

Draft

Date: 20 May 2013.

Marked up from Track
Access Agreement dated 10
January 2012
(other than Annexures)

RailCorp Track Access Agreement

Rail Corporation New South Wales, a statutory corporation
constituted under the Transport Administration Act 1988
(**RailCorp**)

[Insert name of rail operator]

(**Rail Operator**)

RailCorp Track Access Agreement

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Details

Date

Parties

Name	Rail Corporation New South Wales , a statutory corporation constituted under the <i>Transport Administration Act 1988</i> (NSW)
ABN	59 325 778 353
Short form name	RailCorp
Notice details	Level 20, 477 Pitt Street, Sydney, New South Wales

Name	[Insert name of rail operator]
ABN	[Insert rail operator's ABN details]
Short form name	
Role	Rail Operator
Notice details	[insert address]

Background

- A RailCorp is the owner of the Network and also a NSW statutory corporation responsible for operation of railway passenger services.
- B The Rail Operator has requested access to parts of the Network.
- C RailCorp has agreed to grant access to parts of the Network on a non-exclusive basis to the Rail Operator and the Rail Operator has agreed to accept access to the Network, in each case on the terms set out in this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

Unless the context otherwise requires:

Acceptable Credit Rating means a BBB- Standard & Poor's or a Baa3 Moodys Investors Services Pty Limited's domestic long term issuer Credit Rating or an equivalent Credit Rating by another Rating Agency, or such other Credit Rating agreed by the parties.

Access Charges means the charges for Access Rights as set out in Annexure C as reviewed from time to time in accordance with Annexure C.

Access Rights means the access rights granted to the Rail Operator pursuant to clause 3.1.

Access Undertaking means:

- (a) if an undertaking referred to in section 99C of the Transport Administration Act is in force under the Competition and Consumer Act that undertaking; or
- (b) in any other case, an access undertaking in force under Schedule 6AA of the Transport Administration Act,

that applies to or binds RailCorp.

Accounting Standards has the meaning given in the Corporations Act.

Accreditation means:

- (a) in the case of the Rail Operator, accreditation to operate Rolling Stock on the Network, and
- (b) in the case of any other person, accreditation necessary to undertake or perform the relevant activity or operation,

in accordance with and to the extent required by the Rail Safety National Law (NSW).

Ad Hoc Train Path means a Train Path using particular Authorised Network Segments but which is not provided for in the Core Train Paths and which is made available to the Rail Operator on a specified day and included in the Daily Train Plan for that day only.

Agent means a person appointed under clause 1.5 by RailCorp as its agent in relation to this Agreement or any aspect of it, or any other person appointed by law.

Agreement means this agreement and includes any annexures, exhibits and schedules attached to this agreement and any documents referred to in the annexures, exhibits and schedules.

ARTC means Australian Rail Track Corporation Ltd (ABN 75 081 455 754).

ASA Controlled Document means any of the following documents and such other documents as are determined by ASA from time to time to be set, controlled, maintained, owned or published by Asset Standards Authority in accordance with its Charter:

- (a) Train Operating Conditions Manual;
- (b) Communications Equipment Standards; and
- (c) Minimum Operating Standards for Rolling Stock Manual.

Asset Standards Authority (or ASA) means the Asset Standards Authority within TfNSW responsible for the engineering and safety standards of the Network.

Authorised Network Segments means those Network Segments identified in Annexure A for which the Rail Operator is entitled to apply for an Ad Hoc Train Path.

Billing Period has the meaning given in clause 4(a) of Annexure C to this Agreement.

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

Change in Law means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Government Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Government Authority;
- (d) the imposition of a requirement for authorisations not required as at the date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (f) any such authorisation as has been granted ceasing to remain in full force and effect, or being renewed on conditions which are materially less favourable than those attached to the original authorisation.

Change in Taxes means:

- (a) the imposition of a new Tax;
- (b) an increase in the rate of a Tax; or
- (c) a change in the basis of calculation of a Tax.

Change of Control means, in relation to a corporation, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect (including through one or more entities):

- (a) to control more than half of the voting power of the corporation;
- (b) to control the composition of the board of directors of the corporation; or
- (c) to control more than half of the issued share capital of the corporation excluding any part thereof which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

resides with persons other than those holding that power on the date of 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 [TO BE INSERTED].

Communications Equipment Standards means the standards relating to communications equipment to be installed on Rolling Stock operated on the Network which as at the Commencement Date comprise the standards listed in Annexure L, as amended from time to time in accordance with this Agreement.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Confidential Information means:

- (a) information that is marked as confidential by the party providing it; and
 - (b) in respect of the Rail Operator, is information of the kind described in Part I of Annexure B; and
 - (c) in respect of RailCorp, is information of the kind described in Part II of Annexure B,
- but Confidential Information does not include any information which:
- (d) at the time of the first disclosure to or observation by the Recipient, was already in the lawful possession of the Recipient;
 - (e) is in or comes into the public domain otherwise than by disclosure in breach of this Agreement; or
 - (f) becomes available to the Recipient independently from a third party free to disclose such information.

Contractor means any contractor, subcontractor, consultant or other person contracted by or on behalf of a party to perform services or carry out duties for or on behalf of that party, and, in the case of the Rail Operator, includes any person contracted by the Rail Operator to operate Trains or conduct Rail Operations or visit any part of the Network.

Core Train Paths means the Rail Operator's Timetabled Train Paths.

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

Costs include:

- (a) costs, charges and expenses, including those incurred in connection with advisers, experts and consultants (including legal costs calculated on a solicitor and own client basis);
- (b) damages, liabilities, losses, injuries (whether actual or contingent) suffered or incurred by a party; and
- (c) any fines, penalties, interest or similar item imposed by any legislation.

Credit Rating means a credit rating assigned or issued by a Rating Agency.

Daily Train Plan means the documents comprising all of the advices which are prepared for each day during the Term in accordance with the Operations Protocol by or on behalf of each of the Train Control Entities exercising Train Control on the Network on that day and which, taken together, show all of the Train Paths on the Network for that day.

Dangerous Goods means any substance or article prescribed as dangerous goods under the *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW).

DEH means Office of Environment and Heritage NSW.

Default Rate means the sum of the reference rate plus 3%, where the reference rate means the "Reference Rate" quoted by Westpac Banking Corporation Limited (or any successor bank) on any relevant date as published in the Australian Financial Review or, if it is not so quoted or published on or in respect of any relevant date, as specified by or on behalf of the chief manager of the New South Wales Head Office of Westpac Banking Corporation Limited or such other similar rate as specified by a major commercial bank agreed between the parties.

Director-General has the meaning given in the Transport Administration Act.

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

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

Employees and Agents means

- (a) in respect of a party, the employees, officers, directors, Agents, licensees or Contractors of, or any other person under the control or supervision of, that party; and
- (b) the employees, officers, directors, agents, licensees or contractors of, or any other person under the control or supervision of, the Agents, licensees, Contractors or any other person under the control or supervision of, a party.

Environment means components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas; and

includes interacting natural ecosystems that include components referred to in (a) to (c).

Environment Protection Licence means any environment protection licence held by RailCorp or Sydney Trains from time to time and issued under the PEO Act in relation to railway system activities (as referred to in clause 33 of Schedule 1 to the PEO Act) on the Network, as modified, amended or replaced from time to time.

Environmental Damage means any material injury or damage to persons, living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration.

Environmental Liability means any obligation, expense, penalty, fine or damages under any Law relating to the Environment or under the common law which would or could be imposed as a result of or arising from or in connection with any activities carried on by or on behalf of the Rail Operator during the Term.

Environmental Management System Manual means the environmental management system manual designated by RailCorp, as amended from time to time in accordance with this Agreement.

Environmental Or Incident Condition means:

- (a) any Environmental Damage; or
- (b) any event, circumstance, condition, operation or activity which is reasonably likely to result in Environmental Damage or an Incident;
- (c) any failure on the part of the Rail Operator to comply with any Rail Operator Management Plan; or
- (d) any failure on the part of the Rail Operator to comply with any obligation imposed on the Rail Operator under clause 7.2, 7.3 or 7.4 of this Agreement,

which in RailCorp's reasonable opinion could result in RailCorp or any other person incurring any material liability or being served with or made subjected to any notice or direction of any competent Government Authority.

EPA means New South Wales Environment Protection Authority established under the *Protection of the Environment Administration Act 1991*.

Equipment means equipment that is owned or operated by the Rail Operator (or by a contractor for or on behalf of the Rail Operator) in association with the loading, unloading, management and general operation of Rolling Stock.

Event of Default means a default listed in clause 19.1.

Expert means a person appointed in accordance with clause 16.3 or clause 9.5.

Force Majeure Event means an event or circumstance which is beyond the reasonable control of the party seeking to rely on it and includes such an event or circumstance that is:

- (a) an act of God, peril of the sea, unavoidable accident of navigation, fire, flood, cyclone, earthquake, landslide, wash away, explosion;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (c) an order, demand, direction, restriction, prohibition, requirement, injunction or other legally enforceable requirement made or given by a Government Authority;
- (d) an act of terrorism, foreign enemies, hostilities (whether war is declared or not), war, rebellion, revolution, malicious damage, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law;
- (e) a power or water shortage, epidemic, quarantine, strike, lockout, stoppage, go-slow, labour disturbance or other such industrial action; and
- (f) breakdown or damage to or confiscation of property,

but does not include breakdown or delay of any Rail Operator Trains, Rail Operator Rolling Stock or Equipment.

Government Authority means any international, federal, state or local government, semi-government, quasi-government or other department, body or authority, statutory or otherwise (but in the case of the TfNSW only in its capacity as a statutory consent, regulatory or administrative authority).

GST means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.

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

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

Incident has the meaning given to that term in the Network Incident Management Framework.

Incidental Charges means the charges for Incidental Use as set out in Annexure C as reviewed from time to time in accordance with Annexure C.

Incidental Use means an activity that occurs in conjunction with the Rail Operator's use of the Network but is not directly related to the movement of Rolling Stock.

Insolvency Event means the happening of any of the following events in relation to either party or a holding company of a party to the extent applicable to each party or holding company:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) if the party or the holding company of a party is a body corporate, a meeting of directors or members of the party or holding company is convened for purposes which include considering a resolution that the party or holding company become an externally administered body corporate as that phrase is defined in the Corporations Act or the party is otherwise placed under external administration;
- (c) an application is made to a court for the party or a holding company of the party to be wound up and the application is not formally objected to within one month or formally dismissed within one month;
- (d) the appointment of a controller (as defined in the Corporations Act) of any of its assets;
- (e) it proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;
- (f) it becomes insolvent under administration, as defined in the Corporations Act; or
- (g) where the party is not a company under the Corporations Act, any event which is analogous to any event referred to in paragraphs (a) to (f).

Interface Agreement has the meaning given to the term 'interface agreement' in the Rail Safety National Law (NSW) and includes an interface agreement continued in force by the Rail Safety National Law (NSW) or the Rail Safety National Regulations.

IPART means the Independent Pricing and Regulatory Tribunal.

Key Performance Indicator means a performance indicator developed in accordance with clause 11.1 of this Agreement.

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

Material Change means a:

- (a) Change in Taxes; or
- (b) Change in Law.

Minimum Acceptable Use means 70% of the times which that Timetabled Train Path is available for use by the Rail Operator measured over one month periods, commencing on the first day of each month.

Minimum Operating Standards for Rolling Stock Manual means the manual of minimum operating standards for Rolling Stock designated by RailCorp from time to time, as amended from time to time in accordance with this Agreement.

Minister means the Minister responsible for the Transport Administration Act.

Net Financial Effect means the net effect in financial terms of a Material Change on RailCorp in relation to performing its obligations or exercising its rights under this Agreement including any offsetting benefits or adverse effects directly or indirectly connected to the Material Change.

Network means the railway lines vested in or owned by RailCorp from time to time and excludes:

- (a) the railways lines comprising or forming part of the Metropolitan Freight Network or the Southern Sydney Freight Line controlled by ARTC; and
- (b) those things excluded from the definition of 'rail infrastructure facilities' in the Transport Administration Act.

Network Control means:

- (a) service planning (namely, the timetabling of Trains, including daily timetables and planning the occupation of railway track for maintenance and other service requirements); and
- (b) real time control (namely, the actual control of the movement of Trains, including train signalling and Incident management),

in respect of the Network, and includes Train Control.

Network Incident Management Framework means the incident management framework designated by RailCorp, as amended from time to time in accordance with this Agreement.

Network Management Document has the meaning given in clause 7.1(a).

Network Possessions Manual means the manual for managing Track Possessions designated by RailCorp from time to time, as amended from time to time in accordance with this Agreement.

Network Segment means any discrete part of the Network.

Noise includes sound and vibration.

Non-Cash Security means an irrevocable and unconditional undertaking by a bank or other financial institution (in a form acceptable to RailCorp) to pay to RailCorp on demand, a minimum of \$15,000 or an amount equal to 3 months Access Charges payable by the Rail Operator (based on the Access Charges paid by the Rail Operator in the 3 months immediately prior to the date on which the Non-Cash Security is provided or where 3 months have not yet expired, a fair and reasonable estimation by RailCorp of 3 months Access Charges), whichever is the greater.

Notice Date means the date of service of the relevant Notice of Dispute.

Notice of Dispute means a written notice of a Dispute, including details of the Dispute.

Obstruction means any obstruction to the whole or any part of the Network (including debris or other objects on the Network) which causes or could cause a disruption to, or cancellation by RailCorp or a Train Control Entity of, a Train Movement.

Operational Document has the meaning given in clause 6.5(a).

Operational Safety Rules means the policies, rules and procedures for the safe working and operational requirements of the Rail Operator and other users of the Network designated or amended by RailCorp from time to time in accordance with this Agreement, and includes as at the Commencement Date the documents listed in Annexure F, as amended by RailCorp from time to time.

Operations Protocol means the operations protocol designated by RailCorp from time to time, which outlines the basis on which Timetables will be developed and put into effect through Network Control and includes as at the Commencement Date the protocols for formulation and compliance with:

- (a) the Standard Working Timetable;
- (b) the daily working timetable; and
- (c) the daily control functions and the Daily Train Plan,

set out in Annexure G, as amended from time to time in accordance with this Agreement.

Original Security has the meaning given to that term in clause 20.7.

Other Rail Operator means a person who is a party to an agreement with RailCorp for access to the Network for Rail Operations other than the Rail Operator.

Passenger Priority means priority and certainty of access for railway passenger services as provided for in section 5(2)(a) and 99D(5)(a) of the Transport Administration Act and includes priority in relation to:

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

Payment means:

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

PEO Act means the *Protection of the Environment Operations Act 1997 (NSW)*.

Rail Operations means the operation or moving, by any means, of any Rolling Stock on the Network under this Agreement.

Rail Operator Environmental Management Plan means the Rail Operator's environmental management plan identified by that description, and provided to RailCorp on or prior to the Commencement Date, as amended from time to time in accordance with this Agreement.

Rail Operator Management Plan has the meaning given in clause 7.2(a).

Rail Operator's Credit Rating means the Credit Rating held by, or assigned to, the Rail Operator.

Rail Operator's Incident Management Plan means the Rail Operator's incident management plan identified by that description, and provided to RailCorp on or prior to the Commencement Date, as amended from time to time in accordance with this Agreement.

Rail Safety National Law (NSW) means the Rail Safety National Law as applied (with modifications) as a law of New South Wales by the *Rail Safety (Adoption of National Law) Act 2012 (NSW)*.

Rail Safety National Regulations means the *Rail Safety National Law National Regulations 2012 (NSW)* and the *Rail Safety (Adoption of National Law) Regulation 2012 (NSW)*.

Rail Safety Work has the meaning in the Rail Safety National Law (NSW).

Rail Safety Worker has the meaning in the Rail Safety National Law (NSW).

Rating Agency means Standard & Poor's or Moody's Investors Service Pty Ltd or FITCH IBCA (Aust) Pty Ltd or some other rating agency of similar standing and reputation agreed by the parties.

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

Referral Date means the date on which a party receives a notice from the other party under clause 16.2(d).

Regulator has the meaning given in the Rail Safety National Law (NSW).

Reinstatement means the reinstatement of the Train Operating Specifications in its form before any amendment to Train Operating Specifications under this clause 9 (except for any other amendments made in accordance with this Agreement).

Reuse Period has the meaning given to that term in clause 5.4(a)(i).

Review Date means any date identified in Annexure C as the date for a review of the Access Charges payable by the Rail Operator under this Agreement.

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

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

Security Deposit means a minimum of \$15,000 or an amount equal to 3 months Access Charges payable by the Rail Operator (based on the Access Charges paid by the Rail Operator in the 3 months immediately prior to the date on which the Security Deposit is provided or where 3 months have not yet expired, a fair and reasonable estimation by RailCorp of 3 months Access Charges), whichever is the greater.

Special Event means the Sydney Royal Easter Show, a major sporting event, a major cultural event or any other similar event which requires:

- (a) a special timetable for the operation of rail passenger services for the use and benefit of the general public; and
- (b) consequential adjustments to the Rail Operator's Rail Operations.

Standard Working Timetable means the standard working timetable established in accordance with the Operations Protocol as amended from time to time in accordance with the Operations Protocol.

Subsidiary Corporation has the meaning in section 55B of the Transport Administration Act.

Sydney Trains means Sydney Trains ABN 38 284 779 682.

Tax means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on RailCorp by, or payable by RailCorp to, any Government Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.

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

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

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

Termination Date means:

- (a) [INSERT DATE]; or
- (b) any earlier date on which this Agreement is terminated in accordance with clause 5.5, 19.2 or otherwise.

Timetabled Train Path means a Train Path for a one way Train Movement which has a departure time and arrival time for a specified day of the week set out in the Standard Working Timetable as updated from time to time in accordance with this Agreement and the Operations Protocol and which is available to the Rail Operator (subject to the Rail Operator confirming its requirement for the use of that Train Path in accordance with the Operations Protocol). For the avoidance of doubt, Train Paths that have the same departure time and arrival time on different days of the week are separate Train Paths for the purposes of this Agreement.

TOC Waiver means a written waiver of Rolling Stock operational standards (as described in the Train Operating Conditions Manual) issued by RailCorp or by ASA, accompanied by a unique registration number and containing technical instructions authorising operations personnel to perform a movement of Rolling Stock on the Network under conditions which vary from the existing Train Operating Conditions Manual.

Track means the rails, ballast, sleepers and all items used to fix the rails to the sleepers and to the ground underneath.

Track Possession means the temporary closure of a part of the Network for the purposes of carrying out repair, maintenance or upgrading work on or adjacent to the Network.

Track Possessions Plan means the plan referred to in clause 10.2(b) as amended from time to time in accordance with this Agreement.

Train means a single unit of Rolling Stock which is a locomotive or other self propelled unit or two or more units of Rolling Stock coupled together to operate on the Track as a single unit at least one of which is a locomotive or other self-propelled unit.

Train Consist means, in respect of each of the Rail Operator's Train Movements, an advice prepared by the Rail Operator including the details specified in the Operations Protocol.

Train Control means the control and regulation of all Rail Operations (including Train Movements, movements of Rolling Stock and track maintenance vehicles).

Train Control Direction means an instruction or direction relating to Train Control.

Train Control Entity means the person in whom Network Control functions are vested by Law in respect of a part of the Network and any other person (including any subcontractor or agent) engaged by such a person to exercise the function of Network Control in respect of that part of the Network on its behalf.

Train Movement means a particular trip by a Train on a Train Path.

Train Operating Conditions Manual means a manual designated by RailCorp from time to time, as amended from time to time in accordance with this Agreement which contains the Train operating conditions for the movement of Rolling Stock on the Network and includes any TOC Waiver issued from time to time.

Train Operating Specifications mean the operating requirements and conditions applicable to each of the Rail Operator's Trains (and each unit of Rolling Stock comprised in that Train) that must be observed in order to entitle the Rail Operator to make a Train Movement on the Network using that Train and utilising a Train Path, as set out in the:

- (a) Operations Protocol;
- (b) Train Operating Conditions Manual; and
- (c) Standard Working Timetable.

Train Path means the series of Track segments over a particular time interval through which a Train may travel and may include stopping points and intervals and other set down or changeover points. For the avoidance of doubt, a Train Path which has a departure time for a specified day of the week is separate to a Train Path which has the same departure time on another day of the week.

Transport for NSW (or TfNSW) means Transport for NSW ABN 18 804 239 602.

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

Wayside Monitoring Device means a piece of equipment permanently or temporarily positioned beside or within Track to detect, measure, record and, if required, report on Rolling Stock performance.

Weighbridge means an automatic rail weighbridge which is owned or controlled or accessed by RailCorp and which is capable of measuring the weight of Rolling Stock.

Yard means any yard owned or controlled by RailCorp and excludes any yard forming part of the Metropolitan Freight Network or the Southern Sydney Freight Line controlled by Australian Rail Track Corporation Limited.

Yard Management Services means the yard management services in relation to a Yard agreed in writing with the Rail Operator from time to time.

Yard Management Services Charges means the charges for Yard Management Services agreed in writing by the parties.

1.2 Interpretation

Unless expressed to the contrary:

- (a) the singular includes the plural and vice versa; and
- (b) a gender includes the other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:
 - (i) a clause or paragraph is a reference to a clause or paragraph in this Agreement and a reference to a schedule or annexure is a reference to a schedule or annexure to this Agreement;
 - (ii) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (iii) a person includes its legal personal representatives, successors and assigns;
 - (iv) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) an obligation includes a warranty or representation and reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vii) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (viii) the words include, includes or including must be read as if they are followed by the words without limitation;
 - (ix) time is to local time in New South Wales;
 - (x) \$ or dollars is a reference to the lawful currency of Australia;
 - (xi) this Agreement or any other document includes this Agreement or the other document as varied or replaced and notwithstanding any change in the identity of the parties;

- (xii) 'amendment' includes 'replacement', a reference to 'amend' includes 'replace' and a reference to 'as amended' includes 'as replaced';
- (xiii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
- (xiv) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xv) where time is to be reckoned by reference to a day or event, that day or the day of that event will be excluded; and
- (xvi) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (e) an obligation on a party to mitigate the impact of any action, event or occurrence on the other party does not impose on the party required to mitigate an obligation to take any action which may have a material adverse effect on any other person (including any other user of the Network);
- (f) capitalised expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning in this Agreement;
- (g) any reference in this Agreement to a schedule or an annexure or to any information contained in a schedule or Agreement means that schedule or annexure or the information in that schedule or annexure as updated or amended in accordance with this Agreement; and
- (h) if there is any inconsistency between the provisions of this Agreement including any annexure or schedule a descending order of precedence must be accorded to:
 - (i) Annexure F and any documents referenced in that Annexure;
 - (ii) clauses 1 to 24 of this Agreement;
 - (iii) the annexures (other than Annexure F) and any schedules to this Agreement; and
 - (iv) any other documents incorporated by express reference;
 so that the provisions of the higher ranked document to the extent of any inconsistency prevail.

1.3 Acknowledgments

- (a) RailCorp has provided and the Rail Operator has received copies of each of the following documents (effective as at the date of this Agreement): Train Operating Conditions Manual, Minimum Operating Standards for Rolling Stock Manual, the standards listed in Annexure L - Communications Equipment Standards, the documents listed in Annexure F - Operational Safety Rules, Network Possessions Manual, Network Incident Management Framework and the Environmental Management System Manual.
- (b) The Rail Operator has provided and RailCorp has received copies of each of the following documents (effective as at the date of this Agreement): Rail Operator's Incident Management Plan and Rail Operator's Environmental Management Plan.
- (c) The Rail Operator acknowledges that some lines which are part of the Network at the Commencement Date or a Yard or part thereof may in future come under the control of the ARTC. In that event, RailCorp may, by notice in writing to the Rail Operator, remove from this Agreement:
 - (i) Access Rights relating to such lines and any related rights; or

- (ii) any rights relating to such a Yard or part thereof,
as the case requires.

1.4 Restructure

- (a) The parties acknowledge and agree that the NSW Government has indicated that it will restructure RailCorp. The restructure of RailCorp may result in RailCorp's assets, rights and liabilities being transferred to other entities.
- (b) The Rail Operator agrees:
 - (i) that this Agreement and any assets, rights or liabilities RailCorp holds in connection with this Agreement may be novated, assigned or otherwise transferred from RailCorp to any other entity;
 - (ii) to undertake all actions reasonably requested by RailCorp to effect such a novation, assignment or other transfer; and
 - (iii) that it is not entitled to make, and RailCorp and any novatee, assignee or transferee will not be liable upon, any claim arising from or in connection with any novation, assignment or transfer contemplated by this clause.

1.5 Appointment of Agent

- (a) The Rail Operator acknowledges and agrees that notwithstanding any provision of this Agreement, RailCorp may appoint an Agent to manage the Network or any part thereof on its behalf or to administer this Agreement on its behalf. RailCorp is to give the Rail Operator prompt written notice of the appointment of each Agent. The Rail Operator agrees that:
 - (i) each Agent is empowered to act on behalf of RailCorp as its agent with respect to RailCorp's rights and obligations under or in connection with this Agreement within the scope of its appointment (as notified to the Rail Operator by RailCorp) but not otherwise; and
 - (ii) no Agent is liable to the Rail Operator for any of its acts or omissions and that the Rail Operator is not entitled to make any Claim against an Agent except where the Agent is acting outside the scope of its authority.
- (b) In particular, the Rail Operator acknowledges and agrees that RailCorp may engage an Agent and delegate to an Agent to carry out all or any part of its Train Control functions or any other of its rights and obligations under this Agreement, in which case the Rail Operator agrees to comply with any exercise of such delegated functions or rights and obligations by the Agent, provided always that RailCorp is liable to the Rail Operator for the acts and omissions of an Agent acting within the scope of its appointment as notified by RailCorp under this clause 1.5 as if they were the acts or omissions of RailCorp.
- (c) The Rail Operator agrees that notwithstanding any other provision of this Agreement, copies of all documentation provided by the Rail Operator to RailCorp under this Agreement can be provided by the RailCorp to an Agent.
- (d) RailCorp must give the Rail Operator prompt written notice of revocation of the appointment of an Agent or of any change to the scope of an Agent's appointment.

1.6 Railway operations

- (a) It is intended that on and from 1 July 2013, RailCorp will not carry out any 'railway operations' (as defined in the Rail Safety National Law) and that any such operations will be carried out by RailCorp's Agents and/or Contractors.

- (b) It is intended that on and from 1 July 2013, Sydney Trains will (subject to arrangements between RailCorp and Sydney Trains) be the accredited 'rail infrastructure manager' (as defined in the Rail Safety National Law) of the Network and the Yards.

1.7 Network Control

Sydney Trains as at 1 July 2013 has been designated by the Minister for Transport as the body responsible for Network Control and may also be appointed as an Agent.

2. Term and renewal

2.1 Term

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

2.2 Renewal

Any new, extended or substituted agreement must be by way of written agreement by the parties. This Agreement does not grant or give any right or entitlement to the Rail Operator to a new, extended or substituted agreement.

3. Grant of access rights

3.1 Conditions of Access

- (a) RailCorp grants to the Rail Operator access only to that part of the Network necessary for the purposes of conducting specified Rail Operations:
 - (i) on the Core Train Paths; and
 - (ii) on the Ad Hoc Train Paths allocated by RailCorp to the Rail Operator, which, in each case, comply with the Train Operating Specifications.
- (b) The Access Rights do not include access to, and use of, the Network for:
 - (i) loading and unloading of Trains;
 - (ii) Train queuing and staging;
 - (iii) Train marshalling; or
 - (iv) services other than as expressly agreed by RailCorp and then only on such conditions as it determines.
- (c) The Access Rights:
 - (i) despite anything else in this Agreement, are subject to the requirements of Passenger Priority;
 - (ii) are non-exclusive contractual rights and do not give the Rail Operator any right, title or interest of any proprietary nature in the Network;
 - (iii) do not include any Yard Management Services;
 - (iv) are subject to any safety interface protocols and any safety interface obligations set out in any safety interface plan included within or forming part of Interface Agreements with Sydney Trains; and
 - (v) are otherwise granted on the terms and conditions set out in this Agreement.
- (d) The Access Rights do not include any other right or entitlement to access the Network or premises owned or controlled by RailCorp.

- (e) The parties must not engage in conduct for the purpose of hindering Access to the Network by another person.
- (f) The Rail Operator will only be entitled to exercise its Access Rights where in the opinion of RailCorp the Access Rights are not intended for the purpose of trading in Access Rights.

3.2 Appointment of Contractors

- (a) The Rail Operator is entitled to engage a Contractor to perform Rail Operations under this Agreement, provided that:
 - (i) where the engagement relates to Rail Operations the Rail Operator has first delivered to RailCorp, and if relevant to any Train Control Entity, a notice specifying:
 - (A) the name and address of the Contractor;
 - (B) services and those aspects of the Rail Operator's obligations to be performed by the Contractor;
 - (C) the Train Paths involved in those services; and
 - (D) a description of the terms of the Contractor's engagement;
 - (ii) the Contractor is Accredited to perform the services described in clause 3.2(a)(i) and that each Rail Safety Worker who is to carry out Rail Safety Work in relation to railway operations in respect of which the Contractor is required to be Accredited has the competence to carry out that work; and
 - (iii) the Rail Operator has notified the Contractor of all relevant provisions in this Agreement to enable the Contractor to perform the services in compliance with this Agreement.
- (b) The Rail Operator is entitled to engage a Contractor to perform functions or activities (other than Rail Operations) in connection with this Agreement, provided that:
 - (i) the Rail Operator has first delivered to RailCorp a notice specifying:
 - (A) the name and address of the Contractor;
 - (B) the functions, activities and obligations to be performed by the Contractor; and
 - (C) a description of the terms of the Contractor's engagement;
 - (ii) the Contractor is Accredited to perform the functions or activities described in clause 3.2(b)(i), if applicable; and
 - (iii) the Rail Operator has notified the Contractor of all relevant provisions in this Agreement to enable the Contractor to perform the services in compliance with this Agreement.
- (c) During the period in which a Contractor is engaged, the Rail Operator shall do all things necessary to ensure that:
 - (i) the Contractor does nothing which puts the Rail Operator in breach of this Agreement;
 - (ii) the Contractor complies with the terms of this Agreement; and
 - (iii) the terms and conditions of the Contractor's engagement are consistent with this Agreement.

- (d) The Rail Operator must, if requested by RailCorp, provide evidence of the Accreditation of any Contractor engaged under clause 3.2(a) or 3.2(b).
- (e) The Rail Operator shall notify RailCorp if the Contractor's engagement is terminated or becomes terminable for any reason or expires.
- (f) The Rail Operator is liable to RailCorp for the acts or omissions of its Contractors as if they were acts or omissions of the Rail Operator.
- (g) The engagement of a Contractor and the performance by it of any obligations under this Agreement does not affect this Agreement or the obligations and liabilities of the Rail Operator under this Agreement, nor create Access Rights in favour of the Contractor.
- (h) Where a Rail Operator has engaged a Contractor in accordance with clause 3.2(a) to perform certain services and obligations as specified in clause 3.2(a)(i)(B) RailCorp and any Train Control Entity may perform any corresponding obligation under this Agreement by treating the Contractor as the Rail Operator for that purpose.
- (i) Nothing in this clause 3.2 shall relieve the Rail Operator of any liability for the performance of any obligation under this Agreement.
- (j) RailCorp is entitled to engage a Contractor in relation to this Agreement and, notwithstanding any other provision of this Agreement, copies of all documentation provided by the Rail Operator to RailCorp under this Agreement can be provided to such a Contractor in connection with the performance of the Contractor's obligations.
- (k) Each party warrants that its Contractors:
 - (i) will be appropriately qualified and Accredited and in the case of RailCorp also its Agents, and

4. will comply with the terms of this Agreement to the extent they relate to the Contractor's appointment.Charges

4.1 Access Charges

- (a) The Rail Operator must:
 - (i) pay to RailCorp the Access Charges set out in Annexure C;
 - (ii) make payments required under this Agreement at the times and in the manner provided for in Annexure C unless otherwise provided.
- (b) If the Rail Operator disputes:
 - (i) the amount of Access Charges payable under clause 4.1(a)(i); or
 - (ii) the manner in which the Access Charges are payable under clause 4.1(a)(ii);

the Rail Operator must provide a Notice of Dispute to RailCorp (including details of the dispute) at which time the Dispute will be subject to clause 16.
- (c) If the Rail Operator disputes the Access Charges in accordance with clause 4.1(b) the Rail Operator must, in the absence of manifest error, pay to RailCorp both the disputed and undisputed portion of the relevant Access Charges on the due date for payment.
- (d) Upon resolution of a Dispute referred to in clause 4.1(b):

- (i) if the Rail Operator has not paid any part of the disputed and/or undisputed portion in accordance with clause 4.1(c), the Rail Operator must pay to RailCorp the unpaid amount, together with interest on that amount, or
- (ii) RailCorp must credit the Rail Operator (such credit to be in the form of a deduction from the next invoice for Access Charges) any amount found to have been overpaid by the Rail Operator, together with interest on that amount.
- (e) Interest payable under clauses 4.1(d)(i) and 4.1(d)(ii) shall accrue in accordance with, and shall be payable at the rate provided for, in clause 4.4.
- (f) If the Access Charges are not paid at the times and in the manner provided for in Annexure C but are not disputed by the Rail Operator under clause 4.1(b), the Rail Operator (without limiting any other right or remedy of RailCorp) must pay to RailCorp the unpaid amount, together with interest on that amount. Interest shall accrue in accordance with and shall be payable at the rate provided for, in clause 4.4.

4.2 Charges for Variations to Access Rights

- (a) If the Rail Operator seeks to vary an Access Right, including a change to a Core Train Path pursuant to clause 5.7, and there is an effect on the nature or extent of the Rail Operator's usage or an Other Rail Operator's usage of the Network there may, effective from the date of the variation, be an adjustment to the Access Charges.
- (b) Any adjustment to Access Charges under clause 4.2(a) resulting from a variation to the Access Rights shall be as negotiated and agreed between the Rail Operator and RailCorp. If no agreement is reached between the parties, any adjustment to Access Charges will be determined by RailCorp. The Rail Operator accepts that the applicable Access Charges for any variation to the Access Rights will not necessarily be based on existing Access Charges payable by the Rail Operator, unless specifically provided for in Annexure C.
- (c) If the Access Charges are adjusted under clause 4.2(b), the Rail Operator must pay the adjusted Access Charges at the times and in the manner provided for in Annexure C unless otherwise agreed.
- (d) If the Rail Operator disputes an adjustment to the Access Charges under clause 4.2(b), and that Dispute relates to an adjustment that is not based on an applicable rate provided for in Annexure C, the Rail Operator must provide a Notice of Dispute to RailCorp. If the parties fail to resolve the Dispute within 20 Business Days after the Notice Date or such longer date as the parties may agree, either party may refer the Dispute to IPART for arbitration in accordance with the Access Undertaking. For the avoidance of doubt, Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) will govern the arbitration.

4.3 Review of Access Charges

- (a) The Access Charges shall be reviewed in accordance with the procedures set out in Annexure C.
- (b) Any variation in the Access Charges resulting from a review in accordance with clause 4.3(a) will be effective on and from the relevant Review Date.
- (c) If on the Review Date the review of Access Charges has not been finalised, the Rail Operator must continue to pay the Access Charges payable by it immediately before the relevant Review Date.
- (d) If the review of Access Charges is finalised after the Review Date, and:
 - (i) the Access Charges are increased as a result of the review, then the Rail Operator must, in the following invoice for Access Charges, pay to RailCorp any outstanding

portions of the Access Charges due retrospectively from the Review Date, together with interest on that amount; or

- (ii) the Access Charges are decreased as a result of the review, then RailCorp must credit the Rail Operator (such credit to be in the form of a deduction from the next invoice for Access Charges) any amount found to have been overpaid by the Rail Operator, together with interest on that amount.
- (e) Interest payable under clauses 4.3(d)(i) and 4.3(d)(ii) shall accrue in accordance with, and shall be payable at the rate, provided for in clause 4.4.
- (f) The Rail Operator is only entitled to dispute a review of the Access Charges pursuant to clause 4.3(a) under clause 16, where the dispute relates to the interpretation or method of application of any formula included in the review procedures in Annexure C.

4.4 Calculation of Interest

Interest payable under clauses 4.1(d), 4.1(f) and 4.3(d) in respect of any amount shall be calculated from the due date of payment until the date on which the relevant amount is paid and shall:

- (a) accrue on a daily basis at the Default Rate;
- (b) compound at monthly rests on the last Business Day of each calendar month; and
- (c) unless otherwise stated, be payable on demand.

4.5 GST

- (a) The parties agree that:
 - (i) all Payments have been set or determined without regard to the impact of GST;
 - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply in respect of which GST is payable, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
 - (iii) the payee must provide to the payer a Tax Invoice at the same time at which any GST Amount is payable.

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

- (a) The Rail Operator must:
 - (i) make payment of the Incidental Charges at the times and in the manner provided for in Annexure C unless otherwise provided; and
 - (ii) pay to RailCorp the Incidental Charges set out in Annexure C.
- (b) For all other intents and purposes, Incidental Charges are treated as if they were Access Charges and all provisions relating to Access Charges apply to Incidental Charges (including clause 4 (other than clause 4.2) and clause 16).

4.7 No set off

The Rail Operator is not entitled to set off any monies:

- (a) payable by it under this Agreement against any monies claimed by it or owing to it whether under this Agreement, or any other agreement with RailCorp or otherwise; and

- (b) claimed by it or owing to it under this Agreement, or any other agreement with RailCorp or otherwise against any monies payable by it under this Agreement.

5. Train paths

5.1 Delivery of Rail Operator's Core Train Paths

Subject to:

- (a) any restriction, qualification or power imposed or exercised by RailCorp in accordance with this Agreement;
- (b) the Operations Protocol;
- (c) any Daily Train Plan prepared in accordance with the Operations Protocol;
- (d) any emergency or genuine safety concern;
- (e) presentation of a Train in accordance with the Train Operating Specifications and the Operations Protocol; and
- (f) any Train Control Direction issued (or, where applicable, not issued) by a Train Control Entity,

RailCorp must ensure that the Core Train Paths are available for use by the Rail Operator in accordance with, but subject to, clause 3.1.

5.2 Changes to Rail Operator's Core Train Paths

- (a) In addition to and without limiting any other rights or entitlement of RailCorp, RailCorp may amend any Core Train Path at any time during the Term:
 - (i) to improve the use of the Network;
 - (ii) to improve the reliability of the Network;
 - (iii) in connection with Passenger Priority; or
 - (iv) to reflect amendments to the Standard Working Timetable.
- (b) RailCorp must consult with the Rail Operator in accordance with and to the extent required by clause 24.11 before implementing or giving effect to any amendment referred to in clause 5.2(a)(i), (ii) and (iii).
- (c) RailCorp must use its reasonable endeavours (having regard to, without limitation, the rights and requirements of other users of the Network) to mitigate the impact of the amendment on the Rail Operator (including, by using reasonable endeavours to provide the Rail Operator with an alternate Train Path as close as reasonably possible to the Train Path affected by the amendment).

5.3 Daily Train Plan

- (a) In respect of any day during the Term, the Access Rights for that day are set out in the Daily Train Plan which is prepared in accordance with the Operations Protocol.
- (b) RailCorp must ensure that the Rail Operator receives details of, or has access to, that part of the Daily Train Plan (and any updates or revisions to it) which is relevant to the Rail Operator's Rail Operations at the times and in the manner specified in the Operations Protocol.
- (c) RailCorp must, where reasonably practicable, ensure that the Rail Operator is notified of any changes to the Daily Train Plan that may affect the Rail Operator's Rail Operations and

where RailCorp or its appointee is the Train Control Entity exercising Train Control, use its reasonable endeavours (having regard to, without limitation, the rights and requirements of other users of the Network) to mitigate the impact of the change on the Rail Operator.

5.4 Non Use of Rail Operator's Timetabled Paths

- (a) If the Rail Operator uses a particular Timetabled Train Path less than the Minimum Acceptable Use:
 - (i) RailCorp may give the Rail Operator written notice of its intention to remove that Timetabled Train Path from the Standard Working Timetable and nominate a period (the **Reuse Period**) by the end of which the Rail Operator is required to have restored its use of the relevant Timetabled Train Path to a level equal to or greater than the Minimum Acceptable Use and to have satisfied RailCorp that it will continue to use that Rail Operator's Timetabled Train Path at a level equal to or greater than the Minimum Acceptable Use. The Reuse Period nominated by RailCorp in its notice must not end on a date which is earlier than 10 Business Days after the date of receipt of the Rail Operator of that notice; and
 - (ii) if, at the end of the Reuse Period, the Rail Operator has failed to restore its use of the relevant Timetabled Train Path to a level equal to or greater than the Minimum Acceptable Use and satisfied RailCorp that it will continue to use that Timetabled Train Path to a level equal to or greater than the Minimum Acceptable Use, RailCorp may, by written notice to the Rail Operator, permanently remove that Timetabled Train Path and that removal shall be effective on and from the date of service of RailCorp's notice.
- (b) A failure by the Rail Operator to use a Timetabled Train Path because of a notice of temporary speed and/or weight restrictions or any other temporary restrictions issued under clause 10.4, or because of the occurrence of a Force Majeure Event notified pursuant to clause 17.2 or, except where the Rail Operator is in default of its obligations under this Agreement, because of a temporary or permanent suspension by RailCorp of the Rail Operator's Access Rights or the Rail Operator's compliance with a Train Control Direction given by a Train Control Entity will not constitute non-use of that Train Path for the purposes of clause 5.4(a).

5.5 Removal of all of the Rail Operator's Core Train Paths

- (a) Where:
 - (i) all Train Paths are removed from the Core Train Paths pursuant to clause 5.4 or all Train Paths have been cancelled pursuant to clause 5.8; and
 - (ii) any rights to Ad Hoc Train Paths have not been exercised for 3 months,RailCorp may terminate this Agreement.
- (b) Where the Rail Operator has only rights to Ad Hoc Train Paths under this Agreement and the Rail Operator has not exercised those rights for 3 months, RailCorp may terminate this Agreement.

5.6 Special Events

- (a) At any time during the Term, a Train Control Entity exercising Train Control may:
 - (i) delay, cancel, re-route or reschedule a Train Movement; or
 - (ii) impose any other reasonable operating restrictions on the Network,to the extent necessary for the purposes of accommodating a Special Event.

- (b) RailCorp must ensure that the Rail Operator receives notice of all Special Events in accordance with the procedures set out in the Operations Protocol.
- (c) Where:
 - (i) RailCorp or its appointee is the Train Control Entity exercising Train Control, RailCorp must use its reasonable endeavours (having regard to, without limitation, the rights and requirements of other users of the Network) to mitigate the impact of any Special Event on the Rail Operator; and
 - (ii) any person other than RailCorp or its appointee is exercising Train Control, RailCorp must procure the Train Control Entity to acknowledge that it will use its reasonable endeavours (having regard to, without limitation, the rights and requirements of other users of the Network) to mitigate the impact of any Special Event on the Rail Operator,

(including, by using reasonable endeavours to provide the Rail Operator with an alternate Train Path in the Daily Train Plan as close as reasonably possible to the Train Path affected by the Special Event).

5.7 Rail Operator Request for New or Varied Core Train Path or Ad Hoc Train Path

- (a) The Rail Operator may request a new or varied Core Train Path or an Ad Hoc Train Path at any time by submitting an 'Application for New or Varied Train Path' in accordance with the Operations Protocol.
- (b) RailCorp must deal with that request in accordance with the procedures set out in the Operations Protocol.
- (c) RailCorp must use its reasonable endeavours to provide to the Rail Operator any new or varied Core Train Path or Ad Hoc Train Path requested by the Rail Operator subject to:
 - (i) availability of capacity on the Network;
 - (ii) the reliability of the Network;
 - (iii) the bona fide requirements of existing and/or prospective users of the Network for the requested Train Path;
 - (iv) the agreement or determination on revised Access Charges in accordance with clause 4.2;
 - (v) Passenger Priority; and
 - (vi) compliance with the Train Operating Specifications.
- (d) A new or varied Core Train Path requested by the Rail Operator in accordance with clause 5.7(a) and allocated by RailCorp to the Rail Operator in accordance with this clause 5.7 shall be incorporated into the Standard Working Timetable.

5.8 Relinquishment of Core Train Paths

- (a) The Rail Operator may at any time by notice to RailCorp permanently cancel a Core Train Path.
- (b) If less than 10 Business Days notice of cancellation has been given, the Rail Operator remains liable for the flagfall component of the Access Charge for 10 Business Days from RailCorp receiving notice of the cancellation and no rebate is payable in respect of Train Movements timetabled for use on the relevant Train Path.

6. Train control and train operations

6.1 Train Control

- (a) Train Control on the Network is or may in the future be exercised by one or more Train Control Entities.
- (b) In exercising Train Control on the Network, a Train Control Entity may (pursuant to a Train Control Direction or by exercising any right provided for in the Operations Protocol to refrain from giving a Train Control Direction):
 - (i) delay, alter, add, cancel, re-route or re-schedule any Train Movement in accordance with the Operations Protocol;
 - (ii) prevent any of the Rail Operator's Trains from entering onto the Network; or
 - (iii) impose any other operating restriction or exercise any other right provided for in the Operations Protocol.

6.2 Rail Operator to Comply with Train Control Directions

The Rail Operator must (and must ensure that its relevant Employees and Agents):

- (a) comply with all Train Control Directions given by the Train Control Entity;
- (b) ensure that its Trains do not enter onto the Network other than in accordance with a Train Control Direction issued by the relevant Train Control Entity; and
- (c) notify the Train Control Entity:
 - (i) as soon as the Rail Operator becomes aware of any changes in, or delays to, any of the Rail Operator's Train Movements or anything else which may affect Train Control; and
 - (ii) immediately if it does not comply with a Train Control Direction.

6.3 RailCorp's Obligations and Rights

- (a) RailCorp, or any person appointed by RailCorp as a Train Control Entity, must (having regard to, without limitation, the rights and requirements of other users of the Network) use its reasonable endeavours to mitigate the impact of any Train Control Direction (given in accordance with clause 6.1(b)) on the Rail Operator including, by using reasonable endeavours to provide the Rail Operator with an alternate Train Path in the Daily Train Plan as close as possible to the Train Path affected by the change. RailCorp's obligations under this clause 6.3(a) shall not apply to the extent that the Rail Operator's breach of this Agreement has caused or contributed to the requirement to give the relevant Train Control Direction.
- (b) Despite clause 21, RailCorp may provide a copy of the Core Train Paths and any other document provided by the Rail Operator to RailCorp under this Agreement to any Train Control Entity.

6.4 Provision of Train Consist

- (a) The Rail Operator must deliver to the Train Control Entity a Train Consist in accordance with the Operations Protocol in respect of each of the Rail Operator's Train Movements on that part of the Network for which the Train Control Entity is responsible.
- (b) The Rail Operator must provide to any relevant Train Control Entity and RailCorp at least 30 minutes prior to each Train Movement, the Train Consist for each Train Movement together with any amendments to the Train Consist, so that the Train Consist accurately reflects the Train Movement.

- (c) The Rail Operator acknowledges and agrees that if it does not comply with its obligations under clause 6.4(a), the Train Control Entity may stop or delay a Train (or cancel the relevant Train Movement) in accordance with the Operations Protocol.

6.5 Operational Documents

- (a) At all times during the Term, RailCorp and the Rail Operator must implement and comply with the:
 - (i) Train Operating Conditions Manual;
 - (ii) Operational Safety Rules;
 - (iii) Operations Protocol;
 - (iv) Communications Equipment Standards; and
 - (v) Minimum Operating Standards for Rolling Stock Manual,
- (b) (each, an **Operational Document**). RailCorp may amend an Operational Document at any time during the Term provided it consults with the Rail Operator regarding the proposed amendment in accordance with and to the extent required by clause 24.11.
- (c) For the avoidance of doubt, a TOC Waiver becomes part of, and to the relevant extent may temporarily or permanently amend the Train Operating Conditions Manual. Where the Train Operating Conditions Manual is amended by a TOC Waiver, RailCorp is only required to consult with the Rail Operator in accordance with and to the extent required by clause 24.11 where that TOC Waiver affects the Rail Operator.
- (d) The Rail Operator may request RailCorp to amend an Operational Document by providing written details of any requested amendment and reasons to RailCorp.
- (e) RailCorp:
 - (i) must consider any reasonable request by a Rail Operator for an amendment made under clause 6.5(d); and
 - (ii) may, in its absolute discretion, make such amendments requested by the Rail Operator which it considers appropriate, together with such other amendment or with such changes (if any) which it considers appropriate, in accordance with clause 6.5(b).
- (f) Where a party becomes aware or reasonably believes that a Dispute has arisen under this clause, it may serve a Notice of Dispute on the other party.
- (g) Any Dispute in relation to an amendment to an Operational Document made under clause 6.5 will be subject to clause 16.
- (h) Clause 16 does not apply to any exercise of discretion or any amendment proposed pursuant to clause 6.5(e).
- (i) If any amendment made under this clause 6.5 is the subject of a Dispute under clause 16, subject to clause 16, the amendment shall continue to apply from the time the amendment is made.

6.6 Rail Operator's Rolling Stock

- (a) The Rail Operator is responsible for all Rolling Stock (whether or not it is owned by the Rail Operator) used or operated by or on behalf of the Rail Operator on the Network and must ensure that it is maintained and operated to the higher of:
 - (i) the minimum standard required for Accreditation;

- (ii) the Minimum Operating Standards for Rolling Stock; and
- (iii) the Train Operating Conditions Manual,

except that nothing in the Minimum Operating Standards for Rolling Stock requires the Rail Operator to do anything contrary to its Accreditation.

- (b) Where RailCorp reasonably believes that it is necessary to do so in order to ensure the safe operation of the Network, RailCorp may direct the Rail Operator not to use, or to cease using, a particular item of Rolling Stock on the Network. The Rail Operator must (and must ensure that employees and Contractors) comply with any such direction.
- (c) Where a party becomes aware or reasonably believes that a Dispute has arisen in relation to a direction under this clause, it may serve a Notice of Dispute on the other party.
- (d) Any Dispute in relation to a direction given by RailCorp in accordance with clause 6.6(b) will be subject to clause 16.
- (e) Nothing in clause 6.6(c) or 6.6(d) affects the Rail Operator's obligation to immediately comply with a direction given by RailCorp in accordance with clause 6.6(b).

6.7 Wayside Monitoring Devices

- (a) RailCorp utilises a variety of Wayside Monitoring Devices on the Network to assess the health of both the Rolling Stock and infrastructure for operational safety. Such devices may or may not interact directly with Rail Operations however, where there is a direct interface with Rail Operations in the form of a signal aspect or notification issued via a signaller or by a person exercising Train Control, the Rail Operator must adhere to the instructions arising from that notification.
- (b) Where there is no direct interface between Wayside Monitoring Devices and Rail Operations, RailCorp may provide the Rail Operator with access to data applicable to Rolling Stock health for the Rail Operator's own purposes.
- (c) Without limiting clause 6.6(a) or (b), where RailCorp, in its opinion, determines that data from Wayside Monitoring Devices is indicative of a potential safety risk or is likely to be detrimental to the health and wellbeing of the Rolling Stock, or the Network, Employees or Agents or the public, it may advise the Rail Operator, who will be expected to take appropriate action to mitigate the risk.
- (d) Notwithstanding any other provision of this Agreement, RailCorp will not be liable to the Rail Operator or any other person in respect of any information or data provided or which could have been provided to the Rail Operator in connection with any wayside monitoring.

7. Network management

7.1 Network Management Documents

- (a) At all times during the Term, RailCorp must maintain and each of RailCorp and the Rail Operator must implement and comply with the:
 - (i) Network Incident Management Framework; and
 - (ii) Environmental Management System Manual,(each a **Network Management Document**).
- (b) RailCorp may amend a Network Management Document at any time during the Term provided it consults with the Rail Operator regarding the proposed amendment in accordance with, and to the extent required by, clause 24.11.

- (c) Where a party becomes aware or reasonably believes that a Dispute has arisen under this clause, it may serve a Notice of Dispute on the other party.
- (d) Any Dispute in relation to an amendment to a Network Management Document will be subject to clause 16. If any amendment made under this clause 7.1 is the subject of a Dispute under clause 16, subject to clause 16, the amendment shall continue to apply from the time the amendment is made.

7.2 Rail Operator's Management Plans

- (a) At all times during the Term, the Rail Operator must maintain, implement and comply with the following documents:
 - (i) the Rail Operator's Incident Management Plan; and
 - (ii) the Rail Operator's Environmental Management Plan,
 (each, a **Rail Operator Management Plan**).
- (b) Subject to clause 7.2(c), the Rail Operator may propose an amendment to a Rail Operator Management Plan at any time during the Term by providing a copy of the relevant draft amended Rail Operator Management Plan to RailCorp. Any proposed amendment must be consistent with the requirements of Annexure H in relation to the relevant Rail Operator Management Plan.
- (c) Within 3 months of the Rail Operator providing RailCorp with any draft amended Rail Operator Management Plan in accordance with clause 7.2(b), RailCorp may:
 - (i) by notice in writing accept the draft amended Rail Operator Management Plan in which case the amended Rail Operator Management Plan will be deemed for the purposes of this Agreement to have been finalised in accordance with the requirements of Annexure H and will become operative at the time the notice in writing is received by the Rail Operator; or
 - (ii) if RailCorp is of the opinion that any such draft amended Rail Operator Management Plan does not comply with the requirements set out in Annexure H in relation to that type of Rail Operator Management Plan, RailCorp may provide written notice to the Rail Operator which requires the Rail Operator either not to make any such amendment or to make any further amendment to any such draft amended Rail Operator Management Plan as may be specified by RailCorp so that the relevant draft amended Rail Operator Management Plan complies with the requirements of Annexure H.
- (d) Following a notice by RailCorp under clause 7.2(c)(ii) the Rail Operator must, if so required by RailCorp, not proceed with the proposed amendment; and otherwise may:
 - (i) make any further amendment required by RailCorp within any reasonable period specified by RailCorp in the notice and provide RailCorp with a copy of the draft amended Rail Operator Management Plan, or
 - (ii) if it otherwise determines, not proceed with the proposed amendment and notify RailCorp accordingly. The Rail Operator will be deemed not to be proceeding with the amendment if it has not made the amendment to the draft Rail Operator Management Plan within the period specified in the notice under clause 7.2(c)(ii).
- (e) If RailCorp does not serve any notice on the Rail Operator under clause 7.2(c) within 3 months of the Rail Operator providing RailCorp with a copy of any draft amended Rail Operator Management Plan in accordance with clause 7.2(b), the draft amended Rail Operator Management Plan will be deemed for the purposes of this Agreement to be

consistent with the requirements of Annexure H and will become operative at the expiration of that 3 month period.

- (f) Within 30 Business Days of the Rail Operator providing RailCorp with any further draft amended Rail Operator Management Plan in accordance with clause 7.2(d)(i), RailCorp may:
 - (i) by written notice accept the further draft amended Rail Operator Management Plan in which case the further amended Rail Operator Management Plan will be deemed for the purposes of this Agreement to have been finalised in accordance with the requirements of Annexure H and will become operative at the time the notice in writing is received by the Rail Operator; or
 - (ii) if RailCorp is of the opinion that any such further draft amended Rail Operator Management Plan does not comply with the requirements set out in Annexure H in relation to that type of Rail Operator Management Plan, RailCorp may provide written notice to the Rail Operator which requires the Rail Operator to make any such further amendment to the further draft amended Rail Operator Management Plan as may be specified by RailCorp so that the relevant further draft amended Rail Operator Management Plan complies with the requirements of Annexure H.
- (g) Following a notice by RailCorp under clause 7.2(f)(ii) the Rail Operator may:
 - (i) make any further amendment required by RailCorp within any reasonable period specified by RailCorp in the notice and provide RailCorp with a copy of the draft amended Rail Operator Management Plan; or
 - (ii) determine not to proceed with the proposed amendment and notify RailCorp accordingly. The Rail Operator will be deemed not to be proceeding with the amendment to the draft Rail Operator Management Plan if it has not made the amendment within the period specified in the notice under clause 7.2(f)(ii).
- (h) If RailCorp does not serve any notice on the Rail Operator under clause 7.2(f) within 30 Business Days of the Rail Operator providing RailCorp with a copy of any further draft amended Rail Operator Management Plan in accordance with clause 7.2(d)(i), the further draft amended Rail Operator Management Plan will be deemed for the purposes of this Agreement to have been finalised in accordance with the requirements of Annexure H and will become operative at the expiration of the later of the expiry of the 30 Business Day period and the period of 3 months referred to in 7.2(c).
- (i) If RailCorp serves any notice on the Rail Operator under clause 7.2(f) which requires the Rail Operator to make any further amendment to the further draft amended Rail Operator Management Plan, the provisions of clauses 7.2(f), (g), (h) will continue to apply to any further drafts of the relevant amended Rail Operator Management Plan until such time as:
 - (A) RailCorp by notice in writing accepts the further draft amended Rail Operator Management Plan in which case the further amended Rail Operator Management Plan will be deemed for the purposes of this Agreement to have been finalised in accordance with the requirements of Annexure H and will become operative at the time the notice in writing is received by the Rail Operator;
 - (B) RailCorp does not serve any notice on the Rail Operator within 30 Business Days of the Rail Operator providing RailCorp with a copy of any further draft amended Rail Operator Management Plan in which case the further draft amended Rail Operator Management Plan will be deemed for the

purposes of this Agreement to have been finalised in accordance with the requirements of Annexure H and will become operative at the expiration of that 30 Business Day period; or

- (C) the Rail Operator notifies RailCorp that it is not proceeding with any proposed amendment.
- (j) If RailCorp amends a Network Management Document, RailCorp may by notice in writing to the Rail Operator, require the Rail Operator to make any appropriate amendments to any relevant Rail Operator Management Plan within any reasonable period specified in that notice, which period may be as little as 2 Business Days if the amendment relates to any matter or issue which RailCorp in its opinion, believes is critical to any operational safety issue, to the extent necessary to ensure that the relevant Rail Operator Management Plan continues to comply with the requirements set out in Annexure H, and the Rail Operator must comply with any such notice.
- (k) If any Law which relates to the Environment commences operation or is amended which commencement or amendment in RailCorp's opinion requires any Rail Operator Management Plan to be amended so as to ensure consistency between the relevant Law and the relevant Rail Operator Management Plan or to provide RailCorp with any reasonable assistance in discharging any obligations under the relevant Law, RailCorp may by notice in writing to the Rail Operator require the Rail Operator to amend any relevant Rail Operator Management Plan within any reasonable period specified in that notice so as to ensure that consistency or to provide that assistance, and the Rail Operator must comply with any such notice.
- (l) If the Environment Protection Licence is amended or modified in a manner which requires any Rail Operator Management Plan to be amended so as to ensure consistency between the Environment Protection Licence and the relevant Rail Operator Management Plan or to provide the holder of the Environment Protection Licence with any reasonable assistance in discharging any obligations under the Environment Protection Licence, RailCorp may by notice in writing to the Rail Operator require the Rail Operator to amend any relevant Rail Operator Management Plan within any reasonable period specified in the notice so as to ensure that consistency or to provide that assistance, and the Rail Operator must comply with that notice. Where a party becomes aware or reasonably believes that a Dispute has arisen under this clause, it may serve a Notice of Dispute on the other party.
- (m) Any Dispute in relation to any amendment proposed under this clause 7.2 to a Rail Operator Management Plan will be subject to clause 16.
- (n) For the avoidance of doubt no amendment proposed under clause 7.2 which is the subject of a Dispute under clause 16 shall, subject to clause 16, have any effect.
- (o) No acceptance by RailCorp of any amendment to a Rail Operator Management Plan nor any deemed acceptance arising from not serving a notice under clause 7.2(e) or (h), will relieve the Rail Operator from its duties, obligations and responsibilities arising under this Agreement or otherwise.
- (p) The parties acknowledge and agree that all or any part of the Rail Operator Management Plans may need to be amended to ensure compliance with the requirements of the Rail Safety National Law (NSW) or the Rail Safety National Regulations.

7.3 Environmental Compliance and Incident Management

- (a) At all times during the Term, the Rail Operator must:

- (i) have in place and comply with an environmental management system in respect of any activities carried out by the Rail Operator on or near the Network that is consistent with AS/NZS ISO 14001:2004: Environmental Management Systems - Requirements with guidance for use or any document which replaces or amends that document; and
 - (ii) without limiting clause 24.1, comply with Laws which relate to the Environment, as if the Rail Operator is the holder of the Environmental Protection Licence to the extent that any such Laws relate to the Rail Operator's activities carried out pursuant to or contemplated by this Agreement, which obligation extends but is not limited to compliance with the terms and conditions of the Environment Protection Licence.
- (b) Without limiting clause 7.3(a), at all times during the Term the Rail Operator must comply with the PEO Act as if the Rail Operator is the holder of the Environmental Protection Licence to the extent that the PEO Act relates to the Rail Operator's activities including but not limited to:
- (i) the prevention of any material harm to the Environment within the meaning of those terms under the PEO Act;
 - (ii) the prevention and regulation of air pollution within the meaning of that term under the PEO Act;
 - (iii) the prevention and regulation of noise pollution within the meaning of that term under the PEO Act;
 - (iv) the prevention and regulation of water pollution within the meaning of that term under the PEO Act; and
 - (v) the prevention and regulation of any pollution incident within the meaning of that term under the PEO Act.
- (c) RailCorp may by notice in writing to the Rail Operator require the Rail Operator to assist RailCorp to comply with or demonstrate compliance with all Laws which relate to the Environment which notice must specify the period in which that assistance is to be provided, and the Rail Operator must comply with any such notice within the period specified.
- (d) If:
- (i) RailCorp becomes aware that as a result of any activities of the Rail Operator, an Environmental Or Incident Condition exists, has occurred or is reasonably likely to occur, and RailCorp reasonably considers that action or intervention is required to prevent that Environment Or Incident Condition or prevent, mitigate or remedy any impacts of that Environmental Or Incident Condition; or
 - (ii) RailCorp is given any notice or direction by any competent Government Authority which notice or direction requires action or intervention to prevent that Environment Or Incident Condition or prevent, mitigate or remedy any impact of any Environmental Or Incident Condition resulting from the activities of the Rail Operator,

RailCorp may by notice in writing to the Rail Operator require the Rail Operator to:

- (iii) prevent that Environment Or Incident Condition or prevent, mitigate or remedy any impact of that Environmental Or Incident Condition;
- (iv) comply with the direction of the Government Authority; or

- (v) make any amendment to any Rail Operator Management Plan which amendment addresses the relevant Environmental Or Incident Condition,

and any such notice must specify a reasonable period, which period may be as little as 2 Business Days if the amendment relates to any matter or issue which RailCorp in its opinion, believes is critical to any operational safety issue, in which case the Rail Operator must undertake the steps or actions, and the Rail Operator must comply with that notice within the specified period.

- (e) Where a party becomes aware or reasonably believes that a Dispute has arisen under this clause, it may serve a Notice of Dispute on the other party.
- (f) Any Dispute in relation to any amendment proposed under this clause 7.3 to a Rail Operator Management Plan will be subject to clause 16.
- (g) For the avoidance of doubt no amendment proposed under clause 7.3 which is the subject of a Dispute under clause 16 shall, subject to clause 16, have any effect.

7.4 Environmental Liability

- (a) Notwithstanding any other provisions of this Agreement the Rail Operator agrees to the maximum extent permitted by law not to make, assert or exercise any right or entitlement it may have at any time against RailCorp and releases RailCorp in respect of anything related to any Environmental Liability to which the Rail Operator is or may become subject.
- (b) Notwithstanding any other provisions of this Agreement, the Rail Operator shall indemnify RailCorp and its Employees and Agents (each a RailCorp Party) against all Costs incurred, or suffered by RailCorp or a RailCorp Party in connection with any Environmental Liability.
- (c) RailCorp receives the benefit, and is the agent of its Employees and Agents for the purpose of receiving on their behalf the benefits, of the indemnity given by the Rail Operator in clause 7.4(b) in favour of RailCorp's Employees and Agents.
- (d) The releases and indemnities contained in this clause 7.4 for the benefit of RailCorp continue in full force and effect as to any Claims relating to any event, act, omission or default occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.
- (e) Clauses 14.1, 14.2, 14.3 and 14.4 do not apply in relation to the indemnity in clause 7.4(b).

7.5 Dangerous Goods

The Rail Operator must:

- (a) comply with all applicable Laws regarding the storage, handling and transport of Dangerous Goods including the Australian Code for the Transport of Dangerous Goods by Road and Rail and the Australian Code for the Transport of Explosives by Road and Rail;
- (b) obtain and maintain all necessary approvals, licences and permits required for the storage, handling and transport of Dangerous Goods; and
- (c) on request, provide to RailCorp evidence (to the reasonable satisfaction of RailCorp) of the Rail Operator's compliance with this clause 7.5.

7.6 Incident Management

- (a) RailCorp may clear, or require the Rail Operator to clear, or assist in the clearance of, any Incident or Obstruction which occurs on or near the Network in accordance with the procedures set out in the Network Incident Management Framework.

- (b) The Rail Operator irrevocably appoints RailCorp as its agent for the purposes of clearing any Incident or Obstruction on the Network in accordance with, the Network Incident Management Framework where any such Incident or Obstruction involves the Rail Operator's Rolling Stock.
- (c) The Rail Operator is responsible for and must reimburse RailCorp all costs and expenses incurred by RailCorp in clearing any Incident or Obstruction involving the Rail Operator's Rolling Stock.

8. Interface Agreement

8.1 Rail Operator Compliance

The Rail Operator shall ensure that:

- (a) it complies with the requirements of the Rail Safety National Law in relation to any Interface Agreement with respect to its access to and use of the Network and in relation to its Rail Operations; and
- (b) it and each of its Employees and Agents comply with their respective obligations in any required Interface Agreement.

8.2 Condition of Commencement

The Rail Operator must not access the Network until it has entered into an Interface Agreement with the 'rail infrastructure manager' (as defined in the Rail Safety National Law (NSW)) of the Network.

8.3 RailCorp Compliance

9. RailCorp must comply with the requirements of the Rail Safety National Law (NSW) with respect to any obligations (if any) on RailCorp in relation to Interface Agreements and must ensure that its Employees and Agents comply with their respective obligations in relation to any Interface Agreement obligations of RailCorp. Rail Operator performance

9.1 Rail Operator Performance

If RailCorp is of the reasonable opinion that the Rail Operator's performance or method or manner of performance of its obligations under this Agreement (other than in accordance with the terms and conditions of this Agreement and within the scheduled times for Train Movements) has adversely affected or is likely to adversely affect and is likely to continue to adversely affect:

- (a) the access entitlements of any Other Rail Operator;
- (b) access requirements of RailCorp, TfNSW or any Subsidiary Corporation for passenger services;
- (c) the capacity of the Network;
- (d) Passenger Priority; or
- (e) the efficient and effective use of the Network,

RailCorp may if it reasonably believes it is necessary or appropriate to avoid or minimise the adverse or anticipated adverse effect give notice in writing to the Rail Operator (**Notice of Proposed Action**) that it proposes to do any one or more of the following:

- (f) suspend any Access Rights;
- (g) cancel any Access Rights;
- (h) amend the Train Operating Specifications, or any one or more documents constituting or forming part of the Train Operating Specifications (excluding the Operations Protocol).

9.2 Details of Proposed Action

A Notice of Proposed Action by RailCorp which proposes to suspend Access Rights or to amend the Train Operating Specifications must, as the case requires:

- (a) describe the Access Rights which are proposed to be suspended or cancelled or describe any amendment to the Train Operating Specifications, as the case requires;
- (b) state the proposed commencement or effective date of any suspension, cancellation or amendment;
- (c) provide the reasons for the suspension, cancellation or amendment;
- (d) indicate what is required to be remedied.

9.3 Notice and Referral of Dispute

- (a) Where a party becomes aware or reasonably believes that a Dispute has arisen under this clause 9, it may serve a Notice of Dispute.
- (b) The Rail Operator may refer a dispute in relation to the action proposed in a Notice of Proposed Action to an Expert in accordance with clause 9.5.

9.4 Suspension, Cancellation or Amendment

If the Rail Operator does not serve a Notice of Dispute in relation to the action proposed in a Notice of Proposed Action within 2 Business Days of that notice being given, RailCorp may in its absolute discretion suspend, cancel or amend as specified in the Notice of Proposed Action and shall notify the Rail Operator of the action taken. Such suspension, cancellation or amendment (as the case may be), is binding and notwithstanding any other provision of this Agreement is not subject to any dispute resolution procedures in clause 16.

9.5 Expert

If the Rail Operator refers a Dispute to an Expert in accordance with clause 9.3 or 9.11 the parties agree that the following procedure shall apply:

- (a) the parties must agree on the appointment of an Expert from the panel of experts listed in Annexure K within 2 Business Days of the referral;
- (b) if the parties are unable to agree on the person to be appointed as the Expert within 2 Business Days after the referral, the Expert will, subject to the Expert's availability, be appointed (with respect to each referral which is the subject of this clause) on a rotating basis commencing at the top of the list of the experts listed in Annexure K and working down the list;
- (c) any Expert appointed pursuant to this clause 9.5 must:
 - (i) have no interest or duty which conflicts or may conflict with the function as expert, being required to fully disclose any such interest or duty before appointment;
 - (ii) not be an employee of either of the parties or of a related body corporate of any of them; and
 - (iii) undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

- (d) the determination of a Dispute under this clause 9.5 shall be conducted in accordance with the process set out in this clause 9.5(d) as follows:
- (i) within 5 Business Days after the appointment of the Expert, each party will submit a brief written summary of the facts, matters and circumstances relevant to the Dispute (**Summaries**) to the Expert;
 - (ii) if required by either party, the Expert will meet with the parties within 10 Business Days after the appointment of the Expert, and take oral submissions from the parties relating to the Dispute;
 - (iii) the Expert may make such directions to the parties as the Expert considers appropriate for the just and expeditious resolution of the Dispute, including directions for:
 - (A) the holding and conduct of one or more preliminary conferences;
 - (B) the production by any of the parties of documents or other evidence; and
 - (C) the attendance of witnesses for cross examination,and the parties must comply with all such directions;
 - (iv) the parties will require the Expert to determine the Dispute no later than 5 Business Days after the date for submission of Summaries (whether or not they have in fact been submitted) or 5 Business Days after the date upon which oral submissions are taken (whichever is the later date);
 - (v) the Expert must at all times:
 - (A) observe the rules of natural justice but is not required to observe the rules of evidence; and
 - (B) take such steps as the Expert considers are necessary to protect the confidentiality of any documents or other material received by him;
 - (vi) in deciding a Dispute the Expert must take into account:
 - (A) Passenger Priority;
 - (B) RailCorp's legitimate business interests and investment in the Network;
 - (C) RailCorp's, TfNSW's or a Subsidiary Corporation's access and operational requirements for its passenger operations;
 - (D) RailCorp's, TfNSW's or a Subsidiary Corporation's principal objectives as stated in the Transport Administration Act;
 - (E) the operational and technical requirements necessary for the safe and reliable operation of the Network;
 - (F) the binding obligations of RailCorp to Other Rail Operators in relation to the Network;
 - (G) the interests of Other Rail Operators in the use of the Network; and
 - (H) any statements, evidence, submissions or other material received from the parties, and such other material from such other sources as the Expert considers desirable to resolve the Dispute; and
 - (vii) the Expert may only determine:

- (A) that RailCorp cannot take the action proposed in the Notice of Proposed Action if there was no reasonable basis for RailCorp issuing the Notice; or
- (B) that RailCorp is entitled to take the action proposed in the Notice of Proposed Action;

and is not entitled to determine any action not specified in the Notice of Proposed Action;

- (e) the Expert may at any time terminate the process (without making a determination) if it thinks that:
 - (i) the notification of the Dispute is vexatious; or
 - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance;
- (f) the parties agree to be bound by the determination of the Expert with no right of appeal against the determination except in the case of fraud or manifest error;
- (g) liability for the costs of the Expert will follow the outcome and the parties will pay those costs in accordance with the directions of the Expert; and
- (h) if at any time the Expert ceases or refuses to act, the parties must endeavour to agree on a replacement Expert. If the parties are unable to agree on a replacement Expert within 5 Business Days after the date on which the parties first become aware that the Expert has ceased to act or refuses to act, the person next listed on the list of experts in Annexure K and available (in accordance with the rotation basis referred to in clause 9.5(b)) shall be appointed.

9.6 Application of Suspension, Cancellation or Amendment

Where the Rail Operator has disputed the action proposed in the Notice of Proposed Action and has referred the Dispute to an Expert in accordance with clause 9.5 the suspension, cancellation or amendment (as the case may be) takes effect from the date notified to the Rail Operator by RailCorp following the determination of the Expert unless the Expert has determined that RailCorp is not entitled to take the action proposed in the Notice of Proposed Action.

9.7 Length of Suspension of Access Rights

Subject to clause 9.8 any suspension or amendment effected under this clause 9 shall remain in force until RailCorp has notified the Rail Operator that it is satisfied that:

- (a) the Rail Operator has remedied the performance or method or manner of performance giving rise to the adverse affect; or
- (b) with respect to an anticipated adverse affect has demonstrated to the reasonable satisfaction of RailCorp that all necessary remedial action or other steps have been taken to ensure that the anticipated adverse affect will not occur.

9.8 Cancellation of Suspended Access Rights

RailCorp may at any time after 10 Business Days after suspension effected under this clause 9, by notice in writing to the Rail Operator, cancel any Access Rights which have been suspended under this clause 9 and in relation to which the Rail Operator's performance or manner of performance which gave rise to the suspension has not been remedied to RailCorp's reasonable satisfaction or steps taken to RailCorp's reasonable satisfaction to ensure that the adverse effect does not occur again or that the anticipated adverse effect will not occur. Such notice will be deemed to be a Notice of Proposed Action. For the avoidance of doubt the giving of notice under clause 9.10 does not affect RailCorp's right of cancellation under this clause.

9.9 Cancellation of Access Rights

RailCorp may at any time after 10 Business Days of giving notice of suspension under this clause 9, by notice in writing to the Rail Operator, cancel any Access Rights which are associated or connected with the Rail Operator's performance or manner of performance which gave rise to RailCorp amending the Train Operating Specifications pursuant to this clause 9, if RailCorp is not reasonably satisfied that such performance has been remedied or steps taken to RailCorp's reasonable satisfaction to ensure that the adverse effect will not occur again or that the anticipated adverse affect does not occur. Such notice will be deemed to be a Notice of Proposed Action. For the avoidance of doubt the giving of notice under clause 9.10 does not affect RailCorp's right of cancellation under this clause.

9.10 Removal of Suspension or Reinstatement

The Rail Operator may seek the removal of the suspension of any Access Rights suspended under this clause 9 or Reinstatement by providing a written notice:

- (a) identifying the Access Rights in relation to which it is seeking the removal of the suspension or the Reinstatement;
- (b) providing reasons why the suspension should be removed or the Reinstatement made; and
- (c) providing evidence of the steps or actions it has taken to remedy the adverse affect or anticipated adverse affect which gave rise to the suspension or amendment.

9.11 Consideration of Notice

- (a) RailCorp must consider in good faith any notice given to it under clause 9.10 and if RailCorp is reasonably satisfied that all necessary remedial action or other steps have been taken remove the suspension or make the Reinstatement.
- (b) The Rail Operator may refer a dispute in relation to this clause 9.11 to an Expert under clause 9.5 except that the following shall apply in substitution for clause 9.5(d)(vii):
'the Expert may only determine that the removal of the suspension or the Reinstatement can occur or not'.
- (c) Any removal of a suspension or Reinstatement under this clause 9.11 must allow RailCorp sufficient time to enable it to give effect to removal of a suspension or the Reinstatement having regard to the capacity of and operations on the Network and Other Rail Operator's rights.

9.12 Obligations to Continue

Suspension pursuant to this clause 9 or amendment to Train Operating Specifications pursuant to this clause 9 shall not affect or suspend any other obligation of the Rail Operator including the obligation to pay Access Charges.

9.13 Clause 16 Not to Apply

Subject to clause 16.7, any Dispute in relation to any suspension, amendment, cancellation, action or decision by RailCorp under clause 9 will not be subject to the dispute resolution procedures in clause 16.

9.14 Amendment to Train Operating Specifications

Notwithstanding any other provision of this Agreement an amendment to Train Operating Specifications pursuant to this clause is not subject to any consultation or other variation or amendment process.

9.15 Further action

Nothing in this clause limits or restricts in any way any other power, right or entitlement of RailCorp under this Agreement or limits or restricts RailCorp taking further action under this clause if adverse affects or anticipated adverse affects are not remedied after any suspension or amendment under this clause 9.

9.16 Release

RailCorp is not responsible for any loss, cost, expense or damage suffered or incurred by the Rail Operator and the Rail Operator releases RailCorp from any Claim whatsoever arising from or connected in any way with any suspension, amendment, cancellation, action or decision by RailCorp under this clause 9.

9.17 Automatic Removal

Upon cancellation of any Access Rights the relevant Access Rights are automatically removed from Annexure A, the Standard Working Timetable and any other relevant timetabling, Operational Document or document relating to or connected with the relevant Access Rights and Annexure C shall be automatically amended to the extent necessary to reflect the relevant cancellation.

9.18 No Release

Cancellation or suspension under this clause 9 does not abrogate, impair, release or discharge any debt, obligation or liability of the Rail Operator which may otherwise have accrued including any such debt, obligation or liability which gave rise to or was connected with the cancellation or suspension.

9.19 Survival

Upon any cancellation or suspension under this clause 9 all terms and conditions which by their terms or reasonable implications are to be performed in whole or in part after cancellation or suspension shall survive such cancellation or suspension.

9.20 Non Limitation

Nothing in this clause affects, limits or restricts in any way any other rights, powers or entitlements of RailCorp (including in particular with respect to Passenger Priority) under this Agreement.

10. Infrastructure

10.1 Network Maintenance

- (a) Subject to this Agreement, RailCorp must maintain or cause to be maintained those parts of the Network in respect of which the Rail Operator has Access Rights to the higher of:
 - (i) the minimum standard required by the Asset Standards Authority; and
 - (ii) in respect of any Network Segment, a standard which, subject to clauses 10.2 and 10.4, enables the Rail Operator to conduct Train Movements:
 - (A) on Core Train Paths at the axle load and speed combinations which apply to the relevant Rolling Stock (as specified in the Train Operating Conditions Manual as amended from time to time in accordance with this Agreement); and
 - (B) within the transit times provided for in the Core Train Paths as amended from time to time in accordance with this Agreement.
- (b) RailCorp must provide to the Rail Operator, on request, information reasonably necessary for the Rail Operator to assess the standard of that part of the Network in respect of which

the Rail Operator has Access Rights and RailCorp's compliance with its obligations under clause 10.1(a).

- (c) The Rail Operator must provide to RailCorp, on request, details of its forecasted Train Movements for the 5 year period following the request (including the number and frequency of services, tonnages and products or markets serviced) for the purposes of allowing RailCorp to plan for the management of, and investment strategies for the Network. RailCorp acknowledges that any information provided by the Rail Operator in accordance with this clause:
 - (i) may change from time to time without notice to RailCorp; and
 - (ii) is not (and must not be construed by RailCorp as) a representation by the Rail Operator that it will meet its forecasted Train Movements.
- (d) RailCorp is not entitled to make any Claim against the Rail Operator in respect of any failure by the Rail Operator to meet its forecasted Train Movements.

10.2 Track Possessions

- (a) RailCorp may undertake a Track Possession in accordance with the Network Possessions Manual.
- (b) At all times during the Term, RailCorp must maintain, implement and comply with the Network Possessions Manual and any plan issued in accordance with the Network Possessions Manual which sets out the Track Possessions which are planned to occur in the period covered by the plan (a **Track Possessions Plan**).
- (c) RailCorp may amend the Network Possessions Manual at any time provided it consults with the Rail Operator regarding the proposed amendment in accordance with, and to the extent required by, clause 24.11.
- (d) RailCorp may amend a Track Possessions Plan at any time in accordance with the procedures set out in the Network Possessions Manual.
- (e) Where a party becomes aware or reasonably believes that a Dispute has arisen under this clause, it may serve a Notice of Dispute on the other party.
- (f) Any Dispute in relation to an amendment to the Network Possessions Manual will be subject to clause 16.
- (g) If any amendment made under this clause 10.2 is the subject of a Dispute under clause 16, the amendment shall, subject to clause 16, continue to apply from the time the amendment is made.
- (h) A Track Possessions Plan and RailCorp's obligation to comply with a Track Possessions Plan on any particular day is subject to any Train Control Directions issued or in force on that day by a Train Control Entity.
- (i) RailCorp must:
 - (i) use its reasonable endeavours (having regard to, without limitation, the rights and requirements of other users of the Network) to mitigate the impact on the Rail Operator of any Track Possession and any amendment made or initiated by RailCorp to the Track Possessions Manual or a Track Possessions Plan; and
 - (ii) where any person (other than RailCorp or its appointee) is the Train Control Entity, procure that person's acknowledgment that it will (having regard to, without limitation, the rights and requirements of other users of the Network) use its

reasonable endeavours to mitigate the impact on the Rail Operator of any Train Control Direction which may have the effect of amending a Track Possessions Plan.

- (j) Any delay, rescheduling or cancellation of a Train Movement caused by a Track Possession shall not:
 - (i) constitute a default by RailCorp of its obligations under this Agreement and the Rail Operator shall have no Claim against RailCorp as a result; or
 - (ii) constitute the non-use of a Train Path for the purposes of clause 5.4.

10.3 Notification of Damage

The Rail Operator must notify RailCorp of any damage to the Network of which it becomes aware.

10.4 Restrictions

- (a) When required by the condition of the Network or any part of the Network, RailCorp may give notice of temporary speed and/or weight restrictions or any other temporary restrictions and the Rail Operator must comply with such a notice.
- (b) RailCorp must use its reasonable endeavours (having regard to, without limitation, the rights and requirements of other users of the Network) to mitigate the impact of any restrictions notified by RailCorp pursuant to clause 10.4(a) (including, by using reasonable endeavours to provide or, where applicable, requesting the Train Control Entity to use reasonable endeavours to provide the Rail Operator with an alternate Train Path which is unaffected by the restriction and which is as close as reasonably possible to the Train Path affected by the restriction).
- (c) Where the aggregate of any restrictions imposed by RailCorp in accordance with clause 10.4(a) is such that the Rail Operator is unable to conduct Train Movements on any particular Core Train Path:
 - (i) at the axle load and speed combinations which apply to the relevant Rolling Stock (as specified in the Train Operating Conditions Manual); and
 - (ii) within the transit times provided for in the Core Train Paths,

RailCorp must use its reasonable endeavours to reduce the restrictions as soon as reasonably practicable to a level which enables the Rail Operator to conduct Train Movements on that Rail Operator's Core Train Paths in the manner specified in sub-paragraphs (i) and (ii).

- (d) Irrespective of any other obligations under this Agreement, RailCorp shall not be required to undertake works under this clause 10.4 unless:
 - (i) all relevant approvals from Government Authorities have been obtained; and
 - (ii) the works:
 - (A) are technically feasible;
 - (B) are consistent with the safe and reliable operation of the Network, including the safety of any user of the Network;
 - (C) do not reduce capacity unless required for the safe and reliable operation of the Network;
 - (D) are consistent with the applicable Operational Documents; and
 - (E) are not inconsistent with the implementation of RailCorp's infrastructure management plans, including the timing of works to be undertaken under its

infrastructure management plans, and such works are to be incorporated into RailCorp's infrastructure management plans.

- (e) Except to the extent that a restriction under clause 10.4(a) resulted from a deliberate and wilful breach of this Agreement by RailCorp any delays, cancellations or other consequences of the restrictions shall not constitute a default by RailCorp of its obligations under this Agreement and RailCorp will not be liable for any claims suffered or incurred by or made or brought by or against the Rail Operator as a result of or arising from the imposition of such restrictions.

11. Performance indicators

11.1 Development of Key Performance Indicators

- (a) The parties must develop, agree and document the Key Performance Indicators within 45 Business Days from the Commencement Date.
- (b) If the parties fail to agree on the Key Performance Indicators within the required timeframe, the Key Performance Indicators will be developed at the sole discretion of RailCorp.
- (c) Clause 16 does not apply to any Dispute arising under clause 11.1(b).

11.2 Performance Measurement

- (a) The Rail Operator agrees to monitor, record and assess the performance of its obligations under this Agreement against the performance standards and targets set out in the Key Performance Indicators.
- (b) The Rail Operator must use its reasonable endeavours to achieve the performance standards and targets set out in the Key Performance Indicators.
- (c) Within 20 Business Days after the end of each quarter, each party must provide to the other party the information (as identified in Annexure D) which the other requires in order to assess the performance of the Rail Operator under this Agreement against the performance standards and targets set out in the Key Performance Indicators.

11.3 Review of Key Performance Indicators

- (a) At the request of either party (which cannot be made in the first 12 months of the Term or more than once in any subsequent 12 month period), the parties must review the Key Performance Indicators to determine whether the performance standards and targets applicable at the relevant review date are still an appropriate measure of performance.
- (b) During a review, the parties must negotiate in good faith to agree to any amendments to performance standards, targets and weightings contained in the Key Performance Indicators.
- (c) If the parties are unable to reach agreement during this review, the Key Performance Indicators applicable prior to the review will continue to apply until the next review.

12. Accreditation

12.1 Parties Must Maintain Accreditation

- (a) The Rail Operator must:
 - (i) have, and maintain during the Term, Accreditation;

- (ii) notify the other party, as soon as practicable after receipt of notice from the relevant Government Authority, of any intended or actual, suspension or cancellation affecting its Accreditation; and
 - (iii) on request, provide to the other party a copy of any notice referred to in clause 12.1(a)(ii) from the relevant Government Authority.
- (b) The Rail Operator must notify RailCorp:
- (i) as soon as practicable after receipt of notice from the relevant Government Authority, of any intended or actual amendment or variation of its Accreditation; and
 - (ii) on request, provide to RailCorp a copy of any notice referred to in clause 12.1(b)(i) from the relevant Government Authority.

12.2 Exchange of Accreditation Information

Each party must, on request, provide to the other party a copy of its Accreditation and in the case of RailCorp its or its Contractor's or Agent's Accreditation.

13. Indemnities

13.1 General Indemnities

- (a) Subject to clause 14, the Rail Operator shall indemnify RailCorp and its Employees and Agents (each a RailCorp Party) in respect of all Claims for which RailCorp or any RailCorp Party will or may be or becomes liable, whether during or after the Term, in respect of or arising from any loss, damage or injury to property or person, in or near the Network or a Yard caused or contributed to (but only to the extent of the contribution) by:
 - (i) any negligent or wrongful act or omission;
 - (ii) any default under this Agreement; or
 - (iii) the use of the Network or a Yard other than as contemplated by this Agreement, by or on the part of the Rail Operator or the Rail Operator's Employees and Agents.
- (b) RailCorp receives the benefit, and is the agent of its Employees and Agents for the purpose of receiving on their behalf the benefits, of the indemnity given by the Rail Operator in clause 13.1(a) in favour of RailCorp's Employees and Agents.
- (c) Subject to clauses 13.2 and 14, RailCorp shall indemnify the Rail Operator and its Employees and Agents (each a Rail Operator Party) in respect of all Claims for which Rail Operator or any Rail Operator Party will or may be or become liable, whether during or after the Term, in respect of or arising from any loss, damage or injury to property or person, in or near the Network to the extent caused or contributed (but only to the extent of the contribution) by:
 - (i) any negligent or wrongful act or omission; or
 - (ii) any default under this Agreement,
 by or on the part of the RailCorp or RailCorp's Employees and Agents.
- (d) The Rail Operator receives the benefit, and is the agent of its Employees and Agents for the purpose of receiving on their behalf the benefits, of the indemnity given by RailCorp in clause 13.1(c) in favour of the Rail Operator's Employees and Agents.

13.2 Indemnity - Third Party

- (a) Notwithstanding clauses 13.1(a), 13.1(b) or 13.1(c) the Rail Operator is solely liable for and releases, indemnifies and will keep indemnified RailCorp and its Employees and Agents against all Claims in respect of or arising out of this Agreement in relation to damage to or loss of any property or personal injury to or death of any person except to the extent that such damage, loss, injury or death is caused by or contributed to (but only to the extent of the contribution) by the wilful default or any negligent act or omission of RailCorp.
- (b) Unless otherwise agreed in writing by RailCorp the Rail Operator shall ensure that any exclusion or limitation offered by the Rail Operator's conditions of carriage with its customers extends to RailCorp and shall upon request by RailCorp provide details of the Rail Operator's conditions of carriage relevant to RailCorp's liability in place from time to time.

13.3 Defence of Claims

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

13.4 Continuance of Indemnities

The releases and indemnities contained in this clause 13 for the benefit of either Party continue in full force and effect as to any Claims relating to any event, act, omission or default occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

13.5 Determination of Liability

- (a) In the event of an Incident involving the Rail Operator or any other event which results or could result in a Claim by or against the Rail Operator or RailCorp, liability as between the Rail Operator and RailCorp shall be determined:
 - (i) as agreed between the parties;
 - (ii) failing such agreement and within one (1) month of either party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to clause 13.6; or
 - (iii) where the amount of the Claim exceeds the sum of [\$ to be inserted] and either party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.
- (b) Clause 16 does not apply to any Dispute in relation to liability.

13.6 Loss Adjuster

Where a matter is to be referred to a loss adjuster in accordance with clause 13.5 then the following provisions of this clause shall apply:

- (a) the loss adjuster shall be appointed by the parties, or in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, by the President of the Australasian Institute of Chartered Loss Adjusters;
- (b) in the event, the loss adjuster shall:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to full disclose any such interest or duty before his appointment; and

- (iii) not be an employee of the Operator or RailCorp or of a related body corporate of either party;
- (c) the loss adjuster appointed pursuant to this clause 13.6 shall not be permitted to act until he has given written notice of the acceptance of his appointment to both parties;
- (d) any loss adjuster appointed pursuant to this clause 13.6 shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties;
- (e) any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1984* (NSW), shall not apply to him or his determination or the procedures by which he may reach his determination;
- (f) each party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any Employee or Agent involved in or with knowledge of the Incident or event resulting in the Claim or with any other relevant information that may be of use to the loss adjuster;
- (g) subject to any claims for legal professional privilege, each party must promptly make available to the loss adjuster any files, documents, data, recording or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation;
- (h) the loss adjuster will determine the quantum of the relevant Claim and the liability of the Rail Operator and/or RailCorp in respect of such claim and shall provide a copy of his report on such matters to each of the parties within a reasonable time after his appointment;
- (i) in the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of [\$ to be inserted].

13.7 Costs

The costs of a loss adjuster appointed pursuant to this clause 13 shall be borne by the parties in such proportions as liability is determined by the loss adjuster or, where the liability is determined by a Court, in such proportions as liability is determined by the Court.

14. Limitations

14.1 Limited Liability

- (a) Notwithstanding any other provisions of this Agreement other than clause 7.4, neither party is liable for any Consequential Loss suffered by the other party or for which the other party becomes liable.
- (b) For the purposes of this clause 'Consequential Loss' means any loss of anticipated profit, loss of contracts, loss of revenue, loss of production, loss of freight haulage tonnage, loss of use, loss of rent income or loss of occupation (whether or not any such loss is of a direct, indirect or consequential nature) or for penalties and damages under any agreement (other than this Agreement) but does not include property damage or losses arising from third party claims for property damage, personal injury, nervous shock or death.

14.2 Limitation on Claims

Notwithstanding any other provision of this Agreement other than clause 7.4, neither party shall make any Claim against the other under or in connection with this Agreement, including in relation to the indemnities in clauses 13.1(a), 13.1(c) and 13.2(a), unless:

- (a) notice of the Claim has been given to the other within:
 - (i) 12 months of the occurrence of the event out of which such Claim arises; or
 - (ii) after the expiry of a 12 month period from the occurrence of the event out of which such Claim arises and in the case of a Claim for contribution in respect of a third party claim, 3 months of receiving the third party claim; and
- (b) the amount of the Claim exceeds \$50,000 in respect of:
 - (i) any one occurrence; or
 - (ii) a series of related occurrences which are consequent upon or attributable to one source or original cause,

provided that if this condition is satisfied then the party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of \$50,000.

14.3 Exclusion to Limitation

- (a) The limitation on Claims provided for in clause 14.2(b) shall not apply to a Claim against a party to the extent that the Claim has arisen from any fraud or wilful default of that party.
- (b) In this clause 14.3, **wilful default** means a wanton or reckless:
 - (i) act;
 - (ii) omission; or
 - (iii) breach of this deed,

which reasonably evidences that the perpetrator wilfully and utterly disregarded the harmful and avoidable consequences to the other party arising from the relevant act, omission or breach of this Agreement.

14.4 Limitation on Liability

- (a) The limitation in clause 14.2(b) will not apply to a Claim if the loss, damage, cost or expense the subject of that Claim, when aggregated with any other Claims made (including Claims for loss, damage, costs or expenses which, but for clause 14.2(b), would be recovered under clauses 13.1(a) or otherwise) exceeds the sum of [\$ to be inserted] in any one year (being the period commencing on the Commencement Date or the anniversary of the same and ending one year later). For the purposes of clarification, once the aggregation of Claims under this clause exceeds [\$ to be inserted] in any one year, the limitation in clause 14.2(b) does not apply to any further Claims made during that year.
- (b) The limitation in clause 14.2(b) does not apply to Claims made by one party against the other for monies presently due and payable under the terms of this Agreement including, without limitation, payment by the Rail Operator of Access Charges, Terminal Charges or Incidental Charges.

14.5 Liability - Network Standard

- (a) Notwithstanding any other provision of this Agreement, RailCorp will not be liable to the Rail Operator and the Rail Operator will not have or make any Claim against RailCorp or its Employees and Agents in respect of any loss of or damage to real or personal property, including property of the Rail Operator, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with:
 - (i) the standard of the Network or a Yard or any infrastructure related to the Network or a Yard; or

- (ii) any failure of or defect in the Network or a Yard or in any infrastructure related to the Network or a Yard,

except to the extent that such loss, damage, injury, cost or expense results directly from the failure of RailCorp or its Employees and Agents to maintain, subject to this Agreement, the Network or a Yard to the minimum standard required by clause 10.1(a)(i).

- (b) RailCorp receives the benefit, and is the agent of its Employees and Agents for the purpose of receiving on their behalf the benefit, of clause 14.5(a) in favour of RailCorp's Employees and Agents.
- (c) The benefits contained in this clause 14.5 continue in full force and effect as to any Claims relating to any event, act, omission or default occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

15. Insurance

15.1 Maintain Insurance Policies

The Rail Operator must at its expense take out and subsequently maintain current at all times during the Term the policies of insurance required by this clause 15 with an insurer rated by Standard & Poors or AM Best (or some other recognised rating agency of like standing) as not less than 'A' (or equivalent for the rating agency concerned if not Standard & Poors or AM Best) provided that RailCorp may, acting reasonably, otherwise permit the Rail Operator to take out and maintain the insurance with an insurer acceptable to it, which insurer is:

- (a) authorised to carry on insurance business in Australia by the Australian Prudential Regulation Authority or equivalent regulatory body; or
- (b) prudentially regulated as an insurer in the United Kingdom by the Financial Services Authority or equivalent regulatory body.

15.2 Required Insurance Policies

The Rail Operator must take out and maintain insurance for the risks and on the terms specified in Annexure J unless otherwise approved by RailCorp in writing.

15.3 Evidence of Insurance Policies

- (a) The Rail Operator must within 10 Business Days of a request by RailCorp provide to RailCorp evidence of the insurance policies effected or maintained pursuant to this clause 15 in the form of a certificate of currency which must contain at least the information referred to in clause 3 of Annexure J or, if requested by RailCorp, copies of such insurance policies, to RailCorp's reasonable satisfaction:
 - (i) upon renewal of each insurance policy during the Term; and
 - (ii) whenever reasonably requested to do so in writing by RailCorp.
- (b) If the Rail Operator fails to produce to RailCorp evidence of insurances that have been effected or maintained by it in accordance with clause 15.3(a), RailCorp may:
 - (i) effect and maintain any such insurance and pay the premiums and any amount so paid will be a debt due from the Rail Operator to RailCorp; and/or
 - (ii) terminate this Agreement by notice in writing to the Rail Operator.

15.4 Operator Not to Render Policy Void

The Rail Operator must not render any of the insurances effected or maintained in accordance with this clause 15 void or voidable or liable to refusal of any claim.

15.5 Compliance

The Rail Operator must at all times comply with the terms and conditions of all insurance policies effected or maintained pursuant to this clause 15.

15.6 Notices

- (a) The Rail Operator must as soon as practicable after the occurrence of an event which might give rise to a claim under or the making of a claim on any insurance policy required by this clause 15, notify RailCorp of that claim or event to the satisfaction of RailCorp and thereafter keep RailCorp informed of subsequent developments concerning any claim.
- (b) Whenever the insurer gives the Rail Operator a notice of cancellation, notice that the policy is to lapse due to non-payment of premium or other notice concerning the policy, the Rail Operator must, within 3 Business Days, inform RailCorp in writing that the notice has been given and provide a copy of the notice.

15.7 Excess/Deductible

The Rail Operator must in respect of any claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected or maintained in accordance with this clause 15.

15.8 Settlement of Claims

Upon settlement of a claim under any insurance required by clause 15 covering damage to Network:

- (a) to the extent that RailCorp has directed or determined that the Network not be reinstated, the moneys received must be paid to RailCorp; and
- (b) to the extent that the Network is to be reinstated, RailCorp shall be reimbursed for the moneys paid or for any allowance made to the Rail Operator in respect of the reinstatement.

15.9 Effect of Insurance

The effecting or non effecting of insurance does not limit any liability or obligation of a party under this Agreement.

16. Dispute resolution

16.1 Dispute Resolution

- (a) Subject to clause 16.1(b), nothing in this clause 16 prevents either party seeking urgent interlocutory relief from a court in connection with a Dispute.
- (b) The Rail Operator may not seek interlocutory relief or initiate any other court proceedings in relation to a direction under clause 6.6(b) before the Rail Operator first complies with the dispute resolution procedures in clause 16.
- (c) Subject to clause 16.3 each party will pay its own costs incurred in connection with a Dispute and the determination of a Dispute under clause 16.
- (d) Notwithstanding any other provision of this Agreement a Dispute in relation to Passenger Priority is not subject to the dispute resolutions provisions of clause 16.
- (e) Except as otherwise expressly provided by this Agreement the parties' obligations under this Agreement will continue notwithstanding any Dispute between the parties.

16.2 Procedure for Resolving a Dispute

- (a) Where a party becomes aware that a Dispute has arisen to which this clause 16.2 applies, it may serve a Notice of Dispute on the other party.

- (b) Within 10 Business Days after the Notice Date, ,
the parties' representatives at senior management level must meet and negotiate in good faith to resolve the Dispute.
- (c) If the parties representatives fail to resolve the Dispute (other than a Dispute arising in relation to clause 4.2(b)) within 10 Business Days after the period referred to in clause 16.2(b) either party may refer the Dispute to an Expert for determination in accordance with clause 16.3.
- (d) A party must immediately notify the other party that the Dispute is to be referred to an Expert.

16.3 Referral to Expert

If a party refers a Dispute to an Expert for determination in accordance with this Agreement the parties agree that the following procedure under this clause 16.3 shall apply:

- (a) the parties must endeavour to agree to the appointment of an Expert within 2 Business Days of the Referral Date;
- (b) if the parties are unable to agree on the person to be appointed as Expert within 2 Business Days after the Referral Date, either party may require the Australian Commercial Disputes Centre to appoint an Expert;
- (c) any Expert appointed pursuant to this clause 16.3 must:
 - (i) be qualified to determine the subject matter of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with the function as expert, being required to fully disclose any such interest or duty before appointment;
 - (iii) not be an employee of either of the parties or of a related body corporate of any of them; and
 - (iv) undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (d) the determination of a Dispute under clause 16.3 shall be conducted in accordance with the process set out in this clause 16.3(d) as follows:
 - (i) within 5 Business Days after the appointment of the Expert, each party will submit a brief written summary of the facts, matters and circumstances relevant to the Dispute (**Summaries**) to the Expert;
 - (ii) if required by either party, the Expert will meet with the parties within 10 Business Days after the appointment of the Expert, and take oral submissions from the parties relating to the Dispute;
 - (iii) the Expert may make such directions to the parties as the Expert considers appropriate for the just and expeditious resolution of the Dispute, including directions for:
 - (A) the holding and conduct of one or more preliminary conferences;
 - (B) the production by any of the parties of documents or other evidence; and
 - (C) the attendance of witnesses for cross examination,and the parties must comply with all such directions;

- (iv) the parties will require the Expert to determine the Dispute no later than 20 Business Days after the date for submission of Summaries (whether or not they have in fact been submitted) or 10 Business Days after the date upon which oral submissions are taken (whichever is the later date);
- (v) the Expert may extend the time for determination of the Dispute under clause 16.3(d)(iv) by a further 20 Business Days, if the Expert is satisfied that the Dispute is sufficiently complex or the subject matter of the Dispute makes it impossible to determine the Dispute;
- (vi) the Expert must at all times:
 - (A) observe the rules of natural justice but is not required to observe the rules of evidence; and
 - (B) take such steps as the Expert considers are necessary to protect the confidentiality of any documents or other material received by him, and
- (vii) in deciding a Dispute the Expert must take into account:
 - (A) Passenger Priority;
 - (B) RailCorp's legitimate business interests and investment in the Network;
 - (C) RailCorp's, TfNSW's or a Subsidiary Corporation's access and operational requirements for its passenger operations;
 - (D) RailCorp's, TfNSW's or a Subsidiary Corporation's principal objectives as stated in the Transport Administration Act;
 - (E) the operational and technical requirements necessary for the safe and reliable operation of the Network;
 - (F) the binding obligations of RailCorp to Other Rail Operators in relation to the Network;
 - (G) the interests of Other Rail Operators in the use of the Network; and
 - (H) any statements, evidence, submissions or other material received from the parties, and such other material from such other sources as the Expert considers desirable to resolve the Dispute;
- (e) the Expert may include as part of the determination, directions requiring a party to do any act or thing, or to refrain from doing any act or thing, as the Expert considers desirable to resolve the Dispute and each party must comply with all such directions made to it;
- (f) the Expert may at any time terminate the process (without making a determination) if it thinks that:
 - (i) the notification of the Dispute is vexatious; or
 - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance;
- (g) the parties agree to be bound by the determination of the Expert with no right of appeal against the determination except in the case of fraud or manifest error;
- (h) liability for the costs of the Expert will be in the discretion of the Expert and the parties will pay those costs in accordance with the directions of the Expert; and

- (i) if at any time the Expert ceases or refuses to act, the parties must endeavour to agree on a replacement Expert. If the parties are unable to agree on a replacement Expert within 5 Business Days after the date on which the parties first become aware that the Expert has ceased to act or refuses to act, either party may require the Australian Commercial Disputes Centre to select a replacement Expert who is willing to act.

16.4 ASA Controlled Documents

Notwithstanding anything else in this Agreement, if a Dispute has arisen in relation to an ASA Controlled Document which the parties representatives have failed to resolve at a senior management level in accordance with clause 16.2 either party may refer the Dispute for determination by the Asset Standards Authority and clause 16.2(d) and 16.3 will not apply.

16.5 ASA Review Process

In making a determination in accordance with clause 16.4 the Asset Standards Authority will determine the Dispute in accordance with its externally published review process as referred to in its Charter and the parties agree to be bound by the determination with no right of appeal against the determination except in the case of fraud or manifest error.

16.6 Network Rules or Incident Documents

Notwithstanding any provision of this Agreement, other than clause 7.2, 16.4, 16.5 and 24.11:

- (a) an 'amendment' (as defined in the Rail Safety National Regulations) may be made to any 'network rule' (as defined in the Rail Safety National Regulations);
- (b) an amendment or variation to the Network Incident Management Framework may be made; and
- (c) an amendment or variation required to be made to the Rail Operator's Incident Management Plan may be made,

in accordance with the Rail Safety National Regulations and the dispute resolution provisions in this Agreement will not apply to any such amendment or variation.

16.7 IPART Arbitration

Nothing in this Agreement limits that application of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) to the extent that such application is required by Law.

17. Force majeure

17.1 Suspension of Obligations

The obligations of a party under this Agreement (other than an obligation to pay monies) are suspended during the time and to the extent that a party is prevented from or delayed in complying with its obligations for reasons of the occurrence of a Force Majeure Event.

17.2 Obligations of a Party

If a party is unable to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event it must:

- (a) as soon as possible after becoming aware of its inability to perform the relevant obligations, notify the other party in writing giving details of the Force Majeure Event, the obligations which it is unable to perform and the reasons for such inability; and
- (b) promptly and diligently take all reasonable and appropriate actions to enable it to perform the obligations affected by the Force Majeure Event, except that nothing in this clause requires a party to settle a strike, lockout or other industrial dispute.

17.3 Termination

As a result of Force Majeure if a party is prevented or hindered from complying with its obligations under this Agreement for a continuous period of 1 month then:

- (a) the parties must negotiate in good faith and seek to agree a mutually satisfactory resolution to the issues arising from that Force Majeure; and
- (b) if after a further period of 1 month the parties are unable to agree a resolution either party may terminate this Agreement on giving 10 Business Days notice. The Agreement will terminate on expiry of that notice.

18. Material Change

18.1 Adjustment for a Material Change

- (a) If at any time after the date of this Agreement a Material Change occurs which affects the financial position of RailCorp or the cost to RailCorp of performing its obligations under this Agreement, RailCorp may notify the Rail Operator giving details of the Net Financial Effect of the Material Change.
- (b) Within 10 Business Days after receipt of a notice under clause 18.1(a), the parties shall meet and negotiate in good faith any appropriate adjustments to the amounts payable by the Rail Operator under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return RailCorp to the position it would have been in had it not been for the Material Change. If the parties do not reach agreement within 20 Business Days of RailCorp's notice, the matter will be referred to an expert for determination in accordance with clause 16.3.

18.2 Change of Law

Subject to clause 18.1 if at any time after the Commencement Date a Change of Law occurs the parties shall meet and negotiate in good faith any amendments required to ensure the Agreement is consistent with the Law.

18.3 Parties Obligations

19. Subject to any adjustment in accordance with clause 18.1 or variation in accordance with clause 18.2 the parties' obligations under this Agreement will, other than as effected under clause 1.4, continue notwithstanding the existence of a Material Change. Events of default

19.1 Events of Default

Each of the following is an Event of Default:

- (a) the occurrence of an Insolvency Event in respect of a party;
- (b) the cancellation, suspension, variation or amendment of a party's Accreditation where any such cancellation, suspension, variation or amendment has a material adverse effect on that party's ability to perform its obligations under this Agreement for a continuous period of more than 1 month and by the expiration of that period that party has not engaged an Accredited sub-contractor to carry out the affected obligations;
- (c) a failure by a party to perform or observe any other obligation under this Agreement (other than by reason of the occurrence of a Force Majeure Event) where that failure has not been rectified (including for reasons that it is incapable of being rectified) by the defaulting party within 20 Business Days after service on it of a written request to do so;

- (d) a party assigns or purports to assign this Agreement in breach of clause 22;
- (e) a Change of Control of the Rail Operator occurs and the Rail Operator has not complied with clause 22.1(c);
- (f) a breach of warranty;
- (g) in the case of the Rail Operator only:
 - (i) the failure to effect and maintain any insurance required to be effected and maintained by the Rail Operator in accordance with this Agreement; and
 - (ii) where any Access Charges, Incidental Charges or Terminal Charges payable by the Rail Operator in accordance with this Agreement are in arrears and unpaid for 20 Business Days after they have become due and payable and have been demanded by RailCorp in writing.

19.2 Consequences of Default

- (a) If an Event of Default occurs in respect of a party, the other party may by written notice to the defaulting party terminate this Agreement and from the date of that notice this Agreement shall be at an end.
- (b) If an Event of Default occurs in respect of the Rail Operator, RailCorp may (without limiting its right to terminate this Agreement in accordance with clause 19.2(a)) by written notice to the Rail Operator:
 - (i) suspend any or all of the Access Rights or Terminal Rights (or both) under this Agreement. Any such suspension shall be effective from the date nominated by RailCorp in its notice and shall continue until such time as RailCorp notifies the Rail Operator that the suspension has been lifted or terminates this Agreement in accordance with clause 19.2(a); or
 - (ii) permanently remove from this Agreement any or all of the Rail Operator's Timetabled Train Paths. Any such removal shall be effective from the date nominated by RailCorp in its notice.

19.3 Right to Damages

Termination of this Agreement by a party pursuant to clause 19.2(a) or pursuant to any other clause of this Agreement does not prejudice that party's accrued right to exercise any other rights and remedies it may have (either under this Agreement or at Law) including the right to seek an order from any court for specific performance or damages.

19.4 Removal of Property from Network

- (a) Within 5 Business Days after the Termination Date, the Rail Operator must remove all of its property (including any Rolling Stock it owns or uses) from the Network.
- (b) If the Rail Operator fails to remove any of its property from the Network within the time specified in clause 19.4(a) RailCorp may cause the property to be removed and stored or sold by RailCorp at the risk and cost of the Rail Operator. If RailCorp sells any of the Rail Operator's property pursuant to this clause, RailCorp must do so by public tender and must pay the proceeds of sale of the property (after deduction of RailCorp's costs of removal and sale, and any other outstanding amounts owed to RailCorp) to the Rail Operator.

19.5 No Dispute Resolution

Clauses 16.1 to 16.3 do not apply to any suspension or termination or any purported suspension or termination under this clause 19.

20. Security

20.1 Acceptable Credit Rating or Security

On or before the Commencement Date, the Rail Operator must provide to RailCorp:

- (a) evidence (to the satisfaction of RailCorp) that it holds, or has been assigned, a Credit Rating equal to or greater than the Acceptable Credit Rating; or
- (b) one of the following (at the Rail Operator's discretion):
 - (i) a Security Deposit; or
 - (ii) a Non-Cash Security,

to secure RailCorp against any loss resulting from any default by the Rail Operator under this Agreement.

20.2 Review of Security Amount

- (a) The amount payable as Security shall be reviewed annually on each anniversary of the Commencement Date and such other times determined by RailCorp in its absolute discretion following the granting of material additional Access Rights or material additional Ad Hoc Train Paths.
- (b) From the date of each review under 20.2(a), the amount payable or subject to a Non-Cash Security will be a minimum of \$15,000 or an amount equal to 3 months Access Charges payable by the Rail Operator (based on the Access Charges paid by the Rail Operator in the 3 months immediately prior to the date on which the Security is reviewed or where 3 months have not yet expired, a fair and reasonable estimation by RailCorp of 3 months Access Charges), whichever is the greater.

20.3 Rail Operator's Credit Rating

Except where the Rail Operator has provided a Security to RailCorp in accordance with clause 20.1(b):

- (a) the Rail Operator must notify RailCorp in writing as soon as it becomes aware of any reduction to, or any proposal to reduce, the Rail Operator's Credit Rating to a Credit Rating which is less than the Acceptable Credit Rating; and
- (b) if, at any time during the Term:
 - (i) the Rail Operator's Credit Rating is reduced; and
 - (ii) as a result of that reduction, the Rail Operator's Credit Rating is less than the Acceptable Credit Rating,

then within 5 Business Days after the earlier of the date on which the Rail Operator becomes aware of the reduction and the date on which the relevant Rating Agency notifies the Rail Operator of the reduction, the Rail Operator must provide a Security to RailCorp.

20.4 Default by the Rail Operator

If any Event of Default occurs in respect of the Rail Operator, RailCorp may without prior notice to the Rail Operator demand payment under, or apply the whole or any part of, a Security (including, if applicable, any interest accrued on a Security Deposit) in or towards making good any loss sustained by RailCorp as a result of the Event of Default.

20.5 Return of Security

RailCorp must repay or return to the Rail Operator (and, where applicable, provide to the Rail Operator any necessary releases in relation to) any Security provided by the Rail Operator under

clause 20.1(b) (to the extent that security is not and has not been subject to a claim by RailCorp under clause 20.4):

- (a) promptly after the Termination Date;
- (b) on receipt of a replacement Security provided by the Rail Operator in accordance with clause 20.6 or clause 20.7; or
- (c) on receipt of evidence (to the reasonable satisfaction of RailCorp) that the Rail Operator's Credit Rating has increased to a level which is equal to or greater than the Acceptable Credit Rating.

20.6 Replacement Security

- (a) If RailCorp demands payment under, or applies the whole or part of, any Security provided by the Rail Operator under clause 20.4 the Rail Operator must promptly provide to RailCorp a replacement or additional Security for an amount equal to the amount demanded or applied by RailCorp in accordance with clause 20.4.
- (b) No action by RailCorp under clause 20.6(a) will operate as a waiver of the relevant Event of Default.

20.7 Substitution

The Rail Operator may, with RailCorp's consent, replace any Security provided by the Rail Operator in accordance with clause 20.1(b) (the **Original Security**) with another form of Security.

20.8 Interest on Security Deposit

If the Rail Operator provides a Security Deposit to RailCorp in accordance with this clause 20:

- (a) as soon as practicable after receipt of the Security Deposit, RailCorp must invest the Security Deposit in an interest bearing bank account; and
- (b) subject to clause 20.4, any interest earned from the Security Deposit (after deduction of any bank fees and expenses incurred by RailCorp in connection with the establishment and maintenance of the bank account) must be paid to the Rail Operator at the same time as the Security Deposit is repaid to the Rail Operator in accordance with clause 20.5.

21. Confidentiality

21.1 Employees and Agents

A Recipient must not (and must ensure that its Employees and Agents do not):

- (a) use the Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under this Agreement; or
- (b) disclose the Confidential Information of a Disclosing Party to any third party, other than in accordance with this clause 21.

21.2 Disclosure

A Recipient may disclose the Confidential Information of a Disclosing Party to a third party only where:

- (a) the Recipient has obtained the prior written approval of the Disclosing Party to the disclosure and the Recipient has procured a suitable confidentiality undertaking in respect of the Confidential Information from the third party;
- (b) disclosure is:

- (i) required by any Law or by a notice or order validly issued by any Government Authority;
 - (ii) in the case of RailCorp required by the Director-General;
 - (iii) required to inform IPART or the Regulator;
 - (iv) necessary for the provision of advice by the receiving party's legal advisers, financiers, accountants or other consultants (provided they are under a legal obligation not to disclose the Confidential Information to any third party); or
 - (v) required under the Stock Exchange rules, to the extent required to inform the market;
- (c) the Recipient believes that disclosure to the Director-General, TfNSW, Asset Standards Authority a Subsidiary Corporation or ARTC is reasonably necessary for the purposes of this Agreement, or the efficient management of the Network or any adjoining network.

21.3 Survival

The provisions of this clause shall survive expiration or termination of this Agreement for any reason.

21.4 Acknowledgment

Each party acknowledges that a breach of this clause 21 would be harmful to the business interests of the other party.

22. Dealing with interests

22.1 Dealings by the Rail Operator

- (a) Subject to clause 22.1(b) the Rail Operator may not assign, transfer, part with possession, mortgage, charge, encumber or otherwise deal with its rights and interests in this Agreement.
- (b) The Rail Operator may assign, transfer, part with possession, mortgage, charge, encumber or otherwise deal with its rights and interests in this Agreement at any time without the prior written consent of RailCorp if:
 - (i) it gives prior written notice to RailCorp of the assignment, transfer or other dealing;
 - (ii) in the case of a mortgage, encumbrance or other similar dealing, the proposed mortgagee or chargee executes a deed with RailCorp which includes an acknowledgment by the mortgagee of RailCorp's rights under this Agreement and any other terms reasonably required by RailCorp; and
 - (iii) in the case of an assignment, transfer or other similar dealing, the proposed assignee or transferee:
 - (A) is solvent and capable of performing the obligations of the Rail Operator under this Agreement;
 - (B) provides the evidence required by clause 20.1(a) or provide Security to RailCorp in accordance with clause 20;
 - (C) is Accredited (or has engaged sub-contractors who are Accredited) to operate on the Network; and
 - (D) executes a direct covenant with RailCorp in a form reasonably satisfactory to RailCorp to perform and observe the terms of this Agreement including

an acknowledgment that the Access Rights conferred under this Agreement are limited to the usage of the Network for the specified Rail Operations.

- (c) If there is or proposed to be a Change of Control of the Rail Operator:
 - (i) the Rail Operator must give prior notice to RailCorp of the Change of Control or proposed Change of Control and provide details of the Change of Control or the proposed Change of Control; and
 - (ii) the Rail Operator must:
 - (A) provide evidence (satisfactory to RailCorp) that it is solvent and capable of performing the obligations of the Rail Operator under this Agreement;
 - (B) provide the evidence required by clause 20.1(a) or provide Security to RailCorp in accordance with clause 20; and
 - (C) provide evidence (satisfactory to RailCorp) that it is Accredited or that its Accreditation is unaffected or will be unaffected by any Change of Control (or has engaged sub-contractors who are Accredited) to operate on the Network.

22.2 Dealings by RailCorp

RailCorp may assign, transfer, part with possession, mortgage, charge, encumber or otherwise deal with its rights and interests in this Agreement and the Network at any time without the consent of the Rail Operator.

23. Yard Management Services

23.1 Yard Management Services

- (a) The Yard Management Services are:
 - (i) non-exclusive contractual rights and do not give the Rail Operator any right, title or interest of any proprietary nature in the Network or any Yard;
 - (ii) subject to any safety interface protocols included within or forming part of any relevant Interface Agreement; and

23.2 are subject to the terms and conditions of this Agreement including in particular clause 6, 7, 8, 13 and 14, unless otherwise expressly agreed by the parties. Yard Management Services Charges

- (a) The Rail Operator must pay the Yard Management Services Charges at the times and in the manner agreed in writing by the parties.
- (b) Yard Management Services Charges are deemed to be Access Charges for the purposes of clause 4.1 and 4.3.

24. General

24.1 Compliance by RailCorp and the Rail Operator

- (a) The Rail Operator must at all times during the Term observe and comply with:
 - (i) all Laws, licences and permits and the requirements of all relevant Government Authorities which are applicable to the conduct of Rail Operations by the Rail Operator on the Network; and

- (ii) to the extent applicable to the Rail Operator's Rail Operations, all licences and permits affecting the operations of RailCorp, TfNSW or a Subsidiary Corporation that RailCorp has notified to the Rail Operator from time to time.
- (b) Subject to this Agreement, RailCorp must at all times during the Term observe and comply or procure the observation of and compliance with all Laws, licences and permits and the requirements of all relevant Government Authorities which are applicable to the maintenance, management and operation by RailCorp of the Network. Nothing in this Agreement affects or limits the powers, rights or functions of:
 - (i) the Minister in relation to RailCorp, TfNSW, a Subsidiary Corporation, the Rail Operator or otherwise;
 - (ii) the Director-General;
 - (iii) Transport for NSW;
 - (iv) the Regulator or any other person or authority appointed, authorised or prescribed under the Rail Safety National Law (NSW); or
 - (v) DEH.

24.2 Weighbridges

Where a measurement provided by a Weighbridge is used by RailCorp for any purpose, that measurement shall only be final and binding on the parties if the Weighbridge is certified in accordance with the *Trades Measurement Act 1989* (NSW).

24.3 Records

- (a) Each party will keep, and the Rail Operator will cause each of its Contractors to keep, adequate records in which complete entries will be made in accordance with:
 - (i) for accounting and financial records, the Accounting Standards consistently applied; and
 - (ii) for all other records, prudent business practices consistently applied, reflecting all transactions and events relating to this Agreement and the performance of it.
- (b) If RailCorp or the Rail Operator discover that any information or data provided by the Rail Operator to RailCorp for the purposes of determining the Rail Operator's usage and generating an invoice for Access Charges or Terminal Charges is incomplete or inaccurate the Rail Operator will provide additional, complete and accurate information within 5 Business Days of it first becoming aware of the incomplete or inaccurate information or data.

24.4 Inspections and Audits of Records

- (a) RailCorp may, at reasonable times and upon reasonable notice (except upon the occurrence of an Event of Default when RailCorp may at any time and without notice) inspect and audit the records of the Rail Operator relating to usage of the Network by the Rail Operator.
- (b) If requested by RailCorp, the Rail Operator must provide an audit report that includes a statement by an independent auditor that any statement provided in respect of Train Movements conducted by the Rail Operator during the relevant period accurately reflects all such Train Movements.
- (c) Rail Operator will be liable for the reasonable costs incurred by RailCorp and its advisers in conducting an inspection or audit under this clause 24.4.

24.5 General Inspections and Audits

- (a) Subject to clause 24.5(c):
 - (i) RailCorp may at any time, at its cost and risk, inspect and/or audit any of the Rail Operator's Trains and Rolling Stock, for the purposes of checking the Rail Operator's compliance with this Agreement; and
 - (ii) the Rail Operator may at any time, at its cost and risk, inspect and/or audit any part of the Network for the purposes of checking RailCorp's compliance with this Agreement,

as long as any such inspection or audit is conducted in accordance with all applicable safety procedures and the Operational Safety Rules.
- (b) Subject to 24.5(c), each party must:
 - (i) give the other party any access, information or assistance it reasonably requires in order to carry out any inspection and/or audit in accordance with clause 24.5(a); and
 - (ii) ensure that any representative nominated by it to accompany the representatives of the other party on any such inspection and/or audit comply with, and meet the requirements of, the Operational Safety Rules.
- (c) A party conducting an inspection and/or audit in accordance with clause 24.5(a) must:
 - (i) ensure that its representatives comply with all applicable safety procedures maintained by the other party (as notified by the other party) and also comply with, and meet the requirements of, the Operational Safety Rules;
 - (ii) unless otherwise agreed or the other party has notwithstanding reasonable notice and direct communications on at least 2 separate occasions failed to have a representative present, only do so in the presence of a representative of the other party;
 - (iii) give the other party reasonable notice of its intention to carry out the inspection and/or audit and carry out the inspection and/or audit at reasonable times; and
 - (iv) not damage and minimise any inconvenience or disruption to use of the Network or the business operations of the other party or any other user of the Network during the course of the inspection and/or audit.
- (d) There is no obligation under this clause 24.5 to undertake an inspection or audit.
- (e) RailCorp will not be liable for any loss, cost or damage arising from undertaking or not undertaking any inspection and/or audit.
- (f) The parties agree that the Regulator may audit the implementation of any Interface Agreement and agree to provide information to the Regulator for that purpose.

24.6 Variation/Amendment

Except where this Agreement expressly provides otherwise, this Agreement may be amended only by another agreement executed by the parties.

24.7 Entire Agreement

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

24.8 Non-merger

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

24.9 Authority to Enter into Agreement

Each party warrants that:

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

24.10 Relationship

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

24.11 Consultation

- (a) Subject to clause 24.11(c) where this Agreement expressly requires RailCorp to consult with the Rail Operator in relation to any matter (**a Proposal**) in accordance with this clause 24.11, RailCorp must:
 - (i) notify the Rail Operator, giving details of the Proposal;
 - (ii) arrange and attend a meeting with the Rail Operator to discuss the Proposal; and
 - (iii) give the Rail Operator not less than 1 month after notifying the Rail Operator in accordance with clause 24.11(a)(i) to comment on the Proposal.
- (b) Notwithstanding:
 - (i) any Rail Operator's comments on the Proposal;
 - (ii) any failure by the Rail Operator to comment on the Proposal;
 - (iii) any attendance or failure by the Rail Operator to attend a meeting;
 - (iv) any disagreement by the Rail Operator with the Proposal; or
 - (v) any other matter or thing,

RailCorp, subject to any Court order or binding Regulator direction or declaration, may proceed with any Proposal or make any amendments the subject of any Proposal after 1 month of notifying the Rail Operator in accordance with clause 24.11(a) provided it has not failed to arrange or attend a meeting as required by clause 24.11(a)(ii).
- (c) Despite anything else in this Agreement if, in the opinion of RailCorp:
 - (i) it is necessary to implement a Proposal for the urgent protection or safety of any person or property;
 - (ii) it is not practicable to consult with the Rail Operator or, having commenced the consultation process, complete the consultation process before it becomes necessary to implement the relevant Proposal; or
 - (iii) with respect to the Rail Operator, the Proposal relates to minor or immaterial matters or amendments,

RailCorp may implement the relevant Proposal without consulting or completing the consultation process (as applicable) and the Rail Operator must comply with the amendment which is the subject of the Proposal, as and from the date notified by RailCorp in the Proposal or such later date notified by RailCorp.

- (d) Despite anything else in this Agreement and notwithstanding whether this Agreement expressly requires RailCorp to consult with the Rail Operator in accordance with this clause 24.11, if in the opinion of RailCorp the Proposal relates to matters or amendments that are not minor or immaterial, RailCorp must arrange and attend a meeting with the Rail Operator to discuss the relevant matter or amendment prior to implementing the relevant Proposal.
- (e) If the Rail Operator fails, without good cause, to attend a meeting with RailCorp arranged in accordance with clause 24.11(a)(ii) or 24.11(d), RailCorp may proceed to implement the Proposal referred to in clause 24.11(d).
- (f) Notwithstanding anything else in this Agreement, where this Agreement requires RailCorp to consult with the Rail Operator in relation to a Proposal that relates to an ASA Controlled Document RailCorp must arrange for the Asset Standards Authority to participate in the consultation.

24.12 Provision of Information

Notwithstanding any other provision of this Agreement each party must provide to the other party on request any information or documentation:

- (a) which the other party reasonably requires in order to comply with its obligations under Law (including information required to be exchanged pursuant to the Rail Safety National Law (NSW) or Rail Safety National Regulations; or
- (b) which the other party is required to provide to the other by Law (including information required to be exchanged pursuant to the Rail Safety National Law (NSW), or Rail Safety National Regulations).

24.13 Notices

Subject to any express provision in this Agreement, all notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Agreement other than a Train Control Direction or a Train Consist:

- (a) (**writing**) must be in writing, which for the purpose of this Agreement includes electronic communications, addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

RailCorp:

Rail Corporation New South Wales

Level 20, 477 Pitt Street, Sydney, New South Wales 2000

Facsimile: [02 8922 4855]

Attention: Chief Executive Officer

The Rail Operator:

[insert details]

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

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00 pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

24.14 Costs

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

24.15 Stamp Duty

- (a) The Rail Operator is liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed by the parties under or in connection with it.
- (b) The Rail Operator must:
 - (i) if required by law, lodge this Agreement for stamping at the NSW Stamp Duties office within the time prescribed by law;
 - (ii) as soon as practicable following stamping of this Agreement provide to RailCorp a copy of the duly stamped Agreement with the payment of stamp duty mark clearly identified on the copy; and
 - (iii) indemnify RailCorp for any stamp duty payable by the Rail Operator under this clause.

24.16 No Waiver

- (a) No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The parties shall not be taken to have waived any of their rights under this Agreement unless such a waiver is contained in a notice given to the other party. Any such waiver shall only operate to the extent specified in the notice.

24.17 Severance

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

24.18 Approvals, Consents and Actions

Subject to any express provision to the contrary in this Agreement where a party is required to give its consent or approval under this Agreement, that party may not unreasonably withhold or delay giving its consent or approval.

24.19 Further Assurances

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

24.20 Counterparts

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

24.21 Governing Law

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

24.22 Intellectual Property

All information, documents or other materials in whatever form (including electronic form) supplied or made available to a party by the other party (the **Supplying Party**) remains the intellectual property of the Supplying Party.

Signing page

EXECUTED as an agreement.

**Signed for RAIL CORPORATION NEW
SOUTH WALES** by an authorised officer in
the presence of

Signature of officer



Signature of witness



Name of officer (print)

Name of witness (print)

Office held

Signed for [INSERT DETAILS] by an
authorised officer in the presence of

Signature of officer



Signature of witness



Name of officer (print)

Name of witness (print)

Office held

Annexure A

Authorised Network Segments

Annexure to RailCorp Track Access Agreement

draft

ANNEXURE A

Authorised Network Segments for Ad Hoc Train Paths

This Annexure describes the Authorised Network Segments for Ad Hoc Train Paths.

Terms used in this Annexure have the meanings given to them in clause 1.1 of the Agreement.

The Rail Operator may request at any time an Ad Hoc Train Path in accordance with clause 5.7 of the Agreement and the Operations Protocol on the following Network Segments:

SEGMENT No.	SEGMENT NAME
200	Sydney Yard
203	Central To Redfern
204	Redfern To Strathfield (via Suburban)
205	Strathfield To Flemington
206	Flemington To Lidcombe
207	Lidcombe To Auburn
210	Auburn To Clyde
211	Clyde To Granville
212	Harris Park to Blacktown
213	Clyde to Rosehill
216	Merrylands to Cabramatta
217	Blacktown to Richmond
220	Redfern To Erskineville Jct
221	Erskineville Jct to Sydenham
222	Sydenham to Meeks Road Jct
224	Sydenham to Bankstown
225	Wolli Creek to East Hills
230	Lidcombe to Sefton Park Jct
231	Sefton Park Jct to Cabramatta
232	Liverpool to Glenfield Jct
233	Bankstown to Sefton Park Jct
234	East Hills to Glenfield Jct
235	Cabramatta to Liverpool
242	Merrylands to Harris Park
243	Granville to Harris Park
244	Granville to Merrylands

267	Flemington West Jct to Lidcombe
272	North Strathfield Jct to Flemington
273	Rosehill to Sandown
275	Flemington South Jct to Flemington Middle Jct
276	Flemington South Jct to Flemington West Jct
277	Flemington Middle Jct to Flemington West Jct
280	Flemington Middle Jct to Flemington North Jct
282	Flemington East Jct to Flemington Middle Jct
283	Flemington East Jct to Flemington North Jct
291	Redfern To Strathfield (via Main)
297	Redfern To Strathfield (via Local)
299	Meeks Road Jct to Wolli Creek
300	Wolli Ck to Hurstville
301	Sutherland to Waterfall
302	Waterfall to Metropolitan Colliery Jct
303	Metropolitan Colliery Jct to Coniston
304	Coniston to Unanderra
305	Unanderra to Wongawilli Jct
306	Wongawilli Jct to Dapto
307	Hurstville to Sutherland
308	Kiama to Nowra
309	Dapto to Kiama
310	Coniston to Port Kembla (main lines)
322	Metropolitan Colliery Jct To Colliery
400	Strathfield to North Strathfield Jct
401	North Strathfield to Epping
402	Epping to Hornsby
403	Gosford to Wyong
404	Eraring Jct to Newstan Jct
405	Newstan Jct to Cockle Creek
406	Cockle Creek to Sulphide Jct
407	Adamstown to Broadmeadow (Via Main)

408	Hornsby to Berowra
409	Berowra to Gosford
410	Woodville Jct to ARTC border
433	Woodville Jct to Hamilton
434	Hamilton to Newcastle
435	ARTC border to Hamilton
438	Vales Point Jct to Eraring Jct
490	Sulphide Jct to Adamstown
494	Adamstown to Broadmeadow (Via Down Relief)
496	Wyong to Vales Point Jct
497	Broadmeadow to Woodville Jct
608	Macarthur to ARTC border
700	Blacktown to St Marys
701	St Marys to Penrith
780	Penrith to Springwood
781	Springwood to Mt Victoria
782	Mt Victoria to Newnes Jct
783	Newnes Jct to Lithgow
784	Lithgow to Lithgow Yard
785	Lithgow to Bowenfels (CRIA border)

Annexure B

Confidential Information

Annexure to RailCorp Track Access Agreement

draft

ANNEXURE B

Confidential Information

Part I –RAIL OPERATOR CONFIDENTIAL INFORMATION

Unless the Rail Operator otherwise agrees in writing, Confidential Information of the Rail Operator means any documents, correspondence, data or other information that relates to the following:

1. Annexure C;
2. any details of the Rail Operator's forecasted Train Movements (provided by the Rail Operator to RailCorp in accordance with clause 10.1(c)); and
3. a Dispute between RailCorp and the Rail Operator (to the extent that any such documents, correspondence, data or other information have been provided to any person for the purposes of negotiating or resolving a dispute).

Part II - RAILCORP CONFIDENTIAL INFORMATION

Unless RailCorp otherwise agrees in writing, RailCorp Confidential Information means any documents, correspondence, data or other information that relates to the following:

1. Annexure C; and
2. a Dispute between RailCorp and the Rail Operator (to the extent that any such documents, correspondence, data or other information have been provided to any person for the purposes of negotiating or resolving a dispute.)

Annexure C

Charges

Annexure to RailCorp Track Access Agreement

[Note: To be advised.]

draft

ANNEXURE C

Charges

[*Note: To be advised.*]

draft

Annexure D

Rail Operator Performance Information

Annexure to RailCorp Track Access Agreement

[Note: To be advised.]

ANNEXURE D

Rail Operator Performance Information

[Note: To be advised.]

draft

Annexure E

NOT USED

Annexure to RailCorp Track Access Agreement

draft

Annexure F

Operational Safety Rules

Annexure to RailCorp Track Access Agreement

draft

ANNEXURE F

Operational Safety Rules

Network Rules
Network Procedures
Network Local Appendices
Safe Notices

Together with publications associated with the implementation of these documents.

Annexure G

Operations Protocol

Annexure to RailCorp Track Access Agreement

draft

ANNEXURE G

Operations Protocol



Operations Protocol

RailCorp Owner	General Manager Network Access Division	Tel: (02) 9224 2311 Fax: (02) 9224 3576	Revision Date 3/3/2008	Revision No 3.0
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GENERAL MATTERS

Preamble

This document, titled Operations Protocol forms part of a Track Access Agreement between:

- a. RailCorp, as owner of the infrastructure that forms the RailCorp Network;
and
- b. a Third Party Rail Operator.

Scope of Operations Protocol

The Operations Protocol describes the day-to-day management of the interfaces between RailCorp and a Third Party Rail Operator as they affect the delivery of Train Planning, Train Programming and Train Control services. A list of contact points and telephone numbers is provided in Annexure 4 to facilitate the communication between parties at an operational level.

The Operations Protocol includes a description of the following processes:

- Standard Working Timetable (SWTT) revision
- Standard Working Timetable (SWTT) amendment;
- The exercise of real-time Train Control, including the description and application of Train Decision Factors (TDF) in section 6.0.

Rail Operators when operating on the RailCorp network may seek permanent alterations to their Train Path entitlements when the SWTT is being revised. RailCorp may make temporary modifications to Rail Operators Train Paths in relation to Special Events and Track Possessions, via a STN. Additionally, Rail Operators may seek via the Daily Train Plan (DTP), one-off variations to their allocated Train Paths and access to specific Train Paths that are not already allocated to a Rail Operator (known as Ad hoc paths).

This document is not a Safety Interface document. The documents scope is limited to those processes outlined above.

Definitions

For the purposes of this Operations Protocol, the following terms are defined to mean:

Access Agreement means an agreement between RailCorp and a Rail Operator for the provision of access to the Network;

ATP means as traffic permits.

Commuter Peak Services means those Rail Passenger Services arriving at Central Station or Newcastle Station between 0600 and 0900 hours and departing Central Station or Newcastle Station between 1600 and 1800 hours and continuing until they reach their destination point;

Daily Train Plan, means the documents comprising all of the advices which are prepared for each day in accordance with the Operations Protocol by RailCorp and which, taken together, show all of the Train Paths on the Network for that day;

Express Freight Services means those freight services that are determined by RailCorp Train Control to operate at faster sectional times than local frequent-stopping Rail Passenger Services;

Frequent-Stopping Services means those Rail Passenger Services that stop at most or all stations along their Train Path;

General Manager Network Access means the General Manager Network Access Division, RailCorp or an individual nominated by the General Manager Network Access Division.

Healthy Train means a train that, having regard to the Daily Train Plan applicable on the day:

- a. presents to the Network on time, is configured to operate to its schedule and operates in a way that it remains able to maintain its schedule; or
- b. is running late only due to causes within the RailCorp network , but only where the root cause is outside the Rail Operator's control; or

c. is running on time, regardless of previous delays;

Incident has the meaning given to that term in the Network Incident Management Framework;

Limited-Stop Services means those Rail Passenger Services that stop at a few selected stations along their Train Path;

Long-distance Passenger Services means those Rail Passenger Services operating to or from points outside the RailCorp Network;

Network means the railway lines vested in or owned by RailCorp from time to time and for the avoidance of doubt, excludes those things excluded from the definition of 'rail infrastructure facilities' in the *Transport Administration Act*;

Network Incident Management Framework means the incident management framework designated by RailCorp, as amended from time to time in accordance with the Rail Operators Access Agreement.

Network Possessions Manual means the manual for managing Track Possessions designated by RailCorp, as amended from time to time in accordance with this Agreement;

Network Segment means any discrete part of the Network.

Non-Revenue Positioning Movements means movements of Trains required for reasons other than revenue services;

Peak Positioning Movements means train movements required to position trains to suit the operation of Commuter Peak Services;

Rail Infrastructure Facilities:

- a. includes railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, Train Control systems, communication systems, overhead power supply systems, power and communication cables and associated works, buildings, plant, machinery and vested in, owned or exclusively controlled by RailCorp; but
- b. does not include any stations, platforms, rolling stock maintenance facilities, office buildings or housing, freight centres or depots, private sidings and spur lines connected to premises whether or not vested in, owned or exclusively controlled by RailCorp;

Rail Operations means the operation or moving, by any means, of any Rolling Stock on the Network under this Agreement.

Rail Operator means any person conducting Rail Operations;

Rail Passenger Service means a service for the carriage of passengers on Trains on the Network;

RailCorp means Rail Corporation NSW;

RailCorp Train Planning means the persons within RailCorp delivering Train Planning services;

RailCorp Train Programming means the persons within RailCorp Train Control delivering Train Programming services;

Special Event means the Sydney Royal Easter Show, a major sporting event, a major cultural event or any other similar event which requires:

- a. a special timetable for the operation of rail passenger services for the use and benefit of the general public; and
- b. consequential adjustments to the Rail Operator's Rail Operations;

Special Train Notice or STN means a notice issued by RailCorp Train Planning from time to time setting out changes to the SWTT;

Standard Working Timetable means the standard working timetable established in accordance with the Operations Protocol as amended from time to time in accordance with the Operations Protocol.

SWTT Revision means comprehensive changes to the SWTT that alters the structure of the SWTT which impact on Third Party Rail Operator Services.

Tables Telegrams means the advice of changes to the SWTT published by RailCorp Train Planning when there is not sufficient time to permit all concerned being advised of those changes through a STN;

TOC Waiver means a written waiver of Rolling Stock operational standards (as described in the Train Operating Conditions Manual) issued by RailCorp, accompanied by a unique registration number and containing technical instructions authorising operations personnel to perform a movement of Rolling Stock on the Network under conditions which vary from the existing Train Operating Conditions Manual.

Track means the rails, ballast, sleepers and all items used to fix the rails to the sleepers and to the ground underneath.

Track Possession means the temporary closure of a part of the Network for the purposes of carrying out repair, maintenance or upgrading work on or adjacent to the Network.

Train means a single unit of Rolling Stock which is a locomotive or other self propelled unit or two or more units of Rolling Stock coupled together to operate on the Track as a single unit at least one of which is a locomotive or other self-propelled unit.

Train Consist means, in respect of each of the Rail Operator's Train Movements, an advice prepared by the Rail Operator which includes the information specified in Annexure 3.

Train Control means the control and regulation of all Rail Operations (including Train Movements, movements of Rolling Stock and track maintenance vehicles).

Train Control Direction means an instruction or direction relating to Train Control.

Train Movement means a particular trip by a Train on a Train Path.

Train Operating Conditions mean the operating requirements and conditions applicable to each Train (and each unit of Rolling Stock comprised in that Train) that must be observed in order to entitle a Rail Operator to make a Train Movement on the Network using that Train, as set out in the Train Operating Conditions Manual;

Train Operating Conditions Manual means a manual designated by RailCorp, as amended from time to time in accordance with this Agreement which contains the Train operating conditions for the movement of Rolling Stock on the Network and includes any TOC Waiver issued by RailCorp from time to time.

Train Path means the series of Network Segments over a particular time interval through which a Train may travel and may include stopping points and intervals and other set down or changeover points. For the avoidance of doubt, a Train Path which has a departure time for a specified day of the week is separate to a Train Path which has the same departure time on another day of the week.

Train Path Application means the details relating to a request for new or varied Train Path as described in the form set out in Annexure 1 of this Operations Protocol;

Train Planning means the development of Standard Working Timetable and its amendment through Special Train Notices and Tables Telegrams;

Train Programming means the development of the Daily Train Plan for the sectional train control boards, incorporating the pathing of freight trains and associated requirements as well as Track Possessions.

REVISION OF THE STANDARD WORKING TIMETABLE

Overview of Process

A Standard Working Timetable (SWTT) documents the train paths that have been authorised for operation on the network. Copies of the SWTT can be obtained from RailCorp.

From time to time RailCorp will initiate a SWTT Revision having regard to the access rights of Rail Operators as defined in their Access Agreements; long-term Track Possession requirements; the Network capacity and operating restrictions; and RailCorp's Rail Infrastructure Facilities configuration.

A SWTT Revision is normally undertaken to coincide with significant infrastructure alterations or structural/permanent changes to the previous SWTT.

A Rail Operator may also seek permanent changes to their timetabled train paths at this time. These alterations may include amendment, cancellation or requests for additional train paths in accordance with their legitimate business needs.

A Rail Operator is also entitled to request, between SWTT Revisions permanent changes to their timetabled train paths in accordance with their legitimate business needs. In such situations the roles, responsibilities, inputs and outputs of the process remain the same.

Inputs to Process

The inputs to the SWTT Revision process, in no particular order of priority, are:

- RailCorp's capacity requirements for its above rail services;
- the current SWTT;
- Train Operating Conditions Manual;
- Rail Operator's entitlements to Train Paths as specified in their Access Agreements;
- Train Path Applications from Rail Operators for alterations, deletions and additions to their Train Paths entitlements;
- long-term Track Possessions which RailCorp requires to be implemented in accordance with the Infrastructure Possessions Manual;
- Border times received from/negotiated with ARTC;
- Maintenance windows which are not track possessions but margins between trains which allow work to be carried out on the Infrastructure As Traffic Permits.

- proposed amendments to the SWTT by RailCorp, for any reason including:
 - a. RailCorp identifying potential new Train Paths; and
 - b. RailCorp wishing to re-configure existing Train Paths to optimise the use and reliability of the Network;
- legislative requirement for passenger priority; and
- Rail Infrastructure Facilities configuration, including infrastructure commissioning.

Roles and Responsibilities

The roles of the various parties involved in the SWTT Revision process are defined as follows:

Rail Operator

- submits to the General Manager Network Access Train Path Applications for any permanent additions, deletions and alterations it proposes to its current access rights; and
- consults with the General Manager Network Access in relation to its Train Path Applications.

RailCorp

- determines capacity requirements for its above rail services;
- receives, reviews and determines the requirements of Train Path Applications from Rail Operators;
- the General Manager Network Access reviews train path applications in regard to optimising the use and reliability of the Network;
- co-ordinates and facilitates liaison, where appropriate, between all parties involved or affected by the revision of the SWTT, including other rail infrastructure owners whose infrastructure is connected to the Network;
- Liaises with ARTC to identify appropriate border times for entry/exit to/from the networks.
- Attempts to provide for all pre-existing non RailCorp Train Paths within the SWTT Revision, unless otherwise notified of a request for an amendment to those Train Paths;
- accepts or rejects Train Path Applications, subject to:

- the requirements of Passenger Priority in accordance with the Transport Administration Act 1988;
 - the availability of capacity on the Network (this includes paths already allocated for either trains or maintenance);
 - the reliability of the Network; and
 - the bona fide requirements of other users and prospective users of the Network;
- considers representations from Third Party Rail Operators on the extent to which the SWTT Revision meets the requirements defined in their Access Agreements; and to resolve difficulties in meeting those requirements (including the operative date of a new SWTT); subject to ensuring confidentiality of information pertaining to all parties;
 - determines the date upon which the revised SWTT becomes operational;
 - complies and maintains current distribution list for the SWTT.
 - distributes the revised SWTT, including associated Train Control graphs and associated documentation for implementation.

Output of SWTT Revision Process

The output is a SWTT identifying Rail Operators' scheduled Train Paths within the RailCorp Network, or an STN as the case may be.

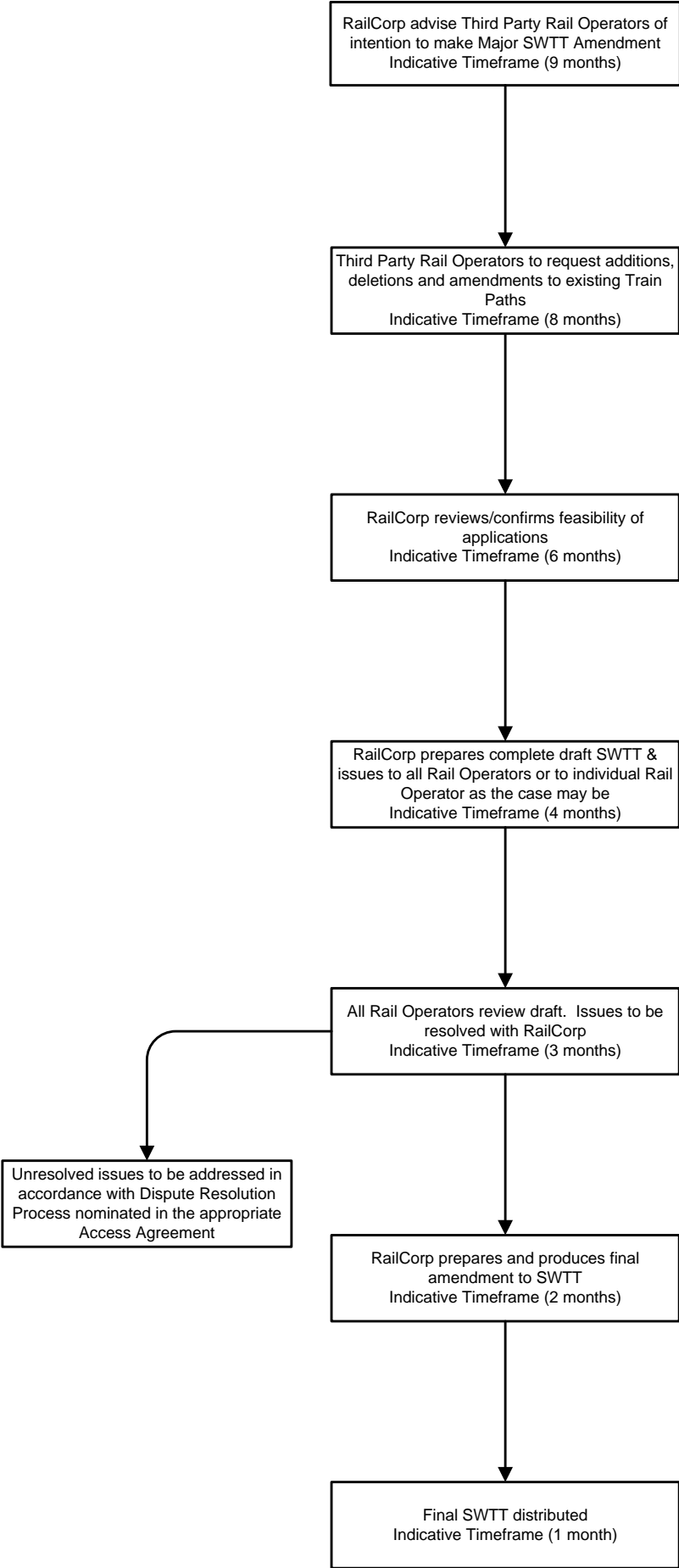
Dispute Resolution

Issues which a Rail Operator has in relation to the SWTT that are not resolved through the processes referred to above will be addressed in accordance with the Access Agreement between RailCorp and the Rail Operator.

Indicative Timeframes

The SWTT Revision Process is graphically represented in Figure 1 which also provides an indicative timeframe for the identified processes. It is RailCorp's intention that these indicative timeframes will be adhered to however failure to achieve the timeframes shall not constitute a default by RailCorp of its obligations under this Operations Protocol or the Access Agreement and RailCorp will not be liable for any claims suffered or incurred by or made or brought by or against the Rail Operator as a result of or arising from the imposition of such restrictions.

FIGURE 1 - SWTT Revision Process



MODIFICATIONS TO THE SWTT

Overview of Process

A SWTT Modification is made to accommodate additions, deletions and alterations to Train Paths that are of a temporary nature. Such modifications can be the result of occurrences such as legitimate business requirements of the Rail Operator of a temporary nature, Special Events and Track Possessions which are subject to a separate process. The results of this separate process are advised by issue of STNs or Tables Telegrams.

Consultation between the parties in relation to modifications to the SWTT relating to Track Possessions will be as outlined in the Infrastructure Possession Manual. Consultation between the parties in relation to modifications to the SWTT relating to Special Events will be as outlined in the respective Access Agreements.

Inputs to Process

The inputs to the process of a SWTT modification, in no particular order of priority are:

- The current SWTT;
- Train Operating Conditions Manual;
- Rail Operators' entitlements to Train Paths as specified in their Access Agreements;
- Maintenance windows which are not track possessions but margins between trains which allow work to be carried out on the Infrastructure As Traffic Permits.
- Track Possession Programme
- RailCorp proposed modifications to the SWTT for any reason, including:
 - a. RailCorp has identified potential new Train Paths; and
 - b. RailCorp wishes to re-configure existing Train Paths to optimise the use and reliability of the Network;
 - c. track possessions required for routine maintenance and upgrades
 - d. it's own capacity management
- legislative requirement for passenger priority;
- Monthly list of Special Events as prepared by RailCorp;
- Rail Infrastructure Facilities configuration; and
- Existing or planned STNs.

Roles and Responsibilities

The roles of the various parties involved in a SWTT Modification are defined as follows:

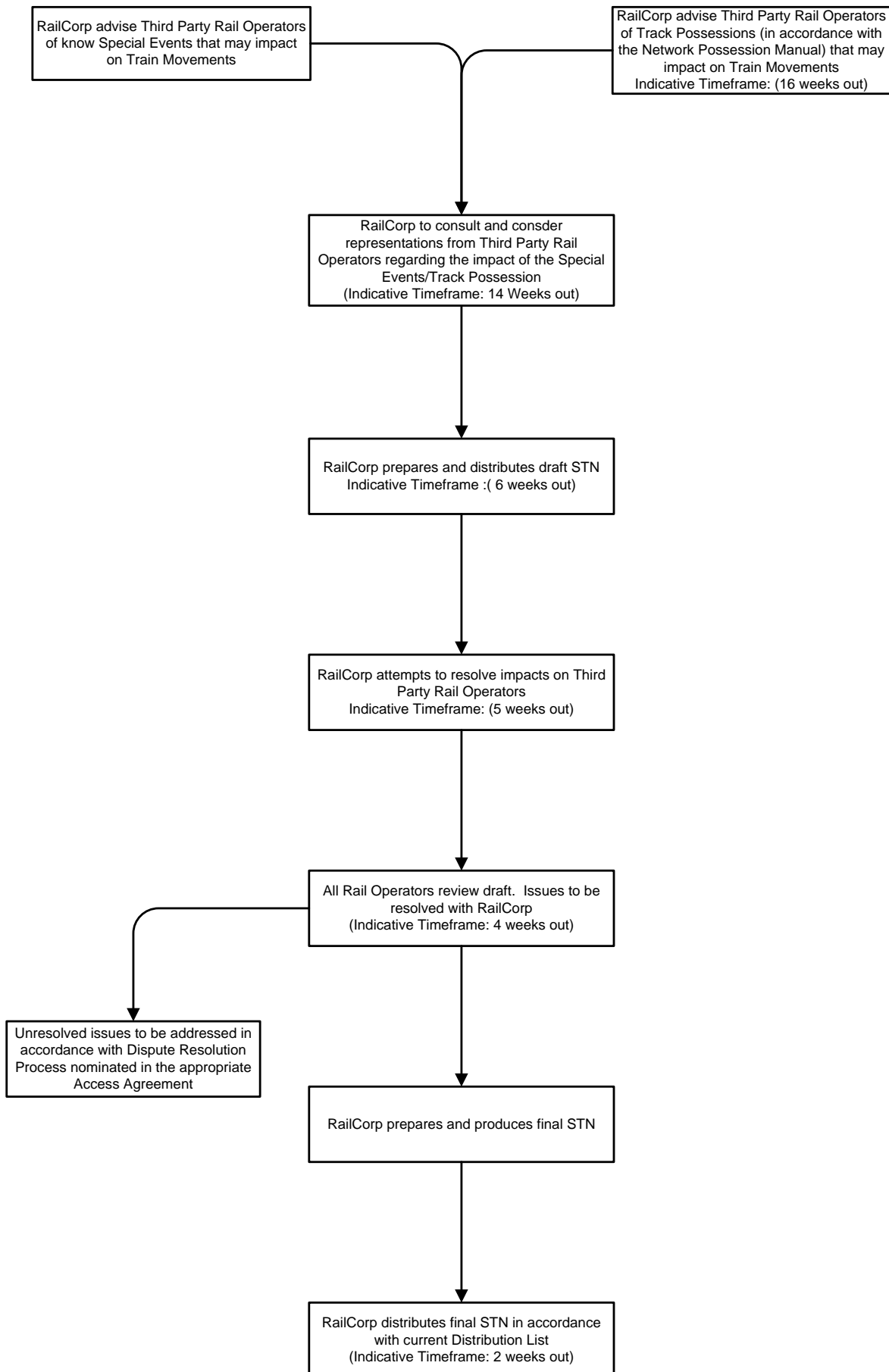
Rail Operator

- notifies RailCorp promptly in writing, where it believes that its Rail Operations may be affected by a Special Event or Track Possession;
- nominates and negotiates with RailCorp those services which should receive highest priority for restricted path allocation.

RailCorp

- notifies Rail Operators and ARTC of all known Special Events and changes to Special Events previously notified, that may impact on Train Movements on the Network and lead to modifications to the SWTT;
- considers representations from Rail Operators and other relevant parties on impacts and resolves difficulties subject to;
 - the requirements of Passenger Priority;
 - the availability of capacity on the Network;
 - the reliability of the Network; and
 - Maintenance windows which are not track possessions but margins between trains which allow work to be carried out on the Infrastructure ATP.
 - the bona fide requirements of other users and prospective users of the Network; and
 - capacity requirements of RailCorp.
- co-ordinates with all parties involved in or affected by a SWTT Modification;
- nominates the date upon which the STN takes effect;
- produces STNs from relevant inputs;
- publishes the list of Special Events on the RailCorp intranet;
- Publishes the Possession Programme on the RailCorp Internet.
- uses its reasonable endeavours to mitigate the impact of a Special Event on the Rail Operator to the extent reasonably possible (including, by using reasonable endeavours to provide the Rail Operator with an alternate Train Path as close as possible to the Train Path affected by the change);
- distributes the new STN or Tables Telegram.

FIGURE 2 - SWTT Modification Process



Output of Process

The output is a STN or Tables Telegram covering changes to the SWTT in accordance with this Protocol.

Dispute Resolution

Issues which Rail Operators have in relation to the SWTT Modification that are not resolved through the processes referred to above will be addressed in accordance with the Access Agreements between RailCorp and the Rail Operator.

Indicative Timeframes

The SWTT Modification Process is graphically represented in Figure 2 which also provides an indicative timeframe for the identified processes. It is RailCorp's intention that these indicative timeframes will be adhered to however failure to achieve the timeframes shall not constitute a default by RailCorp of its obligations under this Operations Protocol or the Access Agreement and RailCorp will not be liable for any claims suffered or incurred by or made or brought by or against the Rail Operator as a result of or arising from the imposition of such restrictions.

DAILY TRAIN PLAN (DTP)

Overview of Process

For each day, the SWTT, contains the entitlements of Rail Operators and all published STNs that apply for that specific date; is amended by RailCorp to form the DTP. The DTP includes additional emergency Track Possessions, confirmed services and any other short notice Train program alterations for that specific date.

Each day's DTP takes effect at 00:01 hours on the day and is amended as required, as described in section 5.0 of this Operations Protocol, to manage and record actual operations during the day.

Inputs to Process

The inputs to the process for DTP preparation, in no particular order of priority, are:

- the current SWTT;
- written confirmation by Rail Operators of those services specified in their entitlements that they intend to operate on a particular day;
- Ad hoc Train Path Applications for additions and alterations to approved services;
- published STNs and Tables Telegrams;
- Network constraints eg planned and scheduled changes to trackwork, signalling and electrical overhead wiring etc.; and
- emergency and urgent Track Possessions for the relevant day to be implemented in accordance with the Infrastructure Possessions Manual.

Roles and Responsibilities

The roles of the various parties involved in the DTP production are as follows:

Rail Operator

- provides written confirmation of the services that it will operate on a particular day from within its Train Paths entitlement to the appropriate contact point at RailCorp Train Programming as per the list in Annexure 4;
- requests in writing for additional Ad hoc Train Paths and alterations to existing entitlements, by providing information of the type specified in the Ad hoc Path Application in Annexure 2 or any information that

RailCorp requires from time to time, to the appropriate contact point at Train Programming as per the list in Annexure 4;

- reviews proposed alternative Train Paths offered by RailCorp, where it is notified that its request for additional Ad hoc Train Paths or alterations to existing entitlements cannot be accommodated, and confirms where appropriate if it wishes to proceed with the alternative Train Path; and
- plans its Trains to operate in accordance with the Daily Train Plan.

RailCorp:

- provides details of emergency Track Possessions made in accordance with the Infrastructure Possessions Manual.
- provides details of As Traffic Permits working which is being carried out
- provides details of planned Track Possessions made in accordance with the Infrastructure Possessions Manual.
- prepares the DTP from the relevant inputs;
- uses its reasonable endeavours to ensure that all confirmed entitlements of Rail Operators are included in the Daily Train Plan; then considers, assesses and accepts or rejects requests for additional Ad hoc Train Paths and alterations to existing entitlements by Rail Operators, subject to:
 - the requirements of Passenger Priority;
 - the availability of capacity on the Network; and
 - the bona fide requirements of RailCorp, other users and potential users of the Network;
- resolves difficulties arising from requests for one off Train Paths and alterations to existing entitlements that cannot be accommodated or conflicting requests, and in the process considers representations by Rail Operators.
- Advises, in writing, the relevant parties if their requests for Ad hoc additional Train Paths and alterations to existing entitlements are approved or declined.
- co ordinates with other rail systems (including siding owners) connecting to the Network;
- issues the DTP for the particular 24-hour period commencing the next day at 00:01 and a provisional DTP for the subsequent 24-hour period.

Parties will use their reasonable endeavours to achieve the following target communication timeframes in the preparation of the DTP:

- Confirmations of existing entitlements and requests for additions and alterations to them must be made by the Rail Operator at least forty-eight (48) hours prior to the DTP that covers the period relevant to the request being made going “live”. Any shorter period of notice may not enable RailCorp and Train Programming to consider and implement the requests; and
- RailCorp Train Programming will respond to requests for additions, and alterations 24 hours prior to the operative time.

Outputs of Process

The output is the DTP for a 24-hour period commencing the next day at 00:01 and a provisional DTP for the subsequent 24-hours including the AMBA Report.

Dispute Resolution

Final decisions in relation to the DTP are made by RailCorp Train Programming in accordance with this Operations Protocol.

Where a Rail Operator is not satisfied with any aspect of the preparation of the DTP, then the matter will be dealt with under the dispute resolution procedures in the Access Agreement between RailCorp and the Rail Operator.

DAILY TRAIN CONTROL (Live Program)

Overview of Process

RailCorp's aim is to direct Trains to operate to the DTP. However, events on the day may prevent this from happening. The DTP is then amended in accordance with this Operations Protocol, to accommodate real-time delays, re-scheduling and cancellations of Train Movements. The record of Train Movements during the day is the actual train graph for the 24-hour period.

Inputs to Process

The inputs to the process for Daily Train Control, in no particular order of priority, are:

- Approved DTP;
- Train Decision Factors in section 6.0 of this Operations Protocol;
- reports of events that will affect Train running including Incidents;
- Operational Safety Rules;
- Rail Operators' service requests; and
- emergency Track Possession requirements to be implemented in accordance with the Network Possessions Manual.

Roles and Responsibilities

The roles of the various parties involved in daily Train Control are as follows:

Rail Operator

- requests alterations to the DTP for Train Paths for which it holds access rights from the appropriate RailCorp Train Control person as outlined in Annexure 4;
- delivers a written Train Consist (as detailed in Annexure 3), by fax or other form of electronic transmission agreed by RailCorp, for each locomotive hauled Train Movement, to the relevant Train Control person as outlined in Annexure 4;
- presents its Trains in accordance with the DTP; and
- operates Trains as per any Train Control Direction.

RailCorp

- issues Train Control Directions on the day to the Rail Operator or the Rail Operator's driver.
- uses its reasonable endeavours to mitigate the impact of disruption experienced by Rail Operators resulting from its Train Control

Directions, to the extent reasonably possible (including, by using reasonable endeavours to provide an affected Rail Operator with an alternate Train Path as close as possible to the Train Path affected by the change);

- makes alterations to the “live program”, including cancellations, re-routing or re-scheduling Trains or imposing any other operating restrictions or exercising other rights, in consultation with Rail Operators and in accordance with the Train Decision Factors in section 6.0 of this Operations Protocol, and in the process considers representations by Rail Operators in relation to the impact of those alterations on their Train Paths;
- advises Rail Operators of the outcomes of their requests for alterations;
 - communicates with Rail Operators in the manner defined in the Network Incident Management Plan, where Train Control Directions involve changes to a Rail Operator’s service resulting from an Incident;
 - may stop, delay or cancel a Train Movement, where the Rail Operator has not complied with the requirements for a Train Consist; but before doing so, uses its reasonable endeavours to ensure that the Rail Operator is advised of the non-compliance and given a reasonable opportunity to comply; and
 - records all information on the running of Trains, including details of operations against timetable and any Incidents and consequential delays affecting the performance of Rail Operators and the Network.
 - Advise adjoining network owners.

Communications Timeframes

The following minimum communications timeframes are required in the undertaking of daily Train Control:

- Rail Operator request changes to the DTP eight (8) hours prior to the operative time.
- RailCorp Train Control advises Rail Operators as soon as possible of the outcome of their requests for alterations;
- Rail Operator delivers the Train Consist to the relevant RailCorp Train Control person as outlined in Annexure 4 30 minutes prior to the departure of the Train and if there are changes to the information contained in the Train Consist along the route, to provide a revised Train Consist prior to departing the point where the change occurred, or where the available technology is such that it is not possible to comply with this requirement;
- to the extent that telephone or radio facilities are available, advise the relevant RailCorp Train Control, by telephone or radio, of the details required (points a, b, c, d, e, f, g, h, j of Annexure 3); and where Dangerous Goods are being carried on a Train, the vehicle number and

classification of each vehicle on which Dangerous Goods are being carried, together with the class and quantity of Dangerous Goods carried on the vehicle; and

- In any case, provide a complete and accurate written Train Consist to the relevant RailCorp Train Control location for the next scheduled stop at which appropriate technology for the sending of written communications is available.

Outputs of Process

The outputs of the process for daily Train Control are:

- co-ordination of Train Movements on the Network;
- Train Control Directions.

Dispute Resolution

On a day-to-day basis, a Rail Operator may discuss daily Train Movements with RailCorp Train Control. Final decisions in relation to daily Train Control Directions lie with RailCorp Train Control.

Rail Operators may make representations for changes to the procedures for the implementation of the DTP “live program” to RailCorp which it will consider and review with all affected parties.

Any disagreements on actions taken on the day or in relation to the procedures used will be reviewed in accordance with the Rail Operator’s Access Agreement.

TRAIN DECISION FACTORS

RailCorp Train Control issues Train Control Directions on a day to day basis, for resolving conflicts where two or more trains require conflicting Train Paths, in accordance with this Operations Protocol.

Where Trains are on-time, they will be managed as specified in the Daily Train Plan (DTP).

Where one or more Trains are late or unhealthy, they will be managed as specified in the matrices below subject to a Rail Operator's preferences for its own services.

The two tables are used in conjunction with each other. Table 1 will enable RailCorp RailCorp Train Control to define the relative priority of two conflicting Trains. Table 2 will specify the type of decision available to RailCorp Train Control in delivering Train Control Directions to resolve the potential conflict.

Table 1 – Path Priority Matrix

Decreasing Order of Priority	RailCorp Network:
Highest	Limited-Stop Commuter Peak Services (incl. Peak Positioning Movements)
	Frequent-Stopping Commuter Peak Services (incl. Peak Positioning Movements)
	Long-Distance Passenger Services
	Limited-Stop non-Commuter Peak Services
	Emergency Possessions
	Express Freight Services
	Frequent-Stopping non-Commuter Peak Services
	Non-Express Freight Services
	Planned Possession
	ATP Engineering Infrastructure Work
Lowest	Non-Revenue Positioning Movements



Table 2 - Decision Matrix

Trains of Equal Health	Both Healthy One On Time + One Late	Both Late
	Rule 1 + 2	Rule 3
Equal Priority Trains		
Unequal Priority Trains		Rule 6 + 3
Higher Priority Train is On Time + Lower Priority is Late	Rule 5 + 2	
Higher Priority Train is Late + Lower Priority Train is On Time	Rule 4 + 2	

Trains of Unequal Health	Rule 7 + 2
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Rule 1: a) a Healthy Train should be managed such that it will exit on time.

If a Healthy Train is running late, it should be given equal preference to other Healthy Trains and advanced wherever possible to regain lost time. Any delay to other Healthy Trains as a result of such advancement must be kept to a minimum as defined in Rule 2.

Rule 2: The following delay limits apply to the full journey of a Healthy Train being held back:

the delay to the individual Rail Passenger Service held back does not exceed 5 minutes; or

there is a plan in place to recover lost time so that the downstream effect on the service held back and on individual subsequent Rail Passenger Services also does not exceed 5 minutes;

the delay to a freight service held back does not exceed 15 minutes; or

there is a plan in place to recover lost time so that the downstream effect on the healthy freight service held back and on individual subsequent healthy freight services also does not exceed 15 minutes. Any plan for the recovery of time by freight services must be capable of being achieved prior to their entry into the RailCorp Network, unless the freight services concerned have standing time built into their Train Paths within the RailCorp Network, and the delay to be recovered within the RailCorp Network does not exceed the amount of standing time.

Rule 3: Give preference to Train where Train performance indicates it will lose least or no more time and even make up time and hold the gain; and consider downstream effect to minimise overall delay.

Rule 4: Lower priority Train gets preference. Higher Priority Train can be given preference subject to the delay to the Lower Priority train being kept to a minimum as defined in Rule 2.

Rule 5: A higher priority Train should be given preference over a lower priority Train. A lower priority Train may be given preference over higher priority Train provided the delay to that Train is kept to a minimum as defined in Rule 2.

Rule 6: High priority Train has preference, subject to Rule 3.

Rule 7: A Healthy Train should be given preference over an unhealthy Train. An unhealthy Train may be given preference over a Healthy Train provided the delay to that Train is kept to a minimum as defined in Rule 2.

Annexure 1 –PATH APPLICATION

RAILCORP REGISTER _____
**APPLICATION FOR NEW OR VARIED TRAIN PATH FOR INCLUSION
IN WORKING TIMETABLE**

Rail Operator name		
Preferred train number (Consistent with Train Numbering Guidelines in TOC Manuals- General Instruction Pages, Section 7)	<u>Forward trip</u>	<u>Return trip</u>
Type of train path		
Origin - Destination and preferred route		
Main commodity	Forward trip	Return trip
Days train path to run	Forward trip	Return trip
Preferred start date		
Period path to apply		

Train Specification Details	Forward Trip	Return Trip
Motive Power		
Proposed Running Schedule		
Trailing Load (tonnes)		
Overall length (including locos)		
Class & type of rolling stock		

Train Type: Please insert tick [✓] in between brackets. Suggestion - copy and paste the tick from this line.

[] Grain [] Trip Trains [] Passenger

☐ Minerals

☐ Work Trains

☐ Containers

☐ Coal

☐ General Freight

Train Path Specification and Timing Details

Forward Journey

Path Specification Item	RAIL OPERATOR'S REQUIREMENTS
Location & preferred depart time	
Any terminal requirements or restrictions to be noted?	
Time required to load/unload	
Is depart time flex available?	
Any dependencies on connections off other services or to meet market deadlines?	
En-route activity & time allowances for this train path	
Crew changeover points and time required?	
Any refuelling involved?	
Locomotive changes?	
Is shunting required, specify locations and time required?	
Is time flex available or any dependencies on other services or market needs?	
Destination & preferred arr. time	
Any terminal requirements or restrictions to be noted?	
Time required to load/unload.	
Is arrival time flex available?	
Any dependencies on connections with other services or to meet market deadlines?	

Return Journey

Path Specification Item	RAIL OPERATOR'S REQUIREMENTS
Starting location & depart time	
Any terminal requirements or restrictions to be noted?	
Time required to load/unload	
Is depart time flex available?	
Any dependencies on connections off other services or to meet market deadlines?	
En-route activity & time allowances for this train path	
Crew changeover points and time required?	
Any refuelling involved?	
Locomotive changes?	
Is shunting required, specify locations and time required?	
Is time flex available or any dependencies on other services or market needs?	
Destination & preferred arr. time	
Any terminal requirements or restrictions to be noted?	
Is arrival time flex available?	
Any dependencies on connections to other services or to meet market deadlines?	

PATH REQUESTOR :		
POSITION		DATE:

Annexure 2 – AD-HOC PATH APPLICATION

APPLICATION TO RMC FOR AD-HOC PATH

FAX TO RMC PROGRAMMER: 02 9379 4941 **DATE OF APPLICATION:** _____

FAX TO RMC SHIFT MANAGER: 02 9379 3420

Rail Operator name		
Date service to operate		
Train number		
Origin - Destination and preferred route, including preferred times		
Motive Power		
Trailing Load (tonnes)	Overall length (including locos)	
Class & type of rolling stock		
En-route activity (crew change, attach/detach etc)		

PATH REQUESTOR :			
POSITION		DATE:	
PHONE		MOBILE	
FAX			

RMC COMMENTS	RECEIVED
APPROVED	

Annexure 3 - TRAIN CONSIST INFORMATION

Train Consist means, in respect of each of the Rail Operator's locomotive-hauled Train Movements, an advice including the following details:

Rail Operator's Name (the one holding access rights)

Train Number (consistent with the Train Numbering Guidelines in TOC Manual – General Instructions Pages, Section 7)

Origin & destination of the Train

Date of departure

The number of vehicles in the Train

The gross [trailing tonnes] weight of the Train

The length of the Train (expressed in metres)

The motive power employed by the Train (active and inactive)

For each vehicle in the Train in the order in which they will be placed, leading end first, the following information:

Vehicle number;

Vehicle classification;

Gross weight of vehicle

Origin and destination of the vehicle; and

Whether it is carrying passengers and/or the manifest of goods carried (including details of all dangerous goods); and

Train crew details – name and contact telephone number.

Annexure 4 - RAILCORP TRAIN CONTROL CONTACTS

Location	Contact Position	Phone No.	Fax No.
Rail Management Centre – Sydney			
	Manager Rail Management Centre	02 9379 4189	02 9379 5019
	Assistant Manager Rail Management Centre	02 9379 1463	02 9379 1288
1 st point of contact	Shift Manager Rail Management Centre	02 9379 1937	02 9379 3420
	Programme Co-ordinator	02 9379 1871	02 9379 4941
	Goods Control Board	02 9379 4733	02 9379 3125
	West Control Board	02 9379 4224	02 9379 5183
	North Control Board	02 9379 4519	02 9379 2078
	South Coast Control Board	02 9379 4559	02 9379 5184
2 nd Point of Contact	Operations Control Supervisor	02 9379 4664	02 9379 4781
	Operations Control Main Board	02 9379 1766	02 9379 4781
	Operations Control Outer Board	02 9379 1701	02 9379 4781
	Operations Control Illawarra Board	02 9379 4599	02 9379 4781
	Operations Control Co-ordinator	02 9379 4485	02 9379 5180
	RailCorp Security	02 9379 4444	

Annexure H

Requirements for Rail Operator's Management Plans

Annexure to RailCorp Track Access Agreement

ANNEXURE H

Requirements for Rail Operator's Management Plans

Rail Operator's Incident Management Plan

The Rail Operator's Incident Management Plan must:

- cover those matters identified in the Network Incident Management Framework as being matters which are required to be covered by the Rail Operator in its Incident Management Plan;
- not be inconsistent with the Network Incident Management Framework;
- nominate the Rail Operator or one or more other Rail Operators or other persons to clear Incidents on behalf of the Rail Operator; and
- provide that in the case of any breach of the Rail Operator's Incident Management Plan that the Rail Operator will notify RailCorp of the breach as soon as reasonably practicable after any such breach.

Rail Operator's Environmental Management Plan

The Rail Operator's Environmental Management Plan must:

- cover those matters identified in the Environmental Management System Manual;
- not be inconsistent with the Environmental Management System Manual;
- address the requirements of the Environment Protection Licence having regard to clause 7.3(a)(ii) of this Agreement;
- identify the Rail Operator's systems and procedures for ensuring compliance with applicable Laws relating to the Environment and for managing environmental risks associated with the Rail Operator's activities on or near the Network;
- provide that in the case of any breach of the Rail Operator's Environmental Management Plan that the Rail Operator will notify RailCorp of the breach as soon as reasonably practicable after any such breach;
- provide that in the case of any breach of the Environment Protection Licence or the PEO Act that the Rail Operator will notify RailCorp of the breach as soon as practicable after any such breach;
- relate to the Rail Operator's Environmental Management System;
- require the Rail Operator to provide to RailCorp any information reasonably required to enable RailCorp to demonstrate the Rail Operator's compliance with the Environment Protection Licence, any request from the EPA, any Law relating to the Environment or any lawful requirement of any competent Government Authority. This includes, but is not limited to requiring the Rail Operator to provide RailCorp with a written statement of compliance with the Environment Protection Licence, within 30 days following the anniversary date of the Environment Protection Licence.

Annexure I

NOT USED

Annexure to RailCorp Track Access Agreement

Annexure J

Insurance

Annexure to RailCorp Track Access Agreement

ANNEXURE J

Insurance

1. Required Insurance Policies

- (a) Public Liability Insurance:
 - (i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement whether in respect of injury to or death of any person (other than the insured or an employee of the insured) or loss of or damage to any property (other than property owned by the insured) in a sum insured of not less than \$250,000,000 and with an excess/deductible not to exceed [*to be inserted*] for any one loss or an aggregate excess/deductible of not more than [*to be inserted*] for any one occurrence;
 - (ii) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
 - (iii) to cover the Rail Operator's Rail Operations and associated activities on the Network.
- (b) Carrier Liability Insurance:
 - (i) to cover the legal liability of the insured arising out of the transport of goods in a sum insured of not less than [*to be inserted*] and with an excess/deductible not to exceed [*to be inserted*] for any one loss.
- (c) Workers Compensation:
 - (i) subject to clause 1(c)(ii), a policy of insurance against liability for death of, or injury to, the Rail Operator's employees including liability arising by Law and at common law, to at least the minimum cover prescribed by the Law in force in New South Wales;
 - (ii) clause 1(c)(i) shall not apply while the Rail Operator is registered as a self insurer under all applicable Laws governing employment and worker's compensation in New South Wales.

2. Policy terms and conditions

- (a) Insurances effected pursuant to clause 1(a) and (b) of this Annexure must:
 - (i) include a principal's indemnity endorsement specifically noting RailCorp as an insured party in respect of its interest arising out of or under this Agreement;
 - (ii) include a cross liability clause pursuant to which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
 - (iii) include a waiver of subrogation clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured;

- (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

3. **Certificate of Currency**

The information that must be included in a certificate of currency as evidence of cover is:

- Class of Insurance
- Insurer(s)
- Policy Number(s)
- Insured
- Other Interested Parties
- Period of Insurance
- The Business
- Interest Insured/Property Insured
- Situation and/or Premises
- Geographical Limits
- Limit of Liability
- Sub-Limit(s) of Liability
- Deductible(s)
- Basis of Settlement
- Relevant Policy Inclusions - eg cross liability, waiver of subrogation and non-invalidating clause, etc
- Relevant Policy Exclusions - eg Asbestos, Professional Indemnity, Third Party Property and/or Bodily Injury Special Conditions/Provisions, etc

Annexure K

Panel

Annexure to RailCorp Track Access Agreement

ANNEXURE K

Panel

[Note: To be advised.]

Annexure L

Communications Equipment Standards

Annexure to RailCorp Track Access Agreement

ANNEXURE L

Communications Equipment Standards

Train Radio Systems - Operational Standard TC 001311 01 ES

Train Radio Systems - MetroNet Standard TC 001312 01 ES

Train Radio Systems - CountryNet Standard TC 001313 01 ES

Train Radio Systems - WB/Local/Mountain Radio Standard TC 001314 01 ES

Train Radio Systems – NTCS Equipment Specification SPM 0179