

**Network Access Agreement  
(Freight Services)**

**V/LINE CORPORATION  
(Access Provider)**

and

**[Insert Other Party]**

**(Operator)**

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THIS AGREEMENT is made on [Date]

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## PARTIES

V/Line Corporation ABN 91 273 289 190 of Level 6, 452 Flinders Street, Melbourne VIC 3000  
("Access Provider")

AND

[Insert Operator name] ABN [insert ABN] of [insert address] ("Operator")

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## INTRODUCTION, PURPOSE, AND SCOPE

- 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 Trains to those parts of the Network described at Schedule 6 of this Agreement, on the terms and conditions contained in this Agreement.
- D. This Agreement sets out the terms and conditions upon which the Access Provider agrees to provide the Operator with access to the Network.
- E. This Agreement is entered into in accordance with the Access Arrangement issued by the Access Provider under the Rail Management Act and the Guidelines of the DTP.
- F. The terms and conditions of this Agreement are consistent with the principle of passenger priority as required by the Access Arrangement.
- G. The purpose of this document is to manage access that the Access Provider will provide to the Operator within the Access Provider's controlled Network, as required by the Access Arrangement and associated legislation including the Rail Management Act.
- H. This Agreement details the process for operating freight rail transport services using those parts of Access Provider's rail Network that have been declared under the V/Line Service Level Agreement. This Agreement does not apply to those parts of the Victorian rail network leased by other parties, including the suburban rail network, suburban tram network and interstate rail network.

# 1. Definitions

## 1.1 Definitions

In this Agreement:

**“Access Agreement”** means this Agreement.

**“Access Arrangement”** means the access arrangement published by the Access Provider in accordance with the Guidelines, the Rail Management Act and in consultation with the DTP.

**“Access Charges”** means the fees and charges payable by the Operator under clause 7.1 and clause 7.2 of this Agreement.

**“Access Fee”** means the fees that the Operator is required to pay for access to an Approved Train Path, as described in clause 7.1 and specified in Schedule 2.

**“Accreditation”** means:

- A. in relation to the Operator, the Rail Safety Accreditation under the Rail Safety National Law that a person must obtain if it is to operate a Train in Victoria; and
- B. in relation to the Access Provider, the rail safety accreditation under the Rail Safety National Law that a person must obtain if it is to manage rail infrastructure in Victoria.

**“Agreement”** means this agreement.

**“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:

- A. for Stabling purposes;
- B. of empty wagons and light engines; or
- C. for operational or maintenance purposes to workshops, locomotive depots and fuel points.

**“Approved Train Path”** means:

- A. the Operator’s Scheduled Train Path; or
- B. the Operator’s Unscheduled Train Path.

**“Available”** means in relation to:

- A. an application for an Unscheduled Train Path by the Operator, a Train Path that:
  - i. 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 and will not conflict with any the obligation to prioritise Passenger Trains in accordance with the principle of Passenger Priority; or
  - ii. has already been granted but is required to be surrendered under the Statement of Freight Network Capability and the Principle of Passenger Priority; and
- B. an application for a Scheduled Train Path by the Operator, a Train Path that has not previously been granted as:
  - i. a Scheduled Train Path; or
  - ii. a Passenger Train Path, and
  - iii. the operation of that Train Path would not conflict with:
    - (a) any Scheduled Train Path (which is not required to be surrendered under the Statement of Freight Network Capability); or
    - (b) a Passenger Train Path; or
    - (c) any Unscheduled Train Path; or
    - (d) a Train Path that is required to be surrendered under the Capacity Use Rules (as provided by the Access Provider).

**“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.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)).

**"Cancellation Fee"** means a fee which is payable under clause 7.3 of the Agreement.

**"Change of Control Event"** means, in relation to an entity, an event the occurrence of which has the effect that:

- A. 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
- B. if no person controlled the entity prior to the time the event occurred, a person obtained control of the entity; or
- C. 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*.

**"Charter"** means the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

**"Claim"** means any claim, allegation, debt, cause of action, liability, proceeding or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Agreement) and whether at law, in equity, in restitution, under statute or otherwise.

**"Commencement Date"** means the date outlined in section 2 of Schedule 1.

**"Commercial Arbitration Act"** means the *Commercial Arbitration Act 2011* (Vic).

**"Confidential Information"** means the terms of this Agreement and all information provided by one party to another which is marked confidential, or which would ordinarily reasonably be considered commercially sensitive or of a confidential nature, being information other than information which:

- A. 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;
- B. 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
- C. 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.

**Conflict of Interest** includes any perceived, potential or actual conflict between:

- A. the duties of the Operator or any of its Personnel under this Agreement; and
- B. any personal, business, financial or other interest that the Operator or any of its Personnel may have in relation to the Agreement.

**"Consequential Loss"** means any loss or damage which is indirect or consequential, including loss of revenue, loss of profits, loss of or diminution of goodwill or credit and credit rating, loss of business reputation, business interruption, 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 for third party claims in respect of property damage, personal injury, nervous shock or death.

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

“**Dangerous Goods**” has the same meaning that it has in the Dangerous Goods Code.

“**Dangerous Goods Code**” means *Australian Code for the Carriage of Dangerous Goods by Road and Rail* (as in force from time to time).

“**Default Rate**” means the rate of interest prescribed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

“**DTP**” means the Victorian *Department of Transport and Planning* (and its successors).

“**Emergency & Crisis Management Plan**” means the document of the Access Provider entitled Emergency & Crisis Management Plan with the Document ID: SAPR-34.

“**Emergency Management Compliance Plan**” means an emergency management compliance plan prepared by the Operator and acceptable to the Access Provider, for dealing with emergency management compliance.

“**Entry Point**” means:

- A. in respect of a Scheduled Train Path, the entry point for that Scheduled Train Path set out in Schedule 4; and
- B. in respect of an Unscheduled Train Path, the place of entry specified by the Access Provider in writing in relation to that Unscheduled Train Path.

“**Entry Time**” means:

- A. in respect of a Scheduled Train Path, the entry time and date for that Scheduled Train Path set out in Schedule 4; and
- B. in respect of an Unscheduled Train Path, the time and date of entry specified by the Access Provider in writing in relation to that Unscheduled Train Path.

“**Environment**” includes the meaning given to that term at common law and in any Law in force in Victoria, including any land, water, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants and the social factors of aesthetics.

“**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.

“**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.

“**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.

“**Exit Point**” means:

- A. in respect of a Scheduled Train Path, the exit point for that Scheduled Train Path set out in Schedule 4; and
- B. in respect of an Unscheduled Train Path, the place of exit specified by the Access Provider in writing in relation to that Unscheduled Train Path.

“**Exit Time**” means:

- A. in respect of a Scheduled Train Path, the exit time and date for that Scheduled Train Path set out in Schedule 4; and
- B. in respect of an Unscheduled Train Path, the time and date of exit specified by the Access Provider in writing in relation to that Unscheduled Train Path.

“**Expiry Date**” means the date specified in section 2 of Schedule 1.

**“Force Majeure”** means:

- A. acts of God, lightning, storm, natural flood, landslide, bush fire or earthquake;
- B. high temperatures resulting in the imposition of operating restrictions pursuant to the Network Operating Requirements;
- C. strikes or other industrial action;
- D. acts of public enemy, war (declared or undeclared), terrorism or terrorist act as defined in the *Terrorism Insurance Act 2002* (Cth), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- E. the effect of any change in applicable Laws of any government or other competent authority;
- F. embargo or power or water shortage; and
- G. other occurrences which are beyond the reasonable control of the Access Provider, including deliberate and accidental damage to infrastructure.

**“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.

**“Further Term”** means the further term specified at section 2 of Schedule 1 and implemented using the mechanism of clause 23.1.2.

**“Geelong Grain Loop”** means the track described as such in Appendix A

**“Government Agency”** means any government and any governmental body whether:

- A. legislative, judicial or administrative;
- B. a department, commission, authority, tribunal, agency or entity; or
- C. 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.

**“GST”** has the meaning given by the GST Law.

**“GST Law”** means the GST Law as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“Guidelines”** means the *Victorian Rail Access Regime Guidelines* issued in June 2025.

**“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.

**“HTfV”** means Head, Transport for Victoria (ABN 97 481 088 949), a body corporate established under the *Transport Integration Act*.

**“Health and Safety Laws”** means all workplace, health and safety related Laws applicable to the provision of the Services by the Operator and applicable to the goods being transported and includes the *OH&S Act* and *OH&S Regulations*.

**“Incident”** means a breakdown, accident, emergency, event or circumstance on or affecting the Network that causes, or may reasonably be expected to cause:

- A. damage to a Train;
- B. injury to or death of any person;
- C. material damage to the property of any person;
- D. delay or obstruction to persons, including the Operator, using the Network;
- E. collision, derailment, signalling failure or serious safeworking breach; or
- F. any breach of any Health and Safety Laws and any railway accident or incident that the Access Provider or the Operator is required to report or investigate under any applicable Law.

**“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;

**“Law”** means

- A. any law, statute, regulation, ordinance, by-law, order or proclamation, and the common law;
- B. standards, codes and guidelines and other industry standards to the extent that such standards, codes and guidelines are relevant to these freight Access Arrangements;
- C. directions or notices issued by any Government Agency; and
- D. any authorisation, ruling, judgment, order or decree.

**“Line”** means the rail path between two locations (including sidings) on the Network that may be the subject of a Train Path;

**“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.

**“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:

- A. the cost of any action taken by the person to protect itself against any loss or to preserve any right it has;
- B. any taxes or duties payable by the person (other than tax on its assessable income); and
- C. where applicable, legal costs on an indemnity basis or on a solicitor and own client basis, whichever is the higher.

**“Major Capital Works and Projects”** means either a capital work or project that the Access Provider designates as such.

**“Material Change”** means any change or changes to:

- A. the scope and/or operation of the access regime established pursuant to Part 2A of the Rail Management Act; or
- B. 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.

**“Melbourne Arrival Sidings”** means the track described as such in Appendix A.

**“Modern Slavery Laws”** means the *Modern Slavery Act 2018* (Cth) and any analogous laws in any other relevant jurisdictions.

**“Network”** means that part of the land and rail infrastructure that is:

- A. operated or managed by the Access Provider; and
- B. declared under Part 2A of the Rail Management Act.

**“Network Management Rules”** means the network management rules made by the relevant Government Authority under the Rail Management Act.

**“Network Operating Requirements”** means the regulations and standards set out in the chapters of the Network Service Plan entitled “Network Operating Requirements” and N requirements for rolling stock, infrastructure, safe-working, communications and train running, and sets out passenger and freight.

**“Notice”** has the meaning given in clause 24. –

**“OH&S Act”** means the *Occupational Health and Safety Act 2004* (Vic).

**“OH&S Incident”** means:

- A. an incident to which Part 5 of the OH&S Act applies; and
- B. any other event or circumstance relating to health or safety that causes or is likely to cause:
  - lost time injuries, medical treatment injuries, first aid injuries or near misses;
  - an interruption of services to customers;
  - a threat to Access Provider's systems or infrastructure;
  - a threat to community health and safety;
  - a threat to the environment;
  - a threat to public or private property; or
  - the creation of the need for urgent action under statute or legislation.

**“OH&S Regulations”** means the *Occupational Health and Safety Regulations 2017* (Vic).

**“On Time”**, in respect of a Train or a Service, means:

- A. on lines used only by Freight Trains, within ten minutes of the Entry Time or Exit Time (as the case may be); and
- B. on lines used by Passenger Trains, within five minutes of the Entry Time or Exit Time (as the case may be).

**“ONRSR”** means the *Office of the National Rail Safety Regulator* or its successor.

**“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 Statement of Freight Network Capability.

**“Operational Control”** means the control exercised, or which may be exercised, by the Access Provider with regard to the efficient operation and safe working of the Network, and includes procedures and requirements relating to Train control, Train movements, track restrictions, Track Occupations, safe working practices, operating restrictions, emergency response, notification of authorities, network restoration, maintenance of the Network, evacuation and Incident investigation.

**“Operational Directions”** means the safe and lawful instructions, directions and notifications from time to time issued by the Access Provider with regard to Operational Control.

**“Operator's Scheduled Train Path”** means each Train Path described in Schedule 4 (as amended from time to time).

**“Operator's Unscheduled Train Path”** means each Train Path granted to the Operator following an application under clause 4.4 and approved by the Access Provider in writing.

**“Passenger Priority”** means the giving of reasonable priority to the provision of rail transport services to passenger service users over the provision of rail transport services to other users including freight operators.

**“Passenger Train”** means a Train used to carry passengers for reward and includes such a Train when it is empty.

**“Passenger Train Path”** has the meaning given to that term in the Operating Handbook.

**“Performance Standard”** means standards for the operators set out in the chapters of the V/Line Network Service Plan entitled “Train operating data”.

**“Personnel”** of a party means that party's officers, employees, agents, contractors or subcontractors including their representatives.

**“Rail Management Act”** means the *Rail Management Act 1996* (Vic).

**“Rail Safety Accreditation”** means any statute, regulation, standard or procedure with respect to or in connection with:

- A. any intergovernmental agreement on rail safety;
- B. any legislative framework controlling rail safety (including the *Rail Safety National Law*);
- C. any series of standards relating to the *Australian Rail Safety Standard (AS4292)*; and
- D. any other legislation, regulation or management system governing the safety and standards of the rail industry.

**“Rail Safety National Law”** means the *Rail Safety National Law (Victoria)* as a consequence of section 6 of the *Rail Safety National Law Application Act 2013 (Vic)*.

**“Related Body Corporate”** has the meaning given in the *Corporations Act*.

**“Review Date”** means 1 July of each year.

**“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).

**“Rolling Stock Standards”** means the specifications and requirements for Rolling Stock set out in the Network Operating Requirements.

**“RSNL Accreditation”** means accreditation under the Rail Safety National Law.

**“Safety Interface Agreement”** means the written agreements for managing the risks to safety at interfaces.

**“Scheduled Service”** means 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 amendment of, its Access Agreement.

**“Scheduled Train Path”** means a Train Path that has been scheduled in the Access Provider’s V/Line Network Service Plan (other than a Passenger Train Path).

**“Scheduled Train Path Group”** means a group of Scheduled Train Paths that have:

- A. the same Entry Point and Exit Point, and
- B. 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.

**“Service”** means a rail freight service provided by the Operator that uses an Approved Train Path.

**“Service Level Agreement”** mean the Service Level Agreement made between V/Line and HTfV effective 1 July 2021.

**“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.

**“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.

**“Statement of Freight Network Capability”** means the document which DTP has developed to state the rail network’s capability and when it is available for carrying goods, found at [https://www.vic.gov.au/sites/default/files/2023-12/DTP0458-Statement-of-Freight-Network\\_v5\\_FA-%5Baccessible%5D.pdf](https://www.vic.gov.au/sites/default/files/2023-12/DTP0458-Statement-of-Freight-Network_v5_FA-%5Baccessible%5D.pdf)

"**TAC**" means the Transport Accident Commission.

"**Term**" means the time period outlined in section 2 of Schedule 1 and implemented at clause 23.1.1.

"**Third Party Lessee**" means a third party entity which has an independent lease of sections of the Victorian rail network (which includes any sidings, yards, terminals or any similar infrastructure which can be leased via HTfV, VicTrack, DTP or any other Department or Government Agency capable of entering into a lease for the Victorian rail network).

"**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.

"**Tottenham Yard**" means the track described as such in Appendix A.

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

"**Track Occupation**" means access to the Network in order to carry out inspections, repairs, maintenance, up-grade work, improvements, additions or any other works.

"**Train**" means two or more units of Rolling Stock coupled together to operate as a single unit, or a single locomotive.

"**Train Path**" means the particular route and time interval, including Entry and Exit Points and Entry Times and Exit 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.

"**Transport Accident Act**" means the *Transport Accident Act 1986 (Vic)*.

"**Transport Integration Act**" means the *Transport Integration Act 2010 (Vic)*.

"**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 enroute 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.

"**Unscheduled Service**" means the provision by the Access Provider 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 as well as ad hoc services.

"**Unscheduled Train Path**" means a Train Path that is granted by the Access Provider through a short-term process of nomination and allocation under its Access Agreement as well as ad hoc allocation, and that is not a Scheduled Train Path or a Passenger Train Path.

"**V/Line Network Service Plan**" or "**NSP**" means the service plan published at <https://corporate.vline.com.au/Network-Access/Network-service-plan>

"**V/Line Service Level Agreement**" means the Service Level Agreement – Governance Module entered into between the Access Provider and HTfV.

"**VicTrack**" means the Victorian Rail Track corporation, a statutory corporation established under *the Rail Corporations Act 1996 (Vic)* and continued under the *Transport Integration Act*.

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## 2. Interpretation

### 2.1 Interpretation

#### 2.1.1 Reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate;
- (d) a party includes the party's executors, administrators, successors and permitted assigns;
- (e) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:
  - (i) that Statutory Provision as amended or re-enacted from time to time;
  - (ii) a statute, regulation or provision enacted in replacement of that
  - (iii) Statutory Provision;
  - (iv) 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; and
  - (v) money is to Australian dollars, unless otherwise stated.

2.1.2 "Including" and similar expressions are not words of limitation.

2.1.3 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.

2.1.4 Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

2.1.5 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.

2.1.6 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.

2.1.7 The rights and remedies conferred on a party by this Agreement are in addition to all other rights and remedies of that party.

### 2.2 Consents or approvals

2.2.1 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 in this Agreement.

2.2.2 Consents and approvals must be evidenced in writing either at the time they are given or shortly afterwards and the party receiving consents and approvals must acknowledge receipt in writing.

## 2.3 Priority of documents

2.3.1 If there is any inconsistency between any of the following documents, those documents will be interpreted in the following order of priority:

- (a) the terms and conditions of this Agreement (inclusive of any Schedules);
- (b) the Access Arrangement;
- (c) the Guidelines; and
- (d) any other documents created under this Agreement or incorporated into it by reference.

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## 3. Passenger Priority

### 3.1 Passenger Priority

3.1.1 In accordance with the Guidelines and the Access Arrangement, the parties acknowledge the principle of Passenger Priority. The Operator agrees that the V/Line Network Service Plan shall include regular Freight Train Train Paths during non-peak periods (as shown in Section 3 of Schedule 5) subject to the Passenger Priority and the order of priority in the Best Practice Principles Timetable set out in section 2 in Schedule 5 of this Agreement.

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## 4. Access

### 4.1 Grant of access

4.1.1 The Access Provider agrees to grant to the Operator access for Freight Trains to those parts of the Network detailed in Schedule 6 in accordance with this Agreement. The access granted may comprise:

- (a) access to Approved Train Paths;
- (b) the right to undertake Ancillary Movements; and
- (c) Stabling.

### 4.2 Limitations on grant

4.2.1 The Operator must not access or use any part of the Network except for the purpose of:

- (a) operating a Service on an Approved Train Path;
- (b) undertaking Ancillary Movements, or
- (c) Stabling, in accordance with this Agreement.

### 4.3 Scheduled Train Paths

4.3.1 The Operator may operate Freight Trains on the Operator's Scheduled Train Paths, subject to and on the terms and conditions of this Agreement.

4.3.2 Requests for additional Scheduled Train Paths and Scheduled Train Path Groups or variations to existing Scheduled Train Paths and Scheduled Train Path Groups may be made by the Operator to the Access Provider in accordance with the Access Provider's Operating Handbook.

- 4.3.3 Subject always to the principle of Passenger Priority, the Access Provider will not unreasonably withhold approval for an additional Scheduled Train Path or variation to an existing Scheduled Train Path.

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

- 4.4.1 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:
- (a) specifies the Train Path sought, including Entry Point, Exit Point, Entry Time and Exit Time;
  - (b) provides comprehensive and accurate details of the Rolling Stock sought to be run over the entire Train Path requested;
  - (c) 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; and
  - (d) includes any other information reasonably requested by the Access Provider.
- 4.4.2 The notice must be provided to the Access Provider at least 2 full Business Days prior to, but not more than two weeks in advance of, the Entry Time of the requested Train Path.
- 4.4.3 The Operator must immediately provide revised information to the Access Provider if there is a material change in the information supplied pursuant to clause 4.4.1.

#### 4.5 Grant of Unscheduled Train Paths

- 4.5.1 Subject to the Statement of Freight Network Capability, the Access Provider is not obliged to grant a requested Unscheduled Train Path if:
- (a) the requested Train Path is not Available;
  - (b) 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;
  - (c) 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
  - (d) clause 9.2.3 applies.
- 4.5.2 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:
- (a) 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
  - (b) 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.
- 4.5.3 If the requested Unscheduled Train Path is not Available, the Access Provider must:
- (a) 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 4.5.2); and

- (b) if the Operator is not satisfied with the alternative Train Path suggested by the Access Provider under clause (a), use reasonable endeavours to offer the Operator an alternative Train Path that does satisfy the Operator's request.
- 4.5.4 For clarification, the 24-hour period in clause 4.5.3(a) does not include a day that is not a Business Day.
- 4.5.5 The Operator acknowledges that the grant of a requested Unscheduled Train Path on any particular occasion does not:
- (a) give rise to any entitlement in respect of any Unscheduled Train Path similar to the granted Unscheduled Train Path; or
  - (b) constitute any indication that any Unscheduled Train Path similar to the granted Unscheduled Train Path will be Available in the future.

## 4.6 Access to certain Sidings and Terminals

- 4.6.1 Without limiting any other provision of this Agreement, but subject to any relevant determination of the DTP or other relevant Government Agency, during the term of this Agreement the Access Provider will provide the Operator with:
- (a) Pricing in respect of non-exclusive access to the Access Provider sidings will be determined in accordance with Schedule 2;
  - (b) non-exclusive access to Melbourne Arrival Sidings and those parts of Tottenham Yard not leased to any other Third Party Lessee's at charges equal to the Access Fee for the movements into and out of Melbourne Arrival Sidings and those parts of Tottenham Yard not leased to Third Party Lessee's but no further fee for the first 24 hours only, after which an additional fee (as per Schedule 2 and Schedule 3) per vehicle per day or part thereof (or such other rate as determined by the DTP from time to time) will apply; and
  - (c) non-exclusive track access to the Geelong Grain Loop at the rate (as per Schedule 2 and Schedule 3) per Train (or such other rate as determined by the DTP from time to time).
- 4.6.2 The charges referred to in clause 4.6.1 will be varied in accordance with Schedule 3 (as if the references to "Access Fee" in Schedule 3 were references to the charges referred to in clause 4.6.1).
- 4.6.3 For the avoidance of doubt, the Operator must pay to the Access Provider the charges referred to in clause 4.6.1 (as varied from time to time under clause 4.6.2).

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## 5. Variation, surrender and non-use of Train Paths

### 5.1 Variation and surrender

- 5.1.1 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:
- (a) for the purpose of and in accordance with the Statement of Freight Network Capability;
  - (b) 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 or Scheduled Train Path Group unsafe, inefficient or impracticable to operate, and the Operator has not rectified that breach within 7 Business Days of notification;

- (c) if circumstances outside the control of the Access Provider (including but not limited to events of Force Majeure) prevent the Approved Train Path or Scheduled Train Path Group from being provided for use by the Operator, provided that the Access Provider provides the Operator with further details of the event as soon as practical in the circumstances; or
- (d) if the Operator:
  - (i) breaches a relevant Law or binding standard;
  - (ii) has its Accreditation suspended or cancelled; or
  - (iii) 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 (iii) 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.

#### 5.1.2 The Operator:

- (a) must surrender an Approved Train Path or a Scheduled Train Path Group if required to do so by the Access Provider under clause 5.1.1; and
- (b) at its sole discretion, may surrender an Approved Train Path or a Scheduled Train Path Group by notice to the Access Provider.

5.1.3 If 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.

## 5.2 Non-use

5.2.1 The Operator must notify the Access Provider as soon as practicable but no less than 72 hours after it becomes aware that it will not use an Approved Train Path. In the event that the Operator becomes aware that it will not use the Approved Train Path with 72 hours or less until the scheduled time of use, the Operator must immediately notify the Access Provider that it will not use the Approved Train Path. The Access Provider will then be free to allocate that Train Path to any other person.

5.2.2 If the Operator does not use an Unscheduled Train Path granted to it, it must pay the Cancellation Fees as set out in Schedule 2 for that Operator Unscheduled Train Path, except if:

- (a) that Operator's Unscheduled Train Path was surrendered in accordance with clause 5.1.1(a) or (c); or
- (b) 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.

5.2.3 In respect of clause 5.1.1(a) the Operator will not be charged for non-use of allocated Train Paths or required to surrender Train Paths to the extent that:

- (a) the Train Path is not available due to the Access Provider not making the Train Path available; and
- (b) the unavailability of the Train Path did not result from an act or omission of the Operator.

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## **6. Conditions of Access**

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

6.1.1 The Operator acknowledges that its right to use Approved Train Paths is subject to:

- (a) Operational Directions given by the Access Provider;
- (b) any restrictions that arise from V/Line's obligations under the Service Level Agreement;
- (c) Incidents and Force Majeure events; and
- (d) the Operator's compliance with the terms and conditions of any Safety Interface Agreement.

### **6.2 Ancillary Movements**

6.2.1 The Access Provider must allow the Operator access to the Network to make Ancillary Movements, subject only to Operational Directions, directions made for the purpose of ensuring safety in accordance with the Rail Safety National Law, the Access Provider's reasonable conditions, and the terms and conditions set out in this Agreement.

6.2.2 When accessing the Network to make Ancillary Movements:

- (a) the Operator must obtain the prior consent of the Access Provider, such consent not to be unreasonably delayed or withheld;
- (b) 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
- (c) the Operator must have appropriate arrangements in place in respect of the storage, shunting and Stabling of the Rolling Stock off the Network.

### **6.3 Ad hoc storage**

6.3.1 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, upon request by the Access Seeker.

6.3.2 All items of Rolling Stock stored on the Network by the Operator are stored at the Operator's risk.

6.3.3 If the Access Provider directs the Operator to remove any or all items of Rolling Stock stored on the Network, the Operator must do so without delay.

### **6.4 Non-exclusive Access**

6.4.1 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.

## 6.5 Future scope of the Network

- 6.5.1 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 *Rail Management Act*.
- 6.5.2 If either of the circumstance referred to in clause 6.5.1 arises, the relevant track will no longer form part of the Network under this Agreement, the Access Provider shall have no liability to the Operator for the relevant sections of the track and any Access Provider's obligations under this Agreement in respect of the relevant track shall be revoked.
- 6.5.3 Where appropriate and unless otherwise prevented to do so, the Access Provider will use reasonable endeavours to notify the Operator of relevant changes made to the Network under clause 6.5.1.

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## 7. Access Charges and Access Fees

### 7.1 Access Fee

- 7.1.1 The Operator must pay to the Access Provider the applicable Access Fees. The Access Fee:
- shall be adjusted to reflect any changes to the prices in Schedule 2 that occur in accordance with Schedule 3

### 7.2 Other Access Charge

- 7.2.1 In addition to the Access Fees payable under clause 7.1, the Operator must pay any other charges in accordance with this Agreement, including under clauses 4.6, 5.2.2 and 7.4 (together with the Access Fees).

### 7.3 Cancellation Fee

- 7.3.1 In addition to other Access Fees, a Cancellation Fee as set out in Schedule 2 will be payable by the Operator to the Access Provider in accordance with this clause 7.3.
- 7.3.2 Subject to clause 7.3.3 and 7.3.4, a Cancellation Fee is payable by the Operator if a booked Train Path is subsequently cancelled by the Operator and not used. This includes cancellations in respect of Unscheduled Services
- 7.3.3 The Cancellation Fee is applicable and payable unless:
- (a) the cause of the failure to operate the Service on the relevant Train Path has been caused by the Access Provider and/or another access provider in circumstances where there is a change of Network which forms part of the Train Path; or
  - (b) the Operator's Unscheduled Train Path was surrendered in accordance with clause 5.1.1(a) or (c); or
  - (c) the Operator's failure to use the path was caused by an act or omission of the Access Provider (e.g. occupation of the relevant path), other than a direction which has been given as the result of the act or omission of the Access Provider.
- 7.3.4 A Cancellation Fee will not be levied if the cause of the Train Path not being used is beyond the control of the Access Seeker. This includes:
- (a) the cause of the failure to operate the Service on the Train Path has been caused by an event of Force Majeure;

- (b) the cause of the failure to operate the Service on the Train Path is beyond the control of the Access Provider whether or not being an event of Force Majeure; or
- (c) the cause of the failure to operate the Service was a result of a breach of this Agreement by the Access Provider or the Access Provider has acted negligently or in wilful default.

#### **7.4 Other charges**

- 7.4.1 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.

#### **7.5 Invoices**

- 7.5.1 The Access Provider must deliver to the Operator within 20 Business Days of 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.
- 7.5.2 Subject to clause 7.6.1, the Operator must pay the amount invoiced in accordance with clause 7.5.1 within 30 days of date of the invoice.
- 7.5.3 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.
- 7.5.4 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.

#### **7.6 Objection to invoiced amount**

- 7.6.1 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:
- (a) 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
  - (b) 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.
- 7.6.2 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.

#### **7.7 Interest on late payment**

- 7.7.1 Subject to clause 7.6.1, if either party fails to make payment for to a valid invoice by the due date, then interest will accrue daily at the Default Rate from the time the invoice was due to be paid until the date that the amount has been paid in full.

7.7.2 The right to demand payment of interest under clause 7.7.1 is without prejudice to any other rights and remedies that a party may have in respect of a payment default under this Agreement.

## **7.8 Access Charges and GST**

7.8.1 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.

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

7.9.1 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:

- (a) the configuration 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);
- (b) train operating information including individual locomotive and wagon movements, Stabling and storage; and
- (c) train loading and weighbridge 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.

7.9.2 The information provided by the Operator to the Access Provider under clause 7.9.1 will be deemed to be information provided in confidence for the purpose of section 38ZZF of the Rail Management Act. The Access Provider's handling of information provided under this clause 7.9.1 must also be consistent with the policies, procedures and systems developed by the Access Provider.

7.9.3 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 7.9.1 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.

7.9.4 Where an error in an invoice is identified as a result of an audit or information provided under clause 7.9.1 (or as a result of an audit 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 Fee 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.

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## 8. GST

### 8.1 Interpretation

In this clause words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

### 8.2 GST exclusive

Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

### 8.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply.

### 8.4 Payment of GST

Subject to clause 8.3, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Agreement).

### 8.5 Tax invoice

The Operator must provide a tax invoice to the recipient before the Operator will be entitled to payment of the GST Amount under clause 8.3.

### 8.6 Reimbursements

If this Agreement requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

8.6.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and

8.6.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

### 8.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

8.7.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and

8.7.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

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## 9. Network maintenance and variation to service

### 9.1 General maintenance

9.1.1 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.

## 9.2 Lines booked out of service

- 9.2.1 The Operator acknowledges that, notwithstanding anything else in this Agreement, the Performance Standard may vary during the period of this Agreement.
- 9.2.2 Subject to clause 9.2.3, before booking a Line out of service or varying the Performance Standard in accordance with clause 9.2.1, the Access Provider must:
- (a) subject to clause 9.2.3 consult with the Operator about the likely impact on the Operator's business; and
  - (b) to the extent practicable, take into account the likely impact on the Operator's Approved Train Paths.
- 9.2.3 In the event that the Access Provider has a genuine concern for safety, the Access Provider may vary the Performance Standard or book one or more Lines to be out of service until such time that it is satisfied that the safety concerns are resolved. The Access Provider is not required to consult the Operator under clause 9.2.2 where access to a Line is being suspended or terminated for safety reasons, however is required to notify the Operator of the suspension or termination.
- 9.2.4 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.
- 9.2.5 A Line that has had its Performance Standard varied or has been booked out of service under these clauses 9.2.1 to 9.2.4 will be subsequently reviewed and amended or booked back into service from the date the Access Provider considers that the safety risk has been addressed. Restored access to a Line will be available on the terms and conditions of this Agreement.
- 9.2.6 The Operator acknowledges that nothing in clauses 9.2.1 to 9.2.4 requires the Access Provider to pay for or carry out any works in relation to any railway infrastructure.

## 9.3 Track Occupations

- 9.3.1 Subject to clauses 9.3.2, 9.3.3, 9.3.4 and 9.3.5 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.
- 9.3.2 In planning a Track Occupation, to the extent reasonably practicable, the Access Provider may consult the Operator and take into account the Operator's 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.
- 9.3.3 If a Track Occupation is likely to materially affect an Approved Train Path, the Access Provider will:
- (a) 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 in any event not less than 90 days' notice; and
  - (b) use its reasonable endeavours to minimise disruption to the Operator's Services caused by Track Occupation.
- 9.3.4 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.
- 9.3.5 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. The Access Provider where practicable, will take reasonable steps to notify the Operator.

9.3.6 For the avoidance of doubt:

- (a) nothing in these clauses 9.3.1, 9.3.2, 9.3.3, 9.3.4 and 9.3.5 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 and Projects); and
- (b) 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.

9.3.7 The Access Provider must:

- (a) presuming it has the requisite knowledge and is not limited otherwise by confidentiality requirements, provide the Operator with at least 3 months' notice (including details of the nature, scope, extent and timing) of future Major Capital Works and Projects and must use reasonable endeavours to provide the Operator with more than 3 months' notice in circumstances where the nature, scope, extent and timing of future Major Capital Works and Projects is known by the Access Provider in advance of the 3 months' notice period;
- (b) use reasonable endeavours to meet the Access Provider's nominated nature, scope, extent and timing of a Major Capital Works Project, and where the nature, scope, extent or timing of a Major Capital Works Project is required to be amended the Access Provider must provide the Operator with reasonable details of any significant change in the nature, scope, extent or timing of a Major Capital Works Project;
- (c) consult the Operator in relation to the likely impact of Major Capital Works and Projects on the Operator's business; and
- (d) use all reasonable endeavours to minimise any adverse commercial impact of those Major Capital Works and Projects on the Operator.

9.3.8 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 be liable to the Operator in respect of matters arising from any Major Capital Works and Projects, provided that this clause 9.3.8, 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.

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## **10. Operator's obligations in using the Network**

### **10.1 Familiarity and compliance with procedures and protocols**

10.1.1 The Access Provider must provide the Operator with:

- (a) the Operating Handbook;
- (b) the V/Line Network Service Plan, including the Network Operating Requirements, and the Rolling Stock Standards;

- (c) the Emergency & Crisis Management Plan; and
- (d) such other procedures and protocols as the Access Provider publishes from time to time.

10.1.2 Subject to clause 10.1.3, the Access Provider:

- (a) may make changes to any of the documents listed in clause 10.1.1 at any time;
- (b) will consult with the Operator prior to making any changes; and
- (c) will notify the Operator in writing of changes to the documents listed in clause 10.1.1, at least 14 days prior to those changes becoming effective.

10.1.3 If a document listed in clause 10.1.1 contains a protocol or procedure that is required under an instrument made by any relevant Government Agency under the Rail Management Act (**Government Agency Instrument**), such document may be varied only in accordance with the relevant Government Agency Instrument.

## 10.2 Weighbridge requirements

10.2.1 The Operator must comply with all reasonable requirements of the Access Provider to weigh Rolling Stock or provide written evidence of tonnages from third parties to determine gross and tare weight and axle loadings.

10.2.2 The Access Provider must use its best endeavours to minimise inconvenience caused to the Operator from weighing the Rolling Stock.

10.2.3 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 under clause 10.2.1.

## 10.3 Operator's obligations

10.3.1 Without limiting any of its other obligations under this Agreement, the Operator agrees at all times during the term of this Agreement:

- (a) to comply with the procedures and protocols listed in clause 10.1.1 and with the Book of Rules;
- (b) to notify the Access Provider immediately if it becomes aware that any of its Trains have become Unhealthy;
- (c) 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 direction validly given);
- (d) to comply with all Laws applicable to the operation of the Services or its use of the Network not to materially change, alter, repair, deface, damage or otherwise affect any part of the Network; and
- (e) 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.

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## 11. Train Manifest

### 11.1 Train Manifest

- 11.1.1 At least 30 minutes prior to entry onto the Network, the Operator must provide the Access Provider with a notice (a “**Train Manifest**”) specifying:
- (a) the number and type of each item of Rolling Stock in the consist of the Train;
  - (b) the type, identification number of each item of Rolling Stock and each point of arrival or departure on the Approved Train Path;
  - (c) the gross mass of the Train;
  - (d) the length of the Train;
  - (e) the motive power employed by the Train;
  - (f) the maximum axle load of the Train;
  - (g) the location, type and quantity of any Dangerous Goods on the Train; and
  - (h) any other information as may be required to be provided in the Train Manifest by the ONRSR from time to time, and this information must be, to the best of the Operator’s knowledge, accurate in all material respects.
- 11.1.2 The Operator must notify the Access Provider immediately if it wishes to alter any of the information given to the Access Provider under clause 11.1.1.
- 11.1.3 The Train Manifest and any alteration of it must be provided in writing or otherwise by an electronic means, which is determined by the Access Provider.

### 11.2 Rolling Stock Standards

- 11.2.1 The Operator must:
- (a) maintain all Rolling Stock used by the Operator on the Network so that it satisfies the Rolling Stock Standards;
  - (b) ensure that all Rolling Stock used by the Operator on the Network is approved for operation by ONRSR;
  - (c) 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;
  - (d) 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;
  - (e) ensure that no Rolling Stock or load exceeds the prescribed dimensional outline for safe operation set out in the Rolling Stock Standards; and
  - (f) 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.
- 11.2.2 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.

### **11.3 Network Operating Requirements**

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

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

11.4.1 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:

- (a) 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
- (b) 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.

11.4.2 The Operator must, at its own expense, comply with a direction of the Access Provider given in accordance with clause 11.4.1.

11.4.3 Any direction provided by the Access Provider under clause 11.4, must be safe and lawful.

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

11.5.1 The Access Provider may at any time require the Operator to undergo an audit by giving the Operator at least 24 hours written notice, for the purpose of assessing:

- (a) the Operator's compliance with the terms and conditions of this Agreement;
- (b) 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
- (c) 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.

11.5.2 The Access Provider must not carry out more than two audits per year, unless an audit detects a material breach of this Agreement, or an audit undertaken in accordance with clause 11.5.1 demonstrates that the Access Seeker has been using or loading wagons in an unsafe manner. In such circumstances, additional audits may be conducted by the Access Provider, acting reasonably.

11.5.3 The Access Provider must use reasonable endeavours to conduct audits under clause 11.5 in a manner that minimises disruptions to the Operator.

### **11.6 Instructions**

11.6.1 In conducting an audit under clause 11.5.1, 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.

## 11.7 Monitoring equipment

11.7.1 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:

- (a) will treat such data as Confidential Information; and
- (b) may only use such information for the purpose of:
  - (i) the assessment under clause 11.5.1;
  - (ii) the safe and efficient operation of the Network; and
  - (iii) calculation of Access Fees.

11.7.2 If:

- (a) 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;
- (b) the Operator obtains data with respect to such Rolling Stock from monitoring equipment on the connecting rail network, and
- (c) 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.

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## 12. Operational Control

### 12.1 Nature of exercise

12.1.1 The Access Provider will:

- (a) exercise Operational Control in accordance with the Book of Rules and the Operating Handbook; and
- (b) maintain Operational Control over the Network in accordance with any Law from time to time applicable in Victoria with regard to such control.

12.1.2 The Access Provider may exercise Operational Control by issuing Operational Directions to the Operator.

12.1.3 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.

12.1.4 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:

- (a) the Access Provider's negligence;
- (b) breach of this Agreement by the Access Provider; or

- (c) breach of the Access Provider's Accreditation.

## 12.2 Extent of exercise

12.2.1 In exercising Operational Control under clause 12.1.1, the Access Provider:

- (a) may delay, add, cancel, re-route or re-schedule Train movements including any Service; and
- (b) will use reasonable endeavours to minimise disruption to the Operator's use of Approved Train Paths.

## 12.3 Responsibility of Operator to comply

12.3.1 The Operator must promptly comply with all Operational Directions.

## 12.4 Communication responsibilities

12.4.1 The Access Provider will:

- (a) 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;
- (b) 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 in Victoria 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;
- (c) operate and maintain a train control centre; and
- (d) 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.

12.4.2 The Operator must:

- (a) 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 6.2.1 and all Operational Directions;
- (b) 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
- (c) if the Train Path connects with a train path on another network:
  - (i) upon request by the Access Provider, provide evidence that the Operator has agreement to enter the connecting network;
  - (ii) notify the Access Provider as soon as the Operator becomes aware that it is unable to enter the connecting network; and

- (iii) 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.

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## 13. Time for Services traversing the Network

### 13.1 Time for Services traversing the Network

- 13.1.1 Without limiting any of the Operator's obligations under this Agreement, the Operator must:
- (a) ensure that each Service is available for departure to enter the Network at the Entry Time;
  - (b) apply sufficient motive power to each Service to ensure that each individual item of Rolling Stock arrives or departs from the Entry Point or Exit Point, as the case may be, at the scheduled Entry Time and Exit Time along the Approved Train Path; and
  - (c) 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.

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## 14. Undertakings and warranties

### 14.1 Undertakings and warranties

- 14.1.1 In addition to and notwithstanding all other warranties express or implied in this Agreement, the Operator undertakes and warrants to the Access Provider that:
- (a) 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;
  - (b) it has the resources and ability to perform all of its obligations under this Agreement;
  - (c) 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;
  - (d) 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;
  - (e) 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;
  - (f) it will as soon as practicable notify the Access Provider of the occurrence of, or pending or threatened occurrence of, any event that is likely to cause or constitute a material breach of any of the acknowledgments, representations, warranties, covenants or other contractual obligations of the Operator under this Agreement and any event that is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
  - (g) it has disclosed to the Access Provider all information that the Access Provider has reasonably requested as part of the process outlined in the Access Arrangement,

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

- (h) 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.

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

14.2.1 The undertakings and warranties set out in this clause 14 will be taken to be given and made:

- (a) on the date of execution of this Agreement; and
- (b) on each day on which the Access Provider grants any access or the Operator operates any Service on the Network.

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## **15. Accreditation**

### **15.1 Accreditation requirements**

- 15.1.1 During the term of this Agreement, each party must hold all required, valid Accreditation.
- 15.1.2 The Operator must, to the extent required by Law ensure that its officers, 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.
- 15.1.3 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.
- 15.1.4 The Operator must not operate Rolling Stock on the Network to the extent it does not hold Accreditation necessary to do so.

### **15.2 Information as to Accreditation**

- 15.2.1 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 15.1.1 to 15.1.4.

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## **16. Compliance with other laws and standards**

### **16.1 Performance in accordance with Law and policy**

- 16.1.1 The Operator must perform its obligations under this Agreement in compliance with:
  - (a) all Laws that are from time to time relevant or applicable to the performance of those obligations (including Australian and foreign anti-corruption legislation);
  - (b) the Access Providers policies and procedures notified to it by the Access Provider, including but not limited to those listed in Schedule 7; and
  - (c) all applicable Victorian State Government policies.

- 16.1.2 On request, the Operator must provide Access Provider with evidence of its compliance with clause 16.1.1.
- 16.1.3 The Operator must at all times:
- (a) ensure it does not perform its obligations under this Agreement in a manner that causes Access Provider to be in non-compliance with or in breach of any Law; and
  - (b) ensure that its Personnel comply with the obligations imposed in clause 16.1.1 and paragraph (a).

## 16.2 RSNL Accreditation

The Operator must:

- 16.2.1 cooperate with Access Provider and do everything reasonably necessary to assist the Access Provider to maintain and meet the requirements of its RSNL Accreditation; and
- 16.2.2 except as required by Law, not do (or omit to do) anything which will or may cause the Access Provider's RSNL Accreditation to be suspended or cancelled.

## 16.3 Conflict of interest

- 16.3.1 The Operator must promptly notify the Access Provider if, at any time during the Term, an actual or potential Conflict of Interest arises relating to the performance of any part of the Services by the Operator or any of its Personnel.
- 16.3.2 If the Operator notifies the Access Provider under clause 16.3.1 of an actual or potential Conflict of Interest, or the Access Provider otherwise becomes aware of an actual or potential Conflict of Interest, the Access Provider will consult with the Operator to determine an appropriate course for managing the Conflict of Interest and the Operator must implement any reasonable course of action that the Access Provider determines appropriate as soon as possible or provide the Access Provider with a written report setting out why it will not implement such course of action.
- 16.3.3 The Operator acknowledges and agrees that failure to comply with this clause 16.3 will constitute a breach of a fundamental term of this Agreement.

## 16.4 Fraud Control

- 16.4.1 The Operator must:
- (a) proactively take all necessary measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under, or that is otherwise in connection with, this Agreement, including all measures directed by the Access Provider; and
  - (b) proactively take all necessary corrective action to mitigate any loss or damage to the Access Provider resulting from fraud to the extent that the fraud was caused or contributed to by the Operator or its Personnel and put the Access Provider in the position it would have been in if the fraud had not occurred (including all corrective action directed by the Access Provider).
- 16.4.2 The Operator acknowledges and agrees that its obligation under clause 16.4.1(a) extends to taking all necessary measures to prevent, detect and investigate any fraud which has or may be committed by all persons employed or engaged by its Personnel (as applicable).

16.4.3 If the Operator or its Personnel knows or suspects that any fraud is occurring or has occurred, the Operator must immediately provide a detailed written notice to the Access Provider including details of:

- (a) the known or suspected fraud;
- (b) how the known or suspected fraud occurred;
- (c) the proactive corrective action the Operator will take under clause 16.4.1(a);
- (d) the proactive measures which the Operator will take under clause 16.4.2 to ensure that the fraud does not occur again, and
- (e) such further information and assistance as the Access Provider requires in relation to the fraud.

## **16.5 Anti-Corruption**

16.5.1 Within 10 Business Days after a request by the Access Provider, the Operator must provide the Access Provider with written confirmation that, to the best of the Operator's knowledge and based on reasonable enquiries undertaken by it, the Operator and its Personnel are compliant with all Laws (including foreign anti-corruption legislation) regarding the offering of unlawful inducements whether in Australia or otherwise in connection with the performance of this Agreement.

## **16.6 Modern slavery laws**

- 16.6.1 The Operator must comply (and ensure its Personnel comply) with the Modern Slavery Laws.
- 16.6.2 The Operator confirms that it conducts its business in a manner consistent with the principles of the Modern Slavery Laws and is not subject to any investigation, enforcement or conviction involving Modern Slavery.
- 16.6.3 The Operator must promptly notify the Access Provider of any actual or suspected breaches by the Operator of the Modern Slavery Laws, and agrees to provide the Access Provider, immediately upon request, any information and assistance that the Access Provider may require for compliance with the Modern Slavery Laws.

## **16.7 Human rights**

16.7.1 In performing this Agreement, the Operator must comply with the requirements of the Charter as if it was a 'public authority' (as defined in the Charter). In particular, the Operator must not act in a way that is incompatible with the human rights protected by the Charter, or, when making a decision in relation to the performance of the Agreement fail to give proper consideration to such a human right.

## **16.8 Transport Accident Act**

- 16.8.1 The Operator acknowledges that the Access Provider has advised the Operator that the scheme of compensation established by the Transport Accident Act applies to railways as set out in that Act.
- 16.8.2 The Operator acknowledges that the Access Provider has explained the operation of the scheme of compensation established under the Transport Accident Act.
- 16.8.3 The Operator agrees:

- (a) to notify the Access Provider of transport accidents involving the Operator's Trains no later than 5 Business Days after becoming aware that a Train operated by that Operator was involved in a transport accident on the Network;
- (b) within 28 days of becoming aware that a Train operated by the Operator has been involved in a transport accident, the Operator in consultation with the Access Provider, will prepare a report of the transport accident involving the Operator's Trains and provide this report to the TAC as required by section 64(2) of the Transport Accident Act;
- (c) to cooperate with the TAC and provide reasonable assistance in regard to any investigation of any transport accident involving the Operator's Trains; and
- (d) that the provisions of sub-sections 94(10) to 94(13) of the Transport Accident Act apply in relation to any liability of the TAC to indemnify the Operator under section 94 of the Transport Accident Act as if references to the owner or driver were references to the Operator.

## **16.9 Rail Management Act**

- 16.9.1 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.
- 16.9.2 If a Material Change occurs in relation to the Access Provider, the Access Provider must notify the Operator of its occurrence.
- 16.9.3 If a notice is issued under clause 16.9.2, 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.
- 16.9.4 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:
  - (a) an amendment to the terms of this Agreement;
  - (b) a waiver of each or either party's obligations under this Agreement; or
  - (c) agreement to terminate this Agreement.
- 16.9.5 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 26 of this Agreement will apply.
- 16.9.6 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 V/Line Service Level Agreement.

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## **17. Incidents**

### **17.1 Notification**

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

## 17.2 Emergency & Crisis Management Plan

- 17.2.1 In the event of an Incident, the Operator must comply with the Emergency & Crisis Management Plan and the Operating Handbook where relevant.

## 17.3 Dealing with Incidents

- 17.3.1 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.
- 17.3.2 For the avoidance of doubt, the Access Provider may provide directions under clause 17.3.1 by appointing a person authorised to give such directions for managing the Incident, as specified in the Operating Handbook and the Emergency & Crisis Management Plan.
- 17.3.3 Without limiting any other provision of this Agreement and in order to carry out its rights in clause 17.3.1, 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.

## 17.4 Other consequences of an Incident

- 17.4.1 The Operator must subject to its rights under applicable laws 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 but subject to its rights under applicable laws, use its best endeavours to procure that its Personnel provide formal statements on any matter related to an Incident if required to do so by such an investigator or board of enquiry in a reasonable timeframe agreed by the investigator or board of enquiry and the Operator at the beginning of the investigation.
- 17.4.2 Notwithstanding any other clauses of this Agreement the Access Provider may suspend the Operator's rights of access in the event that the Operator fails to comply with clause 17.4.1 for such period until the Operator has complied with clause 17.4.1.
- 17.4.3 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 reasonably practicable after 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.
- 17.4.4 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.
- 17.4.5 Subject to any agreement reached or determination made allocating responsibility for payment of costs arising out of an Incident and subject to clause 20.1 and 20.2 (Indemnity), 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.

## 17.5 Disablement

- 17.5.1 Without limiting the other provisions of this clause 17, 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 Operating Handbook

## 17.6 Notifications

17.6.1 Notifications required by this clause 17 must be made by the most expedient available means.

## 18. Environment

### 18.1 Environment

18.1.1 Subject to clause 18.1, the Operator must not:

- (a) bring, carry, store, abandon, dump or dispose of any Industrial Waste or potentially Hazardous Substance on, or in the vicinity of, the Network in a way that contravenes any applicable Environmental Law; or
- (b) discharge any Industrial Waste, Hazardous Substance, garbage or any offensive material on, or in the vicinity of, the Network; or
- (c) handle any Industrial Waste or potentially Hazardous Substance in a manner likely to create an Environmental Hazard.

18.1.2 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 licenses.

18.1.3 Within 14 days of the date of this Agreement, the Operator must provide the Access Provider with an Environmental Management Plan that identifies environmental risks and controls.

18.1.4 Without prejudice to clause 18.1.1 and 18.1.2, the Operator must comply with the Environmental Management Plan.

18.1.5 The Operator must:

- (a) notify the Access Provider of all environmental incidents, including regular reportable incidents as required by applicable environmental laws, licenses and permits; and
- (b) undertake remedial actions for all environmental incidents to the extent it caused or contributed to the incident to the reasonable satisfaction of the Access Provider.

## 19. Dangerous Goods and OH&S

### 19.1 Dangerous Goods and OH&S

19.1.1 In accessing the Network, the Operator must strictly comply with:

- (a) the Dangerous Goods Code in respect of all Dangerous Goods carried on the Operator's Services;
- (b) all Health and Safety Laws;

- (c) the V/Line Third Party Safety and Environmental Management Handbook; and
- (d) all directions from the Access Provider regarding the V/Line Third Party Safety and Environmental Management Handbook.

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## **20. Indemnity**

### **20.1 Operator's indemnity**

20.1.1 Subject to clause 20.4, 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.

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

20.2.1 Subject to clause 20.4, 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.

### **20.3 Defence of Claim**

- 20.3.1 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.
- 20.3.2 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, after acting reasonably consulting with the indemnified party, 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.
- 20.3.3 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.
- 20.3.4 For the purposes of the indemnities given in this clause 20, 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.

### **20.4 Limitation on liability**

- 20.4.1 Neither party is liable (under the indemnities in clauses 20.1 or 20.2 or otherwise) for any Consequential Loss suffered by the other for which the other becomes liable.
- 20.4.2 Each party agrees that, subject to clauses 20.4.2 and 20.4.3, it will not make a Claim against the other under clause 20.1 or 20.2 (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.

- 20.4.3 In the event that either party proposes making a Claim against the other under clause 20.1 or 20.2 (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 26 and otherwise comply with the terms of clause 26 before taking any other action to prosecute its Claim. Nothing in this clause 20.4.2 prohibits a party from seeking and obtaining appropriate injunctive relief.
- 20.4.4 The limitation in clause 20.4.1 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.

## 21. Insurance

- 21.1.1 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:
- (a) 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);
  - (b) any amounts for which it is liable to the other party, and must indemnify the other party, under clause 20.1 or 20.2; and
  - (c) any loss, damage or destruction of any property (other than its own property).
- 21.1.2 The insurance referred to in clause 21.1.1 must be effected with a reputable and solvent insurer holding a minimum Standard and Poor's A-financial rating (unless otherwise approved by the Access Provider from time to time).
- 21.1.3 The Operator must ensure that any of its approved subcontractors will maintain and effect insurance policies of the same, or substantially the same, type and extent and term as the insurance required of the Operator under clause 21.1.1 (unless otherwise approved by the Access Provider from time to time).
- 21.1.4 Each party must not do anything to invalidate an indemnity under its insurance policy required by this clause 21.
- 21.1.5 Each party must notify the other party immediately upon receipt of notification of cancellation of the insurance required under clause 21.1.1.
- 21.1.6 Each party must produce a current certificate of currency in respect of its insurance conforming with the requirements of clause 21.1.1 as soon as reasonably practicable after a request is made by the other party.
- 21.1.7 The requirements of this clause 21 are without prejudice to and do not affect the operation of the indemnities and limitations of liability contained in this Agreement.

## 22. Assignment and Sub-contracting

### 22.1 Assignment

- 22.1.1 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 use of any Approved Train Path, without the prior written consent of the Access Provider.

## **22.2 Sub-contracting**

- 22.2.1 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).
- 22.2.2 Sub-contracting shall not release a party from, or reduce the extent of, any of its obligations or liabilities under this Agreement.

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## **23. Term and termination**

### **23.1 Term**

- 23.1.1 Subject to this clause 23, this Agreement will run for the Term outlined at section 2 of Schedule 1, commencing on the Commencement Date (outlined in section 2 of Schedule 1) and unless otherwise extended in accordance with clause 23.1.223.1.1 or terminated by a party in accordance clause 23 will expire on the Expiry Date (outlined at section 2 of Schedule 1).
- 23.1.2 In the event that both parties agree in writing to extend the Term, they may implement a Further Term that will extend the Agreement for this period or for a month by month Term extension (which will continue until such time where one party cancels the month by month Term).
- 23.1.3 This Agreement is subject to the Operator providing to the Access Provider:
- (a) evidence of the Operator's valid Accreditation;
  - (b) the Operator's Environmental Management Plan; and
  - (c) the Operator's Emergency Management Compliance Plan.
- 23.1.4 If the conditions precedent in clause 23.1.3 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.
- 23.1.5 Notwithstanding clause 23.1.423.1.3(c), if the conditions precedent in clause 23.1.3 have not been fulfilled by the date which is 30 days after the Commencement Date, the Access Provider may terminate this Agreement immediately on notice to the Operator.
- 23.1.6 If this Agreement is terminated under clause 23.1.5 the Access Provider:
- (a) is released from its obligations to further perform this Agreement except those obligations imposing on it obligations of confidentiality; and
  - (b) retains the rights it has against the other party in respect of any past breach.

### **23.2 Preservation of other rights**

- 23.2.1 If a party breaches or repudiates this Agreement, nothing in this clause 23 will prejudice the right of the other party to recover damages or exercise any other right.

### **23.3 Breach of payment obligation**

- 23.3.1 If either party commits a material breach of its payment obligations under this Agreement and fails to remedy the breach within 30 Business Days after being required to do so in writing, the other party may terminate this Agreement by giving 5 Business Days' written notice to the party in default and this Agreement will terminate on expiry of that 5 Business Day notice period.

23.3.2 For the purpose of clause 23.3.1, 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.

#### 23.4 Breach of other obligations

23.4.1 If a party commits a material breach of an obligation under this Agreement (other than a breach referred to in clause 23.3.1) ("**Defaulting Party**") the other party may give the Defaulting Party a notice ("**Default Notice**") within a reasonable time:

- (a) stating that a material breach has occurred;
- (b) setting out reasonable details of the event or circumstances constituting the material breach; and
- (c) specifying a reasonable period of time in which to cure the material breach ("**Cure Period**").

23.4.2 Within 7 Business 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**").

23.4.3 The Defaulting Party will be permitted to cure the material breach within the Cure Period and in accordance with the Cure Plan.

23.4.4 If the Defaulting Party requires an extension to the Cure Period it may, not later than the expiration of the current Cure Period, provide to the other party:

- (a) a revised Cure Plan; and
- (b) evidence that:
  - (i) the Defaulting Party has diligently pursued and is continuing to diligently pursue a feasible and practicable program of rectification; and
  - (ii) the material breach cannot, with reasonable diligence, be cured within the current Cure Period.

23.4.5 The other party must not unreasonably refuse to grant an extension of the Cure Period.

23.4.6 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.

23.4.7 Clauses 23.4.1 to 23.4.6 do not limit or reduce the rights of a party to claim damages or exercise any other rights or remedies for breach of this Agreement.

23.4.8 Where the material breach of one party cannot be cured then the other party shall be entitled to terminate the Agreement on 7 Business Days' notice in writing.

#### 23.5 Termination on insolvency

23.5.1 A party may terminate this Agreement immediately by notice to the other party if the other party:

- (a) stops or suspends payment of either all or a class of its debts (other than debts owed to the Access Provider);
- (b) is insolvent within the meaning of section 95A of the Corporations Act;

- (c) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:
  - (i) the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or
  - (ii) 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;
- (d) has an administrator appointed in respect of it;
- (e) 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;
- (f) 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;
- (g) 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
- (h) 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.

## **23.6 Termination for Change of Control**

23.6.1 The Access Provider may terminate this Agreement immediately if a Change of Control Event occurs without the Access Provider's prior written consent in relation to the Operator and as a result of the Change of Control Event, the Access Provider is satisfied (acting reasonably) that there is a real risk that the Operator will not be able to carry out its obligations under this Agreement.

## **23.7 Cessation of rights**

23.7.1 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:

- (a) carry out the obligations of the Operator at the Operator's cost; and
- (b) store the Operator's Rolling Stock at the Operator's risk and cost.

## **23.8 Accrued rights**

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.

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## 24. Notices

### 24.1 Notice

- 24.1.1 Unless expressly provided otherwise, a notice or other communication connected with this Agreement ("Notice") has no legal effect unless it is in writing.
- 24.1.2 In addition to any other method of service provided by law or at clause 24.1.6, the Notice may be:
- (a) sent by registered post to the address of the addressee set out in this Agreement or subsequently notified to a party by the other party in writing;
  - (b) sent via email to the email address of the addressee set out in this Agreement or subsequently notified to a party by the other party in writing; or
  - (c) delivered at the address for service of the addressee.
- 24.1.3 If the Notice is sent or delivered in a manner provided by clause 24.1.2, it must be treated as given to and received by the party to which it is addressed:
- (a) if sent by post, on the 5th Business Day (at the address to which it is posted) after posting;
  - (b) if sent by email, subject to clause 24.1.3(d), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; or
  - (c) if delivered personally or left at the person's address, upon delivery; and
  - (d) if received after 5 p.m. at the place of delivery, or on a day which is not a Business Day at the place of delivery, the next Business Day at the place of delivery.
- 24.1.4 A Notice sent or delivered in a manner provided by clause 24.1.2 must be treated as validly given to and received by the party to which it is addressed even if:
- (a) 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
  - (b) the Notice is returned unclaimed.
- 24.1.5 Any Notice by a party may be given and may be signed by its solicitor.
- 24.1.6 Any Notice to a party may be given to its solicitor by any of the means listed in clause 24.1.2 to the solicitor's business address or email.
- 24.1.7 Any Notice with respect to:
- (a) an Incident; or
  - (b) Operational Direction,
- may be given orally where the informing party considers that:
- (c) the recipient requires the information contained in the Notice urgently; and
  - (d) there is insufficient time to serve a written Notice,
- provided that such oral notice is subsequently also provided in writing within 24 hours.

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## 25. Confidential Information

### 25.1 Confidential information

25.1.1 Except as permitted by this clause 25, each party must:

- (a) hold the Confidential Information in strict confidence and not disclose the Confidential Information to any person;
- (b) take all steps reasonably necessary to safeguard the confidentiality of the Confidential Information; and
- (c) immediately notify the disclosing party of any potential, suspected or actual disclosure of the Confidential Information not permitted by this Agreement.

25.1.2 A party ("**Receiving Party**") in receipt of the other party's ("**Disclosing Party**") Confidential Information may disclose Confidential Information:

- (a) to its officers, employees and legal, financial or economic advisers (on a need to know basis);
- (b) to the extent required by:
  - (i) any Law or the requirements of the Receiving Party's Accreditation;
  - (ii) ONRSR;
  - (iii) any Government Agency; or
  - (iv) the rules of any stock exchange;
- (c) to the ACCC for the purpose of Part IIIA of the *Trade Practices Act 1974* (Cth) or to the DTP for the purpose of the Rail Management Act or any of the instruments made by any relevant Government Authority under the Rail Management Act;
- (d) to the extent required for the purpose of any mediation, expert determination, arbitration or legal proceeding involving the Receiving Party. A Receiving Party will use reasonably practicable efforts to consult with the Disclosing Party unless it deems this as inappropriate in the circumstances (acting reasonably) or is otherwise prevented from doing so; or
- (e) with the consent of the Disclosing Party.

25.1.3 The provisions of this clause 25 survive termination of this Agreement for a period of six years.

25.1.4 Each party acknowledges that:

- (a) 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
- (b) 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.

25.1.5 For clarification, the confidentiality obligations under this Agreement apply in addition to all obligations under the Rail Management Act.

**25.2 Personnel**

The Operator must ensure that its Personnel do not do or omit to do anything which, if done by the Operator, would be a breach of this clause 25.

**25.3 Injunctive relief**

The Operator acknowledges that damages are not a sufficient remedy for Access Provider for any breach of this clause 25 and Access Provider is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this clause 25 by the Operator, in addition to any other remedies available to Access Provider at law or in equity.

**25.4 Confidentiality deed**

25.4.1 If required by Access Provider, the Operator must ensure that its Personnel authorised by it to have access to Access Provider Confidential Information sign a confidentiality deed in a form acceptable to Access Provider.

25.4.2 The Operator must ensure that its Personnel observe the same degree of confidentiality and secrecy as the Operator is bound under this Agreement.

**25.5 Preservation of Access Provider Confidential Information**

The Operator must take whatever measures are necessary to prevent the disclosure or misuse of Access Provider Confidential Information, including:

25.5.1 establishing and complying with (and ensuring that its subcontractors comply with) security measures to safeguard Access Provider Confidential Information from unauthorised access or use; and

25.5.2 keeping all Access Provider Confidential Information under the Operator's control.

**25.6 Return or destruction of Access Provider Confidential Information**

The Operator must immediately on termination or expiry of this Agreement or on Access Provider's written request at any other time:

25.6.1 return Access Provider Confidential Information to Access Provider provided to or obtained or accessed by the Operator under this Agreement; or

25.6.2 destroy Access Provider Confidential Information so that it is incapable of being accessed by any person; and

25.6.3 provide a statutory declaration to Access Provider that all Access Provider Confidential Information has been returned or destroyed in accordance with this clause 25.6.

**25.7 Notice**

The Operator must promptly notify Access Provider if it suspects, or becomes aware of, any use or disclosure of, or access to, the Access Provider Confidential Information which is inconsistent with this clause 25.7.

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## 26. Dispute Resolution

### 26.1 Procedure to settle disputes

26.1.1 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.

26.1.2 The parties must try to settle a dispute using the following steps:

- (a) first, formal notification of the dispute in writing by either party;
- (b) second, negotiation of the dispute under clause 26.2
- (c) third, mediation of the dispute under clause 26.3 (if agreed); and
- (d) fourth, determination of the dispute under clause 26.4,

unless the parties agree that the dispute is best resolved by an independent expert in accordance with clauses 26.5.1 and 26.6, or clauses 26.5.1 and 26.6 otherwise apply.

26.1.3 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 26.1 and 26.2, 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.

### 26.2 Negotiation

26.2.1 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 26.5 applies), then within 10 Business Days of a party notifying the other party of a dispute under clause 26.1.2(a), Contract Managers (or their nominees) from each party must meet and use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions.

26.2.2 If the Contract Managers cannot resolve the dispute within 20 Business Days after the date that notice was provided under clause 26.1.2(a) (or a longer period agreed by the parties in writing), the parties must ensure that their Dispute Resolution Contact specified in section 1 of Schedule 1 (or their nominees) meet, undertake good faith negotiations and use their reasonable endeavours to resolve the dispute.

26.2.3 If a dispute is not resolved in accordance with this clause 26.2 within 30 Business Days after the notification of the dispute under clause 26.1.2(a), either party may refer the dispute for mediation by:

- (a) giving notice to the other party (**Mediation Notice**); and
- (b) submitting the matter in accordance with clauses 26.3.

### 26.3 Mediation

26.3.1 If the negotiation of the dispute under clause 26.2 is not resolved within 30 Business Days after the notification of the dispute under clause 26.1.2(a), the parties will submit the matter to mediation to be administered by the Australian Disputes Centre (**ADC**) on the following terms:

- (a) the mediator will be chosen by the parties, each party acting reasonably, within 40 Business Days of notification of the dispute under clause 26.1.2(a) and appointed within a further 10 Business Days;

- (b) in the absence of agreement by the parties as to the mediator within 40 Business Days of notification of the dispute under clause 26.1.2(a), the mediator will be appointed on the application of any party by the President of the ADC within 10 Business Days of the application;
- (c) the parties must endeavour to procure that a mediator appointed under clauses 26.3.1(a) or 26.3.1(b):
  - (i) assists the parties to reach a resolution of the dispute by agreement;
  - (ii) 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;
  - (iii) does not make his or her personal or professional views known to the parties or give any professional advice to a party;
  - (iv) is entitled to terminate the mediation if, after consultation with the parties, the mediator forms the view that the mediation process is exhausted; and
  - (v) does not to 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;
- (d) each party to the mediation may appoint a person, including a legally qualified person, to represent it or assist it in the mediation;
- (e) each party will bear its own costs relating to the preparation for and attendance at the mediation;
- (f) the costs of the mediator will be borne equally between the parties; and
- (g) 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.

## 26.4 Arbitration

- 26.4.1 Subject to clauses 26.5 and 26.6, if a dispute between any of the parties relating to or arising out of this Agreement is not settled under clause 26.2 or clause 26.3, either party may by written notice to the other refer the dispute to arbitration for determination on the following terms:
- (a) 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 Chartered Institute of Arbitrators, Australia;
  - (b) 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;
  - (c) the Commercial Arbitration Act 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, 20 and 21 will not apply;
  - (d) each party may be represented at the arbitration by a qualified legal practitioner;
  - (e) 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;

- (f) the decision of the arbitrator with regard to the dispute will be binding upon the parties; and
- (g) if the parties have referred or agreed to refer a dispute to an arbitrator under this clause 26.4, 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 26.5.1 and 26.5.2 unless both parties so agree.

## **26.5 Independent Expert**

26.5.1 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:

- (a) the parties will, each acting reasonably, jointly choose and appoint an independent expert;
- (b) 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;
- (c) in the absence of agreement by the parties as to the independent expert within 10 Business Days of notice of under clause 26.5.1, the independent expert will be appointed on the application of any party by the President of the Institute of Arbitrators Australia;
- (d) 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;
- (e) the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
- (f) the independent expert's decision will be final and binding on the parties; and
- (g) 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.

26.5.2 If the parties have referred or agreed to refer a dispute to an independent expert under clause 26.5.1, the expert must determine all the issues comprised in or relating to the dispute, and no such issue can be referred to arbitration.

## **26.6 Amalgamation of disputes**

26.6.1 The parties may by agreement permit a dispute being dealt with under this clause 26 to be amalgamated with any other dispute or disputes involving one or both parties.

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## **27. Force Majeure**

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

27.1.1 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:

- (a) fully describe the event of Force Majeure;
- (b) specify the obligations and the extent to which it cannot perform those obligations;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures it proposes to adopt to remedy or minimise the effects of the Force Majeure.

## **27.2 Suspension of obligations**

27.2.1 Following a notice of Force Majeure in accordance with clause 27.2.1, 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.

## **27.3 Remediating or minimising Force Majeure**

27.3.1 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.

27.3.2 Without limiting clause 27.3, the Access Provider must take reasonable steps within a timeframe which is feasible 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.

27.3.3 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 it is entitled if this clause 27.3.3 applies and releases the Access Provider from any other liability.

## **27.4 Mitigation**

27.4.1 Subject to clauses 27.3.1 to 27.3.3, 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.

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## **28. Connecting networks**

28.1.1 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.

28.1.2 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.

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## **29. General**

### **29.1 Amendment**

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

### **29.2 Entire Agreement**

29.2.1 This Agreement:

- (a) contains the entire agreement between the parties; and
- (b) supersedes and cancels any contract, agreement, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) relating to the subject matter of this Agreement prior to entering into this Agreement.

### **29.3 Further assurance**

29.3.1 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.

### **29.4 Legal costs and expenses**

29.4.1 Each party must pay its own legal costs and other expenses in relation to the negotiation, preparation and execution of this Agreement and related documents, unless expressly stated otherwise.

### **29.5 Waiver**

29.5.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right whether under this Agreement or otherwise.

29.5.2 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.

29.5.3 A waiver is not effective unless it is in writing.

29.5.4 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.

### **29.6 Rights and remedies**

29.6.1 The rights and remedies conferred on a party by this Agreement are in addition to all other rights and remedies of that party.

### **29.7 Change of Control**

29.7.1 In the event of a Change of Control taking place, the Operator must provide Access Provider with written notice of such Change of Control within 5 Business Days of the Change in Control occurring.

### **29.8 Assignment**

29.8.1 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 use of any Approved Train

Path, without the prior written consent of the Access Provider (which consent shall not unreasonably be delayed or withheld).

- 29.8.2 The Operator acknowledges and agrees that the Access Provider may assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Operator to any State governmental department, administrative office, Public Sector Agency or any special purpose vehicle (however constituted) or any combination of such entities in the event of a State government restructure or other reorganisation. The Access Provider will give written notice to the Operator if it exercises its rights under this clause 29.8.2, the Operator must execute such documents and do such things as the Access Provider may reasonably require to give effect to any such assignment, novation or transfer by the Access Provider.
- 29.8.3 The Operator must, if requested by the Access Provider, execute a novation agreement in the form reasonably requested by the Access Provider.

## **29.9 Nature of relationship**

This Agreement does not:

- 29.9.1 create any relationship of partnership, joint venture, employment, agency or representation between the parties; or
- 29.9.2 give a party the power or authority to:
- (a) act for another party as an agent or otherwise;
  - (b) exercise any right on behalf of another party; or
  - (c) incur any obligation on behalf of another party.

## **29.10 Severability**

29.10.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

## **29.11 No merger**

29.11.1 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.

## **29.12 Good Faith**

- 29.12.1 The parties must act reasonably and in good faith in exercising their rights and performing their respective obligations under this Agreement.
- 29.12.2 For the purpose of clause 29.12.1, good faith means acting fairly, reasonably, honestly and with integrity at all times.

## **29.13 Counterparts and Electronic Signatures**

29.13.1 This Agreement may be executed in counterparts, all of which when taken together constitute one document.

29.13.2 Each party acknowledges and agrees that subject to any Law that requires otherwise, this agreement may be signed by any method of electronic signature that a party uses (at its discretion), including signing on an electronic device or by digital signature.

#### **29.14 Governing law and jurisdiction**

29.14.1 This Agreement is governed by and must be construed in accordance with the laws in force in Victoria.

29.14.2 The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

#### **29.15 Exception and exemption clauses**

29.15.1 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.

#### **29.16 Parties and Partnership**

29.16.1 If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

29.16.2 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

29.16.3 A party which is a trustee is bound both personally and in its capacity as a trustee.

29.16.4 This Agreement does not create any relationship of partnership, joint venture, employment, agency or representation between the parties; or give a party the power or authority to:

- (a) act for another party as an agent or otherwise;
- (b) exercise any right on behalf of another party; or
- (c) incur any obligation on behalf of another party.

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# Signing Page

Executed by the parties as an Agreement.

Signed by a duly authorised delegate for )  
and on behalf of **V/Line Corporation** )  
**ABN 91 273 289 190** in the presence of: )  
)

.....

Witness

.....

Signature of delegate

.....

Name of Witness (Print)

.....

Name and position of delegate (Print)

.....

Date

.....

Date

Executed by [Operator Name] ABN  
[Operator ABN] in accordance with section  
127 of the *Corporations Act 2001* (Cth) in  
the presence of:

---

Signature of director

---

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

---

Name of director (print)

---

Name of director / company secretary (print)

---

Date:

# Schedule 1 Agreement Details

## 1. Parties

### 1.1 Access Provider

|                                   |   |
|-----------------------------------|---|
| <b>Name</b>                       | V/Line Corporation                            |
| <b>ABN</b>                        | 91 273 289 190                                |
| <b>Address</b>                    | Level 6, 452 Flinders Street, Melbourne, 3000 |
| <b>Email</b>                      | freight@vline.com.au                          |
| <b>Attention (for notices)</b>    | Director Freight & Third-Party Access         |
| <b>Contract Manager</b>           | [Insert Contract Manager]                     |
| <b>Dispute Resolution Contact</b> | [Insert Dispute Resolution Contact]           |

### 1.2 Operator

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Name</b>                       | [Insert Name]                       |
| <b>ABN/ACN</b>                    | [Insert ABN/ACN]                    |
| <b>Address</b>                    | [Insert Address]                    |
| <b>Email Address</b>              | [Insert Email Address]              |
| <b>Attention (for notices)</b>    | [Insert attention details]          |
| <b>Contract Manager</b>           | [Insert Contract Manager]           |
| <b>Dispute Resolution Contact</b> | [Insert Dispute Resolution Contact] |

## 2. Term

|                          |   |
|--------------------------|---|
| <b>Term</b>              | From the <b>Commencement Date</b> to the <b>Expiry Date</b> . |
| <b>Commencement Date</b> | The date of execution by both parties                         |
| <b>Expiry Date</b>       | 5 years from the Commencement Date.                           |
| <b>Further Term</b>      | 5 Years   |

## Schedule 2 Pricing

### 1. Introduction

The Access Provider will charge operators of freight the fees as set out below in this Schedule 2.

### 2. Pricing

All prices relating to access will be determined by reference to the publicly available document available at the Freight Information and Access webpage located on the Access Provider website at <https://corporate.vline.com.au/Network-Access/freight>.

#### 2.1 Pricing subject to review

Pricing as set out Freight Information and Access webpage will be updated on each Review Date in accordance with Schedule 3 and the updated pricing will be payable from the applicable Review Date.

#### 2.2 Illustrative Pricing

Pricing for the 2025-26 financial year is included for illustrative purposes. The pricing for the applicable financial year will be included via reference to the V/Line website

#### EXAMPLE PRICING

| Flagfall                   | (\$/km) |
|----------------------------|---------|
| Bulkgrain                  | -       |
| Other freight (containers) | \$1.26  |

| Variable rate              | (\$/1000 GTK) |
|----------------------------|---------------|
| Bulkgrain                  | \$5.85        |
| Other Freight (containers) | \$2.33        |

| Geelong Grain Loop           | Flat fee |
|------------------------------|----------|
| Access to Geelong Grain Loop | \$108.88 |

| Access to certain Sidings & Terminals* | Per vehicle |
|--|-------------|
| Melbourne Arrival Sidings              | \$18.45     |
| Tottenham Yard                         | \$18.45     |

| Cancellation Fee**                                       | Per cancellation |
|--|------------------|
| Total planned path less than 100km in length (fixed fee) | \$200.00         |
| Total planned path more than 100km in length (fixed fee) | \$350.00         |

\* No fee for the first 24 hours of access to the listed sidings and terminals. Access fee listed applies per vehicle for each consecutive 24-hour period of access.

\*\*Cancellation Fee only applies to Unscheduled Services.

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## Schedule 3      Annual review - variation of Access Fees

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### 1.      Access Fee variation formula

On each Review Date during the term of this Agreement, all the Access Fees (including for the avoidance of doubt Cancellation Fees) will be varied in accordance with the following formula, with the updated Access Fees to apply from the Review Date:

A = current price

B = CPI rate increase Melbourne (for the March quarter immediately prior to the Review Date)

N = new Access Fee

$A + (A \times B) = N$  (new Access Fee)

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## **Schedule 4      Scheduled Train Path**

Operator's Scheduled Train Path:

As outlined in the approved V/Line Network Service Plan

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## Schedule 5 Passenger Priority

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### 1. Principle of Passenger Priority

#### Implementation by an Access Provider of passenger priority

In accordance with the Guidelines, the Access Provider Network Service Timetable shall include regular freight paths during non-peak periods as specified by the DTP.

The provision of a passenger service has priority over any non-passenger service unless, in the particular circumstances, the interference with a non-passenger service resulting from according that priority would in the opinion of the HTfV be serious and unreasonable.

This may include priority in relation to:

- a) the allocation of Train Paths;
- b) service planning;
- c) real time control and incident management; and
- d) Network maintenance and other works.

Access Providers will prioritise Train Paths associated with the operation (inclusive of the positioning required) of scheduled passenger services.

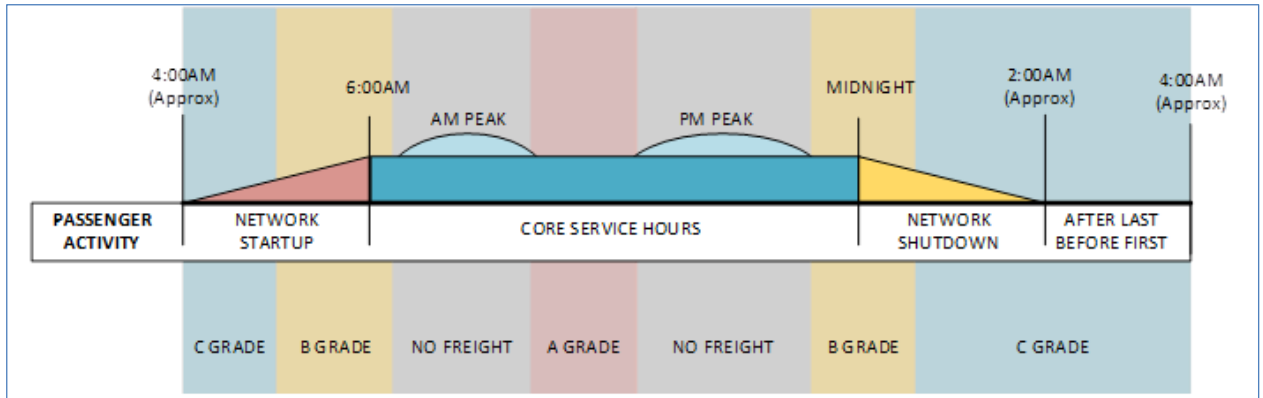
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### 2. Best Practice Principles Timetable

| Order of priority | Service pathway  |
|-------------------|--|
| High              | Peak period passenger services<br>Critical passenger services<br>Critical passenger positioning movement<br>Freight services<br>Non-critical passenger services and positioning movements<br>Ad-hoc empty passenger services |
| Low               | Track machinery  |

- Freight service pathways will generally not be available where they do (or are likely to) impact the operation of peak period passenger services.
- Critical passenger positioning movements are train movements that cannot be altered without having a major adverse impact on the service provision or robustness of other passenger services (e.g. scheduled empty or passenger train movements that travel to a terminus, turn-back and form passenger services).
- Non-critical passenger services and positioning movements are train movements that have the prime purpose of supporting an operational need rather than a passenger service need and can be altered without having a major adverse impact on the service provision or robustness of other passenger services (e.g. scheduled empty or passenger train movements that have the prime purpose of returning a train to a depot for stabling or maintenance)
- Ad-hoc empty passenger services are unscheduled services where the operator needs to operate a train in response to an operational need on a particular day only. (e.g. re-position a train to a depot if it ended up in the wrong location after a disruption).

### 3. Indicative Freight path grades by time



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## **Schedule 6      Use of the Network**

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### **1.      Parts of the Network to which this Agreement applies:**

Applies to the whole of the V/Line network

## Schedule 7 V/Line Policies and Procedures

| Document   | Document Number |
|--|-----------------|
| Access Arrangement 2025  |                 |
| Operation Handbook 2025  |                 |
| Book of Rules and Operating Process 1994   |                 |
| Emergency and Crisis Management Plan   | SAPR-34         |
| Network Service Plan - Freight Schedules<br><a href="https://corporate.vline.com.au/Network-Access/Network-service-plan">https://corporate.vline.com.au/Network-Access/Network-service-plan</a>                          |                 |
| Network Service Plan – Passenger Schedules<br><a href="https://corporate.vline.com.au/Network-Access/Network-service-plan">https://corporate.vline.com.au/Network-Access/Network-service-plan</a>                        |                 |
| Network service Plan – Network operating requirements and addenda<br><a href="https://corporate.vline.com.au/Network-Access/Network-service-plan">https://corporate.vline.com.au/Network-Access/Network-service-plan</a> |                 |
| Train operating data<br><a href="https://corporate.vline.com.au/Network-Access/Network-service-plan">https://corporate.vline.com.au/Network-Access/Network-service-plan</a>  |                 |
| Rail Operator Access Seeker Application Form<br><a href="https://corporate.vline.com.au/Network-Access/freight">https://corporate.vline.com.au/Network-Access/freight</a>  |                 |

## **Appendix A.**

### **Geelong Grain Loop**

82/83 km post in Gheringap, South West of Melbourne

### **Melbourne Arrival Sidings**

Port of Melbourne

### **Tottenham Yard**

9km post in Tottenham, West of Melbourne



This map has been designed for legibility in A3 (6pt font) printing. The map is better printed enlarged as A2 (8.5pt font) or optimally printed as A1 (12pt font).