

Standard Rail Servicing Licence

Rail Adjacent Inner Harbour Berth 29, Port Adelaide

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Flinders Ports Pty Limited ABN 83 097 377 172 (**Licensor**)

[**Licensee**] ACN [insert] (**Licensee**)

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Standard Rail Servicing Licence

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Details

Date

Parties

Name	Flinders Ports Pty Limited
ABN	83 097 377 172
Short form name	Licensor
Notice details	Address: 296 St Vincent Street, Port Adelaide SA 5015 Email: [insert] Attention: [insert]

Name	[Licensee]
ACN	[insert]
Short form name	Licensee
Notice details	Address: [insert address] Email: [insert] Attention: [insert]

Background

- A The Licensed Area is within the areas leased or subleased to the Licensor pursuant to each Headlease.
- B At the request of the Licensee, the Licensor has agreed to grant to the Licensee a non-exclusive licence in respect of the Licensed Area for the Term upon the terms and conditions of this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement defined terms are as set out below:

2TEU Slots means a Short-term Storage Slot in respect of which TEUs are to be stacked two TEUs high.

3TEU Slots means a Short-term Storage Slot in respect of which TEUs are to be stacked three TEUs high.

Abandoned Goods has the meaning given in clause 6.2(a).

Access and Pricing Policy means a document setting out the protocols pursuant to which the Licensor makes access and temporary storage available at, and which sets out pricing protocols in relation to the use of, the Licensed Area as published from time to time on the Licensor's website at www.flindersports.com.au.

Access and Storage Rights means the Access Periods, and the Licensee Short-term Storage Slots.

Access Periods means the Licensee Train Windows and associated Licensee Staging Windows.

Ad hoc Use means the loading or unloading, or storage for a Train, on a one-off basis in accordance with clause 2.6(d).

Agents means a person's officers, employees, agents, representatives, contractors, sub-contractors, licensees, sub-tenants, invitees and any person claiming through or under them. To avoid doubt:

- (a) the Licensee, the Licensee's Agents and the Licensee Group are not the Licensor's Agents; and
- (b) a person's officers, employees, agents, representatives, contractors, sub-contractors, licensees, sub-tenants and invitees are only that person's Agents when acting in that capacity.

Agreement means this document, including the Schedule and annexures.

Arrears has the meaning given in clause 6.1(a)(i).

Australian Standard means a standard that is published by, or on behalf of, Standards Australia Limited ACN 087 326 690, such as Australian Standard AS 3846- 2005 for The Handling and Transport of Dangerous Goods in Port Areas.

Buffer Period means such periods that the Licensor reserves in the rail pad schedule before and after Access Periods, being not less than 1 hour, to the extent reasonably required to accommodate unanticipated operational issues or delays.

Business Day means any day that is not a Saturday, Sunday or gazetted public holiday in the State of South Australia.

Business Practices means operating policies and procedures, human resource and contract management arrangements and arrangements for preventing or minimising public risks.

Carbon Control Law means any Laws which have as one of their purposes or aims the reporting, reduction, limitation, cessation, prevention, offsetting or management of greenhouse gas emissions or concentrations and/or the production of clean energy.

Cargo means goods, cargo, TEUs, merchandise or other property, including without limitation grains, seeds, limestone, soda ash, metals, cements, fertilisers, agricultural commodities, minerals, mineral sands, coal, iron ore and steel.

Claim includes:

- (a) all liability, damage and loss;

- (b) actions, applications, causes of action, arbitrations, claims, demands, orders and judgments; and
- (c) debts, damages, penalties, payments and costs and expenses (including legal costs calculated on a solicitor and own client basis).

Commencement Date means the date of commencement of the Term specified in Item 1.

Common Area means those portions of the Land leased to the Licensor under the Minister Headlease that are:

- (a) not leased or subleased by the Licensor to the Licensee or any other person; and
- (b) designated from time to time by the Licensor for common use by the occupiers of the Land.

Contamination means the presence on or below the surface of the Land, the Licensed Area or any adjoining land of chemical substances in concentrations above the background concentrations and the presence of the chemical substances in those concentrations which has resulted or could potentially result in:

- (a) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses;
- (b) actual or potential harm to water that is not trivial; or
- (c) other actual or potential Environmental Harm that is not trivial, taking into account current or proposed land uses.

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

Electrical Services means the existing power outlets and power for stevedoring requirements designated from time to time by the Licensor for common use by occupiers of the Licensed Area.

Environmental Harm is any harm or potential harm to the environment (of whatever degree or duration) caused or likely or presumed to be caused by the presence of chemical substances:

- (a) whether the harm is a direct or indirect result of the presence of the chemical substances; and
- (b) whether the harm results from the presence of the chemical substances alone or the combined effects of the presence of the chemical substances and other factors,

and includes an Environmental Nuisance.

Environmental Laws means all Laws relating to or controlling impacts on the environment including the EP Act and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the National Environment Protection Measures issued pursuant to those Acts or adopted by the EPA.

Environmental Management Plan means the Licensee's environmental management plan prepared in accordance with clause 7.2 as amended from time to time.

Environmental Nuisance means:

- (a) any adverse effect on an amenity value of an area that:
 - (i) is caused by Pollution; and
 - (ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
- (b) any unsightly or offensive condition caused by Pollution.

EPA means the Environment Protection Authority established under the EP Act.

EP Act means the *Environment Protection Act 1993* (SA).

EPA Licence means an environmental authorisation issued by the EPA pursuant to Part 6 of the EP Act.

Event of Default has the meaning given in clause 6.1(a).

Fees means the Rail Pad Licence Fee and Rail Pad Access Fee as defined in Schedule 2.

Force Majeure Event means any event or circumstance or combination of events or circumstances which are beyond the reasonable control of a party or its Agents and prevent the party or its Agents from performing that party's obligations under this Agreement including any of the following:

- (a) an act of God, epidemic, cyclone, tidal wave, landslide, lightning, earthquake, flood or fire;
- (b) a strike, lockout, work ban, boycott, barricade or picketing or industrial disturbance;
- (c) an act of public enemy (including terrorists), war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection and civil disturbance;
- (d) a change in a Law which renders the performance of the obligation illegal or an injunction ordered by any court which prevents performance of the obligation;
- (e) a refusal or failure by a Relevant Authority to grant or renew any authorisation, approval, consent or licence despite reasonable endeavours to obtain it (and includes the withdrawal, rescission or revocation of any such authorisation, approval, consent or licence);
- (f) a failure or malfunction of the water, gas or power supply necessary for the Licensor to fulfil its obligations under this Agreement; and
- (g) a blockage of, inability to access or refusal of access to or egress from the Licensed Area or any rail line or roads to or from the Port.

FPLD Headlease means the lease dated [insert] from Flinders Ports Land Development Pty Ltd (ACN 117 770 984) to the Licensor in respect of a portion of the land comprised in Certificate of Title Volume 6270 Folio 242.

Headleases means:

- (a) the Minister Headlease; and
- (b) the RIM Site Headleases.

Heavy Vehicle National Law means the Heavy Vehicle National Law, as enacted pursuant to the *Heavy Vehicle National Law (South Australia) Act 2013* (SA) and any regulations issued pursuant to the Heavy Vehicle National Law and any replacement or modification of any of the foregoing and any Industry Code of Practice registered under the Heavy Vehicle National Law.

Holding Over Date has the meaning given in clause 6.4.

Initial Allocation means the Initial Licensee Train Windows, Initial Licensee Staging Windows and the Initial Licensee Short-term Storage Slots.

Initial Licensee 2TEU Slots means the 2TEU Slots allocated to the Licensee as at the date of this Agreement, being those specified as such in Schedule 4.

Initial Licensee 3TEU Slots means the 3TEU Slots allocated to the Licensee as at the date of this Agreement, being those specified as such in Schedule 4.

Initial Licensee Short-term Storage Slots means the Initial Licensee 2TEU Slots and the Initial Licensee 3TEU Slots.

Initial Licensee Staging Windows means the Staging Windows allocated to the Licensee as at the date of this Agreement, being those specified as such in Schedule 3.

Initial Licensee Train Windows means the Train Windows allocated to the Licensee as at the date of this Agreement, being those specified as such in Schedule 3.

Insolvency Event means the Licensee:

- (a) stops or threatens to stop carrying on its business or a material part of it or substantially changes the nature of its business without the consent of the Licensor;
- (b) is a corporation or other body corporate and any of the following occurs:
 - (i) the Licensee is or becomes unable to pay its debts as and when they become due and payable, or is or becomes insolvent within the meaning of s 95A of the

- Corporations Act or is presumed to be insolvent for the purposes of the Corporations Act;
- (ii) the Licensee has a receiver, receiver and manager, trustee, voluntary administrator, administrator of a deed of company arrangement that has not yet terminated, provisional liquidator or liquidator, other controller (within the meaning of section 9 of the Corporations Act) or other similar official appointed in respect of any of the assets or undertaking of the Licensee, or the Licensee is the subject of an application, or other steps are taken, to appoint such an official; or
 - (iii) the Licensee stops or suspends payment to creditors generally or enters any, or continues to be subject to an unconcluded agreement, scheme, arrangement, composition or compromise with, or assignment for the benefit of its creditors generally or any class of them or proposes to do so; or
- (c) is not a corporation or other body corporate and any of the following occurs:
- (i) the Licensee is or becomes unable to pay its debts as and when they are due and payable;
 - (ii) the Licensee commits an act of bankruptcy within the meaning of, or enters an agreement or arrangement with creditors under parts IX or X of the *Bankruptcy Act 1966* (Cth) or is otherwise deemed to be insolvent for the purposes of that Act;
 - (iii) the Licensee is placed into bankruptcy or is the subject of an application to place it into bankruptcy; or
 - (iv) the Licensee stops or suspends payment to creditors generally or enters any, or continues to be subject to an unconcluded agreement, scheme, arrangement, composition or compromise with, or assignment for the benefit of its creditors generally or any class of them or proposes to do so; or
- (d) is involved in an event analogous or having a similar effect to the events listed in paragraphs (a) to (c) above.

Interference Charge has the meaning given in clause 3.1(f)(ii).

Interim Environmental Management Plan means the plan referred to in Item 8.

Item means an item in Schedule 1.

Land means the land more particularly described in the Headleases as being leased to the Licensor.

Laws means any present or future common law and all present and future legislation of the Commonwealth of Australia, a State or Territory of Australia or a local government.

Licensed Area means the Service Area and the RIM Loading Site and includes any part of the Licensed Area.

Licensee means the party described above as the Licensee.

Licensee 2TEU Slots means the Initial Licensee 2TEU Slots, as may be adjusted under this Agreement from time to time.

Licensee 3TEU Slots means the Initial Licensee 3TEU Slots, as may be adjusted under this Agreement from time to time.

Licensee Group means the Licensee Parent Company and its Related Bodies Corporate.

Licensee Parent Company means the entity specified in Item 6.

Licensee Short-term Storage Slots means the Licensee 2TEU Slots and the Licensee 3TEU Slots.

Licensee Staging Windows means the Initial Licensee Staging Windows, as may be adjusted under this Agreement from time to time.

Licensee Train Windows means the Initial Licensee Train Windows, as may be adjusted under this Agreement from time to time.

Licensee's Property means any and all plant, equipment, erections, improvements, infrastructure, signage and other property on or fixed to the Licensed Area which the Licensee owns, operates, controls or leases, stock and other goods stored on the Licensed Area and any other property at the Licensed Area (including without limitation forklifts, reach stackers, straddle carriers, vehicles, machinery or mechanical equipment but excluding the Licensor's Property).

Licensor means the party described above as the Licensor.

Licensor Group means Flinders Port Holdings Pty Ltd ACN 117 687 313 and its Related Bodies Corporate.

Licensor's Property means all and any fixtures, fittings, structures (including any building), erections, fencing, plant, equipment, infrastructure, hardstands and paved areas, improvements (including any building) and other property erected in, on or fixed to the Licensed Area that is owned, vested in, managed, leased or otherwise controlled by the Licensor.

Maritime Security Identification Card means a security identification card issued under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth).

Minister means the South Australian Minister for Infrastructure and Transport.

Minister Headlease means Memorandum of Lease No. 10978398.

Permitted Use means the use set out in Item 4.

Pollutant means:

- (a) any solid, liquid or gas (or combination thereof) including waste, smoke, dust, fumes and odour;
- (b) noise; or
- (c) heat.

Pollution means the result of the discharge emission, deposit or disturbance of a Pollutant or the result of a failure to prevent such discharge, emission, deposit or disturbance and includes, for the avoidance of doubt, sudden and accidental and gradual discharge, emission, deposit or disturbance of a Pollutant.

Port means the Port of Port Adelaide.

Port Charges means:

- (a) any charges pursuant to any agreement made between the Licensor and the Licensee governing the payment of charges relating to the Port by the Licensee to the Licensor (including any cargo service charge agreement); or
- (b) any cargo service charges, navigation service charges, harbour service charges, pilotage charge, facilities services charges, miscellaneous charges, charges for services for the loading and handling of cargo, charges for access to berths and any other like and unlike maritime services charges payable from time to time by the Licensee for the use of wharves, ports and facilities or for the provision of services by the Licensor to the Licensee pursuant to the *Maritime Services (Access) Act 2000* (SA) or any other Laws, including those charges published on the Licensor's website at www.flindersports.com.au, excluding any such charges that are payable by the Licensee on behalf of another person.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Rail Pad Access Fee means the fee referred to in clause 1(a)(ii) of Schedule 2.

Rail Pad Licence Fee means the fee referred to in clause 1(a)(i) of Schedule 2.

Rail Safety Act means the *Rail Safety National Law (South Australia) Act 2012* (SA).

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Authority means a public governmental, semi-governmental, statutory or regulatory authority department, agency or other body with jurisdiction.

Relevant End Customer has the meaning given in clause 2.8(a).

Representative means, in relation to a party, that party's representative specified in Item 5 or another representative notified in writing by that party to the other party.

RIM Loading Site means that part of the RIM Site that is immediately adjacent to the Service Area and which is used by the Licensee for the purpose set out in Item 4(a), and includes any part of the RIM Loading Site.

RIM Site means the rail corridor outside of the Service Area on which the rail infrastructure that services the Service Area is located, but only to the extent within the land that is leased to the Licensor under the FPLD Headlease and the portion of the land comprised in Certificate of Title Volume 6294 Folio 423 that is leased to the Licensor under the Second RIM Site Headlease, and includes any part of the RIM Site.

RIM Site Headleases means the FPLD Headlease and the Second RIM Site Headlease.

Rolling Stock means any vehicle that operates on or uses a railway track including a locomotive, light inspection vehicle, trolley, carriage, and wagon.

Rules has the meaning given to that expression in clause 10(a).

Schedule means each schedule to this Agreement.

Second RIM Site Headlease means Memorandum of Lease No. 11084778.

Security means a charge, mortgage, lien or pledge or a security interest within the meaning of the PPSA.

Service Area means those portions of the Land marked 'OPERATIONS AREA B1' and 'OPERATIONS AREA B2' on FX259579, and includes any part of the Service Area.

Services means all services and facilities supplied to or consumed on the Licensed Area (irrespective of the identity of the supplier) including electricity, gas, water, oil, sewerage, drainage, waste removal, plumbing, systems for warning and control, emergency lighting, security systems, telephone, internet and other communication systems and any other utility or other service supplied to or used in respect of the Licensed Area together with all plant and equipment relating to those utilities and services.

Short-term Storage Slot means an area for the temporary storage of a TEU after unloading from a Train or prior to loading on a Train.

Staging Window means a window of equivalent length to the relevant Train Window that the Licensor allocates to the relevant User before or after (or split before and after) such Train Window for pre and post Train staging, during which the relevant User will have sole use of the Licensed Area to, among other things and consistent with the Permitted Use, move TEUs to and from the Licensee Short-term Storage Slots (but not to or from a Train).

Stevedoring Licence means the licence specified in Item 7 (if any).

Support Services includes security, surveillance, signage (including warning signs), railing, fencing, safety barriers, ladders, lighting and any other warning or support services to enhance the safety, security and convenience of the Licensee's use of the Licensed Area.

Sweeper Vacuum means vacuum equipment that is suitable to clean up material spilt by the Licensee or Licensee's Agents by sweeping the material into a vacuum head and containing that material within the equipment.

Term means the period specified in Item 1 and any extension of the Term, including any period of holding over.

TEU means a twenty-foot equivalent unit whether full or half height.

Third Party User means a User other than the Licensee.

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

Train Window means an access period for sole use of the Licensed Area, being a defined period of hours during which the Service Area is available in respect of a nominated Train for servicing by the relevant User.

Transport Activities means activities, including Business Practices and making decisions associated with the use of a vehicle on a road, including driving or maintaining a vehicle, consigning, scheduling, packing, loading, managing the loading or unloading, unloading or receiving goods for transport by road or carried by road or contracting, directing or employing any person to do any of the foregoing.

Trunk Infrastructure has the meaning given to that term in clause 4.1(d).

User means the Licensee, or any other person that is granted a licence by the Licensor to use the whole or part of the Licensed Area.

Work Health and Safety Act means the *Work Health and Safety Act 2012* (SA).

Works has the meaning given to that term in clause 3.8(a).

1.2 Interpretation

In this Agreement:

- (a) headings are for ease of reference only and do not affect interpretation;
- (b) the Background forms part of this Agreement and shall be binding on the parties;
- (c) the singular includes the plural and vice versa, and a gender includes other genders;
- (d) a reference to a party to a document includes the party's heirs, executors, administrators, successors and permitted assigns;
- (e) a reference to this Agreement or any other document, notice or form includes a reference to it as novated, altered, replaced or amended and includes its schedule, annexures and appendices;
- (f) a reference to a person or persons includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to an act or any statute or Laws includes:
 - (i) any delegated legislation, ordinance, regulation, instrument, rule, code or by-law;
 - (ii) any notice, demand, order, direction, requirement or obligation (including any given or imposed by a Relevant Authority); and
 - (iii) any consolidations, amendments, re-enactments or replacements,of or under any of them, and where the context allows includes the Australian Standards;
- (h) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (i) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (k) all money payable by the Licensee to the Licensor and costs recoverable from the Licensee by the Licensor is recoverable as a liquidated debt and if no date for payment is specified is payable forthwith on demand;
- (l) anything which the Licensee is required to do must be done at the cost of the Licensee and to the reasonable satisfaction of the Licensor;
- (m) where any costs or expenses of the Licensor are payable by or to be reimbursed by the Licensee, the costs and expenses include the Licensor's legal costs and expenses and unless this Agreement specifically provides otherwise are to be paid or reimbursed on a full indemnity basis; and
- (n) a word or expression defined in the Corporations Act or the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

2. Licensing

2.1 Non-exclusive licence

- (a) The Licensor grants the Licensee a non-exclusive licence throughout the Term to use the Licensed Area for the Permitted Use on the terms and conditions set out in this Agreement, subject to the encumbrances, leases or other interests (if any) affecting the Licensed Area.
- (b) The Licensee acknowledges and agrees that under this Agreement:
- (i) the Licensee has no right of exclusive access, occupation or use of the Licensed Area;
 - (ii) the Licensee has no proprietary interest in the Licensed Area;
 - (iii) the Licensee's rights in relation to the Licensed Area rest in contract only;
 - (iv) the Licensee may only access, occupy and use the Licensed Area for the Permitted Use during the Access Periods, immediately adjacent Buffer Periods, or otherwise as permitted by the Licensor (including in respect of Ad hoc Use);
 - (v) access to and occupation and use of all or any part of the Licensed Area may not always be available to the Licensee;
 - (vi) the Licensee and the Licensee's Agents must:
 - (A) not enter or occupy the Licensed Area during a Third Party User's access period or at any time during which another party is occupying the Licensed Area (even during an Access Period or if that other party should not, at that time, be in the Licensed Area); and
 - (B) vacate the Licensed Area upon a valid request from a Third Party User during that Third Party User's access period,unless expressly permitted to remain on the Licensed Area by the Licensor.
 - (vii) the Licensor may at any time (if it considers it reasonably necessary to do so, including for the safe or efficient control, operation and management of the Licensed Area, the Land, Trains or in the event of an emergency, Pollution or Contamination) withdraw, suspend, reallocate, postpone, otherwise vary or modify the Licensee's access to and use of the Licensed Area on a temporary basis, provided that there is no change to the Licensee's Access and Storage Rights on a permanent or long-term basis other than pursuant to and in accordance with clauses 2.2 to 2.7 of this Agreement or as otherwise agreed by the Licensor and Licensee; and
 - (viii) nothing in this Agreement gives the Licensee or Licensee's Agents any rights to access or use any berth or Licensor's facilities adjoining the Licensed Area or gives the Licensee any right of priority to use any berth or Licensor's facilities adjoining the Licensed Area and the Licensor may grant rights to other persons to, without limitation, load and unload Trains and store Cargo at the Licensed Area in accordance with the Access and Pricing Policy.
- (c) Access to the Licensed Area is at all times subject to the Licensee, the Licensee's Agents and any other relevant person or persons having undertaken all necessary steps to comply with all applicable Laws, including without limitation the Rail Safety Act.
- (d) The Licensee must at all times:
- (i) manage and be responsible for all vehicular traffic and pedestrian access and safety on or about the Licensed Area and adjoining areas (including access roads) arising out of or related to its use or its Agents' use of the Licensed Area;
 - (ii) ensure that it and all of the Licensee's Agents who have access to or use of the Licensed Area each hold and have on them any current access cards issued by the Licensor and, where required by law, Maritime Security Identification Cards;

- (iii) ensure that it and any of the Licensee's Agents who have access to or use of the Licensed Area undertake any induction briefings or courses as and when reasonably required by the Licensor; and
 - (iv) ensure that it and all of the Licensee's Agents do not allow unauthorised persons to enter the Licensed Area or Land, including by allowing vehicles to tailgate other vehicles operated by another person, through security gates.
- (e) This Agreement:
- (i) begins on the Commencement Date; and
 - (ii) subject to:
 - (A) clause 6.4 (Holding over); and
 - (B) any sooner determination of this Agreement,
 ends at midnight on the expiry of the Term.

2.2 Initial Access and Storage Rights

The Licensor grants the Initial Allocation of Access and Storage Rights to the Licensee on the terms of this Agreement.

2.3 Additional Access and Storage Rights

- (a) Subject to clause 2.3(h), the Licensee may, from time to time, apply to the Licensor for:
- (i) an increase in the number of Licensee Train Windows (and associated Licensee Staging Windows) or Licensee Short-term Storage Slots; or
 - (ii) an increase in the duration of any Licensee Train Window (and associated Licensee Staging Window) or Licensee Short-term Storage Slot.
- (b) Any application in accordance with clause 2.3(a) must include such information as the Licensor reasonably requires, including:
- (i) the proposed increase in the number or duration of Licensee Train Windows (and associated Licensee Staging Windows);
 - (ii) the proposed increase in the number or duration of Licensee Short-term Storage Slots;
 - (iii) anticipated TEU volumes per Train in respect of the Licensee Train Windows referred to clause 2.3(b)(i) or 2.3(b)(ii); and
 - (iv) any special requirements of the Licensee in relation to the Licensee Train Windows referred to clause 2.3(b)(i) or 2.3(b)(ii).
- (c) If, following receipt of an application from the Licensee under clause 2.3(a), the Licensor notifies the Licensee in writing that it has determined to:
- (i) increase the number of Licensee Train Windows (and associated Licensee Staging Windows) or Licensee Short-term Storage Slots; and/or
 - (ii) increase the duration of any Licensee Train Window (and associated Licensee Staging Window) or Licensee Short-term Storage Slot,
- the Licensee Train Windows (and associated Licensee Staging Windows) and/or Licensee Short-term Storage Slots (as applicable) are deemed to be adjusted in accordance with that determination with effect on and from the Licensee's receipt of the Licensor's notice.
- (d) Subject to clause 2.3(f), the Licensor will, in considering an application under clause 2.3(a) and making a determination referred to in clause 2.3(c), use its reasonable endeavours to ensure that:
- (i) the Licensee, all third parties and Third Party Users have an equal opportunity to access to capacity in the Licensed Area; and
 - (ii) it does not unfairly discriminate between the Licensee, third parties, Third Party Users and its own operations if and to the extent that they use the Licensed Area.

- (e) To avoid doubt, discrimination will not be unfair discrimination if:
- (i) that discrimination reasonably reflects the Licensor's bona fide different costs or risks associated with providing different parties with access to the Licensed Area, including by reason of:
 - (A) Licensee, third party or Third Party User specific site or operational requirements;
 - (B) differences in terms and conditions as a consequence of bona fide differences between the Licensee's and a third party's or a Third Party User's respective requirements, and the times at and circumstances under which they enter into arrangements with the Licensor; or
 - (C) differences in the Licensee's and the third party's or Third Party User's creditworthiness and standing, managerial capacity, health and safety compliance and capacity to carry out operations at the Licensed Area; or
 - (ii) without limiting and subject to clause 2.8, the Licensor considers that it is desirable to offer and/or provide volume discounts on fees for accessing the Licensed Area in respect of a Relevant End Customer task, for the purpose of directly or indirectly maximising product volumes through the Port import and export supply chain (including Port Adelaide Inner Harbour Berth 29 and the Licensed Area).
- (f) Without limiting the discretion of the Licensor in making a determination under clause 2.3(c), the Licensor may elect (in its sole and absolute discretion) to reject an application from the Licensee under clause 2.3(a) without making a determination in relation to it under clause 2.3(c) if:
- (i) the Licensee has not demonstrated to the Licensor's reasonable satisfaction that:
 - (A) the Licensee has all other supply chain rights required to facilitate and enable the use of the increased Access and Storage Rights requested;
 - (B) if the Licensee is not an end customer, the Licensee has genuine customer need for handling the relevant customer product in respect of the increased Access and Storage Rights sought;
 - (C) if required, the Licensee has a rail haulage agreement for the haulage of product to and/or from the Licensed Area during the term of the increased Access and Storage Rights sought;
 - (D) the Licensee has access to any other services and facilities required to make use of the increased Access and Storage Rights sought; and
 - (E) the Licensee has the ability to access the financial resources required to meet its potential liabilities under this Agreement, including (without limitation) the payment of:
 - (I) fees, prices and charges for use of the Licensed Area; and
 - (II) insurance premiums and deductibles under any required policies of insurance;
 - (ii) there is insufficient spare capacity at the Licensed Area to provide the increased Access and Storage Rights sought; or
 - (iii) the provision of the increased Access and Storage Rights sought by the Licensee is not, in the reasonable opinion of the Licensor, consistent with the safe, reliable, efficient and fair use, operation and development of the Licensed Area, Berth 29 and Inner Harbour.
- (g) Following receipt of an application from the Licensee under clause 2.3(a), the Licensor may notify the Licensee in writing that it has determined not to:
- (i) increase the number of Licensee Train Windows, Licensee Staging Windows or Licensee Short-term Storage Slots as requested by the Licensee; or
 - (ii) increase the duration of any Licensee Train Window, Licensee Staging Window or Licensee Short-term Storage Slot as requested by the Licensee.

- (h) Despite anything else, if clause 2.8 applies and any of the rail pad access fees offered to the Licensee in respect of the services the subject of the relevant competitive tender process are different to any of the Rail Pad Access Fees under this Agreement, then:
- (i) where the rail pad access fees offered by the Licensor for a competitive tender process are more than the Rail Pad Access Fees under this Agreement, the Licensee may not apply under this clause 2.3 for any additional Train Windows, associated Staging Windows or Short-term Storage Slots required to provide those services and must instead apply for those additional rights under the Access and Pricing Policy; and
 - (ii) unless clause 2.3(h)(i) applies, where any of the Rail Pad Access Fees under this Agreement are more than the rail pad access fees offered by the Licensor for a competitive tender process, the Licensee may elect to apply for any additional Train Windows, associated Staging Windows or Short-term Storage Slots it requires to provide the services under this Agreement but the fees applying to such additional Train Windows, associated Staging Windows or Short-term Storage Slots will be those lower fees pursuant to clause 2.8.
- (i) Where any additional Train Windows, associated Staging Windows or Short-term Storage Slots are granted to the Licensee as contemplated by clause 2.3(h) they will be governed by and incorporated into this Agreement provided that the applicable fees for the additional Train Windows, associated Staging Windows or Short-term Storage Slots will be as contemplated by clause 2.3(h)(i) or 2.3(h)(ii), as applicable, and the Licensee will remain liable for only one Rail Pad Licence Fee.

2.4 Reduction of Access and Storage Rights and Changes to Windows

- (a) If the Licensee loses a customer who it was servicing at the Licensed Area, its TEU volumes delivered to or from the Licensed Area reduce or it otherwise ceases to use any of its Access and Storage Rights, then either:
- (i) the Licensee may relinquish those Access and Storage Rights on 3 months' notice, subject to the Licensee having held and paid the Fees for those Access and Storage Rights for the initial minimum period of 12 months; or
 - (ii) the Licensor may require the Licensee to demonstrate to the Licensor that the Access and Storage Rights remain required to service the genuine customer requirements of the Licensee and, if the Licensee is unable to demonstrate that to the Licensor's reasonable satisfaction, following reasonable consultation with the Licensee, the Licensor may, by written notice to the Licensee, require the Licensee to relinquish those relevant Access and Storage Rights with effect on the date of, or another date specified in, the Licensor's notice,
- and the Licensee Train Windows and/or Licensee Short-term Storage Slots (as applicable) will be reduced accordingly.
- (b) If Trains scheduled to arrive within the Licensee Train Windows frequently over a 5 month period arrive or depart outside of the Licensee Train Windows, then:
- (i) the Licensor may request the Licensee to demonstrate to the Licensor that it has put measures in place which a reasonable and prudent logistics operator acting in accordance with good industry practice would put in place to minimise the risk of such Trains arriving or departing outside of the Licensee Train Windows; and
 - (ii) if the Licensee is unable to demonstrate that it has put the measures required under clause 2.4(b)(i) in place to the Licensor's reasonable satisfaction within 1 month of the Licensor making a request under clause 2.4(b)(i), the Licensor may by written notice to the Licensee:
 - (A) reallocate some or all of the relevant Licensee Train Windows with effect on the date of, or another date specified in, the Licensor's notice such that the Licensee's relevant window times are changed to times which more closely reflect the times the Licensee actually is using the Service Area; or

- (B) if the Licensee Train Windows are not being used in any consistent manner such that the window times cannot be changed to times more reflective of their use, cancel the relevant Licensee Train Windows on reasonable notice to the Licensee.

2.5 Changes to Access and Storage Rights by Licensee

- (a) The Licensee may, from time to time, apply to the Licensor to move a Licensee Train Window to a different time either temporarily or permanently (including for use for another customer).
- (b) If, following receipt of an application from the Licensee under clause 2.5(a), the Licensor notifies the Licensee in writing that it has determined to accept that application, the applicable Licensee Train Window will be adjusted in accordance with the terms of the application (subject to any amendments between the parties in writing).
- (c) If an adjustment to a Licensee Train Window under clause 2.5(b) is temporary, the adjustment will cease to have effect at the end of the relevant period and the applicable Licensee Train Window will revert back to the times it was scheduled before the adjustment.
- (d) The Licensor must determine the grant of an application under clause 2.5(a) based on the Licensor's reasonable determination as to whether there is sufficient availability at the Licensed Area to grant the requested change and, if the Licensor determines that there is:
 - (i) where the request relates to the servicing of an existing customer of the Licensee, having regard to the genuine level of customer requirements; or
 - (ii) where clause 2.5(d)(i) does not apply:
 - (A) clause 2.3(d) applies to the Licensor's determination as if the reference in clause 2.3(d) to clause 2.3(a) was a reference to clause 2.5(a), and the reference to clause 2.3(c) was to clause 2.5(b); and
 - (B) clause 2.3(f) applies to the Licensor's determination as if the reference in 2.3(f) to:
 - (I) clause 2.3(c) was a reference to clause 2.5(b); and
 - (II) an increase or an increase in number or duration was a reference to a movement sought under clause 2.5(a).

2.6 Term of Access and Storage Rights granted by Licensor

- (a) Subject to clause 2.3 to 2.5, the Initial Licensee Train Windows and Initial Licensee Staging Windows are fixed, unless otherwise expressly indicated in Schedule 3.
- (b) Subject to clause 2.3 to 2.5, the Initial Licensee Short-term Storage Slots are fixed, unless otherwise expressly indicated in Schedule 4.
- (c) Subject to clause 2.6(d), any additional Access and Storage Rights granted under clause 2.3 are to be granted for a minimum term of 12 months or, at the request of the Licensee, may be granted for longer depending on genuine customer contract requirements.
- (d) If a Licensee requires Ad hoc Use, the Licensee may apply to the Licensor for an ad hoc Train Window, Staging Window and Short-term Storage Slots without the need for a 12 month minimum commitment. The Licensor must reasonably consider such request provided that any Ad hoc Use is for not more than three occasions in any 12 month period and provided that if such non-fixed Access and Storage Rights are required or used by the Licensee on more than three occasions in any 12 month period then the Licensee will be required to apply for increased Access and Storage Rights on the basis set out in clause 2.3 for a minimum 12 month period.

2.7 Operational management

- (a) The Licensee, Licensor and Third Party Users must meet at least quarterly to discuss:
 - (i) any allocation or operational issues with respect to the Licensed Area; and

- (ii) any other matters, issues or disputes arising between the parties or with any other User in relation to the access to or use of the Licensed Area.
- (b) The Licensee must use reasonable endeavours to provide 24 hours' notice to the Licensor of any proposed temporary cancellation or modification of its Train movements.
- (c) Access to the Licensed Area in respect of a Train which is, or is likely to, arrive or depart outside of the Licensee Train Window for that Train is at the discretion of the Licensor (acting reasonably). Without limitation, the Licensor is not required to allow such Train to access the RIM Site, or the Licensee to access the Licensed Area, if the Licensor reasonably considers that to allow access is likely have an adverse effect upon other Trains or activities on the Licensed Area.
- (d) Subject to available capacity (as determined by the Licensor acting reasonably), when a Train is, or is likely to, arrive or depart outside of the Licensee Train Window for that Train, the Licensor must allocate the next available period of time to load and unload at no additional cost to the Licensee, with corresponding changes being made to the balance of the Access and Storage Rights relating to the affected Licensee Train Window in respect of that Train movement.
- (e) The Licensor may, and for such period as it determines is reasonably necessary, notify the suspension of access by any person to the Licensed Area where and to the extent reasonably required in order to mitigate the risk of any actual or potential incident, damage, threat to health or safety, to perform urgent maintenance work or in response to an actual or potential material breach of this Agreement.

2.8 Competitive tender processes

- (a) This clause 2.8 only applies if:
 - (i) an end customer (**Relevant End Customer**), the Licensee, a Third Party User or a third party notifies the Licensor in writing that:
 - (A) the Relevant End Customer is conducting a competitive tender under which it invites bids for the supply of services to the Relevant End Customer for the haulage by rail of product to or from the Port; and
 - (B) the successful bidder in that competitive tender will require access to the Licensed Area for the purpose of providing those services; and
 - (ii) the Licensee is a bidder for such task for the Relevant End Customer.
- (b) If this clause 2.8 applies, then the Licensor will use its reasonable endeavours to offer the same fees for accessing the Licensed Area to all bidders referred to in clause 2.8(a) in respect of the product that they will, if successful in the competitive tender process, haul for the Relevant End Customer to or from the Port and in respect of which they require access to the Licensed Area.
- (c) Despite clause 2.8(b), the Licensor may offer different fees for accessing the Licensed Area to different bidders if those differences reasonably reflect the Licensor's bona fide different costs or risks associated with providing different bidders with access to the Licensed Area, including by reason of:
 - (i) bidder specific site or operational requirements;
 - (ii) differences in terms and conditions as a consequence of bona fide differences between bidders' respective requirements, and the times at and circumstances under which they enter into arrangements with the Licensor; or
 - (iii) differences in the bidders' respective creditworthiness and standing, managerial capacity, health and safety compliance and capacity to carry out operations at the Licensed Area.

3. Licensee obligations

3.1 Fees

- (a) The Licensee must pay the Fees to the Licensor.
- (b) The Fees as at the date of this Agreement, the timing of payment and manner of review are set out in Schedule 2.
- (c) The Rail Pad Access Fee must be calculated by the Licensor and invoiced to the Licensee in arrears on a calendar monthly basis. The Rail Pad Access Fee is consideration for all Access and Storage Rights.
- (d) Subject to clause 3.1(e), the Licensee must pay the Rail Pad Access Fee in respect of a Licensee Train Window allocated to it in accordance with this Agreement irrespective of its use of the Licensee Train Window.
- (e) The Licensee is not required to pay the Rail Pad Access Fee in respect of a relevant Licensee Train Window:
 - (i) to the extent it is allocated or uses an available period of time in accordance with clause 2.7(d) and in such a case, it must only pay the Rail Pad Access Fee in respect of the original allocated Licensee Train Window;
 - (ii) with effect from the date it is relinquished under clause 2.4; or
 - (iii) to the extent it is unable to access the Licensed Area or use the Licensee Train Window (or associated Access and Storage Rights) as a result of:
 - (A) breach of this Agreement by the Licensor;
 - (B) another User accessing or occupying the Licensed Area at that time;
 - (C) a Force Majeure Event affecting the Licensor; or
 - (D) the Licensor exercising rights to interrupt, curtail, prevent or suspend access to the Licensed Area or RIM Site or otherwise occupying the Licensed Area or the RIM Site in a manner inconsistent with the exercise of the Licensee's rights under this Agreement (except to the extent resulting from a default of the Licensee).
- (f) If the Licensee overstays its Licensee Train Window or Licensee Staging Window, and that overstay interferes with the use of an allocated Train Window or Staging Window provided to a Third Party User:
 - (i) the Licensor may direct the Licensee to vacate the relevant parts of the Licensed Area to cease the interference; and
 - (ii) the Licensee shall be liable to pay an interference charge equal to the Licensor's estimate of the amount of losses, damages, liabilities, costs and expenses (including any legal costs calculated on a solicitor and own client basis) suffered or incurred, or which are likely to be suffered or incurred, by the Licensor as a result of the Licensee overstaying its Licensee Train Window or Licensee Staging Window (as applicable) (**Interference Charge**), if levied by the Licensor, provided that:
 - (A) the levying of the Interference Charge shall be at the sole discretion of the Licensor; and
 - (B) the Interference Charge must not exceed:
 - (I) \$1,250 as at the date of this Agreement (**Initial Interference Charge**) which may be adjusted in accordance with clause 3.1(f)(ii)(B)(II); or
 - (II) such other amount as the Licensor publishes on the Licensor's website at www.flindersports.com.au from time to time for the purpose of this clause and any substantially equivalent provisions in rail pad licences with Third Party Users (provided that amount

does not increase the Initial Interference Charge by more than 10% from one calendar year to the next),

per three hour period (or part thereof) for any Train Window or Staging Window interfered with by such an overstay.

- (g) The Licensor must include in each rail pad licence into which it enters with any third party a provision that has a substantially equivalent effect to the effect that clause 3.1(f) has as between the Licensor and Licensee under this Licence.
- (h) Subject to clause 2.8, the Licensor will use its reasonable endeavours to ensure that it does not unfairly discriminate between the Licensee, third parties, Third Party Users and its own operations (if and to the extent they use the Licensed Area) in relation to fees to access the Licensed Area, but to avoid doubt discrimination will not be unfair discrimination if the Licensor offers fees to access the Licensed Area, or enters into a licence which contains fees to access the Licensed Area, that differ from those offered to the Licensee or contained in this Agreement if:
 - (i) the differential treatment reasonably reflects the Licensor's bona fide different costs or risks associated with providing different parties with access to the Licensed Area, including by reason of:
 - (A) Licensee, third party or Third Party User specific site or operational requirements;
 - (B) differences in terms and conditions as a consequence of bona fide differences between the Licensee's and a third party's or a Third Party User's respective requirements, and at the times at and circumstances under which they enter into arrangements with the Licensor; or
 - (C) differences in the Licensee's and the third party's or Third Party User's creditworthiness and standing, managerial capacity, health and safety compliance and capacity to carry out operations at the Licensed Area; or
 - (ii) without limiting and subject to clause 2.8, the Licensor's considers it is desirable to offer and/or provide volume discounts on fees for accessing the Licensed Area in respect of a Relevant End Customer task, for the purpose of directly or indirectly maximising product volumes through the Port import and export supply chain (including Port Adelaide Inner Harbour Berth 29 and the Licensed Area).

3.2 Services and Utilities

- (a) The Licensee may use on a non-exclusive basis the Electrical Services during the Term in accordance with the terms and conditions of this Agreement.
- (b) The parties acknowledge and agree that the Licensee will not be liable to pay fees and charges in respect of Services located or available on the Licensed Area unless such Services fees and charges:
 - (i) arise as increased power consumption costs following the connection of any Licensee's Property to any Service on the Licensed Area; and
 - (ii) are capable of being calculated by the Licensor (acting reasonably) as a result of the circumstances in clause 3.2(b)(i),in which case such incremental Services costs will be payable by the Licensee (on a full indemnity basis) to the Licensor within 15 Business Days of a demand from the Licensor.
- (c) The Licensee acknowledges and agrees that:
 - (i) if there is a fault, damage to, disruption to or any other issues with the Electrical Services, the Licensee must notify the Licensor of the same on 08 8447 0600. If the Licensor determines it is necessary, it will arrange for the attendance of an electrician;
 - (ii) if the attendance of an electrician or others is required to remedy or repair a fault, damage to, disruption to or any other issues (including re-setting of the Electrical Services due to a disruption) as a result of negligence, misuse or excessive

demand by the Licensee or the Licensee's Agents, the Licensee will reimburse the Licensor all costs (on a full indemnity basis) associated with the attendance of an electrician or others on demand; and

- (iii) no ancillary electrical items or supplementary distribution equipment will be provided by the Licensor.
- (d) The Licensor and the Licensee acknowledge that the Licensor is not liable or obliged to pay any cost, expense, fee or charge incurred or accrued by the Licensee in respect of the installation, connection, supply, consumption, use or rental of any Services at any time during the Term.
- (e) The Licensee will pay the Licensor within 15 Business Days after a demand any costs (on a full indemnity basis) associated with the cleaning, maintenance, repair or replacement of the Services and Electrical Services incurred by the Licensor or Licensor's Agents due to wrongful use of the Services or Electrical Services by the Licensee or the Licensee's Agents.

3.3 Costs

The Licensee must pay within 15 Business Days of demand:

- (a) the Licensor's reasonable costs (including any legal costs) in respect of any dealing with this Agreement or the Licensed Area by the Licensee (for example, extension, variation, surrender, guarantee, sub-licensing, assignment, transfer or mortgage of this Agreement) and incidental documents;
- (b) all stamp duty in respect of this Agreement and any dealing with this Agreement or the Licensed Area by the Licensee and incidental documents;
- (c) the Licensor's reasonable costs in respect of any application by the Licensee for the consent of the Licensor to any dealing under this Agreement by the Licensee or otherwise with respect to the Licensed Area by the Licensee (whether consent is granted, granted conditionally or refused);
- (d) the Licensor's reasonable costs of considering, approving and supervising anything under this Agreement requiring the Licensor's consent or approval; and
- (e) the Licensor's costs in respect of any breach or default of this Agreement by the Licensee (including preparing and serving a notice of breach).

3.4 Permitted Use

The Licensee must:

- (a) only use, or permit the use of, the Licensed Area for the Permitted Use and where the Permitted Use is referable to a part of the Licensed Area, then only on that part;
- (b) conduct the Licensee's business in good faith in accordance with the best method and in a reputable manner;
- (c) suppress dust arising from, caused or contributed to by the Licensee's use of the Licensed Area, including from the loading, unloading or storage of Cargo, to the Licensor's absolute satisfaction;
- (d) comply with all the conditions of all consents, permits, authorities, approvals and licences from Relevant Authorities to use the Licensed Area for the Permitted Use; and
- (e) on demand, provide the Licensor with copies of those consents, permits, authorities, approvals and licences as they relate to the Licensed Area.

3.5 Prohibitions

The Licensee must not and must prohibit the Licensee's Agents and others over whom it has control from:

- (a) using or permitting any use to be made of the Licensed Area which would enable or prompt a Relevant Authority to issue any notice preventing or restricting the use of the Licensed Area or requiring structural alterations or repairs to the Licensed Area;

- (b) storing Cargo on or about the Licensed Area or the Common Area, other than:
 - (i) in accordance with the Permitted Use; or
 - (ii) in accordance with this Agreement;
- (c) parking trucks or delivery vehicles on the Licensed Area (other than during the Licensee's Access Periods) or any Common Area in any place other than a place allotted by the Licensor for such purposes that does not restrict the rights of a Third Party User;
- (d) obstructing, causing a nuisance or annoyance to or in any way causing any interference to the Licensor or anyone else lawfully using the Licensed Area or the Land;
- (e) sleeping or permitting anyone to sleep at the Licensed Area;
- (f) holding or permitting an auction or liquidation or closing down sale at the Licensed Area;
- (g) bringing or permitting to be brought onto or handled on the Licensed Area any dangerous, noxious, odorous, explosive or inflammable substance, unless handled by the Licensee in accordance with the Permitted Use or normally used for the Permitted Use or cleaning the Licensed Area, and in either case in compliance with all applicable Laws and this Agreement;
- (h) installing any electrical equipment on the Licensed Area which may overload the cables switchboard or sub-boards to or within the Licensed Area or any Common Area;
- (i) bringing onto the Licensed Area or any Common Area anything of such weight, size or nature as (in the Licensor's reasonable opinion) might damage the Licensed Area or any Common Area;
- (j) painting, displaying or attaching any sign advertisement name or notice outside or visible from outside the Licensed Area;
- (k) permitting any unlawful, unsafe, noxious, dangerous or offensive activity, business or process to be undertaken in, on or about the Licensed Area ;
- (l) undertaking any construction, demolition, alteration, repair or maintenance work involving burning, cutting, welding, riveting, grinding, drilling, grit, sand or shot blasting, or any other heat, flame, flash or spark producing operation, together with any related or ancillary activities, in each case on the Licensed Area or the Common Area;
- (m) obstructing any part of the rail infrastructure at the RIM Site or doing anything that may interfere with any railway operations undertaken by or on behalf of any member of the Licensor Group, the rail infrastructure manager for the RIM Site, its contractors and sub-contractors, or any other lawful users of the rail infrastructure at the RIM Site;
- (n) doing anything or allowing anything to be done or neglecting or omitting to do anything whereby a Headlease is reasonably likely to be forfeited or terminated or which would cause the Licensor or the rail infrastructure manager for the RIM Site to be in breach of its obligations under a Headlease or any Laws; or
- (o) obstructing the entrances, exits, driveways and pedestrian footways in and to the Licensed Area.

3.6 Assignment and other dealings

- (a) The Licensee must not assign, transfer, novate, sublicense or grant any right to use, possess, occupy or share possession, part with possession, create or allow to come into existence a Security, encumber or otherwise deal with its interest as licensee or any of its rights or liabilities under this Agreement without the consent of the Licensor.
- (b) Notwithstanding clause 3.6(a), the Licensee may, without the Licensor's prior written consent:
 - (i) grant, create or allow to exist a Security (other than a mortgage) under a general security agreement or a similar agreement over the assets and undertakings of the Licensee; or
 - (ii) transfer or assign its interest under this Agreement to a member of the Licensee Group, provided that:

- (A) in the case of a transfer or assignment, before the transfer or assignment takes effect, the Licensee and the transferee or assignee enters into the deed referred to in clause 3.6(e);
 - and
 - (B) for the avoidance of doubt, when a transfer, or assignment under this clause 3.6(b)(ii) takes effect, the Licensee is not released from its obligations and liabilities under this Agreement (whether arising before, on or after the date the transfer or assignment takes effect).
- (c) Where the Licensee is a company there is a deemed assignment of this Agreement requiring the Licensor's consent if:
- (i) a person or a group of persons cease to be entitled to at least 50% of the Licensee's share capital;
 - (ii) a person or group of persons who on the date the Licensee became the Licensee were not entitled to more than 50% of the Licensee's share capital become entitled to more than 50% of that share capital;
 - (iii) there is a dealing or series of dealings in the shares of the Licensee or a holding company of the Licensee (including the creation of new shares) so that there is a change in effective control of the Licensee; or
 - (iv) a change to the constitution of the Licensee varies the rights attaching to any issued shares in the Licensee,
- provided that:
- (v) any transfer of shares or other securities by inheritance or the transfer or issue of shares or other securities listed on a recognised stock exchange; and
 - (vi) any change in control of the Licensee where control is acquired by a member of the Licensee Group,
- is to be ignored for the purposes of this clause.
- (d) If the Licensee requests the Licensor's consent to a dealing, the Licensee must on demand from the Licensor (and before the Licensor is required to determine whether it consents to the proposed dealing):
- (i) pay all arrears of any fee or charge payable by the Licensee under this Agreement and remedy any other outstanding breaches of this Agreement;
 - (ii) provide to the Licensor a copy of any relevant document;
 - (iii) establish that the other party to the proposed dealing (**third party**) is respectable, responsible, solvent and suitable to the Licensor's reasonable satisfaction;
 - (iv) provide to the Licensor information reasonably required by the Licensor about the financial standing and business experience of the third party; and
 - (v) in addition to payment of the Licensor's costs in accordance with clause 3.3, pay the Licensor's reasonable costs of:
 - (A) enquiries about the proposed dealing or the third party; and
 - (B) perusing preparing and stamping the documents required by the Licensee or the Licensor.
- (e) If the Licensor consents to a transfer or assignment of the Licensee's interest as licensee under this Agreement, the Licensee must ensure that, before the transfer or assignment takes effect and as a condition to the Licensor's consent, the transferee or assignee:
- (i) undertakes to, or covenants with the Licensor in a deed to, comply with this Agreement, including the Permitted Use, from the date of the transfer or assignment as if it were the Licensee; and
 - (ii) provides such guarantees for the performance of the transferee's or assignee's obligations under this Agreement as the Licensor reasonably requires.

- (f) If the Licensee creates or allows to come into existence a Security (other than a general security agreement or a similar agreement over the assets and undertakings of the Licensee) over its interest in this Agreement, the Licensee must ensure that, before the Security takes effect and as a condition of the Licensor's consent, the Licensee and the secured party enter into a consent deed with the Licensor and, if required by the Licensor, the Licensor's financier, on terms acceptable to the Licensor (acting reasonably) and, if applicable, the Licensor's financier.

3.7 Fire Safety

The Licensee must take such precautions against fire in respect of the use of the Licensed Area by the Licensee and the Licensee's Agents and the Licensee's Property as are required by Laws or by any Relevant Authority (including about sprinklers and fire alarms).

3.8 Alterations or Additions by Licensee

- (a) The Licensee must not carry out or permit repairs, replacements, works, improvements, erections, alterations, additions or installations (**Works**) at or to the Licensed Area, except as required under this Agreement.
- (b) Despite any other clause in this Agreement, where this Agreement requires the Licensee to undertake any maintenance, repairs, renewal, cleaning or replacement to the Licensed Area or the Licensor's Property which are of a capital or structural nature (**Structural Repairs**):
- (i) the Licensee must first obtain the consent of the Licensor at its absolute discretion; and
 - (ii) the Licensor may (without any obligation to do so) elect to execute the Structural Repairs on the Licensee's behalf in which case the Licensee must pay all the Licensor's reasonable costs in respect of carrying out such Structural Repairs within 15 Business Days after receiving a demand from the Licensor.

3.9 Notifications by Licensee

The Licensee must give prompt notice to the Licensor of any:

- (a) injury to or death of any person;
- (b) Cargo spills or Contamination;
- (c) Event of Default referred to in clause 6.1;
- (d) non-compliances with the Environmental Management Plan;
- (e) breach of security under the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth);
- (f) accident or want of repair;
- (g) circumstance reasonably likely to cause or which has caused any damage, destruction, risk or hazard to the Services or any property or to any person; or
- (h) structural or other defects in or on the Licensed Area (including any property in or on the Licensed Area) that become known to the Licensee,

in respect of the Services, the Licensed Area or adjoining areas (including any railway line, access roads or stormwater drainage systems) of which the Licensee is aware or ought reasonably to be aware.

3.10 Licensee's Insurance

- (a) The Licensee must keep current at all times:
- (i) general liability insurance covering the Licensee's use of the Licensed Area or the Land for at least the amount specified in Item 3 (or any other amount the Licensor reasonably requires);
 - (ii) industrial special risk insurance for usual risks and covering the Licensee's Property for their full re-instatement value;

- (iii) workers compensation insurance;
 - (iv) motor vehicle insurance covering property damage for all motor vehicles used by the Licensee at the Licensed Area and the Land;
 - (v) a policy covering the Licensee for any personal injury and/or property damage arising from Pollution or Contamination arising from its use of the Licensed Area, caused by a sudden, unintended, unexpected and accidental happening; and
 - (vi) any other insurance required by Law.
- (b) The insurance policies the Licensee effects under this clause:
- (i) must be issued, or reinsured, by an insurer with a minimum Standard & Poor's rating of A-;
 - (ii) in respect of the general liability insurance required in accordance with this clause, must:
 - (A) include an extension to cover the Licensee's liability for personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date in respect of the Licensee's use of the Licensed Area or the Land;
 - (B) cover the Licensor as an interested party for its liability arising out of the acts or omissions of the Licensee or the Licensee's officers or employees;
 - (C) include a cross liability clause; and
 - (D) provide a waiver of subrogation in favour of the Licensor in respect of its liability for the acts or omissions of the Licensee or the Licensee's officers or employees;
 - (iii) must cover events occurring while the policy is current, regardless of when claims are made; and
 - (iv) must have no limit on the number of claims that can be made.
- (c) In respect of the insurance required by this clause, the Licensee must provide the Licensor with a certificate of currency for each policy which contains sufficient information to demonstrate the relevant policy complies with the requirements of this clause:
- (i) before commencing use of the Licensed Area;
 - (ii) on each renewal of the insurance; and
 - (iii) otherwise, when the Licensor asks (but not more than once during each year of the Term unless the Licensor has reasonable grounds to suspect the Licensee is not complying with its obligations under this clause).
- (d) The Licensee must immediately notify the Licensor once it becomes aware of:
- (i) the occurrence of an event which gives rise to a claim under, or could prejudice, a policy required by this clause 3.10; or
 - (ii) the cancellation of a policy required by this clause 3.10.
- (e) The Licensee must not do anything or allow anything to be done which may in anyway invalidate or violate the conditions of any insurance policies or required by this clause 3.10.
- (f) In respect of the Licensee's insurance required by this clause, the Licensee must not, without the Licensor's consent (not to be unreasonably withheld or delayed):
- (i) materially vary or cancel the insurance or allow it to lapse without replacing that insurance; or

- (ii) settle or compromise a claim under the general liability insurance policy in respect of the Licensor's liability arising out of the acts or omissions of the Licensee or the Licensee's officers or employees, noting that this sub-clause (ii) will not apply in order to restrict the ability of an insurer to settle or compromise the claim which is the subject of the claim under the general liability insurance policy where the insurer has granted an indemnity and has conduct of the claim.

3.11 Compliance

Subject to clause 7, the Licensee must at all times and on time comply with:

- (a) all Laws in respect of the:
 - (i) Licensee's or the Licensee's Agents' activities conducted at the Licensed Area;
 - (ii) Licensee's or the Licensee's Agents' Property and Cargo; and
 - (iii) Licensee's or the Licensee's Agents' access, use or occupation of the Licensed Area (except that nothing in this clause requires the Licensee to carry out any structural or capital works to the Licensed Area or any adjacent areas, other than where the requirement for the works arises due to or in consequence of any act, omission or default of the Licensee or the Licensee's Agents);
- (b) any safety interface agreement relevant to the Licensed Area to which the Licensee is a party;
- (c) any Access and Pricing Policy but only to the extent that it is not inconsistent with this Agreement (unless required by Laws). For the avoidance of doubt the Access and Pricing Policy has no application to the Licensee to the extent that it requires the payment of any amount by the Licensee in excess of that required by this Agreement or has any adverse effect on the Licensee's Access and Storage Rights or other rights under this Agreement (unless, and only to the extent, that the Access and Pricing Policy addresses matters required by any relevant Laws);
- (d) all Rules to the extent they relate to the use of the Licensed Area by the Licensee or the Agents of the Licensee; and
- (e) any directions from a Relevant Authority to the extent they relate to the use of the Licensed Area by the Licensee or the Agents of the Licensee.

3.12 Dust

- (a) The Licensee acknowledges that other land in the vicinity of the Licensed Area (including land under the control of the Licensor) is used and may continue to be used for the purpose of activities that may result in dust being created and deposited on the Licensed Area.
- (b) The Licensee must not make or bring any Claim against the Licensor or any of the Licensor's Agents in respect of any such activities or such dust.

3.13 No representations or warranties

Without limiting anything else in this Agreement, the Licensee hereby expressly acknowledges and agrees with the Licensor as follows:

- (a) no warranty, representation, assurance, description, inducement or condition is given or made by or on behalf of the Licensor in respect of this Agreement including in respect of:
 - (i) the Licensed Area including the state or condition of the Licensed Area (including any rail infrastructure) or their fitness or suitability for the purposes of the Licensee or for any purpose whatsoever, and all such warranties, representations, assurances, descriptions, inducements or conditions other than as expressly set out in this Agreement, are excluded and negated to the full extent permissible at law; and
 - (ii) the suitability of the Licensed Area, the Port or the Land for any business or activity to be carried out on or in respect of the Licensed Area or in respect of the Services, fittings, finishes, facilities and amenities of the Licensed Area;

- (b) in agreeing to licence the Licensed Area, the Licensee has not relied on any warranty, representation, condition, description, inducement or assurance in relation to the Licensed Area (including any rail infrastructure) including in relation to the present state or condition of the Licensed Area (including any rail infrastructure) or their fitness or suitability for the Licensee's purposes whatsoever given or made by or on behalf of the Licensor, other than as expressly set out in this Agreement;
- (c) the Licensee examined or had the opportunity to examine the Licensed Area (including any rail infrastructure) prior to entering into this Agreement and, in licensing the Licensed Area, relied on the Licensee's own independent enquiries, inspection, investigations and researches (including in relation to its use of the Licensed Area and as to the existence or otherwise of any requisite consents and approvals and as to the conditions (if any) imposed as part of any such consents and approvals) and on the Licensee's own skill, judgement and experience;
- (d) the Licensee is deemed to licence the Licensed Area with full knowledge of the state and condition of the Licensed Area (including any rail infrastructure); and
- (e) the Licensed Area is licensed, and the rights to use any areas forming part of the Common Area are granted, in their present state of repair and in their present condition, with any and all latent and patent defects.

3.14 Carbon Control Law

- (a) The Licensee must reasonably co-operate with and assist the Licensor in respect of any Carbon Control Law by providing to the Licensor all information in relation to the use of the Licensed Area (other than any information subject to legal professional privilege) that the Licensor reasonably requests to enable the Licensor to:
 - (i) comply with the Carbon Control Law;
 - (ii) prepare any report required by the Carbon Control Law or any other law or which the Licensor (acting reasonably), in relation to a legal obligation, requires prepared;
 - (iii) provide any information required by law; and
 - (iv) conduct and complete any environmental assessment regarding the Licensed Area (including any building) required by the Carbon Control Law.
- (b) While the Licensee is a member of the Licensee Group and uses the Licensed Area, the Licensee agrees:
 - (i) to conduct its business from the Licensed Area consistently with the Licensee Group's publicly stated commitments from time to time to reducing carbon emissions; and
 - (ii) provide the Licensor with a statement upon request (but not more than twice annually) of the scope 1 and scope 2 emissions arising from the Licensee Group's operations on the Land.

3.15 Licensee's Agents

The Licensee is responsible and liable to the Licensor for the acts and omissions of the Licensee's Agents under or in connection with this Agreement or the Licensed Area as if they were the acts and omissions of the Licensee.

3.16 Indemnities

- (a) The Licensee indemnifies and must keep indemnified the Licensor against and in respect of any and all Claims arising from:
 - (i) any breach or default by the Licensee of any obligation under this Agreement;
 - (ii) the death of or injury to any person or loss of or damage to property of any person caused or contributed to by the use of the Licensed Area by the Licensee or any of the Licensee's Agents;

- (iii) the death of or injury to any person or loss of or damage to property of any person caused or contributed to by the use of land adjoining the Licensed Area (other than any areas licensed under the Stevedoring Licence) to the extent it is caused or contributed to by the wrongful act or omission, negligence or default of the Licensee or of the Licensee's Agents;
- (iv) the overflow, leakage or escape of water, fire, gas, electricity or any other substance or thing in or from the Licensed Area to the extent it is caused or contributed to by the wrongful act or omission, negligence or default of the Licensee or any of the Licensee's Agents;
- (v) any private or public nuisance caused or contributed to by the Licensee or any of the Licensee's Agents;
- (vi) the Licensee's failure to notify the Licensor of any material defect in the Licensed Area or the Licensor's Property of which the Licensee or the Licensee's Agents are aware; and
- (vii) the use of the Licensed Area or any adjoining land by the Licensee or the Licensee's Agents for uses other than the Permitted Use,

except to the extent that any such Claim is caused or contributed to by the negligence or wilful default of the Licensor.

- (b) The indemnity is independent from the Licensee's other obligations under this Agreement and does not come to an end when the Term expires or this Agreement is terminated. It is not necessary for the Licensor to incur expense or make a payment before enforcing the indemnity.

3.17 Release

- (a) The Licensee occupies and uses the Licensed Area at its own risk.
 - (b) The Licensee agrees that the Licensor will have no liability or responsibility for, and that the Licensor is fully released from all Claims, and the Licensee shall not make or bring any Claim against the Licensor arising from or otherwise in respect of:
 - (i) loss of or damage to the Licensee's Property or the Licensee's Agents' property and Cargo;
 - (ii) loss or damage caused or contributed to by an accident, incident, damage, death or injury occurring in or on the Licensed Area, Common Area, Land or Port; or
 - (iii) loss or damage caused or contributed to by:
 - (A) flooding of the Licensed Area or blockage of any sewers, waste, drains, gutters or pipes; or
 - (B) any malfunction, failure to function or interruption of any Services,
- except to the extent that such a Claim is caused by the negligence of the Licensor.

3.18 Limitation of liability – Licensor

To the extent permissible by Law, the Licensor will not be liable to the Licensee for any Claim which comprises or is in respect of:

- (a) any defect in or malfunction or failure to function (properly or at all) of any Services or any failure to provide or make available or any delay in providing or making available any Services;
- (b) any action or neglect of the public, co-tenants or other occupants or users of the Licensed Area, the Land, the Port or any Common Area or of adjacent land;
- (c) the Licensor exercising its rights under clause 4;
- (d) anything arising out of any security breach, security failure or lack of security anywhere in the Licensed Area, any Common Area the Port or the Land;
- (e) the Licensee's inability to access the Licensed Area, any Common Area, the Land or the Port;

- (f) disturbance to the Licensee by smells, dust, noise, spills, discharges, fire explosion, industrial action, pests, and other interference by the public;
- (g) the availability or lack of availability to the Licensee of access to rail facilities, the portside area, road or other infrastructure; or
- (h) a Force Majeure Event,

except to the extent that any such Claim is caused or contributed to by the negligence of the Licensor or the wilful breach of this Agreement by the Licensor.

3.19 Limitation of liability – Licensee

- (a) The Licensee is not liable to the Licensor or any member of the Licensor Group under this Agreement or in connection with the Licensed Area (including under an indemnity in favour of the Licensor or under any prior licence of or any part of the Licensed Area):

to the extent that a Claim is caused or contributed to by the wilful or negligent act or omission of the Licensor or the Licensor's Agents.

3.20 Fallen Cargo

- (a) If the Licensee or Licensee's Agents cause any Cargo or other property to fall onto the Licensed Area during loading or unloading of a Train (**Fallen Cargo**), the Licensee must ensure that:
 - (i) loading or unloading of Cargo ceases unless it is safe to continue;
 - (ii) the Licensor is immediately notified;
 - (iii) the Fallen Cargo is recovered as soon and as quickly as possible or as the Licensor (acting reasonably) directs;
 - (iv) subject to clause 3.8(b), any damage to the Licensed Area is fully repaired to the Licensor's satisfaction within the time directed by the Licensor at the Licensee's cost; and
 - (v) the Land is cleaned at the Licensee's cost to the Licensor's satisfaction (acting reasonably).
- (b) The Licensor and the Licensor's Agents may do everything the Licensor considers reasonably necessary in relation to Fallen Cargo.
- (c) The Licensor is not liable to any person for any Claim that arises out of or in connection with Fallen Cargo, including anything done by the Licensor or the Licensor's Agents under clause 3.20(b).
- (d) Without limiting any of the Licensor's other rights or remedies, the Licensee shall promptly reimburse the Licensor on demand for all Claims that arise out of or in connection with Fallen Cargo, including the reasonable costs and losses incurred by the Licensor as a result of interruption to the Licensor's operations and in relation to anything done by the Licensor or Licensor's Agents:
 - (i) to locate and remove the Fallen Cargo;
 - (ii) to repair damage to the Licensed Area and Port;
 - (iii) to clean the Licensed Area and Port; and
 - (iv) to mitigate the effect of the Fallen Cargo on Land and rail operations.
- (e) Nothing in this clause 3.20 limits the application of clauses 3.21 and 3.22.

3.21 Heavy and bulk cargo

The Licensee must ensure that neither it nor the Licensee's Agents cause or permit any heavy or bulk Cargo to be improperly tipped or thrown out from any vehicle or Train onto the Licensed Area or Land.

3.22 No deposit of bulk Cargo

The Licensee must ensure that neither it nor any of the Licensee's Agents cause or permit any bulk Cargo to be deposited on the Land (excluding the Licensed Area), other than in accordance with this Agreement, without the Licensor's permission.

3.23 The Licensor may move Cargo

- (a) The Licensor and the Licensor's Agents may without notice do everything necessary to move any Cargo within or out of the Licensed Area if the Licensor considers it reasonably necessary for any purpose connected with safety, security or the protection of any person, property or the environment in or around the Land or Port.
- (b) The Licensor shall not be liable to any person for any Claims that arise out of or in connection with the movement of any Cargo by the Licensor and the Licensor's Agents within or out of the Licensed Area in accordance with clause 3.23(a).

3.24 Management of the Licensed Area and Support Services

While the Licensee or the Licensee's Agents are using the Licensed Area, the Licensee:

- (a) must control, manage and maintain the Licensed Area to ensure the safety, security and convenience of all users of the Licensed Area;
- (b) shall be responsible for identifying, providing, installing and maintaining any Support Services it requires in connection with its use of the Licensed Area;
- (c) shall ensure that the Licensee and the Licensee's Agents keep off any restricted areas;
- (d) is responsible for providing and ensuring there is adequate security and surveillance of the Licensee's Property on the Licensed Area; and
- (e) will use its reasonable endeavours to protect and keep the Licensee's Property on the Licensed Area safe from theft and vandalism.

4. Repair and maintenance

4.1 Licensee's obligations

- (a) The Licensee must:
 - (i) keep the Licensee's Property within the Licensed Area in good repair and condition and good working order (fair wear and tear excepted); and
 - (ii) not cause or permit the condition of the Licensee's Property within the Licensed Area to become or remain dangerous, dilapidated or ruinous.
- (b) The Licensee will (and will ensure that the Licensee's Agents will), upon completion of every access to or occupation or use of the Licensed Area, vacate the Licensed Area and ensure that the Licensed Area is:
 - (i) clean and tidy to the Licensor's reasonable satisfaction; and
 - (ii) free from Cargo, the Licensee's Property, any property of the Licensee's Agents and any other items brought on or about the Licensed Area or adjoining areas by the Licensee or the Licensee's Agents to the Licensor's satisfaction, except to the extent the Licensee is permitted to store any such Cargo, property or other items on the Licensed Area under this Agreement.
- (c) The Licensee must not damage or permit to be damaged by the Licensee or the Licensee's Agents the Licensed Area or the Licensor's Property and the Licensee must pay all the Licensor's costs in respect of carrying out any works to repair any such damage within seven days after receiving notice from the Licensor.
- (d) The Licensee must, throughout the Licensee's or the Licensee's Agents' use or occupation of the Licensed Area, ensure that all sewer and water pipes and all drains in or on the Licensed Area (other than any sewer and water pipes and drains running through the Licensed Area that service areas other than the Licensed Area, whether or not such

infrastructure also services the Licensed Area (**Trunk Infrastructure**)) remain in a clean and sanitary condition and free and clear from any obstruction or blockage, except where the condition, obstruction or blockage is caused by the Licensor or any of the Licensor's Agents or any other licensee or user of the Licensed Area. The Licensee must ensure that neither it nor any of the Licensee's Agents obstruct or block any Trunk Infrastructure.

- (e) The Licensee must promptly report to the Licensor any instances of vermin or mosquito infestation on the Licensed Area.
- (f) Without creating any obligation on the Licensor to rectify any non-compliances by the Licensee, the Licensee will pay to the Licensor on demand all costs (on a full indemnity basis) associated with rectifying non-compliance with this clause 4.1.

4.2 Licensor repair and maintenance

- (a) The Licensor must use reasonable endeavours to, as required by Law or as directed by a Relevant Authority:
 - (i) carry out any works required to keep the Service Area structurally sound;
 - (ii) carry out any minor works (including line markings) to distinguish areas allocated to Users (where there is more than one active User); and
 - (iii) carry out any structural or capital repairs, maintenance or replacement of the Licensor's Property within the Service Area required to comply with any Law and to keep the Licensor's Property within the Service Area in good repair and condition and in good working order,

except where any such works, repairs, maintenance or replacement are required due to or in consequence of any act, omission or default of the Licensee or any of the Licensee's Agents, fair wear and tear excepted.

- (b) The Licensor must use reasonable endeavours to maintain the RIM Site in accordance with all applicable Laws (including the Rail Safety Act), including the valid appointment of a rail infrastructure manager under the Rail Safety Act.
- (c) The Licensor is not required to repair or maintain fair wear and tear in respect of the Licensed Area and, except as required under this Agreement, the Licensor is not required to repair or replace any of the Licensor's Property.

5. Licensor's rights

5.1 Dealings and reservations

Without limiting any of its obligations under this Agreement, the Licensor reserves the right to and may at any time:

- (a) grant interests in or rights to use the Licensed Area to any person;
- (b) subject to clause 5.1(a), assign, convey, transfer, novate, securitize or otherwise deal with the Licensor's interest in the Licensed Area or this Agreement; and
- (c) install, maintain, use, repair, alter or replace any Services through, contiguous or adjacent to the Licensed Area.

5.2 Rights of entry

- (a) Notwithstanding any other term or condition of this Agreement, the Licensor and the Licensor's Agents may at any time (or if the Licensee is occupying or using the Licensed Area for the Permitted Use by giving reasonable notice to the Licensee, except that such notice is not required in an emergency or a circumstance of urgency), enter upon, use or occupy the Licensed Area with or without vehicles (including Trains, locomotives, Rolling Stock, engines and carriages), plant, equipment or materials, to the extent necessary for any of the following purposes:
 - (i) to inspect the Licensed Area, including to determine if the Licensee is complying with this Agreement;

- (ii) to carry out works, repairs, renovations, replacement, maintenance or alterations on or about the Licensed Area (without creating any obligation on the Licensor to do so);
 - (iii) to inspect, test, repair, maintain or do work on the Licensed Area (including the Services) which cannot reasonably be done without the Licensor entering the Licensed Area;
 - (iv) to exercise the Licensor's rights or to comply with the Licensor's obligations under this Agreement, or to comply with the Licensor's obligations under any Laws (including to satisfy the requirements of a Relevant Authority);
 - (v) to fulfil or perform any statutory or contractual duty, obligation or function of the Licensor; or
 - (vi) any other purpose deemed desirable by the Licensor.
- (b) The Licensee must not make any Claim against the Licensor in respect of entering the Licensed Area or carrying out works contemplated by this Agreement.

5.3 Carry out Licensee's obligations

If the Licensee does not do something it is obliged to do under this Agreement or, in the Licensor's reasonable opinion, the Licensee does not do it properly or within the time required by this Agreement, the Licensor may do that thing at the Licensee's cost after giving reasonable prior notice to the Licensee.

5.4 Other rights

The Licensor may:

- (a) close off access to the Licensed Area in an emergency or at any other time the Licensor reasonably considers necessary;
- (b) in an emergency:
 - (i) prevent the Licensee and the Licensee's Agents from entering the Licensed Area or require them to leave and stay out of the Licensed Area; and
 - (ii) without notice to the Licensee, enter the Licensed Area and remain there and use the Licensed Area,

for so long as reasonably necessary in the circumstances; and
- (c) use, operate, install, repair, maintain, remove, replace and temporarily interrupt Services, provided that the Licensor uses reasonable endeavours to minimise disruption to the Licensee's use of the Licensed Area (except in an emergency).

6. Mutual Agreements

6.1 Default, remedy and termination

- (a) The Licensee is in default under this Agreement, and an **Event of Default** will occur if:
 - (i) any fee, charge or other money payable under this Agreement is not paid when it is due to be paid under this Agreement or, if there is not a due date for payment under this Agreement, after the Licensor has issued a tax invoice or demand for the payment (**Arrears**);
 - (ii) the Licensee does not comply with any other obligation of the Licensee under this Agreement;
 - (iii) the Licensee does not comply with any obligation under the Stevedoring Licence or any agreement or arrangement between the Licensor (or any of its Related Bodies Corporate) and the Licensee relating to the Port, including the payment of:
 - (A) amounts which the Licensee has agreed to pay or remit to the Licensor under any such agreement or arrangement; or

- (B) Port Charges levied against the Licensee for services provided exclusively to the Licensee or any Related Body Corporate of the Licensee (but not for any payment for services to any customer of the Licensee or any Related Body Corporate of the Licensee);
 - (iv) an Insolvency Event occurs in respect of the Licensee or any guarantor of the Licensee's obligations and liabilities under this Agreement or any agreement or arrangement referred to in clause 6.1(a)(iii); or
 - (v) execution is levied against the Licensee and is not discharged within 20 Business Days,
- and the Licensee fails to remedy the breach within 10 Business Days after receipt of written notice from the Licensor requiring it to do so.
- (b) If an Event of Default occurs, the Licensor may:
 - (i) terminate this Agreement;
 - (ii) by notice to the Licensee convert this Agreement to being terminable by either party on one month's notice; or
 - (iii) serve a notice requiring that the Licensee rectify the default.
 - (c) If the Licensor terminates this Agreement pursuant to clause 6.1(c)(i), then the Licensee is not entitled to any compensation or damages for the termination.

6.2 Abandoned goods

- (a) Subject to clause 6.2(b), the Licensor may remove, deal with or dispose of the Licensee's Property or Cargo, left at the Licensed Area outside of the times specified or determined in accordance with this Agreement as the periods in which they are permitted to be used by the Licensee (other than in accordance with clause 3.5(b)) or after the determination of this Agreement (**Abandoned Goods**) in such manner as the Licensor (acting reasonably) chooses and at the Licensee's reasonable cost.
- (b) The Licensor must:
 - (i) not remove the Abandoned Goods from the Licensed Area without providing the Licensee with not less than 24 hours' prior written notice of its intention to remove the Abandoned Goods (**Abandonment Notice**), except where removal is required in the case of an emergency or to ensure there is no disruption to the normal operational use of the Licensed Area (in which case no notice is required before removal, but the Licensor must provide the Licensee with notice of the removal as soon as reasonably practicable in the circumstances); and
 - (ii) if the Licensor removes the Abandoned Goods, make the Abandoned Goods available to the Licensee to collect from the Licensed Area or another location on the Land (at the Licensee's own cost) if such a request is made in writing by the Licensee within 10 Business Days of the Licensor's removal of the Abandoned Goods under clause 6.2(b)(i).
- (c) If:
 - (i) the Licensee does not collect the Abandoned Goods from the Licensed Area or other location on the Land to which the Licensor has removed them within a reasonable period (not exceeding 60 days) of making a written request under clause 6.2(b)(ii) (**Collection Period**); or
 - (ii) the Licensee does not make a written request to collect the Abandoned Goods under 6.2(b)(ii) within the 10 Business Day period referred to in that clause (**Notice Period**),

the Licensee acknowledges and agrees that, at the conclusion of the Collection Period or the Notice Period (as applicable), full legal and equitable title in all Abandoned Goods will pass to the Licensor and the Licensee warrants to the Licensor that such title will pass to the Licensor free and clear of all encumbrances and other rights and interests (except as agreed by the Licensor in its absolute discretion).

- (d) In the event that the Licensor sells or otherwise receives a monetary amount for the disposal of the Abandoned Goods, the Licensor will pay to the Licensee any amount received for the goods less:
 - (i) any costs incurred by the Licensor in their disposal;
 - (ii) any amounts applied by the Licensor to satisfy any Arrears; and
 - (iii) such amount the Licensor reasonably estimates may be necessary to rectify any other breach of this Agreement by the Licensee.
- (e) The Licensor is not liable to the Licensee for any loss or damage to the Abandoned Goods occurring during the period:
 - (i) from the end of the Term or the sooner determination of this Agreement until title in the Abandoned Goods passes to the Licensor under clause 6.2(c), except to the extent any such loss or damage is caused intentionally or negligently by the Licensor or the Licensor's Agents; or
 - (ii) after title in the Abandoned Goods passes to the Licensor under clause 6.2(c), irrespective of the cause.

6.3 Default interest

- (a) The Licensee agrees to pay interest on:
 - (i) any amount payable under this Agreement; or
 - (ii) any Port Charges payable by the Licensee,
 which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) The Licensee agrees to pay interest under clause 6.3(a) on demand from the Licensor.
- (c) The rate of interest applying from (and including) the due date for payment is the rate 2% per annum above the 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if no such rate has been published, another rate set by the Licensor in good faith).
- (d) Interest payable under clause 6.3(a) may be added to the overdue amount by the Licensor at intervals which the Licensor determines from time to time or, if no determination is made, at the end of every calendar month. Interest is payable on the increased overdue amount at the rate set out in this clause 6.3.

6.4 Holding over

If the Licensee holds over after the expiration or sooner termination of the Term (**Holding Over Date**) with the consent (express or implied) of the Licensor, the Licensee will become a monthly licensee of the Licensor. Either party may terminate the monthly licence by giving one month's notice expiring at any time. The monthly licence fee is one twelfth of the annual Rail Pad Licence Fee immediately before the Holding Over Date. The monthly licence is otherwise on the same terms as this Agreement (so far as applicable to a monthly licence).

6.5 Consent

Except where otherwise expressly set out in this Agreement, the Licensor's consent or approval:

- (a) means the Licensor's prior written consent or prior written approval;
- (b) may be given or withheld in the absolute discretion of the Licensor; and
- (c) if given may be made conditional or unconditional.

6.6 Licensee as trustee

- (a) If the Licensee enters into this Agreement as the trustee of a trust, it represents and warrants to the Licensor that:

- (i) it enters into this Agreement both in its personal capacity and as trustee of the trust;
 - (ii) it has full power to enter into this Agreement and does so as part of the proper administration of the trust and for the benefit of the beneficiaries of the trust;
 - (iii) the Licensee is the only trustee of the trust;
 - (iv) subject only to exceptions dictated by Law, the Licensee is entitled to be indemnified out of the assets of the trust;
 - (v) the copy of the trust deed given to the Licensor is a true copy as at the date it was given; and
 - (vi) there have been no other alterations to the trust deed other than as disclosed in writing to the Licensor.
- (b) The Licensee must not, without the Licensor's consent (which consent must not be unreasonably withheld or delayed):
- (i) retire or cease to be the sole trustee of the trust or allow any other person to be appointed as a new trustee;
 - (ii) do anything which prejudices its right to be indemnified out of the assets of the trust;
 - (iii) permit the trust deed to be amended or revoked in a way which could prejudice the Licensee's ability to perform its obligations under this Agreement (unless required by Law); or
 - (iv) permit the trust to be terminated or its vesting date accelerated.

6.7 Other Matters

- (a) No waiver by a party of one breach of a term of this Agreement will operate as a waiver of another breach of that or any other term of this Agreement.
- (b) Any variation of a term of or a right under this Agreement must be in writing and signed by both parties.
- (c) Any term of this Agreement which is invalid, unlawful, void or unenforceable will be capable of severance without affecting any of the other terms of this Agreement.
- (d) This Agreement comprises the whole of the agreement between the parties regarding its subject matter and no other agreements or terms shall be implied in this Agreement or arise by way of collateral agreement, but nothing in this Agreement will adversely affect any right either party has under any other agreement between the parties.
- (e) This Agreement will not create any relationship between the Licensor and Licensee other than the relationship of licensor and licensee.

6.8 Notices

- (a) Any notice required to be given under this Agreement shall (without prejudice to any other means of giving notice) be:
 - (i) in writing in English;
 - (ii) signed by the party or its agent or solicitor; and
 - (iii) given to the recipient either by hand delivery, pre-paid post or email or in any other manner permitted by legislation, in each case addressed in the manner relevantly described in the section of this Agreement titled 'Details'.
- (b) Where two (2) or more persons comprise a party, a notice served on or by any one is deemed served on or by all.
- (c) A party may at any time change any of its details set out in the section of this Agreement titled 'Details' by providing not less than five (5) Business Days' notice to the other party.
- (d) A notice is deemed given or served:
 - (i) if delivered by hand, upon delivery;

- (ii) if sent by pre-paid post, on the fourth Business Day after posting; and
- (iii) if by email, when the sender's email system confirms the time of sending of the email (unless the sender receives a delivery failure notification indicating the email has not been delivered to the addressee),

but if the delivery or receipt is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

6.9 Managing Agent

The Licensor may appoint a managing agent to manage the Licensed Area and any managing agent shall represent the Licensor in all matters relating to the Licensed Area except where the Licensor otherwise notifies the Licensee, provided that any communication from the Licensor to the Licensee shall to the extent of any inconsistency supersede any communication from the managing agent.

6.10 Goods and Services Tax

- (a) The amounts payable by the Licensee to the Licensor for or in connection with a taxable supply under this Agreement do not include any GST (unless expressly specified otherwise).
- (b) The Licensee must pay the Licensor an additional amount on account of GST equal to the amount payable by the Licensee for the relevant taxable supply multiplied by the prevailing GST rate.
- (c) The additional amount is payable at the same time as when the amount for the relevant taxable supply is payable by the Licensee to the Licensor.
- (d) Within 14 days of receipt of the amount and additional amount, the Licensor must provide the Licensee with a tax invoice.
- (e) For the purposes of this clause, each of 'GST', 'taxable supply' and 'tax invoice' have the same meaning as those terms have in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

6.11 Retail and Commercial Leases Act

The Licensee and the Licensor mutually acknowledge and agree that the Licensed Area does not comprise business premises at which goods are sold to the public by retail or at which services are provided to the public or to which the public is invited to negotiate for the supply of services and that the *Retail and Commercial Leases Act 1995* (SA) does not apply to this Agreement.

6.12 Force Majeure

- (a) Notwithstanding any other provision in this Agreement, if by reason of a Force Majeure Event, a party (**Affected Party**) is prevented in the performance of any obligation under this Agreement:
 - (i) the Affected Party will not be liable under this Agreement to the other party for not performing, or for the manner of its performance of, such obligation, to the extent to which the Affected Party is so prevented; and
 - (ii) the performance of that obligation is suspended, but only for the period of time in which the Affected Party is so prevented.
- (b) Without prejudice to clause 6.12(a), the Affected Party is not liable to the other party for any failure in the fulfilment of any of its obligations under this Agreement to the extent that such failure is due to any loss or damage occasioned by that Force Majeure Event.

7. Environmental Obligations

7.1 Environmental Protection

- (a) The Licensee must at its own cost:

- (i) take all reasonable and practicable measures to prevent Environmental Harm and otherwise ensure that any material adverse environmental impact resulting from the Licensee's use of the Licensed Area and the activities carried out by the Licensee or the Licensee's Agents from the Licensed Area is prevented or otherwise minimised;
 - (ii) comply with all Environmental Laws affecting the Licensee's use of the Licensed Area or the activities carried out by the Licensee or the Licensee's Agents from the Licensed Area;
 - (iii) immediately cease any Contamination in or emanating from the Licensed Area caused by the Licensee's use of the Licensed Area;
 - (iv) immediately cease any Pollution that is causing Environmental Harm, in or emanating from the Licensed Area caused by the Licensee's use of the Licensed Area;
 - (v) immediately clean up any Contamination or Pollution in or emanating from the Licensed Area, or Contamination or Pollution in or affecting any adjoining land, to the extent caused or contributed to by the Licensee or any of the Licensee's Agents, or (after the Licensee becomes aware of the Contamination or Pollution) disturbed or exacerbated by, the Licensee or any of the Licensee's Agents;
 - (vi) obtain and provide to the Licensor on request a copy of all environmental licences relating to the Permitted Use and the activities of the Licensee and the Licensee's Agents on the Licensed Area, and relating to the Licensed Area, excluding any that are the responsibility of the Licensor or any Third Party User to obtain under any Law, this Agreement or any other agreement; and
 - (vii) comply with the conditions of any EPA Licences held by the Licensor (as in force from time to time) and ensure that the Licensee's actions do not cause the Licensor to breach the conditions of such EPA Licences, to the extent that such EPA Licences and conditions:
 - (A) apply to the use of the Licensed Area by the Licensee; and
 - (B) have been notified to the Licensee by the Licensor.
- (b) The Licensee must keep the Licensor indemnified against all Claims, arising from or incidental to:
- (i) any failure to comply with clause 7.1(a); or
 - (ii) the Contamination or Pollution referred to in clauses 7.1(a)(iii) and 7.1(a)(iv),
- (c) Subject to clauses 4.2 and 7.1(d), the parties acknowledge and agree that nothing in this Agreement imposes any obligation on the Licensor (as between the Licensor and the Licensee) to remediate or treat any Contamination.

7.2 Environmental Management Plan

- (a) The Licensee must prepare an Environmental Management Plan for the use of the Licensed Area by the Licensee and the Agents of the Licensee that sets out the procedures and methods the Licensee will implement to ensure compliance with:
 - (i) all Environmental Laws relating to the use of the Licensed Area by the Licensee or the Agents of the Licensee, including the noise and Pollution requirements of all Environmental Laws;
 - (ii) EPA Licences required for the Licensee's activities at the Licensed Area; and
 - (iii) EPA Licences held by the Licensor (in force and provided by the Licensor from time to time) to the extent that they apply to the Licensed Area and the use of the Licensed Area by the Licensee or the Licensee's Agents.
- (b) In addition to anything else required by this clause 7.2, the Environmental Management Plan must include the requirements listed in Annexure A.

- (c) Within two months of the Commencement Date, the Licensee must provide the Licensor with a copy of the proposed Environmental Management Plan.
- (d) Within 15 Business Days of the date that the Licensee gives the Licensor a copy of the proposed Environmental Management Plan under clause 7.2(c), the Licensor may (but is not obliged to) review and provide reasonable comments to the Licensee on the proposed Environmental Management Plan, including any reasonable suggested changes, additions or deletions (**suggested amendments**).
- (e) The Licensee must amend the Environmental Management Plan to incorporate suggested amendments and provide the revised Environmental Management Plan to the Licensor within two (2) weeks of receipt of the suggested amendments.
- (f) During the Term, the Licensee must:
 - (i) until the Environmental Management Plan required under this clause 7.2 is prepared, implement and comply with the Interim Environmental Management Plan;
 - (ii) once the Environmental Management Plan required under this clause 7.2 is prepared, implement and comply with the terms of the Environmental Management Plan;
 - (iii) not amend the Environmental Management Plan without the consent of the Licensor, such consent not to be unreasonably withheld or delayed;
 - (iv) provide any information reasonably required by the Licensor to assess the Licensee's compliance with its obligations under this clause promptly upon request to do so;
 - (v) promptly report any regulatory breaches or incidents resulting in Environmental Harm or excursions from the Environmental Management Plan to the Licensor;
 - (vi) cooperate with the Licensor in conducting inspections of the Licensed Area and/or activities of the Licensee for conformance with the Environmental Management Plan as may be requested by the Licensor from time to time; and
 - (vii) ensure that the Environmental Management Plan is regularly reviewed by the Licensee and revised as necessary in light of experience gained during operations, as a consequence of any regulatory breach or regulatory notice issued by the EPA, any incident investigation, annual review conducted in accordance with clause 7.3 or Licensor inspection in accordance with clause 7.2(f)(vi).

7.3 Annual Reviews of Environmental Management Plan

- (a) The Licensee must undertake an annual review of the scope of, and compliance with, the Environmental Management Plan and, unless agreed otherwise, a copy of the annual review will be provided to the Licensor on each anniversary of the Commencement Date.
- (b) If the Licensor:
 - (i) is not satisfied with the annual review or any aspect of the annual review;
 - (ii) does not support any recommendations or actions proposed to be undertaken by the Licensee as a result of the annual review; or
 - (iii) believes that any recommendations or actions proposed to be undertaken by the Licensee as a result of the annual review, are not being effectively implemented, the Licensor may, at the Licensor's election (acting reasonably):
 - (iv) require the Licensee to undertake further work in respect of the annual review or require the Licensee to undertake additional action; or
 - (i) instigate a review of the annual review by an independent qualified environmental consultant acceptable to both parties (acting reasonably),
 and the Licensee must comply with any such requirements.

7.4 No prejudice

This clause 7 relates only to the sharing of responsibilities as between the Licensor and Licensee and does not prejudice any rights of the Licensee or Licensor to take action against any other person, or to resist action taken by any other person or Relevant Authority.

8. Work Health and Safety and Heavy Vehicle National Law

8.1 Work Health and Safety

- (a) The Licensee expressly acknowledges that, at all times during the Licensee's use or occupation of the Service Area, it has the management or control of the Service Area. Accordingly, the Licensee must ensure, so far as is reasonably practicable, that throughout its use of the Service Area pursuant to this Agreement, the Service Area, the means of entering and exiting the Service Area and anything arising from the Service Area, are without risks to the health and safety of any person.
- (b) The Licensee must immediately notify the Licensor of any matters arising from its use of the Licensed Area which may affect the health and safety of any person, including the Licensor's Agents who may use the Licensed Area in accordance with this Agreement.
- (c) The Licensee acknowledges that, while the Licensor's Agents or Third Party Users are using the Licensed Area, it owes safety obligations to the Licensor's Agents and Third Party Users and accordingly, agrees to consult, co-operate and co-ordinate its activities with those persons so that those safety obligations can be discharged.
- (d) The Licensee will notify the Licensor of the occurrence of:
 - (i) any notifiable incidents, as defined in the Work Health and Safety Act, that occur during the Licensee's use or occupation of the Service Area; and
 - (ii) any notifiable occurrences, as defined in the *Rail Safety National Law National Regulations 2012*, that occur during the Licensee's use or occupation of the RIM Site.
- (e) The Licensee acknowledges and agrees that, at all times during the Licensee's use or occupation of the Licensed Area, the Licensee will and will ensure that the Licensee's Agents:
 - (i) comply with and not breach all of its obligations under and the requirements of the Work Health and Safety Act and the Rail Safety Act (as applicable);
 - (ii) prepare and comply with site specific safety policies and plans for:
 - (A) its access to and use of the Licensed Area, including vehicle and Cargo access and use (if relevant); and
 - (B) the access to and use of the Licensed Area by the Licensor and the Licensor's Agent while entering in accordance with this Agreement;
 - (iii) submit to the Licensor, on its request, such site specific safety policies and plans for consideration by the Licensor, and consider any recommendations the Licensor may make as to amendments;
 - (iv) ensure that all activities and work carried out by the Licensee and the Licensee's Agents in, on or about the Licensed Area:
 - (A) are carried out by personnel who are fit for work and have the appropriate licences, training, experience and qualifications to do the activities and work;
 - (B) are carried out with a high degree of skill, competence and professionalism at all times; and
 - (C) are carried out in accordance with the site specific safety policies and plans;

- (v) ensure that any Cargo of the Licensee on or about the Licensed Area is appropriately packaged and clearly labelled and that such labels are clearly visible at all times; and
- (vi) ensure, prior to the handling of any Cargo of the Licensee, that the Cargo:
 - (A) is in a fit and proper condition to be safely handled or otherwise dealt with; and
 - (B) complies with all applicable Laws relating to the particular Cargo (including any Laws dealing with dangerous goods including the Work Health and Safety Act).
- (f) When the Licensor's Agents are entering into the Licensed Area while it is being occupied or used by the Licensee, the Licensor must ensure that the Licensor's Agents comply with the Work Health and Safety Act and the safety policies and plans of the Licensee. The Licensee will not have any liability or responsibility for, and that the Licensee is fully released from all Claims or any loss suffered or incurred by the Licensor, to the extent caused or contributed to by any failure of any of the Licensor's Agents to comply with the Work Health and Safety Act and the safety policies and plans of the Licensee.
- (g) The parties acknowledge and agree that the Rail Safety Act governs the management and control of the RIM Site. Notwithstanding the foregoing, the Licensee expressly acknowledges that, at all times during the Licensee's use or occupation of the RIM Site, whilst the Licensee does not have primary responsibility for the management or control of the RIM Site, the Licensee will take all reasonable steps to ensure that the use by the Licensee and the Licensee's Agents is in compliance with the Work Health and Safety Act.

8.2 Heavy Vehicle National Law

- (a) The Licensee expressly acknowledges that, at all times during the Licensee's use of the Service Area, it has the management or control of all Transport Activities conducted at or within the Service Area, whether by itself or any other person (other than the Licensor) and, pursuant to the foregoing acknowledges that, as between the Licensor and Licensee, the Licensor assigns responsibility for supervising, managing and controlling, directly or indirectly, any activities carried out by a loader or unloader of goods at or within the Service Area to the Licensee.
- (b) At all times during the Licensee's use of the Service Area, the Licensee must:
 - (i) ensure, so far as is reasonably practicable, the safety of its and its Agent's Transport Activities conducted at or having effect in or relating to the Licensee's use of the Service Area;
 - (ii) in relation to Transport Activities conducted at or within the Service Area, not do or require or refrain from doing or requiring anything which would directly or indirectly cause or encourage any person to breach any provision of the Heavy Vehicle National Law; and
 - (iii) in relation to Transport Activities conducted at or within the Service Area, comply with and not breach and ensure that the Licensee's Agents comply with and do not breach any provision of the Heavy Vehicle National Law.
- (c) The Licensee must promptly notify the Licensor if the Licensee becomes aware of any matters arising from the Licensee's use of the Service Area which may adversely affect the safety of any Transport Activities of any person conducted at or having effect in or relating to the Licensee's use of the Service Area, including anything that poses any risk to public safety, the environment, road infrastructure or public amenity.
- (d) The parties acknowledge that, to the extent that the Licensor or the Licensor's agents are conducting any Transport Activities jointly with the Licensee, each party owes a shared safety obligation in relation to the conduct of those Transport Activities and accordingly, agrees to consult, co-operate and co-ordinate its activities with the other party so that those safety obligations can be discharged.

- (e) The Licensee will notify the Licensor if the Licensee becomes aware of the occurrence of any breach of the Heavy Vehicle National Law which occurs at or in the Licensed Area or arises from the Licensee's use of the Service Area during the Licensee's use of the Service Area.
- (f) The Licensee acknowledges and agrees that the Licensee will and will ensure that the Licensee's Agents:
 - (i) prepare and comply with site specific heavy vehicle Transport Activity safety policies and plans for the safe conduct of any Transport Activities conducted at or within the Service Area;
 - (ii) submit to the Licensor, on its request, such site specific heavy vehicle Transport Activity safety policies and plans for consideration by the Licensor, and consider any reasonable recommendations the Licensor may make as to amendments (the doing of which by the Licensor does not in any way derogate from the other provisions of this Agreement); and
 - (iii) ensure that all Transport Activities carried out by the Licensee and the Licensee's Agents in, on or about the Service Area:
 - (A) is carried out by personnel who are fit for work and have the appropriate licences, training, experience and qualifications to do the Transport Activities and work;
 - (B) is carried out with a high degree of skill, competence and professionalism at all times; and
 - (C) is carried out in accordance with the site specific heavy vehicle Transport Activity safety policies and plans.

9. Common Area

- (a) Subject to the other provisions of this Agreement, the Licensee and the Licensee's Agents in common with the Licensor and other persons authorised by the Licensor may enjoy a right of access to and from the Licensed Area over those parts of the Common Area designated by the Licensor from time to time for access.
- (b) The Licensee acknowledges and agrees that all the covenants, terms and conditions and obligations contained in clause 8 (other than clauses 8.1(a), 8.1(e)(ii)(B) and 8.1(f)) relevant to the Licensed Area, also apply to the Licensee's use of any Common Area.

10. Rules

- (a) The Licensor may at any time make, amend, add to or rescind obligations, standards, rules, powers, policies, practices, protocols and procedures whenever it determines in its absolute discretion that it is necessary or desirable for the better governance, administration or management of the Licensed Area and any Common Areas (**Rules**).
- (b) The Rules may deal with topics of safety, security (including maritime security), welfare of persons, traffic (vehicular and maritime), compliance with statutory and other regulatory controls, greenhouse gas emissions, environmental topics, Pollution, Contamination issues, occupational health, safety and welfare policies and issues, security, traffic, emergencies and related and unrelated topics (including the Rules specific to the Licensed Area or to any adjoining land and rail).
- (c) The Rules cannot have a material adverse impact on the rights, obligations and liabilities of the Licensee under this Agreement (except in relation to an emergency situation) or increase any costs payable by the Licensee to the Licensor in relation to the use of the Licensed Area.
- (d) The Licensor will notify the Licensee of any addition, amendment or rescission to the Rules from time to time (but such addition amendment or rescission will not be operative in respect of the Licensee until the Licensee has been notified in writing).

- (e) Once made and notified to the Licensee, a Rule is and will be a term of this Agreement. To the extent of any inconsistency between a Rule and the other terms of this Agreement, the terms of this Agreement prevail. Any breach of a Rule by the Licensee is and will be a breach of this Agreement.
- (f) A notice from the Licensor to the Licensee at any time specifying the Rules in force as at the date of the notice will be conclusive evidence of the Rules in force at that date.
- (g) The Licensor will not be liable to the Licensee for any loss or damage arising from or contributed to by any failure by the Licensor or any of the Licensor's Agents to police or enforce the Rules against any other person.

11. Headleases

11.1 Licensee to Observe Terms of Headleases

- (a) The Licensee will not do anything or allow anything to be done or neglect or omit to do anything whereby a Headlease may be forfeited or terminated or which would cause the Licensor to be in breach or default of its obligations under a Headlease.
- (b) The Licensor's covenants, terms conditions and obligations (as lessee) contained or set out in:
 - (i) clauses 6.2 (Lessee's Plant), 6.7 (Worker's Rehabilitation and Compensation Act 1986) (subject to replacing references to the *Workers' Rehabilitation and Compensation Act 1986* (SA) in that clause with references to the *Return to Work Act 1994* (SA)), 15.5 (Force Majeure) and 17.6 (Delivery of Plans) of the Minister Headlease;
 - (ii) clauses 6.3 (Maintenance of Lessee's Plant), 6.7 (Return to Work Act 2014), 15.5 (Force Majeure) and 17.6 (Delivery of Plans) of the FPLD Headlease; and
 - (iii) any equivalent clauses in the Second RIM Site Headlease,
 are incorporated and deemed to be incorporated mutatis mutandis into this Agreement as if they were specifically set out in this Agreement as covenants, terms, conditions and obligations of the Licensee, and the Licensee covenants and agrees with the Licensor in relation to the Licensed Area in and on the same terms, conditions and covenants as the Licensor as lessee has covenanted and agreed with the lessor under the relevant Headlease. To avoid doubt, the covenants, terms, conditions and obligations of a Headlease incorporated into this Agreement only apply in respect of any part of the Licensed Area that is subject to that Headlease.
- (c) To the extent of any inconsistency between the terms of a Headlease referred to in clause 11.1(b) and this Agreement, the terms of the Headlease prevail.

11.2 Indemnity relating to breach of Headlease

The Licensee must indemnify and keep indemnified the Licensor against any and all Claims for which the Licensor becomes liable in respect of or arising out of any breach of a Headlease caused by the Licensee or any of the Licensee's Agents due to a breach of this Agreement.

11.3 Subsistence of Headlease

- (a) If a Headlease terminates (other than by a surrender) for any reason, this Agreement will automatically terminate.
- (b) If a Headlease is surrendered then (if this Agreement does not terminate automatically by operation of law) the Licensor will be entitled in its absolute discretion to terminate this Agreement by notice given to the Licensee at any time within six months of the surrender or termination of the Headlease, such termination of this Agreement to then be contemporaneous with the surrender or termination of the Headlease.
- (c) If this Agreement is surrendered or terminates under this clause 11.3, neither of the Licensee and the Licensor will have any Claim against the other arising from the surrender or termination of this Agreement (except in respect of any antecedent breach or

default or the breach or default of this Agreement by either party or a Headlease by the Licensor).

12. Dispute resolution

- (a) If a dispute arises out of or in relation to this Agreement, the Licensor and the Licensee shall in the first instance endeavour to settle the dispute in good faith within 14 days through the Representatives.
- (b) Where a dispute cannot be settled in accordance with clause 12(a), the Licensor and the Licensee will refer the dispute to expert determination by an appropriately qualified and experienced expert (having regard to the nature of the dispute) within 14 days to be appointed by the parties by agreement or, failing agreement, appointed by the president of the professional institute of which an appropriate expert is a member. In the absence of manifest error, the determination of the expert will be binding on the parties.
- (c) Nothing in this clause 12 is intended to limit either party to seek urgent injunctive or declaratory relief.

13. Miscellaneous

13.1 Governing law

This Agreement is governed by the laws in South Australia and the parties irrevocably submit to the jurisdiction of the courts of South Australia.

13.2 Counterparts

This Agreement may be executed in counterparts. Each executed counterpart is deemed an original of this Agreement.

13.3 Inconsistency

If there is any inconsistency between the terms of this Agreement and the terms of any other applicable legislation or by-laws, then the terms of that legislation or by-laws will take priority to the extent of that inconsistency.

Schedule 1 – Items

Item 1: Term

[insert].

Item 2: Not used

Item 3: General Liability Insurance

FIFTY MILLION DOLLARS (\$50,000,000) or such other amounts as the Licensor may reasonably request from time to time

Item 4: Permitted Use

- (a) The receiving, loading, unloading and despatch (including by the use of material handling equipment) of bulk, break bulk and containerised goods and materials for export or import by sea to and from the Port or from Trains at the RIM Site by use of the Service Area during the Licensee Train Windows.
- (b) The temporary storage of up to:
 - (i) two TEUs stacked on top of each other at the locations within the Service Area and during the periods, specified in the Licensee 2TEU Slots; and
 - (ii) three TEUs stacked on top of each other at the locations within the Service Area, and during the periods, specified in the Licensee 3TEU Slots.
- (c) Pre and post Train staging, including moving TEUs to and from the Licensee Short-term Storage Slots (but not to or from a Train), during the Licensee Staging Windows.
- (d) Access and egress to and from different parts of the Licensed Area during the Access Periods, or as otherwise permitted by the Licensor.
- (e) Despite paragraphs (a) to (d) above, in no event shall any part of the Licensed Area be used for (i) a purpose which is not permitted under a Headlease relating to the Licensed Area or (ii) as business premises at which goods are sold to the public or at which services are provided to the public, or to which the public is invited to negotiate for the supply of services.

Item 5: Representatives

Licensor

Keith Halifax, Chief Operating Officer, Flinders Ports

Email address: keith.halifax@fphgroup.com.au

Licensee

[insert]

Email address: [insert]

Item 6: Licensee Parent Company [insert ultimate holding company of Licensee]

Item 7: Stevedoring Licence [The agreement between the Licensor and the Licensee in respect of the Licensee's conduct of certain stevedoring operations, including at Port Adelaide Inner Harbour Berth 29, dated [insert]] *[Drafting note: to be amended if necessary to properly describe the Stevedoring Licence or replace with "Not applicable" if there is no Stevedoring Licence between the Licensor and the Licensee.]*

Item 8: Interim Environmental Management Plan [insert]

Schedule 2 – Fees

1. Initial Fees

- (a) The initial Fees are:
- (i) a **Rail Pad Licence Fee**: \$[insert] per annum payable on the date of, and each anniversary of this Agreement; and
 - (ii) a **Rail Pad Access Fee** for each calendar month (or any part thereof and pro rata for the first part-calendar month in which the Commencement Date falls and the part-calendar month in which the Term ends) which is the greater of X and Y, where:

X is the amount calculated at \$250 per 3 hour period, or part thereof, of all Licensee Train Windows during the month or, where applicable, any part thereof; or

Y is the amount equal to the aggregate of:
 - (A) \$[insert] per Licensee 3TEU Slot; and
 - (B) \$[insert] per Licensee 2TEU Slot,allocated to the Licensee by the Licensor for the relevant month or, where applicable, any part thereof.
- (b) Staging Windows shall not incur additional Rail Pad Access Fees.

2. Invoicing and payment

- (a) The Rail Pad Access Fee will be calculated by Licensor and invoiced to the Licensee in arrears on a calendar monthly basis.
- (b) Such invoice will be payable within 15 Business Days of the date of the invoice.
- (c) Late payment of any invoice will result in interest accruing on the unpaid amount in accordance with clause 6.3.
- (d) If the Licensee disputes any amount invoiced to it by the Licensor, the Licensee must, by the due date for payment of the invoice under paragraph (b) above, pay any amount of the invoice it does not dispute and notify the Licensor of the reasons why the Licensee is disputing the balance of the amount of the invoice. If it is agreed between the Licensor and the Licensee, or determined by binding dispute resolution, that the Licensee is liable to pay all or any part of the disputed amount, the Licensee must pay that amount to the Licensor within 10 Business Days of the agreement or determination together with interest on that amount calculated in accordance with clause 6.3 from the date the amount should have been paid to the Licensor under paragraph (b) above until the date the amount is paid to the Licensor. To avoid doubt, nothing in this paragraph (d) releases the Licensee from any liability for failing to pay any undisputed amount to the Licensor by the due date under paragraph (b) above.

3. Take or pay

Subject to clause 3.1(e), the Rail Pad Access Fee for a Licensee Train Window is payable regardless of whether a Train is serviced at the Rail Pad during that Licensee Train Window.

4. Fee Reviews

- (a) On each CPI Review Date, each Fee will be reviewed and adjusted by applying the CPI Review Methodology.

- (b) On each Market Review Date, each Fee will be reviewed and adjusted by applying the Market Review Methodology.
- (c) When the CPI Review Methodology and Market Review Methodology is applied to the Rail Pad Access Fee, it will be applied to each dollar amount comprising the Rail Pad Access Fee.

5. Definitions

For the purposes of this Schedule, the following terms have the following meanings:

Base Date means 1 November 2024.

CPI Review Date means each anniversary of the Base Date, other than a Market Review Date.

CPI Review Methodology means, in relation to a Fee at a CPI Review Date, the amount calculated by applying the following formula:

A = the greater of (B x 1.03) and $\frac{B \times C}{D}$ where:

A is the new amount of the Fee as at the CPI Review Date;

B is the amount of the Fee immediately before the CPI Review Date;

C is the CPI for the quarter ending before the CPI Review Date; and

D is the CPI for the corresponding quarter ending 12 months before the CPI Review Date.

Current Market Rent means the rent determined by a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Australian Property Institute or equivalent body) as the annual rent that could reasonably be obtained for the Licensed Area in the open market by a willing but not anxious owner. The valuer's appointment shall also include a requirement that the valuer accept instructions to undertake the determination on the following basis:

- (a) promptly on appointment the valuer shall:
 - (i) notify the Licensor and each User of the valuer's acceptance of the appointment; and
 - (ii) seek written submissions from or on behalf of the Licensor and each User as to the matters which the valuer ought to consider in making the determination;
- (b) the valuer shall give consideration to the Licensor and each Users' submissions before making the determination provided that the submissions are made within the time reasonably required by the valuer;
- (c) the valuer shall:
 - (i) undertake the valuation on the basis that the Licensed Area is unoccupied and able to be used solely by the Licensor for providing services similar to those contemplated under this Agreement;
 - (ii) take into account:
 - (A) the Permitted Use;
 - (B) all amounts payable by the Licensor in respect of the Licensed Area which are not payable by or recoverable from a User (and, to the extent such amounts are not known, a reasonable estimate of those amounts), other than income tax, capital gains tax and any GST payable by the Licensor;
 - (C) the Licensor's (or its relevant related bodies corporate's) ownership, leasing, licensing or other occupation of the adjacent properties such that they can be used together with the Licenced Area, under relevant leases or licences, to conduct stevedoring activities at Berth 29; and
 - (D) any increase in value of the Licensed Area arising from any Licensor's Property or fittings or other property erected or installed by or on behalf of

the Licensor, and which the Licensee may not remove from the Licensed Area, but only to the extent funded (as between the Licensor and Licensee) by the Licensor; and

- (iii) not take into account any damage to or destruction of the Licensed Area nor any consequential cessation or suspension of fees payable by a User;
- (d) the valuer shall set out in reasonable detail the matters which the valuer has considered and full reasons for the determination;
- (e) the valuer's determination shall be made within 30 days following the valuer's acceptance of the appointment and the valuer shall send a copy of the determination to each of the Licensor and each User promptly on its making; and
- (f) if the valuer fails to make the determination within 30 days after accepting the appointment or becomes incapacitated or dies or resigns from the appointment then another valuer may be appointed to act.

Market Review Date means every fifth anniversary of the Base Date.

Market Review Methodology means, in relation to a Fee at a Market Review Date, the amount calculated by applying the following formula:

A = the greater of E and $\frac{B \times C}{D}$ where:

A is the new amount of the Fee as at the Market Review Date;

B is the amount of the Fee:

- (i) on the first Market Review Date – as at the later of the Base Date and the date of this Agreement; and
- (ii) on each subsequent Market Review Date – as calculated at the immediately preceding Market Review Date;

C is the Current Market Rent as at the Market Review Date; and

D is the Current Market Rent:

- (i) on the first Market Review Date – as at the Base Date; and
- (ii) on each subsequent Market Review Date – as calculated at the immediately preceding Market Review Date;

E is the amount determined by applying the CPI Review Methodology to B at the Market Review Date as if the Market Review Date was a CPI Review Date.

Schedule 3 – Initial Licensee Train Windows & Initial Licensee Staging Windows

[Drafting note: to be completed for each Licence]

Schedule 4 – Initial Licensee 2TEU Slots and 3 TEU Slots

[Drafting note: to be completed for each Licence]

Signing page

EXECUTED as a deed.

Executed by Flinders Ports Pty Limited
ACN 097 377 172 pursuant to section 127 of
the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by [Licensee]
ACN [insert] pursuant to section 127 of the
Corporations Act 2001

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Annexure A – EMP Requirements

EMP Requirements

The Environmental Management Plan must include the following principal components:

- detailed description of operational activities conducted and types of cargo handled at each site;
- identification and evaluation of all environmental risks associated with operational activities;
- clearly defined management measures to address each of the identified environmental risks;
- details of all applicable licences/permits held, including expiry dates and areas/activities covered (e.g. EPA licence, dangerous goods permit, trade waste permit);
- details of any applicable management system standard, including expiry dates and areas/activities covered;
- process and frequency for measuring the effectiveness of risk controls (e.g. audits, inspections, environmental monitoring);
- incident reporting/investigation and emergency response protocols;
- details of hazardous substances storages, location, bunding and spill kits/spill response stations;
- details of employee environmental management awareness and training (e.g. inductions, toolbox talks, spill clean-up); and
- contact details of personnel responsible for environmental management and emergency response.

For handling/storage of dry bulk cargo, the Environmental Management Plan must include or reference the following **dust and spillage** risk controls:

- (a) during any movement of Cargo and all clean-up operations, the drains must be completely covered by suitable materials to prevent Cargo entering the drainage system and the river;
- (b) all operations and storage must not result in Cargo entering the environment, in particular it must not be allowed to be blown by the wind, washed by rain or swept by the Licensee or the Licensee's Agents into the drainage system or river;
- (c) suitable 'Save-all' barrier devices must be correctly fitted during every loading and cleaning operation (where necessary due to the type of Cargo) so that Cargo does not fall into the space between the wharf and the ship. The 'Save-all' barrier devices shall be monitored and moved by the Licensee as tides dictate so that they are always effective in preventing spillages entering the river;
- (d) all complaints (in particular complaints about dust) arising from its operations are dealt with in a prompt and effective manner. Further, the Licensee will record and notify the Licensor of any complaints and together with what corrective actions have been undertaken by the Licensee;
- (e) all floor, hardstand, wharf, etc. areas onto which Cargo spillage occurs or dust accumulates, including during storage or load-out operations, will be promptly cleaned up by the Licensee using a Sweeper Vacuum or equivalent equipment that is satisfactory to the Licensor. Such a Sweeper Vacuum will be at the Licensed Area during all loading operations. Any material collected by the Sweeper Vacuum will be placed into a waste skip and returned to its origin (such as a mine site) or removed by a licensed waste contractor;
- (f) all surfaces of the Licensed Area on which Cargo spillage occurs or dust accumulates are to be regularly cleaned; and
- (g) no plant and equipment is to be washed or cleaned on the Licensed Area other than in designated washbays except with the prior written approval of the Licensor which may be given at the Licensor's absolute discretion. If such approval is given by the Licensor plant and equipment is to be washed or cleaned in a wash-down area designated by the Licensor for washing plant and equipment and this area will be suitably bunded and kept clean. Cargo or other material collected from the bunded area will be placed into a waste skip and returned to its origin (such as a mine site) or removed by a licensed waste contractor