

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by Pacific National Pty Ltd ACN
098 060 550

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1. Persons giving this Undertaking

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Pacific National Pty Ltd ACN 098 060 550 (**Pacific National**) pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (**Act**).

2. Background

The proposed acquisition

- 2.1 Aurizon is an ASX listed national rail freight company. Aurizon's operations are split into its above rail business, consisting of coal, iron ore, intermodal and diversified bulk freight haulage and its below rail business which operates the Central Queensland Coal Network.
- 2.2 In 2016 Aurizon announced a review of its freight performance with a particular focus on its diversified bulk freight and intermodal operations. Following this review Aurizon decided to divest its Acacia Ridge Terminal (**Terminal**).
- 2.3 The Terminal is the site at Acacia Ridge comprising the Brisbane Multi-User Terminal (**BMUT**) and the Queensland Terminal.
- 2.4 Aurizon and Pacific National are the only Rail Haulage Operators that currently use the Terminal. Other entities that gain access to the Terminal include Freight Forwarders, steel manufacturers and other beneficial freight owners.
- 2.5 While Aurizon owns the Terminal, it has subcontracted the provision of terminal services at the Terminal to Qube Logistics (Qld) Pty Ltd (**Qube**).
- 2.6 Pacific National is a rail haulage operator with bulk and intermodal haulage operations in a number of Australian States.
- 2.7 Pacific National has submitted a bid to acquire the Terminal from Aurizon (**Proposed Acquisition**). The Proposed Acquisition involves Pacific National acquiring the freehold title to the Terminal site and the assets and fixtures on the site as well as the contracts between Aurizon and third parties regarding access to or use of the Terminal.
- 2.8 Pacific National proposes to own and operate the Terminal as well as remaining a significant user of it.

The ACCC's review

- 2.9 The ACCC has undertaken a review of the Proposed Acquisition.
- 2.10 [To be inserted by the ACCC]

The ACCC's competition concerns

- 2.11 [To be inserted by the ACCC]

This Undertaking

- 2.12 The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition. This Undertaking aims to achieve this objective by placing obligations on Pacific National to:
- (a) not discriminate between Terminal Users in their use of Terminal Services, or engage in conduct for the purposes of preventing or hindering Terminal Users or prospective users gaining access to the Terminal for the purpose of using Terminal Services. To ensure that Pacific National does not discriminate in this way, Pacific National must comply with the Access Conditions. However, this obligation does

not extend to the supply of any services that are not Terminal Services which Pacific National may provide to Terminal Users;

- (b) ring fence confidential information of Terminal Users, and maintain controls to ensure that confidential information is not disclosed to unauthorised personnel, which includes Related Bodies Corporate of Pacific National;
- (c) comply with the Price Dispute Resolution Process, which includes the appointment of an ACCC approved Independent Price Expert, and the Non-Price Dispute Resolution Process;
- (d) provide for the effective oversight of Pacific National's compliance with this Undertaking, including an obligation which requires Pacific National to provide for a compliance audit by an ACCC Approved Independent Auditor at the request of a Terminal User at any time; and
- (e) provide for regular reviews of this Undertaking to ensure that the Undertaking continues to meet the objectives as described in this clause 2.

3. Commencement of this Undertaking

3.1 This Undertaking comes into effect when:

- (a) this Undertaking is executed by Pacific National;
- (b) this Undertaking so executed is accepted by the ACCC; and
- (c) the Proposed Acquisition is completed,

(and the date on which the last of these events occurs is the **Commencement Date**).

3.2 Pacific National must notify the ACCC in writing of the occurrence of the Commencement Date within one Business Day of that date.

3.3 In respect of BMUT, clauses 8 and 9.11(f)(iv) come into effect on the date that Qube ceases to supply subcontracted terminal services at the BMUT.

4. Cessation of this Undertaking

Withdrawal/Variation

4.1 In accordance with section 87B(2) of the Act, Pacific National may apply to the ACCC to withdraw or vary this Undertaking at any time. This Undertaking is taken to be withdrawn or varied on the date the ACCC consents in writing to the withdrawal or variation of this Undertaking in accordance with section 87B of the Act.

Revocation

4.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

4.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Completion

- 4.4 Clauses 1, 2, 3, 4, 13, 14, 15, 16, 18, 20, 21 and 22 survive completion of the obligations in clauses 5, 7, 8, 10, 11, 12 and Schedules 1, 2, 3, 4, 5 and 6.

5. Access Conditions

- 5.1 Pacific National must comply with the Access Conditions set out in Schedule 1.
- 5.2 From the Commencement Date, the Charges will be as set out in Schedule 1, clause 5(b).
- 5.3 In complying with this clause 5 and without limiting the generality of the obligations therein in relation to all Terminal Services, Pacific National shall not except to the extent required by a third party master train plan:
- (a) offer a longer period of free storage at the Terminal for freight transported by Pacific National or a Related Body Corporate of Pacific National than for Containers transported by other Rail Haulage Operators;
 - (b) offer to waive storage fees for freight transported by Pacific National or a Related Body Corporate of Pacific National to a greater extent than, or in different circumstances to, offers made to waive storage fees for Containers transported by other Rail Haulage Operators;
 - (c) offer more favourable storage terms at the Terminal for freight transported by Pacific National or a Related Body Corporate of Pacific National than for Containers transported by other Rail Haulage Operators;
 - (d) discriminate between Terminal Users of the same class when they are acquiring Terminal Services from Pacific National or a Related Body Corporate of Pacific National;
 - (e) discriminate in the allocation of train schedules or yard space at the Terminal such that freight transported by Pacific National or by a Related Body Corporate of Pacific National is provided with more favourable train schedules or laydown areas compared with freight transported by other Rail Haulage Operators.

6. Terminal Capacity

Capacity Allocation

- 6.1 Pacific National must, subject to all relevant legislation (including any Rail Regulation):
- (a) publish a capacity allocation protocol on Pacific National's website that provides for allocation of capacity at the Terminal;
 - (b) allocate capacity at the Terminal in accordance with the capacity allocation protocol.
- 6.2 The capacity allocation protocol provided for under clause 6.1 must not permit Pacific National to favour itself or another person (including any of its related bodies corporate) over any other person, except to the extent required having regard to issues of safety, requirements of a third party master train plan or other third party operational considerations
- 6.3 The capacity allocation protocol shall be reviewed annually by the Approved Independent Auditor.

Capacity Expansion

- 6.4 An Applicant or Terminal User may request Pacific National to undertake an assessment of Works necessary to provide additional capacity to meet the Applicant's or Terminal User's requirements for access at the Terminal.
- 6.5 Within 40 Business Days of receiving a request, Pacific National must prepare and provide to the Applicant or Terminal User an indicative expansion plan for the Works to accommodate the access requirements of the Applicant or Terminal User. The indicative expansion plan will include:
- (a) an outline of the proposed Works including any alternate proposals for the proposed Works;
 - (b) a program for the development of detailed assessment of the Works including:
 - (i) an estimate of the costs of the Works;
 - (ii) the cost of preparing the detailed assessment;
 - (iii) the process for consultation by Pacific National with the Applicant or Terminal User on the detailed assessment;
 - (iv) the basis upon which Pacific National proposes to allocate the costs incurred in providing the detailed assessment of such Works, which will have regard to the nature of the request for access, the work undertaken and the benefits to Pacific National and the Applicant or Terminal User of the Works; and
 - (v) the estimated costs of the detailed assessment.
- 6.6 Within 20 Business Days of receipt of the indicative expansion plan, the Applicant or Terminal User will advise Pacific National in writing if it wishes to proceed with a detailed assessment of the Works.
- 6.7 If the Applicant or Terminal User notifies Pacific National in accordance with clause 6.6, Pacific National must prepare a feasibility assessment which must include:
- (a) conceptual design for the additional capacity;
 - (b) conceptual costing for the additional capacity;
 - (c) conceptual timeframe for the implementation of the enhancements;
 - (d) consultation and approval requirements;
 - (e) physical and financial risks;
 - (f) identification of environmental issues;
 - (g) potential users of the additional capacity enhancements; and
 - (h) a cost estimate for the detailed design and costing of the proposed enhancements.
- 6.8 Pacific National may charge the Applicant or Terminal User a fee for the costs of undertaking the feasibility assessment, which must reflect the actual costs to Pacific National of undertaking the assessment.

- 6.9 Pacific National must have regard to the following when making the decision to undertake the Works and the manner in which such Works will be undertaken:
- (a) the additional capacity to be derived as a result of the Works and whether that additional capacity could be derived by alternative means;
 - (b) the cost of undertaking the Works;
 - (c) the estimated time to complete the Works;
 - (d) the impact on the Terminal, including the use of the Terminal by Terminal Users, of undertaking the Works;
 - (e) the impact on the Terminal, including the use of the Terminal by Terminal Users, of the Works once completed;
 - (f) the term of the Terminal Services Agreement to be entered into by the Applicant and/or remaining term of the Terminal Services Agreement entered into by the Terminal User;
 - (g) whether all required consents, licences, permits or other required approvals to carry out the Works can be or have been obtained and the Works can be completed in compliance with all applicable legislation.
- 6.10 Pacific National must consult with the Applicant or Terminal User in relation to:
- (a) the manner in which the Works are to be carried out; and
 - (b) the cost of the Works, the allocation of which will be as agreed between Pacific National and the Applicant or Terminal User.
- 6.11 Pacific National will not be required to undertake an expansion in any of the following circumstances:
- (a) the proposed expansion is in breach of any legislation;
 - (b) if, in order to undertake the expansion, it is necessary for Pacific National to make use of land other than that on which the Terminal is located; or
 - (c) Pacific National is, despite its reasonable endeavours, unable to obtain required consents, licences, permits or other approvals required by any legislation or other legal obligation in relation to the design, construction, commissioning, operation and maintenance of the proposed expansion.

7. Confidentiality and ring-fencing

Access to and use of ring-fenced Confidential Information

- 7.1 Pacific National must not require a Terminal User or Applicant to provide any Confidential Information to Pacific National unless provision of that Confidential Information is:
- (a) reasonably necessary for the proper operation of the Terminal;
 - (b) required by law or government authority; or
 - (c) consented to by the Terminal User or Applicant.
- 7.2 For the avoidance of doubt, Pacific National must not require a Terminal User or Applicant to provide any Confidential Information to Pacific National about:

- (a) pricing agreed by the Terminal User or Applicant with any customer;
- (b) terms and conditions agreed by the Terminal User or Applicant with any customer (including the terms related to the duration or renewal of any agreement with the Terminal User's or Applicant's customer; or
- (c) any customer specific forecast of freight volumes.

Notwithstanding the above, Pacific National may seek that Terminal Users or Applicants voluntarily provide information relating to forecasts of freight volumes to facilitate the efficient management of the Terminal.

- 7.3 Pacific National must keep confidential any Confidential Information provided to Pacific National by a Terminal User or Applicant and only allow Pacific National Personnel to access that Confidential Information.
- 7.4 Pacific National must only use Confidential Information provided by a Terminal User or Applicant for the purpose of:
- (a) providing Terminal Services to that Terminal User;
 - (b) resolving a Terminal Dispute;
 - (c) as otherwise expressly consented in writing by that Terminal User or Applicant.
- 7.5 Pacific National must procure that its Personnel only use Confidential Information for the purposes specified in clause 7.4 of this Undertaking.
- 7.6 From the Commencement Date, Pacific National must appoint a Compliance Officer who is responsible on a day to day basis for monitoring Pacific National's compliance with this clause 7.
- 7.7 Pacific National must implement an annual compliance education program for its Personnel who are directly involved in the day-to-day operation of the Terminal or Pacific National's intermodal business, which provides training and information on Pacific National's obligations under this clause 7, and must ensure that that compliance education program is given to Personnel who are directly involved in the day-to-day operation of the Terminal or Pacific National's intermodal business within 30 days of the commencement of their employment.
- 7.8 Pacific National must establish and maintain effective I.T. systems and security measures to safeguard the Confidential Information provided by Terminal Users from unauthorised access, use, copying or disclosure. These measures will include:
- (a) providing individual usernames, passwords and access keys to any Personnel who have access to the Confidential Information of Terminal Users; and
 - (b) recording a log of Personnel who access Confidential Information of Terminal Users stored in Pacific National's I.T. system and retaining that log for inspection by the Approved Independent Auditor if required.

Limited disclosure

- 7.9 Pacific National may disclose Confidential Information of a Terminal User or Applicant:
- (a) which only comprises of the Train Details, including publication on its website from time to time;
 - (b) to a Related Body Corporate of Pacific National only to the extent necessary to provide Terminal Services to the Terminal User or Applicant and to invoice the Terminal User or Applicant for Terminal Services;

- (c) to the Boards of Pacific National and its ultimate holding company as required in the performance of its normal reporting functions;
 - (d) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, or notifications required to brokers, insurers, claims assessors, provided that:
 - (i) the disclosure is first approved by the Compliance Officer who must have regard to the objectives of this Undertaking in making a decision on whether to grant such approval; and
 - (ii) the person to whom the disclosure is made is under a legal obligation to keep the information confidential;
 - (e) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a Terminal Dispute, provided that Pacific National does not disclose the Confidential Information of one Terminal User or Applicant to another Terminal User or Applicant without the first Terminal User's or Applicant's consent;
 - (f) to the ACCC or other government agency to the extent necessary to comply with any written request by that agency, provided that, where permissible, Pacific National first consults with the Terminal User that provided the Confidential Information;
 - (g) where required by law, provided that, where permissible, Pacific National first consults with the Terminal User that provided the Confidential Information; and
 - (h) to the extent the disclosure is reasonably required to protect the safety or security of persons or property or in connection with an emergency.
- 7.10 Pacific National must retain records of any Confidential Information of a Terminal User disclosed in accordance with clauses 7.9(b) to 7.9(h) for a period of not less than five years from the date the Confidential Information is disclosed.
- 7.11 For the avoidance of doubt, nothing in this clause 7 prevents Pacific National from disclosing in the ordinary course of business or financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify any Terminal User or Applicant.

Confidentiality Policy

- 7.12 Pacific National must establish and maintain a Confidentiality Policy in substantially the same form as set out in Schedule 2 to assist its Personnel who are involved in the operation of the Terminal or Pacific National's intermodal business to comply with Pacific National's obligations under this Undertaking.

Variation of Confidentiality Policy

- 7.13 Pacific National may vary its Confidentiality Policy from time to time with the written approval of the ACCC.

Pacific National employees

- 7.14 Unless the ACCC otherwise agrees in writing, Pacific National must procure that no Pacific National employee who has had access to Confidential Information of a Terminal User or Applicant within a prior 6 month period is employed or engaged within 6 months of ceasing to be an employee of Pacific National in a role within, or as a contractor to, a Related Body Corporate of Pacific National which is responsible for commercial dealings with customers acquiring services in connection with the Terminal.

Pacific National's compliance with confidentiality and ring-fencing measures

- 7.15 Pacific National must report any breaches of this clause 7 to the Approved Independent Auditor within 5 Business Days of becoming aware of the breach.

8. Pacific National's Self-Compliance Reports

Compliance Report

- 8.1 Pacific National must provide a report (**Compliance Report**) to the ACCC and the Approved Independent Auditor no later than:
- (a) 28 February each year, covering the immediately prior six month period from 1 July to 31 December; and
 - (b) 31 August each year, covering the immediately prior six month period from 1 January to 30 June.
- 8.2 Subject to clause 8.3, Pacific National must publish each Compliance Report on its website within seven days of providing the report to the ACCC and the Approved Independent Auditor.
- 8.3 Pacific National may redact from any Compliance Report that is published on its website, any information contained within the Compliance Report that is:
- (a) identified as confidential by any other party; and
 - (b) any information which is confidential to Pacific National, provided the ACCC has been notified of the proposed redaction and has provided written confirmation to Pacific National that it accepts the information is confidential.
- 8.4 Pacific National must publish on its website all Compliance Reports that are less than three years old.
- 8.5 The Compliance Report must contain:
- (a) a record of the performance by Pacific National against each KPI in Schedule 3 for each calendar quarter within the relevant 6 month period:
 - (i) for any services provided in that period by Pacific National to its Related Bodies Corporate;
 - (ii) for the same services provided in that period to all other Terminal Users; and

(That is, for example, the report provided by Pacific National on 28 February must contain separate figures for the quarterly periods of 1 July to 30 September and 1 October to 31 December); and
 - (b) a copy of the Terminal Layout Plan.
- 8.6 If this Undertaking commences or expires, is withdrawn or revoked during a 6 month period referred to in clause 8.1, the relevant Compliance Report need only cover the part of that 6 month period in respect of which this Undertaking was in operation.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 9.1 Pacific National must appoint and maintain an Approved Independent Auditor to audit and report upon Pacific National's compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 9.2 Pacific National must, within 5 Business Days after the Commencement Date, provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 4 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3 If clauses 9.21, 9.22 or 9.23 apply, Pacific National must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.8 applies.
- 9.4 The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.5 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Pacific National;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 9.6 After receiving notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Pacific National must within 5 Business Days:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 9.7 The ACCC may exercise its powers under clause 9.8 if:
- (a) Pacific National has not provided the ACCC with a Proposed Independent Auditor Notice in accordance with clauses 9.2; or
 - (b) a new Approved Independent Auditor has not been appointed within 17 Business Days after the former Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.21, 9.22 or 9.23.
- 9.8 If clause 9.7 applies, the ACCC may, at its absolute discretion:

- (a) direct Pacific National to appoint a person who the ACCC has deemed is an Approved Independent Auditor; or
- (b) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan.

Obligations and powers of the Approved Independent Auditor

9.9 Pacific National must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from Pacific National, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in Schedule 4 to this Undertaking with Pacific National for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) conduct any ad hoc compliance audit if requested to do so by a Terminal User in accordance with clause 11 of this Undertaking;
- (d) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 9.11;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking; and
 - (iii) any Audit Reports following completion of an ad hoc compliance audit under clause 11; and
- (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

9.10 Pacific National must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access the facilities, sites or operations of Pacific National and Pacific National's other businesses as required by the Approved Independent Auditor;
- (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
- (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

9.11 The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:

- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures since the previous Audit Report;
- (b) to the extent feasible, a thorough audit of Pacific National's compliance with this Undertaking;

- (c) an outline of areas of uncertainty or ambiguity in the Auditor's interpretation of any obligations contained in this Undertaking;
- (d) all of the reasons for the conclusions reached in the Audit Report;
- (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
- (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) Pacific National's processes or reporting systems in relation to compliance with this Undertaking;
 - (iv) the KPIs in Schedule 3 of this Undertaking that Pacific National is required to report against in accordance with clause 8;
 - (v) the requirements and obligations included in this Undertaking in order to achieve the objectives in clause 2; and
- (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor made under clause 9.11(f).

9.12 In conducting an audit and preparing a report in accordance with clause 9.11, the Approved Independent Auditor shall disregard any non-compliance with the Undertaking, including achievement of the KPIs in Schedule 3, where such non-compliance is a result of Pacific National complying with a Rail Regulation or undertaking Works pursuant to clause 6 of this Undertaking.

9.13 Subject to clause 9.14, if the Approved Independent Auditor receives from Pacific National written notice of a proposed price increase, in accordance with Schedule 5, clause 2.2(a)(ii), the Approved Independent Auditor may request the Independent Price Expert to prepare a report regarding whether the proposed price increase by Pacific National is reasonable and appropriate having regard to the principles listed in Schedule 5, clause 3.4.

9.14 If requested by the Approved Independent Auditor to prepare a report in accordance with clause 9.13, the Independent Price Expert shall, within 45 Business Days of the request being made or otherwise as determined by the ACCC, prepare a report and furnish it to the Approved Independent Auditor as though it were a determination of a price dispute in accordance with Schedule 5, clause 3.3, except that Schedule 5, clause 3.5 shall not apply.

9.15 The Approved Independent Auditor is to provide a copy of the report prepared by the Independent Price Expert and furnished to it in accordance with clause 9.14 to the ACCC and Pacific National with 5 Business Days of its receipt from the Independent Price Expert.

9.16 The Approved Independent Auditor may not make a request in accordance with clause 9.13 if there is a Terminal Services Agreement in force other than an Existing Terminal Services Agreement, and which provides for a Rail Haulage Operator other than Pacific National or its Related Bodies Corporate to acquire Terminal Services, as at the date on which Pacific National provides notice under Schedule 5, clause 2.2 of the proposed Charges applicable for the next Financial Year.

9.17 The Approved Independent Auditor is to provide an Audit Report to the ACCC and Pacific National at the following times:

- (a) within two months after the appointment of the Approved Independent Auditor, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved

Independent Auditor's proposed procedures in conducting the audit (**Establishment Audit**);

- (b) by [insert date] each year (with the first Audit Report due on [insert date] 2018) until the withdrawal or revocation of this Undertaking pursuant to clause 4;
- (c) on completion of any *ad hoc* audit requested under clause 11.5; and
- (d) a final report due three months after the withdrawal or revocation of this Undertaking pursuant to clause 4.

9.18 Unless otherwise agreed with the ACCC in writing, Pacific National must implement any recommendations of the Approved Independent Auditor made in the Audit Report pursuant to clause 9.11(f)(i) to (iv), and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.

9.19 Pacific National must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

Pacific National's obligations in relation to the Approved Independent Auditor

9.20 Without limiting its obligations in this Undertaking, Pacific National must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice necessary for the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing Pacific National personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of Pacific National and Pacific National's other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents requested by the Approved Independent Auditor that he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC (including information explaining any material differences between clause 8.5(a)(i) and 8.5(a)(ii));

- (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
- (v) not appoint the Approved Independent Auditor, or have any agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 9.21 Pacific National must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor before the ACCC has provided the written notice pursuant to clause 4.1, 4.2 or 4.3.
- 9.22 The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor:
- (a) if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading;
 - (b) 5 years from the Commencement Date, and after than not less than 5 years after the appointment of each Approved Independent Auditor, at the ACCC's discretion.
- 9.23 The ACCC may approve any proposal by, or alternatively may direct, Pacific National to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.
- 9.24 If clause 9.21, 9.22, 9.23 applies, Pacific National must provide the ACCC with a Proposed Independent Auditor Notice within 5 Business Days after the relevant event occurs, otherwise clause 9.8 applies.

10. Price Dispute Resolution

Price Dispute Resolution Process

- 10.1 Pacific National must comply with the Price Dispute Resolution Process at Schedule 5 in relation to the setting of Charges for Terminal Services and to determine disputes by a Dispute Applicant in relation to Charges for Terminal Services.
- 10.2 Pacific National may from time to time amend the Price Dispute Resolution Process, provided that Pacific National has obtained the prior written consent of the ACCC.

Appointment of Independent Price Expert

- 10.3 Pacific National must provide to the ACCC by 31 March each Financial Year a written notice setting out the identity of the Proposed Independent Price Expert for the forthcoming Financial Year and a copy of the proposed terms of appointment for that Proposed Independent Price Expert (**Proposed Independent Price Expert Notice**).
- 10.4 The Proposed Independent Price Expert must have the qualifications and experience necessary to carry out the functions of the Independent Price Expert independently of Pacific National or a Terminal User and must not be:
- (a) an employee or officer of Pacific National or a Terminal User or a Related Body Corporate, whether current or in the past 3 years;

- (b) a professional adviser of Pacific National or a Terminal User or a Related Body Corporate, whether current or in the past 3 years;
 - (c) a person who, in the opinion of the ACCC, holds a material interest in Pacific National or a Terminal User or a Related Body Corporate;
 - (d) a person who has a contractual relationship with Pacific National or a Terminal User or a Related Bodies Corporate (other than the terms of appointment of the Independent Price Expert);
 - (e) a Terminal User, supplier or material customer of Pacific National or its Related Bodies Corporate; or
 - (f) an employee or contractor of a firm or company referred to in clauses 10.4(c) to 10.4(e).
- 10.5 Pacific National must provide to the ACCC such information and documents as the ACCC requires to assess the appointment of the Proposed Independent Price Expert.
- 10.6 The ACCC may, in its absolute discretion, consult with any other person in relation to the appointment of the Proposed Independent Price Expert as the Independent Price Expert.
- 10.7 If, after receipt by the ACCC of the Proposed Independent Price Expert Notice, the ACCC informs Pacific National in writing that it:
- (a) does not object to the Proposed Independent Price Expert, Pacific National will appoint the Proposed Independent Price Expert as the Independent Price Expert as soon as practicable on terms approved by the ACCC and consistent with the performance by the Independent Price Expert of his or her functions under the Price Dispute Resolution Process; or
 - (b) does object to the Proposed Independent Price Expert, Pacific National will appoint a person identified by the ACCC at its absolute discretion as the Independent Price Expert on terms approved by the ACCC and consistent with the performance by the Independent Price Expert of his or her functions under the Price Dispute Resolution Process.
- 10.8 Within 2 Business Days of the appointment of the Independent Price Expert under clause 10.7, Pacific National must:
- (a) forward to the ACCC a copy of the executed terms of appointment; and
 - (b) publish the name and contact details of the Independent Price Expert on Pacific National's website.

Conditions relating to Independent Price Expert's functions

- 10.9 Pacific National must:
- (a) procure that the terms of appointment of the Independent Price Expert include obligations on the Independent Price Expert to:
 - (i) continue to satisfy the independence criteria in clause 10.4 for the period of his or her appointment;
 - (ii) provide any information or documents requested by the ACCC about Pacific National's compliance with this Price Dispute Resolution Process directly to the ACCC;
 - (iii) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Independent Price Expert or in

relation to any matter that may arise in connection with this Price Dispute Resolution Process.

- (b) comply with and enforce the terms of appointment for the Independent Price Expert;
- (c) maintain and fund the Independent Price Expert to carry out his or her functions;
- (d) indemnify the Independent Price Expert for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Independent Price Expert of his or her functions as the Independent Price Expert except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Independent Price Expert;
- (e) not interfere with, or otherwise hinder, the Independent Price Expert's ability to carry out his or her functions as the Independent Price Expert;
- (f) provide and pay for any external expertise, assistance or advice necessary for the Independent Price Expert to perform his or her functions as the Independent Price Expert;
- (g) provide to the Independent Price Expert any information or documents requested by the Independent Price Expert that he or she considers necessary for carrying his or her functions as the Independent Price Expert or for reporting to or otherwise advising the ACCC; and
- (h) ensure that the Independent Price Expert will provide information or documents requested by the ACCC directly to the ACCC.

11. Non-Price Dispute Resolution

Non-Price Dispute Resolution Process

- 11.1 Pacific National must comply with the Non-Price Dispute Resolution Process at Schedule 6 to determine disputes by a Dispute Applicant in relation to capacity and the granting, refusal to grant, conditions or administration of a Terminal Services Agreement, other than in relation to the amount of any Charges.
- 11.2 For the avoidance of doubt, Pacific National must permit a Dispute Applicant to raise a dispute under the Non-Price Dispute Resolution Process in relation to Pacific National's compliance with:
 - (a) Clause 5 - Access conditions affecting the Dispute Applicant;
 - (b) Clause 6 – Terminal capacity;
 - (c) Clause 7 - Access to and use of that Dispute Applicant's ring-fenced Confidential Information (if any).
- 11.3 Pacific National may from time to time amend the Non-Price Dispute Resolution Process, provided that Pacific National has obtained the prior written consent of the ACCC.
- 11.4 For the avoidance of doubt, a Dispute Applicant may raise a complaint regarding Pacific National's compliance with this Undertaking directly with the ACCC at any time.

Ad hoc independent audit

- 11.5 In addition to the Non-Price Dispute Resolution Process, a Terminal User or Dispute Applicant who has a complaint about Pacific National's compliance with this Undertaking (other than whether an increase to Charges is reasonable and appropriate pursuant to Schedule 5) may at any time, by providing notice in writing to Pacific National and the ACCC, request the

Approved Independent Auditor to undertake a compliance audit in accordance with clause 9 in relation to that specific complaint and prepare an Audit Report in relation to that specific complaint (**Ad Hoc Audit Notice**).

- 11.6 To be valid, an Ad Hoc Audit Notice must contain:
- (a) a description of the complaint and reasons why the Terminal User suspects that Pacific National may have breached its obligations under this Undertaking; and
 - (b) an unconditional undertaking by the Terminal User to pay the costs of the Approved Independent Auditor in connection with the audit requested in the Ad Hoc Audit Notice, within 14 days of:
 - (i) withdrawal of an Ad Hoc Audit Notice by the Terminal User; or
 - (ii) completion of the audit, if the Approved Independent Auditor does not find or report that Pacific National has breached its obligations under this Undertaking in relation to the matters set out in the Ad Hoc Audit Notice giving rise to the audit.
- 11.7 A Terminal User may at any time withdraw an Ad Hoc Audit Notice by notifying Pacific National and the ACCC in writing, in which case the requirement for the Approved Independent Auditor to prepare an Audit Report under clauses 9.11 and 9.17 ceases.

12. Review of the terms of this Undertaking

- 12.1 The ACCC may, after the second anniversary of the Commencement Date and thereafter not more than once in any five year period, review the terms of this Undertaking to consider whether any changes to the terms of this Undertaking are necessary given the objectives of this Undertaking as described in clause 2.
- 12.2 On deciding to conduct a review pursuant to clause 12.1, the ACCC may invite submissions from Pacific National and other parties with an interest in the terms and conditions of access to the Terminal on whether any changes to the terms of this Undertaking are necessary in order to ensure that this Undertaking continues to achieve the objectives as described in clause 2.
- 12.3 The factors to which the ACCC may have regard in a making decision to review pursuant to clause 12.1 or in conducting the review include but are not limited to:
- (a) the Audit Reports prepared by the Approved Independent Auditor in accordance with clause 9.11;
 - (b) any ad hoc audit reports prepared in accordance with clause 11.5;
 - (c) disputes raised under the Price Dispute Resolution Process and Non-Price Dispute Resolution Process;
 - (d) any change in circumstances since the Commencement Date or the last review conducted pursuant to clause 12.1; and
 - (e) any submissions from parties with an interest in the terms and conditions of access to the Terminal received by the ACCC.

Amendment Notice

- 12.4 Following a review in accordance with clauses 12.1, 12.2 and 12.3, if the ACCC is satisfied that a variation is necessary to ensure that the Undertaking continues to achieve the objectives as described in clause 2, the ACCC may give Pacific National an amendment notice (**Amendment Notice**) which sets out any changes that the ACCC considers should be made

to the Undertaking and an explanation for those changes. The ACCC will, subject to removing any Confidential Information of Pacific National or any other person:

- (a) publish the Amendment Notice on the ACCC's website; and
- (b) publicly consult on the Amendment Notice.

Proposed Variations to this Undertaking following ACCC review

12.5 Following any consultation on the Amendment Notice, if the ACCC decides that changes to this Undertaking are necessary in order to ensure that the Undertaking continues to achieve the objectives as described in clause 2, the ACCC will provide Pacific National with a notice setting out the terms of a variation to the Undertaking which is acceptable to the ACCC (**Variation Notice**).

12.6 Pacific National must:

- (a) consult in good faith with the ACCC with a view to proposing variations to this Undertaking which will address the matters stated in the Variation Notice; and
- (b) notify the ACCC within 90 days of receiving a Variation Notice if Pacific National agrees to seek a variation to the Undertaking either:
 - (i) in the form set out in the Variation Notice; or
 - (ii) in a form agreed between the ACCC and Pacific National following the consultations undertaken in accordance with clause 12.6(a).

12.7 If Pacific National notifies the ACCC that it agrees to seek a variation to the Undertaking in accordance with clause 12.6(b), at that same time, Pacific National must provide a proposed variation to the Undertaking to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act.

Referral to expert determination

12.8 If Pacific National does not agree to seek a variation to this Undertaking in accordance with clause 12.6(b) (**Variation Dispute**), Pacific National must provide written notice to the ACCC of the Variation Dispute, including:

- (a) written reasons explaining why Pacific National does not propose to seek a variation to the Undertaking;
- (b) the identity of a proposed independent expert who will be appointed to conduct the expert determination (**Proposed Independent Expert**); and
- (c) details of the Proposed Independent Expert's relevant qualifications and experience necessary to carry out the expert determination independently of Pacific National or a Terminal User.

(Variation Dispute Notice).

12.9 The Proposed Independent Expert must not be:

- (a) an employee or officer of Pacific National or a Terminal User or a Related Body Corporate, whether current or in the past 3 years;
- (b) a professional adviser of Pacific National or a Terminal User or a Related Body Corporate, whether current or in the past 3 years;
- (c) a person who has a contractual relationship with Pacific National or a Terminal User or a Related Body Corporate; or

- (d) an employee or contractor of a firm or company referred to in clause 12.9(c).
- 12.10 Within 10 Business Days of Pacific National providing a Variation Dispute Notice to the ACCC, the ACCC will provide written notice to Pacific National informing Pacific National of its decision to agree or not agree to the Proposed Independent Expert identified by Pacific National pursuant to clause 12.8(b).
- 12.11 If Pacific National and the ACCC cannot agree on an independent expert to be appointed to determine the Variation Dispute within 20 Business Days of Pacific National providing a Variation Dispute Notice to the ACCC, then the President of the Queensland Bar Association will determine the identity of the independent expert and the Variation Dispute will be referred to that independent expert for determination.
- 12.12 The cost of the independent expert will be borne by Pacific National unless otherwise agreed.
- 12.13 Pacific National will use best endeavours to ensure that the independent expert is provided with:
- (a) all relevant information available to Pacific National in relation to the Variation Dispute; and
 - (b) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Variation Dispute Notice within 60 Business Days of referral to that expert.
- 12.14 The independent expert will decide whether the ACCC's proposed variation to the Undertaking as set out in the Variation Notice is necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking.
- 12.15 If the independent expert decides that the ACCC's proposed variation to the Undertaking as set out in the Variation Notice (with such minor modifications as the expert considers necessary) is necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking, Pacific National must proffer a proposed variation in accordance with the ACCC's proposed variation to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act within 5 Business Days of the independent expert's decision.
- 12.16 If the independent expert decides that a variation is necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking but this variation differs materially from the ACCC's proposed variation, Pacific National must proffer a proposed variation in accordance with the expert's proposed variation to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act within 5 Business Days of the independent expert's decision. The ACCC may in its complete discretion decide whether or not to consent to the variation proffered by Pacific National.
- 12.17 If the independent expert decides that a variation is not necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking, the ACCC's Variation Notice lapses.
- 12.18 The independent expert's decision will be final and binding on Pacific National and Pacific National must take all steps to ensure that the independent expert's decision is fulfilled or otherwise given effect to.
- 12.19 Nothing in this clause 12 prevents the ACCC from investigating a potential breach of this Undertaking or from applying to the Court for orders pursuant to section 87B of the Act in respect of a breach of this Undertaking at any time.

13. Information

- 13.1 The ACCC may direct Pacific National in respect of its compliance with this Undertaking to, and Pacific National must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Pacific National's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 13.2 Any direction made by the ACCC under clause 13.1 will be notified to Pacific National, in accordance with clause 20.2.
- 13.3 In respect of Pacific National's compliance with this Undertaking or an Approved Independent Auditor's compliance with its Approved Terms of Appointment, the ACCC may request any Approved Independent Auditor to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Approved Independent Auditor's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 13.4 Pacific National will use its best endeavours to ensure that an Approved Independent Auditor complies with any request from the ACCC in accordance with clause 13.3.
- 13.5 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 13 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 13.6 The ACCC may in its discretion to be exercised in good faith:
- (a) advise any Approved Independent Auditor of any request made by it under this clause 13; and/or
 - (b) provide copies to any Approved Independent Auditor of any information furnished, documents and material produced or information given to it under this clause 13.
- 13.7 Nothing in this clause 13 requires the provision of information or documents in respect of which Pacific National has a claim of legal professional or other privilege.

14. Disclosure of this Undertaking

- 14.1 Within 5 Business Days of the Commencement Date, Pacific National will publish a copy of this Undertaking on its website.
- 14.2 Pacific National acknowledges that the ACCC may:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.

15. Obligation to procure, direction to Pacific National personnel and assistance from Related Bodies Corporate

- 15.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Pacific National to take or refrain from taking some action, Pacific National must procure that Related Body Corporate to take or refrain from taking that action.
- 15.2 As soon as practicable after the Commencement Date, Pacific National must direct its personnel, including directors, contractors, managers, officers, employees and agents who are involved in the operation of the Terminal or Pacific National's intermodal business not to do anything inconsistent with Pacific National's obligations under this Undertaking.
- 15.3 Pacific National must ensure that any Related Body Corporate provides all necessary assistance and information so that Pacific National is in a position to comply with any:
- (a) direction from the ACCC under clause 13.1; or
 - (b) request from the Approved Independent Auditor in accordance with clause 9;
- for the purposes of the ACCC or the Approved Independent Auditor (as applicable) investigating Pacific National's compliance with clause 7.

16. No impact on existing agreements

- 16.1 Subject to clause 16.2, nothing in this Undertaking shall prevent the performance of the Existing Terminal Services Agreements, entered into by Pacific National and Aurizon under which Pacific National grants Aurizon access to the Terminal. The rights and obligations of the parties to those agreements shall be governed wholly by their terms and not any provision of this Undertaking.
- 16.2 Clause 16.1 does not apply to an Existing Terminal Services Agreement if any of Aurizon's (or its Related Bodies Corporate) rights and obligations under that agreement are transferred, assigned or novated to, or otherwise are held by, Pacific National or its Related Bodies Corporate.

17. Change of control

- 17.1 In the event that a Change of Control is reasonably expected to occur before the withdrawal of this Undertaking in accordance with clause 4.1, Pacific National must:
- (a) notify the ACCC of this expectation as soon as is practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Pacific National pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Pacific National in writing that a section 87B undertaking under this clause is not required.

18. No derogation

- 18.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Pacific National of any term of this Undertaking.
- 18.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Pacific National does not fully

implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

19. Costs

19.1 Pacific National must pay all of its own costs incurred in relation to this Undertaking.

20. Notices

Giving notice

20.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Mergers and Authorisation Review Division

With a copy sent to:

Email address mergersru@acc.gov.au
Attention: Director, Remedies Unit
Coordination and Strategy Branch
Mergers and Authorisation Review Division

20.2 Any notice or communication to Pacific National pursuant to this Undertaking must be sent to:

Name: Pacific National Pty Ltd
Address: Level 16, 15 Blue Street
NORTH SYDNEY NSW 2060
Email address: pnlegal@pacificnational.com.au
Attention: General Counsel and Company Secretary

When a notice is received

20.3 If sent by post, notices are taken to be received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia).

20.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

20.5 Pacific National must notify the other party of a change to its contact details within 3 Business Days.

20.6 Any notice or communication will be sent to the most recently advised contact details and subject to clause 20.3 and 20.4, will be taken to be received.

21. Definitions

ACCC means the Australian Competition and Consumer Commission.

Access Conditions are the conditions contained in Schedule 1 of this Undertaking.

Act means the *Competition and Consumer Act 2010* (Cth).

Ad Hoc Audit Notice has the meaning given in clause 11.5 of this Undertaking.

Amendment Notice has the meaning given in clause 12.4 of this Undertaking.

Applicant means any person or any other Terminal User seeking Terminal Services.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Independent Auditor means the person appointed under clause 9 of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Auditor, as approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given in clause 9.11 of this Undertaking.

BMUT means the Brisbane Multi-User Terminal, being the standard gauge terminal located at Acacia Ridge.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in Perth.

Central Queensland Coal Network means the rail infrastructure network comprised of the Newlands, Goonyella, Blackwater, Moura and Goonyella to Abbot Point systems in respect of which Aurizon Network provides the services declared pursuant to s 250(1)(a) of the *Queensland Competition Authority Act 1997* (Qld).

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Pacific National to any other person or entity;
- (b) the assignment or transfer of the legal or beneficial ownership of some or all of the Terminal (or the business activities associated with operating that Terminal) to any other person or entity, or the sale or transfer of assets,

in each case in circumstances where, as a result of the relevant assignment or other transfer, Pacific National will or may be unable to comply with this Undertaking in whole or in part.

Charges means the fees or charges payable by a Terminal User to Pacific National for the Terminal Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Terminal Services (or any material part thereof).

Commencement Date has the meaning given in clause 3.1 of this Undertaking.

Compliance Officer means the person referred to in clause 7.6 of this Undertaking.

Compliance Report has the meaning given in clause 8.1 of this Undertaking.

Confidential Information means information provided by a Terminal User in relation to the business of that Terminal User which is:

- (a) by its nature confidential, including but not limited to information about that Terminal User's freight manifests, freight descriptions, freight markings, freight mix/volumes, freight origin and destinations, customer details, terminal expenditure/cost information; or
- (b) designated to be confidential by the Terminal User who supplied it; or
- (c) known, or ought reasonably to be known, by Pacific National to be confidential or commercially valuable,

but excludes information that:

- (d) is comprised solely of the name, address, and contact details of a Terminal User for the sole purpose of allowing Pacific National to comply with requirements of the Access Conditions, where those details are to be published on Pacific National's website;
- (e) was in the public domain at the time when it was supplied;
- (f) subsequently becomes available other than through a breach of confidence or breach of this Undertaking;
- (g) was in the lawful possession of Pacific National prior to being provided by the Terminal User; or
- (h) ceases to be confidential in nature by any other lawful means.

Confidentiality Policy has the meaning given in clause 7.12 of this Undertaking.

Container means a standardised shipping container (typically 20 or 40 feet in length) designed and built for the transportation of non-bulk freight.

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

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal, and includes both Terminal Users and Applicants.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given in clause 9.17 of this Undertaking.

Existing Terminal Services Agreements means the:

- (a) Terminal Services Agreement dated 28 July 2017 and entered into by Aurizon Intermodal Pty Ltd and HV Rail Pty Ltd relating to the BMUT; and
- (b) Terminal Services Agreement dated 28 July 2017 and entered into by Aurizon Intermodal Pty Ltd and HV Rail Pty Ltd relating to the Queensland Terminal.

Financial Year means a financial year ending 30 June.

Freight Forwarder means an entity that specialises in arranging storage and shipping of goods on behalf of its customers.

Independent Price Expert means the person appointed under clause 10 of this Undertaking.

KPI means the key performance indicators set out in Schedule 3 of this Undertaking.

Non-Price Dispute Resolution Process means the non-price dispute resolution process established by Pacific National and set out in Schedule 6 of this Undertaking and as amended from time to time in accordance with clause 11.3 of this Undertaking.

Personnel means, in relation to a party, that party's officers (including directors), employees, agents and contractors.

Price Dispute Resolution Process means the price dispute resolution process established by Pacific National and set out in Schedule 5 of this Undertaking, and as amended from time to time in accordance with clause 10.2 of this Undertaking.

Proposed Acquisition has the meaning given in clause 2.7 of this Undertaking.

Proposed Independent Auditor Notice has the meaning given in clause 9.2 of this Undertaking.

Proposed Independent Expert has the meaning given in clause 12.8(b) of this Undertaking.

Proposed Independent Price Expert means the prospective independent price expert identified by Pacific National who will, subject to approval by the ACCC, determine all Price Disputes for all Dispute Applicants for the forthcoming Financial Year.

Proposed Independent Price Expert Notice has the meaning given in clause 10.3 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Qube means Qube Logistics (Qld) Pty Ltd (ACN 009 677 383), the subcontracted terminal services provider at BMUT at the commencement of this Undertaking.

Queensland Terminal means the narrow gauge terminal located at Acacia Ridge.

Rail Haulage Operator means an entity that operates trains for the purposes of transporting goods, including containerised freight by rail.

Rail Regulation means all Acts of Parliament, subordinate legislation or statutory instruments which apply to the owner or operator of a rail terminal such as the Terminal (including in relation to safety) and all applicable rail network management and operations protocols and procedures that apply in respect of any rail networks that are relevant to the Terminal.

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

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Rolling Stock means locomotives, carriages, wagons, railcars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses rail track.

Terminal means the Acacia Ridge Intermodal Terminal, comprised of the BMUT and the Queensland Terminal.

Terminal Dispute means a bona fide commercial complaint or dispute raised in accordance with the Non-Price Dispute Resolution Process or Price Dispute Resolution Process published by Pacific National from time to time.

Terminal Layout Plan means a plan of the Terminal showing the areas of the Terminal and their designated use,

Terminal Services means the right to use the Terminal or part of the Terminal and any associated rights, benefits and privileges necessary or desirable to permit a Terminal User to receive all or part of the following services offered by Pacific National or a Related Body Corporate of Pacific National at the Terminal:

- (a) loading or unloading of containers or freight onto or from a Train;
- (b) loading or unloading of containers or freight onto or from a vehicle owned/operated by Freight Forwarders;
- (c) storage of any containers or freight at the Terminal;
- (d) movement of any containers or freight within the boundaries of the Terminal;
- (e) locomotive provisioning;
- (f) train scheduling, marshalling or shunting;
- (g) any other services associated with, ancillary to, or provided in connection with the services specified in (a) to (f) above.

Terminal Services Agreement means an agreement between Pacific National and a Terminal User under which the Terminal User is supplied the Terminal Services by Pacific National or a Related Body Corporate of Pacific National.

Terminal User means a Rail Haulage Operator using the Terminal.

Train means Rolling Stock or a collection of Rolling Stock which is coupled together to operate on a railway line as a single unit.

Train Details means train description with identification details, estimated time of arrival at or departure from the Terminal, receiving, cut-off and delivery dates for trains arriving at or departing from the Terminal.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Variation Dispute has the meaning given in clause 12.8 of this Undertaking.

Variation Dispute Notice has the meaning given in clause 12.8 of this Undertaking.

Variation Notice has the meaning given in clause 12.5 of this Undertaking.

Works means any construction of improvements to the Terminal.

22. Interpretation

22.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;

- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes a company over which that company is in a position to exercise control within the meaning of section 50AA of the Corporations Act;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with clause 22.1(m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;

- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Pacific National will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

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Executed as an Undertaking

Executed by Pacific National Pty Ltd ACN 098 060 550 pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director

Signature of a director

Name of director

Name of a director

Date

Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* on:

Date

And signed on behalf of the Commission:

Chairman

Date

Schedule 1 Access Conditions

1. Definitions

In this Schedule 1, terms are defined as set out in clause 21 of this Undertaking, unless specified as follows:

Access Application Form means the application form Pacific National requires Applicants to complete in order to apply for Terminal Services.

Dangerous Goods has the meaning given in the Australian Dangerous Goods Code prepared by the National Transport Commission from time to time.

Minimum Service Level means the minimum annual number of train services of a Terminal User requiring the use of the Terminal as specified under a Terminal Services Agreement.

Non Standard TEU means each and every TEU which is not a Standard TEU.

Permitted Storage Period for containers means:

- (a) for containers with Dangerous Goods, the day of arrival of the Train at the Terminal;
- (b) otherwise:
 - (i) for out-bound containers, the period 24 hours before the cut-off time (excluding Sundays and public holidays); and
 - (ii) for in-bound containers, the day of arrival of the Train at the Terminal plus 24 hours from 11:59pm on the day of arrival (excluding Sundays and public holidays) (for Trains arriving between 9pm and midnights, the day of arrival is deemed to be the day following the day on which the Train arrives).

Standard TEU means a TEU which can be top lifted and stacked atop other TEUs but does not include a TEU loaded with Dangerous Goods, a TEU which requires shore power, bottom lift TEUs or TEUs which cannot be stacked.

2. No discrimination or hindering access

- (a) Subject to Schedule 1, clause 2(b):
 - (i) Pacific National must offer Terminal Services to an Applicant on terms no less favourable than terms for Terminal Services offered to another Terminal User.
 - (ii) Pacific National must not discriminate between different Applicants and Terminal Users seeking Terminal Services in offering and providing Terminal Services.
 - (iii) Pacific National must not engage in conduct for the purpose of preventing or hindering a Terminal User conducting its business using Terminal Services, including the supply of any services by the Terminal User to third parties.
 - (iv) Pacific National must not discriminate against any Freight Forwarder or other customer that uses the services of a Terminal User using Terminal Services that is not Pacific National or a Related Body Corporate of Pacific National.

- (v) Pacific National must not engage in conduct for the purpose of preventing or hindering a Freight Forwarder that uses the services of a Terminal User using Terminal Services that is not Pacific National or a Related Body Corporate of Pacific National from using any services of that Terminal User.
- (b) Notwithstanding the obligations imposed on Pacific National in Schedule 1, Pacific National is not required to do any act which would involve it failing to comply with a third party master train plan.

3. Eligibility requirements

Pacific National must ensure that every Applicant can demonstrate, to Pacific National's reasonable satisfaction, that the Applicant:

- (a) is solvent;
- (b) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual potential liabilities under an agreement for the supply of Terminal Services, including the ability to pay any charges when they fall due;
- (c) is able to provide credit support; and
- (d) has in place appropriate occupational health and safety standards and rail safety standards.

4. Pacific National's obligations

- (a) Pacific National must publish on its website:
 - (i) the Access Application Form;
 - (ii) current Charges for each Terminal Service;
 - (iii) the terms and conditions on which Terminal Services are offered (i.e. pro-forma Terminal Services Agreement);
 - (iv) the process for assessing and approving an application by an Applicant and executing an Terminal Services Agreement, including timeframes, the price review mechanism and a dispute resolution mechanism;
 - (v) full details of the Price Dispute Resolution Process and Non-Price Dispute Resolution Process; and
 - (vi) entity names and ABNs of each Terminal User.
- (b) Pacific National must negotiate in good faith for the provision of Terminal Services.
- (c) Pacific National must provide unsuccessful Applicants with a statement of reasons for the decision.
- (d) Pacific National must supply Terminal Services at prices no greater than the then current Charges payable for the Terminal Services.

5. Charges

- (a) At least 60 Business Days before the end of each financial year ending 30 June, Pacific National must:

- (i) publish on its website the proposed Charges applicable for the next financial year;
- (ii) provide written notice of the proposed Charges applicable for the next financial year to each Terminal User, the Approved Independent Auditor and any other person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal who has informed Pacific National in writing that they wish to be notified of changes to Charges; and
- (iii) include on its website and in the notice referred to in this paragraph, a requirement that any person who disputes the proposed Charges, may do so in accordance with the Price Dispute Resolution Process and must notify Pacific National in writing of the dispute at least 45 Business Days before the end of the financial year.

(b) From the Commencement Date until 30 June 2019, the following Charges will apply:

Service	Charge
Train loading/unloading, necessary shunting for loading/unloading of trains, container storage (during the permitted storage period)	<ul style="list-style-type: none"> • For services provided at the BMUT: a minimum fixed fee of \$28,260 per month (based on one train service per week); • For services provided at the Queensland Terminal: a minimum fixed fee of \$12,344 per month (based on one train service per week); • A fee of \$32.09 per TEU (Standard plus Non Standard) for the aggregate TEU which is loaded and unloaded at the Terminal per annum, up to the Minimum Service Level and a fee of \$41.11 per TEU (Standard and Non Standard) for each TEU in excess of the Minimum Service Level per annum; and • A surcharge fee of \$12.00 per Non Standard TEU for the aggregate Non Standard TEU which is loaded and unloaded at the Terminal in each month.
Storage of containers outside of Permitted Storage Period	\$105.68 per TEU for every period of storage of 24 hours or part thereof, for storage outside the permitted storage period.
Access to Marshalling Yard	<ul style="list-style-type: none"> • BMUT: a minimum monthly licence fee of \$3,089 (based on one train service per week); or • Queensland Terminal: a minimum monthly licence fee of \$1,350 (based on one train service per week); and • Additional charge for extended use of the Marshalling Yard is \$6.92 per 100m per hour.

Locomotive Provisioning	<ul style="list-style-type: none"> • A fee of \$207.89 for each locomotive which receives some or all of the provisioning services; • The cost of diesel fuel supplied for locomotive refuelling plus 5%; and • The cost of other supplies plus 5%.
Sidings Access	Fee of \$69.31 for each and every movement of a Train.
Transshipping	<ul style="list-style-type: none"> • A fee of \$32.09 per TEU (Standard plus Non Standard) for the aggregate TEU which is loaded and unloaded at the Terminal per annum, up to the Minimum Service Level and a fee of \$41.11 per TEU (Standard and Non Standard) for each TEU in excess of the Minimum Service Level per annum; and • A surcharge fee of \$12.00 per Non Standard TEU for the aggregate Non Standard TEU which is loaded and unloaded at the Terminal in each month.
Container movements outside of the designated heavy lift area	A fee of \$32.09 per TEU applies to each movement as well as a surcharge of \$12.00 if the container being moved is not a standard container.

6. Terminal management

- (a) It is acknowledged that separate to the Undertaking, Pacific National is required to also comply with Rail Regulations.
- (b) In providing the Terminal Services, including managing or scheduling trains into and out of the Terminal, Pacific National must:
- (i) use all reasonable endeavours to maximise the use of the rail network through the optimum use of the Terminal;
 - (ii) use its best endeavours to accommodate Trains that present at the Terminal before or after the designated arrival time, but not disrupt Trains which arrive and depart the Terminal in accordance with their specified arrival and departure times.

7. Existing access rights

- (a) Subject to clause 7(b) of this Schedule, nothing in the Access Conditions requires Pacific National or Aurizon to vary a term or provision of the Existing Terminal Services Agreements.
- (b) Clause 7(a) of this Schedule does not apply to an Existing Terminal Services Agreement where any of Aurizon's (or its Related Bodies Corporate's) rights and

obligations under that agreement are transferred, assigned or novated to, or otherwise are held by, Pacific National or its Related Bodies Corporate.

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Schedule 2 Pacific National Confidentiality Policy

1. Overview

1.1 Background

- (a) Pacific National Pty Ltd (**Pacific National**) owns and operates the intermodal terminal at Acacia Ridge, Queensland (**Terminal**).
- (b) Confidential Information provided to Pacific National is ring-fenced and is accessible to Pacific National's officers, employees, agents and contractors on a need-to-know basis.
- (c) Pacific National has developed this Confidentiality Policy to provide guidance on how Confidential Information must be treated and the limited circumstances in which it can be disclosed.

It is the obligation of all officers, employees, agents and contractors to safeguard Confidential Information in Pacific National's possession and to hold that information in the strictest confidence

- (d) You should speak to the Compliance Officer if you have any questions about your obligations under this Confidentiality Policy.

Nothing in this Confidentiality Policy obliges any person to act in a manner contrary to the law.

1.2 Scope of this Confidentiality Policy

- (a) This Confidentiality Policy has been developed to help guide our business conduct and ensure that Pacific National complies with its legal obligations in respect of Confidential Information.
- (b) All Pacific National officers, employees, agents and contractors who are involved in the operation of the Terminal or Pacific National's intermodal business must comply with this Confidentiality Policy.
- (c) This Confidentiality Policy governs use of the following types of Confidential Information:
 - (i) **Pacific National Confidential Information** which is Confidential Information that belongs to Pacific National (e.g. management reports, contracts); and
 - (ii) **Terminal User Confidential Information** which is Confidential Information that has been provided to Pacific National by a Terminal User.
- (d) Pacific National may also be subject to other specific confidentiality obligations in relation to information provided by other third parties. You should speak to the Compliance Officer about information provided to Pacific National by other third parties (e.g. software providers).

2. Pacific National's Commitment to Compliance

2.1 Purpose of this Confidentiality Policy

Pacific National has developed this Confidentiality Policy to ensure that:

- (a) the correct information is available to those Pacific National Personnel who need it, when they need it;
- (b) you understand how Confidential Information is to be treated and what Pacific National's obligations are;
- (c) appropriate procedures are in place to maintain and protect the confidentiality of certain Confidential Information in Pacific National's possession;
- (d) Pacific National only uses Confidential Information for permitted purposes;
- (e) certain Confidential Information provided by users of the Terminal is not disclosed to any Related Bodies Corporate of Pacific National which are users of the Terminal;
- (f) the risk of any potential conflict of interest with Related Bodies Corporate of Pacific National is eliminated or minimised; and
- (g) Pacific National complies with the provisions of the *Competition and Consumer Act 2010* (Cth).

2.2 Pacific National's Commitment to Compliance

- (a) Compliance with Pacific National's policies and Australian laws applicable to our business is a key responsibility for everyone who works at Pacific National. It is therefore of utmost importance to protect and secure Confidential Information against potential threats.
- (b) In addition to Pacific National's general law obligations, Pacific National has legally enforceable confidentiality commitments concerning Terminal User Confidential Information pursuant to any *Confidentiality Deed Poll* executed in favour of Terminal Users and an *Enforceable Undertaking* given to the Australian Competition and Consumer Commission (**ACCC**). Copies of any *Confidentiality Deed Poll* and the *Enforceable Undertaking* can be found on Pacific National's intranet and website. The *Enforceable Undertaking* can also be found on the ACCC's website.
- (c) If Confidential Information is disclosed to inappropriate persons, is unavailable or unreliable, Pacific National could suffer serious losses. Pacific National's good reputation is also directly linked to the way both information and information systems are managed.
- (d) This Confidentiality Policy will assist you to understand Pacific National's legal obligations in respect of Confidential Information, including Pacific National's obligations under the *Enforceable Undertaking* given to the ACCC. Pacific National will provide compliance training when you commence employment with Pacific National which will explain your responsibilities and the requirements of this Confidentiality Policy. Ongoing compliance training will also be conducted annually.

2.3 Management responsibilities

In respect of those persons who are involved in the operation of the Terminal or Pacific National's intermodal business, Pacific National's Chief Executive Officer and the management team are responsible for:

- (a) providing each relevant Pacific National officer, employee, agent and contractor with a copy of this Confidentiality Policy;
- (b) annual compliance training to explain the requirements of this Confidentiality Policy;
- (c) monitoring compliance with this Confidentiality Policy and taking steps to ensure it is observed; and
- (d) ensuring that Confidential Information is only disclosed or made available to persons with a need to know in accordance with this Confidentiality Policy.

3. Confidential Information

3.1 What is "Confidential Information"?

- (a) Confidential information means any information which is by its nature commercially or competitively sensitive, which is known to be commercially or confidentially sensitive, or which ought to be known to be commercially or competitively sensitive.
- (b) Confidential Information also includes information which is marked as confidential by the provider of that information or by Pacific National management.

Example: Confidential Information includes information about a particular Terminal User's:

- freight descriptions
- freight mix/volumes
- freight markings
- freight origin and destinations
- customer details
- terminal expenditure/cost information

- (c) Confidential Information does *not* include information which was in the public domain at the time it was supplied to Pacific National, was in the lawful possession of Pacific National prior to being provided by a Terminal User, or ceases to be confidential in nature by other lawful means.

Important: You should consult the Compliance Officer if you are unsure about whether information is Confidential Information.

3.2 Identifying Confidential Information

- (a) Any party who provides Pacific National with information will be responsible for identifying what information is Confidential Information.
- (b) Pacific National's management will be responsible for identifying what information is Confidential Information and, where appropriate, what information within that Confidential Information is Terminal User Confidential Information.
- (c) Information that is Confidential Information or Terminal User Confidential Information must be, when identified, appropriately marked or designated in a way

that makes it clear that such information is Confidential Information and/or Terminal User Confidential Information.

3.3 Classification of information

To assist you comply with this Confidentiality Policy, in cases where it is necessary to restrict information access, the following classification levels (1 to 4) shall apply:

1. Open / Public

- (i) Information is open to all.
- (ii) Example: Press releases, public information.
- (iii) Information may be published on the Internet or any other public domain.

2. Company restricted

- (iv) Information is limited to Pacific National officers, employees, agents and contractors.
- (v) Company restricted information may be published on the Intranet or in other internal publications, notes and minutes.
- (vi) Example: "Normal" working documents and project/meeting protocols and internal telephone books.

3. Confidential

- (vii) Information is limited to specific users, Pacific National functions and specific customers.
- (viii) *Example:* personnel information, accounting data, customer data, sensitive projects and vendor contracts.

4. Secret

- (ix) Extremely sensitive company information limited to named users. Specific access approval must be obtained.
- (x) *Example:* Strategic proposals, information about security, major pending contracts, reorganisation or financial transactions.

4. Access to Confidential Information

4.1 Who can access Confidential Information?

- (a) Confidential Information can only be accessed and used by certain authorised persons.
- (b) You can only access Terminal User Confidential Information if you are an officer, employee, agent or contractor who works in or exercises management oversight over or responsibility for Pacific National.
- (c) Disclosure of Confidential Information to group I.T. support personnel and contractors is permitted to the extent necessary for those personnel to provide I.T. support and troubleshooting services to Pacific National. I.T. support personnel are bound by confidentiality obligations.

(d) Confidential Information cannot otherwise be accessed by any of Pacific National's Related Bodies Corporate.

(e) The following access controls exist to safeguard Confidential Information:

(i) Physical access controls

- A. Physical access to Pacific National's premises shall be restricted to Pacific National's officers and employees. Agents, contractors and consultants may be given limited access as appropriate. Employees shall always accompany visitors.
- B. Sensitive locations such as computer rooms or areas containing Confidential Information shall be restricted to employees on an as-need basis. Only the manager responsible should grant access.

(ii) Information access controls

- A. Access to Confidential Information shall be limited in accordance with the security classification. Physically available information classified as confidential or higher shall be kept in a lockable or password protected device.
- B. Digitally represented information classified as "Company restricted" or higher shall be protected by a password. Information classified as "Confidential" or higher shall be stored in a secure lockable area (i.e. central computer room).

(iii) Application access controls

- A. Although the information accessed through certain applications may not be classified, application access shall only be granted on a need basis.
- B. Data fields within applications shall as far as possible be protected from unintentional modifications. This may mean implementing read-only access restrictions.
- C. Only applications acquired/authorised and installed by Pacific National or authorised parties shall be deployed on Pacific National computer equipment.

(iv) Network access controls

- A. So far as is possible, only computer equipment controlled by Pacific National shall be connected directly to Pacific National's network.
- B. Pacific National officers, employees, agents and contractors shall not try to access information or information systems that are not intended for their use.
- C. All passwords and access keys shall be given on an individual basis in order to enable individual treatment. Under no circumstances shall IDs or passwords be shared with others.

4.2 Permitted use of Confidential Information

- (a) If you have access to any Confidential Information which is:
 - (i) **Pacific National Confidential Information**, you must use that Confidential Information solely for the purpose of conducting Pacific National's Terminal business and providing services required by Terminal Users;
 - (ii) **Terminal User Confidential Information**, you must only use that Confidential information for the purpose of providing Terminal Services and/or Terminal Services to that Terminal User or to resolve a Terminal Dispute.
- (b) If you need to use any Confidential Information for another purpose, Pacific National must obtain the consent of the provider of that Confidential Information.
- (c) Pacific National officers, employees, agents and contractors must not use any Confidential Information to gain an advantage for themselves or any Related Body Corporate of Pacific National.

4.3 Can you disclose Confidential Information?

You must keep all Confidential Information in strict confidence and not disclose or cause or permit the disclosure of that Confidential Information to any other person without the consent of the provider, unless it is done so in accordance with section 5.2 of this Confidentiality Policy.

Important: You must obtain the approval of the Pacific National Compliance Officer before disclosing any Confidential Information.

5. Disclosure of Confidential Information

5.1 No disclosure to certain related entities

In no circumstances can any Confidential Information of any other Terminal User be disclosed to Related Bodies Corporate of Pacific National who are Terminal Users, or proposed users of the Terminal.

5.2 Disclosure in limited circumstances

- (a) If you have access to Confidential Information you must not disclose that Confidential Information without the consent of the provider of that Confidential Information.
- (b) Some limited exceptions apply. Pacific National may disclose Confidential Information without the consent of the provider:
 - (i) which comprises a train description, estimated time of arrival at Terminal, receiving, cut-off and delivery dates for trains arriving at the Terminal (including publication on its website from time to time);
 - (ii) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, or notifications required to brokers, insurers, claims assessors, provided that the person to whom the disclosure is made is under a legal obligation to keep the information confidential;
 - (iii) to the Boards of Pacific National and its ultimate holding company as required in the performance of its normal reporting functions;

- (iv) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a Terminal Dispute;
- (v) to the ACCC or other government agency to the extent necessary to comply with any written request by that agency;
- (vi) where required by law, provided that, where permissible, Pacific National first consults with the Terminal User that provided the Confidential Information; and
- (vii) to the extent the disclosure is reasonably required to protect the safety or security of persons or property or in connection with an emergency.

Important: You must obtain the approval of the Compliance Officer before disclosing any Confidential Information in accordance with this section 5.2.

5.3 Record of disclosure

- (a) Pacific National is required to maintain a record of any Confidential Information of a Terminal User that is disclosed in accordance with section 5.2 of this Confidentiality Policy.
- (b) It is important that you obtain the approval of the Compliance Officer before disclosing any Confidential Information so that an appropriate record can be made.

5.4 Guidelines for reporting to Pacific National's shareholders

- (a) Pacific National's management team is responsible for the day to day management of Pacific National and for implementing the direction and strategy set by the Board.
- (b) From time to time, Pacific National's shareholders will require sufficient information for them to make decisions in relation to matters concerning Pacific National's business, including:
 - (i) Pacific National's financial performance and financial position;
 - (ii) the financing and capital structure of Pacific National;
 - (iii) annual budgets, including capital and operating expenditure and approvals of expenditures and liabilities outside the budget of the Pacific National business;
 - (iv) the appointment of or change of auditors of Pacific National;
 - (v) commencing, defending or settling claims of or against Pacific National;
 - (vi) ensuring that Pacific National is complying with all applicable laws; and

Subject always to section 5, any reporting to Pacific National's shareholders should:

- (vii) only relate to matters concerning their equity interest in Pacific National;
- (viii) be provided to those shareholders for use in their capacity as shareholder; and
- (ix) to the extent it is necessary to disclose information about Terminal Users, that information should be in aggregated and summary form provided in a manner that:

- A. does not disclose Confidential Information about the assets, business or affairs of particular Terminal Users; and
- B. cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify any Terminal User.

Important: You should consult the Compliance Officer if you are unsure about what information can be disclosed to Pacific National's shareholders.

6. General

6.1 Monitoring and consequences of non-compliance

- (a) Security measures will be put in place in order to monitor and prevent potential security risks. Pacific National will monitor and log access to Terminal User Confidential Information stored on its I.T. systems. Monitoring shall be in adherence with local laws and regulations.
- (b) Failure to strictly adhere to this Confidentiality Policy could result in Pacific National breaching its legal obligations under the:
 - (i) *Competition and Consumer Act 2010 (Cth)*;
 - (ii) Enforceable Undertaking given to the ACCC; and
 - (iii) any Confidentiality Deed Poll executed by Pacific National.
- (c) The consequences for Pacific National are serious including the possibility of court action, financial loss, reputational damage and loss of its rights to operate the Terminal.
- (d) Any Personnel found to have violated this Confidentiality Policy may be subject to disciplinary action, up to and including termination of employment.

6.2 Inadvertent disclosure of Confidential Information

- (a) If you become aware of any disclosure of Confidential Information (inadvertent or otherwise) in breach of this Confidentiality Policy, you must notify the Compliance Officer immediately.
- (b) The Compliance Officer will investigate the suspected breach and document the outcome of his or her investigation, including an steps taken to mitigate the impact of the disclosure.

6.3 Destruction of Confidential Information

- (a) The provider of Confidential Information may request that Pacific National return, destroy or delete Confidential Information which they have provided to Pacific National. You should speak with the Compliance Officer if you receive any such request.
- (b) Where Confidential Information is destroyed, it must be destroyed in a secure manner so as not to lead to inadvertent disclosure in breach of this Confidentiality Policy. You should speak with the Compliance Officer before destroying any Confidential Information.

6.4 Definitions

Compliance Officer means the compliance officer designated by Pacific National who is responsible on a day to day basis for monitoring Pacific National's compliance with its confidentiality obligations contained in its Undertaking to the ACCC.

Confidential Information has the meaning given in section 3.1.

Personnel means, in relation to a party, that party's officers, employees, agents and contractors who work in or exercise management oversight over or responsibility for that party.

Pacific National means Pacific National Pty Ltd ACN 098 060 550.

Pacific National Confidential Information has the meaning given to that term in clause 1.2.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Terminal has the meaning given to that term in section 1.1.

Terminal Services means the right to use the Terminal or part of the Terminal and any associated rights, benefits and privileges necessary or desirable to permit a Terminal User to receive all or part of the following services offered by Pacific National or a Related Body Corporate of Pacific National at the Terminal:

- (a) loading or unloading of containers or freight onto or from a Train;
- (b) loading or unloading of containers or freight onto or from a vehicle owned/operated by Freight Forwarders;
- (c) storage of any containers or freight at the Terminal;
- (d) Movement of any containers or freight within the boundaries of the Terminal;
- (e) Locomotive provisioning;
- (f) Train scheduling, marshalling or shunting;
- (g) any other services associated with, ancillary to, or provided in connection with the services specified in (a) to (f) above.

Terminal Services Agreement means an agreement between Pacific National and a Terminal User under which the Terminal User is supplied the Terminal Services by Pacific National.

Terminal User means a Rail Haulage Operator using the Terminal.

Terminal User Confidential Information has the meaning given to that term in clause 1.2.

Terminal Dispute means a bona fide commercial complaint or dispute raised in accordance with the Non-Price Dispute Resolution Process or Price Dispute Resolution Process published by Pacific National from time to time.

Schedule 3 Key Performance Indicators

See clause 8 of this Undertaking for Pacific National's comparative reporting obligations on each of the following KPIs.

Pacific National will report against these KPIs. In reporting on these KPIs Pacific National will identify if during the relevant reporting period any Works are being undertaken at the Terminal. The purpose of KPI reporting under this Undertaking is to monitor Pacific National's compliance with its obligations in this Undertaking. The KPIs are therefore undertaking compliance tools, and will not be used to measure the performance of individual terminal users.

KPI	Purpose	Objective	Calculation of KPI
<p>1. Train ready for departures</p>	<p>The purpose of the KPI is to measure terminal performance on loading a train efficiently to allow for an on time departure.</p>	<p>80% of trains to depart the terminal within plus or minus 30 minutes of the scheduled departure time (provided the train arrives at the terminal within the permitted time).</p>	<p>Percentage of trains that are ready to depart outside plus or minus 30 minutes of their scheduled departure time.</p> <p>The KPI excludes all shunt delays or linehaul delays outside of terminal control or influence. Trains that arrive late are removed from the calculation.</p>
<p>2. Truck turnaround time</p>	<p>Measure delays by reporting on the average time trucks are spending at the terminal picking up or delivering freight. This will be influenced by the storage location of the relevant freight at the Terminal.</p>	<p>35 Minutes</p>	<p>Average time spent at the Terminal picking up or delivering freight, measured from the time the truck enters the Terminal gate to the time when the truck departs the Terminal through the Terminal gate, for:</p> <p>(a) [set out freight categories - if more than one]</p> <p>...</p>

KPI	Purpose	Objective	Calculation of KPI
3. Freight availability	To measure the terminal performance against a defined availability time at which the containers from a service are made available for pick up.	80% of freight on train services will be available one hour from the time the train has been handed over by the Rail Haulage Operator and is accessible for unloading by Pacific National.	Percentage of freight available one hour from the time the train has been handed over by the rail haulage operator and is accessible for unloading by Pacific National. The KPI excludes all shunt delays or linehaul delays outside of terminal control or influence.
4. Transaction times per container	To measure the time taken to process a container from truck to ground, truck to train, train to truck, ground to truck.	Average of 25 minutes	The KPI is calculated by totalling the time a truck is in the terminal as measured by the time between truck in-gate and out-gate and dividing this by the number of container transactions carried out during this time. A truck can have up to 6 transactions.
5. Load to train load plan	To measure the accuracy of the loading of containers onto trains.	80% of containers to be loaded according to the Rail Haulage Operator's train load plan	Percentage of containers loaded in accordance with the requirements as stipulated by the Rail Haulage Operator. The KPI excludes containers not received prior to the applicable cut-off time or containers incorrectly designated (i.e. dangerous goods not designated as such).
6. Freight dwell time over free time/ long term storage	Measure time freight units stay over free time. Customer hold is storage beyond free time which is requested by the customer, arising from an arm's length commercial agreement between the customer and Pacific National.	95% of freight units picked up within free time period	(a) Total freight units. (b) Number of freight units which stay over free time. (c) Number of freight units which stay over free time as a percentage of total freight units.

KPI	Purpose	Objective	Calculation of KPI
7. Confidentiality and Ring Fencing	Measure Pacific National's compliance with clause 7 of the Undertaking	100% compliance	<ul style="list-style-type: none"> • Number of and type of complaints received concerning non-compliance with clause 7 • Number of instances of breaches of clause 7. • Pacific National's response to the reported complaints and breaches.
8. Complaints	Measure the number and type of complaints raised in order to facilitate the ACCC's review of the terms of this Undertaking in determining whether the Undertaking is meeting its objectives set out in clause 2 for the term of this Undertaking.	Minimise actionable complaints	<ul style="list-style-type: none"> • Number and type of complaints raised under the Price Dispute Resolution Process and Non-Price Dispute Resolution Process. • Outcomes of the complaints raised.

Schedule 4 Proposed Independent Auditor Notice

This form sets out the information required by the ACCC in relation to proposed appointment of the independent auditor.

Please note in relation to information given on in relation to this notice, giving false or misleading information is a serious offence.

Method of delivery to the ACCC

The completed Proposed Independent Auditor Notice, along with the additional requested information is to be provided to the ACCC with the subject line "*Proposed Independent Auditor Notice – Pacific National s87B Undertaking*" to the below email addresses:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
 Mergers and Authorisation Review Division

With a copy sent to:

Email address mergersru@acc.gov.au
Attention: Director, Remedies Unit
 Coordination and Strategy Branch
 Mergers and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a proposed independent auditor.

1. Proposed independent auditor details:
 - (a) the name of the proposed independent auditor; and
 - (b) the name of the proposed independent auditor's employer and contact details including:
 - (i) Address;
 - (ii) Contact name;
 - (iii) Telephone number;
 - (iv) Other contact details.

2. A submission containing the following information:
 - (a) details of the proposed independent auditor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking;
 - (b) the names of the [*owner/s and the directors (delete any that do not apply)*] of proposed independent auditor's employer;
 - (c) details of any of the following types of relationships between Pacific National and the proposed independent auditor or the proposed independent auditor's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:

- (i) Pacific National and the proposed independent auditor's employer are Associated Entities;
- (ii) Pacific National is an Entity Connected with the proposed independent auditor's employer;
- (iii) the proposed independent auditor's employer is an Entity Connected with Pacific National;
- (iv) Pacific National and the proposed independent auditor's employer are Related Entities;
- (v) Pacific National and the proposed independent auditor's employer are Related Parties;
- (vi) any Related Party, Related Entity or Entity Connected with Pacific National is a Related Party, Related Entity or Entity Connected with the proposed independent auditor;
- (vii) Pacific National and the proposed independent auditor or the proposed independent auditor's employer have a contractual relationship or had one within the past three years, other than those attached to this form;
- (viii) the proposed independent auditor's employer is a supplier of Pacific National or has been in the past three years;
- (ix) Pacific National is a supplier of the proposed independent auditor's employer or has been in the past three years;
- (x) any other relationship between Pacific National and the proposed independent auditor or the proposed independent auditor's employer that allows one to affect the business decisions of the other.

3. A document outlining the terms of appointment for the proposed independent auditor.

The ACCC requires the finalised draft audit plan, drafted by the proposed independent auditor and outlining (to the extent possible) the proposed independent auditor's detailed work plan describing how it intends to monitor Pacific National's compliance with the Undertaking and how it will prepare the plans in regard to the establishment audit and the Audit Report.

Schedule 5 - Price Dispute Resolution Process

Pacific National Pty Ltd (**Pacific National**) owns and operates the intermodal terminal at Acacia Ridge, Queensland (**Terminal**).

This Price Dispute Resolution Process is intended to apply in the setting of Changes for Terminal Services and to resolve disputes relating to the prices charged by Pacific National for the supply of Terminal Services. Non-price disputes are not governed by these processes.

Pacific National has committed to the ACCC (through a Section 87B Undertaking) to comply with the Access Conditions in the performance of its obligations under this Price Dispute Resolution Process.

1. Objective

- (a) Pacific National publishes Charges for the Terminal on its website.
- (b) Pacific National will use this Price Dispute Resolution Process to notify price increases and resolve disputes relating to Charges at the Terminal.
- (c) The Section 87B Undertaking and any Confidentiality Deed Poll which Pacific National has executed in favour of Terminal Users outline how Pacific National will deal with Confidential Information provided by Terminal Users.

2. Annual Price Review

2.1 Review of Reference Tariffs

- (a) Pacific National will conduct an annual review of its Charges and may propose a price increase which it considers reasonable and appropriate, taking into account the relevant considerations in Schedule 5, clause 3.4.
- (b) The remainder of this Schedule only applies if, after conducting a review of its Charges under clause 2.1(a) of this Schedule, Pacific National proposes a price increase.

2.2 Notice of Price Increase

At least 60 Business Days before the end of each Financial Year, Pacific National must provide notice of the proposed Charges applicable for the next Financial Year by:

- (a) giving written notice to:
 - (i) any person who has entered into a Terminal Services Agreement
 - (ii) the Approved Independent Auditor; and
 - (iii) any other person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal who has informed Pacific National in writing that they wish to be notified of changes to Charges;
- (b) publishing the proposed Charges and information about this Price Dispute Resolution Process (including that a Price Dispute can be raised up until 45 days before the end of the Financial Year) on its website; and
- (c) giving written notice to the Independent Price Expert.

2.3 Information About Price Increase

A notice provided under Schedule 5, clause 2.2(a) must contain:

- (a) the amount of the proposed Charges;
- (b) the date on which the proposed Charges will take effect;
- (c) detailed reasons for any proposed price increase;
- (d) information about this Price Dispute Resolution Process (including that a Price Dispute can be raised up until 45 Business Days before the end of the Financial Year); and
- (e) the name and contact details of the Independent Price Expert.

2.4 Offer to Negotiate

Pacific National must offer to negotiate with any Dispute Applicant who provides or proposes to provide an Objection Notice in relation to a proposed price increase notified under Schedule 5, clause 2.2.

2.5 Approved Price Increases

A Price Dispute cannot be raised under Schedule 5, clause 3.1 in respect of a proposed price increase or a part of a proposed price increase of which notice has been given in accordance with Schedule 5, clause 2.2 which notice discloses that the price increase has been approved or determined by the Independent Price Expert pursuant to Schedule 5, clause 3.3.

3. Price Dispute

3.1 Raising a Price Dispute

- (a) A Dispute Applicant who objects to a proposed price increase may raise a Price Dispute by providing written notice to the Independent Price Expert and Pacific National no later than 45 Business Days before the end of the Financial Year (**Objection Notice**).
- (b) An Objection Notice must set out the Dispute Applicant's reasons for objecting to the proposed price increase.
- (c) By submitting an Objection Notice, the Dispute Applicant agrees to comply with this Price Dispute Resolution Process.
- (d) A Dispute Applicant may at any time withdraw an Objection Notice by written notice to Pacific National and the Independent Price Expert, in which case the powers and authority of the Independent Price Expert to make a determination of that Objection Notice under Schedule 5, clause 3.3 shall forthwith cease.

3.2 Publication of Objection Notice

Pacific National must publish a copy of the Objection Notice on its website within 5 days of receipt.

3.3 Independent Price Expert Determination

- (a) Where the Independent Price Expert has received an Objection Notice, the Independent Price Expert:
 - (i) will determine whether Pacific National's proposed price increase is reasonable and appropriate having regard to the principles listed in Schedule 5, clause 3.4; and
 - (ii) may accept, reject or vary Pacific National's proposed price increase.
- (b) Any variation of a price increase by the Independent Price Expert under Schedule 5, clause 3.3(a)(ii) will not result in a Charge that is:
 - (i) higher than the Charges proposed by Pacific National under Schedule 5, clause 2.2; or
 - (ii) less than the Charges that apply immediately before the proposed price increase.
- (c) The Independent Price Expert will make his or her determination within:
 - (i) the 60 Business Day period referred to in Schedule 5, clause 2.2; or
 - (ii) not more than 20 Business Days after the 60 Business Day period, or otherwise as determined by the ACCC.
- (d) Pacific National and the Dispute Applicant must provide the Independent Price Expert with any information he or she requires to make a determination under this Schedule 5, clause 3.3, within a timeframe reasonably determined by the Independent Price Expert.
- (e) In the event that more than one Objection Notice is received in relation a proposed price increase, the Independent Price Expert will only make a single determination about those Charges or that proposed price increase.
- (f) The Independent Price Expert's decision is final and binding.
- (g) When making a determination under this Schedule 5, clause 3.3, the Independent Price Expert is acting as an expert and not as an arbitrator.

3.4 Relevant Considerations

In determining whether a Charge is reasonable and appropriate, Pacific National and the Independent Price Expert will have regard to the following principles:

- (a) that Charges should:
 - (i) be set so as to generate expected revenue for Terminal Services that is at least sufficient to meet the efficient costs of providing the Terminal Services; and
 - (ii) include a return on investment commensurate with the commercial risks involved;
- (b) that Charges should be set taking into account:
 - (i) all efficient input costs;
 - (ii) an appropriate allocation of Pacific National's relevant overhead costs;

- (iii) expected volumes over the period Pacific National has used to calculate the proposed Charges;
 - (iv) any Works undertaken at the Terminal;
 - (v) depreciation of, and a return on, the prudent level of capital invested by Pacific National at the Terminal, where:
 - A. depreciation is based on straight line methodology (or a reasonable alternative methodology) and reasonably anticipated asset lives but excludes depreciation on the value of the land;
 - B. the rate of return is based on Pacific National's weighted average cost of capital;
 - C. the prudent level of capital must not include any investments or proposed investments which arise or are proposed after the Commencement Date at the Terminal that disproportionately benefit a Pacific National Related Body Corporate based on their actual or likely use of the Terminal (for clarity, investments will not disproportionately benefit a Pacific National Related Body Corporate where costs are allocated, and relevant charges are determined, on a basis that allocates the cost of that investment based on usage of the relevant assets);
 - (vi) the interests of all users of the Terminal Services for which the proposed Charges relates, including the extent to which the proposed Charges reflect actual or likely use of the Terminal by different users, including use of facilities and equipment ; and
 - (vii) the reasonableness and appropriateness of, and justification for, the existing Charges for the supply of the Terminal Services.
- (c) the structure of Charges may allow multi-part pricing and price discrimination only if, and to the extent that:
- (i) the cost of providing the service is higher, or
 - (ii) it aids efficiency; and
- any multi-part pricing or price discrimination should be transparent.

3.5 Notice and Publication of Decision

- (a) The Independent Price Expert must notify:
 - (i) Pacific National; and
 - (ii) any party that lodged an Objection Notice in relation to the proposed price increase,

of his or her determination under Schedule 5, clause 3.3(a)(ii) as soon as practicable after making the determination.
- (b) Within 2 Business Days of receiving the determination, Pacific National must:
 - (i) publish the Independent Price Expert's determination on Pacific National's website; and

- (ii) provide a copy of the Independent Price Expert's determination to the Approved Independent Auditor.
- (c) The cost of the expert determination will be shared equally between Pacific National and the Dispute Applicant, unless the Independent Expert determines or the parties agree otherwise.
- (d) Pacific National and the Dispute Applicant will execute a deed to indemnify the Independent Price Expert against any loss or damage incurred by the Independent Price Expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.

4. Date Price Increase Takes Effect

- (a) In the absence of any Objection Notice submitted under Schedule 5, clause 3.1, or request made by the Approved Independent Auditor under clause 9.13, the new price takes effect the date that Pacific National notified under Schedule 5, clause 2.2(a) that the proposed price increase would take effect.
- (b) If the Independent Price Expert makes a determination under Schedule 5, clause 3.3(a)(ii), or furnishes a report to the Approved Independent Auditor in accordance with clause 9.14, then the new price as determined by the Independent Expert takes effect on the date that Pacific National notified under Schedule 5, clause 2.2(a) that the proposed price increase would take effect.

5. Existing Charges

This Price Dispute Resolution Process does not apply to the supply of services under the Existing Terminal Services Agreements.

6. Definitions

In this Price Dispute Resolution Process, the following meanings will apply (unless the context otherwise indicates):

Access Conditions means the conditions set out in Schedule 1 of the Section 87B Undertaking.

Approved Independent Auditor has the meaning given in the Section 87B Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business in Queensland.

Charges means the fees or charges payable by a Terminal User to Pacific National for the Terminal Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Terminal Services (or any material part thereof).

Confidential Information has the meaning given in the Section 87B Undertaking.

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal.

Existing Terminal Services Agreements means the:

- (a) Terminal Services Agreement dated 28 July 2017 and entered into by Aurizon Intermodal Pty Ltd and HV Rail Pty Ltd relating to the BMUT; and
- (b) Terminal Services Agreement dated 28 July 2017 and entered into by Aurizon Intermodal Pty Ltd and HV Rail Pty Ltd relating to the Queensland Terminal.

Financial Year means a financial year ending 30 June.

Independent Price Expert has the meaning given in the Section 87B Undertaking.

Objection Notice has the meaning given in Schedule 5, clause 3.1(a).

Price Dispute means a bona fide commercial dispute raised by a Dispute Applicant about the proposed increase to a Charge which relates to that Dispute Applicant.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Section 87B Undertaking means the undertaking given by Pacific National to the Australian Competition and Consumer Commission as in force from time to time for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) concerning Pacific National's operation of the Terminal.

Terminal Services means the right to use the Terminal or part of the Terminal and any associated rights, benefits and privileges necessary or desirable to permit a Terminal User to receive all or part of the following services offered by Pacific National or a Related Body Corporate of Pacific National at the Terminal:

- (a) loading or unloading of containers or freight onto or from a Train;
- (b) loading or unloading of containers or freight onto or from a vehicle owned/operated by Freight Forwarders;
- (c) storage of any containers or freight at the Terminal;
- (d) Movement of any containers or freight within the boundaries of the Terminal;
- (e) Locomotive provisioning;
- (f) Train scheduling, marshalling or shunting;
- (g) any other services associated with, ancillary to, or provided in connection with the services specified in (a) to (f) above.

Terminal Services Agreement means an agreement between Pacific National and a Terminal User under which the Terminal User is supplied the Terminal Services by Pacific National or a Related Body Corporate of Pacific National.

Terminal User means a Rail Haulage Operator using the Terminal.

Works means any construction of improvements to the Terminal.

Schedule 6 - Non-Price Dispute Resolution Process

Pacific National Pty Ltd (Pacific National) owns and operates the intermodal terminal at Acacia Ridge, Queensland (Terminal).

This Non-Price Dispute Resolution Process is intended to resolve disputes in relation to capacity and the granting, refusal to grant, conditions or administration of a Terminal Services Agreement, other than in relation to the prices charged by Pacific National for the supply of Terminal Services. Price disputes are governed by the Price Dispute Resolution Process.

Pacific National has committed to the ACCC (through a Section 87B Undertaking) to comply with the Access Conditions in the performance of its obligations under this Non-Price Dispute Resolution Process.

1. Objective

- (a) Pacific National is committed to resolving all Terminal Disputes proactively and constructively.
- (b) The Section 87B Undertaking and any Confidentiality Deed Poll which Pacific National has executed in favour of Terminal Users outline how Pacific National will deal with Confidential Information provided by Terminal Users.

2. Raising a Terminal Dispute

- (a) A Dispute Applicant who wishes to raise a Terminal Dispute with Pacific National must do so within 6 months after the circumstance giving rise to that Terminal Dispute by providing written notice to Pacific National (**Terminal Dispute Notice**) for the purpose of endeavouring to resolve the Terminal Dispute.
- (b) The Terminal Dispute Notice must include details of:
 - (i) the nature of the Terminal Dispute;
 - (ii) the outcome sought by the Dispute Applicant in relation to the Terminal Dispute; and
 - (iii) the action on the part of Pacific National which the Dispute Applicant believes will resolve the Terminal Dispute.
- (c) By lodging a Terminal Dispute Notice, the Dispute Applicant agrees to comply with this Non-Price Dispute Resolution Process.

3. Negotiation

- (a) Within 7 days of the Dispute Applicant providing Pacific National a Terminal Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Terminal Dispute expeditiously by joint discussion.
- (b) If the Terminal Dispute is not resolved in accordance with Schedule 6, clause 3(a) within 21 days of the Dispute Applicant providing a Terminal Dispute Notice to Pacific National then:
 - (i) if both parties agree, they will attempt to resolve the Terminal Dispute by mediation pursuant to Schedule 6, clause 4; or

- (ii) if one or both of the parties do not wish to resolve the Terminal Dispute by mediation, either party may within 7 days refer the Terminal Dispute to Expert Determination or Arbitration in accordance with Schedule 6, clause 4.4.

4. Formal Mediation

4.1 Appointment of Mediator

- (a) A Terminal Dispute referred to formal mediation in accordance with Schedule 6, clause 3(b)(i) will be mediated by a single mediator appointed by agreement between Pacific National and the Dispute Applicant.
- (b) The mediator appointed by Pacific National and the Dispute Applicant must have the qualifications and experience necessary to carry out the functions of the mediator independently of Pacific National and must not be:
 - (i) an employee or officer of Pacific National or its Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a professional adviser of Pacific National or its Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with Pacific National or its Related Bodies Corporate (other than the terms of appointment of the mediator);
 - (iv) a Terminal User, supplier or material customer of Pacific National or its Related Bodies Corporate; or
 - (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.
- (c) If Pacific National and the Dispute Applicant fail to agree on the appointment of a mediator within 14 days of referral under Schedule 6, clause 3(b)(i), the President of the Chapter of the Institute of Arbitrators and Mediators of Australia (**IAMA**) in the state of Queensland will select the mediator.
- (d) Pacific National and the Dispute Applicant will use all reasonable endeavours to ensure that:
 - (i) the mediation occurs within 28 days after a mediator has been appointed; and
 - (ii) the mediator is provided with all relevant information available to Pacific National and the Dispute Applicant and all reasonable assistance to enable the mediator to conduct the mediation.

4.2 Indemnification of the Mediator

Pacific National and the Dispute Applicant will execute a deed to indemnify the mediator against any loss or damage incurred by the mediator in the course of carrying out his or her functions in accordance with his or her terms of appointment.

4.3 Conduct of Mediation

Unless otherwise agreed between Pacific National and the Dispute Applicant:

- (a) each of Pacific National and the Dispute Applicant may be represented at the mediation by another party, including by a legally qualified person;
- (b) the cost of the mediation will be shared equally between Pacific National and the Dispute Applicant;
- (c) Pacific National and the Dispute Applicant will bear their own costs relating to the preparation for and attendance at the mediation; and
- (d) the mediation will otherwise be conducted under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner).

4.4 Referral to Expert Determination or Arbitration

- (a) A party may, by notice to the other (**Final Dispute Notice**) refer a Terminal Dispute which remains unresolved to:
 - (i) an expert for determination in accordance with Schedule 6, clause 5; or
 - (ii) an arbitrator for arbitration in accordance with Schedule 6, clause 6within 7 days after:
 - (iii) the conclusion of the 21 day negotiation period for the Terminal Dispute under Schedule 6, clause 3(b), where the parties have not agreed to attempt to resolve the dispute through mediation; or
 - (iv) the conclusion of formal mediation of the Terminal Dispute in accordance with Schedule 6, clause 4.
- (b) Within 7 days of the issue of a Final Dispute Notice, Pacific National and the Dispute Applicant will agree on:
 - (i) which of expert determination or arbitration will be conducted to resolve the Terminal Dispute; and
 - (ii) the identity of the expert or arbitrator to be appointed to conduct the expert determination or arbitration.
- (c) In the event that Pacific National and the Dispute Applicant cannot agree on either:
 - (i) which of expert determination or arbitration will be conducted to resolve the Terminal Dispute; or
 - (ii) the identity of the person to conduct the expert determination or arbitration as the case may be,then the President of IAMA in the state of Queensland will determine those matters.
- (d) The expert or arbitrator appointed by Pacific National and the Dispute Applicant must have the qualifications and experience necessary to carry out the functions of the expert or arbitrator as applicable independently of Pacific National and must not be:
 - (i) an employee or officer of Pacific National or its Related Bodies Corporate, whether current or in the past 3 years;

- (ii) a professional adviser of Pacific National or its Related Bodies Corporate, whether current or in the past 3 years;
- (iii) a person who has a contractual relationship with Pacific National or its Related Bodies Corporate (other than the terms of appointment of the expert or arbitrator);
- (iv) a Terminal User, supplier or material customer of Pacific National or its Related Bodies Corporate; or
- (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.

5. Expert Determination

If the Terminal Dispute is referred to an expert for expert determination pursuant to Schedule 6, clause 4.4(a), the following provisions will apply:

- (a) Pacific National and the Dispute Applicant will use all reasonable endeavours to ensure that the expert provides the expert's determination on the Terminal Dispute within 60 days of referral under Schedule 6, clause 4.4(a).
- (b) The expert will decide the Terminal Dispute as an expert not an arbitrator and the expert's decision will be final and binding on both Pacific National and the Dispute Applicant. Pacific National must take all steps within its power to ensure that the expert's decision is fulfilled or otherwise given effect to, including by enforcing Pacific National's contractual rights against third parties.
- (c) The cost of the expert determination will be shared equally between Pacific National and the Dispute Applicant, unless agreed otherwise.
- (d) Pacific National and the Dispute Applicant will use all reasonable endeavours to ensure that the expert is provided with:
 - (i) all relevant information available to Pacific National and the Dispute Applicant; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Terminal Dispute within 60 days of referral under Schedule 6, clause 4.4(a).
- (e) Pacific National and the Dispute Applicant will execute a deed to indemnify the expert against any loss or damage incurred by the expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.
- (f) Pacific National must within 7 days of the determination being made by the expert send a copy of the determination to the Approved Independent Auditor.

6. Arbitration

- (a) If the Terminal Dispute is referred to an arbitrator pursuant to Schedule 6, clause 4.4(a), Pacific National and the Dispute Applicant may agree on the terms on which the arbitration will be conducted.
- (b) Pacific National must take all steps within its power to ensure that any determination by the arbitrator is fulfilled or otherwise given effect to, including by enforcing Pacific National's contractual rights against third parties.

- (c) If, within 14 days of the arbitrator being appointed, Pacific National and the Dispute Applicant are unable to reach agreement on the terms on which the arbitration will be conducted, the arbitration will be conducted in accordance with the IAMA Arbitration Rules, as modified by the provisions of this Non-Price Dispute Resolution Process.
- (d) The arbitrator will not be required to proceed with the arbitration unless and until the Dispute Applicant has agreed to pay the arbitrator's and other costs as determined in accordance with Schedule 6, clause 6(p) and provide any indemnity as required in accordance with Schedule 6, clause 6(q).
- (e) Unless Pacific National and the Dispute Applicant agree otherwise, the arbitration will be conducted in private.
- (f) Pacific National and the Dispute Applicant may appoint a person, including a legally qualified person, to represent it or assist in the arbitration.
- (g) The arbitrator must observe the rules of natural justice, but is not bound by technicalities, legal forms or rules of evidence.
- (h) The arbitrator must act as speedily as a proper consideration of the Non-Price Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Non-Price Dispute and all matters affecting the merits, and fair settlement, of the Non-Price Dispute.
- (i) The arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the Dispute Respondent(s) and the Dispute Applicant in the Non-Price Dispute, and may require that the cases be presented within those periods.
- (j) The arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.
- (k) The arbitrator will present its determination in draft form to Pacific National and the Dispute Applicant and allow them the opportunity to comment before making a final determination.
- (l) The arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
- (m) Subject to Schedule 6, clause 6(r) and unless Pacific National and the Dispute Applicant agree otherwise, any determination by the arbitrator will be confidential.
- (n) The arbitrator may at any time terminate an arbitration (without making a determination save for any determination under Schedule 6, clause 6(p)) and the subject matter if the Dispute Notice shall be regarded as resolved, if he or she thinks that:
 - (i) the notification of the Terminal Dispute is vexatious;
 - (ii) the subject matter of the Terminal Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the Dispute Applicant has not engaged in negotiations in good faith.
- (o) In deciding a Terminal Dispute, the arbitrator will have regard to the objectives of the Section 87B Undertaking and may have regard to any other matters that he or she thinks are relevant.

- (p) In deciding a Terminal Dispute, the arbitrator must not:
- (i) without the consent of Pacific National and the Dispute Applicant, make a determination which relates to matters which were not specified in the Terminal Dispute Notice; or
 - (ii) without the consent of Pacific National and the Dispute Applicant, allow any other party to join or intervene in the arbitration.
- (q) A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to apply from a specified day which is earlier than the day on which it takes effect.
- (r) Other than in circumstances where the determination or direction is the subject of review by a court of law, if a Dispute Applicant does not comply with a determination or direction of the arbitrator, Pacific National will not be obliged to continue to seek to resolve the matters subject of the Terminal Dispute Notice.
- (s) Other than where the determination or direction is the subject of review by a court of law, Pacific National will comply with the lawful determination or direction of the arbitrator.
- (t) The arbitrator's costs and the costs of the parties to the arbitration will be borne by Pacific National and the Dispute Applicant in such proportions as the arbitrator determines. Pacific National and the Dispute Applicant may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
- (u) Where the arbitrator requires it, Pacific National and the Dispute Applicant will indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this Schedule 6, clause 6, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (v) Any laws relating to arbitrations applying in the jurisdiction in which any arbitration undertaken in accordance with this Schedule 6, clause 6 is conducted will apply to the arbitration.
- (w) Pacific National must send a copy of any determination made by the arbitrator to the Approved Independent Auditor within 7 days of the determination being made.

7. General

Save the for the Approved Independent Auditor provided for in this Non-Price Dispute Resolution Process, the Terminal Dispute and any terms of resolution are to be kept strictly confidential by Pacific National and the Dispute Applicant.

8. Definitions

In this Non-Price Dispute Resolution Process, the following meanings will apply (unless the context otherwise indicates):

Access Conditions means the conditions set out in Schedule 1 of the Section 87B Undertaking.

Approved Independent Auditor has the meaning given in the Section 87B Undertaking.

Confidential Information has the meaning given in the Section 87B Undertaking.

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal.

Final Dispute Notice has the meaning given in Schedule 6, clause 4.4(a).

IAMA means Institute of Arbitrators and Mediators of Australia in Queensland.

Related Body Corporate has the meaning given to that term in the Corporations Act 2001 (Cth).

Section 87B Undertaking means the undertaking by Pacific National to the Australian Competition and Consumer Commission as in force from time to time for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) concerning Pacific National's operation of the Terminal.

Terminal Dispute means a bona fide commercial dispute raised by a Dispute Applicant associated with the provision of Terminal Services by Pacific National as they relate to that Dispute Applicant, including the terms and conditions of use of Terminal Services or the quality of Terminal Services but excludes any dispute in relation to the price of any Terminal Services or Access Service.

Terminal Dispute Notice has the meaning given in Schedule 6, clause 2(a).

Terminal Services means the right to use the Terminal or part of the Terminal and any associated rights, benefits and privileges necessary or desirable to permit a Terminal User to receive all or part of the following services offered by Pacific National or a Related Body Corporate of Pacific National at the Terminal:

- (a) loading or unloading of containers or freight onto or from a Train;
- (b) loading or unloading of containers or freight onto or from a vehicle owned/operated by Freight Forwarders;
- (c) storage of any containers or freight at the Terminal;
- (d) Movement of any containers or freight within the boundaries of the Terminal;
- (e) Locomotive provisioning;
- (f) Train scheduling, marshalling or shunting;
- (g) any other services associated with, ancillary to, or provided in connection with the services specified in (a) to (f) above.

Terminal Services Agreement means an agreement between Pacific National and a Terminal User under which the Terminal User is supplied the Terminal Services by Pacific National or a Related Body Corporate of Pacific National.

Terminal User means a Rail Haulage Operator using the Terminal.