

**ACCESS ARRANGEMENT** *[insert date]*

made by

**ESSENTIAL SERVICES COMMISSION VICTORIA ("ESC")**

in respect of **V/LINE PTY LIMITED ABN 29 087 425 269**

of  
Level 23,  
570 Bourke Street,  
Melbourne VIC 3000 ("V/Line")



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## Part 1

### 1. Preamble

- 1.1.a. V/Line is a corporation owned by the State of Victoria.
- 1.1.b. V/Line operates passenger train services in Victoria and has been the operator of the Network since 4 May 2007.
- 1.1.c. V/Line's previous Access Arrangements were:
  - (i) the Access Arrangement made by the ESC for PN on 29 June 2006 as varied on 24 April 2007 to substitute V/Line for PN, the previous below rail operator; and
  - (ii) The Access Arrangement made by the ESC for V/Line dated 17 June 2009
- 1.1.d. V/Line applied to the ESC under section 38ZR of the RMA for renewal of the 17 June 2009 Access Arrangement in March 2012.
- 1.1.e. The ESC made a final decision under section 38ZF of the RMA to approve the renewal of that Access Arrangement in *[insert month]* 2012.





## Part 2

### 2. Scope and administration of Access Arrangement

#### 2.1. Scope

- 2.1.a. This Access Arrangement provides for the negotiation and supply of Access required for the operation of freight and passenger trains by Operators and V/Line (in its capacity as a provider of passenger train operations) on the Network.
- 2.1.b. Access for passenger trains does not constitute a Reference Service under this Access Arrangement.
- 2.1.c. For clarification, this Access Arrangement:
- (i) includes its annexures; and
  - (ii) does not address the provision of Access to parts of the Victorian rail network outside the Network, or to the rail infrastructure of other track owners or track managers.

#### 2.2. Grant and duration of Access Arrangement

- 2.2.a. V/Line (in its capacity as an Access Provider) shall comply with the processes specified in this Access Arrangement in relation to the grant of Access:
- (i) to Operators on the Network for Scheduled Services and Unscheduled Services; and
  - (ii) to V/Line (in its capacity as a provider of passenger train operations),
- and will comply with the terms and conditions specified in this Access Arrangement in relation to the provision of Scheduled Services and Unscheduled Services to Operators.
- 2.2.b. This Access Arrangement takes effect on the Commencement Date and will continue until the earlier to occur of the:
- (i) third anniversary of the Commencement Date; or
  - (ii) withdrawal of this Access Arrangement in accordance with the RMA.

#### 2.3. Review of Access Arrangement

- 2.3.a. V/Line may, during the Access Period, apply pursuant to section 38ZO of the RMA for the approval of the ESC to vary this Access Arrangement.



- 2.3.b. If the ESC seeks information in relation to matters that may be relevant to the ESC's exercise of its rights pursuant to section 38ZP of the RMA, V/Line shall provide such information available to it as directed by the ESC.

## **2.4. Access Agreements**

- 2.4.a. This Access Arrangement applies to the negotiation of new Access Agreements. It is not intended to interfere with rights and obligations under existing access agreements in force at the Commencement Date, but it shall apply to extensions, renewals or amendments of such existing access agreements.
- 2.4.b. The form of Access Agreement in Appendix 3 is intended to reflect the needs of an Operator, and represents standard terms and conditions of Access for Operators.

## **2.5. V/Line's provision of Services to its related bodies corporate**

- 2.5.a. At the Commencement Date, V/Line was not an Operator. If V/Line (or a related body corporate) becomes an Operator during the Access Period, it shall provide Access to Scheduled Services and Unscheduled Services to itself or to its related bodies corporate:
- (i) on the terms and conditions specified in the Access Agreement set out in Appendix 3; and
  - (ii) at the prices specified in Appendix 1 or at lower prices.
- 2.5.b. If lower prices are charged by V/Line in accordance with clause 2.5.a(ii), such lower prices shall be deemed to replace the relevant prices in Appendix 1 as reference prices for all Operators.
- 2.5.c. If lower charges are charged by V/Line in accordance with clause 2.5.b V/Line must:
- (i) publish the revised reference price schedule on the V/Line website; and
  - (ii) notify the ESC in writing immediately.

## **2.6. Contact details**

- 2.6.a. Persons wishing to contact V/Line for further information or to apply for Access to the Network should contact V/Line at the following address:

Chief Executive Officer

Attention: Manager Contracts Access and Interfaces



V/Line Pty Limited  
Level 23, 570 Bourke Street  
Melbourne Victoria 3000  
Telephone (03) 9619 5900  
Facsimile (03) 9619 5906

2.6.b. V/Line shall publish information relevant to this Access Arrangement on its web site at <http://www.vline.com.au> including:

- (i) The Operating Handbook;
- (ii) A narrative description of the Network;
- (iii) The prices for Scheduled Services and Unscheduled Services as set out in Appendix 1;
- (iv) Prices for which Access has been granted to Operators together with a general description of the Services to which such prices relate;
- (v) The Access Agreement as contained in Appendix 3;
- (vi) The Track Standard by corridor; and
- (vii) An Information Pack



## Part 3

### 3. Negotiation process

#### 3.1. Good faith negotiations

- 3.1.a. V/Line shall negotiate in good faith with each Access Seeker.

#### 3.2. Information provided by V/Line to Access Seekers

##### 3.2.a. Information pack

- (i) V/Line has an Information Pack that is available:
- 1) free of charge from its website: [www.vline.com.au](http://www.vline.com.au); or
  - 2) can be mailed upon request. (A fee of \$250.00 plus GST payable in advance will apply for hard copies).

##### 3.2.b. Further Information

V/Line where it is reasonably possible to do so, shall respond to requests for further information within fourteen days of receiving a written application for Access and payment of \$750.00 plus GST. This response shall include:

- (i) A statement of whether any requested capacity is available, and, if not, what capacity is available and how additional capacity could be made available by way of upgrade or any other alternative options;
- (ii) If the terms and conditions for the Access for which the application is made are to vary from the standard terms and conditions in the Access Agreement in the information pack, details of the varied terms and conditions will be provided;
- (iii) A description of any reasonably required upgrades of the Network necessary to grant the Access, if necessary;
- (iv) Standard sectional running times for a typical Train Path for the line sections over which the Access Seeker is requesting Access;
- (v) Proposals for assessing works required for creating additional capacity to meet the Access Seeker's request;
- (vi) An estimate of the charges for the particular Access for which the request is being made, if that Access is to require a higher infrastructure standard than applies under Appendix 6 or if any Services entail Out of Hours Pricing, together with details of how that varied charge was determined; and





- (vii) A response to any further information reasonably requested by the Access Seeker.

**3.2.c. Master Train Timetable, Network Map and Train Path Surrender**

Further information about the Master Train Timetable, the Network Map and variation or surrender of a Train Path is set out in the Operating Handbook.

**3.3. Access Seeker application process**

- 3.3.a. Access Seekers must apply for Access in writing, together with payment of a fee of \$750.00 plus GST. For clarification, this fee does not need to be repaid if a request for further information has been made under clause 3.2.b and a payment of \$750.00 plus GST has already been made under that clause. An access application should contain:

- (i) Information regarding those matters set out in Appendix 2; and
- (ii) Such additional information that the Access Seeker considers may assist V/Line to assess the application.

**3.3.b. Acceptance of application**

- (i) V/Line shall acknowledge the application within five (5) Business Days of its receipt. For complex applications, V/Line may request the Access Seeker to agree to an extension of the application assessment period and shall advise indicative timeframes for that assessment.

- (ii) Within ten (10) Business Days of receipt of the application, V/Line shall:

A.) Confirm that a complete application has been received and shall be progressed; or

B.) Advise that an incomplete application has been received and shall not be progressed until the prescribed information has been received in accordance with Appendix 2. V/Line shall advise in writing what further information is required.

- (iii) If V/Line does not provide a response within ten Business Days of receipt of the application in accordance with clause 3.3.b(ii)B.) V/Line shall be deemed to have accepted a completed application in accordance with clause 3.3.b(ii)A.)

**3.3.c. The process for assessing an accepted application**

- (i) Within twenty (20) Business Days after V/Line's notification under clause 3.3.b that a completed access application has been received, V/Line shall advise the Access Seeker:



- A.) If there is sufficient capacity on the Network for V/Line to grant Access to the Access Seeker in accordance with its application and, if so, shall offer terms and conditions for the requested Access in the form of an Indicative Access Proposal; and
  - B.) If sufficient capacity is only available if additional operating costs are incurred, the nature and approximate magnitude of these costs shall be specified; or
  - C.) That there is not sufficient capacity on the Network to grant Access.
- (ii) If V/Line notifies the Access Seeker of insufficient capacity, V/Line shall, no later than twenty-five (25) Business Days after issuing notice accepting an application under clause 3.3.b, provide a further notice to the Access Seeker that shall include:
- A.) Reasons why there is insufficient capacity on the Network; and / or
  - B.) If there is some capacity available, the terms and conditions on which part of the request can be granted; and / or
  - C.) An offer to provide an assessment of any works required to upgrade the Network necessary to grant the Access and the indicative cost of those works in accordance with the process specified in clause 3.5.

**3.3.d. Rejection of an application**

- (i) Within twenty-five (25) Business Days of an application being acknowledged V/Line may reject the application on any of the following grounds:
- 1) The Access Seeker does not have, or will not have, all necessary accreditation to operate lawfully the Service proposed in the Access application;
  - 2) The Access Seeker's rolling stock does not comply with V/Line's requirements as supplied in the information pack;
  - 3) The Access Seeker did not demonstrate that either:
    - A.) the management and staff of the Access Seeker have the necessary knowledge and experience to carry out the proposed rail operations; or
    - B.) the Access Seeker will be able to engage the services of other person(s) who have such knowledge and experience; and
  - 4) The Access Seeker did not demonstrate that it has the financial capacity to meet its financial obligations to V/Line.



- (ii) V/Line shall advise why the application is rejected within twenty-five (25) business days of an application being acknowledged by V/Line.

### 3.4. Negotiation protocol

- 3.4.a. V/Line's standard terms and conditions are specified in the standard Access Agreement in Appendix 3.
- 3.4.b. An offer by V/Line to the Access Seeker made under clause 3.3.c(i)A.) and if applicable 3.3.c(i)B.), will be open for a period of thirty (30) days from the date of issue. If the Access Seeker wishes to pursue that offer, the Access Seeker shall either:
  - (i) accept in writing the Indicative Access Proposal subject to the finalisation of the schedules; or
  - (ii) notify V/Line in writing that the Access Seeker wishes to negotiate alternative terms and conditions. This notice must contain:
    - 1) a statement indicating the terms and conditions that the Access Seeker proposes to alter and an explanation for the proposed alteration;
    - 2) a draft of any text proposed to be amended; and
    - 3) agreement to comply with the dispute resolution procedures contained in Appendix 8 during the negotiation of the altered terms and conditions.
- 3.4.c. In the event that the Access Seeker seeks to negotiate alternative terms and conditions (as per clause 3.4.b(ii)), V/Line shall notify the Access Seeker of the timeframe for the conduct of the negotiation, which shall be:
  - (i) one (1) month in respect of negotiations where no changes to the Network's infrastructure are required by the Access Seeker's proposal; or
  - (ii) If changes to the Network's infrastructure are required, the negotiations shall be conducted in accordance with clauses 3.5 and 3.6 (as relevant), and having regard to the need to conduct negotiations in good faith and in a timely manner. V/Line shall notify the Access Seeker of the timeframe for negotiations within ten (10) Business Days of receiving notice from the Access Seeker.

V/Line shall be prepared to commence negotiations with the Access Seeker by means of formal meetings upon V/Line's issue of its notice of receipt and advice of indicative timeframes.
- 3.4.d. The Access Seeker, if not satisfied with the progress of the negotiation and dispute resolution processes, may notify a dispute to the ESC.



### **3.5. Procedure for assessment of works to provide additional capacity**

- 3.5.a. Where additional capacity is necessary to meet an Access Seekers requirements V/Line shall advise the Access Seeker (clause 3.3.c(i)C.)). Upon receiving written advice from the Access Seeker of its intention to pursue increasing capacity as an option, V/Line shall arrange a scoping meeting within seven (7) Business Days or as agreed.
- 3.5.b. At the scoping meeting, V/Line will provide the Access Seeker with copies of the protocols developed for the purposes of section 4.4 of the Negotiation Guidelines.
- 3.5.c. V/Line shall involve the Access Seeker in all aspects of assessing works required to provide additional capacity to the Network. There may be several technical options for the delivery of additional capacity. V/Line will consult with the Access Seeker in relation to how the preferred option should be identified. Costs and a schedule of payments will also be negotiated and agreed during discussions between the parties.
- 3.5.d. V/Line shall provide project management for the implementation of the additional capacity solution in consultation with the Access Seeker.
- 3.5.e. Before any scoping, assessing works or the project proceeds as per clauses 3.5.b, 3.5.c and 3.5.d, the Access Seeker will undertake to reimburse V/Line for its reasonable project costs.
- 3.5.f. Any change to configuration of the Network is subject to the approval of the Public Transport Development Authority.

### **3.6. Interconnection**

#### **3.6.a. General**

V/Line shall assist Access Seekers where it is necessary to install physical infrastructure to connect to the Network. V/Line shall be responsible for operating and maintaining all mainline rail infrastructure at the interconnection at the relevant Access Seeker's expense.

#### **3.6.b. Information provided to assist interconnection**

- (i) Upon receipt of an expression of interest, together with a fee of \$750.00 plus GST, V/Line shall provide within fourteen (14) days:
  - 1) An Information Pack.;
  - 2) a description of the physical infrastructure at the location of the proposed interconnection;





- 3) procedural and physical interface arrangements at the site of the proposed interconnection;
  - 4) applicable engineering and operational standards of V/Line;
  - 5) reliability and safety guidelines, standards and operating procedures; and
  - 6) a template Safety Interface Agreement.
- (ii) Each interconnection application will be treated separately to an Access application and will incur fees to cover V/Line's reasonable costs of assessment of the interconnection application.

3.6.c. Information to be provided by the Access Seeker for interconnection rights.

In order for the proposed interconnection to be formally assessed, an Access Seeker must submit an application to V/Line that:

- (i) either demonstrates that the installation has been type approved for operation on the Network, or provides sufficient information for V/Line to undertake a engineering assessment adequate to obtain type approval of the installation for use on the Network;
- (ii) includes a commissioning plan;
- (iii) includes a fully-costed maintenance plan for maintaining the interconnection, including the proposed annual fee payment to V/Line for that part of the interconnection that is rail infrastructure located on the Network;
- (iv) certifies that the Access Seeker has obtained and shall maintain all necessary approvals, other than approvals of, or required from external parties by, V/Line itself, in relation to the construction, commissioning, operation and maintenance of the interconnection; and
- (v) provides a draft agreement with V/Line that provides for:
  - 1) V/Line to operate and maintain that part of the interconnection that is rail infrastructure located on the Network;
  - 2) the Access Seeker to be liable to pay for all scoping and delivery of the construction costs of the interconnection;
  - 3) the Access Seeker to pay a fee to V/Line for the ongoing operation and maintenance of that part of the interconnection that is rail infrastructure located on the Network, such fee to be set by V/Line, following its review of the Access Seeker's fully costed maintenance plan, at a level that represents V/Line's reasonable estimate of the costs of such operation and maintenance, plus the



operating margin of 8.0% permitted under this Access Arrangement;

- 4) the Access Seeker to agree that if requested by V/Line it will remove that part of the interconnection that is rail infrastructure located on the Network on termination of the maintenance agreement; and
  - 5) the Access Seeker to provide a guarantee acceptable to V/Line in respect of its obligation under item 3.6.c(v)4). V/Line must not unreasonably withhold its acceptance of the guarantee on the basis of its form.
- 3.6.d. V/Line shall provide the Access Seeker, within thirty (30) Business Days of receipt of the Access Seeker's interconnection application, with notice of:
- (i) V/Line's acceptance of that proposal, conditional on all approvals being obtained; or
  - (ii) V/Line's rejection of the proposal, together with reasons for the rejection.
- 3.6.e. V/Line shall provide project management for the implementation of the additional capacity solution in consultation with the Access Seeker.
- 3.6.f. Before any scoping, assessing works or the project proceeds as per clauses 3.5.b, 3.5.c, 3.5.d and 3.6.e, the Access Seeker will undertake to reimburse V/Line for its reasonable project costs.
- 3.6.g. Any change to configuration of the Network is subject to the approval of the Public Transport Development Authority.



## Part 4

### 4. Pricing

#### 4.1. Description of Services

- 4.1.a. V/Line shall offer the following Scheduled and Unscheduled Services to Operators.
- (i) Scheduled Services during Normal Hours, which services are Reference Services;
  - (ii) Unscheduled Services during Normal Hours, which services are Reference Services;
  - (iii) Unscheduled Services at times that are Out of Hours, which services are Non-Reference Services.
- 4.1.b. Scheduled Services and Unscheduled Services shall be provided at a standard which is no lower than the Performance Standard.
- 4.1.c. Notwithstanding the provisions of clause 4.1.b, where an Access Seeker has made an application in accordance with 3.4.c(ii) for Scheduled Service/s or Unscheduled Service/s to be supplied at a higher performance standard than the Performance Standard and the Access Seeker and V/Line have reached agreement in accordance with clause 4.2.c. the Scheduled Service/s and Unscheduled Service/s shall be supplied to that Access Seeker at the higher standard.
- 4.1.d. Unscheduled Services may not be requested more than two (2) weeks in advance.
- 4.1.e. The Performance Standard as at the Commencement Date is set out in Appendix 6.
- 4.1.f. In the event that V/Line makes an application to the ESC for the variation of the Performance Standard under section 38ZO of the RMA, V/Line may, from the time of lodgement and during the application process and to the extent reasonably required to take account of the circumstances the subject of the application, do either of the following in respect of the applicable Line/s:
- book a line out of service; or
  - vary the Performance Standard by reducing the Average Maximum Operating Speed,
- without limiting its other rights or obligations from a safety perspective.
- Any variation or line closure effected under this clause 4.1.f will be lifted as soon as practicable after the final determination of the relevant application to vary the Performance Standard, but only after V/Line has



reasonably determined that it can apply the new Performance Standard safely.

- 4.1.g. V/Line may temporarily book a line out of service or vary the Performance Standard if it reasonably believes that it is necessary to ensure the safety of passengers, Access Seekers, Operators or the public.
- 4.1.h. The Performance Standard may be varied from time to time:
  - (i) by agreement with the Public Transport Development Authority as a result of changes to the Annual Works Plan; and
  - (ii) If the Public Transport Development Authority directs that V/Line close part or all of an applicable Line.

## 4.2. Prices and charging

- 4.2.a. V/Line charges for Services according to whether or not Access is provided in Normal Hours or Out of Hours.
- 4.2.b. In respect of Scheduled Services during Normal Hours or Unscheduled Services during Normal Hours sought by an Access Seeker for which the required performance standard of rail infrastructure is the Performance Standard, the applicable charges are set out in Appendix 1.
- 4.2.c. In respect of Scheduled Services during Normal Hours or Unscheduled Services during Normal Hours for which the Performance Standard sought by an Access Seeker is higher than the Performance Standard, charging will be based on the applicable charges as set out in Appendix 1 as modified by prior agreement between V/Line and the Operator so as to reflect the "Operator pays incremental costs" principle set out in clause 4.2.h.
- 4.2.d. If an Access Seeker applies for Access for a Scheduled Service to operate outside Normal Hours (as in place at the time the application is made), the Access Seeker should request that Normal Hours be extended. In such circumstances, if approved, V/Line shall make available Access for such Service during Normal Hours (as amended), provided that the Operator provides V/Line with at least one (1) month's notice.
- 4.2.e. For clarification, V/Line must not reduce the Normal Hours without the prior approval of the ESC where:
  - (i) that reduction would prejudice an existing Scheduled Service; and
  - (ii) the applicable Operator has not consented to that reduction.
- 4.2.f. If an Operator seeks an Unscheduled Service on an Out of Hours basis, the charging will be based on the charges as set out in Appendix 1, and further adjusted as modified by prior agreement between V/Line and the





Operator so as to reflect the "Operator Pays Incremental Costs" principle set out in clause 4.2.i.

- 4.2.g. If an Operator does not use an **Unscheduled Service**, the Operator must pay the **flagfall** element of the applicable price and any other incremental costs contemplated under clause 4.2.i, unless:
- (i) the Operator surrendered or cancelled the **Unscheduled Service** with sufficient notice to V/Line (such notice being received by V/Line before 10am of the Business Day preceding the date of the **Unscheduled Train Path**); or
  - (ii) the Operator's failure to use the **Unscheduled Service** was caused by an act or omission of V/Line (for example, possession of the relevant line), other than a direction which has been given as the result of the act or omission of the Operator.
- 4.2.h. **Unscheduled Services** will be provided **Out of Hours** following application to V/Line by an Operator, and mutual agreement between V/Line and the Operator. Charging will be based on the applicable charges as set out in Appendix 1, and further adjusted as modified by prior agreement between V/Line and the Operator so as to reflect the "Operator Pays Incremental Costs" Principle set out in Clause 4.2.i.
- 4.2.i. Each **Out of Hours Pricing** arrangement, and the pricing arrangement for each **Scheduled Service** or **Unscheduled Service** for which the performance standard of rail infrastructure sought by an **Access Seeker** is higher than the **Performance Standard**, will be the sum of:
- (i) the corresponding **Normal Hours** pricing, as set out in Appendix 1; plus
  - (ii) either:
    - 1) the incremental costs incurred by V/Line in providing that **Service**; or
    - 2) the reasonably anticipated costs (as agreed between the parties) of providing that **Service**; plus
  - (iii) the operating margin of 8.0% permitted under this **Access Arrangement** on the incremental cost in paragraph (ii) above.

For the purposes of this **Access Arrangement**, the calculation of charges on this basis is referred to as the "**Operator Pays Incremental Cost Principle**". If there is no agreement between the parties for the purposes of clause 4.2.i(ii)2) then 4.2.i(ii)1) shall apply.

### 4.3. Revenue Cap

- 4.3.a. As at the **Commencement Date**, the **Revenue Cap** that applies in respect of the provision of declared rail transport services under this **Access**



Arrangement is the sum of the Freight Revenue Cap, as described in clause 4.3.b below.

- 4.3.b. The Revenue Cap that applies to declared rail transport services that are freight services over the Access Period (**Freight Revenue Cap**) is \$73.12 million, which is the estimated 2012/13 forecast cost of providing declared rail transport services.

#### **4.4. Freight pricing structure and task differentiation**

- 4.4.a. V/Line's pricing for Reference Services, as set out in Appendix 1, includes:
- (i) a flagfall charge (in \$ per TK) and a variable charge (in \$ per GTK); and
  - (ii) task differentiation between Bulk Grain Freight and other freight.
- 4.4.b. V/Line shall not charge:-
- (i) for Access to silo sidings and regional loading facilities. Occupation of these sidings and facilities will be made available to Access Seekers by agreement with the loading facility operator (see Information Pack);
  - (ii) other than as set out in Appendix 1, for Access to yards for freight storage, loading and make up / break up of trains. However, the above-rail operator of these yards may charge the Access Seeker for freight storage, shunting and marshalling;
  - (iii) for Access for an Ancillary Movement, provided it extends no further than one kilometre. V/Line will charge for any movements in excess of one kilometre as a Scheduled Service or Unscheduled Service as applicable; and
  - (iv) the Flagfall Charge for Trip Trains. In other words, Trip Trains may be charged on the basis of the Variable Rate only.
- 4.4.c. Operators may be required to make their own arrangements in respect of stabling. However, in the event of a need for stabling by an Operator to which V/Line has provided or is about to provide Scheduled Services or Unscheduled Services, V/Line will make available temporary storage to that Operator for no additional consideration, provided doing so will not adversely affect either the provision of Access by V/Line to other Operators or V/Line's maintenance of the Network.
- 4.4.d. Notwithstanding the provisions of clauses 4.4.a, 4.4.b and 4.4.c the Public Transport Development Authority may direct V/Line to lower from time to time all or some of the charges payable by Access Seekers. On the expiration of any such period of direction all charges lowered by the direction will from that time be payable as calculated in accordance with clauses 4.4.a, 4.4.b and 4.4.c unless a further direction is given.



#### **4.5. Price escalation**

Access pricing during the term of an Access Agreement will be adjusted annually according to the formula set out in Appendix 11.



## **Part 5**

### **5. Management of capacity and Network**

#### **5.1. General**

- 5.1.a. V/Line shall comply with the Capacity Use Rules.
- 5.1.b. V/Line shall comply with the Network Management Rules.

#### **5.2. Network Service Plan and Master Train Timetable**

- 5.2.a. V/Line's Network Service Plan contains separate sections for passenger and freight timetables that have been developed with the respective train operators in accordance with their Access requirements and the procedures contained in this Access Arrangement and the Operating Handbook.
- 5.2.b. As outlined in the Operating Handbook, V/Line's Master Train Timetable shall be updated to reflect grants of Access for Scheduled Services. If practicable, V/Line's Daily Train Plan (which is updated on a weekly basis) shall be updated to reflect grants of Access to Unscheduled Services.

#### **5.3. Capacity allocation in response to Access applications**

- 5.3.a. Available Paths in Normal Hours are available to Operators at the prices as stated in clause 4.2.b.
- 5.3.b. Available Paths in Out of Hours times are available on the terms stated in clauses 4.2.f, 4.2.g and 4.2.h. If two Operators require the same Available Path, priority will be determined in accordance with the Operating Handbook.

#### **5.4. Variation and surrender of a Train Path**

- 5.4.a. All permanent changes to the passenger timetable are dealt with as set out in the Operating Handbook.
- 5.4.b. As outlined in the Operating Handbook, V/Line shall assist Operators in dealing with the metropolitan and standard gauge access provider to achieve full journey train paths.
- 5.4.c. Permanent and temporary variations of the timing of Scheduled Services will be conducted in accordance with the Operating Handbook.





## **5.5. Protocols and capacity allocation protocols**

- 5.5.a. Network procedures and work procedures apply to all passenger and freight train operators and are varied in accordance with the processes provided for in the Network Management Rules and the Capacity Use Rules in consultation with all affected operators and, where required contractually, upon approval by the Public Transport Development Authority.
- 5.5.b. The Protocols and Work Procedures are available at V/Line's office located at Level 23 at 570 Bourke Street Melbourne and will be published on the V/Line web site.

## **5.6. Reporting of actual Train Path utilisation**

- 5.6.a. V/Line will record Train Path utilisation in a train management and billing computer system. V/Line will provide a report on Train Path utilisation to the ESC for each quarter on or before the 20<sup>th</sup> day of the month following the end of the calendar quarter to which the utilisation report relates.

## **Part 6**

### **6. Account keeping**

#### **6.1. Preparing, maintaining and keeping accounting records and accounts**

- 6.1.a. V/Line will prepare annual accounts in accordance with the Account Keeping Rules. These accounts audited and submitted to the ESC.
- 6.1.b. The cost allocation policy that is prepared by V/Line under the Account Keeping Rules will be annexed to this Access Arrangement following its approval by the ESC. V/Line shall comply with the cost allocation policy when carrying out its obligations under the Account Keeping Rules.

## **Part 7**

### **7. Performance Indicators**

- 7.1.a. V/Line shall publish on its website:
  - (i) the Average Maximum Operating Speed on each Line Section; and
  - (ii) the maximum speed on each Line Segment,

on a basis directly comparable with the relevant Performance Standard set out in Appendix 6.



- 7.1.b. V/Line shall also publish on its website on a quarterly basis, separately for the freight only rail lines and for the rail lines carrying passenger services, V/Line's performance against the following indicators:
- (i) the number of kilometres of track affected by temporary speed restrictions on a moving six monthly basis; and
  - (ii) the average number of kilometres of track on each day during the year affected by temporary speed restrictions.
- 7.1.c. V/Line shall also report its performance against the following indicators:
- (i) Separately for the freight only rail lines and for the rail lines carrying passenger services:
    - 1) the percentage of granted paths varied for the purpose of track possessions;
    - 2) the number of sleepers replaced each year;
    - 3) the number of safety incidents reported to the relevant safety regulators (Director, Transport Safety and the Office of Chief Investigator, Transport and Marine Safety Investigations); and
  - (ii) the number of broken rails and "pull aparts" for the Network as a whole in each year.
- 7.1.d. The performance indicators specified in clauses 7.1.a, 7.1.b and 7.1.c must be reported to the ESC in the manner requested by the ESC.



## Part 8

### 8. Ring Fencing

- 8.1.a. As at the Commencement Date, the ESC has not applied the Ring Fencing Rules to V/Line. The obligations under this Part 8 are intended to address requirements in Part 2A, Division 2 of the RMA.
- 8.1.b. If after the Commencement Date the obligations under the Ring Fencing Rules are applied to V/Line by the ESC, the Separation Arrangement that is prepared by V/Line under the Ring Fencing Rules will be annexed to this Access Arrangement following its approval by the ESC.
- 8.1.c. **Access Seeker Information**
- Access Seeker Information shall be kept confidential and shall be handled in accordance with the system and business rules to be established under section 38ZZB of the RMA and to be approved by the ESC. The system and business rules for handling Access Seeker Information will be annexed to this Access Arrangement following its approval by the ESC.
- 8.1.d. **Training**
- Training for relevant V/Line staff and contractors in V/Line's information handling (and if applicable, ring fencing) obligations and procedures will be conducted.
- 8.1.e. **Complaints**
- Complaints from Operators to V/Line in connection with a belief that V/Line has not complied with V/Line's obligations under the RMA with respect to information supplied by the Operator to V/Line in confidence, will be dealt with in accordance with the dispute resolution procedures contained in the standard Access Agreement in Appendix 3 (whether or not such agreement has been entered into by the Operator and V/Line).



# Appendix 1

## Pricing

### Introduction

The prices specified in this Appendix 1 are the maximum standing offer prices for reference services.

The pricing set out in this Appendix 1:

- (i) apply in respect of Scheduled Services in Normal Hours and Unscheduled Services in Normal Hours; and
- (ii) forms the basis of pricing for Unscheduled Services in Out of Hours; and
- (iii) Clause 4.2.f, 4.2.g and 4.2.h sets out further details of pricing for Unscheduled Services in Out of Hours.

For clarification:

- (i) the liability of Operators to pay the charges specified in this Appendix 1 will arise pursuant to an Access Agreement when a Scheduled Service or Unscheduled Service is applied for and granted, subject to the operation of clause; and
- (ii) notwithstanding that the prices in this Appendix 1 are standing offer prices, V/Line and an Access Seeker may agree to different prices, subject to the RMA, the Negotiation Guidelines and this Access Arrangement.

### A. Bulk Grain Freight Access

V/Line will charge Operators the sum of:

- (1) the Flagfall Rate as shown below; and
- (2) the Variable Rate as shown below,

in each case as set out below for the financial year in question.

Year	Flagfall rate, \$/TK	Variable rate, \$/GTK
20012/13	To be calculated by adding March CPI to 2011/12 current rates of \$5.719	To be calculated by adding March CPI to 2011/12 current rates of \$7.607
2013/14	(A)	(A)
2014/15	(B)	(B)

- (A) Based on 2013/14 price, as adjusted according to the mechanism in Appendix 11.

**Comment [BVG/Line1]:** It is noted that currently V/Line has been directed to invoice Bulk Grain at the following rates Flagfall rate – zero, Variable rate \$4.13/GTK





- (B) Based on 2014/15 price, as adjusted according to the mechanism in Appendix 11.

**B. All Other Freight Access**

V/Line will charge Operators the sum of:

- (1) the flagfall rate as shown below; and
- (2) the variable rate,

in each case as set out below for the financial year in question.

Year	Flagfall rate, \$/TK	Variable rate, \$/GTK
20012/13	To be calculated by adding March CPI to 2011/12 current rates of \$0.876	To be calculated by adding March CPI to 2011/12 current rates of \$1.646
2013/14	(A)	(A)
2014/15	(B)	(B)

- (A) Based on 2013/14 price, as adjusted according to the mechanism in Appendix 11.
- (B) Based on 2014/15 price, as adjusted according to the mechanism in Appendix 11.

**C. Other Access**

V/Line will charge Operators:

- (1) for non-exclusive access at the applicable prices in this Appendix 1 for movements into and out of Somerton, Melbourne Arrival Sidings and those parts of Tottenham Yard not leased to PN, but no further fee for the first 24 hours only, after which an additional fee of \$12.82 (excluding GST) per vehicle per day or part thereof (or such other rate as determined by the ESC from time to time) will apply; and
- (2) for non-exclusive track access to the Geelong Grain Loop at the rate of \$78.04 (excluding GST) per Train (or such other rate as determined by the ESC from time to time).

Charges for Other Access will be adjusted according to the mechanism in Appendix 11.

**Interpretation**

In this Appendix Train means any rolling stock operated as a single unit or coupled together.

Comment [BVG/Line2]: to be updated to provide for CPI increase on 2011/12 rates after March qtr

Comment [BVG/Line3]: to be updated to provide for CPI increase on 2011/12 rates after March qtr



## Appendix 2

### Information to accompany an Access application

The applicant must provide the following information with an Access application:-

#### Applicant Details

- Company details.
- Company address and contact details.
- Company number and Australian Business Number.

#### Description of Service(s) including

- Origin and destination of each Service sought.
- Frequency of Service(s) (estimated number of services: per day, days of operation, days of operation per year.)
- Indicative departure time and arrival time for each Service.
- Whether or not the Service requires a change to the currently applicable Normal Hours.
- Description of any other special conditions required to operate the Service e.g. required performance standards.

#### Details of the rolling stock and freight

- Details of freight to be transported including: type, estimated annual tonnage, seasonal variation, handling requirements (including hazardous substance details) and any specific operational requirements.
- Typical consist for each Service, including loaded weight, empty weight and tare weight.
- Acknowledgement that the Operator will be required to provide the list of all wagons and types of wagon being operated (including technical details such as axle load, loaded weight and tare weight, together with certification from a qualified engineer that the rolling stock conforms to the Rolling Stock Standards supplied in the information pack).
- Acknowledgement that the Operator will be required to provide the list of all locomotives and types being operated (including axle load, fully fuelled weight and performance characteristics together with certification from a qualified engineer that the locomotives comply with the Rolling Stock standards supplied in the information pack).

#### Term of agreement proposed

- Details of the term of the agreement sought and any special provisions.
- Commencement date for the proposed agreement.

#### Financial capacity

- Evidence of financial capacity.
- Acknowledgement that the Operator will be required to provide the public liability insurance for \$250 million.

#### Competency and capacity

- Acknowledgement that the Operator will be required to provide evidence of the appropriate accreditation to operate Services.
- Confirmation that the Operator's drivers who are to operate Services on a Train Path have the requisite experience and training to operate those Services on that Train Path.



**Additional Information requirement for interconnection or upgrade applications**

- The need for conditional or surge capacity based on historical usage patterns, market characteristics or other constraints such as shipping.
- Anticipated change in demand associated with a commitment to upgrade or expand capacity,

**Form of Application**

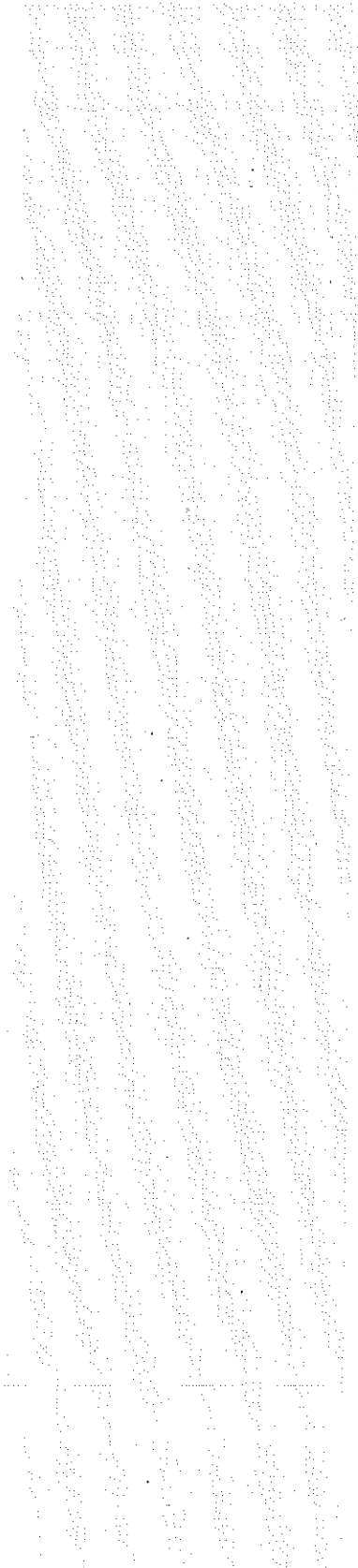
V/Line will make available an application form on request which may be completed and lodged in either electronic or written form and which clearly states:

*"This is an application made in accordance with the Access Arrangement made by the Essential Services Commission of Victoria, in respect of V/Line, dated [insert date]."*



**Appendix 3**

**Access agreement**







**Network Access Agreement**

**(Freight Services)**

**V/Line Pty Limited (*Access Provider*)**

**And**

***[Operator]***



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THIS AGREEMENT is made on.....

## PARTIES

V/LINE PTY LIMITED ABN 29 087 425 269  
of Level 23, 570 Bourke Street, Melbourne VIC 3000 ("Access Provider")

AND

[Insert name and ACN] of [Insert address] ("Operator")

## INTRODUCTION

- A The Access Provider operates the Network.
- B The Operator is an access seeker for the purposes of the Rail Management Act.
- C The Access Provider has agreed to provide the Operator with access for Freight Trains to those parts of the Network described at Item 4 of Schedule 1 of this Agreement, on the terms and conditions contained in this Agreement.

## 1 Definitions

In this Agreement:

- 1.1 "Access Arrangement" means the access arrangement made by the Victorian Essential Services Commission under the Rail Management Act, which is binding on the Access Provider;
- 1.2 "Access Charges" means the fees and charges payable by the Operator under clause 5.1 and clause 5.2 of this Agreement;
- 1.3 "Access Fees" means the fees that the Operator is required to pay for access to an Approved Train Path, as described in clause 5.1 and specified in Schedule 2;
- 1.4 "Accreditation" means:
  - 1.4.1 in relation to the Operator, the rail safety accreditation under the Rail Safety Act that a person must obtain if it is to operate a Train in Victoria or New South Wales; and
  - 1.4.2 in relation to the Access Provider, the rail safety accreditation under the Rail Safety Act that a person must obtain if it is to manage rail infrastructure in Victoria or New South Wales;
- 1.5 "Agreement" means this agreement;
- 1.6 "Ancillary Movement" means a Train movement on the Network of not more than 1 kilometre which is not part of an Approved Train Path but which is necessary or reasonably required in connection with the use of an Approved Train Path, including a movement:
  - 1.6.1 for Stabling purposes;



- 1.6.2 of empty wagons and light engines; and
- 1.6.3 for operational or maintenance purposes to workshops, locomotive depots and fuel points;
- 1.7 **"Approved Train Path"** means:
- 1.7.1 an Operator's Scheduled Train Path; or
- 1.7.2 an Operator's Unscheduled Train Path;
- 1.8 **"Available"** means in relation to:
- 1.8.1 an application for an Unscheduled Train Path, a Train Path that:
- (a) has not already been granted (whether to the Operator, the Access Provider, or to a Third Party Operator), and the operation of that Train Path does not or will not conflict with any Train Path already granted (unless that other Train Path is required to be surrendered under the Capacity Use Rules); or
  - (b) has already been granted but is required to be surrendered under the Capacity Use Rules; and
- 1.8.2 an application for a Scheduled Train Path by the Operator:
- (a) a Train Path that has not previously been granted as
    - (i) a Scheduled Train Path;
    - (ii) a Passenger Train Path,and the operation of that Train Path would not conflict with any Scheduled Train Path (which is not required to be surrendered under the Capacity Use Rules) and would not conflict with a Passenger Train Path;
  - (b) any Unscheduled Train Path; or
  - (c) a Train Path that is required to be surrendered under the Capacity Use Rules.
- 1.9 **"Book of Rules"** means the Book of Rules and Operating Procedures 1994, as these rules and procedures are amended or replaced from time to time.
- 1.10 **"Business Day"** means a day not being a Saturday or Sunday, on which banks are generally open for business in Melbourne, Victoria;
- 1.11 **"Capacity Use Rules"** means the capacity use rules made by the Victorian Essential Services Commission pursuant to section 38T of the Rail Management Act;
- 1.12 **"Change of Control Event"** means, in relation to an entity, an event the occurrence of which has the effect that:
- 1.12.1 if a person controlled the entity prior to the time the event occurred, the person ceased to control the entity or another person obtained control of the entity; or
  - 1.12.2 if no person controlled the entity prior to the time the event occurred, a person obtained control of the entity; or



- 1.12.3 if the entity is owned or controlled by a group or consortium of persons, or if the group or consortium could control the entity were they to act collectively, there is any material change in the composition of the group or consortium; and
- for the purposes of this definition, "control" and "controlled" have the meaning given in section 50AA of the Corporations Act;
- 1.13 "**Claim**" means all claims, legal actions and demands (including the costs and expenses of defending or settling any action, proceeding, claim or demand);
- 1.14 "**Commencement Date**" means the date of this Agreement;
- 1.15 "**Confidential Information**" means the terms of this Agreement and all information provided by one party to another which is marked confidential, being information other than information which:
- 1.15.1 at the time of the first disclosure by the disclosing party was already in the lawful possession of the other party and which was not at the time of such disclosure the subject of any obligation of confidentiality;
- 1.15.2 is or becomes generally available to the public otherwise than by disclosure in breach of the terms of this Agreement or an obligation of confidence owed to the disclosing party by the other party; or
- 1.15.3 becomes available to the other party, from a third person legally entitled to possess the information and provide it to the other party, without breaching any obligation of confidentiality in relation to such information or any Law.
- 1.16 "**Consequential Loss**" means any loss or damage which is indirect or consequential, including loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, or increased overhead costs, but does not include property damage or losses arising from third party claims in respect of property damage, personal injury, nervous shock or death;
- 1.17 "**Corporations Act**" means the *Corporations Act 2001* (Cth);
- 1.18 "**Dangerous Goods**" has the same meaning that it has in the Dangerous Goods Code;
- 1.19 "**Dangerous Goods Code**" means Australian Code for the Carriage of Dangerous Goods Road and Rail (as in force from time to time);
- 1.20 "**Default Rate**" means the rate of interest prescribed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic);
- 1.21 "**Delay Loss**" has the meaning given in clause 17.16;
- 1.22 "**Emergency Management Compliance Plan**" means an emergency management compliance plan prepared by the Operator and acceptable to the Access Provider, which describes how the Operator will comply with the Emergency Management Plan;
- 1.23 "**Emergency Management Plan**" means the emergency management plan published by the Access Provider from time to time;
- 1.24 "**Entry Point**" means:
- 1.24.1 in respect of a Scheduled Train Path, the entry point for that Scheduled Train Path set out in Schedule 4; and



- 1.24.2 in respect of an **Unscheduled Train Path**, the place of entry specified by the Access Provider in relation to that **Unscheduled Train Path**;
- 1.25 **"Entry Time"** means:
- 1.25.1 in respect of a **Scheduled Train Path**, the entry time for that **Scheduled Train Path** set out in Schedule 4; and
- 1.25.2 in respect of an **Unscheduled Train Path**, the time and date of entry specified by the Access Provider in relation to that **Unscheduled Train Path**;
- 1.26 **"Environment"** includes the meaning given to that term at common law and in any Law in force in Victoria or New South Wales, including any land, water, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants and the social factors of aesthetics;
- 1.27 **"Environmental Hazard"** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics;
- 1.28 **"Environmental Law"** means any Law relating to the Environment, including any Law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property;
- 1.29 **"Environmental Management Plan"** means an environmental management plan prepared by the Operator and acceptable to the Access Provider, for dealing with the environmental effects of the Operator's operations on the Network;
- 1.30 **"Exit Point"** means:
- 1.30.1 in respect of a **Scheduled Train Path**, the exit point for that **Scheduled Train Path** set out in Schedule 4; and
- 1.30.2 in respect of an **Unscheduled Train Path**, the place of exit specified by the Access Provider in relation to that **Unscheduled Train Path**;
- 1.31 **"Exit Time"** means:
- 1.31.1 in respect of a **Scheduled Train Path**, the exit time for that **Scheduled Train Path** set out in Schedule 4; and
- 1.31.2 in respect of an **Unscheduled Train Path**, the time and date of exit specified by the Access Provider in relation to that **Unscheduled Train Path**;
- 1.32 **"Expiry Date"** means the date specified in clause 3 of Schedule 1;
- 1.33 **"Force Majeure"** means:
- 1.33.1 acts of God, lightning, storm, natural flood, landslide, bush fire or earthquake;
- 1.33.2 high temperatures resulting in the imposition of operating restrictions pursuant to the Network Operating Requirements;
- 1.33.3 strikes or other industrial action;





- 1.33.4 acts of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- 1.33.5 the effect of any change in applicable Laws of any government or other competent authority;
- 1.33.6 embargo or power or water shortage; and
- 1.33.7 other occurrences which are beyond the reasonable control of the Access Provider, including deliberate and accidental damage to infrastructure;
- 1.34 "Freight Train" means a Train used to carry freight or other goods and materials for reward and includes such a Train when it is empty;
- 1.35 "Government Agency" means any government and any governmental body whether:
- 1.35.1 legislative, judicial or administrative;
- 1.35.2 a department, commission, authority, tribunal, agency or entity; or
- 1.35.3 commonwealth, state, territorial or local;
- but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- 1.36 "GST" has the meaning given by the GST Law;
- 1.37 "GST Law" means the GST Law as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.38 "Hazardous Substance" means any substance that causes, or might reasonably be expected to cause, injury to any person exposed to that substance, including but not limited to dangerous, inflammable, volatile or explosive substances or goods, and any emission from that substance;
- 1.39 "Incident" means a breakdown, accident, emergency, event or circumstance on or affecting the Network that causes, or may reasonably be expected to cause:
- damage to a Train; or
  - injury to or death of any person; or
  - material damage to the property of any person; or
  - delay or obstruction to persons using the Network; or
  - collision, derailment, signalling failure or serious safeworking breach, and any railway accident or incident that the Access Provider or the Operator is required to report or investigate under any applicable Law;
- 1.40 "Industrial Waste" means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials that are potentially harmful to human beings or the Environment;
- 1.41 "Lateness Payment" has the meaning given in clause 17.16;
- 1.42 "Law" means any statute, regulation, order, rule, subordinate legislation and other document enforceable under any statute, regulation, order, rule or subordinate legislation;



- 1.43 "Line" means the rail path between two locations (including sidings) on the Network that may be the subject of a Train Path;
- 1.44 "Line Segment" means a segment or section of rail track of the Network designated as a line segment by the Access Provider in the Network Operating Requirements;
- 1.45 "Loss" means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person, and includes:
- the cost of any action taken by the person to protect itself against any loss or to preserve any right it has;
  - any taxes or duties payable by the person (other than tax on its assessable income); and
  - where applicable, legal costs on an indemnity basis or on a solicitor and own client basis, whichever is the higher;
- 1.46 "Material Change" means any change or changes to:
- 1.46.1 the scope and/or operation of the access regime established pursuant to Part 2A of the Rail Management Act; or
- 1.46.2 the Law, or a policy or direction from a Government Agency,  
which materially and substantially affects either the rights or obligations of the Access Provider under this Agreement or the cost to the Access Provider of performing its obligations under this Agreement;
- 1.47 "Negotiation Guidelines" mean the negotiation guidelines made by the Victorian Essential Services Commission pursuant to section 38V of the Rail Management Act;
- 1.48 "Network" means that part of the land and rail infrastructure that is:
- 1.48.1 operated or managed by the Access Provider; and
- 1.48.2 declared under Part 2A of the Rail Management Act,  
and includes Somerton, Melbourne Arrival Sidings, those parts of Tottenham Yard not leased to Pacific National (Victoria) Limited and, for such period as the Access Provider continues to act as access manager of the Geelong Grain Loop pursuant to its appointment to do so by the Victorian Rail Track Corporation, the Geelong Grain Loop;
- 1.49 "Network Management Rules" means the network management rules made by the Victorian Essential Services Commission pursuant to section 38U of the Rail Management Act;
- 1.50 "Network Operating Requirements" means the regulations and standards set out in the chapters of the Network Service Plan entitled "Network Operating Requirements" and "Addenda", as published by the Access Provider from time to time;
- 1.51 "Network Service Plan" means the Access Provider's network service plan that contains requirements for rolling stock, infrastructure, safe-working, communications and train running, and sets out passenger and freight train schedules with details on section running times;
- 1.52 "Notice" has the meaning given in clause 21;



- 1.53 "On Time", in respect of a Train or a Service, means:
- 1.53.1 on lines used only by Freight Trains, within ten minutes of the Entry Time or Exit Time (as the case may be); and
- 1.53.2 on lines used by Passenger Trains, within five minutes of the Entry Time or Exit Time (as the case may be);
- 1.54 "Operating Handbook" means the Access Provider's operating handbook that applies to operations on the Network and the allocation of capacity, as published by the Access Provider from time to time in accordance with the Network Management Rules and the Capacity Use Rules;
- 1.55 "Operational Control" means the control exercised, or which may be exercised, by the Access Provider with regard to the efficient operation and safeworking of the Network, and includes procedures and requirements relating to Train control, Train movements, track restrictions, Track Occupations, safeworking practices, operating restrictions, emergency response, notification of authorities, network restoration, maintenance of the Network, evacuation and Incident investigation;
- 1.56 "Operational Directions" means the lawful instructions, directions and notifications from time to time issued by the Access Provider with regard to Operational Control;
- 1.57 "Operator's Scheduled Train Path" means each Train Path described in Schedule 4 (as amended from time to time);
- 1.58 "Operator's Unscheduled Train Path" means each Train Path granted to the Operator following a request under clause 2.4;
- 1.59 "Passenger Franchisee" means a Passenger Train operator who has entered into a franchise agreement with the PTDA for the operation of passenger services on the Network;
- 1.60 "Passenger Franchisee Franchise Agreement" means that agreement entered by a Passenger Franchisee with the PTDA for the operation of passenger services on the Network;
- 1.61 "Passenger Train" means a Train used to carry passengers for reward and includes such a Train when it is empty;
- 1.62 "Passenger Train Path" has the meaning given to that term in the Capacity Use Rules;
- 1.63 "PTDA" means the Public Transport Development Authority, established under the *Transport Integration Act 2010* (Vic);
- 1.64 "Rail Management Act" means the *Rail Management Act 1996* (Vic);
- 1.65 "Rail Safety Act" means the *Rail Safety Act 2006* (Vic) or *Rail Safety Act 2008* (NSW) as applicable;
- 1.66 "Regional Infrastructure Lease" means the Regional Infrastructure Lease dated 2 May 2007 and restated XXXX 2012 between V/Line and the PTDA;
- 1.67 "Related Body Corporate" has the meaning given in the Corporations Act;
- 1.68 "Ring Fencing Rules" mean the ring fencing rules made by the Victorian Essential Services Commission pursuant to section 38S of the Rail Management Act;

Comment [B1]: to be updated once PTDA commences operation



- 1.69. **"Rolling Stock"** means any vehicle that operates on or uses a railway track including a locomotive, light inspection vehicle, road/rail vehicle, trolley, carriage, diesel multiple unit and wagon (but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track);
- 1.70. **"Rolling Stock Standards"** means the specifications and requirements for Rolling Stock set out in the Network Operating Requirements;
- 1.71. **"Safety Regulator"** means the Director, Transport Safety pursuant to the Rail Safety Act (Vic) or ;
- 1.72. **"Scheduled Train Path"** means a Train Path that has been scheduled in the Access Provider's master train timetable (other than a Passenger Train Path).
- 1.73. **"Scheduled Train Path Group"** means a group of Scheduled Train Paths that have:
- 1.73.1 the same Entry Point and Exit Point, and
  - 1.73.2 Entry Times and Exit Times that are the same in respect of the relevant time of day and the relevant day of the week,
- as specified in Schedule 4;
- 1.74. **"Service"** means a rail freight service provided by the Operator that uses an Approved Train Path;
- 1.75. **"Stabling"** means the parking or laying up of Rolling Stock which is necessary or expedient for giving full effect to the movements of the Rolling Stock required for the operation of Services;
- 1.76. **"Stabling Arrangement"** means an arrangement with the Access Provider or a third party to store Rolling Stock, and includes a wagon storage agreement, a lease or licence for a stabling track and permission from the facility owner to use a terminal, yard, receipt or storage facility to store Rolling Stock;
- 1.77. **"Third Party Operator"** means a person other than the Operator or a related body corporate of the Access Provider who has the right to access the Network to provide rail services;
- 1.78. **"Track"** means any single line between two turnouts, or from a turnout to the baulks;
- 1.79. **"Track Occupation"** means access to the Network in order to carry out inspections, repairs, maintenance, up-grade work, improvements, additions or any other works;
- 1.80. **"Train"** means several units of Rolling Stock coupled together to operate as a single unit;
- 1.81. **"Train Path"** means the particular route and time interval, including Entry and Exit Points and Times, through which a Train may travel on a particular day over one or more Line Segments from an origin to a destination, including such stopping points and intermediate times and locations;
- 1.82. **"Transport Act"** means the Transport (Compliance and Miscellaneous) Act 1983
- 1.83. **"Trip Trains"** means train movements of rakes of a larger Freight Train;
- 1.84. **"Unhealthy"**, in relation to a Service or Train, means that a Service or Train has not entered the Approved Train Path at the Entry Point On Time or has lost time en-route as





a result of "above rail" causes so that in either case it is not expected to exit the Approved Train Path at the Exit Point On Time; and

- 1.85 "Unscheduled Train Path" means a Train Path that is granted by the Access Provider through a short term process of nomination and allocation, and is not a Scheduled Train Path or a Passenger Train Path.

## **1A Good faith**

- 1A.1 The parties must act reasonably and in good faith in performing their respective obligations under this Agreement.

## **2 Access**

### **Grant of access**

- 2.1 The Access Provider agrees to grant access for Freight Trains to those parts of the Network detailed in Item 4 of Schedule 1 to the Operator in accordance with this Agreement. The access granted may comprise:
- 2.1.1 access to Approved Train Paths; and
  - 2.1.2 the right to undertake Ancillary Movements; and
  - 2.1.3 Stabling

### **Limitations on grant**

- 2.2 The Operator must not access or use any part of the Network except for the purpose of:
- 2.2.1 operating a Service on an Approved Train Path; or
  - 2.2.2 undertaking Ancillary Movements, or
  - 2.2.3 Stabling
- in accordance with this Agreement.

### **Scheduled Train Paths**

- 2.3 The Operator may operate Freight Trains on the Operator's Scheduled Train Paths, subject to and on the terms and conditions of this Agreement.
- 2.3.1 Requests for additional Scheduled Train paths or variations to existing Scheduled Train Paths may be made by the Operator to the Access Provider in accordance with the Operating Handbook.
  - 2.3.2 The Access Provider will not unreasonably withhold approval for an additional Scheduled Train Path or variation to an existing Scheduled Train Path.



## **Application for use of Unscheduled Train Paths**

- 2.4 The Operator may request that the Access Provider grant the use of an Unscheduled Train Path by providing the Access Provider with a written notice which:
- 2.4.1 specifies the Train Path sought, including Entry Point, Exit Point, Entry Time and Exit Time;
  - 2.4.2 provides details of the Rolling Stock sought to be run over the entire Train Path requested; and
  - 2.4.3 provides details of appropriate Stabling Arrangements made by the Operator for storing its Rolling Stock off the main line (or other rights to access to facilities off the main line) compatible with the requested Train Path.
- The notice must be provided to the Access Provider at least 48 hours prior to, but not more than two weeks in advance of, the Entry Time of the requested Train Path. The 48 hour notice period does not include a day that is not a Business Day.
- 2.5 The Operator must immediately provide revised information to the Access Provider if there is a material change in the information supplied pursuant to clause 2.4.

## **Grant of Unscheduled Train Paths**

- 2.6 Subject to the Capacity Use Rules, the Access Provider is not obliged to grant a requested Unscheduled Train Path if:
- 2.6.1 the requested Train Path is not Available;
  - 2.6.2 the Operator has not made appropriate Stabling Arrangements for storing its Rolling Stock off the main line (or other rights to access to facilities off the main line) compatible with the requested Train Path;
  - 2.6.3 the Operator is in material breach of this Agreement (including without limitation any provision requiring the Operator to pay money to the Access Provider); or
  - 2.6.4 the request is not made in accordance with clause 2.4.
- 2.7 The Access Provider must make a determination as to whether a requested Unscheduled Train Path is Available having regard to the matters set out in the Network Operating Requirements and the Operating Handbook. Where the Access Provider:
- 2.7.1 receives the request on a Business Day, the Access Provider must respond to the Operator on the next Business Day (no more than 24 hours after the time the request was received); and
  - 2.7.2 receives the request on a day that is not a Business Day, the Access Provider must respond to the Operator by the close of business on the next Business Day.



- 2.8 If the requested Unscheduled Train Path is not Available, the Access Provider must:
- 2.8.1 notify the Operator and provide details of another Available Train Path that most closely resembles the Train Path that the Operator has applied for promptly (and no later than within 24 hours after the Access Provider's determination under clause 2.7); and
  - 2.8.2 if the Operator is not satisfied with the alternative Train Path suggested by the Access Provider under clause 2.8.1, use reasonable endeavours to offer the Operator an alternative Train Path that most closely aligns with the Operator's request.
- For clarification, the 24 hour period in clause 2.8.1 does not include a day that is not a Business Day.
- 2.9 The Operator acknowledges that the grant of a requested Unscheduled Train Path on any particular occasion does not:
- 2.9.1 give rise to any entitlement in respect of any Unscheduled Train Path similar to the granted Unscheduled Train Path; or
  - 2.9.2 constitute any indication that any Unscheduled Train Path similar to the granted Unscheduled Train Path will be Available in the future.

### **Access to certain Sidings and Terminals**

- 2.10 Without limiting any other provision of this Agreement, but subject to any relevant determination of the Victorian Essential Services Commission, during the term of this Agreement the Access Provider will provide the Operator with:
- 2.10.1 non-exclusive access to Somerton at charges equal to the Access Fees for the movements into and out of Somerton but no further fee for the first 24 hours only, after which an additional fee of \$12.82 (excluding GST) per vehicle per day or part thereof (or such other rate as determined by the Victorian Essential Services Commission from time to time) will apply;
  - 2.10.2 non-exclusive access to Melbourne Arrival Sidings and those parts of Tottenham Yard not leased to Pacific National (Victoria) Limited ("PN") at charges equal to the Access Fees for the movements into and out of Melbourne Arrival Sidings and those parts of Tottenham Yard not leased to PN but no further fee for the first 24 hours only, after which an additional fee of \$12.82 (excluding GST) per vehicle per day or part thereof (or such other rate as determined by the Victorian Essential Services Commission from time to time) will apply; and
  - 2.10.3 non-exclusive track access to the Geelong Grain Loop at the rate of \$78.04 (excluding GST) per Train (or such other rate as determined by the Victorian Essential Services Commission from time to time).



- 2.11 The charges referred to in clause 2.10 will be varied in accordance with Schedule 3 (as if the references to "Access Fees" in Schedule 3 were references to the charges referred to in clause 2.10).
- 2.12 For the avoidance of doubt, the Operator must pay to the Access Provider the charges referred to in clause 2.10 (as varied from time to time under clause 2.11 ).
- 2.13 In clause 2.10 Somerton, Melbourne Arrival Sidings, Tottenham Yard and Geelong Grain Loop have the meaning given to those terms in the Access Arrangement.

### **3 Variation, surrender and non-use of Train Paths**

#### **Variation and surrender**

- 3.1 Without limiting the Access Provider's rights under this Agreement, the Access Provider may vary or require the Operator to surrender an Approved Train Path or a Scheduled Train Path Group:
- 3.1.1 for the purpose of and in accordance with section 5.1, 5.2, 5.5, 5.6 or 5.7 of the Capacity Use Rules;
- 3.1.2 if the Operator is in material breach of this Agreement in relation to an Approved Train Path or Scheduled Train Path Group, the Access Provider has notified the Operator that the material breach renders the Approved Train Path unsafe, inefficient or impracticable to operate, and the Operator has not rectified that breach within 7 days of notification;
- 3.1.3 if the Operator has (or had) terminated a rail based freight haulage contract with a customer that may require the Approved Train Path or Scheduled Train Path Group to be granted to another Train Operator if that train path is required by the other Train Operator for a continuation of the customers freight haulage. In this instance the binding protocol made under Section 6.3(a)(vii) and (viii) shall not apply.
- 3.1.4 if circumstances outside the control of the Access Provider (including but not limited to events of Force Majeure) prevent the Approved Train Path from being provided for use by the Operator, provided that the Access Provider provides the Operator with details of the event as soon as possible in the circumstances; or
- 3.1.5 if the Operator:
- (a) breaches a relevant Law or binding standard;
  - (b) has its Accreditation suspended or cancelled; or
  - (c) fails to comply with the protocols contained in the Operating Handbook or the Rolling Stock Standards,

but in relation to a breach by the Operator under clause 3.1.4(c) and in relation to a particular Train Path, the Access Provider may only temporarily vary Train Paths to the extent necessary to avoid the relevant breach.





- 3.2 The Operator:
- 3.2.1 must surrender an Approved Train Path or a Scheduled Train Path Group if required to do so by the Access Provider under clause 3.1; and
  - 3.2.2 at its sole discretion, may surrender an Approved Train Path or a Scheduled Train Path Group by notice to the Access Provider.
- 3.3 When an Approved Train Path or a Scheduled Train Path Group is surrendered, it ceases to be the Operator's Approved Train Path or Scheduled Train Path Group under this Agreement and the Access Provider has the right to delete that affected Train Path or the Scheduled Train Path Group from schedule 4.

### Non-use

- 3.4 The Operator must notify the Access Provider as soon as practicable after it becomes aware that it will not use an Approved Train Path. The Access Provider will then be free to allocate that Train Path to any other person.
- 3.5 When the Operator uses less than 50% of the Operator's Scheduled Train Paths in any Scheduled Train Path Group in any calendar month, the Operator must pay an amount in respect of each such Scheduled Train Path Group calculated as follows:
- $$A = [(0.50 \times G) - U] \times (F \times D)$$
- where:
- A = the amount payable by the Operator;
  - U = the number of the Operator's Scheduled Train Paths in the relevant Scheduled Train Path Group that the Operator used during the relevant month;
  - G = the number of the Operator's Scheduled Train Paths in the relevant Scheduled Train Path Group in the relevant month;
  - F = the applicable flagfall rate relating to Scheduled Train Paths in the relevant month; and
  - D = the total distance in kilometres of all the Operator's Scheduled Train Paths in the relevant Scheduled Train Path Group in the relevant month
- 3.6 If the Operator does not use an Unscheduled Train Path granted to it, it must pay the flagfall component of the Access Fees for that Operator Unscheduled Train Path, except if:
- 3.6.1 that Operator's Unscheduled Train Path was surrendered;



- 3.6.2 the Operator has given the Access Provider notice of non-use by 10 AM on the Business Day prior to the Entry Time applying to that Operator's Unscheduled Train Path; or
  - 3.6.3 the non-use occurred as a result of a direction by the Access Provider, other than a direction which has been given as the result of the act or omission of the Operator.
- 3.7 In respect of clauses 3.1.1 and 3.5, the Operator will not be charged for non-use of allocated Train Paths or required to surrender Train Paths to the extent that:
- 3.7.1 the Train Path is not available due to the Access Provider not making the Train Path available; and
  - 3.7.2 the unavailability of the Train Path did not result from an act or omission of the Operator.

## **4 Conditions of Access**

### **Limits on use of Train Paths**

- 4.1 The Operator acknowledges that its right to use an Approved Train Paths is subject to:
  - 4.1.1 Operational Directions given by the Access Provider;
  - 4.1.2 Incidents and Force Majeure events.

### **Ancillary Movements**

- 4.2 The Access Provider must allow the Operator access to the Network to make Ancillary Movements, subject only to Operational Directions and the terms and conditions set out in this Agreement.
- 4.3 When accessing the Network to make Ancillary Movements:
  - 4.3.1 the Operator must obtain the prior consent of the Access Provider, such consent not to be unreasonably delayed or withheld;
  - 4.3.2 the Operator must comply with any Operational Directions made by the Access Provider relating to the moving of any vehicle or other equipment brought onto the Network; and
  - 4.3.3 the Operator must have appropriate arrangements in place in respect of the storage, shunting and Stabling of the Rolling Stock off the Network.



### **Ad hoc storage**

- 4.4 The Access Provider may, at its discretion, allow the Operator to store one or more items of Rolling Stock on the Network on a short-term basis, free of charge, upon request by the Operator.
- 4.5 All items of Rolling Stock stored on the Network by the Operator are stored at the Operator's risk.
- 4.6 If the Access Provider directs the Operator to remove or move any or all items of Rolling Stock stored on the Network, the Operator must do so without delay.

### **Non-exclusive Access**

- 4.7 The Operator's right to access the Network is non-exclusive. Subject to the Access Provider providing access in accordance with this Agreement, including access to Approved Train Paths, nothing contained or implied in this Agreement prevents or limits the Access Provider or any other person from conducting freight, passenger or other services on the Network.

### **Future scope of the Network**

- 4.8 The Operator acknowledges that any part of the Network may from time to time be removed from the Access Provider's management or operation or cease to be declared under Part 2A of the RMA.
- 4.9 If either of the circumstance referred to in clause 4.8 arises, the relevant track will no longer form part of the Network under this Agreement.

## **5 Access Charges and Access Fees**

### **Access Fees**

- 5.1 The Operator must pay to the Access Provider the applicable Access Fees. The Access Fees:
- 5.1.1 shall be calculated in accordance with Schedule 2, by reference to whether the relevant Train Path is to be provided in Normal Hours or Out of Hours (as defined in the Access Arrangement), and will include a flagfall component and a variable charge, subject to clause 5.1.3;
- 5.1.2 shall be adjusted to reflect any changes to the prices in Schedule 2 that occur in accordance with Schedule 3; and



- 5.1.3 shall be, in respect of Trip Trains, only the relevant variable charge set out in Schedule 2, and no flagfall component.

### **Access Charge**

- 5.2 In addition to the Access Fees payable under clause 5.1, the Operator must pay any other charges under clauses 2.10, 3.5, 3.6 and 5.3 (together with the Access Fees, the Access Charges).

### **Other charges**

- 5.3 The Operator must pay to the Access Provider any net effect of any new taxes or charges, or increases in taxes or charges (other than income tax) which is a tax, royalty, rate, duty, levy or impost of general application imposed on the Access Provider by any Government Agency, as notified in writing to the Operator, attributable to the provision by the Access Provider to the Operator of access to the Network.

### **Invoices**

- 5.4 The Access Provider must deliver to the Operator within 14 days after the end of each month a tax invoice setting out the Access Charges payable by the Operator with respect to the previous month. The invoice must be accompanied by a statement setting out in reasonable detail the calculation of the amounts shown in the invoice so that the Operator can verify that the calculation is in accordance with this Agreement.
- 5.5 Subject to clause 5.8, the Operator must pay the amount invoiced in accordance with clause 5.4 within 14 days after the day the invoice is received.
- 5.6 A failure by the Access Provider to invoice for payment on a particular occasion will not prejudice the Access Provider's right to invoice for that payment.
- 5.7 The Access Provider must do all things, including providing any information referred to in the invoices or providing other documentation, that may be necessary or desirable to enable or assist the Operator to claim any input tax credit, credit, set off, rebate or refund in relation to the amount attributable to any GST included in the amount invoiced.

### **Objection to invoiced amount**

- 5.8 If the Operator has a bona fide objection to the amount claimed under any invoice it may notify the Access Provider of the objection and either:
- 5.8.1 pay the amount in full and, if an adjustment is subsequently agreed between the parties, the Operator may deduct the amount of the adjustment from the





next invoice following the agreement or determination, together with interest at the Default Rate on that amount accrued daily from the due date for payment of the disputed invoice until the due date for payment of that next invoice; or

- 5.8.2 pay the amount of the invoice less the amount in dispute and, if it is subsequently agreed between the parties, the Operator must add that amount to the next invoice following the agreement or determination, together with interest at the Default Rate on that amount accrued daily from the due date for payment of the disputed invoice until the due date for payment of that next invoice.

- 5.9 The failure by the Operator to object to an invoice prior to the due date for payment or actual payment will not prejudice the Operator's right to dispute the amount of the invoice.

### **Interest on late payment**

- 5.10 Subject to clause 5.8, if either party fails to pay any amount payable by it by the due date, that party must, if demand is made by the other party, pay interest at the Default Rate on the unpaid amount accrued daily from the time it falls due until the amount has been paid in full.
- 5.11 The right to demand payment of interest under clause 5.10 is without prejudice to any other rights and remedies that a party may have in respect of a payment default under this Agreement.

### **Set off**

- 5.12 Either party may set off against any amount due and payable under this Agreement by it to the other party, any amount due and payable under this Agreement by the other party to it.

### **Access Charges and GST**

- 5.13 The Access Charges are calculated without provision for GST. However, the Access Charges will be invoiced including the amount of the GST payable by the Operator and the invoice must conform to the requirements of a tax invoice within the meaning of the GST Law.

### **Train Manifest information and audit**

- 5.14 For the purpose of allowing the Access Provider to correctly invoice the Access Charges due, the Operator, its servants and agents must make available to the Access Provider



promptly upon request all records and information of the Operator (and its servants or agents) which relate to:

- 5.14.1 the make up and movements of Trains operated by or on behalf of the Operator under this Agreement (including train manifests or consolidated data compiled from train manifests);
- 5.14.2 train operating information including individual locomotive and wagon movements, Stabling and storage; and
- 5.14.3 train loading and weighing information sufficient to determine actual gross and tare weight of wagons,

and the Access Provider must only use the information for the purpose for which it is disclosed and not disclose the information to any person without the prior written consent of the Operator.

The information provided by the Operator to the Access Provider under this clause 5.14 will be deemed to be information provided in confidence for the purpose of section 38ZZZ of the Rail Management Act. Where applicable, the Access Provider's handling of information provided under this clause 5.14 must also be consistent with the policies, procedures and systems developed by the Access Provider under clause 4 of the Ring Fencing Rules.

- 5.15 The Operator its servants and agents must allow an auditor appointed by the Access Provider to access all records and information set out in clause 5.14 and the rights of the Access Provider and any auditor it appoints to review records and information include the right to review and to copy the records and information. The Access Provider shall not carry out more than two audits per year, unless an audit detects a manifest error.
- 5.16 Where an error in an invoice is identified as a result of an audit under clause 5.14 (or as a result of other related records or information) the Access Provider may issue an amended invoice. If it is identified that any information provided by or on behalf of the Operator is incorrect and has led to an understatement of the Access Fees invoiced the Access Provider may also invoice the Operator for and the Operator must pay interest at the Default Rate calculated from the due date for payment of the invoice containing the understated Access Fees to the date of payment of the correctly stated Access Fees. If it is identified that an error in an invoice has been caused as a result of an error on the part of the Access Provider (whether as the result of the audit or otherwise), and results in overpayment by the Operator, the Access Provider must pay interest at the Default Rate calculated from the date that the Operator paid the invoice containing the overstated Access Fees.

## **6 Network maintenance & Works**

### **General maintenance**

- 6.1 The Access Provider will maintain those parts of the Network over which the Operator has Approved Train Paths so as to ensure that those parts of the Network are fit for the



purpose of the Operator operating a Freight Train on those parts of the Network in accordance with the Performance Standard set out in Appendix 6 of the Access Arrangement (as adjusted in accordance with clause 4.1.h of the Access Arrangement).

### **Lines booked out of service**

- 6.2 The Operator acknowledges that, notwithstanding anything else in this Agreement, the Access Provider may, during the period of this Agreement make an application to the ESC under section 38ZO of the RMA for variation of the Performance Standard, alter the Performance Standard or book lines out of service in regards to relevant Line/s in accordance with clause 4.1.f of the Access Arrangement.
- 6.3 Subject to clause 6.4, before booking a Line out of service or varying the Performance Standard in accordance with clause 6.2, the Access Provider must:
- 6.3.1 consult with the Operator about the likely impact on the Operator's business; and
  - 6.3.2 to the extent practicable, take into account the likely impact on the Operator's Approved Train Paths.
- 6.4 For the avoidance of doubt, the Access Provider may temporarily vary the Performance Standard or book a Line/s out of service for safety reasons at any time as contemplated by clause 4.1.g of the Access Arrangement. The Access Provider is not required to give notice to the Operator under clause 6.3 where access to a Line is being suspended or terminated for safety reasons.
- 6.5 For the avoidance of doubt, access to a Line that is booked out of service is not available during any period during which that Line is booked out of service.
- 6.6 A Line that has had its Performance Standard varied or has been booked out of service under these clauses 6.2 to 6.6 will be subsequently reviewed and amended or booked back into service, from either :
- the date the application for variation under section 38ZO to the ESC is approved; or
  - the date V/Line considers that the safety risk has been addressed.
- Restored access to a Line will be available on the terms and conditions of this Agreement.
- 6.7 The Operator acknowledges that nothing in clauses 6.2 to 6.6 requires the Access Provider to pay for or carry out any works in relation to any railway infrastructure.

### **Track Occupations:**

- 6.8 Subject to clause 6.9 and the provisions of clauses 6.9, 6.10, 6.11 & 6.12 the Access Provider may, at any time, have a Track Occupation on any part of the Network, including those parts of the Network to which the Operator has access pursuant to the Approved Train Paths.



- 6.9 In planning a Track Occupation, to the extent reasonably practicable, the Access Provider must consult the Operator and take into account the Operators Approved Train Paths and the Access Provider must use its reasonable endeavours to minimise disruption to the Operator's Services likely to be caused by the Track Occupation.
- 6.10 If a Track Occupation is likely to materially affect an Approved Train Path, the Access Provider will:
- 6.10.1 provide as much notice to the Operator of the relevant Track Occupation (including the expected duration of the relevant Track Occupation) as is practicable; and
  - 6.10.2 use its reasonable endeavours to minimise disruption to the Operator's Services caused by Track Occupation.
- 6.11 A Track Occupation may be cancelled by the Access Provider at any time and the Access Provider will use reasonable endeavours to notify the Operator in advance if a Track Occupation is to be cancelled but otherwise as soon as reasonably possible after it is cancelled.
- 6.12 Without limiting anything else in this Agreement, the Access Provider may occupy any part of the Network and, in exercising Operational Control, may vary the Operator's Train Paths without complying with this clause to the extent the Access Provider is of the view (acting reasonably) that an urgent Track Occupation is necessary for safety reasons.
- 6.13 For the avoidance of doubt:
- 6.13.1 nothing in these clauses 6.8, 6.9, 6.10, 6.11 & 6.12 requires the Access Provider to obtain the Operator's consent to any Track Occupation or to any repairs, maintenance or upgrade of the Network (including any Major Capital Works Projects); and
  - 6.13.2 subject to the Access Provider complying with its obligations under this Agreement and under any applicable Law (including in relation to the Access Provider's Accreditation), the Access Provider is not liable to compensate the Operator in respect of matters arising from any Track Occupation.
- 6.14 The Access Provider:
- 6.14.1 must provide the Operator with at least 3 months' notice (including details of the nature, scope, extent and timing) of future Major Capital Works Projects;
  - 6.14.2 must provide the Operator with reasonable details of any significant change in the nature, scope, extent or timing of a Major Capital Works Project;





- 6.14.3 must consult the Operator in relation to the likely impact of Major Capital Works Projects on the Operator's business; and
  - 6.14.4 must use all reasonable endeavours to minimise any adverse commercial impact of those Major Capital Works Projects on the Operator.
- 6.15 Subject to the Access Provider complying with its obligations under this Agreement and under any applicable Law (including in relation to the Access Provider's Accreditation), the Access Provider is not liable to compensate nor otherwise liable to the Operator in respect of matters arising from any Major Capital Works Projects, provided that this clause 6.15, does not release the Access Provider from liability to the Operator in respect of property damage or personal injury suffered by the Operator or any person having a claim against the Operator as a result of the relevant works.

## 7 Operator's obligations in using the Network

### Familiarity and compliance with procedures and protocols

- 7.1 The Access Provider must provide the Operator with:
- 7.1.1 the Operating Handbook;
  - 7.1.2 the Network Service Plan, including the Network Operating Requirements, and the Rolling Stock Standards;
  - 7.1.3 the Emergency Management Plan; and
  - 7.1.4 such other procedures and protocols as the Access Provider publishes from time to time.
- 7.2 Subject to clause 7.3, the Access Provider:
- 7.2.1 may make changes to any of the documents listed in clause 7.1 at any time;
  - 7.2.2 will consult with the Operator prior to making any changes; and
  - 7.2.3 will notify the Operator in writing of changes to the documents listed in clause 7.1, at least 14 days prior to those changes becoming effective.
- 7.3 If a document listed in clause 7.1 contains a protocol or procedure that is required under an instrument made by the Victorian Essential Services Commission under the Rail Management Act (**Commission Instrument**), such document may be varied only in accordance with the relevant Commission Instrument.



## **Weighing requirements**

- 7.4 The Operator must comply with all reasonable requirements of the Access Provider to weigh Rolling Stock or provide evidence of tonnages from Third Parties to determine gross and tare weight and axle loadings.
- 7.5 The Access Provider must use its best endeavours to minimise inconvenience caused to the Operator from weighing the Rolling Stock.
- 7.6 The Access Provider is not liable for any costs or Loss that may be incurred by the Operator or any other person (whether arising from delay or otherwise) arising from the weighing of Rolling Stock or provision of information under clause 7.4.

## **Operator's obligations**

- 7.7 Without limiting any of its other obligations under this Agreement, the Operator agrees at all times during the term of this Agreement:
  - 7.7.1 to comply with the procedures and protocols listed in clause 7.1 and with the Book of Rules;
  - 7.7.2 to notify the Access Provider immediately if it becomes aware that any of its Trains has become Unhealthy;
  - 7.7.3 to ensure that its use of the Network is carried out in such a way as to minimise obstruction of the Network and so that use of the Network by any other user authorised by the Access Provider is not prevented or delayed (other than through use of the Network in accordance with this Agreement or through proper compliance with an instruction or directions validly given);
  - 7.7.4 to comply with all Laws applicable to the operation of the Services or its use of the Network;
  - 7.7.5 not to materially change, alter, repair, deface, damage or otherwise affect any part of the Network; and
  - 7.7.6 to provide to the Access Provider such information related to the operation of the Services as the Access Provider reasonably requires to enable it to properly perform its functions and discharge its obligations to the Operator, other operators, and the public.



## 8 Train Manifest

### Train Manifest

- 8.1 At least 30 minutes prior to entry on to the Network, the Operator must provide the Access Provider with a notice (a "Train Manifest") specifying:
- 8.1.1 the number and type of each item of Rolling Stock in the consist of the Train;
  - 8.1.2 the type, identification number of each item of Rolling Stock and each point of arrival or departure on the Approved Train Path;
  - 8.1.3 the gross mass of the Train;
  - 8.1.4 the length of the Train;
  - 8.1.5 the motive power employed by the Train;
  - 8.1.6 the maximum axle load of the Train;
  - 8.1.7 the location, type and quantity of any Dangerous Goods on the Train; and
  - 8.1.8 any other information as may be required to be provided in the Train Manifest by the Safety Regulator from time to time,
- and this information must be, accurate in all material respects.
- 8.2 The Operator must notify the Access Provider immediately if it wishes to alter any of the information given to the Access Provider under clause 8.1.
- 8.3 The Train Manifest and any alteration of it must be provided in writing.

### Rolling Stock Standards

- 8.4 The Operator must:
- 8.4.1 maintain all Rolling Stock used by the Operator on the Network so that it satisfies the Rolling Stock Standards;
  - 8.4.2 ensure that all Rolling Stock used by the Operator on the Network is approved for operation by the Safety Regulator;
  - 8.4.3 ensure that all Rolling Stock used by the Operator on the Network is equipped with fully operational safety and safe working equipment which is compatible with the safe working systems used by the Access Provider;
  - 8.4.4 ensure that the axle load of the Rolling Stock (including load) does not exceed the axle loading weight set out in the Rolling Stock Standards prescribed for that part of the Network on which a Service is operated;
  - 8.4.5 ensure that no Rolling Stock or load exceeds the prescribed dimensional outline for safe operation set out in the Rolling Stock Standards; and



- 8.4.6 ensure that no Train exceeds the maximum Train length prescribed for that part of the Network on which a Service is operated, set out in the Rolling Stock Standards.
- 8.5 If the Operator wishes to operate Rolling Stock on the Network of a type which does not fully, but at least substantially, meets the Rolling Stock Standards, the Operator may request the Access Provider to alter the Rolling Stock Standards so as to specifically deal with such Rolling Stock and to specify such requirements for such Rolling Stock as are reasonably necessary to ensure the operation of such Rolling Stock on the Network does not have a material adverse effect on the Network or on the operation of Trains on the Network. The Access Provider must respond promptly to a request by the Operator for amendments to the Rolling Stock Standards.

### **Network Operating Requirements**

- 8.6 The Operator must in accessing the Network pursuant to this Agreement strictly comply with the Network Operating Requirements.

### **Directions by the Access Provider**

- 8.7 If the Access Provider believes on reasonable grounds that any one or more individual vehicles comprised in the Rolling Stock used by the Operator on the Network is in breach of the Network Operating Requirements or the Rolling Stock Standards, then the Access Provider may do one or both of the following:
- 8.7.1 direct the Operator to cease to use the vehicle or vehicles concerned on the Network and provide a statement of the grounds for such direction as soon as practicable after the direction has been given; or
  - 8.7.2 direct the Operator to ensure the vehicle or vehicles concerned comply with the Network Operating Requirements and the Rolling Stock Standards prior to continuing to use the vehicle or vehicles on the Network.
- 8.8 The Operator must, at its own expense, comply with a direction of the Access Provider given in accordance with clause 8.7.

### **Inspection and audit by Access Provider**

- 8.9 The Access Provider may at any time require the Operator to undergo an audit conducted by the Access Provider, by giving the Operator written notice, for the purpose of assessing:
- 8.9.1 the Operator's compliance with the terms and conditions of this Agreement;
  - 8.9.2 whether any one or more of the wagons used by the Operator in the provision of a Service is loaded in excess of its rated carrying capacity; or





- 8.9.3 whether any one or more of the wagons used by the Operator in the provision of a Service is loaded in an unsafe or potentially unsafe manner.
- 8.10 The Access Provider must use reasonable endeavours to conduct audits under clause 8.9 in a manner that minimises disruptions to the Operator.

### **Instructions**

- 8.11 In conducting an audit under clause 8.9, the Access Provider may give an instruction to the Operator, including an instruction to divert or delay a Train or make any part of a Train engaged in providing a Service available for inspection or weighing.

### **Monitoring equipment**

- 8.12 The Access Provider or its agent may place, on or about the Network, monitoring equipment which will take readings or measurements to monitor the operation of Rolling Stock. The Operator hereby authorises and consents to the Access Provider undertaking such monitoring and the collection of data from such monitoring equipment with respect to the Operator's Rolling Stock. The Access Provider:
- 8.12.1 will treat such data as Confidential Information; and
  - 8.12.2 may only use such information for the purpose of:
    - (a) the assessment under clause 8.9;
    - (b) the safe and efficient operation of the Network; and
    - (c) calculation of Access Fees.
- 8.13 If:
- 8.13.1 the Operator's Rolling Stock used to operate a Service on the Network continues to travel on a connecting rail network as part of that Service;
  - 8.13.2 the Operator obtains data with respect to such Rolling Stock from monitoring equipment on the connecting rail network, and
  - 8.13.3 such data is reasonably required by the Access Provider for the safe and reliable operation of the Network,
- the Operator must use reasonable endeavours to provide such data to the Access Provider upon request.



## **9 Operational Control**

### **Nature of exercise**

- 9.1 The Access Provider will:
- 9.1.1 exercise Operational Control in accordance with the Book of Rules and the Operating Handbook; and
  - 9.1.2 maintain Operational Control over the Network in accordance with any Law from time to time applicable in Victoria or New South Wales with regard to such control.
- 9.2 The Access Provider may exercise Operational Control by issuing Operational Directions to the Operator.
- 9.3 An Operational Direction may include any direction or requirement that the Access Provider considers necessary for the safe and efficient operation of the Network including, without limitation, a direction regarding Train speed and weight restrictions.
- 9.4 The Access Provider is not liable to the Operator, or any other person, for any Loss that is directly or indirectly related to the giving of an Operational Direction except to the extent that the Loss is caused by:
- 9.4.1 the Access Provider's negligence;
  - 9.4.2 breach of this Agreement by the Access Provider; or
  - 9.4.3 breach of the Access Provider's Accreditation.

### **Extent of exercise**

- 9.5 In exercising Operational Control under clause 9.1, the Access Provider:
- 9.5.1 may delay, add, cancel, re-route or re-schedule Train movements including any Service; and
  - 9.5.2 will use reasonable endeavours to minimise disruption to the Operator's use of Approved Train Paths.

### **Responsibility of Operator to comply**

- 9.6 The Operator must at all times promptly comply with all Operational Directions.



## Communication responsibilities

### 9.7 The Access Provider will:

- 9.7.1 keep the Operator properly and promptly informed of any event, activity or Incident known to the Access Provider that will, or is reasonably likely to, prevent or materially limit the operation of a Service by the Operator;
- 9.7.2 make available to the Operator in a timely manner (which it may do through publication on a website or other electronic means) all published regulations, standards, practices, instructions, directions and notifications from time to time applicable for the Network relating to Operational Control or the Network Operating Requirements to the extent that those regulations, standards, practices, instructions, directions and notifications are relevant to the operation of the Services;
- 9.7.3 operate and maintain a train control centre; and
- 9.7.4 operate and maintain, or cause another person to do so, a communications system in respect of the Network for the purposes of communications with the Operator and other Train operators on the Network and facilitate the Operator's access to that communications system.

### 9.8 The Operator must:

- 9.8.1 notify the Access Provider promptly after the Operator becomes aware of any actual or potential changes to the Operator's Train movements which are not or which might not be in accordance with any Approved Train Path or any Ancillary Movement allowed under clause 4.2 and all Operational Directions; and
- 9.8.2 ensure that all Trains under the control of the Operator are equipped with fully operational and compatible communications equipment to enable immediate communications between the Access Provider and the Trains of the Operator on the Network; and
- 9.8.3 if the Train Path connects with a train path on another network:
  - (a) upon request by the Access Provider, provide evidence that the Operator has agreement to enter the connecting network;
  - (b) notify the Access Provider as soon as the Operator becomes aware that it is unable to enter the connecting network; and
  - (c) place the Train in the nearest convenient storage location until an alternative pathway is agreed, if directed to do so by the Access Provider in circumstances where the Operator is unable to access the connecting network.



## **10 Time for Services traversing the Network**

- 10.1 Without limiting any of the Operator's obligations under this Agreement, the Operator must:
- 10.1.1 ensure that each Service is available for departure to enter the Network at the Entry Time;
  - 10.1.2 apply sufficient motive power to each Service to ensure that each individual item of Rolling Stock arrives or departs, as the case may be, at the scheduled points and times along the Approved Train Path; and
  - 10.1.3 ensure that each Service is resourced with appropriate Rolling Stock and Train crew to enable the Service to depart the Network at the Exit Time for that Service.
- 10.2 If the Operator does not strictly comply with the requirements set out in clause 10.1.1, the Access Provider has no obligation to provide the Approved Train Paths, but will use reasonable endeavours to accommodate the Operator's Trains, by:
- 10.2.1 allowing the Operator to use Approved Train Paths; or
  - 10.2.2 offering the next Available Train Paths that most closely resembles the Approved Train Path to the Operator.

## **11 Undertakings and warranties**

### **Undertakings and warranties**

- 11.1 In addition to and notwithstanding all other warranties express or implied in this Agreement, the Operator undertakes and warrants to the Access Provider that:
- 11.1.1 it is duly incorporated and is empowered to enter into this Agreement and to do all things that it is required to do by this Agreement;
  - 11.1.2 it has the resources and ability to perform all of its obligations under this Agreement;
  - 11.1.3 all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on it;
  - 11.1.4 all authorisations by any Government Agency that are required or will be required in connection with the execution and delivery of the performance of obligations under, or the validity or enforceability of, this Agreement, including the Accreditation, have been obtained or effected and are fully operative and in full force and effect;
  - 11.1.5 there is no litigation, arbitration or administrative proceedings taking place, pending or, to its knowledge, threatened against it which could have a material adverse effect on its ability to perform its obligations under this Agreement;





- 11.1.6 it will as soon as practicable notify the Access Provider of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the Operator under this Agreement and any event that could have a material adverse effect on its ability to perform its obligations under this Agreement;
- 11.1.7 it has disclosed to the Access Provider all information that the Access Provider has requested under clause 3(b) of the Negotiation Guidelines, being information that could reasonably be regarded as affecting to a substantial extent the decision of the Access Provider to enter into this Agreement or to allocate a Train Path to the Operator; and
- 11.1.8 all information provided to the Access Provider is true and correct and that no statement or representation made by it or on its behalf to the Access Provider in negotiations antecedent to this Agreement or to the allocation of a Train Path is misleading or deceptive in any material respect.

### **Time of giving undertakings and warranties**

- 11.2 The undertakings and warranties set out in this clause 11 will be taken to be given and made:
  - 11.2.1 on the date of execution of this Agreement; and
  - 11.2.2 on each day on which the Access Provider grants any access or the Operator operates any Service on the Network.

## **12 Accreditation**

### **Accreditation requirements**

- 12.1 During the term of this Agreement, each party must hold Accreditation.
- 12.2 The Operator must to the extent required by Law ensure that its employees, agents and contractors engaged in or in connection with the operation of the Services are acceptable to or approved by the agency or authority from time to time responsible for Accreditation.
- 12.3 Each party must keep the other party informed of all material variations in its Accreditation that impact on the other party's rights or obligations under this Agreement.
- 12.4 The Operator must not operate Rolling Stock on the Network to the extent it does not hold Accreditation necessary to do so.

### **Information as to Accreditation**

- 12.5 Without limiting any other provision of this Agreement, prior to operating any Rolling Stock on the Network the Operator must give the Access Provider such evidence as the



Access Provider reasonably requires to demonstrate that the Operator meets the requirements set out in clauses 12.1 to 12.4.

### **13 Compliance with other laws and standards**

- 13.1 Without limiting any of its obligations under this Agreement, the Operator must comply with all requirements of any Law from time to time applicable to its business, operations, and Services.

### **14 Incidents**

#### **Notification**

- 14.1 The Access Provider must notify the Operator of any Incident that may affect Services to be operated by the Operator as soon as possible after the Incident comes to the Access Provider's attention.
- 14.2 The Operator must notify the Access Provider of any Incident as soon as possible after it comes to the Operator's attention.

#### **Emergency Management Plan**

- 14.3 In the event of an Incident, the Operator must comply with the Emergency Management Plan where relevant.

#### **Dealing with Incidents**

- 14.4 The Access Provider may take such steps as it considers appropriate to deal with an Incident. The Operator must comply with any directions of the Access Provider in connection with the Incident, including in relation to clearing tracks.
- 14.5 Without limiting any other provision of this Agreement and in order to carry out its rights in clause 14.4, the Access Provider may move materials, goods, equipment or Rolling Stock of the Operator or require the Operator to do so, and may engage third party contractors for the purposes of moving or re-railing such materials, goods, equipment or Rolling Stock.
- 14.6 The Operator must comply with any reasonable directions given to the Operator by a person authorised to give such directions in relation to the Incident, as specified in the Operating Handbook and the Emergency Management Plan.



## **Other consequences of an Incident**

- 14.7 The Operator must fully cooperate with any investigator (whether employed by the Access Provider or otherwise) or board of enquiry authorised to investigate the Incident and must, without limitation, procure that its employees, contractors and agents provide formal statements within 7 Business Days on any matter related to an Incident if required to do so by such an investigator or board of enquiry.
- 14.8 Notwithstanding any other clauses of this Agreement the Access Provider may suspend an Operators rights of access in the event that the Operator fails to comply with condition 14.7 for such period until the Operator has complied with condition 14.7.
- 14.9 The Operator must not dispose of or part with possession of any Rolling Stock or equipment involved in an Incident unless given written permission to do so by the Access Provider (which written permission must be given by the Access Provider as soon as investigations in relation to the Incident are completed) or, if in the reasonable opinion of the Access Provider, the Incident will not be subject to an ongoing investigation by any investigator or board of enquiry authorised to investigate the Incident.
- 14.10 Subject to all applicable Laws, the Operator may continue to use equipment (including Rolling Stock) involved in an Incident which still meets the Rolling Stock Standards on the condition that the Operator allows access to the equipment (including Rolling Stock) by any investigator or board of enquiry authorised to investigate the Incident.
- 14.11 Subject to any agreement reached or determination made allocating responsibility for payment of costs arising out of an Incident, the Access Provider is responsible, on an interim basis, for payment of costs in relation to remediation or repair of the Network and the Operator is responsible, on an interim basis, for payment of costs in relation to recovery of the Operator's Trains and any goods.

## **Disablement**

- 14.12 Without limiting the other provisions of this clause 14, if any Rolling Stock of the Operator is disabled (whether through derailment, collision, locomotive failure or otherwise) while on the Network, the Operator must notify the Access Provider, as a matter of urgency, of the circumstances and other details relating to the disablement. The Operator must carry out emergency recovery and rectification action in consultation with the Access Provider at the earliest practicable time, and in accordance with the Emergency Management Plan.



## **Notifications**

- 14.13 Notifications required by this clause 14 must be made by the quickest available means.

## **15 Environment**

- 15.1 Subject to clause 16.1, the Operator must not:
- 15.1.1 bring, store, abandon or dump any Industrial Waste or potentially Hazardous Substance on the Network in a way that contravenes any applicable Environmental Law;
  - 15.1.2 discharge any Industrial Waste, Hazardous Substance, garbage or any offensive matter on to the Network; or
  - 15.1.3 handle any Industrial Waste or potentially Hazardous Substance in a manner likely to create an Environmental Hazard.
- 15.2 In operating its Services or carrying out Ancillary Movements on the Network, the Operator must comply with all Environmental Laws and obtain and maintain in full force and effect and comply with the terms of all permits and licences required in order to release or emit anything into the air or water or on to the ground or otherwise into the Environment or to emit any substantial noise.
- 15.3 The Operator must provide the Access Provider with an Environmental Management Plan.
- 15.4 Without prejudice to clause 15.1 and 15.2, the Operator must comply with the Environmental Management Plan.

## **16 Dangerous Goods**

- 16.1 The Operator must at all times comply with the Dangerous Goods Code in respect of all Dangerous Goods carried on the Operator's Services.

## **17 Indemnity and Insurance**

### **Operator's indemnity**

- 17.1 Subject to clause 17.7, the Operator will indemnify the Access Provider against any liability, loss, damage, costs or expenses (including, but not limited to, legal costs and expenses on a full indemnity basis) suffered or incurred by, or any Claim made or brought against, the Access Provider caused by, or to the extent contributed to by, a





breach of this Agreement by the Operator or any negligent act or omission by the Operator or anyone acting on its behalf in the performance of this Agreement.

### **Access Provider's indemnity**

- 17.2 Subject to clause 17.7, the Access Provider will indemnify the Operator against any liability, loss, damage, costs or expenses (including, but not limited to, legal costs and expenses on a full indemnity basis) suffered or incurred by, or any Claim made or brought against, the Operator caused by, or to the extent contributed to by, a breach of this Agreement by the Access Provider or any negligent act or omission by the Access Provider or anyone acting on its behalf in the performance of this Agreement.

### **Defence of Claims**

- 17.3 The parties shall render each other all reasonable assistance in the defence of any claim made against a party by a third party arising out of any Incident or other event giving rise to a Claim.
- 17.4 To the extent that a party ("**responsible party**") is obliged to indemnify the other party ("**indemnified party**") against a Claim by a third party against the indemnified party, the responsible party may, subject only to the terms of any applicable insurance which the indemnified party may have, at its own expense defend and settle any action or proceedings in the name of the indemnified party and execute such documents in the action or proceedings as the responsible party sees fit. The responsible party indemnifies the indemnified party in respect of all costs, expenses and losses which the indemnified party may incur on account of the action or proceedings.
- 17.5 The responsible party must not enter into any settlement or compromise of a Claim that involves a remedy other than the payment of money by the responsible party without the prior written consent of the indemnified party, which shall not be unreasonably withheld.
- 17.6 For the purposes of the indemnities given in this clause 17, the property of a person includes that person's cost of recovery of any of their property damaged or affected by the relevant loss, damage or destruction.

### **Limitation on liability**

- 17.7 Subject to clause 17.16, neither party is liable (under the indemnities in clauses 17.1 or 17.2 or otherwise) for any Consequential Loss suffered by the other for which the other becomes liable.
- 17.8 Each party agrees that, subject to clauses 17.9 and 17.10, it will not make a Claim against the other under clause 17.1 or 17.2 (as the case may be) or otherwise if the total



amount of the Claim does not exceed \$50,000.00 in respect of any one event or cause of action or series of related events or causes of action.

- 17.9 In the event that either party proposes making a Claim against the other under clause 17.1 or 17.2 (as the case may be) or otherwise to recover loss or damages in respect of any one event or cause of action or series of related events or causes of action, the party making the Claim must give notice of a dispute under clause 24 and otherwise comply with the terms of clause 24 before taking any other action to prosecute its Claim. Nothing in this clause 17.9 prohibits a party from seeking and obtaining appropriate injunctive relief.
- 17.10 The limitation in clause 17.8 does not apply to Claims made by one party against the other for monies presently due and payable under the terms of this Agreement including, without limitation, payment by the Operator of the Access Charges.

## **Insurance**

- 17.11 Each party must take out and maintain a public liability insurance policy for an amount not less than \$250 million for any one event with respect to any liabilities to the other party and any third parties, for:
- 17.11.1 the death or injury of any person (except a person who at the time of the injury or death is defined as a worker of the other party under any law relating to workers' compensation insurance);
  - 17.11.2 any amounts for which it is liable to the other party, and must indemnify the other party, under clause 17.1 or 17.2; and
  - 17.11.3 any loss, damage or destruction of any property (other than its own property).
- 17.12 The insurance referred to in clause 17.11 must be effected with a reputable and solvent insurer.
- 17.13 Each party must notify the other party immediately upon receipt of notification of cancellation of the insurance required under clause 17.11.
- 17.14 Each party must produce a current certificate of currency in respect of its insurance conforming with the requirements of clause 17.11 as soon as reasonably practicable after a request is made by the other party.
- 17.15 The requirements of this clause 17 are without prejudice to and do not affect the operation of the indemnities and limitations of liability contained in this Agreement.



## Delay indemnity

- 17.16 Without limiting any provision of this Agreement, if the Operator causes or contributes to any delay in the Network, and that results in:
- 17.16.1 the Access Provider being liable to pay a greater amount to a Passenger Franchisee under the Passenger Franchisee's access agreement or any related agreement; or
  - 17.16.2 a Passenger Franchisee paying a lesser amount to the Access Provider under the Passenger Franchisee's access agreement or any related agreement, or
  - 17.16.3 where the Access Provider is also a Passenger Franchisee the Access Provider being liable to pay a greater amount under the Passenger Franchisee's Franchise Agreement or any related agreement;
- (in the case of clause 17.16.1 and 17.16.2 a "Lateness Payment" as defined in the relevant Passenger Franchisee's Agreement with the Access Provider and in the case of clause 17.16.3 a "Lateness Payment" as defined in the relevant Passenger Franchisee's Agreement) than would otherwise be the case ("Delay Loss"), the Access Provider must provide the Operator with a delay loss certificate, which indicates the amount of any Delay Loss and the cause of the Delay Loss, together with documentary evidence of the amounts under clause 17.16.1 and 17.16.2 or 17.16.3. The Operator must reimburse the Access Provider for the Delay Loss to the extent that the Operator caused or contributed to it.
- 17.17 The delay loss certificate referred to in clause 17.16 will be conclusive evidence of the amount of any Delay Loss incurred by the Access Provider and the cause of such Delay Loss in the absence of manifest error.
- 17.18 The parties acknowledge that any Lateness Payment is payable irrespective of whether or not the cause of the Lateness Payment is a breach of this Agreement.

## 18 Assignment and sub-contracting

### Assignment

- 18.1 The Operator must not assign or transfer, or attempt or purport to assign or transfer, any of its rights or obligations under this Agreement, including any Approved Train Path, without the prior written consent of the Access Provider (not to be unreasonably withheld).
- 18.2 Subject to the obligations on the Access Provider in clause 19, the Access Provider must not assign or transfer any of its rights or obligations under this Agreement, without the prior written consent of the Operator (not to be unreasonably withheld).



## **Sub-contracting**

- 18.3 Neither party may sub-contract any of its obligations under this Agreement without the prior written consent of the other party (not to be unreasonably withheld).
- 18.4 Sub-contracting shall not release a party from, or reduce the extent of, any of its obligations or liabilities under this Agreement.

## **19 Term and termination**

### **Term**

- 19.1 Subject to this clause 19, this Agreement commences on the Commencement Date and unless otherwise terminated will expire on the Expiry Date.
- 19.2 This Agreement is subject to the Operator providing to the Access Provider:
- 19.2.1 evidence of the Operator's Accreditation;
  - 19.2.2 the Environmental Management Plan; and
  - 19.2.3 the Emergency Management Compliance Plan.
- 19.3 If the conditions precedent in clause 19.2 have not been fulfilled at the Commencement Date, the Operator will not be entitled to use any Approved Train Path until they have been fulfilled.
- 19.4 Notwithstanding clause 19.3, if the conditions precedent in clause 19.2 have not been fulfilled by the date which is 30 days after the Commencement Date, either party may terminate this Agreement immediately on notice to the other party.
- 19.5 If this Agreement is terminated under clause 19.4 each party:
- 19.5.1 is released from its obligations to further perform this Agreement except those obligations imposing on it obligations of confidentiality; and
  - 19.5.2 retains the rights it has against the other party in respect of any past breach.

### **Preservation of other rights**

- 19.6 If a party breaches or repudiates this Agreement, nothing in this clause 19 will prejudice the right of the other party to recover damages or exercise any other right.





## **Breach of payment obligation**

- 19.7 If either party commits a material breach of its payment obligations under this Agreement and fails to remedy the breach within 30 days after being required to do so in writing, the other party may terminate this Agreement by giving 7 days' written notice to the party in default and this Agreement will terminate on expiry of that 7 day notice period.
- 19.8 For the purpose of clause 19.7, a material breach is a failure by a party to comply with its payment obligations with respect to an amount or amounts exceeding a total sum of \$20,000.

## **Breach of other obligations**

- 19.9 If a party commits a material breach of an obligation under this Agreement (other than a breach referred to in clause 19.7) ("**Defaulting Party**") the other party may give the Defaulting Party a notice ("**Default Notice**") within a reasonable time:
- 19.9.1 stating that a material breach has occurred;
  - 19.9.2 setting out reasonable details of the event or circumstances constituting the material breach; and
  - 19.9.3 specifying a reasonable period of time, being no longer than 30 days in which to cure the material breach ("**Cure Period**").
- 19.10 Within seven days of receipt of a Default Notice, the Defaulting Party must provide to the other party a plan designed to cure the material breach specified in the Default Notice ("**Cure Plan**").
- 19.11 The Defaulting Party will be permitted to cure the material breach within the Cure Period and in accordance with the Cure Plan.
- 19.12 If the Defaulting Party requires an extension to the Cure Period, of not more than 30 days, under clause 19.9.3 it may, not later than the expiration of the Cure Period, provide to the other party:
- 19.12.1 a revised Cure Plan; and
  - 19.12.2 evidence that:
    - (a) the Defaulting Party has diligently pursued and is continuing to diligently pursue a feasible and practicable programme of rectification; and
    - (b) the material breach cannot, with reasonable diligence, be cured within the current Cure Period.



- 19.13 The other party must not unreasonably refuse to grant an extension of the Cure Period.
- 19.14 If the Defaulting Party commits a material breach and the material breach is not cured within the Cure Period then, the other party may terminate this Agreement immediately by notice to the Defaulting Party.
- 19.15 Clauses 19.9 to 19.13 do not limit or reduce the rights of a party to claim damages for breach of this Agreement.

### Termination on insolvency

- 19.16 A party may terminate this Agreement immediately by notice to the other party if the other party:
- 19.16.1 stops or suspends payment of either all or a class of its debts (other than debts owed to the Access Provider);
  - 19.16.2 is insolvent within the meaning of section 95A of the Corporations Act;
  - 19.16.3 fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:
    - (a) the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or
    - (b) the party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
  - 19.16.4 has an administrator appointed in respect of it;
  - 19.16.5 has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to the whole or a substantial part of its assets or undertaking and that controller or similar officer is not removed within 15 Business Days of the appointment;
  - 19.16.6 has an order made or a resolution passed for its winding up or dissolution or it enters an arrangement, compromise, or composition with or assignment for the benefit of its creditors or a class of them;
  - 19.16.7 has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
  - 19.16.8 is subject to any event which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.



## Termination for Change of Control

- 19.17 The Access Provider may terminate this Agreement immediately if a Change of Control Event occurs in relation to the Operator without the Access Provider's prior written consent, such consent not to be unreasonably withheld.

## Cessation of rights

- 19.18 Upon expiry or termination of this Agreement, all rights of the Operator to use the Network will cease. The Operator must at the cost of the Operator on or prior to expiry or termination remove all of the Operator's Rolling Stock from the Network. If the Operator does not remove all Rolling Stock, the Access Provider may:
- 19.18.1 carry out the obligations of the Operator at the Operator's cost; and
  - 19.18.2 store the Operator's Rolling Stock at the Operator's risk and cost.

## Accrued rights

- 19.19 Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination of this Agreement.

## Rail Management Act

- 19.20 The Operator acknowledges that its rights under this Agreement have been granted having regard to the obligations of the Access Provider under the Rail Management Act.
- 19.21 If a Material Change occurs in relation to the Access Provider, the Access Provider must notify the Operator of its occurrence.
- 19.22 If a notice is issued under clause 19.21, the parties must enter into good faith negotiations to determine whether any amendments to this Agreement are necessary, taking into account the circumstances surrounding the Material Change.
- 19.23 Where the parties are able to reach agreement in relation to the consequences of a Material Change for this Agreement, the agreement may include, or result in:
- 19.23.1 an amendment to the terms of this Agreement;
  - 19.23.2 a waiver of each or either party's obligations under this Agreement; or
  - 19.23.3 agreement to terminate this Agreement.
- 19.24 Where the parties are unable to reach agreement in relation to the consequences of the Material Change for this Agreement, the dispute resolution procedures set out in clause 24 of this Agreement will apply.



- 19.25 The Access Provider will be liable to the Operator for any loss or damage incurred by the Operator as a result of the Access Provider breaching the Regional Infrastructure Lease

## **20 Exception and exemption clauses**

- 20.1 A provision of this Agreement must not be construed to the disadvantage of a party merely because the provision is an exception or exemption clause for the benefit of that party.

## **21 Notices**

- 21.1 Unless expressly provided otherwise, a notice or other communication connected with this Agreement ("Notice") has no legal effect unless it is in writing.
- 21.2 In addition to any other method of service provided by law, the Notice may be:
- 21.2.1 sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
  - 21.2.2 sent by facsimile to the facsimile number of the addressee; or
  - 21.2.3 delivered at the address for service of the addressee.
- 21.3 If the Notice is sent or delivered in a manner provided by clause 21.2, it must be treated as given to and received by the party to which it is addressed:
- 21.3.1 if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
  - 21.3.2 if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
  - 21.3.3 if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 21.4 Despite clause 21.3.2:
- 21.4.1 a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
  - 21.4.2 a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.





- 21.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:
- 21.5.1 the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
  - 21.5.2 the Notice is returned unclaimed.
- 21.6 Any Notice by a party may be given and may be signed by its solicitor.
- 21.7 Any Notice to a party may be given to its solicitor by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number.
- 21.8 Any:
- 21.8.1 Notice with respect to an Incident; or
  - 21.8.2 Operational Direction,
- may be given orally.

## **22 Confidential Information**

- 22.1 Except as permitted by this clause 22, each party must:
- 22.1.1 hold the Confidential Information in strict confidence and not disclose the Confidential Information to any person;
  - 22.1.2 take all steps reasonably necessary to safeguard the confidentiality of the Confidential Information; and
  - 22.1.3 immediately notify the disclosing party of any potential, suspected or actual disclosure of the Confidential Information not permitted by this Agreement.
- 22.2 A party ("**Receiving Party**") in receipt of the other party's ("**Disclosing Party**") Confidential Information may disclose Confidential Information:
- 22.2.1 to its officers, employees and legal, financial or economic advisers (on a need to know basis);
  - 22.2.2 to the extent required by:
    - (a) any Law or the requirements of the Receiving Party's Accreditation;
    - (b) the Safety Regulator;
    - (c) any Government Agency; or
    - (d) the rules of any stock exchange;



- 22.2.3 to the ACCC for the purpose of Part IIIA of the Trade Practices Act 1974 (Cth) or to the Victorian Essential Services Commission for the purpose of the Rail Management Act or any of the instruments made by the Victorian Essential Services Commission under the Rail Management Act;
  - 22.2.4 to the extent required for the purpose of any mediation, expert determination, arbitration or legal proceeding involving the Receiving Party; or
  - 22.2.5 with the consent of the Disclosing Party, which will not be unreasonably withheld.
- 22.3 The provisions of this clause 22 survive termination of this Agreement for a period of three years.
- 22.4 Each party acknowledges that:
- 22.4.1 the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information and that monetary damages would be an insufficient remedy; and
  - 22.4.2 in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of and to compel specific performance of this clause.
- 22.5 For clarification, the confidentiality obligations under this Agreement apply in addition to the obligations under sections 38ZZZ and 38ZZZA of the Rail Management Act, and in addition to the Access Provider's obligations to handle confidential information in accordance with the system and business rules approved by the Victorian Essential Services Commission under section 38ZZZB of the Rail Management Act.

## **23 Connecting networks**

- 23.1 If at any time the Operator intends to provide Services as part of or in conjunction with rail services conducted, or to be conducted, by the Operator on railways which do not constitute part of the Network, the Operator acknowledges that the Operator is solely responsible for obtaining any rail access rights from other owners or authorities.
- 23.2 The Access Provider will cooperate to a reasonable extent with the Operator and with other track owners or authorities in order to assist the granting to the Operator of access rights necessary to enable the Operator to operate the Services as part of, or in conjunction with, rail services conducted, or to be conducted, by the Operator on railways which do not constitute part of the Network.



## 24 Dispute Resolution

### Procedure to settle disputes

- 24.1 If there is a dispute between any of the parties relating to or arising out of this Agreement, the parties must use reasonable endeavours acting in good faith to settle the dispute as soon as practicable.
- 24.2 The parties must try to settle a dispute using the following steps:
- 24.2.1 first, formal notification of the dispute in writing by either party;
  - 24.2.2 second, negotiation of the dispute under clause 24.4;
  - 24.2.3 third, mediation of the dispute under clause 24.5 (if agreed); and
  - 24.2.4 fourth, determination of the dispute under clause 24.6,
- unless the parties agree that the dispute is best resolved by an independent expert in accordance with clauses 24.7 and 24.8, in that case clauses 24.7 and 24.8 shall be applied.
- 24.3 A party must not commence Court proceedings in relation to a dispute arising in connection with this Agreement until it has exhausted the procedures in clauses 24.1 and 24.2, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

### Negotiation

- 24.4 If there is a dispute between any of the parties relating to or arising out of this Agreement (other than a dispute to which clause 24.7 applies), then within 10 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet and use reasonable endeavours acting in good faith to resolve the dispute by joint discussions.

### Mediation

- 24.5 If the negotiation of the dispute under clause 24.4 is not resolved within 10 Business Days from its commencement, the parties will submit the matter to mediation on the following terms:
- 24.5.1 the mediator will be chosen by the parties within 25 Business Days of notification of the dispute under clause 24.2.1 and appointed within a further 10 Business Days;
  - 24.5.2 in the absence of agreement by the parties as to the mediator within 35 Business Days of notification of the dispute under clause 24.2.1, the mediator



will be appointed on the application of any party by the President of LEADR (Association of Dispute Resolvers) within 10 Business Days of the application;

- 24.5.3 the parties must endeavour to procure that a mediator appointed under clauses 24.5.1 or 24.5.2:
- (a) assists the parties to reach a resolution of the dispute by agreement;
  - (b) acts impartially and ensures that each party has a clear understanding of the other party's points of view to enable proposals to be formulated for settlement of the dispute;
  - (c) does not make his or her personal or professional views known to the parties or give any professional advice to a party;
  - (d) is entitled to terminate the mediation if, after consultation with the parties, the mediator forms the view that the mediation process is exhausted; and
  - (e) does not impose a solution on the parties and any suggestion made during the course of the mediation by the mediator will not be binding on a party;
- 24.5.4 each party to the mediation may appoint a person, including a legally qualified person, to represent it or assist it in the mediation;
- 24.5.5 each party will bear its own costs relating to the preparation for and attendance at the mediation;
- 24.5.6 the costs of the mediator will be borne equally between the parties; and
- 24.5.7 the mediation process will cease if the dispute has not been settled within 20 Business Days of the mediator being appointed, or such longer time as may be agreed by the parties.

## Arbitration

- 24.6 Subject to clauses 24.7 and 24.8, if a dispute between any of the parties relating to or arising out of this Agreement is not settled under clause 24.4 (or if no agreement is reached to refer the dispute to mediation within 20 Business Days of notification of the dispute), either party may by written notice to the other refer the dispute to arbitration for determination on the following terms:
- 24.6.1 the arbitrator will be chosen by the parties but in the absence of an agreement by the parties as to the arbitrator within 10 Business Days of the notice referring the matter to arbitration, the arbitrator will be appointed on the application of either party by the President of the Institute of Arbitrators Australia;
- 24.6.2 the arbitrator must have appropriate qualifications necessary to understand and resolve the issues in dispute and have no interest or duty which conflicts or may conflict with his or her functions as an arbitrator;
- 24.6.3 the Commercial Arbitration Act 1984 (Vic) will apply to the arbitration and the arbitration will be conducted and held in accordance with, and subject to, the





Institute of Arbitrators Australia Expedited Commercial Arbitration Rules except that Rule 19 will not apply;

- 24.6.4 each party may be represented at the arbitration by a qualified legal practitioner;
- 24.6.5 the arbitrator must hand down a decision within two months after notice referring the dispute to arbitration or such longer period as may be mutually agreed between the parties or in the absence of agreement such longer period as is reasonably considered appropriate by the arbitrator in all the circumstances;
- 24.6.6 the decision of the arbitrator with regard to the dispute will be binding upon the parties; and
- 24.6.7 if the parties have referred or agreed to refer a dispute to an arbitrator under this clause 24.6, the arbitrator must determine all the issues comprised in or relating to the dispute, and no such issue can be referred to an independent expert under clauses 24.7 and 24.8 unless both parties so agree.

### **Independent Expert**

- 24.7 If either party notifies the other of a dispute which the parties agree is best resolved by an independent expert, the parties will submit to the following procedure prior to any other course of action being taken to resolve the dispute:
  - 24.7.1 the parties will jointly choose and appoint an independent expert;
  - 24.7.2 the independent expert must have appropriate qualifications necessary to understand and resolve the issues in dispute and have no interest or duty which conflicts or may conflict with his or her functions as an independent expert;
  - 24.7.3 in the absence of agreement by the parties as to the independent expert within 2 Business Days of notice of the dispute, the independent expert will be appointed on the application of any party by the President of the Institute of Arbitrators Australia;
  - 24.7.4 the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 15 Business Days after being appointed, or such longer period as may be agreed between the parties;
  - 24.7.5 the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
  - 24.7.6 the independent expert's decision will be final and binding on the parties; and
  - 24.7.7 the costs of the independent expert will be borne by the parties equally or as the independent expert may otherwise determine and each party will bear its own costs relating to the independent expert's decision.



- 24.8 If the parties have referred or agreed to refer a dispute to an independent expert under clause 24.7, the expert must determine all the issues comprised in or relating to the dispute, and no such issue can be referred to arbitration.

### **Amalgamation of disputes**

- 24.9 The parties may by agreement permit a dispute being dealt with under this clause 24 to be amalgamated with any other dispute or disputes involving one or both parties.

## **25 Force Majeure**

### **Notice of event of Force Majeure**

- 25.1 If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:
- 25.1.1 fully describe the event of Force Majeure;
  - 25.1.2 specify the obligations and the extent to which it cannot perform those obligations;
  - 25.1.3 estimate the time during which the Force Majeure will continue; and
  - 25.1.4 specify the measures it proposes to adopt to remedy or minimise the effects of the Force Majeure.

### **Suspension of obligations**

- 25.2 Following a notice of Force Majeure in accordance with clause 25.1, and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money.

### **Remedying or minimising Force Majeure**

- 25.3 The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take reasonable steps to remedy or minimise the effects of the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 25.4 Without limiting clause 25.3, the Access Provider must take reasonable steps to restore any part of the Network damaged or affected by the Force Majeure event to a standard which permits the Operator to operate its Services unless the Access Provider, acting reasonably, determines that it would not be economically feasible to do so.



- 25.5 If the Access Provider determines that it would not be economically feasible to restore the part of the Network affected by the Force Majeure Event, it must take reasonable steps to make available to the Operator an alternative Train Path which allows the Operator to operate its Services. The Operator accepts that this will be the only relief to which is entitled if this clause 25.5 applies, and releases the Access Provider from any other liability.

## **Mitigation**

- 25.6 Subject to clauses 25.3 to 25.5, the party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.

## **26 Severability**

- 26.1 If anything in this Agreement is illegal, unenforceable or void, then it is severed and the rest of this Agreement continues in force.

## **27 No merger**

- 27.1 The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## **28 Entire Agreement**

- 28.1 This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

## **29 Amendment**

- 29.1 No amendment or variation of this Agreement is valid or binding on a party unless made in writing and executed by both parties.

## **30 Waiver**

- 30.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 30.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 30.3 A waiver is not effective unless it is in writing.



- 30.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

### **31 Further assurance**

- 31.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

### **32 Governing Law and jurisdiction**

- 32.1 The law of Victoria governs this Agreement.
- 32.2 The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

### **33 Interpretation**

- 33.1 Reference to:
- 33.1.1 one gender includes the others;
  - 33.1.2 the singular includes the plural and the plural includes the singular;
  - 33.1.3 a person includes a body corporate;
  - 33.1.4 a party includes the party's executors, administrators, successors and permitted assigns;
  - 33.1.5 a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
    - (a) that Statutory Provision as amended or re-enacted from time to time;
    - (b) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - (c) another regulation or other statutory instrument made or issued under that Statutory Provision, as amended or re-made or re-issued from time to time;
  - 33.1.6 money is to Australian dollars, unless otherwise stated.
- 33.2 "Including" and similar expressions are not words of limitation.
- 33.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 33.4 Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.





- 33.5 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- 33.6 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

### **Parties**

- 33.7 If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.
- 33.8 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- 33.9 A party which is a trustee is bound both personally and in its capacity as a trustee.

### **Consents or approvals**

- 33.10 If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless express provision to the contrary has been made.



Executed as an agreement

EXECUTED by the Access Provider by or in the presence of:

\_\_\_\_\_  
Signature of Director / Chief Executive Officer

\_\_\_\_\_  
Signature of Director / Secretary

\_\_\_\_\_  
Name of Director / Chief Executive Officer  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of Director / Secretary  
(BLOCK LETTERS)

EXECUTED by the Operator by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Secretary

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of Director / Secretary  
(BLOCK LETTERS)



## Schedule 1

### Item

#### 1 Access Provider

Name	V/Line Pty Limited
ABN	29 087 425 269
Address	Level 23, 570 Bourke Street Melbourne VIC 3000
Fax (for notices)	(03) 9619 5000
Attention (for notices)	Manager Contracts Access and Interfaces

#### 2 Operator

Name  
ABN  
Address  
Fax (for notices)  
Attention (for notices)

#### 3 Expiry Date

2400 hrs on the                      day of

#### 4 Parts of the Network to which this Agreement applies:

- (A) Whole of Network                      Strike out A or B
- (B) *[detail limited operation here]*



## Schedule 2

### Pricing

In this Schedule, Normal Hours and Out of Hours have the meaning given to those terms in the Access Arrangement.

**1 Normal Hours Pricing**

The Access Fee for an Operator's Scheduled Train Path and an Operator's Unscheduled Train Path in Normal Hours will be calculated according to the prices set out in Parts A, B and C below.

**2 Out of Hours Pricing**

The Access Fee for an Operator's Unscheduled Train Path in Out of Hours will be calculated according to the methodology set out in clauses 4.2.f, 4.2.g and 4.2.h of the Access Arrangement. For clarification, Out of Hours pricing will reflect the "Operator Pays Incremental Costs Principle" as set out in the Access Arrangement. When applying the methodology in clauses 4.2.f, 4.2.g and 4.2.h of the Access Arrangement, references to an Unscheduled Service shall be read as a reference to an Operator's Unscheduled Train Path.

**A. Bulk Grain Freight Access**

V/Line will charge Operators the sum of:

(1) the Flagfall Rate as shown below; and

(2) the Variable Rate as shown below,

in each case as set out below for the financial year in question.

Year	Flagfall rate, \$/TK	Variable rate, \$/GTK
20012/13	To be calculated by adding March CPI to 2011/12 current rates of	To be calculated by adding March CPI to 2011/12 current rates of \$7.607

**Comment [BVG/Line2]:** It is noted that currently V/Line has been directed to invoice Bulk Grain at the following rates Flagfall rate – zero, Variable rate \$4.13/GTK





	\$5.719	
2013/14	(A)	(A)
2014/15	(B)	(B)

(A) Based on 2013/14 price, as adjusted according to the mechanism in Appendix 11.

(B) Based on 2014/15 price, as adjusted according to the mechanism in Appendix 11.

**B. All Other Freight Access**

V/Line will charge Operators the sum of:

(1) the flagfall rate as shown below; and

(2) the variable rate,

in each case as set out below for the financial year in question.

Year	Flagfall rate, \$/TK	Variable rate, \$/GTK
20012/13	To be calculated by adding March CPI to 2011/12 current rates of \$0.876	To be calculated by adding March CPI to 2011/12 current rates of \$1.646
2013/14	(A)	(A)
2014/15	(B)	(B)

(A) Based on 2013/14 price, as adjusted according to the mechanism in Appendix 11.

(B) Based on 2014/15 price, as adjusted according to the mechanism in Appendix 11.



## Schedule 3

### Annual variation of Access Fees

#### Definitions:

In this Schedule:

"Bureau" means the Australian Bureau of Statistics and includes a reference to the Bureau but with a different name at any time;

"Consumer Price: All Groups Index Number Melbourne" means: the same index number but with a different name at any time; and the same numbers adjusted mathematically to take account of a change at any time in the base year provided that indices of the same base year are used throughout the calculation;

"CPI" means for a particular Review Date:

- (a) Consumer Price: All Groups Index Number Melbourne published by Bureau for the March quarter immediately preceding the start of the relevant Review Date, divided by:
- (b) Consumer Price: All Groups Index Number Melbourne published by the Bureau for the March Quarter immediately preceding the March quarter referred to in paragraph (a); and

"Review Date" means 1 July each year. For the avoidance of doubt, the first Review Date (to determine prices for 2013/14) will be 1 July 2013.

#### Access Fee variation formula

On each Review Date during the term of this Agreement, the Access Fees will be varied in accordance with the following formula:

$$A(n) = A(n-1) \times \text{CPI}$$

where

A(n) = The Access Fees to apply from the year from the relevant Review Date; and

A(n-1) = The Access Fees that applied in the year prior to the relevant Review Date.



## Schedule 4

### Scheduled Train Path Group

Operator's Scheduled Train Path:

Train path number:

Date of commencement of first Operator's Scheduled Train Path:     /   /

Date of commencement of final Operator's Scheduled Train Path:     /   /

Entry Point:

Entry Time: [insert reference to day of week, and time of day]

Exit Point:

Exit Time: [insert reference to day of week, and time of day]



## Appendix 4

### Ring fencing separation arrangement

*[Note: If at any time the obligations under the Ring Fencing Rules are applied to VLine by the ESC, the Separation Arrangement will be appended here.]*





## Appendix 5

### Definitions

Any capitalised term used in this Access Arrangement that is not defined in this Appendix 5 or elsewhere in this Access Arrangement, but is defined in the RMA, has the meaning given in the RMA.

Access	As the context requires, either: <ul style="list-style-type: none"><li>(a) the access sought by an Access Seeker from V/Line or the access provided by V/Line in its capacity as the manager of the Network to an Access Seeker pursuant to an Access Agreement; or</li><li>(b) the access sought and Provided by V/Line in its capacity as an operator on the Network.</li></ul>
Access Agreement	An agreement between V/Line as Access provider and an Operator in relation to Access to the Network, either on the basis of the standing offer terms and conditions in Appendix 3, or on other terms agreed between the parties.
Access Period	The term of this Access Arrangement commencing on the Commencement Date and ending on that earlier date as provided for in clause 2.2.b.
Access Seeker	As the context requires, either an Operator seeking to enter into an Access Agreement with V/Line or an Operator that has entered into an Access Agreement with V/Line.
Access Seeker Information	Information provided to V/Line by an Operator and which the Operator identifies as being confidential.
Account keeping Rules	Those account keeping rules attached at Appendix 7.
Ancillary Movements	Mainline movements associated with the make up or break up of trains and loading and unloading operations.
Annual Works Plan	The annual works plan agreed between the Public Transport Development Authority and V/Line under the Regional Infrastructure Lease



Available Path	Has the same meaning as is contained in the Operating Handbook
Average Maximum Operating Speed	<p>The distance-weighted average of the maximum speeds calculated:</p> <ul style="list-style-type: none"> <li>• excluding the impacts of terrain and curve speed restrictions;</li> <li>• for a train travelling in a direction towards Melbourne; and</li> <li>• taking into consideration the impact of any Temporary Speed Restrictions imposed due to track condition, infrastructure signal failure or level crossing sighting;</li> </ul> <p>at which a train with a 19-tonne axle load can operate over each Line Segment as specified in the Network Operating Requirements or the Operating Handbook.</p>
Bulk Grain Freight	Being grain transported loose across the Network in bulk wagon hoppers.
Business Day	A day that is not a Saturday or Sunday or a day appointed under the <i>Public Holidays Act 1993 (Vic)</i> as a public holiday in the place which the act or thing is to be or may be done.
Capacity Use Rules	Being those rules made in accordance with section 38T of the RMA
Commencement Date	<<commencementdate>>, pursuant to section 38ZR(5) of the RMA.
Cost Allocation Policy	The policy approved by the ESC in accordance with section 5 of the Account Keeping Rules and attached at Appendix 7 of this Access Arrangement.
CPI	<p>For a particular Review Date:</p> <p>(a) Consumer Price: All Groups Index Number Melbourne published by the Australian Bureau of Statistics (<b>Bureau</b>) for the March quarter immediately preceding the start of the relevant Review Date,</p> <p>divided by:</p> <p>(b) Consumer Price: All Groups Index Number Melbourne published by the Bureau for the March quarter immediately preceding the March quarter referred to in paragraph (a).</p> <p>In this definition:</p>



	<p>(a) the references to the Consumer Price: All Groups Index Number Melbourne means:</p> <p>(i) the same index number but with a different name at any time; and</p> <p>(ii) the same numbers adjusted mathematically to take account of a change at any time in the base year provided that indices of the same base year are used throughout the calculation; and</p> <p>(b) the references to the Bureau include a reference to the Bureau but with a different name at any time.</p>
Daily Train Plan	The timetable maintained by V/Line in accordance with the Operating Handbook that sets out all planned train movements on the Network on a particular day.
Geelong Grain Loop	The area coloured red, blue and green on the diagram set out in Annexure B.
GST	As defined in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
GTK	Gross tonne kilometres, being the total gross weight (in tonnes) of a train multiplied by the distance travelled (in kilometres).
Indicative Access Proposal	V/Line's initial offer of access based on its standard terms and conditions as reflected in Appendix 3.
Information Pack	Being that information as specified in section 2(c) of the Negotiation Guidelines.
Line Section	The line sections of the Network, as described in Appendix 6.
Line Segment	A segment of rail track on the Network designated as a "line segment" by V/Line in its Network Operating Requirements or its Operating Handbook (or both), and which has specific operating requirements. For example, a 100km Line Section might comprise 6 different Line Segments (the combined length of which total the length of the Line Section), and each have different operating speed limits.
Master Train Timetable	Is that permanent timetable as referenced in the Operating Handbook
Melbourne Arrival Sidings	The area so indicated on the diagrams set



	out in Annexure A.
Negotiation Guidelines	Being those negotiation guidelines made by the ESC in accordance with Section 38V of the RMA.
Network	That part of the land and rail infrastructure that is both: (a) operated or managed by V/Line; and (b) declared under section 38I of the RMA, including Somerton, Melbourne Arrival Sidings, those parts of Tottenham Yard not leased to PN and, for such period as V/Line continues to act as access manager of the Geelong Grain Loop pursuant to its appointment to do so by the Victorian Rail Track Corporation, the Geelong Grain Loop.
Network Management Rules	Those rules made in accordance with section 38U of the RMA.
Network Map	The set of maps of the Network.
Network Operating Requirements	That part of the Network Service Plan entitled "Network Operating Requirements" and "Addenda", as published by V/Line from time to time.
Network Service Plan	The network service plan as amended from time to time by V/Line in accordance with the Operating Handbook, and showing passenger train paths, Scheduled Services and Available Paths on the Network.
Normal Hours	The normal signalbox operating hours ("block working hours") for the relevant corridor of the Network. Normal signalbox hours as at the date of this Access Arrangement are contained in Appendix 9, and changes will be published in Operating Handbook
Operator	A freight train operator, and includes an Access Seeker.
Operating Handbook	The current version of the handbook of procedures and protocols as approved by the ESC, that sets out how train schedules and authorised working in the Network will accommodate customer needs, access requirements and resource availability. The handbook includes the Network Map and protocols required under the Network





Out of Hours	Management Rules and the Capacity Use Rules.
Out of Hours Pricing	All times outside Normal Hours.
Performance Standard	Being that pricing as calculated in accordance with the Operator Pays incremental costs Principal detailed in clause 4.2.i
Public Transport Development Authority	The Average Maximum Operating Speed performance standards across the Network from time to time, being those standards specified in Appendix 6 as at the Commencement Date, and as subsequently varied pursuant to clause 4.1.f and 4.1.g.
PN	The Public Transport Development Authority established under the Transport Integration Act 2010 (Vic).
Protocols and Work Procedures	Pacific National (Victoria) Limited.
Protocols and Work Procedures	Those protocols and procedures contained in V/Line's : <ul style="list-style-type: none"> <li>• Network Service Plan</li> <li>• Network Operating Requirements (Network Infrastructure)</li> <li>• Network Service Plan Addenda (Includes authorised rolling stock)</li> <li>• Operating Handbook</li> <li>• Emergency Management Plan</li> <li>• Rolling Stock Approval Form</li> </ul>
Revenue Cap	Is the amount as detailed in clause 4.3.
Review Date	1 July of each year of the Access Period. For the avoidance of doubt, the first Review Date (to determine prices for 2013/14/10) will be 1 July 2013.
Rolling Stock Standards	means the specifications and requirements for Rolling Stock set out in the Network Operating Requirements
Scheduled Services	The provision by V/Line of Access for which an Operator gains an entitlement to use the applicable Train Path(s) on a recurrent basis upon entry into, or by



Separation Arrangement	amendment of, its Access Agreement. The ring fencing separation arrangement described in section 5 of the Ring Fencing Rules.
Services	The provision of Access by V/Line in the form of Scheduled Services, and/or Unscheduled Services.
Somerton	The area so indicated on the diagrams set out in Annexure A.
TK	The number of kilometres that a train travels on the Network.
Tottenham Yard	The area so indicated on the diagrams set out in Annexure A.
Track Standard	Is the indicator of the track standard as contained in Appendix 6.
Train Path	The particular time interval, including an entry time and day and an exit time and day, through which a train may travel over a segment of the Network from an origin to a destination and may include stopping points and intermediate times and locations that V/Line considers necessary or appropriate to define the pathway.
Trip Trains	Train movements of rakes of a larger freight train (e.g. Tottenham Yard to Dynon Terminal/Port of Melbourne).
Unscheduled Services	The provision by V/Line of Access for which an Operator gains an entitlement to use the applicable Train Path(s) by means of the process of nomination and allocation, both on a short-term basis, under its Access Agreement.
Variable Rate	Is the rate described as the Variable Rate in Appendix 1



## Appendix 6

### Track standard by corridor

The table below sets out the Performance Standard as at the Commencement Date, which is defined as having an Average Maximum Operating Speed for each Line Section no lower than the corresponding speed for that Line Section as indicated in the table below.

Line Section	Average Maximum Operating Speed no lower than (km/h)
Maryborough – Dunolly (via Maryborough),	70
Dunolly – Mildura	70
Shepparton – Tocumwal	55
Toolamba – Echuca,	Booked out
Korong Vale – Boort	60
Inglewood – Wycheproof	60
Dunolly – Inglewood	55
Gheringhap – Ballarat	70
Melbourne Freight Mainlines	20
Shepparton – Dookie	Booked out
Echuca – Deniliquin	40
Barnes to Moulamein	Booked out
Swan Hill – Piangil	45
Boort – Manangatang	50
Wycheproof – Sea Lake	50
Eaglehawk – Inglewood	Booked out
Mildura – Yelta	40
Ouyen – Panitya	35
Murtoa – Hopetoun	40
Dimboola – Rainbow	30
Warrnambool – Dennington	25
Moolort – Maryborough,	Booked out
Maryborough to Ararat	Booked out
Sidings (other than Sidings that are not connected to the Network whether by being disconnected, spiked out, or otherwise closed) and Terminals	5
Sidings that are not connected to the Network whether by being disconnected, spiked out, or otherwise closed	Booked out

#### Interpretation

In this Appendix 6:

**Siding** means Tracks on the Network connected to a running line or to another siding on which Rolling Stock can be placed clear of the running line;

**Terminal** means a facility at which freight is loaded or unloaded from Rolling Stock, or stored, and includes locomotive maintenance facilities, hard stands, equipment and other infrastructure used for the loading or unloading of freight from Rolling Stock at the facility;

**Track** means any single line between two turnouts, or from a turnout to the baulks.



## **Appendix 7**

### **Cost Allocation Policy**







### 1. V/Line Regulatory Account Keeping Policy

This Account Keeping Policy (AK Policy) is prepared in order to comply with the Account Keeping Rules (AK Rules) set out in the *Victorian Government Gazette*<sup>1</sup>. It details how V/Line will report its financial compliance with the AK Rules. It has been updated to reflect the integration of V/Line's financial management and reporting.

### 1. V/Line organisational structure

V/Line Pty Ltd (V/Line) is wholly owned by a statutory Rail Corporation, V/Line Corporation, established under the *Transport Integration Act 2010 (TIA)*. The Board of Directors of V/Line Corporation reports to the Minister for Public Transport (with V/Line Corporation and V/Line Pty Ltd having the same directors). V/Line has a Franchise Agreement with the Director of Public Transport to operate regional rail and rail replacement coach services throughout Victoria.

V/Line became an access provider on 4 May 2007 when the Government acquired the lease of the regional rail infrastructure from Pacific National and the Director of Public Transport leased it to V/Line under a Regional Infrastructure Lease (RIL).

V/Line has integrated the former 'Regional Network and Access' (RNA) and passenger operations parts of the business and now reports financially on an integrated basis to the Department of Transport and the Department of Treasury and Finance.

The bulk of the RNA 'business' is still located in the two departments of Infrastructure (responsible for network maintenance) and Network Services (responsible for train control and signal operation).

The chart below shows V/Line's department structure.

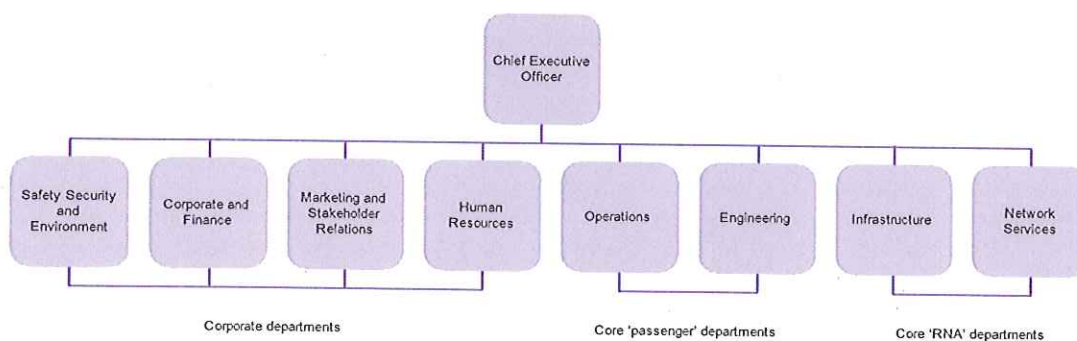


Chart 1 – V/Line ORG Chart showing predominant allocations

<sup>1</sup> Victorian Government Gazette, "S38 – Victorian Rail Access Regime – Account keeping Rules", 04 January 2006, page 1





The Operations and Engineering departments are virtually fully involved in the provision of passenger services, although planning for freight paths is now included in one integrated planning section located in operations. Corporate areas including safety, security and environment, finance, IT, procurement, human resources, stakeholder relations and commercial functions are fully integrated.

### 3. General Ledger

V/Line uses a common chart of accounts with financial information being available for each business unit. However for the purposes of the Regulatory Account Keeping Policy, V/Line business units are split into the Access Activities Business Unit — 'RNA'; and all other V/Line Business Units — "V/Line Passenger Services".

### 4. Internal financial reporting

All business units' general ledger account balances are contained in the Microsoft Dynamicx AX system in a common chart of accounts and are consolidated into the V/Line audited financial statements.

### 5. Revenue and Invoicing

Revenue and invoicing is also contained within Microsoft Dynamicx AX.

### 6. Cost Allocation Policy

The ESC has set out regulatory requirements for the allocation of costs in the Victorian Rail Access Regime Account Keeping Rules and the Rail Access Pricing Guidelines. In order to satisfy the requirements of these documents costs incurred by V/Line will be captured and allocated according to business unit, activity and service to the extent practicable.

An overview of the ESC cost allocation structure for operating and maintenance expenditure is as set out in figure 1. The diagram sets out the Commission's allocation requirements, these requirements and their practical application are covered in the following discussion. Clearly identifiable at each stage of this allocation process should be:

- the nature and amount of direct costs allocated to business units or activities
- the nature and amount of indirect costs allocated to business units or activities
- a description of the basis upon which indirect costs have been allocated, including a quantification of the allocators applied.

#### ***Level 1 - Allocating costs between Other Activities and Access Activities business units***

*The first level of cost allocation is between those business units of V/Line that conduct access activities and those that don't (passenger and corporate departments). This level of allocation is achieved via the structure of V/Line's general ledger, Dynamicx AX, as the bulk of the access activities have been kept separate as the RNA business units (Infrastructure and Network Services). Thus the primary distinction is between RNA as access business units and V/Line*





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*non-access related business units. The costs allocated to the Access Activities Business unit and Other Activities Business units are either direct costs or indirect costs. Direct costs are cost items which are directly attributable to a business unit. Indirect costs are cost items not directly attributable and are shared across both Access and Other Business Units.*

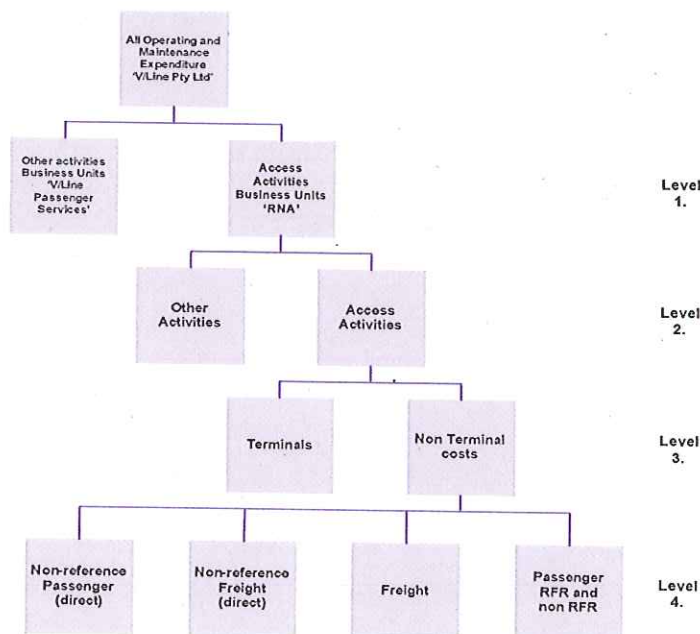
*Indirect costs or common costs are allocated on a causal basis. Where a Causal Relationship cannot be established without undue cost and effort, V/Line will separately list all such items. Indirect costs incurred by both Other Activities Business Units and Access Activities Business Units include the following:*

- Corporate and Finance (including commercial, procurement and IT)
- Human Resources
- Safety, Security and Environment
- Other costs

*Costs are to be allocated between Other Activities and Access Activities Business Units in the following manner:*

- *direct costs incurred by individual business units should be directly attributed to either an Access Activities Business Unit code or an Other Activities Business Unit code*
- *in the first instance indirect costs should be allocated on the basis of any identifiable causal factors*
- *in the absence of identifiable causal factors, indirect costs are to be allocated between the Access and Other business units using the values established in the 2006 PN Access Arrangement for 2008-09.*

Chart 2 - ESC cost allocation structure



Source: ESC (2005) Victorian Rail Access Regime, Account Keeping Rules





**Level 2 - Allocating costs between other activities and access activities (Declared Rail Transport Services) within an Access Activities Business Unit**

Non access activities performed by the Access Activities Business units could include certain government programs and access for utility and other third party works. As with level 1 allocations the primary distinction made between costs is direct and indirect costs. Cost should be allocated in the following manner:

- costs directly attributable to an activity should be directly coded to either an access-activities or an other-activity code
- in the first instance indirect costs should be allocated on the basis of any identifiable causal factors
- in the absence of identifiable causal factors, indirect costs are to be allocated between the Access and Other Activities on the basis of the corresponding proportional share of direct costs.

**Level 3 - Allocating costs between access terminal activities and other access activities**

Currently, V/Line does not have any declared terminal services, however, as with level 1 and 2 allocations the underlying principles are:

- costs directly attributable to an activity should be directly coded to either terminal or non-terminal services
- in the first instance indirect costs should be allocated on the basis of any identifiable causal factors
- in the absence of identifiable causal factors, indirect costs are to be allocated between terminal and non-terminal services on the basis of the corresponding proportional share of direct costs.

**Level 4 - Allocating costs between freight and passenger services within access activities (excluding terminal)**

The principles for the allocation of costs between freight and passenger trains can be summarised as follows:

- costs that are directly attributable to rail lines are allocated between:
  - the Regional Fast Rail (RFR) lines
  - the other passenger lines
  - and the freight-only lines

Note in practice, direct costs are apportioned between passenger and freight lines on a train kilometre basis for the relevant year.
- allocate the costs directly attributable to rail lines as follows:
  - all of the costs associated with the other freight-only lines are to be allocated to freight
  - for shared passenger and freight lines: the costs that would be avoided if freight services did not operate on those lines are to be allocated to freight — the avoidable costs associated with freight services for the RFR Network and Other Passenger Network are 0.0% of costs
  - the costs that would be avoided if passenger services did not operate on those lines are to be allocated to passenger — the avoidable costs for passenger services on the RFR Network are 29% of costs directly attributable to these lines. For the Other







*Passenger Network the avoidable cost is 47% of costs directly attributable to these lines*

- *the remaining costs are to be allocated to passenger and to freight in proportion to the respective usage – ie by train kilometres.*

## **7. Capital expenditure and depreciation**

The regulatory accounts require the allocation of new capital expenditure (including accumulated new capital expenditure) and related regulatory depreciation to Access activities and Other Activities. Capital works on V/Line's network are transferred to VicTrack's books under V/Line's franchise arrangements. Therefore V/Line's 'below rail' capital is small and applies mainly to plant and equipment used for infrastructure maintenance. New capital expenditure is therefore defined as capital expenditure retained on V/Line's books (mainly plant and equipment). Depreciation is allocated between the Access and Non Access Activities on a direct cost allocation basis.

The ESC requires the regulatory accounts to include a statement regarding the existing regulatory asset base (RAB). In the 2009-10 V/Line audited accounts an RAB of \$4.472 million is shown.

## **8. Cost allocation statement**

The principles and rules underlying the allocation of costs (as discussed in section 2) form the basis for the cost allocation statement and other supporting financial reports which are contained in the regulatory account keeping policy financial reports. V/Line will record a cost allocation statement that includes:

- a detailed explanation of how cost have been allocated
  - between Access Activities business units and Other business units
  - for the Access Activities Business Unit between
    - declared rail transport services
    - other services provided by the Access Unit
  - with respect to declared rail transport services
    - declared rail transport services (other than terminal)
    - terminal services
  - with respect to declared rail transport services (other than terminal) between services provided in connection with freight services and passenger services
  - Costs directly attributable to non-reference services that are passenger services and non-passenger services
- in relation to the Access Activities Business Unit
  - the sum of all new capital expenditure post 30 April 1999
  - accumulated depreciation on new capital expenditure
  - written down book value of accumulated new capital expenditure





- o basis for the allocation of new capital expenditure and, accumulated depreciation and written down book value.

## 9. Maintenance, capital works, depreciation, and other operating costs

V/Line will record by line segment of the network all maintenance costs that can be directly coded to a line segment in the following cost categories:

- routine maintenance, including routine track maintenance
- major periodic maintenance and renewal, including in relation to track
- maintenance of signalling and communications equipment
- maintenance of structures, buildings, facilities and terminals
- other maintenance; and
- total expenditure on maintenance
- network operations (such as, train control and safeworking activities).

V/Line will also reconcile the expenditures reported above with those reported in the financial statements and cost allocation statement. Included in the reconciliation will be reconciliation with:

- total operating expenditure to operating activities
- total operating and maintenance expenditure of the access activities.

## 10. Prices and Revenue

RNA will record revenues, prices charged and the quantities by billing units for each reference service provided by RNA. A summary of revenues from access activities and other RNA activities will be provided in the AK Policy Financial Reports. Information provided to the Commission will include:

- prices charged for reference services
- quantities provided in relation to reference services
- the price and quantity of services in relation to each user of the rail network
- details of any contracts, agreements, arrangements or understandings under which V/Line provides declared services.

V/Line will provide information on the source of revenues derived from access activities to the ESC, as specific in Section 2.5 (c) of the AK Rules, no later than four calendar months after the end of the financial year.

## 11. Audit and Certification

V/Line will prepare and submit annual accounts to the ESC in the format of the AK Policy Financial Reports within four months of the close of the relevant financial year. V/Line will use these financial reports for the compilation of its financial states which are independently audited and submitted to the Australian Securities and Investments Commission. RNA



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Financial Reports provided to the ESC are to comply with the auditing and certification requirements are detailed in Section 2.7 of the AK Rules.





## Schedule A

### Directors' Declaration

A director's responsibility statement means a statement signed and dated by the Chief Executive Officer and a Non-Executive Director of an access provider which states whether, in the opinion of the CEO and Director, the statements prepared in accordance with sections 2.2, 2.3 and 2.4 of the AK Rules and provided to the Commission are true and fair, and have been prepared in accordance with applicable and appropriate accounting principles and policies, and have been prepared in accordance with the AK Rules.

## Schedule B

### List of Regulatory Account Keeping Policy Financial Reports

The account keeping policy financial report templates as required by the Account Keeping Rules are as follows:

- 1 Profit and Loss Statement
- 2 Statement of Financial Position
- 3 Details of Capital Expenditure and Asset Disposals made during the relevant financial year
- 4 Details of Related Party Transactions
- 5 Details of contributions towards capital and maintenance expenses received from any government agency or from users
- 6 Cost Allocation Statement
- 7 Maintenance and Capital Works Statement
- 8 Prices and Revenue Statement
- 9 Internal Transfer Terms Statement

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## Appendix 8

### Dispute resolution during negotiation process

- a) If a dispute arises between V/Line and the Access Seeker in connection with the negotiations for the provision of access pursuant to this Access Arrangement ("Dispute") then either party may give a notice ("Dispute Notice") to the other specifying the Dispute and requiring it to be dealt with under this Appendix 8.
- b) V/Line and the Access Seeker shall use reasonable endeavours and act in good faith to settle the dispute as soon as practicable.
- c) The Chief Executive Officers of the Access Seeker and the Chief Executive of V/Line must, within 10 Business Days from the date of receipt of a Dispute Notice, attempt to resolve the Dispute.
- d) If a Dispute is not resolved in accordance with clause (c), V/Line and the Access Seeker may agree to jointly choose and appoint an independent expert to provide a report containing a recommendation as to the basis on which the Dispute should be resolved.
- e) If the parties agree to appoint an independent expert in accordance with clause (d), then:
  - i) in the absence of agreement as to the independent expert within 10 Business Days the independent expert will be appointed on the application of V/Line by the President of the Institute of Arbitrators and Mediators Australia;
  - ii) the independent expert must provide his report as soon as practicable and, if possible, within 20 Business Days of the Dispute being referred to the expert;
  - iii) the independent expert will act as an expert and not an arbitrator and may adopt such procedures as he/she thinks fit;
  - iv) the costs of the independent expert will be borne equally by V/Line and the Access Seeker; and
  - v) V/Line and the Access Seeker will use their best endeavours to resolve the dispute on the basis set out in the expert report obtained under this clause (e), within 10 Business Days of receipt of the expert report.
- f) If either V/Line or the Access Seeker refers the Dispute to the ESC, either party may provide the ESC with a copy of the expert report obtained under clause (e).



## **Appendix 9**

### **Normal Signal Box & Signalled Locations: Operating Hours at the Commencement Date**



## 7. OTHER GENERAL OPERATIONAL RESTRICTIONS

### STANDARD SIGNALLING LOCATION OPERATING HOURS

#### NORMAL SIGNAL BOX AND SIGNALLED LOCATIONS – OPERATING HOURS AND BLOCK WORKING HOURS FOR DOUBLE LINE BLOCK SECTIONS

LOCATION	AREA OF CONTROL	TIMES OF OPERATION	COMMENTS
WEST TOWER	Access to NORTH DYNON and MELBOURNE YARD	24/7	V/Line Network Services Department Employees Attended Location interacts with VRTC, ARTC and MTM.
LATROBE REGIONAL SIGNAL CONTROL	DOWN side PAKENHAM to UP side TRARALGON	0530 Sunday to 0130 the following Sunday	Signal Control located at 628 Bourke St, Melbourne V/Line Network Services Department Employees (Train Control Centre)
TRARALGON	Safeworking Location – Block Station for TRARALGON Station and Yard	Required to be attended for all trains. Staff Exchange Box (unattended) used for through trains no follow on cross movements Emergency backup for Latrobe RFR Corridor.	Attended by VLP employees  Attended by Central Train Control staff during Emergency
SALE	Safeworking Location – Block Station for SALE Station and Yard	Open and Close location with long Train Staff Working. Staff Exchange Box (unattended) used for through trains no follow on cross movements	Attended by VLP employees
BAIRNSDALE	Safeworking Location – Terminal Block Station	Driver in Charge conditions for train only	Driver in Charge conditions apply for all other traffic one train only No Follow on
NORTH GEELONG "C"	Attended Location Switch In and Switch Out – Access to North Geelong Yard (Ballarat End) and Grain Loop and Broad Gauge departures to Melbourne and North Shore Yard and from and to North Shore Yard via the CIGL	Monday to Thursday 0800 Hours till 1536 Hours. Friday 0700 Hours to 1436 Hours.	V/Line Network Services Department Employees
GEELONG SIGNAL CONTROL	Attended Location. Signal Trains between WERRIBEE – GEELONG and MARSHALL	24/7	V/Line Network Services Department Employees
SOUTH GEELONG	Block Station. Attended Location for South Geelong Station and Yard	06:05 Hours until 01:30 Hours next day – Sunday 03:45 Hours until 01:40 Hours next day – M - F. 05:25 Hours until 01:25 Hours next day - Saturday	VLP employee operates signalling for Passenger and Freight traffic
CAMPERDOWN VLINE LOCATION	Camperdown Station and Yard	05:25 Hours – 0800 Hours and 1900 hours – 2135 Hours M - F	Attended by VLP employees
WARRNAMBOOL VLINE LOCATION	Station and Yard	Driver in Charge conditions for train only	Additional requirements to be made for out of hours train working
BALLARAT SIGNAL CONTROL	Signalling of all trains between Sunshine and Ballarat	0550 Hours Sunday till 0130 Hours following Sunday	V/Line Network Services Department Employees operates signal control centre
ARARAT	Signalling into Ararat Broad Gauge Platform	24/7	Operated from Train Control Centre, 628 Bourke Street, Melbourne
MURTOA	Hopetoun Branch Line	No scheduled trains	ARTC owned location
DIMBOOLA	Yaapeet Branch Line	No scheduled trains	ARTC owned location
MARYBOROUGH	Attended Location Maryborough Yard crossing of trains and Moolort/Ararat Branch lines	SU 0940 Hours to 1410 Hours 1754 Hours to 0130 Hours next day MO 0910 Hours to 0130 Hours next day TU 0610 Hours to 0130 Hours next day WE 0610 Hours to 0130 Hours next day TH 0610 Hours to 0130 Hours next day FR 0910 Hours to 1410 Hours 1754 Hours to 0130 Hours next day SA 0840 Hours to 1310 Hours	V/Line Network Services Department Employees
DUNOLLY	Access to Yard and Inglewood Branch line	No scheduled trains on secondary corridor.	
OUYEN	Access to Yard and Pinnaroo Branch line	No scheduled trains.	
BENDIGO	Signalling of all trains between Watergardens and Bendigo	0500 Hours SU till 0200 Hours following SU	V/Line Network Services Department Employees

### NETWORK SERVICE PLAN



## 7. OTHER GENERAL OPERATIONAL RESTRICTIONS

### NORMAL SIGNAL BOX AND SIGNALLED LOCATIONS – OPERATING HOURS AND BLOCK WORKING HOURS FOR DOUBLE LINE BLOCK SECTIONS

LOCATION	AREA OF CONTROL	TIMES OF OPERATION	COMMENTS
SWAN HILL	Swan Hill Yard and Signalling	No Scheduled Freight Trains	Driver in Charge for Pass trains V/Line staff assist for run-around
ECHUCA	Access to Echuca Yard and Toolamba and Deniliquin Branch Lines	0600 Hours – 1400 Hours 1800 Hours – 1930 Hours M – F 0600 Hours – 0730 Hours Sat Driver in Charge – 8071/8072 2000 Hours – 2100 Hours Sat 0800 Hours – 0930 Hours Sun Driver in Charge – 8071/8072 2000 Hours – 2100 Hours Sun	V/Line Network Services Department Employees
WALLAN	Double Line Block Location – sectional block – Switch In and Out location for Termination of Trains	0530 Hours – 2120 Hours M - F	Rostered for Passenger train follow on
KILMORE EAST	Double Line Block Location – sectional block – Switch In and Out location and Access to Apex Quarry and Station siding Termination of Trains	0520 Hours - 2330 Hours M – TH 0520 Hours – 2100 Hours FR 1025 Hours -2000 – Sat 1400 Hours – 2215 Hours Sun	Rostered for Passenger train follow on and scheduled NE General Freight trains
BROADFORD	Double Line Block Location – sectional block – Switch In and Out location	1730 Hours – 2020 Hours M – FR Closed Sat – Sun	Rostered for Passenger train follow on
SEYMOUR	Double Line Block Location – sectional block and terminal location and access to Station and Loco Yard and Shepparton Line.	SU 0630 Hours till 2315 Hours MO 0500 till 0030 Hours Next Day TU 0500 till 0030 Hours Next Day WE 0500 till 0030 Hours Next Day TH 0500 till 0030 Hours Next Day FR 0500 till 0115 Hours Next Day SA 0500 till 0115 Hours Next Day	V/Line Network Services Department Employees – Two shifts Monday to Sunday
SHEPPARTON	Access to Shepparton Yard and Sidings and Tocumwal and Dookie lines	M - F 06:00 Hours to 21:30 Hours SA and SU rostered for Passenger Traffic arrivals and departures and 9353 (Freight).	Rostered for V/Line Pass trains arrival and departure only and Tocumwal train M-F

**Note** VRTC means Victorian Rail Track Corporation

VLP means V/Line Operations Department






## **Appendix 10**

### **Procedures for handling Access Seeker Information**



	<b>PROCEDURE</b>	<b>DOCUMENT NUMBER:</b> COPR-008
<b>SUBJECT:</b> ACCESS SEEKER CONFIDENTIAL INFORMATION HANDLING	<b>ISSUE DATE:</b> <b>REVISION:</b>	Page 1 of 6

**1. PURPOSE**

This procedure sets out the process for the use and handling of Access Seeker Information to V/Line in connection with an Access Application or capacity management.

**2. SCOPE**

This procedure applies to all V/Line Pty Ltd (V/Line) staff, as well as agents and subcontractors of V/Line.

**3. RESPONSIBILITIES**

- Manager Contracts, Access and Interfaces – shall act as the Nominated Contact Officer, the responsibilities of which are documented below.
- IT Services Manager – shall be responsible for IT setup as required by the procedure documented below.


**4. DEFINITIONS**

Refer to the Glossary

**5. PROCEDURE**


- 5.1 This protocol has been developed by the Access Provider in relation to Access to the Network in accordance with the requirements of section 38ZZZB the *Rail Management Act 1996 (Vic)* (“Act”) and Guidelines made under the Act as at 1 January 2006.
- 5.2 The Access Provider reserves the right to amend this protocol, subject to the approval of the ESC.
- 5.3 Any Operator who seeks access to the Network will be bound by this protocol.
- 5.4 The Access Provider is required to establish, maintain and comply with a system and business rules relating to use or handling of confidential information provided by an Operator to the Access Provider and disclosure of that information by the Access Provider.
- 5.5 This protocol describes that system and those business rules.
- 5.6 The terms and conditions of all information provided by an Operator to the Access Provider in confidence (the Access Seeker Information) including information provided by an Operator in connection with an access application or capacity management are confidential.
- 5.7 The Access Provider must only use the Access Seeker Information for the purposes of processing the Access Application or for purposes directly related to the Operator seeking access to the Network, including capacity management.



	<b>DOCUMENT NUMBER:</b> COPR-008
<b>PROCEDURE</b>  <b>SUBJECT:</b> ACCESS SEEKER CONFIDENTIAL INFORMATION HANDLING	<b>ISSUE DATE:</b> <b>REVISION:</b> <div style="text-align: right;">Page 2 of 6</div>

- 5.8 The Access Provider will ensure that it, its officers, employees, agents and subcontractors will not, without the consent of the other party, disclose Access Seeker Information to any person unless the disclosure:
- a) is of Access Seeker Information already within the public domain other than as a result of a breach of this Process and Protocol;
  - b) is of Access Seeker Information already known to that person (as evidenced by the person's written records) at the date of disclosure;
  - c) is to be made to the professional advisers (including legal and financial) of the Access Provider, provided that the recipient agrees to keep the Access Seeker Information confidential;
  - d) subject to paragraph 5.10, is to be made to a Related Body Corporate of the Access Provider, provided that the recipient agrees to keep the Access Seeker Information confidential;
  - e) is required by Law (including the Act or the Guidelines), or any Governmental, Agency acting or purporting to act within its powers and functions, or by the requirements of Accreditation;
  - f) is reasonably necessary for the purposes of any mediation, expert determination, arbitration or legal proceeding involving the Access Provider or the Operator provided that (subject to any direction by the mediator, expert, arbitrator, appeal panel or court) the confidentiality of the information is maintained;
  - g) relates to information consisting of aggregate freight or aggregate passenger volume data for all operators or other aggregate usage or revenue statistics provided by the Operator to the Access Provider which does not separately identify the Operator (but this does not permit the disclosure by the Access Provider of information relating to costs, payments, receipts or profits of the Operator);
  - h) is to the Australian Competition and Consumer Commission for the purposes of Part 111A of the Trade Practices Act 1974 (Cth) or to the ESC for the purposes of the Act or the Guidelines; or
  - i) is by the Access Provider to the managers of the Melbourne metropolitan and ARTC rail networks and terminals for the purpose of managing interfaces between Networks and associated rail facilities, provided that the recipient agrees to keep the Access Seeker Information confidential.
- 5.9 In the event that any of the above circumstances occur the Access Provider will notify the Operator of the disclosure in accordance with paragraph 5.17 of this procedure
- 5.10 The Access Provider and the Operator must take all steps reasonably necessary to ensure that Access Seeker Information is disclosed only to such of its or its Related Body Corporate's officers, employees, agents or




	<p style="text-align: center;"><b>PROCEDURE</b></p>	<p><b>DOCUMENT NUMBER:</b> COPR-008</p>
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subcontractors who require that knowledge in order to carry out their duties in relation to the Access Application or capacity management.

- 5.11 Nothing in this paragraph 5 prevents the disclosure of Access Seeker Information to the PTDA or any minister, officer, employee, agent, adviser or consultant of the State of Victoria or a Governmental Agency of that State which has an enforceable right to such disclosure.
- 5.12 The obligation of confidentiality under this paragraph is a continuing obligation and remains in force from the date upon which the Operator makes a request for access.
- 5.13 The Access Provider will nominate a person ("Nominated Contact Officer") who will be the point of contact with the Operator in connection with an Access Application.
- 5.14 The Operator must only provide Access Seeker Information to the Access Provider:
  - a) in hard copy or in a sealed envelope or box marked to the attention of the Nominated Contact Officer; or
  - b) in electronic format sent only to the Nominated Contact Officers via the email address [networkaccess@vline.com.au](mailto:networkaccess@vline.com.au); and
  - c) clearly marked as "Commercial in Confidence".
- 5.15 The Nominated Contact Officer is responsible for:
  - a) maintenance of a register identifying any Access Seeker Information received from the Operator, any copies made, which of the Access Provider's officers, employees, agents, subcontractors, professional advisers (including legal and financial) or Related Bodies Corporate have received the Access Seeker Information and from whom it has been retrieved, storage location archive location and destruction date.
  - b) distribution of Access Seeker Information to persons or entities entitled to that information in accordance with paragraphs 5.7 and 5.8;
  - c) control of copying of the Access Seeker Information by the Access Provider;
  - d) storing Access Seeker Information that is in electronic format in a secure manner on the Access Provider's Computer system including control of passwords;
  - e) recovery, filing and destruction of Access Seeker Information held by the Access Provider, and
  - f) maintaining the register described in paragraph 5.19.






	<p style="text-align: center;"><b>PROCEDURE</b></p>	<p><b>DOCUMENT NUMBER:</b> COPR-008</p>
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- 5.16 The Access Provider must store Access Seeker Information in a secure manner, including:
- a) hard copy information must be kept in a locked cabinet when it is not being used;
  - b) information in electronic format must be stored in a "pass word protected" file in the Access Provider's computer system and the protocols in paragraph 5.21 will apply;
  - c) access for the Access Provider's staff is limited only to persons specifically authorised by the Nominated Contact Officer;
  - d) no copying is permitted except by the Nominated Contact Officer or under his or her control;
  - e) disclosure as contemplated by paragraphs 5.8(c), (d) or (i) will not be made unless the relevant recipient has first executed a confidentiality undertaking in favour of the Access Provider;
  - f) the information will only be available to persons or entities to whom the Access Provider is entitled to provide the information in accordance with paragraph 5; and
  - g) disclosure under paragraphs 5.8(e) or (h) will only be made upon the written request of the relevant recipient.
- 5.17 If the Access Provider makes a disclosure of Access Seeker Information as permitted by paragraphs 5.8(e) or (h) or paragraph 5.10 it will notify the Operator within 24 hours of the disclosure.
- 5.18 The Access Provider may elect to destroy all or any part of the Access Seeker Information at any time and is not obliged under this protocol to retain any such information.
- 5.19 The Nominated Contact Officer will retain a register of any disclosure of the Access Seeker Information made under clauses 5.8(e), (f), (h) or 5.10. The Operator may obtain a copy of that register upon written request.
- 5.20 The Nominated Contact Officer must immediately report to the Company Secretary of the Access Provider if he or she discovers or suspects on reasonable grounds that a breach of these business rules may have occurred. The Company Secretary must refer the matter to the Chief Executive Officer and initiate corrective action.
- 5.21 In order to preserve the security of any Access Seeker Information held by the Access Provider in electronic format, the following protocols will be observed in connection with the Access Provider's IT system:
- a) Access Seeker Information will be stored in a file on a network drive that is only accessible by a user logging in using a secure password;



	<p style="text-align: center;"><b>PROCEDURE</b></p>	<p><b>DOCUMENT NUMBER:</b> COPR-008</p>
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- b) a secure password may only be allocated to a user by the Nominated Contact Person;
- c) if a user is no longer entitled to access the Access Seeker Information, the IT system must be updated to cancel access from that password;
- d) the Access Provider's IT system will record and the Nominated Contact Person will be informed of any attempted or actual log-in activity on the relevant site.

## 6. GLOSSARY

In this document the following definitions apply unless the context requires otherwise.

"Access" means access to the Network or part of the Network, to operate freight services or passenger services.

"Access Application" means an application for access by an Operator under the Guidelines and the Act.

"Access Seeker Information" means information provided to V/Line by an Operator and which the Operator identifies as being confidential.

"Access Provider" means V/Line Pty. Ltd.

"Accreditation" means accreditation obtained in accordance with the requirements of Division 3, Part VI of the Transport (Compliance and Miscellaneous) Act, including any guideline, regulation or ordinance made pursuant to that Division.

"Act" means the Rail Management Act 1996 (Vic).

"Business Day" means a week day on which trading banks are open in Melbourne.

"PTDA" means the Public Transport Development Authority"

"ESC" means the Essential Services Commission or its successor.


"Governmental Agency" means any government or any governmental, semi-governmental or judicial entity or authority, including any self regulatory organisation or any stock exchange.

"Guidelines" means the guidelines made by the ESC under the Act.

"Law" means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

"Nominated Contact Officer" has the meaning given in paragraph 5.13.



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“Operator” means the person seeking access to or having a legally enforceable right to have access to the Network.

“Related Body Corporate” has the meaning given in the Corporations Act 2001 (Cth).

“Train Path” means the particular time interval, including an entry time and day and an exit time and day, through which rolling stock may travel over a section for the Network from an origin to a destination (including stopping points).

“VRTC” means Victorian Rail Track Corporation.

#### REFERENCES

Rail Management Act 1996 (Vic)

Transport (Compliance and Miscellaneous) Act 1983 (Vic)

Corporations Act 2001 (Cth)

#### RECORDS

The Training Attendance Register (HRFO: 024) must be completed and a record kept when staff are trained in this procedure.



## Appendix 11

### Annual variation of access fees

On each Review Date during the term of an Access Agreement, the access fees will be varied in accordance with the following formula:

$$A^{(n)} = A^{(n-1)} \times \text{CPI}$$

where

$A^{(n)}$  = The access fees to apply from the year from the relevant Review Date;  
and

$A^{(n-1)}$  = The access fees that applied in the year prior to the relevant Review Date.



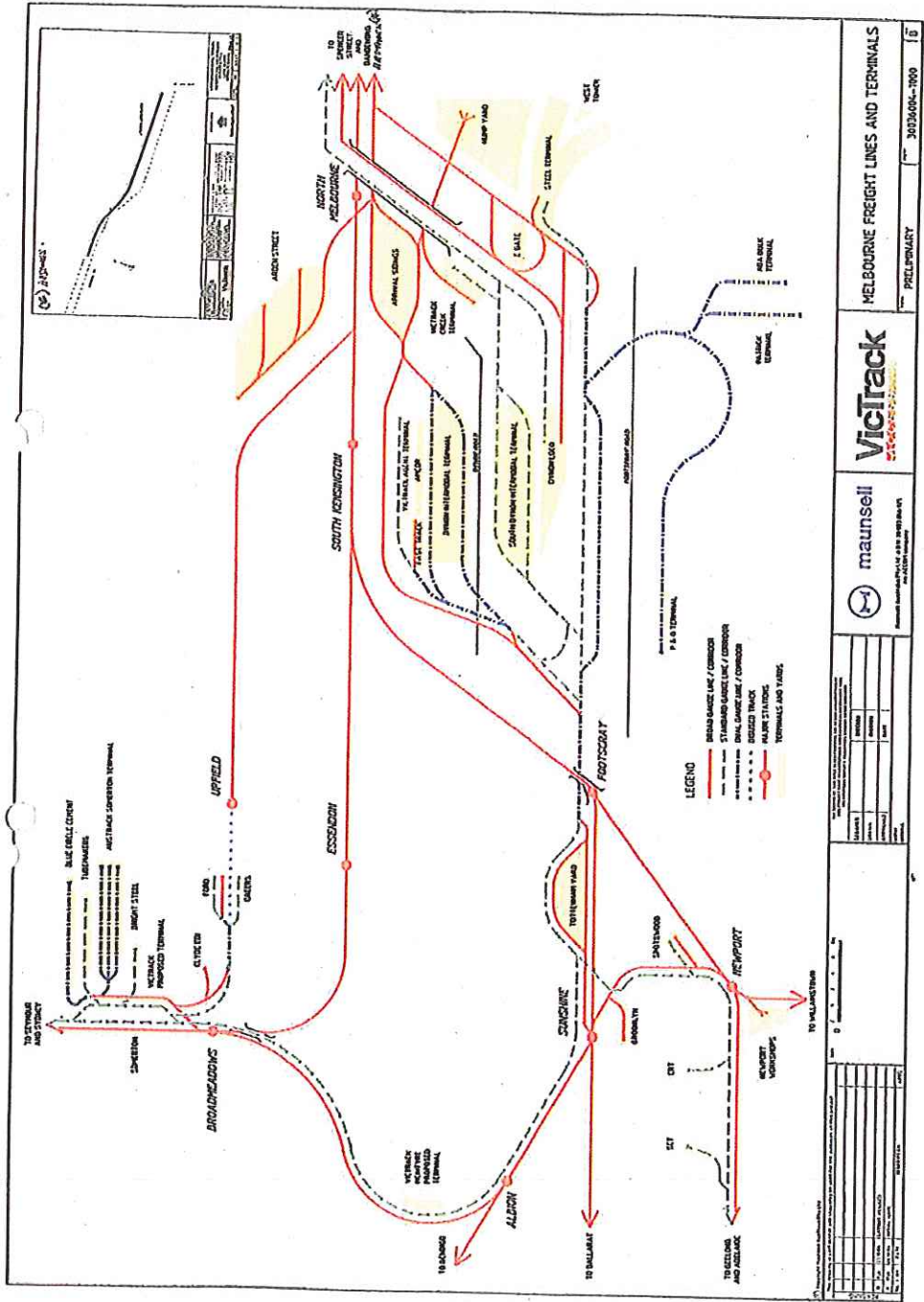


## Annexure A

### Location diagrams

**Comment [BVG/Line4]:** Location diagrams will be updated to reflect changes to the Regional Infrastructure Lease as a result of State Projects such as Regional Rail Link.





MELBOURNE FREIGHT LINES AND TERMINALS  
 PRELIMINARY 3033A006-1000



NO.	DESCRIPTION	DATE	BY

NO.	DESCRIPTION	DATE	BY

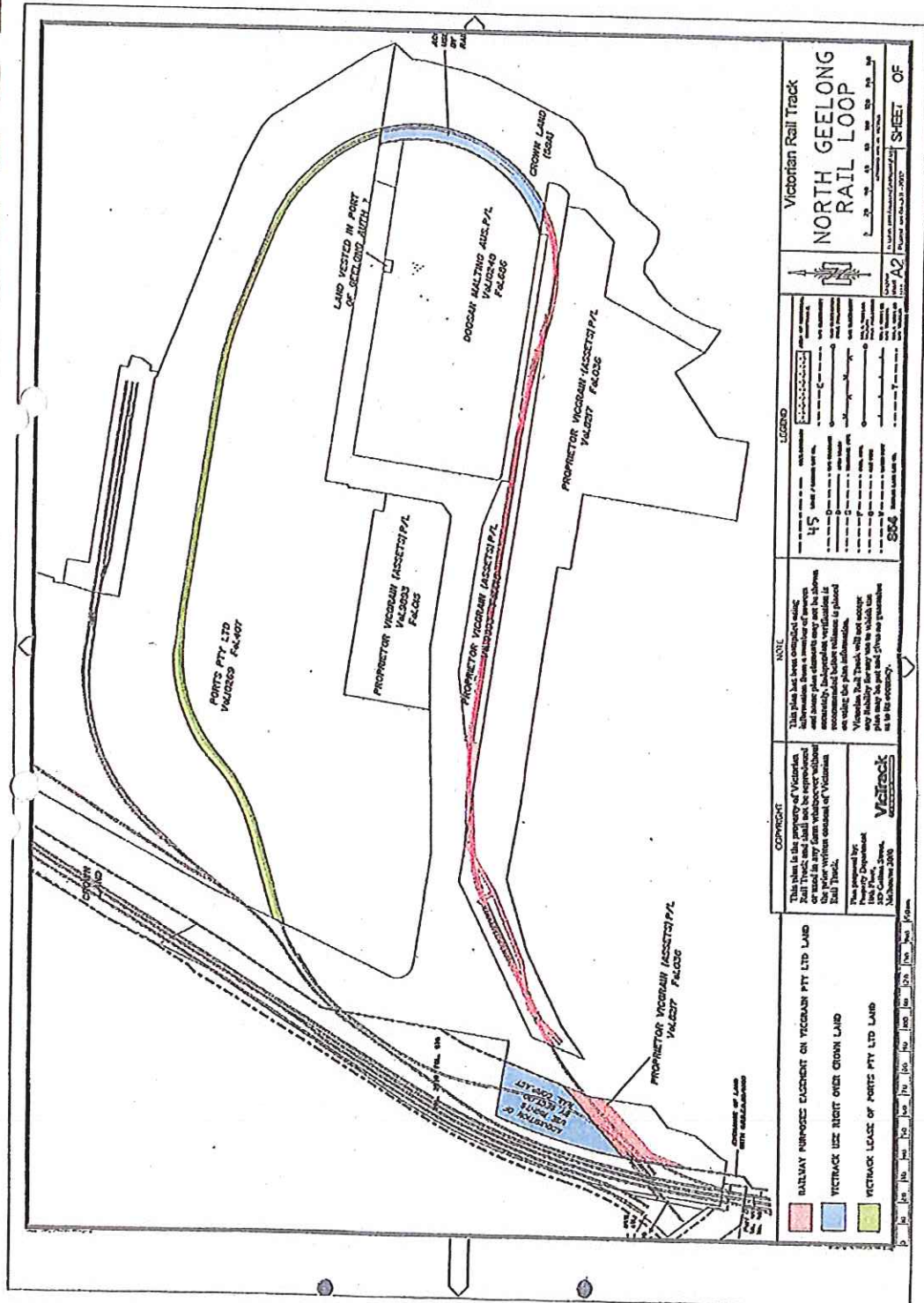
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## **Annexure B**

### **Geelong Grain Loop**





Victorian Rail Track  
**NORTH GEELONG  
 RAIL LOOP**

1: Scale 1:1000  
 2: Date 10/10/2007  
 3: Sheet A2 OF 45

**LEGEND**

RAILWAY PURPOSES EASEMENT ON VICORAM PTY LTD LAND	45
VICORAM USE RIGHT OVER CROWN LAND	46
VICORAM LEASE OF PORTS PTY LTD LAND	47

**NOTE**

This plan has been compiled using information from a number of sources and is intended to provide a general overview of the site. It is not intended to be used as a legal document and should not be relied upon for legal purposes. The information contained herein is provided for informational purposes only and is not intended to constitute an offer of any financial product or service. The Victorian Rail Track Authority is not responsible for any loss or damage arising from the use of this plan. Any liability for any loss or damage arising from the use of this plan may be limited by the Victorian Rail Track Authority's terms and conditions of use.

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 Property Department  
 250 Collins Street  
 Melbourne 3000

**RAILWAY PURPOSES EASEMENT ON VICORAM PTY LTD LAND**

**VICORAM USE RIGHT OVER CROWN LAND**

**VICORAM LEASE OF PORTS PTY LTD LAND**

