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## STANDARD ACCESS AGREEMENT – PORT OF MELBOURNE RAIL TERMINAL

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Date:

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### 1 Parties

<b>Patrick</b>	Name	<b>Patrick Container Ports Pty Ltd</b>
	ACN	009 762 985
	Address	Gate B105A, Penrhyn Road, Port Botany
	Email	<i>[Insert]</i>
	Attention	<i>[Insert]</i>
<b>Access Holder</b>	Name	<i>[Insert Access Holder Details]</i>
	ACN	<i>[Insert Access Holder Details]</i>
	Address	<i>[Insert Access Holder Details]</i>
	Email	<i>[Insert Access Holder Details]</i>
	Attention	<i>[Insert Access Holder Details]</i>

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### 2 Background

- A. Patrick provides Open and Non-Discriminatory Access to Access Holders acquiring Services at the Terminal.
- B. This Access Agreement along with the Terminal Operating Protocol and the Terminal Access Arrangement, sets out the terms and conditions on which Patrick agrees to allow the Access Holder to Access the Terminal and acquire the Services.

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## 3 Term

### 3.1 Commencement and expiry

This Access Agreement commences on the Commencement Date and expires on the Expiry Date, unless renewed in accordance with clause 3.2 or terminated earlier in accordance with the terms of this Access Agreement.

**Commencement Date** [Insert]

**Expiry Date** [Insert]

### 3.2 Option

This Access Agreement may be extended by the parties for a further [Insert] from the Expiry Date ("**Option Period**"). If the Access Holder wishes to extend the agreement for the Option Period, it must notify Patrick in writing, no later than three months prior to the Expiry Date. Patrick will consider the notice and respond in writing no later than one month prior to the Expiry Date. The parties will negotiate any extension of the Term in good faith,

### 3.3 Interdependence

- (a) If Patrick's rights in relation to the Terminal between Patrick and PoM are terminated, this Access Agreement will be taken to have been terminated. Patrick will not be liable for any loss or damage caused by early termination of this Access Agreement.
- (b) If Patrick is prevented or restricted for any period:
  - (i) in its ability to access the Port Rail Network for any reason; or
  - (ii) if Patrick is otherwise prevented or restricted from providing Services as a consequence of steps taken by PoM,then:
  - (iii) any obligations of Patrick related to the supply of Services will be suspended during the applicable period; and
  - (iv) Patrick will not be liable to the Access Holder for loss or damage arising from any such failure to provide Services.

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## 4 Representatives

### 4.1 Access Holder Representative

The Access Holder must nominate and notify Patrick (and the Patrick Nominee where applicable) as soon as reasonably possible of the name and contact details of the person who will be its representative for any issues relating to the Services (referred to as the **Access Holder Representative**).

#### 4.2 Patrick Representative

Patrick must nominate and notify the Access Holder as soon as reasonably possible of the name and contact details of the person who will be its representative for any issues relating to the Services (referred to as the **Patrick Representative**).

#### 4.3 Patrick Nominee

- (a) From time to time, Patrick may nominate a third party to undertake certain operational functions at the Terminal ("**Patrick Nominee**"). For the avoidance of doubt:
  - (i) where a Patrick Nominee is appointed:
    - (A) the Patrick Nominee will be responsible for day to day operational matters only; and
    - (B) Patrick will manage all negotiations, agreements and disputes in relation to access matters, (including window allocation) directly with Access Seekers and Access Holders; and
  - (ii) where a Patrick Nominee is not appointed, all references to the Patrick Nominee will be read as Patrick.
- (b) The Patrick Nominee will nominate and notify the Access Holder and Patrick as soon as reasonably possible of the name and contact details of the person who will be its representative for issues relating to those aspects of the Services that it provides (referred to as the **Patrick Nominee Representative**).

#### 4.4 Change of Representative

Either party or Patrick's Nominee may change its Representative from time to time by providing notice in writing to the other parties' Representative as nominated under this clause 4.

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## 5 Access to the Terminal

#### 5.1 General principles of Access

- (a) Patrick will provide non-exclusive access to the Terminal to the Access Holder to the extent required for the provision of the Services in accordance with this Access Agreement and the documents listed in clause 5.2(a).
- (b) This Access Agreement applies in respect of Access to the Terminal only and does not confer on the Access Holder any rights of physical access to adjacent premises. For clarity, this Access Agreement does not apply in respect of any area, operations, services or activities not located or undertaken within the Licensed Area.

#### 5.2 Access documents

- (a) Patrick and the Access Holder acknowledge and agree that this Access Agreement is subject to and conditional on compliance by the Access Holder with the provisions of the:

- (i) Terminal Access Arrangement;
- (ii) Port Rail Access Principles;
- (iii) Capacity Allocation Protocol; and
- (iv) Terminal Operating Protocol,

as amended from time to time by Patrick and/or PoM (as relevant) and published on Patrick's and/or PoM's website.

- (b) To the extent that any of the terms of this Access Agreement are inconsistent with any of the documents listed in clause 5.2(a) above, the terms of this Access Agreement apply.

### **5.3 Acknowledgement regarding the Capacity Allocation Protocol**

The parties to this Access Agreement acknowledge and agree that the parties must comply with, and that Access under this Access Agreement will be provided subject to, the Capacity Allocation Protocol (as amended from time to time). Where the Capacity Allocation Protocol is amended, any terms of this Access Agreement taken from the Capacity Allocation Protocol will be deemed to have their amended form.

### **5.4 Compliance with information provision requirements**

The Access Holder must comply with the information provision obligations set out in the Terminal Operating Protocol, including but not limited to the BAPLIE Train Consist information requirements, PRA and EIDO information.

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## **6 Services to be provided by Patrick**

### **6.1 Provision of Services**

- (a) Patrick (or the Patrick Nominee as applicable) will provide and the Access Holder agrees to acquire the relevant Services identified in Schedule 1 on and from the Commencement Date.
- (b) Patrick will ensure that there is sufficient approved, accredited and serviceable equipment and appropriately skilled and appropriately licensed labour available to supply the Services, from time to time.
- (c) The Services will be provided to the Access Holder in a competent, professional and efficient manner and to any standard required by applicable legislation.
- (d) For the avoidance of doubt, this Access Agreement and the Services provided to the Access Holder under this Access Agreement only apply to Services within the Terminal.

### **6.2 Conditions precedent**

Patrick will have no obligation to provide the Services or allocate Windows under this Access Agreement until the Access Holder demonstrates to the satisfaction of Patrick that the Access Holder:

- (a) has all necessary accreditations;

- (b) meets all of the Access Criteria;
- (c) holds all insurances as required by, and in compliance with clause 16(a) ;
- (d) is able to provide credit support, where required by Patrick;
- (e) has completed the Rail Site Induction, executed the Contractor HSE Agreement and Safety Interface Agreement;
- (f) has ensured that its Associates are aware of and comply with all applicable laws and all reasonable lawful directions and orders given by Patrick (or the Patrick Nominee as applicable) in accordance with the Access Agreement and Terminal Access and Operating Protocol, or any person authorised by law to give directions to the Access Holder; and
- (g) meets the Train Load/Unload Requirements.

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## 7 Rail access windows

### 7.1 Allocated Windows

- (a) The Access Holder is allocated the Windows set out in Schedule 1.
- (b) The Access Holder and Patrick acknowledge and agree that allocation of Windows is to be made on the basis of Open and Non-Discriminatory Access.
- (c) The Access Holder acknowledges that Patrick may withdraw or vary the Access Holder's Allocated Capacity in accordance with the terms of the Capacity Allocation Protocol and this Access Agreement.
- (d) The Access Holder acknowledges that with respect to Windows to be allocated to Access Holders, Patrick will only allocate a Window to an Access Holder if the Access Holder is able to demonstrate that it holds, or has the benefit of, Rail Paths that will, if properly exercised by the Access Holder, enable the Access Holder's Train to enter and depart the Terminal in accordance with the proposed Window.

### 7.2 Rail Terminal Operating Protocol

The parties acknowledge and agree that in carrying out management of Trains into and out of the Terminal, they will comply with the terms of the Terminal Operating Protocol and the Port Rail Access Principles.

### 7.3 Access to the Port Rail Network

The parties acknowledge and agree that:

- (a) the Port Rail Manager will not provide Access to the Port Rail Network unless Access Holders comply with the following principles:
  - (i) not hoarding off-port Rail Paths, complying with any off-port "use it or lose it" obligations, including voluntarily giving up off-port Rail Paths if they are not being productively used and not gaming off-port rail paths (**Off-port Access Principles**);

- (ii) holding all appropriate licences and accreditations, including any necessary interface agreements; and
  - (iii) negotiating a relevant Window at a port rail terminal that aligns with a corresponding off-port rail path.
- (b) Where an Access Holder has been provided with access to the Port Rail Network, this access may be revoked where the Port Rail Manager (in its absolute discretion) considers that the Off-port Access Principles have been breached.
- (c) Where access to the Port Rail Network has been refused or revoked by the Port Rail Manager, Patrick may in its sole discretion elect to:
- (i) treat the refusal or revocation as an Event of Default, in which case clause 19 will apply; or
  - (ii) enforce its commercial arrangement with the Access Holder for the Term.

#### 7.4 Constrained Path Freight Train

The parties acknowledge and agree that:

- (a) State policy is currently that passenger services have priority over freight services and that on time passenger performance to timetables is a State imperative;
- (b) provided that the State gives PoM and Patrick reasonable prior notice of the timetable limitations of Constrained Path Freight Trains (**Priority Notification**), Patrick will use reasonable endeavours to accommodate Windows for Constrained Path Freight Train services within the timetable limitations applicable to those trains;
- (c) for the purposes of clause 7.4(b) above, reasonable endeavours includes negotiating any necessary amendments to an existing Access Agreement with the Access Holder, but only where such amendments are commercially acceptable to Patrick (acting reasonably) and the relevant Access Holder; and
- (d) PoM and Patrick will use reasonable endeavours to work cooperatively to consult with the State in relation to any potential Priority Notification, including in relation to the impact of a Priority Notification on Patrick's operations and the feasibility of managing any potential timetable changes.

#### 7.5 Unhealthy Trains

If a Train becomes an Unhealthy Train due to a delay caused by:

- (a) an act or omission of Patrick (or the Patrick Nominee as applicable) (other than an Unforeseen Event), additional costs must not be charged for making up time; or
- (b) an Unforeseen Event or a reason other than an act or omission of Patrick (or the Patrick Nominee as applicable) Patrick may recover additional reasonable costs of servicing the Access Holder's Train.

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## 8 Capacity variation and withdrawal

### 8.1 Allocated capacity withdrawals

Subject to Patrick complying with Open and Non-Discriminatory Access, and in order to encourage the optimum use of the Terminal, Patrick is entitled to temporarily or permanently vary or withdraw any Allocated Capacity and reallocate that Capacity to another Access Seeker where:

- (a) the Access Holder does not satisfy, over any 3-month period, its Minimum Usage Requirement and Patrick is:
  - (i) satisfied (acting reasonably) that:
    - (A) the Access Holder does not have a reasonable justification for failing to meet its Minimum Usage Requirement; and
    - (B) it is commercially feasible to re-allocate the Capacity to another Access Seeker such that the Terminal will be more highly utilised;
- (b) immediately, or otherwise as directed, Patrick is directed to withdraw that Capacity by the Port Rail Manager;
- (c) immediately where the Access Holder materially breaches (or otherwise repeatedly breaches) safety requirements applicable at the Terminal, of relevant legislation, or of any standard otherwise specified under this Access Agreement or in the Terminal Operating Protocol; or
- (d) immediately, where the Access Holder no longer holds appropriate on and off-port Rail Paths that are aligned with the relevant Window(s).

### 8.2 Ramp up Period

For the avoidance of any doubt, Patrick's will not be required to withdraw any Allocated Capacity pursuant to clause 8.1(a) or (b) in respect of an Access Agreement during the Ramp Up Period of that Access Agreement.

### 8.3 Notice of permanent capacity variation or withdrawal

- (a) Where Patrick intends to permanently vary or withdraw any Allocated Capacity, Patrick will provide written notice to the Access Holder of its intention to permanently vary or withdraw the Allocated Capacity, and this notice must state:
  - (i) the reason for the proposed variation or withdrawal;
  - (ii) that the Access Holder is required to show cause in writing why Patrick should not require the permanent variation or surrender of the Access Holder's allocated Windows in the circumstances;
  - (iii) the date by which the Access Holder is required to provide a written response to Patrick which will be 10 Business Days from the date of Patrick's notice; and
  - (iv) that if the Access Holder does not provide a sufficient justification (in Patrick's reasonable opinion) in writing by the stated date, Patrick may,

by written notice to the Access Holder, permanently withdraw or vary the Access Holder's allocated Windows in accordance with the notice.

- (b) Patrick will provide the Access Holder with 10 Business Days to show reasonable cause in writing why Patrick should not withdraw or vary the Capacity the subject of the notice.
- (c) In considering any response from the Access Holder to a notice given by Patrick under this provision, Patrick will act reasonably.

#### **8.4 Variation or withdrawal of capacity for breach**

- (a) Patrick may permanently vary or withdraw the Windows of an Access Holder following breach by the Access Holder of relevant legislation, or an industry or the Patrick standard, or the Terminal Operating Protocol or a requirement relating to the operation or safety requirements applicable to the Terminal.
- (b) Patrick must notify the Access Holder in writing of its intention to permanently vary or withdraw its Windows, and such notice must state:
  - (i) the alleged breach;
  - (ii) that the Access Holder is required to show cause in writing why Patrick should not require the permanent variation or surrender of the Access Holder's allocated Windows the subject of the alleged breach;
  - (iii) the date by which the Access Holder is required to show cause; and
  - (iv) that if the Access Holder does not show reasonable cause by the stated date, Patrick may by written notice to the Access Holder permanently vary or require the surrender of the Access Holder's allocated Windows the subject of the notice.
- (c) Patrick will provide the Access Holder with 10 Business Days to show reasonable cause why Patrick should not vary or withdraw Windows as specified in the notice.
- (d) Where such breach creates a risk of injury to persons or damage to property, including damage to equipment or infrastructure at the Terminal, Patrick may withdraw the Access Holder's allocated Windows immediately until the Access Holder has addressed the risk to the reasonable satisfaction of Patrick acting reasonably.

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## **9 Short term storage**

- (a) The Access Holder must deliver/remove, or procure the delivery/removal of, its containers from the Terminal within 24 hours from midnight on the day on which the container was loaded/discharged from a Train (or such lesser time as may be required by an Authority).
- (b) In the event that an Access Holder fails to remove a Container in the Terminal within the time specified in clause 9(a) above, Patrick will be entitled to:
  - (i) charge the Access Holder a storage fee in respect of storage of the Container;



- (ii) remove the Container to a storage facility; and
  - (iii) treat the Container as abandoned at the Access Holder's risk and expense, subject to providing notice as contemplated by clause 9(c) below.
- (c) The Access Holder must not in any circumstances abandon any container and Patrick will be entitled, on 28 days' notice to the Access Holder, to dispose of an abandoned Container or its contents at the Access Holder's risk and expense (including any costs of storage of the abandoned Container or its contents prior to disposal) in any manner Patrick deems reasonable and the Access Holder will not be entitled to any compensation in respect of the abandoned Container or its contents and/or their disposal.

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## 10 Truck Terminal Access Service

The provision of the Truck Terminal Access Service will be subject to the standard terms of access by trucks to the Terminal, as may be published by Patrick from time to time on its website.

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## 11 Variation and cancellation of Services

### 11.1 Maintenance

The Access Holder acknowledges that Patrick may need to carry out maintenance at the Terminal from time to time, and that:

- (a) for scheduled maintenance, Patrick will use all reasonable endeavours to provide affected Access Holders with at least one (1) weeks' notice of the maintenance and any likely impact on the Access Holder's Access or use of the Terminal; or
- (b) for unscheduled maintenance, Patrick will provide notice to affected Access Holders as soon as reasonably practicable after becoming aware of the need to undertake such maintenance.

### 11.2 Temporary variation or suspension

Patrick may vary its provision of the Services, including immediately suspending Services or any associated access to the Terminal by the Access Holder, where and to the extent reasonably required in order to:

- (a) mitigate the risk of any actual or potential:
  - (i) incident (including but not limited to a break down, accident or emergency at the Terminal or enroute to or from the Terminal);
  - (ii) material damage to the Terminal, property or Patrick's infrastructure or equipment; or
  - (iii) injury to any persons;
- (b) otherwise to respond to any breach of this Access Agreement by the Access Holder; or

Any such variation under this clause may continue at Patrick's discretion for so long as the risk continues.

### **11.3 Material Change**

- (a) In the event a Material Change occurs, Patrick must notify the Access Holder within 10 Business Days of becoming aware of the Material Change.
- (b) Within 10 Business Days after receipt by the Access Holder of a notice referred to in clause 11.3(a), Patrick and the Access Holder must meet and negotiate in good faith with a view to addressing the effects of the Material Change, including:
  - (i) any variation to the Services or access rights or the terms of this agreement that may be required to address the effects of the Material Change;
  - (ii) the date on which any variation referred to in clause 11.3(b)(i) will commence; and
  - (iii) the duration of any variation of the type referred to in clause 11.3(b) (i).
- (c) If following negotiations in accordance with clause 11.3(b):
  - (i) the parties agree on any variation of the type referred to in clause 11.3(b)(i) and agree on the terms of that variation including as to the matters referred to in clause 11.3(b)(ii) and (iii), the access rights and this Agreement will be varied in accordance with the variation as agreed in writing between the Parties; or
  - (ii) if the Parties are unable to agree on the terms of the variation within 20 Business Days of the negotiation referred to in paragraph clause 11.3(b), either Party may terminate this Agreement.

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## **12 Service and Access Charges**

### **12.1 Applicable charges**

- (a) In consideration of allowing the Access Holder to Access the Services in accordance with this Access Agreement and the provision of the Services, the Access Holder will pay to Patrick the relevant Access Charges (as specified in Schedule 2).
- (b) To the extent that the Access Charges do not reflect current Reference Prices, Patrick will set Access Charges in accordance with the Pricing Principles.
- (c) The Access Holder will pay to Patrick all other applicable container terminal fees and charges as specified in the Public Container Terminal Tariff Schedule. The Access Holder acknowledges that the Public Container Terminal Tariff Schedule may be amended by Patrick from time to time.
- (d) The Access Holder acknowledges and agrees that Patrick will not load or unload any Container that is subject to unpaid fees or charges.

## 12.2 Review and variation of Access Charges

- (a) Subject to compliance with the Pricing Principles, Patrick may review and increase Access Charges at any time by publishing a notice of the updated Access Charges on Patrick's website not less than 30 days prior to their commencement.

## 12.3 Access Holder payment

- (a) The Access Holder must pay each tax invoice issued by Patrick within thirty (30) days of the date of the tax invoice without discount, deduction, counterclaim or set-off. Payments must be made in accordance with the payment instructions specified on the relevant tax invoice (unless otherwise agreed by Patrick in writing).
- (b) If the Access Holder has not paid an amount due under this Access Agreement within the payment term specified in the tax invoice, the Access Holder must pay interest on the amount unpaid at the Agreed Rate. The interest payable under this clause accrues from day to day from and including the due date for payment up to the actual date of payment and may be capitalised by Patrick at monthly intervals.
- (c) If the Access Holder disputes any aspect of a tax invoice issued by Patrick, the Access Holder must notify Patrick of the issue, in writing, within fourteen (14) days of the date of the tax invoice.

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## 13 Rights and responsibilities

- (a) The Access Holder and its Associates' Access to the Terminal is conditional upon the Access Holder and each of its Associates complying with the terms of this Access Agreement, the documents identified at Clause 5.2(a), the Terminal Systems.
- (b) The Access Holder and its Associates must provide Patrick (or the Patrick Nominee as applicable) with any information reasonably required for the efficient conduct of the provision of the Services, including any notice or other information specified in this Access Agreement or in the Terminal Operating Protocol, in a timely manner.
- (c) The Access Holder and its Associates must be and remain compliant with all applicable laws and regulations and have and maintain all necessary accreditations, licences and approvals (including under the Rail National Safety Law), and provide Patrick (or the Patrick Nominee as applicable) with all necessary assistance, information and documentation to enable Patrick (or the Patrick Nominee as applicable) to comply with such laws and to verify compliance with such laws by the Access Holder and its Associates.
- (d) The Access Holder must ensure that the Access Holder's Associates are aware of and comply with all applicable laws and all reasonable lawful directions and orders given by Patrick (or the Patrick Nominee as applicable) in accordance with this Access Agreement or any person authorised by law to give directions to the Access Holder and its Associates.
- (e) The Access Holder must ensure that neither it, nor any of its Associates, enter the Terminal under the influence of, or with the presence of, alcohol or illicit drugs in their system, nor drink, smoke, or consume alcohol or illicit drugs

while at the Terminal. The Access Holder and its Associates may be required to participate in drug and alcohol testing carried out by or on behalf of Patrick (or the Patrick Nominee as applicable).

- (f) The Access Holder and its Associates must comply with all applicable legal and regulatory obligations with respect to the provision of information relating to Containers and their cargo (including by lodging PRAs and EIDOs within the required timeframes) and the Access Holder and its Associates warrant that all information supplied to Patrick (or the Patrick Nominee as applicable) is complete and accurate in all respects.
- (g) The Access Holder and its Associates must ensure that any information or data it provides to Patrick (or the Patrick Nominee as applicable) is free from any viruses or malware.
- (h) The Access Holder acknowledges that all loading and unloading of Containers onto or from any Train in the Terminal will be under the control of Patrick (or the Patrick Nominee as applicable).
- (i) The Access Holder acknowledges and agrees that Patrick (or the Patrick Nominee as applicable) relies on the accuracy of data and information provided by the Access Holder and its Associates and / or by other third parties. Neither Patrick (nor the Patrick Nominee as applicable) has any ability or obligation to verify such data and information, or to inspect a Container and no such inspection will increase Patrick's Liability under this Access Agreement.
- (j) If, in Patrick's reasonable opinion, an Associate of the Access Holder is not acting in accordance with the requirements of this Access Agreement, Patrick may require the Access Holder to replace such Associate. If the Access Holder or the relevant Associate does not comply with this requirement, Patrick may at its discretion require the Access Holder or the relevant Associate to complete refresher training, restrict Access to the Terminal or declare an Event of Default, in which case clause 19 will be applicable.

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## 14 Health and Safety, Dangerous Goods and Environmental Protection

- (a) The Access Holder will and will ensure that each of its Associates comply with the Terminal Operating Protocol in respect of Health and Safety Law and Dangerous Goods Law.
- (b) Patrick (or the Patrick Nominee as applicable) must notify the Access Holder as soon as reasonably practicable after it becomes aware of any obstruction, incident or near miss incident:
  - (i) involving the Access Holder's Rolling Stock; or
  - (ii) that may impact the Terminal.
- (c) Each party agrees to co-operate with any investigation of an incident and agrees to make available records and personnel, as relevant to the investigation where possible subject to legal advice. In the event an incident occurs at the Terminal or during the provision of the Services by Patrick (or the Patrick Nominee as applicable) to the Access Holder, Patrick (or the

Patrick Nominee as applicable) will be entitled to take such action as it deems necessary to overcome and alleviate the cause and consequences of the incident and the Access Holder must assist Patrick (or the Patrick Nominee as applicable).

- (d) Patrick (or the Patrick Nominee as applicable) will be responsible for the overall coordination and management of the response to an incident, so that full restoration is effected as soon as practicable. Each party will use reasonable endeavours to ensure that disruption of Access Rights and Services is minimised.
- (e) Patrick (or the Patrick Nominee as applicable) will provide to the Access Holder all information necessary for the safe operation of the Access Holder's Trains within the Terminal.
- (f) The Access Holder must comply with all instructions given by Patrick (or the Patrick Nominee as applicable) from time to time to protect the Terminal, property and individuals.
- (g) Patrick and the Access Holder acknowledge and agree that each of them has obligations under the Health and Safety Law, the Dangerous Goods Law and the Environmental Laws.
- (h) Without limiting any other provision of this Access Agreement, the Access Holder must comply with, and ensure that its Associates comply with, the Health and Safety Law, the Dangerous Goods Law and the Environmental Laws and must retain proper, complete and accurate records of such compliance. The Access Holder shall provide details of such records to Patrick (or the Patrick Nominee as applicable) on request.
- (i) The Access Holder must implement, maintain, enforce and regularly review its own Access Holder Systems and must take all reasonably practicable steps to ensure that its Associates are adequately trained in and understand the Access Holder Systems. If requested by Patrick (or the Patrick Nominee as applicable), the Access Holder must produce to Patrick a copy of its Access Holder Systems together with reasonable evidence of compliance with the same.
- (j) The Access Holder must immediately report to Patrick (or the Patrick Nominee as applicable) any instance where the Access Holder has received a notice or penalty from a relevant regulator (including any Government Agency) relating to non-compliance or potential non-compliance with the Health and Safety Law, the Dangerous Goods Law and / or the Environmental Laws.
- (k) In certain circumstances, Patrick (or the Patrick Nominee as applicable) may be legally obligated to report serious breaches (or near misses) of the Health and Safety Law, the Dangerous Goods Law and / or the Environmental Laws to a relevant regulator or to a Government Agency.
- (l) The Access Holder must ensure that all Rolling Stock, plant and equipment admitted to the Terminal is safe and is operated in a safe manner and the Access Holder must comply with all instructions given by Patrick (or the Patrick Nominee as applicable) to protect the Terminal, property and individuals.

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## 15 Liability and Indemnities

### 15.1 Patrick's Liability

Except to the extent caused or contributed to by a negligent act or omission of Patrick (or the Patrick Nominee as applicable) or breach of this Access Agreement by Patrick (or the Patrick Nominee as applicable), neither Patrick nor the Patrick Nominee as applicable will be liable in tort, contract, bailment or otherwise to the Access Holder for anything arising out of or relating to any:

- (a) breach of this Access Agreement or negligence caused or contributed by the Access Holder or its Associates;
- (b) incident, including (without limitation) discharge, spill or release of a Contaminant;
- (c) damage or deterioration of any tangible property (including any Rolling Stock, locomotive, wagon, truck or other equipment or vehicle);
- (d) damage to any Container or its contents; or
- (e) acts or omissions of any third party.

### 15.2 Limitations on Liability

- (a) The Access Holder may only make a Claim against Patrick if the Claim exceeds the Liability Floor Amount for any one event.
- (b) Patrick's (or the Patrick Nominee as applicable) Liability under this Access Agreement and at law will be limited in all cases and howsoever arising to loss or damage resulting directly from and only to the extent caused or contributed to by Patrick's (or the Patrick Nominee as applicable) negligence or default in accordance with the following limits:
  - (i) insofar as the Liability relates to damage to a Container and contents of a Container while at the Terminal, up to a maximum of \$15,000 for any one event or a series of related events;
  - (ii) insofar as the Liability relates to damage to a Train while at the Terminal, up to a maximum of \$1,000,000 for any one event or a series of related events; and
  - (iii) insofar as the Liability relates to any Liability not covered in 15.2(b)(i) or 15.2(b)(ii) above, \$100,000 for any one event or series of related events.

### 15.3 Indemnity

The Access Holder will be liable for, and agrees to indemnify Patrick and its Associates (including the Patrick Nominee as applicable) in respect of any Liability arising from an act or omission by the Access Holder or any of its Associates which gives rise to:

- (a) damage to the Terminal and / or the surrounding environment;
- (b) any discharge, spill or release of a Contaminant;

- (c) damage to, deterioration or contamination of any tangible property;
- (d) personal injury (including sickness or death); or
- (e) a breach of any law or regulation,

except to the extent that the Liability was caused or contributed to by the negligent act or omission or breach of this Access Agreement by Patrick or its Associates (including the Patrick Nominee as applicable).

#### **15.4 Consequential Loss**

Notwithstanding anything else in this Access Agreement, neither party (nor the Patrick Nominee as applicable) shall have any Liability to the other in connection with this Access Agreement, whether in tort (including in negligence), contract, bailment, under an indemnity or otherwise, for Consequential Loss.

#### **15.5 Notification of Claims**

- (a) A party will not be liable for any Claim by the other party unless notice of the Claim is given to the first party within fourteen (14) days of the date of the relevant incident giving rise to the Claim.
- (b) A party will be discharged from all Liability for a Claim unless proceedings are commenced within one (1) year of the date that notice of that Claim was given to the first party.

#### **15.6 Non-excludable rights**

- (a) To the extent permitted by law, and except as expressly set out in this Access Agreement, Patrick makes no and expressly excludes all warranties and representations with respect to the Services.
- (b) Patrick's Liability to the Access Holder for a breach of any warranty, statutory guarantee or condition regarding the Services that cannot by law be excluded is limited, at Patrick's option and where permitted by law, to:
  - (i) supplying the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

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## **16 Insurance**

- (a) The Access Holder must, at its own expense, effect the following minimum insurances with a reputable insurer, with a minimum Standard & Poors rating of at least 'A', on or before the commencement of this Access Agreement until its cessation:
  - (i) public liability insurance in respect of third party property damage and injury to persons (including damage to property in the Access Holder's care, custody or control and sudden and accidental pollution) to a minimum value of \$20,000,000 for any one occurrence and unlimited in the aggregate;
  - (ii) carrier liability insurance for not less than \$20,000,000 for any one loss;

- (iii) employer's liability and workers' compensation insurance (including common law liability) as required under any applicable workers' compensation law; and
  - (iv) any such other insurances as are required by law or good industry practice.
- (b) The Access Holder must produce evidence to Patrick of the valid insurance policies referred to in this clause 16 on request.
  - (c) The Access Holder warrants to Patrick that it will maintain all of the insurances required by this clause 16 for the term of this Access Agreement and, in the case of insurance policies entered into on a claims-made basis, for a further six (6) years following the expiry or termination of this Access Agreement.

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## 17 Complaints and dispute resolution process

### 17.1 Customer Complaints

- (a) The Access Holder may, at any time, submit a complaint in writing to Patrick in relation to its provision of Services under this Agreement, provided that any such complaint is lodged within 3 months of the relevant event(s) giving rise to the complaint and complies with clause 17.1(b) below.
- (b) A complaint lodged by the Access Holder must be lodged by the Access Holder Representative, be dated and include:
  - (i) details of the complaint, including any relevant dates, a description of any relevant incident(s) and any supporting materials; and
  - (ii) the outcome sought by the Access Holder.
- (c) Patrick acknowledges the importance of managing and responding to any complaints from the Access Holder in a timely, efficient and reasonable manner.
- (d) Patrick and the Access Holder agree to work together in good faith in order to seek to resolve complaints efficiently and expeditiously, including by providing reasonable access to personnel and information to support the resolution of any complaint (provided that nothing in this clause requires either Patrick or the Access Holder to disclose Confidential Information).
- (e) If a complaint has not been resolved within 30 Business Days of receipt of the complaint by Patrick, then either party may refer the matter for resolution in accordance with the remainder of this clause 17.

### 17.2 Dispute resolution process

If a bona fide dispute arises between Patrick and the Access Holder in relation to Access to Services, it will be resolved in accordance with the dispute resolution process set out in this clause 17. Patrick will not consider any Vexatious Claims under the dispute resolution process set out in this clause 17.



### **17.3 Raising a dispute**

- (a) An Access Holder who wishes to raise a dispute must do so only after the complaints process in clause 17.1 has been complied with. For clarity, Patrick may refuse to accept a dispute in circumstances where the Access Holder has not complied with clause 13.1 before seeking to commence a dispute.
- (b) If a dispute arises, a party claiming the dispute must promptly notify the other party in writing of the existence and nature of the dispute (**Notice of Dispute**).
- (c) The Notice of Dispute must be lodged by the party's Representative, dated and include:
  - (i) details of the dispute, including any relevant dates, a description of any relevant incident(s) and any supporting materials; and
  - (ii) the outcome sought.

### **17.4 Meeting of Patrick and Access Holder Representatives**

Within seven (7) days (or such longer period as may be agreed between the parties) after a Notice of Dispute has been given under clause 17.3, the Patrick Representative and the Access Holder Representative must meet and endeavour to settle the dispute in good faith.

### **17.5 Negotiation of senior representatives**

If the Patrick Representative and the Access Holder Representative do not resolve the dispute, within fourteen (14) days (or such longer period as may be agreed between the parties) after a Notice of Dispute has been given under clause 17.3, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the dispute expeditiously by joint discussion.

### **17.6 Mediation**

- (a) If the senior representatives of the parties do not resolve the dispute under clause 17.5 within twenty eight (28) days after a Notice of Dispute has been given under clause 17.3 (or such longer period as may be agreed between the parties), the parties must refer the dispute for mediation by a mediator appointed by the parties. If the parties do not agree on a mediator within thirty five (35) days after a Notice of Dispute has been given under clause 17.3, the mediator will be a person appointed by the President, for the time being, of the Law Institute of Victoria.
- (b) The costs of the mediator will be shared equally.

### **17.7 Confidentiality**

Subject to clause 21.2, any complaints or disputes and any terms of resolution are to be kept strictly confidential by the Access Holder and Patrick.

### **17.8 Disputes relating to Access Charges**

- (a) The Access Holder may dispute Access Charges or proposed Access Charges on the basis that they do not comply with the requirements of part (b) of the Pricing Principles.

- (b) The Access Holder has no right to otherwise dispute Access Charges or dispute any Reference Prices, and any such disputes must be initiated by PoM.
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## 18 Force Majeure

- (a) Subject to any applicable regulatory requirements, a party will be released from its obligations under this Access Agreement to the extent and for the duration that performance of this Access Agreement is delayed, hindered or prevented by a Force Majeure Event.
  - (b) If a Force Majeure Event occurs or is likely to occur, the affected party must give prompt notice of the Force Majeure Event to the other party in writing and such notice must detail what action is being taken to overcome its effects. For the avoidance of doubt, such notice for the purposes of this clause 18(a) can include communication by email.
  - (c) The affected party must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform as soon as possible. However:
    - (i) nothing will oblige the affected party to settle any strike or other industrial dispute on terms contrary to the affected party's wishes; and
    - (ii) nothing will oblige the affected party to contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
  - (d) The non-affected party will provide reasonable assistance to the affected party if a Force Majeure Event occurs.
  - (e) The affected party must resume its obligations under this Access Agreement as soon as it is no longer affected by a Force Majeure Event.
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## 19 Default and termination

### 19.1 Default and termination

- (a) Without prejudice to its other rights against the Access Holder under this Access Agreement, Patrick may at any time after an Event of Default occurs:
    - (i) suspend the Access Holder's right (or the right of a specific Associate of the Access Holder) to Access the Services; or
    - (ii) terminate this Access Agreement (or indefinitely prevent a specific Associate of the Access Holder from accessing the Services),in each case with immediate effect by giving notice in writing to the Access Holder (a **Default Notice**).
  - (b) If an Event of Default relates only to a specific Associate of the Access Holder, Patrick may restrict the exercise of its rights under clause 19.1(a) above to that specific Associate, where Patrick considers that doing so would be sufficient to address the Event of Default and adequately protect Patrick's business interests (including having regard to whether that Associate's failure is
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indicative of any broader failure of the Access Holder to impose and enforce the Access Holder Systems and otherwise require compliance by its Associates with this Access Agreement).

- (c) In circumstances where Patrick commits an act of default under this Access Agreement, the Access Holder may terminate this Access Agreement by notice to Patrick in writing.

## 19.2 Suspension

If Patrick elects to suspend the Access Holder's right (or the right of a specific Associate of the Access Holder) to Access the Services under clause 19.1(a)(i), the Default Notice shall state:

- (a) the reason that Patrick has elected to suspend the relevant rights;
- (b) the steps that the Access Holder and / or the relevant Associate (acting reasonably) must take to remedy the breach in order for the suspension to be removed; and
- (c) the date (the **Remedy Date**) by which the Access Holder must take those steps.

## 19.3 After expiry or termination

On expiry or termination, each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

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# 20 Miscellaneous provisions

## 20.1 Notices

- (a) Subject to clause 20.1(b) below, a notice, consent or other communication by a party under this Access Agreement must be in writing and must either be delivered by hand, sent by pre-paid registered mail or courier to the registered head office of the other party or sent by email (in which case the machine from which the communication was sent must produce a report that confirms that the message was successfully delivered, in full).
- (b) A notice, consent or other communication by a party under this Access Agreement in relation to Liabilities which have or may have arisen under this Access Agreement must not be given by email.
- (c) A notice, consent or other communication that complies with this clause is regarded as being given and received:
  - (i) if it is delivered by hand, by pre-paid registered mail, by courier or by other similar traceable form of delivery - on actual receipt; or
  - (ii) if it is delivered by email, on the Business Day on which it was received (or, if received after 5:00pm local time in the place of receipt, on the next Business Day).

## **20.2 Notice to a Representative**

Where in this Access Agreement a notice, approval, consent or other communication is to be sent to the Access Holder Representative or the Patrick Representative (or the Patrick Nominee Representative as applicable), it must be in writing and sent to that person at the address or email notified for the time being by the addressee to the sender.

## **20.3 Governing law**

This Access Agreement and any non-contractual obligations arising out of or in connection with it are governed and construed in accordance with the laws of Victoria.

## **20.4 Jurisdiction**

- (a) The courts of Victoria have exclusive jurisdiction to settle any dispute arising out of or in connection with this Access Agreement (including a dispute relating to the existence, validity or termination of this Access Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Access Agreement (a **Dispute**)) and each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria.
- (b) The parties agree that the courts of Victoria are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

## **20.5 Amendment**

- (a) Patrick and/or PoM may amend the Terminal Operating Protocol, Terminal Access Arrangement, Capacity Allocation Protocol and Public Container Terminal Tariff Schedule from time to time.
- (b) Prior to making amendments in accordance with this clause 20.5(a), Patrick must provide the Access Holder with reasonable notice in writing of the proposed amendment, being at least one (1) months' notice, unless a shorter period of time is required in response to changes to (or the introduction of) any Law or for urgent operational reasons.
- (c) Where a shorter notice period is required for the reasons set out in clause 20.5(b), Patrick may amend this Access Agreement at any time and will notify the Access Holder of any such amendments in writing as soon as reasonably practicable.

## **20.6 Assignment**

- (a) The Access Holder's rights, interests, entitlements and obligations under this Access Agreement are not capable of being assigned or transferred without the prior written consent of Patrick.
- (b) Patrick may assign or transfer this Access Agreement without the Access Holder's consent.

## **20.7 Waiver of rights**

- (a) Failure to or delay in enforcing or exercising, or the partial exercise or enforcement of a right, power or remedy provided by law or under this Access

Agreement does not preclude a party from exercising or enforcing that right, power or remedy in future.

- (b) Any waiver of a breach of this Access Agreement must be in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver. A waiver of a breach of any term of this Access Agreement will be limited to that term and instance specified.

#### **20.8 Severability**

- (a) If, at any time, any provision in this Access Agreement is or becomes illegal, invalid, prohibited or unenforceable (or found to be so) in the Jurisdiction is ineffective in the Jurisdiction to the extent of the prohibition or unenforceability.
- (b) Such illegality, invalidity, prohibition or unenforceability shall not:
  - (i) affect the legality, validity or enforceability of the remaining provisions of this Access Agreement; nor
  - (ii) affect the legality, validity or enforceability of that provision in any other jurisdiction.

#### **20.9 Relationship**

Nothing in this Access Agreement creates a relationship of employer and employee, principal and agent, partnership or similar between the parties.

#### **20.10 Rights**

- (a) All rights, immunities, indemnities and limitations of Liability in this Access Agreement will continue to have their full force and effect in all circumstances and notwithstanding any breach of this Access Agreement by a party or any other person entitled to the benefit of such provisions, or termination of this Access Agreement.
- (b) Any right that a person may have under this Access Agreement is in addition to, and does not replace or limit, any other right that the person may have.

#### **20.11 Change of Control**

If the Access Holder is a corporation which is not listed on the Australian Securities Exchange and there is a proposed change in Control:

- (a) of the Access Holder; or
- (b) any holding company of the Access Holder including the Access Holder's ultimate holding company (in either case as defined in the Corporations Act),

then Patrick has the right to terminate this Access Agreement.

#### **20.12 GST**

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Access Agreement are exclusive of GST.

- (b) If GST is payable by a supplier, or by the representative member for a GST group of which the supplier is a member, on any supply made under this Access Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- (c) The recipient will pay the amount referred to in clause 20.12(b) above in addition to and at the same time that the consideration for the supply is to be provided under this Access Agreement.
- (d) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 20.12(b) above. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- (e) If an adjustment event arises in respect of a taxable supply made by a supplier under this Access Agreement, the amount payable by the recipient under clause 20.12(b) above will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) Where a party is required under this Access Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
  - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
  - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (g) In this clause 20.12 (GST), words and expressions which are not defined in this Access Agreement but which have a defined meaning in GST Law, have the same meaning as in the GST Law.

### 20.13 Entire agreement

- (a) Nothing in this Access Agreement limits or excludes any Liability either party may have in connection with any representations or other communications (either oral or written) made prior to or during the term of this Access Agreement, where such Liability cannot be limited or excluded.
- (b) Subject to clause 20.13(a) above, this Access Agreement supersedes all previous agreements, understandings, negotiations, representations and warranties about its subject matter and embodies the entire agreement between the parties about its subject matter.

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## 21 Confidentiality

### 21.1 Confidential Information

- (a) Subject to clause 21.2, a party (**Recipient**) must keep confidential any Confidential Information provided by the other party (**Discloser**) and only allow an officer, employee, agent or contractor who works for the Recipient to access that Confidential Information for the purpose of:

- (i) providing the Services to the Access Holder;
- (ii) administering this Access Agreement, Capacity Allocation Protocol and the Terminal Operating Protocol;
- (iii) resolving a dispute; or
- (iv) as otherwise agreed by the Discloser.

## 21.2 Permitted disclosure of Confidential Information

- (a) The Recipient is permitted to disclose Confidential Information:
  - (i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
  - (ii) to any third party appointed for the purposes of resolving a particular dispute provided they are under a legal obligation not to disclose the Confidential Information publicly or to any third party;
  - (iii) to the PoM for the purpose of the PoM monitoring Patrick's compliance with its open access obligations or investigating a complaint under the Terminal Access Arrangement or the Rail Management Agreement (**RMA**), subject to PoM agreeing to be bound by the same obligations not to disclose the Confidential Information publicly or to any third party;
  - (iv) in the case of Patrick, other than Confidential Information of the Access Holder related to Access matters, to the Patrick Nominee for the purposes of facilitating provision of the Services; and
  - (v) if, and to the extent required by law, provided that it first consults with Discloser in relation to the manner and timing of that disclosure.
- (b) Where Patrick or the Access Holder makes a disclosure to a third party in accordance with this clause, they must procure that the third party use best endeavours to treat that disclosure as commercial-in-confidence.

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## 22 Definitions

### 22.1 Defined terms

In this Access Agreement:

**Access** means the provision of the Services at the Licensed Area by or on behalf of Patrick.

**Access Agreement** means this agreement for Access between Patrick and an Access Holder (which, for the avoidance of doubt, may or may not be in the form of the SAA).

**Access Charges** means fees paid for the Services (which, for the avoidance of doubt, may or may not be the same as the Reference Prices) as set out in Schedule 2.

**Access Criteria** in relation to a person means a person that:

- (a) is not, and is not likely to be, Insolvent;
- (b) is an accredited rail operator;
- (c) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual and potential liabilities under the Access Agreement;
- (d) has in place appropriate occupational health and safety standards and other standards required under, or that a prudent accredited rail operator would have in place by reference to provisions contained in, the Rail National Safety Law; and
- (e) evidences that it holds all approvals and agreements (including Rail Paths and interface agreements) reasonably required in connection with the Access sought by the person.

**Access Holder** means a person who has an entitlement to Access under an Access Agreement and satisfies the Access Criteria. A reference to “the Access Holder” means the entity as identified in the ‘Parties’ section of this Access Agreement.

**Access Holder Representative** has the meaning given in clause 4.1.

**Access Holder Systems** means the comprehensive policies, procedures and systems in relation to compliance with and management of the Access Holder’s various obligations under the Health and Safety Law, the Dangerous Goods Law and the Environmental Laws (and all other applicable laws and regulations).

**Access Seeker** means a person seeking Access or an Access Holder seeking increased Access (, in each case who satisfies the Access Criteria.

**Accredited Rail Operator** means a person accredited as an operator as defined in the Rail National Safety Law.

**Agreed Rate** means unless otherwise agreed by parties in writing, the rate that is 4% above:

- (a) the Reserve Bank of Australia’s ‘Cash Rate Target’ rates during the period from and including the due date for payment up to and including the date that the outstanding balance is paid; or
- (b) if the Reserve Bank of Australia ceases to publish the ‘Cash Rate Target’ then the interest rate that is the nearest equivalent to the ‘Cash Rate Target’ published by the Reserve Bank of Australia.

**Allocated Capacity** means Windows at the Terminal allocated to an Access Holder by Patrick.

**Ancillary Services** means the services referred to as ancillary services (if any) in Schedule 1.

**Associate** means a party’s employees, officers, servants, agents, invitees, subcontractors, customers and Related Body Corporate. For the avoidance of doubt the Access Holder is not an Associate of Patrick.

**Australian Securities Exchange** means ASX Limited (ABN 98 008 624 691) or the financial market conducted by ASX Limited, as the context requires.



**BAPLIE Train Consist** means the business rules and structure elements associated with the “UNEDIFACT BAPLIE” document that is available from the 1-Stop website.

**Business Day** means a day that banks are open for business in Melbourne Victoria excluding a Saturday, Sunday, or public holiday.

**Capacity** means the capability of the Terminal to provide Reference Services (expressed in TEUs).

**Capacity Allocation Protocol** means the PoM Capacity Allocation Protocol linked in Schedule 3 and published by PoM, as amended from time to time.

**Claim** includes a notice, demand, claim, action, litigation, judgment, damage, loss, cost, expense or proceeding however arising, made or brought by or against any person, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or other legal doctrine and whether involving a third party or a party to this Access Agreement.

**Commencement Date** means the date of this Access Agreement.

**Confidential Information** means information provided to Patrick by the Access Holder in confidence under or in connection with this Access Agreement, the Terminal Access Arrangement, the Terminal Operating Protocol or the Capacity Allocation Protocol and vice versa.

**Contractor HSE Agreement** means the Patrick Nominee Terms and Conditions of Site Access entered into by the Access Holder

**Consequential Loss** means any indirect, consequential, special or incidental loss or damage.

**Constrained Path Freight Trains** mean scheduled broad gauge freight Trains operating on some sections of the rail network which are required to operate within strict passenger timetable limitations with little flexibility (which as at the date of this Access Agreement, relate to Trains operating on the South-East rail network).

**Container** means at any time a freight container (including, without limitation, empty or full) as defined under “AS3711.2:2015 Freight Containers – Terminology”, as amended and replaced from time to time and which is recognised at the time as a standard container by international stevedoring standards and which is transported from, or is to be transported to, a destination outside of Australia.

**Contaminant** means a noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing or presenting risk of material harm to human health or any other aspect of the environment.

**Control** of an entity includes the power to directly or indirectly:

- (a) determine the management or policies of the entity;
- (b) control the membership of the board or other governing body of the entity; or
- (c) control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the entity.

**Controller** has the meaning it has in the Corporations Act.

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

**Dangerous Goods** means dangerous goods as defined in the “International Maritime Dangerous Goods (IMDG) Code” or the “Australian Dangerous Goods Code (7th Edition)” and any goods / cargo which are or which may become dangerous, volatile, explosive, flammable or offensive or which are or may become harmful to any person, property or the environment.

**Dangerous Goods Law** means, insofar as it applies to the Jurisdiction, any law or regulation relating to the carriage or storage of Dangerous Goods or hazardous substances.

**Default Notice** has the meaning in clause 19.1(a).

**EIDO** means an “Electronic Import Delivery Order”.

**Environmental Laws** means any applicable law or regulation relating to the protection of the environment and / or natural resources and includes the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

**Event of Default** means any one or more of the following:

- (a) the Access Holder or any Associate fails to comply with any provision of this Access Agreement (including the payment of the fees in accordance with clause 12.1 (*Applicable charges*)) and such failure is capable of remedy and the Access Holder does not remedy that failure within five (5) Business Days after receipt of written notice from Patrick requiring it to be remedied;
- (b) the Access Holder or any Associate fails to comply with any provision of this Access Agreement (including the payment of the fees in accordance with clause 12.1 (*Applicable charges*)) and such failure is not capable of remedy;
- (c) the Access Holder or any Associate repeatedly or persistently breaches this Access Agreement, regardless of whether those breaches are capable of, or are, remedied;
- (d) the Access Holder or any Associate fails to materially comply with this Access Agreement, irrespective of whether that failure is capable of remedy (which includes a failure to participate in post incident drug and alcohol testing and where access to the Port Rail Network has been refused or revoked);
- (e) Patrick has suspended the Access Holder’s right (or the right of a specific Associate of the Access Holder) to Access the Terminal under clause 19.1(b) (*Default and termination*), and the Access Holder and / or the relevant Associate fails to remedy the breach to Patrick’s reasonable satisfaction by the Remedy Date;
- (f) the Port Rail Manager has refused or revoked the Access Holder’s right to access the Port Rail Network;
- (g) there is a change in Control of the Access Holder;
- (h) the Access Holder is Insolvent; and
- (i) any other event occurs or circumstance arises which, in the reasonable opinion of Patrick, is likely to materially and adversely affect the ability of the Access Holder or any Associate to comply with this Access Agreement, and that event

or those circumstances continue for five (5) Business Days after receipt of written notice to the Access Holder from Patrick.

**Expiry Date** means the date indicated in clause 3.1.

**Force Majeure Event** means acts of god (storms, cyclones, epidemics, natural disasters etc.), strikes, terrorism, acts of a public enemy, riots, malicious damage, sabotage, and / or any production or operational shutdown which is ordered by a Government Agency or by law or regulation (albeit which is not due to the act or default of the affected party) and other similar events or circumstances, which cause a party to be delayed or unable, wholly or in part, to perform any obligations under this Access Agreement but which the affected party is not able to prevent or overcome, or the effects of which the affected party is not reasonably able to predict and take measures to avoid by the exercise of reasonable operational, technical and commercial diligence and prudence.

**Government Agency** means any government or any public, statutory, governmental, semigovernmental, local governmental or judicial body, entity or authority and includes a Minister of the Crown (in any right), the Crown, municipality and any person, body, entity or authority exercising a power under an Act of Parliament.

**GST** has the meaning it has in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** has the same meaning it has in the GST Act.

**Health and Safety Law** means, insofar as it applies to the Jurisdiction, any law or regulation relating to workplace health and safety including the SOLAS Requirements.

**Healthy Train** means a Train arriving at the start time (or within twenty (20) minutes) of its Window and that is configured with a locomotive and number of wagons carrying a number of containers substantially consistent with that Window.

**Insolvent** means in respect of a person, if:

- (a) the person is (or states that it is) insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) the person is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) the person is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by PoM);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within thirty (30) days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c) above;
- (e) the person is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;

- (f) the person is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which Patrick reasonably deduces it is so subject);
- (g) the person is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) above happens in connection with that person under the Law of any jurisdiction.

**Jurisdiction** means Victoria.

**Law** means any statute, regulation, notice, order, rule, subordinate legislation or other instrument or principle enforceable under any statute, regulation, order, rule or subordinate legislation or by a court.

**Liability or Liabilities** means any Claim, loss, liability, cost or expense of any kind and however arising (whether in contract, negligence, another tort, the general law, under statute or otherwise), including damages, penalties, fines and interest, whether actual or contingent, known or unknown and including those which are prospective or contingent and those the amount of which, for the time being, is not ascertained or ascertainable. Liable has a corresponding meaning.

**Liability Floor Amount** means:

- (a) in respect of any loss of damage related to a Train or associated equipment of the Access Holder or its Associates, the amount of \$20,000; and
- (b) in respect of all other loss or damage, the amount of \$1,000.

**Licensed Area** means the area of the port rail terminal as set out in Schedule 4.

**Material Change** means any change to the Law, or a policy or direction from a Government Agency, outside the control of Patrick, provided that the event, taken alone or as a group with other events, materially and substantially affects either the rights or obligations of Patrick or the Access Holder under this Agreement or the cost to Patrick (or the Patrick Nominee as applicable) of performing its obligations under this Agreement.

**Minimum Usage Requirement** means 65% of Allocated Capacity under an Access Agreement.

**Notice of Dispute** has the meaning given in clause 17.3(a).

**Off-port Access Principles** has the meaning given in clause 7.3(a)(i).

**Open and Non-Discriminatory Access** means in relation to Patrick's provision of the Services at its Terminal:

- (a) not unreasonably favouring itself or another person in a way that unreasonably adversely impacts any Port User's ability to access the Licensed Area to meet the Port User's legitimate commercial needs;
- (b) offering to provide Port Users with Services on standard terms and conditions, which are to be applied in a consistent manner to all Port Users, or offering to provide Port Users with Services through an Access Agreement on terms agreed with that Port User in accordance with the Pricing Principles;

- (c) acting reasonably in providing a Port User with Access to a Window at the Terminal that aligns with the Rail Path secured (as evidenced by a Port User) and not unreasonably preventing or hindering Access;
- (d) consistently and reasonably exercising its discretion not to allow Access to rail terminal Services for any Window allocated to an Access Holder who operates an Unhealthy Train if such Access has the potential to adversely affect other Trains to which a Window has been allocated by the rail terminal operator; and
- (e) being transparent in the manner in which it provides Access, including allocation of Windows, service levels and Reference Prices. This includes publishing a Schedule and Reference Prices on a public website,

as amended from time to time and published on PoM's website.

**Parliament** means the legislative branch of the Government of Australia.

**Patrick** means Patrick Container Ports Pty Ltd ACN 009 762 985.

**Patrick Nominee** means any nominee appointed by Patrick under clause 4.3.

**Patrick Representative** has the meaning given in clause 4.2.

**Patrick Nominee Representative** has the meaning given in clause 4.3(b)

**Terminal Systems** means the Rail Site Induction, all other policies and procedures applicable to the Terminal, and all reasonable directions issued by the Patrick Nominee including (without limitation) with respect to health and safety matters and drug and alcohol testing.

**PoM** means Port of Melbourne Operations Pty Ltd as Trustee for the Port of Melbourne Unit Trust (ABN 67 610 925 178).

**Port of Melbourne** includes international container terminals and the port supply chain.

**Port Precinct** means:

- (a) the area defined as the port of Melbourne in the *Port Management Act 1995* (VIC); and
- (b) any adjacent area owned, controlled or managed by PoM.

**Port Rail Access Principles** means the "Port Rail Access Principles" published by PoM as amended from time to time which are, at the time of this Access Agreement:

- (a) Open and Non-Discriminatory Access for Port Users at port rail terminals and container interchange facilities;
- (b) removing cost out of the port rail supply chain, with a view to promoting competition between rail and road transport to and from the Port Precinct;
- (c) expeditious, efficient, timely, flexible and commercial negotiations of access agreements in good faith between Port Users and port rail terminal operators;

- (d) the long term competitiveness of the Port of Melbourne<sup>1</sup> and port rail terminal operators;
- (e) the efficiency of port rail terminals and the Port of Melbourne;
- (f) Port Users acting in good faith and in accordance with legitimate commercial interests in directly or indirectly seeking access to port rail terminals; and
- (g) volume growth in rail transport at the Port Precinct in support of the State's rail mode shift target.

**Port Rail Manager** means PoM or its subcontractor responsible for management of the Port Rail Network, as notified by PoM to Patrick from time to time (which at the date of this Access Agreement is Australian Rail Track Corporation Limited).

**Port Rail Network** means the rail infrastructure within the boundaries of the Port Precinct (excluding any rail or related infrastructure within the boundaries of a PoM tenant's lease or licence).

**Port User** means:

- (a) the owner, master or agent of the owner of a vessel or vehicle using any assets or service provided at the Port Precinct;
- (b) the owner, consignor or consignee or person entitled to possession of goods or cargo located in or passing through the Port Precinct;
- (c) the agent of a person described in item (b) above of this definition;
- (d) users of roads in the Port Precinct for transport of goods to or from or in the Port Precinct;
- (e) users of rail infrastructure at the Port for transport of goods to or from or in the Port Precinct; and
- (f) a lessee or licensee of any part of the Port Precinct (other than PoM or its Related Body Corporate, the State or any entity or body owned by the State) and their invitees.

**PRA** means the container pre-receipt advice message describing the characteristics of a Container prior to it arriving at the Terminal.

**Pricing Principles** means the following principles as they apply to Patrick's pricing: Pricing will be reasonable, including by Patrick ensuring:

- (a) Reference Prices and Access Charges are consistent with the Port Rail Access Principles and are reasonable in light of all relevant factors, including:
  - (i) reflecting operations of an efficient terminal that operates with optimal lifts and storage requirements;
  - (ii) incorporating a return on investment commensurate with the commercial risks involved; and

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<sup>1</sup> the Port of Melbourne includes international container terminals and the port supply chain.

- (iii) not incorporating costs otherwise incurred, recovered or that should be borne by third parties (including PoM, the State and related businesses of Patrick); and
- (b) Access Charges allow multi-part pricing and price discrimination when it aids efficiency and competition, but only where differentiation of Access Charges reflects:
  - (i) differences in costs (direct or indirect) of supplying the relevant services;
  - (ii) differences in risks associated with the supply of relevant services;
  - (iii) demand for the services and prevailing market conditions at the time of entering into the relevant agreements; or
  - (iv) discounting pricing behaviour of Patrick that is consistent with outcomes in a competitive environment.

**Priority Notification** has the meaning given in clause 7.4(b).

**Public Container Terminal Tariff Schedule** means the Patrick Terminal Public Tariffs as applicable to the Access Holder, copies of which are available on the Patrick website.

**Rail National Safety Law** means the Rail Safety National Law (Victoria) as in force under the *Rail Safety Law Application Act 2013* (Vic).

**Rail Operating Licence** means the rail operating licence from PoM to Patrick entered into on or about 3 September 2020.

**Rail Path** a right to access the Port Rail Network or any rail infrastructure connected directly or indirectly to the Port Rail Network (as the context requires).

**Rail Site Induction** means the online induction for accessing the Terminal.

**Ramp Up Period** means the first 6 months of a scheduled service while the Access Holder is building demand, which may be extended for up to a further 3 months by mutual agreement between Patrick and the Access Holder.

**Reference Price** the standard pricing for the Reference Services set and published by Patrick from time to time.

**Reference Service** means those services referred to as reference services in Schedule 1.

**Related Body Corporate** has the meaning given to it in the Corporations Act.

**Remedy Date** has the meaning given in clause 19.2(c).

**Representative** means the Patrick Representative, Patrick Nominee Representative (as applicable) and the Access Holder Representative or a reference to any one of them as the context requires.

**Rolling Stock** means any vehicle that operates on or uses a railway track including a locomotive, light inspection vehicle, road/rail vehicle, trolley, carriage, diesel

multiple unit and wagon (but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track).

**SAA / Standard Access Agreement** means a standard access agreement, being a template access agreement that may be entered into between Patrick and an Access Holder (which, for the avoidance of doubt, is not required to be used).

**Safety Interface Agreement** means a safety interface agreement between the Access Holder and the Patrick Nominee for the Patrick Rail Terminal.

**Schedule** means a high level schedule of allocated and available Windows at the Terminal published by Patrick.

**Services** means the Reference Services and any Ancillary Services as set out in Schedule 1, in each case on the Licensed Area.

**SOLAS Requirements** means any law or regulation introduced pursuant to the *Safety of Life at Sea (SOLAS) Convention* of the International Maritime Organisation.

**State** means the State of Victoria through the Department of Transport.

**Term** means the period starting on the Commencement Date and ending on the Expiry Date.

**Terminal** means the rail terminal located on the Licensed Area.

**Terminal Access Arrangement** means the terminal access arrangement required to be published on Patrick's website, as amended from time to time.

**Terminal Operating Protocol** means the Patrick rail terminal operating protocol published on Patrick's website, as amended from time to time.

**TEU** means twenty-foot equivalent unit.

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

**Train Load/Unload Requirements** means each of the requirements set out in clause 4 of the Terminal Operating Protocol

**Truck Terminal Access Service** means the in-gate processing of trucks, provision of access by a truck to the Terminal to collect or deliver a container and out-gate processing of trucks.

**Unforeseen Event** means an event or circumstance outside the control of Patrick that adversely impacts or causes cessation of Services including significant weather events, activities of emergency service, power failures, safety incidents, equipment breakdown, industrial event or any act or omission of a third party which adversely impacts access to or from the Terminal.

**Unhealthy Train** means a Train that is not a Healthy Train.

**Vexatious Claim** means a claim that is not made in good faith, pursued regardless of its merits and is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted.



**Window** means an access slot at the Terminal, being a defined time of arrival at the Terminal for servicing.

## 22.2 Interpretation

The following rules apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
  - (i) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
  - (ii) legislation or a code is to that legislation or code as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (iii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iv) a singular word includes the plural, and vice versa.
- (c) A reference to dollars, AUD or \$ is to an amount in Australian currency.
- (d) "Include" and "including" are not words of limitation.
- (e) Where the Access Holder is prohibited from acting or omitting to act in a certain way, the Access Holder must ensure that each of its Associates complies with such prohibition.
- (f) This Access Agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.
- (g) Time is of the essence in respect of all timeframes set out in this Access Agreement.
- (h) If a provision or part of a provision of this Access Agreement is illegal, invalid or unenforceable, then that part or part is severed from this Access Agreement and this Access Agreement otherwise remains unaffected.

# Signing page

**EXECUTED** by **[ACCESS HOLDER]** )  
**ACN [insert]** in accordance with )  
Section 127(1) of the *Corporations Act* )  
*2001* (Cth) )  
)  
)  
..... )  
Signature of director ) Signature of director/company )  
secretary\* )  
\*delete whichever is not applicable )  
)  
)  
..... )  
Name of director (block letters) ) Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

**EXECUTED** by **PATRICK CONTAINER** )  
**PORTS PTY LTD ACN 009 762 985** in )  
accordance with Section 127(1) of the )  
*Corporations Act 2001* (Cth) )  
)  
)  
..... )  
Signature of director ) Signature of director/company )  
secretary\* )  
\*delete whichever is not applicable )  
)  
)  
..... )  
Name of director (block letters) ) Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

## Schedule 1 Services and rail access Windows

### Services

Service	Description of available Services at the Terminal	Provision of Service [Yes/No]
Reference Services	<b>Rail Terminal Lift</b> <ul style="list-style-type: none"> <li>• Import/Export 20ft/40ft ISO Laden/Empty containers;</li> <li>• Unload or Load of containers to/from rail wagon to truck or rail stack.</li> </ul>	
	<b>Rail Terminal Access</b> <ul style="list-style-type: none"> <li>• Provision of access by a Train into the Terminal;</li> <li>• Allocation of a train to a track for loading and unloading; and</li> <li>• Facilitating the departure of the Train.</li> </ul>	
	<b>Truck Terminal Access</b> <ul style="list-style-type: none"> <li>• In-gate processing of trucks;</li> <li>• Provision of access by a truck to the Terminal to collect or deliver a container; and</li> <li>• Out-gate processing of trucks.</li> </ul>	
Ancillary Services	Nil	

### Allocated rail access Windows

Rail access Window term	Rail access Window times	Rail access Window lifts

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**Schedule 2      Access Charges**

<b>Fee for Reference Service</b>	<b>Service Charges</b>
Rail Terminal Lift Fee	
Rail Terminal Access Fee	
Truck Terminal Access Fee	

<b>Description of Ancillary Service</b>	<b>Service Charges</b>

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## Schedule 3      Capacity Allocation Protocol

A link to the live Capacity Allocation Protocol published by the PoM is available at this link:

<https://www.portofmelbourne.com/wp-content/uploads/Port-of-Melbourne-Port-Rail-Capacity-Allocation-Protocol-.pdf>

