

# Metro Trains Melbourne Pty Ltd (“Access Provider”)

## Capacity Allocation Protocol

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### 1 Background

- 1.1 This protocol has been developed by the Access Provider in relation to access to the Network in accordance with the requirements of the *Rail Corporations Act 1996 (Vic)* (“Act”) and Guidelines made under the Act as at 1 January 2006, and in particular under section 6.3 of the Capacity Use Rules.
- 1.2 The Access Provider reserves the right to amend this protocol in the event that the Act or the Guidelines are amended after 1 January 2006.
- 1.3 Any Operator who seeks access to the Network will be bound by this Protocol.

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### 2 Line Identification

Each line on the Network is described in the Addenda.

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### 3 Definition of a standard freight train path

The definition of a freight Train Path is consistent with the Capacity Use Rules<sup>1</sup>.

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### 4 Assessment of a request to provide a declared rail transport service

- 4.1 The assessment procedure for a request to provide a declared rail transport service<sup>2</sup> is set out in the Train Path Request Process and Protocol.
- 4.2 The process by which the Access Provider determines whether there is an available Train Path is as follows:
  - The Access Provider will not allocate a Train Path to the Operator if that Train Path would conflict with:
    - A Train Path of the Access Provider which is set out in the Metropolitan Master Working Timetable;

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<sup>1</sup> *freight train path* means an entitlement of a *user* to use a *train path* on a *rail network* of an *access provider* to provide *freight services*, and includes a *scheduled train path* and an other *freight train path*

<sup>2</sup> Declared rail transport services are set out in the Rail Corporations Act 1996 Freight Network Declaration Order and the Passenger Network Declaration Order dated 16 December 2005 Victorian Government Gazette No. S 259.

- A Train Path for a Passenger Train;
  - Compliance rules as set out in the Addenda; or
  - A Train Path that the Access Provider is contractually obliged to provide to, or reserve for, a Third Party Operator (including an “ad hoc” Train Path).
- For the avoidance of doubt no Train Path will be allocated to a freight Operator that conflicts with the concept of passenger priority.
- 4.3 Where there is more than one application for an Unscheduled Train Path the Access Provider must make a determination as follows:
- Determine whether an alternative Unscheduled Train Path would satisfy the access requirements of any of the applications, consistent with the concept of passenger priority; then
  - Secondly, should an alternative Unscheduled Train Path not be available, allocate the Unscheduled Train Path to a Third Party Operator wishing to run Passenger Trains; then
  - Thirdly, allocate the Unscheduled Train Path to the future Third Party Operator or Operator wishing to run freight Trains with the greatest utilisation of the Network.
- 4.4 In determining “greatest utilisation” the Access Provider will consider relevant factors including:
- The duration of use of the Train Path;
  - The frequency of use of the Train Path;
  - The aggregate tonnage of the freight services; and
  - In the event that there is more than one application for the same Unscheduled Train Path where each application is associated with servicing the same freight task, any contractual commitment that the Operator seeking access can demonstrate.

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## **5 Description of the required degrees of utilisation**

- 5.1 “Utilisation” is defined under section 10 of the Capacity Use Rules.
- 5.2 The concept of utilisation is included in section 5.5 of the Capacity Use Rules (revision of status and surrender of underutilised train paths and section 5.6 of the Capacity Use Rules (surrender of train paths) in the Capacity Use Rules.
- 5.3 The level of utilisation of a certain Train Path is only relevant where there is a Third Party Operator that requires that

particular Train Path (following the assessment of the Third Party Operator's request for a declared rail transport service).

- 5.4 In this circumstance if the existing utilisation of that Train Path (taken over a continuous 6 monthly period) is determined to be less than the expected utilisation of the Train Path under the access application then the Operator must surrender the Train Path for the purpose of making the Train Path available to satisfy the request. This paragraph 5.4 is subject to paragraph 5.7.
- 5.5 In the absence of a bona fide access application, if the freight Train Path is a Scheduled Train Path, the status of that Train Path would be revised to the status of an Unscheduled Train Path where its utilisation is zero (as determined over a continuous 6 monthly period).
- 5.6 In circumstances where the surrender of a Train Path is contemplated under section 5.6 of the Capacity Use Rules;
- the utilisation level of the surrendered Train Path will be zero; or
  - where there is an access application for a Scheduled Train Path for freight services: either;
    - under an existing access agreement; or
    - in circumstances where any existing access arrangement does not specify a degree of utilisation for that Train Path

then the level of utilisation of the Train Path that is contemplated to be surrendered will need to be less than the expected level of utilisation of the Train Path under the access application.

This paragraph 5.6 is subject to paragraph 5.7.

- 5.7 Paragraph 5.4 and 5.6 are subject to the following process:
- The Access Provider must give the Operator who is the user of the Train Path a written notice:
    - Stating that it is a notice under section 5.6 of the Capacity Use Rules;
    - Requiring the Operator to demonstrate its ability to utilise, or fully utilise that train path or otherwise to show cause in writing why the Access Provider should not require the surrender of the Train Path the subject of the notice
    - Stating the date by which the Operator is required to provide a written response to the Access Provider (which must not be less than 14 days after the Operator receives the notice); and

- Stating that if the Operator does not show reasonable cause in writing by the stated date, the Access Provider may by written notice to the Operator require the surrender of the Train Path that is the subject of the notice.
- The Access Provider must act reasonably and in good faith when considering any response by an Operator to a notice given above.

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**6 Guidelines for responding to or issuing a request to permanently vary a train path**

The guidelines, principles and procedures are contained in existing access agreements, Train Operating Protocol and train path request Process and Protocol.

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**7 Guidelines for a permanent variation or surrender of a train path due to a breach of legislation, standards or requirements of the Access Provider**

The description of the circumstances in which the Access Provider may permanently vary or require the surrender of a Train Path of an Operator due to a breach by the Operator of relevant Law, an applicable Standard, the Operator's Accreditation, the Book of Rules and Operating Procedures, the Access Provider's rolling stock interface standards (as contained in the Addenda or the Rolling Stock Standards) or any other material requirement of the Access Provider for the Operation of Rolling Stock on the Network of the Access Provider and, where those circumstances create a risk of injury to persons or damage to property, including damage to rail infrastructure on the Network, may permit the Access Provider to suspend the Train Path immediately until the Operator has addressed the risk to the reasonable satisfaction of the Access Provider can be found in the following documents:

- Train Operating Protocol;
- Track Occupation Protocol;
- Existing access agreements;
- The Addenda;
- Operational Interface Procedures; and
- Emergency Response Plan.

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- 8 Guidelines, principles and procedures that the access provider will apply when determining whether to vary permanently or require the surrender of a train path of a user in the circumstances referred to where there is a variation or surrender of a train path due to a breach of legislation, standards or requirements of the Access Provider.

The Access Provider must:

- 8.1 Give the Operator a written notice stating:
- o that it is a notice under section 5.4 of the Capacity Use Rules;
  - o the alleged breach;
  - o that the Operator is required to show cause in writing why the Access Provider should not require the permanent variation or surrender of the Train Path the subject of the alleged breach;
  - o the date by which the Operator is required to show cause (which must not be less than 14 days after the Operator receives the notice); and
  - o that if the Operator does not show reasonable cause by the stated date, the Access Provider may by written notice to the Operator permanently vary or require the surrender of the Train Path.
- 8.2 Subject to complying with the above and when considering any response by an Operator to a "show cause" notice given by the Access Provider under the above, act reasonably and in good faith.
- 8.3 Subject to complying with paragraph 8.2, and if the Access Provider determines that the Operator has failed to show cause and that the Train Path should be permanently varied or surrendered, the Access Provider may give the Operator a written notice varying permanently or requiring the surrender of the Train Path and stating the date on which the permanent variation or surrender of the Train Path shall be effective, such date to be not less than 14 days from the date of receipt by the Operator of the notice.

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- 9 Description of the circumstances in which a train path is varied on a temporary basis

The circumstances in which a Train Path can be varied on a temporary basis include:

- Variations sought by the Access Provider consistent with the rights under existing access agreements;

- For reasons related to safety (including, without limitation, because of an Incident, a Force Majeure Event or track speed restrictions);
- In connection with the repair, maintenance, upgrading, extension, construction, or alteration of the Network or rail infrastructure;
- In order to permit a Track Occupation;
- Variations required by the Director pursuant to section 10 of the Transport Act; and
- Variations sought by the Operator.

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**10 Procedures and communications protocols that the access provider will follow when varying a train path on a temporary basis**

The procedures and communications protocols that the Access Provider will follow when varying a Train Path on a temporary basis are set out in a number of documents including the:

- Train Operating Protocol;
- Emergency Response Plan and associated documents;
- Track Occupation Protocol; and
- Existing access agreements.

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**11 Principles and procedures for addressing complaints from a user or access seeker about an alleged failure of the access provider to comply with these capacity use rules**

Principles and procedures for addressing complaints from an Operator about an alleged failure of the Access Provider to comply with the Capacity Use Rules are set out in the following documents, including:

- Train Operating Protocol; and
- Existing access agreements.

Where this matter is not addressed or stated in the documents listed above it is a requirement that the Access Provider to:

- Address each complaint in good faith; and
- Report to the ESC each such complaint and the measures taken by the Access Provider in response to that complaint.

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**12 Glossary**

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

“access” means access to the Network or part of the Network, to operate freight services or passenger services.

**“Access Provider”** means Metro Trains Melbourne Pty Ltd ACN 136 429 948.

**“Accreditation”** means accreditation obtained in accordance with the requirements of Division 3, Part VI of the Transport Act, including any guideline, regulation or ordinance made pursuant to that Division.

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

**“Addenda”** means the most up to date addenda to the Metropolitan Master Working Timetable published from time to time as contained in the document entitled “MTM Working Timetable System Description [WTT Addenda] dated November 2009”.

**“Book of Rules”** means the book of rules that applies to operations on the Network, PTC Book of Rules and Operating Procedures 1994, as those rules and operating procedures are amended or replaced from time to time with the approval of the Director, Public Transport Safety.

**“Capacity Use Rules”** means the rules made by the ESC under Section 38T of the Act.

**“Daily Train Path”** means the timetable maintained by the Access Provider that sets out planned Train movements on the Network on a particular day.

**“Director”** means the Director of Public Transport under the *Transport Act 1983 (Vic)*.

**“ESC”** means the Essential Services Commission or its successor.

**“Emergency Response Plan”** means the Emergency Response Plan issued from time to time by the Access Provider.

**“existing access agreements”** means any existing contract or arrangement between the Access Provider and a Third Party Operator for the Third Party Operator to have access to the Network.

**“Force Majeure”** means any circumstances beyond the reasonable control of a party which occurs without the negligence of that person including (without limitation):

- (a) inevitable accident, act of God, lightning, storm, flood, landslide, fire or earthquake, peril of navigation;
- (b) high temperatures resulting in the imposition of operating restrictions pursuant to the Metropolitan Master Working Timetable or the Daily Train Plan;
- (c) strikes, lockouts or other industrial action;
- (d) act of public enemy, hostility, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (e) the effect of any change in applicable Laws of any government or other competent authority;

- (f) executive or administrative order or act of either general or particular application of any government, prohibition or restriction by domestic or foreign Laws, regulations or policies (other than Laws specifically for that purpose passed by the Commonwealth of Australia), quarantine or customs restrictions;
- (g) breakdown or damage to or confiscation of property (but not including breakdown or delay of any Rolling Stock operated by the Operator); or
- (h) embargo or power or water shortage.

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

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

- (a) the safety of a Train or any persons to be jeopardised;
- (b) serious injury to or death of any person;
- (c) material damage to the property of any person;
- (d) delay or obstruction to the use of the Network; or
- (e) collision, derailment, signalling failure or serious safeworking breach,

and any other railway accident or incident that the Access Provider or the Operator is required to investigate under any applicable Law.

**"Infrastructure Lease"** means the lease titled "Infrastructure Lease - Train" between the Director, VRTC and the Access Provider dated 31 August 2009, as amended.

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

**"Metropolitan Master Working Timetable"** means the timetable and Addenda showing all of the scheduled train paths for Trains on the Network, as amended from time to time.

**"Network"** means the land and infrastructure leased by the Access Provider under the Infrastructure Lease from time to time, including railway track, associated track structures and works (such as cuttings, tunnels, bridges, sidings, excavations, landfill, track support earthworks and drainage works), pedestrian crossings, over-track structures, under-track structures, service roads, signalling, notices and signs and overhead electrical power supply systems, but excluding:

- (a) buildings (including stations, platforms, sheds and shelters);
- (b) carparks;
- (c) terminals, storage and receipt facilities;

- (d) workshops, depots, yards and fuel points; and
  - (e) private sidings that are not leased to the Access Provider,
- but includes any infrastructure leased to the Access Provider which passes through, or is immediately adjacent to, any of the infrastructure or facilities referred to in paragraphs (a) to (e) above.

**“Operator”** means the person seeking access to the Network or (where relevant) a Third Party Operator.

**“Operational Interface Procedures”** means the procedures that apply to operational interfaces on the Network as published by the Access Provider from time to time.

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

**“Rolling Stock”** means any vehicle that operates on or uses a railway track including a locomotive, light rail vehicle, light inspection vehicle, road/rail vehicle, trolley, carriage, diesel multiple unit and wagon (but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track).

**“Rolling Stock Standards”** means Australian Standard AS4292 in so far as it applies to Rolling Stock, as amended from time to time.

**“Scheduled Train Path”** means a Train Path that is set out in the Metropolitan Master Working Timetable.

**“Services”** means freight rail services or passenger rail services (as applicable).

**“Standards”** means any applicable standards and codes issued from time to time by Standards Australia including, without limitation, the Rolling Stock Standards.

**“Third Party Operator”** means a person other than the Access Provider or the Operator who has the right to access the Network for the provision of rail services.

**“Track Occupation”** means access to the Network in order to carry out inspections, repairs, maintenance, up-grade work, improvements, additions or any other works, which could interfere with the Operator's Services.

**“Track Occupation Protocol”** means the Metropolitan Track Occupation protocol published by the Access Provider from time to time.

**“Train”** means Rolling Stock coupled together to operate as a single unit.

**“Train Operating Protocol”** means the Metropolitan Train Operating Protocol issued by the Access Provider, as amended from time to time.

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

**“Train Path Request Process and Protocol”** and Protocol means the Access Provider’s process and protocol for seeking Train Paths under the Negotiation Guidelines.

**“Transport Act”** means the *Transport Act 1983 (Vic)*.

**“Unscheduled Train Path”** means a Train Path that is not a Scheduled Train Path.

**“VRTC”** means Victorian Rail Track Corporation.