

Brookfield **Rail**

SEGREGATION ARRANGEMENTS

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1. OBJECTIVES OF THE SEGREGATION ARRANGEMENTS

~~WestNetBR~~ is the “owner” as defined in the Railways (Access) Act 1998 (“the Act”) ~~owner for the purposes of the Act~~ of a ~~rail~~ railways network in Western Australia which is subject to the provisions of the Act ~~to the extent that the network is defined in Schedule 1 of the Railways (Access) Code 2000 (“the Code”) which is established under the Act and the Code.~~

~~WestNetBR~~ recognises its obligation to comply with the Act and the Code and specifically Section 28 and Sections 30 to 34 of the Act. The objective of ~~this segregation arrangement~~ these Segregation Arrangements is to ensure that ~~WestNetBR~~ complies with the requirements of Sections 28 and 30 of the Act to segregate its access related functions ~~and in particular gives from its other functions and to give~~ effect to the obligations set out in:

- (a) ~~(i)~~ Section 31 of the Act which requires an effective regime for the **protection of confidential information** arising from performing access related functions.
- (b) ~~(ii)~~ Section 32 of the Act which requires the avoidance of **conflict of interest** between the duties of a relevant officer in performing access related functions and duties involved in other business of the railway owner.
- (c) ~~(iii)~~ Section 33 of the Act relating to the **duty of fairness** which requires that relevant officers in performing their duties must not have regard for the interests of the railway owner in a way that is unfair to persons seeking access, ~~proponents or operators.~~
- (d) ~~(iv)~~ Section 34 of the Act which requires that **accounts and records** are maintained to ensure that ~~it~~ the railway owner accurately records and distinguishes income, expenditure, assets and liabilities related to carrying out access related functions from other activities of the railway owner. This also requires that any apportionment required between its access related functions and other functions be done in a fair and reasonable way.

~~It is noted that~~ Section 29 of the Act allows the Regulator to impose ~~other~~ requirements on ~~WestNetBR~~, other than those covered in Sections 31 to 34 of the Act, to further improve the effectiveness of ~~the segregation arrangements~~ these Segregation Arrangements if and as required.

2. ~~SEGREGATION OF~~ ACCESS RELATED FUNCTIONS

~~WestNet defines~~ For the purposes of these Segregation Arrangements, ‘Access Related Functions ~~as~~ means:

- (a) ~~(i) Compliance with the provisions of~~ Performance of activities specified under the Act and Code ~~and with requirements of the Regulator under that legislative framework including~~ (but not limited to):
 - (i) calculating the floor and ceiling costs for approval by the Regulator;
 - (ii) ~~calculating the floor and ceiling costs for approval by the Regulator, and~~ applying the costing principles, the overpayment rules, the ~~train management guidelines, and the train path allocation policy~~ Train Management Guidelines and the Train Path Policy;
 - (iii) ~~ensuring that suitable controls, measures and procedures are established to give effect to the segregation arrangements approved by the Regulator;~~ and
 - (iv) ~~undertaking the steps defined in Parts 2 and 3 of the Code for the negotiation of Access Agreements~~ inside the Code.

- (b) ~~(ii)~~-Negotiation of Access Agreements (either inside or outside of the Code) and granting of ~~access~~Access rights.
- (c) ~~(iii)~~-Management of Access Agreements including performance monitoring and day-to-day operation issues.
- (d) ~~(iv)~~-Collection, use, and dissemination of train running data including manifest details, ~~and access usage.~~
- (e) ~~(v)~~-Train scheduling, train path allocation, publication of ~~working timetables~~Working Timetables, control planning, ~~and the granting of ad-hoc train path entitlements.~~
- (f) ~~(vi)~~-Train control ~~which includes~~including provision of appropriate authorities for trains to use scheduled train paths (train orders or signals), ~~and~~ and real-time management of trains.
- (g) ~~(vii)~~-Emergency management of the ~~network~~Network including co-ordination of emergency service responses.
- (h) ~~(viii)~~-Development, maintenance and monitoring compliance with appropriate rail safety standards for ~~WestNet~~BR's staff, its contractors and ~~operators~~any Operators on the Network.
- (i) ~~(ix)~~-Development and authorisation of the ~~WestNet's~~BR Rules (including the General Appendix and Working Timetables) and issue of special notices, instructions and warnings related to the rules.
- (j) ~~(x)~~-Development of train operating standards (to the extent they relate to the rail infrastructure) ~~such as~~including maximum braking distances, ~~and~~ and maximum train lengths ~~etc., and the maintenance standards for the infrastructure itself.~~
- (k) Development of maintenance standards for the rail infrastructure.
- (l) ~~(xi)~~-Maintenance of the track and other rail infrastructure including signalling and communications maintenance.
- (m) Any administrative or corporate functions required to support the activities referred to in sections 2(a) to 2(l) above.

2A. APPLICATION TO THIRD PARTIES

- (a) ~~Where WestNet~~Subject to section 2A(b), where BR engages contractors or other third parties to provide any part of the ~~access related functions it will ensure that any contractor is aware of and complies with any obligations imposed by the Act or the Code and where appropriate have the contractor sign a Confidentiality and Compliance Agreement.~~Access Related Functions it will ensure that:
 - (i) those parties are aware of and comply with any obligations imposed by the Act and the Code with respect to Access Related Functions; and
 - (ii) where those parties have access to Confidential Information in relation to Access Related Functions, require those parties to sign a Confidentiality and Compliance Agreement.
- (b) Section 2A(a) does not apply to BR's professional advisers or consultants who are under a duty of confidentiality.

3. RAIL ACCESS SEGREGATION ARRANGEMENTS MANAGEMENT AND COMPLIANCE PROCESSES

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- (a) ~~WestNet Rail~~BR has detailed ~~more~~-specific management and compliance processes in Appendix A to this document.
 - (b) ~~This Appendix A describes the principal and more detailed methods by~~manner in which ~~WestNet Rail~~BR manages ~~the~~these Segregation ~~arrangements and also describes~~Arrangements including the processes put in place to ensure an effective compliance regime is maintained.
 - (c) Appendix A is the vehicle by which ~~the segregation arrangements~~these Segregation Arrangements and any changes to the segregation processes, procedures and practices are formalised and communicated throughout ~~the organisation~~BR.
 - (d) ~~Therefore Appendix A –the Segregation Arrangements Management and Compliance Processes– will~~ be:
 - (i) ~~Be~~ issued as a controlled document to the ~~WestNet~~BR senior management team and other ~~appropriate WestNet staff, who are then responsible to comply with the document.~~BR staff who are involved in Access Related Functions, who must comply with Appendix A;
 - (ii) ~~Be~~ reviewed and updated as required by law with changes to Appendix A being issued to BR staff in accordance with BR's procedures for controlled documents; ~~and~~
 - (iii) ~~Be~~ used to develop the training requirements for ~~new employees and other persons~~BR staff involved in Access ~~related functions.~~
 - ~~(iv) Be the base document against which compliance audits are conducted.~~Related Functions to raise awareness of their obligations under the Act and the Code with respect to Access Related Functions.
 - (e) Appendix A includes:
 - (i) Specific details of the security arrangements in place to protect ~~confidential information~~Confidential Information including details of the arrangements for securing paper and electronic records and for access to information systems.
 - (ii) Details of the ~~physical location of staff work places and the~~ security systems in place in ~~those workplaces and especially for the train control centres operated by WestNet and employees dedicated to providing network management and access related matters~~BR offices.
 - (iii) A list of the types of behaviour which may breach ~~segregation arrangements~~these Segregation Arrangements and the appropriate corrective arrangement for each breach.
 - (iv) A compliance plan that will ~~include external audit requirements. The compliance plan will~~ be a key monitoring tool for the Regulator and any Auditor in assessing effectiveness of ~~the segregation arrangements~~these Segregation Arrangements.

4. CONFIDENTIAL INFORMATION

- (a) BR must:
 - (i) keep confidential and not disclose, and ensure that its employees keep confidential and not disclose, any Confidential Information provided to BR by a Network Participant or Proponent except in accordance with:
 - (A) section 4(c), 4(e) or 4(f) of these Segregation Arrangements; or

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- (B) a Confidentiality and Compliance Agreement signed by the relevant employee; and
- (ii) subject to section 4(c), ensure that its employees only use Confidential Information provided to BR by a Network Participant or Proponent for the purpose for which it was provided.
- (b) ~~WestNet believes the definition of Confidential Information in~~ may include the ~~Act would mean that the following are examples of the~~ types of information ~~that would be deemed to be confidential:~~
- (i) ~~Applications~~ Access applications and preliminary information ~~from persons seeking access and proponents~~ provided by Proponents with their Access applications.
 - (ii) Correspondence related to the negotiation of the Access Agreement.
 - (iii) The Access Agreement itself and information exchanged in the management of the Access Agreement over time.
 - (iv) Any data related to the recording of usage of the Access Agreement including the data held in RAMS.
 - (v) Master Train Control Diagrams (to the extent they identify specific operations).
 - (vi) Completed ~~Train Control Diagrams~~ train control diagrams and voice logging tapes from ~~train~~ Train control.
- (c) BR may disclose Confidential Information of a Network Participant or Proponent:
- (i) if the Network Participant or Proponent provides its prior written consent to BR, such consent not to be unreasonably withheld;
 - (ii) to the extent disclosure is required or compelled by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator;
 - (iii) to the extent disclosure is necessary for:
 - (A) the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers; or
 - (B) notifications to brokers, insurers or claims assessors,
provided that the person to whom the disclosure is made is under a legal obligation to keep the information confidential;
 - (iv) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving an Access Dispute or a Price Dispute provided that BR does not disclose the Confidential Information of one Network Participant or Proponent to another Network Participant or Proponent without the first Network Participant's or Proponent's consent;
 - (v) to the extent disclosure is required for the purpose of facilitating the performance of yard control services;
 - (vi) to the extent the disclosure is required to protect the safety or security of persons or property or in connection with an accident or Emergency; or
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- (vii) to the extent the Confidential Information comprises the Operator's or the Proponent's (where the Proponent proposes to be an Operator) rollingstock details.
- (d) Where an employee of ~~WestNet~~BR has prescribed duties which ~~are~~involve managing or conducting ~~access related functions, WestNet will, at the time of their permanent or temporary appointment, Access Related Functions. BR will~~ require the employee to sign a Confidentiality and Compliance Agreement ~~that they are aware of their responsibilities and obligations under the Code and specifically as it relates to confidential information as defined in the Code and in these Segregation Arrangements.~~ BR will provide training to all BR employees who are required to sign a Confidentiality and Compliance Agreement with respect to their obligations under the Act, the Code and these Segregation Arrangements.
- (e) ~~WestNet~~BR has established a regime for protecting Confidential Information ~~as defined in the Code~~ including:
- (i) ~~(i)—A system of securing access~~Access related information that only allows ~~appropriate WestNet~~authorised BR staff ~~and contractors~~ to access the records. This information will be located in secure and lockable facilities within ~~WestNet Rail's head office. BR's offices and Train control centres.~~
~~WestNet~~BR will control access to its entire head office and its regional offices and ~~this office~~these offices will be locked when not attended.
 Train control centres are secured and entry is controlled by ~~WestNet~~BR.
- (ii) ~~(ii)—A security system on electronic records that allows only appropriate WestNet~~authorised BR staff ~~and contractors~~ to access the records.
 Access to electronic records that are confidential can only be given by the ~~Commercial~~Responsible Manager and will only be given to persons who have signed a Confidentiality and Compliance Agreement.
~~WestNet~~BR has physically dedicated computer file servers. User Ids and passwords are set up and managed by the ~~WestNet~~BR Information Technology Group. Authority to allocate passwords resides with the ~~Commercial~~Responsible Manager.
 There are further restrictions applying to the following primary stand-alone systems.
- (iii) ~~(iii)—Appropriate controls on data, including information in the Rail Access Management System (RAMS) and costing and pricing information to protect confidential information~~Confidential Information.
 The ~~Commercial~~Responsible Manager must authorise all access to ~~confidential data~~and use of Confidential Information held in RAMS and will only grant access to persons who have signed Confidentiality and Compliance Agreements.
 This process of granting access and usage is capable of being, and ~~is~~will be, audited in accordance with section 8 of these Segregation Arrangements.
- (iv) ~~(iv)—Specific provisions in each Access Agreement providing~~imposing contractual obligations on ~~WestNet~~BR to protect ~~confidential information~~Confidential Information.
- (f) For the avoidance of doubt, nothing in this section 4 prevents BR from disclosing, in the ordinary course of business, financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably

be, and is not reasonably capable of being, identified with, attributed to or used to identify any Network Participant or Proponent.

5. CONFLICTS OF INTEREST

- (a) ~~WestNetBR~~ will manage its ~~access related functions~~ Access Related Functions so that, for 'relevant officers' (as defined in the Act), no conflicts of interest exist between his or her duties:
- (i) as a person concerned in the performance of Access Related Functions, on the one hand; and
 - (ii) as a person involved in other business of BR, on the other.
- (b) In the case of train scheduling and ~~train~~ Train control, these functions will be undertaken by ~~WestNetBR~~ staff ~~who are subject to~~ or contractors who have signed a Confidentiality and Compliance Agreements Agreement.
- (c) ~~Operators may prepare amendments to daily or weekly plans for services which experience variable demand or variable destinations providing they do not interfere with any other operators' rights and subject to WestNet having ultimate approval of such changes.~~
- (d) If a person employed by BR whose duties involve the management or conduct of Access Related Functions ceases to work for BR in order to commence employment with a Related Body Corporate of BR, then BR will provide to that employee, as part of the exit process for that employee, a debriefing to remind the employee of BR's obligations relating to the management of Confidential Information.
- (e) In making all decisions in relation to the temporary transfer of BR employees whose duties involve the management or conduct of Access Related Functions to roles in a Related Body Corporate of BR, BR must have regard to the potential implications of any such transfer on BR's obligations to manage Confidential Information.
- (f) BR will procure that no employee of BR who has had access to Confidential Information of a Network Participant or a Proponent will, within a six month period of ceasing employment with BR, be employed or engaged in a role with a Related Operator which is involved in commercial dealings with:
- (i) Access Holders;
 - (ii) customers of Operators;
 - (iii) Proponents (where the Proponent proposes to be an Access Holder); or
 - (iv) customers of Proponents (where the Proponent proposes to be an Operator).
- (g) BR has procured, by way of a deed between BR and the relevant holding company of its Related Operator (as at the date of these Segregation Arrangements), an undertaking from the relevant holding company that it will ensure that the Related Operator complies with the arrangements specified in section 5(e).
- (h) BR must, at all times, ensure that:
- (i) less than 50% of the number of directors of BR are Common Directors; and
 - (ii) Common Directors do not have responsibility for, or involvement in, the operations of BR, other than in their capacity as a director of BR.
- (i) BR must establish corporate governance arrangements which ensure that Common Directors do not:
- (i) receive or access Confidential Information; or

- (ii) participate in any decisions or attend any meetings, in respect of services that BR provides, or is proposing to provide, to:
- (iii) the Related Operator in respect of which the relevant Common Director holds a directorship (**Relevant Related Operator**); or
- (iv) any Network Participants or Proponents that compete with, or is proposing to compete with, the Relevant Related Operator.
- (j) BR must ensure that the directors of BR are not Prohibited RO Persons.
- (k) For the purposes of this section 5:
 - (i) 'Common Director' means a person who, at the relevant time, is a director of BR and a director of a holding company of BR.
 - (ii) 'Prohibited RO Person' means a person who:
 - (A) is a current employee of a Related Operator;
 - (B) has been an employee of a Related Operator in the past 3 years;
 - (C) holds 5% or more of the total number of votes attached to voting shares in a Related Operator; or
 - (D) has a material contractual relationship with a Related Operator.

6. DUTY OF FAIRNESS AND NON-DISCRIMINATION

~~WestNet will treat all persons seeking access, proponents and operators fairly in relation to prices, service quality, and paths and priority.~~

~~In addition, WestNet will ensure that the key terms and conditions of internal access arrangements will be broadly comparable to those provided or offered to third parties.~~

6.1 Overview

BR acknowledges that, in performing Access Related Functions, BR and its employees must not have regard to the interests of BR in a way that is unfair to Proponents or to other Network Participants.

6.2 Access

BR must not unfairly or unreasonably:

- (a) hinder or deny Access to any Proponent or Network Participant; or
- (b) discriminate against a Proponent or Network Participant as to the terms and conditions (including Access Charges, priority of Access and service levels) upon which Access is provided, or is proposed to be provided, when compared to a Related Operator.

6.3 Reasonable discrimination permitted

Discrimination as to terms and conditions is not to be taken as unfair or unreasonable for the purposes of these Segregation Arrangements if the relative terms reflect reasonable commercial and technical considerations including (without limitation):

- (a) relative costs of providing Access to different Network Participants, having regard to:
 - (i) the commodity being transported;
 - (ii) the type of rollingstock used by the relevant Operator including the length and mass of the rollingstock;

- (iii) the geographic area in which the Access is being provided; and
- (iv) the relative effect of the task on the efficient utilisation of the Network;
- (b) the costs and risks associated with providing services required by, or in respect of, some Network Participants, but not others;
- (c) the nature and characteristics of the sections of the Network to which Access is sought;
- (d) circumstances in the market which have had, or will have, a material effect on a Network Participant's ability to pay Access Charges; and
- (e) the extent of competition for the task with other modes of transport.

6.4 Ensuring duty of fairness

The ~~mechanism~~mechanisms for ensuring ~~WestNet~~BR's compliance with its duty of fairness ~~is two-fold~~include:

- (a) the Dispute Resolution Process specified in Appendix C of these Segregation Arrangements (where applicable);
- (b) ~~(i) Persons seeking access and proponents can determine~~the process under the Code for determining the fairness of prices negotiated under provisions of Section 21(1) of the Code ~~-(where applicable); and~~
- (c) ~~(ii) Provisions of WestNet~~relevant provisions in BR's standard Access Agreement provide for specificAgreements including consultation mechanisms, ~~the provision of obligations to provide~~ information, and dispute resolution mechanisms ~~which would allow persons seeking access and proponents to test the duty of fairness related to other than price issues in the provision of access.~~

6.5 Application of fairness to Part 5 instruments

~~WestNet~~BR acknowledges that its obligation to comply with its duty of fairness ~~applies to the application of the~~includes compliance with the Regulator's determinations ~~made by the Regulator~~ under Part 5 of the Code ~~and particularly~~including:

- (a) ~~(i) The~~these Segregation Arrangements;
- (b) ~~(ii) The~~the Train Management Guidelines;
- (c) ~~(iii) The~~
- (d) the Train Path Policy;
- (e) ~~(iv) The~~Costing Principles.
- (f) ~~(v) The~~Overpayment Rules.

~~WestNet will also inform persons seeking access and proponents at the onset of negotiations (whether inside or outside of the Code) of their rights to confidentiality.~~

~~If negotiations have commenced outside the Code and persons seeking access and proponents subsequently make an access application under the Code, WestNet and the person seeking access will agree on what information previously supplied by the person(s) seeking access and proponent(s) is subject to the confidentiality provisions of these arrangements.~~

- (g) the costing principles; and
- (h) the overpayment rules.

7. PREPARATION OF ACCOUNTS AND RECORDS

- (a) ~~WestNetBR~~ will maintain accounts and financial records for the purposes of complying with the Act and the Code. ~~WestNetBR~~ employees also control the data used to generate invoices for ~~access~~Access customers.
- (b) ~~WestNetBR~~ will present the accounts or financial reports required to comply with the Act and Code or to assist the Regulator in the performance of the Regulator's duties under the Act or the Code in the manner approved by the Regulator.
- (c) In preparing such regulatory accounts or reports ~~WestNetBR~~ must have regard to the ~~Costing Principles~~costing principles determined by the Regulator under Part 5 of the Code.

8. ~~COMPLIANCE AND REVIEW~~AUDIT, COMPLIANCE AND REVIEW

~~Compliance with these arrangements will be achieved by;~~

- ~~i. WNR agrees to the ERA reviewing its Segregation Arrangements in 2015 through a public consultation process. This review will commence on 1 October 2015 and WNR will provide the ERA with its proposed revision of its Segregation Arrangements on this date.~~
- ~~ii. WNR agrees to the ERA monitoring WNR's compliance with its Segregation Arrangements through an audit of WNR's compliance with its Segregation Arrangements every two years. This audit will be carried out by an independent auditor approved by the ERA, with WNR managing and funding the audit. The scope of the audit will be determined by the ERA. It is expected that the next audit will commence at the end of the 2011-12 financial year.~~
- ~~iii. The final audit report will be provided to the ERA. The ERA will publish this report on its website (excluding confidential information).~~
- ~~iv. WNR acknowledges that the ERA can also commission special audits at any time on any~~

8.1 Regulator monitoring, enforcement and review

- (a) BR acknowledges that stakeholders, including Network Participants and Proponents, may notify the Regulator of any concerns in relation to these Segregation Arrangements and the Regulator may investigate such concerns.
- (b) Under sections 20(1) and (2) of the Act, the Regulator is responsible for monitoring and enforcing compliance with the Act and the Code utilising the powers granted to the Regulator under the Act. The responsibilities of the Regulator under sections 20(1) and (2) of the Act extend to the monitoring and enforcement of these Segregation Arrangements.
- (c) Under section 29(1) of the Act, BR may amend or replace the Segregation Arrangements at any time, subject to the approval of the Regulator.

8.2 Subject of audit

In respect of each year ending 30 June, an audit of BR's compliance during that year with its obligations in respect of the following will be conducted in accordance with section 8.3:

- (a) sections 4, 5, 6.2 (having regard to section 6.3) and 7 of these Segregation Arrangements;
- (b) any matters specifically identified in Appendix A of these Segregation Arrangements as being subject to an audit under this section 8; and
- (c) its compliance with the Train Path Policy and Train Management Guidelines.

8.3 Audit report

The Auditor will compile an audit report identifying:

- (a) to the extent feasible, whether BR has complied in all material respects with its obligations referred to in section 8.2, and, if not, details as to the relevant non-compliance;
- (b) the process adopted for the conduct of the audit;
- (c) any complaints made by a Network Participant or Proponent to BR about BR's compliance with the obligations referred to in section 8.2, and the outcome of any such complaint;
- (d) any disputes initiated by a Network Participant or Proponent under section 8A, and the outcome of any such dispute;
- (e) any recommendations by the Auditor to improve BR's processes or reporting systems in relation to compliance with the obligations referred to in section 8.2; and
- (f) the implementation and outcome of any prior recommendations by the Auditor.

8.4 Conduct of audit

An audit required under section 8.2 must be conducted in accordance with the following process:

- (a) BR will annually appoint the auditor subject to the Regulator's prior approval of the auditor. Where the Regulator does not approve the appointment of a particular auditor, BR must nominate an alternative auditor or replacement auditor as soon as practicable after the Regulator notifies BR of such non-approval;
- (b) the auditor must be:
 - (i) independent of BR; and
 - (ii) appropriately qualified and experienced;
- (c) the Regulator's approval of an auditor (or replacement auditor) in accordance with section 8.4(a) continues unless and until withdrawn in accordance with section 8.4(d);
- (d) if the Regulator is of the reasonable belief that an audit conducted by an Auditor has not been conducted to a satisfactory standard, the Regulator may, within three (3) months after completion of the audit, notify BR in writing that its approval of the Auditor in relation to the next audit of those matters is withdrawn;
- (e) the Auditor will have a duty of care to the Regulator in the provision of the audit and, in the event of a conflict between the Auditor's obligations to BR and its duty of care to the Regulator, the Auditor's duty of care to the Regulator will take precedence;
- (f) prior to commencing the audit the Auditor must agree an audit plan with BR, document that audit plan, and obtain the Regulator's approval of the audit plan;
- (g) the audit plan will:

- (i) consist of a proposed work program for the execution of the audit, including audit costs (which are payable by BR);
 - (ii) provide that the audit must be completed by 30 September immediately following the year ending 30 June in respect of which the audit is being undertaken or such later date as may be agreed between the Auditor and BR; and
 - (iii) provide for the establishment of an audit liaison group, comprising the Auditor, BR and the Regulator, during the course of the audit, to provide a forum for the resolution of any audit issues that arise;
- (h) BR will:
 - (i) provide any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor to be reasonable after consultation with BR;
 - (ii) in relation to the audit of BR's obligations under section 7 of these Segregation Arrangements ~~issue where additional assurance is required~~, provide access to BR's financial records and information systems necessary for the purpose of conducting the audit; and
 - (iii) not interfere with, or otherwise hinder, the Auditor's ability to carry out his or her functions under this section 8;
- (i) the Auditor will be required to enter into a Confidentiality and Compliance Agreement in relation to any information provided by BR, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report;
- (j) the Auditor will provide to BR and the Regulator a copy of:
 - (i) the audit report (which the Regulator may publish provided that the Regulator must ensure that any Confidential Information specified in the published version of the audit report is redacted); and
 - (ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail;
- (k) BR must use reasonable endeavours to implement any recommendations made by the Auditor in the audit report or any other letters or reports provided in accordance with section 8.4(j) (except to the extent the non-implementation is approved by the Regulator) as soon as reasonably practicable after the documents are provided by the Auditor; and
- (l) BR must use reasonable endeavours to comply with any direction of the Regulator in relation to matters arising from the audit report as soon as reasonably practicable.

8A DISPUTE RESOLUTION

- ~~v. WestNet will report any breach of the segregation arrangements of which it becomes aware to the Regulator in writing within five business days.~~

~~WestNet acknowledges that the Act and Code provide powers sufficient for the Regulator to commission special audits on any issue or area where the Regulator requires additional assurance.~~

~~WestNet will also undertake awareness training of the obligations under the Act or Code for all staff who are engaged in access related functions or who are required to sign Confidentiality and Compliance Agreements.~~

8A.1 Dispute Resolution Process under the Segregation Arrangements

- (a) If a Dispute Applicant gives BR an Objection Notice in accordance with clause 2.1 of Appendix C then BR must comply with the Dispute Resolution Process to determine the dispute.
- (b) BR may, from time to time, amend the Dispute Resolution Process provided that BR has obtained the prior written consent of the Regulator.

8A.2 Disputes under the Code and the Segregation Arrangements

- (a) A Code Access Seeker must not commence or participate in any dispute resolution process outside the Code (including under these Segregation Arrangements) with respect to any terms or conditions (including Access Charges) that apply to the Access rights specified in its Access proposal under the Code. BR is not obliged to participate in any dispute resolution proceedings referred to in this clause 8A.2(a).
- (b) If a Code Access Seeker is granted an arbitral award under the Code then:
 - (i) it must not commence or participate in any dispute resolution process under these Segregation Arrangements in respect of the subject matter of the award; and
 - (ii) BR is not obliged to participate in any dispute resolution proceedings referred to in clause 8A.2(b)(i).
- (c) If a Non-Code Access Seeker:
 - (i) commences or participates in a Dispute Resolution Process under these Segregation Arrangements; and
 - (ii) subsequently submits an Access proposal to BR under the Code for Access rights which are the same, or substantially the same, as the Access rights specified in its Access proposal outside the Code.

then the Dispute Resolution Process under these Segregation Arrangements will be taken to be discontinued, and may not be re-enlivened, and BR is not obliged to participate any further in any dispute resolution proceedings under these Segregation Arrangements in relation to the same issues.
- (d) If a binding decision is made under these Segregation Arrangements with respect to Access rights specified in a Non-Code Access Seeker's Access proposal then:
 - (i) the Non-Code Access Seeker must not subsequently submit an Access proposal to BR under the Code for Access rights which are the same, or substantially the same, as the Access rights specified in its Access proposal outside the Code; and
 - (ii) BR is not obliged to consider any Access proposal referred to in clause 8A.2(d)(i).
- (e) For the avoidance of doubt, the purpose of this clause 8A.2 is to ensure that a person does not commence, or participate in, a dispute resolution process under the Code when it has also commenced, or is participating in, a dispute resolution process outside the Code (and vice versa) in respect of the same, or substantially the same, subject matter.

(f) BR acknowledges that nothing in this clause 8A.2 is intended to limit the Segregation Arrangements from applying in respect of Access Agreements entered into under the Code.

(g) For the purposes of this clause 8A.2:

(i) a 'Code Access Seeker' is a person that has submitted an Access proposal to BR under the Code; and

(ii) a 'Non-Code Access Seeker' is a person that is:

(A) negotiating with BR for Access outside the Code; and

(B) not a Code Access Seeker in respect of the Access rights the subject of the outside the Code negotiations.

9. DEFINITIONS:

Access	(a) the use of railway infrastructure <u>the Network</u> ; and (b) where applicable, includes the exercise of other rights of the kind described in section 3A(1) of the Act.
Access Agreements <u>Agreement</u>	Means an agreement in writing under this Code between the railway owner <u>BR</u> and an entity for access <u>the grant of Access</u> by <u>BR</u> to that entity; and includes a Commercial Track Access Agreement, an Operational Track Access Agreement or a Track Access Agreement, as applicable.
<u>Access Charges</u>	<u>Means the fees or charges payable by a Network Participant to BR under an Access Agreement.</u>
<u>Access Dispute</u>	<u>Means a bona fide commercial dispute raised by a Dispute Applicant which is not a Price Dispute.</u>
<u>Access Holder</u>	<u>Means a party that is granted Access under a Commercial Track Access Agreement or a Track Access Agreement, as applicable.</u>
<u>Access Related Functions</u>	<u>Has the meaning ascribed to it in section 2 of this document.</u>
Act	Means the <i>Railways (Access) Act</i> 1998 <u>1998 (WA)</u> .
<u>Auditor</u>	<u>Means an auditor appointed by BR and approved by the Regulator in accordance with section 8.4(a) or 8.4(c) of this document.</u>
<u>BR</u>	<u>Means Brookfield WA Rail Pty Ltd ACN 118 144 960.</u>
<u>BR Rules</u>	<u>Means the rules (including any appendix to the rules and the Working Timetables) issued in accordance with BR's 'Rail Safety Management Plan' approved under Section 10 of the <i>Rail Safety Act 2010</i> (WA) together with any amendments, deletions or additions made in accordance with the Rail Safety Management Plan and all policies and notices issued by BR for the purpose of ensuring the safe use of the Network.</u>
Code	Means the <i>Railways (Access) Code 2000</i> <u>(WA)</u> established under the Act.
<u>Commercial Track Access Agreement</u>	<u>Means an agreement in writing between BR and a party pursuant to which BR grants Access to that party for the operation of train services on the Network by one or more Operators nominated by the party.</u>

Confidentiality and Compliance Agreement	Means a statement signed by a WestNet employee or contractor, indicating their understanding of the obligations imposed under the Act or Code and specifically as those obligations relate to the protection of confidential information <u>deed substantially in the form specified in Appendix B.</u>
Confidential Information	Has the meaning ascribed to it in Section 31(2) of the Act <u>but excludes information that:</u> <u>(a) subsequently becomes available other than through a breach of confidence or a breach of these Segregation Arrangements;</u> <u>(b) was in the lawful possession of BR before being provided to BR by the Network Participant or the Proponent;</u> <u>(c) ceases to be confidential in nature by any other lawful means; or</u> <u>(d) is received by BR independently from a third party free to disclose such information.</u>
Contractor <u>Dispute Applicant</u>	Means a person or entity engaged by WestNet to provide advice about or to perform part of its access related functions <u>Proponent or a Network Participant.</u>
<u>Dispute Resolution Process</u>	<u>Means the dispute resolution process specified in Appendix C.</u>
<u>Disputed Access Charge</u>	<u>Means an Access Charge that is the subject of a Price Dispute.</u>
Emergency	Means any event or incident which by its nature requires immediate intervention or action.
Instructions <u>ERA</u>	Means all instructions and directions, issued by WestNet from time to time which: (a) ensure, facilitate or encourage the proper, efficient, safe and lawful (i) use of and access to the Network by all Network users, and (ii) management of the Network by WestNet; (b) are consistent with the Train Management Guidelines; and (c) are given with a view to minimising the disruption to the Operator in a manner which is reasonable in the circumstances and taking into account the valid objectives of WestNet (as set out in paragraphs (a) and (b) of this definition of "Instructions") in issuing the instruction or direction; but does not include instructions and directions which: (d) derogate from the Train Paths; (e) prevent the Operator from running a Service of the

~~nature of the Services contemplated at the Commencement Date or as agreed between the parties from time to time; or~~
~~(f) are given for the purpose only of achieving WestNet internal commercial objectives unrelated to the valid objectives of WestNet as set out in paragraphs (a) and (b) of this definition of "Instructions"; unless the instructions or directions:~~
~~(g) are Train Control Directions properly given;~~
~~(h) relate to safety;~~
~~(i) are given to implement or support the Train Management Guidelines;~~
~~(j) are necessary to prevent or to minimise the effect of a material breach of an Access Agreement; or~~
~~(k) are otherwise authorised by an Access Agreement.~~
the Economic Regulation Authority of Western Australia.

<u>Final Dispute Notice</u>	<u>Has the meaning given in clause 5.1(b) of Appendix C.</u>
<u>Independent Price Expert</u>	<u>Means the expert appointed in accordance with clause 4.1(a), 4.1(c) or 4.1(d) of Appendix C.</u>
Master Train Control Diagrams	<p>Means diagrams for train working which show:</p> <p><u>(a)</u> (i) all train movements scheduled and included in the working timetable <u>Working Timetable</u> as permanent train movements;</p> <p><u>(b)</u> (ii) all train movements which have been proposed and agreed and for which there is a contractual agreement which reserves that <u>Train</u> path for a operator; <u>an Operator; and</u></p> <p><u>(c)</u> (iii) all planned train movements for which advice has been given to the operator <u>Operator</u> that the <u>Train</u> path for the train movement is available and able to be practically operated but for which no contractual agreement has been reached.</p>
Network	<p>Means the track <u>railways network</u> and <u>associated</u> infrastructure controlled by WestNet <u>BR in Western Australia to which:</u></p> <p><u>(a)</u> to which Access has or can be granted to an Operator to</p> <p>operate Services <u>train services</u> under an <u>Operational Track Access Agreement</u> or Track Access Agreement; and</p> <p><u>(b)</u> <u>the Code applies.</u></p>
<u>Network Participant</u>	<u>Means an Access Holder or an Operator, as applicable.</u>
<u>Objection Notice</u>	<u>Has the meaning given in clause 2.1 of Appendix C.</u>

Operator	Means an entity to which access is provided under <u>a party that is granted Access for the operation of train services on the Network under an access <u>agreement</u>; <u>Operational Track Access Agreement or a Track Access Agreement.</u></u>
<u>Operational Track Access Agreement</u>	<u>Means an agreement in writing between BR and a party nominated by a customer of BR under a Commercial Track Access Agreement pursuant to which BR grants Access to that nominated party for the operation of train services on the Network on behalf of the customer.</u>
<u>Price Dispute</u>	<u>Means a bona fide commercial dispute raised by a Dispute Applicant about an Access Charge which is payable, or proposed to be payable, by the Dispute Applicant in contravention of section 6.2.</u>
Proponent	Means an entity that has made <u>submitted</u> a <u>bona fide Access</u> proposal; to BR whether under the Code or otherwise.
Railway infrastructure	Means the facilities necessary for the operation of a railway, including: — (a) railway track, associated track structures, over or under track structures, supports (including supports for equipment or items associated with the use of a railway); (b) tunnels and bridges; (c) stations and platforms; (d) train control systems, signalling systems and communication systems; (e) electric traction infrastructure; (f) buildings and workshops; and (g) associated plant machinery and equipment, but not including —: (h) sidings or spur lines that are excluded by section 3(3) or (4) of the Act from being railway infrastructure; and (i) rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, and terminal yards and depots;.
Rail operations	Means the operation of rolling stock on a part of the railways network;
Railway owner	Means the person having the management and control of the use of the railway infrastructure concerned;
RAMS	Means <u>the 'Rail Access Management System,' which is</u> the computer system operated by WestNet <u>BR</u> for the purpose of preparing train consists and monitoring train progress on the Network and generally for the purpose of

	Train Control <u>control</u> and invoicing, including for the provision of information relating to timetables, special train notices, temporary speed restrictions, and track warnings.
Regulator	Means the person who holds, or is acting in, the office provided for by Part 3 of the Act;.
Scheduled train path (Freight) <u>Related Body Corporate</u>	Means the entitlement of the Operator to use a Train Path for freight services which has a fixed entry and exit time <u>Has the meaning given in the Corporations Act 2001 (Cth).</u>
Scheduled train path (Passenger) <u>Related Operator</u>	Means the entitlement of the Operator to use a Train Path on the Network for Passenger Services which has a fixed entry and exit time and fixed intervals for passenger stops in between <u>A Network Participant which is a Related Body Corporate of BR.</u>
<u>Responsible Manager</u>	<u>Means the responsible manager of BR with the relevant delegated authority.</u>
<u>Segregation Arrangements</u>	<u>Means this document including any schedules or appendices to it but only to the extent this document has been approved by the Regulator.</u>
<u>Track Access Agreement</u>	<u>Means an agreement in writing between BR and a party pursuant to which BR grants Access to that party for the operation of train services on the Network by that party.</u>
Train control	Means the control of Trains <u>trains</u> by WestNet <u>BR</u> or its agents on the Network.
Train control centre	Means the facility or facilities maintained and operated by WestNet <u>BR</u> or its agents at any geographic location for the purposes of communication with Train Crew <u>train crew</u> in order to exercise the Train <u>control</u> of Trains.
Train control directions	Means all directions communicated by the Train Controller on duty regarding any network management issue.
Train controller	Means a person or agent appointed by WestNet <u>BR</u> to carry out the function of Train Control <u>control</u> .
<u>Train Management Guidelines</u>	<u>Means BR's Train Management Guidelines, as approved by the Regulator under section 43 of the Code.</u>
Train path	is an <u>is a contractual</u> entitlement to operate a Service <u>train service</u> on the Network and where that train service has departure, transit and arrival times between the entry and exit points on the Network and includes the following

	types of Train Path—Conditional Train Path, Scheduled Train Path (Passenger), Scheduled Train Path (Freight), Flexible Scheduled Train Path (Freight) and Reserved Train Path.
WestNet <u>Train Path Policy</u>	Means WestNet Rail Pty Ltd <u>BR's Train Path Policy, as approved by the Regulator under section 44 of the Code.</u>
WestNet Rules	Means WestNet's Rules (including the Appendix to the Rules and Working Timetables) issued in accordance with WestNet's "Rail Safety Management Plan" approved under Section 10 of the Rail Safety Act together with any amendments, deletions or additions made in accordance with the Rail Safety Management Plan and all policies and notices issued by WestNet for the purpose of ensuring the safe use of the Network.
Working Timetable	Means the train timetables and operating data for all or part of the network <u>Network</u> issued as part of the WestNet rules <u>BR Rules</u> and as amended from time to time.

APPENDIX A - MANAGEMENT AND COMPLIANCE PROCESSES

1. PURPOSE AND OVERVIEW

Consistent with the obligations and intent of the ~~Western Australian Railways (Access) Act 1998, 1998 (WA)~~ (the **Act**) and the corresponding ~~Railways (Access) Code 2000, 2000 (WA)~~ (the **Code**) this Appendix addresses ~~WestNet Rail~~**BR**'s processes and compliance obligations to give effect to ~~the~~**its** Segregation Arrangements. Accordingly this Appendix describes how ~~WestNet Rail~~**BR** manages its segregation obligations and processes and specifically outlines the responsibilities and authorities with respect to segregation, day-to-day management processes and compliance requirements, including the auditing process.

~~Appendix A will be issued as a controlled document to all appropriate WestNet Rail managers and employees who have involvement in rail access related functions. Appendix A provides the basis for the training/awareness process which is delivered to all employees, contractors and other appropriate persons to ensure compliance to the relevant aspects of the Railway (Access) Act 1998.~~

~~Appendix A is the vehicle by which the segregation arrangements and compliance obligations are communicated to the appropriate managers and staff.~~

The essential business of ~~WestNet~~**BR** is the sale of ~~access~~**Access** at a price that will provide acceptable returns on ~~the~~ investment and encourage utilisation and competition on the ~~network~~**Network**. In addition, a core function of ~~WestNet~~**BR** is to maintain the ~~railway~~**Railway** infrastructure to acceptable operating and safety standards.

~~WestNet will grant access to the WestNet network and will ensure all Operators are treated in a fair and equitable manner. BR will grant access to the Network and will ensure all Network Participants are treated in a fair and reasonable manner in accordance with its obligations under the Act.~~

~~The pricing policies adopted will be developed within the framework established under the Act and the Code which will also provide the framework within which access agreements will be negotiated.~~

~~The WestNet network includes all designated main-line tracks and associated infrastructure (freight network) which was previously owned and operated by the former Westrail Freight (Government) Network. That part of the network open to access is described in Schedule 1 of the Rail (Access) Code 2000.~~

Capitalised terms in this Appendix A have the meaning given in the Segregation Arrangements unless otherwise defined in this Appendix A.

2. RESPONSIBILITIES AND AUTHORITIES

The responsibilities and authorities for ~~WestNet~~**BR**'s employees carrying out Access Related Functions ~~including managing, performing activities and the maintenance of records and other documentation is appropriately~~**is further** defined and detailed in ~~various~~**the** documents described below:

Documented Procedures

~~WestNet~~**BR**'s documented procedures describe the allocation of responsibilities to particular designated positions. The documented ~~actions~~**procedures** also indicate the allocation of responsibilities and authorities for particular ~~railway~~ Access related tasks.

Position Descriptions

Position ~~Descriptions~~[descriptions](#) are prepared for each designated position within ~~WestNet~~[BR](#). These ~~Position Descriptions~~[position descriptions](#) describe the functional areas of responsibility ~~including Access Related Functions~~.

Responsibilities

~~Chief Executive Officer is responsible and has the authority to ensure a compliance regime for the Segregation Arrangements is put in place in WestNet Rail.~~

~~Commercial Manager is responsible for commercial arrangements, dealings and negotiations with new and existing customers ensuring they comply with the Segregation Arrangements.~~

~~Manager Safety and Compliance is to ensure that documented processes and procedures are established and implemented to maintain compliance with segregation obligations as described in the Act.~~

~~Access Manager is to ensure that day to day access related functions including train control, customer liaison and train schedulers conform to the approved Segregation Arrangements.~~

~~Compliance Officer is responsible to ensure that new people required to sign the Confidentiality and Compliance Agreement are aware of the requirements and to ensure that the required agreements are actually signed, keep the actual signed agreements and maintain appropriate records.~~

Confidentiality and Compliance Agreement

A copy of the Confidentiality and Compliance Agreement is attached in Appendix B.

3. DETAILS OF THE MANAGEMENT OF SEGREGATION ARRANGEMENTS

3.1 Access Related Premises and Locations

(Ref. Section 28 – Act)

Within ~~the WestNet Company~~[BR](#) there are several functional groups housed at various geographical locations throughout the Network. ~~The Infrastructure (both civil and signalling and communications) management groups are located at head office and regional centres. The Access Group (management) is located at head office, i.e. Welshpool. There are currently two Train Control Centres being Midland Control and Avon Yard Control. including:~~

- ~~the infrastructure (both civil and signalling and communications) management groups, which are located at head office and regional offices;~~
- ~~the access management group and the commercial, legal, training and corporate support teams, which are located at head office; and~~
- ~~Access Management Head Office—Welshpool~~[currently three BR Train control centres at Midland, Avon and Picton.](#)

Access to head office

~~The Access management area is located together with other WestNet head office management groups in a separate and secure office premises. These premises located in Welshpool are accessed only~~[Head office is only accessed](#) by ~~WestNet~~[BR](#) employees ~~and authorised contractors of BR~~ through the use of access security cards. Visitors to the

~~WestNet~~BR's head office must enter into a reception area which is separated from the main office facility. ~~Bona fide~~Bona fide visitors are then escorted to the area of business.

Apart from BR employees and authorised ~~WestNet staff~~contractors of BR, the only other permitted entry after hours is by the specified cleaning contractor. This contractor is briefed on the confidentiality requirements ~~and~~ and obligations of the facility and any documents therein. The contractor's management team is also asked to sign a Confidentiality and Compliance Agreement obliging ~~him or the contractor's management team and~~ any of his the contractor's staff to observe and protect the confidentiality requirements and obligations.

Access to regional offices

Regional offices of BR are accessed only by BR employees and authorised contractors of BR.

Train control centres

Train control centres are secured and entry is controlled by BR.

3.2 Confidential Information

(Ref. Section 31 – Act)

Types of Confidential Information

~~WestNet believes the definition of Confidential Information in the Act would mean that may include the following are examples of the types of information; that would be deemed to be confidential-~~

- (a) ~~Applications~~Access applications and preliminary information ~~from an person(s) seeking access and proponent(s) who is seeking access provided by Proponents with their Access applications.~~
- (b) Correspondence related to the negotiation of the Access Agreement.
- (c) The Access Agreement itself and information exchanged in the management of the Access Agreement ~~overtime~~over time.
- (d) Any data related to the usage of the Access Agreement including the data held in RAMS.
- (e) Master Train Control Diagrams (to the extent they identify specific operations).
- (f) Completed ~~Train Control Diagrams~~train control diagrams and voice logging tapes from ~~train~~Train control.

General Management of Confidential Information

~~WestNet shall maintain the confidentiality of Access related matters through a series of initiatives/processes including controls and training-~~ The following describes the particular processes which promote and manage the regime of confidentiality of Access related matters within ~~WestNet~~BR.

- (a) ~~All employees and contractors who are required to perform WestNet Rail Access related activities which are determined as confidential or which may be subject to the Segregation Arrangements shall complete an Access Segregation Awareness Training Session and sign a Confidentiality and Compliance Agreement, within 10 business days of commencing employment with WestNet Rail. The training session covers an overview of the Act and associated Code, Segregation obligations, Breaches to Segregation requirements and the need for signed Confidentiality and Compliance Agreements. The Safety and Compliance section shall maintain a list of~~

~~all personnel who have undertaken the training session. Confirmation of appropriate personnel having signed a Confidentiality and Compliance Agreement shall be carried out on an annual basis and will be confirmed through the Independent External compliance audit.~~

- ~~(i) employees of BR who are required to perform Access Related Functions; and~~
- ~~(ii) contractors of BR who are required to perform Access Related Functions and have access to Confidential Information in relation to Access Related Functions other than BR's professional advisers or consultants who are under a duty of confidentiality.~~

~~will complete an 'Access Segregation Awareness Training Session' and sign a Confidentiality and Compliance Agreement within 10 business days after commencing their employment or engagement with BR (as applicable).~~

- ~~(b) The Access Segregation Awareness Training Session is a training session that covers an overview of the Act and the Code, the Segregation Arrangements, breaches of Segregation Arrangements and BR's requirement for certain personnel to sign Confidentiality and Compliance Agreements.~~
- ~~(c) BR shall maintain a list of all personnel who have undertaken the Access Segregation Awareness Training Session.~~
- ~~(d) Confirmation of appropriate personnel having signed a Confidentiality and Compliance Agreement shall be carried out on an annual basis and will be confirmed under the audit processes specified in section 8 of the Segregation Arrangements.~~
- ~~(e) WestNetBR will maintain a current list of personnel positions, including consultants and contractors, required to undertake Access Segregation Awareness Training Session and sign a Confidentiality and Compliance Agreement. This list is set out below:~~
 - ~~• WestNet Rail head office staff based at Welshpool, including:

 - ~~Accountants and Finance related personnel~~
 - ~~Commercial functions personnel~~
 - ~~Infrastructure related personnel (including engineers and technicians)~~
 - ~~Access related personnel including schedulers, timetabling and others liaising with above rail operations~~
 - ~~Legal personnel~~
 - ~~Safety and Compliance personnel~~
 - ~~Human Resource personnel~~
 - ~~Business and Development personnel~~
 - ~~Administrative personnel~~~~
 - ~~• Train Controllers~~
 - ~~• WestNet Group staff including:

 - ~~CEO~~
 - ~~General Counsel~~
 - ~~Chief Information Officer~~
 - ~~IT related staff~~~~
 - ~~• West Net Rail Directors~~
 - ~~• WestNet Rail Regional Superintendents including:

 - ~~Perway (6) Signalling (3) Communications (1)~~~~

- ~~Consultants and Contractors who have occasion to work in head office for a period of more than 4 consecutive days or are working in head office without being directly escorted or supervised.~~
- (f) • ~~Exclusions—visitors~~ Visitors under the direct supervision of a ~~WestNet Rail employee.~~ BR employee are not required to undertake an Access Segregation Awareness Training Session or sign a Confidentiality and Compliance Agreement.
- (g) • ~~The Safety and Compliance section~~ BR will maintain a current register of ~~completed and signed-off~~ Confidentiality and Compliance Agreements. The ~~Compliance Officer~~ Responsible Manager shall record on the Confidentiality and Compliance register the following information with respect to persons that have signed a Confidentiality and Compliance Agreement:
 - (i) ~~Name~~ the name of the person ~~completing~~ who signed the agreement;
 - (ii) the date the agreement was signed;
 - (iii) ~~Job~~ the job role of the person;
 - (iv) ~~Work~~ the work group of the person;
 - Date training
 - (v) the date that the person completed the Access Segregation Awareness Training Session; and
 - (vi) • ~~On receiving the signed copy of the Confidentiality and Compliance Agreement the Compliance Officer, will enter the date the agreement was signed and~~ the location of the stored document on the Confidentiality and Compliance Register.
- ~~The training officer will be responsible for maintaining and updating the electronic on-line Confidentiality and Compliance module found on the Intranet along with the automated completion recording of the names and dates of completion.~~
- (h) • ~~The Compliance Officer~~ Responsible Manager will keep a file containing all signed Confidentiality and Compliance Agreements under lock and key.

~~All Operator Track Access Agreements contain specific contractual obligations requiring WestNet to protect confidential information.~~

Management of Electronic Data

~~WestNet~~ BR operates with a security system including time-limited passwords on electronic records that allows only ~~appropriate WestNet~~ authorised BR staff and authorised contractors to access ~~the records, information, and data of~~ related to Access Related Functions. Other security measures include—:

- (a) The authority to access electronic information that is confidential can only be given by the ~~Commercial~~ Responsible Manager and will only be given to persons who have signed a Confidentiality and Compliance Agreement.
- (b) When a user logs-on to the computer network his ~~or~~ her access to any shared files, information systems, e-mail and the ability to generate reports etc is automatically restricted to their Business section.
- (c) ~~WestNet~~ BR has a physically separate computer file server from any other business unit or company.

- (d) User Ids and passwords are set up and managed by the Information Technology Section of ~~the organisation~~ BR. All personnel within the Information Technology Section are required to sign a Confidentiality and Compliance Agreement. Authority to allocate passwords for Access related matters resides with the ~~General~~ Responsible Manager ~~WestNet Rail~~.
- (e) ~~Additionally a~~ further restriction is applied to users who have the ability to access any stand-alone computer system. This restriction only allows specific information to be viewed ~~/or~~ reported by the user in accordance with their allocated user ID scope and approved by the ~~General~~ Responsible Manager ~~WestNet Rail~~.
- (f) The Access management area utilises computing equipment with access rights confined to that management area to carry out train path planning and allocation. This process is an independent function to the RAMS ~~system~~ which is separately secured on a ~~WestNet~~ BR server with authorised controlled passwords.
- (g) ~~The Rail Access Management System RAMS is a purpose built computer data management system which:- facilitates the management of train operation through authorising only appropriate train consists (with certified rollingstock); monitors and records train movements over the Network and details relevant information on train and the perway condition. WestNet~~ BR has implemented a regime of security on accessing any specific data considered ~~confidential information~~ Confidential Information to appropriate personnel authorised by the ~~General~~ Responsible Manager ~~WestNet Rail~~ and who have signed a Confidentiality and Compliance Agreement. The process of authorising access and the general usage of ~~RAMS confidential information~~ Confidential Information in RAMs shall be audited in accordance with section 8 of the Segregation Arrangements.
- (h) All computer systems management and back-up processes are managed by the Information Technology (IT) section.

With respect to the treatment of Confidential Information, all IT staff members who have access to ~~WNR~~ BR systems are required to sign a Confidentiality and Compliance Agreement. ~~There are daily incremental back-ups and weekly full backups.~~

The ~~Regional areas~~ regional offices of BR have dedicated ~~WestNet~~ BR computer directory structures which are not accessible by non ~~WestNet~~ BR staff ~~or unauthorised contractors of BR~~. Backup tapes are handled by ~~WestNet~~ authorised BR staff ~~or authorised BR contractors~~ and forwarded to the IT staff for safe-storing.

~~WestNet management is required to provide management/financial reports to the WestNet Board of Directors who in turn have specific obligations to maintain confidential information.~~

Management of Other Specific Confidential Information

(a) Train control diagrams

Train Control Master Diagrams are prepared and kept within the secured Access Management Area. Completed train ~~Control~~ control diagrams from ~~both train~~ BR's Train control centres are addressed and dispatched to the ~~Access~~ Responsible Manager under separate bag and following examination are secured and stored within the Access Management Area.

(b) Voice ~~Logged Tapes~~ logged tapes

All conversations on both radio and telephone between the Train ~~Controllers~~ controllers and train crews, on-track equipment, ~~or~~ vehicles or track-side maintenance staff are voice recorded utilising a continuous running magnetic digital tape system.

The tapes are stored in a secure ~~or~~ locked facility, to maintain a history of communication, ~~only authorised WestNet personnel having the key. Only authorised BR staff and authorised BR contractors will have a key to the facility and, subject to the following paragraph, will only access the facility~~ for the purposes of tape replacement and rotation. Any movement or interchange of tapes is recorded in a log book which is endorsed with time, and date and signed.

The retrieval of any tape information for monitoring, audit or incident investigation purposes can only be carried out with the express authority of the ~~Access~~ Responsible Manager and tape movements can only be between the locked tape housing and the ~~Access Manager's~~ office area of the Responsible Manager in a sealed envelope.

3.3 Conflicts of Interest

(Ref. Section 32 – Act)

~~WestNet~~ BR will manage its ~~access related functions~~ Access Related Functions in a manner which provides for, and ensures that, all relevant ~~WestNet~~ BR staff do not have a ~~“conflict of interest”~~ between their duties:

- (a) in performing Access Related Functions, on the one hand; and
- (b) as a person involved in the other business of BR, on the other.

All Access management and Access operational staff including those involved in Access applications and negotiations, train scheduling, train control as well as Access pricing and invoice information preparation shall sign a Confidentiality and Compliance Agreement.

The use of contractors, consultants, legal expertise and any other services provided by external personnel or companies will be managed to ensure that there are no ~~conflicts~~ conflict of interest issues between the performance of Access Related Functions (on the one hand) and the other business of BR (on the other).

Should the use of any external service involve ~~actual or potential access to rail access related information~~ access by external service provider personnel to Confidential Information in relation to Access Related Functions (particularly that involving above-rail operator information,) then those personnel shall be required to sign a Confidentiality and Compliance Agreement unless those personnel are otherwise under a duty of confidentiality.

~~With respect to the WestNet Board of Directors, there are processes detailed in this document and obligations already in place under the “Corporations Act 2001”; [exercise a duty of care (Section 180), act in good faith (Section 181) and disclose or avoid conflicts of interest (Section 191)] which preclude Boards and Directors from exercising a conflict of interest with respect to the Railways (Access) Act 1998 and Railways (Access) Code 2000.~~

Each director of BR will be required to sign a Confidentiality and Compliance Agreement. BR must comply with the restrictions specified in section 5 of the Segregation Arrangements with respect to the directorships of BR.

3.4 Duty of Fairness

(Ref. - Section 33 of the Act).

- (a) ~~WestNet commits to treat all clients whether actual or potential, including person(s) seeking access and proponent(s), actual operators as well as commodity based clients acting in conjunction with an operator in a fair manner~~ BR acknowledges that, in performing Access Related Functions, BR and its employees must not have regard to the interests of BR in a way that is unfair to Proponents or to other Network Participants including with respect to the following:-
- (i) ~~BR's~~ BR's response to Access applications;
 - (ii) ~~BR's~~ BR's negotiation methodology in relation to Access applications and Access Agreements;
 - ~~prices;~~
 - (iii) Access Charges; or
 - (iv) ~~the~~ the quality of ~~rail access~~ Access related services provided by BR, including liaison, correspondence, scheduling ~~pathways, train~~ Train paths, Train control priority and ~~emergency~~ Emergency responses.

The principles of fairness do not directly equate to the term equality because of issues such as type of product, priority requirements of clients, length of haul and environmental concerns. However, it does oblige WestNet not to unfairly discriminate between the proposed rail operations of a proponent and the actual rail operations of another third party Operator:-

- (b) BR must not unfairly or unreasonably:
- (i) hinder or deny Access to any Proponent or Network Participant; or
 - (ii) discriminate against a Proponent or Network Participant as to the terms and conditions (including Access Charges, priority of Access and service levels) upon which Access is provided, or is proposed to be provided, when compared to a Related Operator.
- (c) Discrimination as to terms and conditions is not to be taken as unfair or unreasonable for the purposes of the Segregation Arrangements if the relative terms reflect reasonable commercial and technical considerations including (without limitation):
- (i) relative costs of providing Access to different Network Participants, having regard to:
 - (A) the commodity being transported;
 - (B) the type of rollingstock used by the relevant Operator including the length and mass of the rollingstock;
 - (C) the geographic area in which the Access is being provided; and
 - (D) the relative effect of the task on the efficient utilisation of the Network;
 - (ii) the costs and risks associated with providing services required by, or in respect of, some Network Participants, but not others; and
 - (iii) the nature and characteristics of the sections of the Network to which Access is sought;

- (iv) circumstances in the market which have had, or will have, a material effect on a Network Participant's ability to pay Access Charges; and
- (v) the extent of competition for the task with other modes of transport.
- (d) The ~~mechanism~~mechanisms for ensuring ~~WestNet~~BR's duty of fairness includes:-include:
 - (i) the Dispute Resolution Process specified in Appendix C of the Segregation Arrangements (where applicable);
 - (ii) ~~Informing person(s) seeking access and proponent(s) of the provisions for assessing the consistency and~~the process under the Code for determining the fairness of prices ~~being~~negotiated under provisions of Section 21 (1) of the Code- (where applicable); and
 - (iii) ~~WestNet's Standard Access Agreement provides for specific consultation mechanisms; the provision of information as well as dispute resolution mechanisms which allow the person(s) seeking access and proponent(s) to determine the fairness of the provision of access related issues other than price-~~the provisions of BR's standard Access Agreements.

~~WestNet will conduct awareness briefing sessions to staff involved in the provision of access on all compliance issues, including confidentiality and~~The 'Access Segregation Awareness Training Session' will include a section on BR's duty of fairness. The ~~signing of a Confidentiality & Compliance agreement not only provides obligations for maintaining confidential information, but provides an obligation on~~Confidentiality and Compliance Agreement requires the signatory to understand and comply with specific obligations under the Act, ~~which include~~ "including BR's duty of fairness".

~~In~~BR acknowledges that, in accordance with Part 5 of the Code, the Regulator will issue determinations to ensure the appropriate application, management and enforcement of certain ~~rail access~~Access related protocols. ~~These determinations~~ which are also aimed at facilitating a duty of fairness ~~to these protocols being~~including:-

~~The train management guidelines (Section 43—Code)~~

~~- the Train Management Guidelines; and~~

~~- The~~the Train Path Allocation Policy (Section 44—Code).

~~WestNet commits not to discriminate against any third party Operator through inappropriate train scheduling.~~

~~WestNet commits to a duty of fairness to the application of the above determinations and its duty of fairness will be confirmed as part of the external independent audit process.~~

~~To further ensure that a duty of fairness is comprehended in dealings with all person(s) seeking access and proponent(s) WestNet shall, at the onset of negotiations inform the access seeker of their rights to; and WestNet's commitment to; maintaining confidentiality, whether negotiations have commenced "inside" or "outside" of the provisions of the Code, notwithstanding the provision of Section 6.~~

~~Additionally, if negotiations have commenced outside the provisions of the Code and subsequently the person(s) seeking access and proponent(s) makes application for access under the Code, WestNet and the person(s) seeking access and proponent(s) shall agree that any information already supplied or disclosed by the person(s) seeking access and proponent(s) shall be subject to the same confidential provisions as are required for negotiations carried under the Code.~~

3.5 Separation of Accounts and Records

(Ref. Section 34 - Act)

~~WestNet~~BR maintains separate accounts information and financial calculations records which comply ~~to~~with Section 34 of the Act and relevant provisions of the Code.

Details of information associated with accounts are handled directly and only by ~~designated WestNet staff in liaison with the Operator~~authorised BR staff and authorised BR contractors.

4. ACCESS SEGREGATION ARRANGEMENTS COMPLIANCE PLAN

4.1 General

~~WestNet shall~~BR has implemented, as part of establishing and maintaining a compliance regime ~~have~~ a series of measures which will, in effect, monitor the following:-

- verification of obligations ~~to~~under the Act and Code;
- ~~identifying/acknowledging breaches to the requirements of this document;~~identification and acknowledgement of breaches of the Segregation Arrangements; and
- reporting of identified breaches of the Segregation Arrangements to the ~~regulator.~~Regulator.

~~(Note: these~~These measures are in addition to the ~~independent external compliance audit~~audits conducted in accordance with section 8 of the Segregation Arrangements.

~~Complaints regarding segregation obligations may be submitted~~Stakeholders, including Network Participants and Proponents, may submit complaints regarding BR's compliance with the Segregation Arrangements directly to the Regulator ~~in which case the Regulator should determine whether the complaint has sufficient substance to consider it to be a breach or potential breach of the segregation obligations rather than an unsubstantiated comment or a misunderstanding of WestNet's actual obligations.~~

If the Regulator considers that the stakeholder's complaint warrants recording and/or investigation as a breach or potential breach ~~it should~~of the Segregation Arrangements it must forward the complaint to ~~WestNet~~BR for follow up action.

Complaints which are provided to BR by the Regulator or made by the Regulator which claim there was breach or potential breach of the Segregation Arrangements must, in the first instance, be investigated by the Responsible Manager to determine if there has been an actual breach of the Segregation Arrangements.

4.2 Confidential Information Compliance

~~WestNet~~BR is committed to ~~maintain~~maintaining confidentiality of information as detailed in Section 3.2 of this ~~document. Reported breaches of this aspect should contain the~~Appendix A.

If a person (including any employee of BR) reports a breach of Section 3.2 of this Appendix A, the report must contain details of the ~~particular aspects of where confidential information~~breach and whether the Confidential Information has been disclosed either advertently or inadvertently. ~~A breach may also be initiated internally should WestNet become aware that confidential information has been disclosed advertently or inadvertently.~~

Breaches of ~~Confidentiality~~confidentiality obligations will include inappropriate disclosure of ~~information~~Confidential Information as described in Section 3.2 of this ~~document~~Appendix.

Breaches ~~to~~of confidentiality obligations may occur verbally through ~~personal~~conversations or telephone ~~discussion; written~~discussions; in writing through paper correspondence or ~~Email~~email; or any other process which communicates information.

4.3 Conflicts of Interest Compliance

A breach of ~~the BR's~~ conflict of interest obligations ~~shall have occurred~~under the Segregation Arrangements may occur when it is determined that the arrangements described in Section 3.3 of this ~~document~~Appendix have failed.

A breach ~~would be~~of the conflict of interest obligations will occur primarily where a person carrying out ~~rail~~ Access Related Functions for ~~WestNet has a working association with; or has carried out tasks for; or on behalf of; an Operator or a person seeking access or~~ proponent. ~~A person who performs Rail Access Functions for WestNet shall not in the short term or long term perform above rail functions nor shall a person working for an Operator carry out WestNet~~BR carries out tasks, other than its Access Related Functions ~~deemed confidential for BR, for or on behalf of a Network Participant or a Proponent.~~

A breach of the Segregation Arrangements may occur if BR fails to comply with the restrictions specified in section 5 of the Segregation Arrangements with respect to the directorships of BR.

~~Also no Board member of WestNet is permitted to be a Board member or executive member of any above Rail Operator. Should at any time there be evidence to the contrary, this would be classified as a Breach.~~

4.4 Duty of Fairness and Non-Discrimination Compliance

~~Issues raised through original public submissions confused being "fair" and fairly with "equally" and "equitable" as explained in Section 3.4 and the Regulator's determination following legal advice was to keep the terminology used in the Act and Code, that being "fair" and "fairly".~~

~~Accordingly breaches to Section 33 of the Act shall be deemed to~~Breaches of section 6 of the Segregation Arrangements may occur when:-

- Application for Access

~~This refers to where a person seeking access or proponent~~Subject to section 6.3 of the Segregation Arrangements, a Proponent is not provided with a fair response to an ~~expression of interest or access~~Access application or proposal.

Fairness relates to preferential consideration ~~/ or~~ treatment provided to another ~~proponent or operator~~Proponent or Network Participant in the form of ~~access~~Access provision, ~~access pricing~~Access Charges or demands on required resources, processes or standards ~~(operating and with respect to operations or~~ rollingstock ~~) in~~ circumstances where such treatment is not permitted.

- Access Negotiation

~~This refers to where a person seeking access or proponent is not receiving a~~Subject to section 6.3 of the Segregation Arrangements, a Proponent does not receive a "fair" negotiation process in comparison with ~~other proponents~~Related Operators in terms

of timing of responses, ~~disadvantaged pricing structure, access~~ Access Charges, Access provision or required resources, processes, staffing levels and standards.

- Managing The Operation of Access Provision

~~A breach is deemed to occur when~~ Subject to section 6.3 of the Segregation Arrangements, an Operator is unfairly or unreasonably discriminated against with respect to allocation of ~~train~~ Train paths and the management of ~~train~~ Train control including communication processes.

- ~~Related~~ Services related to Access

~~A breach is deemed to occur when an Operator is~~ Subject to section 6.3 of the Segregation Arrangements, a Network Participant is unfairly or unreasonably discriminated against with respect to the provision of ~~related~~ services related to Access including:- liaison, correspondence, ~~confidential information~~ Confidential Information, invoice information, treatment of priority requests and responses to ~~emergency situations~~ Emergencies.

4.5 Separation of Accounts and Records Compliance

Breaches to the separation of accounts and records arrangements as described in Section 3.5 of this ~~document shall~~ Appendix may occur when:-

- Individual train information, consists, kms, tonnes or rates for an Operator are supplied to another ~~above rail operator~~ Operator either advertently or inadvertently.
- Individual train information or invoicing ~~/~~ costing / pricing / or processes ~~which in~~ respect of a Network Participant are worked on ~~/~~ prepared or reported on by unauthorised personnel or by persons outside ~~WestNet~~ BR and in particular by employees ~~with of~~ another Operator Network Participant.
- ~~The electronic database~~ RAMS is accessed by unauthorised personnel for preparing ~~/~~ or working on or reporting on any financial aspects of BR's Access Related Functions either by design or through inadvertent breakdown of the security password system.

4.6 Physical Segregation of Premises/Personnel Compliance

Breaches to the physical segregation arrangements as described in Section 3.1 of this ~~document shall~~ Appendix may occur when:-

- ~~It is reported to WestNet that unauthorised~~ Unauthorised persons ~~had~~ have unaccompanied or unsupervised access or entry into the ~~WestNet Management~~ BR head office or a BR regional office area.
- ~~It is reported to WestNet that there was~~ There is a failure of the physical security arrangements (key cards ~~/~~ or locks) on the ~~WestNet management~~ BR head office or BR regional office area or any of the ~~train~~ Train control centres, with particular emphasis on after hours security failures.
- ~~It is reported to WestNet that unauthorised~~ Unauthorised persons ~~were~~ are given or ~~were~~ are in possession of key cards ~~/~~ or keys allowing access to the ~~WestNet~~ BR head office ~~management~~ or a BR regional office area or ~~train~~ a BR Train control centres ~~centre~~.
- ~~It is reported to WestNet that the~~ The formal servicing or maintenance arrangements in place within the ~~WestNet~~ BR physically segregated area (including cleaning organisations) have been compromised which ~~had~~ allowed, or potentially ~~had~~ allowed, disclosure of ~~confidential information~~ Confidential Information. There is a particular emphasis on after hours compromised circumstances.

4.7 Corrective Action Resulting from Breaches

The ~~Commercial~~Responsible Manager will maintain a ~~Register~~register of all complaints which claim there was a breach or a potential breach of Segregation ~~arrangements~~Arrangements and which were submitted to BR by external parties, the Regulator or ~~identified internally within WestNet employees of BR.~~

~~The process of follow up is to~~ If BR receives a complaint that claims that a breach or potential breach of the Segregation Arrangements has occurred, BR will provide an acknowledgment of receipt of the complaint to the complainant and then ~~to determine if the complainant warrants it to be classified as a breach. A breach may be classified as the~~ Responsible Manager will determine if the complaint has identified an actual breach of the Segregation Arrangements.

For the purposes of this Appendix A, a breach of the Segregation Arrangements is a departure from the ~~specified arrangements~~Segregation Arrangements as described in Section 3 of this ~~document~~Appendix, which may actually, or potentially ~~adversely impact a client with respect to confidential information; conflicts of interest; duty of fairness and separation of accounts and records.~~ Note:— Complaints which are passed on by the Regulator or initiated by the Regulator as being a breach or potential breach shall, in the first instance, be investigated by WestNet to determine if there has been a breach, adversely impact a Proponent or a Network Participant.

Should ~~WestNet~~the Responsible Manager determine that the complaint ~~is to be classified as a breach it shall be recorded as such and~~ has identified a breach of the Segregation Arrangements then the following actions will be initiated:-

- (a) The ~~General Manager WestNet Rail~~chief executive officer of BR shall be advised of the breach as soon as practicable.
- (b) ~~A formal~~ Notice of ~~Breach~~the breach shall be submitted to the Regulator within 5 business days ~~(following classification as a breach)~~after the Responsible Manager determines that the complaint has identified a breach.
- (c) The breach shall be investigated by the Responsible Manager to establish:
 - (i) how the breach occurred including whether there was an inadvertent or deliberate departure from the Segregation Arrangements; and
 - (ii) ~~The breach shall be investigated to establish the actual actions, the~~ causes/ and reasons, for the breach including whether there was a process or technology failure ~~and if there was inadvertent departure from the segregation requirements or if there was a deliberate action by person/persons to depart from the segregation requirements.~~
- (d) An investigation report shall be submitted to the ~~General Manager WestNet Rail and if the Breach is substantiated~~chief executive officer of BR and, if the investigation by BR determines that a breach of the Segregation Arrangements occurred, the report shall contain findings and recommendations to prevent any re-occurrence ~~of the breach.~~
- (e) Following the endorsement of the ~~General Manager WestNet Rail~~recommendations in the investigation report by the chief executive officer of BR, the recommendations shall be implemented which may include counselling and or disciplinary action ~~should if~~ an employee ~~be found to have departed from~~of BR has breached the Segregation ~~requirements.~~Arrangements.
- (f) Once the investigations are completed and the process of implementing the recommendations has been initiated, a report will be submitted to the Regulator

detailing the findings, recommendations and the follow up action to be taken by BR to prevent a re-occurrence of the breach.

(g) The Responsible Manager will ensure that a register is maintained which records the following information:

- (i) any complaint submitted to BR which identifies a breach of the Segregation Arrangements; and
- (ii) ~~The Register maintained by the Commercial Manager which records if the complaint was classified as a breach will also record~~ when the recommendations specified in the report of the investigation of the relevant breach have been implemented by BR.

4.8 Segregation Training/Awareness

To facilitate compliance with the ~~Segregation requirements of the Act and Code, all employees and contractors~~ requirements of the Act and Code, all:

(a) employees of BR who are required to perform Access Related Functions; and

(b) contractors of BR who are required to perform ~~WestNet Access-related activities which are determined as confidential or which may be subject to the segregation arrangements shall complete an Access Segregation Awareness training session.~~ The training session covers an overview of the Act and associated Code, Segregation obligations, Breaches to Segregation requirements and the need for signed Confidentiality and Compliance Agreements. The Safety and Compliance Section shall maintain a list of all personnel who have undertaken the training session. Access Related Functions and have access to Confidential Information in relation to Access Related Functions other than BR's professional advisers or consultants who are under a duty of confidentiality.

shall complete an Access Segregation Awareness Training Session.

4.9 Confidentiality and Compliance Agreements Compliance

All ~~personnel involved in or conducting Access related activities~~ :

(a) employees of BR who are required to perform Access Related Functions; and

(b) contractors of BR who are required to perform Access Related Functions and have access to Confidential Information in relation to Access Related Functions other than BR's professional advisers or consultants who are under a duty of confidentiality.

are required to sign a Confidentiality and Compliance Agreement as described in Section 4.4 of the Segregation Arrangements.

The signing of a Confidentiality and Compliance Agreement commits the signatory to protect ~~confidentiality as well as complying~~ Confidential Information and comply with the relevant obligations under the Act and Code. The signing of the Confidentiality and Compliance Agreement ~~also~~ confirms that the ~~person~~ signatory understands the relevant ~~obligation requirements; in addition to other measures this may be achieved by completing the Access Segregation Awareness training session.~~ obligations under the Act and Code.

~~Should it be determined that~~ if a person has breached the requirements of the Segregation arrangements as described in this document then ~~the existing Confidentiality and Compliance Agreement shall be deemed as invalid and~~ Arrangements it shall be mandatory for that person to repeat the completion of the Access Segregation Awareness ~~training~~ Training Session and subsequently sign a new Confidentiality and Compliance Agreement. ~~The above which will replace the existing Confidentiality and Compliance~~

Agreement signed by the person. This process is in addition to any counselling or disciplinary action which may result from the breach.

The Responsible Manager ~~Safety & Compliance~~ shall maintain a register of all people ~~who have been determined to~~ have breached the Segregation ~~arrangements~~ Arrangements and follow-up action taken, including training and resigning a Confidentiality and Compliance Agreement.

5. INDEPENDENT EXTERNAL ACCESS SEGREGATION COMPLIANCE AUDIT

~~WestNet will undertake an independent external audit of its obligations under its~~ BR will procure audits in accordance with Section 8 of the Segregation Arrangements ~~every two years as set out under Section 8.~~

APPENDIX B – CONFIDENTIALITY AND COMPLIANCE AGREEMENT

CONFIDENTIALITY and COMPLIANCE AGREEMENT

~~For~~
for

~~WestNet~~Brookfield Rail ~~Access~~ Segregation Arrangements

1. FUNCTION/PURPOSE OF AGREEMENT

As ~~requested~~required by the *Railways (Access) Act 1998* (WA) (~~Act~~), this ~~agreement~~ provides for a deed, which is given in favour of Brookfield WA Rail Pty Ltd ACN 118 144 960 (Brookfield Rail), provides that the person who is the signatory to this ~~agreement~~ to deed (signatory) must comply with the provisions of the Act in carrying out the signatory's ~~Access Related Functions in~~access related functions with respect to any of the following:

-
- (a) ~~Section 28~~ - ~~“Duty to Segregate”~~
- (b) ~~Section 31~~ - ~~“Protection of Confidential Information”~~
- (c) ~~Section 32~~ - ~~“Avoidance of Conflict of Interest”~~
- (d) ~~Section 33~~ - ~~“Duty of Fairness”~~
- (e) ~~Section 34~~ - ~~“Maintenance of Separate Accounts and Records”~~

2. SPECIFIC OBLIGATION RELATED TO SECTION 31

(a) The ~~Signatory~~signatory agrees to comply with the following obligations ~~related of this deed with respect~~ to Confidential Information.

(b)

~~2.1 “Confidential Information” as defined in Section 31 Clause (2) of the Act:~~

(c) ~~Means~~For the purposes of this deed, ‘Confidential Information’ means information that has not been made public and that:-

- (i) ~~a) Is~~is by its nature confidential;
- (ii) ~~b) Was specific~~was specified to be confidential by the person who supplied it; or
- (iii) ~~c) Is~~is known by the person using or disclosing it to be confidential”

~~2.2 For the purposes of this Agreement confidential information includes:~~

~~A) Any information which is, or ought reasonable to be apparent to be, confidential by its notice, from whatever source;~~

but excludes information that:

- (iv) subsequently becomes publicly available other than through a breach of confidence or a breach of Brookfield Rail’s Segregation Arrangements;

-
- (v) was in the lawful possession of Brookfield Rail before being provided to Brookfield Rail by the owner;
- (vi) ceases to be confidential in nature by any other lawful means; or
- (vii) is received by Brookfield Rail independently from a third party free to disclose such information.
- (d) **B) For the purposes of this deed 'Confidential Information' includes information or data** contained in any communication or record, whether written, electronic or oral;
- C) —Data, in any form which relates to any of the following:**
- (1) —An Access application;**
 - (2) —Access negotiations;**
 - (3) —Access Agreements;**
 - (4) —Correspondence relating to any part, present or proposed Access Agreement;**
 - (5) —Charges for the provision of Access including invoices for and record of payments or Access charges;**
 - (6) —Train control functions dealing with pathways, train consists and actual train running.**
- (e) **2.3** In consideration of ~~WestNet~~Brookfield Rail:
- (i) **A) Disclosing**~~disclosing~~ Confidential Information to the signatory; or
- (ii) **B) Retaining**~~retaining~~ or agreeing to retain that signatory to perform functions for ~~WestNet~~Brookfield Rail.
- ~~The~~the signatory ~~to this agreement agrees that it~~ must:—
- (iii) **A) Keep**~~keep~~ strictly confidential the Confidential Information; and
- (iv) **B) Not**~~not~~, at any time disclose, divulge, make known or in any way communicate to any person in any part of the world any of the Confidential Information which the signatory has acquired or received or will acquire or receive while engaged by ~~WestNet~~Brookfield Rail or subsequent thereto, except:
- (A) 1. To**~~to~~ an employee, officer or contractor of, or consultant or adviser to ~~WestNet, Brookfield~~ Rail in the proper performance of an access related function by the signatory; or
 - (B) 2. To**~~to~~ the extent required by ~~law~~applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator.
- (f) If the signatory must make a disclosure of Confidential Information in accordance with clause 2(d)(iv), the signatory must disclose only the minimum Confidential Information required to comply with the applicable law, order or requirement; and before making such disclosure, the signatory must:
-

-
- (i) give Brookfield Rail reasonable written notice of the full circumstances of the required disclosure and the Confidential Information which the signatory proposes to disclose; and
- (ii) consult with Brookfield Rail as to the form of the disclosure.
- (g) ~~2.4~~ The signatory must not directly or indirectly at any time use or permit the use of any of the Confidential Information:
- (i) ~~A) For~~for his or her own advantage or gain;
- (ii) ~~B) For~~for the benefit or gain of any third party (whether associated with the signatory or not);
- (iii) ~~C) In~~in any manner which may cause injury, to any person or loss to ~~Westnet~~Brookfield Rail or any person to whom ~~WestNet~~Brookfield Rail provides ~~Access~~access, or access related, services; or
- (iv) ~~D) In~~in any manner which may cause ~~WestNet~~Brookfield Rail to breach the Act, ~~Code~~the Railways (Access) Code 2000 (WA) (Code), Brookfield Rail's Segregation Arrangements or any regulation, determination, ruling or requirement ~~of the Rail Access Regulations~~ pursuant to the Act or Code.
- (h) ~~2.5~~ The signatory must at all times take, and cause to be taken, such precautions as are necessary to maintain the confidentiality of the Confidential Information and to prevent its disclosure.
- (i) ~~2.6~~ The signatory must immediately upon demand, deliver up to ~~WestNet~~Brookfield Rail all material (whether documents, papers, plans, drawings, tapes, disks, computer software, or any other medium of storing or recording information) comprising or containing ~~ay of the~~ Confidential Information (including all copies extract, abstracts and analyses thereof) which is in the possession, or under the control of, the signatory.
- (j) ~~2.7~~ The signatory must immediately disclose to ~~WestNet~~Brookfield Rail, in writing, any breach of this ~~Agreement~~deed of which it becomes aware.
- ~~2.8 — This agreement continues without limitation in time but does not apply to any Confidential Information that:~~
- ~~A) The signatory is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator;~~
- ~~B) Is in the public domain other than as a result of breach of this agreement, or any agreement in the same or similar terms in relation to Confidential Information.~~

~~2.9 If the signatory must make a disclosure in accordance with the preceding clause the signatory must disclose only the minimum Confidential Information required to comply with the applicable law, order or requirement; and before making such disclosure, the signatory must: give WestNet Rail reasonable written notice of the full circumstances of the required disclosure; and the Confidential Information which the signatory proposes to disclose; and consult with WestNet Rail as to the form of the disclosure.~~

3. AGREEMENT

- (a) In signing this deed I understand:
- (i) the confidentiality obligations in connection with access related functions that are imposed under the Act, the Code, Brookfield Rail's Segregation Arrangements or any regulation or determination pursuant to the Act or Code; and
 - (ii) In signing this Agreement I understand that in carrying out duties and responsibilities related to ~~Access Management~~access related functions I must not breach the requirements and obligations specified in the ~~Railway (Access) Act 1998~~ or the ~~Railways (Access) Code 2000~~Code, Brookfield Rail's Segregation Arrangements or any regulation or determination pursuant to the Act or Code.
- (b) I further specifically undertake to comply with the provisions of this ~~agreement~~deed and not disclose use or permit the use of Confidential ~~information as specified in Section 2 of this Agreement~~Information other than in accordance with this deed.

Signed as a deed poll:

PERSON POSITION

LOCATION

SIGNATURE

WITNESS

DATE

APPENDIX C – DISPUTE RESOLUTION PROCESS

1. OVERVIEW

Subject to the terms of this Appendix C, this Dispute Resolution Process is intended to resolve certain disputes relating to:

- (a) Access Charges; and
- (b) the granting, refusal to grant, conditions or administration of an Access Agreement, other than in relation to Access Charges.

Capitalised terms in this Appendix C have the meaning given in the Segregation Arrangements unless otherwise defined.

In this Appendix C, clause references are references to clauses of this Appendix C unless expressly stated otherwise.

2. RAISING A DISPUTE

2.1 CRITERIA FOR SUBMITTING AN OBJECTION NOTICE

A Dispute Applicant who considers that BR has not complied with section 6.2 of the Segregation Arrangements may raise a dispute with BR by giving a written notice (**Objection Notice**) to BR provided that the following criteria are satisfied:

- (a) the dispute specified in the Objection Notice must be:
 - (i) in respect of a service which is:
 - (A) the subject of an Access proposal submitted by the Dispute Applicant to BR or an Access Agreement between the Dispute Applicant and BR; and
 - (B) subject to clause 2.1(b), comparable to a service provided by BR to a Related Operator under an Access Agreement by reference to:
 - (1) the commodity being transported;
 - (2) the type of rollingstock used, including the length and mass of the rollingstock; and
 - (3) the geographic area in which the Access is being sought or provided.
 - (Comparable Service); or
 - (ii) relevant to an entity which is a customer of both:
 - (A) the Dispute Applicant (where the Dispute Applicant is an Operator or a Proponent that proposes to be an Operator); and
 - (B) a Related Operator (where the Related Operator is an Operator),
where the Dispute Applicant is seeking, and the Related Operator has obtained, from BR (as applicable) Access for at least one Comparable Service for the benefit of the customer;
- (b) if the dispute specified in the Objection Notice relates to an Access Agreement between BR and a Related Operator, the relevant Access Agreement must have been entered into after 17 August 2015 (being the date of the public announcement of the proposed acquisition of Asciano Limited by the consortium assembled by Brookfield

Asset Management Inc that includes Brookfield Infrastructure Partners LP) provided that a dispute in relation to:

- (i) a waiver by BR of rights under an Access Agreement entered into on or before 17 August 2015 between BR and a Related Operator; or
- (ii) amendments to an Access Agreement referred to in clause 2.1(b)(i).

which take effect after 17 August 2015, are not prohibited under this criteria; and

- (c) the dispute specified in the Objection Notice must not relate to an Access Charge, or any part of an Access Charge, which has been approved or determined by the Independent Price Expert pursuant to clause 4.2.

2.2 OBJECTION NOTICE

- (a) An Objection Notice must set out details of:

- (i) the Dispute Applicant's reasons for issuing the Objection Notice;
- (ii) the nature of the dispute;
- (iii) the outcome sought by the Dispute Applicant in relation to the dispute; and
- (iv) the action on the part of BR which the Dispute Applicant believes will resolve the dispute.

- (b) By submitting an Objection Notice, the Dispute Applicant agrees to comply with this Dispute Resolution Process.

2.3 WITHDRAWAL OF OBJECTION NOTICE

A Dispute Applicant may, at any time prior to determination of a dispute specified in an Objection Notice, withdraw the Objection Notice by written notice to BR and the person responsible for determining the dispute, in which case the powers and authority of the person responsible for determining the dispute to make a determination of that Objection Notice under this Appendix C shall cease.

3. NEGOTIATION

- (a) Within 7 days after the Dispute Applicant provides an Objection Notice to BR, the chief executive officers (or nominees of the chief executive officers) of each party must meet and negotiate with a view to resolving the dispute expeditiously by joint discussion.
- (b) If the dispute is not resolved in accordance with clause 3(a) within 21 days after the Dispute Applicant provides an Objection Notice to BR then:
 - (i) if the dispute is a Price Dispute, it will be resolved in accordance with clause 4;
 - or
 - (ii) if the dispute is an Access Dispute, it will be resolved in accordance with clause 5.

4. PRICE DISPUTE

4.1 APPOINTMENT OF INDEPENDENT PRICE EXPERT

- (a) Subject to clauses 4.1(c) to 4.1(f), a Price Dispute will be determined by an expert appointed by agreement between BR and the Dispute Applicant.
- (b) The expert appointed under this clause 4 must be an economist having at least 10 years' experience and must not be:

-
- (i) an employee or officer of BR, the Dispute Applicant or their Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a person who is a professional adviser of BR, the Dispute Applicant or their Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with BR, the Dispute Applicant or their Related Bodies Corporate (other than the terms of appointment of the expert);
 - (iv) a Network Participant;
 - (v) a supplier or material customer of BR, the Dispute Applicant or of their Related Bodies Corporate; or
 - (vi) an employee of a firm or company referred to in paragraphs (iii) to (v) above.
 - (c) If BR and the Dispute Applicant fail to agree on the appointment of an expert in accordance with clause 4.1(a) within 7 days after the conclusion of the 21 day negotiation period for the Price Dispute under clause 3(b)(i), then:
 - (i) BR or the Dispute Applicant may request that the Perth Centre for Energy and Resources Arbitration:
 - (A) select the expert; or
 - (B) if the Perth Centre for Energy and Resources Arbitration declines to select the expert, provide a list of suitable people that could be appointed as the expert; and
 - (ii) if the Perth Centre for Energy and Resources Arbitration selects the expert, then BR and the Dispute Applicant must, within 5 days after the Perth Centre for Energy and Resources Arbitration has selected the expert, appoint the selected expert and refer the Price Dispute to the selected expert.
 - (d) If:
 - (i) the Perth Centre for Energy and Resources Arbitration declines to:
 - (A) select the expert; and
 - (B) provide a list of suitable people that could be appointed as the expert; or
 - (ii) Perth Centre for Energy and Resources Arbitration does not exist at the relevant time,

then:

 - (iii) BR and the Dispute Applicant must request that the ERA:
 - (A) select the expert; or
 - (B) if the ERA declines to select the expert, provide a list of suitable people that could be appointed as the expert; and
 - (iv) BR and the Dispute Applicant must, within 5 days after ERA has selected the expert, appoint the selected expert and refer the Price Dispute to the selected expert.
 - (e) If the expert is to be selected by a person referred to in clause 4.1(c) or 4.1(d) and that person declines to select the expert but provides to BR and the Dispute Applicant a list of suitable people that could be appointed as the expert, then:
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- (i) the first person specified in that list will be taken to be selected by the relevant person as the expert on the date the list is provided to BR and the Dispute Applicant;
 - (ii) if the first person specified in that list does not accept the appointment as the expert, then the next person specified in that list will be taken to be selected by the relevant person as the expert on the date the first person notifies BR and the Dispute Applicant of its non-acceptance; and
 - (iii) the process specified in clause 4.1(e)(ii) will apply to the next and each subsequent person specified in that list until a person that is taken to be selected by the relevant person as the expert accepts the appointment as the expert.
- (f) Subject to clause 4.1(e), if the expert is to be selected by a person referred to in clause 4.1(c) or 4.1(d) and the person selected as the expert does not accept appointment as the expert, then an alternative person is to be selected as the expert at either party's request by the same person referred to in clause 4.1(c) or 4.1(d) (as applicable).

4.2 INDEPENDENT PRICE EXPERT DETERMINATION

- (a) The Dispute Applicant must:
 - (i) provide the Objection Notice to the Independent Price Expert within 2 days after the Independent Price Expert is appointed; and
 - (ii) notify BR within 1 day after it has provided the Objection Notice to the Independent Price Expert that it has done so.
- (b) If the Independent Price Expert receives an Objection Notice in accordance with clause 4.2(a), then BR and the Dispute Applicant must instruct the Independent Price Expert that:
 - (i) if it determines that the Disputed Access Charge has not been set in accordance with section 6.2 of the Segregation Arrangements, then it must determine the Price Dispute taking account of the matters specified in section 29 of the Code and the provisions of these Segregation Arrangements; and
 - (ii) that it may accept or reject the Disputed Access Charge or may vary the Disputed Access Charge taking account of the matters specified in section 29 of the Code and the provisions of these Segregation Arrangements.
- (c) BR and the Dispute Applicant must request that the Independent Price Expert makes his or her determination within:
 - (i) 60 days after it receives the Objection Notice;
 - (ii) such further period, not being more than 20 days, as the Independent Price Expert in his or her sole discretion requires; or
 - (iii) such further period as may be agreed by BR and the Dispute Applicant.
- (d) BR and the Dispute Applicant:
 - (i) must provide the Independent Price Expert with any information he or she requires to make a determination under this clause 4.2; and
 - (ii) may make submissions to the Independent Price Expert on the Price Dispute, within a timeframe reasonably determined by the Independent Price Expert.

- (e) If BR or the Dispute Applicant makes submissions to the Independent Price Expert on the Price Dispute in accordance with clause 4.2(d)(ii) then the Independent Price Expert must have regard to those submissions in making its determination of the Price Dispute.
- (f) BR and the Dispute Applicant must instruct the Independent Price Expert to provide the parties with a written statement of reasons for its decision, setting out:
 - (i) the matters it took into account and the respective weight it gave to them; and
 - (ii) the matters it disregarded.
- (g) Except in the case of manifest error or fraud, the Independent Price Expert's decision is final and binding on BR and the Dispute Applicant.
- (h) When making a determination under this clause 4.2, the Independent Price Expert is acting as an expert and not as an arbitrator.

4.3 NOTICE OF DECISION BY INDEPENDENT PRICE EXPERT

- (a) The Independent Price Expert must notify BR and the Dispute Applicant, of his or her determination under clause 4.2(b)(ii) within 2 days after making the determination.
- (b) BR must provide a copy of the Independent Price Expert's determination to the Auditor:
 - (i) within 7 days after BR receives the determination; or
 - (ii) if the Auditor has not been appointed within 7 days after BR receives the determination, within 7 days after the Auditor is appointed.
- (c) The cost of the expert determination must be shared equally between BR and the Dispute Applicant, unless the Independent Price Expert determines, or the parties agree, otherwise.
- (d) BR and the Dispute Applicant must indemnify the Independent Price Expert against any loss or damage incurred by the Independent Price Expert in the course of carrying out his or her functions in accordance with his or her terms of appointment excluding circumstances where the conduct of the Independent Price Expert constitutes:
 - (i) negligence (whether wilful or otherwise); or
 - (ii) dishonest or unlawful conduct.

5. ACCESS DISPUTE

5.1 REFERRAL OF ACCESS DISPUTE TO EXPERT DETERMINATION OR ARBITRATION

- (a) BR and the Dispute Applicant may agree:
 - (i) to refer an Access Dispute which remains unresolved to:
 - (A) an expert for determination in accordance with clause 5.2; or
 - (B) an arbitrator for arbitration in accordance with clause 5.3; or
 - (ii) that an Access Dispute which remains unresolved will not be referred to either an expert for determination in accordance with clause 5.2 or an arbitrator for arbitration in accordance with clause 5.3.

within 7 days after the conclusion of the 21 day negotiation period for the Access Dispute under clause 3(b)(ii).
- (b) If BR and the Dispute Applicant:

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- (i) agree to refer an Access Dispute which remains unresolved to an expert or an arbitrator in accordance with clause 5.1(a)(i) then, on the date that such agreement is reached, the parties must exchange notices which acknowledge such agreement; or
 - (ii) do not reach agreement within the 7 day period specified in clause 5.1(a) in respect of the matters specified in clause 5.1(a) then the parties must exchange notices which acknowledge that agreement has not been reached,
 - each notice being a **Final Dispute Notice**.
 - (c) BR and the Dispute Applicant must agree on:
 - (i) which of expert determination or arbitration will be conducted to resolve the Access Dispute within 7 days after the Final Dispute Notice is exchanged; and
 - (ii) the identity of the expert or arbitrator to be appointed to conduct the expert determination or arbitration within the later of:
 - (A) 12 days after the Final Dispute Notice is exchanged; or
 - (B) if clause 5.1(d) applies, 5 days after the ERA gives BR and the Dispute Applicant a notice under clause 5.1(d)(ii).
 - (d) If BR and the Dispute Applicant cannot agree on which of expert determination or arbitration will be conducted to resolve the Access Dispute within the timeframe specified in clause 5.1(c)(i), then BR and the Dispute Applicant must request that the ERA:
 - (i) determine whether the Access Dispute will be determined by expert determination or arbitration; and
 - (ii) notify BR and the Dispute Applicant of its determination.A determination by the ERA under this clause 5.1(d) is final and binding on BR and the Dispute Applicant.
 - (e) If BR and the Dispute Applicant cannot agree on the identity of the expert or arbitrator, as the case may be, within the relevant timeframe specified in clause 5.1(c)(ii) then either party may request that the President (for the time being) of the Law Society of Western Australia:
 - (i) select the expert or arbitrator, as the case may be; or
 - (ii) if the President (for the time being) of the Law Society of Western Australia declines to select the expert or arbitrator, as the case may be, provide a list of suitable people that could be appointed as the expert or arbitrator, as the case may be.
 - (f) If the President (for the time being) of the Law Society of Western Australia selects an expert or arbitrator, as the case may be, in accordance with clause 5.1(e) then BR and the Dispute Applicant must, within 5 days after the President (for the time being) of the Law Society of Western Australia has made the selection, appoint the selected person and refer the Access Dispute to the selected person.
 - (g) If:
 - (i) the President (for the time being) of the Law Society of Western Australia declines to:
 - (A) select the expert or arbitrator, as the case may be; and
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- (B) provide a list of suitable people that could be appointed as the expert or arbitrator, as the case may be; or
- (ii) the Law Society of Western Australia or the position of President does not exist at the relevant time.
- then:
- (iii) BR or the Dispute Applicant may request that the Perth Centre for Energy and Resources Arbitration:
- (A) select the expert or arbitrator, as the case may be; or
- (B) if the Perth Centre for Energy and Resources Arbitration declines to select the expert or arbitrator (as the case may be), provide a list of suitable people that could be appointed as the expert or arbitrator (as the case may be); and
- (iv) if the Perth Centre for Energy and Resources Arbitration selects the expert or arbitrator, as the case may be, then BR and the Dispute Applicant must, within 5 days after the Perth Centre for Energy and Resources Arbitration has selected the relevant person, appoint the selected person and refer the Access Dispute to the selected person.
- (h) If:
- (i) the Perth Centre for Energy and Resources Arbitration declines to:
- (A) select the expert or arbitrator, as the case may be; and
- (B) provide a list of suitable people that could be appointed as the expert or arbitrator, as the case may be; or
- (ii) the Perth Centre for Energy and Resources Arbitration does not exist at the relevant time.
- then:
- (iii) BR and the Dispute Applicant must request that the ERA:
- (A) select the expert or arbitrator, as the case may be; or
- (B) if the ERA declines to select the expert or arbitrator, as the case may be, provide a list of suitable people that could be appointed as the expert or arbitrator, as the case may be; and
- (iv) if the ERA selects the expert or arbitrator, as the case may be, then BR and the Dispute Applicant must, within 5 days after the ERA has selected the relevant person, appoint the selected person and refer the Access Dispute to the selected person.
- (i) If the expert or arbitrator (as applicable) is to be selected by a person referred to in clause 5.1(f), clause 5.1(g) or clause 5.1(h) and that person declines to select the expert or arbitrator, as the case may be, but provides to BR and the Dispute Applicant a list of suitable people that could be appointed as the expert or arbitrator, as the case may be, then:
- (i) the first person specified in that list will be taken to be selected by the relevant person as the expert or arbitrator on the date the list is provided to BR and the Dispute Applicant;
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- (ii) if the first person specified in that list does not accept the appointment as the expert or arbitrator, then the next person specified in that list will be taken to be selected by the relevant person as the expert or arbitrator on the date the first person notifies BR and the Dispute Applicant of its non-acceptance; and
 - (iii) the process specified in clause 5.1(i)(ii) will apply to the next and each subsequent person specified in that list until a person that is taken to be selected by the relevant person as the expert or arbitrator accepts the appointment as the expert or arbitrator.
- (j) Subject to clause 5.1(i), if the expert or arbitrator is to be selected by a person referred to in clause 5.1(f), 5.1(g) or 5.1(h) and the person selected as the expert or arbitrator does not accept appointment as the expert or arbitrator, then an alternative person is to be selected as the expert or arbitrator at either party's request by the same person referred to in clause 5.1(f), 5.1(g) or 5.1(h) (as applicable).
- (k) The expert or arbitrator appointed under this clause 5.1 must have at least 10 years' experience in the field relevant to the Access Dispute (as determined by BR) and the qualifications reasonably necessary to carry out the functions of the expert or arbitrator, as the case may be, and must not be:
 - (i) an employee or officer of BR, the Dispute Applicant or their Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a person who is a professional adviser of BR, the Dispute Applicant or their Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with BR, the Dispute Applicant or their Related Bodies Corporate (other than the terms of appointment of the expert or arbitrator);
 - (iv) a Network Participant;
 - (v) a supplier or material customer of BR, the Dispute Applicant or of their Related Bodies Corporate; or
 - (vi) an employee of a firm or company referred to in paragraphs (iii) to (v) above.

5.2 EXPERT DETERMINATION

If the Access Dispute is referred to an expert for expert determination pursuant to clause 5.1(a), the following provisions will apply:

- (a) BR and the Dispute Applicant must:
 - (i) instruct the expert to provide; and
 - (ii) use all other reasonable endeavours to ensure that the expert provides the expert's determination on the Access Dispute within 60 days after the referral under clause 5.1.
- (b) BR and the Dispute Applicant must instruct the expert that if it determines that BR has not complied with section 6.2 of the Segregation Arrangements, then it must determine the Access Dispute taking account of the matters specified in section 29 of the Code and the provisions of these Segregation Arrangements.
- (c) The expert must decide the Access Dispute as an expert not an arbitrator. Except in the case of manifest error or fraud, the expert's decision is final and binding on both BR and the Dispute Applicant.

- (d) BR must take all reasonable steps within its power to ensure that the expert's decision is fulfilled or otherwise given effect to, including by enforcing BR's contractual rights against third parties.
- (e) The expert may seek legal advice on issues raised in the Access Dispute if the expert, acting reasonably, considers that it requires legal advice in order to determine the Access Dispute.
- (f) The cost of the expert determination must be shared equally between BR and the Dispute Applicant, unless the expert determines, or the parties agree, otherwise.
- (g) BR and the Dispute Applicant may make submissions to the expert on the Access Dispute.
- (h) If BR or the Dispute Applicant makes submissions to the expert on the Access Dispute in accordance with clause 5.2(g) then the expert must, subject to clause 5.2(b), have regard to those submissions in making its determination of the Access Dispute.
- (i) BR and the Dispute Applicant must use all reasonable endeavours to ensure that the expert is provided with:
 - (i) all relevant information available to BR and the Dispute Applicant; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Access Dispute within 60 days of referral under clause 5.1.
- (j) BR and the Dispute Applicant must indemnify the expert against any loss or damage incurred by the expert in the course of carrying out his or her functions in accordance with his or her terms of appointment excluding circumstances where the conduct of the expert constitutes:
 - (i) negligence (whether wilful or otherwise); or
 - (ii) dishonest or unlawful conduct.
- (k) BR and the Dispute Applicant must instruct the expert to provide the parties with a written statement of reasons for its decision, setting out:
 - (i) the matters it took into account and the respective weight it gave to them; and
 - (ii) the matters it disregarded.
- (l) BR must provide a copy of any determination made by the expert to the Auditor:
 - (i) within 7 days after BR receives the determination; or
 - (ii) if the Auditor has not been appointed within 7 days after BR receives the determination, within 7 days after the Auditor is appointed.

5.3 ARBITRATION

- (a) If the Access Dispute is referred to an arbitrator pursuant to clause 5.1, BR and the Dispute Applicant must, subject to clause 5.3(b), agree on the terms on which the arbitration will be conducted.
- (b) BR and the Dispute Applicant must instruct the arbitrator that if it determines that BR has not complied with section 6.2 of the Segregation Arrangements, then it must determine the Access Dispute taking account of the matters specified in section 29 of the Code and the provisions of these Segregation Arrangements.
- (c) If, within 14 days after the arbitrator is appointed, BR and the Dispute Applicant are unable to reach agreement on the terms on which the arbitration will be conducted,

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- the arbitration must be conducted in accordance with the IAMA & LEADR Arbitration Rules, as modified by the provisions of this Dispute Resolution Process.
- (d) The arbitrator is not required to proceed with the arbitration unless and until the Dispute Applicant has agreed to:
- (i) pay the arbitrator's costs and other costs as determined in accordance with clause 5.3(q); and
 - (ii) provide any indemnity as may be required in accordance with clause 5.3(r).
- (e) BR and the Dispute Applicant may make submissions to the arbitrator on the Access Dispute.
- (f) If BR or the Dispute Applicant makes submissions to the arbitrator on the Access Dispute in accordance with clause 5.3(e) then the arbitrator must, subject to clause 5.3(b), have regard to those submissions in making its determination of the Access Dispute.
- (g) Unless BR and the Dispute Applicant agree otherwise, the arbitration must be conducted in private.
- (h) BR and the Dispute Applicant may appoint a person, including a legally qualified person, to represent it or assist in the arbitration.
- (i) The arbitrator must present its determination in draft form to BR and the Dispute Applicant and allow them the opportunity to comment before making a final determination.
- (j) The arbitrator must hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
- (k) Subject to clause 5.3(s) and unless BR and the Dispute Applicant agree otherwise, any determination by the arbitrator must be kept confidential.
- (l) The arbitrator may at any time terminate an arbitration (without making a determination save for any determination under clause 5.3(q)) and the subject matter of the Objection Notice shall be regarded as resolved, if he or she thinks that:
- (i) the notification of the Access Dispute is vexatious;
 - (ii) the subject matter of the Access Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the Dispute Applicant has not engaged in negotiations in good faith.
- (m) In deciding an Access Dispute, the arbitrator may have regard to any matters that he or she thinks are relevant.
- (n) In deciding an Access Dispute, the arbitrator must not:
- (i) without the consent of BR and the Dispute Applicant, make a determination which relates to matters which were not specified in the Objection Notice; or
 - (ii) without the consent of BR and the Dispute Applicant, allow any other party to join or intervene in the arbitration.
- (o) A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to
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apply from a specified day which is earlier than the day on which the final determination is made.

- (p) Other than in circumstances where the determination or direction is the subject of review by a court, if a Dispute Applicant does not comply with a determination or direction of the arbitrator, BR is not obliged to continue to seek to resolve the matters subject of the Objection Notice.
- (q) The arbitrator's costs and the costs of the parties to the arbitration must be borne by BR and the Dispute Applicant in such proportions as the arbitrator determines. BR and the Dispute Applicant may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
- (r) Where the arbitrator requires it, BR and the Dispute Applicant must indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 5.3, such indemnity excluding circumstances where the conduct of the arbitrator constitutes:

 - (i) negligence (whether wilful or otherwise); or
 - (ii) dishonest or unlawful conduct.
- (s) BR must provide a copy of any determination made by the arbitrator to the Auditor:

 - (i) within 7 days after BR receives the determination; or
 - (ii) if the Auditor has not been appointed within 7 days after BR receives the determination, within 7 days after the Auditor is appointed.
- (t) BR must take all reasonable steps within its power to ensure that any determination by the arbitrator is fulfilled or otherwise given effect to, including by enforcing BR's contractual rights against third parties.

6. GOVERNING LAW AND JURISDICTION

- (a) This Appendix C shall be interpreted according to the laws for the time being in force in Western Australia.
- (b) Subject to clause 6(c), BR and the Dispute Applicant submit to the exclusive jurisdiction of the courts of Western Australia in respect of any dispute raised under clause 2.1 and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.
- (c) Compliance with this Dispute Resolution Process is a necessary precondition to the court's jurisdiction (except in the case of urgent injunctive relief).

7. GENERAL

Except for the obligations of disclosure to the Auditor provided for in this Dispute Resolution Process, the dispute and any terms of resolution are to be kept strictly confidential by BR and the Dispute Applicant.

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Description	Brookfield Rail - Segregation Arrangements
Rendering set	Standard

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