

Terminal Access Arrangement (TAA)

1 Background

1.1 Introduction

- (a) Qube and the Port of Melbourne Operations Pty Ltd as trustee of the Port of Melbourne Unit Trust (**POM**) have entered into the Rail Management Agreement (**Rail Management Agreement**) to facilitate the development of a Port Rail Access System at the Port of Melbourne.
- (b) Amongst other things, the Port Rail Access System is intended to provide for open and non-discriminatory access to port rail terminals and container interchange facilities at the Port of Melbourne, including the Terminal and Container Interchange at Appleton Dock operated by Qube.

1.2 Purpose of this Terminal Access Arrangement

- (a) The purpose of this TAA is to provide a framework that promotes the following objectives facilitating Open and Non-Discriminatory Access for Access Seekers and Customers to the Terminal in line with the Port Rail Access Principles.
- (b) In facilitating the objectives in clause 1.2(a), it is acknowledged that:
 - (i) the Terminal and each of the other terminals within the Port Rail Access System operate in competition with each other as well as being subject to competition from other terminals and from road transport;
 - (ii) the Terminal and its operation are not intended to be subject to monopoly asset regulation;
 - (iii) initial rail volumes at the Port and at the Terminal are low;
 - (iv) the ownership and operations of the Terminal and each of the other rail terminals within the Port Rail Access System are different;
 - (v) Qube is responsible for operating the Terminal, including setting Reference Prices and any other terms or conditions of Access, in accordance with its commercial and operational judgement subject to the Open and Non-Discriminatory Access Obligations and the Pricing Principles;
 - (vi) Qube is, and may continue to be, vertically integrated and the Terminal may therefore provide services to competitors or potential competitors of Qube.
- (c) All clauses in this TAA are to be interpreted in accordance with this clause 1.2.

1.3 Interpretation

In this TAA, a defined term or expression has the meaning set out in the Dictionary at Schedule 1.

2 Open and Non-Discriminatory Access

2.1 Open and Non-Discriminatory Access

Qube will comply with the Open and Non-Discriminatory Access Obligations set out in clause 2.2 through the supply of Reference Services and Ancillary Services to an Access Seeker either:

- (a) as contemplated in this TAA; or
- (b) as otherwise agreed between the parties.

2.2 Open and Non-Discriminatory Access Obligations

- (a) The Open and Non-Discriminatory Access Obligations are that Qube will:
 - (i) not unreasonably favour itself or another person in a way that unreasonably adversely impacts any Access Seeker or Customer's ability to access the Licensed Area to meet that Access Seeker or Customer's legitimate commercial needs except where this is permitted under any relevant terminal access and operating arrangements (including this Terminal Access Arrangement, the Terminal Operating Procedure or the terms of any Access Agreement with the affected Customer);
 - (ii) offer to provide Customers with Services on standard terms and conditions, which are to be applied in a consistent manner to all port users, or offering to provide port users with Services through an Access Agreement on terms agreed with that Customer in accordance with the Pricing Principles;
 - (iii) act reasonably in providing a Customer with Access to a Window at the Terminal that aligns with the Customer's Rail Path and not unreasonably prevent or hinder Access;
 - (iv) consistently and reasonably exercise its discretion not to allow Access to Services for any Window allocated to an Access Holder who operates an Unhealthy Train if such Access has the potential to adversely affect other Trains to which a Window has been allocated by the rail terminal operator; and
 - (v) refuse to allow Access to any Train which has the potential to impact Trains scheduled to access the Port Rail Access System; and
 - (vi) be transparent in the manner in which it provides Access, including allocation of Windows, service levels and Reference Prices.
- (b) For clarity, clause 2.2(a) does not apply to any reasonable restriction of Access at the Terminal imposed by Qube in accordance with this TAA, a Customer Access Agreement, the Terminal Operating Procedure or any relevant agreement, including restrictions:
 - (i) to prevent, or to respond to, an Incident or to otherwise seek to prevent injury to persons or damage to the Terminal or other property;

- (ii) reasonably necessary for the operation of the Terminal due to unforeseeable external factors including:
 - (A) network issues including without limitation track possessions, weather, signalling outages, congestion, regulatory actions; track closure;
 - (B) road issues including without limitation weather, congestion, signalling, closure;
 - (C) rail operator issues including late or early arrival or departure from the Terminal including without limitation locomotive or wagon failures, train crew issues;
 - (D) issues other rail terminals at the Port;
 - (E) within the Terminal the availability of equipment including without limitation mechanical breakdown, the availability of labour or regulatory action affecting the Terminal;
 - (F) the availability of containers for loading or unloading to or from a wagon or truck;
 - (G) rolling stock or truck issues including type or defect that causes delay; and
 - (H) where Qube has reasonable grounds to believe that the Customer or Access Seeker would fail, to a material extent, to comply with this TAA, an Access Agreement or the Terminal Operating Procedure (for example, evidence that the Access Seeker is not creditworthy).

2.3 Obligation to act in good faith

When carrying out their obligations and exercising rights in relation to this TAA, Qube and all Customers and Access Seekers must act in good faith.

3 Scope and commencement of the Arrangement

3.1 Scope of Arrangement

This TAA applies in respect of Access to the Terminal only. For clarity, except where expressly provided, this TAA does not apply in respect of any area, operations, services or activities not located or undertaken within the Licensed Area.

3.2 Commencement and review of the Arrangement

- (a) This TAA comes into effect on and from the date 24 April 2020.
- (b) Qube may review the operation and terms of this TAA at any time and will consult with Customers, potential Access Seekers and POM when doing so.
- (c) Subject to any requirement in the RMA, Qube may make any amendments to this Arrangement at any time, and in its discretion, by publishing the amended TAA on its website.

4 Services

- (a) Qube will make available to Access Seekers, and will supply to Customers under an Access Agreement, both Reference Services and Ancillary Services at the Terminal.
- (b) None of the Ancillary Services may be acquired without a Customer also acquiring a Reference Service.
- (c) Qube will ensure that there is sufficient approved, accredited and serviceable equipment and appropriately skilled and appropriately licensed labour to provide Access in a safe manner and with due care and skill.

5 Qube operational requirements

5.1 Operational requirements

Qube will:

- (a) operate the Terminal during reasonable operating hours having regard to overall demand and efficient shift structures;
- (b) provide Windows for servicing of Trains during the Terminal's operating hours;
- (c) cooperate with relevant parties in order to schedule Trains in a manner that, in Qube's reasonable commercial and operational judgement, will promote efficiency, maximise productivity and volume through the Terminal; and
- (d) undertake all Terminal activities having regard to any KPIs set out in relevant Access Agreements or the RMA.

5.2 Terminal Operating Protocol

In carrying out management and movement of Trains into and out of the Terminal, Qube will comply with the Terminal Operating Protocol.

6 Constrained Path Freight services

- (a) In scheduling Windows at the Terminal, Qube recognises that the State of Victoria's policy is that passenger services have priority and that on time passenger performance to timetables is a Victorian State policy imperative.
- (b) Qube acknowledges and agrees that
 - (i) Qube must work in a cooperative manner to prioritise Windows for Constrained Path Freight Train services at the Terminal; and
 - (ii) in the event of a dispute regarding Windows, Qube will be bound by a directive issued to Qube by the CEO of Freight Victoria to adjust Windows to accommodate a Constrained Path Freight Train.

7 Capacity Allocation and Planning

7.1 Capacity allocation

- (a) Qube will publish a schedule of all Windows (including those that are unavailable), including identifying the expected turnaround time of each Allocated Window.
- (b) Qube will manage Capacity at the Terminal having regard to (amongst other things):
 - (i) the matters set out at clause 5.1 of this TAA;
 - (ii) the Capacity Allocation Plan; and
 - (iii) the Port Rail Access Principles.
- (c) Qube will use all reasonable endeavours to allocate Available Capacity at the Terminal in order to satisfy any Access Requests received, and having regard to Available Capacity.

8 Access Applications

8.1 Procedure for receiving and assessing access applications

- (a) An Access Seeker may make an Access Request by submitting a valid application form in the form made available by Qube on its website.
- (b) Qube may require an Access Seeker to provide additional information which the Qube considers, applying business and commercial judgement, would reasonably assist it to respond to the Access Request including to assess whether the Access Seeker satisfies the Eligibility Criteria set out at clause 8.3.
- (c) Qube will acknowledge receipt of an Access Request within 5 Business Days of receipt by way of a notice that either:
 - (i) the Access Seeker's request is complete and contains sufficient information to enable Qube to respond to the Access Request; or
 - (ii) the Access Seeker's request is incomplete, which may include because:
 - (A) the request was not in the form or did not contain the information specified in the application form;
 - (B) Qube reasonably considered that any additional information requested under clause 8.1(b) was insufficient to enable it to respond to the Access Request; or
 - (C) further information is reasonably required in order for Qube to assess the Access Request.

8.2 Negotiating terms and conditions of access

Once it has received a complete and valid Access Request, Qube 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(s) available to the Access Seeker;
- (b) use all reasonable endeavours to meet the requirements of an Access Seeker who has complied with its obligations under this TAA; and
- (c) endeavour to complete negotiations of the contractual terms expeditiously, having regard to the nature of the application and the Services sought by the Access Seeker.

8.3 Eligibility criteria

Qube may reject an Access Request if the Access Seeker fails to demonstrate, to Qube's reasonable satisfaction, that it:

- (a) is solvent;
- (b) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual potential liabilities under any Standard Access Agreement, including the ability to pay any charges when they fall due and payment of excesses under insurance policies;
- (c) is able to provide credit support;
- (d) has in place appropriate occupational health and safety standards;
- (e) has or will be able to obtain all necessary accreditations or approvals required to operate the service(s) it is proposing to operate;
- (f) uses, or intends to use, rolling stock that complies with the requirements applicable from time to time for access to the Terminal including (without limitation) having the ability for its locomotives to communicate with the Terminal communication systems; and
- (g) uses, or intends to use, IT systems that will reliably interoperate with those systems used for the operation of the Terminal.

9 Confidentiality

9.1 Confidentiality

Subject to clause 9.2, Qube will keep confidential any Confidential Information provided to it by an Access Seeker and only allow an officer, employee, agent or contractor of Qube to access that Confidential Information for the purpose of:

- (a) providing Services to that Access Seeker (or any contractor of that Access Seeker);

- (b) resolving a Dispute; or
- (c) as otherwise expressly consented to in writing by that Access Seeker.

9.2 Permitted disclosure of Confidential Information

Qube is permitted to disclose Confidential Information:

- (a) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
- (b) to any 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;
- (c) to POM for the purpose of Qube's compliance with its reporting and compliance obligations or investigating a complaint under this TAA or the RMA, subject to POM agreeing to be bound by the same obligations not to disclose the Confidential Information to any third party; and
- (a) if, and to the extent required by law, provided that it first consults with the party that provided the Confidential Information in relation to the manner and timing of that disclosure.

9.3 Internal information controls

Unless otherwise agreed with an Access Seeker, Qube will take all reasonable steps to prevent access to any information system, or part of any information system, containing Confidential Information (including the terms of any Access Request) of that Access Seeker where such access is by staff or contractors within a Qube entity that provides services that directly compete with services offered by that Access Seeker.

10 Complaints and disputes

10.1 Complaints

Qube will take steps to seek to take steps to respond to any complaint received from a Customer or an Access Seeker within a reasonable time.

10.2 Dispute Resolution Process

- (a) Any dispute by a Customer in respect of Access will be governed by the dispute resolution process in that Customer's Access Agreement.
- (b) In respect of any Access Seeker:
 - (i) Access Seekers do not have a right to dispute prices for Services, including any change in Reference Prices, and this TAA does not deal with disputes regarding prices.

- (ii) For all non-price related disputes, Qube and an Access Seeker will comply with the process set out in this clause to resolve disputes in relation to the operation of this TAA.
- (iii) If a dispute arises between Qube and the Access Seeker, both parties must undertake genuine and good faith negotiations with a view to resolving the dispute expeditiously by joint discussion.
- (iv) If a resolution is not reached within 30 days of the notification of a dispute by the Access Seeker to Qube, the parties may agree to refer the matter for expert determination.
- (v) In resolving any dispute, the Expert is to have particular regard to the matters in clause 1.2 of this TAA.
- (vi) In relation to the costs of any Expert:
 - (A) if the dispute is withdrawn prior to any determination, is resolved substantially in favour of Qube, or is otherwise found by the Expert to be vexatious, the Access Seeker will be liable for the costs of the Expert and any other dispute costs (but not including any legal costs of Qube); and
 - (B) if the dispute is resolved substantially in favour of the Access Seeker, then Qube will be liable for the costs of the Expert and any other dispute costs (but not including any legal costs of the Access Seeker).
- (vii) Qube is not required to participate in any expert determination unless the Access Seeker has entered into a binding tripartite agreement with Qube and the Expert, in a form reasonably acceptable to the Expert, and which provides for payment of the Expert's costs by Qube or the Access Seeker, as contemplated under clause 10.2(v).
- (viii) The existence of any dispute, and the terms of any resolution, are to be kept strictly confidential by the Access Seeker and Qube.

Schedule 1 Dictionary

Word/term	Definition
Access	the provision by Qure of Reference Services or Ancillary Services;
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).
Access Request	a request for Access made by an Access Seeker in writing in accordance with clause 8.1(a);
Access Seeker	a person seeking access to the Terminal or a Customer seeking increased access (for the avoidance of doubt, this is not limited to rolling stock operators), in each case who satisfies the Eligibility Criteria;
Ancillary Services	those services defined as Ancillary Services in the Standard Access Agreement, from time to time;
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 Plan	the plan of that name published by Qube, from time to time;
Confidential Information	any documents, information or communications provided to Qube by an Access Seeker in connection with any Access Request and which are not otherwise public;
Constrained Path Freight Train	scheduled broad gauge freight Trains operating on some sections of the rail network which are required to operate within strict passenger timetable limitations with little flexibility (which as at the date of this agreement, relate to Trains operating on the South-East rail network).
Container	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
Container Interchange	the capability for Containers to/from third parties to be received and dispatched from the Licensed Area, including loading Containers onto and unloading Containers from Trucks.
Customer	a person who satisfies the Eligibility Criteria and who has an entitlement to Access under an Access Agreement;
Eligibility Criteria	those criteria set out in clause 8.3;
Expert	An expert appointed by the parties to resolve a Dispute in accordance with clause 10.2;
Licensed Area	the area of land licensed to Qube by POM for the purposes of operating the Terminal;

Open and Non-Discriminatory Access	means the provision of access in accordance with the Open and Non-Discriminatory Access Obligations;
Open and Non-Discriminatory Access Obligations	those principles set out in clause 2.2;
POM	as defined in clause 1.1(a);
Port	the Port of Melbourne;
Port Rail Access Principles	the Port Rail Access Principles published by POM as at the Commencement Date;
Port Rail Access System	has the meaning given in the Rail Management Agreement;
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).
Pricing Principles	those pricing principles set out in the Port Rail Access Principles;
Qube	Qube Logistics (Vic) Pty Ltd (ABN 72 092 352 228);
Rail Management Agreement	as defined in clause 1.1(a);
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);
Reference Services	those services defined as Reference Services in the SAA, from time to time;
SAA	the Standard Access Agreement, as published by Qube from time to time;
Services	the Reference Services and any Ancillary Services;
TAA	this Terminal Access Arrangement;
Terminal	the rail terminal located in the Licensed Area;
Terminal Operating Procedure	The terminal operating procedure, as published in respect of the Terminal by Qube from time to time;
Train	several units of rolling stock coupled together to operate as a single unit.
Windows	an access slot at the Terminal, being a defined time of arrival and departure at the Terminal for servicing.