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V/LINE ACCESS ARRANGEMENT

FINAL DECISION

JUNE 2012

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CHAIRPERSON'S INTRODUCTION

The *Rail Management Act 1996* (RMA) sets out the Victorian rail access regime that applies to providers of declared rail infrastructure. The RMA prescribes that the Commission is responsible for administering the Victorian Rail Access Regime.

Through Declaration Orders, the Victorian Government determines which infrastructure services are declared for access. The Victorian regional rail network is declared for access and V/Line is the operator and access provider for this rail network. Under the RMA, V/Line must at all times have an approved access arrangement in place with the Commission.

Access arrangements encourage competition and efficiency in the rail freight industry by allowing freight operators to access certain declared infrastructure. This enables freight operators to compete in markets where competition is dependent on such access.

On 30 March 2012, the Commission received an application from V/Line to renew its access arrangement. On 5 April 2012, the Commission published a notice in the Melbourne Age and Herald Sun newspapers regarding V/Line's application and undertook a stakeholder consultation process whereby stakeholders and the public were invited to make a submission regarding the application. Two submissions were received from stakeholders and these submissions were considered in preparing the Commission's draft decision.

The Commission's draft decision regarding V/Line's proposed access arrangement was published on 31 May 2012 and a further round of consultation undertaken. Two submissions to the draft decision were received (one from the Public Transport Development Authority, operating as Public Transport Victoria, and one from a member of the public) and those submissions were considered in preparing the Commission's final decision.

In response to the draft decision, V/Line submitted a revised access arrangement on 14 June 2012. In making its final decision, the Commission has had regard to whether the revised access arrangement contains the specific elements and meets the relevant requirements of the RMA.

The Commission has made its final decision **to approve** V/Line's revised access arrangement. This final decision outlines the Commission's reasoning for deciding to approve the revised access arrangement.

The Commission thanks V/Line and stakeholders for their contributions through this approval process. This has assisted the Commission to make its final decision on V/Line's access arrangement.

Dr Ron Ben-David
Chairperson

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ACRONYMS

| | |
|-------|---|
| CPA | Competition Principles Agreement |
| CPI | Consumer Price Index |
| DoT | Department of Transport |
| EMCMP | Emergency Management and Crisis Management Plan |
| ESC | Essential Services Commission (Victoria) |
| GTK | Gross Tonne Kilometres |
| MPM | Major Periodical Maintenance |
| MSIS | Mode Shift Incentive Scheme |
| NSP | Network Service Plan |
| PIL | Primary Infrastructure Lease |
| PTDA | Public Transport Development Authority (operating as Public Transport Victoria) |
| RIL | Regional Infrastructure Lease |
| RMA | <i>Rail Management Act 1996</i> |
| TEU | Twenty-foot Equivalent Unit |
| TK | Train Kilometres |
| VRAR | Victorian Rail Access Regime |
| WACC | Weighted Average Cost of Capital |

GLOSSARY

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| Above rail | Refers to activities associated with the provision and operation of train services including provision of rolling stock and freight handling. |
| Above rail costs | Costs related to train operation, rolling stock and related activities/services. |
| Above rail operator | A person or company that operates (runs) rolling stock (trains) for movement of freight/cargo. Usually a train/freight operator. |
| Access | The use of infrastructure owned and/or operated by another party. |
| Access agreement | A standard (pro forma) agreement between an access provider and an access seeker that sets out the contractual terms of access. Can be negotiated between the parties. Once signed becomes contractual. |
| Access arrangement | Sets out the process and protocols and information for obtaining access to the rail network. It includes the access agreement. Also referred to as an access undertaking by the Commonwealth (ACCC) and other State regulators. |
| Access arrangement information | Information provided by the access provider to an access seeker. |
| Access charge | A price paid in return for access to infrastructure. |
| Access holder | A freight operator (i.e. network user) who has signed an access agreement with V/Line and thus holds access rights (i.e. entitlements to train paths) to the rail network. |
| Access provider | A provider of declared rail transport services (i.e. V/Line). |
| Access regime | The overarching legislative framework for access (see Part 2A of the <i>Rail Management Act 1996</i>). |

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| Access seeker | A person seeking access to a declared rail transport service. Usually an above rail operator. Becomes an access holder once they sign an access agreement with the access provider. |
| Account Keeping Rules | A Commission Instrument which requires access providers to maintain and provide the Commission with accounting records and accounts. |
| Ballast | The material upon which the sleepers bear. It is used to form the road bed of a railway track. It is laid on the base formation with the rack laid on top of it and provides a storm water drainage medium. |
| Ballast cleaning | The process of extracting the ballast from the railway track and shaking or washing the ballast to remove detrimental material, and then returning it back to the track. The process improves the performance of the ballast by removing the material that tends to lubricate the ballast particles. The process is most commonly performed using a track mounted machine and the track is relatively undisturbed while it occurs. |
| Below rail | The rail track infrastructure, including rail, sleepers, signals, overhead power systems and track fencing. |
| Below rail costs | Costs related to the rail track and related structures. |
| Bridges (over and under the track) | Overbridges are those that go over the track and are typically pedestrian footbridges or road bridges. Underbridges are under the track and typically convey rivers, subways, or roadways. The bridge structure is separate from the earth formation that is usually under the track but abuts the earth formation at the 'abutments'. |
| Capacity Use Rules | A Commission Instrument which improves the functionality of a third party access regime by ensuring a fair and reasonable allocation of network capacity to access seekers and users. |
| Commission Instruments | Rules and guidelines made by the Commission which are intended to ensure that the Victorian Rail Access Regime is efficient and effective. |
| Culvert | A form of underbridge conveying a stream, but with a |

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| | <p>construction that is integral to the formation or embankment consisting of the earth under a railway track.</p> |
| Declaration Order | <p>An Order of the Victorian Governor in Council pursuant to section 38I of the <i>Rail Management Act 1996</i> that is the mechanism by which certain transport infrastructure services are declared (made available) for access.</p> |
| Diamond crossing | <p>The cross-over railroad structure of two rail tracks is sometimes called a diamond junction or diamond crossing in reference to the diamond-shaped centre. The two tracks need not be the same gauge.</p> |
| Draft decision | <p>A decision of the Commission made under section 38ZB of the <i>Rail Management Act 1996</i>.</p> |
| Final decision | <p>A decision of the Commission made under section 38ZF of the <i>Rail Management Act 1996</i>.</p> |
| Freight Operators | <p>A person or company that operates (runs) rolling stock (trains) for movement of freight/cargo. See above rail operator.</p> |
| Economic regulator | <p>An economic regulator is usually established independent of government and has a role in regulating particular industries and/or service providers, most often those having some form of monopoly or market power.</p> |
| Gross tonne kilometres (GTK) | <p>GTK is the rail industry standard of track usage. GTK is the product of the gross tonnes of the train and the distance travelled (kilometres). A single gross tonne-km is not very much – it's like a watt-hour. Generally thousand GTK is used when calculating charges and other usage-related indicators as the cost is then something reasonable – much as electricity charges are generally quoted 'per kwh' rather than 'per wh'. The gross tonnes are the sum of the weight of the locomotive, carriages and wagons (known as the tare weight) as well as the weight of any freight they may be carrying (known as the net tonnes).</p> |
| Indemnity | <p>A sum of money that is required to compensate a party for a particular loss or damage it may suffer during the performance of the contract.</p> |
| Inspections | <p>This activity monitors the condition of the asset either</p> |

visually or by electronic or mechanical means. It is usually performed on a regular and predictable basis and is 'routine' in nature. Inspections occur on train running assets such as bridges, track, signals, communications equipment and overhead traction equipment, as well as stations.

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| Interconnection | Connection to an access provider's declared railway track. |
| Intermodal | The use of various modes of transport to move cargo/freight. |
| Major Periodical Maintenance (MPM) | Maintenance and asset renewal undertaken to maintain a given level of service potential. Includes re-railing, re-layering, rail grinding etc. |
| Negotiation Guidelines | A Commission Instrument that sets out requirements for each access provider to establish a process for negotiation of access agreements that is fair and equitable. |
| Net tonne | Weight of the freight or the payload. |
| Network Management Rules | A Commission Instrument which provides protocols for how access to the network will be managed in order that the access provider does not hinder third party access or discriminate against third party network users. |
| Non-reference service | A declared rail transport service that is not a reference service (see definition of reference service below). |
| Operator | A company that runs rolling stock (that is, an above rail operator). |
| Performance bond | An irrevocable bank guarantee, letter of credit or insurance bond callable by the access provider in a form approved by the access provider. |
| Pricing Order | An Order of the Governor in Council pursuant to section 38J of the <i>Rail Management Act 1996</i> specifying the principles and authorising the Commission to determine the methodology for calculating access prices for declared rail transport services. |
| Proposed access arrangement | An access arrangement submitted to the Commission for approval under section 38W of the <i>Rail Management Act 1996</i> . |

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| Rail gauge | The distance or width between the inner sides of the rails. |
| (Rail) grinding | The process of grinding the head of the rail with a machine equipped with grinding stones and which travels longitudinally along the railway while the stones perform their grinding transversely to the direction of the machine's travel. |
| Rail joint | A mechanism to join two sections of rail by mechanical means, usually by bolts and side plates (fishplates). 'Insulated rail joints' are used to define the limits of an electrical section of the rail for signalling purposes. 'Mechanical rail joints' are used where the lateral stability of the track is not sufficient to resist forces generated in the heating and cooling of the rail in the summer and winter months respectively. Otherwise most rail is welded to form long lengths of 'continuously welded rail'. |
| Rail siding | A low-speed track section distinct from a main track or branch track. It may connect to the main track or to other sidings at either side. |
| Reactive maintenance | Maintenance that is a 'reaction' to a failure of the asset and is therefore unplanned with the failure not predicted. In a well-run railway this type of maintenance is minimised. |
| Reference service | A declared rail transport service that is provided by an access provider to itself or a related body, or is likely to represent a significant proportion of demand by access seekers, or is provided by means of a terminal. |
| Renewals | As distinct from 'repair', a process that replaces large sections of the asset such as the replacement of rail or sleepers. Renewals are usually planned well in advance because the work requires large pieces of equipment and is likely to disrupt the train traffic. Unplanned renewals occur where catastrophic and otherwise undetected failure occurs. |
| Revised access arrangement | An access arrangement submitted to the Commission in response to its draft decision, for approval under section 38ZC of the <i>Rail Management Act 1996</i> . |
| Ring Fencing Rules | A Commission Instrument which aims to ensure that |

access is provided in a non-discriminatory way where an access provider is vertically integrated.

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| Rolling stock | A vehicle that operates on or uses a railway track or tramway track, and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle. |
| Routine maintenance | That maintenance which occurs on a regular basis, probably on a time cycle, and which involves minor train traffic disturbance and small machinery. A large part of routine maintenance is inspection of the condition of the asset. |
| Signalling | A system of electrical circuits, detectors and electrical switches that detects the location of trains and provides visible commands to train drivers and information to other railway workers. |
| Sleeper | The components of the railway track that keeps the rails a specified distance apart and transmits the load from the rails to the ballast. In Melbourne timber sleepers are the dominant form, but a program of using concrete sleepers has begun and these will be progressively introduced. Timber sleepers typically have a 20 to 25 year life because they deteriorate with time. Concrete sleepers have a reasonably indefinite life. |
| Standard gauge | Railways that have a distance between the inside edges of the rail of 1 435mm (or 4 feet 8 ½ inches). |
| Stevedore | Individual or firm employed for the purposes of loading and unloading a vessel. |
| Tamping | The process by which ballast is packed around the sleepers of a track to ensure the correct position for the location, speed and curvature. Can be done manually or mechanically by special 'tamping machines', usually independently powered track vehicles. |
| Twenty-foot Equivalent Unit (TEU) | The industry standard to measure containers. A 20-foot container's dimensions are twenty feet long (6.09 metres), 8 feet wide (2.4 metres) and 8 feet six inches high (2.6 metres). |

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| Terminal | A facility at which freight is loaded or unloaded from rolling stock, or stored, and includes hard-stands, equipment and other infrastructure used for the loading or unloading of freight from rolling stock at the facility. |
| Terminal ancillary services | Terminal services which include shunting, wagon maintenance and storage, which a user may not necessarily need to use when acquiring other terminal services. |
| Track kilometres (TK) | Total rail length including sections featuring double track or passing loops. |
| Track Standards | Track Standards represent the service level which an access provider will commit to providing access holders. It is defined as an average maximum operating speed per line section set out in Appendix 6 of V/Line's access arrangement. |
| Traction equipment | Equipment used in the reticulation of electrical power to an electric train. The equipment includes substations containing transformers and rectifiers, where power is captured from main power grids and converted to power suitable for the trains, and the wires and fittings that transmit the power to the pantograph which is the collection mechanism on the train. |
| Train operator | A company that runs rolling stock (that is, an above rail operator). |
| Train path | A time slot within which a train can travel through specific rail sectors. |
| Turnout (switch) | A section of track approximately 30 metres in length that permits the deviation of a train from one track to another. Two turnouts assembled back to back on parallel tracks constitute a 'crossover'. |
| Ultrasonic flaw detection (rail testing) | A system for examining the condition of rails to determine the integrity of the steel. The data is collected by an electronic instrument run along the track using ultrasonic pulses and the examination of the return signal from the rail. |
| Vertical integration | The degree to which a firm is integrated (that is, owns or |

controls both below rail and above rail operations in a market).

The Essential Services Commission (the Commission) is Victoria's independent economic regulator of certain industries prescribed by the Victorian government. The *Rail Management Act 1996* (RMA) prescribes that the Commission is responsible for administering the Victorian Rail Access Regime for the Victorian rail freight industry.

The purpose of the rail access regime is to encourage competition in rail transport services to promote the use of, and efficient investment in, rail infrastructure. It does this by allowing rail freight operators to access certain infrastructure provided by publicly and privately owned facilities in order to enable freight operators to compete in markets where competition is dependent on such access.

Through Declaration Orders, the Victorian Government determines which facilities and infrastructure services are subject to access.

In the case of V/Line, the Passenger Network Declaration Order 2005 and the Freight Network Declaration Order 2005 declare the rail infrastructure associated with the regional rail network for access.

1.1 V/Line's access arrangement

Under the RMA, an access provider must at all times have an approved access arrangement in place that covers its declared infrastructure. Access arrangements set out the indicative terms and conditions upon which the access provider of the declared infrastructure will provide access as well as the processes to be followed for gaining access to the rail network so that access seekers can run trains on the rail network to haul freight.

V/Line is the owner and operator of declared rail infrastructure (i.e. the regional rail network) and is an access provider for the purposes of the RMA. Its access arrangement is primarily used by rail freight operators such as Pacific National, El Zorro, South Spur (Qube Logistics), Interail (Queensland Rail) and Genesee and Wyoming for the provision of above rail freight services.

The RMA requires that an access provider must apply to the Commission to renew its access arrangement no less than 90 days prior to expiry of its access arrangement. V/Line's current access arrangement expires on 29 June 2012. Appendix A sets out the legislative requirements which an access provider must comply with.

On 30 March 2012, the Commission received an application from V/Line to renew its access arrangement

1.2 Commission's role and approval process

The Commission's role under the RMA is to assess and approve access arrangements submitted by owners or operators of declared infrastructure. In undertaking its assessment the Commission is required to take into account the matters outlined in section 38ZI of the RMA (see Appendix C for a summary).

The Commission is required to make its final decision to approve or not approve V/Line's access arrangement within 90 days of V/Line's application. However, before making its final decision, the Commission is required to prepare a draft decision. A summary of the Commission's approval process is set out in Appendix B.

Upon receiving V/Line's access arrangement application on 30 March 2012 the Commission:

- notified interested parties
- published a notice on its website and in the Herald Sun and The Age on 5 April 2012
- invited public submissions on V/Line's access arrangement by 27 April 2012 (the Commission received two submissions - one from Asciano, and one from Cargill)
- published its draft decision on 31 May 2012
- invited public submissions on the draft decision by 14 June 2012 (the Commission received two submissions), and
- received a revised access arrangement and agreement from V/Line in response to the draft decision on 14 June 2012.

1.3 Timelines

The statutory timeframes within which the Commission's approval process must be completed are very short. The Commission must make a final decision within 90 days of receiving a proposed access arrangement. However, before it releases a final decision, the Commission is required to release a draft decision and call for submissions for a period of 14 days.

Table 1.1 details the Commission's timetable in making its assessment and final decision.

Table 1.1 Timetable for the assessment

| <i>Process</i> | <i>Date</i> |
|---|---------------|
| Notify parties and publish notice | 5 April 2012 |
| Submissions on access arrangement application | 27 April 2012 |
| Draft decision | 30 May 2012 |
| Submissions on draft decision | 14 June 2012 |
| Final decision | 27 June 2012 |

1.4 Commission's final decision

The Commission's final decision is to **approve** V/Line's revised access arrangement.

In accordance with section 38ZC of the RMA, V/Line submitted a revised access arrangement on 14 June 2012 (see Appendix D). The Commission has assessed this revised access arrangement against the requirements of the RMA and the issues raised by the Commission in its draft decision, as required by section 38ZF(2) and (3) of the RMA.

In making its final decision, the Commission has taken into account matters listed in section 38ZI of the RMA. The Commission's consideration of these factors is reflected in the reasons for the Commission's final conclusions set out in chapters 3, 4 and 5 below.

The Commission made its final decision to approve V/Line's revised access arrangement on 27 June 2012. Under section 38ZR(5) of the RMA, if the Commission approves a revised access arrangement, it must be taken to have been approved on the day the previous binding access arrangement was due to expire. Accordingly, V/Line's revised access arrangement will commence on 29 June 2012 (being the date of expiry of the previous access arrangement) and will expire on 29 June 2015.

1.5 Structure of the Commission's final decision

This final decision addresses areas where the Commission made a draft decision requiring a response from V/Line. For the Commission's initial assessment of V/Line's price and non-price matters, readers are referred to the Commission's draft decision.

The structure of the final decision is as follows.

- Chapter 2 presents background information on V/Line and the regional rail network.
- Chapter 3 sets out the Commission's assessment of V/Line's proposed access prices.

- Chapter 4 sets out the Commission's assessment of V/Line's proposed track standards.
- Chapter 5 sets out the Commission's assessment of V/Line's proposed arrangements for non-price matters.
- The Appendices set out the legislative requirements, Commission's approval process, matters to be taken into account, revenue cap and WACC, V/Line's revised access arrangement and the Commission's consultant reports.

Any questions about this final decision may be directed to Dominic L'Huillier, Senior Regulatory Manager — Transport and Industry Sectors Branch on 03 9651 3782.

2 | V/LINE AND THE REGIONAL NETWORK

2.1 Who is V/Line?

V/Line is a State Government owned not-for-profit statutory rail corporation established under the *Rail Corporations Act 1996* (and continuing under the *Transport Integration Act 2010*), and is a state business corporation under the *State-Owned Enterprises Act 1992*. It is governed by the *Transport Integration Act 2010*, and is responsible to the Victorian Minister for Public Transport and Victoria's Treasurer.

V/Line is responsible for operating and managing the regional intra-state rail network since the State Government buy-back of the network from Pacific National in May 2007. V/Line operates the regional rail network under the Regional Infrastructure Lease (RIL), which is due to expire in 2017.

V/Line is an access provider for the purposes of the Victorian Rail Access Regime. Therefore, V/Line is required to submit an access arrangement covering the regional rail network to the Commission for assessment and approval.

V/Line is also responsible for providing regional passenger services under a franchise agreement with the Victorian Government. Under this agreement, V/Line is responsible for operating regional passenger rail and coach services as well as the network of regional rail stations. The franchise agreement, entered into in 2003, is due to expire in December 2012, with the Victorian Government having the option to extend the franchise a further 12 months.

While V/Line is vertically integrated in the passenger rail services market – that is, it provides both above rail passenger services and below rail track services – V/Line is not vertically integrated in the rail freight services market. This means it does not compete (i.e. does not provide freight operator services) in the above rail freight operator market.

2.2 Declaration orders

The Victorian rail access regime applies to providers of declared rail transport services. Declared rail transport services are rail transport services which have been declared by an order of the Governor in Council, on the recommendation of the Minister.

Two declaration orders have been made by the Governor in Council in relation to rail track services (and one for terminal services¹), outlining the relevant rail network infrastructure that is regulated for access under the Victorian Rail Access Regime. These are:

- the Passenger Network Declaration Order 2005, which declared all passenger services provided on the metropolitan and regional Victorian rail networks as declared rail transport services, and
- the Freight Network Declaration Order 2005, which declared all freight services provided on the metropolitan and regional Victorian rail networks as declared rail transport services.

2.3 Leases

The declaration orders were made by the Governor in Council in 2005, and are defined in terms of leases that were in place at the time, such as the Primary Infrastructure Lease (PIL). The PIL was Pacific National's lease over the regional rail network before the buy-back of the network by the State Government.

After the Government buy-back of the network in May 2007, the PIL was replaced by the Regional Infrastructure Lease (RIL), under which the three parties to the lease are VicTrack, the Director of Public Transport, and V/Line.

It should be noted that the Victorian Government has established the Public Transport Development Authority (PTDA), under the *Transport Integration Act 2010*. It has assumed relevant functions of the Director of Public Transport on April 2012 when it commenced operation.² The PTDA operates as Public Transport Victoria (PTV). PTV is the statutory authority that administers Victoria's train, tram and bus services.

Under the RIL, VicTrack (the owner of the infrastructure) leases the network to the Director of Public Transport (Department of Transport) who then sub-leases it to V/Line. This makes V/Line the access provider of the declared regional rail network, consisting of infrastructure referred to originally under the PIL and used to provide passenger and freight rail transport services.

Now that the PTDA has commenced operation, the RIL will continue as restated between V/Line, VicTrack and the PTDA (rather than 'the Director').

2.4 What infrastructure is subject to access?

The regional intra-state rail network is declared for access. It is owned by VicTrack, and operated by V/Line. The network consists of 3 420 km of railway tracks, which

¹ The Dynon Terminal Order 2005 declared terminal services provided within the Dynon precinct as declared rail transport services.

² <http://www.transport.vic.gov.au/about-us/legislation/legislation-establishing-the-ptda>.

includes 1 540 km of track used by passenger services and freight trains (referred to as the mixed network), and 1 880 km of track currently used by freight trains (referred to as the freight only network).

The network includes regional broad gauge lines to:

- Geelong and Warrnambool
- Ballarat, Ararat and Mildura/Merbein
- Kulwin
- Hopetoun (standard gauge)
- Yaapeet (standard gauge)
- Robinvale
- Bendigo and Swan Hill/Piangil
- Echuca, Moulamein (partially open) and Deniliquin
- Seymour and Shepparton/Tocumwal
- Traralgon and Bairnsdale
- some freight lines within metropolitan Melbourne and the South Dynon fuel depot, and
- the Southern Cross Station passenger yard.

Map 2.1 shows the Victorian regional rail network, including the passenger rail and freight-only lines.

2.5 Users of the regional rail network

V/Line currently has five access agreements in place for freight rail operators using the regional rail network. These operators are:

- Pacific National (a subsidiary of Asciano)
- El Zorro
- South Spur (Qube Logistics³)
- Interail (a subsidiary of Queensland Rail), and
- Genesee and Wyoming.

Table 2.1 outlines the freight services operated by each of these users.

Pacific National holds a long-term (10 year) access agreement with V/Line, due to expire in 2017.⁴ The other operators each have a rolling agreement with V/Line to access the regional rail network.

V/Line has indicated that the term of the access agreements are set to coincide with the expiry of the current access arrangement, and may be renegotiated upon the outcome of the Commission's access arrangement assessment.

³ Qube Logistics operates freight services covering both road and rail. It is part of Qube Logistics Holdings, listed on the ASX.

⁴ V/Line 2012, *V/Line access arrangement renewal*, Application to the ESC (public submission), March, p. 5, available at www.esc.vic.gov.au.

Table 2.1 Train services in Victoria & southern NSW

| <i>Operator</i> | <i>Service</i> | <i>Commodities hauled</i> | <i>Avg. services per week</i> |
|-----------------------------|---------------------------|---|-------------------------------|
| Pacific National (Asciano) | Wodonga, Riverina | Chemical, paper, paper products and other rural products | N/A |
| | Shepparton, Tocumwal | Rice, grains, dairy products, stock foods, canned and fresh fruits, wines | 3 |
| | Merbein, Donald, Ballarat | Wines, mineral sands, fresh fruits, grains, stock foods and malt | 3 |
| | Warrnambool | Dairy products, grains and stock foods | 5 |
| | Maryvale | Imported pulp and exported paper products | 6 |
| El Zorro | Portland, Morwell | Mineral sands | 7 |
| South Spur (Qube Logistics) | Deniliquin | Rice and grains (containerised) | 6 |
| Interail (Queensland Rail) | Horsham | Grain, stock foods and meat | Ad hoc |
| Genesee and Wyoming | N/A | Grain | Not active |

Source: V/Line response to Commission information request. N/A means information not available.

The price issues of an access arrangement relate to what the access provider (V/Line) charges access seekers (users) to use the services declared for access. This chapter summarises the Commission's assessment of V/Line's access prices.

3.1 Commission's approach

The Commission is required to determine an efficient price for rail access. Given the current context within which rail freight operates – that is, strong competition from road – the Commission has interpreted the efficient price as one that sets the access price for freight services equal to the incremental cost that freight traffic imposes on the regional network. This is the approach the Commission adopted in its 2011 assessment of Metro Trains Melbourne (Metro's) access arrangement. Pricing at incremental cost is the lowest efficient price that maximises the potential for freight's on-going use of the regional rail network.

For sections of the V/Line network where freight is the only user, this requires access prices to be set with the objective of recovering at least the efficient forward looking (cash) costs, namely the operating and maintenance costs associated with providing the network.

Therefore, for the V/Line network:

- the efficient prices for the freight-only lines are set to recover from all freight users no less than the total costs of operating and maintaining the relevant line sections, and
- on the mixed lines (where both passenger and freight lines operate), it is assumed that passenger services set the maintenance standards and the lines will be maintained indefinitely by V/Line through funding from the Government.⁵ Therefore, the prices to be charged to freight users will be the incremental costs that freight users impose on those networks, including future maintenance costs which are variable with freight usage.

⁵ Passenger networks are maintained to a higher track standard than required for freight operations. This typically leads to a higher total cost of maintenance per track kilometre for mixed lines than for freight only lines.

3.2 Commission's assessment of access prices

The Commission has undertaken a detailed review of prices as part of this review. Given V/Line did not submit any formal costing or a financial model associated with its access arrangement application, the Commission engaged consultants Booz & Company to provide an independent assessment of what the efficient rail access prices should be for the regional rail network. The detailed pricing assessment is set out in Appendix E.

In parallel, the Commission also commissioned advice from engineering firm GHD. GHD has undertaken a review of the maintenance activities and costs of V/Line in relation to the declared network that it operates. The GHD review focussed on the efficiency of the maintenance practices and costs proposed by V/Line in its submission. GHD has determined that the unit costs associated with V/Line's estimates are efficient industry costs, but noted that V/Line's Asset Management Plan as submitted does not necessarily reflect the full costs of maintaining the network in a steady state. As a result, GHD has recalculated a set of costs for each line that reflect a program of work designed to maintain the network. GHD's review is set out in Appendix F.

In assessing V/Line's proposed access prices, the Commission and its consultants have had regard to the information and historical data requested by the Commission and provided by V/Line, the consultant's own projections of demand and costs and the independent engineering assessment conducted by GHD.⁶

3.2.1 V/Line's network

V/Line's declared infrastructure network can be categorised into two sub-networks:

- the freight only network which provides access for freight trains only, and
- the passenger network or mixed network which provides for a mixture of freight and passenger services.

Given the lack of available information, the Commission and its consultants have determined efficient costs for these two sub-networks.

For the purpose of the Commission's analysis of efficient costs, there is no distinction made between bulk grain freight and other freight. In other words, the incremental costs per train kilometre (TK) and costs per gross tonne kilometre (GTK) will be the same irrespective of the commodities carried. The final access prices charged may vary by market, but this is associated with the capacity to pay

⁶ The consultant's review was a desktop analysis and did not involve consideration of the current condition of V/Line's assets. The underlying assumption is that V/Line will be able to deliver the track to nominated track standard within its existing funding envelope. The consultant's analysis assessed the efficient expenditure required to continue to maintain the track in a steady state condition, having regard to the track standard, but did not allow for any maintenance deficit that may or may not currently exist.

of different freight markets rather than the costs freight trains impose on the V/Line network. This matter is discussed further below in section 3.3.

Freight only network

For the freight only network, efficient prices from freight operators should recover no less than the total costs of operating and maintaining the relevant line sections on a fit for purpose and sustainable basis. This cost has been assessed at \$25.4 million per annum by the Commission's consultants. Based on forecast annual GTK of 677 million, this represents an average cost of \$37.60 per '000 GTK for freight services on the freight only lines.

Passenger (mixed network)

Consistent with its 2011 assessment of Metro's access arrangement, the Commission has determined that efficient access prices for the passenger network should reflect the incremental costs that freight imposes on the network. This includes future maintenance costs which are variable with freight usage.

Across all classes of track used by freight and passenger services, the Commission's consultants determined the incremental costs imposed by freight at \$6.94 per '000 GTK, comprising \$5.51 per '000 GTK for incremental maintenance costs and \$1.43 per '000 GTK for incremental operations costs.

The incremental cost freight imposes on the passenger network of \$6.94 per '000 GTK is much less than the average cost of freight's use of the freight only network of \$37.60 per '000 GTK, as the former includes only the costs that vary with usage, whereas the latter includes total costs (including the fixed costs of network maintenance and overheads that do not vary with usage).

For the mixed network, those fixed costs are assumed to be recovered from passenger services (given passenger services set the maintenance standards for those networks). For the freight only network, the fixed costs need to be recovered from freight services.

Geelong Grain Loop and Yards

Two additional access prices also need to be assessed, namely for sidings and yards controlled by V/Line and the Geelong Grain Loop.

No detailed cost or usage data were provided nor made available in relation to these services. The Commission's consultants consider that the current price of \$12.82 per wagon-day as proposed by V/Line is comparable to the charges determined by the Commission for VicTrack who have similar sidings available for use by third parties, and on this basis the proposed price is accepted.

In terms of the Geelong Grain Loop, this is a facility with approximately 4.05 km of dual-gauge loop. The Commission's consultants have estimated the annual

maintenance cost around \$70 000 per annum with an incremental cost related to usage of around half that. An expected use of around 450 trains per annum⁷ gives a floor price of around \$78 per tonne, which matches V/Line's proposal of \$78.04 per tonne. The proposed V/Line price is therefore accepted.

3.3 Commission's maximum efficient access prices

The Commission's assessment of efficient costs is \$37.60 per '000 GTK for freight only lines and \$6.94 per '000 GTK for passenger lines. When multiplied by the forecast GTK on the respective networks of 677 and 650 million, the total efficient cost to be recovered from freight services across the total V/Line network is \$30 million.

V/Line's proposed access prices do not distinguish between the freight only lines and passenger lines, but instead focus on different markets (i.e. bulk grain and other freight, including containers). This may be a reasonable approach as the capacity of freight operators to pay access charges (and the relative competitiveness of rail transport with road transport) is less related to the parts of the network they are travelling on and more related to the commodity being carried.

The Commission accepts that it may be efficient to recover costs through market differentiated prices, noting that the regulatory regime requires that users of like services are charged consistently (i.e. they are charged the same price if they operate in the same end market).

Bulk grain and other freight access prices

The efficient price per GTK required to recover the full \$30 million is \$22.60 per '000 GTK.⁸ This maximum access rate of \$22.60 per '000 GTK will apply to both reference services: bulk grain and other freight.

This maximum rate is a weighted average of the efficient price on the passenger network of \$6.94 per '000 GTK and the efficient price on the freight only network of \$37.60 per '000 GTK.

Although a maximum price of \$22.60 per '000 GTK might be seen as excessive for any freight traffic that only utilised the passenger network (where the efficient price is \$6.94 per '000 GTK), the maximum price would still be well below the ceiling price for freight's use of that network⁹ and is unlikely to reflect the actual prices

⁷ Based on expected use of 500 000 tonnes per annum and 11 000 tonnes per train.

⁸ \$30 million divided by a total of 1 327 million GTK (650 for mixed lines and 677 for freight only lines).

⁹ \$22.60 is well below the efficient price for the freight only network of \$37.60 and it is reasonable to assume that the ceiling price for freight's use of the passenger network would be no less than this price.

charged (given the financial support freight traffic presently receive from the Government).

The Commission recognises that most freight traffic will utilise both the passenger network and the freight only network, and freight traffics will utilise those networks to varying degrees. The actual prices charged by V/Line have also varied by commodity carried rather than by the network used. The Commission has sought to minimise complexity in the pricing approach and has therefore adopted a single maximum price for all freight traffic.

Normally two part tariffs, with a proportion of the charge linked to Train Kilometres (TKs) rather than GTKs, are applied to encourage longer trains and the efficient use of track capacity and to reflect the fact that some costs such as train control are related to train movements rather than train size. However, the Commission has maintained a single GTK-based rate given that there are no real track capacity issues on the regional network (and passenger trains are given priority) and almost 90 per cent of the efficient cost is maintenance related (where GTK is a better reflection of cost causality than TK). In other words GTK is a better cost driver as it accounts for the relative difference in freight type – for example, a train carrying cement will be heavier than a train carrying grain freight and therefore, on a GTK basis, would pay more.

In practice, the actual charges will be less than the Commission's maximum access charge for both reference services, with the actual charges reflecting the extent of Government financial assistance to each market. The actual charges faced by customers are not a matter for the Commission to address, with the caveat that revenue from reference freight services taken together should not exceed \$30 million per annum.

The Commission's final maximum access prices are summarised in table 3.1 under the Commission's final conclusion (these prices are unchanged from the draft decision).

3.4 V/Line's response to the draft decision

In its response to the Commission's draft decision, V/Line notes that the Commission's determined access price of \$22.60 is a maximum price. V/Line proposes to continue to charge its current access prices as outlined in Appendix 1 of its access agreement. These prices are presented in column 2 of table 3.1.

In practice, the actual access prices charged to operators by V/Line are those outlined in column 1 of table 3.1. These prices reflect the directions of the Minister for Public Transport and the extent of Government financial assistance to each market.¹⁰ Where the Minister for Public Transport does not direct V/Line to charge

¹⁰ As advised by the Department of Transport.

a lower price, the maximum access prices as set out in V/Line's access arrangement will apply.

3.5 Commission's final conclusion

The Commission considers that V/Line's proposed prices are acceptable as they fall below the Commission's maximum determined efficient access price.

In undertaking its pricing assessment, the Commission was required to establish efficient prices for freight's use of the V/Line network. The Commission has determined that the maximum efficient prices should be no more than the incremental costs of freight's use of the network. The incremental costs of freight's use of the network are calculated in two parts:

- for the freight only network, the total costs of operating and maintaining the relevant line sections, and
- for the mixed network, the incremental costs imposed by freight users, including future maintenance costs which are variable with freight usage.

Given the incomplete information available to the Commission, the efficient cost analysis required estimates of future throughput projections and the forecast efficient costs required to maintain the network on a fit for purpose and steady state basis.

The Commission's efficient cost estimates have also relied upon an independent engineering assessment conducted by GHD. Although GHD determined that the unit costs associated with V/Line's estimates are efficient industry costs, V/Line's Asset Management Plan as presented does not appear to reflect the full costs of maintaining the network in a steady state. Therefore GHD has recalculated a set of costs for each line that reflects a program of work designed to maintain the network in a steady state condition. The Commission accepts the advice of GHD that V/Line's processes for performing its maintenance work are efficient.

The Commission's efficient total cost estimate for freight use of the V/Line network is \$30 million per annum, incorporating incremental operations, maintenance and overhead costs. The estimated efficient price that V/Line would need to charge freight operators to meet the full \$30 million is \$22.60 per '000 GTK.

Table 3.1 Commission's maximum access prices (\$2011-12)

| <i>Services</i> | <i>Current access prices charged^a (set by DoT)</i> | <i>V/Line proposed access prices in access arrangement^b</i> | <i>V/Line converted prices^d</i> | <i>Commission maximum access prices</i> |
|---|---|--|--|---|
| | <i>(1)</i> | <i>(2)</i> | <i>(3)</i> | <i>(4)</i> |
| <i>Bulk grain</i> | | | | |
| Flag-fall (\$/TK) | 0.000 | 5.719 | | |
| Variable rate (\$/'000 GTK) | 4.130 | 7.607 | 12.14 | 22.60 |
| <i>Other freight including containers</i> | | | | |
| Flag-fall (\$/TK) | 0.876 | 0.876 | | |
| Variable rate (\$/'000 GTK) | 1.646 | 1.646 | 2.34 | 22.60 |
| <i>Other access</i> | | | | |
| Geelong Grain Loop (\$/access) | 78.04 | 78.04 | N/A | 78.04 |
| Yards ^c (\$/vehicle per day) | 12.82 | 12.82 | N/A | 12.82 |

^a Determined by the Minister for Public Transport. The Minister directs V/Line to charge these prices to assist rails competitiveness with road. See www.vline.com.au/about/networkaccess/pricing.html

^b These prices are a continuation (escalation) of V/Line's 2009 access prices which are themselves an escalation of the prices determined by the ESC in 2006. These prices are adjusted each year as per the access arrangement escalation formula.

^c For access to certain sidings: the Somerton Sidings, Melbourne Arrival Sidings and Tottenham Yard.

^d V/Line's two part tariffs (column 2) converted to a single variable rate charge per '000 GTK rate (updated from draft decision).

4 | TRACK STANDARDS

Rail lines are maintained to different specifications which, among other things, determines the average maximum operating speeds that a train may travel on each particular line. The average maximum operating speed links very closely to the track standard.¹¹

There is a relationship between the right to charge a price for access services and the services provided by the access provider. That is, track standards in effect represent the service level which an access provider (in this case V/Line) will commit to in return for a fee (access price) paid by access seekers (a freight operator).

The service standard is also important for regulatory purposes as it is the starting point for costing and determining what the access price should be. This is because the costs of operating and maintaining the network are determined by the standard to which the network is set and maintained.

Hence, in a context where railway networks recover their costs¹² (e.g. in the coal railway networks), track standards are important because they describe the service that is offered and provide clarity on the specific service levels the service provider is providing. However, in a context where railway networks do not recover their costs, and access seekers are not paying the full cost of the service they are provided, the implications are different.

This chapter sets out the Commission's draft proposal for an alternative mechanism by which track standards may be set and varied, V/Line's response to the Commission's draft proposal and the Commission's final conclusions on V/Line's revised access arrangement in respect of these matters.

¹¹ Other attributes linked to track standard may include axle weight, which determines the size of locomotives and loading of wagons that are allowed on a particular line.

¹² That is, where the access revenue earned by the access provider covers the costs of the services it provides.

4.1 V/Line's initial proposal

During consultation for V/Line's previous access arrangement renewal in 2009 and as part of the Commission's consultation process regarding the review of the Victorian Rail Access Regime in 2009–10, V/Line put forward that track standards should not be regulated by the Commission under the access regime.¹³

V/Line argued that the level of track standards it is able to maintain is dependent on how much funding it receives from the Department of Transport year to year, stating that:

*The current regime leaves V/Line in a difficult position in that the Commission seeks to hold V/Line to track standards which it may not have the funding to deliver.*¹⁴

In its 2012 proposed access arrangement, V/Line again proposed that it be able to vary its track standards, proposing that:

*...the required track standard for the purpose of the Arrangement be able to be varied by notification to the Commission and the provision of relevant information regarding MPM funding and the approved Works Plan(s).*¹⁵

To give effect to this, V/Line inserted clause 4.1.h in its proposed access arrangement, which provides that V/Line may vary its track standards from time to time:

- by agreement with the Public Transport Development Authority as a result of changes to the Annual Works Plan, and
- if the Public Transport Development Authority directs that V/Line close part or all of an applicable line.

V/Line also inserted clause 4.1.f in its proposed access arrangement, which allows V/Line to vary its track standards or book a line out of service from the time of lodgement of an application for the variation of its access arrangement under section 38ZO of the RMA.¹⁶

4.2 Commission's draft proposal on track standard variations

The Commission's draft decision noted that V/Line's concerns in respect of its ability to comply with and be held accountable by the Commission to its track

¹³ V/Line 2009, *Response to the ESC Draft Report on Review of the Victorian Rail Access Regime*, December, p. 3.

¹⁴ *Ibid.*, p. 5.

¹⁵ V/Line 2012, *V/Line access arrangement renewal application to the ESC*, March, p. 4.

¹⁶ The performance standard is defined as the average maximum operating speed across the network, which is specified in Appendix 6 of the access arrangement.

standards appear valid, given access revenue from access prices is insufficient to cover its costs of operating and maintaining the network. Therefore, V/Line is dependent on Government funding being provided to maintain the track standard (see Commission's draft decision section 4.1 for further elaboration of these issues).

The Commission also noted that as Government funding decisions are subject to budget priorities and can vary from year to year, there is a need for some flexibility with regard to track standards to reflect the level of funding actually provided. However it also noted Asciano's submission that any change to the track standard should be subject to consultation with network users and customers prior to the change.¹⁷

As a result, the Commission's draft conclusion was that these factors should be taken into account in developing a process for varying track standards.

In relation to clause 4.1.f in V/Line's proposed access arrangement, the Commission concluded that it is inappropriate for V/Line to book a line out of service or vary its track standards before any variation application has been approved (except temporarily for safety reasons). The Commission's draft conclusion required clause 4.1.f to be removed.

However, the Commission proposed that clause 4.1.h be removed and replaced with the Commission's recommended process to amend track standards (box 4.1).

Box 4.1 Commission's draft proposal

The Commission sought stakeholder comments on the workability of the following proposal:

V/Line is to remove clauses 4.1.f and 4.1.h and rename the existing clause 4.1.g as clause 4.1.k, and insert the following clauses:

4.1.f A line may be booked out of service or the Performance Standard may be varied from time to time in accordance with the process set out in clauses 4.1.g to 4.1.j to reflect the annual funding available for the maintenance of the network, if approved by the Essential Services Commission.

(continued next page)

¹⁷ Asciano 2012, *Submission to the Essential Services Commission of Victoria in relation to their Consultation on the V/Line 2012 Access Arrangement*, April, p. 5.

(continued)

- 4.1.g *V/Line must consult with access holders prior to applying to the Essential Services Commission to book a line out of service or vary the Performance Standard.*
- (i) *V/Line's consultation process must provide access holders with relevant information relating to the track, maintenance requirements to maintain existing standards and information about the proposed change to the Performance Standard.*
 - (ii) *V/Line must ensure that information provided to access holders is sufficient to allow network users to understand the likely impact of any proposed change on their access entitlement.*
 - (iii) *V/Line must provide access holders with a reasonable time frame in which to submit a response to the proposed change to the Performance Standard.*
 - (iv) *V/Line must have regard to all submissions provided by stakeholders in determining its proposed Performance Standard.*
- 4.1.h *Following consultation with access holders, and prior to submitting an application to the Commission, V/Line must obtain the agreement of the Public Transport Development Authority that its proposed Performance Standard is consistent with available funding and existing parameters of the Regional Infrastructure Lease.*
- 4.1.i *V/Line must apply to the Essential Services Commission to book a line out of service or vary its Performance Standard. In its application:*
- (i) *V/Line must provide a written endorsement from the Public Transport Development Authority that the proposed Performance Standard is consistent with available funding and existing parameters of the Regional Infrastructure Lease;*
 - (ii) *V/Line must provide copies of any submissions received from stakeholders during its consultation process, and a statement that it had regard to these submissions in determining its proposed Performance Standard; and*
 - (iii) *V/Line must detail the expected impact on access holders of the proposed change to the Performance Standard.*
- 4.1.j *Following any decision by the Essential Services Commission on an application by V/Line to book a line out of service or vary the Performance Standard:*
- (i) *V/Line must advise all access holders of the Essential Services Commission's decision;*
 - (ii) *V/Line must provide all access holders any details on the timing of implementation of any change to the Performance Standard; and*
 - (iii) *V/Line must publish any revised Performance Standard on its website and include it in its Information Pack.*

4.3 V/Line's response to the Commission's draft proposal

V/Line agrees with and has adopted the Commission's proposed process for varying track standards, and has amended the clauses in section 4.1 of its revised access arrangement as recommended by the Commission in its draft decision. In addition, V/Line has made reference to this new set of clauses throughout its revised access arrangement and standard access agreement where relevant.

V/Line has also amended clause 4.1.k in its revised access arrangement to include a requirement that V/Line must notify the Commission if it temporarily books a line out of service or varies the track standards for safety reasons.

4.4 Stakeholder views

The PTDA (operating as Public Transport Victoria) has endorsed the Commission's proposal for varying track standards. In its submission, it stated that:

The Public Transport Development Authority, operating as Public Transport Victoria (PTV), is comfortable with the role ascribed to it in the Draft Decision. In particular, PTV is comfortable that V/Line must obtain the agreement of PTV prior to submitting an application to alter a Performance Standard in the manner set out in the Draft Decision. PTV would also be comfortable with this proposition extending to cases where V/Line proposes to book a line out of service.¹⁸

4.5 Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to the track standards, by incorporating the Commission's proposed mechanism for varying track standards.

The Commission's final conclusion is that, in the current context in which freight operates in Victoria, this mechanism is pragmatic and provides for flexibility with regard to track standards to reflect the level of funding actually provided, while also providing comfort to users that they will be consulted about changes to track standards before the changes are implemented. The Commission is also satisfied that V/Line's amendment to clause 4.1.k, that is, V/Line must notify the Commission if it books out a line or varies a performance standard for safety reasons, is appropriate.

¹⁸ Public Transport Victoria (PTV) 2012, *Submission to the ESC Draft Decision*, June.

5 | NON-PRICE ISSUES

The non-price issues of an access arrangement include certain information that the access provider must make available to access seekers, various protocols and procedures regarding access that must be consistent with the Commission Instruments and a standard access agreement which provides the basis for agreeing the contractual terms and conditions of access between an access provider and access seeker.

This chapter outlines V/Line's response to the Commission's draft conclusions, and provides the Commission's final conclusions on whether V/Line's revised access arrangement is consistent with the RMA. It is organised into seven sections:

- information to be made available to the access seeker
- confidential information
- Capacity Use Rules
- Negotiation Guidelines
- Network Management
- other matters in the access arrangement, and
- access agreement terms and conditions.

5.1 Information to be made available to an access seeker

Section 38X(1)(c) of the RMA requires an access arrangement to include a description of the information (including the information pack and further information required under the Negotiation Guidelines) that the access provider will make available to an access seeker.

Commission's draft conclusion

In its draft decision, the Commission stated it would be beneficial for the access arrangement to include a succinct summary of the contents of the Information Pack, rather than simply referring to the relevant section of the Negotiation Guidelines in the definition of Information Pack in Appendix 5.

The Commission's draft decision required V/Line to amend its proposed access arrangement (in either clause 3.2.a or in the definition of Information Pack in Appendix 5) to include a summary of the contents of the Information Pack.

V/Line's response to the draft decision

V/Line has amended the definition of Information Pack in Appendix 5 of its revised access arrangement to include a summary of the contents of the Information Pack.

Stakeholder views

The Commission received a late submission from a member of the public in relation to the level of information that is available in the public domain via V/Line's website. The submission raises two issues: first, that a requirement to publish certain information (including master timetables, daily train plans and temporary variations in train paths) should be made a condition to the Commission approving the access arrangement; and second, that certain links to timetables on V/Line's website did not display the correct information.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to the information to be made available to an access seeker. Therefore, the Commission's conclusion is that V/Line's revised access arrangement is consistent with section 38X(1)(c) of the RMA.

The Commission considers that V/Line has complied with the requirements of the RMA to make information available to access seekers. Specifically, the Commission considers that V/Line's information pack and operating handbook address the requirements set out in the Negotiation Guidelines and Network Management Rules. These require, amongst other things, that certain information is to be provided to access seekers upon request (Negotiation Guidelines) or be published on V/Line's website for access seekers (Network Management Rules). Accordingly, the Commission does not consider it necessary to impose a general condition requiring V/Line to provide more detailed information about its passenger train services to the general public.

However, the Commission notes some minor issues with the Information Pack made available on V/Line's website – namely that some documents do not appear to have been updated or the links appear to be incorrect (for example certain freight schedules). The Commission notes that V/Line should ensure that it maintains an updated Information Pack on its website.

5.2 Confidential information

Section 38ZZZB of the RMA requires an access provider to establish and maintain system and business rules for the handling of confidential information. These system and business rules govern the use or handling of information supplied to the access provider in confidence by an access seeker or user, and the disclosure of this information.

The obligation imposed by section 38ZZZB arises separately from the Ring Fencing Rules, and therefore applies to all access providers. The Commission stated in its draft decision that the Ring Fencing Rules do not apply to V/Line.

Commission's draft conclusion

In clause 5.14 of its proposed access agreement, V/Line had made reference to procedures and systems developed by the access provider under clause 4 (establishment and maintenance of policies, procedures and systems) of the Ring Fencing Rules. In its draft decision, the Commission stated that, for clarity, this clause should also make reference to section 38ZZZB of the RMA.

The Commission's draft decision required that V/Line amend the final paragraph of clause 5.14 of its access agreement to read '*... procedures and systems developed by the Access Provider under clause 4 of the Ring Fencing Rules and section 38ZZZB of the RMA.*'

V/Line's response to the draft decision

V/Line has amended the final paragraph of clause 5.14 in its revised access agreement to make reference to section 38ZZZB of the RMA in addition to the Ring Fencing Rules.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to system and business rules for the handling and use of confidential information. The Commission's conclusion is that V/Line's revised access arrangement is consistent with section 38ZZZB of the RMA.

5.3 Capacity Use Rules

The Capacity Use Rules are designed to improve the functionality of the access regime by ensuring fair and reasonable allocation of network capacity to access seekers and users. The Capacity Use Rules have been made by the Commission as specified under section 38T of the RMA.

Section 38X(5)(c) of the RMA requires a proposed access arrangement to be consistent with the Capacity Use Rules.

Commission's draft conclusion

In its draft decision, the Commission stated that V/Line did not adequately address its requirements under section 6 of the Capacity Use Rules relating to protocols that address variation or surrender of a train path.

- Under section 6.3(a)(iv)(A) V/Line is required to prepare and maintain protocols for determining whether a train path will be reassigned as an unscheduled freight

- train path, including required degrees of utilisation of train paths and decision criteria for reassignment. V/Line did not provide these protocols.
- Under section 6.3(a)(vii) V/Line is required to prepare and maintain guidelines, principles and procedures relating to the permanent variation or surrender of a train path on the basis of a breach of relevant legislation or other requirement. V/Line did not provide these protocols described in clauses 6.3(a)(vii)(A) to (C) of the rules.
 - Under section 6.3(a)(viii) V/Line is required to prepare and maintain guidelines, principles and procedures to determine whether a user is no longer able or will no longer be able to utilise or fully utilise a freight train path (pursuant to clause 5.6 of the rules). V/Line partially addressed the requirements in clauses 6.3(a)(viii) of the rules in clause 7(b)(ii) of its operating handbook, but failed to address the following requirements:
 - in giving a user written notice pursuant to section 5.6 of the Capacity Use Rules, state that the notice is given under section 5.6 of the Capacity Use Rules (clause 6.3(a)(viii)(A)(1)), and
 - to act reasonably and in good faith when considering the user's response (clause 6.3(a)(viii)(B)).
 - V/Line did not address section 6.3(xi), which requires the protocols to contain principles and procedures for addressing complaints from a user or access seeker about an alleged failure of V/Line to comply with the Capacity Use Rules.

The Commission's draft decision required V/Line to amend its operating handbook to address the above requirements.

V/Line's response to the draft decision

In response to the draft decision, V/Line has redrafted sections of its Operating Handbook and submitted this to the Commission for approval. Specifically:

- Clause 7(b) has been renamed 'Surrender of Scheduled Train Path or variation to Unscheduled Service' clarifying that this clause (in practice) applies to both surrender and variation.
- Clause 7(b)(i) has been redrafted to account for permanent variation or surrender of a train path on the basis of a breach of relevant legislation or other requirement (i.e. a breach of the access agreement conditions).
- Clause 7(b)(ii) has been redrafted to account for the decision criteria and procedures to reassign a train path if it is underutilised (section 6.3(a)(iv)(A) of the Capacity Use Rules) and provide guidelines, principles and procedures for determining whether a user is no longer able or will no longer be able to utilise a train path (section 6.3(a)(viii) of the Capacity Use Rules).
- The final paragraph of the operating handbook has also been amended to account for principles and procedures for addressing complaints about an alleged failure of V/Line, in compliance with section 6.3(a)(xi) of the Capacity Use Rules.

Commission's final conclusion

The Commission has reviewed V/Line's operating handbook and is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to the Capacity Use Rules. The Commission's conclusion is that V/Line's revised access arrangement is consistent with the Capacity User Rules as required by section 38T of the RMA.

5.4 Negotiation Guidelines

The Negotiation Guidelines set out the requirements relating to the negotiation of access, and are intended to facilitate commercial negotiation for access on fair and reasonable terms. The Negotiation Guidelines have been made by the Commission as specified under section 38V of the RMA.

Section 38X(4) of the RMA requires a proposed access arrangement to be consistent with the Negotiation Guidelines.

Commission's draft conclusion

In its draft decision, the Commission found that V/Line's proposed access arrangement satisfied most of the requirements in the Negotiation Guidelines, and was mostly consistent with the guidelines as required by section 38X(4) of the RMA. However, in the following areas, V/Line's proposed access arrangement required amendment:

- Clause 2(f)(vi) requires V/Line to provide its protocols for the assessment of additional capacity works as part of the further information to be provided to an access seeker on request. Therefore V/Line's amendment to clause 3.2.b(v) was not appropriate and the previous wording was to be reinstated.
- In relation to interconnection, V/Line were required to amend clauses 3.6.e and 3.6.f to refer to interconnection and the correct clause numbers (clause 3.6 instead of 3.5).
- V/Line had specified an access application fee in clause 3.3.a and an interconnection application fee in clause 3.6.b(ii). These fees were not consistent with section 6.3 of the guidelines (read broadly), and were required to be removed from the access arrangement (see discussion below).

Section 6.3 of the guidelines specifically prohibits any fees or levies for assessing and determining access applications. Therefore V/Line's access application fee in clause 3.3.a of its proposed access arrangement is inconsistent with the guidelines. The Commission required this clause to be removed from V/Line's access arrangement.

In addition, any application fee for assessing and determining applications is prohibited. Therefore V/Line's interconnection application fee in clause 3.6.b(ii) is not consistent with the guidelines, and the Commission required that it be removed from the access arrangement.

The Commission's draft decision required V/Line to:

- amend clause 3.2.b(v) of its proposed access arrangement back to the previous wording, requiring V/Line to provide its protocols for assessing additional capacity works,
- amend clauses 3.6.e and 3.6.f of its proposed access arrangement to refer to interconnection and the correct clause numbers (clause 3.6 instead of 3.5), and
- amend clauses 3.3.a and 3.6.b(ii) of its proposed access arrangement to remove the application fees for access applications and interconnection applications, consistent with section 6.3 of the Negotiation Guidelines.

V/Line's response to the draft decision

V/Line has amended clause 3.2.b(v) in its revised access arrangement to refer to protocols for assessing additional capacity works. It has also amended clauses 3.6.e and 3.6.f of its revised access arrangement to refer to interconnection and the correct clause numbers.

In relation to fees, V/Line has amended clauses 3.3.a and 3.6.b(ii) of its proposed access arrangement to remove the application fees for access applications and interconnection applications, consistent with section 6.3 of the Negotiation Guidelines.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to consistency with the Negotiation Guidelines. The Commission's conclusion is that V/Line's revised access arrangement is consistent with the Negotiation Guidelines as required by section 38X(4) of the RMA.

5.5 Network Management Rules

The Network Management Rules provide protocols for how access to the network will be managed. They are intended to ensure that the network management practices are not used to hinder third party access or discriminate against third party network users, thereby distorting competition between above rail service providers. The Network Management Rules have been made by the Commission as specified under section 38U of the RMA.

Section 38X(5)(d) of the RMA requires a proposed access arrangement to be consistent with the Network Management Rules.

Commission's draft conclusion

To address concerns expressed by Cargill, the Commission's draft decision required V/Line to amend its access arrangement and/or operating handbook (where appropriate) to specify that V/Line must use reasonable endeavours to

provide a signaller at manual signal boxes when required by an unscheduled service out of hours.

V/Line's response to the draft decision

V/Line has amended clause 4.2.h in its revised access arrangement to provide that V/Line will use reasonable endeavours to provide a signaller at manual signal box locations (in respect of unscheduled services provided out of hours).

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to consistency with the Network Management Rules. The Commission's conclusion is that V/Line's revised access arrangement is consistent with the Network Management Rules as required by section 38X(5)(d) of the RMA.

5.6 Other matters in the access arrangement

In its draft decision, the Commission addressed other changes made by V/Line to its proposed access arrangement. The Commission was satisfied with most of the changes made by V/Line, however required V/Line to make certain amendments to clauses, as discussed below.

5.6.1 Section 4.3 – Revenue cap

Commission's draft conclusion

The Commission's draft decision required V/Line to amend clause 4.3.b in its proposed access arrangement to clarify that the revenue cap is an annual amount that applies each year over the term of the access arrangement.

V/Line's response to the draft decision

V/Line has amended section 4.3 of its revised access arrangement to remove references to the 'Freight Revenue Cap' and combine the previous clauses 4.3.a and 4.3.b into a single clause 4.3.a, as suggested by Asciano. V/Line has also amended the new clause 4.3.a to clarify that the revenue cap is an annual amount that applies each year over the term of the access arrangement.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to clause 4.3 in its revised access arrangement.

5.6.2 Appendix 1 – Pricing

Commission's draft conclusion

In Appendix 1 of its proposed access arrangement under the first clarification point (i) under the heading "For clarification", V/Line removed references to clauses 4.2.f and 4.2.g. However, V/Line did not replace the reference with an updated clause number, and therefore it is unclear to which clause the clarification refers to.

V/Line also included in its pricing tables the wording 'to be calculated by adding March CPI to the 2011/12 current rates'. The Commission noted that this wording is incorrect, as the access prices are calculated by multiplying the current rates by the applicable CPI increase (rather than adding the increase).

The Commission's draft decision required V/Line to:

- amend the clarification (i) in the introduction to Appendix 1 of its proposed access arrangement to clarify which clause it is referring to, and
- amend the pricing tables in Appendix 1 of its proposed access arrangement to correctly reflect how CPI increases are to be applied.

V/Line's response to the draft decision

V/Line has amended the clarification (i) in the introduction to Appendix 1 of its revised access arrangement to clarify that the liability of operators to pay the charges specified in Appendix 1 is subject to the operation of clauses 4.2.b, 4.2.f, 4.2.g and 4.2.h.

V/Line has also amended the pricing tables in Appendix 1 to correctly reflect that CPI increases are applied by multiplying (rather than adding) the rate by the March CPI.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to Appendix 1 in its revised access arrangement.

5.6.3 Appendix 5 - Definitions

Commission's draft conclusion

The Commission's draft decision required V/Line to:

- amend Appendix 5 of its proposed access arrangement to include a definition for the *Rail Management Act 1996*
- amend Appendix 5 of its proposed access arrangement to include a definition for Safety Interface Agreement

- amend the definition of Account Keeping Rules in Appendix 5 of its proposed access arrangement to refer to the rules made in accordance with section 38R of the RMA, and
- amend the definition for Review Date in Appendix 5 of its proposed access arrangement to remove '10' from the definition.

V/Line's response to the draft decision

V/Line has amended Appendix 5 of its revised access arrangement to include a definition for the RMA and Safety Interface Agreement. It has also amended the definition of Account Keeping Rules to refer to the rules made by the Commission in accordance with section 38R of the RMA, and corrected the definition of Review Date to refer to 2013/14.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to the definitions in Appendix 5 of its revised access arrangement.

5.6.4 Annexure A – Location diagrams

Commission's draft conclusion

In its proposed access arrangement, V/Line commented that the location diagrams in Annexure A will be updated to reflect changes to the Regional Infrastructure Lease as a result of state projects such as the Regional Rail Link.

The Commission's draft decision required V/Line to amend Annexure A to include V/Line's updated location diagrams.

V/Line's response to the draft decision

V/Line has reviewed the location diagrams contained in Annexure A of its revised access arrangement, and has noted that the diagrams are still current (as Somerton Roads, Tottenham and Arrivals Siding are still contained within the Regional Infrastructure Lease).¹⁹

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to ensuring that the location diagrams are up to date in its revised access arrangement.

¹⁹ V/Line 2012, *Response to Draft Decision – Cover letter*, June, p. 4.

5.7 Access agreement terms and conditions

The purpose of a standard access agreement is to provide a basis for agreeing the contractual terms and conditions of access. An access agreement once signed by the access provider (i.e. V/Line) and an access seeker (i.e. a freight operator) becomes the binding terms and conditions that govern how access is granted to the rail network.²⁰

In its draft decision, the Commission assessed a number of changes made by V/Line to the terms and conditions in its proposed access agreement. The Commission was satisfied with most of the changes made by V/Line, however required V/Line to make certain amendments to clauses, as discussed below.

5.7.1 Section 1 – Definitions

Commission's draft conclusion

In its proposed access agreement, V/Line included the sentence '... and any (sic) railway accident or incident that the Access Provider or the Operator is required to report or investigate under any applicable law' in the final bullet point of clause 1.39.

In addition, V/Line left a tracked comment in the proposed access agreement that it proposes to update the definition of 'Regional Infrastructure Lease' in clause 1.66 to reflect the date it is restated (once the Public Transport Development Authority commences operation).

The Commission's draft decision required V/Line to:

- amend the final bullet point in the definition of 'incident' in clause 1.39 to separate the words 'and any railway accident or incident that the Access Provider or the Operator is required to report or investigate under any applicable law' from the final bullet point (as per the previous access agreement), and
- amend the definition of 'Regional Infrastructure Lease' in clause 1.66 to reflect the date it is restated, or remove reference to the future date.

V/Line's response to the draft decision

V/Line has amended the definition of 'incident' in clause 1.39 of its revised access agreement to reflect the previous access agreement.

²⁰ It should be noted, however, that both access seeker and access provider are free to negotiate outside the standard access agreement and reach a different access agreement, including in relation to access prices, providing that both parties agree. However, where such negotiations fail, the standard access agreement becomes the fall back agreement.

V/Line has also amended the definition of 'Regional Infrastructure Lease' in clause 1.66 of its revised access agreement to remove all references to dates.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to the definitions in section 1 of its revised access agreement.

5.7.2 Variation and surrender of a train path (clause 3.1)

Clause 3.1 of the access agreement relates to the variation and surrender of a train path. V/Line included a new clause 3.1.3 in its proposed access agreement (and reflected in clause 7(b)(iii) of its operating handbook) which grants the access provider the right to vary or surrender an operator's approved train path if the operator has terminated its freight haulage contract with a customer, and if that train path is required by another operator for the continuation of the customer's freight haulage. Essentially, this means that if a customer contracts a different operator to haul the freight for which the train path has been granted to the original operator, that train path may be transferred to the new operator.

In its submission, Asciano argued that the principle behind this clause should be refined as there may be circumstances where the incumbent operator's freight path may be used to service new or existing customers.²¹ In particular, Asciano noted that where a train services more than one customer (in a mixed train consist), the other customers should not lose their train path due to the loss of one customer.

Instead, Asciano suggested that the access agreement should provide for the customer to request a transfer of the freight path, and the request should not be unreasonably refused by the operator.

The Commission noted that V/Line's operating handbook already included a similar clause granting V/Line the right to surrender a train path where a haulage contract has been terminated (previously clause 8(b) of V/Line's operating handbook). The new clause 3.1.3 in the proposed access agreement (and clause 7(b)(iii) of the operating handbook) provide for the same right to surrender a train path as the previous clause 8(b); however the previous clause provided that this may only be done where the original operator of the train path will no longer utilise that train path.

Commission's draft conclusion

In its draft decision, the Commission recognised that the transfer of a freight path to another operator (without adhering to the notice requirements that would otherwise apply) may be necessary to ensure maximum utilisation of the network, and the continuation of a customer's freight haulage. However, the Commission

²¹ *Asciano 2012, op cit*, p. 8.

also noted Asciano's concerns with respect to other existing customers in a mixed train consist losing their train path. The Commission's draft conclusion was that it is only appropriate to transfer a train path if the original freight operator will no longer utilise the path for an existing customer contracted to use that path.

The Commission also noted an incorrect clause reference in clause 3.1.5 of the proposed access agreement, which needed to be updated.

The Commission's draft decision required V/Line to:

- amend clause 3.1.3 of its proposed access agreement (and clause 7(b)(iii) in its operating handbook) to provide that a train path may only be transferred due to the termination of a contract if the original operator will no longer utilise that train path for an existing customer contracted to use that train path, and
- amend clause 3.1.5 of its proposed access agreement to refer to clause 3.1.5(c), rather than 3.1.4(c) (which no longer exists).

V/Line's response to the draft decision

V/Line has amended clause 3.1.3 in its revised access agreement (and clause 7(b)(iii) of its operating handbook) to reflect that a train path may only be transferred due to the termination of a contract if the original operator has no other rail freight haulage contract with a customer that requires the continued use of the approved train path or scheduled train path group.

In addition, V/Line has amended clause 3.1.5 in its revised access agreement to refer to the correct clause.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to variation and surrender of a train path in clause 3.1 of its revised access agreement (and clause 7(b)(iii) of its operating handbook).

5.7.3 General maintenance and lines booked out of service (clauses 6.1 to 6.7)

Clause 6.1 of the access agreement relates to general maintenance, and clauses 6.2 to 6.7 relate to booking lines out of service. These clauses refer to other clauses in the access arrangement which relate to varying track standards.

In addition, V/Line included a new clause 6.3 relating to consultation with operators when booking lines out of service or varying the performance standard. V/Line has included the clarification in clause 6.4 (previously 6.3) that it is not required to give notice to the operator under the new clause 6.3 where access is suspended or terminated due to safety reasons.

Commission's draft conclusion

As a result of the Commission recommending a new set of clauses for varying track standards, the draft decision required subsequent amendments to be made to clauses 6.1, 6.2, 6.4 and 6.6 of V/Line's proposed access agreement.

Further, the Commission found that clause 6.4 should be clarified to specify that V/Line is not required to *consult* with the operator under clause 6.3 where access is suspended or terminated due to safety reasons, however is still required to *notify* the operator in these circumstances.

The Commission's draft decision required V/Line to:

- amend clause 6.1 to refer to the Performance Standard as adjusted under clauses 4.1.f to 4.1.j
- amend clause 6.2 to read *'The Operator acknowledges that, notwithstanding anything else in this Agreement, the Performance Standard may vary during the period of the Agreement pursuant to clauses 4.1.f to 4.1.j of the Access Arrangement.'*
- amend clause 6.4 to replace the reference to clause 4.1.g with clause 4.1.k
- amend the final sentence in clause 6.4 to read *'The Access Provider is not required to ~~give notice to~~ consult the Operator under clause 6.3 where access to a Line is suspended or terminated due to safety reasons, however, is required to notify the Operator of the suspension or termination.'*, and
- amend clause 6.6 to remove the first bullet point, and to read *'... amended or booked back into service, from the date V/Line considers that the safety risk has been addressed. Restored access to a Line will be available on the terms and conditions of this Agreement.'*

V/Line's response to the draft decision

V/Line has amended clauses 6.1, 6.2, 6.4 and 6.6 in its revised access agreement as required by the Commission's draft decision.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to clauses 6.1, 6.2, 6.4 and 6.6.

5.7.4 Track occupations (clauses 6.8 to 6.15)

V/Line included a new section in its proposed access agreement regarding track occupations. This section, in clauses 6.8 to 6.15, was included by V/Line to reflect changes to its operating handbook, and provide clarity around track occupations.

Commission's draft conclusion

In its draft decision, the Commission stated that clauses 6.14.1 and 6.14.2 should include words requiring V/Line to use reasonable endeavours to provide notice to access users before major capital works, and provide access users with reasonable details of any changes to the project plan.

Specifically, the Commission's draft decision required V/Line to:

- amend clause 6.14.1 of its proposed access agreement to state that V/Line 'must provide the Operator with at least 3 months' notice (including details of the nature, scope, extent and timing) of future Major Capital Works Projects 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 Projects is known by V/Line in advance of the 3 months' notice period;' and
- amend clause 6.14.2 to state that V/Line 'must use reasonable endeavours to meet the V/Line 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 V/Line must provide the Operator with reasonable details of any significant change in the nature, scope, extent or timing of a Major Capital Works Project;'.

V/Line's response to the draft decision

V/Line has amended clauses 6.14.1 and 6.14.2 in its revised access agreement in line with the Commission's recommendations. Further, to improve the reading of the clauses, V/Line has removed the first 'must' from each of the clauses 6.14.1 to 6.14.4 and inserted 'must' in the first line of clause 6.14.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to clauses 6.14.1 and 6.14.2, and is satisfied that V/Line's other amendments to clauses 6.14.1 to 6.14.4 are appropriate.

5.7.5 Train Manifest (clause 8.1)

Clause 8.1 of the access agreement lists the information that the operator is required to provide to V/Line in a train manifest. Previously, this clause stated that the information must be accurate in all material respects to the best of the operator's knowledge. In its proposed access agreement, V/Line amended this clause to remove the words 'to the best of the operator's knowledge', on the basis that, for safety, the operator should be able to provide accurate information.²²

²² V/Line 2012, *Schedule of changes to access agreement*, p. 2, available at www.esc.vic.gov.au.

Asciano argued that the previous wording was sufficient and should be restored.²³

Commission's draft conclusion

In its draft decision, the Commission's approach was to strike a reasonable balance for both parties, such that the operator should use reasonable endeavours to ensure this information is accurate in all material respects.

The Commission's draft decision required V/Line to amend clause 8.1 of its access agreement to state that '*the operator must use reasonable endeavours to ensure this information is accurate in all material respects*'.

V/Line's response to the draft decision

V/Line has amended clause 8.1 of its revised access agreement to include the Commission's recommended wording.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to clause 8.1.

5.7.6 Inspection and audit by the Access Provider (clause 8.9 and 8.10, and previous clause 8.10 (removed))

Clause 8.9 of V/Line's proposed access agreement allows V/Line to require the operator to undergo an audit for specific purposes. Previously, clause 8.9 required that the access provider give at least 24 hours' written notice before an audit; however V/Line removed this 24 hour requirement from its proposed access agreement.

V/Line also removed the previous clause 8.10. This clause required that the access provider be limited to no more than two audits per year, unless an audit detects a material breach of the agreement or demonstrates that the operator has been using or loading wagons in an unsafe manner. V/Line stated that 'limiting the number of potential audits has the potential to be contrary to safety requirements.'²⁴

Commission's draft conclusion

In its draft decision, the Commission found that it is a reasonable obligation for V/Line to give at least 24 hours' written notice before conducting an audit, as previously required. In addition, the Commission concluded that it is reasonable that the access provider be limited to a number of audits, so that audits and inspections are not undertaken unnecessarily.

²³ Asciano 2012, *Submission to the Essential Services Commission of Victoria in relation to their Consultation on the V/Line 2012 Access Arrangement*, April, p. 10.

²⁴ V/Line 2012, *V/Line schedule of changes to access agreement*, p. 2, available at www.esc.vic.gov.au.

The Commission's draft decision required V/Line to:

- amend clause 8.9 of the access agreement to reinstate the words 'at least 24 hours'
- reinstate the previous clause 8.10 of the access agreement, and replace the word 'Access Seeker' with 'Operator' for consistency, and
- reinstate the previous wording of clause 8.11 (clause 8.10 in the proposed access agreement).

V/Line's response to the draft decision

In its revised access agreement, V/Line has reinstated the words 'at least 24 hours' in clause 8.9, and reinstated the previous clause 8.10. For consistency, V/Line has also replaced Access Seeker with Operator.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendments required by the draft decision in relation to clauses 8.9 and 8.10.

5.7.7 Other consequences of an incident (clause 14.7)

Clause 14.7 of V/Line's proposed access agreement requires the operator to fully cooperate with any investigator or board of enquiry authorised to investigate an incident. Further, the operator must, without limitation, procure that its employees, contractors and agents provide formal statements within 7 business days on any matter related to an incident if required to do so by the investigator or board of enquiry.

Commission's draft conclusion

In its draft decision, the Commission required V/Line to amend clause 14.7 to require the operator to use *reasonable endeavours* (rather than 'without limitation') to procure that its employees, contractors and agents provide formal statements within 7 business days. This provides for circumstances where the operator may have a valid reason for not being able to provide all required information to an investigator within 7 business days (for example, procuring employee statements).

Therefore, the Commission's draft decision required V/Line to amend clause 14.7 of the proposed access agreement to provide that the operator use *reasonable endeavours* to procure that its employees, contractors and agents provide formal statements within 7 business days.

V/Line's response to the draft decision

V/Line has amended clause 14.7 of its revised access agreement to remove the words 'without limitation' and replace them with a requirement for the operator to 'use reasonable endeavours'.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to clause 14.7.

5.7.8 Delay indemnity (clause 17.16.3)

Clause 17.16 of the access agreement provides that the operator may be required to reimburse the access provider for a 'delay loss' if the operator causes or contributes to any delay in the network resulting in certain outcomes listed in the clause. In its proposed access agreement, V/Line inserted clause 17.16.3, which is an additional outcome under which the operator will be required to pay a delay loss. This additional outcome is where the delay results in the access provider being liable to pay a greater amount under its Passenger Franchise Agreement or any related agreement.

As a general comment, Asciano expressed concerns that the access agreement did not outline the conditions that apply to V/Line, such as thresholds for delays which incur the penalty, or the quantum of the penalty. Asciano argued that such information should be provided to an operator prior to the operator agreeing to this clause.²⁵

Commission's draft conclusion

The Commission's draft decision required V/Line to amend its access agreement to require V/Line to provide to an access seeker relevant information (if requested) on the 'Lateness Payment' in its Passenger Franchise Agreement, for the purposes of clause 17.16.3 of the access agreement.

V/Line's response to the draft decision

In response to the Commission's draft decision, V/Line has inserted in the final line of clause 17.16.3 in its revised access agreement the following sentence: '*On request by the Operator the Access Provider will provide the Operator extracts from the Franchisee Agreement upon which the Delay Loss is calculated.*'

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to clause 17.16.3.

5.7.9 Termination for Change of Control (Clause 19.17)

Clause 19.17 of the access agreement allows the access provider to terminate the access agreement if a change of control event occurs in relation to the operator

²⁵ Asciano 2012, *Submission to the Essential Services Commission of Victoria in relation to their Consultation on the V/Line 2012 Access Arrangement*, April, p. 11.

(that is, where there is a change in the controlling interests in the operator) without the access provider's prior written consent.

However, previously this clause contained the additional condition (now removed) that V/Line may only terminate the agreement on these grounds if:

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.

In its proposed access agreement, V/Line removed this condition that it may only terminate the agreement under clause 19.17 if there is a reasonable risk that the operator will no longer be able to carry out its obligations.

Commission's draft conclusion

In its draft decision, the Commission concluded that the risk that the operator will no longer be able to carry out its obligations is the key reason for such a termination clause, and therefore the original wording of the clause should be reinstated.

However, in relation to the prior written consent, V/Line also added in its proposed access agreement the requirement: 'such consent not to be unreasonably withheld'. The Commission found that this amendment is appropriate and should be incorporated in the reinstated clause.

The Commission's draft decision required V/Line to amend clause 19.17 to read: 'The Access Provider may terminate this Agreement immediately if a Change of Control Event occurs in relation to the Operator without the Access Provider's prior written consent (with such consent not to be unreasonably withheld) 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.'

V/Line's response to the draft decision

V/Line has amended clause 19.17 in its revised access agreement in line with the Commission's recommended wording.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to clause 19.17.

5.7.10 Notices (Clause 21.8)

Clause 21.8 of the access agreement outlines two situations where a notice may be given orally, namely: in relation to an incident or an operational direction. Previously, this clause provided that such notice may only be given orally:

where the informing party considers that the recipient requires the information contained in the Notice urgently; and there is insufficient time to serve a written notice.

In its proposed access agreement, V/Line removed this requirement that the informing party must consider the information urgent to the recipient, and that there is insufficient time to serve a written notice.

Commission's draft conclusion

In its draft decision, the Commission saw no reason why this wording should be removed, and believed the previous wording provided greater clarity as to the limited circumstances when an oral notice may be given, and why.

The Commission stated that a written notice should be the predominant form of giving a notice because it assists in transparency, and may be particularly useful if there is a dispute regarding the timing and nature of a notice. However, the Commission noted that there may be exceptional circumstances where an oral notice is sufficient, as previously provided by clause 21.8.

As such, the Commission required the previous wording of clause 21.8 be reinstated (however the previous numbering of clauses 21.8.3 and 21.8.4 be removed, to improve readability of clause 21.8).

The Commission's draft decision required V/Line to amend clause 21.8 of the access agreement to state: '...may be given orally *where the informing party considers that the recipient requires the information contained in the Notice urgently and there is insufficient time to serve a written notice.*'

V/Line's response to the draft decision

V/Line has amended clause 21.8 in its revised access agreement as recommended by the Commission to reinstate the previous limitation.

Commission's final conclusion

The Commission is satisfied that V/Line has appropriately addressed the amendment required by the draft decision in relation to clause 21.8.

Obligation to submit a proposed access arrangement

Under section 38ZR of the RMA, an access provider must not less than 90 days before expiry of a binding access arrangement apply to the Commission for the renewal of that access arrangement.

The contents of proposed access arrangements are set out in section 38X(1) of the RMA and reproduced in box A.1.

Sections 38X(3) to 38X(5) of the RMA requires a proposed access arrangement to be consistent with the:

- any pricing methodology made by the Commission,
- Negotiation Guidelines,
- Account Keeping Rules,
- Ring Fencing Rules,
- Capacity Use Rules, and
- Network Management Rules.

A proposed access arrangement can include any other matter, in addition to the above requirements, that the access provider considers relevant (section 38X(2)).

Box A.1 Section 38X of the RMA – contents of proposed access arrangements

- (1) A proposed access arrangement must—
 - (a) in relation to every reference service to which the arrangement relates, include—
 - (i) a description of the service; and
 - (ii) information as to whether that service is being provided by the access provider to itself or a related body corporate of the access provider; and
 - (iii) the terms and conditions for the provision of that service; and
 - (iv) the price, or methodology for the calculation of the price, to be charged in respect of the provision of that service; and
 - (b) include information in relation to the availability and the indicative terms and conditions, for the provision of declared rail transport services that are not reference services; and
 - (c) include a description of the information that the access provider will make available to an access seeker; and
 - (d) set out the procedure for the making of an application by an access seeker for the provision to them of a declared rail transport service; and
 - (e) describe the procedure and method how the access provider will assess and determine an application for the provision by them of a declared rail transport service; and
 - (f) specify a date for the expiry of the access arrangement, being a date that is not less than 3 years, and not more than 5 years, after the date on which the access arrangement may be approved by the Commission under this Part in a final decision.
- (2) A proposed access arrangement may also include any other matter that the access provider considers relevant.
- (3) The price or methodology referred to in sub-section (1)(a)(iv) must be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order.
- (4) Information referred to in sub-section (1)(c), the procedure referred to in sub-section (1)(d) and the procedure and method referred to in sub-section (1)(e) must be consistent with the negotiation guidelines.
- (5) The proposed access arrangement must also be consistent with—
 - (a) the account keeping rules, and
 - (b) the ring fencing rules, and
 - (c) the capacity use rules, and
 - (d) the network management rules.

Obligation to submit access arrangement information

A proposed access arrangement must also contain access arrangement information, which is defined in section 38W(2) of the RMA to be 'information that an access seeker would reasonably require to understand the derivation of the elements of the access arrangement so as to form an opinion as to whether the access arrangement complies with Part 2A of the RMA.'

The Commission considers that information included in the access arrangement information must be made available to access seekers and the public.

Supporting information and material

In addition to the access arrangement information, the access provider should provide supporting information and material to establish compliance of its proposed access arrangement with the requirements of the RMA.

Furthermore, the access provider should provide details of any consultation with industry stakeholders on the proposed access arrangement, or drafts of the proposed access arrangement.

Other material to accompany the proposed access arrangement

When an access provider submits a proposed access arrangement to the Commission for approval, it must at the same time, submit a:

- cost allocation policy and templates for providing accounting information to the Commission under the Account Keeping Rules,
- separation arrangement under the Ring Fencing Rules,
- statement of 'capacity management protocols' under the Capacity Use Rules, and
- network operating handbook and rolling stock interface standards under the Network Management Rules.

In addition, pursuant to section 38ZZZB of the RMA, an access provider must, on the same day as it submits a proposed access arrangement, submit to the Commission for approval, system and business rules for:

- (a) the use or handling of information supplied to the access provider in confidence by an access seeker or a user, including the use or handling of that information by an officer, employee or agent of the access provider, and
- (b) the disclosure of information supplied to the access provider in confidence by an access seeker or a user, including the disclosure of that information by an officer, employee or agent of the access provider.²⁶

²⁶ Section 38ZZZB of the RMA.

Table B.1 summarises the process for access arrangement approval. The process begins when the Commission receives a proposed access arrangement from an access provider and ends when the Commission publishes its final decision, or appeals on the final decision are determined.

| Step | Summary of procedure |
|------|--|
| 1 | The access provider prepares and submits a proposed access arrangement under section 38W along with any required accompanying material. |
| 2 | <p>The Commission receives a proposed access arrangement from the access provider under section 38W.</p> <p>The Commission must, as soon as practicable, acknowledge receipt of the proposed access arrangement by notifying every interested party in writing and by publication on its website and in a state newspaper (section 38Y(1)).</p> <p>The Commission must provide no less than 21 days for written submissions to be made in respect of the proposed access arrangement from the date of notification (section 38Y(2)).</p> |
| 3 | <p>Before making a Draft Decision, the Commission must consider all written submissions received within the specified time, and may, but is not required to, consider late submissions (section 38ZA).</p> <p>The Commission must make a Draft Decision to approve or not approve the proposed access arrangement, stating reasons for its decision. When making a Draft Decision, the Commission must take into account matters listed in section 38ZI. If the Commission does not approve the proposed access arrangement it needs to specify any amendments that should be made and any matters that should be addressed for approval (section 38ZB).</p> <p>The Commission must give a copy of the Draft Decision to every party who submitted comments to the proposed access arrangement and to the access provider. The Commission must also publish the Draft Decision on its website and make it available for inspection at its offices (section 38ZB(5)).</p> <p>The Commission must provide no less than 14 days, from the date the Draft Decision is published, for written comments to be submitted (section 38ZB(6)).</p> |

| Step | Summary of procedure |
|------|--|
| 4 | The access provider may, within 14 days of being given a copy of the Draft Decision, submit revisions to the initial proposal (section 38ZC). |
| 5 | <p>Before making a Final Decision, the Commission must consider all written submissions received within the specified time, and may, but is not required to, consider late submissions (section 38ZE).</p> <p>The Commission must make a Final Decision to approve or not approve the proposed access arrangement, stating reasons for its decision (section 38ZF). When making a Final Decision, the Commission must take into account matters listed in section 38ZI. The Commission is required to give notice of its Final Decision as specified in section 38ZH.</p> <p>The Commission's Final Decision must be made within 90 days of the access provider submitting the initial proposed access arrangement (section 38ZG).</p> |
| 6 | Appeals on the Final Decision can be made pursuant to section 55 of the <i>Essential Services Commission Act 2001</i> (Vic). |

Section 38ZI of the RMA requires the Commission to take certain matters into account. These include:

- the rail-specific objectives in section 38F of the RMA (section 38ZI(a))
- the matters that reflect clause 6(4)(i) of the Competition Principles Agreement (CPA) (see section 38ZI(b) to (i) of the RMA), and
- any other matter that the Commission considers relevant (section 38ZI(j)).

Each of these is discussed in turn below:

Rail-specific objectives

The regulatory objectives of the Commission, as stated in section 38F of the RMA:

in addition to the objectives under section 8 of the Essential Services Commission Act 2001 (but subject to section 5(2) of that Act):

- (a) *to ensure access seekers, and any other person the Commission considers may want to be provided declared rail transport services, have a fair and reasonable opportunity to be provided declared rail transport services; and*
- (b) *to promote competition in rail transport services to achieve an increase in the use of, and efficient investment in, rail infrastructure or tram infrastructure (as the case requires).*

Competition Principles Agreement – matters in section 38ZI(b)-(i) of the RMA

The matters that reflect the CPA and to which the Commission must have regard (as set out in section 38ZI(b) to (i)) are:

- (b) *the access provider's legitimate business interests and investment in the rail network owned or operated by that access provider; and*
- (c) *the costs to the access provider of providing access, including any costs of extending the rail network owned or operated by that access provider but not including costs associated with losses arising from increased competition in upstream or downstream markets; and*

- (d) the economic value to the access provider of any additional investment that an access seeker or the access provider has agreed to undertake; and*
- (e) the interests of users; and*
- (f) existing contractual obligations of the access provider and users of the rail network owned or operated by that access provider; and*
- (g) the operational and technical requirements necessary for the safe and reliable operation of the rail network owned or operated by the access provider; and*
- (h) the economically efficient operation of the rail network owned or operated by the access provider; and*
- (i) the benefit to the public in having competitive markets.*

Other relevant matters

Under section 38ZI(j), the Commission must have regard to any other matter that the Commission considers relevant.

APPENDIX D

V/LINE'S REVISED ACCESS
ARRANGEMENT (MARKED UP)

ACCESS ARRANGEMENT *[insert date]*

made by

ESSENTIAL SERVICES COMMISSION VICTORIA (“ESC”)

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

of
Level 23,
570 Bourke Street,
Melbourne VIC 3000 (**“V/Line”**)

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Part 1

1. Preamble

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

Part 2

2. Scope and administration of Access Arrangement

2.1. Scope

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

2.2. Grant and duration of Access Arrangement

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

2.3. Review of Access Arrangement

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

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

2.4. Access Agreements

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

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

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

2.6. Contact details

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

Chief Executive Officer

Attention: Manager Contracts Access and Interfaces

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

- 2.6.b. V/Line shall publish information relevant to this Access Arrangement on its web site at <http://www.vline.com.au> including:
- (i) The Operating Handbook;
 - (ii) A narrative description of the Network;
 - (iii) The prices for Scheduled Services and Unscheduled Services as set out in Appendix 1;
 - (iv) Prices for which Access has been granted to Operators together with a general description of the Services to which such prices relate;
 - (v) The Access Agreement as contained in Appendix 3;
 - (vi) The Track Standard by corridor; and
 - (vii) An Information Pack

Part 3

3. Negotiation process

3.1. Good faith negotiations

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

3.2. Information provided by V/Line to Access Seekers

3.2.a. Information pack

(i) V/Line has an Information Pack that is available:

- 1) free of charge from its website: www.vline.com.au; or
- 2) can be mailed upon request. (A fee of \$250.00 plus GST payable in advance will apply for hard copies).

3.2.b. Further Information

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

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

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

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

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

3.3. Access Seeker application process

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

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

3.3.b. **Acceptance of application**

- (i) V/Line shall acknowledge the application within five (5) Business Days of its receipt. For complex applications, V/Line may request the Access Seeker to agree to an extension of the application assessment period and shall advise indicative timeframes for that assessment.
- (ii) Within ten (10) Business Days of receipt of the application, V/Line shall:
 - A.) Confirm that a complete application has been received and shall be progressed; or
 - B.) Advise that an incomplete application has been received and shall not be progressed until the prescribed information has been received in accordance with Appendix 2. V/Line shall advise in writing what further information is required.
- (iii) If V/Line does not provide a response within ten Business Days of receipt of the application in accordance with clause 3.3.b(ii)B.) V/Line shall be deemed to have accepted a completed application in accordance with clause 3.3.b(ii)A.)

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

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

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

3.3.d. Rejection of an application

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

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

3.4. Negotiation protocol

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

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

3.5. Procedure for assessment of works to provide additional capacity

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

3.6. Interconnection

3.6.a. General

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

3.6.b. Information provided to assist interconnection

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

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

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

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

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

operating margin of 8.0% permitted under this Access Arrangement;

- 4) the Access Seeker to agree that if requested by V/Line it will remove that part of the interconnection that is rail infrastructure located on the Network on termination of the maintenance agreement; and
- 5) the Access Seeker to provide a guarantee acceptable to V/Line in respect of its obligation under item 3.6.c(v)4). V/Line must not unreasonably withhold its acceptance of the guarantee on the basis of its form.

3.6.d. V/Line shall provide the Access Seeker, within thirty (30) Business Days of receipt of the Access Seeker's interconnection application, with notice of:

- (i) V/Line's acceptance of that proposal, conditional on all approvals being obtained; or
- (ii) V/Line's rejection of the proposal, together with reasons for the rejection.

3.6.e. V/Line shall provide project management for the implementation of the ~~interconnection additional capacity solution~~ in consultation with the Access Seeker.

3.6.f. ~~In relation to any proposed interconnection b~~Before any scoping, assessing works or the project proceeds as per clauses ~~3.6.b, 3.6.c, 3.6.d, 3.5.b, 3.5.e, 3.5.d~~ and 3.6.e, the Access Seeker will undertake to reimburse V/Line for its reasonable project costs.

3.6.g. Any change to configuration of the Network is subject to the approval of the Public Transport Development Authority.

Part 4

4. Pricing

4.1. Description of Services

- 4.1.a. V/Line shall offer the following Scheduled and Unscheduled Services to Operators.
- (i) Scheduled Services during Normal Hours, which services are Reference Services;
 - (ii) Unscheduled Services during Normal Hours, which services are Reference Services;
 - (iii) Unscheduled Services at times that are Out of Hours, which services are Non-Reference Services.
- 4.1.b. Scheduled Services and Unscheduled Services shall be provided at a standard which is no lower than the Performance Standard.
- 4.1.c. Notwithstanding the provisions of clause 4.1.b, where an Access Seeker has made an application in accordance with 3.4.c(ii) for Scheduled Service/s or Unscheduled Service/s to be supplied at a higher performance standard than the Performance Standard and the Access Seeker and V/Line have reached agreement in accordance with clause 4.2.c. the Scheduled Service/s and Unscheduled Service/s shall be supplied to that Access Seeker at the higher standard.
- 4.1.d. Unscheduled Services may not be requested more than two (2) weeks in advance.
- 4.1.e. The Performance Standard as at the Commencement Date is set out in Appendix 6.
- 4.1.f. A line may be booked out of service or the Performance Standard may be varied from time to time in accordance with the process set out in clauses 4.1.g to 4.1.j to reflect the annual funding available for the maintenance of the network, if approved by the Essential Services C-ommission.
- 4.1.g. V/Line must consult with Access Holders prior to applying to the Essential Services Commission to book a line out of service or vary the Performance Standard.
- (i) V/Line's consultation process must provide Access Holders with relevant information relating to the track maintenance requirements to maintain existing standards and information about the proposed change to the Performance Standard.
 - (ii) V/Line must ensure that information provided to Access Holders is sufficient to allow network users to understand the likely impact of any proposed change on their access entitlement.

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(iii) V/Line must provide Access Holders with a reasonable time frame in which to submit a response to the proposed change to the Performance Standard.

(iv) V/Line must have regard to all submissions provided by stakeholders in determining its proposed Performance Standard.

4.1.h. Following consultation with Access Holders, and prior to submitting an application to the Commission, V/Line must obtain the agreement of the Public Transport Development Authority that its proposed Performance Standard is consistent with available funding and existing parameters of the Regional Infrastructure Lease.

4.1.i. V/Line must apply to the Essential Services Commission to book a line out of service or vary its Performance Standard. In its application:

(i) V/Line must provide a written endorsement from the Public Transport Development Authority that the proposed Performance Standard is consistent with available funding and existing parameters of the Regional Infrastructure Lease;

(ii) V/Line must provide copies of any submissions received from stakeholders during its consultation process, and a statement that it had regard to these submissions in determining its proposed Performance Standard; and

(iii) V/Line must detail the expected impact on Access Holders of the proposed change to the Performance Standard.

4.1.j. Following any decision by the Essential Services Commission on an application by V/Line to book a line out of service or vary the Performance Standard;

(i) V/Line must advise all Access Holders of the Essential Services Commission's decision;

(ii) V/Line must provide all Access Holders any details on the timing of implementation of any change to the Performance Standard; and

(iii) V/Line must publish any revised Performance Standard on its website and include it in its Information Pack

4.1.e.

4.1.f. In the event that V/Line makes an application to the ESC for the variation of the Performance Standard under section 38ZO of the RMA, V/Line may, from the time of lodgement and during the application process and to the extent reasonably required to take account of the circumstances the subject of the application, do either of the following in respect of the applicable Line/s:

- book a line out of service; or
- vary the Performance Standard by reducing the Average Maximum Operating Speed,

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~~—without limiting its other rights or obligations from a safety perspective.~~

~~Any variation or line closure effected under this clause 4.1.f will be lifted as soon as practicable after the final determination of the relevant application to vary the Performance Standard, but only after V/Line has reasonably determined that it can apply the new Performance Standard safely.~~

~~4.1.g.4.1.k. V/Line may temporarily book a line out of service or vary the Performance Standard if it reasonably believes that it is necessary to ensure the safety of passengers, Access Seekers, Operators or the public. V/Line must notify the Essential Services Commission if this occurs.~~

~~4.1.h. The Performance Standard may be varied from time to time:~~

- ~~(i) by agreement with the Public Transport Development Authority as a result of changes to the Annual Works Plan; and~~
- ~~(ii) If the Public Transport Development Authority directs that V/Line close part or all of an applicable Line.~~

4.2. Prices and charging

4.2.a. V/Line charges for Services according to whether or not Access is provided in Normal Hours or Out of Hours.

4.2.b. In respect of Scheduled Services during Normal Hours or Unscheduled Services during Normal Hours sought by an Access Seeker for which the required performance standard of rail infrastructure is the Performance Standard, the applicable charges are set out in Appendix 1.

4.2.c. In respect of Scheduled Services during Normal Hours or Unscheduled Services during Normal Hours for which the Performance Standard sought by an Access Seeker is higher than the Performance Standard, charging will be based on the applicable charges as set out in Appendix 1 as modified by prior agreement between V/Line and the Operator so as to reflect the "Operator pays incremental costs" principle set out in clause 4.2.h.

4.2.d. If an Access Seeker applies for Access for a Scheduled Service to operate outside Normal Hours (as in place at the time the application is made), the Access Seeker should request that Normal Hours be extended. In such circumstances, if approved, V/Line shall make available Access for such Service during Normal Hours (as amended), provided that the Operator provides V/Line with at least one (1) month's notice.

4.2.e. For clarification, V/Line must not reduce the Normal Hours without the prior approval of the ESC where:

- (i) that reduction would prejudice an existing Scheduled Service; and

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

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

4.3. Revenue Cap

~~4.3.a. As at the Commencement Date, the Revenue Cap that applies in respect of the provision of declared rail transport services under this Access Arrangement is \$30.85 million per annum which is the estimated 2012/13 forecast cost of providing declared rail transport services.~~

~~4.3.a. As at the Commencement Date, the Revenue Cap that applies in respect of the provision of declared rail transport services under this Access Arrangement is the sum of the Freight Revenue Cap, as described in clause 4.3.b below.~~

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

4.4. Freight pricing structure and task differentiation

4.4.a. V/Line's pricing for Reference Services, as set out in Appendix 1, includes:

- (i) a flagfall charge (in \$ per TK) and a variable charge (in \$ per GTK); and
- (ii) task differentiation between Bulk Grain Freight and other freight.

4.4.b. V/Line shall not charge:-

- (i) for Access to silo sidings and regional loading facilities. Occupation of these sidings and facilities will be made available to Access Seekers by agreement with the loading facility operator (see Information Pack);
- (ii) other than as set out in Appendix 1, for Access to yards for freight storage, loading and make up / break up of trains. However, the above-rail operator of these yards may charge the Access Seeker for freight storage, shunting and marshalling;
- (iii) for Access for an Ancillary Movement, provided it extends no further than one kilometre. V/Line will charge for any movements in excess of one kilometre as a Scheduled Service or Unscheduled Service as applicable; and
- (iv) the Flagfall Charge for Trip Trains. In other words, Trip Trains may be charged on the basis of the Variable Rate only.

4.4.c. Operators may be required to make their own arrangements in respect of stabling. However, in the event of a need for stabling by an Operator to which V/Line has provided or is about to provide Scheduled Services or Unscheduled Services, V/Line will make available temporary storage to that Operator for no additional consideration, provided doing so will not

adversely affect either the provision of Access by V/Line to other Operators or V/Line's maintenance of the Network.

- 4.4.d. Notwithstanding the provisions of clauses 4.4.a, 4.4.b and 4.4.c the Public Transport Development Authority may direct V/Line to lower from time to time all or some of the charges payable by Access Seekers. On the expiration of any such period of direction all charges lowered by the direction will from that time be payable as calculated in accordance with clauses 4.4.a, 4.4.b and 4.4.c unless a further direction is given.

4.5. Price escalation

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

Part 5

5. Management of capacity and Network

5.1. General

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

5.2. Network Service Plan and Master Train Timetable

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

5.3. Capacity allocation in response to Access applications

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

5.4. Variation and surrender of a Train Path

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

5.5. Protocols and capacity allocation protocols

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

5.6. Reporting of actual Train Path utilisation

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

Part 6

6. Account keeping

6.1. Preparing, maintaining and keeping accounting records and accounts

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

Part 7

7. Performance Indicators

- 7.1.a. V/Line shall publish on its website:
 - (i) the Average Maximum Operating Speed on each Line Section; and
 - (ii) the maximum speed on each Line Segment,on a basis directly comparable with the relevant Performance Standard set out in Appendix 6.

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

Part 8

8. Ring Fencing

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

Appendix 1

Pricing

Introduction

The prices specified in this Appendix 1 are V/Line's ~~the~~ maximum standing offer prices for reference services.¹

The pricing set out in this Appendix 1:

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

For clarification:

- (i) the liability of Operators to pay the charges specified in this Appendix 1 will arise pursuant to an Access Agreement when a Scheduled Service or Unscheduled Service is applied for and granted, subject to the operation of clauses 4.2.b, 4.2.f, 4.2.g and 4.2.h; and
- (ii) notwithstanding that the prices in this Appendix 1 are standing offer prices, V/Line and an Access Seeker may agree to different prices, subject to the RMA, the Negotiation Guidelines and this Access Arrangement.

A. Bulk Grain Freight Access

V/Line will charge Operators the sum of:

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

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

| Year | Flagfall rate, \$/TK | Variable rate, \$/GTK |
|---------|---|---|
| 2012/13 | To be calculated by <u>Multiplying adding</u> March | To be calculated by <u>multiplying adding</u> March |

¹ For all access agreements signed under this access arrangement, V/Line proposes to charge the access prices as outlined in this Appendix 1. The access prices in Appendix 1 are V/Line's maximum standing offer prices for reference services. These are acceptable as they fall below the maximum efficient price of \$22.60 per '000 GTK determined by the Essential Services Commission in its 2012 decision. In practice, the actual access prices charged to operators by V/Line will reflect the directions of the Department of Transport and the extent of Government financial assistance to each market. Where the Department of Transport does not direct V/Line to charge a lower price, the access prices as set out in this Appendix will apply.

| | CPI to-by 2011/12 current rates of \$5.719 | CPI to-by 2011/12 current rates of \$7.607 |
|---------|---|---|
| 2013/14 | (A) | (A) |
| 2014/15 | (B) | (B) |

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

B. All Other Freight Access

V/Line will charge Operators the sum of:

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

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

| Year | Flagfall rate, \$/TK | Variable rate, \$/GTK |
|---------|---|---|
| 2012/13 | To be calculated by adding multiplying March CPI to-by 2011/12 current rates of \$0.876 | To be calculated by adding multiplying March CPI to-by 2011/12 current rates of \$1.646 |
| 2013/14 | (A) | (A) |
| 2014/15 | (B) | (B) |

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

C. Other Access

V/Line will charge Operators:

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

(2) for non-exclusive track access to the Geelong Grain Loop at the rate of \$78.04 (excluding GST) per Train (or such other rate as determined by the ESC from time to time).

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

Interpretation

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

Appendix 2

Information to accompany an Access application

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

Applicant Details

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

Description of Service(s) including

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

Details of the rolling stock and freight

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

Term of agreement proposed

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

Financial capacity

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

Competency and capacity

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

Additional Information requirement for interconnection or upgrade applications

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

Form of Application

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

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

Appendix 3

Access agreement

Appendix 4

Ring fencing separation arrangement

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

Appendix 5

Definitions

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

| | |
|--------------------------------|---|
| Access | As the context requires, either: <ul style="list-style-type: none">(a) the access sought by an Access Seeker from V/Line or the access provided by V/Line in its capacity as the manager of the Network to an Access Seeker pursuant to an Access Agreement; or(b) the access sought and Provided by V/Line in its capacity as an operator on the Network. |
| Access Agreement | An agreement between V/Line as Access provider and an Operator in relation to Access to the Network, either on the basis of the standing offer terms and conditions in Appendix 3, or on other terms agreed between the parties. |
| Access Holders | Means an Operator or Operators who has a current Access Agreement entered with V/Line which includes access rights to that part of the Network which is subject to the application of clause 4.1.f |
| Access Period | The term of this Access Arrangement commencing on the Commencement Date and ending on that earlier date as provided for in clause 2.2.b. |
| Access Seeker | As the context requires, either an Operator seeking to enter into an Access Agreement with V/Line or an Operator that has entered into an Access Agreement with V/Line. |
| Access Seeker Information | Information provided to V/Line by an Operator and which the Operator identifies as being confidential. |
| Account keeping Rules | Those account keeping rules made in accordance with section 38R of the RMA attached at Appendix 7. |
| Ancillary Movements | Mainline movements associated with the make up or break up of trains and loading |

| | |
|---------------------------------|--|
| Annual Works Plan | <p>and unloading operations.</p> <p>The annual works plan agreed between the Public Transport Development Authority and V/Line under the Regional Infrastructure Lease</p> |
| Available Path | <p>Has the same meaning as is contained in the Operating Handbook</p> |
| Average Maximum Operating Speed | <p>The distance-weighted average of the maximum speeds calculated:</p> <ul style="list-style-type: none"> • excluding the impacts of terrain and curve speed restrictions; • for a train travelling in a direction towards Melbourne; and • taking into consideration the impact of any Temporary Speed Restrictions imposed due to track condition, infrastructure signal failure or level crossing sighting; <p>at which a train with a 19-tonne axle load can operate over each Line Segment as specified in the Network Operating Requirements or the Operating Handbook.</p> |
| Bulk Grain Freight | <p>Being grain transported loose across the Network in bulk wagon hoppers.</p> |
| Business Day | <p>A day that is not a Saturday or Sunday or a day appointed under the <i>Public Holidays Act 1993</i> (Vic) as a public holiday in the place which the act or thing is to be or may be done.</p> |
| Capacity Use Rules | <p>Being those rules made in accordance with section 38T of the RMA</p> |
| Commencement Date | <p><<commencementdate>>, 2829 June 2012, pursuant to section 38ZR(5) of the RMA.</p> |
| Cost Allocation Policy | <p>The policy approved by the ESC in accordance with section 5 of the Account Keeping Rules and attached at Appendix 7 of this Access Arrangement.</p> |
| CPI | <p>For a particular Review Date:</p> <p>(a) Consumer Price: All Groups Index Number Melbourne published by the Australian Bureau of Statistics (Bureau) for the March quarter immediately preceding the start of the relevant Review Date,</p> |

| | |
|----------------------------|--|
| | <p>divided by:</p> <p>(b) Consumer Price: All Groups Index Number Melbourne published by the Bureau for the March quarter immediately preceding the March quarter referred to in paragraph (a).</p> <p>In this definition:</p> <p>(a) the references to the Consumer Price: All Groups Index Number Melbourne means:</p> <p style="padding-left: 40px;">(i) the same index number but with a different name at any time; and</p> <p style="padding-left: 40px;">(ii) the same numbers adjusted mathematically to take account of a change at any time in the base year provided that indices of the same base year are used throughout the calculation; and</p> <p>(b) the references to the Bureau include a reference to the Bureau but with a different name at any time.</p> |
| Daily Train Plan | The timetable maintained by V/Line in accordance with the Operating Handbook that sets out all planned train movements on the Network on a particular day. |
| Geelong Grain Loop | The area coloured red, blue and green on the diagram set out in Annexure B. |
| GST | As defined in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> . |
| GTK | Gross tonne kilometres, being the total gross weight (in tonnes) of a train multiplied by the distance travelled (in kilometres). |
| Indicative Access Proposal | V/Line's initial offer of access based on its standard terms and conditions as reflected in Appendix 3. |
| Information Pack | <p>Being that information as specified in section 2(c) of the Negotiation Guidelines <u>including copies of:</u></p> <p><u>(a) the Access Arrangement; and</u></p> <p><u>(b) the Operating Handbook; and</u></p> <p><u>(c) the Network Service Plan; and</u></p> <p><u>(d) the Master Train Timetable; and</u></p> <p><u>(e) the form for making an access application; and</u></p> <p><u>(f) -an Access Agreement.</u></p> |

| | |
|--------------------------------|---|
| Line Section | The line sections of the Network, as described in Appendix 6. |
| Line Segment | A segment of rail track on the Network designated as a “line segment” by V/Line in its Network Operating Requirements or its Operating Handbook (or both), and which has specific operating requirements. For example, a 100km Line Section might comprise 6 different Line Segments (the combined length of which total the length of the Line Section), and each have different operating speed limits. |
| Master Train Timetable | Is that permanent timetable as referenced in the Operating Handbook |
| Melbourne Arrival Sidings | The area so indicated on the diagrams set out in Annexure A. |
| Negotiation Guidelines | Being those negotiation guidelines made by the ESC in accordance with Section 38V of the RMA. |
| Network | That part of the land and rail infrastructure that is both: (a) operated or managed by V/Line; and (b) declared under section 38I of the RMA, including Somerton, Melbourne Arrival Sidings, those parts of Tottenham Yard not leased to PN and, for such period as V/Line continues to act as access manager of the Geelong Grain Loop pursuant to its appointment to do so by the Victorian Rail Track Corporation, the Geelong Grain Loop. |
| Network Management Rules | Those rules made in accordance with section 38U of the RMA. |
| Network Map | The set of maps of the Network. |
| Network Operating Requirements | That part of the Network Service Plan entitled “Network Operating Requirements” and “Addenda”, as published by V/Line from time to time. |
| Network Service Plan | The network service plan as amended from time to time by V/Line in accordance with the Operating Handbook, and showing passenger train paths, Scheduled Services and Available Paths on the Network. |

| | |
|--|---|
| Normal Hours | The normal signalbox operating hours (“block working hours”) for the relevant corridor of the Network. Normal signalbox hours as at the date of this Access Arrangement are contained in Appendix 9, and changes will be published in Operating Handbook |
| Operator | A freight train operator, and includes an Access Seeker. |
| Operating Handbook | The current version of the handbook of procedures and protocols as approved by the ESC, that sets out how train schedules and authorised working in the Network will accommodate customer needs, access requirements and resource availability. The handbook includes the Network Map and protocols required under the Network Management Rules and the Capacity Use Rules. |
| Out of Hours | All times outside Normal Hours. |
| Out of Hours Pricing | Being that pricing as calculated in accordance with the Operator Pays incremental costs Principal detailed in clause 4.2.i |
| Performance Standard | The Average Maximum Operating Speed performance standards across the Network from time to time, being those standards specified in Appendix 6 as at the Commencement Date, and as subsequently varied pursuant to clause 4.1.f and 4.1.g. |
| Public Transport Development Authority | The Public Transport Development Authority established under the Transport Integration Act 2010 (Vic). |
| PN | Pacific National (Victoria) Limited. |
| Protocols and Work Procedures | Those protocols and procedures contained in V/Line’s : <ul style="list-style-type: none"> • Network Service Plan • Network Operating Requirements (Network Infrastructure) • Network Service Plan Addenda (Includes authorised rolling stock) • Operating Handbook • Emergency Management Plan |

- Rolling Stock Approval Form

RMA

Revenue Cap

means Rail Management Act 1996 (Vic)

Is the amount as detailed in clause 4.3.

Review Date

1 July of each year of the Access Period. For the avoidance of doubt, the first Review Date (to determine prices for 2013/14/19) will be 1 July 2013.

Rolling Stock Standards

means the specifications and requirements for Rolling Stock set out in the Network Operating Requirements

Safety Interface Agreement

Means a safety interface agreement as may be required under the Rail Safety Act.

Scheduled Services

The provision by V/Line of Access for which an Operator gains an entitlement to use the applicable Train Path(s) on a recurrent basis upon entry into, or by amendment of, its Access Agreement.

Separation Arrangement

The ring fencing separation arrangement described in section 5 of the Ring Fencing Rules.

Services

The provision of Access by V/Line in the form of Scheduled Services, and/or Unscheduled Services.

Somerton

The area so indicated on the diagrams set out in Annexure A.

TK

The number of kilometres that a train travels on the Network.

Tottenham Yard

The area so indicated on the diagrams set out in Annexure A.

Track Standard

Is the indicator of the track standard as contained in Appendix 6.

Train Path

The particular time interval, including an entry time and day and an exit time and day, through which a train may travel over a segment of the Network from an origin to a destination and may include stopping points and intermediate times and locations that V/Line considers necessary or appropriate to define the pathway.

Trip Trains

Train movements of rakes of a larger freight train (e.g. Tottenham Yard to Dynon Terminal/Port of Melbourne).

Unscheduled Services

The provision by V/Line of Access for which an Operator gains an entitlement to

use the applicable Train Path(s) by means of the process of nomination and allocation, both on a short-term basis, under its Access Agreement.

Variable Rate

Is the rate described as the Variable Rate in Appendix 1

Appendix 6

Track standard by corridor

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

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

Interpretation

In this Appendix 6:

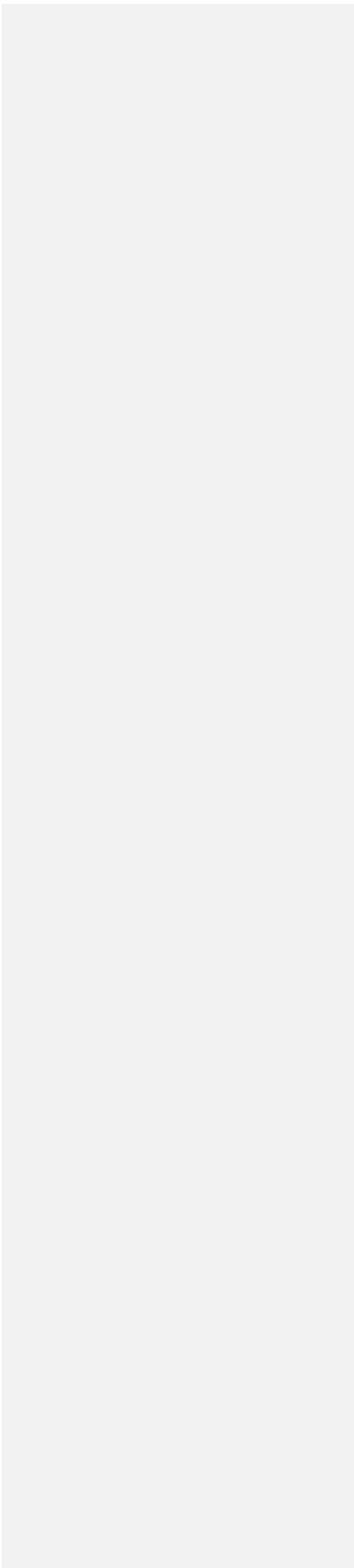
Siding means Tracks on the Network connected to a running line or to another siding on which Rolling Stock can be placed clear of the running line;

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

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

Appendix 7

Cost Allocation Policy



Appendix 8

Dispute resolution during negotiation process

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

Appendix 9

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

Appendix 10

Procedures for handling Access Seeker Information

Appendix 11

Annual variation of access fees

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

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

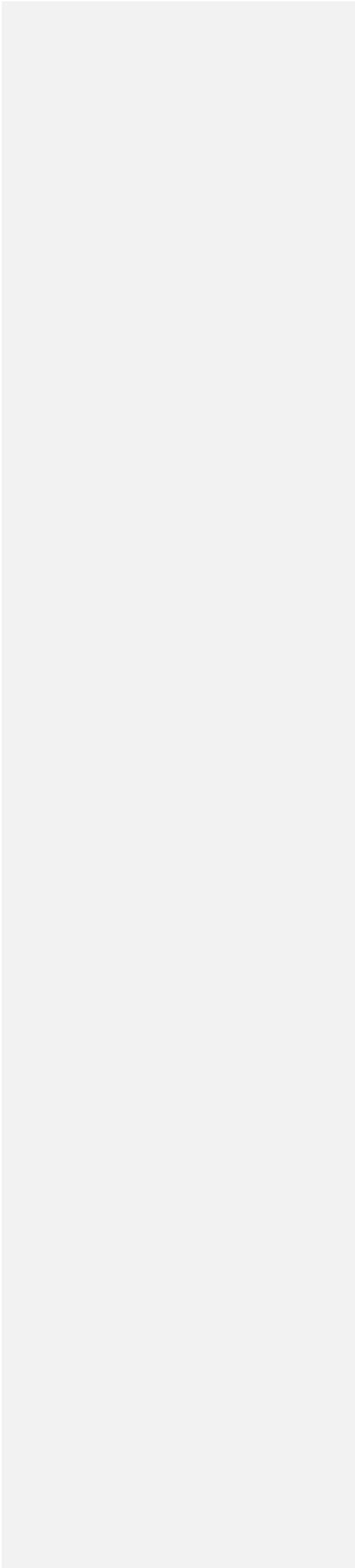
where

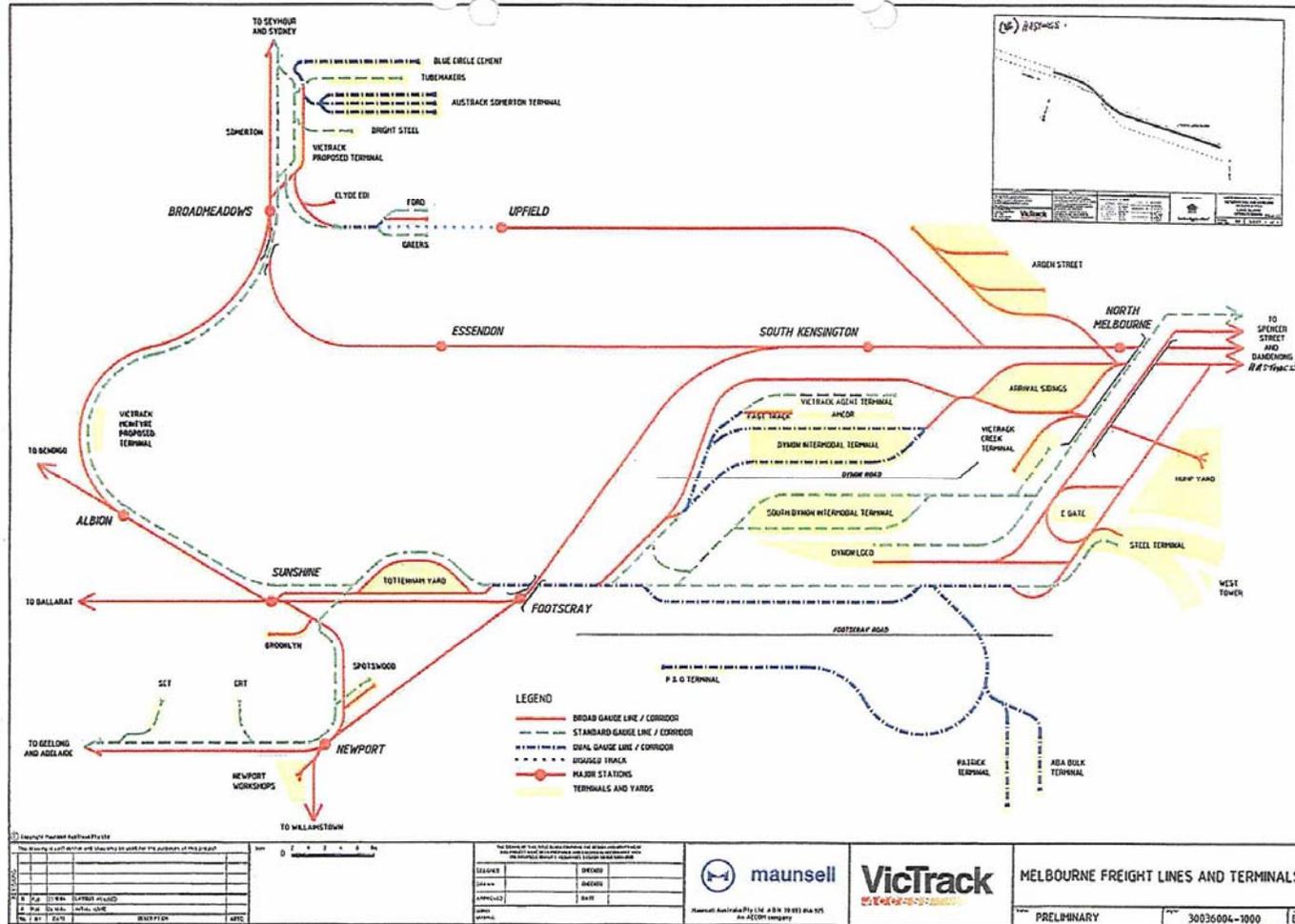
$A(n)$ = The access fees to apply from the year from the relevant Review Date;
and

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

Annexure A

Location diagrams

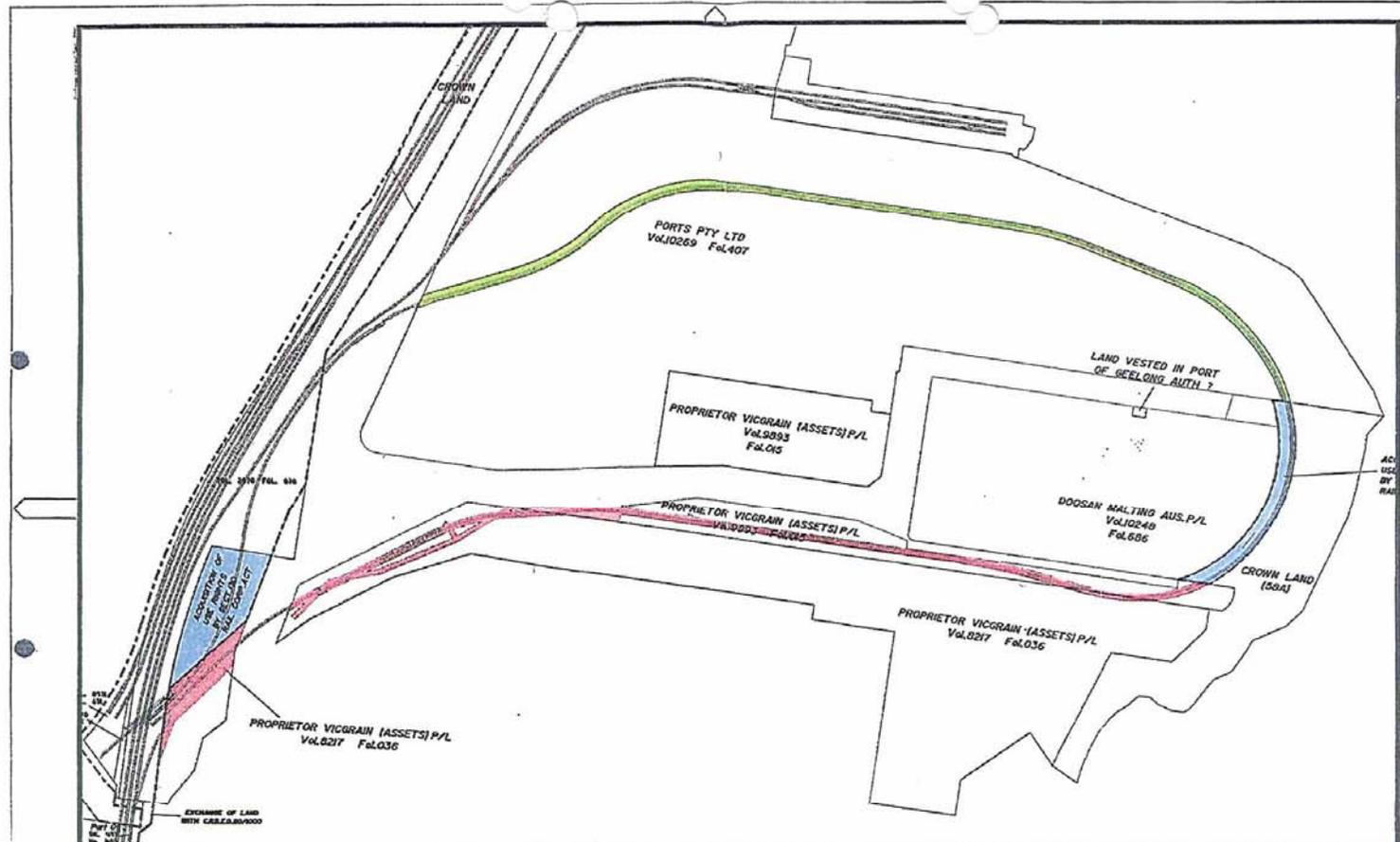




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Annexure B
Geelong Grain Loop

Field Code Changed



| | | | | |
|--|---|---|---|---|
| <p>RAILWAY PURPOSES EASEMENT ON VICORAIN PTY LTD LAND</p> <p>VICTRACK USE RIGHT OVER CROWN LAND</p> <p>VICTRACK LEASE OF PORTS PTY LTD LAND</p> | <p>COPYRIGHT</p> <p>This plan is the property of Victorian Rail Track and shall not be reproduced or used in any form whatsoever without the prior written consent of Victorian Rail Track.</p> <p>This prepared by: Property Department 10th Floor, 289 Collins Street, Melbourne 3000</p> <p>Victrack</p> | <p>NOTE</p> <p>This plan has been compiled using information from a number of sources and some plan elements may not be shown accurately. Independent verification is recommended before reliance is placed on using the plan information.</p> <p>Victorian Rail Track will not accept any liability for any use to which the plan may be put and gives no guarantee as to its accuracy.</p> | <p>LEGEND</p> <p>45 LEASE / EASEMENT ON VIC. LAND</p> <p>854 RAILWAY LAND USE NO.</p> <p>AREA OF HISTORICAL SIGNIFICANCE</p> <p>RAILWAY PURPOSES EASEMENT ON VICORAIN PTY LTD LAND</p> <p>VICTRACK USE RIGHT OVER CROWN LAND</p> <p>VICTRACK LEASE OF PORTS PTY LTD LAND</p> <p>RAILWAY PURPOSES EASEMENT ON VICORAIN PTY LTD LAND</p> <p>VICTRACK USE RIGHT OVER CROWN LAND</p> <p>VICTRACK LEASE OF PORTS PTY LTD LAND</p> | <p>Victorian Rail Track</p> <p>NORTH GEELONG RAIL LOOP</p> <p>0 20 40 60 80 100 120 140 160 180 200 220 240 260 280 300</p> <p>Scale in METRES</p> <p>Printed on 04-31-2007</p> <p>SHEET OF</p> |
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Network Access Agreement

(Freight Services)

V/Line Pty Limited (*Access Provider*)

And

[Operator]

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THIS AGREEMENT is made on.....

PARTIES

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

AND

[Insert name and ACN] of *[Insert address]* (“**Operator**”)

INTRODUCTION

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

1 Definitions

In this Agreement:

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

Field Code Changed

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

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

Field Code Changed

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

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

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

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

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

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

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

1A Good faith

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

2 Access

Grant of access

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

Limitations on grant

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

Scheduled Train Paths

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

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Application for use of Unscheduled Train Paths

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

Grant of Unscheduled Train Paths

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

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- 2.8 If the requested **Unscheduled Train Path** is not Available, the Access Provider must:
- 2.8.1 notify the Operator and provide details of another Available Train Path that most closely resembles the Train Path that the Operator has applied for promptly (and no later than within 24 hours after the Access Provider's determination under clause 2.7); and
 - 2.8.2 if the Operator is not satisfied with the alternative Train Path suggested by the Access Provider under clause 2.8.1, use reasonable endeavours to offer the Operator an alternative Train Path that most closely aligns with the Operator's request.

For clarification, the 24 hour period in clause 2.8.1 does not include a day that is not a Business Day.

- 2.9 The Operator acknowledges that the grant of a requested **Unscheduled Train Path** on any particular occasion does not:
- 2.9.1 give rise to any entitlement in respect of any **Unscheduled Train Path** similar to the granted **Unscheduled Train Path**; or
 - 2.9.2 constitute any indication that any **Unscheduled Train Path** similar to the granted **Unscheduled Train Path** will be Available in the future.

Access to certain Sidings and Terminals

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

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

3 Variation, surrender and non-use of Train Paths

Variation and surrender

- 3.1 Without limiting the Access Provider's rights under this Agreement, the Access Provider may vary or require the Operator to surrender an Approved Train Path or a Scheduled Train Path Group:
 - 3.1.1 for the purpose of and in accordance with section 5.1, 5.2, 5.5, 5.6 or 5.7 of the Capacity Use Rules;
 - 3.1.2 if the Operator is in material breach of this Agreement in relation to an Approved Train Path or Scheduled Train Path Group, the Access Provider has notified the Operator that the material breach renders the Approved Train Path unsafe, inefficient or impracticable to operate, and the Operator has not rectified that breach within 7 days of notification;
 - 3.1.3 if the Operator has (or had) terminated a rail based freight haulage contract with a customer ~~and the Operator has no other rail freight haulage contract with a customer that requires the continued use of the that may require the~~ Approved Train Path or Scheduled Train Path Group ~~to be granted to another Train Operator if that train path is required by the other Train Operator for a continuation of the customers freight haulage.~~ In this instance the binding protocol made under Section 6.3(a)(vii) and (viii) shall not apply.
 - 3.1.4 if circumstances outside the control of the Access Provider (including but not limited to events of Force Majeure) prevent the Approved Train Path from being provided for use by the Operator, provided that the Access Provider provides the Operator with details of the event as soon as possible in the circumstances; or
 - 3.1.5 if the Operator:
 - (a) breaches a relevant Law or binding standard;
 - (b) has its Accreditation suspended or cancelled; or
 - (c) fails to comply with the protocols contained in the Operating Handbook or the Rolling Stock Standards,
 but in relation to a breach by the Operator under clause ~~3.1.5(c)3-1.4(e)~~ 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.

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

Non-use

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

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

4 Conditions of Access

Limits on use of Train Paths

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

Ancillary Movements

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

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Ad hoc storage

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

Non-exclusive Access

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

Future scope of the Network

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

5 Access Charges and Access Fees

Access Fees

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

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

Access Charge

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

Other charges

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

Invoices

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

Objection to invoiced amount

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

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

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

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

Interest on late payment

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

Set off

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

Access Charges and GST

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

Train Manifest information and audit

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

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

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

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

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

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

6 Network maintenance & Works

General maintenance

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

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purpose of the Operator operating a Freight Train on those parts of the Network in accordance with the Performance Standard ~~set set under clauses 4.1. e to 4.1.j of the Access Arrangement~~ out in Appendix 6 of the Access Arrangement (as adjusted in accordance with clause 4.1. ~~f to 4.1.j~~^h of the Access Arrangement).

Lines booked out of service

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

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Track Occupations:

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

6.14 The Access Provider must:

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~~6.14.1 provide the Operator with at least 3 months' notice (including details of the nature, scope, extent and timing) of future Major Capital Works 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 projects is known by V/Line in advance of the 3 months' notice period; and~~

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~~6.14.2 use reasonable endeavours to meet the V/Line 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 V/Line must provide the Operator with reasonable details of any significant change in the nature, scope, extent or timing of a Major Capital Works Project;~~

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6.14 :

~~6.14.1 must provide the Operator with at least 3 months' notice (including details of the nature, scope, extent and timing) of future Major Capital Works Projects;~~

~~6.14.2 must provide the Operator with reasonable details of any significant change in the nature, scope, extent or timing of a Major Capital Works Project;~~

~~6.14.3 must consult the Operator in relation to the likely impact of Major Capital Works Projects on the Operator's business; and~~

~~6.14.4 must use all reasonable endeavours to minimise any adverse commercial impact of those Major Capital Works Projects on the Operator.~~

6.15 Subject to the Access Provider complying with its obligations under this Agreement and under any applicable Law (including in relation to the Access Provider's Accreditation), the Access Provider is not liable to compensate nor otherwise liable to the Operator in respect of matters arising from any Major Capital Works Projects, provided that this clause 6.15, does not release the Access Provider from liability to the Operator in respect of property damage or personal injury suffered by the Operator or any person having a claim against the Operator as a result of the relevant works.

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7 Operator's obligations in using the Network

Familiarity and compliance with procedures and protocols

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

Weighing requirements

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

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Operator's obligations

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

8 Train Manifest

Train Manifest

- 8.1 At least 30 minutes prior to entry on to the Network, the Operator must provide the Access Provider with a notice (a "**Train Manifest**") specifying:
- 8.1.1 the number and type of each item of Rolling Stock in the consist of the Train;
 - 8.1.2 the type, identification number of each item of Rolling Stock and each point of arrival or departure on the Approved Train Path;
 - 8.1.3 the gross mass of the Train;
 - 8.1.4 the length of the Train;
 - 8.1.5 the motive power employed by the Train;
 - 8.1.6 the maximum axle load of the Train;
 - 8.1.7 the location, type and quantity of any Dangerous Goods on the Train; and
 - 8.1.8 any other information as may be required to be provided in the Train Manifest by the Safety Regulator from time to time,
- and the operator must use reasonable endeavours to ensure this information is

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~~accurate in all material respects~~ this information must be, ~~accurate in all material respects~~.

- 8.2 The Operator must notify the Access Provider immediately if it wishes to alter any of the information given to the Access Provider under clause 8.1.
- 8.3 The Train Manifest and any alteration of it must be provided in writing.

Rolling Stock Standards

- 8.4 The Operator must:
- 8.4.1 maintain all Rolling Stock used by the Operator on the Network so that it satisfies the Rolling Stock Standards;
 - 8.4.2 ensure that all Rolling Stock used by the Operator on the Network is approved for operation by the Safety Regulator;
 - 8.4.3 ensure that all Rolling Stock used by the Operator on the Network is equipped with fully operational safety and safe working equipment which is compatible with the safe working systems used by the Access Provider;
 - 8.4.4 ensure that the axle load of the Rolling Stock (including load) does not exceed the axle loading weight set out in the Rolling Stock Standards prescribed for that part of the Network on which a Service is operated;
 - 8.4.5 ensure that no Rolling Stock or load exceeds the prescribed dimensional outline for safe operation set out in the Rolling Stock Standards; and
 - 8.4.6 ensure that no Train exceeds the maximum Train length prescribed for that part of the Network on which a Service is operated, set out in the Rolling Stock Standards.
- 8.5 If the Operator wishes to operate Rolling Stock on the Network of a type which does not fully, but at least substantially, meets the Rolling Stock Standards, the Operator may request the Access Provider to alter the Rolling Stock Standards so as to specifically deal with such Rolling Stock and to specify such requirements for such Rolling Stock as are reasonably necessary to ensure the operation of such Rolling Stock on the Network does not have a material adverse effect on the Network or on the operation of Trains on the Network. The Access Provider must respond promptly to a request by the Operator for amendments to the Rolling Stock Standards.

Network Operating Requirements

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

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Directions by the Access Provider

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

Inspection and audit by Access Provider

- 8.9 The Access Provider may at any time require the Operator to undergo an audit conducted by the Access Provider, by giving the Operator at least 24 hours written notice, for the purpose of assessing:
- 8.9.1 the Operator's compliance with the terms and conditions of this Agreement;
 - 8.9.2 whether any one or more of the wagons used by the Operator in the provision of a Service is loaded in excess of its rated carrying capacity; or
 - 8.9.3 whether any one or more of the wagons used by the Operator in the provision of a Service is loaded in an unsafe or potentially unsafe manner.

8.10 The Access Provider must 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 8.9 demonstrates that the Operator has been using or loading wagons in an unsafe manner. In such circumstances, additional audits may be conducted by the Access Provider, acting reasonably.

~~8.10~~8.11 The Access Provider must use reasonable endeavours to conduct audits under clause 8.9 in a manner that minimises disruptions to the Operator.

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Instructions

~~8.11~~8.12 In conducting an audit under clause 8.9, the Access Provider may give an instruction to the Operator, including an instruction to divert or delay a Train or make any part of a Train engaged in providing a Service available for inspection or weighing.

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Monitoring equipment

~~8.128.13~~ The Access Provider or its agent may place, on or about the Network, monitoring equipment which will take readings or measurements to monitor the operation of Rolling Stock. The Operator hereby authorises and consents to the Access Provider undertaking such monitoring and the collection of data from such monitoring equipment with respect to the Operator's Rolling Stock. The Access Provider:

~~8.12.18.13.1~~ will treat such data as Confidential Information; and

~~8.12.28.13.2~~ may only use such information for the purpose of:

- (a) the assessment under clause 8.9;
- (b) the safe and efficient operation of the Network; and
- (c) calculation of Access Fees.

~~8.138.14~~ If:

~~8.13.18.14.1~~ the Operator's Rolling Stock used to operate a Service on the Network continues to travel on a connecting rail network as part of that Service;

~~8.13.28.14.2~~ the Operator obtains data with respect to such Rolling Stock from monitoring equipment on the connecting rail network, and

~~8.13.38.14.3~~ such data is reasonably required by the Access Provider for the safe and reliable operation of the Network,

the Operator must use reasonable endeavours to provide such data to the Access Provider upon request.

9 Operational Control

Nature of exercise

9.1 The Access Provider will:

9.1.1 exercise Operational Control in accordance with the Book of Rules and the Operating Handbook; and

9.1.2 maintain Operational Control over the Network in accordance with any Law from time to time applicable in Victoria or New South Wales with regard to such control.

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

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- 9.3 An Operational Direction may include any direction or requirement that the Access Provider considers necessary for the safe and efficient operation of the Network including, without limitation, a direction regarding Train speed and weight restrictions.
- 9.4 The Access Provider is not liable to the Operator, or any other person, for any Loss that is directly or indirectly related to the giving of an Operational Direction except to the extent that the Loss is caused by:
- 9.4.1 the Access Provider's negligence;
 - 9.4.2 breach of this Agreement by the Access Provider; or
 - 9.4.3 breach of the Access Provider's Accreditation.

Extent of exercise

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

Responsibility of Operator to comply

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

Communication responsibilities

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

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9.8 The Operator must:

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

10 Time for Services traversing the Network

10.1 Without limiting any of the Operator's obligations under this Agreement, the Operator must:

- 10.1.1 ensure that each Service is available for departure to enter the Network at the Entry Time;
- 10.1.2 apply sufficient motive power to each Service to ensure that each individual item of Rolling Stock arrives or departs, as the case may be, at the scheduled points and times along the Approved Train Path; and
- 10.1.3 ensure that each Service is resourced with appropriate Rolling Stock and Train crew to enable the Service to depart the Network at the Exit Time for that Service.

10.2 If the Operator does not strictly comply with the requirements set out in clause 10.1.1, the Access Provider has no obligation to provide the Approved Train Paths, but will use reasonable endeavours to accommodate the Operator's Trains, by:

- 10.2.1 allowing the Operator to use Approved Train Paths; or
- 10.2.2 offering the next Available Train Paths that most closely resembles the Approved Train Path to the Operator.

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11 Undertakings and warranties

Undertakings and warranties

- 11.1 In addition to and notwithstanding all other warranties express or implied in this Agreement, the Operator undertakes and warrants to the Access Provider that:
- 11.1.1 it is duly incorporated and is empowered to enter into this Agreement and to do all things that it is required to do by this Agreement;
 - 11.1.2 it has the resources and ability to perform all of its obligations under this Agreement;
 - 11.1.3 all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on it;
 - 11.1.4 all authorisations by any Government Agency that are required or will be required in connection with the execution and delivery of the performance of obligations under, or the validity or enforceability of, this Agreement, including the Accreditation, have been obtained or effected and are fully operative and in full force and effect;
 - 11.1.5 there is no litigation, arbitration or administrative proceedings taking place, pending or, to its knowledge, threatened against it which could have a material adverse effect on its ability to perform its obligations under this Agreement;
 - 11.1.6 it will as soon as practicable notify the Access Provider of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the Operator under this Agreement and any event that could have a material adverse effect on its ability to perform its obligations under this Agreement;
 - 11.1.7 it has disclosed to the Access Provider all information that the Access Provider has requested under clause 3(b) of the Negotiation Guidelines, being information that could reasonably be regarded as affecting to a substantial extent the decision of the Access Provider to enter into this Agreement or to allocate a Train Path to the Operator; and
 - 11.1.8 all information provided to the Access Provider is true and correct and that no statement or representation made by it or on its behalf to the Access Provider in negotiations antecedent to this Agreement or to the allocation of a Train Path is misleading or deceptive in any material respect.

Time of giving undertakings and warranties

- 11.2 The undertakings and warranties set out in this clause 11 will be taken to be given and made:
- 11.2.1 on the date of execution of this Agreement; and

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- 11.2.2 on each day on which the Access Provider grants any access or the Operator operates any Service on the Network.

12 Accreditation

Accreditation requirements

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

Information as to Accreditation

- 12.5 Without limiting any other provision of this Agreement, prior to operating any Rolling Stock on the Network the Operator must give the Access Provider such evidence as the Access Provider reasonably requires to demonstrate that the Operator meets the requirements set out in clauses 12.1 to 12.4.

13 Compliance with other laws and standards

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

14 Incidents

Notification

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

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Emergency Management Plan

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

Dealing with Incidents

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

Other consequences of an Incident

- 14.7 The Operator must fully cooperate with any investigator (whether employed by the Access Provider or otherwise) or board of enquiry authorised to investigate the Incident and must use reasonable endeavours, without limitation, procure that its employees, contractors and agents provide formal statements within 7 Business Days on any matter related to an Incident if required to do so by such an investigator or board of enquiry.
- 14.8 Notwithstanding any other clauses of this Agreement the Access Provider may suspend an Operator's rights of access in the event that the Operator fails to comply with condition 14.7 for such period until the Operator has complied with condition 14.7.
- 14.9 The Operator must not dispose of or part with possession of any Rolling Stock or equipment involved in an Incident unless given written permission to do so by the Access Provider (which written permission must be given by the Access Provider as soon as investigations in relation to the Incident are completed) or, if in the reasonable opinion of the Access Provider, the Incident will not be subject to an ongoing investigation by any investigator or board of enquiry authorised to investigate the Incident.

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- 14.10 Subject to all applicable Laws, the Operator may continue to use equipment (including Rolling Stock) involved in an Incident which still meets the Rolling Stock Standards on the condition that the Operator allows access to the equipment (including Rolling Stock) by any investigator or board of enquiry authorised to investigate the Incident.
- 14.11 Subject to any agreement reached or determination made allocating responsibility for payment of costs arising out of an Incident, the Access Provider is responsible, on an interim basis, for payment of costs in relation to remediation or repair of the Network and the Operator is responsible, on an interim basis, for payment of costs in relation to recovery of the Operator's Trains and any goods.

Disablement

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

Notifications

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

15 Environment

- 15.1 Subject to clause 16.1, the Operator must not:
- 15.1.1 bring, store, abandon or dump any Industrial Waste or potentially Hazardous Substance on the Network in a way that contravenes any applicable Environmental Law;
 - 15.1.2 discharge any Industrial Waste, Hazardous Substance, garbage or any offensive matter on to the Network; or
 - 15.1.3 handle any Industrial Waste or potentially Hazardous Substance in a manner likely to create an Environmental Hazard.
- 15.2 In operating its Services or carrying out Ancillary Movements on the Network, the Operator must comply with all Environmental Laws and obtain and maintain in full force and effect and comply with the terms of all permits and licences required in order to release or emit anything into the air or water or on to the ground or otherwise into the Environment or to emit any substantial noise.

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15.3 The Operator must provide the Access Provider with an Environmental Management Plan.

15.4 Without prejudice to clause 15.1 and 15.2, the Operator must comply with the Environmental Management Plan.

16 Dangerous Goods

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

17 Indemnity and Insurance

Operator's indemnity

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

Access Provider's indemnity

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

Defence of Claims

17.3 The parties shall render each other all reasonable assistance in the defence of any claim made against a party by a third party arising out of any Incident or other event giving rise to a Claim.

17.4 To the extent that a party ("**responsible party**") is obliged to indemnify the other party ("**indemnified party**") against a Claim by a third party against the indemnified party, the responsible party may, subject only to the terms of any applicable insurance which the indemnified party may have, at its own expense defend and settle any action or proceedings in the name of the indemnified party and execute such documents in the action or proceedings as the responsible party sees fit. The responsible party

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indemnifies the indemnified party in respect of all costs, expenses and losses which the indemnified party may incur on account of the action or proceedings.

- 17.5 The responsible party must not enter into any settlement or compromise of a Claim that involves a remedy other than the payment of money by the responsible party without the prior written consent of the indemnified party, which shall not be unreasonably withheld.
- 17.6 For the purposes of the indemnities given in this clause 17, the property of a person includes that person's cost of recovery of any of their property damaged or affected by the relevant loss, damage or destruction.

Limitation on liability

- 17.7 Subject to clause 17.16, neither party is liable (under the indemnities in clauses 17.1 or 17.2 or otherwise) for any Consequential Loss suffered by the other for which the other becomes liable.
- 17.8 Each party agrees that, subject to clauses 17.9 and 17.10, it will not make a Claim against the other under clause 17.1 or 17.2 (as the case may be) or otherwise if the total amount of the Claim does not exceed \$50,000.00 in respect of any one event or cause of action or series of related events or causes of action.
- 17.9 In the event that either party proposes making a Claim against the other under clause 17.1 or 17.2 (as the case may be) or otherwise to recover loss or damages in respect of any one event or cause of action or series of related events or causes of action, the party making the Claim must give notice of a dispute under clause 24 and otherwise comply with the terms of clause 24 before taking any other action to prosecute its Claim. Nothing in this clause 17.9 prohibits a party from seeking and obtaining appropriate injunctive relief.
- 17.10 The limitation in clause 17.8 does not apply to Claims made by one party against the other for monies presently due and payable under the terms of this Agreement including, without limitation, payment by the Operator of the Access Charges.

Insurance

- 17.11 Each party must take out and maintain a public liability insurance policy for an amount not less than \$250 million for any one event with respect to any liabilities to the other party and any third parties, for:
- 17.11.1 the death or injury of any person (except a person who at the time of the injury or death is defined as a worker of the other party under any law relating to workers' compensation insurance);

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- 17.11.2 any amounts for which it is liable to the other party, and must indemnify the other party, under clause 17.1 or 17.2; and
 - 17.11.3 any loss, damage or destruction of any property (other than its own property).
- 17.12 The insurance referred to in clause 17.11 must be effected with a reputable and solvent insurer.
- 17.13 Each party must notify the other party immediately upon receipt of notification of cancellation of the insurance required under clause 17.11.
- 17.14 Each party must produce a current certificate of currency in respect of its insurance conforming with the requirements of clause 17.11 as soon as reasonably practicable after a request is made by the other party.
- 17.15 The requirements of this clause 17 are without prejudice to and do not affect the operation of the indemnities and limitations of liability contained in this Agreement.

Delay indemnity

- 17.16 Without limiting any provision of this Agreement, if the Operator causes or contributes to any delay in the Network, and that results in:
- 17.16.1 the Access Provider being liable to pay a greater amount to a Passenger Franchisee under the Passenger Franchisee's access agreement or any related agreement; or
 - 17.16.2 a Passenger Franchisee paying a lesser amount to the Access Provider under the Passenger Franchisee's access agreement or any related agreement, or
 - 17.16.3 where the Access Provider is also a Passenger Franchisee the Access Provider being liable to pay a greater amount under the Passenger Franchisee's Franchise Agreement or any related agreement;

(in the case of clause 17.16.1 and 17.16.2 a "**Lateness Payment**" as defined in the relevant Passenger Franchisee's Agreement with the Access Provider and in the case of clause 17.16.3 a "**Lateness Payment**" as defined in the relevant Passenger Franchisee's Agreement) than would otherwise be the case ("**Delay Loss**"), the Access Provider must provide the Operator with a delay loss certificate, which indicates the amount of any Delay Loss and the cause of the Delay Loss, together with documentary evidence of the amounts under clause 17.16.1 and 17.16.2 or 17.16.3. The Operator must reimburse the Access Provider for the Delay Loss to the extent that the Operator caused or contributed to it. On request by the Operator the Access Provider will provide to the Operator extracts from the Franchisee Agreement upon which the Delay Loss is calculated.

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- 17.17 The delay loss certificate referred to in clause 17.16 will be conclusive evidence of the amount of any Delay Loss incurred by the Access Provider and the cause of such Delay Loss in the absence of manifest error.
- 17.18 The parties acknowledge that any Lateness Payment is payable irrespective of whether or not the cause of the Lateness Payment is a breach of this Agreement.

18 Assignment and sub-contracting

Assignment

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

Sub-contracting

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

19 Term and termination

Term

- 19.1 Subject to this clause 19, this Agreement commences on the Commencement Date and unless otherwise terminated will expire on the Expiry Date.
- 19.2 This Agreement is subject to the Operator providing to the Access Provider:
- 19.2.1 evidence of the Operator's Accreditation;
 - 19.2.2 the Environmental Management Plan; and
 - 19.2.3 the Emergency Management Compliance Plan.

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- 19.3 If the conditions precedent in clause 19.2 have not been fulfilled at the Commencement Date, the Operator will not be entitled to use any Approved Train Path until they have been fulfilled.
- 19.4 Notwithstanding clause 19.3, if the conditions precedent in clause 19.2 have not been fulfilled by the date which is 30 days after the Commencement Date, either party may terminate this Agreement immediately on notice to the other party.
- 19.5 If this Agreement is terminated under clause 19.4 each party:
- 19.5.1 is released from its obligations to further perform this Agreement except those obligations imposing on it obligations of confidentiality; and
 - 19.5.2 retains the rights it has against the other party in respect of any past breach.

Preservation of other rights

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

Breach of payment obligation

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

Breach of other obligations

- 19.9 If a party commits a material breach of an obligation under this Agreement (other than a breach referred to in clause 19.7) ("**Defaulting Party**") the other party may give the Defaulting Party a notice ("**Default Notice**") within a reasonable time:
- 19.9.1 stating that a material breach has occurred;
 - 19.9.2 setting out reasonable details of the event or circumstances constituting the material breach; and
 - 19.9.3 specifying a reasonable period of time, being no longer than 30 days in which to cure the material breach ("**Cure Period**").

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- 19.10 Within seven days of receipt of a Default Notice, the Defaulting Party must provide to the other party a plan designed to cure the material breach specified in the Default Notice ("**Cure Plan**").
- 19.11 The Defaulting Party will be permitted to cure the material breach within the Cure Period and in accordance with the Cure Plan.
- 19.12 If the Defaulting Party requires an extension to the Cure Period, of not more than 30 days, under clause 19.9.3 it may, not later than the expiration of the Cure Period, provide to the other party:
- 19.12.1 a revised Cure Plan; and
- 19.12.2 evidence that:
- (a) the Defaulting Party has diligently pursued and is continuing to diligently pursue a feasible and practicable programme of rectification; and
 - (b) the material breach cannot, with reasonable diligence, be cured within the current Cure Period.
- 19.13 The other party must not unreasonably refuse to grant an extension of the Cure Period.
- 19.14 If the Defaulting Party commits a material breach and the material breach is not cured within the Cure Period then, the other party may terminate this Agreement immediately by notice to the Defaulting Party.
- 19.15 Clauses 19.9 to 19.13 do not limit or reduce the rights of a party to claim damages for breach of this Agreement.

Termination on insolvency

- 19.16 A party may terminate this Agreement immediately by notice to the other party if the other party:
- 19.16.1 stops or suspends payment of either all or a class of its debts (other than debts owed to the Access Provider);
- 19.16.2 is insolvent within the meaning of section 95A of the Corporations Act;
- 19.16.3 fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:
- (a) the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or

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- (b) the party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
- 19.16.4 has an administrator appointed in respect of it;
 - 19.16.5 has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to the whole or a substantial part of its assets or undertaking and that controller or similar officer is not removed within 15 Business Days of the appointment;
 - 19.16.6 has an order made or a resolution passed for its winding up or dissolution or it enters an arrangement, compromise, or composition with or assignment for the benefit of its creditors or a class of them;
 - 19.16.7 has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
 - 19.16.8 is subject to any event which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Termination for Change of Control

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

Cessation of rights

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

Accrued rights

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

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Rail Management Act

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

20 Exception and exemption clauses

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

21 Notices

- 21.1 Unless expressly provided otherwise, a notice or other communication connected with this Agreement ("**Notice**") has no legal effect unless it is in writing.
- 21.2 In addition to any other method of service provided by law, the Notice may be:
- 21.2.1 sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
 - 21.2.2 sent by facsimile to the facsimile number of the addressee; or
 - 21.2.3 delivered at the address for service of the addressee.
- 21.3 If the Notice is sent or delivered in a manner provided by clause 21.2, it must be treated as given to and received by the party to which it is addressed:

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- 21.3.1 if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 - 21.3.2 if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - 21.3.3 if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 21.4 Despite clause 21.3.2:
- 21.4.1 a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
 - 21.4.2 a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 21.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:
- 21.5.1 the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - 21.5.2 the Notice is returned unclaimed.
- 21.6 Any Notice by a party may be given and may be signed by its solicitor.
- 21.7 Any Notice to a party may be given to its solicitor by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number.
- 21.8 Any:
- 21.8.1 Notice with respect to an Incident; or
 - 21.8.2 Operational Direction,
- may be given orally [where the informing party considers that the recipient requires the information contained in the Notice urgently and there is insufficient time to serve a written notice.](#)

22 Confidential Information

- 22.1 Except as permitted by this clause 22, each party must:

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- 22.1.1 hold the Confidential Information in strict confidence and not disclose the Confidential Information to any person;
 - 22.1.2 take all steps reasonably necessary to safeguard the confidentiality of the Confidential Information; and
 - 22.1.3 immediately notify the disclosing party of any potential, suspected or actual disclosure of the Confidential Information not permitted by this Agreement.
- 22.2 A party ("**Receiving Party**") in receipt of the other party's ("**Disclosing Party**") Confidential Information may disclose Confidential Information:
- 22.2.1 to its officers, employees and legal, financial or economic advisers (on a need to know basis);
 - 22.2.2 to the extent required by:
 - (a) any Law or the requirements of the Receiving Party's Accreditation;
 - (b) the Safety Regulator;
 - (c) any Government Agency; or
 - (d) the rules of any stock exchange;
 - 22.2.3 to the ACCC for the purpose of Part IIIA of the Trade Practices Act 1974 (Cth) or to the Victorian Essential Services Commission for the purpose of the Rail Management Act or any of the instruments made by the Victorian Essential Services Commission under the Rail Management Act;
 - 22.2.4 to the extent required for the purpose of any mediation, expert determination, arbitration or legal proceeding involving the Receiving Party; or
 - 22.2.5 with the consent of the Disclosing Party, which will not be unreasonably withheld.
- 22.3 The provisions of this clause 22 survive termination of this Agreement for a period of three years.
- 22.4 Each party acknowledges that:
- 22.4.1 the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information and that monetary damages would be an insufficient remedy; and
 - 22.4.2 in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of and to compel specific performance of this clause.
- 22.5 For clarification, the confidentiality obligations under this Agreement apply in addition to the obligations under sections 38ZZZ and 38ZZZA of the Rail Management Act, and in addition to the Access Provider's obligations to handle confidential information in

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accordance with the system and business rules approved by the Victorian Essential Services Commission under section 38ZZZB of the Rail Management Act.

23 Connecting networks

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

24 Dispute Resolution

Procedure to settle disputes

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

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Negotiation

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

Mediation

24.5 If the negotiation of the dispute under clause 24.4 is not resolved within 10 Business Days from its commencement, the parties will submit the matter to mediation on the following terms:

24.5.1 the mediator will be chosen by the parties within 25 Business Days of notification of the dispute under clause 24.2.1 and appointed within a further 10 Business Days;

24.5.2 in the absence of agreement by the parties as to the mediator within 35 Business Days of notification of the dispute under clause 24.2.1, the mediator will be appointed on the application of any party by the President of LEADR (Association of Dispute Resolvers) within 10 Business Days of the application;

24.5.3 the parties must endeavour to procure that a mediator appointed under clauses 24.5.1 or 24.5.2:

- (a) assists the parties to reach a resolution of the dispute by agreement;
- (b) acts impartially and ensures that each party has a clear understanding of the other party's points of view to enable proposals to be formulated for settlement of the dispute;
- (c) does not make his or her personal or professional views known to the parties or give any professional advice to a party;
- (d) is entitled to terminate the mediation if, after consultation with the parties, the mediator forms the view that the mediation process is exhausted; and
- (e) does not 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;

24.5.4 each party to the mediation may appoint a person, including a legally qualified person, to represent it or assist it in the mediation;

24.5.5 each party will bear its own costs relating to the preparation for and attendance at the mediation;

24.5.6 the costs of the mediator will be borne equally between the parties; and

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- 24.5.7 the mediation process will cease if the dispute has not been settled within 20 Business Days of the mediator being appointed, or such longer time as may be agreed by the parties.

Arbitration

- 24.6 Subject to clauses 24.7 and 24.8, if a dispute between any of the parties relating to or arising out of this Agreement is not settled under clause 24.4 (or if no agreement is reached to refer the dispute to mediation within 20 Business Days of notification of the dispute), either party may by written notice to the other refer the dispute to arbitration for determination on the following terms:
- 24.6.1 the arbitrator will be chosen by the parties but in the absence of an agreement by the parties as to the arbitrator within 10 Business Days of the notice referring the matter to arbitration, the arbitrator will be appointed on the application of either party by the President of the Institute of Arbitrators Australia;
- 24.6.2 the arbitrator must have appropriate qualifications necessary to understand and resolve the issues in dispute and have no interest or duty which conflicts or may conflict with his or her functions as an arbitrator;
- 24.6.3 the Commercial Arbitration Act 1984 (Vic) will apply to the arbitration and the arbitration will be conducted and held in accordance with, and subject to, the Institute of Arbitrators Australia Expedited Commercial Arbitration Rules except that Rule 19 will not apply;
- 24.6.4 each party may be represented at the arbitration by a qualified legal practitioner;
- 24.6.5 the arbitrator must hand down a decision within two months after notice referring the dispute to arbitration or such longer period as may be mutually agreed between the parties or in the absence of agreement such longer period as is reasonably considered appropriate by the arbitrator in all the circumstances;
- 24.6.6 the decision of the arbitrator with regard to the dispute will be binding upon the parties; and
- 24.6.7 if the parties have referred or agreed to refer a dispute to an arbitrator under this clause 24.6, the arbitrator must determine all the issues comprised in or relating to the dispute, and no such issue can be referred to an independent expert under clauses 24.7 and 24.8 unless both parties so agree.

Independent Expert

- 24.7 If either party notifies the other of a dispute which the parties agree is best resolved by an independent expert, the parties will submit to the following procedure prior to any other course of action being taken to resolve the dispute:
- 24.7.1 the parties will jointly choose and appoint an independent expert;

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

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

Amalgamation of disputes

24.9 The parties may by agreement permit a dispute being dealt with under this clause 2424 to be amalgamated with any other dispute or disputes involving one or both parties.

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25 Force Majeure

Notice of event of Force Majeure

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

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Suspension of obligations

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

Remedying or minimising Force Majeure

- 25.3 The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take reasonable steps to remedy or minimise the effects of the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 25.4 Without limiting clause 25.3, the Access Provider must take reasonable steps to restore any part of the Network damaged or affected by the Force Majeure event to a standard which permits the Operator to operate its Services unless the Access Provider, acting reasonably, determines that it would not be economically feasible to do so.
- 25.5 If the Access Provider determines that it would not be economically feasible to restore the part of the Network affected by the Force Majeure Event, it must take reasonable steps to make available to the Operator an alternative Train Path which allows the Operator to operate its Services. The Operator accepts that this will be the only relief to which is entitled if this clause 25.5 applies, and releases the Access Provider from any other liability.

Mitigation

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

26 Severability

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

27 No merger

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

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28 Entire Agreement

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

29 Amendment

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

30 Waiver

- 30.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 30.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 30.3 A waiver is not effective unless it is in writing.
- 30.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

31 Further assurance

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

32 Governing Law and jurisdiction

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

33 Interpretation

- 33.1 Reference to:
- 33.1.1 one gender includes the others;
 - 33.1.2 the singular includes the plural and the plural includes the singular;
 - 33.1.3 a person includes a body corporate;
 - 33.1.4 a party includes the party's executors, administrators, successors and permitted assigns;
 - 33.1.5 a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:

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- (a) that Statutory Provision as amended or re-enacted from time to time;
- (b) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
- (c) another regulation or other statutory instrument made or issued under that Statutory Provision, as amended or re-made or re-issued from time to time;

33.1.6 money is to Australian dollars, unless otherwise stated.

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

33.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

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

33.5 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

33.6 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

Parties

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

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

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

Consents or approvals

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

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Executed as an agreement

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

Signature of Director / Chief Executive Officer

Signature of Director / Secretary

Name of Director / Chief Executive Officer
(BLOCK LETTERS)

Name of Director / Secretary
(BLOCK LETTERS)

EXECUTED by the Operator by or in the presence of:

Signature of Director

Signature of Director / Secretary

Name of Director
(BLOCK LETTERS)

Name of Director / Secretary
(BLOCK LETTERS)

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Schedule 1

Item

1 Access Provider

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

2 Operator

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

3 Expiry Date

2400 hrs on the day of .

4 Parts of the Network to which this Agreement applies:

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

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Schedule 2

Pricing

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

1 Normal Hours Pricing

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

2 Out of Hours Pricing

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

A. Bulk Grain Freight Access

V/Line will charge Operators the sum of:

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

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

| Year | Flagfall rate, \$/TK | Variable rate, \$/GTK |
|---------|---|--|
| 2012/13 | To be calculated by adding multiplied by March CPI to by 2011/12 | To be calculated by adding multiplied by March CPI to by 2011/12 current rates of |

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| | | |
|---------|--------------------------|---------|
| | current rates of \$5.719 | \$7.607 |
| 2013/14 | (A) | (A) |
| 2014/15 | (B) | (B) |

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

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

B. All Other Freight Access

V/Line will charge Operators the sum of:

(1) the flagfall rate as shown below; and

(2) the variable rate,

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

| Year | Flagfall rate, \$/TK | Variable rate, \$/GTK |
|---------|---|---|
| 2012/13 | To be calculated by adding multiplying March CPI to by 2011/12 current rates of \$0.876 | To be calculated by adding multiplying March CPI to by 2011/12 current rates of \$1.646 |
| 2013/14 | (A) | (A) |
| 2014/15 | (B) | (B) |

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

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

Field Code Changed

Schedule 3

Annual variation of Access Fees

Definitions:

In this Schedule:

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

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

“**CPI**” means for a particular Review Date:

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

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

Access Fee variation formula

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

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

where

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

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

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Schedule 4

Scheduled Train Path Group

Operator's Scheduled Train Path:

Train path number:

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

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

Entry Point:

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

Exit Point:

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

Field Code Changed



OPERATING HANDBOOK

2012

Document No.: NOPR: 038 | Revision 09 | Issue Date: 21 February 2012.

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1. INTRODUCTION

1. This operating handbook sets out the V/Line capacity allocation principles and Network management protocols for Access Seekers / Train Operators to Access the V/Line Network.
2. All documentation relative to Access conditions and obligations not included in the handbook have been listed and described accordingly so that Access Seekers/Operators are aware of their existence and relevance.

2. DEFINITIONS

Access - either the access sought by an Access Seeker from V/Line or the access provided by V/Line to an Access Seeker pursuant to an Access Agreement, for the purpose of operating Trains on the Network.

Access Agreement - an agreement between V/Line as Access Provider and:

- a. an operator in relation to Access to the Network for freight Trains;
- b. V/Line for passenger and heritage Train operations.

Access Arrangement - the Standard terms and conditions for all future Access Agreements for the access of Freight Services to the V/Line Network.

Access Provider - means V/Line

Access Seeker - as the context requires, either a Train Operator seeking to enter into an access agreement with V/Line or a Train Operator that has entered into an access agreement with V/Line.

Ad Hoc Train Path - means a Passenger Train Path requested on a one off basis that is subject to the 'Principle Of Passenger Priority'

ARTC - means Australian Rail Track Corporation.

Available Capacity - means with respect to a rail Line, the available Train Paths for that Line as determined by V/Line.

Available Path - an operationally achievable Train Path including an Unscheduled Freight Train Path, other than a Train Path already committed by V/Line to another Train Operator under an Access Agreement.

Business Day - a day that is not a Saturday or Sunday or a day appointed as a public holiday.

Daily Train Plan - the timetable produced and approved by V/Line in accordance with this handbook that sets out all planned Train movements on the Network on a given day.

DMU – A Diesel Multiple Unit Train

Draft Master Train Time Table - the proposed master time table as prepared in accordance with S.10 of the *Transport (Compliance and Miscellaneous) Act*

ESC - means Essential Services Commission.

ESLO - means Emergency Services Liaison Officer, a role designated to a V/Line Officer in the EMP whilst an incident is under the control of an external control agency.

EMP - means the V/Line Emergency Management Plan that sets out the obligations for V/Line in dealing with incidents in accordance with the Emergency Management Manual Victoria and rail safety accreditation.

Force Majeure - is as defined in Access Agreements.

Freight Services - means rail transport services that are not Passenger Services or rail transport services that are provided by means of a terminal.

Freight Train Path- means an entitlement of a Train Operator to use a Train Path on the Network of V/Line to provide Freight Services and includes a Scheduled Train Path and an Unscheduled Freight Train Path.

Healthy - in respect of a Train Service or Train means a Train Service or a Train that has entered the Network or Line of V/Line On Time or if it has entered the Network or Line late has made up time or if it has entered the Network or Line early has lost time, such that in the reasonable opinion of V/Line it is running On Time and there are no indications that it will not exit the Network or Line On Time, or it has entered the Network or Line of an Access Provider On Time, has lost time en-route and is not On Time as a result of 'below rail' causes.

Good Industry Practice - means those practices followed in the commercial railway industry when an activity is undertaken in accordance with all applicable Legislation and Standards and with due care and skill.

Legislation - means Commonwealth, Victorian or local government Legislation including regulations, orders, by-laws, rules and other subordinate Legislation or other document enforceable under any such Legislation, regulations, orders, by-laws, rules or subordinate Legislation.

Line - in respect of the Network of V/Line, means the rail path between two locations on the Network as determined in the Network operating requirements that may be the subject of a Train Path.

Line Segment – a segment of rail track of the Network designated as a Line Segment by V/Line in its NSP or this handbook (or both) and which has specific operating requirements and RAMS input requirements.

Master Train Timetable - means the permanent timetable produced and approved by V/Line.

MTM – means Metro Trains Melbourne

Network - means the land and infrastructure leased to V/Line under the Regional Infrastructure Lease from time to time and declared under either the freight Network declaration order 2005 or the passenger Network declaration order 2005. Including railway track, associated track structures and works (such as cuttings, tunnels, bridges, sidings, excavations, landfill, track support earthworks and drainage works) pedestrian crossings, over track structures, under track structures, service roads, signalling, notices and signs, but excluding:

- a. buildings (including stations, platforms, sheds and shelters);
- b. car parks;
- c. terminals, storage and receiving facilities;
- d. workshops, depots, yards and fuel points; and
- e. private sidings that are not leased to V/Line, but includes any infrastructure leased to V/Line which passes through or is immediately adjacent to any of the infrastructure or facilities referred to in a) to e) above.

Network Map - the map of the V/Line Network as shown in this handbook.

Normal Hours - the proposed operation of a Train on the Network on the basis that it is consistent with the normal signal box operating hours (block working hours) for the relevant corridor of the Network. The normal signal box operating hours are available from the NSP. The normal signal box operating hours are only changed when changes are made to Scheduled Train Paths for passenger and/or freight trains in the MTT, in accordance with the provisions of the Access Arrangement and this Operating Handbook.

NSP - the V/Line Network Service Plan as amended from time to time by V/Line in accordance with this handbook and Access Agreements. Setting out the details for Rolling Stock Access, Train operating limits, Network description, Network characteristics and the Master Train Timetable for scheduled passenger and scheduled and unscheduled freight Trains.

Occupation - means Access to the Network for the purpose of inspection, maintenance or construction during which time Trains cannot operate through the Occupation area.

Occupations Committee - representatives of V/Line, MTM and other stakeholders from time to time that meet Weekly in relation to track Occupations and other related works enabling the Train Operators to communicate their interests in works planning and implementation with V/Line and MTM to enable arrangements to be finalised in accordance with Access Agreements.

On Time - in respect of a Line utilised by any Passenger Service means within five minutes of the scheduled Line entry or expected Line exit times; and for a Line utilised exclusively by Freight Services means within ten minutes of the scheduled Line entry or expected Line exit times.

Out Of Hours - all times outside Normal hours.

Out Of Hours Train Path - means an Unscheduled Freight Train Path that is Out Of Hours and may incur additional Access costs in accordance with the Access Arrangement.

Passenger Service - means railway services for the carriage of passengers by Train between locations on the Network of V/Line.

Passenger Train Path - means either:

- a. an entitlement of a Train Operator under an Access Agreement to use a Train Path on the Network of V/Line to provide Passenger Services which has fixed Line entry and exit times and fixed intervals for passenger stops; or
- b. a Passenger Train Path specified in the timetable approved by the Public Transport Development Authority of Public Transport, as amended from time to time, under section 10 of the *Transport Act 1983*.

Principle of Passenger Priority - means the giving of priority to the provision of Declared Rail Transport Services to Passenger Service Train Operators over the provision of Declared Rail Transport Services to Train Operators other than Passenger Service Train Operators.

Printed Schedule – referred to as an “S” circular issued by the Manager Network Access or authorised officer to the access seeker after due process of an unscheduled train path application for a freight train or for Infrastructure train movements. Issued to all Operators.

RAMS - means Rail Access Management System;

Real-Time Scheduling - means the process of Train Controllers coordinating arrival and departure times for Train Services at the beginning, intermediate and destination locations of a Train journey, where this process takes place on the day of the Train Service in question.

RFR - means Regional Fast Rail.

Rolling Stock - means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, DMU's, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the rail track.

Running Ahead - in respect of a Train Service or Train means a Train Service or Train that has entered the Network or Line of V/Line before its scheduled entry time or is making up time en-route and in the reasonable opinion of V/Line is expected to exit the Network or Line earlier than its scheduled exit time.

Scheduled Services - means the entitlement of a Train Operator to use a Train Path on the Network of V/Line on a recurrent basis upon entry into or by amendment of its Access Agreement. Services which have a fixed Line entry and exit time.

Scheduled Train Path – a Train Path - that is allocated to a Train Operator and shown in the Master Train Timetable for freight Trains or the Daily Train Plan and Master Train Timetable for passenger Trains.

Standard - means any Standard or code of practice issued from time to time by Standards Australia (an incorporated body formerly known as the Standards Association of Australia), the Association of American Railroads, the International Union Railways, British Standards, Federal Railroad Administration, the Australasian Railway Association or such similar body to the extent that the Standard or code is applicable to the Victorian railway industry.

Test Trains – means Trains which Access the Network for the purpose of testing new or altered Rolling Stock or Infrastructure.

TPWS - means Train Protection Warning System.

Train - means a DMU or locomotive and with or without wagons or carriages used to operate Train Services.

Train Controller - means a person at a Train control centre of V/Line who carries out one or more of the following activities;

- a. performing Train Control Services;
- b. managing and monitoring Train movements and all other operation of Rolling Stock on the Network of V/Line and any activities affecting or potentially affecting such Train movements and Rolling Stock operation; and
- c. managing incidents that occur or may occur on the Network of V/Line.

Train Control Services - means services involving the giving of directions or the granting of permission to operate Rolling Stock on the V/Line Network consistent with the safe and efficient operation of that Rolling Stock and the Network.

Train Manifest - means a notice (written or electronic form) prepared by a Train Operator in relation to a Train Service or Train and containing:

- 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 its first point of arrival or departure from the Train Path;
- c. the gross mass of the Train;
- d. the length of the Train;
- e. the motive power including axle load employed by the Train;
- f. the maximum wagon axle load;
- g. the location, type and quantity of any dangerous goods on the Train; and
- h. any other requirements notified by V/Line that have a specific purpose for the running of certain Trains.

Train Operating Committee – means representatives of V/Line, MTM and other stakeholders from time to time that meet monthly to plan and agree on the implementation dates for Master Train

Timetable changes. The Committee also discusses and agrees on the necessary temporary service plan changes for Passenger Services that are impacted by Occupations and works determined by the Occupations Committee.

Train Operator - means a user who runs or a person who runs a Train Service or Train or operates Rolling Stock on the V/Line Network.

Train Path - the particular time interval including an entry time and day and exit time and day through which an actual Train may travel over a segment of the Network from an origin to a destination and may include stopping points and intermediate times and locations that V/Line considers necessary or appropriate to define the pathway.

Train Path Priorities - means the order of priorities for the scheduling and rescheduling of Train Paths or Train Services and for the provision of alternative Train Paths in accordance with the Principle Of Passenger Priority.

Train Service - means a Train run by a Train Operator an Access Provider or a related body corporate of V/Line by which that person provides railway Freight Services or Passenger Services.

Unhealthy - in respect of a Train Service or Train means a Train Service or Train that has not entered the Network or Line of V/Line On Time or has lost time en-route as a result of 'above rail' causes so that in either case it is not, in the reasonable opinion of V/Line, expected to exit the Network or Line On Time.

Unscheduled Freight Train Path- is an Available Path that has been included in the Master Train Timetable to facilitate prompt allocation upon request.

Unscheduled Services - the provision by V/Line of Access for which an operator gains an entitlement to use the applicable Train Paths(s) by means of the process of nomination and allocation both on a short term under its Access Agreement.

Utilisation - with respect to a Train Path means the frequency with which the Train Path is used. A Train Path is used when a Train Service or Train is:

- a. presented at the scheduled Line entry point;
- b. exists at the scheduled Line exit point;
- c. the times of entry or exit are not so dissimilar to the scheduled Line entry and exist times so as to require the issue of a separate or new Train Path; and
- d. the relevant Train Service or Train operates reasonably in accordance with the terms of the Access Agreement or existing arrangement or dispute resolution decision applicable to that Train or Train Service on that Train Path. For the avoidance of doubt, there is no failure to use a Train path as contemplated in paragraphs (a), (b), and (c) if the failure occurs;
 - i. because V/Line and a Train Operator agree to substitute an alternative Train Path; or
 - ii. because V/Line does not make the Network available to the Train Operator other than as a result of an act or omission of the user; or
 - iii. because of a Force Majeure event.

V/Line - is V/Line Pty Ltd.

VRTC - is the Victorian Rail Track Corporation.

Weekly - means Sunday to Saturday inclusive.

3. V/LINE CAPACITY ALLOCATION AND NETWORK MANAGEMENT

- a. V/Line will carry out its capacity allocation and Network management activities in a manner that is consistent with the Principle of Passenger Priority and V/Line will not unreasonably favour itself or another person over any other person.
- b. V/Line will use all reasonable endeavours to carry out its capacity allocation and Network management activities in a manner that is compatible with the operations of any interfacing rail networks.
- c. V/Line will also use all reasonable endeavours to allocate any Train Path requested by an Access Seeker and encourage maximum use of the Network by identifying all possible opportunities to create Train Paths that enable all Train Operators to operate their Trains to meet their business obligations.
- d. On receipt of an Access application V/Line will make an assessment as to whether there is Available Capacity in the form of an available Train Path or Available Paths. This assessment will review the proposed Train operations and how they interact with existing Scheduled or Unscheduled Train Paths and whether modifications can be made to the timetable to accommodate the Access application.
- e. If the V/Line assessment determines that there is insufficient Available Capacity to satisfy the Access application V/Line shall:
 - i. attempt to find an alternative Train Path that satisfies the requirements of the Access Seeker; and
 - ii. make an assessment of whether part of the Access Seeker's request can be satisfied with Available Capacity; and
 - iii. provide a written explanation to the Access Seeker within 24 hours of the receipt of the Access application as to why the Access Seeker's request could not be satisfied in full showing the Available Capacity of the Line and the existing Scheduled or Unscheduled Train Paths on the Line which conflict with the Access application.
- f. If two or more Access Seekers request the same available Freight Train Path and if it is not possible to satisfy all requests by using alternative similar Train Paths, V/Line will be obliged to allocate the available Train Path to the Access Seeker from which the greatest Utilisation of the Network is achieved by operating the freight service. V/Line's judgment of greatest Utilisation will consider the following aspects that are listed in order of importance:
 - i. frequency of Train Path usage;
 - ii. aggregate tonnage comparison;
 - iii. duration of Train Path usage.

V/Line will not require Access Seekers to identify consignees as part of the assessment process.
- g. On request by the Access Seeker, V/Line will provide written advice to the Access Seekers outlining the judgment made based on the assessment of the Utilisation benefits. A copy of the advice will also be forwarded to the ESC.

4. NETWORK SERVICE PLAN

- a. The Network Requirements section of the NSP contains Train operating data relative to the Network.

- b. The Addenda To The NSP - contains information relative to the field application of the RAMS. The Addenda also contains Train running documentation (including dangerous goods) and qualifying instructions and details of all locomotives and Rolling Stock authorised to operate on the V/Line Network.
- c. The Master Train Timetable is contained in the NSP and details all Passenger Train Paths and scheduled Freight Train Paths.

5. NETWORK MAP

- a. The Network Map is contained in Attachment 2 of this Operating handbook.

6. PRODUCTION OF MASTER TRAIN TIMETABLE AND DAILY TRAIN PLAN.

- a. V/Line maintain an up to date Master Train Timetable incorporating all amendments including a Network Map identifying Available Paths. Attachment 1 (Flow Chart) that sets out the V/Line objectives for ongoing production of the Master Train Timetable V/Line will provide copies of the Master Train Timetable and Network Map within 7 Business Days of the receipt of a reasonable request from an Access Seeker.
- b. A Train Operator may submit requests for the granting of new Scheduled Train Paths or variation to its Scheduled Train Paths in writing to V/Line, with a three month lead time prior to the next timetable change date as determined between all stakeholders at the Train Operating Committee meetings. A shorter lead-time can be sought on the basis that the variation is essential for ongoing business activities. In the case of a Freight Train Path request that does not require any amendment to any other Train Operator's services, the lead-time for creating the Scheduled Train Path will be one calendar month.
- c. A Train Operator may submit a request to V/Line to allocate an Unscheduled Freight Train Path to the Train Operator as a Scheduled Train Path. Subject to clause 3f, V/Line will make the Unscheduled Freight Train Path available to the Train Operator as a Scheduled Train Path within 10 Business Days of receipt of the Train Operator's request.
- d. V/Line may also initiate amendments to the Master Timetable when it is necessary to correct Network capacity issues, take advantage of new Network capacity or improve staffing and productivity arrangements in Line with Good Industry Practice including changes to Normal Hours. V/Line will only make such changes after receiving the agreement of Train Operators that are the users of Scheduled Train Paths requiring amendment.
- e. V/Line will review the requests for new or varied Scheduled Train Paths for conflicts within the Master Train Timetable.
- f. Where a conflict occurs between Train Operators' Train Paths, V/Line will finalise all Train Paths by giving priority to requests for Train Paths for Passenger Services then requests for Train Paths for Freight Services. With amendment to existing Train Paths commencing with Unscheduled Freight Train Paths, scheduled Freight Train Paths and then Passenger Train Paths. The agreement of Train Operators will be necessary for any amendments to their Scheduled Train Paths except amendments required by the Public Transport Development Authority of Public Transport pursuant to section 10 of the Transport (Compliance and Miscellaneous) Act 1983 (Vic).
- g. When agreement is reached, V/Line will return the Train Operators request for new or varied Scheduled Train Paths for acceptance and acknowledgment.

- h. V/Line will incorporate into the Draft Master Train Timetable any new or varied Scheduled Train Paths arising as a result of variations required by the Public Transport Development Authority pursuant to section 10 of the Transport (Compliance and Miscellaneous) Act 1983 (Vic) relevant to Passenger Train Path Priorities and any resulting variations to Freight Train Paths. V/Line will give affected Train Operators as much notice as practicable of any variations of this type.
- i. Train Operators of Passenger Train Paths are responsible for obtaining the approval of the Public Transport Development for all varied or new Scheduled Train Paths in the draft Master Train Timetable.
- j. Changes to the Master Train Timetable that require additional signaller and/or Train Controller resources will be subject to the authority of the General Manager Network Services in consultation with the Manager, Contracts, Access and Interfaces who will ensure that the Access Agreements between the Train Operator and V/Line are complied with.
- k. The Daily Train Plan consists of temporary variations to the Master Train Timetable for a given day, which are necessary to provide for approved variations and other operational disruptions including Occupations, known about before the day of operation. The Daily Train Plan will be updated on a weekly basis, or more frequently at the discretion of V/Line, and will be accurate with respect to all information known at the time of its preparation.
- l. The components for the production of the Daily Train Plan are:
 - i. the current version of the Master Train Timetable; and
 - ii. temporary variations to unscheduled / Scheduled Train Paths required by V/Line because of track Occupations; and
 - iii. requests from Train Operators for temporary variations to their Scheduled Train Paths and requests for Unscheduled Freight Train Paths; and
 - iv. the NSP; and
 - v. 'S' circular
- m. The roles of the various parties involved in the production of the Daily Train Plan are as follows:

Train Operators will:

 - i. ensure that their Trains are prepared and resourced to run in accordance with the Daily Train Plan produced by V/Line; and
 - ii. follow the process including Train Path Requisition procedure for the production of Daily Train Plan outlined in this handbook; and
 - iii. attend the occupations committee meetings convened by V/Line and MTM for the purpose of managing Train operating and track Occupation related changes.

V/Line will:

 - iv. offer Access for Train Operators to the RAMS;
 - v. ensure all relevant information is available to Train Operators;
 - vi. ensure that all Train Path allocations and scheduling is approved by the affected Train Operators and then conducted in accordance with the following Train Path Priorities:
 - A. Passenger Train Path requests or entitlements, then

- B. scheduled freight; then
- C. unscheduled freight and then
- D. Out Of Hours unscheduled freight.

n. **Out of Hours Unscheduled Freight Train Paths**

Train Operators may request an Out Of Hours Unscheduled Freight Train Path. V/Line will consider any request received from a Train Operator in accordance with the Train Path Priorities set out in 6 m. vi above. Furthermore in considering an Out Of Hours Unscheduled Train Path request V/Line will investigate the possibility of the Train Operator being able to operate the Train during Normal hours before finalising the allocation of a requested Train Path. The Access costs for Out Of Hours unscheduled Train Paths will be as set out in the Access Arrangement.

o. **Unscheduled Train Path Requirements**

Unscheduled Freight Train Path requests must be received at least 48 hours prior (such period not including any day that is not a Business Day) to the requested entry time of the Train onto the Network, or it will become a 'best endeavours' approach when under 48 hours. If possible, V/Line will allocate the requested pathway. If not possible, the Operator will be requested to resubmit for a different pathway that is acceptable.

p. **48 Hour Rule**

Train Operators need to also consider that the operation of Trains on Lines that are not subject to regular scheduled Train traffic, may need special approval in accordance with Train Operations Notice - 0400/08 for active level crossing management purposes. This may result in Unscheduled Freight Train Path requests not being approved in time to operate as intended unless the request is received at least 48 hours prior (such period not including any day that is not a Business Day) to the requested entry time of the Train onto the Network.

q. **Fridays**

On Fridays the requirements will include Train Operators to provide to V/Line the information which relates to the following Saturday, Sunday and Monday and where the Monday is a public holiday, the information which relates to the following Tuesday.

r. **Holiday Periods**

On the last Business Day prior to Christmas, Easter and other holiday periods, the requirements will include Train Operators to provide to V/Line the information that relates to all days in that holiday period and the following Business Day.

s. The Manager Network Access will:

- i. review the requirements for conflicts with the Master Train Timetable.
- ii. liaise with the Train Operators who would be affected by the proposed requirements and detail any potential impact these variations may have on their services.
- iii. where necessary consult and seek the consent of Train Operators to amend any requirements requested by them to enable implementation without conflict firstly by attempting to negotiate alternative Train Paths.
- iv. finalise the Daily Train Plan at 1100 hours on the Business Day prior to the Daily Train Plan becoming the subject of Real Time Scheduling.

t. **Daily Train Plan**

The Daily Train Plan can only be altered after finalisation with the authority of the Manager Network Control or the Senior Train Controller who will use every endeavour to make the amendments without impacting other Scheduled Services. If this is not possible services requiring amendment will be treated as follows;

- i. An amendment to a Passenger Train Path will be made if a Scheduled Train Path for a Freight Service can be altered without impacting Train crew and locomotive allocation plans, subject to clause (c) below.
- ii. An amendment to a Scheduled Train Path for a Freight Service will be made if there is no impact on a Scheduled Train Path for a Passenger Service or a Passenger Train Path.
- iii. The responsibility for obtaining the agreement of other Train Operators affected by the changes to enable an amendment to the Daily Train Plan will rest with the Train Operator making the request who will be given the details of the impact on other Train Operators at the time of making the request to allow the requesting Train Operator to decide, in view of the impact on other Train Operators, whether to proceed with the request. V/Line will not amend the Daily Train Plan unless the affected Train Operators have provided V/Line with their agreement to the amendment in writing.

u. Heritage Trains

The operation of heritage Trains on the V/Line Network is currently undertaken by V/Line and this handbook is used to make all arrangements. Rolling Stock details are also included in the NSP. Heritage Trains are operated on Ad Hoc Train Paths.

v. Test Trains

Test Trains for Rolling Stock and track infrastructure purposes are arranged using this handbook and for V/Line they are operated on Ad Hoc Train Paths. For non - passenger Train Operators they are operated as Unscheduled Freight Train Paths.

7. SCHEDULED TRAIN PATH ISSUE AND SURRENDER

a. Request for Unscheduled Train path to become Scheduled Train Path

Train Operators can request that an Unscheduled Freight Train Path be made a Scheduled Train Path for a Train Operator to utilise on a scheduled basis. Train Operators are encouraged to use Scheduled Train Paths so that the Master Train Timetable and resourcing plans (signal box operating hours etc) conform with Good Industry Practice and remain economical for all parties.

b. Surrender of Scheduled Train Path or variation to Unscheduled Service

The following situations will result in V/Line requiring a Train Operator to surrender a Scheduled Train Path or vary a Scheduled Train Path to an Unscheduled Service:

- i. where there is a material breach of Access Agreement conditions in the Access Agreement:
 - a. which creates a risk of injury to persons or damage to property the Scheduled Train path may be immediately suspended by V/Line until the Train Operator has addressed the risk to the reasonable satisfaction of V/Line; and/or
 - b. V/Line will give the Train Operator a written notice as per section 5.4 of the Capacity Use Rules and in compliance with Section 6.3 (vii) (A) of the Capacity Use Rules. V/Line in considering any such response or failure to respond to the Notice will act in accordance with Section 6.3(vii) (B) and (C) of the Capacity Use Rules.

ii. the failure to utilise the Scheduled Train Path on at least 50% of the days on which the Train was scheduled during a calendar month. The Utilisation measure of 50% does not include events that were as a result of V/Line not being able to grant Access for the Scheduled Train Path:

- A. the application of 7(b)(ii) above will only occur after consideration of the seasonal aspects associated with the Train Operators service delivery contractual arrangements that are directly related to the Utilisation of the Scheduled Train Path in question.
- B. subject to the requirements of 7(b)(ii)A being met:
 - 1. the surrender of the Scheduled Train Path can then be sought provided that the Scheduled Train Path has been sought by another Train Operator; or
 - 2. where the Scheduled Train Path is not being sought by another Train Operator and/or V/Line no longer wishes to roster signalling or control staff for the tasks that have not been required the variation of the Scheduled Train Path to an Unscheduled Service can be then be sought
- C. In seeking the surrender of a Scheduled Train Path or variation to an Unscheduled Service, V/Line will give the Train Operator a written notice in accordance with section 5.6 of the Capacity Use Rules requiring the Train Operator to demonstrate that the Scheduled Train Path should not be surrendered or varied to an Unscheduled Service because of its intention and ability to Utilise the Scheduled Train Path at a level equal to or greater than 50% of the scheduled days of operation as set out in of 7(b)(ii)A & of 8(b)(ii)B above.
- D. The Train Operator will have 14 days to respond from the date of receipt of the notice issued in of 7(b)(ii)C above and V/Line will comply with section section 6.3(a)(viii)(B) and act reasonably and in good faith when considering any response by a Train Operator to the notice.
- E. If the Train Operator does not respond to the notice by the required date demonstrating an intention and ability to Utilise the Scheduled Train Path at 50% or greater in each of the next three months V/Line will :
 - 1. give further written notice requiring the surrender of the Scheduled Train Path so that it can be granted to another Train Operator who has requested the Scheduled Train Path that was subject to the notice; or
 - 2. give further written notice requiring variation of the Scheduled Train Path to an Unscheduled Service
- F. If the Train Operator does respond and demonstrates an intention and ability to Utilise the Scheduled Train Path at 50% or greater in each of the next three months the Train Operator's entitlement to that Scheduled Train Path will remain.

b. Surrender of Scheduled Train Path

~~The following situations will result in V/Line requiring a Train Operator to surrender a Scheduled Train Path:~~

- ~~i. material breach of Access Agreement conditions in the Access Agreement; or~~
- ~~ii. the failure to utilise the Scheduled Train Path on at least 50% of the days on which the Train was scheduled during a calendar month. The Utilisation measure of 50% does not~~

~~include events that were as a result of V/Line not being able to grant Access for the Scheduled Train Path:~~

- ~~A. the application of 7(b)(ii) above will only occur after consideration of the seasonal aspects associated with the Train Operators service delivery contractual arrangements that are directly related to the Utilisation of the Scheduled Train Path in question.~~
 - ~~B. subject to the requirements of 7(b)(ii)A being met the surrender of the Scheduled Train Path can then be sought provided that the Scheduled Train Path has been sought by another Train Operator or V/Line no longer wishes to roster signalling or control staff for the tasks that have not been required.~~
 - ~~C. In seeking the surrender of a Scheduled Train Path, V/Line will give the Train Operator a written notice requiring the Train Operator to demonstrate that the Scheduled Train Path should not be surrendered because of its intention and ability to Utilise the Scheduled Train Path at a level equal to or greater than 50% of the scheduled days of operation as set out in of 7(b)(ii)A & of 8(b)(ii)B above.~~
 - ~~D. The Train Operator will have 14 days to respond from the date of receipt of the notice issued in of 7(b)(ii)C above.~~
 - ~~E. If the Train Operator does not respond to the notice by the required date demonstrating an intention and ability to Utilise the Scheduled Train Path at 50% or greater in each of the next three months V/Line will give further written notice requiring the surrender of the Scheduled Train Path so that it can be granted to another Train Operator who has requested the Scheduled Train Path that was subject to the notice.~~
 - ~~F. If the Train Operator does respond and demonstrates an intention and ability to Utilise the Scheduled Train Path at 50% or greater in each of the next three months the Train Operator's entitlement to that Scheduled Train Path will remain.~~
- iii. if the Operator has (or had) terminated a rail based freight haulage contract with a customer and the Operator has no other rail freight haulage contract with a customer that requires the continued use of the ~~that may require the Scheduled Train Path to be granted to another Train Operator if that train path is required by the other Train Operator for a continuation of the customers freight haulage.~~

8. TRAIN CONTROL AND SIGNALLING RESOURCES

a. Control

Train control (Control) is staffed continuously for the delivery of the Daily Train Plan. The operation of freight Trains on Out Of Hours Freight Train Path may require additional staffing at Control. The freight Train Operator will be required to meet additional Access costs for any staffing needs in accordance with the Access Arrangement.

b. Regional Signalling Staff

Regional signalling staff are rostered Normal Hours. Unscheduled Freight Train Paths which operate Out of Hours may incur additional access charges to cover costs for staffing. Any such charges will be payable by the freight Train Operator in accordance with the Access Arrangement. To avoid this situation, where possible, V/Line will request all Unscheduled Freight Train Paths that fall within Normal Hours to be allocated first, prior to any Out Of Hours Unscheduled Freight Train Paths being allocated.

9. REPORTING OF ACTUAL TRAIN PATH UTILISATION

- a. V/Line maintains records of actual mainline freight Train movements to meet its obligations as an Access Provider and to also assist with the decision process for Scheduled Train Path surrender as outlined in clause 7 b ii & iii. The records contain the following information:
 - i. Scheduled Train Path Utilisation including the percentage of Utilisation per month;
 - ii. Unscheduled Freight Train Path Utilisation including the percentage of Utilisation per month;
 - iii. notices to Train Operators for the surrender of a Scheduled Train Path;
 - iv. V/Line initiated Train cancellations;
 - v. details of the unavailability of any part of the Network for a Scheduled Train Path to operate; and
 - vi. Force Majeure events.

10. TRAIN CONTROL SERVICES

- a. The V/Line primary objective is to direct Trains to operate in accordance with the Daily Train Plan.
- b. Train Operators will present their Trains in accordance with the Daily Train Plan.
- c. Train Operators will maintain a continuous communications link with V/Line while their Trains are operating on the Network.
- d. V/Line will:
 - i. consult with the Train Operators but will be solely responsible for the issue of operational directions; and
 - ii. have duly certified and authorised personnel to provide Train Control Services using communications systems that are voice recorded and in some cases have records of real time signalling system data to assist with incident investigations and complaints handling;
 - iii. facilitate the running of Train Services in accordance with the Daily Train Plan subject to safety considerations, external incidents involving emergency services response and directions, and timely presentation by Trains at entry points; and
 - iv. provide continuous Train Control Services for Train Operators to contact at all times using the contact arrangements provided in the NSP.
- e. **Healthy/Unhealthy Trains - Train Path Priorities**
In exercising Train Control Services, V/Line will apply the following Train Path Priorities for managing operational conflicts:
 - i. Firstly, V/Line will endeavour to have every Train remain Healthy and arrive at its destination in accordance with the Daily Train Plan.
 - ii. Secondly, if the first priority cannot be achieved due to Unhealthy Trains, V/Line will endeavour to minimise overall delays to Passenger Services on the Network without

causing serious and unreasonable interference with Freight Services on Scheduled Train Paths.

- iii. Thirdly, subject to the first and second priorities, V/Line will endeavour to minimise overall delays to Healthy Freight Services on the Network.
- iv. Fourthly, subject to the first, second and third priorities, V/Line will endeavour to minimise overall delays to Unhealthy Freight Services on the Network
- v. During incidents and emergencies whilst the EMP is in use the above principles will remain whilst it is still possible to operate Trains.

f. Manager Network Control

The Manager Network Control is available to conduct reviews of Daily Train Plan performance with each Train Operator at the request of a train operator. The results of the reviews will be used to improve scheduling and operational control processes as well as for Train Operators to be able to become more conversant with the Network characteristics.

- g. To assist with this process outlined in clause 10 f., staff providing Train Control Services will do the following:
 - i. Train running which varies from the Daily Train Plan (including late and Running Ahead as well as incidents and occurrences) will be logged and Train performance entered into the RAMS;
 - ii. on a day to day basis a Train Operator may discuss situations and actions with the Manager Network Control;
 - iii. Train performance will be measured by comparing the actual time of operation of a service against the time scheduled for that service in the Daily Train Plan.

h. Train Manifest and Operating Requirements

At least 30 minutes prior to entry into the Network the Train Operator must provide the Train Controller with a Train Manifest.

i. Rolling Stock

The Train Operator must:

- i. properly maintain all Rolling Stock used on the Network;
- ii. ensure that all Rolling Stock used on the Network is accredited;
- iii. ensure that all Rolling Stock used on the Network is equipped with fully operational safety and safe working equipment which is compatible with the safe working systems;
- iv. ensure that the axle load of the Rolling Stock (including load) does not exceed the published axle loading weight; and
- v. ensure that no Rolling Stock or load exceeds the prescribed dimensional outline for safe operation.

j. Directions by V/Line

If V/Line believes on reasonable grounds that one or more individual vehicles in the Rolling Stock used by the Train Operator on the Network is in breach of the NSP, then V/Line may do one or both of the following:

- i. direct the Train 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
- ii. direct the Train 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.

k. Train Control Services

In accordance with its accreditation requirements, V/Line will:

- i. exercise Train Control Services in accordance with the Book of Rules and Operating Procedures 1994 as amended from time to time; and
- ii. maintain Train Control Services over the Network in accordance with the EMP.
V/Line may exercise Train Control Services by issuing operational directions to the Train Operators.

l. V/Line may in exercising Train Control Services delay, add, cancel, re-route or adjust Train movements.

m. The Train Operator must at all times promptly comply with all operational directions.

n. In the event of service disruptions or incidents V/Line must:

- i. Use Train Control Services in accordance with the Standard Access Agreement, in particular clauses 14.4, 14.5 and 14.6;
- ii. Consult with Train Operators regarding the management of any of the Train Operator's Trains;
- iii. Use Train Control Services to impose reasonable operating restrictions, including speed and load restrictions, on any failed Train in order to minimise overall delays to Trains on the Network; and
- iv. Use Train Control Services to issue reasonable directions, including directions to Train Operators to use additional or alternate Rolling Stock to assist failed Trains, in order to minimise overall delays to Trains on the Network.

o. Operational Communication

V/Line will:

- i. keep the Train Operators properly and promptly informed of any event, activity or incident becoming known to V/Line that will, or is reasonably likely to, prevent or limit the operation of services by the Train Operators;
- ii. make available to the Train Operators in a timely manner 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 Train Control Services or the Network operating requirements to the extent that those regulations, Standards, practices, instructions, direction and notifications are relevant to the operation of the services.

Train Operators are required to:

- iii. notify V/Line promptly after becoming aware of any actual or potential changes to the Train movements which are not or which might not be in accordance with the Daily Train Plan; and
- iv. ensure that all Trains are equipped with fully operational and compatible communications equipment to enable immediate communications between V/Line and the Trains on the Network; and
- v. ensure that all cross jurisdictional arrangements are in place with MTM, ARTC and VRTC so as to not cause delay on the V/Line Network.

11. OCCUPATIONS

- a. When V/Line needs to have an Occupation it will notify each Train Operator who has Access pursuant to Scheduled Train Paths the subject of the proposed Occupation. The notification will normally occur at the Weekly Occupations meeting and V/Line will minimise the impact of Occupations as much as possible and will use reasonable endeavours to provide each affected user with an alternative train path and will comply with the Train Path Priorities.

b. Contents of Notice of Occupation

A notice of an Occupation must specify:

- i. the area of the proposed Occupation (the boundaries of which are not necessarily limited to the work site and may extend to signalling boundaries or locations where Trains can switch to another track or route);
- ii. the timing of the proposed Occupation;
- iii. the conditions under which Occupation works will be carried out;
- iv. any amendment or impact on the Train Operator's Scheduled Services necessary for the Occupation; and
- v. the consequences of not undertaking the Occupation in terms of Network serviceability including speed restrictions and other limitations that will impact the operation of Scheduled Services.

c. The Types of Occupations

Types of Occupations are:

- i. *Under own protection (non-Occupation)* - Work may be performed between Trains. It is common for work to be done in this manner without affecting Train running, however, at times some delays may arise from reducing speed through or around the work site for planned works V/Line will issue a Train circular to describe the work location for drivers and other appropriate staff and to describe the protection required for the work location. In circumstances of unplanned minor works, work may be completed under an Infrastructure gang's own protection where it is unnecessary to issue Train circulars.
- ii. *Closedown Occupation* - Closedown Occupation is a major track Occupation that will disrupt any AM peak services or PM peak services or is of prolonged duration. At least three months notice of this type of Occupation must be given to Train Operators whose Scheduled Services are intended to be impacted by the Occupation.
- iii. *Total Occupation and All Lines Closed* - A total Occupation is an Occupation of all tracks or the track on single Lines with no alternative route around the work site. At least one month's notice of this type of Occupation must be given to Train Operators whose Scheduled Services are intended to be impacted by the Occupation. NOTE: At certain times following an emergency or incident it will be necessary during the response and

recovery activities by V/Line for total Occupations to be applied at short notice and without prior planning, consultation, and agreement from affected Train Operators.

- iv. *Diversion* - A diversion occurs when an Occupation occurs in multiple track areas, (i.e. 2 or more tracks) where alternative routing can be set up around the work site using unaffected adjacent tracks. Four weeks notice of this type of Occupation must be given to affected Train Operators whose Scheduled Services are to have altered routing due to the Occupation.
- v. *Re-Routing* - Re-routing occurs when it becomes necessary to operate Trains via an alternative rail corridor to reach their normal destinations. This may arise from an Occupation closing all Lines or where there is insufficient track capacity to divert all Trains past the work site, hence requiring some Trains to be re-routed. Three months notice of this type of Occupation must be given to affected Train Operators whose Scheduled Services are intended to be routed via an alternative corridor.
- vi. *Track Warrants* - Track warrants are utilised on some Lines to enable works when no Trains are scheduled to operate so there is no impact on Train Operators services.

d. Service Impacts

Service impact can vary for each type of Occupation and V/Line will ensure that proper planning is in place to limit service impact to that which is essential for the Occupation activities to be completed.

e. Implementation of Occupations

V/Line may only implement an Occupation on the conditions set by any relevant Access Agreement.

f. 3rd Party or State Works

For Occupations to be implemented for 3rd Party or State Works, V/Line require all affected freight Train Operators to make their own arrangements for service impact compensation with the principal party requiring the Occupation to conduct works.

g. Alternative Freight Arrangements

The V/Line safety management system does not allow for the operation of Trains through affected areas of Occupations and Train Operators are required to make alternative/substitute non rail based arrangements during Occupation periods where it is not possible to operate Trains on alternative tracks and routes.

h. V/Line Responsibilities for Occupations

V/Line, Infrastructure and Safety/Risk officers are responsible for the management of occupations as follows:

- i. to document and maintain current Occupation requests and approved track Occupations;
- ii. to determine Train movements to and from Occupations sites in conjunction with the affected Train Operators;
- iii. to make arrangements with Train Operators for works Train and track machine movements associated with the Occupation;
- iv. to maintain a works order registration system;
- v. to determine safe working requirements of an Occupation and obtain all necessary agreements;
- vi. to approve documentation prepared in relation to required timetable changes;
- vii. to approve timetables for all works Trains in consultation with Train Operators;
- viii. to prepare and issue the necessary Train notices and circulars;
- ix. record the details of all Scheduled Train Paths impacted by the Occupations; and
- x. record all instances of Occupation cancellations and overruns including notification times to Train Operators as a result of the unplanned events encountered.

12. V/LINE EMERGENCY AND CRISIS MANAGEMENT PLAN

- a. For rail based emergencies on the V/Line Network such as derailments, where there are no serious injuries, V/Line will act as the control agency responsible for the management of the emergency.
- b. Any other authority at the scene will act as a support agency acting under the direction of the V/Line site controller.
- c. If there are serious injuries involved, or for other emergencies including a level crossing accident, a fire, or a dangerous goods spillage, V/Line will act as a support agency and a V/Line Officer will be appointed as ESLO whose duties will include protecting the scene and working under the control of an emergency service control agency (Police, Military or Fire Brigade.) V/Line staff and Train Operator staff will be responsible for supplying resources as requested to control the emergency and the provision of technical and professional engineering advice.
- d. It may also be necessary for V/Line and/or Train Operators to provide Access or Rolling Stock to the Control Agency and as support agencies we are responsible for complying with such requirements.
- e. V/Line will use every endeavour to preserve the normal conditions of Access Agreements during incident response and recovery. Where this is not possible V/Line will consult with Train Operators to explain why the incident requires changes to normal Access Agreement conditions and the likely duration of the situation.
- f. V/Line will also inform Train Operators of the types of Access to track that will be used to recover the situation and work towards normal Train operations with updates provided as frequently as reasonably practicable, and necessary and no more than eight hours apart.
- g. If the incident involves recovery activities by Train Operators an on site meeting will be conducted by V/Line to enable Train Operators to outline their Access needs so that recovery arrangements are put in place and V/Line emergency activities are suspended or altered.
- h. The V/Line Emergency Management Plan is included in all Access Agreements with V/Line. The V/Line Emergency Management Plan contains guidelines for:
 - i. employees of V/Line;
 - ii. employees of Train Operators operating on the V/Line Network; and
 - iii. contractors to V/Line providing services.
- i. From time to time emergency management exercises are arranged with all agencies and V/Line along with Train Operators are required to participate to ensure that emergency situation scenarios are fully responded to. There may also be occasions when the Network is not available due to military or defence purposes.

13. COMMUNICATION AND CONSULTATION

- a. There are two formally established protocols in place with MTM, V/Line and Train Operators for:

i. Track Occupations Meeting

A Weekly meeting is conducted and all aspects relating to Occupations, works and speed restrictions are discussed. The Occupations Committee also co-operates to ensure that Occupations are minimised by coordinating multiple works on rail corridors encompassing V/Line and MTM Networks.

ii. Train Protocol Meeting

A monthly meeting is conducted to plan changes to the Master Train Timetable and temporary changes to Scheduled Train Paths due to Occupations and special events.

- b. The V/Line contact for Train Operators on the V/Line Network relating to Train Path requests for inclusion in the Daily Train Plan is:

The Manager - Network Access
Level 11
628 Bourke Street
MELBOURNE VIC 3000
Tel: 03 9619 1307

- c. The V/Line contact for Train Operators for matters relating to the Real Time Scheduling of the Daily Train Plan is:

The Manager - Network Control
Pod A , Level 1 Southern Cross Station
GPO Box 848 Melbourne VIC 3001
Tel: 03 9619 1307

- d. The V/Line contact for Train Operators seeking accreditation for Rolling Stock to operate on the V/Line Network is:

The Manager Systems & Audits
Level 10
628 Bourke Street
MELBOURNE VIC 3000
Tel: 03 84148643 Fax: 03 8414 8766

- e. The V/Line contact for Train Operators seeking advice regarding the Master Train Timetable and scheduled services is:

The Network Services Performance Manager
Pod A , Level 1 Southern Cross Station
GPO Box 848 Melbourne VIC 3001
Tel: 03 9619 21451

- f. The V/Line contact for all Train Service matters is:

General Manager Network Services
Network Services Department
Level 11
628 Bourke Street
MELBOURNE VIC 3000
Tel: 03 8414 8578 Fax: 03 8414 8738

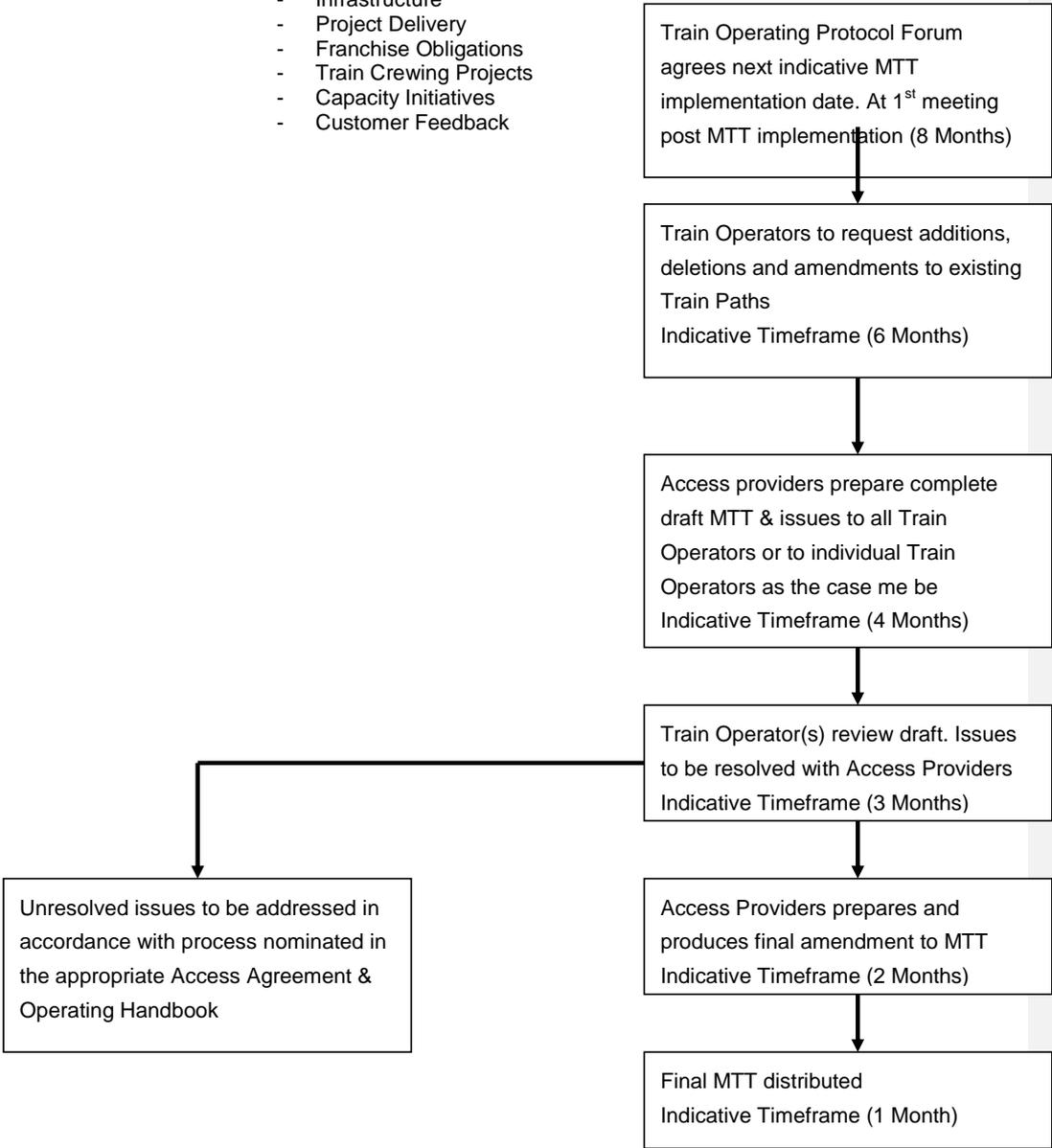
The General Manager Network Services is also responsible for the upkeep of this operating handbook in accordance with this operating handbook and ensuring stakeholder consultation occurs for any changes that have an impact on all Train Operator's activities in accordance with their Access Arrangement.

Complaints or questions about the application of rail Access Arrangements in accordance with the Network ~~M~~management rules [and Capacity Use Rules](#) should also be lodged with the General Manager Network Services who will deal with the matter as the V/Line officer responsible for ensuring that each complaint is dealt with in good faith with the overall objective of promoting sound working relationships with Train Operators. As well as developing the knowledge and skills of V/Line personnel to deal with multiple Train Operator Access to the Network. All complaints will also be reported to the ESC and include the details of resolution and confirmation that the Train Operator was given the option of settling the dispute in accordance with Access Agreement conditions or taking the matter directly to the ESC.

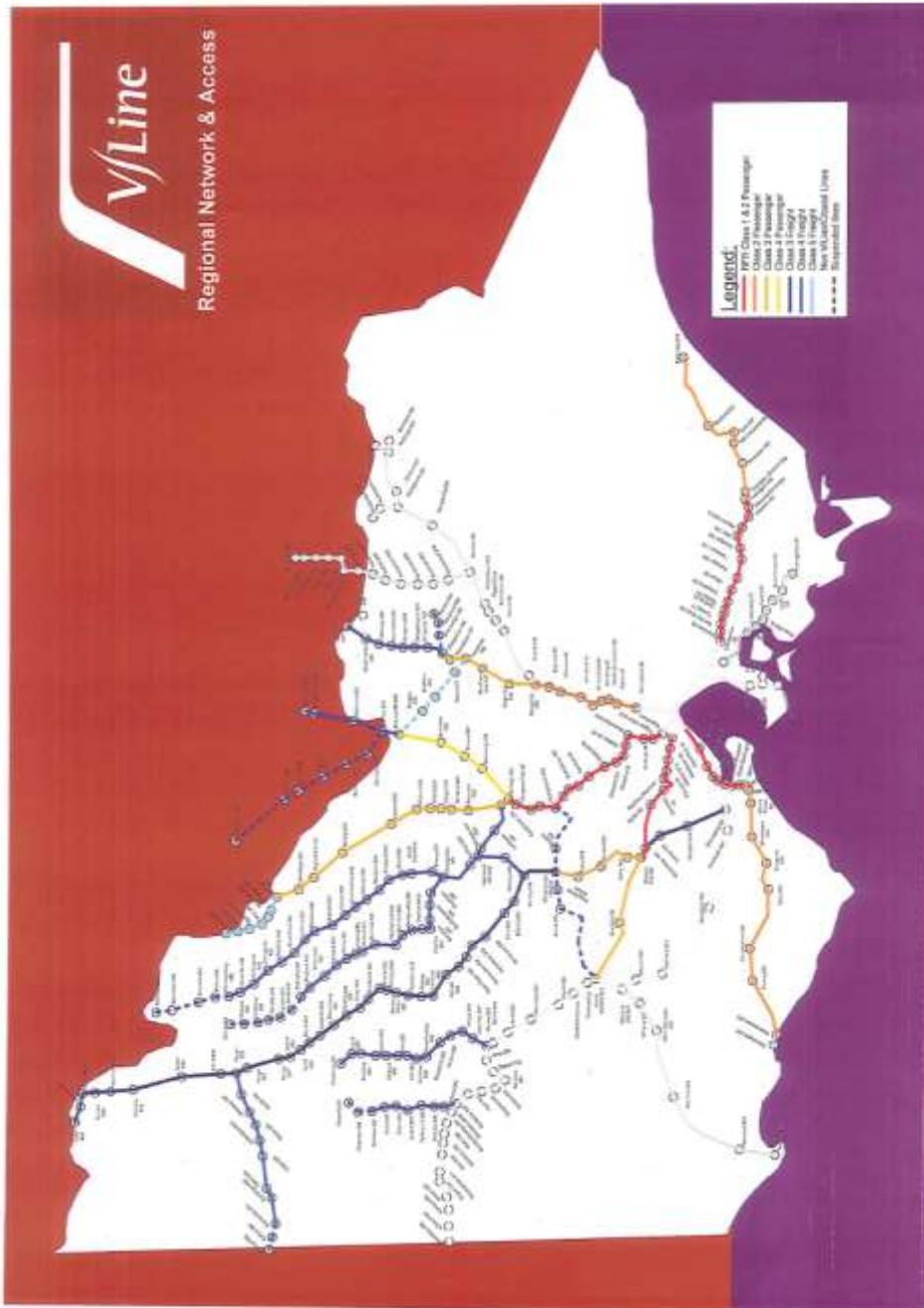
Attachment 1.

Master Timetable (MTT) Development Flow Chart

- Infrastructure
- Project Delivery
- Franchise Obligations
- Train Crewing Projects
- Capacity Initiatives
- Customer Feedback



Attachment 2 – Network Map



Pursuant to section 4.2 (a) of the Pricing Order, the prices that an access provider may charge must be set so as to comply with a revenue cap.

Given the current access prices charged by V/Line are determined by Government (based on an agreement entered into by the Government and Pacific National following the buy-back of the network in 2007) and the Commission recommended efficient floor prices are higher than the prices currently charged by V/Line, the revenue cap is just a theoretical exercise with little relevance to full cost recovery. Nonetheless, a revenue cap is provided below.

Revenue Requirement

The forecast revenue requirement for a given access period is the forecast efficient cost of supplying the declared reference services. The forecast revenue is the total discounted value of the forecast revenue in each year over the access period. The revenue cap process requires access prices to be set such that, across all declared transport services, the anticipated revenue for years with an average throughput is equal to a reasonable forecast of the infrastructure provider's efficient cost of providing the services

V/Line proposed total operating revenue requirement for 2012-13 of \$73.12 million. This is made up of "access activity expenses" (\$26.6 million) which are direct costs of access; "other activities" (\$16.18 million) which are overheads and include an allocation of head office costs; and a "maintenance adjustment" (\$30.33 million) which represents a maintenance deficit calculated by V/Line.

The Commission's annual recommended revenue requirement from 2012 to 2015 is shown in table E.1 below and focuses only on the freight operating expenses relating to access. The present value of the revenue is calculated by discounting at the WACC of 6.02 per cent, resulting in a total revenue requirement for direct costs of \$29.10 million for 2012-13.

Table E.1 Recommended revenue requirement

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 |
|--|---------|---------|---------|---------|
| Freight only operating expenses | 25.44 | | | |
| Freight operating costs on the passenger network | 4.55 | | | |
| Total freight operating expenses | 29.95 | 30.85 | 31.78 | 32.73 |
| Discounted revenue requirement (\$M) | | 29.10 | 28.27 | 27.47 |

Weighted average cost of capital

The WACC is used to measure a company's internal cost of capital and in a regulatory context is the rate of return that is to be earned on the regulatory asset base and/or for any proposed capital expenditure.

The Commission uses the real post-tax WACC approach to estimate the cost of capital, with the Capital Asset Pricing Model (CAPM) used to estimate the cost of equity.

ESC has engaged Synergies to provide an opinion on the appropriate WACC for the rail access arrangements proposed V/Line (regional network), having regard to the Commission's past rail WACC decisions and other relevant jurisdictional regulatory WACC decisions for the rail, water and energy sectors. Synergies was not asked to undertake an assessment, based on first principles i.e. a bottom-up assessment, of the risk profiles of intermodal and regional rail networks.

The Commission's last WACC decision in relation to V/Line's regional network was made in 2009.²⁷

V/Line's proposal

V/Line's access arrangement renewal application did not include a proposed WACC.

Stakeholder views

Stakeholders made no submissions in relation to this matter.

²⁷ Essential Services Commission 2009, *V/Line Proposed Access Arrangement*, Draft Decision, May, p. 30.

Commission's draft conclusion

Real risk free rate

The Commission has used estimates of a nominal risk free rate and inflation to derive a real risk free rate.

The Commission's independent consultant Synergies has advised that the risk free rate should be based on the yield on 10 year Commonwealth Government bonds. In addition, the Commission has adopted a 20 day averaging period for the nominal risk free rate, being the twenty days ending 30 April 2012. Australian regulators typically apply an averaging period of between 20 and 40 days.

In determining a value for inflation, most Australian regulators now use a long-term forecast, for example the midpoint of the RBA's target band. Synergies has advised the Commission that this is a reasonable approach to adopt.

Market risk premium (MRP)

The Commission has used a MRP of 6 per cent per annum in its recent regulatory decisions and it is the most common estimate used by Australian regulators (and has been for the last ten years). These include the ACCC's final decision for ARTC's interstate network²⁸, the ERA's determinations for the urban and freight networks²⁹, and the QCA's decision for QR's coal network.³⁰

The Commission's independent consultant Synergies has advised that based on regulatory precedent a 6 per cent equity market premium is reasonable at the present time.

Equity beta

The equity beta measures the non-diversifiable, or market risk, borne by investors. The Commission previously adopted an equity beta value of 1.00 for V/Line.

The ACCC's 2008 decision on ARTC's interstate rail network used an equity beta of 1.29 (50/50 gearing).³¹

The QCA's determination used an equity beta of 0.8 (55 per cent debt gearing) for QR's coal network.³²

²⁸ ACCC 2008, *Final Decision: Australian Rail Track Corporation Access Undertaking – Interstate Rail Network*, July, p. 158.

²⁹ ERA 2008, *Final Determination 2008 Weighted Average Cost of Capital for the Freight (WestNet Rail) and Urban (Public Transport Authority) Railway Networks*, June, p. 37.

³⁰ QCA 2010. *Draft Decision, QR Network's DAU – Tariffs and Schedule F*, June, p. 56.

³¹ ACCC 2008, *Final Decision: Australian Rail Track Corporation Access Undertaking – Interstate Rail Network*, July, p. 164.

³² QCA 2010, *Draft Decision, QR Network's DAU – Tariffs and Schedule F*, June, p. 56.

The ERA's 2008 decision used an equity beta of 0.46 for WA's urban rail network and 1.0 for Westnet Rail's freight network (35 per cent debt/65 per cent equity gearing).³³

The Commission's independent consultant Synergies has advised that it is important to consider the value of equity betas in the context of gearing, as higher gearing increases financial risk, which will be reflected in a higher equity beta. The Commission has adopted a relatively conservative gearing assumption for V/Line (discussed below). V/Line also operates under some market demand and price constraints due to potential road competition. Given these factors, Synergies considers that the equity beta value for V/Line should be no less than 1.0.

On the grounds of consistency with its past decisions and based on Synergies advice, the Commission has retained an equity beta value of 1.0 for V/Line.

Debt margin

Standard Australian regulatory practice is to estimate the debt margin by:

- establishing an appropriate notional credit rating assumption (reflecting the risk of the business on a stand-alone basis); and
- observing the actual cost of debt in the market for borrowers with this credit rating, using the same term to maturity and averaging period as the risk free rate.

The notional credit rating assumption has generally resulted in Australian utilities being ascribed a rating of BBB or BBB+.

- The approach typically adopted by the Commission for estimating debt margins is to assume a credit rating of BBB+ consistent with the benchmark gearing level and deriving a margin for a BBB+ rated company from Australian corporate bond yields. The Commission has previously relied on fair value yields published by Bloomberg and/or CBA Spectrum. The latter are no longer published.

Since the global financial crisis, the market for long term bonds has become very illiquid. As a result, recent regulatory decisions have used a variety of approaches to estimating the debt margin.

The Commission's independent consultant Synergies is of the opinion that Bloomberg's BBB³⁴ fair value yield curves remain the most appropriate source of data to estimate the debt margin, as it is credible, independent and readily verifiable. It also includes BBB rated bonds currently on issue that satisfy Bloomberg's criteria (for example, it may not include bonds that have been issued but are not traded).

³³ ERA 2008, *Final Determination 2008 Weighted Average Cost of Capital for the Freight (WestNet Rail) and Urban (Public Transport Authority) Railway Networks*, June, p. 37.

³⁴ Bloomberg's BBB curve is based on a sample of BBB, BBB- and BBB+ bonds.

As Bloomberg has not published a ten year BBB yield for some time, the key issue is how to extrapolate the longest yield that is currently available, which is seven years. Synergies observes that the AER has preferred extrapolating this yield based on the difference between the seven and ten year AAA corporate bond yields, which Bloomberg ceased publishing in June 2010 (the average is taken over the last twenty business days prior to the cessation of their publication).

Synergies' concern with this approach is that this data is now very out-of-date. Its recommendation is to extrapolate the seven year BBB yield based on the difference between the five and seven year BBB yields. This therefore assumes that the term structure is constant out to ten years. While Synergies recognises the issues with such an assumption, it is considered preferable to extrapolating the seven year yield using data that is now nearly two years old (particularly given the volatile environment that has continued to prevail in global capital markets).

The debt margin has therefore been estimated using this approach, over the same twenty day period that was used to estimate the risk-free rate.

Capital structure

The Commission has previously used a 50 per cent gearing for V/Line, reflecting the risk profile of V/Line's business. The Commission has seen no evidence to suggest that this risk profile has changed since 2009.

This gearing level is also consistent with other recent rail access determinations, notably by the ACCC and QCA. For example, the ACCC's 2008 decision assumed 50 per cent gearing for the Interstate Rail Network³⁵. The QCA's 2010 decision assumed 55 per cent gearing for QR's Central Queensland Coal Network³⁶.

The Commission's independent consultant Synergies has advised that a relatively conservative 50 per cent gearing level is reasonable for a regional below rail network, such as V/Line, given its risk profile.

Gamma

The appropriate choice of gamma is an area of controversy in Australian economic regulation. Historically, the most commonly applied value of gamma by Australian regulators has been 0.5 including:

- The ERA's determination for the urban and freight rail networks³⁷
- The QCA's decision for QR's coal network³⁸

³⁵ ACCC 2008, *Final Decision: Australian Rail Track Corporation Access Undertaking – Interstate Rail Network*, July, p.164.

³⁶ QCA 2010, *Draft Decision, QR Network's DAU – Tariffs and Schedule F*, June, p. 56.

³⁷ ERA 2008, *Final Determination 2008 Weighted Average Cost of Capital for the Freight (WestNet Rail) and Urban (Public Transport Authority) Railway Networks*, June, p. 37.

³⁸ QCA 2010, *Draft Decision, QR Network's DAU – Tariffs and Schedule F*, June, p. 56.

- The ERA’s 2009 decision for TPI’s iron ore railway in WA³⁹.

However, following an appeal to the Australian Competition Tribunal by ENERGEX and Ergon Energy of the AER’s decision to adopt a gamma value of 0.65 for the 2005 Queensland electricity distribution determination, the Tribunal determined a gamma value of 0.25 as appropriate.

The Commission’s independent consultant Synergies considers that 0.25 is the most appropriate long-term value to assume for gamma. This is because the SFG Consulting study that underpins this estimate has been endorsed by the Tribunal as providing the most robust estimate that is currently available.

However, given the need for consistency in its decision-making, the Commission has decided to adopt a gamma value of 0.5.

Conclusion

The Commission’s proposed real-post tax is 6.02 per cent. The Commission’s proposed WACC parameters for V/Line is presented in table E.2.

Table E.2 V/Line regulatory WACC

| Parameter | <i>Commission’s 2012 final decision</i> |
|---------------------------|---|
| Nominal risk free rate | 3.86% |
| Equity beta | 1.0 |
| Market risk premium | 6.0% |
| Debt ratio | 50% |
| Nominal debt margin | 3.58% |
| Gamma | 0.5 |
| Nominal pre-tax WACC | 9.52% |
| Real pre-tax WACC | 6.87% |
| Real post-tax WACC | 6.02% |

³⁹ ERA 2009, *The Pilbara Infrastructure (TPI) Final Determination on the 2009 Weighted Average Cost of Capital for TPI’s Railway Network*, June, p.4.



Essential Services Commission

Regulatory Review of V/Line Maintenance and Pricing

May 2012



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The services undertaken by GHD in connection with preparing this Report:

- were limited by the data made available by ESC and V/Line in its enquiries;*

The opinions, conclusions and any recommendations in this Report are based on assumptions made by GHD when undertaking services and preparing the Report, including (but not limited to):

- data provided by V/Line is an accurate representation of its Declared network including configuration, maintenance activities and report & estimated costs*

GHD expressly disclaims responsibility for any error in, or omission from, this Report arising from or in connection with any of the Assumptions being incorrect.

Subject to the paragraphs in this section of the Report, the opinions, conclusions and any recommendations in this Report are based on conditions encountered and information reviewed at the time of preparation.



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1. Executive Summary

GHD has undertaken a review of the maintenance activities and costs of V/Line in relation to the Declared network V/Line operates.

The review has focussed on the efficiency of the maintenance practices and costs and the reasonableness of the maintenance costs presented in V/Line's application for approval of its voluntary Access Arrangement.

As part of that review an estimate of V/Line's floor costs has been made and also the various factors that would make up the Ceiling cost. Other parties will estimate the Ceiling cost as it involves consideration of capital costs and Corporate costs.

Floor costs have been estimated by considering the incremental costs of providing the access services. Floor costs have been considered separately for the Freight Only Network and for Freight traffic on the Passenger Network.

The V/Line application indicates a dependency of funding but this review is unable to consider funding or affordability issues except by way of benchmark. In any event V/Line has simply applied for the previous fees to be rolled over. Therefore, we have sought to identify what expenditure is required for the future term regardless of their funding arrangements. We have also chosen to ignore V/Line's stated accounts for previous years' expenditure because those accounts are solely based on allocation methodology, not the required expenditure to maintain the service standards that they ascribe.

We have assessed V/Line's unit costs and concluded that for the equipment on which to perform the work, their unit costs are efficient. However, as some infrastructure elements are not appropriate for the level of traffic, we have discounted the quantity of work required to make it more appropriate for the task. This particularly relates to the signalling equipment on the Mildura Line which has been used as a benchmark Freight Only line for the purposes of estimating Freight Only Network costs.



2. Context and Methodology

V/Line is the vertically integrated operator of the regional rail network of Victoria. It provides infrastructure services as well as above rail services. The infrastructure services, by way of access to the tracks, are Declared services and are the subject of this review.

V/Line's infrastructure network can be categorised into two sub-networks; that providing access for freight trains only, and that which provides access for a mixture of freight and passenger services called in this report the "Passenger Network".

2.1 Passenger Network

The Passenger Network comprises the Regional Fast Rail tracks of the Traralgon/Bairnsdale, Geelong, Bendigo and Ballarat Lines and the Seymour/Shepparton and Warrnambool Lines.

As the Regulatory context is applicable to freight services only on these lines we have sought to estimate the variable component of maintenance and operation with freight use.

To do this we have considered those elements of maintenance and operation that will be affected by the increased tonnage, in increased train paths, axles and loading of freight vehicles.

2.2 Freight Only Network

The Freight Only Network comprises all other regional lines. V/Line operates a number of depots, stations and sidings that are not Declared and therefore not the subject of this review.

The lines in the Freight Only Network are subject to different levels of use and therefore are maintained to different standards of quality commensurate with the service being offered.

V/Line have indicated service levels by way of track standards, in their application for renewal of the Access Arrangement and it is these service levels that determine the appropriate and efficient cost of maintenance.

Appendix 6 of their application is repeated below in Table 1. We have also identified a maintenance weighting that will apply to each line in our assessment of costs.

In order to assess the required maintenance cost for a sustainable railway, we have estimated maintenance costs on a normalised/levelised¹ basis for the Mildura Line as representing a relatively high use and high capacity railway in the Victorian context and applying a maintenance factor for other lesser used lines in the Freight Only Network.

¹ An average over the life of the assets which levels out the peaks caused by Major Programmed Maintenance (MPM) that occur from time to time because of deterioration of certain components such as rail and sleepers and which are replaced in any one year at great expense



The method to use a levelised approach is similar to V/Line in its application except that our analysis will not be influenced by funding factors. We have therefore assumed that without advice to the contrary, the Freight Only Network is a perpetual asset and this three year Regulatory Period under consideration is simply part of a continuum. We observe that V/Line's Asset Management Plan is oriented toward a funding submission and was not produced for the purpose of the application for the Regulated network. Funding will depend on the condition of the asset and past work performed.

In order to apply a maintenance factor to each of the lines we have had regard for the speed nominated in the V/Line application and the tonnage for the particular line. The elements of maintenance that are affected by taking these matters into account are:

- Inspections (not including level crossings and safeworking² systems)
- Relative timber sleeper deterioration tolerance, thus life, and therefore replacement cycle
- Geometry standard and the need for corrective geometry activities
- Responsiveness to corrective maintenance and the ability to apply temporary speed restrictions³ without unduly affecting train transit times, reactive maintenance
- Rail wear on curves and rail defects, insulated rail joints
- Level crossing standard and safeworking systems
- Occupation opportunity for maintenance activities, productivity of work afforded by access to track to perform the work

The applicable weighting for each of these maintenance elements is also shown in the table. The lower the weighting, the lower the costs are expected to be.

Other elements are not affected by the standards such as corridor maintenance for fire breaks, bridge and culvert maintenance or formation maintenance.

² The method of ensuring trains operate safely with respect to each other, that is, to maintain safe levels of separation from each other, and to operate efficiently at the same time

³ Restrictions placed on the speed of trains for a short term on account of a failure of a component or for safety reasons associated with weather events or other short term incidents



Table 1 Service Standards Nominated by V/Line⁴ for the Freight Only Network and Consequential Maintenance Factors

| Line Section | Maximum Operating Speed no lower than (km/h) | Inspection ⁵ | Sleeper deterioration | Geometry correction | Reactive maintenance | Rail Wear | Level crossing & safeworking maintenance | All others | Occupation Productivity |
|---|--|-------------------------|-----------------------|---------------------|----------------------|-----------|--|------------|-------------------------|
| Proportion of cost | | 5% | 40% | 8% | 5% | 5% | 11% | 26% | |
| Maryborough – Dunolly (via Maryborough) | 70 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Dunolly – Mildura | 70 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Shepparton – Tocumwal | 55 | 0.75 | 0.9 ⁶ | 0.75 | 0.5 | 0.25 | 0.5 | 0.75 | 0.85 |
| Toolamba – Echuca | Booked out | 0.1 | | | | | 0.2 | 0.25 | 0.5 |
| Korong Vale – Boort | 60 | 1 | 0.9 | 0.9 | 0.5 | 0.25 | 0.5 | 0.75 | 0.85 |
| Inglewood – Wycheproof | 60 | 1 | 0.9 | 0.9 | 0.5 | 0.5 | 0.5 | 0.75 | 0.85 |
| Dunolly – Inglewood | 55 | 1 | 0.9 | 1 | 0.75 | 0.75 | 0.5 | 0.75 | 0.75 |
| Gheringhap – Ballarat | 70 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Melbourne Freight Mainlines | 20 | 1 | 0.8 | 0.5 | 1 | 0.25 | 1 | 1 | 3 |
| Wodonga – Bandiana | Deleted from network | | | | | | | | |
| Benalla – Oaklands | Deleted from network | | | | | | | | |
| Shepparton – Dookie | Booked out | 0.1 | | | | | 0.2 | 0.25 | 0.5 |
| Echuca – Deniliquin | 40 | 0.75 | 0.9 | 0.9 | 0.5 | 0.25 | 0.25 | 0.75 | 0.75 |
| Barnes –to Moulamein | Booked out | 0.1 | | | | | 0.2 | 0.25 | 0.5 |
| Swan Hill – Piangil | 45 | 0.75 | 0.9 | 0.75 | 0.5 | 0.25 | 0.25 | 0.75 | 0.75 |
| Boort – Manangatang | 50 | 0.75 | 0.9 | 0.75 | 0.5 | 0.25 | 0.5 | 0.75 | 0.75 |

⁴ Appendix 6 V/Line's Application

⁵ While V/Line Procedure NIPR:2701.1 indicates the same frequencies of inspection for all freight lines, except for ultrasonic and specialist inspections, NIPR 2701 indicates "Track and Civil Technical Maintenance Plan Schedule, may be varied by the Infrastructure Manager where changes are required to the nature or frequency of service tasks in response to raised or lowered levels of risk" and the variations estimated are assessed on that basis.

⁶ From 27 to 30 years life for 0.9, and to 33 years life for 0.8



| Line Section | Maximum Operating Speed no lower than (km/h) | Inspection ⁵ | Sleeper deterioration | Geometry correction | Reactive maintenance | Rail Wear | Level crossing & safeworking maintenance | All others | Occupation Productivity |
|--------------------------|--|-------------------------|-----------------------|---------------------|----------------------|-----------|--|------------|-------------------------|
| Wycheproof – Sea Lake | 50 | 0.75 | 0.9 | 0.75 | 0.5 | 0.25 | 0.25 | 0.75 | 0.75 |
| Eaglehawk – Inglewood | Booked out | 0.1 | | | | | 0.2 | 0.25 | 0.5 |
| Mildura – Yelta | 40 | 0.75 | 0.9 | 0.5 | 0.5 | 0.25 | 0.5 | 0.75 | 0.75 |
| Ouyen – Panitya | 35 | 0.75 | 0.8 | 0.5 | 0.5 | 0.25 | 0.25 | 0.75 | 0.75 |
| Murtoa – Hopetoun | 40 | 0.75 | 0.8 | 0.5 | 0.5 | 0.25 | 0.25 | 0.75 | 0.75 |
| Dimboola – Rainbow | 30 | 0.75 | 0.8 | 0.5 | 0.5 | 0.25 | 0.25 | 0.75 | 0.75 |
| Warrnambool – Dennington | 25 | 0.75 | 0.8 | 0.5 | 0.3 | 0.25 | 0.5 | 0.75 | 0.75 |
| Moolort – Maryborough | Booked out | 0.1 | | | | | 0.2 | 0.25 | 0.5 |
| Maryborough –to Ararat | Booked out | 0.1 | | | | | 0.2 | 0.25 | 0.5 |

We note that some lines have changed their status since last review. The lines shown as “deleted” have either been transferred to other operators or removed from connection. The lines shown as “booked out” are identified because although they do not attract access fees, there are some costs associated with corridor management such as fire breaks. We have not attempted to estimate those costs. Some lines have had their speed standard changed and we have ignored previous standards and adopted those indicated in the application as being applicable for the maintenance standard.

We have interpreted the service standard “Maximum Operating Speed no lower than (km/h)” as meaning that apart from curves and temporary speed restrictions the intended maximum speed in any location on the line is that number. We also assume that while a maximum speed can be adopted for infrastructure reasons, the actual speed of a train may not be the maximum speed because the train is not powerful enough or the wagons might not be suitable for that speed.



3. V/Line Data on Cost Apportionment, Configuration and Expenditure on Maintenance

3.1 Cost Apportionment

The 2010/11 V/Line Regulatory accounts⁷ show the level of activity in the Freight and Passenger train categories and the various protocol with regard apportionment as:

- For passenger: 7,262,358 train kms, weighting 86%
- For freight: 1,152,603 train kms, weighting 14%

V/Line identifies Direct Cost allocators and Indirect Cost Allocators.

The Direct Cost Allocations for Avoidable Cost for Passenger and Freight are:

- For RFR⁸ Lines, 29% passenger, 0% freight
- For other passenger lines, 47% passenger, 0% freight
- Portland Maroona Line, 0% passenger, 100% freight
- Other freight Lines, 0% passenger, 100% freight

GHD's observation that freight attracts no avoidable cost on passenger lines is that this is an impractical assumption, and that although the incremental or avoidable cost would be small there is no doubt that freight traffic will cause an incremental cost. This is further explored below.

For Indirect Cost Allocations the default allocation is the proportional share of direct costs but otherwise, where this is not appropriate the allocations are:

- For RFR Lines, passenger 95.5%, freight 4.5%
- For other passenger lines, 81.1% passenger, 18.9% freight
- Portland Maroona Line, 0% passenger, 100% freight
- Other freight lines, 0% passenger, 100% freight

While this method of expressing costs and allocating costs may serve some useful purpose it serves no purpose in understanding the actual or efficient requirement level of expenditure and the following sections will detail that methodology.

3.2 Configuration of the Network

The total network comprises 3,420 km⁹, 1,540 km of which is the Passenger Network where both passenger and freight trains operate, and 1,880 km the Freight Only Network.

⁷ V/Line Regulatory Accounts Cost Allocators for the Year Ending 30 June 2011

⁸ Regional Fast Rail

⁹ V/Line Asset Management Plan 2012-2017



V/Line operates an internal transfer pricing approach to its regulated access obligations and identifies “RNA¹⁰” expenditure. Other V/Line costs are identified as “V/Line Passenger”.

It is not readily apparent why V/Line is using this method of recording and as there is a need to identify the required efficient expenditure, this data is suitable for reference purposes only and more detailed estimates on a line by line basis will be provided below.

3.3 Expenditure on Maintenance

V/line identifies¹¹ Routine Maintenance¹² and MPM¹³ as two distinct “types” of maintenance activity. V/line also identifies costs as being “direct” and “indirect”, the later being the subject of allocation. However, so called “direct” expenditure, allocation rules based on the number of Train Kilometres¹⁴ is used to arrive at an appropriate expenditure report.

In the year ending 30th June 2011 V/Line’s maintenance expenditure on the RNA network was reported as¹¹:

- For Passenger Lines: \$127,045,370 of which \$10,240,320 was ascribed to freight services and \$116,808,050 to passenger services. The average expenditure on these lines was \$82,497 per km, or \$17.49 per train km
- For Freight Only lines: \$9,938,000. The average expenditure on these lines was \$5,286 per km or \$4.59 per train km.

However, we observe that all of these accounts have been derived from an allocative method and none of the figures tell us exactly how much was actually spent on the lines or how much should be spent to fulfil the objectives of providing access to the service standards.

While the allocation on a train km basis is convenient and easy to measure the prospect of maintaining infrastructure for a train of passengers or a train of mineral sands are very different objectives. Passengers require safety, comfort and speed while the freight train requires safety and heavy loading.

Hence it will be our objective to derive what level of expenditure should be appropriate in the context of efficient required expenditure to sustain a network.

¹⁰ Regional Network Access (Division), a virtual organisation

¹¹ V/line Regulatory Accounts Cost Input Sheet – Opex for the year ending 30 June 2011

¹² Day to day, including inspections and short term corrective maintenance

¹³ Major Programmed Maintenance or Major Periodic Maintenance, identified by V/Line in the Asset Management Plan as DLM (Deep Level Maintenance), includes major tasks on a cyclic basis, some of which is time dependent maintenance such as timber resleeper and some of which is usage dependent such as rail grinding and rail replacement due to wear

¹⁴ Kilometres travelled by one train, no matter its size, recorded as train paths over a section length. Usually a measure of the amount of work performed in the train control function and also applicable to signalling transactions



3.4 Expenditure on Operations

Operations in the activity of providing train paths and access to the network. This task is performed by a group of Train Controllers¹⁵ and Signal Box¹⁶ personnel who operate on an extended shift basis, most of which is 24 hours per day. As passenger trains do not operate 24 hours per day on all lines, the Train Control hours of operation is also influenced by freight train activity and maintenance activities.

V/Line provides a defined access pathway service to the freight Network based on the expected level of activity and where activity is requested by Train Operators¹⁷ V/Line need to organise supplementary services, usually at an extra cost to the Train Operator.

The Regulatory accounts for year ended 30th June 2011 indicate the expenditure was:

- Train Control - Passenger Lines: \$9.68m of which \$8.772m has been ascribed to passenger services and \$0.913m (9.4%) to freight services operating on those lines
- Train Control - Freight Only Lines: \$1.577m

This means that freight services were allocated 22% of the total cost of Train Control.

- Signalling – Passenger Lines: \$5.426m of which \$0.522m (9.6%) was ascribed to freight services operating on those lines
- Signalling – Freight Only Lines: \$0.863m

Again this means that freight services were allocated 22% of the total cost of Signalling.

While the direct cost allocation Level 4 of V/Line's Cost Allocators indicate a 86% to 14% allocation on the basis of train-kms, this ratio appears to be true in the accounts for a calculation of Freight Only costs divided by Total Costs, and yet allocation has also been made to Freight services on the passenger lines therefore making the burden to Freight approximately 22% of the total.

Similarly to the observations made with maintenance, the VLine Regulatory Accounts do not reflect the actual cost of delivering the service as all costs are distribute or allocated on the basis of train-kms. As signal box operation is far more prevalent on the freight Network, one would assume that this type of activity would be more heavily allocated for freight, while, on the Passenger Network, Train Control operations for freight are scarce compared to passenger so the Train Control allocation should be lower.

Hence it will be our objective to derive what level of expenditure should be appropriate.

¹⁵ A group of trained personnel who are located centrally and communicate to the trains via radio or telephone

¹⁶ A mechanical or electrical field installation to set the correct route for the train

¹⁷ Operators of trains, as distinct from Operators of the Network



4. Maintenance and Operations Costs

Floor costs are those associated with incremental costs. That is, those costs that are incurred for a small variation in traffic levels. Ceiling costs are those that would be incurred on a fully stand-alone basis, including all capital charges, margins and all maintenance, operations and overhead costs.

4.1 Freight Only Network Maintenance Costs

In the Freight Only Network, only freight trains operate. The configuration of this network is known⁹ and is evidenced by timber sleepers and with minimum 80lb/yd (41 kg/m) rail long welded¹⁸, and with relatively poor formation quality, shallow crushed rock ballast and a variety of bridge types with some very old structures.

Most of the costs are time or season related as these factors influence the timber sleeper life¹⁹, formation performance²⁰, and vegetation growth²¹ overlaid by a need to inspect the infrastructure on a time basis.

The costs that do vary with task include wear on turnout²² components, rail joint geometry²³, track geometry and rail wear on a reactive basis.

The expected life of rail due to wear, even on sharp curves is expected to be a minimum of 500 million gross tonnes (MGT)²⁴, so for all of the lines in the Freight Only Network, a lifetime of 100 years is expected. The most used line (Mildura Line) receives approximately 2 MGT. Isolated locations may receive greater wear but even on turnouts where the curve radii are sharp and the switch blade²⁵ is narrow the expected life is great.

The Victorian Freight Only Network of 1,880 kms, comprises plain track²⁶, as well as turnouts and sidings. A commonly used equivalence is 1 turnout equivalent to 0.5km, 1 km siding as 0.5km of main line and level crossing as 2km track. These equivalences are helpful in understanding the benchmarks applicable and the estimate of costs suggested by V/Line. However in this instance, where forecast expenditure is based on funding, the benchmark is of limited value.

¹⁸ Welded into long lengths, typically 110m to 440m, or sometimes Continuously Welded Rail (CWR)

¹⁹ Due to cracking and rotting

²⁰ Water induced movements, especially in black soil, a clay soil.

²¹ Vegetation needs to be controlled in the corridor to prevent bush fires and on the tracks to prevent organic fouling and dust capture in the track ballast structure which affects drainage

²² The rail structure where tracks diverge

²³ On account of the bashing the joint receives

²⁴ The empty train load as well as the loading inside the train, on both the forward and return journeys

²⁵ The movable piece to direct traffic

²⁶ Track that is only the two rails and sleepers on the main running line



V/Line has proposed²⁷ a budget for the whole network (3,420km plus turnouts, sidings, level crossings) of \$101m, a unit budget of \$29,532 per km. This unit rate is within a broad range for unit costs across a number of freight Networks²⁸ except that the task in these networks at this unit rate is approximately 10 million tonnes per annum, a task much higher than V/Line's average task²⁹ of 702,000 tonnes.

Benchmarking in the circumstances of a very mixed railway, passenger and freight, metropolitan, country, intermodal and bulk, is inappropriate and a bottom estimate is the method we have approached this task.

4.2 Passenger Network Freight Incremental Maintenance Costs

The Essential Services Commission is required to determine those costs attributable to freight traffic on the Passenger Network.

V/Line has reported costs expended on the Passenger Network due to Freight services by allocating total costs on a Train km basis.

For costs that don't vary with traffic this method is inappropriate whereas there may be specific costs generated due to the particular type of loading of freight trains.

In other Access Regimes, allocations for costs are generally made on the basis of Gross Tonne Kilometres for maintenance functions and Train Kilometres for operations functions, with a combination for overheads, the two parameters being recognised as cost drivers.

In this analysis, rather than allocating costs, we have derived costs using V/Line's own Steady State Model and reviewed those items that are driven by incremental freight. We have assumed that all inspections are solely dependent on passenger services as these services are by far the majority of service and drive ultimate safety levels. That means all Routine Maintenance is attributable to Passenger services.

The incremental maintenance cost attributable to Freight on the Passenger Lines is therefore driven by wear and heavy loading. Thus the V/Line Steady State Model has been used to derive those items where these are the contributory factors.

We have allocated costs for rail repair (rail grinding, replacement, IRJ, failures, turnout renewal) and geometry correction on a GTK basis and derived a cost per km and per GTK.

²⁷ Asset Management Plan 2012-2017

²⁸ See footnote 32

²⁹ Gross tonne kilometres divided by track kilometres



The costs associated with these activities on a per km basis for each track category are:

Table 2 Incremental Costs for Freight on Passenger Network

| Basis/Track Class | Ratio Freight GTK to Pass GTK | Full incremental cost Fr+Pass (Per km) | Freight incremental cost (Per km) | Freight incremental cost (Per '000GTK) |
|---|-------------------------------|--|-----------------------------------|--|
| Class 1 | 0.56 | \$10,417 | \$5,804 | \$14.42 |
| Class 2 | 0.38 | \$7,335 | \$2,811 | \$32.00 |
| Class 3 | 0.22 | \$7,242 | \$1,602 | \$13.25 |
| Class 4 | 0.45 | \$1,850 | \$830 | \$15.56 |
| All Pass Network | 0.38 | \$7,042 | \$2,737 | \$21.33 |
| Total Freight Cost on Passenger Network | | | \$3,781,876 | |

Source: "11-04-2012 ESC Access Detail 5 Years.xls" (confidential) and "Life Cycle Model extract for ESC 2012-04-30.pdf" (confidential)

The relative amounts show the importance of good rail condition and geometry at higher speed.

The emergence of Class 2 as being the highest incremental cost on a GTK basis indicates the influence of relatively small GTK to spread the extra costs associated with freight.

4.3 Operations Cost Efficiency on the Freight Only Network

Operations cost is typically the Train Control function and where installed, signal boxes for local train routing functions. On a network of such low traffic volumes, the signal box function is inefficient because the safeworking method of "Train Orders³⁰" or "Centralised Traffic Control³¹" has universally replaced the need for signal boxes in all jurisdictions except Victoria.

Train Kilometres has been used by other jurisdictions, ARTC, QR and WestNet Rail, to benchmark Operations Costs and it is our intent to use those in this assessment.

Information provided by V/Line indicates that in 2011/2012, on the Freight Only Network; there was a total of 387,976 Train Kms, approximately 4.5% of all Train Km across Passenger and Freight.

³⁰ Instructions delivered to train drivers verbally by radio or through a radio based electronic token

³¹ Instructions delivered to train drivers through signals where the traffic volumes justify and transmitted by a central location for the whole state



VLine has reported in its Regulatory Accounts⁷ for 2010/2011 that a total expenditure on Passenger and Freight services for Train Control and Signalling was \$17,570,190.

For the Freight Only Network there was an allocation of \$2,459,970 for that task or \$6.64 per Train Km.

There are two methods by which the efficiency of this expenditure can be tested.

Firstly on a bottom up basis, we have estimated the resource required to support that operation.

Due to the diverse range of operating times of freight trains we estimate that a full 24/7 Train Control service would be required although most of the freight activity would occur during the night. We assume that Train Order Working is available for the whole Freight Only Network. Therefore the costs of providing this service, essentially as a stand-alone service, is the cost of providing a 24/7 presence. Given the density of freight trains on the Freight Only Network, being 4,854 trains or 13 to 14 trains per day, we estimate that the equivalent of 1 person on each shift is sufficient to carry out those duties.

To sustain a 24/7 shift roster, 5 persons are required at a unit cost of approximately \$200,000 including on costs, office and equipment. This estimate is a total cost of \$1,000,000 per annum

Secondly, benchmarking has occurred across operators in various Regulatory Decisions³², and those benchmarks are indicative of efficient costs. However, given the variations in volume and safeworking systems comparisons are indicative only, at least plus or minus 100% of the estimates.

ARTC has reported³³ Train Control costs of approximately \$411 per 000 Train Kms in 2007. QCA in its 1999 Draft Decision acknowledged a Train Control cost of 1 Train Controller per 200,000 to 300,000 train kms.

Both of these estimates would place a Train Control cost for 387,976 Train Kms as recorded for the Freight Only Network, at a cost of approximately \$200,000 to \$300,000 (\$2012). However, the benchmarks are applicable to an environment of large economies of scale.

There is no doubt that the current Victorian Freight Only Network is not conducive to efficient train control functions due to the paucity of task.

The cost of \$2,459,970 for Train Control on the Freight Only Network does appear to be high, exceeding the stand alone cost of an efficient network. The network itself and the legacy of the signal box operation are contributing to its inefficiency.

³² ERA of WA Final Determination on WestNet Rail's Proposed Floor and Ceiling Costs for 2009-10, P 44-47 for the lower estimate and QCA's Final Approval, Queensland Rail's Draft Amending Access Undertaking - Take or Pay 28 October 2011 supporting papers, QCA 1999 DAU Draft Decision, Chapter 12, WESTNET RAIL SECTION 9 DETERMINATIONS FLOOR/CEILING CALCULATIONS ARTC SUBMISSION (http://www.erawa.com.au/cproot/3263/2/floorceil_artc.pdf), Review of Efficient Maintenance Costs of RailCorp's Hunter Valley Coal Network, IPART, 17 November 2011

³³ Review of Efficient Maintenance Costs of RailCorp's Hunter Valley Coal Network, IPART, 17 November 2011



We conclude that a more realistic cost of Train Control on an efficient basis is estimated to be \$1.80 per train km given the inefficient circumstances and that the total cost is \$923,290 based on the forecast tonnages for 2011/2012.

4.4 Passenger Network Freight Incremental Operations Cost

Information provided³⁴ by Vline indicates the total Train Km across the whole system amounted to 8,245,545 Train Kms of which 7,383,207 Train Kms were passenger.

On the Passenger Network, 492,124 Train Kms were Freight, approximately 6.25% of the total Train Kms on the Passenger Network.

The operation of freight trains on the Passenger Network is most likely to be at times when passenger trains do not operate for two reasons.

Firstly, freight trains are not conducive to passenger train operation because they travel much slower and take many passenger train paths³⁵. Secondly, freight trains usually depart their destination at the end of the day after freight forwarders and grain loaders have used the day time to load the train. Freight trains therefore generally travel through the night in a counter period to the operation of passenger trains that travel mostly during the day.

In fact freight trains are likely to travel at times when no passenger trains are travelling, during the early hours of the morning.

Therefore the impost of freight trains on the Train Control costs of a Passenger Network is disproportionately high. It is not sufficient to allocate train control costs on the basis of train kilometres alone.

The Train Control costs allocated to freight on the Passenger Network in the Regulatory Accounts for 2010/2011 was \$656,950. There was 492,124 freight Train Kms on the Passenger Network and thus the unit cost was \$1.33 per Train Km.

We conclude that this amount is not reasonable and that the cost equating to the Freight Only Network would be more appropriate, that is \$1.80 per Train Km.

³⁴ 11-04-2012 ESC Access Detail 5 Years.xls

³⁵ This is because a path is a time-distance trajectory, and when trains are slower or faster than the dominant train, a number of paths are consumed by the less dominant train



5. Maintenance Cost Estimate for Freight Only Network

5.1 Methodology

GHD has sought to estimate the required maintenance levels and cost as distinct from those allocated by V/Line by considering as the base, a sustainable long term approach to maintenance. In that respect we have used the structure of V/Line's "Steady State" lifetime approach for estimating the needs of the Mildura Line and then by using Table 1, derived the cost on a per km basis for each of the other lines of the Freight Only Network.

5.2 Estimate for Mildura Line

V/Line have provided³⁶ an extract from their Life Cycle Model to which we have used with Mildura configuration to generate an estimate of the annual Deep Level Maintenance (DLM/MPM)³⁷ expenditure required. We have combined this with a Routine Maintenance estimate derived from V/Line's Asset Management Plan.

We conclude that the Mildura Line requires an annual expenditure of \$23,698 per kilometre.

5.3 Life Cycle Model Efficient Costs

We have reviewed V/Line's Life Cycle Model and in extracting the unit costs for use in our calculations we have compared those costs to our own understanding of most of the current prices in the industry. Not all units could be verified.

We note that the work performed by V/Line is either performed in-house for Routine Maintenance and non-specialist MPM. Specialist MPM is work such as rail grinding or ultrasonic testing where tenders are called.

GHD understands that the in-house workforce has relatively recently been "insourced" after a period of working for the previous private sector owner, Pacific National and formerly Freight Australia. We therefore conclude that the workforce is most probably as efficient as any in the Australian context and that for the work required on the equipment installed, this element is appropriate.

However, the other arm to efficiency is what work needs to be performed and we have observed that some of the infrastructure elements used on the Mildura line, particularly signalling elements, were provided in the days of more intense activity on the line and are now not appropriate configuration. We have continued to use some signalling infrastructure for the purpose of our estimates, around junctions and for site specific installations such as level crossings.

³⁶ Life Cycle Model extract for ESC 2012-04-30.pdf

³⁷ Deep Level Maintenance and Major Programmed Maintenance are used interchangeably by V/Line



5.4 Maintenance Cost Estimates for All Freight Only Lines

The impact of Line by Line costs, applying the factors in Table 1 are shown in

Table 3 Line by Line Maintenance Costs for the Freight Only Network

| Line Section | Maximum Operating Speed no lower than (km/h) | Total Cost Routine and Deep Level Maintenance Cost Annual cost per km (\$) |
|---|--|--|
| Maryborough – Dunolly (via Maryborough) | 70 | \$23,698.22 |
| Dunolly – Mildura | 70 | \$23,698.22 |
| Shepparton – Tocumwal | 55 | \$15,006.90 |
| Toolamba – Echuca | Booked out | \$1,090.12 |
| Korong Vale – Boort | 60 | \$15,500.41 |
| Inglewood – Wycheproof | 60 | \$15,752.21 |
| Dunolly – Inglewood | 55 | \$14,485.54 |
| Gheringhap – Ballarat | 70 | \$23,698.22 |
| Melbourne Freight Mainlines | 20 | \$59,897.25 |
| Wodonga – Bandiana | Deleted from network | |
| Benalla – Oaklands | Deleted from network | |
| Shepparton – Dookie | Booked out | \$1,090.12 |
| Echuca – Deniliquin | 40 | \$12,965.89 |
| Barnes –to Moulamein | Booked out | \$1,090.12 |
| Swan Hill – Piangil | 45 | \$12,752.60 |
| Boort – Manangatang | 50 | \$13,241.38 |
| Wycheproof – Sea Lake | 50 | \$12,752.60 |
| Eaglehawk – Inglewood | Booked out | \$1,090.12 |
| Mildura – Yelta | 40 | \$12,885.91 |
| Ouyen – Panitya | 35 | \$11,686.18 |
| Murtoa – Hopetoun | 40 | \$11,686.18 |
| Dimboola – Rainbow | 30 | \$11,686.18 |
| Warrnambool – Dennington | 25 | \$11,997.22 |
| Moolort – Maryborough | Booked out | \$1,090.12 |
| Maryborough –to Ararat | Booked out | \$1,090.12 |

The ranges observed in the table are commensurate with other benchmarks previously indicated.

Table 4 expresses these costs in per GTK terms



Table 4 Total Maintenance Cost per '000 GTK

| Line Section | '000 GTK (2010/2011) | Length Km | Total Maintenance Cost \$(2010/2011) | Total Maintenance Cost per '000 GTK \$ (2010/2011) |
|---|-------------------------|--------------|---|--|
| Maryborough – Dunolly (via Maryborough) | 9967 | 22 | \$521,361 | \$52.31 |
| Dunolly – Mildura | 363316 | 363 | \$8,602,454 | \$23.68 |
| Shepparton – Tocumwal | 28423 | 69 | \$1,035,476 | \$36.43 |
| Toolamba – Echuca | Booked out | 83 | \$90,480 | |
| Korong Vale – Boort | 5209 | 29 | \$449,512 | \$86.30 |
| Inglewood – Wycheproof | 10611 | 95 | \$1,496,460 | \$141.03 |
| Dunolly – Inglewood | 15374 | 39 | \$564,936 | \$36.75 |
| Gheringhap – Ballarat | 108114 | 72 | \$1,706,272 | \$15.78 |
| Melbourne Freight Mainlines | 100000 | 40 | \$2,395,890 | \$23.96 |
| Wodonga – Bandiana | Deleted from network | | | |
| Benalla – Oaklands | Deleted from network | | | |
| Shepparton – Dookie | Booked out | | | |
| Echuca – Deniliquin | 4536 | 73 | \$946,510 | \$208.67 |
| Barnes –to Moulamein | Booked out | | | |
| Swan Hill – Piangil | 8638 | 44 | \$561,114 | \$64.96 |
| Boort – Manangatang | 17632 | 146 | \$1,933,241 | \$109.64 |
| Wycheproof – Sea Lake | 5730 | 77 | \$981,950 | \$171.37 |
| Eaglehawk – Inglewood | Booked out | | | |
| Mildura – Yelta | 5515 | 21 | \$270,604 | \$49.07 |
| Ouyen – Panitya | 10940 | 90 | \$1,051,756 | \$96.14 |
| Murtoa – Hopetoun | 21252 | 112 | \$1,308,852 | \$61.59 |
| Dimboola – Rainbow | 2370 | 60 | \$701,171 | \$295.85 |
| Warrnambool – Dennington | 378 | 5 | \$59,986 | \$158.69 |
| Moolort – Maryborough | Booked out | | | |
| Maryborough –to Ararat | Booked out | | | |
| Geelong Grain Loop | 2025 | 4 | \$70,025 | \$35 |
| Total Freight Only Network Cost | | | \$22,741,025 | |

The wide variation in the costs per GTK is indicative of the proportion of fixed costs associated with the maintenance of these types of railways and the variation in task. Where the task is very low the cost per GTK is very high albeit the standard of the line is low and the maintenance costs are as low as practically possible.



6. Maintenance Cost Variability of the Freight Only Network

In assessing the floor cost of the infrastructure, and hence the appropriate floor price, knowledge of the variability of cost with use is key to the determination of the floor.

The configuration of infrastructure in V/Line's assets, and its use, point to a cost base which is largely fixed in that the cost driver of operations, corporate and maintenance costs is largely time, and not use.

The time dependent maintenance cost elements include inspections and replacement of timber components. While some elements of timber deterioration are associated with traffic, by far the majority is associated with dry rot and drying leading to shrinking.

The floor cost will be estimated using the parameters and costs identified in Table 1 and Table 3. Floor costs will vary depending on usage but as the Freight Only Network is timber sleepered which attract such a large proportion of costs, the variability at the low tonnages across the whole network will be moderate.

Geometry correction, reactive maintenance and rail maintenance are the only material portions of the cost that are related to usage³⁸. For example while some timber deterioration is related to usage, and some signalling equipment maintenance is related to use, some geometry changes and rail failures are not. On balance we have used these parameters to estimate incremental/floor costs shown in Table 5.

Table 5 Incremental / Floor Costs by Line Section

| Line Section | Maximum Operating Speed no lower than (km/h) | Incremental / Floor Annual cost per km (\$) |
|---|---|--|
| Maryborough – Dunolly (via Maryborough) | 70 | \$4,265.68 |
| Dunolly – Mildura | 70 | \$4,265.68 |
| Shepparton – Tocumwal | 55 | \$1,963.99 |
| Toolamba – Echuca | Booked out | \$0.00 |
| Korong Vale – Boort | 60 | \$2,205.71 |
| Inglewood – Wycheproof | 60 | \$2,457.51 |
| Dunolly – Inglewood | 55 | \$2,754.92 |
| Gheringhap – Ballarat | 70 | \$4,265.68 |
| Melbourne Freight Mainlines | 20 | \$7,287.20 |

³⁸ Within a range of tonnage task beyond which large changes would be needed. For example if task was to increase tenfold, then a whole new maintenance regime would be required.



| Line Section | Maximum Operating Speed no lower than (km/h) | Incremental / Floor Annual cost per km (\$) |
|--------------------------|---|--|
| Wodonga – Bandiana | Deleted from network | |
| Benalla – Oaklands | Deleted from network | |
| Shepparton – Dookie | Booked out | \$0.00 |
| Echuca – Deniliquin | 40 | \$1,946.22 |
| Barnes –to Moulamein | Booked out | \$0.00 |
| Swan Hill – Piangil | 45 | \$1,732.93 |
| Boort – Manangatang | 50 | \$1,732.93 |
| Wycheproof – Sea Lake | 50 | \$1,732.93 |
| Eaglehawk – Inglewood | Booked out | \$0.00 |
| Mildura – Yelta | 40 | \$1,377.46 |
| Ouyen – Panitya | 35 | \$1,377.46 |
| Murtoa – Hopetoun | 40 | \$1,377.46 |
| Dimboola – Rainbow | 30 | \$1,377.46 |
| Warrnambool – Dennington | 25 | \$1,199.72 |
| Moolort – Maryborough | Booked out | \$0.00 |
| Maryborough –to Ararat | Booked out | \$0.00 |

When compared to the total cost of maintenance on the Freight Only Network the variability is only 18% with the fixed component of maintenance, mainly driven by time related activities being 82% of the total.



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FINAL REPORT

Assessment of V/Line Access Pricing Approach

Essential Services Commission

Sydney

2012

Version 1.0

This document is confidential and is intended solely for the use and information of the client to whom it is addressed.

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1. Introduction

1.1. Background and objectives

The Essential Services Commission (hereafter ‘the Commission’) is the independent economic regulator of the rail industry in Victoria. The Commission is responsible for assessing the price and non-price aspects of the access arrangements submitted by service providers, including V/Line Pty Ltd (hereafter ‘V/Line’). V/Line is a not-for-profit corporation under the State-Owned Enterprises Act 1992.

In approving or assessing the proposed access arrangements, the Commission has to have regard to the provisions of Part 2A of *the Rail Management Act (1996)* and the *Rail Network Pricing Order 2005* (Pricing Order). The Act establishes a state access regime that declares certain rail infrastructure open for third party access and the Pricing Order sets out a set of general and freight specific pricing principles.

The general pricing principles pursuant to section 4.1 (a) of the Pricing Order includes the requirement that the set of approved prices should recover the efficient costs of providing the reference services, having regard to the standard and quality of those services.

The freight specific pricing principles pursuant to section 4.3 (a) of the Pricing Order further states that the prices charged by the access provider should recover the efficient costs of providing freight services and exclude:

- Reasonable expected efficient costs directly attributable to the operation of passenger trains, including the estimated additional operations and maintenance expenditure associated with operating and maintaining the rail infrastructure to a higher standard associated with passenger services; and
- Reasonable expected costs of providing declared rail services that are not directly attributable to the passenger or freight service, allocated in proportionate to the use of rail infrastructure for passenger and freight services.

The Commission’s assessment of the V/line access arrangement will need to ensure that the approved prices for freight reference services recover the efficient forward looking (cash) costs, namely the operating and maintenance costs, associated with providing the relevant networks or facilities for freight services.

The Commission has engaged Booz & Company to provide an independent assessment of the efficient prices proposed by V/Line against the relevant principles in the Pricing Order.

In parallel, the Commission has also commissioned asset costing advice from engineering firm GHD. GHD has undertaken a review of the maintenance activities and costs of V/Line in relation to the declared network that it operates. The review has focussed on the efficiency of the maintenance practices and costs proposed by V/Line in its submission. It is a desktop analysis of efficient costs and accordingly based on a high level assessment of existing asset configuration, asset class and asset condition, current/forecast usage and operational characteristics. The report therefore relies on engineering and professional judgement.

This report is intended to inform the Commission's final decision on the approval of V/Line's proposed prices for the provision of declared services. The terms of reference for this project set out the following key tasks:

- Assistance in reviewing and determining access prices including modelling inputs, prices and volumes, operating statistics.
- Determining whether proposed prices are efficient.
- Assessment of cost allocation approaches.

1.2. Structure of the report

The remainder of this report is structured as follows:

- Chapter 2 summaries V/Line's submission of its proposed prices and a description of the network.
- Chapter 3 outlines our approach for calculating the reference price and the detailed results.
- Chapter 4 presents the conclusions of our analysis.

2. V/Line's proposed access arrangement

This Chapter provides a summary of V/Line's submission to the Commission. In particular, it's proposed access prices.

2.1. Description of network and services

V/Line's infrastructure network can be categorised into two sub-networks; that providing access for freight trains only, and that which provides access for a mixture of freight and passenger services referred to in this report as the passenger network.

V/Line is thus the provider of passenger services on the regional rail network in addition to operating the network. However, V/Line does not provide rail freight services.

The regional intra state network consists of 3,420 km of railway tracks. The network includes regional broad gauge lines to:

- Geelong and Warrnambool
- Ballarat, Ararat and Mildura /Merbein
- Kulwin
- Hopetoun (standard gauge)
- Yaapeet (standard gauge)
- Robinvale
- Bendigo and Swan Hill/Piangil
- Echuca, Moulamein (partially open) and Deniliquin
- Seymour and Shepparton/Tocumwal
- Traralgon and Bairnsdale
- Some freight lines within metropolitan Melbourne and the South Dynon fuel depot
- The Geelong Grain Loop
- The Southern Cross Station passenger yard

Appendix 3 provides a map of the Victorian Regional Rail Network, including the passenger rail and freight-only lines.

2.1.1. Existing users

Passenger services on the V/Line network are provided by V/Line itself. Freight services are provided by three main users, El Zorro, Pacific National and Qube Logistics, together with

some minor users, mainly for maintenance purposes. Details on usage by line section are provided in Chapter 3.

2.2. Access prices proposed by V/Line

Table 2-1 sets out the prices currently proposed by V/Line for access to the regional rail network. The prices proposed by V/Line are the maximum standing offer for reference services. Further, the proposed prices apply to all services – i.e. scheduled and unscheduled services in normal hours and unscheduled services during out of normal hours.

Table 2-1- Reference prices proposed by V/Line

| Reference services | Prices (excluding GST) | |
|--------------------------------------|-----------------------------|-----------------------|
| | Flag fall (\$/TK) | Variable (\$/000 GTK) |
| Bulk grain | \$5.719 | \$7.607 |
| Other freight , including containers | \$0.876 | \$1.64 |
| Other services | Prices (excluding GST) | |
| Yard | \$12.82 per vehicle per day | |
| Geelong grain loop | \$78.04 per train | |

Source: V/Line submission (2012)

3. Our approach and detailed results

3.1. Introduction

This Chapter describes our approach and methodology for calculating the relevant efficient costs. The cost estimates by GHD have been used as a starting point for the calculation of access charges, supplemented by meetings between V/Line and the Commission to obtain relevant data and information.

Although V/Line's regulatory accounts provide detailed allocations of costs between the various line sections, this is essentially a mechanical exercise which bears little relationship to the actual expenditure, as explained in the report by GHD. GHD has concluded that the actual expenditure has been less than the amount required to maintain the infrastructure to a standard which is 'fit for purpose' over the long-run.

The objective of the pricing analysis is to establish efficient prices for freight use of the V/line network. The approach adopted was as follows:

- for *freight only lines*, the price would be set to recover from freight users no less than the full (efficient) costs of operating and maintaining the relevant line sections over the relevant period; and
- for *mixed lines* (which carried both passenger and freight services), it is assumed that passenger services set the maintenance standards and the lines will be maintained indefinitely by government. Therefore, the prices to be charged to freight users will be no less than the (efficient) incremental costs that freight users impose on those networks, including the components of major periodic maintenance costs which are variable with usage.

3.2. Overview of the approach

In estimating efficient prices the following six step approach has been adopted.

Step 1: is to ascertain the network configuration and track standard by segment. Given there is no reliable information on actual costs by asset class, the aim is to equate the various characteristics of the network (e.g. distance, track standard) to the effort required to maintain the track to the required standard.

Step 2: is to ascertain current and future demand (usage) by segment for the freight only and mixed network, in terms of both train kilometres (tk) and gross tonne kilometres (gtk). Given the lack of information submitted by V/Line in its access application, current usage will be used as the basis for predicting future usage.

Usage forecasts are a key element in determining costs and prices over the regulatory period. On the cost side, forecast usage is a factor in determining the maintenance effort required. On the price side, forecast usage determines the unit prices required to recover the total revenue requirement.

Step 3: is to calculate the cost of supply for providing reference services.

The cost of supply comprises the forecast operating expenditure (operations and maintenance costs and overhead costs) and a return on, and return of, historic and forecast capital expenditure associated with providing the declared services. The general pricing guidelines specify that the forecast operating and maintenance costs must be reasonable best estimates and must not exceed those that would be incurred to achieve a “fit for purpose” service standard.

In the case of the V/Line network, historic capital cost has not been considered as it has been entirely provided by the Government. Any future capital cost will also be provided by the Government and has likewise not been considered.

Operations and maintenance costs have therefore been developed from an assessment of the recurrent costs required to maintain and operate the infrastructure at the standard specified by the Government.

Step 4: involves estimating the efficient prices for reference services (bulk grain, other freight) and other services (yard services and grain loop).

For freight-only lines, prices are based on the total efficient costs of operating and maintaining the relevant network.

For mixed lines, prices are based on the incremental costs of freight services.

In order to estimate the costs for each line segment, an engineering analysis was firstly undertaken of a benchmark line, in this case the Mildura line, and the total annual maintenance costs required were established.

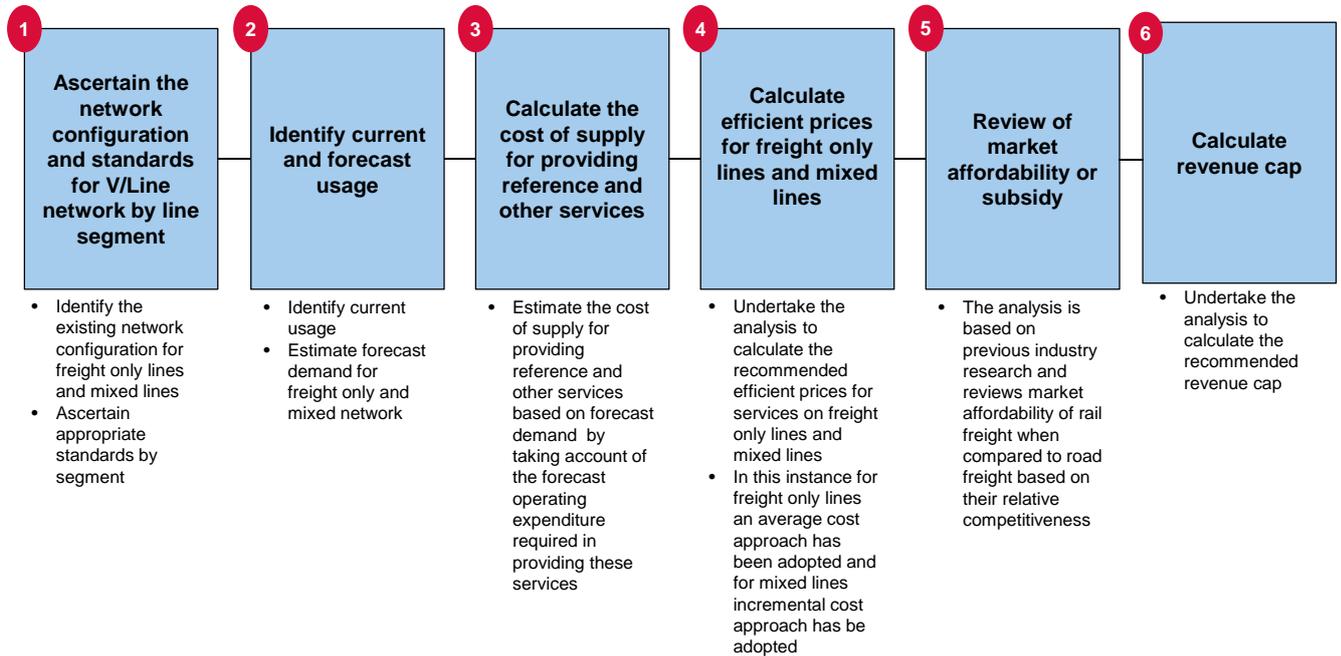
The costs of other line segments were then calculated based on the characteristics of the line segment compared to the Mildura line and an appropriate factor applied to the Mildura benchmark cost. The Mildura Line represents the highest class and highest speed of all freight only lines, and therefore has been assigned a factor of one. Other freight only lines have been assigned a factor less than one to take account of their lower class and speed.

Step 5: is to review market affordability or subsidy for rail freight compared to road freight based on their relative competitiveness. The analysis is based on industry research and existing literature review.

Step 6: involves calculating the recommended revenue cap.

Figure 3-1 below outlines the approach undertaken for the review.

Figure 3-1- Assessment approach



3.3. Network configuration and standards (Step 1)

The total network comprises 3,420 track-km¹, 1,540 km of which is the Passenger Network, on most of which both passenger and freight trains operate, and 1,880 km is the Freight Network, on which only freight trains operate. About 220 km of the Freight Network is ‘booked-out’ lines which are not currently in operation and which are unlikely to be re-opened.

V/Line categorises its track into 5 classes, with classes 1 and 2 being the higher-speed passenger lines, with speeds of 160 km/hr and 100 km/hr respectively, class 3 being lower-speed lines (typically 70 km/hr maximum speed) on which both passenger and freight trains operate, class 4 lines which are mostly freight secondary and branch lines, operating at typical speeds of between 50 km/hr and 30 km/hr, and class 5, which are either booked-out or carry very small volumes of freight operating at speeds of 20 km/hr.

The maintenance costs for these different classes of track have cost components which are fixed with respect to usage and those which are variable with respect to usage, as discussed in the engineering report. However, all classes carry relatively low volumes by world standards, with the busiest (the Mildura line) carrying 2-3 million gross² tonnes but smaller feeder lines carrying around 250,000 gross tonnes and a lot less in a poor season.

¹ V/Line Asset Management Plan 2012-2017

² This includes both the weight of the freight itself and the weight of the locomotive and wagons. Allowing for the (generally) empty return trip, the weight of the freight itself (known as the net tonnes) is about half the gross weight.

3.3.1. Passenger network

As discussed earlier, the Passenger Network comprises the Regional Fast Rail network of the Traralgon/Bairnsdale, Geelong, Bendigo and Ballarat lines, together with the Seymour/Shepparton and Warrnambool Lines and the extensions beyond Bendigo and Ballarat to Swan Hill, Echuca and Maryborough.

The regulatory regime is only applicable to freight services on this network and the review has only considered those elements of maintenance and operation that are affected by the increased tonnage from freight use, both in terms of the increase in train paths and the additional wear and tear on the infrastructure from the freight vehicles.

During the review period, the Watergardens to Sunbury line section will be transferred to Metro following its electrification and this section has been omitted from the review.

3.3.2. Freight network

The lines on the Freight only network are subject to different levels of use and are therefore maintained to different standards of quality, commensurate with the services offered. As freight is the only user of these services, all the relevant maintenance and operations costs have been attributed to freight, separated into the fixed and variable components.

3.4. Estimating current and future demand (Step 2)

3.4.1. Current demand

Table 3.1 gives the usage of the V/Line network over the last five years, split by passengers and freight.

Table 3-1 - Usage of V/Line network 2007-08 to 2011-12

| | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 2011-21 ⁽¹⁾ | Average |
|-----------------------------------|---------|---------|---------|---------|------------------------|---------|
| Passenger | | | | | | |
| Train km (000) | 6904 | 6945 | 7160 | 7266 | 7513 | 7158 |
| Gross tonne-km (m) ⁽²⁾ | 1397 | 1444 | 1493 | 1544 | 1597 ⁽³⁾ | 1495 |
| Freight only | | | | | | |
| Passenger network | | | | | | |
| Train-km (000) | 569 | 471 | 362 | 474 | 444 | 464 |
| Gross tonne-km (m) | 682 | 562 | 432 | 648 | 590 | 583 |
| Freight network | | | | | | |
| Train-km (000) | 328 | 245 | 291 | 388 | 620 | 375 |
| Gross tonne-km (m) | 420 | 330 | 417 | 644 | 1146 | 591 |
| Total Freight | | | | | | |
| Train-km (000) | 897 | 716 | 653 | 862 | 1064 | 838 |
| Gross tonne-km (m) | 1102 | 892 | 849 | 1293 | 1737 | 1174 |
| Freight as a % of total | | | | | | |
| Train-km (000) | 11% | 9% | 8% | 11% | 12% | 10% |
| Gross tonne-km (m) | 44% | 38% | 36% | 46% | 52% | 44% |

Source: V/line except (1) expanded from YTD April (2) Booz & Company estimates (3) actual adjusted to allow for service cancellations for Regional Rail works.

Freight typically represents about 10% of the train-km on the network but around 50% of the gross tonne-km. The freight traffic is on average evenly split between the passenger network and the freight network, although in busy years (such as 2011/12) the freight network, which predominantly carries grain, is more intensively used and vice versa in poor years.

Freight can be conveniently divided into grain and the remainder. Grain traffic includes both domestic and export grain; some of the export grain is hauled to both Geelong and Melbourne ports, whilst the remainder is hauled to depots near the ports where it is containerised and subsequently exported. Domestic grain is carried to two large depots in Kensington and Sunshine. The non-grain traffics consist of a small number of largely trainload traffics.

Export containers of agricultural produce (including containerised grain) are carried from Mildura, Shepparton and Warrnambool, with the first two also collecting traffic from some intermediate points. Paper products are carried to and from Maryvale, quarry products from Kilmore to metropolitan Melbourne and cement from Geelong to Melbourne. Whilst the non-grain products are reasonably stable from year-to-year, the grain, and especially the export grain, is susceptible to large swings in demand. Domestic grain generally has priority when there is a poor year and, as a result, in a year like 2008/9, volumes on the freight-only network can be under one-third of what they are in a bumper year such as 2011/12.

3.4.2. *Forecast demand*

Discussions with the Department of Transport (DOT) indicate that the outlook is unlikely to change dramatically over the next three years. The abolition in 2008 of the single desk for Australian wheat exports has since led to the establishment of a large number of wheat exporters and very different relationships between growers, exporters and intermediate grain handling and transport companies. Instead of much of the grain moving in bulk along a single channel, an arrangement for which rail is well-suited, it now moves through many channels only some of which have the critical volume to make rail attractive. However, this situation is now beginning to settle down and there will be steady moves to improve the efficiency of the grain supply chain. This should see rail at least maintain its current role in the grain supply chain.

The various container movements are likely to maintain their current volumes, again subject to reasonable harvests for that part which is containerised grain. However, most of them are fragile financially, needing the subsidies that have been provided over the past three years to retain them on rail. These payments were renewed in the recent State budget for the next two years.

The other traffic, paper, stone and cement have not changed substantially in recent years and are not expected to do so in the future. An additional new traffic is the mineral sands which are being railed on the Hopetoun line en route to Portland but this will have a relatively small impact on the overall V/Line freight task because of the short distance it travels on the V/Line network before connecting with the ARTC network.

The grain harvest over the last eight years has ranged from 1.6 million tonnes in 2006/7 to 7.1 million tonnes in 2010/11 (some of which is being moved in 2011/12). Although 2011/12 has been a good harvest, future years are unknown. For the purposes of this report, an average harvest over the period of 5 million tonnes has been assumed, equivalent to the average of the past 8 years excluding the abnormal 2006/7 season. This is also equivalent to the average over the last four years and the corresponding V/Line tonnages have been used as a guide for the volume carried by each line section.

Table 3-2 - Forecast usage of V/Line network 2012-13 to 2014-15

| | Average 2007-12 | Forecast 2012-15 | % change |
|------------------------------|-----------------|------------------|----------|
| Passenger | | | |
| Train-km (000) | 7158 | 7261 | 1.4% |
| Gross tonne-km (m) | 1495 | 1541 | 3.1% |
| Freight only | | | |
| Passenger network | | | |
| Train-km (000) | 464 | 495 | 6.7% |
| Gross tonne-km (m) | 583 | 650 | 11.5% |
| Freight network | | | |
| Train-km (000) | 375 | 556 | 48.3% |
| Gross tonne-km (m) | 591 | 677 | 14.6% |
| Total Freight | | | |
| Train-km (000) | 838 | 1051 | 25.4% |
| Gross tonne-km (m) | 1174 | 1327 | 13.0% |
| Freight as % of total | | | |
| Train-km (000) | 10% | 13% | 30.0% |
| Gross tonne-km (m) | 44% | 46% | 4.5% |

Source: Booz& Company estimates

The overall forecast usage over the control period (2012-2015) for V/Line network (net of the Watergardens transfer) has been split by passengers and freight is given in Table 3-2 above. Going forwards, freight is forecasted to represent an average of about 13% of the overall train km on the network and around 46% of gross tonne km for the network over the control period.

3.5. Determining the cost of supply (Step 3)

The cost of supply conceptually includes three main components: recurrent operating and maintenance costs, historic capital expenditure and forecast capital expenditure. However, all V/Line's capital expenditure, both past and future, has been funded by the government and hence is excluded from the cost. The two sections below discuss the recurrent operating and maintenance costs.

3.5.1. Operating costs

These costs are discussed in detail and derived in the companion engineering report. They are typically the train control, signaling and safe working functions, all of which still remain in Victoria. However, the signal box function is inefficient for the volumes experienced in Victoria and the engineering consultants have adjusted V/Line's forecast cost to reflect a regime of "Train Orders"³ or "Centralised Traffic Control"⁴ which is standard practice everywhere in Australia.

³ Instructions delivered to train drivers verbally by radio or through a radio based electronic token

After a review of the costs in other jurisdictions, the engineering review estimated the efficient cost of train control on the freight-only network as \$923,290 p.a., equivalent to \$1.80 per train-km.

The freight trains generally operate on the Passenger network when passenger trains do not operate and thus there are relatively limited opportunities to share duties with passenger train controllers. The engineering review thus concluded that the cost associated for the freight-only network of \$1.80 per train-km is also a reasonable estimate for the operations cost on the passenger network.

3.5.2. *Maintenance costs*

These costs are also discussed in detail in the engineering report. The maintenance costs were classified into those which are essentially time-based and those which are essentially usage-based, using costs derived from V/Line's own Steady State Model⁵. The baseline has been taken as the Dunolly – Ouyen section of the Mildura line, one of the busiest sections of the freight-only network and one which is in reasonable condition having been recently rehabilitated. This model generated an estimate of the annual Deep Level Maintenance (DLM/MPM)⁶ expenditure required, which was then combined with the cost of Routine Maintenance derived from V/Line's Asset Management Plan to give an estimated annual expenditure of \$23,698 per kilometre. This means that this maintenance expenditure is required every year over the life of the asset to maintain the asset in a steady state on an even basis.

The concept of steady state is a theoretical concept and thus the engineering consultants have estimated that about 82 per cent of the estimated annual expenditure can be associated to elapsed time and the remainder to usage, enabling the total expenditure to be split into two components: \$19,432 p.a. as a fixed annual cost and \$4.25 per 000 gtk as the usage-related component.

This is mainly because some deterioration of the assets and the inspections required in the normal course of maintenance are time based, while component wear due to traffic is usage related. The time based elements are fixed from year to year while the usage related elements are variable with traffic. For example, timber sleeper decay is time based but rail wear is usage related.

In our estimates we have taken account of the speed and tonnage requirements of each line. For slow speed lines, there is greater tolerance to deterioration than on faster speed lines. For these lines the fixed elements on a yearly basis are lower because the standard of infrastructure does not need to be as high as on a faster speed line. Similarly, on lines with

⁴ Instructions delivered to train drivers through signals where the traffic volumes justify and transmitted by a central location for the whole state

⁵ This is an approach to estimating maintenance costs that considers the expected life of the asset and applies a unit cost to replacement activities. GHD has relied on the unit cost rather than the activity quantum on a year by year basis.

⁶ Deep Level Maintenance and Major Programmed Maintenance are used interchangeably by V/Line

higher task, the usage related elements will be greater than the lower task lines. Our estimates have been constructed taking these factors into account.

The total costs in each category have been calculated by considering the Mildura Line as a base, and factoring each other line on the basis of their tonnage and the speed required in the V/Line Track Standards⁷. The lower speed lines, such as Korong Vale to Boort, operating with a Track Standard of 60 km/hr, attract lower factors for fixed maintenance⁸ cost compared with the Mildura line, and as the tonnages are also lower attract a lower cost factor for variable costs.

We have used Table 4 of the GHD report⁹ to derive the line by line variable and fixed costs.

Table 3-3 below shows the fixed and variables costs for different line segments for V/Line's freight only network. As shown in Table 3-3 below the freight only network has an average variable cost of \$3.89 per 000 gross tonne-km (lower than the variable cost for the benchmark line of \$4.25 due to the lower average tonnage across the network).

Table 3-3 - Fixed and variable cost for freight only network 2011-12 (\$000)

| | Length (1) | Gross Tonnes (000) (2) | Fixed Cost | | Variable cost | | Total (4) + (6) (\$000) |
|--------------------------|---------------|------------------------------|-----------------------|----------------------------------|-------------------------|--------------------------|-------------------------------|
| | | | Per Km (\$) (3) | Total (000) (4) = (1*3) | Per (000 gtk) (5) | Total (6)=(5* 1*2) | |
| Moolort - Maryborough | 18 | 0 | 1090 | 20 | 0.00 | 0 | 20 |
| Maryborough - Ararat | 84 | 0 | 1090 | 92 | 0.00 | 0 | 92 |
| Echuca - Toolamba | 67 | 0 | 1090 | 73 | 0.00 | 0 | 73 |
| Korong Vale - Boort | 29 | 253 | 13295 | 380 | 3.85 | 28 | 407 |
| Boort - Ultima | 86 | 195 | 11508 | 990 | 3.42 | 58 | 1048 |
| Ultima - Manangatang | 61 | 124 | 11508 | 705 | 3.42 | 26 | 731 |
| Manangatang - Robinvale | 53 | 0 | 1090 | 58 | 0.00 | 0 | 58 |
| Inglewood - Korong Vale | 33 | 471 | 13295 | 434 | 3.85 | 59 | 494 |
| Korong Vale - Wycheproof | 63 | 183 | 13295 | 834 | 3.85 | 44 | 878 |
| Wycheproof - Sea Lake | 77 | 103 | 11020 | 847 | 3.42 | 27 | 875 |
| Sea Lake - Mittyack | 46 | 0 | 1090 | 51 | 0.00 | 0 | 51 |
| Dunolly - Inglewood | 40 | 470 | 11731 | 465 | 3.64 | 68 | 533 |
| Ouyen - Walpeup | 30 | 64 | 10309 | 308 | 2.72 | 5 | 313 |
| Walpeup - Murrayville | 79 | 45 | 10309 | 817 | 2.72 | 10 | 826 |
| Murrayville - Panitya | 19 | 0 | 1090 | 21 | 0.00 | 0 | 21 |

⁷ Appendix 6, draft Access Arrangement

⁸ Such as for sleeper condition, rail wear, reactive maintenance and geometry correction

⁹ Regulatory Review of V/Line Maintenance and Pricing, May 2012

| | Length (1) | Gross Tonnes (000) (2) | Fixed Cost | | Variable cost | | Total (4) + (6) (\$000) |
|----------------------------|---------------|------------------------------|-----------------------|----------------------------------|-------------------------|--------------------------|-------------------------------|
| | | | Per Km (\$) (3) | Total (000) (4) = (1*3) | Per (000 gtk) (5) | Total (6)=(5* 1*2) | |
| North Geelong - Moorabool | 6 | 1169 | 19432 | 122 | 4.25 | 31 | 153 |
| Gheringhap - Ballarat | 74 | 1169 | 19432 | 1434 | 4.25 | 366 | 1800 |
| Mildura - Yelta | 20 | 202 | 11508 | 234 | 2.97 | 12 | 246 |
| Maryborough - Dunolly | 22 | 1578 | 19432 | 429 | 4.25 | 148 | 576 |
| Dunolly - Ouyen | 263 | 1005 | 19432 | 5104 | 4.25 | 1120 | 6224 |
| Ouyen - Mildura | 101 | 542 | 19432 | 1954 | 4.25 | 231 | 2186 |
| Dimboola - Yaapeet | 83 | 18 | 10309 | 860 | 2.47 | 4 | 864 |
| Murtoa - Warracknabeal | 50 | 509 | 10309 | 517 | 2.97 | 76 | 593 |
| Warracknabeal - Hopetoun | 61 | 322 | 10309 | 630 | 2.97 | 58 | 689 |
| Eaglehawk - Inglewood | 40 | 0 | 1090 | 44 | 0.00 | 0 | 44 |
| Swan Hill - Piangil | 44 | 102 | 11020 | 485 | 3.20 | 14 | 500 |
| Barnes Crossing - Burraboi | 83 | 0 | 1090 | 91 | 0.00 | 0 | 91 |
| Burraboi - Moulamein | 43 | 0 | 1090 | 47 | 0.00 | 0 | 47 |
| Shepparton - Dookie | 25 | 0 | 1090 | 27 | 0.00 | 0 | 27 |
| Shepparton - Tocumwal | 70 | 373 | 13043 | 907 | 3.64 | 94 | 1001 |
| Echuca - Mathoura | 39 | 569 | 11020 | 429 | 2.97 | 66 | 494 |
| Mathoura - Deniliquin | 34 | 570 | 11020 | 375 | 2.97 | 58 | 433 |
| Warrnambool - Westvic | 3 | 163 | 10797 | 29 | 2.20 | 1 | 30 |
| Westvic - Dennington | 2 | 0 | 10797 | 21 | 2.20 | 0 | 21 |
| West Tower - Tottenham | 5 | 3181 | 52610 | 270 | 1.90 | 31 | 302 |
| Total | 1854 | | | 20105 | 3.89 ¹⁰ | 2636 | 22741 |

Source: Booz & Company estimates

Table 3-4 below shows the freight incremental costs on the passenger network for different track classes. On the passenger network, the incremental cost of freight operations is driven by wear and heavy loading. The V/Line Steady State Model was used to estimate the total cost items associated with incremental freight traffic (rail grinding, replacement, failures, turnout renewal and geometry correction) for each class of track which was then allocated to passenger and freight trains on a gtk basis. We have apportioned the incremental costs derived by GHD¹¹ in their Table 2 on a per gtk basis for the passenger and the freight components on the Passenger Network.

¹⁰ Variable cost/GTK

¹¹ *ibid*

As shown in Table 3-4 below, the total incremental cost of running a freight train on the passenger network for all classes of track is \$5.51 per '000 tonne km. This in turn represents the floor price for freight traffic on the passenger network. It is also evident that for class 1 lines, those in which the fastest trains operate at a high frequency, the incremental costs are high in comparison with the others because there is proportionately more wear and tear. For class 4 lines, the speeds and tonnages are low and most of the costs are not incremental. They are mostly fixed and driven by time related effects such as timber sleeper deterioration.

Table 3-4 - Incremental freight maintenance costs on passenger network 2011-12

| Track Class | Incremental Cost \$ 000 | | | GTK (000) | | Freight Incremental cost | |
|--------------|-------------------------|---------------|--------------------------|------------------|----------------|-------------------------------------|-------------------------|
| | Track Km (1) | Per Km (2) | Total costs (3)=(1*2) | Passenger (4) | Freight (5) | Total \$000 (6) = (5/(4+5)*3) | Per 000 GTK (6/5) |
| Class 1 | 600 | 10417 | 6250 | 904 | 459 | 2105 | 4.59 |
| Class 2 | 409 | 7335 | 3000 | 367 | 126 | 769 | 6.08 |
| Class 3 | 442 | 7242 | 3201 | 256 | 95 | 866 | 9.12 |
| Class 4 | 86 | 1850 | 159 | 17 | 6 | 42 | 6.92 |
| Total | | | | 1544 | 686 | 3781 | 5.51 |

Source: Booz & Company estimates

It can also be observed from Table 3-4 above that the higher class passenger lines operate a greater proportion of passenger trains than the lower class passenger lines. This is in line with expectations as the higher class passenger lines have a more concentrated passenger service with little spare capacity for freight trains.

3.6. Estimation of recommended efficient prices for reference services (Step 4)

In Table 3-3 and Table 3-4 the total costs for freight usage is derived by using incremental/variable and fixed costs and the forecast task, measured in terms of gtk. In summary, the prices resulting from this analysis are as follows:

- On both networks, an operations cost of \$1.80 per train-km, equivalent to \$1.43 per 000 gtk, is estimated given the forecast average train-size of 1261 gross tonnes¹². Operations costs will typically include functions like train control, signalling and safe working functions. These charges were derived by the engineering consultants GHD after a benchmarking review of the costs in other jurisdictions.
- For the freight only network, efficient prices have been estimated to be at \$25.4m per annum. Based on forecast annual gtk of 677m, this represents an average cost of \$37.60 per 000 gtk for freight services on freight only lines. This is based on the premise that efficient prices should recover no less than the total costs of operating and maintaining the relevant line sections on a fit for purpose basis.

¹² One train km equals 1261 gross tonne km, therefore cost per 000 GTK is (1000/1261) multiplied by \$1.80 equals \$1.43.

- On the passenger network, the incremental costs imposed by freight across all classes of track is \$5.51 per 000 gtk for maintenance (as shown in Table 3-4 above) plus \$1.43 per 000 gtk for operations, making a total of \$6.94 per 000 gtk.

The incremental cost freight imposes on the passenger network of \$6.94 per 000 gtk is much less than the average cost of freight's use of the freight only network of \$37.60 per 000 gtk, as the former includes only the costs that vary with usage, whereas the latter includes total costs, including the fixed costs of network maintenance and overheads that do not vary with usage.

For the mixed network, the fixed costs are assumed to be recovered from passenger services (given passenger services set the maintenance standards for those networks). For the freight only network, the fixed costs need to be recovered from freight services.

Given efficient costs of \$37.60 per 000 gtk for freight only lines and \$6.94 per 000 gtk for passenger lines the total efficient cost to be recovered from freight services across the total V/line network represents \$30m (when multiplied by forecast gtk on the respective networks of 677 and 650m).

Bulk Grain and other Freight Access Prices

The average price per gtk required to recover the full \$30m is \$22.60 per 000 gtk¹³. A single per gtk rate has been derived given that there are no track capacity issues on the regional network (and passenger trains are given priority) and almost 90% of the efficient cost is maintenance related where gtk is a better reflection of cost causality than train kms.

Geelong Grain Loop and Yards

Two additional line sections also need to be considered: the Melbourne sidings and yards controlled by V/Line and the Geelong Grain Loop. No detailed cost or usage data has been made available to date. The maintenance cost of the Sidings and yards is likely to be around \$6,000 p.a. per km¹⁴ but they are far in excess of the capacity currently required as well as likely to be removed as part of the Regional Rail Network. The current price of \$12.82 per wagon-day as proposed by V/Line is comparable to the charges of VicTrack and Asciano¹⁵, both of whom have similar sidings available for use by third parties and on this basis the proposed price is recommended.

The Geelong Grain Loop is more complex. The facility is an estimated 4.05km dual-gauge loop with two turnouts with a sharp curvature of about 120 metre radius. This will create reduced sleeper life and require close attention to fastenings. On this basis, the annual maintenance cost is estimated at \$14,000 per km or around \$70,000 per annum, allowing for the two turnouts. In 2010-11 the throughput was 0.8 million tonnes but the future use will be

¹³ 30m divided by a total of 1,327 (650+677) m gtk

¹⁴ The benchmark across Australian railways researched by the Engineering Consultants GHD indicates a range for open track of approximately \$10,000 to \$60,000 per km depending on traffic. Sidings and slow speed locations attract costs lower than these.

¹⁵ VicTrack and Asciano have submitted applications for Access Arrangements which are being review by ESC at this time.

affected by the continuing trend towards increasing containerisation and the use of multiple supply chains. Based on a long term average export of 2.5 million tonnes, with 20% using the Geelong Grain Loop, the expected average usage will be 500,000 tonnes p.a., at a cost equivalent to \$0.14 per tonne. The incremental cost¹⁶ is estimated at about half this value, i.e. \$0.07 per tonne or \$77 per trainload assuming a 20 wagon train carrying 1,100 tonnes of grain. The V/Line proposal of \$78.04 per train is thus just above this floor price.

The recommended prices are summarised in Table 3-5.

Table 3-5 – Recommended prices for V/Line 2011-12

| Services | Recommended access prices (\$) 2011-12 |
|------------------------------------|--|
| Freight Services (\$/ 000 gtk) | 22.60 |
| Other Access | |
| Geelong Grain Loop (\$ per access) | 78.04 |
| Yards(\$/ vehicle per day) | 12.82 |

.Source: Booz & Company estimates

The maximum access rate of \$22.60 per 000 gtk applies to both reference services – bulk grain and other freight.

3.7. Analysis of market affordability (Step 5)

Literature review and industry research conducted by Booz & Company indicates that in almost all Victorian regional freight markets, road sets the competitive price benchmark when compared to rail freight. A previous analysis by Booz & Company (2010)¹⁷ indicated that of the three market segments (i.e., grain, intermodal and other bulk), grain has the highest ability to pay rail access fees, given the comparative advantage of rail for bulk freight over relatively long distances.

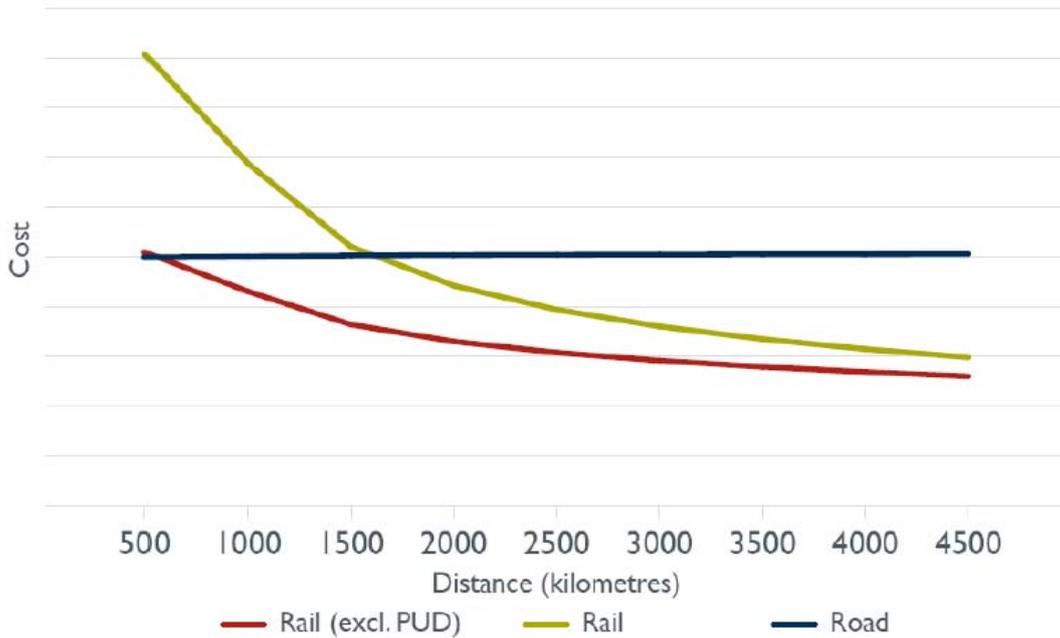
The choice between rail and road transport for freight generally depends on the trade-off between cost and service quality factors. Some of the key freight service quality factors include transit time, reliability, availability, schedule, spoilage, and volume and service availability/frequency.

Modal cost structures and market volumes are also significant factors influencing mode choice. Figure 3-2 depicts the relationship between average and freight costs and haulage distance for inter- capital road and rail freight.

¹⁶ Based on GHD's analysis in its report "Regulatory Review of VicTrack, Maintenance and Pricing, May 2012"

¹⁷ DOT (2010), Rail Freight Access Fee Review

Figure 3-2- Average freight costs and distance travelled for road and rail freight



Source: BITRE (2009), Information sheet no. 34
 Note: Rail freight costs exclude pick-up and delivery

Pick-up and delivery and rail terminal costs add significantly to the average door-to-door cost of rail, particularly for short-haul freight. As haul length increases, those costs become less significant in the overall cost of rail transport.

A previous analysis conducted by Booz & Company (2010)¹⁸ indicated that demand is most elastic to price rather than service qualities as show in Table 3-6 below.

Table 3-6- Rail freight elasticity

| | Price | Transit Time | Reliability | Service Availability |
|------------|-------|--------------|-------------|----------------------|
| Short Haul | -1.1 | -0.4 | 0.6 | 0.5 |
| Long Haul | -1.1 | -0.3 | 0.6 | 0.4 |

Source: Booz & company for DoT (2010), Rail Freight Access Fee Review

Of the three freight types i.e., grain, intermodal and other bulk, grain is the most inelastic to price due to the export grain supply chain's bias towards rail. This bias is created by the large quantities involved when fulfilling shipping orders in short timeframes, the existing investment in rail sidings and capacity constraints for receivables at ports by road. Some other bulk products similarly also have some resistance to moving to road when specialised infrastructure is in place at the rail head to load direct to train.

Intermodal freight by its nature is the most elastic of the freight types. As a result, intermodal freight haulers are very sensitive to any change in access price. Intermodal hauls are more

¹⁸ *ibid*

easily broken down into smaller quantities and easier to swap over to road. The high pick-up and delivery costs for intermodal freight at each end of the rail journey also place rail at a significant disadvantage.

The 2012 state budget has recently announced that the current rebate is being replaced by the Mode Shift Incentive Scheme. This is a two-year program which includes two years of funding to replace the intermodal rebate and funding of \$34m over four years for regional rail freight major periodic maintenance. These commitments are likely more about supporting current volumes than providing for any dramatic change in capacity.

The effective access rates paid in the market today have been taken as the starting point for market affordable rates, well below the efficient floor price for freight services calculated in Section 3.6. These are the current charges net of government rebates (which apply to intermodal services). It seems prudent that a differential between the access charges for grain and for other freight is retained for the reasons outlined above. There seems little capacity to increase access charges from existing levels, given the marginal nature of rail freight operations in Victoria, particularly for the freight currently requiring government rebates to remain competitive.

3.8. Calculation of revenue cap (Step 6)

Pursuant to section 4.2(a) of the pricing order the prices that an access provider may charge must be set so as to comply with the revenue cap as included in an access arrangement and as approved by the Commission.

The forecast revenue requirement for a given access period is the forecast efficient cost of supplying the declared reference services. The forecast revenue is the total discounted value of the forecast revenue in each year over the access period.

V/Line in its 2012 submission has asserted a revenue requirement of \$67.93 million for 2010-11 and is shown in Table 3-7 below.

In Table 3-7, V/Line's freight operating expenses include "access activity expenses" which are direct costs and "other activities" which are overheads and include an allocation of head office costs. Also in the table, the total operating requirement includes an "MPM adjustment to steady state" allocation represents a maintenance deficit calculated by V/Line.

Table 3-7 – V/Line's proposed revenue requirement 2012-13 to 2014-15

| | 2010 | 2011-12 | 2012-13 | 2013-14 | 2014-15 |
|---|--------------|--------------|--------------|--------------|--------------|
| Access activity expenses | 24.71 | 25.57 | 26.60 | 27.26 | 27.94 |
| Other activities | 15.03 | 15.55 | 16.18 | 16.58 | 17.00 |
| MPM adjustment to steady state | 28.18 | 29.17 | 30.33 | 31.09 | 31.87 |
| Total operating requirement (\$ m) | 67.92 | 70.29 | 73.11 | 74.93 | 76.81 |
| Forecast revenue (\$m) | 17.00 | 17.59 | 18.29 | 18.75 | 19.22 |

Source: V/Line's access arrangement (2012)

The annual recommended revenue requirement from 2012 to 2015 is shown in Table 3-8 below. The present value of the revenue is calculated by discounting at the WACC of 6.02%, resulting in a total revenue requirement for direct costs of \$29.10m for 2012-13. The recommended revenue requirement in Table 3-8 assumes steady state conditions.

Table 3-8- Recommended revenue requirement 2012-15

| | 2011-12 | 2012-13 | 2013-14 | 2014-15 |
|---|---------------------|---------|---------|---------|
| Freight only operating expense | 25.44 | | | |
| Freight operating costs on passenger network | 4.51 | | | |
| Total freight operating expenses (\$) m ¹⁹ | 29.95 ²⁰ | 30.85 | 31.77 | 32.73 |
| Discounted revenue requirement (\$)m ²¹ | | 29.10 | 28.27 | 27.46 |

Source: Booz & Company estimates

Overheads as shown in V/Line's "other activities", amounts to approximately \$16m per year, or 55% of direct costs. This is not in accord with our understanding of efficient costs for those activities which are usually in the range 5% to 10% of direct costs. For the purpose of this analysis we have used overheads of 7.5% of operations and maintenance costs.

¹⁹ Escalated by 3%

²⁰ The number has been rounded up to 30m in the body of the report

²¹ WACC of 6.02%

4. Summary and Conclusions

In order to estimate efficient prices for freight's use of the V/line network, we have relied on future throughput projections and the forecast costs required for maintaining the network in a steady state, based on the independent engineering assessment conducted by GHD.

GHD has determined that the unit costs associated with V/Line's estimates are efficient industry costs, but the Asset Management Plan presented, does not necessarily reflect the full costs of maintaining the network in a steady state. Therefore they have recalculated a set of costs for each line that reflect a program of work designed to maintain the network in a sustainable way.

We note that V/Line has submitted that it expects to earn revenue for 2011/2012 of \$4.55m from freight access and they expect to receive a subsidy from the DOT of \$12.42m²², making total revenue of \$17.59m. In addition, the May 2012 budget announced a further amount of \$34m over 4 years for MPM maintenance which will assist in correcting the imbalance.

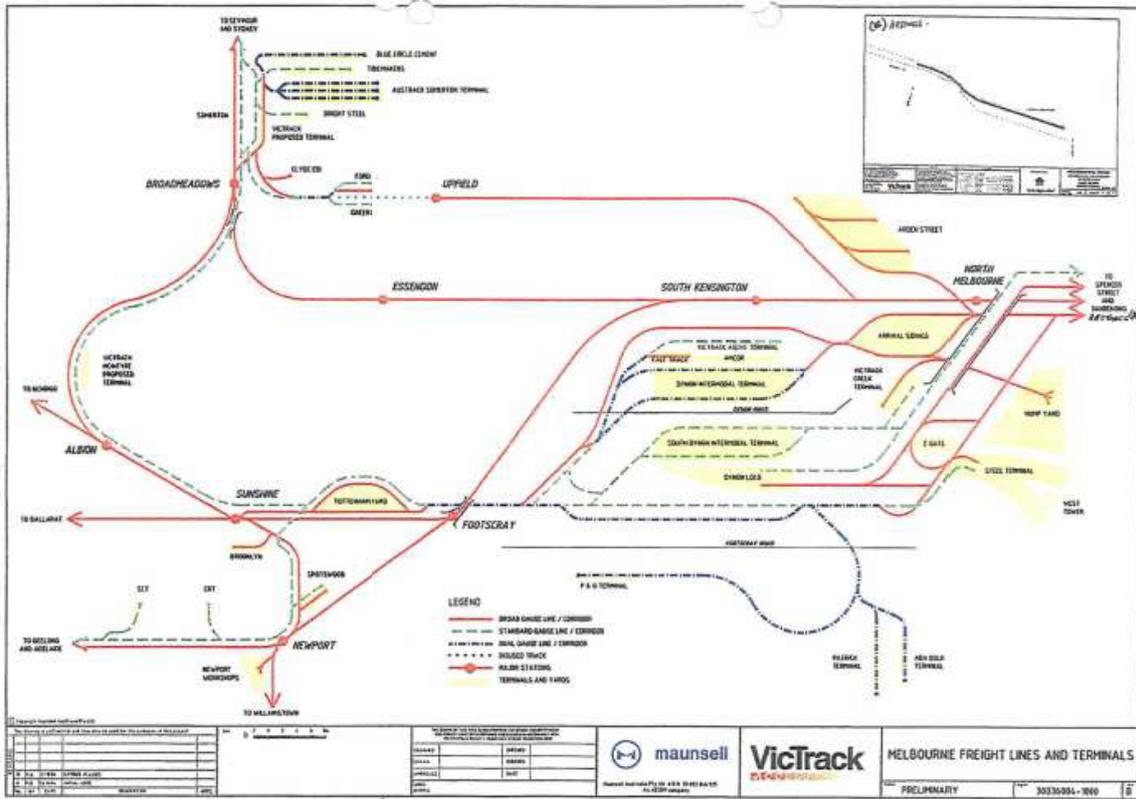
We have determined that the efficient costs for maintaining and operating the freight only network to be \$25.4m and the incremental costs of freight on the passenger network of \$4.5m, making a total of \$30m²³. These considerations do not include the impact of a maintenance deficit, if it exists, but such a deficit could be eliminated by annual increment catch-up. We believe that V/Line is performing its maintenance work efficiently but that the revenue is not sufficient to maintain the network in a sustainable way. The overheads asserted by V/Line in its regulatory accounts seem disproportionate to efficient costs.

The projected revenue from government assists in retaining track standard, but still does not cover expected steady state costs. This means that V/Line's revenue from access seekers, together with the current level of government subsidy, is only sufficient to retain the current market share at best, and more likely to lose market share should track standards deteriorate.

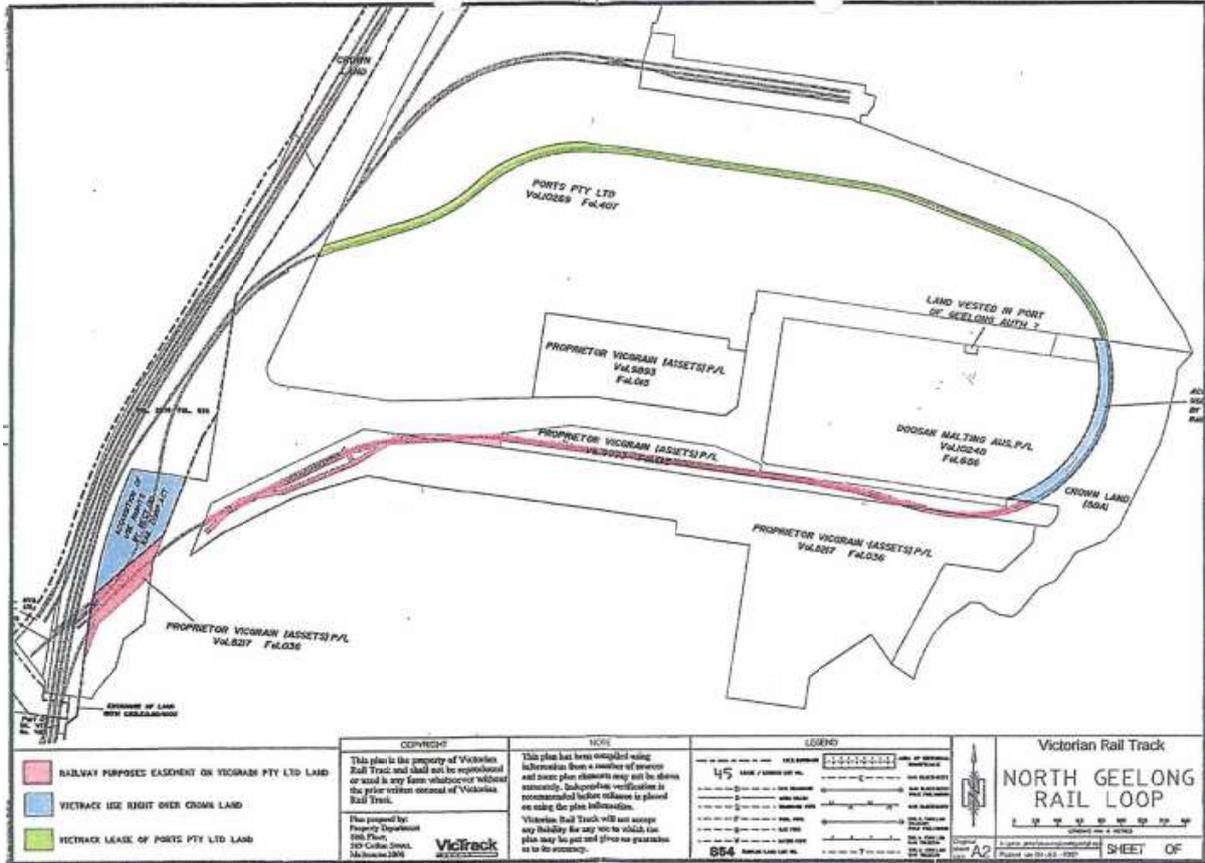
²² The subsidy foreshadowed by V/Line in its submission which pre-dates the May 2012 budget assumes no funding for Major Programmed Maintenance

²³ The numbers are rounded up in the report

Appendix 1. Map of Melbourne freight lines and terminals



Appendix 2. Map of Geelong grain loop



Appendix 3. Map of V/Line regional rail network

