

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by Melbourne
International RoRo & Auto Terminal Pty Ltd
ACN 163 814 364

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1. Persons giving this Undertaking

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Melbourne International RoRo & Auto Terminal Pty Ltd ACN 163 814 364 (MIRRAT) pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (Act).

2. Background

The proposed acquisition

- 2.1 In April 2012, the Victorian Government announced a \$1.6 billion project to build extra capacity at the Port of Melbourne to accommodate the forecast growth in the container and automotive trades (**Port Capacity Project**).
- 2.2 The automotive terminal at Webb Dock West within the Port of Melbourne (**Terminal**) will be redeveloped as part of the Port Capacity Project.
- 2.3 Port of Melbourne Corporation (**PoMC**) is the port manager and owner of all land within the port boundaries, including the Terminal. PoMC is a statutory corporation under the *Port Services Act 1995* (Vic) responsible for the strategic management and development of the Port of Melbourne.
- 2.4 PoMC is responsible for the Port Capacity Project and has invited bidders to submit proposals for the right to redevelop, lease and operate the Terminal on an open access basis until 30 June 2040.
- 2.5 MIRRAT has submitted a bid to PoMC and, if successful, proposes to enter into a Development Agreement, Automotive Terminal Lease and Terminal Operations Deed with PoMC (**Proposed Transaction**). MIRRAT's proposal includes an open access regime and the implementation of tariffs for users of the Terminal which will be reflective of the costs of developing and operating the Terminal. The purpose of the open access regime is to require the operator of the Terminal to manage the Terminal on a non-discriminatory basis with open access to all automotive shipping lines, stevedores, mooring service providers, PDI service providers, car companies and other automotive terminal end-users. MIRRAT's tariffs will be subject to independent price oversight and a dispute regime accessible to all persons with an interest in the terms and conditions of access to the Terminal. MIRRAT has also committed to implementing confidentiality arrangements to protect the commercially sensitive information of Terminal Users.
- 2.6 MIRRAT is a wholly owned subsidiary of Wallenius Wilhelmsen Terminals Holding AS (**WW Terminals**), a company which operates automotive terminals in Europe, the United States and Asia. WW Terminals is a wholly owned subsidiary of Wallenius Wilhelmsen Logistics AS (**WWL**), the ultimate parent company of MIRRAT.
- 2.7 WWL operates an ocean shipping business which operates vessels that will berth at the Terminal to load and unload cargo.

The ACCC's review

- 2.8 The ACCC commenced its review of the Proposed Transaction on 8 October 2013. The ACCC conducted market inquiries and considered information provided by MIRRAT and interested parties. The purpose of the ACCC's inquiries was to assess whether or not the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any market in contravention of section 50 of the Act.
- 2.9 The ACCC sought feedback from interested parties on the open access regime as initially proposed by MIRRAT, focussing on the effectiveness of the open access regime (including proposed open access services terms and conditions, berthing priority rules and price and non-price dispute resolution processes).

The ACCC's competition concerns

- 2.10 Through market inquiries conducted by the ACCC, concerns were expressed in relation to MIRRAT's status as a vertically integrated operator of the sole automotive terminal at the Port of Melbourne, having regard to:
- (a) MIRRAT's ultimate parent company, WWL, which is a full service global automotive shipping and logistics provider; and
 - (b) the potential for MIRRAT to vertically integrate in the provision of other Terminal Services (such as stevedoring or PDI operator services) in the future.
- 2.11 The key concerns identified were that if the Proposed Transaction proceeds, as the only automotive terminal operator at the Port of Melbourne:
- (a) MIRRAT would have access to rival shipping companies' commercially sensitive information and may be able to use this information to the advantage of WWL;
 - (b) MIRRAT would have access to Terminal Users' commercially sensitive information, which may raise concerns should MIRRAT or its Related Bodies Corporate commence providing Terminal Services in the downstream market in the future;
 - (c) MIRRAT would have the ability to provide preferential treatment to WWL compared to other shipping companies, including through shipping schedules, berthing allocations and the provision of ancillary services;
 - (d) MIRRAT may have the ability and incentive to foreclose the entry and expansion of its non-vertically integrated rivals by:
 - (i) raising the stand alone price for Access Services above efficient levels such that this raises the input costs of its rivals; and
 - (ii) MIRRAT or its Related Bodies Corporate offering Terminal Services (whether as separate services or as a bundled offer) in the downstream market at a price which prevents or hinders the ability of its rivals to compete for the supply of the relevant Terminal Services.
 - (e) MIRRAT's proposed open access regime (as initially included in its proposal to the PoMC) would be unlikely to be effective in preventing it from discriminating against competing shipping lines and other Terminal Users.
- 2.12 The ACCC concluded that, in the absence of this Undertaking, MIRRAT would have an increased ability and incentive to discriminate against rival automotive shipping lines and other Terminal Users that MIRRAT may compete with in future, and provide preferential treatment to its related entities in the market for the supply of automotive terminal services in the Melbourne region.
- 2.13 The ACCC also concluded that the open access regime proposed by MIRRAT, which includes independent price oversight mechanisms, non-discrimination obligations and confidentiality safeguards, should be capable of independent oversight and enforcement to ensure that MIRRAT treats all Terminal Users on a non-discriminatory basis and that the confidential information of Terminal Users is protected.
- 2.14 MIRRAT does not agree that concerns raised in market inquiries are likely to arise or that the Proposed Transaction will have the effect, or be likely to have the effect, of substantially lessening competition in any market but, for the avoidance of doubt, MIRRAT has provided this Undertaking to address any potential competition concerns, should MIRRAT be the successful bidder for the Terminal redevelopment.
- 2.15 Given the Undertaking is expected to be in place for the duration of the lease (i.e. until 30 June 2040) unless terminated, the ACCC was concerned to ensure that this Undertaking continues to meet its objectives throughout its entire term.

The Undertaking remedy

- 2.16 The objective of this Undertaking is to address the ACCC's competition concerns, as set out in clauses 2.10 to 2.13 and 2.15 above. This Undertaking aims to achieve this objective by:
- (a) requiring MIRRAT not to discriminate between Terminal Users in favour of a Related Body Corporate, or engage in conduct for the purposes of preventing or hindering access services to Terminal Users or prospective users. To ensure that MIRRAT does not discriminate in this way, MIRRAT must:
 - (i) comply with the Open Access Conditions; and
 - (ii) comply with the Berthing Allocation Rules, under which MIRRAT must not discriminate between shipping lines in favour of its Related Bodies Corporate, or engage in conduct for the purpose of preventing or hindering access to the Terminal by any shipping line in the exercise of a right of access to the Terminal.
 - (b) requiring MIRRAT to 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 MIRRAT;
 - (c) requiring MIRRAT to 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) providing for the effective oversight of MIRRAT's compliance with this Undertaking, including an obligation which requires MIRRAT to provide for a compliance audit by an ACCC Approved Independent Auditor at the request of a Terminal User at any time; and
 - (e) providing 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 MIRRAT;
 - (b) this Undertaking so executed is accepted by the ACCC; and
 - (c) MIRRAT commences operations at the Terminal as the Terminal operator which includes responsibility for the berthing of vessels at the Terminal,
- (and the date on which the last of these events occurs, which is not expected to occur before 1 January 2018, is the **Commencement Date**).

4. Cessation of this Undertaking

Expiry

- 4.1 This Undertaking expires on the date that MIRRAT ceases to operate the Terminal, which may occur on or before 30 June 2040, and the ACCC confirms this in writing.

Withdrawal

- 4.2 Notwithstanding clause 4.1, this Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

Revocation

- 4.3 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

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

Completion

- 4.5 Clauses 1, 2, 3, 4, 8, 9, 10, 14, 15, 16, 19, 20, 21, and 22 survive completion of the obligations in clauses 5, 6, 7, 11 and 12 and Schedules 1, 2, 3, 4, 5, 6 and 7.

5. Open Access Conditions

- 5.1 MIRRAT must comply with the Open Access Conditions set out in Schedule 1.
- 5.2 In complying with this clause 5 and without limiting the generality of the obligations therein in relation to all Terminal Services, MIRRAT must not:
- (a) offer a longer period of free landside storage at the Terminal for cargo transported by shipping lines which are Related Bodies Corporate of MIRRAT than for Comparable Cargo transported by other shipping lines;
 - (b) offer to waive storage fees for cargo transported by shipping lines which are Related Bodies Corporate of MIRRAT to a greater extent than, or in different circumstances to, offers made to waive storage fees for Comparable Cargo transported by other shipping lines;
 - (c) offer more favourable storage terms at the Terminal for cargo transported by shipping lines which are Related Bodies Corporate of MIRRAT than for Comparable Cargo transported by other shipping lines;
 - (d) discriminate between Licensees when they are providing services to shipping lines which are Related Bodies Corporate of MIRRAT, and when they are providing services to other shipping lines in relation to:
 - (i) rules about receipt and delivery of Comparable Cargo; and
 - (ii) the allocation of equipment for Comparable Cargo;
 - (e) discriminate in the allocation of yard space at the Terminal such that cargo transported by shipping lines which are Related Bodies Corporate of MIRRAT is provided with more favourable laydown areas compared with Comparable Cargo transported by other shipping lines; or
 - (f) offer export customers of shipping lines which are Related Bodies Corporate of MIRRAT superior receipt services (including laydown/free time) than those offered to customers of other shipping lines for comparable services.

6. Berthing Allocation Rules

Compliance with Berthing Allocation Rules

- 6.1 From the date on which MIRRAT assumes responsibility for berthing at the Terminal, or such later date agreed with the ACCC, MIRRAT must introduce and publish on its website the Berthing Allocation Rules that are set out in Schedule 4 to this Undertaking, which will govern

the berthing of vessels at the Terminal (and may be varied from time to time in accordance with this clause 6).

6.2 MIRRAT must comply with the Berthing Allocation Rules.

6.3 In its application or interpretation of the Berthing Allocation Rules, MIRRAT must not:

- (a) discriminate between different shipping lines in favour of its Related Bodies Corporate;
- (b) engage in conduct for the purpose of preventing or hindering access to the Terminal by any shipping line in the exercise of a right of access to the Terminal.

Standard variation process

6.4 Subject always to clause 6.3, MIRRAT may vary the Berthing Allocation Rules from time to time provided that such variation is consistent with the objectives of this Undertaking and that before doing so, MIRRAT:

- (a) publishes a notice (**Draft BAR Variation Notice**) on its website which:
 - (i) informs the public of MIRRAT's intention to vary the Berthing Allocation Rules and the reasons for the proposed variation;
 - (ii) attaches a copy of the Berthing Allocation Rules with the proposed variation shown in mark-up;
 - (iii) invites interested parties to provide written responses to MIRRAT on the proposed variation, including whether the respondent considers that the proposed variation will have a material adverse effect on a Terminal User or is not consistent with this Undertaking;
 - (iv) includes a deadline for responses which is not earlier than 10 Business Days after the date of publication of the Draft BAR Variation Notice;
 - (v) includes a contact name and address for written responses to be addressed to MIRRAT;
 - (vi) invites interested parties to request a meeting to discuss the proposed variation, such request to be submitted within 5 Business Days after the date of publication of the Draft BAR Variation Notice; and
 - (vii) specifies the date on which the proposed variation will take effect, which must be no less than 30 Business Days after publication of the Draft BAR Variation Notice;
- (b) provides the Draft BAR Variation notice to the Approved Independent Auditor;
- (c) if requested to do so by any interested party in accordance with clause 6.4(a)(vi), conducts a meeting to discuss the proposed variation with interested parties no later than 10 Business Days after publication of the Draft BAR Variation Notice. At MIRRAT's discretion, separate meetings may be held between MIRRAT and individual parties with confidential interests;
- (d) reviews and considers in good faith any:
 - (i) written responses provided by the deadline specified in the Draft BAR Variation Notice; and
 - (ii) feedback provided during any meeting about the proposed variation conducted in accordance with clause 6.4(c);

- (e) obtains approval from the Port Manager and Harbour Master of the Port to the proposed variation to the Berthing Allocation Rules;
- (f) publishes a notice (**Final BAR Variation Notice**) on its website which:
 - (i) may withdraw, amend or confirm any variation proposed in the Draft BAR Variation Notice;
 - (ii) includes reasons for any withdrawal or amendment of a variations proposed in the Draft BAR Variation Notice;
 - (iii) attaches a copy of the Berthing Allocation Rules with the proposed variation shown in mark-up; and
 - (iv) specifies the date on which the revised Berthing Allocation Rules will take effect, which must be no less than 20 Business Days after publication of the Final BAR Variation Notice (which may differ from the date specified in the Draft BAR Variation Notice).
- (g) provides the Final BAR Variation Notice to the Approved Independent Auditor within 5 Business Days of the Final BAR Variation Notice being published on its website.

Variations by the Harbour Master of the Port

- 6.5 Notwithstanding clause 6.4 but subject always to clause 6.3, MIRRAT may vary the Berthing Allocation Rules from time to time to the extent necessary to comply with a written direction from the Harbour Master of the Port, in which case MIRRAT must provide Terminal Users with as much prior notice of the variation as is feasible in the circumstances by publishing a notice on its website describing the event and providing reasons for the variation.

Disputes about changes to the Berthing Allocation Rules

- 6.6 Any concerns relating to a variation or proposed variation to the Berthing Allocation Rules under clause 6.4 (including MIRRAT's compliance with the process set out in this clause 6) can be raised by interested parties under the Non-Price Dispute Resolution Process.

7. Confidentiality and ring-fencing

Access to and use of ring-fenced Confidential Information

- 7.1 MIRRAT must not require a Terminal User or proposed Terminal User to provide any Confidential Information to MIRRAT 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.
- 7.2 For the avoidance of doubt, MIRRAT must not require a Terminal User to provide any Confidential Information to MIRRAT about freight rates, terms and conditions agreed with a customer, the terms or duration or renewal of any freight contract, or any customer specific forecast of freight volumes.
- 7.3 MIRRAT must keep confidential any Confidential Information provided to MIRRAT by a Terminal User and only allow Authorised Persons to access that Confidential Information.
- 7.4 MIRRAT must only allow Authorised Persons to use Confidential Information provided by a Terminal User 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.
- 7.5 From the Commencement Date, MIRRAT must appoint a MIRRAT Compliance Officer who is responsible on a day to day basis for monitoring MIRRAT's compliance with this clause 7.
- 7.6 MIRRAT must implement an annual compliance education program for employees, which provides training and information on MIRRAT's obligations under this clause 7, and must ensure that that compliance education program is given to new employees within 30 days of the commencement of their employment.
- 7.7 MIRRAT must establish and maintain effective I.T. systems and security measures to safeguard the Confidential Information of Terminal Users from unauthorised access, use, copying or disclosure. These measures will include:
- (a) providing individual usernames, passwords and access keys to any Authorised Persons who have access to the Confidential Information of Terminal Users; and
 - (b) recording a log of Authorised Persons who access Confidential Information of Terminal Users stored in MIRRAT's I.T. system and retaining that log for inspection by the Approved Independent Auditor if required.

Limited disclosure

- 7.8 MIRRAT may disclose Confidential Information of a Terminal User:
- (a) which comprises the Vessel Details, including publication on its website from time to time;
 - (b) 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 MIRRAT 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;
 - (c) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a Terminal Dispute, provided that MIRRAT does not disclose the Confidential Information of one Terminal User to another Terminal User without the first Terminal User's consent;
 - (d) to the ACCC or other government agency to the extent necessary to comply with any written request by that agency;
 - (e) to the Port Manager where MIRRAT is under a legal obligation to do so;
 - (f) where required by law, provided that, where permissible, MIRRAT first consults with the Terminal User that provided the Confidential Information; and
 - (g) to the extent the disclosure is reasonably required to protect the safety or security of persons or property or in connection with an emergency.
- 7.9 MIRRAT must retain records of any Confidential Information of a Terminal User disclosed in accordance with clauses 7.8(b) to 7.8(g) for a period of not less than five years from the date the Confidential Information is disclosed.

- 7.10 For the avoidance of doubt, nothing in this clause 7 prevents MIRRAT 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.

Confidentiality Policy

- 7.11 MIRRAT must establish and maintain a Confidentiality Policy in substantially the same form as set out in Schedule 2 to assist its Personnel to comply with MIRRAT's obligations under this Undertaking.

Variation of Confidentiality Policy

- 7.12 MIRRAT may vary its Confidentiality Policy from time to time with the approval of the ACCC.

MIRRAT employees

- 7.13 Unless the ACCC otherwise agrees in writing, MIRRAT undertakes to procure that no MIRRAT employee who has had access to Confidential Information of a Terminal User within a prior 6 month period is employed or engaged within 6 months of ceasing to be an employee of MIRRAT in a role within, or as a contractor to, a business unit of WWL (or a Related Body Corporate of WWL) which is responsible for commercial dealings with customers acquiring ocean shipping services to and from Melbourne.

MIRRAT's compliance with confidentiality and ring-fencing measures

- 7.14 MIRRAT must report any breaches of this clause 7 to the Approved independent Auditor within 5 Business Days of becoming aware of the breach.

8. MIRRAT's Annual Self-Compliance Report

- 8.1 On an annual basis for the duration of this Undertaking, MIRRAT must provide the ACCC and the Approved Independent Auditor with a report of its compliance with this Undertaking, which includes:
- (a) a record of the average performance by MIRRAT against each KPI in Schedule 3 during the previous calendar year:
 - (i) for any services provided by MIRRAT to its Related Bodies Corporate; and
 - (ii) for the same services provided to all other Terminal Users;
 - (b) details about all access disputes and terminal end-user disputes which arose in the previous calendar year, and how they were resolved; and
 - (c) details of any breaches of the ring-fencing provisions in clause 7 of this Undertaking.

(Annual Compliance Report).

- 8.2 MIRRAT must provide an Annual Compliance Report to the ACCC and the Approved Independent Auditor no later than 31 August each year (**Self-Report Date**). The Annual Compliance Report will cover the period from 1 July to 30 June in each year of the term of this Undertaking (or part thereof where this Undertaking commences or expires, is withdrawn or revoked during that period) immediately prior to the Self-Report Date.

9. Independent Audit

Approval of Proposed Independent Auditor

- 9.1 MIRRAT must appoint and maintain an Approved Independent Auditor to audit and report upon MIRRAT's compliance with this Undertaking.
- 9.2 MIRRAT must, prior to, or 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 5 to this Undertaking (**Proposed Independent Auditor Notice**).
- 9.3 After receiving a Proposed Independent Auditor Notice, the ACCC must decide whether to:
- (a) approve the appointment of the person named in the Proposed Independent Auditor Notice as the Approved Independent Auditor which includes approving the:
 - (i) terms of appointment attached to the Proposed Independent Auditor Notice; and
 - (ii) draft audit plan attached to the Proposed Independent Auditor Notice; or
 - (b) not approve the person named in the notice as the Proposed Independent Auditor.
- 9.4 If clause 9.3(b) applies, the ACCC may, at its absolute discretion:
- (a) direct MIRRAT to submit a Proposed Independent Auditor Notice that:
 - (i) names a person identified by the ACCC as the Proposed Independent Auditor; and/or
 - (ii) includes attachments that:
 - A. relate to the person identified by the ACCC under clause 9.4(a)(i) (if applicable); and/or
 - B. address any issues identified by the ACCC in relation to the terms of appointment and/or draft audit plan; or
 - (b) identify and approve a person as the Approved Independent Auditor together with the:
 - (i) terms of appointment; and
 - (ii) draft audit plan.
- 9.5 As soon as practicable, and within 2 Business Days of any direction by the ACCC under clause 9.4(a), MIRRAT must submit a Proposed Independent Auditor Notice in accordance with the direction.
- 9.6 Without limiting the ACCC's discretion, in making the decisions described in clause 9.3 or 9.4, 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 MIRRAT;
 - (c) terms of appointment and the draft audit plan are consistent with this Undertaking; and

- (d) terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.
- 9.7 Within 10 Business Days after receiving a Proposed Independent Auditor Notice, the ACCC must notify MIRRAT in writing of its decisions and any direction made pursuant to clause 9.3 or 9.4.
- 9.8 The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 9.7 by notifying MIRRAT in writing of the extension within 10 Business Days after receiving the Proposed Independent Auditor Notice.
- 9.9 The ACCC may exercise its powers under clause 9.10 if:
 - (a) MIRRAT has not provided the ACCC with a Proposed Independent Auditor Notice in accordance with clauses 9.2, 9.5 or 9.22; 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 9.19, 9.20 or 9.21.
- 9.10 If clause 9.9 applies, the ACCC at its absolute discretion may:
 - (a) identify and approve a person as the Approved Independent Auditor;
 - (b) approve the terms of appointment of the Approved Independent Auditor; and
 - (c) approve the draft audit plan.

Appointment of the Approved Independent Auditor

- 9.11 After receiving notice from the ACCC of its decisions pursuant to clause 9.3(a), 9.4(b) or 9.10, MIRRAT 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 within 1 Business Day of execution.

Obligations and powers of the Approved Independent Auditor

- 9.12 MIRRAT 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 MIRRAT, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in Schedule 5 to this Undertaking with MIRRAT 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 12 of this Undertaking;
 - (d) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 9.15; and
 - (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 12; 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.
- 9.13 MIRRAT 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 MIRRAT and MIRRAT'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.
- 9.14 Without limiting its obligations in this Undertaking, MIRRAT 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 required by 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 MIRRAT 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 MIRRAT and MIRRAT'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;
 - (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.

Compliance Audit

- 9.15 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 MIRRAT'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) MIRRAT's processes or reporting systems in relation to compliance with this Undertaking;
 - (iv) the KPIs in Schedule 3 of this Undertaking that MIRRAT 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 9.15(f).
- 9.16 The Approved Independent Auditor is to provide an Audit Report to the ACCC and MIRRAT 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 31 October each year until the expiry, withdrawal or revocation of this Undertaking pursuant to clause 4;
 - (c) on completion of any *ad hoc* audit requested under clause 12.5; and
 - (d) a final report due three months after the expiry, withdrawal or revocation of this Undertaking pursuant to clause 4.
- 9.17 Unless otherwise agreed with the ACCC in writing, MIRRAT must implement any recommendations of the Approved Independent Auditor made in the Audit Report pursuant to clause 9.15(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.

- 9.18 MIRRAT 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).

Resignation, revocation or termination of the Approved Independent Auditor

- 9.19 MIRRAT 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, 4.3 or clause 4.4.
- 9.20 The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.21 The ACCC may approve any proposal by, or alternatively may direct, MIRRAT 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.
- 9.22 If clause 9.19, 9.20, 9.21 applies, MIRRAT must provide the ACCC with a Proposed Independent Auditor Notice within 5 Business Days after the relevant event occurs, otherwise clause 9.10 applies.

10. Information

- 10.1 The ACCC may direct MIRRAT in respect of its compliance with this Undertaking to, and MIRRAT 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 MIRRAT'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.
- 10.2 Any direction made by the ACCC under clause 10.1 will be notified to MIRRAT, in accordance with clause 20.2.
- 10.3 In respect of MIRRAT'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.
- 10.4 MIRRAT will use its best endeavours to ensure that an Approved Independent Auditor complies with any request from the ACCC in accordance with clause 10.3.
- 10.5 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 10 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.

- 10.6 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 10; 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 10.
- 10.7 Nothing in this clause 10 requires the provision of information or documents in respect of which MIRRAT has a claim of legal professional or other privilege.

11. Price Dispute Resolution

Price Disputes Resolution Process

- 11.1 MIRRAT must comply with the Price Dispute Resolution Process at Schedule 6 to determine disputes by any person (including an Applicant, Licensee or any other person) in relation to Reference Tariffs for the Access Services.
- 11.2 MIRRAT may from time to time amend the Price Dispute Resolution Process, including to the extent necessary to comply with a written direction from the Port Manager, provided that MIRRAT has obtained the prior written consent of the ACCC.

Appointment of Independent Price Expert

- 11.3 MIRRAT must provide to the ACCC by 31 March in 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**).
- 11.4 The Proposed Independent Price Expert must have the qualifications and experience necessary to carry out the functions of the Independent Price Expert independently of MIRRAT and must not be:
- (a) an employee or officer of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (b) a professional adviser of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (c) a person who, in the opinion of the ACCC, holds a material interest in MIRRAT or its Related Bodies Corporate;
 - (d) a person who has a contractual relationship with MIRRAT or its Related Bodies Corporate (other than the terms of appointment of the Independent Price Expert);
 - (e) a Terminal User, supplier or material customer of MIRRAT or its Related Bodies Corporate; or
 - (f) an employee or contractor of a firm or company referred to in clauses 11.4(c) to 11.4(e).
- 11.5 MIRRAT must provide to the ACCC such information and documents as the ACCC requires to assess the appointment of the Proposed Independent Price Expert.
- 11.6 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.
- 11.7 If, after receipt by the ACCC of the Proposed Independent Price Expert Notice, the ACCC informs MIRRAT in writing that it:

- (a) does not object to the Proposed Independent Price Expert, MIRRAT 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, MIRRAT 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.

11.8 Within 2 Business Days of the appointment of the Independent Price Expert under clause 11.7, MIRRAT 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 MIRRAT's website.

Conditions relating to Independent Price Expert's functions

11.9 MIRRAT 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 11.4 for the period of his or her appointment;
 - (ii) provide any information or documents requested by the ACCC about MIRRAT's compliance with this Price Related 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 Related 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 required by 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.

12. Non-Price Dispute Resolution

Non-Price Dispute Resolution Process

- 12.1 MIRRAT must comply with the Non-Price Dispute Resolution Process at Schedule 7 to determine disputes by any person (including an Applicant, Licensee or any other person) in relation to the granting, refusal to grant, conditions or administration of an Access Licence Agreement, other than in relation to the amount of any Reference Tariff.
- 12.2 For the avoidance of doubt, MIRRAT must permit any Terminal User (or proposed Terminal User) to raise a dispute under the Non-Price Dispute Resolution Process in relation to MIRRAT's compliance with:
 - (a) Clause 5 - Open access conditions affecting the Terminal User;
 - (b) Clause 6 - Berthing allocation, including any allocation decision by MIRRAT, affecting the Terminal User or any change by MIRRAT to the Berthing Allocation Rules; or
 - (c) Clause 7 - Access to and use of that Terminal User's ring-fenced Confidential Information.
- 12.3 MIRRAT may from time to time amend the Non-Price Dispute Resolution Process, including to the extent necessary to comply with a written direction from the Port Manager, provided that MIRRAT has obtained the prior written consent of the ACCC.
- 12.4 For the avoidance of doubt, a Terminal User may raise a complaint regarding MIRRAT's compliance with this Undertaking directly with the ACCC at any time.

Ad hoc independent audit

- 12.5 In addition to a Terminal User's rights under the Non-Price Dispute Resolution Process, a Terminal User who has a complaint about MIRRAT's compliance with this Undertaking may at any time, by providing notice in writing to MIRRAT 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**).
- 12.6 To be valid, an Ad Hoc Audit Notice must contain:
 - (a) a description of the complaint and reasons why the Terminal User suspects that MIRRAT 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 MIRRAT 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.
- 12.7 A Terminal User may at any time withdraw an Ad Hoc Audit Notice by notifying MIRRAT and the ACCC in writing, in which case the requirement for the Approved Independent Auditor to prepare an Audit Report under clauses 9.15 and 9.16 ceases.

13. Review of the terms of this Undertaking

- 13.1 The ACCC may, after the second anniversary of the Commencement Date and thereafter not more than once in any 5 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.
- 13.2 On deciding to conduct a review pursuant to clause 13.1, the ACCC may invite submissions from MIRRAT, the Port Manager 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.
- 13.3 The factors to which the ACCC may have regard in a making decision to review pursuant to clause 13.1 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 9.15;
 - (b) any ad hoc audit reports prepared in accordance with clause 12.5;
 - (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 13.1; 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

- 13.4 Following a review in accordance with clauses 13.1, 13.2 and 13.3, 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 MIRRAT 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 MIRRAT or any other person:
- (a) publish the Amendment Notice on the ACCC's website;
 - (b) give a copy of the Amendment Notice to the Port Manager; and
 - (c) publicly consult on the Amendment Notice.

Proposed Variations to this Undertaking following ACCC review

- 13.5 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 MIRRAT with a notice setting out the terms of a variation to the Undertaking which is acceptable to the ACCC (**Variation Notice**).
- 13.6 MIRRAT 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 MIRRAT 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 MIRRAT following the consultations undertaken in accordance with clause 13.6(a).

13.7 If MIRRAT notifies the ACCC that it agrees to seek a variation to the Undertaking in accordance with clause 13.6(b), at that same time, MIRRAT must provide a proposed variation to the Undertaking to the ACCC for the purpose of seeking ACCC consent in accordance with s 87B(2) of the Act.

Referral to expert determination

13.8 If MIRRAT does not agree to seek a variation to this Undertaking in accordance with clause 13.6(b) (**Variation Dispute**), MIRRAT must provide written notice to the ACCC of the Variation Dispute, including:

- (a) written reasons explaining why MIRRAT 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 MIRRAT.

(**Variation Dispute Notice**).

13.9 The Proposed Independent Expert must not be:

- (a) an employee or officer of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
- (b) a professional adviser of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
- (c) a person who has a contractual relationship with MIRRAT or its Related Bodies Corporate; or
- (d) an employee or contractor of a firm or company referred to in clause 13.9(c).

13.10 Within 10 Business Days of MIRRAT providing a Variation Dispute Notice to the ACCC, the ACCC will provide written notice to MIRRAT informing MIRRAT of its decision to agree or not agree to the Proposed Independent Expert identified by MIRRAT pursuant to clause 13.8(b).

13.11 If MIRRAT and the ACCC cannot agree on an independent expert to be appointed to determine the Variation Dispute within 20 Business Days of MIRRAT providing a Variation Dispute Notice to the ACCC, then the Chairman of the Victorian Bar Council will determine the identity of the independent expert and the Variation Dispute will be referred to that independent expert for determination.

13.12 The cost of the independent expert will be borne by MIRRAT unless otherwise agreed.

13.13 MIRRAT will use best endeavours to ensure that the independent expert is provided with:

- (a) all relevant information available to MIRRAT 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 days of referral to that expert.

- 13.14 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.
- 13.15 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, MIRRAT 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 s 87B(2) of the Act within 5 Business Days of the independent expert's decision.
- 13.16 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, MIRRAT 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 s 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 MIRRAT.
- 13.17 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.
- 13.18 The independent expert's decision will be final and binding on MIRRAT and MIRRAT must take all steps to ensure that the independent expert's decision is fulfilled or otherwise given effect to.
- 13.19 Nothing in this clause 13 prevents the ACCC from investigating a potential breach of this Undertaking or from applying to the Court for orders pursuant to s87B of the Act in respect of a breach of this Undertaking at any time.

14. Disclosure of this Undertaking

- 14.1 Within 5 Business Days of the Commencement Date, MIRRAT will publish a copy of this Undertaking on its website.
- 14.2 MIRRAT 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 MIRRAT personnel and assistance from Related Bodies Corporate

- 15.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of MIRRAT to take or refrain from taking some action, MIRRAT must procure that Related Body Corporate to take or refrain from taking that action.
- 15.2 As soon as practicable after the Commencement Date, MIRRAT must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with MIRRAT's obligations under this Undertaking.
- 15.3 MIRRAT must ensure that any Related Body Corporate provides all necessary assistance and information so that MIRRAT is in a position to comply with any:

- (a) direction from the ACCC under clause 10.1; 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 MIRRAT's compliance with clause 7.

16. No derogation

- 16.1 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 MIRRAT of any term of this Undertaking.
- 16.2 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 MIRRAT 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.

17. Change of Control of MIRRAT's business

- 17.1 In the event that a Change of Control of MIRRAT's business is expected to occur before the withdrawal of this Undertaking in accordance with clause 4.2 MIRRAT must:
 - (a) notify the ACCC of this expectation; 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 MIRRAT pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified MIRRAT in writing that a section 87B undertaking under this clause is not required.

18. Resolving inconsistencies

- 18.1 To the extent there are any inconsistencies between this Undertaking and the Terminal Operations Deed or Berthing Allocation Rules as regards MIRRAT's obligations pursuant to this Undertaking, this Undertaking prevails.

19. Costs

- 19.1 MIRRAT 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 Adjudication Group

With a copy sent to:

Email address mergersucu@acc.gov.au
Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

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

Name: Melbourne International RoRo & Auto Terminal Pty Ltd
Address: Level 1
33 Herbert Street
St Leonards NSW 2065
Email address: Martin.McArdle@2wglobal.com
Attention: Mr Martin McArdle
Legal Counsel

With a copy sent to:

Name: Mr Kim Buoy
Address: 1-7 Link Way
Laverton North VIC 3026
Email address: Kim.Buoy@2wglobal.com

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 MIRRAT or the ACCC 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 Licence Agreement means an agreement between MIRRAT and a Licensee under which the Licensee is supplied the Access Services by MIRRAT.

Access Services means the right to use the Terminal to provide all or part of the Terminal Services, and any associated rights, benefits and privileges necessary or desirable to permit a Licensee to provide all or part of the Terminal Services.

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

Ad Hoc Audit Notice has the meaning given in clause 12.5 of this Undertaking.

Amendment Notice has the meaning given in clause 13.4 of this Undertaking.

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

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, as amended from time to time by ACCC direction given under clause 9.12(e), by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Independent Auditor means the person appointed under clause 9.11 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 9.15 of this Undertaking.

Authorised Person means:

- (a) MIRRAT Personnel and, subject to paragraph (b) directly below, excludes any person who is involved in or provides services to a Related Body Corporate of MIRRAT;
- (b) Personnel of any Related Body Corporate of MIRRAT who are responsible for providing I.T. support and troubleshooting services to MIRRAT; and
- (c) any other person or class of persons approved by the ACCC in writing from time to time.

Berthing Allocation Rules means the document by that name published on MIRRAT's website from time to time which governs the berthing of vessels at the Terminal, the current version of which (at the time of the ACCC's acceptance of this Undertaking) is provided at Schedule 4.

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

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

Comparable Cargo means cargo which is similar in nature, type, size or volume.

Confidential Information means information provided by a Terminal User to MIRRAT 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 cargo manifests, cargo descriptions, cargo markings, cargo mix/volumes, cargo origin and destinations, overseas and local 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 MIRRAT 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 MIRRAT to comply with requirements of the Open Access Conditions that details of persons providing services at the Terminal be published on MIRRAT'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 MIRRAT prior to being provided by the Terminal User; or
- (h) ceases to be confidential in nature by any other lawful means.

Change of Control means the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of MIRRAT by MIRRAT to any other person or entity.

Confidentiality Policy has the meaning given in clause 7.11 of this Undertaking.

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

Draft BAR Variation Notice has the meaning given in clause 6.4(a) of this Undertaking.

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

Establishment Audit has the meaning given in clause 9.16 of this Undertaking.

Final BAR Variation Notice has the meaning given in clause 6.4(f) of this Undertaking.

Financial Year means a financial year ending 30 June.

Harbour Master of the Port means the person appointed from time to time as the Harbour Master of the Port of Melbourne under the *Marine Safety Act 2010* (Vic) or any successor legislation.

Independent Price Expert means the person appointed under clause 11.7 of this Undertaking.

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

Licensee means any stevedore, mooring services provider, PDI Operator or any other user granted the right to provide part of the Terminal Services from time to time under an Access Licence Agreement with MIRRAT.

MIRRAT means Melbourne International RoRo & Auto Terminal Pty Ltd ACN 163 814 364.

MIRRAT Complaints Officer means the complaints officer designated by MIRRAT who is responsible for receiving and attending to complaints raised by Terminal Users.

MIRRAT Compliance Officer means the person referred to in clause 7.5 of this Undertaking.

Mooring Services means the mooring and unmooring of vessels.

Non-Price Dispute Resolution Process means the non-price dispute resolution process established by MIRRAT and set out in Schedule 7 of this Undertaking and as amended from time to time in accordance with clause 12.3 of this Undertaking.

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

PDI Facility means a pre-delivery vehicle inspection services facility located within the integrated on-port pre-delivery inspection hub at Alpha Road, Webb Dock, Port of Melbourne, Victoria.

PDI Operator Services means the movement of Units between the Terminal and a PDI Facility.

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.

PoMC means the Port of Melbourne Corporation ABN 22 195 188 658.

Port Manager the owner and/or manager of the Port of Melbourne from time to time, being initially PoMC.

Price Dispute Resolution Process means the price dispute resolution process established by MIRRAT and set out in Schedule 6 of this Undertaking, and as amended from time to time in accordance with clause 11.2 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 13.8(b) of this Undertaking.

Proposed Independent Price Expert means the prospective independent price expert identified by MIRRAT who will, subject to approval by the ACCC, determine all Price Disputes for all Terminal Users for the forthcoming Financial Year.

Proposed Independent Price Expert Notice has the meaning given in clause 11.3 of this Undertaking.

Proposed Transaction has the meaning given in clause 2.5 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances.

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

Reference Tariffs means the fees or charges payable by a Licensee to MIRRAT for the Access 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).

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.

Self-Report Date has the meaning given in clause 8.2 of this Undertaking.

Stevedoring Services means the loading and unloading of vessels at the Terminal.

Terminal means the automotive terminal operated by MIRRAT and located at Webb Dock West, Port of Melbourne.

Terminal Operations Deed means any deed between MIRRAT and the PoMC in relation to the provision of Terminal Services by MIRRAT.

Terminal Services means:

- (a) Mooring Services, PDI Operator Services and Stevedoring Services; and
- (b) any other services of a kind offered by MIRRAT to its Related Bodies Corporate or third parties, including shipping lines, importers and exporters.

Terminal User means:

- (a) any shipping line using the Terminal; or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time under an Access Licence Agreement with MIRRAT.

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 MIRRAT from time to time.

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 13.8 of this Undertaking.

Variation Dispute Notice has the meaning given in clause 13.8 of this Undertaking.

Variation Notice has the meaning given in clause 13.5 of this Undertaking.

Vessel Details means vessel name, voyage number, estimated time of arrival at Terminal, receiving, cut-off and delivery dates for vessels arriving at the Terminal.

WWL means Wallenius Wilhelmsen Logistics AS.

WW Terminals means Wallenius Wilhelmsen Terminals Holding AS.

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, MIRRAT 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.

Executed as an Undertaking

Executed by Melbourne International RoRo & Auto Terminal Pty Ltd ACN 163 814 364 by its authorised signatory:

Y.L. S. B. J.

Signature of authorised signatory

Kim E. B. J.

Name of authorised signatory (print)

21/3-2014

Date

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

Date

26/3/14

And signed on behalf of the Commission:

Chairman

[Signature]

Date

27/3/14

Schedule 1 Open Access Conditions

1. Definitions

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

Applicant means any stevedore, mooring service provider, PDI Operator or any other user seeking Access Services.

Licence Application Form means the application form the Operator requires Applicants to complete in order to apply for Access Services to provide Mooring Services, PDI Operator Services, Stevedoring Services and any other Terminal Service (as the case may be).

Operator means Melbourne International RoRo & Auto Terminal Pty Ltd ACN 163 814 364.

2. No discrimination or hindering access

- (a) The Operator must offer Access Services to an Applicant on terms no less favourable than terms offered to a Licensee for Access Services to conduct comparable Terminal Services.
- (b) The Operator must not discriminate between different Applicants and Licensees, or discriminate in favour of a Related Body Corporate, in offering and providing Access Services to conduct comparable Terminal Services.
- (c) The Operator must not engage in conduct for the purpose of preventing or hindering Access Services or Terminal Services by any Applicant or Licensee.
- (d) The Operator must not discriminate between different persons, or discriminate in favour of a Related Body Corporate, in offering and providing Terminal Services directly to third parties.

3. Eligibility requirements

The Operator must ensure that every Applicant can demonstrate, to the Operator'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 Access 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.

4. Operator obligations

- (a) The Operator must publish on its website:
 - (i) the Licence Application Form;
 - (ii) current Reference Tariffs for each Access Service;
 - (iii) the terms and conditions on which Access Services are offered;

- (iv) the process for assessing and approving an application by an Applicant and executing an Access Licence Agreement, including timeframes, the price review mechanism and a dispute resolution mechanism;
 - (v) full details of the Price Related Dispute Resolution Process and Non-Price Dispute Resolution Process;
 - (vi) entity names and ABNs of each Licensee; and
 - (vii) Berthing Allocation Rules.
- (b) The Operator must negotiate in good faith for the provision of Access Services.
 - (c) The Operator must provide unsuccessful Applicants with a statement of reasons for the decision, and provide a copy to the Port Manager.
 - (d) The Operator must supply Access Services at prices no greater than the then current Reference Tariffs payable for the Access Services.

5. Complaints and requests for information

- (a) The Operator must notify the Port Manager within two Business Days after the date of receiving:
 - (i) a complaint from any person in relation to Access Services;
 - (ii) a request or inquiry from the Australian Competition and Consumer Commission concerning a complaint about the Operator's compliance with this Undertaking, and including a request for information or documents under the *Competition and Consumer Act 2010 (Cth)* or this Undertaking.
- (b) The Operator must co-operate with the Port Manager in the resolution of complaints by any person in relation to Access Services or responding to inquiries or requests by the Australian Competition and Consumer Commission.
- (c) The Operator must co-operate with the Australian Competition and Consumer Commission in relation to any inquiries or requests, including requests for information or documents.

6. Reference Tariffs

At least 60 days before the end of each financial year ending 30 June, the Operator must:

- (a) publish on its website the proposed Reference Tariffs applicable for the next financial year; and
- (b) provide written notice to each Licensee of the proposed Reference Tariffs applicable for the next financial year.
- (c) include on its website and in the notice referred to in this paragraph, a requirement that any person who disputes the proposed Reference Tariffs, may do so in accordance with the Price Dispute Resolution Process and must notify the Operator in writing of the dispute at least 45 days before the end of the financial year.

Schedule 2 MIRRAT Confidentiality Policy



Confidentiality Policy

Melbourne International RoRo & Auto Terminal Pty Ltd

21 March 2014



MELBOURNE INTERNATIONAL RORO
AND AUTOMOTIVE TERMINAL

1 OVERVIEW

1.1 Background

Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) operates the automotive terminal at Webb Dock West, Melbourne (**Terminal**).

Confidential Information provided to MIRRAT is ring-fenced and is accessible to MIRRAT's officers, employees, agents and contractors on a need-to-know basis.

MIRRAT 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 MIRRAT's possession and to hold that information in the strictest confidence

You should speak to the MIRRAT 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

This Confidentiality Policy has been developed to help guide our business conduct and ensure that MIRRAT complies with its legal obligations in respect of Confidential Information.

All MIRRAT officers, employees, agents and contractors must comply with this Confidentiality Policy.

This Confidentiality Policy governs use of the following types of Confidential Information:

- **MIRRAT Confidential Information** which is Confidential Information that belongs to MIRRAT (e.g. management reports, contracts); and
- **Terminal User Confidential Information** which is Confidential Information that has been provided to MIRRAT by a Terminal User (e.g. cargo manifests, consignee details).

MIRRAT may also be subject to other specific confidentiality obligations in relation to information provided by other third parties. You should speak to the MIRRAT Compliance Officer about information provided to MIRRAT by other third parties (e.g. PoMC, software providers).

2 MIRRAT'S COMMITMENT TO COMPLIANCE

2.1 Purpose of this Confidentiality Policy

MIRRAT has developed this Confidentiality Policy to ensure that:

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

2.2 MIRRAT's commitment to compliance

Compliance with MIRRAT's policies and Australian laws applicable to our business is a key responsibility for everyone who works at MIRRAT. It is therefore of utmost importance to protect and secure Confidential Information against potential threats.

In addition to MIRRAT's general law obligations, MIRRAT has given legally enforceable confidentiality commitments concerning Terminal User Confidential Information pursuant to a *Confidentiality Deed Poll* executed in favour of Terminal Users and an *Enforceable Undertaking* given to the Australian Competition and Consumer Commission (**ACCC**). Copies of the *Confidentiality Deed Poll* and *Enforceable Undertaking* can be found on MIRRAT's intranet and website.

If Confidential Information is disclosed to inappropriate persons, is unavailable or unreliable, MIRRAT could suffer serious losses. MIRRAT's good reputation is also directly linked to the way both information and information systems are managed.

This Confidentiality Policy will assist you to understand MIRRAT's legal obligations in respect of Confidential Information, including MIRRAT's obligations under the Enforceable Undertaking given to the ACCC. MIRRAT will provide compliance training when you commence employment with MIRRAT which will explain your responsibilities and the requirements of this Confidentiality Policy. Ongoing compliance training will also be conducted annually.

2.3 Management responsibilities

MIRRAT's Managing Director and the management team are responsible for:

- providing each MIRRAT officer, employee, agent and contractor with a copy of this Confidentiality Policy;

- annual compliance training to explain the requirements of this Confidentiality Policy;
- monitoring compliance with this Confidentiality Policy and taking steps to ensure it is observed; and
- 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"?

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.

Confidential Information also includes information which is marked as confidential by the provider of that information or by MIRRAT management.

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

- cargo manifests
- cargo descriptions
- cargo markings
- cargo mix/volumes
- cargo origin and destinations
- overseas and local customer details
- terminal expenditure/cost information

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

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

3.2 Identifying Confidential Information

Any party who provides MIRRAT with information will be responsible for identifying what information is Confidential Information.

MIRRAT'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.

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

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

2 Company restricted

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

3 Confidential

- Information is limited to specific users, MIRRAT functions and specific customers.
- *Example:* personnel information, accounting data, customer data, sensitive projects and vendor contracts.

4 Secret

- Extremely sensitive company information limited to named users. Specific access approval must be obtained.
- *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?

Confidential Information can only be accessed and used by certain authorised persons.

You can only access Confidential Information if you are an officer, employee, agent or contractor who works in or exercises management oversight over or responsibility for MIRRAT.

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 MIRRAT. I.T. support personnel are bound by confidentiality obligations. Confidential Information cannot otherwise be accessed by any of MIRRAT's Related Bodies Corporate.

The following access controls exist to safeguard Confidential Information:

1 Physical access controls

Physical access to MIRRAT's premises shall be restricted to MIRRAT's officers and employees. Agents, contractors and consultants may be given limited access as appropriate. Employees shall always accompany visitors.

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.

2 Information access controls

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.

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).

3 Application access controls

Although the information accessed through certain applications may not be classified, application access shall only be granted on a need basis.

Data fields within applications shall as far as possible be protected from unintentional modifications. This may mean implementing read-only access restrictions.

Only applications acquired/authorised and installed by MIRRAT or authorised parties shall be deployed on MIRRAT computer equipment.

4 Network access controls

Only computer equipment controlled by MIRRAT shall be connected directly to MIRRAT's network.

MIRRAT officers, employees, agents and contractors shall not try to access information or information systems that are not intended for their use.

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

If you have access to any Confidential Information which is:

- **MIRRAT Confidential Information**, you must use that Confidential Information solely for the purpose of conducting MIRRAT's Terminal business and providing services required by its' Terminal Users;
- **Terminal User Confidential Information**, you must only use that Confidential information for the purpose of providing Terminal Services to that Terminal User or to resolve a Terminal User Dispute.

If you need to use any Confidential Information for another purpose, MIRRAT must obtain the consent of the provider of that Confidential Information.

MIRRAT officers, employees, agents and contractors must not use any Confidential Information to gain an advantage for themselves or any Related Body Corporate of MIRRAT.

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 MIRRAT 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 MIRRAT who are Terminal Users, or proposed users of the Terminal. This includes WWL's ocean shipping business.

You must not discuss, provide access to or disclose any Confidential Information of another Terminal User to WWL's ocean shipping business

If anyone from WWL's ocean shipping business contacts you to request Confidential Information about another Terminal User, you must notify the MIRRAT Compliance Officer immediately.

5.2 Disclosure in limited circumstances

If you have access to Confidential Information you must not disclose that Confidential Information without the consent of the provider of that Confidential Information.

Some limited exceptions apply. MIRRAT may disclose Confidential Information without the consent of the provider:

- which comprises a vessel name, voyage number, estimated time of arrival at Terminal, receiving, cut-off and delivery dates for vessels arriving at the Terminal (including publication on its website from time to time);
- 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;
- to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a Terminal User Dispute;
- to the ACCC or other government agency to the extent necessary to comply with any written request by that agency;
- to PoMC where MIRRAT is under a legal obligation to do so;
- where required by law, provided that, where permissible, MIRRAT first consults with the Terminal User that provided the Confidential Information; and

- 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 MIRRAT Compliance Officer before disclosing any Confidential Information in accordance with this section 5.2.

5.3 Record of disclosure

MIRRAT is required to maintain a record of any Confidential Information of a Terminal User that is disclosed in accordance with this Confidentiality Policy.

It is important that you obtain the approval of the MIRRAT Compliance Officer before disclosing any Confidential Information so that an appropriate record can be made.

5.4 Guidelines for reporting to MIRRAT's shareholders

MIRRAT's management team is responsible for the day to day management of MIRRAT and for implementing the direction and strategy set by the Board.

From time to time, MIRRAT's shareholders will require sufficient information for them to make decisions in relation to matters concerning MIRRAT's business, including:

- MIRRAT's financial performance and financial position;
- the financing and capital structure of MIRRAT;
- annual budgets, including capital and operating expenditure and approvals of expenditures and liabilities outside the budget of the MIRRAT business;
- the appointment of or change of auditors of MIRRAT;
- commencing, defending or settling claims of or against MIRRAT;
- ensuring that MIRRAT is complying with all applicable laws; and

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

- only relate to matters concerning their equity interest in MIRRAT;
- be provided to those shareholders for use in their capacity as shareholder; and
- 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:
 - does not disclose Confidential Information about the assets, business or affairs of particular Terminal Users; and
 - 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 MIRRAT Compliance Officer if you are unsure about what information can be disclosed to MIRRAT's shareholders.

6 GENERAL

6.1 Monitoring and consequences of non-compliance

Security measures will be put in place in order to monitor and prevent potential security risks. MIRRAT 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.

Failure to strictly adhere to this Confidentiality Policy could result in MIRRAT breaching its legal obligations under the:

- *Competition and Consumer Act 2010* (Cth);
- Enforceable Undertaking given to the ACCC;
- Confidentiality Deed Poll; and
- Contract with PoMC, which could provide PoMC with the right to operate the Terminal.

The consequences for MIRRAT are serious including the possibility of court action, financial loss, reputational damage and loss of its rights to operate the Terminal.

Any Personnel found to have violated this Confidentiality may be subject to disciplinary action, up to and including termination of employment.

6.2 Inadvertent disclosure of Confidential Information

If you become aware of any disclosure of Confidential Information (inadvertent or otherwise) in breach of this Confidentiality Policy, you must notify the MIRRAT Compliance Officer immediately.

The MIRRAT 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

The provider of Confidential Information may request that MIRRAT return, destroy or delete Confidential Information which they have provided to MIRRAT. You should speak with the MIRRAT Compliance Officer if you receive any such request.

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 MIRRAT Compliance Officer before destroying any Confidential Information.

6.4 Definitions

Access Licence Agreement means an agreement between MIRRAT and a Terminal User under which MIRRAT provides the Terminal Services.

Confidential Information has the meaning given in section 3.1.

MIRRAT means Melbourne International RoRo & Auto Terminal Pty Ltd ABN 43 163 814 364.

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

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

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.

PoMC means the Port of Melbourne Corporation.

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

- a the use of facilities and infrastructure owned, operated or controlled by MIRRAT; or
- b services and anything else provided by MIRRAT,

at the Terminal which in each case MIRRAT makes available to allow a Terminal User to facilitate export and import of motor vehicles and other cargo.

Terminal User means:

- a any shipping line using the Terminal; or
- b any other person who has applied for, whether successful or not, the right to provide Terminal Services at the Terminal from time to time under an Access Licence Agreement with MIRRAT.

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

Terminal User 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 MIRRAT from time to time.

Schedule 3 Key Performance Indicators

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

KPI	Purpose	Objective	Calculation of KPI
1. Truck turnaround time	Measure delays by reporting on the average time trucks are spending at the terminal picking up or delivering cargo. This will be influenced by the storage location of the relevant Cargo at the Terminal.	30 Minutes	Average time spent at the Terminal picking up or delivering cargo, measured from gate in to gate out.
2. Yard dwell time, imports	Measure average time import cargo units stay at the Terminal	2.5 days	Average time cargo units stay at the Terminal measured from announced time for pick-up to actual pick-up.
3. Yard dwell time, exports	Measure average time export cargo units stays at the Terminal	4 days	Average time cargo units stay at the terminal measured from actual time of delivery to announced cut-off time.
4. Berthing allocation changes	Measure delays in loading or discharging of vessels due to change in allocated berth by MIRRAT	Minimise delays	Number of incidents where there is a delay in start-up of Stevedore operations due to deviation between planned allocation of berth and actual allocation of berth. Note: Excludes any change to berthing allocation caused or contributed to by the relevant shipping line (or its representatives) or matters not within MIRRAT's reasonable control.
5. Mooring services	Measure delays for mooring service providers due to change in allocated berth by MIRRAT	Minimise delays	Number of incidents where there is a delay in the mooring of vessels due to deviation between planned allocation of berth and actual allocation of berth. Note: Excludes any delay or lost time caused or contributed to by the relevant shipping line (or its representatives) or not within MIRRAT's reasonable control.
6. Allocation of storage space	Measure average distance from vessel to first point of rest (storage location) for self-propelled automobiles	Efficient allocation of storage space	Average distance from vessel ramp to first point of rest in allocated yard space at the Terminal for self-propelled automobiles.

KPI	Purpose	Objective	Calculation of KPI
7. Equipment availability	Measure availability of requested MIRRAT equipment allocated to stevedore or shipping line at the Terminal	100% of demand meet	<p>Deviation between MIRRAT equipment requested by stevedore or shipping line and actual machinery provided (including type and capacity) to stevedore or shipping line.</p> <p>Note: KPI applies to equipment at the Terminal which is owned or controlled by MIRRAT and offered for use to stevedores or shipping lines.</p>
8. Mechanical support	Measure quality and reliability of mechanical support for MIRRAT equipment at the Terminal	Mechanical support for all Terminal Users	<p>Average lost time in excess of 1 hour due to failure of MIRRAT in providing mechanical breakdown support.</p> <p>Reported from time Mechanical Engineer officially notified to issue resolved (in total hours).</p> <p>Note: Excludes any faults or break-down caused or contributed to by the relevant Terminal User.</p>
9. Cargo dwell time over free time/ long term storage	Measure time cargo units stay over free time, excluding Customs or DAFF hold.	100% of self-propelled units picked up or delivered within free time period	<p>Number of self-propelled units which stay over free time as a percentage of total self-propelled units.</p>
10. Confidentiality and Ring Fencing	Measure MIRRAT's compliance with clause 7 of the Undertaking	100% compliance	<p>Number of complaints received concerning non-compliance with clause 7 and MIRRAT's response thereto.</p>
11. 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 complaints	<p>Report on number and type of complaints raised under the Price Dispute Resolution Process and Non-Price Dispute Resolution Process</p>

Schedule 4 Berthing Allocation Rules

1. Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) operates the automotive terminal at Webb Dock West, Melbourne (**Terminal**).
2. This document sets out the rules for managing berthing and berthing allocation at the Terminal (**Berthing Allocation Rules**). MIRRAT will allocate berths at the Terminal in accordance with these Berthing Allocation Rules.
3. In its application or interpretation of these Berthing Allocation Rules, MIRRAT will not discriminate between different shipping lines or in favour of its Related Bodies Corporate, or engage in conduct for the purpose of preventing or hindering access to the Terminal by any shipping line.
4. MIRRAT has also executed a Confidentiality Deed Poll in favour of Terminal Users which outlines how MIRRAT will handle Confidential Information provided under these Berthing Allocation Rules.
5. The Berthing Allocation Rules are:
 - (a) Vessels equipped with ramps and that are purpose made for ocean transportation of self-propelled vehicles will have berthing priority at all times at the Terminal for loading and discharging of cargo.
 - (b) Berthing allocation and priority will be based on the overriding principle of “first come/ first served” (measured from the time of actual boarding of pilot), and subject thereto, berthing allocations will be made having regard to the following:
 - (i) optimal safety in operations as well as accommodating the fastest possible turn-around of vessels;
 - (ii) ETA Port Phillip Bay pilot station based on 7 day, 3 day, 2 day and 1 day notice; and
 - (iii) ETA Port Phillip Bay pilot station based on (1) 12 hours' notice, (2) stevedore commencement times and (3) best estimate of arrival time at the berth.
 - (c) It will be the shipping line's local representative's responsibility to notify the Terminal through EDI on actual time of pilot boarding time and of expected arrival at the Terminal. If the stevedores have not been ordered to start work on arrival, priority will be given to the next vessel in line, and the vessel will be given priority according to when stevedores will commence working on that vessel.
 - (d) Berthing will be allocated on the first available berth based upon estimated completion of operation and departure time. The stevedore and shipping line's representative have a responsibility to advise the Terminal of any changes.
 - (e) Vessels that have been at anchor waiting berthing will be given berthing priority over vessels arriving Port Phillip Bay pilot station.
 - (f) Vessels transferring from other berths within the port will only be given berthing priority if they depart (time of casting of last line) their last berth prior to other vessels taking on a pilot (time of pilot boarding). Each shipping line's local representative is responsible for notifying the Terminal of any changes and the time of these actions.
 - (g) Any changes to announced times of a vessel that could affect the berthing priority of another vessel and are not notified to the Terminal, may lead to a change in allocation of berthing at the Terminal's discretion.

6. Complaints about berthing allocation:
 - (a) must be submitted in writing to MIRRAT's Complaints Officer as soon as possible;
 - (b) must be escalated to MIRRAT's Managing Director (or his/her representative) if the complaint cannot be resolved within 6 hours of it being submitted to the MIRRAT Complaints Officer; and
 - (c) may be referred to Harbour Master at the Port of Melbourne for a final decision if MIRRAT's Managing Director (or his/her representative) cannot resolve the complaint within 8 hours of it being submitted to MIRRAT in accordance with clause 6(a).
7. MIRRAT has published a Non-Price Dispute Resolution Process in respect of its management of the Terminal and has undertaken to comply with that process. Any person dissatisfied with a berthing allocation made by MIRRAT or a change to these Berthing Allocation Rules which has been proposed or made by MIRRAT may, as an alternative to referring the dispute to the Harbour Master under clause 6(c), raise a dispute under the Non-Price Dispute Resolution Process.
8. These Berthing Allocation Rules will be reviewed by MIRRAT yearly and proposals for changes discussed with all shipping lines and stevedores. MIRRAT may only make changes to these Berthing Allocation Rules in accordance with the process set out in the clause 6 of the Section 87B Undertaking it has given to the ACCC.
9. Unless defined in these rules, the definitions in the Section 87B undertaking apply.

Schedule 5 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 – MIRRAT s87B Undertaking*" to the below email addresses:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

With a copy sent to:

Email address mergersucu@acc.gov.au
Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

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 MIRRAT 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) MIRRAT and the proposed independent auditor's employer are Associated Entities.

- (ii) MIRRAT is an Entity Connected with the proposed independent auditor's employer.
- (iii) the proposed independent auditor's employer is an Entity Connected with MIRRAT.
- (iv) MIRRAT and the proposed independent auditor's employer are Related Entities.
- (v) MIRRAT and the proposed independent auditor's employer are Related Parties
- (vi) any Related Party, Related Entity or Entity Connected with MIRRAT is a Related Party, Related Entity or Entity Connected with the proposed independent auditor.
- (vii) MIRRAT 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 MIRRAT or has been in the past three years.
- (ix) MIRRAT is a supplier of the proposed independent auditor's employer or has been in the past three years.
- (x) any other relationship between MIRRAT 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.

Specific Information required for Undertaking Appointments

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 MIRRAT's compliance with the Undertaking and how it will prepare the plans in regard to the establishment audit and the Audit Report.

Schedule 6 Price Dispute Resolution Process

PRICE RELATED DISPUTE RESOLUTION PROCESS

Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) operates the Melbourne International RoRo & Automotive Terminal at Webb Dock West, Melbourne (**Terminal**).

This Price Related Dispute Resolution Process is intended to resolve disputes between MIRRAT and Terminal User relating to the prices charged by MIRRAT for the supply of Terminal Services. Non-price related disputes between MIRRAT and Terminal User are not governed by these processes.

MIRRAT has committed to PoMC and the ACCC to comply with the Open Access Conditions in the performance of its obligations under this Price Related Dispute Resolution Process.

1 OBJECTIVE

- (a) MIRRAT publishes Reference Tariffs for the Terminal on its website.
- (b) MIRRAT is committed to setting Reference Tariffs at levels which are reasonable and appropriate, taking into account the relevant considerations in clause 3.4.
- (c) The Section 87B Undertaking and any Confidentiality Deed Poll which MIRRAT has executed in favour of Terminal Users outline how MIRRAT will deal with Confidential Information provided by Terminal Users.

2 ANNUAL PRICE REVIEW

2.1 REVIEW OF REFERENCE TARIFFS

MIRRAT will conduct an annual review of its Reference Tariffs and may propose a price increase which it considers reasonable and appropriate, taking into account the relevant considerations in clause 3.4.

2.2 NOTICE OF PRICE INCREASE

At least 60 days before the end of each Financial Year, MIRRAT will provide notice of the proposed Reference Tariffs applicable for the next Financial Year by:

- (a) giving written notice to any person who has entered into an Access Licence Agreement;
- (b) publishing the proposed Reference Tariffs and information about this Price Related 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 clause 2.2(a) must contain:

- (a) the amount of the proposed Reference Tariff;
- (b) the date on which the proposed Reference Tariff will take effect;
- (c) detailed reasons for any proposed price increase;
- (d) information about this Price Related Dispute Resolution Process (including that a Price Dispute can be raised up until 45 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

MIRRAT will offer to negotiate with any Terminal User who provides or proposes to provide an Objection Notice in relation to a proposed price increase notified under clause 2.2.

2.5 APPROVED PRICE INCREASES

A Price Dispute cannot be raised under 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 clause 2.2 which notice discloses that the price increase:

- (a) has been approved or determined by the Independent Price Expert pursuant to clause 3.3; or
- (b) has been approved by PoMC and will take effect no later than 1 year after the Commencement Date of the Section 87B Undertaking.

3 PRICE DISPUTE

3.1 RAISING A PRICE DISPUTE

- (a) A Terminal User who objects to a proposed price increase may raise a Price Dispute by providing written notice to the Independent Price Expert and MIRRAT no later than 45 days before the end of the Financial Year (**Objection Notice**).
- (b) An Objection Notice must set out the Terminal User's reasons for objecting to the proposed price increase.
- (c) By submitting an Objection Notice, the Terminal User agrees to comply with this Price Related Dispute Resolution Process.
- (d) A Terminal User may at any time withdraw an Objection Notice by written notice to MIRRAT 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 clause 3.3 shall forthwith cease.

3.2 PUBLICATION OF OBJECTION NOTICE

MIRRAT will 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 MIRRAT's proposed price increase is reasonable and appropriate having regard to the principles listed in clause 3.4; and
 - (ii) may accept, reject or vary MIRRAT's proposed price increase.

- (b) Any variation of a price increase by the Independent Price Expert under clause 3.3(a)(ii) will not result in a Reference Tariff that is:
 - (i) higher than the Reference Tariff proposed by MIRRAT under clause 2.2; or
 - (ii) less than the then current Reference Tariff.
- (c) The Independent Price Expert will make his or her determination within:
 - (i) the 60 day period referred to in clause 2.2; or
 - (ii) such further period, not being more than 20 days, as the Independent Price Expert in his or her sole discretion requires.
- (d) MIRRAT and the Terminal User must provide the Independent Price Expert with any information he or she requires to make a determination under this 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 to a proposed price increase, the Independent Price Expert will only make a single determination about those Reference Tariffs or that proposed price increase.
- (f) The Independent Price Expert's decision is final and binding.
- (g) When making a determination under this 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 Reference Tariff is reasonable and justified, the Independent Price Expert will have regard to the following principles:

- (a) that Reference Tariffs 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 Reference Tariffs should be set taking into account:
 - (i) Terminal lease costs and all efficient input costs;
 - (ii) an appropriate allocation of MIRRAT's relevant overhead costs;
 - (iii) expected volumes over the period MIRRAT has used to calculate the proposed price increase;
 - (iv) depreciation of, and a return on, the prudent level of capital invested by MIRRAT at the Terminal, where:
 - (A) depreciation is based on straight line methodology (or a reasonable alternative methodology) and reasonably anticipated asset lives; and
 - (B) the rate of return is based on MIRRAT's weighted average cost of capital;

- (v) the interests of all users of the Terminal Services for which the proposed Reference Tariff relates; and
- (vi) the reasonableness and appropriateness of, and justification for, the existing Reference Tariffs for the supply of the Terminal Services.

- (c) The structure of Reference Tariffs 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) MIRRAT; and
 - (ii) any party that lodged an Objection Notice in relation to the proposed price increase,
 of his or her determination under clause 3.3(a)(ii) as soon as practicable after making the determination.
- (b) Within 2 days of receiving the determination, MIRRAT must:
 - (i) publish the Independent Price Expert's determination on MIRRAT'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 MIRRAT and the Terminal User, unless the Independent Expert determines or the parties agree otherwise.
- (d) MIRRAT and the Terminal User 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 clause 3.1, the new price takes effect the date that MIRRAT notified under clause 2.2(a) that the proposed price increase would take effect.
- (b) If the Independent Price Expert makes a determination under clause 3.3(a)(ii), then the new price as determined by the Independent Expert takes effect on the date that MIRRAT notified under clause 2.2(a) that the proposed price increase would take effect.

5 DEFINITIONS

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

Access Licence Agreement means an agreement between MIRRAT and a Licensee under which the Licensee is supplied the Access Services by MIRRAT.

Access Services means the right to use the Terminal to provide all or part of the Terminal Services, and any associated rights, benefits and privileges necessary or desirable to permit a Licensee to provide all or part of the Terminal Services.

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

Business Day means a day on which trading banks are open for the transaction of general banking business in Melbourne, other than a Saturday, Sunday or public holiday generally observed in Melbourne.

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

Financial Year means a financial year ending 30 June.

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

Licensee means any stevedore, mooring services provider, PDI Operator or any other user granted the right to provide part of the Terminal Services from time to time under an Access Licence Agreement with MIRRAT.

Mooring Services means the mooring and unmooring of vessels.

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

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

PDI Facility means a pre-delivery vehicle inspection services facility located within the integrated on-port pre-delivery inspection hub at Alpha Road, Webb Dock, Port of Melbourne, Victoria.

PDI Operator Services means the movement of units between the Terminal and a PDI Facility.

PoMC means the Port of Melbourne Corporation.

Price Dispute means a bona fide commercial dispute raised by a Terminal User about the proposed increase to a Reference Tariff which relates to that Terminal User.

Reference Tariffs means the fees or charges payable by a Licensee to the MIRRAT for the Access 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).

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

Section 87B Undertaking means the undertaking given by MIRRAT 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 MIRRAT's operation of the Terminal.

Stevedoring Services means the loading and unloading of vessels at the Terminal.

Terminal Services means:

- (a) Mooring Services, PDI Operator Services and Stevedoring Services; and
- (b) any other services of a kind offered by MIRRAT to its Related Bodies Corporate or third parties, including shipping lines, importers and exporters.

Terminal User means

- (a) any shipping line using the Terminal; or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time under an Access Licence Agreement with MIRRAT.

Schedule 7 Non-Price Dispute Resolution Process

NON-PRICE RELATED DISPUTE RESOLUTION PROCESS

Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) operates the Melbourne International RoRo & Automotive Terminal at Webb Dock West, Melbourne (**Terminal**).

This Non-Price Related Dispute Resolution Process is intended to resolve disputes between MIRRAT and Terminal Users relating to matters other than the prices charged by MIRRAT for the supply of Terminal Services. Price related disputes between MIRRAT and Terminal Users are not governed by these processes.

MIRRAT has committed to PoMC and the ACCC to comply with the Open Access Conditions in the performance of its obligations under this Non-Price Related Dispute Resolution Process.

1 OBJECTIVE

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

2 RAISING A TERMINAL USER DISPUTE

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

3 NEGOTIATION

- (a) Within 7 days of the Terminal User providing MIRRAT a Terminal User Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Terminal User Dispute expeditiously by joint discussion.
- (b) If the Terminal User Dispute is not resolved in accordance with clause 3(a) within 21 days of the Terminal User providing a Terminal User Dispute Notice to MIRRAT then:
 - (i) if both parties agree, they will attempt to resolve the Terminal User Dispute by mediation pursuant to clause 4; or
 - (ii) if one or both of the parties do not wish to resolve the Terminal User Dispute by mediation, either party may within 7 days refer the Terminal User Dispute to Expert Determination or Arbitration in accordance with clause 4.4.

4 FORMAL MEDIATION

4.1 APPOINTMENT OF MEDIATOR

- (a) A Terminal User Dispute referred to formal mediation in accordance with clause 3(b)(i) will be mediated by a single mediator appointed by agreement between MIRRAT and the Terminal User.
- (b) The mediator appointed by MIRRAT and the Terminal User must have the qualifications and experience necessary to carry out the functions of the mediator independently of MIRRAT and must not be:
 - (i) an employee or officer of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a professional adviser of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with MIRRAT or its Related Bodies Corporate (other than the terms of appointment of the mediator);
 - (iv) a Terminal User, supplier or material customer of MIRRAT 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 MIRRAT and the Terminal User fail to agree on the appointment of a mediator within 14 days of referral under clause 3(b)(i), the President of the Chapter of the Institute of Arbitrators and Mediators of Australia (**IAMA**) in the state of Victoria will select the mediator.
- (d) MIRRAT and the Terminal User 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 MIRRAT and the Terminal User and all reasonable assistance to enable the mediator to conduct the mediation.

4.2 INDEMNIFICATION OF THE MEDIATOR

MIRRAT and the Terminal User 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 MIRRAT and the Terminal User:

- (a) each of MIRRAT and the Terminal User 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 MIRRAT and the Terminal User;
- (c) MIRRAT and the Terminal User 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 User Dispute which remains unresolved to:

- (i) an expert for determination in accordance with clause 5; or
- (ii) an arbitrator for arbitration in accordance with clause 6,

within 7 days after:

- (iii) the conclusion of the 21 day negotiation period for the Terminal User Dispute under 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 User Dispute in accordance with clause 4.

- (b) Within 7 days of the issue of a Final Dispute Notice, MIRRAT and the Terminal User will agree on:

- (i) which of expert determination or arbitration will be conducted to resolve the Terminal User 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 MIRRAT and the Terminal User cannot agree on either:

- (i) which of expert determination or arbitration will be conducted to resolve the Terminal User 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 Victoria will determine those matters.

- (d) The expert or arbitrator appointed by MIRRAT and the Terminal User must have the qualifications and experience necessary to carry out the functions of the expert or arbitrator as applicable independently of MIRRAT and must not be:

- (i) an employee or officer of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;

- (ii) a professional adviser of MIRRAT or its Related Bodies Corporate, whether current or in the past 3 years;
- (iii) a person who has a contractual relationship with MIRRAT or its Related Bodies Corporate (other than the terms of appointment of the mediator);
- (iv) a Terminal User, supplier or material customer of MIRRAT 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 User Dispute is referred to an expert for expert determination pursuant to clause 4.4(a), the following provisions will apply:

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

6 ARBITRATION

- (a) If the Terminal User Dispute is referred to an arbitrator pursuant to clause 4.4(a), MIRRAT and the Terminal User may agree on the terms on which the arbitration will be conducted.
- (b) MIRRAT 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 MIRRAT's contractual rights against third parties.
- (c) If, within 14 days of the arbitrator being appointed, MIRRAT and the Terminal User 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 Related Dispute Resolution Process.
- (d) The arbitrator will not be required to proceed with the arbitration unless and until the Terminal User has agreed to pay the arbitrator's and other costs as determined in accordance with clause 6(p) and provide any indemnity as required in accordance with clause 6(q).
- (e) Unless MIRRAT and the Terminal User agree otherwise, the arbitration will be conducted in private.
- (f) MIRRAT and the Terminal User may appoint a person, including a legally qualified person, to represent it or assist in the arbitration.
- (g) The arbitrator will present its determination in draft form to MIRRAT and the Terminal User and allow them the opportunity to comment before making a final determination.
- (h) 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.
- (i) Subject to clause 6(r) and unless MIRRAT and the Terminal User agree otherwise, any determination by the arbitrator will be confidential.
- (j) The arbitrator may at any time terminate an arbitration (without making a determination save for any determination under 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 User Dispute is vexatious;
 - (ii) the subject matter of the Terminal User Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the Terminal User has not engaged in negotiations in good faith.
- (k) In deciding a Terminal User 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.
- (l) In deciding a Terminal User Dispute, the arbitrator must not:
- (i) without the consent of MIRRAT and the Terminal User, make a determination which relates to matters which were not specified in the Terminal User Dispute Notice ; or
 - (ii) without the consent of MIRRAT and the Terminal User, allow any other party to join or intervene in the arbitration.
- (m) 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.
- (n) Other than in circumstances where the determination or direction is the subject of review by a court of law, if a Terminal User does not comply with a determination or direction of the arbitrator, MIRRAT will not be obliged to continue to seek to resolve the matters subject of the Terminal User Dispute Notice.
- (o) Other than where the determination or direction is the subject of review by a court of law, MIRRAT will comply with the lawful determination or direction of the arbitrator.
- (p) The arbitrator's costs and the costs of the parties to the arbitration will be borne by MIRRAT and the Terminal User in such proportions as the arbitrator determines. MIRRAT and the Terminal User may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
- (q) Where the arbitrator requires it, MIRRAT and the Terminal User 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 clause 6, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (r) Any laws relating to arbitrations applying in the jurisdiction in which any arbitration undertaken in accordance with this clause 6 is conducted will apply to the arbitration.
- (s) MIRRAT must send a copy of any determination made by the arbitrator to PoMC and the Approved Independent Auditor within 7 days of the determination being made.

7 GENERAL

Save the for the obligations of disclosure to PoMC and the Approved Independent Auditor provided for in this Non-Price Related Dispute Resolution Process, the Terminal User Dispute and any terms of resolution are to be kept strictly confidential by MIRRAT and the Terminal User.

8 DEFINITIONS

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

Access Licence Agreement means an agreement between MIRRAT and a Licensee under which the Licensee is supplied the Access Services by MIRRAT.

Access Services means the right to use the Terminal to provide all or part of the Terminal Services, and any associated rights, benefits and privileges necessary or desirable to permit a Licensee to provide all or part of the Terminal Services.

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

Business Day means a day on which trading banks are open for the transition of general banking business in Melbourne, other than a Saturday, Sunday or public holiday generally observed in Melbourne.

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

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

Licensee means any stevedore, mooring services provider, PDI Operator or any other user granted the right to provide part of the Terminal Services from time to time under an Access Licence Agreement with MIRRAT.

Mooring Services means the mooring and unmooring of vessels.

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

PDI Facility means a pre-delivery vehicle inspection services facility located within the integrated on-port pre-delivery inspection hub at Alpha Road, Webb Dock, Port of Melbourne, Victoria.

PDI Operator Services means the movement of units between the Terminal and a PDI Facility.

PoMC means the Port of Melbourne Corporation.

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

Section 87B Undertaking means the undertaking by MIRRAT 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 MIRRAT's operation of the Terminal.

Stevedoring Services means the loading and unloading of vessels at the Terminal.

Terminal Services Means:

- (a) Mooring Services, PDI Operator Services and Stevedoring Services; and
- (b) any other services of a kind offered by MIRRAT to its Related Bodies Corporate or third parties, including shipping lines, importers and exporters.

Terminal User means:

- (a) any shipping line using the Terminal; or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time under an Access Licence Agreement with MIRRAT.

Terminal User Dispute means a bona fide commercial dispute raised by a Terminal User associated with the provision of Terminal Services by MIRRAT as they relate to Terminal Users, 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 Service.