

Brookfield Rail

SEGREGATION ARRANGEMENTS

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1. OBJECTIVES OF THE SEGREGATION ARRANGEMENTS

BR is the owner for the purposes of the Act of a railways network in Western Australia which is subject to the provisions of the Act and the Code.

BR 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 these Segregation Arrangements is to ensure that BR complies with the requirements of Sections 28 and 30 of the Act to segregate its access related functions from its other functions and to give effect to the obligations set out in:

- (a) Section 31 of the Act which requires an effective regime for the **protection of confidential information** arising from performing access related functions.
- (b) 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) 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 or to other rail operators.
- (d) Section 34 of the Act which requires that **accounts and records** are maintained to ensure that 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.

For the purposes of these Segregation Arrangements, and to the extent that BR and a third party choose to negotiate an agreement for access “otherwise than under this Code”, within the meaning of section 4A of the Code, those negotiations and the arrangements arising from any resulting agreement are not to be taken to be:

- (i) “access-related functions”; or
- (ii) “other functions”,

within the meaning of section 28 of the Act.

Section 29 of the Act allows the Regulator to impose requirements on BR, other than those covered in Sections 31 to 34 of the Act, to further improve the effectiveness of these Segregation Arrangements if and as required.

2. ACCESS RELATED FUNCTIONS

Access Related Functions has the meaning given to the term ‘access-related functions’ in section 24 of the Act, and includes:

- (a) Performance of activities specified under the Act and Code including (but not limited to):
 - (i) calculating the incremental and total costs for approval by the Regulator;
 - (ii) applying the costing principles, the overpayment rules, the 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.
- (b) Negotiation of Access Agreements and granting of Access rights.
 - (c) Management of Access Agreements including performance monitoring and day-to-day operation issues.
 - (d) Collection, use, and dissemination of train running data including manifest details.
 - (e) Train scheduling, train path allocation, publication of Working Timetables, control planning and the granting of ad-hoc train path entitlements.
 - (f) Train control including provision of appropriate authorities for trains to use scheduled train paths (train orders or signals) and real-time management of trains.
 - (g) Emergency management of the Network including co-ordination of emergency service responses.
 - (h) Development, maintenance and monitoring compliance with appropriate rail safety standards for BR's staff, its contractors and any Operators on the Network.
 - (i) Development and authorisation of the BR Rules (including the General Appendix and Working Timetables) and issue of special notices, instructions and warnings related to the rules.
 - (j) Development of train operating standards (to the extent they relate to the rail infrastructure) including maximum braking distances and maximum train lengths.
 - (k) Development of maintenance standards for the rail infrastructure.
 - (l) 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) 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:
 - (i) those parties are aware of and comply with any obligations imposed by the Act and the Code; 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. MANAGEMENT AND COMPLIANCE PROCESSES

- (a) BR has detailed specific management and compliance processes in Appendix A to this document.

- (b) Appendix A describes the manner in which BR manages these Segregation Arrangements including the processes put in place to ensure an effective compliance regime is maintained.
- (c) Appendix A is the vehicle by which these Segregation Arrangements and any changes to the segregation processes, procedures and practices are formalised and communicated throughout BR.
- (d) Appendix A will be:
 - (i) issued as a controlled document to the BR senior management team and BR's Relevant Officers, who must comply with Appendix A;
 - (ii) reviewed and updated as required by law with changes to Appendix A being issued to BR's senior management team and Relevant Officers in accordance with BR's procedures for controlled documents; and
 - (iii) used to develop the training requirements for BR's Relevant Officers 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 including details of the arrangements for securing paper and electronic records and for access to information systems.
 - (ii) Details of the security systems in place in BR offices.
 - (iii) A list of the types of behaviour which may breach these Segregation Arrangements and the appropriate corrective arrangement for each breach.

4. CONFIDENTIAL INFORMATION

- (a) When performing Access Related Functions, BR must:
 - (i) keep confidential and not disclose, and ensure that its employees keep confidential and not disclose, any Confidential Information provided to or collected by BR by a Person Seeking Access or an Operator except in accordance with:
 - (A) section 4(c), 4(e) or 4(f) of these Segregation Arrangements; or
 - (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 Person Seeking Access or an Operator for the purpose for which it was provided.
- (b) Confidential Information will include the following types of information:
 - (i) Proposals and information provided by Persons Seeking Access.
 - (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.

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- (v) Master Train Control Diagrams (to the extent they identify specific operations).
 - (vi) Completed train control diagrams and voice logging tapes from Train control.
 - (c) BR may disclose Confidential Information of a Person Seeking Access or an Operator:
 - (i) in accordance with, or as permitted by an Access Agreement;
 - (ii) if the Person Seeking Access or Operator provides its prior written consent to BR;
 - (iii) 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;
 - (iv) 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;
 - (v) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a dispute provided that BR does not disclose the Confidential Information of a Person Seeking Access or an Operator to another Person Seeking Access or Operator without the first Person Seeking Access or Operator's consent;
 - (vi) to the extent disclosure is required for the purpose of facilitating the performance of yard control services;
 - (vii) 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
 - (viii) to the extent the Confidential Information comprises the Operator's or the Person Seeking Access' (where the Person Seeking Access proposes to be an Operator) rollingstock details.
 - (d) Where an employee of BR has prescribed duties which involve managing or conducting Access Related Functions, BR will require the employee to sign a Confidentiality and Compliance Agreement. 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) BR has established a regime for protecting Confidential Information in the performance of its Access Related Functions including:
 - (i) A system of securing Access related information that only allows authorised BR staff and contractors to access the records. This information will be located in secure and lockable facilities within BR's offices and Train control centres.

BR will control access to its entire head office and its regional offices and these offices will be locked when not attended.

Train control centres are secured and entry is controlled by BR.
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- (ii) A security system on electronic records that allows only authorised BR staff and contractors to access the records.

Access to electronic records that are confidential can only be given by the Responsible Manager and will only be given to persons who have signed a Confidentiality and Compliance Agreement.

BR has physically dedicated computer file servers. User IDs and passwords are set up and managed by the BR Information Technology Group. Authority to allocate passwords resides with the Responsible Manager.
- (iii) Appropriate controls on data, including information in RAMS and costing and pricing information to protect Confidential Information.

The Responsible Manager must authorise all access to 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 will be, audited in accordance with section 8 of these Segregation Arrangements.
- (iv) Specific provisions in each Access Agreement imposing contractual obligations on BR to protect 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 Person Seeking Access or Operator.

5. CONFLICTS OF INTEREST

- (a) BR will manage its Access Related Functions so that, for BR's Relevant Officers, 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 control, these functions will be undertaken by BR staff or contractors who have signed a Confidentiality and Compliance Agreement.
- (c) 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 an Associate 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.
- (d) 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 an Associate of BR, BR must have regard to the potential implications of any such transfer on BR's obligations to manage Confidential Information.
- (e) BR will procure that no Relevant Officer will, within a one year period of ceasing employment with BR, be employed or engaged by an Associate of BR in a role which is involved in commercial dealings in relation to 'rail operations' (as defined in the Code) 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).

6. DUTY OF FAIRNESS

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 Persons Seeking Access or Operators.

6.2 Ensuring duty of fairness

The mechanisms for ensuring BR's compliance with its duty of fairness include:

- (a) the process under the Code for determining the fairness of prices negotiated under provisions of Section 21(1) of the Code (where applicable); and
- (b) relevant provisions in BR's standard Access Agreements including consultation mechanisms, obligations to provide information and dispute resolution mechanisms.

6.3 Application of fairness to Part 5 instruments

BR acknowledges that its obligation to comply with its duty of fairness includes compliance with the Regulator's determinations under Part 5 of the Code including:

- (a) these Segregation Arrangements;
- (b) the Train Management Guidelines;
- (c) the Train Path Policy;
- (d) the costing principles; and
- (e) the overpayment rules.

BR will also inform Persons Seeking Access at the onset of negotiations of their rights to confidentiality.

If negotiations have commenced outside the Code and a Person Seeking Access subsequently makes an access application under the Code, BR and the Person Seeking Access will agree on what information previously supplied by the Person Seeking Access is subject to the confidentiality provisions of these Segregation Arrangements.

7. PREPARATION OF ACCOUNTS AND RECORDS

- (a) BR will maintain accounts and financial records for the purposes of complying with the Act and the Code. BR employees also control the data used to generate invoices for Access customers.
- (b) BR 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 BR must have regard to the costing principles determined by the Regulator under Part 5 of the Code.

8. COMPLIANCE AND REVIEW

8.1 Regulator monitoring, enforcement and review

- (a) BR acknowledges that stakeholders, including Persons Seeking Access and Operators, 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 vary these Segregation Arrangements at any time, subject to the approval of the Regulator.
- (d) Section 29(3) of the Act allows the Regulator to give directions in writing to BR with respect to a matter which relates to the way in which BR's obligations under section 28 of the Act are to be carried out to the extent that agreement is not reached under section 29(2) of the Act and BR is to comply with any such direction. The Act and the Code provide powers sufficient for the Regulator to require special audits on any issue relating to the Segregation Arrangements at any time. Any audit required by the Regulator will be carried out by an independent auditor approved by the ERA, with BR managing and funding the audit.

DEFINITIONS:

Access	Has the meaning given to the term 'access' in section 3 of the Code
Access Agreement	Has the meaning given to the term 'access agreement' in section 3 of the Code.
Access Charges	Means the fees or charges payable by an Operator to BR under an Access Agreement.
Access Holder	Means a party that is granted Access under an Access Agreement that is either a Commercial Track Access Agreement or Track Access Agreement, as applicable.
Access Related Functions	Has the meaning given in section 2 of these Segregation Arrangements.
Act	Means the <i>Railways (Access) Act 1998 (WA)</i> .
Associate	Has the meaning given to the term 'associate' in section 3 of the Code.
BR	Means Brookfield WA Rail Pty Ltd ACN 118 144 960.
BR Rules	<p>(a) the BR Network Safeworking Rules and Procedures, including any schedule or appendix to them, as issued by BR from time to time in accordance with BR's safety management system approved under section 99 of the <i>Rail Safety National Law (WA)</i>; and</p> <p>(b) all policies and notices issued by BR from time to time for the purpose of ensuring the safe use of the Network.</p>
Code	Means the <i>Railways (Access) Code 2000 (WA)</i> established under the Act.
Commercial Track Access Agreement	Means an Access 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.
Confidentiality and Compliance Agreement	Means a deed substantially in the form specified in Appendix B.
Confidential Information	Has the meaning ascribed to it in section 31(2) of the Act.
Emergency	Means any event or incident which by its nature requires immediate intervention or action.

ERA	Means the Economic Regulation Authority of Western Australia.
Master Train Control Diagrams	<p>Means diagrams for train working which show:</p> <ul style="list-style-type: none"> (a) all train movements scheduled and included in the Working Timetable as permanent train movements; (b) all train movements which have been proposed and agreed and for which there is a contractual agreement which reserves that Train Path for an Operator; and (c) all planned train movements for which advice has been given to the Operator that the Train Path for the train movement is available and able to be practically operated but for which no contractual agreement has been reached.
Network	<p>Means the railways network and associated infrastructure controlled by BR in Western Australia to which:</p> <ul style="list-style-type: none"> (a) Access has or can be granted to an Operator to operate train services under an Operational Track Access Agreement or Track Access Agreement; and (b) the Code applies.
Operational Track Access Agreement	Means an Access 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.
Operator	Has the meaning given to the term 'operator' in section 3 of the Code.
Person Seeking Access	Means a person who has made a request in accordance with section 7 of the Code or who has made a proposal in accordance with section 8 of the Code.
Proponent	Has the meaning given to the term 'proponent' in Section 3 of the Code.
Railway infrastructure	Has the meaning given to the term 'railway infrastructure' in section 3 of the Act.

RAMS	Means the ‘Rail Access Management System’ which is the computer system operated by BR for the purpose of preparing train consists and monitoring train progress on the Network and generally for the purpose of Train Control 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.
Relevant Officer	Has the meaning given to the term ‘relevant officer’ in section 24 of the Act.
Responsible Manager	Means the responsible manager of BR with the relevant delegated authority.
Segregation Arrangements	Means this document including any schedules or appendices to it but only to the extent this document has been approved by the Regulator.
Track Access Agreement	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.
Train control	Means the control of trains by BR or its agents on the Network.
Train control centre	Means the facility or facilities maintained and operated by BR or its agents at any geographic location for the purposes of communication with train crew in order to exercise Train control.
Train controller	Means a person or agent appointed by BR to carry out the function of Train control.
Train Management Guidelines	Means BR’s Train Management Guidelines, as approved by the Regulator under section 43 of the Code.
Train Path	Is a contractual entitlement to operate a train service on the Network where that train service has departure, transit and arrival times between the entry and exit points on the Network.
Train Path Policy	Means BR’s Train Path Policy, as approved by the Regulator under section 44 of the Code.
Working Timetable	Means the train timetables and operating data for all or part of the Network issued as part of the BR Rules 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 *Railways (Access) Act 1998 (WA)* (the **Act**) and the corresponding *Railways (Access) Code 2000 (WA)* (the **Code**) this Appendix addresses BR's processes and compliance obligations to give effect to its Segregation Arrangements. Accordingly this Appendix describes how 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.

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

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

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 BR's employees carrying out Access Related Functions is further defined and detailed in the documents described below:

Documented Procedures

BR's documented procedures describe the allocation of responsibilities to particular Responsible Managers. The documented procedures also indicate the allocation of responsibilities and authorities for particular Access related tasks. BR will maintain a list of Responsible Managers.

Position Descriptions

Position descriptions are prepared for each Responsible Manager within BR. These position descriptions describe the functional areas of responsibility.

Responsibilities

The following responsibilities will be assigned to Responsible Managers:

- Responsibility for and authority to ensure a compliance regime for the Segregation Arrangements is put in place for BR.
- Responsibility for commercial arrangements, dealings and negotiations with new and existing customers ensuring they comply with the Segregation Arrangements.
- Responsibility for ensuring that day-to-day Access Related Functions including Train control, customer liaison and train schedulers conform to the approved Segregation Arrangements.
- Responsibility for ensuring 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 BR there are several functional groups housed at various geographical locations throughout the Network 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
- currently three BR Train control centres at Midland, Avon and Picton.

Access to head office

Head office is only accessed by BR employees and authorised contractors of BR through the use of access security cards. Visitors to BR's head office must enter into a reception area which is separated from the main office facility. Bona fide visitors are then escorted to the area of business.

Apart from BR employees and authorised 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 obligations of the facility and any documents therein. The contractor's management team is also asked to sign a Confidentiality and Compliance Agreement obliging the contractor's management team and any of 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

Confidential Information will include the following types of information:

- (a) Proposals and preliminary information provided by Persons Seeking Access.
- (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 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 and voice logging tapes from Train control.

General Management of Confidential Information

The following describes the particular processes which promote and manage the regime of confidentiality of Access related matters within BR.

- (a) All:
 - (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 the 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) BR will maintain a current list of personnel positions, including contractors, required to undertake Access Segregation Awareness Training Session and sign a Confidentiality and Compliance Agreement. These positions cover the following duties within BR:
 - BR 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 Investment Development personnel
 - Administrative personnel
 - Train Controllers
 - BR Group staff including:
 - CEO

- General Counsel
 - Director Technology
 - IT related staff
 - BR Directors
 - BR Regional Leads including: Perway, Signalling and Communications
 - 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) Visitors under the direct supervision of a BR employee are not required to undertake an Access Segregation Awareness Training Session or sign a Confidentiality and Compliance Agreement.
- (g) BR will maintain a current register of signed Confidentiality and Compliance Agreements. The 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) the name of the person who signed the agreement;
 - (ii) the date the agreement was signed;
 - (iii) the job role of the person;
 - (iv) the work group of the person;
 - (v) the date that the person completed the Access Segregation Awareness Training Session; and
 - (vi) the location of the stored document on the Confidentiality and Compliance Register.
- (h) The Responsible Manager will keep a file containing all signed Confidentiality and Compliance Agreements under lock and key.

Management of Electronic Data

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

- (a) The authority to access electronic information that is confidential can only be given to a staff member or contractor by the Information Technology section of BR in accordance with a user access form signed by the relevant Responsible Manager. The Responsible Manager will ensure that access may 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) BR has a physically separate computer file server from any other company.
- (d) Passwords are initially created by the Information Technology (IT) section of BR. All personnel within the IT section are required to sign a Confidentiality and Compliance Agreement. A user's manager has the authority to reset a subordinate user's password, if required.

- (e) Security restrictions and access protocols are applied to users who have the ability to access any stand-alone computer system.
- (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 which is separately secured on a BR server with authorised controlled passwords.
- (g) BR has implemented a regime of security on accessing any specific data considered Confidential Information to appropriate personnel authorised by the Responsible Manager and who have signed a Confidentiality and Compliance Agreement. The process of authorising access and the general usage of 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 IT section.

With respect to the treatment of Confidential Information, all IT staff members who have access to BR systems are required to sign a Confidentiality and Compliance Agreement.

Backup tapes are handled by authorised BR staff or authorised BR contractors and forwarded to the IT staff for safe-storing.

Management of Other Specific Confidential Information

- (a) Train control diagrams

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

- (b) Voice logged tapes

All conversations on both radio and telephone between the Train 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 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 Responsible Manager and tape movements can only be between the locked tape housing and the office area of the Responsible Manager in a sealed envelope.

3.3 Conflicts of Interest

(Ref. Section 32 – Act)

BR will manage its Access Related Functions in a manner which provides for, and ensures that, all relevant 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 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 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.

Each director of BR will be required to sign a Confidentiality and Compliance Agreement.

3.4 Duty of Fairness

(Ref. - Section 33 of the Act).

- (a) 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 Persons Seeking Access or Operators including with respect to the following:-
 - (i) BR's response to Access applications;
 - (ii) BR's negotiation methodology in relation to Access applications and Access Agreements;
 - (iii) Access Charges; or
 - (iv) the quality of Access related services provided by BR, including liaison, correspondence, scheduling Train paths, Train control priority and Emergency responses.
- (b) BR must not unfairly or unreasonably discriminate against a Person Seeking Access or Operator 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 an Associate of BR.
- (c) The mechanisms for ensuring BR's duty of fairness include:
 - (i) the process under the Code for determining the fairness of prices negotiated under provisions of Section 21(1) of the Code (where applicable); and
 - (ii) the provisions of BR's standard Access Agreements.

The 'Access Segregation Awareness Training Session' will include a section on BR's duty of fairness. The Confidentiality and Compliance Agreement requires the signatory

to understand and comply with specific obligations under the Act, including BR's duty of fairness.

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 Access related protocols which are also aimed at facilitating a duty of fairness including:

- the Train Management Guidelines; and
- the Train Path Policy.

BR will also inform Persons Seeking Access at the onset of negotiations of their rights to confidentiality.

If negotiations have commenced outside the Code and a Person Seeking Access subsequently makes an access application under the Code, BR and the Person Seeking Access will agree on what information previously supplied by the Person Seeking Access is subject to the confidentiality provisions of these Segregation Arrangements.

3.5 Separation of Accounts and Records

(Ref. Section 34 - Act)

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

Details of information associated with accounts are handled directly and only by authorised BR staff and authorised BR contractors.

4. ACCESS SEGREGATION ARRANGEMENTS COMPLIANCE PLAN

4.1 General

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

- verification of obligations under the Act and Code;
- identification and acknowledgement of breaches of the Segregation Arrangements; and
- reporting of identified breaches of the Segregation Arrangements to the Regulator.

Stakeholders, including Persons Seeking Access or Operators, may submit complaints regarding BR's compliance with the Segregation Arrangements directly to the Regulator.

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

BR is committed to maintaining confidentiality of information as detailed in Section 3.2 of this 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 breach and whether the Confidential Information has been disclosed either advertently or inadvertently.

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

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

4.3 Conflicts of Interest Compliance

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

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.

4.4 Duty of Fairness and Non-Discrimination Compliance

Breaches of section 6 of the Segregation Arrangements may occur when:

- Application for Access

Subject to section 6.3 of the Segregation Arrangements, a Person Seeking Access is not provided with a fair response to a request under section 7 of the Code or a proposal under section 8 of the Code.

Fairness relates to preferential consideration or treatment provided to another Proponent or Operator in the form of Access provision, Access Charges or demands on required resources, processes or standards with respect to operations or rollingstock in circumstances where such treatment is not permitted.

- Access Negotiation

A Proponent does not receive a 'fair' negotiation process in comparison with another Proponent in terms of timing of responses, Access Charges, Access provision or required resources, processes, staffing levels and standards.

- Managing the operation of Access Provision

An Operator is unfairly or unreasonably discriminated against with respect to allocation of Train paths and the management of Train control including communication processes.

- Services related to Access

An Operator is unfairly or unreasonably discriminated against with respect to the provision of services related to Access including: liaison, correspondence, Confidential Information, invoice information, treatment of priority requests and responses to 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 Appendix may occur when:

- Individual train information, consists, kms, tonnes or rates for an Operator are supplied to another Operator either advertently or inadvertently.

- Individual train information or invoicing, costing, pricing or processes in respect of an Operator are worked on, prepared or reported on by unauthorised personnel or by persons outside BR and in particular by employees of another Operator.
- 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 Appendix may occur when:

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

4.7 Corrective Action Resulting from Breaches

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

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 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 Segregation Arrangements as described in Section 3 of this Appendix, which may actually, or potentially, adversely impact a Proponent or an Operator.

Should the Responsible Manager determine that the complaint has identified a breach of the Segregation Arrangements then the following actions will be initiated:

- (a) The chief executive officer of BR shall be advised of the breach as soon as practicable.
- (b) Notice of the breach shall be submitted to the Regulator within 5 business days 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 causes and reasons for the breach including whether there was a process or technology failure.

- (d) An investigation report shall be submitted to the 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 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 if an employee of BR has breached the Segregation 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) 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 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 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:

- (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 of the Segregation Arrangements.

The signing of a Confidentiality and Compliance Agreement commits the signatory to protect Confidential Information and comply with the relevant obligations under the Act and Code. The signing of the Confidentiality and Compliance Agreement confirms that the signatory understands the relevant obligations under the Act and Code.

If a person has breached the requirements of the Segregation Arrangements it shall be mandatory for that person to repeat the completion of the Access Segregation Awareness Training Session and subsequently sign a new Confidentiality and Compliance Agreement 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 shall maintain a register of all people have breached the Segregation Arrangements and follow-up action taken, including training and re-signing a Confidentiality and Compliance Agreement.

APPENDIX B – CONFIDENTIALITY AND COMPLIANCE AGREEMENT

CONFIDENTIALITY and COMPLIANCE AGREEMENT for Brookfield Rail Segregation Arrangements

1. PURPOSE

As required by the *Railways (Access) Act 1998* (WA) (**Act**), this 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 deed (**signatory**) must comply with the provisions of the Act in carrying out the signatory's 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 agrees to comply with the following obligations of this deed with respect to Confidential Information.
- (b) For the purposes of this deed, 'Confidential Information' means information that has not been made public and that:
 - (i) is by its nature confidential;
 - (ii) was specified to be confidential by the person who supplied it; or
 - (iii) is known by the person using or disclosing it to be confidential,
- (c) For the purposes of this deed 'Confidential Information' includes information or data contained in any communication or record, whether written, electronic or oral.
- (d) For the purposes of this deed, the term 'access related functions' has the meaning ascribed to that term in the Brookfield Rail Segregation Arrangements.
- (e) In consideration of Brookfield Rail:
 - (i) disclosing Confidential Information to the signatory; or
 - (ii) retaining or agreeing to retain that signatory to perform functions for Brookfield Rail,the signatory must:
 - (iii) keep strictly confidential the Confidential Information; and
 - (iv) 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 Brookfield Rail or subsequent thereto, except:

- (A) to an employee, officer or contractor of, or consultant or adviser to, Brookfield Rail in the proper performance of an access related function by the signatory; or
 - (B) to the extent required by 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(e)(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) The signatory must not directly or indirectly at any time use or permit the use of any of the Confidential Information:
 - (i) for his or her own advantage or gain;
 - (ii) for the benefit or gain of any third party (whether associated with the signatory or not);
 - (iii) in any manner which may cause injury to any person or loss to Brookfield Rail or any person to whom Brookfield Rail provides access, or access related, services; or
 - (iv) in any manner which may cause Brookfield Rail to breach the Act, the *Railways (Access) Code 2000 (WA) (Code)*, Brookfield Rail's Segregation Arrangements or any regulation, determination, ruling or requirement pursuant to the Act or Code.
- (h) 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) The signatory must immediately upon demand, deliver up to 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 Confidential Information (including all copies, extracts, abstracts and analyses thereof) which is in the possession, or under the control of, the signatory.
- (j) The signatory must immediately disclose to Brookfield Rail, in writing, any breach of this deed of which it becomes aware.

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) that in carrying out duties and responsibilities related to access related functions I must not breach the requirements and obligations specified in the Act or the Code, Brookfield Rail's Segregation Arrangements or any regulation or determination pursuant to the Act or Code.
- (b) I undertake to comply with the provisions of this deed and not disclose use or permit the use of Confidential Information other than in accordance with this deed.

Signed as a deed poll:

PERSON POSITION

LOCATION

SIGNATURE

WITNESS

DATE