customer to Qube and any amounts owed by any related entity of the Customer to Qube.
- (c) Prior to exercising its rights under clause 4.1(b) the Operator will provide the Customer with 10 Business Days' notice in writing.
- (d) The lien referred to in clause 4.1(b) is in addition to any applicable statutory lien.
- (e) If in Qube's reasonable opinion a container or its contents:
 - (i) are or are liable to become Dangerous Goods;
 - (ii) do not comply with all applicable Laws; or
 - (iii) are unsuitable to be handled using the equipment and operating procedures at the Terminal (including as contemplated by the Terminal Operating Procedure),

Qube may:

- (iv) refuse to provide the Services in respect of that container; or
 - (v) take whatever measures it considers to be reasonably necessary (including opening the container, weighing and measuring the container or its contents, requiring the container to be repacked or reloaded and delaying or rescheduling their loading and carriage) at the Customer's risk and expense in order to cause the container, its contents, the vehicle or Train by which the container will be transported or the driver of such vehicle or Train to comply with all applicable Laws and to otherwise be suitable for handling.
- (f) If in Qube's reasonable opinion the weight of any container materially varies from the weight as declared on the documentation provided to Qube by the Customer, Qube may:
- (i) refuse to provide the Services in respect of the container;
 - (ii) advise relevant regulatory authorities; and
 - (iii) require the Customer to take the necessary measures to rectify and re-declare the correct weight and amend the documentation at their risk and expense.
- (g) Qube may itself, or may engage an independent third party to, conduct an audit or review Customer's compliance with its obligations under this Agreement, including compliance with any applicable Laws. If Qube or the independent third party discovers a breach or non-compliance by the Customer of its obligations under this Agreement, the Customer must comply at its cost with any findings or recommendations of such audit or review in relation to the breach or non-compliance.
- (h) Qube has no obligation to inspect a container and no inspection will increase Qube's liability under this Agreement.
- (i) Qube will be released from its obligations under this Agreement to the extent and for the duration that performance of this Agreement is delayed, hindered or prevented by a Force Majeure Event.
- (j) Qube is not responsible for and has no liability in respect of any inaccuracy in the description provided by a Customer of a container or its contents.

4.2 Customer's rights and obligations

- (a) The Customer warrants that it:
- (i) is, or is the authorised agent or bailee of, the person owning (or having an interest in) any Container being delivered to or collected from the Terminal by or on behalf of the Customer;
 - (ii) will provide Qube with any information that Qube reasonably requires for the efficient conduct of the provision of the Services, including any notice, forecast or other information, including (without limitation) as specified from time to time in this Agreement or the Terminal Operating Protocol, in a timely manner;
 - (iii) is and will remain compliant with all applicable Laws (including, without limitation, any applicable health and safety legislation and dangerous goods codes) and has and will maintain all accreditations, licences and approvals as required by Law, and provide Qube with all necessary assistance, information and documentation to enable Qube to comply with such Laws;

- (iv) will ensure that the Customer's Personnel are aware of and comply with all applicable Laws and all reasonable lawful directions and orders given by Qube or any person authorised by Law to give directions to the Customer;
- (v) will comply at all times with Qube's Policies and Procedures including complying with all instructions given by Qube from time to time to protect the Terminal, property and individuals;
- (vi) will ensure that all Rolling Stock, plant and equipment which enters the Terminal is safe and operated in a safe manner;
- (vii) will comply at all times with the Terminal Access Arrangement, the Capacity Allocation Protocol and the Terminal Operating Protocol;
- (viii) will provide reasonable assistance to Qube in order to enable it to perform the Services (if required);
- (ix) will allow Qube to obtain immediate access to any Commercial Document where Qube is required to produce the Commercial Document at the request of a Government Agency;
- (x) ensure that no Dangerous Goods are transported into the Terminal except and to the extent (including on any applicable terms) approved in advance by Qube;
- (xi) ensure all Containers are safely packed, secured and clearly identified and labelled;
- (xii) ensure the packaging, identification, labelling and handling of Containers, and any documentation and instructions pertaining to a Container or the handling of the Container, are accurate and comply with all applicable Laws, regulations and standards; and
- (xiii) any temperature controlled will only be tendered in compliance with the Terminal Operating Procedure.

5 Truck Terminal Access Service

The provision of the Truck Terminal Access Service to the Customer will be subject to the standard terms of access by trucks to the Terminal, as may be published by Qube from time to time, which terms are incorporated into and form part of this Agreement.

6 Short Term Storage

- (a) The Customer must deliver/remove, or procure the delivery/removal of, its containers from the Terminal within 24 hours of loading/discharge of the container from a Train (or such lesser time as may be required by an Authority).
- (b) If the Customer fails to remove a container within the time specified in clause 6(a), Qube will be entitled to:
 - (i) charge the Customer a storage fee in respect of storage of the Container;
 - (ii) remove the Container to a storage facility; and
 - (iii) treat the Container as abandoned at the Customer's risk and expense, subject to providing notice as contemplated in clause 6(c) .

- (c) The Customer must not in any circumstances abandon any container and Qube will be entitled, on 28 days' notice to the Customer, to dispose of an abandoned container or its contents at the Customer's risk and expense (including any costs of storage of the abandoned container or its contents prior to disposal) in any manner Qube deems reasonable and the Customer will not be entitled to any compensation in respect of the abandoned container or its contents and/or their disposal.
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7 Rail Access

7.1 Cancellation of Train Movements

In accordance with the Terminal Operating Procedure, the Customer must use best endeavours to provide 24 hours' notice Qube of any proposed temporary cancellation or modification of Train Movements.

7.2 Services for early and late Trains

- (a) Train Movements within the Terminal will be managed by Qube in accordance with the Terminal Operating Procedure and any applicable Schedule.
- (b) If a Train arrives at the Terminal outside the window specified for that Train in the Schedule (an **Untimely Train**), and Qube reasonably considers that the provision of such Services is likely have an adverse effect upon other Trains or Train Movements at the Terminal, the Services to be provided in respect of the Untimely Train will take a lower priority to other Trains and Train Movements.
- (c) If the Customer's Trains frequently arrive or depart outside the allocated window, Qube may give the Customer a notice requiring the Customer to ensure that its Trains arrive and depart the Terminal in accordance with the Schedule.
- (d) If Qube gives the Customer a notice pursuant to clause 7.2(c), the Customer must prepare and submit to Qube a plan for improvement of the on-time running of its Trains and use best endeavours to run Trains in accordance with the Schedule.
- (e) The Customer acknowledges that Qube may recover from the Customer all additional costs which Qube reasonably incurs in connection with the provision of Services accommodating Untimely Trains in accordance with this clause 7.2.

7.3 Untimely Trains

- (a) If a Train becomes an Untimely Train due to a delay caused by:
 - (i) an act or omission of Qube, additional costs will not be charged and Qube will use reasonable endeavours to service the Customer's Train to make up time; or
 - (ii) a reason other than an act or omission of Qube, Qube may recover additional reasonable costs of servicing the Customer's and other Customers trains impacted including any additional costs associated with servicing the Train quickly or otherwise inconsistently with the Schedule in attempting to make up time.

7.4 Allocation and variation of rail capacity and road service capacity

- (a) Without limitation to clause 9, and subject to the Terminal Operating Protocol, Qube may allocate, vary, prioritise and withdraw any rail capacity associated with Train Movements and any road service capacity used or required by the Customer.

- (b) All access rights granted under this Agreement, scheduled windows for Train Movements and slots booked for Trucks are non-transferable. The Customer (and any carrier retained by the Customer) may not pool or attempt to transfer or re-sell such rights to other rail operators or carriers.
-

8 Variation and cancellation of Services

8.1 Temporary variation or suspension

- (a) Qube may vary its provision of the Services, including immediately suspending Services or any associated access to the Terminal by the Customer, where and to the extent reasonably required in order to:
 - (i) mitigate the risk of any actual or potential:
 - (A) Incident;
 - (B) material damage to the Terminal, property or Qube's infrastructure or equipment; or
 - (C) injury to any persons; and
 - (ii) otherwise to respond to any actual and material breach of this Agreement by the Customer.
- (b) Any such variation under this clause 8.1 may continue at Qube's discretion for so long as the risk specified in clause 8.1(a) continues.

8.2 Material Change

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

9 Repairs and maintenance

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

10 Security

10.1 Security

- (a) Qube may (acting reasonably) require the Customer to provide the Security to Qube. If so, the Customer must provide that Security within 10 Business Days of being notified by Qube of the requirement to do so.
- (b) If a Security is required, the Customer must deliver to Qube security in the amount of the Security for the performance of the Customer's obligations under this Agreement in the form of:
 - (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
 - (ii) any other security reasonably acceptable to Qube, containing terms and conditions reasonably acceptable to Qube.
- (c) If, at any time during the Term, the Security held by Qube is less than the amount specified in the definition of Security, the Customer must increase the Security by the amount determined by Qube to ensure that the amount of the Security accords with the amount specified in the definition of Security and deliver to Qube a new or replacement Security to reflect the change within 10 Business Days after receipt of notice to do so from Qube.
- (d) The provision and continuance of the Security (or of any new or replacement Security provided by the Customer in accordance with this clause 10.1) is a condition of the performance by Qube of its obligations under this Agreement.
- (e) At the end of the Term, Qube will (where applicable) return the Security to the Customer.

10.2 Exercise of Security by Qube

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

11 Non-utilisation of capacity

11.1 Minimum Usage Requirement

Subject to Qube complying with Open and Non-Discriminatory Access, Qube is entitled to withdraw any Windows or Capacity allocated to the Customer and reallocate those Windows, or that Capacity, to another Customer where:

- (a) the Customer does not satisfy, over any 3-month period, its Minimum Usage Requirement and Qube is:
 - (i) satisfied (acting reasonably) that:
 - (A) the Customer does not have a reasonable justification for failing to meet its Minimum Usage Requirement; and
 - (B) it is commercially feasible to re-allocate the Capacity or Windows to another Customer such that the Terminal will be more highly utilised; or
- (b) immediately, or otherwise as directed, where Qube is directed to withdraw that Capacity or those Windows by the Port Rail Manager;
- (c) immediately where the Customer materially breaches (or otherwise repeatedly breaches) safety requirements applicable at the Terminal, relevant legislation, or any standard otherwise specified under this Agreement or in the Terminal Operating Protocol; or
- (d) immediately, where the Customer no longer holds appropriate on and off port Rail Paths that are aligned with the Windows or Capacity.

11.2 Notice of surrender

Where Qube intends to withdraw any Windows or Capacity under clause 10.1(a), Qube will notify the Customer in writing, which notice will:

- (a) require the Customer to demonstrate its ability to utilise, or fully utilise that Customer's allocated Windows or otherwise to show cause in writing why Qube should not require the surrender of the Customer's Windows or Capacity;
- (b) state the date by which the Customer is required to provide a written response to Qube (which must be no less than 10 Business Days); and
- (c) state that if the Customer does not provide a sufficient justification (in Qube's reasonable opinion) in writing by the stated date, Qube may, by written notice to the Customer, immediately withdraw the Customer's allocated Windows or Capacity in accordance with the notice.

12 Health and safety obligations

12.1 Obligation to notify

- (a) The Customer must notify Qube as soon as reasonably practicable after it becomes aware of any obstruction or any incident that may impact the Terminal.
- (b) Qube must notify the Customer as soon as reasonably practicable after it becomes aware of any incident involving the Customer's Rolling Stock.

12.2 Qube's management of incidents

- (a) Qube is responsible for the overall coordination and management of the response or investigation to any incident at the Terminal, or otherwise within Qube's leased area at the Port.
- (b) Both Qube and the Customer will use reasonable endeavours to work together to seek to minimise any disruption to the Schedule and any other Services caused by an incident involving the Customer's Train or Rolling Stock.
- (c) Qube and the Customer must co-operate with any investigation of an incident by Qube or any third party, including making available records and personnel.
- (d) Without limitation, Qube may take any action it deems necessary to overcome and alleviate the cause and consequences of the incident and the Customer must assist Qube, including by complying with any direction given by Qube in connection with an incident.

13 Complaints and disputes

13.1 Customer complaints

- (a) The Customer may, at any time, submit a complaint in writing to Qube in relation to its provision of Services under this Agreement, provided that any complaint is lodged with Qube within 3 months of the relevant event(s) giving rise to the complaint.
- (b) A complaint lodged by a Customer must be dated and include:
 - (i) the Customer contact responsible for management of the complaint;
 - (ii) details of the complaint, including any relevant dates, a description of any relevant incident(s) and any supporting materials; and
 - (iii) the outcome sought by the Customer.
- (c) Qube acknowledges the importance of managing and responding to any complaints from Customers in a timely, efficient and reasonable manner.
- (d) Qube will acknowledge receipt of any complaint lodged with it under sub-clause (a) within 5 business days.
- (e) Qube and the Customer agree to work together in good faith in order to seek to resolve complaints efficiently and expeditiously, including by providing reasonable access to personnel and information to support the resolution of any complaint (provided that nothing in this clause requires either Qube or the Customer to disclose commercial-in-confidence information).
- (f) If a complaint has not been resolved within 30 Business Days of receipt of the complaint by Qube, then either party may refer the matter for resolution in accordance with clause 13.2.
- (g) The existence of a complaint, and any correspondence or materials disclosed in the context of the complaints process under this clause 13.1, are Confidential Information and may only be disclosed by either Party in accordance with clause 20.

13.2 Dispute resolution

- (a) Qube will comply with the Dispute Resolution Process in this clause 13.2 to resolve Disputes between the Operator and Access Seekers or Customers in relation to the operation of this Terminal Access Protocol.
- (b) A Customer who wishes to raise a Dispute with the Operator must do so only after the complaints process in clause 13.1 has been complied with. For clarity, Qube may refuse to accept a Dispute under this clause 13.2 in circumstances where a Customer has not complied with clause 13.1 before seeking to commence a Dispute.
- (c) In relation to any Dispute in respect of Service Charges:
 - (i) a Customer may not raise a Dispute in respect of Reference Prices;
 - (ii) any Dispute in respect of non-standard Service Charges is limited to any failure by Qube to comply with the Non-Discriminatory Pricing Principles in respect of such Service Charges; and
 - (iii) any Dispute may only be raised in respect of pricing for Reference Services or Ancillary Services, and not for any other services supplied by Qube.
- (d) A Customer may refer a matter as a Dispute by providing written notice to Qube (**Dispute Notice**) for the purpose of endeavouring to resolve it.
- (e) The Dispute Notice must include details of:
 - (i) the nature of the Dispute;
 - (ii) the outcome sought by the Customer in relation to the Dispute; and
 - (iii) the action on the part of Qube which the Customer believes is reasonably required in order to resolve the Dispute.
- (f) By lodging a Dispute Notice, the Access Seeker or Customer agrees to comply with this Dispute Resolution Process.

13.3 Negotiation

- (a) Within 5 Business Days of the Customer providing Qube with a Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute expeditiously by joint discussion.
- (b) If the Dispute is not resolved in accordance with clause 13.3(a) within 15 Business Days of the Customer providing a Dispute Notice to Qube, then either party may within 5 Business Days refer the Dispute to Independent Expert determination in accordance with clause 13.4.

13.4 Referral to Independent Expert determination

- (a) A party may, by notice to the other (**Final Dispute Notice**) refer a Dispute which remains unresolved by negotiation to an Independent Expert for determination in accordance with clause 15.5, within 7 days after the conclusion of the 21 day negotiation period for the Dispute under clause 15.3(b), where the parties have not agreed to attempt to resolve the Dispute through mediation.

- (b) Within 7 days of the issue of a Final Dispute Notice, the Customer and Qube will agree on the identity of the Independent Expert to be appointed to conduct the Independent Expert determination.
- (c) In the event that Qube and the Customer cannot agree on the identity of the person to conduct the Independent Expert determination, then a person nominated by the Resolution Institute who accepts appointment as the Independent Expert will determine those matters.
- (d) The Independent Expert appointed by Qube and the Customer must have the qualifications and experience necessary to carry out the functions of the Independent Expert independently of the parties to the Dispute.

13.5 Independent Expert determination

If a Dispute is referred to an Independent Expert for determination pursuant to clause 13.4, the following provisions will apply:

- (a) Qube and the Customer will use all reasonable endeavours to ensure that the Independent Expert provides the Independent Expert's determination on the Dispute within 60 days of the date of referral under clause 13.4(a);
- (b) the Independent Expert will decide the Dispute as an Independent Expert, and the Independent Expert's directions or determinations will be final and binding on both Qube and the Customer;
- (c) Qube and the Customer will use all reasonable endeavours to ensure that the Independent Expert is provided with:
 - (i) all relevant information available to Qube and the Customer; and
 - (ii) all reasonable assistance, in a timely manner, to enable the Independent Expert to make a determination in relation to the Dispute within 60 days of referral under clause 13.4(a).

13.6 Confidentiality

The Dispute and any terms of resolution are to be kept strictly confidential by the Customer and Qube.

13.7 Costs

- (a) Subject to any other determination of the expert as to costs:
 - (i) if a Dispute is resolved substantially in favour of the Customer, Qube will be required to pay the Independent Expert's costs; and
 - (ii) if the Dispute is withdrawn by the Customer, is vexatious or is otherwise substantially resolved in favour of Qube, the Customer will be required to pay the Independent Expert's costs.
- (b) Qube is not obliged to participate in any Dispute unless the Customer has agreed in writing with Qube to comply with any determination of the Independent Expert, including any costs to which it becomes subject as contemplated by clause 13.5(a)(ii).

14 Liability

14.1 General

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

14.2 Qube's liability

- (a) Except to the extent caused or contributed to by a negligent act or omission of Qube or breach of this Agreement, Qube will not be liable in tort, contract, bailment or otherwise to the Customer for anything arising out of or relating to any:
 - (i) breach of this Agreement or negligence by the Customer or its Associates;
 - (ii) acts or omissions on the part of any third party;
 - (iii) any Incident, including (without limitation) any spill of a Contaminant;
 - (iv) damage to any Rolling Stock (including any locomotive or wagon), Truck or other equipment or vehicle; and
 - (v) damage to any container or its contents.
- (b) Qube's liability under this Agreement and at Law will be limited in all cases and howsoever arising to loss and damage resulting directly from and only to the extent caused or contributed to by Qube's negligence or default to a maximum of \$5,000 for any event or series of related events.

14.3 Release of Qube

Without limitation to clause 14.2, the Customer agrees to access the Terminal, and use the Services, at its own risk. Qube is not liable to the Customer for any damage to any property of the Customer or to any other property of any description in the possession of the Customer or any Third Party Operator retained by the Customer, and releases Qube from any such Claims, except to the extent that such Claims arise directly from any negligent act or omission of Qube or breach by it of this Agreement. Without limitation, this clause 14.3 applies to any Claims which arise from actions of other Customers or users of the Terminal, including rail operators.

14.4 Notification of Claim

- (a) Qube will not be liable for any Claim by the Customer unless notice of the Claim is given to Qube within 30 days of the Incident giving rise to the Claim.
- (b) Unless otherwise agreed, and subject to sub-clause (a), Qube will be discharged from all Liability for a Claim unless proceedings are commenced within one year of the date that notice of that Claim is given to Qube.

14.5 Customer Indemnities

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

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

14.6 Consequential loss

Despite any other provision of this Agreement, the Customer will be liable to Qube for consequential loss.

15 Insurance

15.1 Insurances required

During the Term, the Customer must effect and maintain with a reputable insurance company the Insurances which are required to note the interests of Terminal Operations Co on each policy.

15.2 Disclosure of policies

The Customer must provide Qube with a copy of a certificate of currency of the insurances required by clause 15.1 of this Agreement as reasonably requested by Qube from time to time.

16 Force Majeure

16.1 Suspension of rights and obligations

- (a) If a Party is unable to perform an obligation (other than an obligation to pay money) under this Agreement by reason of a Force Majeure Event, that obligation is suspended for the minimum extent and duration of the Force Majeure Event provided that:
 - (i) the Party gives the other Party prompt notice of and reasonable details of the Force Majeure Event and an estimate of the extent and duration of its inability to perform; and
 - (ii) the Party takes all reasonable steps to avoid or limit the effects of the events or circumstances giving rise to the Force Majeure Event.

16.2 Consequences

- (a) If a Force Majeure Event 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 a Force Majeure Event 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, Qube may terminate this Agreement by giving the Customer 14 Business Days' written notice and this Agreement will terminate on expiry of that 14 Business Day notice period.

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 Default and Termination

17.1 Events of default

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

- (a) fails to pay any amount payable to Qube under this Agreement within 14 Business Days' of the due date for payment;
- (b) fails to comply with any material obligation under this Agreement, and does not make good that default within 10 Business Days after receipt of written notice from the Qube;
- (c) goes into liquidation or provisional liquidation or an application is made for it to be wound up; or
- (d) is insolvent under the *Corporations Act 2001* (Cth) or stops payment of any of its debts.

17.2 Remedies

If any of the events contained in clause 17.1 occurs, subject to any applicable Law, in addition to any other rights it has under this Agreement, the Qube may do any one or more of the following:

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

17.3 Termination

This Agreement terminates on the earlier of:

- (a) the Expiry Date; or
- (b) the date either Party terminates this Agreement in accordance with the terms in this Agreement;
- (c) the date that the Rail Operating Licence is terminated, for any reason; or
- (d) the date the Rail Management Agreement is terminated, for any reason.

17.4 All rights preserved

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

- (a) the right of Qube to be paid all amounts that are outstanding under this Agreement; and
- (b) the obligations of confidentiality under clause 20.

18 GST

18.1 GST

- (a) If a Party is required under this Agreement to reimburse or pay to another Party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that Party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that Party (or an entity on whose behalf the Party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (b) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this Agreement, the Parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this Agreement other than under this clause 18.1 (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the Party providing consideration for that supply (**Recipient**) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) except to the extent that clause 18.1(b)(ii) is applicable, the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Recipient in respect of that supply, no later than that time; and
 - (iv) where additional amounts are payable between Parties to this Agreement pursuant to clause 18.1(b)(ii), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each Party shall be obliged only to give the other the tax invoice referred to in clause 18.1(b)(ii) .
- (c) To the extent, if any, that any consideration (or part of any consideration) is specified in this Agreement to be inclusive of GST, that consideration (or the relevant part) shall be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 18.1(b)(ii).
- (d) If the Supplier determines on reasonable grounds, is advised by the Commissioner of Taxation or otherwise becomes aware that the GST payable on a supply is different from the additional amount paid by the Recipient to the Supplier in accordance with clause 18.1(b)(ii) in relation to that supply (if any) and as a result:
 - (i) the Supplier is required to pay an amount (or further amount) of GST in relation to that supply, the Recipient must pay the Supplier within 7 days after demand that amount or further amount; or
 - (ii) the Supplier receives or becomes entitled to receive a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply, the Supplier must refund or credit the Recipient with a corresponding amount.

- (e) For the purpose of calculating further variations under this clause 18.1, any additional amount referred to in clause 18.1 is taken to be altered by the amount of any earlier variation made under this Agreement (if applicable).
 - (f) If any adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.
 - (g) This clause 18.1 survives the completion, rescission or termination of this Agreement.
 - (h) Any reference in this clause to GST payable by a Party includes any GST payable by the representative member of any GST group of which that Party is a member. Any reference in this clause to input tax credits to which a Party is entitled will include input tax credits to which the representative member of any GST group of which that Party is a member is entitled.
 - (i) If the GST 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.
-

19 General Conditions

19.1 General conditions

- (a) The access rights granted to the Customer as part of the Services supplied under this Agreement are non-exclusive contractual rights of access.
 - (b) This Agreement and the Services:
 - (i) do not confer on the Customer any rights of access to any land outside the Licensed Area;
 - (ii) do not give rise to a relationship of landlord and tenant between the Customer and Qube and nothing done pursuant to this Agreement shall give rise to any such relationship; and
 - (iii) do not give the Customer any exclusive rights to be provided with any Services offered under this Agreement.
 - (c) Qube may grant other rights, entitlements and Services to other Customers including rights, entitlements and Services similar to those set out in this Agreement.
-

20 Confidentiality

20.1 The Customer's confidentiality obligation

- (a) Subject to clause 18.1(b), the Customer will keep confidential any Confidential Information provided to it by Qube and only allow an officer, employee, agent or contractor of the Customer to access that Confidential Information for the purpose of:
 - (i) accessing Services (or any contractor of that Customer);
 - (ii) resolving a dispute;
 - (iii) expressly consented to in writing by Qube;

- (b) The Customer is permitted to disclose Confidential Information under this Agreement if and strictly to the extent required by law, provided that the Customer first consults with Qube in relation to the manner and timing of that disclosure.

20.2 Qube's confidentiality obligation

- (a) Subject to clause 18.2(b), Qube will keep confidential any Confidential Information provided to it by Customer and only allow an officer, employee, agent or contractor of Qube to access that Confidential Information for the purpose of:
 - (i) providing Services to that Customer (or any contractor of that Customer);
 - (ii) resolving a dispute; or
 - (iii) as otherwise expressly consented to in writing by that Customer.
- (b) Qube is permitted to disclose Confidential Information under this Agreement:
 - (i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
 - (ii) to any expert appointed for the purposes of resolving a dispute provided they are under a legal obligation not to disclose the Confidential Information publicly or to any third party;
 - (iii) to the Port of Melbourne and the State for the purpose of Qube's compliance with its reporting and compliance obligations or investigating a complaint under this Agreement or the Rail Management Agreement; and
 - (iv) if, and to the extent required by law, provided that it first consults with the Customer in relation to the manner and timing of that disclosure.

21 Miscellaneous

21.1 No variation

Unless and to the extent otherwise contemplated or required by its own terms, this Agreement may only be amended, varied, supplemented or replaced by another written document signed by the Parties.

21.2 Counterparts

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

21.3 Further assurance

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

21.4 Severability

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

21.5 No merger

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

21.6 Assignment of rights

The Customer must not assign, subcontract or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Qube, which must not be unreasonably withheld or delayed.

21.7 Change of control

If a proposed change in Control:

- (a) of the Customer; or
- (b) any holding company of the Customer including the Customer's ultimate holding company (in either case as defined in the Corporations Act), then Qube has the right to terminate this agreement.

21.8 Entire agreement

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

21.9 Governing Law

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

21.10 Costs

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

21.11 Legal relationship

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

21.12 Consents and approvals

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

PART 5: Schedules and Annexures

Schedule 1

1 Definitions and Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

Word/term	Definition
Access	means the provision of the Services at the Licensed Area by or on behalf of Qube;
Access Charges	fees to be paid for the Services (which, for the avoidance of doubt, may or may not be the same as the Reference Prices, from time to time).
Access Agreement	an agreement for Access between Qube and a Customer (which, for the avoidance of doubt, may or may not be in the form of the SAA).
Agreed Amount	has the meaning given in 18.1.
Agreed Rate	means 3% above the Reserve Bank of Australia's "Cash Rate Target" at the time the outstanding amount is to be paid;
Agreement	means this agreement;
Ancillary Services	as defined in Part 2;
Associates	means a Party's employees, officers, servants, agents and subcontractors and in the case of the Customer also includes any person who has an interest in the Goods and their employees, officers, servants, agents and subcontractors;
Authority	means: (a) a government or government department, statutory authority or other body; (b) a governmental, semi-governmental or judicial person; or (c) a person (whether autonomous or not) who has responsibility and authority in relation to the management of the IMEX Terminal or the administration of a Law;
Business Day	means a day on which banks are open for business in Melbourne, Victoria excluding a Saturday, Sunday or public holiday in that city.
Capacity	the capability of the Terminal to provide Reference Services (expressed in TEUs), including as increased or expanded in the future as the case may be;
Capacity Allocation Protocol	the plan of that name published by Qube, from time to time;

Claim	includes a claim, cause of action, notice, demand, action, proceeding, litigation or investigation, however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), statute or otherwise and whether involving a third party or a party to this agreement.
Commencement Date	as set out at Item 3 of Part 2;
Confidential Information	means the following information in any form: <ul style="list-style-type: none"> (a) the negotiations leading up to, and the terms and conditions contained in, this Agreement (which is confidential information of each Party); and (b) information of a confidential nature, or which the Disclosing Party makes the Receiving Party aware that it is considered by the Disclosing Party to be confidential which is communicated by or on behalf of the Disclosing Party to the Receiving Party, before or after the Commencement Date including information relating to the financial or trading position of the Disclosing Party and practices, techniques, processes, trade secrets and know-how relating to the operation of the Terminal and any truck or Train;
Container	means at any time a freight container (including, without limitation, empty or full) as defined under AS3711.2:2015 Freight Containers – Terminology, as amended and replaced from time to time and which is recognised at the time as a standard container by international stevedoring standards and which is transported from, or is to be transported to, a destination outside of Australia;
Contaminant	means a Dangerous Good or noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing material harm to the environment;
Control	of an entity includes the power to directly or indirectly: <ul style="list-style-type: none"> (c) determine the management or policies of the entity; (d) control the membership of the board or other governing body of the entity; or (e) control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the entity;
Corporations Act	means the <i>Corporations Act 2001</i> (Cth);
Customer	means the Party specified in Item 2 of the Reference Schedule;
Dangerous Goods	means dangerous cargo or Goods as defined in the Australian Dangerous Goods Code and any goods that may injure or harm people, property or the environment including but not limited to

goods that are or may become dangerous, poisonous, corrosive, volatile, explosive, flammable or radioactive;

Expiry Date	means the date at Item 4 of Part 1;
Force Majeure Event	means circumstances where Qube is delayed or unable, wholly or in part, to deliver any of the Services, or perform any obligation under this Agreement, due to any circumstances beyond its reasonable control including (without limitation): acts of God, severe weather events, fire, war, sabotage or terrorism, accident, explosion, embargo, epidemic or quarantine, labour dispute, civil commotion, port blockade or closure, restrictions imposed by an Authority;
Government Agency	means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;
GST	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Incident	<p>means a break down, accident or emergency at the Terminal or enroute to or from the Terminal which involves Qube and/or the Customer and which causes or may reasonably be expected to pose a danger of causing any one or more of the following:</p> <ul style="list-style-type: none">(f) material damage to or interference with the Terminal;(g) material damage to infrastructure or equipment used in providing the Services;(h) material damage to property at the Terminal;(i) material personal injury to any person for which Qube is responsible;(j) an Environmental Hazard that may affect the Terminal, Qube or any person for which Qube is responsible; and(k) an incident which requires notification under any Law including any rail safety Laws or environmental Laws that may affect the Terminal, Qube or any person for which Qube is responsible.
Jurisdiction	means the State of Victoria;
Law	<p>means:</p> <ul style="list-style-type: none">(l) the common law and equity;(m) all present and future Acts of the Parliaments of the Commonwealth, States or Territories; and(n) all enforceable regulations, subsidiary legislation, codes, ordinances, local laws, by-laws, orders, judgements, licences, rules, permits, agreements and enforceable requirements of any Authority;
Liability	includes all liabilities, losses, damages and costs, direct or indirect, however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort

	(including negligence), statute or otherwise including where arising under any claim;
Licensed Area	the area of land licensed to Qube by POM for the purposes of operating the Terminal;
Material Change	means any change to the Law, or a policy or direction from a Government Agency, outside the control of Qube, provided that the event, taken alone or as a group with other events, materially and substantially affects either the rights or obligations of Qube or the Customer under this Agreement or the cost to Qube of performing its obligations under this Agreement;
Minimum Usage Requirement	means 65% of Capacity at the Terminal allocated under an Access Agreement;
Non-Discriminatory Pricing Principles	as defined in clause 2.5;
Open and Non-Discriminatory Access	as defined in the TAA;
Party	means a party to this Agreement and includes that party's successors, legal, personal representatives, and permitted assigns, novates and Parties shall have a corresponding meaning;
Payment Term	means 30 days following the date of the relevant invoice provided by Qube to the Customer or as otherwise agreed between Qube and the Customer;
Policies and Procedures	means the management plan, safety regulations and any other of Qube's rules and policies applicable at the Terminal, or as otherwise instigated by Qube and which relate to the Services;
POM	Port of Melbourne Operations Pty Ltd as trustee for the Port of Melbourne Unit Trust (ABN 67 610 925 178);
Port	the Port of Melbourne, including international container terminals and the port supply chain;
Port Rail Access Principles	as defined in the TAA;
Port Rail Manager	means PoM or its subcontractor responsible for management of the Port Rail Network, as notified by PoM to Qube from time to time (which at the date of this agreement is Australian Rail Track Corporation Limited);
Port Rail Network	the rail infrastructure within the boundaries of the Port (excluding any rail or related infrastructure within the boundaries of Qube's lease or the Licensed Area).
Qube	Qube Logistics (Vic) Pty Ltd (ABN 72 092 352 228);
Rail Management Agreement	as defined in the TAA;

Rail Operating Licence	means the rail operating licence from PoM to Qube entered into on or about the date of this agreement;
Rail Path	a right to access the Port Rail Network or any rail infrastructure connected directly or indirectly to the Port Rail Network (as the context requires);
Recipient	as defined in 18.1;
Reference Services	those services defined in Item 1 of Part 2;
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);
Schedule	means the schedule of allocated and available Windows at the Terminal published by Qube, from time to time;
Security	Means security in the amount set out at Item 6 of Part 1;
Service Charges	means the prices referred to in Part 3 of this Agreement;
Services	means the Reference Services and any Ancillary Services;
Short Term Storage Allowance	Means the period of 24 hours from the time that any Container enters the Terminal;
State	means the State of Victoria through the Department of Transport;
Term	means the period starting on the Commencement Date and ending on the Expiry Date;
Terminal	the rail terminal located in the Licensed Area;
Terminal Access Arrangement	means the document by that name as published by Qube, from time to time;
Terminal Access Service	as defined in Part 2;
Terminal Access Service Fee	as defined in Part 3;
Terminal Loading and Unloading Service	as defined in Part 2;
Terminal Operating Procedure	the terminal operating procedure, as published in respect of the Terminal by Qube from time to time;
TEU	means twenty-foot equivalent unit;

Third Party Operator	means any rail operator retained by the Customer;
Train	means several units of Rolling Stock coupled together to operate as a single unit;
Train Movement	mean the operation of a Train on the rail track at a time scheduled in the timetable for the predominant purposes of conveying freight and includes the empty movement of such a Train;
Truck Terminal Access Service	as defined in Part 2;
Untimely Train	as defined in clause 7.2;
Truck Terminal Access Service	as defined in Part 2;
Window	an access slot at the Terminal, being a defined time of arrival and departure at the Terminal for servicing.

1.2 Interpretation

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

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

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

EXECUTED as an agreement.

Signed, sealed and delivered by **[Insert relevant Qube entity]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed, sealed and delivered by **[the Customer]** **[Insert ACN]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)