



Train Path Policy

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1. Introduction

1.1 Background

- (a) Roy Hill Infrastructure Pty Ltd (**RHI**) owns and operates the RHI Railway from Roy Hill Mine to Port Hedland in the Pilbara region in Western Australia. RHI proposes to enter into agreements with various third parties (**Operators**) under which RHI will agree to provide Service Entitlements for Operators over the RHI Railway.
- (b) The RHI Railway is subject to the *Railways (Access) Code 2000* (**Code**). The Code requires the railway owner to prepare and submit a statement of policy to the Regulator for approval in relation to:
 - (i) the allocation of Train Paths; and
 - (ii) the provision of access to Train Paths that have ceased to be used.

The statement of policy is referred to as the Train Path Policy (**TPP**).

1.2 Purpose of Train Path Policy

The objective of the TPP is to provide a framework to apply to the allocation and management of network Capacity to:

- (a) ensure that RHI's contractual obligations to any person using RHI's Railway are fulfilled;
- (b) maximize the efficient utilisation of RHI's Railway;
- (c) ensure that capacity on the RHI Railway is allocated and managed in a way which does not unfairly discriminate between the proposed Rail Operations of the Operator and the Rail Operations of RHI, or an associate of RHI; and
- (d) provide for the safe and reliable use of RHI's Railway.

1.3 Relationship between TPP and Train Management Guidelines (TMG)

The TPP and the TMG are closely related. There are three key aspects to the allocation and management of Capacity:

- (a) the initial assessment and allocation of Capacity, resulting in the specification of a Service Entitlement for each Operator, which will be governed by the Operator's Access Agreement. The principles governing this assessment and allocation are contained in the TPP. This includes any permanent changes to the Service Entitlements that are subsequently made.
- (b) the short term scheduling of Train Paths to fulfil each Operator's Service Entitlement. This is addressed in the TMG.
- (c) the daily operation of Services in real time, which is also addressed in the TMG.

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The main functions of the TPP will therefore be to provide a framework governing:

- (d) the initial assessment and allocation of Capacity;
- (e) the management of Capacity, including:
 - (i) permanent variations to Service Entitlements;
 - (ii) resumptions of Service Entitlements; and
 - (iii) review of Service Entitlements.

1.4 Application

This TPP will apply to all Operators with whom RHI has an Access Agreement under the Code (including any third party engaged by the Operator as its agent or contractor to perform obligations under the Access Agreement).

2 Allocation of Capacity

2.1 Specification of Capacity

Each Operator's Access Rights will be specified in terms of a Service Entitlement. This includes:

- (a) for Timetabled Traffic, the Train Paths that are allocated to that traffic; and
- (b) for Cyclic Traffic, the number of Train Paths that will be allocated to that Operator within a particular period of time in accordance with the Operator's Service Entitlement.

Each Operator's Service Entitlement will be documented in the Master Train Plan (refer to clause 2.1 of the TMG).

2.2 Analysis of Capacity

(a) Master Train Plan

RHI will maintain a Master Train Plan for those routes under its control that are subject to the Code.

(b) Access Proposals

In lodging an Access Proposal, Proponents are encouraged to review the Code including sections 7, 8 and 9. It is possible to seek Access Rights by negotiation with RHI outside the provisions of the Code.

(c) Capacity Analysis

When RHI receives an Access Proposal from a Proponent, RHI will undertake a Capacity Analysis. The purpose of this Capacity Analysis is to determine whether there is sufficient Available Capacity to meet the requirements of the Proponent, and if not, the extent to which Capacity enhancements are likely to be required.

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In carrying out its Capacity Analysis, RHI will take account of the following considerations:

- (i) the need to undertake, where appropriate modelling of the effect that extra trains would have on the operation of RHI's Railway;
- (ii) the need for the Capacity Analysis process to be transparent to the Proponent and for RHI to maintain dialogue with the Proponent during this process, including in relation to any information provided by the Proponent to assist this process pursuant to section 15 of the Code; and
- (iii) in determining whether any RHI Railway expansions or Capacity enhancements are necessary, or the extent of any necessary RHI Railway expansions or Capacity enhancements, RHI must be satisfied that any extra Train Paths proposed by the Proponent (whether in the form of Cyclic Traffic or Timetabled Traffic) will not affect the utilisation or proposed utilisation (including any operational reserve required to ensure that the utilisation or proposed utilisation is achieved) of the Capacity of the RHI Railway by RHI and its related entities, or by other users of the RHI Railway and that portion of Committed Capacity already taken up by Operators, on the RHI Railway.

Where RHI considers that there are major impediments to providing sufficient Capacity to meet the request, and that Capacity enhancements might be necessary that would have a significant bearing on the costs faced by the Proponent, then the Capacity Analysis may need to be done in more detail which may require more time for RHI to be able to respond to the request, provided the total time does not exceed the relevant timeframe prescribed under the appropriate section of the Code.

Pursuant to section 7 of the Code, RHI will on request provide the Proponent with the information required under the section.

The process for allocation of Train Paths as part of the negotiation process for Access will be:

- (iv) the Operator will request the Train Path;
- (v) RHI will refer to the Master Train Plan to:
 - (A) determine if the Train Paths are available;
 - (B) if possible, seek changes to or the deletion of Train Paths allocated to other Operators to create the requested Train Paths;
 - (C) advise the Operator the Train Paths as requested are not available and suggest alternatives that may be available; and
- (vi) at all times maintain dialogue with the Operator to ensure all alternatives are explored.

The finalisation of the Capacity Analysis will enable the finalisation of the resultant Service Entitlement, initial timetable (if relevant), Charges and associated funding arrangements.

(d) Capacity Allocation

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Where a request for a Train Path or Train Paths or a request for an additional Train Path may preclude other entities from gaining access to that infrastructure the Train Path(s) will not be granted without the approval of the ERA in accordance with section 10 of the Code. If the ERA grants approval then RHI will commence negotiations.

RHI will apply the following guidelines for requests for new Train Paths either prior to or after commencement of an Access Agreement.

Otherwise (and subject to section 10 of the Code) Train Paths will be allocated on a first come first served basis.

If two Operators request the same available Train Path and it is not possible to satisfy both requests by using alternative but similar Train Paths, the available Train Path will be provided to the Operator who first requested the Train Path and can establish that it has a requirement for the Train Path.

Whether a requirement exists will be determined on the basis of the criteria set out below.

RHI will negotiate to provide new Train Paths where the Operator meets the following criteria:

- (i) the Operator can demonstrate an intention to enter into arrangements for the operation of Train Services, to the satisfaction of RHI; or
- (ii) the Operator provides details of anticipated increased demand because of:
 - (A) an upgrade or expansion of production capacity with confirmation that it will progress (eg funding approved, public announcement etc); or
 - (B) market growth based on trend data; or
- (iii) the Operator can demonstrate a committed new project with agreed funding.

For the purposes of such negotiations, RHI will effectively reserve an unused Train Path to the Operator for a minimum of 2 months. RHI reserves the right to terminate negotiations with that Operator after that period of time.

RHI recognises its obligations under the Code to ensure that it does not unfairly discriminate between one Proponent and another when making a decision, in accordance with the requirements of section 16 of the Code.

In the event that a Proponent believes that RHI has not complied with the TPP or the provisions of the Code in relation to the allocation of Access Rights, they may have recourse to a dispute resolution mechanism under the Access Agreement. If no Access Agreement is yet in place, a Proponent may seek to have the matter arbitrated as a dispute in accordance with section 26(1) of the Code.

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3 Management of Capacity

3.1 Permanent Variation to Train Paths

- (a) The following process applies where consideration is being given to the permanent variation of an existing Service Entitlement of an Operator that does not change the overall number of Train Paths allocated to that Operator under its Service Entitlement. Short term or temporary variations to Train Paths are managed in accordance with the TMG.
- (b) Requests for additional access rights will be evaluated in accordance with section 3.3. Changes that would result in a reduction in an Operator’s Service Entitlements will be evaluated in accordance with section 3.2.

3.2 Permanent Variation to Train Path requested by RHI

- (a) A Service Entitlement may be varied for the remaining term of an Access Agreement (or for such other duration as may be agreed) if:
 - (i) RHI sends a notice to the Operator stating:
 - (A) that RHI wishes to vary the use by the Operator of the scheduled Train Path;
 - (B) the length of time such variations will be in force;
 - (C) the reason or reasons for RHI’s proposal; and
 - (ii) the Operator consents to RHI’s proposed variation, such consent only to be withheld upon reasonable grounds (save that the Operator cannot withhold in the case of variations required by reason of RHI’s obligations in relation to the safety of RHI’s Railway).
- (b) Reasonable grounds in this context includes:
 - (i) the Train Path proposed not being available because it is already allocated to another Operator in accordance with the TPP; and
 - (ii) because it cannot be operated safely or effectively.
- (c) RHI must give not less than thirty days’ notice of a variation request. The Operator must provide its response to this notice within 28 days of such notice being received by it. If the Operator’s response is to refuse consent, it must within such time also provide full reasons in writing to RHI.

3.3 Permanent Variation to Train Path requested by Operator

- (a) An Operator seeking a variation to an existing Train Path must do so in accordance with the provisions of the Access Agreement and the information supplied by the Operator should specify:
 - (i) the route for which the Train Path is requested;

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- (ii) the times when the Train Path is required; and
 - (iii) the nature of the Service which will use the Train Path.
- (b) If RHI is unable to comply with a request from an Operator to vary a Train Path RHI will, at the request of the Operator, provide written reasons as to why it is not available.
- (c) RHI will, in seeking to accommodate a request for a varied or additional Train Path from an Operator, undertake to negotiate with other Operators seeking their agreement to amend their Train Paths which will allow RHI to accommodate the request for an additional Train Path. However as a general principle, once an Operator is given a Train Path and the Operator is subsequently meeting its obligations and requirements under the Code and the Access Agreement, that Train Path would not be permanently varied without the consent of both parties.

3.4 Identification of an underutilised Train Path

- (a) Access Agreements will include clauses which provide for the implementation of sections 3.4(b) to 3.4(c) of this Train Path Policy.
- (b) In general, Access Agreements will entitle Operators to use a Train Path on a regular and recurring basis. If an Operator has failed to utilise such a Train Path as prescribed in an Access Agreement that Train Path may be classified as underutilised.
- (c) The process for identifying and confirming whether a Train Path is underutilised is as follows:
 - (i) RHI will monitor the Train Path over a three month period (**Monitoring Period**);
 - (ii) If the Train Path is not utilised as prescribed in the Access Agreement at any time during the Monitoring Period (provided that the failure to utilise the Train Path is not as a consequence of a Force Majeure event or RHI not making the Train Path available) RHI may issue the Operator with a written notice that this Train Path has been identified as underutilised;
 - (iii) If the Operator fails to utilise the Train Path as prescribed in the Access Agreement more than 6 times in aggregate in a six month period from the date of the notice (**Utilisation Period**), RHI will issue the Operator with a written notice confirming the Train Path as underutilised at the end of that period (provided that the failure to utilise the Train Path is not as a consequence of a Force Majeure event or RHI not making the Train Path available or temporary changes or variations to the Train Paths agreed to by RHI); and
 - (iv) If the failure by the Operator to utilise a Train Path during the Monitoring Period or the Utilisation Period, as the case may be, is the consequence of a Force Majeure event or of RHI not making the Train Path available, or temporary changes or variations to the Train Paths have been agreed by RHI then the Monitoring Period or the Utilisation Period, as the case may be, will be extended by such period as is required for RHI to make available to the Operator the number of Train Paths that were not utilised for those reasons.

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3.5 Consequences of a confirmed underutilised Train Path

- (a) Once a Train Path has been confirmed as being underutilised and the relevant Operator is notified as such RHI may withdraw the contractual entitlement of the Operator to utilise that Train Path.
- (b) Prior to RHI withdrawing the contractual entitlement of the Operator to utilise the Train Path RHI will consult with the Operator and provide the Operator with an opportunity to:
 - (i) provide any relevant evidence to RHI in relation to the underutilisation; or
 - (ii) demonstrate to RHI's reasonable satisfaction a bona fide future requirement for that Train Path.

3.6 Removal of Service Entitlement due to Transfer of Contract Between Operators

- (a) If certain Service Entitlements are currently allocated under an Access Agreement to an Operator and that Operator loses part or all of its haulage contracts for which the Service Entitlements are allocated, RHI will negotiate with the Operator to reach agreement on the Service Entitlements to be withdrawn from the Operator.
- (b) In the case of such an agreement not being reached, RHI will commence the process under Part 5 for the withdrawal of the Service Entitlement due to under-utilisation. Where the process involving the withdrawal of a Service Entitlement is initiated by RHI, an Operator who has lost part of its tonnage still has the opportunity to retain its Service Entitlements if it can satisfy RHI of a sustained requirement for that Capacity in accordance with Part 5.

3.7 Review of Service Entitlements

- (a) RHI may, at its discretion, by written notice given to the Operator cause all or part of its Service Entitlements to be reviewed in a bona fide manner by the parties. This will be done by comparing identified Scheduled Train Paths with actual performance during the preceding three months of the Trains actually using or purporting to operate the reviewable Service Entitlement. In the case of Cyclic Traffic, RHI and the Operator will agree the basis on which performance will be reviewed if a basis for such an assessment is not set out in the Access Agreement.
- (b) If such a review of the three month history shows the actual use to be different (in a material respect) to the proposed or anticipated use of the Train Path, the parties will negotiate to amend the Service Entitlement so that it reflects , as closely as reasonably practicable, the three month history. In this context "differs in a material respect" means, for a Train Path, if a Train owned by the Operator fails regularly to:
 - (i) be ready for entry onto RHI's Railway when expected; or
 - (ii) when entering onto RHI's Railway, fails to complete its journey when expected.

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- (c) The effect of any Force Majeure event, the failure of RHI to make the RHI Railway available, or mechanical failure of the Operator’s equipment will not be included in any test of performance. Where RHI and the Operator have agreed key performance indicators under the Access Agreement, they will be taken into account in any review.
- (d) Nothing compels RHI to revise the Service Entitlement of an Operator if:
 - (i) it would compromise the Service Entitlements of any other Operator in accordance with their Access Agreement; or
 - (ii) to do so would materially adversely impact on RHI’s ability or opportunity to efficiently and safely manage the RHI Railway.
- (e) Nothing compels an Operator to accept a proposal to revise its Service Entitlement if the contractual obligations owed by that Operator to any person (including RHI) would prevent it from doing so, unless the regular failure of the Operator’s Service compromises the Service Entitlement of another Operator in accordance with its Access Agreement.
- (f) If another Operator’s Service Entitlement is being affected:
 - (i) RHI will use its reasonable endeavours to renegotiate the affected Service Entitlement of the other affected Operator however that Operator is under no obligation to agree to such variation, recognising that as a general principle once an Operator is allocated a Service Entitlement and the Operator is subsequently meeting its obligations and requirements under the Code and its Access Agreement, that Service Entitlement would not be permanently varied without the consent of both parties; and
 - (ii) If the affected Service Entitlement cannot be reviewed in accordance with this Part 3.7, the Operator of the non-performing Service Entitlements will use its best endeavours to renegotiate its contractual obligations that would otherwise prevent it from accepting RHI’s proposed revisions.

3.8 Cancellation of Services using Train Paths

- (a) RHI will adopt the following policy in granting an Operator the right to cancel Train Paths without penalty and the specific provisions of the policy agreed between RHI and the Operator will be contained in the relevant Access Agreement.
- (b) An Operator may cancel an individual Train Path under any of the following circumstances (but only if the occurrence of these circumstances is beyond the reasonable control of the Operator):
 - (i) there are mechanical difficulties with the Rolling Stock used or operated by the Operator;
 - (ii) there is a failure of any part of the Operator’s equipment used or to be used in connection with a Service;

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- (iii) repair, maintenance or upgrading of RHI's Railway is being carried out or there is some other event which materially affects the Operator's use of all or any part of RHI's Railway (including derailment, collision, or late running trains); or
 - (iv) the Operator is unable to load Trains because of a lack of product at terminals or is unable to unload product at terminals or ports because of insufficient storage space or because of mechanical difficulties with the loading or unloading equipment at terminals or ports.
- (c) The Operator must give RHI as much notice of cancellation as is possible in the relevant circumstances.

4 Other

4.1 Non Discrimination

RHI will not discriminate between Operators in the application of this TPP and the application of RHI's Railway rules.

4.2 Dispute Resolution

Any dispute arising in relation to any aspect of these guidelines will be managed in accordance with the Access Agreement. Part 3 of the Code provides for arbitration of Access disputes in certain circumstances in relation to the provisions to be contained in a proposed Access Agreement. The circumstances are set out in section 25(2) of the Code.

Once an Access Agreement has been entered into disputes will be resolved by a three-stage process as follows:

- (a) first, by negotiation of the dispute between the parties with a seven day time limit and using reasonable endeavours;
- (b) secondly, by mediation between the equivalent Chief Executive Officers and after 14 days if no agreement is reached by expert mediation; and
- (c) thirdly, by arbitration in accordance with the *Commercial Arbitration Act 1985*.

If no Access Agreement is yet in place, a Proponent seeking access under the Code may seek to have the matter arbitrated as a dispute in accordance with section 26 (1) of the Code.

4.3 Rights of an Operator to Sub licence a Train Path

An Operator may sell the rights to use a Train Path to another Operator in accordance with the provisions set out in Annexure A.

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An Operator may assign the rights to entitlements under an Access Agreement in accordance with the assignment provisions of an Access Agreement.

4.4 Consistency between an Access Agreement and the TPP

RHI will ensure where possible that those sections of an Access Agreement which relate to requirements set out in the TPP documents are referenced to the relevant clauses in these documents to ensure consistency is maintained between the Access Agreement and these documents.

4.5 Compliance and Review

The Train Path Policy may be amended or replaced by RHI with the approval of the ERA.

Stakeholders have the ability to express any concern to the ERA which may arise at any time and the ERA will investigate such claims.

The ERA has the power under the Code to amend the Train Path Policy at any time and Proponents and Operators can at any time request the ERA to consider amendments.

5 Definitions and Interpretation

5.1 Access Agreement and Train Path Policy interpretation rules apply

- (a) Unless this document expressly states otherwise definitions and rules of interpretation in an Access Agreement or other third party contract which refers to this Train Path Policy apply also to the interpretation of this document in respect of the Operator or other third party as the case may be.
- (b) Unless indicated otherwise references to sections are to sections of this Train Path Policy.

5.2 Definitions

In this Train Path Policy unless the contrary intention is apparent:

72 Hour Plan	is the plan prepared by RHI pursuant to section 2.2(c) of the TMG.
Access	means: <ul style="list-style-type: none">(a) the use of RHI's Railway;(b) where applicable, includes the exercise of other rights of the kind described in section 3A(1) of the Act.
Access Agreement	means an agreement in writing under the Code between RHI and an entity for access to the RHI Railway by that entity.
Access Proposal	means a proposal made in writing under the Code for Access.

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Access Rights	means the entitlement of an Operator to Access in accordance with a specified Service Entitlement.
Available Capacity	means Capacity that is not Committed Capacity.
Capacity	<p>In relation to any Route Section of RHI’s Railway, means the number of Rail Operations that can be accommodated on the that Route Section during a particular time after providing for RHI’s reasonable requirements for the exclusive utilisation of the RHI Railway for the purposes of performing activities associated with the repair or enhancement of the RH railway pursuant to the requirements of section 4 of the Train Management Guidelines and having regard to:</p> <ul style="list-style-type: none"> (a) the characteristics of the Route Section; (b) the length of the Rolling Stock comprising a Train that can be operated on the Route Section and the speed at which it can be operated; (c) the requirements of the railway owner’s safety standards under the <i>Rail Safety National Law (WA) Act 2015</i> or any written law; and (d) the technical requirements for the relevant Rolling Stock.
Capacity Analysis	means an assessment of the extent to which a specified Route Section of RHI’s Railway has Available Capacity and whether that Available Capacity is sufficient for the proposed Access Rights and if the Available Capacity is not sufficient for the proposed Access Rights an assessment of RHI’s Railway expansion or other Capacity enhancements required to meet those proposed Access Rights.
Charges	means the price paid by an Operator for Access under an Access Agreement.
Committed Capacity	<p>means that portion of the Capacity that is utilised or proposed to be utilised (including any operational reserve required to ensure that the utilisation or proposed utilisation is achieved):</p> <ul style="list-style-type: none"> (a) by RHI and its related entities, and by other users of the RHI Railway who have an agreement with RHI outside of the Code; and (b) to meet the Service Entitlements of Operators.
Cyclic Traffic	means traffic whose Service Entitlements are defined in terms of a number of Services within a particular period of time, for example a year, month or week, subject to a range of

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	<p>constraints which may include:</p> <ul style="list-style-type: none"> (a) specified days of operation and times at the origin and/or destination; (b) specified arrival/departure times at intermediate locations, with an allowable variation around these specified times for the scheduling of the Train Service; (c) maximum time period between Train Services; (d) minimum time period between Train Services; (e) average below rail transit time; (f) the agreed threshold for on-time running of the Train Services; (g) regularity of timetable reviews and the applicable review process; and (h) allowable modifications of timetable eg cancellation or deferral of Services.
<p>Economic Regulation Authority (ERA)</p>	<p>means the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003 (WA)</i>.</p>
<p>Force Majeure</p>	<p>means an event or circumstance or combination of events or circumstances not reasonably within the control of a Party and which, by the exercise of due diligence and care consistent with GRIP, the Party is not reasonably able to prevent or overcome including (subject to having satisfied the foregoing requirements):</p> <ul style="list-style-type: none"> (a) acts of God, epidemics, cyclones, tidal waves, landslides, lightning, earthquakes, floods, washouts, storms, fire or extreme weather conditions; or (b) strikes, lockouts, work bans, boycotts, barricades, picketing or industrial disturbances; or (c) acts of public enemy, national emergencies, war declared or undeclared, terrorism, sabotage, blockade, revolution, riots, insurrections, civil disturbances, radioactive contamination or hostile action; or (d) explosions, breakages, mechanical and electrical breakdowns, failures of equipment, derailments,

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	<p>collapses of gantries, loaders or conveyors, accident to machinery or lines or pipes; or</p> <p>(e) actions or inactions by, or orders, judgments or rulings, injunctions, decisions of enforcement actions of any State or Federal court; or</p> <p>(f) actions or inactions of government or other authorities whether domestic or foreign including denials, refusals or failures to grant or renew, or cancellation or withdrawal of, any applicable authorisation, expropriation, confiscation, resumption or restraint and changes to, or removals or modifications of any exemption from, laws, rules and regulations; or</p> <p>(g) denial of access to the RHI Railway by any government agency, railway track closure or blockage; or</p> <p>(h) a failure or malfunction of any software or goods supplied or used by RHI in providing Service Entitlements or any ancillary services under the applicable Access Agreement.</p>
<p>GRIP or Good Rail Industry Practice</p>	<p>means:</p> <p>(a) the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise in comparable circumstances, if engaged in providing services in the Australian railways industry for carriage of mineral ore, and complying with its contractual obligations and all applicable laws, authorisations, standards, industry codes and guidelines (including those governing reliability, safety and environmental protection); or</p> <p>(b) to the extent the standard referred to in paragraph (a) of this definition is inapplicable, for example because the expression is being applied in a different industry, a comparable standard.</p>
<p>Master Train Plan</p>	<p>means a document prepared and maintained by RHI that will register:</p> <p>(a) the Service Entitlements of each Operator on RHI's railway including:</p> <p>(i) for Timetabled Traffic, the Train Paths that are</p>

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	<p>allocated to that traffic;</p> <p>(ii) for Cyclic Traffic, the number of Train Paths that will be allocated to that Operator per quarter or week or each 72 hours in accordance with the Operator's Service Entitlement;</p> <p>(b) the Capacity required to provide each Operator's Service Entitlements; and</p> <p>(c) the periods of time allocated for Planned Possessions.</p> <p>The Master Train Plan provides the basis for preparation of the Weekly and the 72 Hour Train Plans.</p>
Monitoring Period	is defined in section 3.4(c)(i).
Operator	has the same meaning as in clause 3 of the Code.
Planned Possession	means the temporary closure, occupation, use or other removal from operation by RHI of part of the RHI Railway for the purposes of carrying out maintenance, enhancement or other work on or near the RHI Railway, which may affect the safety of any person or property where such closure or occupation is entered into the Master Train Plan and does or is reasonably likely to disrupt or otherwise adversely impact on the provision of Service Entitlements.
Proponent	means an entity who has submitted a proposal for Access under the Code.
Rail Operations	means the operation of Rolling Stock on a part of RHI's Railway.
RHI	means Roy Hill Infrastructure Pty Ltd ABN 60 130 249 633
RHI Railway	means the railway owned and operated by RHI from the Roy Hill minesite to the Port of Port Hedland, excluding <i>railway infrastructure</i> which is not covered under the definition in section 3 of the <i>Railways (Access) Act 1998</i> .
Rolling Stock	means a locomotive, carriage, wagon or other vehicle for use on a railway
Route Section	means the section of the RHI Railway into which the railway is divided for management and costing purposes.
Scheduled Train Path	means an entitlement of an Operator under its Access Agreement, as identified in its Service Entitlement to use a specified portion of RHI's Railway at the times and between the locations specified in the relevant Master Train Plan, so as to allow the passage of one Train.

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Service	means a Train run by the Operator using RHI’s Railway by which the Operator provides railway freight services.
Service Entitlement	means an Operator’s entitlement under an Access Agreement to operate Cyclic Traffic or Timetabled Traffic services in accordance with this Train Path Policy. Service Entitlements to operate Cyclic Traffic will consist of a number of services within a particular period of time, as specified in the Access Agreement and will be defined in terms of arrival and departure times in accordance with the Weekly Train Plan and the 72 Hour Plan. Service Entitlements to operate Timetabled Traffic will consist of specified arrival and departure times on a particular day and/or week during a year, as specified in the Access Agreement and will be included in the Weekly Train Plan and the 72 Hour Plan. A Service Entitlement may specify constraints or operational requirements to be observed by the Operator.
Timetabled Traffic	means traffic whose Service Entitlements are defined in terms of specified Train Paths, including arrival and departure times, on a particular day and/or week during a year, for the duration of the Access Agreement, subject to a range of constraints which may include: <ul style="list-style-type: none"> (a) the agreed threshold of on-time running of Train Services; (b) regularity of timetable reviews and the applicable review process; and (c) allowable modifications of timetable eg cancellation or deferral of services.
Train	means one or more units of Rolling Stock coupled together, at least one of which is a locomotive or other self propelled unit.
Train Management Guidelines or TMG	means the guidelines approved or determined by the ERA in accordance with clause 43 of the Code, which are to be applied and followed by RHI in the performance of its functions in relation to a part of the railway network and associated infrastructure.
Train Path	means an entitlement granted to an Operator by RHI to access the RHI Railway between entry and exit points on the RHI Railway.
Utilisation Period	is defined in section 3.4(c)(iii).
Weekly Train Plan	is the plan prepared by RHI pursuant to section 2.2(b) of the TMG.

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APPENDIX A

TRADING IN TRAIN PATHS THROUGH SUBLICENCES

1 Trading must be in accordance with this Appendix

The Operator may not trade its rights to any Train Path unless the Operator does so in accordance with the provisions of this Appendix A.

2 Deemed Sub Licence

If the Operator trades its rights to any Train Path, the Operator is taken to have granted a sub-licence to use the relevant Train Path or Train Paths to a third party operator and:

- (a) the trading of the Train Path with a third party operator does not in any way release the Operator from, or limit any liability of the Operator in respect of, its obligations in relation to the Train Path under the Operator's Access Agreement; and
- (b) without limitation, the Operator indemnifies RHI from and against all costs and expenses, losses, damage and any other liability suffered or incurred by RHI as a result of the act or omission of the third party operator or any other person relating to or in connection with the relevant Train Path or Train Paths or the use of RHI's Railway by the third party operator or any other person, whether or not the act or omission is negligent or a breach of the Access Agreement.

3 Trading in all Train Paths Prohibited

The Operator must not trade all of its Train Paths but must at all times retain at least one Train Path for its own use.

4 Prohibition on Trading Used Train Paths Subject to an Intention to Resume Capacity Notice

A Train Path on which RHI has issued a notice under Part 3.4 cannot be on sold during the subsequent six month monitoring period. On-selling is permitted following this 6 month period provided the Train Path has passed the underutilisation test set out under Part 3.4.

5 Requirements for Trading

If the Operator wishes to trade one or more of its Train Paths, the Operator must arrange for a written agreement to be executed by the third party operator setting out the terms and conditions of the trade. The Trade Agreement must include obligations of the third party operator to:

- (a) be bound by and comply with the Access Agreement in relation to the relevant Train Path;
- (b) be properly accredited and provide evidence of accreditation as required by the Access Agreement;

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- (c) comply with all instructions;
- (d) indemnify the Operator against all liabilities arising as a result of the use of the relevant Train Path or Train Paths and TPP;
- (e) take out and maintain insurance in the terms of the Access Agreement; and
- (f) not further trade in the relevant Train Path or Train Paths with RHI’s prior written consent.

6 Further Terms of Trade Agreement

The Trade Agreement must also:

- (a) appoint RHI the attorney of the third party operator for the purposes of enforcing the Trade Agreement if RHI decides that it wishes to enforce the Trade Agreement against the third party operator;
- (b) contain a provision that RHI may enforce the provisions of the Trade Agreement which are for the benefit of RHI;
- (c) all recoveries by the Operator under the Trade Agreement which are in common with any matter, act or thing in respect of which RHI has suffered loss is to be held on trust for RHI and is to be applied first in satisfaction of RHI’s loss in a manner which RHI in its absolute discretion determines;
- (d) contain an acknowledgement by the Operator and the third party operator that RHI is not liable to the Operator or the third party operator in any manner as a result of the trading of the relevant Train Path or Train Paths or as a result of anything connected with that trade and a release of RHI from any claim by any party under the Trade Agreement; and
- (e) contain any other provisions which RHI acting reasonably considers to be necessary.

7 Commencement and Operation of Trade Agreement

Any Trade Agreement entered into by the Operator with a third party operator is taken not to be capable of having effect or commencing operation unless and until:

- (a) a copy of the Trade Agreement has been submitted to RHI and RHI has approved the proposed Trade Agreement as complying with the requirements of this clause, such approval not to be unreasonably withheld; and
- (b) RHI has been given evidence that the third party operator holds the necessary accreditation.

8 Definitions

In this Appendix:

- (a) “third party operator” means any person with whom the Operator enters into an agreement of any kind for the trade of a Train Path.

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- (b) “Trade” means in relation to a Train Path, any agreement by which the Operator gives to a person who is not a party to the Access Agreement the right to use that Train Path and other grammatical forms of the word “Trade” have a corresponding meaning; and
- (c) “Trade Agreement” means any agreement for the trade of a Train Path.

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