

Access Arrangement South Dynon Terminal

Dated 1 July 2025

Contents

1.	Introduction.....	4
1.1	Purpose of this document	4
1.2	Commencement date and term	4
1.3	Definitions and interpretation	4
1.4	Contact details	6
2.	Services and Charges	7
2.1	Declared Rail Transport Services and Reference Tariffs	7
2.2	Provision of Declared Rail Transport Services to Pacific National	7
3.	Not Used	7
4.	Terms and conditions.....	7
4.1	Combination of Services	7
4.2	Standard Access Agreement	7
5.	Application and Negotiation Protocol.....	7
5.1	Access Application and Assessment	7
5.2	Good Faith Commitment	7
5.3	Negotiation process	7
5.4	Scope of negotiations	8
5.5	Timing of negotiations	8
5.6	Dispute resolution process	8
6.	Procedure for making an access application	9
6.1	Information Pack	9
6.2	Provision of further information	9
6.3	Application Form and Access Seeker information	10
7.	Procedure for assessing access applications.....	10
7.1	Acknowledgement of receipt	10
7.2	Assessment of Access Application	11
8.	Capacity Allocation Protocols	12
8.1	Capacity allocation	12
8.2	Mutually exclusive requests for capacity	12
8.3	Access seeker may vary capacity allocation	13
8.4	Pacific National rights to vary or withdraw capacity entitlements	13
8.5	Pacific National may permanently vary or withdraw capacity	13
8.6	Pacific National may temporarily vary allocated capacity	14
8.7	Complaint handling	14
9.	Capacity allocation and capacity increase.....	15
9.1	Capacity allocation	15
9.2	Capacity increase	15
10.	Fees and Levies	17
10.1	Fees and levies for the provision of information	17
10.2	Fees and levies for assessing Works	17
11.	Confidential Information.....	17
11.1	Confidential Information	17
11.2	Prohibition on disclosure	17
11.3	Confidential Information	18
11.4	Prohibition on use of Access Seeker information	18
11.5	Provision of Information to Pacific National	18

12. Terminal Management Protocol.....	19
12.1 Non-Discrimination	19
12.2 Track Network Management Protocols	19
12.3 Late or Early Trains	19
12.4 Priority to On-Time Trains	19

List of Schedules and Annexures

Schedule 1 - South Dynon Terminal Layout

Schedule 2 – Access Application Form

Schedule 3 - Reference Prices for Declared Rail Transport Services

Schedule 4 - Train Loading / Unloading Process Considerations

Schedule 5 – Data and Reporting

Schedule 6 – Capacity Statement

Annexure A – Standard Access Agreement

1. Introduction

1.1 Purpose of this document

This document is the Access Arrangement for the South Dynon Terminal and is submitted by Pacific National pursuant to the RMA.

1.2 Commencement date and term

This Access Arrangement will commence on the date specified by section 38X of the RMA.

In accordance with the Victorian Rail Access Guidelines (June 2024), this Access Arrangement (commencing prior to 2026) expires on 30 June 2026.

1.3 Definitions and interpretation

Access Agreement means the "Terminal Access and Services Agreement - South Dynon Terminal" between Pacific National Services Pty Ltd and an Access Seeker for access to Services at the South Dynon Terminal.

Access and Regulation means Pacific National Pty Ltd's (ABN 39 098 060 550) Access and Regulation team.

Access Arrangement means an access arrangement for the South Dynon Terminal prepared and published in accordance with Division 5 of the RMA as current from time to time and means this document where consistent with and appropriate to the context.

Access Arrangement Information means 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 the requirements of Division 3, Division 4, and Division 5 of the RMA.

Access Holder means an Access Seeker who has been provided by the Access Provider with a Declared Rail Transport Service within the South Dynon Terminal under an Access Agreement.

Access Provider means Pacific National Services Pty Ltd.

Access Seeker means an accredited person who wants to be provided a Declared Rail Transport Service by the Access Provider within the South Dynon Terminal.

ARTC means Australian Rail Track Corporation Limited ACN 081 455 754.

Australian Dangerous Goods Code means the "Australian Code for the Transport of Dangerous Goods by Road and Rail" prepared by the National Transport Commission and varied from time to time.

Available Capacity means the capability of providing Declared Rail Transport Services at the South Dynon Terminal after taking into account requirements to accommodate users' existing train paths and existing contractual commitments, and any requirements to reserve capacity for the prudent operation of the Terminal in accordance with all applicable standards and good industry practice.

Business Day means a day not being Saturday, Sunday or public holiday, on which banks are generally open for business in Melbourne, Victoria.

CPI means the Melbourne Consumer Price Index (All Groups) Number, as published by the Australian Bureau of Statistics. In this definition:

- (a) the reference to the Consumer Price Index (Melbourne Consumer Price Index, All Groups) means:
 - (i) the same number but with different names at any time;
 - (ii) the same number adjusted mathematically to take account of a change at any time in the base period provided that indices of the same base year are used throughout the calculations; and
- (b) the reference to the Australian Bureau of Statistics includes a reference to:
 - (i) the Australian Bureau of Statistics but with a different name at any time;and
 - (ii) a Governmental Agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

Declared Rail Transport Service means a rail transport service declared by an Order under section 38E of the RMA.

Environmental Laws means

- (a) any legislation (including regulations, rules, by-laws and orders) applicable to the environment and environmental protection; and
- (b) any directions, notices or guidelines regarding the environment and environmental protection issued by any relevant authority or any code of practice or compliance code or framework appropriate or relevant to the Interface,

as amended or replaced from time to time, and includes (without limitation) the *Environment Protection Act 2017* (Vic), *Environment Protection Regulations 2021* (Vic), *Planning and Environment Act 1987* (Vic) and related Safety Legislation;

Head, Transport for Victoria has the meaning provided in the definition of Head, Transport for Victoria in section 3 of the Transport Integration Act 2010 (Vic);

Independent Panel means an independent panel constituted under section 38ZC of the RMA;

Operator Establishment Fee means the fee entitled “Operator Establishment Fee” set out in Schedule 3 “*Reference Tariffs for Declared Rail Transport Services*” of this Access Arrangement.

Pacific National means Pacific National Services Pty Ltd, ACN 052 134 362 / ABN 48 052 134 362.

Rail Safety National Law (Vic) means the Rail Safety National Law as applied (with modifications) as a law of Victoria by the *Rail Safety National Law Application Act 2013* (Vic).

Reference Tariffs means the charges for Declared Rail Transport Services under this Access Arrangement.

RMA means the Rail Management Act 1996 (Vic) as amended from time to time.

SARC means Safe Access to the Rail Corridor accreditation in accordance with Rail Safety National Law (Vic).

Safety Interface Agreement means the requirement (where applicable) for Pacific National to seek to enter into an agreement with the Access Holder for the management of risks to safety arising from the interface of (where applicable):

- (a) railway operations carried out by and on behalf of different rail transport operators;
and
- (b) railway operations with public or private roads, at rail or road crossings,

pursuant to the Rail Safety Act 2006 (Vic) (or in accordance with any other relevant standard or guideline relating to safety or coordination) and which may also incorporate the Train Specification and which may include provisions relating to:

- (a) the implementation and maintenance of measures to manage those risks;
- (b) the evaluation, testing and, if appropriate, revision of these measures;
- (c) the respective roles and responsibilities of each party to the agreement in relation to these measures) the procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
- (d) a process for keeping the agreement under review

South Dynon Terminal means the land delineated on the plan contained in Schedule 1 to this Access Arrangement.

Standard Access Agreement means the Terminal Access and Services Agreement - South Dynon Terminal in the form contained in Annexure A of this Access Arrangement.

Terminal IT Systems means the IT systems used by Pacific National to operate the South Dynon Terminal.

Track Network Management Protocols means the relevant track network management and operations protocols and procedures for the ARTC track network, V/Line track network and Metro Trains Melbourne track network and any other relevant networks to the extent that they are relevant to South Dynon Terminal and its use.

User's Capacity Allocation means capacity allocated to a user under an Access Agreement where this capacity allocation is consistent with clause 8 "*Capacity Allocation Protocols*".

V/Line means V/Line Pty Ltd, ACN 087 425 269.

Victorian Rail Access Regime Guidelines means the guidelines prepared and published by the Minister pursuant to 38H of the RMA and varied from time to time.

1.4 Contact details

Pacific National Access Team

Email: South_Dynon_Access@pacificnational.com.au

Pacific National
Level 1, 2 Blue Street
North Sydney NSW 2060

2. Services and Charges**2.1 Declared Rail Transport Services and Reference Tariffs**

The details of all Declared Rail Transport Services and the Reference Tariffs are set out in Schedule 3 of this Access Arrangement.

2.2 Provision of Declared Rail Transport Services to Pacific National

Pacific National operates the South Dynon Terminal and in doing so, uses all the Declared Rail Transport Services listed in this Access Arrangement.

3. Not Used

4. Terms and conditions**4.1 Combination of Services**

None of the Declared Rail Transport Services 2 to 11 can be acquired without first acquiring Declared Rail Transport Service 1.

4.2 Standard Access Agreement

The terms and conditions of access for the Declared Rail Transport Services are set out in the Standard Access Agreement, which is Annexure A to this Access Arrangement.

5. Application and Negotiation Protocol

This Application and Negotiation Protocol is made in accordance with the Guidelines prepared by the Minister pursuant to section 38H of the RMA and details:

- (a) The protocols that apply to any request for access to the South Dynon Terminal; and
- (b) The procedure for assessing and negotiating the terms and conditions for access.

5.1 Access Application and Assessment

- (a) An Access Seeker applying for access to the South Dynon Terminal must follow the process set out in clause 6.
- (b) Pacific National will follow the procedure set out in clause 7 when assessing and determining access applications.

5.2 Good Faith Commitment

When following the procedures and carrying out the obligations specified in this Application and Negotiation Protocol, Pacific National and all Access Seekers must act in good faith.

5.3 Negotiation process

Following provision by Pacific National of a notice under clause 7.2(a) Pacific National will:

- (a) meet and negotiate in good faith with the Access Seeker to seek to reach agreement on the terms and conditions, including price, on which it will make the requested services available (including if the notice has been provided under clause 7.2(c)(ii) of availability or part availability of capacity, any works required to provide additional capacity); and

- (b) use all reasonable endeavours to meet the requirements of an Access Seeker who has complied with its obligations under the Act and the Application and Negotiation Protocol in this clause 5.

5.4 Scope of negotiations

The access negotiations will be conducted on the basis that:

- (a) save for:
 - (i) specific factual details relevant to each individual access application; and
 - (ii) any matters agreed between Pacific National and the Access Seeker, the Standard Access Agreement will comprise the contractual terms between Pacific National as the operator of the South Dynon Terminal, and the Access Seeker;
- (b) the price for the services to be provided will be determined in accordance with the Access Arrangement Information and the Reference Tariffs.

5.5 Timing of negotiations

The negotiation of the contractual terms will be completed within 60 Business Days of Pacific National giving notice under clause 7.1(b)(i).

5.6 Dispute resolution process

- (a) If a dispute arises between Pacific National and the Access Seeker in connection with the negotiations for the provision of access to the South Dynon Terminal ("**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 clause 5.6.
- (b) Pacific National and the Access Seeker shall use reasonable endeavours and act in good faith to settle the dispute as soon as practicable.
- (c) If the Dispute is not resolved within 10 Business Days from the date on which it is referred to the delegates of the Chief Executive Officers, the Dispute will be referred to the senior Pacific National executive with responsibility for the South Dynon Terminal who will attempt to resolve the Dispute within 20 Business Days from the date of receipt of the Dispute Notice.
- (d) If a Dispute is not resolved in accordance with clause 5.6(c) Pacific National and the Access Seeker will 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) In the absence of agreement as to the independent expert within 10 Business Days the independent expert will be appointed on the application of Pacific National by the President of the Institute of Arbitrators and Mediators Australia.
- (f) The independent expert must provide his/her report as soon as practicable and, if possible, within 20 Business Days of the Dispute being referred to the expert.
- (g) The independent expert will act as an expert and not an arbitrator and may adopt such procedures as he/she thinks fit.
- (h) The independent expert will determine how the costs of the independent expert will be borne between Pacific National and the Access Seeker.

- (i) Pacific National and the Access Seeker will use their best endeavours to resolve the Dispute on the basis set out in the expert report obtained pursuant to the mechanism provided under paragraph (d) above.
- (j) If either Pacific National or the Access Seeker refers the Dispute to the Head, Transport for Victoria, either party may provide the Head, Transport for Victoria with a copy of the expert report obtained pursuant to the mechanism provided under paragraph (d) above.

6. Procedure for making an access application

6.1 Information Pack

- (a) Pacific National will publish and maintain on its website, a publicly available information pack in relation to access to the South Dynon Terminal.
- (b) The information pack for the South Dynon Terminal will contain:
 - (i) a copy of the Access Arrangement and Access Arrangement Information.
 - (ii) the detailed diagrammatic map of the South Dynon Terminal is set out in Schedule 1 of this Access Arrangement and includes the location within the South Dynon Terminal of fixed plant and equipment.
 - (iii) the name and contact details of the Access and Regulation representative who has primary responsibility for responding to questions from Access Seekers prior to the lodgement of access applications.
 - (iv) a copy of the Application Form for access to the South Dynon Terminal, which is set out in Schedule 2 to this Access Arrangement.
 - (v) a copy of the standard terms and conditions for access to the South Dynon Terminal contained in the Standard Access Agreement, which is Schedule E to this Access Arrangement.
 - (vi) a description of the signalling system, safe working systems and operational systems operative at the South Dynon Terminal; and
 - (vii) a copy of Pacific National's Terminal Management Protocol.
 - (viii) Access and Regulation will advise the Access Seeker, at the time of providing the information pack, that further information may be available in accordance with clauses 8 and 9 of this Access Arrangement.

6.2 Provision of further information

- (a) If requested by the Access Seeker and if the Access Seeker provides it with a description of the service it is considering seeking, Pacific National will provide the following additional information:
 - (i) whether there is capacity to provide access to the South Dynon Terminal.
 - (ii) a description of the South Dynon Terminal including the layout of the terminal and interface with roads, ports or other relevant infrastructure used to access the terminal and a description of any operational constraints to roadside access to the terminal.
 - (iii) details of the access charges that apply for access to the South Dynon Terminal with reference to the Reference Tariffs set out in the Access Arrangement.
 - (iv) such other matters as an Access Seeker may reasonably require for the purpose of making an application for access in accordance with the Access Arrangement.

- (b) Pacific National will use all reasonable endeavours to provide the information requested under clause (a) to the Access Seeker in writing within 14 days after receiving the request for further information and the description of the service from the Access Seeker.

6.3 Application Form and Access Seeker information

- (a) An Access Seeker may submit a completed Application Form to Access and Regulation providing details of the access requested. An access application must be in accordance with the Application Form which is set out in Schedule 2 to this Access Arrangement.
- (b) In addition to information required by the Application Form, Access and Regulation may require the Access Seeker to provide information as to:
 - (i) the managerial and financial ability to carry out the operations and activities consistent with the access request, including evidence that the Access Seeker's management and staff have the necessary knowledge, experience and Accreditation (SARC or equivalent) or that the Access Seeker will be able to and will engage the services of another person whose management and staff have the necessary knowledge, experience and Accreditation (SARC or equivalent) to carry out the proposed rail operation and that the Access Seeker has the necessary financial resources to carry out the proposed activities;
 - (ii) the Access Seeker's requirements in relation to the terminal services and train management protocols required at the South Dynon Terminal;
 - (iii) the nature and ability of the Access Seeker's IT systems to reliably interface with the Terminal IT Systems if the access sought were to be provided;
 - (iv) the ability of the Access Seeker's locomotives to communicate with terminal communication systems in accordance with the Terminal Management Protocol; and
 - (v) any other information reasonably required by Access and Regulation to assess and respond to the access application.

7. Procedure for assessing access applications

7.1 Acknowledgement of receipt

- (a) Access and Regulation will acknowledge receipt of an access application within 5 Business Days of receipt.
- (b) Within 10 Business Days of receipt of an access application (or such longer period as may be agreed between Access and Regulation and the Access Seeker), Access and Regulation will advise the Access Seeker that either:
 - (i) the Access Seeker's application is in the form prescribed in the Access Arrangement and contains the information required; or
 - (ii) the Access Seeker's application is not in the form prescribed in the Access Arrangement or does not contain the information required (in which case Access and Regulation may reject the access application).
- (c) If Access and Regulation rejects an access application in accordance with paragraph (b)(ii) above, Access and Regulation will, in the notice to the Access Seeker, specify the additional information that it reasonably requires for the access application to be compliant.

- (d) Having received a notification pursuant to the paragraph (b)(ii) above, an Access Seeker may elect to:
 - (i) give further information to Access and Regulation, in which case, paragraphs (a), (b) and (c) above shall apply to the provision of such further information with such alterations and modifications as are necessary;
 - (ii) refer the matter to the Head, Transport for Victoria as an access regime dispute under section 38ZB of the RMA; or
 - (iii) accept the rejection and not proceed further with that access application.
- (e) If Access and Regulation does not reject the access application within 10 Business Days of receipt of the access application or such longer period as the parties agree, Pacific National is deemed to have given an acknowledgement under paragraph (b)(i).

7.2 Assessment of Access Application

- (a) Within 20 Business Days of issuing a notice to the Access Seeker under clause 7.1(b)(i), or the date on which Access and Regulation is deemed to have done so under clause 7.1(e), Pacific National will determine, consistent with this Access Arrangement, the Victorian Rail Access Regime Guidelines and any protocols made under them, as well as the factors referred to in clause 8.1(a), whether there is sufficient Available Capacity to meet the Access Seeker's request and, by notice in writing to the Access Seeker, advise the Access Seeker accordingly.
- (b) Subject to paragraph (e), if Pacific National determines under paragraph (a) that there is sufficient Available Capacity to meet the Access Seeker's request, Pacific National will include in the notice provided to the Access Seeker in accordance with paragraph (a) the proposed terms and conditions, including price, upon which the access provider will make the requested service available.
- (c) If Pacific National determines under paragraph (b) that there is not sufficient Available Capacity to meet the Access Seeker's request (after assessing Available Capacity in accordance with the Victorian Rail Access Regime Guidelines and any protocols made under them), Pacific National will, within 25 Business Days of issuing a notice to the Access Seeker under clause 7.1(b)(i) or within 25 Business Days of the date on which the Pacific National is deemed to have done so under clause 7.1(e):
 - (i) provide reasons why the service cannot be made available to meet the Access Seeker's request;
 - (ii) if part but not all of the Access Seeker's request can be satisfied from Available Capacity, subject to clause 7.2(e) notify the Access Seeker of the terms and conditions, including price, upon which the Pacific National will make that the service requested available to the extent of Pacific National's Available Capacity; and
 - (iii) if Works are required to provide additional capacity necessary to meet the Access Seeker's request in full, at the time of providing notice under clause 7.2(c)(ii) above offer to undertake an assessment of the Works required and the cost of those Works in accordance with clause 7.2 of this Access Arrangement.
- (d) Pacific National may reject or terminate access if:
 - (i) the Access Seeker does not have or will not have all necessary accreditation lawfully to operate the service it is proposing to operate;
 - (ii) the Access Seeker's rolling stock does not comply with the requirements for access to the relevant rail network applicable from time to time, where the relevant rail

network may include, but is not limited to, ARTC network, V/Line Network, Metro Trains Melbourne network, TAHE network and ARC Infrastructure network;

- (iii) either the management and staff of the Access Seeker do not have the necessary knowledge, accreditation and experience to carry on the proposed rail operations, or the Access Seeker will not be able to engage the services of another person whose management and staff have the necessary knowledge, accreditation and experience carry on the proposed operations; or
 - (iv) the Access Seeker does not appear to have the necessary financial capacity, for example but not limited to providing evidence of sufficient insurance, to meet its financial obligations to Pacific National under an Access Agreement and the financial obligations it owes to any other persons (including excesses under insurance policies).
- (e) If Pacific National determines to reject an access application under paragraph (d) it will, within 25 Business Days of issuing a notice to the Access Seeker under clause 7.1(a) or within 25 Business Days of the date on which it is deemed to be done so under clause 7.1(e) notify the Access Seeker of its determination and provide reasons why the requested service cannot be made available.

8. Capacity Allocation Protocols

8.1 Capacity allocation

- (a) On receipt of an access application in accordance with clause 6.3(a) of this Access Arrangement, Pacific National will make an assessment as to whether there is sufficient Available Capacity at the South Dynon Terminal to meet the Access Seeker's request. In making that assessment Pacific National will take account the factors outlined in Schedule 4 - Train Loading / Unloading Process Considerations, the matters referenced in clause 7.2(a), and any other relevant factors which are reasonable to take into account or which are referred to in this document.
- (b) If Pacific National determines, in its reasonable opinion, that there is insufficient Available Capacity to satisfy an Access Seeker's request, it will, in accordance with clause 7.2(c) of this Access Arrangement:
 - (i) make an assessment of whether part of the Access Seeker's request can be satisfied with Available Capacity and an assessment of the works that would be required to satisfy the balance of the Access Seeker's request, consistently with each protocol referred to in the Application and Negotiation Protocol; and
 - (ii) provide a written explanation to the Access Seeker as to why the access application could not be satisfied in full.
- (c) If Pacific National determines, in its reasonable opinion, that there is sufficient Available Capacity to satisfy an Access Seeker's request, it will notify the Access Seeker in accordance with clause 7.2(b) of this Access Arrangement.

8.2 Mutually exclusive requests for capacity

In circumstances where two or more Access Seekers are seeking mutually exclusive capacity allocation rights, the rights will be granted to the Access Seeker who accepts an Access Agreement with Pacific National which, in the opinion of Pacific National, is most favourable to Pacific National. Ordinarily, but without limiting Pacific National's discretion in this regard, Pacific National would make such a decision based on the Access Agreement that represented the highest present value of future returns to Pacific National after considering all risks associated with the Access Agreement.

8.3 Access seeker may vary capacity allocation

An Access Seeker or user may apply to Pacific National to vary its allocated capacity entitlements under an Access Agreement. Pacific National will assess the application against the capacity allocation principles and procedures set out in the Capacity Allocation Protocol having regard to the Available Capacity and, will vary the capacity entitlement as sought if able to do so pursuant to those principles and procedures. In varying the capacity entitlement of any Access Seeker or user under this clause, Pacific National will negotiate with the Access Seeker or user in good faith and will use all reasonable endeavours to vary the allocated capacity entitlement in accordance with the request of the Access Seeker or user, provided that such variation does not interfere with the allocated capacity entitlements of another user or the optimum use of the terminal.

8.4 Pacific National rights to vary or withdraw capacity entitlements

In order to encourage the optimum use of South Dynon Terminal, Pacific National will be entitled to withdraw capacity allocated to a user pursuant to a Access Agreement, and reallocate that capacity to another Access Seeker, if the user has failed to use at least 65% of the allocated capacity for any calendar month during the term of the Access Agreement, without sufficient justification acceptable to Pacific National acting in good faith and reasonably. Pacific National must notify the user in writing of its intention to withdraw allocated capacity on the basis of this clause 8, which notice must:

- (a) state that it is a notice given under the Freight Path Availability principles of the Victorian Rail Access Regime Guidelines;
- (b) require the user to demonstrate its ability to utilise, or fully utilise that User's Capacity Allocation to the extent contemplated in the Freight Path Availability principles of the Victorian Rail Access Regime Guidelines (as applicable) or otherwise to show cause in writing why Pacific National should not require the surrender of the User's Capacity Allocation the subject of the notice;
- (c) state the date by which the user is required to provide a written response to the access provider (which will not be less than 14 days after the user receives the notice); and
- (d) state that if the user does not show reasonable cause in writing by the stated date, Pacific National may by written notice to the user require the surrender of the User's Capacity Allocation that is the subject of the notice.

Pacific National will provide the user with sufficient opportunity (to be no less than 14 days from the date of the notice) to demonstrate its ability to utilise, or fully utilise that allocated capacity to the extent contemplated under the Terminal access arrangement or otherwise to show cause in writing why Pacific National should not withdraw the allocated capacity the subject of the notice. In considering any response from the user to a notice given by Pacific National under this clause, Pacific National will act reasonably and in good faith.

8.5 Pacific National may permanently vary or withdraw capacity

Pacific National may permanently vary or withdraw capacity allocated to a user under an Access Agreement following breach by the user of relevant legislation, or an industry or Pacific National standard (including Pacific National's rolling stock interface standards), or the Terminal Management Protocol or a Pacific National requirement relating to the operation or safety requirements applicable to South Dynon Terminal. Pacific National must notify the user in writing of its intention to permanently vary or withdraw allocated capacity on the basis of this clause 8, which notice must state:

- (a) that it is a notice under Freight Path Availability principles of the Victorian Rail Access Regime Guidelines;
- (b) the alleged breach;
- (c) that the user is required to show cause in writing why Pacific National should not require the permanent variation or surrender of the User's Capacity Allocation the subject of the alleged breach;
- (d) the date by which the user is required to show cause (which will not be less than 14 days after the user receives the notice); and
- (e) that if the user does not show reasonable cause by the stated date, Pacific National may by written notice to the user permanently vary or require the surrender of the User's Capacity Allocation the subject of the notice.

Pacific National will provide the user with sufficient opportunity (to be no less than 14 days from the date of the notice) to show reasonable cause why Pacific National should not vary or withdraw capacity as specified in the notice. However, where such breach creates a risk of injury to persons or damage to property, including damage to equipment or infrastructure at the South Dynon Terminal, Pacific National may withdraw the User's Capacity Allocation immediately until the user has addressed the risk to the reasonable satisfaction of Pacific National acting in good faith and reasonably. In considering any response from the user to a notice given by Pacific National under this clause, Pacific National will act reasonably and in good faith.

8.6 Pacific National may temporarily vary allocated capacity

- (a) Pacific National may vary capacity allocated under an Access Agreement on a temporary basis:
 - (i) to repair, maintain, upgrade, extend, construct or make alterations to the South Dynon Terminal;
 - (ii) for reasons of safety or for the prevention of injury or damage to the rail network or South Dynon Terminal or to other persons or property; and
 - (iii) following a request in writing from a user.
- (b) Pacific National must advise the user in writing of its intention to temporarily vary a capacity allocation under clause 8.6 by notice in writing of not less than 14 days. However, a lesser notice period as determined by Pacific National acting in good faith and reasonably may be given if the temporary variation is required to ensure safety in the operation of South Dynon Terminal. Pacific National will consult with the user prior to issuing the notice and during the notice period so as to best accommodate the requirements of the user by temporarily allocating suitable substitute capacity where possible, applying the capacity allocation principles and procedures set out in the Capacity Allocation Protocol.

8.7 Complaint handling

If an Access Seeker or user is not satisfied that Pacific National has complied with its obligations under this clause 8 and provides Pacific National with details of the complaint in writing, Pacific National will investigate and consider the complaint and seek to address the complaint in good faith within 21 days from receipt of the complaint. Pacific National will report to the Head, Transport for Victoria each such complaint and the measures taken by Pacific National in response to such complaint.

9. Capacity allocation and capacity increase**9.1 Capacity allocation**

- (a) In carrying out allocation of Available Capacity for the South Dynon Terminal Pacific National will, subject to all relevant legislation (including in relation to safety):
 - (i) not unreasonably favour itself or another person (including any of its related bodies corporate or business units) over any other person;
 - (ii) subject to paragraph (i) above carry out capacity allocation of Available Capacity in respect of the South Dynon Terminal:
 - A. so as to encourage the maximum use of the South Dynon Terminal; and
 - B. in accordance with clause 8 of this Access Arrangement.
- (b) Pacific National will use its reasonable endeavours to allocate the Available Capacity at the South Dynon Terminal to an Access Seeker in response to the receipt of an access request.

9.2 Capacity increase

- (a) An Access Seeker may request Pacific National to undertake an assessment of Works necessary to provide additional capacity to meet the Access Seeker's request for access.
- (b) "Works" for the purposes of this clause means any step or action intended to increase the capacity of the South Dynon Terminal, including without limitation:
 - (i) alteration of the layout of the South Dynon Terminal;
 - (ii) purchase or lease of equipment (including without limitation lifting or other associated rail equipment) to be used at the South Dynon Terminal;
 - (iii) construction of improvements to the South Dynon Terminal; and
 - (iv) alteration of the manner in which Pacific National manages, conducts or carries out operations at the South Dynon Terminal.
- (c) Within 40 Business Days of receiving a request, Pacific National will prepare and provide to the Access Seeker an indicative expansion plan for the Works to accommodate the Access Seeker's access request. The indicative expansion plan will include:
 - (i) an outline of the proposed Works including any alternate proposals for the proposed Works;
 - (ii) a program for the development of detailed assessment of the Works including:
 - A. an estimate of the costs of the Works;
 - B. the cost of preparing the detailed assessment;
 - C. the process for consultation by Pacific National with the Access Seeker on the detailed assessment;
 - D. the basis upon which Pacific National proposes to allocate the costs incurred in providing the detailed assessment of such Works, which will be fair and reasonable having regard to the nature of the request for access, the work undertaken and the benefits to Pacific National and the Access Seeker of the Works; and
 - E. the estimated costs of the detailed assessment.

- (d) Within 20 Business Days of receipt of the indicative expansion plan, the Access Seeker will advise Pacific National in writing if it wishes to proceed with a detailed assessment of the Works.
- (e) If the Access Seeker notifies Pacific National in accordance with clause 9.2(d), Pacific National will prepare a feasibility assessment which must include:
 - (i) conceptual design for the additional capacity;
 - (ii) conceptual costing for the additional capacity;
 - (iii) conceptual timeframe for the implementation of the enhancements;
 - (iv) consultation and approval requirements;
 - (v) physical and financial risks;
 - (vi) identification of environmental issues;
 - (vii) potential users of the additional capacity enhancements; and
 - (viii) a cost estimate for the detailed design and costing of the proposed enhancements.

The timeframe for provision of this feasibility assessment will be advised to the Access Seeker following Pacific National receiving advice from the Access Seeker under clause 9.2(d). This timeframe will vary and will depend on the nature and complexity of the proposed works that need to be undertaken to meet the request to increase capacity. This timeframe may subsequently be varied with the agreement of the Access Seeker and Pacific National.

- (f) Pacific National will charge the Access Seeker a reasonable fee for the costs of undertaking the feasibility assessment as set out in clause 5 Application and Negotiation Protocol.
- (g) The decision to undertake the Works and the manner in which such Works are to be undertaken by Pacific National is in Pacific National's absolute discretion provided that it is consistent with these protocols and the terms of the lease pursuant to which Pacific National occupies the South Dynon Terminal.
- (h) Without derogating from Pacific National's discretion, Pacific National will consult with the Access Seeker in relation to:
 - (i) the manner in which the Works are to be carried out; and
 - (ii) the cost of the Works, the allocation of which will be as agreed between Pacific National and the Access Seeker.
- (i) Pacific National will not be required to undertake an expansion in any of the following circumstances:
 - (i) the proposed expansion is in breach of any legislation;
 - (ii) if, in order to undertake the expansion, it is necessary for Pacific National to make use of land other than that on which the South Dynon Terminal is located;
 - (iii) Pacific National is, despite its reasonable endeavours, unable to obtain required consents, licences, permits or other approvals required by any legislation or other legal obligation in relation to the design, construction, commissioning, operation and maintenance of the proposed expansion; or
 - (iv) the expansion is in Pacific National's reasonable opinion otherwise unreasonable.

10. Fees and Levies**10.1 Fees and levies for the provision of information**

Pacific National will not charge the Access Seeker for the provision of the information required to be provided under clause 6.2.

10.2 Fees and levies for assessing Works

- (a) Where an Access Seeker has accepted Pacific National's offer under clause 7.2(c)(iii) and Pacific National has carried out the detailed assessment of the Works and the cost of the Works, Pacific National may charge a fee for providing such detailed assessment, which will be calculated in a fair and reasonable manner having regard to the nature of the request for access, the work undertaken and the benefits to Pacific National and the Access Seeker of the works.
- (b) Pacific National will, on request by the Access Seeker, provide to the Access Seeker in writing a breakdown of the component costs of the fee charged by Pacific National under paragraph (a).

11. Confidential Information**11.1 Confidential Information**

Information provided by Pacific National or an Access Seeker in confidence to each other under or in connection with the Application and Negotiation Protocol is "**Confidential Information**" for the purposes of this clause.

11.2 Prohibition on disclosure

Each of Pacific National and the Access Seeker undertakes to the other that it, its officers, employees, agents and subcontractors will not, without the written consent of the other party (which consent shall not be unreasonably withheld) disclose Confidential Information to any person, unless the disclosure:

- (a) is of Confidential Information already within the public domain other than as a result of a breach of this clause 11;
- (b) is of Confidential Information already known to that person (as evidenced by the persons written records) at the date of disclosure;
- (c) is provided to the professional advisers of the disclosing party, on condition that the professional adviser agrees to keep the Confidential Information confidential;
- (d) is to be made to a related body corporate of the disclosing party provided that:
 - (i) the related body corporate agrees to keep the Confidential Information confidential;
 - (ii) the Confidential Information is disclosed solely for the purpose of enabling the disclosing party to undertake its rights and obligations under this Access Arrangement or an Access Agreement made pursuant to it;
 - (iii) if Pacific National is the disclosing party, Pacific National must ensure that the related body corporate complies with this clause 11 as if that related body corporate were an access provider; and
 - (iv) if the Access Seeker is the disclosing party, the Access Seeker must ensure that the related body corporate complies with this clause 11 as if that related body corporate were an Access Seeker;

- (e) is required by law (including the act or the guidelines), or any governmental agency acting or purporting to act within its powers and functions, or by the requirements of accreditation;
- (f) is reasonably necessary for the purposes of any mediation, expert determination, arbitration or legal proceeding involving Pacific National or the Access Seeker; or
- (g) is to the ACCC for the purposes of Part IIIA of the Competition and Consumer Act 2010 Cth or to the Head, Transport for Victoria for the purposes of the RMA;

11.3 Confidential Information

- (a) To the extent that compliance with the Application and Negotiation Protocol requires either Pacific National or the Access Seeker to provide the other party with Confidential Information, each party must take all reasonable steps to ensure that the Confidential Information is kept confidential and only made available to officers, employees, agents or subcontractors (including consultants) who require that Confidential Information (and only to the extent required) to enable the respective parties to comply with their obligations under the Application and Negotiation Protocol.
- (b) Subject to paragraph (c), neither Pacific National nor the Access Seeker may disclose Confidential Information received from the other party in accordance with this clause 11, to any related body corporate without the prior written consent of the other party.
- (c) Nothing in this clause 11 prevents the disclosure of Confidential Information to the Director or any minister, officer, employee, agent, adviser or consultant of the State of Victoria or a governmental agency of that State.
- (d) The obligation of confidentiality under this clause is a continuing obligation and remains in force from the date upon which the Access Seeker makes a request pursuant to clause 6.3(a) of this Access Arrangement.

11.4 Prohibition on use of Access Seeker information

- (a) Pacific National must not, without the written consent of the other party, use Confidential Information given to it by an Access Seeker or user other than as described in the notice appearing at the commencement of the Access Application Form in Schedule 2 or other than for one of the following purposes:
 - (i) to assess and respond to a request by the Access Seeker for the provision of a service made under the Application and Negotiation Protocol; and
 - (ii) to provide the relevant service to the user.
- (b) An Access Seeker or a user must not, without the written consent of Pacific National, use Confidential Information given to them by Pacific National other than solely for the purpose of seeking to be provided, or using, a service provided by Pacific National pursuant to the Application and Negotiation Protocol.

11.5 Provision of Information to Pacific National

Nothing in this clause prevents Access and Regulation from disclosing all information, other than the name of the Access Seeker or end customer details, to Pacific National as the operator of the South Dynon Terminal for the sole purpose of enabling Pacific National to assess an application in accordance with the Application and Negotiation Protocol.

12. Terminal Management Protocol

12.1 Non-Discrimination

In carrying out management of trains into and out of the South Dynon Terminal, Pacific National will, subject to all relevant legislation (including in relation to safety), not unreasonably favour itself or another person (including any of its related bodies corporate or business units) over any other person.

12.2 Track Network Management Protocols

Pacific National will, to the extent necessary to provide access to the South Dynon Terminal in accordance with this Access Arrangement and comply with the relevant track network management and operations protocols and procedures for the ARTC track network, V/Line track network, and Metro Track Melbourne Track network and any other relevant networks to the extent that they are relevant to the South Dynon Terminal. Pacific National will use all reasonable endeavours to maximise the use of the rail network through the optimum use of the South Dynon Terminal.

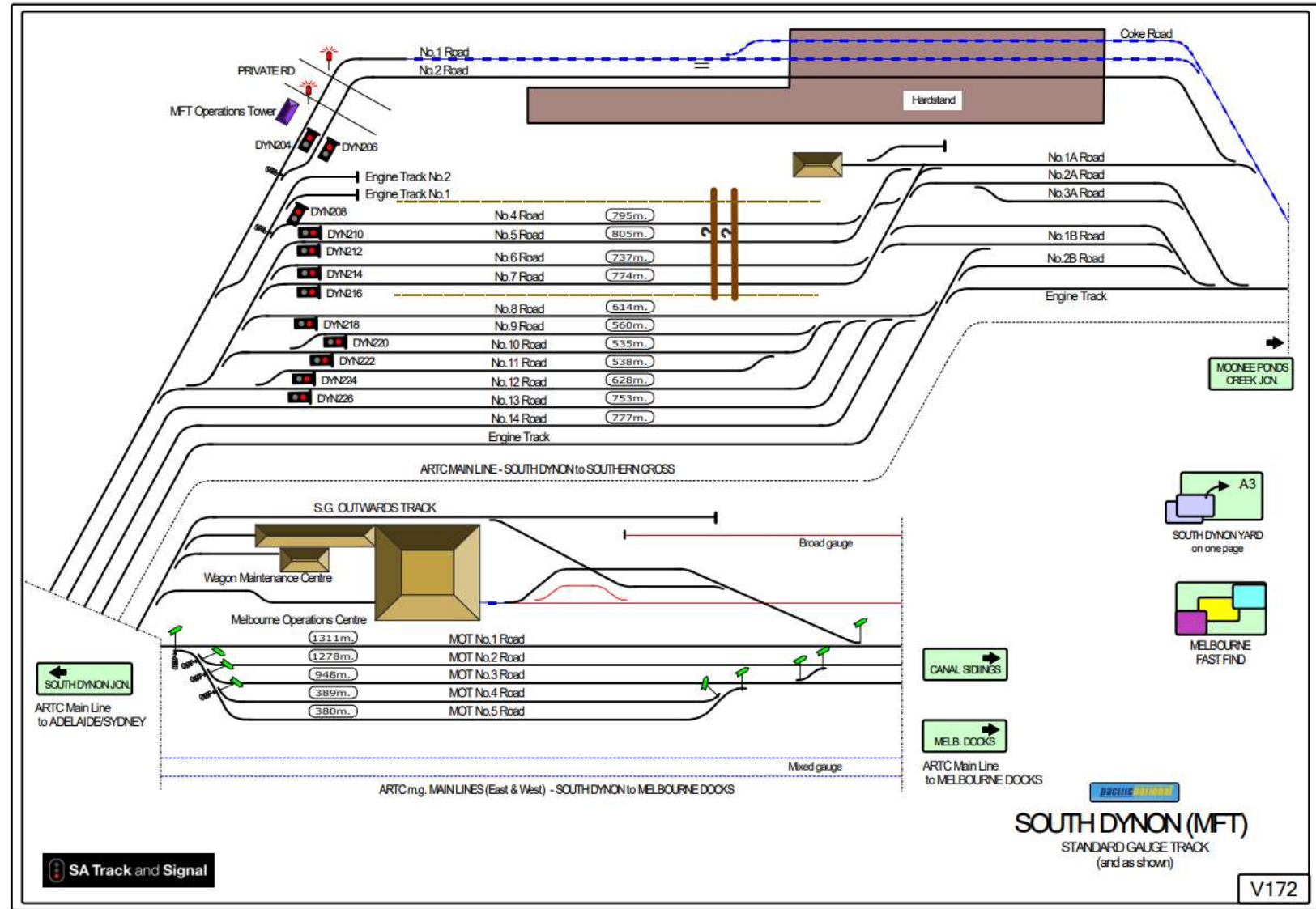
12.3 Late or Early Trains

Pacific National will use its reasonable endeavours to accommodate trains that arrive, or depart, the South Dynon Terminal more than 15 minutes before, or after, their specified time.

12.4 Priority to On-Time Trains

Nothing in clause 12.3 will require Pacific National to disrupt trains which arrive at, or depart, the South Dynon Terminal in accordance with their specified arrival and departure times.

Schedule 1 - South Dynon Terminal Layout (Acknowledgement to [SA Track and Signal](#))



Schedule 2 – Access Application Information Required

Access Application Form	
<p><i>*Please Note – in submitting this Access Application Form, the Access Seeker understands and consents to Pacific National informing the Department of Transport (and / or the Head, Transport for Victoria as the case may be) of the fact the Access Seeker has applied for Access; and consents to Pacific National providing any of the below information to the Department of Transport (and / or the Head, Transport for Victoria as the case may be) if the Department or the Head requests or requires the information.</i></p>	
<p>1. Access seeker's contact details:</p> <p style="text-align: right;">Company Name:</p> <p style="text-align: right;">Contact Person:</p> <p style="text-align: right;">Phone:</p> <p style="text-align: right;">Email:</p>	
<p>2. Details of:</p> <ul style="list-style-type: none"> • The Declared Rail Transport Services the Access Seeker requires, and • The duration of the Access Agreement sought. 	
<p>3. Evidence of Access Seeker's:</p> <ul style="list-style-type: none"> • Financial capability • Acknowledgement of Insurance requirements. • Provide evidence of Insurance coverage, including Certificates of Currency. 	
<p>4. Details of the accreditation of the Access Seeker or the status of the Access Seeker's application for accreditation:</p>	
<p>5. Details of:</p> <ul style="list-style-type: none"> • All rolling stock proposed to be used in these services. • Accreditation details of all rolling stock to be used. 	
<p>6. A statement of the departures from the terms and conditions specified in the Access Agreement being proposed by the Access Seeker.</p>	
<p>5. Any other information reasonably required by Pacific National to assess and respond to an access application.</p>	

If necessary, please attached additional information to this Access Application Form.

Schedule 3 - Declared Rail Transport Services and Reference Tariffs

Declared Rail Transport Services

Important

The South Dynon Terminal is not a licensed waste facility (as per the Environment Protection Act 2017 and the Environment Protection Regulations 2021).

Regulated waste containers cannot be stored on-site for any period.

While regulated waste containers may be held on rail and transferred direct (rail to road and vice versa), placing a regulated waste container on the ground would trigger a breach.

Declared Rail Transport Service 1: Establishment and Ongoing Provision of Terminal Services

The establishment service is provided on a one-off fee basis and includes:

- (a) Agreement execution and account establishment;
- (b) Establishment of an IT system interface between the Access Seeker and Pacific National.

Declared Rail Transport Service 2: Train Management Services - Trains of up to 1500 metres

In respect of trains of up to 1500 metres, train processing services comprise:

- (a) **Shunting:** Break up of trains on arrival of up to four shunts to place onto loading roads or marshalling yard, removal of red cards and marshalling of train for departure. Pacific National will provide locomotive(s) and crew for the shunting of trains.
- (b) **Truck in-gate process:** - Process to collect customer booking information, weigh the truck/trailer to obtain accurate container weight, integration of electronic information, inventory management of the container and notification by the Access Holder of the nature and description of any Dangerous Goods (which must be provided 12 hours prior to the arrival of the Dangerous Goods).
- (c) **Attaching and detaching locomotives:** Coordination in detaching locomotives on arrival and coordination of the attaching of outgoing locomotives before departure. Locomotives are to be crewed by the Access Holder.
- (d) **Truck out-gate process:** Completion of the truck visit to the terminal, matching of release numbers to container numbers and integration of electronic information for ending possession of the container.
- (e) **Ongoing administration:** related to the management of Access Holder;
- (f) **Customer interface:** Interfacing with Access Holder's customers as required.

Declared Rail Transport Service 3: Additional Shunting: comprises shunting on an hourly basis, in addition to that provided as part of Declared Rail Transport Service 2, with the locomotive and crew provided by Pacific National.

Declared Rail Transport Service 4: Container Lifting

- (a) **Single Top Lift (per container, per lift):** is a direct top-lift (any size container) from
 - A train directly onto a truck.
 - A truck directly onto a train. Or
 - A truck or train onto the ground in preparation for storage.
- (b) **Additional Top Lift (per container, per lift):** is a direct top-lift (any size container) from the ground onto a truck or train.

- (c) **Single Bottom Lift (per container, per lift):** is a direct bottom-lift (any size container) from
- A train directly onto a truck.
 - A truck directly onto a train. Or
 - A truck or train onto the ground in preparation for storage.
 - From the ground to a train or a truck

Declared Rail Transport Service 5: Vehicle Access Fee

The charge per vehicle (by TEU capacity) entering the terminal to collect, or deliver, freight.

Declared Rail Transport Service 6: Container Management

- (a) **Container Storage Fees** (per TEU, per day)
- 1 to 2 days after the Free Storage Period
 - 3+ days after the Free Storage Period

Free Storage Period Free commences on the day of container arrival at the Terminal and continues until the end of the next Terminal Working Day.

Note: The South Dynon Terminal is closed between 16:30 Saturday and 08:00 Sunday. The period that the South Dynon Terminal is closed is considered part of the Free Storage Period, except for Dangerous Goods.

- (b) **Container Door Security Fee – Container Seal** (per container)

If a container or freight is identified with doors or some other structure not secured in accordance with the requirements described in 'Container Door Security' requirements of Pacific National's Freight Loading Manual (FLM), Pacific National will secure the container or freight with the number and type of seals it considers appropriate having regard to the nature of the container or freight and charge the Customer a Container Door Security Fee.

- (c) **Late Cancellation Fee**

The Customer will be charged a Late Cancellation Fee for any Booking that is cancelled after the cancellation times nominated in the service schedule for that service.

Declared Rail Transport Service 7: Dangerous Goods Management

Management of Dangerous Goods in the terminal or on wagons in line with the Australian Dangerous Goods Code.

Important

For general Dangerous Goods consignments, a minimum of 12 hours' notice is required prior to the arrival or departure of the scheduled service.

For Security Sensitive Ammonium Nitrate (SSAN) or High-Consequence Dangerous Goods (HCDG) materials, or Schedule 15 MHF Substances may only be transferred direct from road transport to train, or train to road transport.

The Terminal is not licensed to store HCDG materials.

HCDG containers must not be placed on the ground.

- (a) **Dangerous Goods Non-Collection Charge** (per Container plus any additional costs)

Dangerous Goods containers which are not collected on the day they are first made available at their destination Terminal:

- will incur a Non-Collection Charge and applicable Dangerous Goods Storage charges.
- may result in Pacific National contravening Dangerous Goods storage and handling legislation. Pacific National may be obliged to notify the appropriate government

authority upon such failure. The Customer will indemnify and reimburse on demand Pacific National and any of its Related Bodies Corporate against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against Pacific National) arising from or incurred in connection with complying with directives or notices issued by any government authority, including, but not limited to, fines, charges or penalties imposed by them.

- All costs incurred by Pacific National as a result of an Incident caused by the Access Holder will be charged to the Access Holder in addition to the Incident Charge.

(b) **Dangerous Goods Storage Fee** (per TEU per day – in addition to the Non-Collection Charge)

Dangerous Goods containers are charged a Storage Fee commencing on the day they are first made available at their destination. There is no Free Storage Period for Dangerous Goods.

(c) **SSAN/HCDG Dangerous Goods Fee** (additional to the standard Dangerous Goods Fee)

An additional SSAN/HCDG Dangerous Goods Fee is chargeable to the Access Holder for Security Sensitive Ammonium Nitrate (SSAN) or High-Consequence Dangerous Goods (HCDG) materials.

Declared Rail Transport Service 8: Rolling Stock Storage

- (a) Locomotive storage - Provision of track space for locomotives during the loading/unloading process.
- (b) Wagon storage - Storage of any wagons not required for the outgoing service or any lay-over sets in line with the Access Holder's timetable.

Declared Rail Transport Service 9: Inductions

- (a) Truck driver induction - Truck driver inductions for any drivers not currently registered with Pacific National.
- (b) Locomotive driver induction - Access Holder train driver inductions, yard familiarisation and Safety Interface Agreement procedures.

Declared Rail Transport Service 10: Incident Charge

In addition to the Incident Charge, all costs incurred by Pacific National as a result of an Incident caused by the Access Holder will be charged to the Access Holder.

Declared Rail Transport Service 11: Administrative Services

- (a) Administration services will be charged if additional manual administration is required by the Access Seeker.

Declared Rail Transport Services – Reference Tariffs

Services	Unit	Maximum Prices FY26
Declared Rail Transport Service 1: Operator establishment fee	Per hour	\$121.09

Services	Unit	Maximum Prices FY26
Declared Rail Transport Service 2 Train Processing Services:		
- Trains up to 900m long	Per train	\$ 5,211.00
- Trains from 900m to 1,200m long	Per train	\$ 5,880.00
- Trains from 1,200m to 1,500m long	Per train	\$ 6,576.00
Declared Rail Transport Service 3 Additional Shunting	Per hour	\$ 627.41
Declared Rail Transport Service 4 Container Lifting:		
(a) Single Top Lift per TEU	Per TEU	\$ 87.58
(b) Additional Top Lift per TEU	per TEU	\$ 87.58
(c) Single Bottom Lift per TEU	per TEU	\$ 131.37
Declared Rail Transport Service 5 Vehicle Access Fee	Per TEU	\$ 10.00
Declared Rail Transport Service 6 Non-Dangerous Goods Container Management:		
(a) Container Storage (after Free Storage Period)		
(i) 1 to 2 days	Per TEU, per day	\$ 176.30
(ii) 3+ days	Per TEU, per day	\$ 363.85
(b) Container Door Security Fee	Per container	\$ 54.32
(c) Late Cancellation Fee	Per TEU	\$ 155.80
Declared Rail Transport Service 7 Dangerous Goods Container management		
(a) Dangerous Goods Non-Collection Charge	Per container, plus costs	\$ 312.62
(b) Dangerous Goods Storage Charge (In addition to the Non-Collection Charge)	Per TEU, per day	\$ 155.80
(c) SSAN/HCDG Dangerous Goods Fee (In addition to other Dangerous Goods Fees)	Per container	\$ 77.90
Declared Rail Transport Service 8 Rolling Stock Storage		
(a) Locomotive Storage	Per 100 metres per hour	\$ 2.78
(b) Wagon Storage	Per 100 metres per hour	\$ 2.78

Services	Unit	Maximum Prices FY26
Declared Rail Transport Service 9 Personnel Inductions		
(a) Truck driver induction	Per induction course of up to a maximum of four attendees	\$ 195.17
(b) Locomotive driver induction	Per induction course of up to a maximum of four attendees	\$ 555.58
Declared Rail Transport Service 10 Incident Charge	Per hour of Terminal downtime (plus incurred costs)	\$ 7,745.79
Declared Rail Transport Service 11 Administrative service	Per hour	\$ 97.37

Notes:

- The prices offered comply with the Pricing Principles set out in the Victorian Rail Access Guidelines namely that:

When setting prices for Freight Services, an Access Provider must have regard to the following matters:

- The need for prices to be consistent for Access Seekers and users with common freight requirements.
 - The need for prices to be consistent for Access Seekers and users who are provided Declared Rail Transport Services using rail infrastructure in the same geographic zones.
 - The need to minimise administrative requirements and costs imposed on Access Seekers, Access Providers and the Department of Transport and Planning.
- Reference Tariffs will be subject to a fee variation effective from 1 July in each year (commencing with 1 July 2026) in accordance with the following formula:

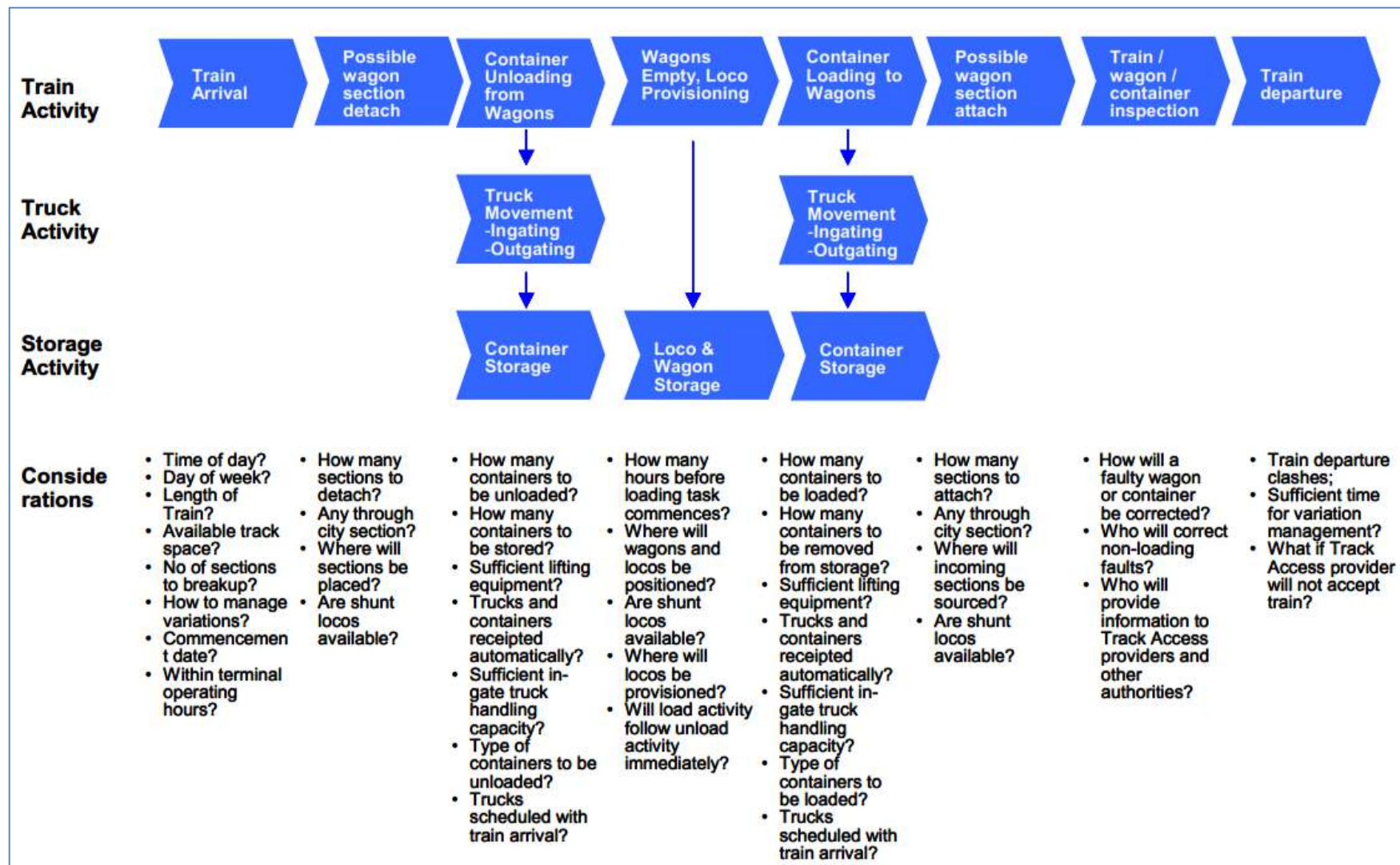
$$R_n = R_o \times \text{CPI}_n / \text{CPI}_o$$

where:

- R_n = The Reference Tariff per Declared Rail Transport Service to apply from 1 July of the applicable year.
- R_o = The Reference Tariff per Declared Rail Transport Service applying on 30 June of the year prior to the applicable year.
- CPI_n = CPI (all Groups Index Number, Melbourne) for December in the year prior.
- CPI_o = CPI (all Groups Index Number, Melbourne) for December two years prior to the applicable year.

Schedule 4 - Train Loading / Unloading Process Considerations

(Process to fill available capacity, ie does not require investment for expansion)



Schedule 5 - Data and Reporting

Data Retention and Reporting

In accordance with the Rail Access Arrangement Guidelines, Pacific National will record the following information on each train movement in the Terminal. This information includes:

- a) Train number/operating date/operating time – scheduled vs. actual.
- b) Train configuration (i.e., number of wagons, number of locomotives, train gross tonnes)
- c) Train Operator
- d) Train type
- e) Train GTK
- f) Number of containers loaded
- g) Number of containers unloaded.

These records will be kept in a form to enable them to be reviewed against Pacific National's master train timetable.

Reporting Declared Freight Terminal utilisation

Pacific National will provide to Victorian Department of Transport and Planning after every financial year, a report that reports on the performance indicators in respect of that financial year.

The report will include details of:

- a) Freight throughput at the terminal, separately identifying containers and other freight
- b) Inbound and outbound Freight Services provided (e.g. number of trains, metres of wagons)
- c) Utilisation of terminal capacity
- d) Percentage utilisation of scheduled terminal capacity
- e) The methodology used to produce the calculations in the report
- f) Any Freight Terminal Services cancelled by the Access Provider
- g) Percentages of on-time train arrivals and on-time departures
- h) The number of access requests received
- i) The name of Access Seekers that made an access request
- j) Timeframes achieved when negotiating access requests
- k) The number of access requests refused
- l) Reasons for refusing access requests.

Schedule 6 – Capacity Statement

South Dynon - Melbourne Freight Terminal Capacity Statement

The South Dynon Terminal is an open access terminal in accordance with the Rail Management Act 1996 (Vic) and in accordance with Victorian Rail Access Regime. Access to the South Dynon is governed by the terms and conditions of the Access Arrangement located on the Pacific National website at www.pacificnational.com.au/

Overview

The Terminal is a busy working terminal. While the maximum capacity of the Terminal is set out in this Capacity Statement, its available capacity varies daily and seasonally with utilisation.

The Terminal operates 24 hours a day, 6 days a week. The Terminal is closed between 16:30 Saturday and 08:00 Sunday every week.

Access Seekers are encouraged to discuss their needs with Pacific National to determine how their requirements can be accommodated.

Track Capacity

The Terminal can load, and unload, 4 trains of up to 1500 metres simultaneously.

The road numbers, locations, their lengths and uses are set out in Attachment-A of this Capacity Statement.

Several other roads can store rolling stock.

Trucking Capacity

The number of trucks the Terminal can accommodate between these times is:

06:00 to 18:00

The Terminal can accommodate 30 trucks per hour to load, and unload, trains.

18:00 to 06:00

The Terminal can accommodate 15 trucks per hour to load, and unload, trains.

Lift Capacity

The South Dynon Terminal has multiple roads serviced by;

- Two gantry cranes and
- Up to five reach stackers

which load containers from;

- Trucks onto trains;
- Trains onto trucks; and
- Trains or trucks onto the ground for storage.

Attachment-A of this document sets out which roads are serviced by gantry cranes, and those serviced by reach stackers

Current lift rates for each gantry crane and reach stacker are 15 lifts per hour and operate as follows, depending on demand:

06:00 to 18:00

- Two gantry cranes; and
- Four to Five reach stackers

18:00 to 06:00

- One gantry crane; and
- Two reach stackers

Additional capacity may be provided between 18:00 and 06:00 if there is sufficient demand.

Container Storage

The Terminal has a maximum storage capacity of 1500 TEU. This includes a combination of Non-Dangerous Goods containers and Dangerous Goods containers.

(a) Non-Dangerous Goods Container Storage

- The storage of Non-Dangerous Goods containers is described under Declared Rail Transport Service 5 (Non-Dangerous Goods Container Management) of the Access Arrangement.

(b) Dangerous Goods Container Storage

- The Terminal is not licenced to store HCDG dangerous goods.
 - HCDG containers must not be placed on the ground.
 - They may only be lifted from truck to train or train to truck.
- The storage of Dangerous Goods containers is described under Declared Rail Transport Service 6 (Dangerous Goods Container Management) of the Access Arrangement.

Additional detail is provided in the following attachments to this Capacity Statement

Attachment A

Sets out the roads in the Terminal, their lengths and current functions

Attachment B

Sets out the utilisation and available capacity of the Terminal

- The utilisation plan shows the utilisation plan for each road, for each day in the Terminal's current two week planning cycle
 - Coloured sections in each road show the periods when the road is occupied
 - Blank sections show the periods when the road is available

Attachment-A
South Dynon Roads; Lengths, Locations and Capacity



See Attachment-B for a map of the yard

ROAD NAME	LENGTH (Metres)	COMMENTS
Transfer Road - Gauge Convert	620	Wagon Storage
Coke Road Reach Stackers	670	Loading/Unloading
MSPA Forklift Only	200	Loading/Unloading
1 Bottom Reach Stackers	950	Loading/Unloading
3 Reach Stackers	1240	Loading/Unloading
1A Reach Stackers	490	Loading/Unloading
4 Gantry Crane	690	Loading/Unloading
5 Gantry Crane	690	Loading/Unloading
6 Gantry Crane	690	Loading/Unloading
7 Gantry Crane	690	Loading/Unloading
8	625	Repaired and Red Carded wagons
9	565	Running road
10	540	Wagon Storage
11	540	Staging and Marshalling
12	630	Staging and Marshalling
13	760	Staging and Marshalling
14	800	Staging and Marshalling
15	840	Staging and Marshalling
1B	280	Wagon storage for maintenance
3B	260	Staging and Marshalling
S/ Engine	340	Staging and Marshalling
MOT #1 Road	1050	Staging and Marshalling
MOT #2 Road	1050	Staging and Marshalling
MOT #3 Road	1050	Repaired and Red Carded wagons
MOT #4 Road	330	Overflow storage for locos
MOT #5 Road	290	Wagon storage/scraping
MOT #1A Road	330	Wagon storage/scraping
MOT #3A Road	330	Wagon storage/scraping

Attachment-B – Terminal Utilisation and Availability

[illegible]

Monday wk1

[illegible]

Tuesday wk1

[illegible]

Wednesday wk1

[illegible]

Thursday wk1																																																	
ROAD	LENGTH	00:30	01:00	01:30	02:00	02:30	03:00	03:30	04:00	04:30	05:00	05:30	06:00	06:30	07:00	07:30	08:00	08:30	09:00	09:30	10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00
Transfer Road - Gauge Convert	620	SPARE WAGONS																																															
Coke	670																																																
MSPA	200											MSPA Later placement				Steel Wagons																																	
1 Bottom	950																																																
3	1240																																																
1A	490																																																
4	690																																																
5	690																																																
6	690																																																
7	690																																																
	6310																																																
8	625	Red Cards																																															
9	565											Running Road																																					
10	540											SPARE WAGONS																																					
11	540																																																
12	630																																																
13	760																																																
14	800																																																
15	840																																																
1B	280											WAGONS WAITING ON ENGINEERING																																					
3B	260											OVERLAND																																					
S/ Engine	340																																																
	6180																																																
MOT 1	1050																																																
MOT2	1050											SPARE + Spares from MFT yard																																					
MOT3	1050											APD REPAIRED AND RED CARDED WAGONS																																					
MOT4	330											OVER FLOW FOR LOCOS																																					
MOT5	290											SCRAP WAGONS																																					
MOT1A	330											SCRAP WAGONS																																					
MOT3A	330											SCRAP WAGONS																																					

Friday wk1

[illegible]

Saturday wk1

[illegible]

[illegible]

Monday wk2

[illegible]

Tuesday wk2

[illegible]

Wednesday wk2

[illegible]

Thursday wk2	
ROAD	LENGTH
Transfer Road - Gauge Convert	620
Coke	670
MSPA	200
1 Bottom	950
3	1240
1A	490
4	690
5	690
6	690
7	690
8	6310
8	625
9	565
10	540
11	540
12	630
13	760
14	800
15	840
1B	280
3B	260
S/ Engine	340
MOT 1	1050
MOT2	1050
MOT3	1050
MOT4	330
MOT5	290
MOT1A	330
MOT3A	330

Friday wk2

[illegible]

Saturday wk2

[illegible]

Annexure A – Standard Access Agreement

This Page Intentionally Blank

Terminal Access and Services Agreement South Dynon Terminal

Annexure A to the South Dynon Access Arrangement

Dated 1 July 2025

Contents

Contents

1.	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	11
2.	Conditions Precedent.....	12
3.	Term	12
4.	Services	12
4.1	Supply of Services and Grant of access rights	12
4.2	Nature and scope of access rights	12
4.3	Service Standards	13
4.4	Sub-contract	13
5.	Charges and payment.....	13
5.1	Charges	13
5.2	Invoices	13
5.3	Payment	13
5.4	Disputes	14
5.5	Variation of Service Charges	14
6.	GST	14
6.1	Amounts GST exclusive	14
6.2	GST gross up and recovery	14
6.3	Tax Invoice	15
6.4	Adjustment event	15
6.5	Reimbursement and indemnifications	15
7.	Security	15
7.2	Exercise of Security	16
8.	Variation and Cancellation of Services	16
8.1	Temporary variation	16
8.2	Material Change	16
8.3	General variations	17
8.4	Cancellation of Train Movements	17
8.5	Permanent Cancellation of Train Movements	18
8.6	Services for early and late Trains	18
8.7	Variation of Timetable	18
8.8	Pacific National rights to vary or withdraw Services	19
8.9	Complaint handling	19
8.10	Additional throughput	20
9.	Management of the Terminal	20
9.1	Pacific National's obligations	20
9.2	Repairs and maintenance of the Terminal	21
9.3	Access Holder's obligations	21
10.	Accreditation	22
10.1	Accreditation	22
10.2	Evidence of Accreditation	22
11.	Emergencies.....	22
11.1	Notification	22

11.2	Investigation and Remediation	23
12.	Safety.....	23
12.1	Compliance by the Parties	23
12.2	Compliance by Access Holder	23
13.	Suspension and termination	24
13.1	Suspension	24
13.2	Termination by Pacific National	25
13.3	Termination by the Access Holder	25
13.4	Consequences of termination	25
14.	Liability and indemnities.....	26
14.1	Indemnity by Pacific National	26
14.2	Indemnity by Access Holder	26
14.3	Dispute	27
14.4	No liability for consequential loss	27
14.5	Defence of claims	27
14.6	Release of Pacific National	27
15.	Insurance	27
15.1	Insurances required	27
15.2	Disclosure of policies	28
16.	Disputes.....	28
17.	Confidentiality	29
17.1	Obligations	29
17.2	Permitted disclosure	29
17.3	Consequences for breach	30
17.4	Return or destruction of Confidential Information	30
17.5	Effect of return of information	30
18.	Force Majeure.....	31
18.1	Suspension of rights and obligations	31
18.2	Consequences	31
18.3	No release or discharge	31
19.	General.....	31
19.1	Governing law	31
19.2	Jurisdiction	31
19.3	Entire agreement	32
19.4	Variation/amendment	32
19.5	Assignment/novation	32
19.6	Further acts and documents	32
19.7	No representation or reliance	33
19.8	Relationship	33
19.9	Waiver	33
19.10	Notices	33
19.11	Costs	34
19.12	Stamp duty	35
19.13	Counterparts	35

List of Schedules

Schedule 1 - South Dynon Terminal Layout

Schedule 2 - Train Specification and Service Details

Schedule 3 - Service Charges and Variation

Schedule 4 - Terminal Protocols

Schedule 5 - Capacity and Throughput

Schedule 6 - Agreement Details

Terminal Access and Services Agreement - South Dynon Terminal (Annexure A to Access Arrangement - Standard Access Agreement)

made at on 202x

Parties

Pacific National Pty Ltd, ACN 098 060 550 ("**Pacific National**") of Level 1, 2 Blue Street, North Sydney NSW 2060, Australia.

[Insert name and ACN of Access Holder] ("**Access Holder**") of [insert registered office address]

Recitals

- A. Pacific National operates and provides access to the Terminal and provides the Services to rail freight operators accessing the Terminal.
- B. Pacific National agrees to grant the Access Holder access to the Terminal and to provide the Services on the terms and conditions of this agreement.

The parties agree

1. Definitions and interpretation

1.1 Definitions

Access Arrangement means the Access Arrangement for the South Dynon Terminal made by Pacific National and submitted to the Department of Transport and Planning pursuant to the Rail Access Arrangement Guidelines.

Access Agreement means this Terminal Access and Services Agreement - South Dynon Terminal (references to 'this agreement' will be taken to mean references to the Access Agreement).

Acceptable Credit Rating means a minimum long term credit rating of either BBB- from Standard & Poors or Baa3 from Moody's.

Accreditation means accreditation in accordance with the Rail Safety Laws (including any regulation, guideline or ordinance made pursuant to that Act), which is required by the Access Holder, its employees, agents, contractors and sub-contractors to operate Trains and conduct the activities contemplated by this agreement.

Additional Monthly Throughput means a number of TEU in a particular month in excess of the Allocated Monthly TEU which is applicable under this agreement for that month.

Allocated Monthly TEU means the number of TEU for each month set out in Schedule 5 as adjusted from time to time in accordance with this agreement.

Arbitrator means a qualified arbitrator who:

- (a) is a member of the Institute of Arbitrators and Mediators (Victorian Chapter);

- (b) is not an interested party to the agreement and is not associated either directly or indirectly with an interested party (unless otherwise agreed in writing by both parties);
- (c) has a detailed understanding of, and experience in, dispute resolution practices and procedures; and
- (d) has an understanding of the rail industry in Australia.

ARTC means the Australian Rail Track Corporation Limited, ACN 081 455 754.

Authority means the Crown, a minister, a government department, a government authority, a government owned entity constituted for a public purpose, a local council or a local government entity.

Business Day means a day not being Saturday, Sunday or public holiday, on which banks are generally open for business in Melbourne, Victoria.

Business Hours means between 9.00 am and 5.00 pm on a Business Day.

Capacity Allocation Protocols means the Capacity Allocation Protocols for the South Dynon Terminal set out in the South Dynon Access Arrangement.

Ceiling TEU means, for a month, the Allocated Monthly TEU which is applicable under this agreement for that month, plus an additional percentage of that Allocated Monthly TEU as specified in Schedule 5 (as varied from time to time in accordance with this agreement).

Claim includes any claim, demand, remedy, injury, damage, loss, cost, expense, suit, liability, action, proceeding, right of action or claim for compensation.

Commencement Date means the date the conditions precedent set out in clause 2 have been satisfied or such other date as the parties agree in writing.

Confidential Information means the terms of this agreement and all information provided in confidence by one party to another including without limitation, in the case of the Access Holder, the Train Specification (other than the timetable), being information other than information which:

- (a) at the time of the first disclosure by the disclosing party was already in the lawful possession of the other party and which was not at the time of such disclosure the subject of any obligation of confidentiality;
- (b) is or becomes generally available to the public otherwise than by disclosure in breach of the terms of this agreement or an obligation of confidence owed to the disclosing party by the other party; or
- (c) becomes available to the other party, from a third person legally entitled to possess the information and provide it to the other party, without breaching any obligation of confidentiality in relation to such information or any Law.

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

Dangerous Goods have the meaning given in the *Dangerous Goods Code*.

Dangerous Goods Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail* prepared by the National Transport Commission (or successor body) from time to time.

Default Rate means the interest rate which is 2 percentage points above the prime lending rate charged by the Commonwealth Bank of Australia at the relevant time on overdrafts of \$100,000.00 or more.

Interstate Rail Network means the interstate rail network managed and operated by ARTC.

Environmental Hazard means a state of danger to human beings or the environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Laws means

- a) any legislation (including regulations, rules, by-laws and orders) applicable to the environment and environmental protection; and
- b) any directions, notices, guidelines, or codes of practice regarding the environment and/or environmental protection issued by any relevant authority,

as amended or replaced from time to time, and includes (without limitation) the Environment Protection Act 2017 (Vic), Environment Protection Regulations 2021 (Vic), and the Planning and Environment Act 1987 (Vic);

Environmental Management System means a plan of management devised by the Access Holder in consultation with Pacific National to address all environmental risks and to ensure compliance with all applicable Environmental Laws.

Event of Insolvency means, in respect of a party, that:

- (a) a controller (as defined in section 9 of the Corporations Act), manager, trustee, administrator, or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any insolvency provision;
- (e) a moratorium of any debts of a person, or an official assignment or a composition or an arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;

- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- (h) in respect of a body corporate not incorporated in Australia or any individual not resident in Australia, any other similar event occurs under any foreign laws applying to it relating to that person's solvency or relief from creditors.

Financial Default means:

- (a) that the Access Holder fails to pay any charge or amount due under this agreement in accordance with clause 5; or
- (b) that the Access Holder is, or becomes, subject to an Event of Insolvency.

Floor TEU means, for a month, the Allocated Monthly TEU which is applicable under this agreement for that month, less a percentage of that Allocated Monthly TEU as specified in Schedule 5 (as varied from time to time in accordance with this agreement).

Force Majeure in relation to a party, means any cause outside the reasonable control of that party.

GST, means the tax imposed or to be imposed by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the related imposition Acts of the Commonwealth, States or Territories.

Head, Transport for Victoria means the person appointed under section 64A of the Transport Integration Act 2010 (Vic);

Incident means a break down, accident or emergency at the Terminal or enroute to or from the Terminal which involves Pacific National and/or the Access Holder and which causes or may reasonably be expected to pose a danger of causing any one or more of the following:

- (a) material damage to or interference with the Terminal;
- (b) material damage to infrastructure or equipment used in providing the Services;
- (c) material damage to property at the Terminal;
- (d) personal injury to any person for which Pacific National is responsible;
- (e) an Environmental Hazard that may affect the Terminal, Pacific National or any person for which Pacific National is responsible;
- (f) an incident which requires notification under any Law including Rail Safety Laws or Environmental Laws that may affect the Terminal, Pacific National or any person for which Pacific National is responsible; and

- (g) an incident requiring notification under the Dangerous Goods Code that may affect the Terminal, Pacific National or any person for which Pacific National is responsible.

Instruction means:

- (a) any Train Control Direction or any other instruction or direction issued by Pacific National to the Access Holder from time to time in respect of safety issues; or
- (b) any other instruction or direction issued by Pacific National, acting reasonably, to the Access Holder from time to time,

which is aimed at ensuring, facilitating or encouraging the proper, efficient, safe or lawful use of, access to and egress from the Terminal or which is issued with a view to minimising disruption to the Access Holder, the activities at the Terminal or the provision by Pacific National of the Services.

Laws means laws, Acts, ordinances, rules, regulations, other delegated legislation, codes or the requirements and directions of any relevant Authority, bodies, instrumentalities and trusts and public authorities, including Environmental Laws and Rail Safety Laws.

Material Change means any change to:

- (a) the scope and/or operation of the Rail Access Regime; or
- (b) the Law, or a policy or direction from a Government agency,

provided that the event, taken alone or as a group with other events, materially affects either the rights or obligations of Pacific National or the Access Holder under this agreement or increases the cost to Pacific National of performing its obligations under this agreement.

Permitted Time means the arrival and departure time windows specified at item B of Schedule 6 (as amended from time to time in accordance with this agreement).

Rail Access Arrangement Guidelines means the means guidelines prepared under Section 38H of the RMA and includes any amendment to guidelines prepared in accordance with the RMA.

Rail Access Regime means the Victorian rail access regime set out in Part 2A of the RMA (including as set out in any relevant orders or regulations made thereunder).

Rail Safety Laws means all applicable occupational health and safety laws, regulations, rules, standards and approved codes of practice and standards including the *Rail Safety National Law Application Act 2013* (Vic) and the *Rail Safety Act 2006* (Vic) and the *Rail Safety (Local Operations) Act 2006* (Vic) (and any regulation, guideline or ordinance made pursuant to those Acts) and shall also include the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2017* (Vic).

Rail Track means the rail track leading into, through and/or out of the Terminal.

Railway Manager means the entity which is the accredited railway manager of the Rail Track.

RMA means the Rail Management Act 1996 (Vic).

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

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).

Safety Interface Agreement means the requirement (where applicable) for Pacific National to seek to enter into an agreement with the Access Holder for the management of risks to safety arising from the interface of (where applicable):

(a) railway operations carried out by and on behalf of different rail transport operators; and

(b) railway operations with public or private roads, at rail or road crossings,

pursuant to the Rail Safety Act 2006 (Vic) (or in accordance with any other relevant standard or guideline relating to safety or coordination) and which may also incorporate the Train Specification, and which may include provisions relating to:

(a) the implementation and maintenance of measures to manage those risks;

(b) the evaluation, testing and, if appropriate, revision of these measures;

(c) the respective roles and responsibilities of each party to the agreement in relation to these measures;

(d) the procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and

(e) a process for keeping the agreement under review.

Safety Regulator means the Director of Transport Safety pursuant to the *Transport Integration Act 2010* (Vic).

Security Deposit means 3 months' Service Charges, calculated on the basis of the Services the Access Holder has forecast it will require from time to time.

Service Charges means the charges set out in **Schedule 3** as varied by Pacific National from time to time in accordance with this agreement.

Services means the services to be provided to the Access Holder set out in **Schedule 2** as varied by Pacific National from time to time in accordance with this agreement.

Term means the period specified at item A of Schedule 6.

Terminal means the South Dynon terminal more particularly outlined in red in the diagram attached at **Schedule 1**.

Terminal Protocols means the protocols developed by Pacific National from time to time (acting reasonably) which specify the procedures which the Access Holder must follow when accessing and using the Terminal, including the terminal protocols in Schedule 4 to this agreement (as may be amended from time to time); the terminal protocols in Schedule 4 include, amongst other requirements the Access Holder must follow, the following requirements:

- (a) that the Access Holder provide to Pacific National the proposed times for the arrival and departure of any road vehicles to and from the Terminal, 24 hours in advance of those movements;
- (b) that the Access Holder provide prompt notification of any Timetable delay so as to ensure that Pacific National can efficiently manage any excess capacity;
- (c) that the Access Holder provide Pacific National with a description of its container weights; container sizes and notification of the nature and description of any Dangerous Goods (which must be provided on arrival of the vehicles);
- (d) that the Access Holder provide Pacific National with all necessary written authorities to deal with the containers and goods contained in the Rolling Stock;
- (e) that the Access Holder provide Pacific National with such other documents or information as reasonably required by Pacific National, to enable Pacific National to properly and efficiently manage and operate the Terminal, provide access to and egress from the Terminal, and provide the Services to the Access Holder and other users of the Terminal; and
- (f) that the Access Holder provide the above documents and information in such format as reasonably required by Pacific National.

TEU means a Twenty Foot Equivalent Unit where 1 TEU equals a 6.1m container.

Third Party Access Holder means any person who:

- (a) holds rights to access the Terminal; and
- (b) is an Accredited railway operator, but does not include Pacific National, the Access Holder or any Related Body Corporate of Pacific National or the Access Holder.

Timetable means the times at which the Access Holder's Trains are scheduled to arrive at and depart from the Terminal and a description of each Train as set out in Schedule 2.

Train means several units of Rolling Stock coupled together to operate as a single unit.

Train Control Direction means any instruction or direction (whether given orally or in writing, by means of signal and other similar device) issued by Pacific National or the Railway Manager or on behalf of either of them relating to Train Movements.

Train Movements mean the operation of a Train on the Rail Track by the Access Holder at a time scheduled in the timetable for the predominant purposes of conveying freight and includes the empty movement of such a Train.

Train Path means the series of track segments over a particular time interval through which a Train can travel and may include stopping points and intervals and fuelling stations and other set down or changeover points.

Train Specification means the specification set out in **Schedule 2**, and includes:

- (a) the technical specification for rail operations on a Train Path (including the time of entry to, and exit from, the Train Path and duration of use of the Train Path);
- (b) technical specifications of Trains and Rolling Stock authorised for a particular Train Path or permitted on the Rail Track; and

- (c) the timetable maintained by, or for, Pacific National of all scheduled Train Paths of the Access Holder on the Victorian rail network and the Interstate Rail Network for Trains which will require the provision of the Services.

Train Window for each of the Access Holder's Trains means the period of time comprised of:

- (a) the times at which the Access Holder's trains are scheduled to arrive at and depart from the Terminal as set out in the Timetable; and
- (b) the Permitted Time.

Untimely Train has the meaning given in clause 8.6.

V/Line means V/Line Pty Ltd, ACN 087 425 269.

Victorian Rail Network means, collectively, the Victorian interstate, regional and metropolitan rail networks owned by VicTrack and variously leased to Metro Trains Melbourne, V/Line, and ARTC.

1.2 Interpretation

In this agreement:

- (a) schedules to it are an integral part of it and any reference to this agreement includes a reference to the schedules;
- (b) headings are for convenience only and do not affect interpretation;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

2. Conditions Precedent

Other than clauses 1, 2, 17 and 19, this agreement shall be of no force or effect and Pacific National will have no obligation to provide the access or Services under this agreement until:

- (a) Pacific National and the Access Holder have entered into a Safety Interface Agreement in accordance with the requirements of the *Rail Safety National Law Application Act 2013* (Vic); and
- (b) The Access Holder demonstrates to the satisfaction of Pacific National:
 - (i) that it has Accreditation;
 - (ii) that it holds all insurances as required by, and in compliance with, clause 15.1; and
 - (iii) that it has provided the Security Deposit to Pacific National (if required) in compliance with clause 7 ; and
 - (iv) that safety issues, IT system interface and other set-up and transition-in requirements of the parties have been addressed in accordance with the Terminal Management Protocol.

3. Term

This agreement commences on the date the agreement is executed by both parties and continues until expiry of the Term, unless terminated earlier in accordance with this agreement.

4. Services**4.1 Supply of Services and Grant of access rights**

During the Term, subject to the Access Holder complying with its obligations under this agreement, Pacific National agrees:

- (a) to supply the Services, or arrange for the Services to be supplied by one of its Related Bodies Corporate, to the Access Holder in respect of Train Movements in accordance with the terms of this agreement and the Terminal Protocols; and
- (b) to grant to the Access Holder non-exclusive access to the Terminal (on the basis of applications submitted to and dealt with by Pacific National in accordance with the Terminal access application and negotiation protocol) for Trains described in the Train Specification to the extent necessary for Pacific National (or its contractors or agents) to provide the Services to the Access Holder, under this agreement.

4.2 Nature and scope of access rights

- (a) The access rights granted to the Access Holder are:
 - (i) non-exclusive contractual rights; and
 - (ii) for Train Movements consistent with the Train Specification and the Timetable.
- (b) This agreement:
 - (i) does not confer on the Access Holder any rights of access to any part of the Terminal other than to the extent necessary for Pacific National, or its Related

Bodies Corporate, to provide the Services to the Access Holder under this agreement;

- (ii) does not give rise to a relationship of landlord and tenant between the Access Holder and Pacific National and nothing done pursuant to this agreement shall give rise to any such relationship; and
 - (iii) does not give the Access Holder any exclusive rights to be provided with any services at the Terminal or to any part of the Terminal.
- (c) Subject to its obligations under clause 4.1, Pacific National may grant other rights and entitlements in respect of the Terminal to other users, including rights and entitlements similar to those set out in this agreement.

4.3 Service Standards

Pacific National will provide the Services:

- (a) in a competent, professional and efficient manner;
- (b) in accordance with the Terminal Protocols; and
- (c) to the standard required by, and in satisfaction of, the obligations imposed by any relevant legislation.

4.4 Sub-contract

- (a) Pacific National may, without prior reference to or consent from the Access Holder, sub-contract the performance of any of the Services to any person who is, in the opinion of Pacific National, suitably qualified, experienced and competent to perform that obligation (whether or not a Pacific National Related Body Corporate).
- (b) No such arrangement entered into by Pacific National will release Pacific National from, or reduce the extent of, its obligations under this agreement.

5. Charges and payment

5.1 Charges

In consideration of Pacific National supplying, or arranging for the supply of, the Services to the Access Holder, the Access Holder will pay to Pacific National the Service Charges specified in **Schedule 3**.

5.2 Invoices

Pacific National will render invoices to the Access Holder for the Services provided to the Access Holder in accordance with item C of Schedule 6.

5.3 Payment

- (a) The Access Holder must pay the Service Charges and any other applicable charges or amounts which Pacific National is entitled to charge, or recover from, the Access Holder (including any costs incurred pursuant to clause 9.2) to Pacific National in accordance with item D of Schedule 6.
- (b) If the Access Holder fails to pay any amount payable under this agreement (including any amount in an invoice issued pursuant to clause 5.2) by the due date, the Access Holder must pay interest on that amount at the Default Rate computed

from (but excluding) the due date for payment of that amount until (but excluding) the date on which that amount is paid in full.

- (c) The interest will accrue and be recoverable on a daily basis and will be payable on demand by Pacific National.

5.4 Disputes

- (a) If the Access Holder disputes any amount on an invoice, it must pay the non-disputed amounts by the due date for payment of those amounts plus any additional amounts as specified at item E in Schedule 6.
- (b) On resolution of any dispute in accordance with this agreement, Pacific National must credit to the Access Holder in the form of a deduction from the next invoice for Service Charges (or payment within 14 days from resolution of the dispute in the event no next invoice is to be rendered) any amount determined to have been overpaid by the Access Holder to Pacific National and interest on that amount at the Default Rate computed from (but excluding) the date on which the amount was overpaid until (but excluding) the date on which the credit or payment has been made by Pacific National in accordance with this clause 5.4(b).
- (c) On resolution of any dispute in accordance with this agreement, the Access Holder must pay to Pacific National within 14 days from the date of resolution of the dispute, the amount (if any) determined to be payable by the Access Holder and interest on that amount at the Default Rate computed from (but excluding) the date on which the amount was due to be paid to Pacific National until (but excluding) the date on which the payment has been made by the Access Holder in accordance with this clause 5.4(c).
- (d) Interest payable pursuant to clauses 5.4(b) or (c), will accrue and be recoverable on a daily basis and will be payable on demand in accordance with clauses 5.4(b) or (c) (as applicable) by the party entitled to the interest.

5.5 Variation of Service Charges

Unless otherwise agreed by the parties in writing, Pacific National may only vary the Service Charges in accordance with **Schedule 3**.

6. GST

6.1 Amounts GST exclusive

- (a) All amounts and other consideration payable under or in connection with this Agreement are exclusive of GST, unless otherwise expressly noted.

6.2 GST gross up and recovery

- (a) Subject to clause 6.2(b) below if a party makes a taxable supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (b) Clause 6.2(a) does not apply to any consideration that is expressed in this Agreement to be inclusive of GST.

- (c) The recipient of the supply must make the payment of the GST determined at clause 6.2(a) at the same time and in the same manner as it provides the consideration for the relevant supply subject to clause 6.3.

6.3 Tax Invoice

- (a) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- (b) A party need not make any payment for a supply made under or in connection with this Agreement until it receives a valid tax invoice for the supply to which the payment relates.

6.4 Adjustment event

If there is an adjustment event in relation to a supply which results in the amount of GST on the supply being varied from the additional amount paid or payable by the recipient of the supply under clause 6.2, the supplier must issue an adjustment note to the recipient, and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the recipient of the supply.

6.5 Reimbursement and indemnifications

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 6.2 .

7. Security

- (a) If the Access Holder does not have an Acceptable Credit Rating, the Access Holder must provide to Pacific National the Security Deposit, if required by Pacific National, within 10 Business Days of being required by Pacific National to do so.
- (b) If a Security Deposit is required, the Access Holder must deliver to Pacific National security for the performance of the Access Holder's obligations under this agreement in the form of:
 - (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
 - (ii) other security reasonably acceptable to Pacific National,containing terms and conditions reasonably acceptable to Pacific National.
- (c) If, at any time during the Term, the Security Deposit held by Pacific National is less than the amount specified in the definition of Security Deposit, the Access Holder must increase the Security Deposit by the amount determined by Pacific National to ensure that the amount of the Security Deposit accords with the amount specified in the definition of Security Deposit and deliver to Pacific National a new or replacement Security Deposit to reflect the change within 10 Business Days after receipt of notice to do so from Pacific National.
- (d) The provision and continuance of the Security Deposit (or of any new or replacement Security Deposit provided by the Access Holder in accordance with

this clause 7) is a condition of the performance by Pacific National of its obligations under this agreement.

- (e) At the end of the Term, Pacific National will (where applicable) return the Security Deposit to the Access Holder including any necessary releases.

7.2 Exercise of Security

Notwithstanding any other rights Pacific National has under the agreement, and without prejudice to them, if the Access Holder is in Financial Default, Pacific National may, within 10 days of becoming aware of the Access Holder's Financial Default (but only in respect of undisputed Service Charges unpaid), give notice to the Access Holder of such Financial Default and if the Financial Default is not rectified within 30 days from the date of the notice, Pacific National may, in addition to any other right it has under this agreement and without notice to the Access Holder, apply the whole or any part of the Security Deposit toward making good any loss sustained by Pacific National as a result of the Financial Default.

8. Variation and Cancellation of Services

8.1 Temporary variation

- (a) Pacific National may vary the Services or access rights, including suspending the Services or the access rights, provided to the Access Holder under this agreement for the purpose of endeavouring to prevent any actual or potential:
 - (i) Incident;
 - (ii) material damage to the Terminal, property or Pacific National's infrastructure or equipment;
 - (iii) injury to any persons; or
 - (iv) material breach of this agreement.
- (b) Any such variation under this clause 8.1 may continue at Pacific National's discretion for so long as the risk specified in clause 8.1(a) continues.

8.2 Material Change

- (a) In the event a Material Change occurs, Pacific National must notify the Access Holder within 10 Business Days of becoming aware of the Material Change.
- (b) Within 10 Business Days after receipt by the Access Holder of a notice referred to in paragraph (a), Pacific National and the Access Holder must meet and negotiate in good faith with a view to addressing the effects of the Material Change, including:
 - (i) any variation to the Services or access rights or the terms of this agreement that may be required to address the effects of the Material Change;
 - (ii) the date on which any variation referred to in paragraph (i) will commence; and
 - (iii) the duration of any variation of the type referred to in paragraph (i).
- (c) If following negotiations in accordance with paragraph (b):
 - (i) the parties agree on any variation of the type referred to in paragraph(b)(i) and agree on the terms of that variation including as to the matters referred to in paragraphs (b)(ii) and (iii), the access rights and this agreement will be

varied in accordance with the variation as agreed in writing between the parties;

- (ii) if the parties are unable to agree on the terms of the variation within 20 Business Days of the negotiation referred to in paragraph (b), either party may give a Dispute Notice to the other and the Dispute will be dealt with under clause 16.

8.3 General variations

- (a) If either party (the **"First Party"**) wishes to vary the Services or access rights, it must send a written notice (**"Variation Notice"**) to the other party (the **"Second Party"**) specifying:
 - (i) the details of the variation proposed;
 - (ii) the reasons for the variations proposed;
 - (iii) the terms of the agreement the First Party is seeking to vary; and
 - (iv) the date on which the variation is to take place.
- (b) If Pacific National is the Second Party, Pacific National will assess the requested variation in accordance with the principles and procedures set out in the Capacity Allocation Protocols (paragraphs 1-4).
- (c) The Second Party must consider the requested variation (acting reasonably) and give the First Party a written notice within 30 days from the Variation Notice specifying whether it:
 - (i) accepts the variations specified in the Variation Notice without conditions;
 - (ii) accepts the variations contained in the Variation Notice on conditions which are to be specified in the notice; or
 - (iii) rejects the variations specified in the Variation Notice and the reasons for the rejection.
- (d) If the Second Party accepts the variations specified in the Variation Notice, the Services, the access rights and this agreement will be varied in accordance with, and from the date specified in, the Variation Notice.
- (e) If the Second Party accepts the variations specified in the Variation Notice, subject to conditions:
 - (i) the parties must engage in good faith negotiations for a period of 14 days from the date of the notice given pursuant to clause 8.3(c), to determine whether they will agree on the conditions specified by the Second Party; and
 - (ii) if the parties agree to vary the Services, the Services, the access rights and this agreement will be varied in accordance with the agreement reached by the parties from the date of the parties' agreement.
- (f) If the Second Party rejects the variation specified in the Variation Notice or the parties do not reach agreement on the proposed variation or conditions in accordance with clause 8.3(e), the Services, the access rights and this agreement will not be varied and clause 16 will not apply.

8.4 Cancellation of Train Movements

- (a) The Access Holder must notify Pacific National in accordance with the Terminal Protocols of any proposed temporary cancellation of Train Movements.

- (b) To the extent that the Allocated Monthly TEU is not met, the provisions of item (b) of Schedule 5 will apply.

8.5 Permanent Cancellation of Train Movements

- (a) The Access Holder must give Pacific National prior written notice (in accordance with item F in Schedule 6) of:
 - (i) any Train Movement which is to be cancelled on a permanent basis; and/or
 - (ii) any Services which are to be cancelled on a permanent basis in respect of a Train.
- (b) If:
 - (i) the relevant Train Movement is cancelled on a permanent basis and the Access Holder does not provide notice required by clause 8.3(a)(i); or
 - (ii) the Services to be provided in respect of a Train Movement are cancelled on a permanent basis and the Access Holder does not provide notice required by clause 8.5(a)(ii),

the Access Holder must pay the Service Charges in accordance with clause 5 for the Services which were to be provided in respect of such Train Movements for the balance of the period for which notice should have been given.

8.6 Services for early and late Trains

- (a) If a Train arrives at the Terminal outside a Train Window (the "Untimely Train"), Pacific National will use its best endeavours (excluding the payment of any money) to provide the Services to the Untimely Train within the same time intervals for the provision of the Services as those set out in the Timetable, provided that if the provision of such Services will affect or impact upon other Train Movements at the Terminal (whether of Pacific National trains or trains of other operators), the Services to be provided in respect of the Untimely Train will take a lower priority to all other such Trains.
- (b) If the Access Holder's Trains frequently arrive or depart outside the Permitted Time for the Trains (as determined by Pacific National acting reasonably), Pacific National may give the Access Holder a notice requiring the Access Holder to ensure that its Trains arrive and depart the Terminal in accordance with the Train Specification and the Timetable.
- (c) If Pacific National gives the Access Holder a notice pursuant to clause 8.6(b), the Access Holder must prepare and submit to Pacific National a plan for improvement of the on-time running of its Trains and use best endeavours to run Trains in accordance with the Train Specification, the Timetable and the improvement plan.
- (d) The Access Holder acknowledges that Pacific National may recover from the Access Holder all additional costs which Pacific National reasonably incurs in connection with the provision of Services accommodating Untimely Trains in accordance with this clause 8.6.

8.7 Variation of Timetable

The Access Holder may, subject to obtaining the prior written consent of Pacific National (which may not be unreasonably withheld) and giving Pacific National prior written notice in accordance with item G of Schedule 6, vary the Timetable in respect of any Train on a permanent basis.

8.8 Pacific National rights to vary or withdraw Services

- (a) Without limiting Pacific National's rights under sub-clauses 8.8(b)-(d), in order to encourage the optimum use of the Terminal, Pacific National will be entitled to withdraw Services and reallocate them to another access seeker, to the extent the Access Holder has failed to use in the aggregate at least at least 65% of the allocated Services for any calendar month during the Term of this agreement, without sufficient justification acceptable to Pacific National acting in good faith and reasonably. If Pacific National proposes to withdraw Services, Pacific National must advise the Access Holder in writing of its intention to withdraw Services on the basis of this clause 8.8(a) within 14 days of the end of the month in which the Access Holder does not so use the Services and provide the Access Holder with sufficient opportunity (to be no less than 14 days from the date of the notice) to demonstrate its ability to utilise, or fully utilise the Services or otherwise to show cause in writing why Pacific National should not withdraw the Services the subject of the notice. If the Access Holder fails so to demonstrate, Pacific National may vary allocated Services by reducing them thereafter reflecting such non-use.
- (b) Pacific National may permanently vary or withdraw Services following breach by the Access Holder of relevant legislation, or an industry or Pacific National standard, or the Terminal Protocols or a Pacific National requirement relating to the operation or safety requirements applicable to the Terminal. Pacific National must advise the Access Holder in writing of its intention to permanently vary or withdraw Services on the basis of this clause 8.8(b) and provide the Access Holder with sufficient opportunity (to be no less than 14 days from the date of the notice) to show reasonable cause why Pacific National should not vary or withdraw the Services as specified in the notice. However, where such breach creates a risk of injury to persons or damage to property, including damage to equipment or infrastructure at the Terminal, Pacific National may withdraw the Access Holder's Services immediately until the Access Holder has addressed the risk to the reasonable satisfaction of Pacific National acting in good faith and reasonably.
- (c) Subject to clause 8.8(d), Pacific National may vary Services on a temporary basis:
 - (i) to repair, maintain, upgrade, extend, construct or make alterations to the Terminal;
 - (ii) for reasons of safety or for the prevention of injury or damage to the rail network or Terminal or to persons or property;
 - (iii) to comply with any Law or valid requirement or request of an Authority; or
 - (iv) following a request in writing from the Access Holder.
- (d) Pacific National must advise the Access Holder in writing of its intention to temporarily vary the Services under clause 8.8(c) by notice in writing of not less than 14 days. However, a lesser notice period as determined by Pacific National acting in good faith and reasonably may be given if the temporary variation is required to ensure safety in the operation of Terminal or for Pacific National to comply with any Law or valid requirement or request of an Authority in a timely manner. Pacific National will consult with the Access Holder prior to issuing the notice and during the notice period so as to best accommodate the requirements of the Access Holder by temporarily allocating suitable substitute services where possible, applying the Capacity Allocation Protocol.

8.9 Complaint handling

If the Access Holder is not satisfied that Pacific National has complied with its obligations under clause 8.8 and provides Pacific National with details of the complaint in writing,

Pacific National will investigate and consider the complaint and seek to address the complaint in good faith within 21 days from receipt of the complaint. Pacific National will report to the Head, Transport for Victoria each such complaint and the measures taken by Pacific National in response to such complaint.

8.10 Additional throughput

- (a) Upon written request by the Access Holder given in accordance with Schedule 5 prior to 1 July each year during the Term (but not more than once in each calendar year), the Access Holder may request Pacific National to provide Services for Additional Monthly Throughput for the remaining months of the Term commencing 1 January of the following year or such later date nominated by the Access Holder. The rights under this clause 8.10 are in addition to the rights to increase the Allocated Monthly TEU in paragraph (a)(ii) of Schedule 5, however paragraph (a)(ii) of Schedule 5 will no longer apply to any Allocated Monthly TEU that has been increased under this clause 8.10.

- (b) If, in Pacific National's reasonable opinion having regard to:
- (i) the existing capacity of the Terminal;
 - (ii) Pacific National's commitments to other users of the Terminal in accordance with the Capacity Allocation Protocols;
 - (iii) the Additional Monthly Throughput requested by the Access Holder and the impact of that request on the Ceiling TEU definition; and
 - (iv) the extent to which the Services and Pacific National's other operations in the Terminal can be carried out efficiently,

Pacific National is able to provide Services for the Additional Monthly Throughput requested, Pacific National will agree to provide Services for the Additional Monthly Throughput.

- (c) If Pacific National does agree to provide Services for Additional Monthly Throughput pursuant to this clause 8.10, the Allocated Monthly TEU for the remaining months of the Term will be deemed to be permanently increased by the relevant Additional Monthly Throughput, for the purposes of this agreement, including the definitions of "Ceiling TEU" and "Floor TEU".

9. Management of the Terminal

9.1 Pacific National's obligations

- (a) Pacific National shall be responsible for the management and operation of the Terminal.
- (b) Pacific National must at all times during the Term:
- (i) ensure that the Access Holder is provided with a current version of the Terminal Protocols and Procedures;
 - (ii) comply with the Terminal Protocols; and
 - (iii) inform the Access Holder as soon as reasonably practicable if it is not able to provide any of the Services in accordance with this agreement or if a Material Change occurs..

9.2 Repairs and maintenance of the Terminal

- (a) Pacific National (itself or through contractors or agents) will be responsible for the maintenance of the Terminal and the infrastructure and equipment used to provide the Services to the standard reasonably determined by Pacific National as necessary for the safe and reliable provision of the Services.
- (b) In carrying out any repairs or maintenance of the Terminal Equipment or infrastructure used to provide the Services, Pacific National must (and must ensure that any contractors or agents) use reasonable endeavours to minimise any disruption to the Services.
- (c) Subject to clause 9.2(d), where it becomes necessary to make repairs to the Terminal as a result of an act or omission by the Access Holder (or by any of its contractors, invitees, customers, service providers, agents, or personnel) which causes damage to the Terminal or any infrastructure or equipment used to provide the Services, Pacific National will conduct (itself or through contractors or agents) the necessary repair works arising as a result of the specific act or omission by the Access Holder and recover the costs associated with the repair works (other than maintenance costs that arise in connection with the normal wear and tear of the Terminal) from the Access Holder as a charge payable by the Access Holder to Pacific National.
- (d) The Access Holder must pay Pacific National for, and Pacific National will be entitled to recover from the Access Holder, the costs incurred pursuant to clause 9.2(c) in accordance with clauses 5.3 and 5.4.
- (e) Pacific National will not be liable for any costs incurred by, or Claims made by or against the Access Holder, as a result of Pacific National conducting any repairs or maintenance of the Terminal and any delay caused (including to any Train Movement or to the Timetable) as a result of this clause will not constitute a breach of this agreement by Pacific National.

9.3 Access Holder's obligations

The Access Holder must at all times during the Term:

- (a) comply with the Terminal Protocols;
- (b) comply with the Safety Interface Agreement (where applicable);
- (c) comply with any Instruction given by Pacific National from time to time;
- (d) not interfere with Pacific National's, or any Third Party Access Holder's, operations at the Terminal;
- (e) ensure that it acts in a way that minimises any obstruction of the Terminal or any risk of an Incident or injury to any person occurring at the Terminal;
- (f) comply with all applicable Laws (including all Environmental Laws and the Rail Safety Laws) and maintain all Accreditations, licenses and approvals as required by Law;
- (g) manage all potential environmental risks and hazards in accordance with Environmental Laws;

- (h) not refuel any rolling stock at any location within the Terminal, except for the designated fuel point at the Terminal, without prior written consent from Pacific National;
- (i) ensure that no vehicles (including Rolling Stock) or plant and equipment are brought into the Terminal if such vehicles or plant and equipment are likely to cause structural or other damage to or within the Terminal or to cause damage to any equipment or infrastructure within the Terminal;
- (j) provide Pacific National with a minimum of 12 hours' notice prior to the arrival or departure of Dangerous Goods (such notice to also include full details as to the quantity and type of Dangerous Goods);
- (k) inform Pacific National as soon as reasonably practicable (but in any event at least 24 hours prior to the scheduled arrival of a Train, or departure of a Train from, the Terminal) if the Access Holder does not require any Services;
- (l) comply with the Environmental Management System;
- (m) provide Pacific National with all reasonable co-operation as reasonably required by Pacific National from time to time; and
- (n) operate the Trains in accordance with the Train Specification and the Timetable.

10. Accreditation

10.1 Accreditation

- (a) The Access Holder will maintain Accreditation (including in respect of its employees, contractors, invitees, service providers, agents, and personnel) to the extent required by the applicable Rail Safety Laws for the Term.
- (b) The Access Holder is responsible for ensuring the Accreditation of its employees, contractors, invitees, service providers, agents, and personnel.
- (c) The Access Holder must notify Pacific National as soon as practicable after it receives any notice of intended or actual material amendment, variation, suspension or cancellation affecting its Accreditation (or any Accreditation in respect of its employees, contractors, invitees, service providers, agents, or personnel).

10.2 Evidence of Accreditation

Prior to the Commencement Date, and on request by Pacific National during the Term, the Access Holder must provide to Pacific National a copy of the Access Holder's Accreditation. Pacific National's receipt or review of (or failure to receive or review) the Accreditation will not detract from or modify the Access Holder's obligations under clause 10.1.

11. Emergencies

11.1 Notification

Pacific National and the Access Holder will notify each other of any Incident, including an Incident that has caused or may cause an Environmental Hazard, immediately after it comes to their attention.

11.2 Investigation and Remediation

- (a) Incidents will be investigated in accordance with the requirements of the applicable Law.
- (b) Following an Incident, the parties will consult to determine the appropriate action to be taken.
- (c) Each party agrees to co-operate in relation to any investigation of an Incident and agrees to make available records and personnel, as relevant to the investigation.
- (d) In the event an Incident occurs at the Terminal or during the provision of the Services by Pacific National to the Access Holder and without prejudice to Pacific National's other rights under this agreement, Pacific National shall be entitled to take such action as it deems necessary to overcome and alleviate the cause and consequences of the Incident and the Access Holder shall assist Pacific National wherever and however reasonably and practicably possible in the exercise of Pacific National's rights pursuant to this clause 11.2.
- (e) The Access Holder grants to Pacific National, Pacific National's authorised employees, contractors, sub-contractors and agents the right at any time to enter and inspect the Access Holder's locomotives, rolling stock and containers in the event of an Incident.
- (f) To the extent that the Incident occurs as a result of or as a consequence of a breach of this agreement by the Access Holder or any negligent or intentional or unintentional act or omission by or on behalf of the Access Holder (or any of its contractors, invitees, customers, service providers, agents, or personnel), the reasonable costs and expenses directly incurred by Pacific National in the exercise of its rights under this clause 11.2 shall be paid by the Access Holder to Pacific National in accordance with clause 5.3 of this agreement.
- (g) Pacific National shall not be liable for any Claim by the Access Holder against Pacific National as a result of Pacific National rectifying or remediating, and/or attempting to rectify or remediate, an Incident or its effects.

12. Safety**12.1 Compliance by the Parties**

The parties will, in relation to their respective responsibilities and rights under this agreement:

- (a) comply with all applicable Laws; and
- (b) comply with the Dangerous Goods Code.

12.2 Compliance by Access Holder

- (a) The Access Holder must ensure that all Rolling Stock, and any other plant and equipment (including any plant and equipment associated with its trains or Rolling Stock) admitted to the Terminal, is safe and is operated in a safe manner and complies with and is operated in accordance with the Rail Safety Laws.
- (b) The Access Holder must comply with all Instructions given by Pacific National to the Access Holder from time to time to protect the Terminal, property and individuals.

- (c) The Access Holder must provide Pacific National with the information required by the Terminal Protocols, as applicable and appropriate, to enable Pacific National to identify safety risks associated with the provision of the Services.
- (d) In addition to the Access Holder's obligations to maintain Accreditation, the Access Holder must obtain and maintain such additional accreditation, licences and approvals and maintain and adhere to such additional standards which are required by Law.
- (e) During loading, handling and operation of its containers and Rolling Stock and delivery of the containers and Rolling Stock to the Terminal and in the conduct of its operations in accessing or using the Terminal the Access Holder must:
 - (i) ensure that it does not do or fail to do or allow any of its employees, agents, contractors or sub-contractors to do or fail to do, and must take all reasonable steps to prevent anyone else from doing or failing to do anything which would or might reasonably be expected to cause or contribute to:
 - A. a nuisance, death or injury to any person;
 - B. an Environmental Hazard;
 - C. damage to any real or personal property;
 - D. breach of any Law; and
 - E. an event or circumstance which would entitle an Authority to issue a notice, order or direction under any Law.
 - (ii) ensure that all plant and equipment and goods carried on or in the Access Holder's Rolling Stock comply with all Laws and is maintained and operated in a proper, safe and efficient manner.

13. Suspension and termination

13.1 Suspension

- (a) Pacific National may, by giving written notice to the Access Holder prior to or immediately following the suspension, suspend the Access Holder's rights under this agreement if any of the following occur:
 - (i) a Financial Default occurs and continues for 7 Business Days after notice from Pacific National to the Access Holder providing details of such default;
 - (ii) Pacific National in its reasonable opinion considers that suspension is required in order to avoid material damage to the Terminal, property or Pacific National's infrastructure or equipment, or injury to any person;
 - (iii) Pacific National is unable to provide access to the Terminal or to supply the Services to the Access Holder as a result of an Incident;
 - (iv) the Access Holder fails to comply with clauses 7, 9.3, 12, 14.6 or 19.5 and such default continues for 7 Business Days after notice from Pacific National to the Access Holder providing details of such default; or
 - (v) the Access Holder fails to perform any other obligation under this agreement and such default continues for 30 Business Days after notice from Pacific National to the Access Holder providing details of such default.
- (b) If Pacific National wishes to suspend the rights of the Access Holder pursuant to this clause 13.1, it must first give written notice to the Access Holder specifying:
 - (i) the rights which are affected by the suspension;
 - (ii) the reasons for the suspension; and

- (iii) the actions the Access Holder must take in order for the suspension to end.
- (c) Subject to clause 13.1(d), any suspension pursuant to this clause 13.1, will continue until such time as the Access Holder has remedied (where possible) the relevant event which triggered the suspension and, where appropriate, taken action to prevent it from occurring again.
- (d) Pacific National may suspend its obligations for the reason specified in clause 13.1(a)(iii), in which case Pacific National's obligations under this agreement will be suspended during the time, and to the extent, that it is prevented or delayed from complying with its obligations by reason of the Incident.
- (e) Where Pacific National suspends any rights (by notice in writing to the Access Holder in accordance with clause 13.1(a);
 - (i) pursuant to clauses 13.1(a)(i); 13.1(a)(iv); 13.1(a)(v); or
 - (ii) pursuant to clauses 13.1(a)(ii) and 13.1(a)(iii), where that suspension is caused by an act or omission or default by the Access Holder,the suspension does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Service Charges under this agreement and shall be without prejudice to Pacific National's other rights and remedies in respect of the event triggering the suspension or any breach of this agreement.

13.2 Termination by Pacific National

Without limiting any rights of termination in this agreement or which are available at law, Pacific National may, by giving written notice to the Access Holder, immediately terminate this agreement upon the occurrence of any of the following:

- (a) a Financial Default occurs and continues for 30 Business Days after notice from Pacific National to the Access Holder providing details of such default;
- (b) the Access Holder fails to comply in a material respect with any other obligation under this agreement and such failure continues for 30 Business Days after notice from Pacific National to the Access Holder providing details of such default; or
- (c) subject to clause 8.2, a Material Change occurs.

13.3 Termination by the Access Holder

Without limiting any rights of termination contained in this agreement, the Access Holder may, by giving written notice to Pacific National, immediately terminate this agreement upon the occurrence of any of the following:

- (a) an Event of Insolvency in relation to Pacific National occurs and continues for a period of 30 Business Days after notice from the Access Holder providing details of such default;
- (b) Pacific National fails to comply in a material respect with any other obligation under this agreement and such default continues for 30 Business Days after notice from the Access Holder providing details of such default, except where the impact upon the Access Holder's operations, access and use of the Terminal is immaterial.

13.4 Consequences of termination

- (a) Termination of this agreement will not affect the rights, powers, remedies, obligations, duties and liabilities of either party under this agreement that have

accrued to the date of termination, which rights, powers, remedies, obligations, duties and liabilities will continue to be enforceable.

- (b) Promptly upon, and in any event within 5 Business Days following, termination or expiry of this Agreement, the Access Holder must at its cost safely remove from the Terminal all Rolling Stock and any other items, plant or equipment it has caused to be within the Terminal; if the Access Holder fails to do so then Pacific National may (without prejudicing any other rights it may have) take all reasonable steps to remove and re-locate any Rolling Stock or other items, plant or equipment and the cost of such steps must be paid by the Access Holder to Pacific National on demand. The Access Holder hereby indemnifies Pacific National against any Claims for which Pacific National is or may become liable for as a result of Pacific National exercising its rights under this clause 13.4(b).

14. Liability and indemnities

14.1 Indemnity by Pacific National

Subject to clauses 14.4, and 14.6, Pacific National shall indemnify, and keep indemnified, the Access Holder, its employees, officers and agents in respect of all Claims for which the Access Holders, its employees, officers or agents are, will or may be or become liable, whether during or after the Term, in respect of or arising directly from any loss, damage or injury to property or any person, in or near the Terminal to the extent such loss, damage or injury is caused or contributed to by:

- (a) any negligent or wrongful act or omission; or
- (b) any breach of this agreement,

by or on behalf of Pacific National, its employees, officers or agents.

The Access Holder receives the benefit, and is the agent of its employees, officers and agents for the purpose of receiving on their behalf the benefits of the indemnity given by Pacific National in this clause 14.1 in favour of the Access Holder's employees, officers and agents.

14.2 Indemnity by Access Holder

Subject to clause 14.4, the Access Holder shall indemnify and keep indemnified, Pacific National and its Related Bodies Corporate, and its and their employees, officers and agents in respect of all Claims for which Pacific National, its employees, officers or agents are, will or may be or become liable, whether during or after the Term, in respect of or arising directly from any loss, damage or injury to property or any person, in or near the Terminal, to the extent such loss, damage or injury is caused or contributed to by:

- (a) any negligent or wrongful act or omission;
- (b) any breach of this agreement,

by or on behalf of the Access Holder, its employees, officers, personnel, invitees, customers, service providers or agents.

Pacific National receives the benefit, and is the agent of its employees, officers and agents for the purpose of receiving on their behalf the benefits of the indemnity and the release given by the Access Holder in this clause 14.2 and clause 14.6 in favour of Pacific National's employees, officers and agents.

14.3 Dispute

Except as provided under clause 9.2, in the event that either party proposes making a Claim against the other under clause 14.1 or 14.2 (as the case may be) to recover loss or damage, the party making the Claim must give notice of a dispute under clause 16 and otherwise comply with the terms of clause 16 before taking any other action to prosecute its Claim. Nothing in this clause 14 prohibits a party from seeking and obtaining appropriate injunctive relief.

14.4 No liability for consequential loss

Despite anything else in this agreement, Pacific National will not be liable for any indirect or consequential loss (including for loss of profits of any kind (anticipated or expected), loss of contracts, loss of revenue, economic loss of any kind, loss of production, loss of freight haulage tonnage, loss of use, loss of rent, loss of income or loss of occupation in contract, tort, under any statute or otherwise (including negligence) suffered by the Access Holder or for which the Access Holder becomes liable.

14.5 Defence of claims

- (a) The parties shall provide all reasonable assistance to each other 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.
- (b) To the extent that a party (the "**indemnifying party**") is obliged to indemnify the other party (the "**indemnified party**") against a Claim by a third party against the indemnified party, the indemnifying party may, subject only to the terms of any applicable insurance which the indemnifying 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 indemnifying party sees fit. The indemnifying party indemnifies the indemnified party in respect of all costs, expenses and losses which the indemnified party may incur on account of the action or proceedings.

14.6 Release of Pacific National

The Access Holder agrees to access the Terminal, and use the Services, at its own risk. Pacific National is not liable to the Access Holder for any damage to any property of the Access Holder or to any other property of any description in the possession of the Access Holder, and the Access Holder releases Pacific National from any such Claims, except to the extent that such Claims arise directly from any negligent act or omission or breach of this agreement by or on behalf of Pacific National. Without limitation, this clause 14.6 applies to any Claims which arise from any defect or condition of the Terminal beyond Pacific National's control or the actions of other users at the Terminal.

15. Insurance**15.1 Insurances required**

During the Term, the Access Holder must effect and maintain with a reputable insurance company the insurances set out at item H in Schedule 6, such insurances to note the interests of Pacific National on each policy.

15.2 Disclosure of policies

The Access Holder must provide Pacific National with a certificate of currency for each insurance policy required by this agreement and any other relevant certificate(s) of currency as reasonably requested by Pacific National from time to time.

16. Disputes

- (a) Subject to clause 16(l) below, if a dispute arises between Pacific National and the Access Holder in connection with this agreement ("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 clause 16.
- (b) Pacific National and the Access Holder must use reasonable endeavours and act in good faith to settle the Dispute as soon as practicable.
- (c) Each party must, within 3 Business Days from the date of receipt of a Dispute Notice, nominate a delegate who is a senior manager of the party and is familiar with the party's obligations under this agreement, who will meet and attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within 10 Business Days from the date on which it is referred to the delegates, the Dispute will be referred to the Chief Executive Officer of the Access Holder and a senior executive in the case of Pacific National who will attempt to resolve the Dispute within 20 Business Days from the date of receipt of the Dispute Notice.
- (e) If a Dispute is not resolved in accordance with paragraph (d), Pacific National and the Access Holder will 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.
- (f) In the absence of agreement as to the independent expert within 10 Business Days the independent expert will be appointed on the application of Pacific National by the President of the Resolution Institute.
- (g) The independent expert must provide his/her report as soon as practicable and, if possible, within 20 Business Days of the Dispute being referred to the independent expert.
- (h) The independent expert will act as an expert and not an arbitrator and may adopt such procedures as he/she thinks fit.
- (i) The independent expert will determine how his/her costs will be borne between Pacific National and the Access Holder.
- (j) Pacific National and the Access Holder will use their best endeavours to resolve the dispute on the basis set out in the expert report obtained pursuant to the mechanism provided under paragraph (e) above.
- (k) If either Pacific National or the Access Holder refers the dispute to the Head, Transport for Victoria, either party may provide the Head, Transport for Victoria with a copy of the expert report obtained pursuant to the mechanism provided under paragraph (a) above.
- (l) This clause 16 shall not apply to any access regime dispute (as that term is defined in section 38ZA of the *Rail Management Act* 1996 (Vic) which is notified by the

Head, Transport for Victoria pursuant to section 38ZA of the *Rail Management Act* 1996 (Vic).

17. Confidentiality

17.1 Obligations

Except as permitted by this clause 17, each party must:

- (a) hold the Confidential Information in strict confidence and not disclose the Confidential Information, nor communicate any opinion regarding the Confidential Information, to any person;
- (b) not without the written consent of the other party make use of any Confidential Information for any purpose other than the purpose of:
 - (i) (in the case of Pacific National) assessing and responding to a request by the Access Holder for the provision of a service or providing the relevant service to the Access Holder; or
 - (ii) (in the case of the Access Holder) seeking to be provided, or using, a service provided by Pacific National;
- (c) take all steps reasonably necessary to safeguard the confidentiality of the Confidential Information;
- (d) not make copies, reproductions, recordings or extracts of the Confidential Information;
- (e) immediately notify the disclosing party of any potential, suspected or actual use, disclosure, copying, reproduction, recording or extracting of the Confidential Information not permitted by this agreement; and
- (f) ensure that each of the persons to whom Confidential Information is disclosed pursuant to clause 17.2 comply with the provisions of this clause.

17.2 Permitted disclosure

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

- (a) to its officers, employees and legal, financial or economic advisers (on a need to know basis);
- (b) to the extent required:
 - (i) by any Law;
 - (ii) by the Safety Regulator or the Railway Manager;
 - (iii) by the rules of any stock exchange;
 - (iv) to comply with any capacity allocation principles or protocols, provided that the Receiving Party;
 - (v) unless immediate disclosure is required by Law or the rule of any stock exchange, notifies the Disclosing Party of any actual or anticipated disclosure requirement;

- (vi) unless immediate disclosure is required by Law or the rules of any stock exchange, consults with the Disclosing Party, prior to disclosure, as to the form and content of any disclosure;
 - (vii) uses its best endeavours at the cost of the Disclosing Party to oppose or restrict disclosure, or to make disclosure on terms which will preserve as far as possible the confidentiality of the Confidential Information; and
 - (viii) at the cost of the Disclosing Party, takes such steps as the disclosing party may reasonably request to permit the Disclosing Party to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means; or
- (c) as ordered by any court, after having, to the extent practicable, consulted with the Disclosing Party with a view to agreeing the form, content, timing and manner of the disclosure.

17.3 Consequences for breach

The provisions of this clause 17 survives termination of this agreement. Each party acknowledges that:

- (a) that the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information and that monetary damages would be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of and to compel specific performance of this clause.

17.4 Return or destruction of Confidential Information

On demand in writing by the Disclosing Party, the Receiving Party must at its own expense:

- (a) deliver to the Disclosing Party, or at its option destroy, all Confidential Information in the possession, power or control of the Receiving Party; and
- (b) delete any Confidential Information that has been entered into a computer, database or other electronic means of data or information storage by or on behalf of the Receiving Party,

provided that the Receiving Party shall be entitled to retain a copy of such Confidential Information if:

- (c) required by Law or the rules of any stock exchange on which its shares or any shares of any of its Related Bodies Corporate are listed; or
- (d) reasonably necessary to enable the Receiving Party to comply with its obligations under any rules or standards of professional conduct applying to it or under any policy of insurance held by it.

17.5 Effect of return of information

The return, destruction or deletion of the Confidential Information in accordance with clause 17.4 does not release the Receiving Party from its obligations under this agreement.

18. Force Majeure**18.1 Suspension of rights and obligations**

If a party is unable to perform an obligation (other than an obligation to pay money) under this agreement by reason of Force Majeure, that obligation is suspended for the minimum extent and duration of the Force Majeure provided that the party:

- (a) gives the other party prompt notice of and reasonable details of the Force Majeure and an estimate of the extent and duration of its inability to perform; and
- (b) the party takes all reasonable steps to avoid or limit the effects of the events or circumstances giving rise to the Force Majeure.

18.2 Consequences

- (a) If the Force Majeure continues more than one month after the notice given under clause 18, the parties must meet to discuss in good faith a mutually satisfactory resolution to the problem.
- (b) If the Force Majeure continues for more than three months after the notice given under clause 18.1 and the parties have not agreed on a mutually satisfactory resolution to the problem, either party may terminate this agreement by giving the other party 14 days' written notice and this agreement will terminate on expiry of that 14-day notice period.

18.3 No release or discharge

No Force Majeure event will release or discharge:

- (a) the party affected by it from the obligation to perform the obligation which is so affected if the obligation still exists after the cessation of the Force Majeure event; or
- (b) any party from any obligation to pay any sum of money pursuant to any obligation under this agreement.

19. General**19.1 Governing law**

This agreement is governed by and must be construed according to the law applying in Victoria.

19.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19.2(a).

19.3 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

19.4 Variation/amendment

Unless otherwise provided in this agreement, this agreement may only be varied by a document signed by or on behalf of each party.

19.5 Assignment/novation

- (a) Pacific National may assign, transfer or novate the whole or any part of its rights or obligations contained in this agreement to any person ("**Pacific National Assignee**"), provided that the Pacific National Assignee agrees, by deed in writing, to be bound by and to perform Pacific National's obligations under this agreement.
- (b) On and from the time Pacific National procures the Pacific National Assignee's agreement under clause 19.5(a), Pacific National will be released and discharged from any further obligation or liability under this agreement.
- (c) Subject to clauses 19.5(d) and (e), the Access Holder shall not assign, transfer or novate its rights or obligations, or any part of them under this agreement, to any person ("**Access Holder Assignee**") without the prior written consent of Pacific National, which consent may not be unreasonably withheld.
- (d) Pacific National will not withhold its consent to an assignment, transfer or novation if:
 - (i) the Access Holder Assignee is a Related Body Corporate of the Access Holder who has satisfied the conditions precedent set out in clause 2 of this agreement, is financially sound and is otherwise capable of performing the Access Holder's obligations under this agreement;
 - (ii) the Access Holder is not in default of any of its obligations under this agreement; and
 - (iii) except in the event of a novation, the Access Holder remains liable for the performance of its obligations under this agreement assumed by the Access Holder Assignee provided however that performance by the Access Holder Assignee will discharge the Access Holder from liability for performance of those obligations.
- (e) Any assignment, transfer or novation by the Access Holder of its rights or obligations under this agreement will be conditional upon and will not take effect until the Access Holder Assignee agrees by deed in writing, to be bound by and to perform the Access Holder's obligations under this agreement.

19.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

19.7 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

19.8 Relationship

Nothing in this agreement shall constitute or be deemed to constitute a partnership between the parties or be deemed to constitute:

- (a) the Access Holder as an agent of Pacific National for any purpose whatever and the Access Holder has no authority or power to bind Pacific National or to contract in its name or create a liability against it in any way or for any purpose; and
- (b) Pacific National as an agent for the Access Holder for any purpose whatever and Pacific National has no authority or power to bind the Access Holder or to contract in its name or create a liability against it in any way or any purpose.

19.9 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a Term of this agreement operates as a waiver of another breach of that Term or of a breach of any other Term of this agreement.

19.10 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Pacific National:

For the attention of: Head of Legal
Cc: PN Access Team
Email: pnlegal@pacificnational.com.au
Cc: South_Dynon_Access@PacificNational.com.au

Street Address:
Level 1, 2 Blue Street
North Sydney NSW 2060

Access Holder:

For the attention of:
[cc:]
Email:
[Cc:]
Street Address:
Level xx, xxxx Street
Suburb State Postcode

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by email to the number, of the addressee, in accordance with clause 19.10(b); and
- (e) are taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of email) if sent by email, at the time sent (as recorded on the device from which the sender sent the message), unless the sender's information system receives a message that the email has not been delivered to the recipient or the recipient is out of office. If that that delivery is made outside Business Hours, that communication is taken to be received at 9.00 am on the next Business Day.
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 19.10(b), unless that delivery is made outside Business Hours, that communication is taken to be received at 9.00 am on the next Business Day.

19.11 Costs

Each Party must bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and carrying into effect and enforcement of this agreement.

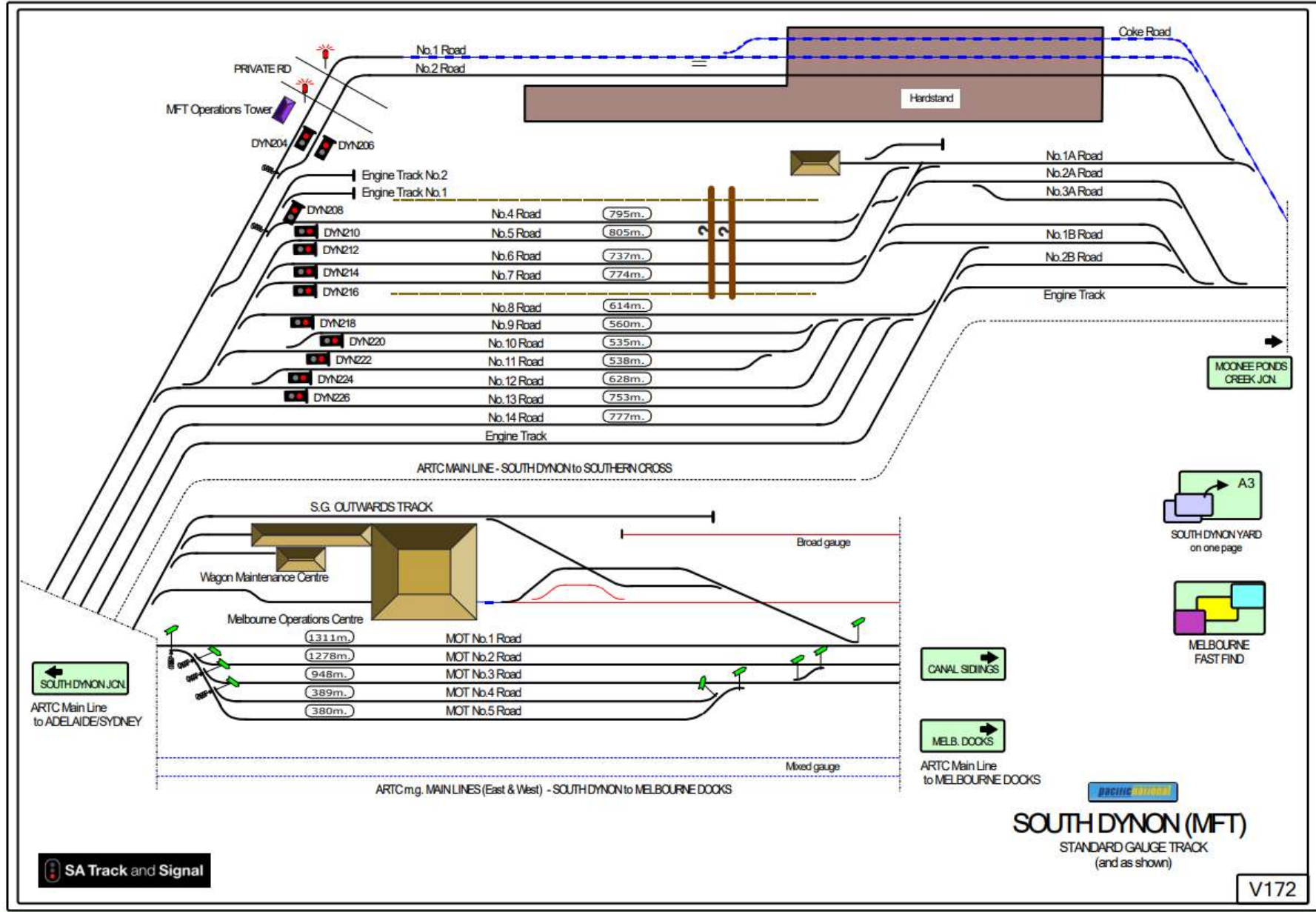
19.12 Stamp duty

The Access Holder must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement.

19.13 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

Schedule 1 - South Dynon Terminal Layout (Acknowledgement to [SA Track and Signal](#))



Schedule 2 - Train Specification and Service Details

[To be specified once negotiated with the Access Holder]

Schedule 3 - Service Charges and Variation

[To be included when Declared Rail Transport Services are agreed with the Access Holder]

Schedule 4 - Terminal Protocols

Pacific National Terminal Management Protocol for South Dynon

1. Preliminary

(a) In this document:

(i) the following definitions apply unless the context requires otherwise:

- A. **Cut-Off Time** means 2 hours, or such other time notified to the Access Holder from time to time before the scheduled departure time of a Train shown in the Timetable;
- B. **Load Standards** means the standards developed in accordance with clause 13;
- C. **Terminal Manager** means Pacific National or its authorised representative;
- D. **Train Arrival Time** means the time that the last unit of Rolling Stock in a Train enters the Terminal;
- E. **Train Departure Time** means the time that the first unit of Rolling Stock in a train leaves the Terminal
- F. **Train Handover Time** means the time that the Terminal Manager will hand over the loaded train for inspection by the Access Holder prior to departure on the network;
- G. **Freight Availability Time** means the time that freight is available to be collected
- H. **Train Turnaround Time** means the amount of time from the Train Arrival Time to the Train Handover Time;
- I. **Access Agreement** means the Terminal Access and Services Agreement – South Dynon Terminal between the Terminal Manager and the Access Holder;
- J. **Access Arrangement** means the South Dynon Terminal Access Arrangement made by Pacific National pursuant to Division 5 of the *Rail Management Act 1996* (Vic).;
- K. **Terminal Protocols** means this document, which is the Pacific National Terminal Management Protocol referred as such to in the Access Arrangement, and the Access Agreement; and
- L. **Container Inventory Checks** means the checking of container IDs against the containers that are physically in the Terminal,

(ii) words which are defined in Access Agreement and which are used in the Terminal Protocols have the same meaning in the Terminal Protocols unless the context requires otherwise.

(b) Provisioning

- (i) Direct locomotive refuelling by any party is not permitted outside of the existing fuel point within the Terminal without VicTrack's prior written approval.

- (ii) The Access Seeker may not conduct provisioning activities anywhere in the Terminal without Pacific National's written approval.
- (c) The Terminal Protocols may be varied from time to time in the following manner:
 - (i) if the Terminal Manager determines (in its absolute discretion) that a variation to the Terminal Protocols is necessary or appropriate for the proper, efficient or safe provision of the Services or management of the Terminal:
 - A. the Terminal Manager will provide the Access Holder with an amended version of the Terminal Protocol for the Access Holder's consideration (**the draft amended Terminal Protocol**) and will meet with the Access Holder to discuss the proposed variations;
 - B. if the Terminal Manager and the Access Holder agree on the proposed variations, the Terminal Manager will publish an amended Terminal Protocol, which will then be the Terminal Protocol;
 - C. if the Terminal Manager and the Access Holder do not agree on the proposed variations, within 2 weeks of receipt of the draft amended Terminal Protocol, the Access Holder will make any request for amendments to that document;
 - D. to the extent that any amendments proposed by the Access Holder interfere with the Terminal Manager's obligations set out in clause 8 of the Access Arrangement, the Terminal Manager is not obliged to take such amendments into consideration.
 - E. the Terminal Manager will:
 - (1) make a bona fide effort to consider the amendments (other than those discussed in paragraph D) proposed by the Access Holder but it is not obliged to make any modification to which it does not agree; and
 - (2) provide to the Access Holder a further amended version of the draft amended Terminal Protocol (**the further amended Terminal Protocol**);
 - F. if the Terminal Manager and the Access Holder agree on the proposed variations, the Terminal Manager will publish the further amended Terminal Protocol, which will then be the Terminal Protocol
 - G. if the Terminal Manager and the Access Holder do not agree the General Managers of each party must, within 5 days of the provision of the further amended Terminal Protocol, meet and attempt to come to an agreement on the proposed variations;
 - H. If no agreement is reached under paragraph G. above, the proposed variation will be referred to the Head, Transport for Victoria for approval, and if approved, the Terminal Manager will publish an amended Terminal Protocol, which will then be the Terminal Protocol.
 - I. Notwithstanding anything in paragraph 1(b)(i) a variation to a part of the Terminal protocol that deals with a matter related to section 4 or section 8 of the Network Management Rules shall take effect only on and from the date the Head, Transport for Victoria decides to approve a variation pursuant to the section 10.3 of the Network Management Rules, or waives the requirements for approval pursuant to section 11.2 of the Network Management Rules

- (ii) The requirements in paragraph (i) may be set aside in the case of emergency or variations necessary for the safe provision of the Services or management of the Terminal, but any variation made under this circumstance will be considered to be temporary and the parties will endeavour to consult and agree on a permanent modification as soon as practicable and in accordance with the procedure set out in paragraph 1(b) (i).
- (iii) When the Terminal Manager publishes an amended Terminal Protocol under paragraphs B. or F. above, it will provide a copy of the amended Terminal Protocol to the Head, Transport for Victoria together with a confirmation from the Access Holder that it agrees to the amendments to the Terminal Protocol.
- (iv) The Access Holder acknowledges and agrees that there may be other users at the Terminal with rights of access to the Terminal with whom the Terminal Manager must consult for the purposes of amending the Terminal Protocols and that whilst the Terminal Manager will consult with all relevant Access Holders and users on relevant Terminal Protocol amendments, the Terminal Manager will, in its absolute discretion, determine whether and to what extent a proposed amendment to the Terminal Protocols will be implemented.

2. General

- (a) To enable the Terminal Manager to properly and efficiently manage and operate the Terminal, provide access to and from the Terminal and provide the Services to the Access Holder, the Access Holder will provide the Terminal Manager with such documents or information as reasonably required by the Terminal Manager from time to time, including, for example such documents or information as:
 - (i) up to date rail certificates;
 - (ii) container plating compliance audits;
 - (iii) evidence that the Access Holder's employees, officers and agents who are rail safety workers have the requisite competence required by the Rail Safety Laws;
 - (iv) wagon technical data; and
 - (v) any other documents or information reasonably required by the Terminal Manager.
- (b) The Access Holder will ensure that, at all times, its employees, officers and agents who are Critical Safety Workers as defined in the Rail Safety Laws present fit for duty at the Terminal.
- (c) The Access Holder will ensure that its employees, officers and agents will submit to random and post-Incident drug and alcohol testing as required.
- (d) The Access Holder will provide the information referred to in the preceding subparagraph in such format as reasonably required by the Terminal Manager.
- (e) Prior to the end of each calendar month, the Access Holder will provide the Terminal Manager with its weekly forecasts of the number of TEU in respect of which it requires Services in the next calendar month.
- (f) Prior to the end of each quarter (ending 31 March, 30 June, 30 September and 31 December), the Access Holder will provide the Terminal Manager with its monthly forecasts of the number of TEU in respect of which it requires Services in the next 12 calendar months.

- (g) The Access Holder will provide prompt notification of any Timetable change to the Terminal Manager so as to ensure that the Terminal Manager can efficiently manage any excess or reduced capacity in the Terminal.
- (h) The Terminal Manager will load or unload bottom lift containers that conform to ISO/Australian Standard NZS 3711 as required to provide Services under the Access Agreement.
- (i) The Terminal Manager will reasonably make available sufficient equipment to lift maximum container weights as shown on compliance plates of certified containers that conform to ISO/Australian Standard NZS 3711 as required to provide Services as required under the Access Agreement.
- (j) The Access Holder must have the capability to run a compatible IT system so that it can interface with the Terminal Manager's IT systems.
- (k) The Access Holder must comply immediately with a direction given by the Terminal Manager.

3. Track Utilisation

- (a) A track utilisation plan is to be prepared by the Terminal Manager which will identify planned occupancy of the terminal.
- (b) The Terminal Manager will use reasonable endeavours to ensure that the track utilisation plan is:
 - (i) accurate with respect to all information known by the Terminal Manager at the time of its preparation; and
 - (ii) consistent with each Access Holder's Timetable.
- (c) The Access Holder will provide the following details upon request by the Terminal Manager to allow preparation of the track utilisation plan:
 - (i) arrival and departure times;
 - (ii) track lengths requirement;
 - (iii) shunt requirement (consist movement); and
 - (iv) locomotive provisioning times.
- (d) The Terminal Manager will use the track utilisation plan to manage capacity within the Terminal and will use all reasonable endeavours to facilitate the operation of the Terminal in accordance with the Track Utilisation Plan.
- (e) The Access Holder and Terminal Manager will co-operate to meet operational requirements caused by day of operation variations to the track utilisation plan.
- (f) The Terminal Manager may vary the track utilisation plan from time to time in order to improve capacity and efficiency of the Terminal. The Terminal Manager will prepare an amended track utilisation plan and in doing so will use all reasonable endeavours to minimise disruptions to Access Holders. The Terminal Manager will consult with the Access Holder before finalising any amended track utilisation plan.
- (g) The Access Holder may request (the Request) the Terminal Manager to vary the track utilisation plan from time to time in order to accommodate temporary variations to the Access Holder's Timetable or permanent variations to the Access Holder's Timetable that have been implemented in accordance with clause 6.7 of the Access Agreement. The Access Holder will provide such information as is reasonably requested by the Terminal Manager to enable the Terminal Manager to consider the Request. The Terminal Manager will consult with the Access

Holder in relation to the Request and will vary the track utilisation plan in order to accommodate the Request. For the avoidance of doubt, this clause does not relate to a Request by the Access Holder in respect of Trains or Services not set out in the Access Agreement.

4. Train loading

- (a) At least 12 hours prior to the scheduled departure time of a Train, the Access Holder will provide the Terminal Manager with an indicative load plan which will include:
 - (i) wagon consist;
 - (ii) marshalling requirements; and
 - (iii) container bookings.
- (b) The Access Holder will be responsible for the timely presentation of the wagon consist to allow the Terminal Manager to load containers in accordance with the indicative load plan.
- (c) The Terminal Manager will check containers to ensure they are safe for loading having regard to container integrity, load restraint and compliance plating. The Terminal Manager will advise the Access Holder of containers which are not safe for loading.
- (d) The Terminal Manager will use its best endeavours to load the Train in accordance with the indicative load plan and the Load Standards.
- (e) The Terminal Manager will manage variations to the indicative load plan and will advise the Access Holder of any such variations.
- (f) The Terminal Manager will load the containers within the safety conditions of the wagon consist presented by the Access Holder having regard to axle load, height, drawbar and network restrictions. It is the Access Holder's responsibility to ensure that all containers are fit for travel and the Terminal Manager has no responsibility to secure or adjust contents of containers.
- (g) The Terminal Manager will ensure auto twist locks are secure. For the avoidance of doubt Pacific National does not accept manual twist locks.
- (h) The Terminal Manager will not be obliged to load a container which is not received in the Terminal prior to the Cut Off Time, but the Terminal Manager will use its best endeavours to do so subject to the Terminal Manager's obligations to other Access Holders and provided the Terminal Manager considers it is efficient to do so (in the Terminal Manager's absolute discretion).
- (i) The Access Holder must comply with the Terminal Manager's direction for the handling of Dangerous Goods, Dangerous Good must be presented fit for travel in accordance with the relevant Australian Dangerous Goods Code.
- (j) The Access Holder will provide the Terminal Manager with notification of the nature and description of any Dangerous Goods (which must be provided on arrival of the Dangerous Goods).
- (k) The Access Holder will provide the Terminal Manager with all necessary written authorities to deal with the containers to be loaded onto the Access Holder's Trains, including, for example:
 - (i) written authorities enabling access to containers for the purposes of:
 - A. inspecting containers to check that they are within specification;
 - B. checking the safety of the container;

- (ii) any other documents or information reasonably required by the Terminal Manager.
- (l) The Terminal Manager will load containers in accordance with the specific service ID's that make up the overall train consist, including for example such service ID's as:
 - (i) day of travel;
 - (ii) place of origin of Train;
 - (iii) destination of Train;
 - (iv) number of services on that Train;
 - (v) details of Rolling Stock on each service; and
 - (vi) any other service ID's reasonably required by the Terminal Manager.
- (m) The Terminal Manager will provide the train manifest to the Access Holder at the Train Handover Time in order to allow final inspection and pre-departure safety checks to be undertaken by the Access Holder prior to the train's departure.
- (n) The Access Holder will ensure that all loading standards, marshalling requirements and network restrictions have been met during the pre-departure check. For avoidance of any doubt, the ultimate responsibility for the train to be safely loaded in accordance with any required standards prior to its release onto the network remains with the Access Holder.
- (o) The Terminal Manager will not be obliged to load containers deemed unfit by the Terminal Manager in its absolute discretion having regard to all relevant safety, compliance and regulatory requirements.

5. Unloading Trains

- (a) At least 12 hours prior to the scheduled arrival time of a Train, the Access Holder will provide the Terminal Manager with notification of the nature and description of any Dangerous Goods and confirm that the Train has been safely loaded in accordance with any required standards prior to its release onto the network.
- (b) The Terminal Manager will check containers to ensure they are safe for unloading having regard to container integrity, load restraint, plating compliance and Dangerous Goods segregation. The Terminal Manager will advise the Access Holder of containers which are not safe for unloading.
- (c) The Access Holder will provide the Terminal Manager with all necessary written authorities to deal with the containers to be unloaded from the Access Holder's Trains, including, for example:
 - (i) written authorities enabling access to containers for the purposes of:
 - A. inspecting containers to check that they are within specification;
 - B. checking the safety of the container;
 - (ii) any other documents or information reasonably required by the Terminal Manager.
- (d) The Terminal Manager will ensure:
 - (i) containers will be allocated ground location ID's which will describe the grid location of the container within the Terminal in order to assist truck operators to locate freight,
 - (ii) Container Inventory Checks will be undertaken daily,
 - (iii) Any container inventory exceptions will be escalated to the Access Holder upon identification, and

- (iv) all freight will be unloaded in accordance with the performance measures outlined within the Terminal Protocols.

6. Daily Variations

- (a) The Access Holder will use its best endeavours to provide 12 hours' notice to the Terminal Manager if a Train is likely to arrive before or after its scheduled arrival time.
- (b) In respect of arriving Trains:
 - (i) For Train arrivals at or before the scheduled arrival time in the Timetable, the Terminal Manager will use its best endeavours to provide the Services and ensure that the Train departs on time.
 - (ii) For the avoidance of doubt, nothing in paragraph (a) above will require the Terminal Manager to disrupt Trains which arrive and depart in accordance with their specified arrival and departure times.
 - (iii) For train arrivals after the scheduled arrival time in the Timetable:
 - A. the Terminal Manager and Access Holder will co-operate to forward plan for the arrival of those Trains;
 - B. where it is possible, the Terminal Manager will allocate resources and amend its operating plan to service the Access Holder's late arriving trains in a timely fashion;
 - C. the Terminal Manager will use its best endeavours to provide the Services so as to have the train arrived into the Terminal as soon as is practical, subject to the Terminal Manager's obligations to other Access Holders and provided the Terminal Manager considers it is efficient to do so (in the Terminal Manager's absolute discretion);
- (c) In respect of departing Trains:
 - (i) The Access Holder may:
 - A. request the Terminal Manager to give priority to the provision of Services to certain of the Access Holders Trains;
 - B. request the Terminal Manager to vary Cut-Off Times or train departure times to accommodate variations; and
 - C. request the Terminal Manager to prioritise the container loading to meet customer expectations.
 - (ii) The Terminal Manager will:
 - A. use its best endeavours to comply with such requests subject to the Terminal Manager's obligations to other Access Holders and provided the Terminal Manager considers it is efficient to do so (in the Terminal Manager's absolute discretion); and
 - B. if it becomes apparent to the Terminal Manager that a train cannot be completed on schedule, the Terminal Manager will advise the Access Holder no later than two hours prior to the scheduled departure time of the train in order to allow crewing issues to be addressed.
- (d) If a Train fails within the Terminal, the Terminal Manager will:
 - (i) use all reasonable endeavours to minimise disruptions to other Access Holders;

and

- (ii) as soon as is practical subject to its obligations to other Access Holders, clear the failed Train.

7. In Gate / Out Gate

- (a) The Terminal Manager will publish Terminal Operating Hours from time to time. The Terminal Manager will provide reasonable notice of any change to the Terminal Operating Hours to the Access Holder.
- (b) The Terminal Manager will provide freight opening and closing receival times for each of the Access Holder's train services.
- (c) For the purpose of maximising slot utilisation, the Access Holder may request that the Terminal Manager receive containers prior to the opening and closing times. These containers would be known as pre-receivals.
- (d) The Terminal Manager will notify the Access Holder of any exceptions in data or load integrity that may impact on the successful gating of the Access Holders containers.
- (e) The Access Holder will provide to Pacific National the proposed times for the arrival and departure of any road vehicles to and from the Terminal, 24 hours in advance of those movements.

8. Safety

- (a) The Terminal Manager will prepare a safety management plan for the Terminal.
- (b) The Terminal Manager will provide to the Access Holder all information necessary for the safe operation of the Access Holder's Trains within the Terminal.
- (c) The Access Holder will develop and provide a safety management plan for its rail operation that is consistent with requirements of the Terminal Manager. The Access Holders safety management plan will be incorporated into the safety management plan for the Terminal.
- (d) The Terminal Manager and the Access Holder will comply with the safety management plan for the Terminal.

9. Performance Measures

- (a) The Terminal Manager will develop:
 - (i) a set of performance measures and performance targets relevant to the service being provided to the Access Holder together with action plans to achieve those performance targets; and
 - (ii) a set of performance measures and performance targets against which the Access Holder's performance will be measured together with action plans designed to assist in achieving the Access Holder's performance targets.
- (b) The Terminal Manager will consult with the Access Holder on the performance measures, performance targets and action plans developed under paragraph (a) above.
- (c) In consulting with the Access Holder in accordance with paragraph (b), the Terminal Manager will take into account any concerns raised by the Access Holder regarding the performance measures, performance targets and action plans and make a bona fide effort to mitigate such concerns however, the Terminal Manager is not obliged to make any modification with which it does not agree.

- (d) The performance measures developed under paragraph (a)(i) and a(ii) may include:
 - (i) *Medical Treatment Injury (MTI)* – injury that requires medical treatment, including all injuries where the employee is placed on alternative duties.
 - (ii) *Lost Time Injury (LTI)* - those occurrences that result in a fatality, permanent disability or time lost from work of one day/shift or more to the Access Holder's persons as a result of the Terminal Manager's failure to adhere to or implement safe working practices and procedures.
 - (iii) *Derailment* - a rolling-stock derailment occurring in the normal movement of a train on a track where one or more rolling stock wheels leave the rail or track during railway operations which affects the Access Holder.
 - (iv) *Collision* - any impact or strike involving trains, vehicles, infrastructure, persons, animals or other obstructions either on the track or within the terminal which affects the Access Holder.
 - (v) *Terminal Load Lifting Incident* - any incident involving terminal lifting equipment that may represent a danger to the safety of the Access Holder's persons or property.
 - (vi) *Terminal Infrastructure Related Incident* - any incident involving the Access Holder as a result of the standard of infrastructure under the Terminal Manager's control.
 - (vii) *Safeworking Irregularities/Breach* - any breach of, irregularity or deficiency in an operational safeworking system or procedure by either party.
 - (viii) *Vandalism/Theft/Attempted Theft* - any wilful or malicious destruction or damage to the Access Holder's property, in addition to any theft or attempted theft from trains that are the Access Holder's Property.
 - (ix) On-Time Train Departures affecting the Access Holder.
 - (x) Train Turnaround Times affecting the Access Holder.
 - (xi) Freight Availability affecting the Access Holder.
 - (xii) Truck turnaround and transaction times affecting the Access Holder.
 - (xiii) Trains presented late by the Access Holder. (xiv) Trains presented early by the Access Holder.
 - (xiv) Trains with container numbers differing to information provided by the Access Holder to the Terminal Manager.

10. Interface Agreement

- (a) Prior to commencement of the service the Terminal Manager will provide to the Access Holder a copy of its standard template Safety Interface Agreement and the Access Holder and the Terminal Manager will use that template to agree a Safety Interface Agreement in compliance with the Rail Safety Laws.
- (b) The Safety Interface Agreement which is required pursuant to the Rail Safety Laws will, among other things, deal with communication between the Access Holder and the Terminal Manager.

11. Rolling Stock Standards

- (a) The Access Holder must comply with the requirements applicable for access to the relevant rail network applicable from time to time, where the relevant rail

network may include, but is not limited to, ARTC network, V/Line Network, Metro Train Melbourne network, TAHE, and ARC Infrastructure network.

- (b) The Access Holder must provide the Terminal Manager with details of the Rolling Stock to be utilised.

12. Customer Communications

- (a) In relation to customer complaints arising from time to time on issues such as truck, trailer or container damage, excessive truck turnaround times, left behinds etc:
 - (i) the Terminal Manager will establish a single point of contact for customer complaints. This will apply for customer related complaints directly from the Access Holder.
 - (ii) the Terminal Manager and the Access Holder will jointly endeavour to provide resolution to the customer issue.
- (b) In relation to customer complaints about an alleged failure of the Terminal Manager to comply with the Terminal Protocol:
 - (i) the Terminal Manager will:
 - A. establish a single point of contact for such customer complaints;
 - B. address the complaint in good faith; and
 - C. annually provide to the Head, Transport for Victoria a report on such complaints received and the measures taken by the Terminal Manager to address each complaint.

13. Load Standards

- (a) The Terminal Manager will develop Load Standards taking into account the following:
 - (i) all rolling-stock and network restrictions applicable for the scheduled train route which include but are not limited to the following criteria:
 - A. Train Specification as set out in the Access Agreement,
 - B. Dangerous Goods segregation rules in accordance with the Australian Dangerous Goods Code,
 - C. Network restrictions as set out by the various track access providers on their websites (including ARTC, TAHE, V/Line, Metro Trains Melbourne and ARC Infrastructure including:
 - 1. network height restrictions,
 - 2. network and rollingstock axle and overall wagon load limits,
 - 3. network and rollingstock drawgear restrictions,
 - 4. network and rollingstock lightly loaded wagon restrictions,
 - D. rail loading outline requirements (gauge profile) appropriate to the particular corridor over which the container will move,
 - E. container doors properly closed and secured with a container seal;
 - (ii) any train consist in hard-copy and electronic form (provided by the Access Holder to the Terminal Manager) which accurately depicts the physical load of the train and which does not contain any documentation failure

that involves train operation data that may impact on load information for train integrity.

- (b) The Terminal Manager will use best endeavours to load the train in accordance with:
 - (i) the indicative load plan and the Load Standards prior to the Train Handover Time; and
 - (ii) the performance measures outlined within the Terminal Protocols.
- (c) The Access Holder is responsible for the final pre-departure safety checks and Load Standard verification prior to its release onto the network.

14. South Dynon Terminal Operations Communication Protocol

- (a) The Terminal Manager requires that the Access Holder establish and maintain a radio communications link with the Terminal Manager at all times that the South Dynon Terminal is open. The operating details of this radio link will be specified by the Terminal Manager.
- (b) The Terminal Manager will use the radio communications link to give directions to the Access Holder in relation to operations within South Dynon Terminal.
- (c) The Terminal Manager will record all voice and data transmissions relevant to the operations of trains within the South Dynon Terminal, including transmissions to and from the South Dynon Terminal, train operators and the operators of other rail networks.

Schedule 5 - Capacity and Throughput

For the purposes of the agreement and this Schedule 5:

Allocated Monthly TEU: []

Ceiling TEU percentage: []%.

Floor TEU percentage: []%.

(a) Services

- (i) In consideration of payment of the Services Charges referred to in paragraph (b) below, Pacific National will during each month of the Term provide the Services for the relevant specific Trains listed in the Timetable, provided that those Trains do not carry in aggregate during that month a TEU greater than the Ceiling TEU for that month (subject to paragraph (a)(ii) below and clause 6.10 of this agreement), and provided that no Train exceeds the maximum length specified for that Train in the Timetable.
- (ii) The Allocated Monthly TEU referred to above as at the date of this agreement may be permanently increased by up to []% in any particular month by the Access Holder by giving Pacific National written notice at least 2 months prior to seeking that increase. Once the Access Holder has given such a notice, the increased figure will be deemed to be the Allocated Monthly TEU for the relevant month for the purposes of this agreement. However, the Allocated Monthly TEU for each month may only be increased under this paragraph (ii) by a maximum of []% above the TEU for that month as listed above as at the date of this agreement. Any other increase will be dealt with under clause 6.10 of this agreement. Calculation of the Ceiling TEU and Floor TEU will be based on the Allocated Monthly TEU as increased under this paragraph from time to time.
- (iii) Pacific National has no obligation to provide the services in paragraph (i) above for Trains other than those listed in the Timetable, or for Trains which exceed the maximum lengths specified in the Timetable, or once the aggregate TEU for a month exceeds the Ceiling TEU for that month, but Pacific National may agree to do so in its absolute discretion. If Pacific National agrees to accept the additional TEU, it will receive the charges referred to in paragraph (b) below in relation to that additional TEU.

(b) Charges for Services

The Access Holder will pay Pacific National the fee specified in Schedule 3 ("**Rate**") per TEU for the aggregate TEU which is loaded and unloaded at the Terminal in each month, provided that if the total TEU loaded and unloaded in a month is not equal to or more than the Floor TEU (for any reason other than the default of Pacific National under this agreement), the Access Holder will pay the Services Charge under this paragraph as if the TEU loaded and unloaded that month equalled the Floor TEU. The Floor TEU in this paragraph (i) may be increased in a particular month as a result of an increase to the Allocated Monthly TEU as referred to in paragraph (a)(ii) above, or in clause 8.8 of this agreement.

Schedule 6 - Agreement Details

A	Term	[] year(s)
B	Permitted Time	The time that is 15 minutes before or after the scheduled time for the arrival of a Train and 15 minutes before or after the scheduled time for the departure of a Train as specified in the Timetable.
C	Invoicing	[Details to be provided]
D	Payment Terms	30 days from invoice date
E	Payment - Disputed Amounts	50% of disputed amounts
F	Cancellation Notice	Two months' notice
G	Timetable Variation	One month's notice
H	Insurance	<ul style="list-style-type: none"> public liability insurance for an amount not less than \$250,000,000 for any one occurrence for unlimited occurrences during the period of insurance in respect of: <ul style="list-style-type: none"> (i) damage to real property and personal property; and (ii) injury to or death of any person. Workers' compensation insurance in accordance with any applicable law.

Executed as an agreement.

Executed by Pacific National Pty Ltd ACN 098 060 550 by
in accordance with section 127 of the Corporations Act 2001

sign here ► _____
Director

print name _____

sign here ► _____
Director/Company Secretary

print name _____

Executed by XYZ PTY Ltd ACN xxx xxx xxx by
in accordance with section 127 of the Corporations Act 2001

sign here ► _____
Director

print name _____

sign here ► _____
Director/Company Secretary

print name _____

Date