

New Works Deed

The Director-General of the Ministry of Transport

Pacific National (NSW) Pty Limited

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Spares 40



Date	
Parties	
1.	The Director-General of the Ministry of Transport of Level 21, 227 Elizabeth Street, Sydney, NSW, 2000 (the <i>Director-General</i>).
2.	Pacific National (NSW) Pty Limited (ABN 83 099 150 688) of Level 6, 380 St Kilda Road, Melbourne, VIC, 3004 (<i>Pacific National</i>).
Recitals	
A	The Director-General of the Ministry of Transport (formerly the New South Wales Department of Transport) and Freight Rail Corporation are parties to a Works Deed (Grain) dated on or about 30 October 2001 (<i>Works Deed</i>). Pacific National assumed the rights and obligations of Freight Rail Corporation under the Works Deed when it assumed the rights and obligations of Freight Rail Corporation in February 2002.
B	Under the Works Deed, Pacific National has certain obligations to invest funds in Grain-specific Rolling Stock Assets including wagon acquisition and refurbishment and rail to rail Grain consolidation facilities (<i>GCFs</i>) at Werris Creek and Stockinbingal. A number of Pacific National's obligations under the Works Deed have not yet been completed (the <i>Remaining Obligations</i>).
C	The Works Deed was amended by the parties by a Deed of Variation of Works Deed (Grain) dated on or around the date of this Deed (<i>Deed of Variation</i>).
D	The Director-General and Pacific National have agreed, pursuant to a Memorandum of Understanding dated on or around the date of this Deed (<i>Memorandum of Understanding</i>), to replace the Works Deed (as amended by the Deed of Variation) with this Deed which shall require Pacific National to perform the obligations outlined in Schedule 1 (<i>New Obligations</i>) in lieu of the Remaining Obligations and on the terms and conditions set out in this Deed.

It is agreed as follows.

1. Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Accreditation means, in the case of Pacific National, its accreditation under the *Rail Safety Act 2000* (NSW) as an operator of Rolling Stock Assets.

Approval means any approval consent, permit or authorisation.

Arbitrator means an arbitrator appointed in accordance with the Institute's Rules for the Conduct of Commercial Arbitrations.

Asset Obligations means the obligations outlined in part 2 of Schedule 1.

Assign means to assign, transfer, sub-let, license, charge, mortgage, grant an option or other right over or otherwise deal with or encumber (but does not include the granting of a security in the nature of a floating charge over its assets in good faith and in the ordinary course of business as a means of securing a debt facility).

Business Day means any day except a Saturday or Sunday or a day that is a public holiday throughout New South Wales.

81 Class Locomotives means 30 of Pacific National's fleet of 81 Class standard gauge locomotives, the subject of the Refurbishment Works and identified in Schedule 6.

Commencement Date means the date of this Deed.

Completion means completion of the New Obligations, as contemplated by this Deed. For the removal of doubt:

- (a) in relation to the Asset Obligations, completion will occur:
 - (i) when the PN Rolling Stock Assets are Transferred to the Transferee in accordance with clause 6.2 and Pacific National has otherwise complied with the requirements of that clause; or
 - (ii) if Pacific National is ready and willing to Transfer the PN Rolling Stock Assets but the Director-General (or the Transferee, as the case may be) fails to accept a Transfer, then on 30 June 2009 and Pacific National has otherwise complied with the requirements of clause 6.2; and
- (b) in relation to the Locomotive Obligations, completion will occur when the Refurbishment Works have been completed in accordance with clause 5.1 and Pacific National has otherwise complied with the requirements of that clause.

Confidential Information means:

- (a) in respect of the Director-General, information of the kind described in Part 1 of Schedule 4; and
 - (b) in respect of Pacific National, information of the kind described in Part 2 of Schedule 4,
- but Confidential Information does not include any information which:
- (c) at the time of the first disclosure to or observation by the Recipient, was already in the lawful possession of the Recipient in written or electronic form;
 - (d) is in or comes into the public domain otherwise than by disclosure in breach of this Deed; or
 - (e) becomes available to the Recipient independently from a third party free to disclose such information.

Contract means the commercial rail haulage contract entered into between GrainCorp Limited (ABN 60 057 186 035) and Pacific National for the haulage of Grain from consolidation points to port over a 5 and a half year period from May 2008.

Contractor means any person (including any contractor, supplier, manufacturer or other person) who supplies any materials or does any works in relation to the New Obligations.

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

Deed means this deed and any Schedules or annexures to this Deed.

Disclosing Party means a party who discloses Confidential Information to the other party.

Dispute means any dispute, difference of opinion, disagreement, claim or contention between the parties in connection with, or related to, this Deed or any decision, determination or exercise of discretion made in accordance with, under, or in breach of this Deed.

Event of Default means any of the events listed in clause 12.1.

Excess Amount has the meaning given to that term in clause 6.3(a)(v)(B).

Expert has the meaning given to that term in clause 13.2(c).

Export Grain Rail Haulage Services (branch line) means the export Grain rail haulage services provided by Pacific National on the New South Wales branch line and main line network (but only where travel over the main line network is necessary) to reach the nearest available hub for the deposit of Grain, on route to port.

Export Grain Rail Haulage Services (main line) means the export Grain haulage services provided by Pacific National on the New South Wales main line network.

Force Majeure Event means any event which is beyond the reasonable control of Pacific National and which causes a delay in reaching Completion of any component of the New Obligations, including:

- (a) loss or damage caused by an act of God, fire, explosion, earthquake, storm and tempest, civil commotion or any like occurrence including war;
- (b) any civil commotion or industrial action which directly prevents work on the relevant component of the New Obligations from proceeding; and
- (c) rain and inclement weather or conditions sufficient to prevent work on the relevant component of the New Obligations from proceeding.

Final Completion Date means 30 June 2013 (or any other date as agreed between the parties).

Government Authority means any international, federal, state or local government, semi-government, quasi-government or other department, body or authority, statutory or otherwise (but in the case of MoT and the Work Cover Authority of New South Wales only in their capacity as a statutory consent, regulatory or administrative authority).

Grain includes wheat, barley, canola, sorghum and other similar bulk rural products for export.

GST means the goods and services tax as imposed by the GST Law.

GST Amount means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of the Payment if only part of a Payment is consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced).

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Independent Certifier means an independent person appointed by the Director-General in accordance with clause 10.

Insolvency Event means, in relation to Pacific National, the happening of any of the following events in relation to Pacific National or a holding company of Pacific National:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) if it is a body corporate, it is placed under external administration;
- (c) an application is made to a court for it to be wound up and the application is not formally objected to within one month or formally dismissed within one month;
- (d) the appointment of a controller (as defined in the Corporations Act) of any of its assets;
- (e) it proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any class of creditors, including a deed of company arrangement; or
- (f) it becomes insolvent under administration, as defined in the Corporations Act.

Institute means the Institute of Arbitrators & Mediators Australia (New South Wales division).

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

Locomotive Obligations means the obligations outlined in part 1 of Schedule 1.

MoT means the New South Wales Ministry of Transport.

New Obligations means the obligations outlined in Schedule 1 (and comprising of the Locomotive Obligations and the Asset Obligations).

Nominated Representative has the meaning given to that term in clause 17.1(a).

Nominee means a nominee of the Director-General to be selected at the absolute discretion of the Director-General and the name of which is to be notified by the Director-General to Pacific National by 15 May 2009.

Non-Cash Security means one or more irrevocable and unconditional undertakings (in a form acceptable to the Director-General acting reasonably) by a trading bank or other institution (acceptable to the Director-General acting reasonably) to pay to the Director-General on demand in aggregate an amount up to the Total Security Amount.

Notice Date has the meaning given to that term in clause 13.2(a).

Notice of Dispute has the meaning given to that term in clause 13.1(b).

Payment means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under or in connection with this Deed); and
- (b) the GST exclusive market value of any non-monetary consideration.

PN Rolling Stock Asset means a Rolling Stock Asset identified in Schedule 5 or nominated under clause 6.1.

Quarter means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April.

Quarterly Progress Report means a report (in both electronic and hard copy form) which includes the information set out in Schedule 3.

Rate of Return means an internal rate of return of [REDACTED] based on the economic value of the PN Rolling Stock Assets.

Recipient means a party who is the recipient of Confidential Information.

Reduction Amount has the meaning given to that term in clause 8.4(c)(i).

Reduction Request has the meaning given to that term in clause 8.1(b).

Refurbishment Works means major component change outs and other works to be undertaken by Pacific National in respect of the 81 Class Locomotives identified in Schedule 6. A summary scope of works is set out in Schedule 2, full details of which will be provided by Pacific National to the Director-General within 21 days of the Director-General requesting Pacific National to do so.

Relevant Period has the meaning given to that term in clause 6.3.

Rolling Stock Asset means any vehicle which is operated or used on a Track (excluding, at any time, a vehicle designed for both on-track and off-track use when that vehicle is not being operated or used on the Track at that time).

Security means a Non-Cash Security or a Security Deposit.

Security Deposit mean a cash deposit for an amount equal to the Total Security Amount.

Submission has the meaning given to that term in clause 9.1(a).

Summary has the meaning given to that term in clause 13.4(b).

Supply has the meaning given to that term in the GST Law.

Tax Invoice has the meaning given to that term in the GST Law.

Taxable Supply has the meaning given to that term in the GST Law.

Term means the term of this Deed, as set out in clause 2.

Termination Date means the date on which Completion has occurred in respect of all the New Obligations (or any earlier date on which this Deed is terminated in accordance with clause 12.2(a)(i)).

Total Operating Costs means the total costs incurred by Pacific National in providing the Export Grain Rail Haulage Services (branch line) (including in relation to crewing, equipment, staffing and associated management services).

Total Security Amount means \$70 million, as reduced in accordance with clause 8.

Track means the rails, ballast, sleepers and all items used to fix the rails to the sleepers and to the ground underneath and which together form the New South Wales branch lines.

Transfer means to transfer legal and beneficial ownership unencumbered.

Transfer Date means 30 June 2009 (or such other date as agreed between the parties or as directed by the Director General under clause 6.2(b)).

Transferee means the Nominee notified by the Director General to Pacific National in accordance with this Deed.

1.2 General

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The *singular* includes the plural and conversely.
- (b) A *gender* includes all genders.
- (c) Where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a *clause, paragraph, annexure* or *Schedule* is to a clause or paragraph of, or annexure or schedule to this Deed.
- (f) A reference to any *party* to this Deed or any other agreement or document includes the party's successors and permitted assigns.
- (g) A reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed.
- (h) A reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (i) A reference to *dollars* or \$ is to Australian currency.
- (j) A reference to *conduct* includes any omission and any statement or undertaking, whether or not in writing.
- (k) Mentioning anything after *include, includes* or *including* does not limit what else might be included.
- (l) All references to *time* are to New South Wales time.
- (m) References to the whole includes part.
- (n) Capitalised expressions which are not defined in this Deed but which have a defined meaning in the GST Law have the same meaning in this Deed.

1.3 Director General discretion

If in this Deed the Director General exercises a discretion adverse to Pacific National, he must provide reasons for his decision.

2. Term

This Deed commences on the Commencement Date and expires on the Termination Date.

3. Security**3.1 Pacific National to provide Security**

- (a) On or before the Commencement Date, Pacific National must provide to the Director-General one of the following (at Pacific National's discretion):
- (i) a Security Deposit; or
 - (ii) a Non-Cash Security.
- (b) If Pacific National provides to the Director-General a Non-Cash Security, the parties acknowledge and agree that the Non-Cash Security shall comprise:
- (i) one Non-Cash Security for \$30,000,000 with an expiry date which is no earlier than 31 August 2009 as security for the performance of the Asset Obligations; and
 - (ii) 5 or any lesser number of Non-Cash Securities which in aggregate total \$40,000,000 each with an expiry date which is no earlier than 31 August 2013 as security for the performance of the Locomotive Obligations.
- (c) If:
- (i) the Asset Obligations are not Completed by the date referred to in clause 3.1(b)(i); or
 - (ii) the Locomotive Obligations are not Completed by the date referred to in clause 3.1(b)(ii),

Pacific National must provide a replacement Non-Cash Security for the Total Security Amount (taking into account any reduction to the Total Security Amount that has already occurred in accordance with clause 8) by no later than 2 Business Days before the relevant expiry date.

3.2 Reduction of the Total Security Amount

The Total Security Amount shall be reduced from time to time during the Term in accordance with clause 8.

3.3 Default by Pacific National

If an Event of Default occurs in respect of Pacific National, then clause 12 shall apply.

3.4 Return of Security

Subject to clause 3.3, the Director-General must repay or return to Pacific National the Security provided by Pacific National in accordance with this clause 3:

- (a) where applicable, in accordance with clause 8; and
- (b) promptly after Completion of the New Obligations.

The Director-General may (in its absolute discretion) return the Security to Pacific National if Pacific National has fulfilled all the New Obligations before the Final Completion Date and is otherwise under no liability to the Director-General under this Deed.

3.5 Interest on Security Deposit

If Pacific National provides a Security Deposit to the Director-General in accordance with this clause 3:

- (a) as soon as practicable after receipt of the Security Deposit, the Director-General must invest the Security Deposit in an interest bearing bank account (in the name of the Director-General); and
- (b) any interest earned from the Security Deposit (after deduction of any bank fees and expenses reasonably incurred by the Director-General up to the repayment date in connection with the establishment and maintenance of the bank account which has not been yet paid as at that date) must be paid to Pacific National at the same time as the Security is repaid to Pacific National in accordance with clause 3.4.

4. Works Deed and New Obligations

With effect from the Commencement Date:

- (a) the Works Deed is terminated and neither party shall have any further rights or obligations under that deed;
- (b) without limiting clause 4(a), the New Obligations replace all of Pacific National's incomplete obligations, including the Remaining Obligations, under the Works Deed; and
- (c) Pacific National is released from any obligation to complete the Remaining Obligations.

5. Locomotive Obligations

5.1 Refurbishment Obligations

Pacific National must complete the Refurbishment Works by the Final Completion Date taking into account its obligations to provide Export Grain Rail Haulage Services (main line) under the Contract.

5.2 Availability of 81 Class Locomotives

Pacific National:

- (a) must ensure that the 81 Class Locomotives are used primarily for Export Grain Rail Haulage Services (main line) during the Term and such use must be in a manner consistent with and in the style of the Contract; and
- (b) may use the 81 Class Locomotives for other purposes during the Term only where there is a surplus of 81 Class Locomotives not required for the provision of Export Grain Rail Haulage Services (main line) at the time of their use.

6. Asset Obligations

6.1 PN Rolling Stock Assets

- (a) The parties acknowledge that a list of the serial numbers of the 48 Class locomotives and 148 Grain wagons comprising the PN Rolling Stock Assets are included in Schedule 5.
- (b) Pacific National must provide the serial numbers for the 32 remaining Grain wagons comprising the PN Rolling Stock Assets to the Director-General (for inclusion in the list of PN Rolling Stock Assets in Schedule 5) on or before 31 December 2008. The Grain wagons must be:
 - (i) drawn from those that were purchased, or had works performed on them, in accordance with the Works Deed; and

selected from the following class of Grain wagons:

6.2 Transfer of PN Rolling Stock Assets

- (a) Subject to clause 7, Pacific National will Transfer the PN Rolling Stock Assets:
 - (i) to the Transferee;
 - (ii) on the Transfer Date or at such earlier date directed by the Director-General under clause 6.2(b) below;
 - (iii) on the following terms and conditions:
 - (A) all realised proceeds of sale (if any) are remitted to the Director-General regardless of the Transferee of the PN Rolling Stock Assets;
 - (B) the Director-General will procure that the Transferee covenants and agrees with Pacific National to use the PN Rolling Stock Assets exclusively on the New South Wales branch line and main line network (where travel over the main line network is necessary) to reach the nearest available hub for the deposit of Grain, on route to port;
 - (C) the Transferee and the Director-General are not liable for, and do not assume any obligations relating to Pacific National's Export Grain Rail Haulage Services (branch line) business, including any obligations to employees or customers of Pacific National, following completion of the Transfer; and
 - (D) on the basis that:

- (1) 2 branch line trains each consisting of 4 x 48 Class Locomotives and 40 Grain wagons (i.e., 8 x 48 Class Locomotives and 80 wagons) and the spares listed in Schedule 7 will be delivered to an appropriate railway facility (to be nominated by the Director-General at least 10 days prior to the delivery date) at Werris Creek, New South Wales;
 - (2) 2 branch line trains each consisting of 4 x 48 Class Locomotives and 40 Grain wagons (i.e., another 8 x 48 Class Locomotives and 80 wagons) will be delivered to an appropriate railway facility (to be nominated by the Director-General at least 10 days prior to the delivery date) at Parkes, New South Wales; and
 - (3) the remaining 2 x 48 Class Locomotives and 20 Grain wagons will be delivered to one of the railway facilities nominated by the Director-General under subparagraphs (1) or (2) above (and Pacific National will provide notice to the Director General 10 days prior to the Transfer Date of which facility that delivery will take place at).
- (iv) in then operational working order and condition (but Pacific National has no obligation past 30 June 2009 for the maintenance of, and gives no warranty, express or implied, as to the condition of the PN Rolling Stock Assets at that date). For the purposes of this Deed, a PN Rolling Stock Asset will be regarded as being in "then operational working order and condition" if it has been operated and maintained by Pacific National in the period from the date of this Deed to the Transfer Date (assuming there is demand for its use) and it is capable of being delivered at the location referred to in clause 6.2(a)(iii)(D); and
- (v) on the basis that they are accredited and fit for use in New South Wales under the *Rail Safety Act 2002* (NSW).
- (b) Despite anything else in this clause 6.2, the Director-General may direct (such direction to be at the absolute discretion of the Director-General) a Transfer of all of the PN Rolling Stock Assets before 30 June 2009, in which case any such early date directed by the Director-General shall be the Transfer Date for the purposes of this Deed.

6.3 Export Grain Rail Haulage Services

- (a) Subject to clause 7, and subject to the availability of access to Track which allows for the safe operation of the PN Rolling Stock Assets, Pacific National must provide Export Grain Rail Haulage Services (branch line) using the PN Rolling Stock Assets on the New South Wales branch line and main line network (but only where travel over the main line network is necessary) to reach the nearest available hub for the deposit of Grain, on route to port, from 1 July 2008 (or such other date as agreed between the parties) until the Transfer of the PN Rolling Stock Assets to the Transferee on the Transfer Date (the *Relevant Period*). In this regard, Pacific National:
- (i) must use the PN Rolling Stock Assets to provide the Export Grain Rail Haulage Services (branch line) during the Relevant Period;

- (ii) will provide crewing, equipment and all associated management services to receive and execute customer orders under the Contract during the Relevant Period;
- (iii) will continue scheduled fixed and routine maintenance and accreditation of the PN Rolling Stock Assets to ensure that they are fit for purpose under the *Rail Safety Act 2002* (NSW) and in operational working order and condition at all times during the Relevant Period;
- (iv) may retain all customer revenue earned from these services during the Relevant Period, and bears the risk of customer revenue not covering variable costs; and
- (v) may charge marginal costs plus a Rate of Return to customers for the provision of the Export Grain Rail Haulage Services (branch line) during the Relevant Period. If, in the Director-General's opinion (acting reasonably), the PN Rolling Stock Assets are insufficient to accommodate the 2008 Grain harvest:
 - (A) the use of the PN Rolling Stock Assets for customers shall be determined on an auction basis where the highest bidder will be successful; and
 - (B) if the auction process results in a charge to customers above the marginal costs plus a Rate of Return (the *Excess Amount*), the Excess Amount will be identified, quantified and paid to the Director-General on the Transfer Date and Pacific National must give to the Director-General a certificate from its external auditor certifying:
 - (1) the Excess Amount (if any); or
 - (2) if there is no Excess Amount, then the actual internal rate of return pre tax based on the economic value of the assets.
- (b) Until the Transfer Date, Total Operating Costs remain Pacific National's responsibility.
- (c) For the avoidance of doubt, Pacific National has no obligation to provide the Export Grain Rail Haulage Services (branch line) referred to in this clause 6.3 after the Transfer Date (for example, if the Director-General fails to nominate a Transferee) unless the PN Rolling Stock Assets are not Transferred as a result of some act or default by Pacific National.

7. Force Majeure Events

- (a) If Completion of any component of the New Obligations will not or is likely not to occur by the Final Completion Date (or in the case of the Asset Obligations by the Transfer Date) due to the occurrence of a Force Majeure Event:
 - (i) Pacific National must notify the Director-General in writing within 10 Business Days of becoming aware of the Force Majeure Event, giving details of the Force Majeure Event, including:
 - (A) the date on which it occurred;
 - (B) the period of the delay caused by the occurrence of the Force Majeure Event (acting reasonably);

- (C) the means proposed to be adopted to remedy or abate the Force Majeure Event; and
 - (D) the impact of the Force Majeure Event on the Completion date in respect of the affected component of the New Obligations by a period which is no greater than the number of days of delay caused by the occurrence of the Force Majeure Event;
- (ii) Pacific National must mitigate the effects of the Force Majeure Event to the extent reasonably practicable and resume performance of the affected component of the New Obligations as soon as reasonably possible;
 - (iii) Pacific National must notify the Director-General when the Force Majeure Event has been remedied or abated to an extent which permits Pacific National to resume the performance of the affected component of the New Obligations and the date Pacific National intends to resume performance of the affected component of the New Obligations; and
 - (iv) the Completion Date in respect of the affected component of the New Obligations shall be extended for a period of time necessary for Pacific National to complete the relevant New Obligations after the Force Majeure Event is remedied in accordance with clause 7(a)(ii).
- (b) If following an extension of time pursuant to clause 7(a)(iv), a Force Majeure Event continues and the parties agree that:
- (i) the Force Majeure Event cannot be remedied in accordance with clause 7(a)(ii); and
 - (ii) the New Obligations can no longer be completed within a reasonable period of time,

the parties must meet and in good faith seek a variation to the terms of the New Obligations, and if agreement cannot be reached in 30 days of either party giving notice to the other under this clause, then either party may refer the matter for expert determination under clause 13.

8. Reductions in the Total Security Amount

8.1 Reduction on Completion of Refurbishment Works

- (a) Subject to clause 8.1(b), Pacific National may reduce as at 30 June each year that part of the Security relating to the Locomotive Obligations in accordance with the formula:
\$1.333 million X each 81 Class Locomotive in respect of which the Refurbishment Works have been completed during the 12 months to 30 June in each year of the Term
- (b) If Pacific National wishes to reduce the Total Security Amount in accordance with clause 8.1(a), it may submit a written request (a **Reduction Request**) to the Director-General seeking the Director-General's authorisation to the reduction and providing:

- (i) details of the amount by which Pacific National wants the Total Security Amount to be reduced and the amount of the Total Security Amount after any such reduction;
 - (ii) details of the costs of the Refurbishment Works which Pacific National has completed since the last reduction in the relevant Total Security Amount and evidence of any costs and expenses incurred by Pacific National in relation to those Refurbishment Works (including, if requested by the Director General, copies of invoices, receipts and claims for payment made by any relevant Contractor) and the estimated further costs of completing the Refurbishment Works;
 - (iii) details of the number and specific 81 Class Locomotives which have been upgraded and refurbished to the date of the Reduction Request;
 - (iv) a schedule of the Refurbishment Works undertaken to the date of the Reduction Request;
 - (v) where applicable, the reasons why Pacific National considers that the Refurbishment Works have reached Completion (and details of any results of tests performed when commissioning the Refurbishment Works); and
 - (vi) any other information which the Director-General or the Independent Certifier (if applicable) may reasonably require in connection with the Reduction Request.
- (c) The Director-General is not required to authorise a reduction to the Total Security Amount in accordance with this clause 8.1 if the Director-General has reason to believe, based on objective evidence put to him, that Pacific National, subject to the terms and conditions of the Contract, has failed to:
- (i) meet, in all material respects, its obligations under the Contract (other than as a result of a default by Graincorp Limited); and
 - (ii) remedy within a reasonable time any such failure by Pacific National to the satisfaction of Graincorp Limited (acting reasonably).
- (d) In making a decision under clause 8.1(c), the Director-General may request certification from an Independent Certifier in accordance with clause 8.3.

8.2 Reduction following Transfer of PN Rolling Stock Assets

- (a) Subject to clause 8.2(b), in addition to any reduction in clause 8.1(a):
- (i) immediately following the Transfer of the PN Rolling Stock Assets to the Transferee on the Transfer Date; or
 - (ii) if Pacific National is ready and willing to Transfer the PN Rolling Stock Assets at that date but the Director-General or his Nominee (if one has been nominated) is not in a position to accept the Transfer of those assets,
- the Director-General must reduce the Security by \$30 million.
- (b) If Pacific National wishes to reduce the Total Security Amount in accordance with clause 8.2(a), it must submit a written request for a reduction (*Transfer Reduction*

Request) within 30 days of the Transfer Date, but for avoidance of doubt, if clause 8.2(a) applies, the Director-General must reduce the Security by \$30 million.

8.3 Certification by the Independent Certifier

After receipt of a Reduction Request from Pacific National in relation to the Refurbishment Works, the Director-General may, if he considers it appropriate:

- (a) provide a copy of the Reduction Request and all supporting documentation provided by Pacific National to the Independent Certifier; and
- (b) cause the Independent Certifier promptly to:
 - (i) review the Reduction Request and the supporting documentation;
 - (ii) carry out any inspections of the work relating to the Refurbishment Works which the Independent Certifier considers necessary for the purposes of assessing whether the obligations detailed in the Reduction Request have been carried out by Pacific National; and
 - (iii) by written notice to the Director-General (and having regard to the Independent Certifier's assessment of whether or not the obligations detailed in the Reduction Request have been carried out by Pacific National), provide to the Director-General a certificate confirming whether or not Completion of the relevant component of the Refurbishment Works has been reached in the manner contemplated by this Deed,

as soon as practicable after being provided with a copy of the Reduction Request (and the supporting documentation provided by Pacific National).

8.4 Director-General to notify Pacific National

- (a) As soon as practicable after receipt of:
 - (i) a Reduction Request from Pacific National; and
 - (ii) a certificate from the Independent Certifier confirming whether or not completion of the relevant component of the New Obligations has occurred (if an Independent Certifier is appointed under clause 8.3);

the Director-General must notify Pacific National in writing whether or not the Director-General authorises the reduction in the relevant Total Security Amount.

- (b) In exercising his discretion under clause 8.4(a), the Director-General must act reasonably.
- (c) If the Director-General notifies Pacific National in accordance with clause 8.4(a) that it authorises a reduction in a Total Security Amount:
 - (i) the relevant Total Security Amount shall be reduced immediately by an amount equal to the amount specified in the Reduction Request or, if applicable, the Director-General's notice (the *Reduction Amount*); and
 - (ii) at the same time as the Director-General gives a notice to Pacific National under clause 8.4(a), the Director-General must:

- (A) provide to Pacific National any written consent or authorisation or part surrender of any Non-Cash Security which Pacific National requires in order to ensure that the Total Security Amount is reduced by an amount equal to the Reduction Amount; and
- (B) where Pacific National provides a Security Deposit in accordance with clause 3.1, promptly repay to Pacific National an amount equal to the Reduction Amount plus interest (after deduction of any bank fees and expenses reasonably incurred by the Director-General up to the date of repayment in connection with the establishment and maintenance of the bank account which have not been yet paid as at that date).
- (d) If the Director-General notifies Pacific National in accordance with clause 8.4(a) that it does not authorise a reduction in the Total Security Amount, the Director-General's notice must give reasons for this decision and Pacific National may amend the Reduction Request and resubmit it to the Director-General. Any such amended Reduction Request shall be dealt with in accordance with the procedures set out in this clause 8.

9. Amendments to the Refurbishment Works

9.1 Submission by Pacific National

- (a) Pacific National may, at any time during the Term, make a written submission to the Director-General (a *Submission*) recommending a variation to the scope of some or all of the components of the Refurbishment Works (including a variation which has the effect of reducing the scope of, or permitting Pacific National to stop any further work on, the Refurbishment Works).
- (b) Any Submission made by Pacific National in accordance with clause 9.1(a) must include:
 - (i) details of the relevant amendment or variation;
 - (ii) reasons for the requested amendment or variation; and
 - (iii) any cost implications of the requested amendment or variation.

9.2 Response by the Director-General

- (a) The Director-General:
 - (i) must consider in good faith any Submission made by Pacific National; and
 - (ii) subject to clause 9.3, may (in its absolute discretion) reject a Submission or accept a Submission on any conditions which the Director-General considers to be appropriate (including a condition that some but not all of the variations or amendments requested by Pacific National be implemented).
- (b) Within 20 Business Days after receipt of a Submission, the Director-General must notify Pacific National in writing whether the Director-General accepts or rejects a Submission (and, if applicable the conditions of acceptance).
- (c) If the Director-General accepts a Submission, the parties must take all reasonable steps to give effect to the Director-General's decision.

9.3 Amendment to Specifications

If Pacific National makes a Submission recommending an amendment to the scope of some or all of the components of the Refurbishment Works, the Director-General must not unreasonably reject the Submission where the proposed amendment is:

- (a) of a minor nature; or
- (b) is required as a condition of any Approval which is necessary to enable the Refurbishment Works to be carried out or, if applicable, is necessary in order to satisfy the standards required by Pacific National's Accreditation or any other standards imposed on Pacific National by a Government Authority.

10. Independent Certifier

10.1 Appointment of Independent Certifier

The Director-General may, if he considers it appropriate to do so, appoint an Independent Certifier to assist the Director-General to monitor the performance of Pacific National regarding the Refurbishment Works under this Deed. The Independent Certifier will carry out any of the following tasks at the request of the Director-General:

- (a) inspecting the progress of the Refurbishment Works from time to time during the Term;
- (b) providing a certificate to the Director-General confirming whether or not Completion of each component of the Refurbishment Works has occurred, as contemplated by clause 8; and
- (c) reviewing each Reduction Request (and the supporting documentation) submitted by Pacific National to the Director-General in accordance with clause 8.

10.2 Pacific National's acknowledgment

Pacific National acknowledges that any certification or confirmation made or given by the Independent Certifier in relation to the Refurbishment Works or any Reduction Request does not constitute the Independent Certifier's or the Director-General's acceptance or approval of any component of the New Obligations.

11. Co-operation, reporting and records

11.1 Co-operation

- (a) Pacific National must promptly provide to the Director-General or the Independent Certifier any information or documentation relating to the Refurbishment Works reasonably requested by the Director-General or the Independent Certifier (as the case may be).
- (b) The Director-General must take (and must ensure that the Independent Certifier takes) all steps reasonably necessary to minimise any interference to the business undertakings or operations of Pacific National in exercising any rights of inspection granted to the Director-General or the Independent Certifier under this Deed.

11.2 Reporting and Records

- (a) Within 15 Business Days after the end of each Quarter, Pacific National must provide to the Director-General a Quarterly Progress Report.
- (b) Pacific National must at all times during the Term and for a period of 3 years after the Termination Date maintain all books, records, invoices, receipts, claims for payment, bank statements and other documentation relating to the New Obligations.
- (c) The Director-General may (at its cost) at any time during the Term and up to 3 years after the Termination Date, at all reasonable times and upon giving reasonable notice to Pacific National, conduct an audit of, or inspect, any of the books, records and other documentation (including all electronic files and records) referred to in clause 11.2(b). Pacific National must give all reasonable assistance to the Director-General during the course of any audit or inspection carried out by the Director-General in accordance with this clause.

12. Events of Default

12.1 Events of Default

- (a) Each of the following is an Event of Default in the case of Pacific National:
 - (i) failure to complete the Refurbishment Works by the Final Completion Date;
 - (ii) failure to meet its obligations under clause 5.2;
 - (iii) failure to provide the Export Grain Rail Haulage Services (branch line) during the Relevant Period (as contemplated by clause 6.3);
 - (iv) failure to Transfer the PN Rolling Stock Assets to the Transferee by the Transfer Date (as contemplated by clause 6.2);
 - (v) subject to the terms and conditions of the Contract, failure during the Term to meet its obligations under the Contract in any material respect and any such failure having not been remedied to the satisfaction of Graincorp Limited (acting reasonably);
 - (vi) failure to provide Security (or, if applicable, any replacement Security) to the Director-General in accordance with clause 3; or
 - (vii) an Insolvency Event occurs in respect of Pacific National, but only where the controller (as defined in the Corporations Act) appointed to Pacific National evinces an intention not to carry out any of Pacific National's obligations under this Deed or fails to carry out any or Pacific National's obligations under this Deed (and, in the latter case, the failure continues for 60 Business Days after the date of appointment of the controller).
- (b) If an Event of Default occurs in respect of Pacific National, the Director-General must give Pacific National a notice in writing specifying:
 - (i) the nature of the Event of Default which has occurred; and
 - (ii) a reasonable cure period to remedy the Event of Default having regard to the nature of the Event of Default.

12.2 Consequences of default

- (a) If an Event of Default occurs in respect of Pacific National and the Event of Default remains unremedied by Pacific National following a notice issued under clause 12.1(b), then the Director-General may (at any time after the occurrence of the Event of Default) take one or more of the following actions:
- (i) subject to giving Pacific National prior written notice of its intention to do so, terminate this Deed to the extent of the component or components of the New Obligations or other obligations under this Deed which are the subject of the Event of Default;
 - (ii) exercise the Director-General's rights under this clause 12.2 to demand payment under, or draw from that part of, the Security provided by Pacific National in accordance with clause 3 to the extent of the Security held regarding the matter the subject of the Event of Default (including any interest accrued on a Security Deposit); and
 - (A) retain the whole or any part of the amount demanded or drawn; or
 - (B) where clause 12.2(a)(iii) applies, apply the amount demanded or drawn in the manner provided for in clause 12.2(b)(i); or
 - (iii) subject to giving Pacific National prior written notice of its intention to do so, take over (or procure a third party to take over) the Completion of the New Obligations (including causing a Transfer of the PN Rolling Stock Assets to the Transferee) in respect of which an Event of Default has occurred so as to cause Completion to occur.
- (b) If the Director-General takes over (or procures a third party to take over) the carriage of any or all of the components of the New Obligations in accordance with clause 12.2(a)(iii), the Director-General:
- (i) must apply the amount demanded under, or drawn from, the Security provided by Pacific National in accordance with clause 3 in or towards completing, or procuring the Completion of the relevant component or components of the New Obligations; and
 - (ii) may seek reimbursement from Pacific National for any costs and expenses incurred by the Director-General in completing, or procuring the Completion of, or the rectification of any defects in, the relevant component or components of the New Obligations (to the extent that the amount demanded under or drawn from the Security is not sufficient to cover those costs and expenses),
- and any unused balance of the Security must be paid or returned to Pacific National.
- (c) Pacific National shall do all things necessary on its part to give effect to any decision made by the Director-General in accordance with clause 12.2(a) or clause 12.2(b), including:
- (i) assigning to the Director-General the benefit of any relevant agreement or contract which the Director-General reasonably considers may assist the Director-General to complete the New Obligations;

- (ii) providing to the Director-General (or to any person engaged by the Director-General to complete the New Obligations) any access to the PN Rolling Stock Assets which the Director-General considers may be reasonably necessary in order to enable the relevant component or components of the New Obligations to be completed; and
- (iii) paying to the Director-General any amount claimed by the Director-General in accordance with clause 12.2(b)(ii) promptly after receipt of a demand from the Director-General.

12.3 Power of Attorney

If Pacific National fails to Transfer the PN Rolling Stock Assets to the Transferee in accordance with clause 6.2 then, by the operation of this clause 12.3, Pacific National is deemed to have irrevocably and unconditionally appointed (and irrevocably and unconditionally appoints) the Director-General as its attorney to take all steps the Director-General considers to be necessary (including executing any documents or forms) to effect the Transfer of the PN Rolling Stock Assets to the Transferee and if the Director-General does so, then he must reduce the Security in accordance with clause 8.2(a) as if Pacific National had transferred the PN Rolling Stock Assets, less any costs incurred by the Director-General arising from Pacific National's breach of clause 6.2.

12.4 Right to damages

Any action taken by the Director-General pursuant to this clause 12 does not prejudice any other rights or remedies the Director-General may have (either under this Deed or at Law) in respect of an Event of Default.

13. Dispute Resolution

13.1 Dispute Resolution Procedures

- (a) Any Dispute arising between the parties must be dealt with strictly in accordance with the following procedures of this clause 13.
- (b) Where a party becomes aware that a Dispute has arisen, it must notify the other party giving details of the Dispute (a *Notice of Dispute*).

13.2 Negotiation

- (a) Promptly after the date of receipt by the other party of a Notice of Dispute (the *Notice Date*), the parties' Nominated Representatives must meet and negotiate in good faith to resolve the Dispute.
- (b) If the Dispute is not resolved within 10 Business Days after the Notice Date, the Dispute must be referred to the Director-General and the chief executive officer or the managing director of Pacific National for resolution.
- (c) If the Dispute has not been resolved by the Director-General and the chief executive officer or the managing director of Pacific National within 20 Business Days after the Notice Date, then:

- (i) in the case of a Dispute concerning a matter of law, either party may refer the Dispute to arbitration in accordance with clause 13.3; or
- (ii) in the case of a Dispute concerning any other matter, either party may refer the Dispute to an independent industry expert who is suitably qualified, of at least 10 years standing and who is a member of the Institute (as agreed between the parties, or failing agreement, appointed by the president of the Institute (the *Expert*)) for determination in accordance with clause 13.4.

13.3 Arbitration

If a Dispute is referred to arbitration under this clause 13.3:

- (a) the matter must be submitted to arbitration in accordance with, and subject to, the Institute's Rules for the Conduct of Commercial Arbitrations (as amended from time to time);
- (b) the arbitration will be conducted and held in accordance with the laws of New South Wales by a senior experienced lawyer of not less than 10 years standing; and
- (c) the parties agree to be bound by the decision of the Arbitrator.

13.4 Expert determination

If a party refers a Dispute to an Expert in accordance with clause 13.2(c)(ii), the following provisions of this clause shall apply.

- (a) The Expert will act as an independent expert and not as an arbitrator.
- (b) Within five Business Days after the appointment of the Expert, each party will submit a brief written summary of, and its submission in relation to, the Dispute to the Expert (*Summary*).
- (c) The parties will:
 - (i) cause the Expert to determine the Dispute no later than 20 Business Days after the Summaries are required to be submitted (whether or not they have in fact been submitted); and
 - (ii) promptly provide to the Expert all information and assistance the Expert may reasonably require in order to make a decision.
- (d) If the Expert determines that he needs an assistant, the Expert may select and appoint an assistant or seek professional advice. The selection of the assistant is at the absolute discretion of the Expert.
- (e) The parties agree to be bound by the decision of the Expert with no right of appeal against the decision except in the case of fraud or manifest error.
- (f) Liability for the costs of the Expert and the assistant (if any) will be in the discretion of the Expert and the parties will pay those costs in accordance with the directions of the Expert.
- (g) If at any time the Expert ceases or refuses to act, the parties shall endeavour to agree on a replacement who has the qualifications described in clause 13.2(c)(ii). If the parties are unable to agree on a replacement Expert within 5 Business Days after the date on which the parties first become aware that the Expert has ceased to act or refuses to act, either party

may require the president of the Institute to select a replacement who is willing to act and who has the qualifications described in clause 13.2(c)(ii).

13.5 Qualification

This clause 13 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court at any time.

13.6 Obligations to continue

The parties' obligations under this Deed will continue notwithstanding any Dispute between the parties.

13.7 Dispute Resolution Costs

Unless ordered otherwise by the Arbitrator or Expert (as the case may be), each party will bear its own costs:

- (a) in respect of any arbitration under clause 13.3; and
 - (b) in respect of any Expert determination under clause 13.4,
- and will pay one half of the Arbitrator's or Expert's costs (as the case may be).

14. Confidentiality

- (a) Except as required by law or the rules of any recognised stock exchange, Pacific National may not issue any press release or make any public statement or announcement of any kind whatsoever relating in any way to the Works Deed, this Deed, the New Obligations or the Memorandum of Understanding without the written consent of the Director General.
- (b) A Recipient must not (and must ensure that its employees and agents do not):
 - (i) use the Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under this Deed; or
 - (ii) disclose the Confidential Information of a Disclosing Party to any third party, other than in accordance with this clause 14.
- (c) A Recipient may disclose any Confidential Information of a Disclosing Party to a third party only where:
 - (i) the Recipient has obtained the prior written approval of the Disclosing Party to the disclosure and the Recipient has procured a suitable confidentiality undertaking in respect of the Confidential Information from the third party; or
 - (ii) disclosure is:
 - (A) required by any Law or by a notice or order validly issued by any Government Authority with the force of law; or
 - (B) necessary for the provision of advice by the receiving party's legal advisers, financiers, accountants or other consultants (provided they are under a legal obligation not to disclose the Confidential Information to any third party).

- (d) The provisions of this clause survive expiration or termination of this Deed for any reason.
- (e) Each party acknowledges that a breach of this clause 14 would be harmful to the business interests of the other party.

15. GST

15.1 GST

The parties agree that:

- (a) all Payments have been set or determined without regard to the impact of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply in respect of which GST is payable, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, together with any related interest, penalties, fines or other charges, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the payee must provide to the payer a Tax Invoice at the same time at which any GST Amount is payable.

15.2 Reimbursement or indemnification

Despite any other provision of this Deed, if a Payment due under this Deed is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any GST forming part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.

16. Assignment

- (a) The rights and obligations of Pacific National under this Deed are personal. They cannot be Assigned and Pacific National must not attempt or purport to do so, without the prior written consent of the Director-General (which may be given or withheld in the absolute discretion of the Director-General).
- (b) The Director-General may Assign the Director-General's rights and benefits under this Deed at any time:
 - (i) to any agency, body or authority within the Federal or NSW State Governments;
or
 - (ii) to a third party not specified in clause 16(b)(i), with the prior written consent of Pacific National (such consent shall not be unreasonably withheld).

17. General

17.1 Nominated Representatives

- (a) On or before the Commencement Date, each party must nominate a representative for the purposes of this Deed (the representative of each party being, a *Nominated Representative*).

- (b) The Nominated Representative of each party must communicate directly with the Nominated Representative of the other party in relation to the day to day administration of matters arising under this Deed.
- (c) A party must promptly notify the other party in writing if it replaces its Nominated Representative with another representative.

17.2 Variation/Amendment

This Deed may be amended only by another deed executed by the parties.

17.3 Entire Agreement

This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter, including the Memorandum of Understanding.

17.4 Non-merger

The rights and obligations of the parties will not merge on completion of any transaction under this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

17.5 Authority to enter into Deed

Pacific National warrants that:

- (a) it has full power and authority to enter into and perform its obligations under this Deed; and
- (b) this Deed constitutes a valid and binding obligation on it, and is otherwise enforceable in accordance with its terms.

17.6 Relationship

The relationship between the parties is entirely contractual, and nothing in this Deed creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the parties.

17.7 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) **(writing)** must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

Director-General:

Director-General, Ministry of Transport
Level 21
227 Elizabeth Street
SYDNEY 2000

Facsimile: (02) 9268 2808

Attention: Cassandra Wilkinson
Director Rail & Freight Policy

Pacific National:

Level 6
380 St Kilda Road
Melbourne VIC 3004

Facsimile: (03) 9284 4052

Attention: Company Secretary

- (b) **(signed)** must be signed by the sender or if a company, by its authorised representative; and
- (c) **(served)** will be taken to have been served:
 - (i) **(personal)** in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Deed (as the case may be) or at any other address which the recipient may have notified to the sender;
 - (ii) **(fax)** in the case of facsimile transmission, when recorded on the transmission result report unless:
 - (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
 - (B) the transmission result report indicates a faulty or incomplete transmission; and
 - (iii) **(mail)** in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 5.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

17.8 Costs

Subject to any express provision in this Deed, each party bears its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

17.9 Stamp Duty

- (a) Subject to clause 17.9(b), Pacific National is liable for and must duly pay all stamp duty (including any fine or penalty except where it arises from a default by the Director General) on or relating to this Deed and any document executed by the parties under or in connection with it;
- (b) The Transferee (or the Director-General, as the case may be) is liable for and must pay all stamp duty (if any) payable in respect of the Transfer of the PN Rolling Stock Assets.

17.10 No Waiver

- (a) No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

- (b) The parties shall not be taken to have waived any of their rights under this Deed unless such a waiver is contained in a notice given to the other party. Any such waiver shall only operate to the extent specified in the notice.

17.11 Severance

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

17.12 Further Assurance

Each party must promptly execute all documents and do all things that the other party from time to time requires of it to give effect to this Deed.

17.13 Counterparts

This Deed may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

17.14 Governing Law

This Deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Schedule 1

New Obligations

The New Obligations comprise the following:

1. Locomotive Obligations

Pacific National reallocating \$40 million of the monetary value of the Remaining Obligations under the Works Deed to the Refurbishment Works to be undertaken by Pacific National in respect of the 30 81 Class Locomotives listed in Schedule 6.

Pacific National making available the 81 Class Locomotives to provide the Export Grain Rail Haulage Services (main line) during the Term, as contemplated by clause 5.2.

2. Asset Obligations

Pacific National reallocating \$30 million of the monetary value of the Remaining Obligations under the Works Deed:

- (a) as to [REDACTED]:
- (i) to making available the PN Rolling Stock Assets for the provision of the Export Grain Rail Haulage Services (branch line) in accordance with clause 6.3; and
 - (ii) Pacific National Transferring the PN Rolling Stock Assets to the Transferee in accordance with clause 6.2,
- being the following:
- (iii) 180 branch line standard gauge Grain wagons; and
 - (iv) 18 x 48 Class Locomotives,
- (being those identified in Schedule 5 and otherwise notified to the Director-General by Pacific National in accordance with clause 6.1) and the spares listed in Schedule 7.
- (b) as [REDACTED], to providing Export Grain Rail Haulage Services (branch line) on the New South Wales branch lines until the PN Rolling Stock Assets are Transferred to the Transferee (that is, during the Relevant Period), on the terms and conditions set out in clause 6.3 of this Deed.

Schedule 2

Refurbishment Works



Scope of Works – 81 Class Locomotives

Outcome

Locomotive Investment – Refurbishment Works

81 Class Locomotives

81 Class refurbishment scope (30 locos for \$40M)

		Budget
A) Locomotive Overhaul		
Engine/Drive		
<ul style="list-style-type: none"> • Overhaul engine to 16/645E3B • Overhaul/ Utex turbo • Overhaul radiator • Overhaul cooling systems including oil and water pumps • Overhaul compressor • Overhaul turbo soak back pump & replace Paragon fuel pump 	Subtotal	
Traction/Electrical		
<ul style="list-style-type: none"> • Overhaul starter motors • Overhaul main alternator • Overhaul auxiliary alternator • Replace batteries as required - • Overhaul radiator fan motors • Inspect electrical control systems & replace 2 power modules • Overhaul dynamic brake fan 		
Locomotive Body		
<ul style="list-style-type: none"> • Modify sandboxes • Fit Traction Motor cut out 	Subtotal	
<ul style="list-style-type: none"> • Inspect and requalify underframe, drawgear and bodywork • Repair body rust • External and internal re-paint 		

<ul style="list-style-type: none"> • Braking Systems - Air brake systems change out kit 		
<input type="checkbox"/>	Subtotal	██████████
Crew OHS and Amenity, Communications		
<ul style="list-style-type: none"> • Overhaul air conditioning • Upgrade toilet to microphor • Upgrade driver's seats • Brake valve silencing • Install CD player and mute box • Modify drop window on driver side to fixed type • Modify observer's dash – Remove unused switches • Install 12 V phone charging outlet • Modify hatch steps • Replace binds to 90 class type 		
<input type="checkbox"/>	Subtotal	██████████
Testing & Commissioning		██████████
	Total for Locomotive	██████████
B) Bogies Overhaul		
<ul style="list-style-type: none"> • Overhaul bogies frames • Overhaul Traction Motors • Renew all wheel discs 		
	Total for Bogies	██████████
	Total for Refurbishment Works/ loco	██████████
	Budget Summary	
	81 Class Loco Overhaul (CCO)	██████████
	81 Class Bogie Overhaul	██████████
	Total for 81 class Refurbishment Works per loco (Loco Overhaul + Bogies)	\$1,333,000
	Total for 30 * 81 class Refurbishment Works	\$40,000,000
	Note:	

To maximize wheel life, the bogie change out occurs when wheels reach its condemning limit and may not align with the component change out of locomotives. It is planned to have bogies overhauls completed within the agreed period.

Schedule 3

Quarterly Progress Report (Format and Content)

In accordance with the reporting requirements set out in clause 11.2(a), within 15 Business Days after the end of each Quarter, Pacific National shall provide the following information to the Director-General with regard to the immediately preceding Quarter.

- Update and general progress during the Quarter in relation to the New Obligations;
- Cumulative progress from the Commencement Date to the end of the Quarter in relation to the New Obligations;
- ****Amount expended in relation to each component of the New Obligations:**
 - during the Quarter; and
 - from the Commencement Date to the end of the Quarter,and a comparison of those amounts against forecasted expenditure;
- ****Amounts certified by the Independent Certifier:**
 - during the Quarter; and
 - from the Commencement Date to the end of the Quarter.
- Schedule milestones achieved during the Quarter;
- Planned critical activities for the next Quarter;
- ****Claims made by any Contractors during the months (copies of claims and certification of payments to be attached);**
- Any revisions to the timetable for carrying out and completing the New Obligations;
- Update on any outstanding issues; and
- ****Where applicable, any defects arising in respect of any component of the New Obligations and the steps taken to rectify the relevant defects.**

Schedule 4

Confidential Information

1. Director-General

Nil.

2. Pacific National

Any Quarterly Progress Report provided by Pacific National in accordance with clause 11.2(a) but only to the extent that the relevant Quarterly Progress Report contains the information identified with a double asterisk in Schedule 3.

Schedule 5

List of PN Rolling Stock Assets to be Transferred

NSW Government 48 Class Locomotives

Number	Serial Number
1.	██████
2.	██████
3.	██████
4.	██████
5.	██████
6.	██████
7.	██████
8.	██████
9.	██████
10.	██████
11.	██████
12.	██████
13.	██████
14.	██████
15.	██████
16.	██████
17.	██████
18.	██████

NSW Government Grain Wagons

Number	Wagon No.
1.	██████████
2.	██████████
3.	██████████
4.	██████████
5.	██████████
6.	██████████

Number	Wagon No.
7.	[REDACTED]
8.	[REDACTED]
9.	[REDACTED]
10.	[REDACTED]
11.	[REDACTED]
12.	[REDACTED]
13.	[REDACTED]
14.	[REDACTED]
15.	[REDACTED]
16.	[REDACTED]
17.	[REDACTED]
18.	[REDACTED]
19.	[REDACTED]
20.	[REDACTED]
21.	[REDACTED]
22.	[REDACTED]
23.	[REDACTED]
24.	[REDACTED]
25.	[REDACTED]
26.	[REDACTED]
27.	[REDACTED]
28.	[REDACTED]
29.	[REDACTED]
30.	[REDACTED]
31.	[REDACTED]
32.	[REDACTED]
33.	[REDACTED]
34.	[REDACTED]
35.	[REDACTED]
36.	[REDACTED]
37.	[REDACTED]

Number	Wagon No.
38.	[REDACTED]
39.	[REDACTED]
40.	[REDACTED]
41.	[REDACTED]
42.	[REDACTED]
43.	[REDACTED]
44.	[REDACTED]
45.	[REDACTED]
46.	[REDACTED]
47.	[REDACTED]
48.	[REDACTED]
49.	[REDACTED]
50.	[REDACTED]
51.	[REDACTED]
52.	[REDACTED]
53.	[REDACTED]
54.	[REDACTED]
55.	[REDACTED]
56.	[REDACTED]
57.	[REDACTED]
58.	[REDACTED]
59.	[REDACTED]
60.	[REDACTED]
61.	[REDACTED]
62.	[REDACTED]
63.	[REDACTED]
64.	[REDACTED]
65.	[REDACTED]
66.	[REDACTED]
67.	[REDACTED]
68.	[REDACTED]

Number	Wagon No.
69.	[REDACTED]
70.	[REDACTED]
71.	[REDACTED]
72.	[REDACTED]
73.	[REDACTED]
74.	[REDACTED]
75.	[REDACTED]
76.	[REDACTED]
77.	[REDACTED]
78.	[REDACTED]
79.	[REDACTED]
80.	[REDACTED]
81.	[REDACTED]
82.	[REDACTED]
83.	[REDACTED]
84.	[REDACTED]
85.	[REDACTED]
86.	[REDACTED]
87.	[REDACTED]
88.	[REDACTED]
89.	[REDACTED]
90.	[REDACTED]
91.	[REDACTED]
92.	[REDACTED]
93.	[REDACTED]
94.	[REDACTED]
95.	[REDACTED]
96.	[REDACTED]
97.	[REDACTED]
98.	[REDACTED]
99.	[REDACTED]

Number	Wagon No.
100.	██████████
101.	██████████
102.	██████████
103.	██████████
104.	██████████
105.	██████████
106.	██████████
107.	██████████
108.	██████████
109.	██████████
110.	██████████
111.	██████████
112.	██████████
113.	██████████
114.	██████████
115.	██████████
116.	██████████
117.	██████████
118.	██████████
119.	██████████
120.	██████████
121.	██████████
122.	██████████
123.	██████████
124.	██████████
125.	██████████
126.	██████████
127.	██████████
128.	██████████
129.	██████████
130.	██████████

Number	Wagon No.
131.	██████████
132.	██████████
133.	██████████
134.	██████████
135.	██████████
136.	██████████
137.	██████████
138.	██████████
139.	██████████
140.	██████████
141.	██████████
142.	██████████
143.	██████████
144.	██████████
145.	██████████
146.	██████████
147.	██████████
148.	██████████

Note: The list of PN Rolling Stock Assets is to include an additional 32 wagons which serial numbers will be notified by Pacific National to the Director-General in accordance with clause 6.1(a).

Schedule 6

List of 30 81 Class Locomotives to be refurbished

Number	Serial Number
1.	■
2.	■
3.	■
4.	■
5.	■
6.	■
7.	■
8.	■
9.	■
10.	■
11.	■
12.	■
13.	■
14.	■
15.	■
16.	■
17.	■
18.	■
19.	■
20.	■
21.	■
22.	■
23.	■
24.	■
25.	■
26.	■
27.	■

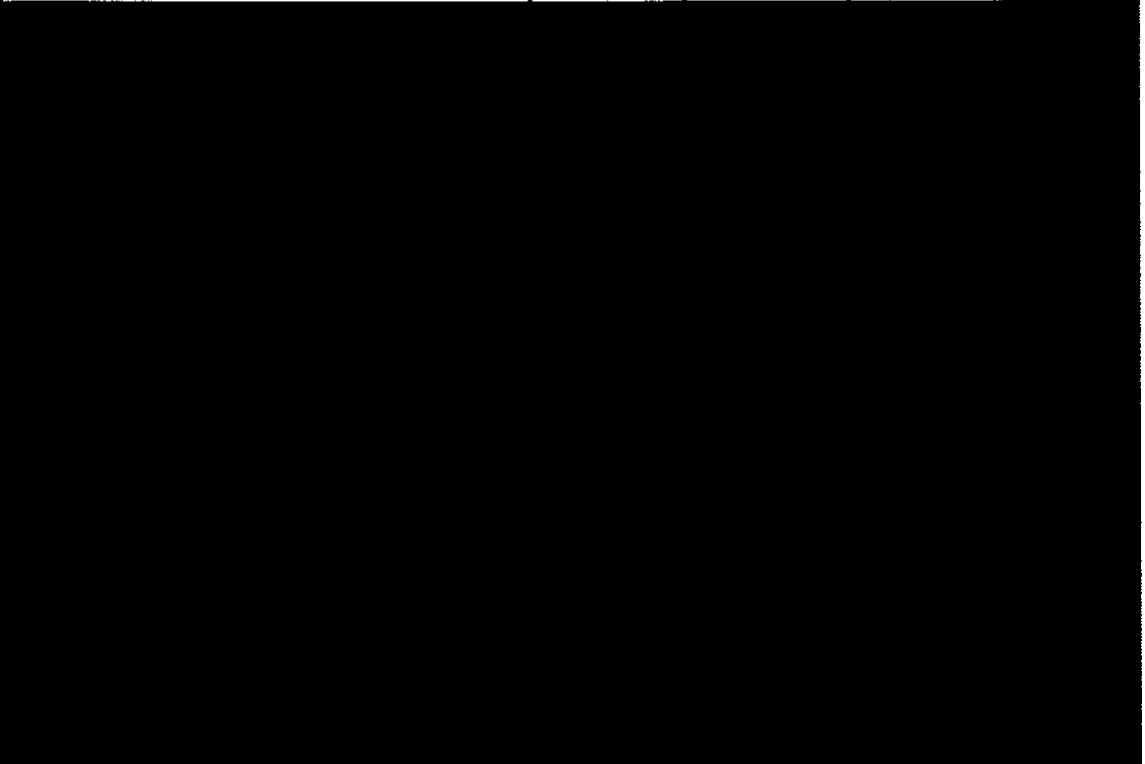
Number	Serial Number
28.	■
29.	■
30.	■



Schedule 7

Spares

Component Description	Pacific National Component Stock Code	Total Number of Components	Number of Serviceable Components	Number of Components Requiring Overhaul
[Redacted content]				

Component Description	Pacific National Component Stock Code	Total Number of Components	Number of Serviceable Components	Number of Components Requiring Overhaul
				

SIGNED SEALED AND DELIVERED by the)
DIRECTOR-GENERAL OF THE)
MINISTRY OF TRANSPORT)
in the presence of:)
)
)
)
)
)
)

Signature

Witness

Print name

Print name

EXECUTED for and on behalf of)
PACIFIC NATIONAL (NSW) PTY)
LIMITED in accordance with section 127(1) of)
the *Corporations Act 2001*:)
)
)

Director/Secretary Signature

Director Signature

Print name

Print name