



Train Management Guidelines

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1. INTRODUCTION

1.1 Background

WestNet Rail Pty Limited (“WestNet”), owned by Babcock and Brown Infrastructure (51%) and Babcock and Brown investment vehicles (49%) is the manager of the leases of the freight rail infrastructure network in Western Australia, previously operated by the State Government owned Westrail.

The Railways (Access) Code 2000 (“the Code”) requires certain parts of the rail network managed by WestNet to be made available for access by third party rail Operators. Schedule 1 of the Code lists the sections of the WestNet rail network covered by the Code.

The Economic Regulation Authority (ERA) was established on 1 January 2004 to oversee the economic regulation functions of rail services in Western Australia. Administration of the Rail Access Regime was previously the responsibility of the Office of the Rail Access Regulator.

1.2 Relevance of Train Management Guidelines (T.M.G.)

The Railways (Access) Code 2000 requires that WestNet prepares and submits to the ERA the T.M.G. that will apply under the Code. WestNet’s T.M.G. are a statement of principles, rules and practices which will be applied in the real time management of services. The ERA must approve or determine the T.M.G. after a period of public consultation.

This includes those applicable in circumstances where services are interrupted due to matters outside WestNet's control and there is a need to resolve competing interests of users of the Network. These principles, rules and practices (and any amendment to them) will apply in a non-discriminatory way between all users of the Network so as to maintain the order of priority of the Train Paths. These Guidelines will be an appendix to any future Access Agreement.

The Code only requires the T.M.G. to apply to access arrangements negotiated within the Code. WestNet, nevertheless, will apply the T.M.G to all Operators regardless of whether access applications are made inside or outside of the Code.

Access Agreements are entered into with the Operator but the Access Agreements explicitly provide that an Operator may engage a third party as its agent or contractor to perform the obligations of the Operator under the Access Agreement. This includes acting as an agent or contractor for the purpose of the T.M.G.

2. INFRASTRUCTURE ISSUES

Before a Service can operate on the Network there are two essential criteria the Operator must:

- (a) have an Access Agreement and have fulfilled all the conditions in that agreement especially those related to insurance and is an Accredited Operator; and
- (b) provide WestNet with the information required for a Train Manifest.

Once these conditions are satisfied the Service will be admitted to the Network and managed in accordance with the principles, rules and practices of the T.M.G.

2.1 Use of the Network in accordance with the Train Paths

WestNet will ensure that Services run according to Train Paths so that a service which enters the Network on time will exit the Network on time, subject to:

- (a) safety considerations;
- (b) matters outside the reasonable control of WestNet, which affect the ability of WestNet to provide the Train Paths;
- (c) advice from the Operator's within 15 minutes of the scheduled departure time that it will be ready for departure on time;
- (d) presentation of the Operator's Train on time; and
- (e) emergencies affecting the Services.

WestNet will use its best endeavours to accommodate a Service which is running early or late, is presented at the point of entry to the Network late or is presented at the point of entry to the Network more than 15 minutes early by providing a Train Path for that Service at WestNet's first available opportunity and in accordance with the general principles of train management in Section 3.3 of the T.M.G.

Both WestNet and the Operator will use their best endeavours to:

- (a) ensure that such Services which are running or presented late, when compared with the Train Path or Train Control Directions, recover the lost time; and
- (b) ensure that such Services which are presented more than 15 minutes early depart the Network no later than the scheduled time

WestNet may issue Instructions to the Operator and these Instructions may include but are not limited to instructions or directions:

- (a) to cease use of a Train Path by the Service and for the Service to proceed over such Train Path on the Network as WestNet nominates;
- (b) to continue use by the Service of the Network subject to such variation of the applicable Train Path or the Service or the composition or quality of Trains as WestNet nominates;
- (c) to cause the Service to proceed to a point on the Network and stand there until WestNet issues a further instruction or direction in relation to the Service; or if the Service operates outside of its Train Path, to delay or redirect the Service to

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allow access to the Network by another Operator of a train (including, if relevant, WestNet) whose service would, but for the delay or redirection of the Operator's Service, be delayed or further delayed;

- (d) to change the entry and exit time of a Train Path;
- (e) to issue notification of a temporary speed restriction on a section of track;
- (f) to cancel a Train Path;
- (g) to upgrade a Conditional Train Path to a Scheduled Train Path; and
- (h) to amend or clarify application of the WestNet's Network Rules.

In these circumstances WestNet will:

- (a) in giving any Instruction endeavour to minimise disruption to the Operator's Services;
- (b) if an Instruction which varies the Operator's Train Paths is intended by WestNet to be permanent, such permanent effect of the Instruction will not take effect until the appropriate procedures for permanent variation of a Train Path has been satisfied in accordance with Section 2.4 of the TPP; and
- (c) the duration of the temporary Train Path will be consistent with the duration of the Instruction issued; and
- (d) as soon as is reasonably practicable and in any event before an Instruction becomes effective, WestNet must give to the Operator a written copy of the Instruction if such Instruction is ordinarily given in writing by WestNet to Operators

The Operator will comply with all Instructions and will promptly inform all relevant Train crew of those Instructions and any changes to them. The Operator will also generally inform all relevant Train crew of WestNet's Network Rules and any general notices and other information notified to the Operator by WestNet and will promptly inform the Operator of any changes made by WestNet. If an Instruction is a Train Control Direction, it must be complied with immediately. Unless the Train Control Centre gives an Instruction that is a Train Control Direction, the Operator need only comply with an Instruction if it was given a reasonable time before the required time for compliance.

The Operator must comply with all Instructions in such a way as to reasonably minimise disruption to any other Operator's use of the Network. WestNet is not responsible for any delay suffered or cost incurred by the Operator in complying with a proper Instruction of WestNet, and the Operator releases WestNet from any claim arising from such compliance.

The Operator is not responsible for any delay suffered or cost incurred by WestNet in the Operator complying with a proper Instruction of WestNet, and WestNet releases the Operator from any such claim arising from such compliance.

2.2 Network Blockage

A Train failure, which fouls the Network and blocks the passage of Trains will be cleared using alternative locomotives and crews arranged by the Operator or by WestNet. The strategy adopted will minimise the time the Network will be blocked.

Operators, other than the Operator whose train has failed, must provide reasonable assistance to WestNet when necessary to facilitate the clearing of a blockage of the network caused by a failed train.

An operator is not required to provide assistance if it will incur cost and risk unless agreement is reached on how the costs and risks will be shared. Agreement on the terms and conditions for providing assistance may be negotiated within the Access Agreement.

The failed Train will be cleared from the main line to the nearest location where it does not impact on train running and the Operator will then be responsible for planning repairs and alternative Train Paths in conjunction with WestNet.

2.3 Operators recovery plan

In clearance of a failed Operator's Train from the Network, the Operator will be consulted to consider alternatives which may include:

- (a) a reduction of loading; or
- (b) continuing at reduced speed; or
- (c) arranging an alternative locomotive and continuing; or
- (d) amalgamating Trains

2.4 Operator and WestNet Consultation Protocols

In the event of WestNet becoming aware of a Network failure or potential deviation from the Train Path, whereby the predicted exit time from the network will be at variance to the scheduled exit time, the Operator will be advised, at the earliest possible time, of the magnitude of the variance and revised time of exit from the network.

The timing of this advice will be as agreed between the Operators and WestNet, and should at least take into account the magnitude of the deviation from schedule and the duration of the remaining journey on the Network.

In the event of the Operator becoming aware of a Network failure or potential deviation from schedule, the Operator shall advise WestNet at the earliest possible time of the event and the magnitude of the deviation.

To facilitate the above communications process, the Operator and WestNet shall provide for a 24 hour communications link unless otherwise agreed.

3. OPERATIONS CONFLICT RESOLUTION PROCEDURES AND PROTOCOL

3.1 Real time allocation of Train Paths

Scheduled Train Paths will have been established under Access Agreements and will be promulgated by:

- (i) issuing of Working Timetables; and
- (ii) issuing of Instructions via the Rail Access Management System where the Train Path is not permanently scheduled.

If an Operator requests an ad-hoc Train Path or an alternative Train Path the new Train Path will be issued under the authority of the Access Manager.

3.2 Resolution of Prioritisation of Train Paths

In the event of a conflict with Train Paths arising from an unhealthy Train (one which enters the network late or loses time en-route) the Train Controller shall use the matrix set out in Section 3.3.

3.3 General Principles for Train Management

The general principles for the management of trains are provided in Table 1.

The principle personnel concerned with the application of the matrix is the Access Manager and Train Controllers who manage real time application of Train Paths.

The Access Manager is responsible for compliance with the T.M.G. and training will be provided to Train Controllers in the application of the matrix.

In applying the matrix the following interpretations will be applied:

- (i) a “healthy train” is a train that entered the Network on time and there are no indications that it will not exit on time;
- (ii) an “unhealthy train” is one that has entered the Network more than 10 minutes after its scheduled entry time or loses time en-route due to a failure on the part of the Operator or the railway infrastructure and is not expected to exit on time;
- (iii) a train “running ahead” is a train that has entered the Network at least 10 minutes before its scheduled entry time or is making up time en-route and is expected to exit the Network earlier than its scheduled exit time;
- (iv) aside from the rules in the matrix no one train has priority over another except for
 - (a) trains operating on a Scheduled Train Path (passenger) where the Train Controller must recognise the fixed intervals for passenger stops en-route between exit and entry even to the extent that the Passenger service is unhealthy at point of the next designated stopping point, and

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Table 1 - General Principles for Train Management

- All** To ensure operational safety is maintained through compliance with safeworking rules, regulations and procedures.
- WesNet** To ensure the integrity of the track and other infrastructure so that the train plan be met.
- Operators** To ensure operating integrity, including train crewing, locomotives, wagons and loading so that the train plan can be met.
- WestNet** To manage the Network based on agreed entry/exit times.

		Train "A" - Current status				
		Train running "On Time"		Train running "Ahead"		Train running "Late"
		Train "A" - Objective				
		OT Exit	OT Exit	1. Lose no more time 2. Make up time 3. Hold the gain		
Train "B" - Current status	Train Running "On Time"	Train "B" - Objective	OT Exit	Scheduled Cross	"A" or "B" Rule 2	B Rule 3
	Train Running "Ahead"		OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running "Late"		1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

- Rule 1. Train "B" may be given preference on condition Train "A" will still meet OT objective. In the event that giving preference to Train "B" will cause Train "A" not to meet its OT objective, then Train "A" is given preference.
- Rule 2. Both trains must meet their OT objective.
- Rule 3. Train "A" may be given preference on condition Train "B" will still meet OT objectives. In the event that giving preference to Train "A" will cause Train "B" not to meet its OT objective, then Train "B" is given preference.
- Rule 4. Give priority to the train where performance indicates it will lose least or no more time, and even make up time and hold the gain.

Notes: The Traffic Management Decision Making Matrix is used as follows:

- [1] Train "A" and Train "B" are competing for priority in relation to traffic management decision by the train control, for example network entry, a cross or pass with another train in single line territory.
- [2] The controller compares the current "status" or performance of both trains in terms of running "On Time", "Ahead" or "Late".
- [3] The decision is given to the train and Rule indicated at the point of intersection.

- (b) where the two trains concerned are operated by the same Operator who has indicated a specific priority between the trains but only if it does not interfere with the Train Paths allocated to another Operator;
- (v) where the infrastructure layout does not permit the planned operation (such as long trains crossing passenger trains who require to stop at the passenger facility) the Train Controller will achieve the best crossing possible given the constraint; and
- (vi) where there is some constraint that means the matrix would not allow the overall on-time objective for all trains to be met the Train Controller will refer the issue to the Access Manager who will decide the course of action to be taken, taking into account the need to treat all operators fairly; the safe operation of the railway; and the on-time running objective of all trains.

3.4 Train Activities following a Major Delay

The principles WestNet will use, with respect to priority of operations resuming after a major delay in which the blockage has been cleared or the infrastructure repaired sufficiently to resume safe train operations, are:

- (i) All affected Operators will be consulted as to their positions and needs including factors such as crewing arrangements; sensitive freight; and shipping or production requirements.
- (ii) Passenger trains will be given priority if passengers are stranded en-route.
- (iii) Otherwise the trains will resume service in the order that they were scheduled to run prior to the blockage, if practical, and taking account of issues raised in (i).

3.5 Repairs, Maintenance and Upgrading of the Network

WestNet may perform repairs, maintenance or upgrading of the Network, or take possession of any part of the Network, at any time. If repairs, maintenance or upgrading of the Network, or taking possession of the Network, are reasonably likely to materially affect the Train Paths, WestNet must, prior to commencement of the works:

- (i) take all reasonable steps to minimise any disruption to the Train Paths; and
- (ii) use its best endeavours to provide an alternative Train Path but need not obtain the Operator's consent to such repairs, maintenance or upgrading, or possession of the Network. (Possession of the Network means closure of the relevant part of the Network to all traffic for the purpose of effecting repairs, maintenance or upgrading).

WestNet will at all times, consult with Operators whose Train Paths may be effected by a possession of the Network for repairs, maintenance, and will notify Operators when possession of the Network is required for emergency or Force Majeure events.

WestNet recognises its responsibilities to treat all Operators fairly in the application of its possession management and recognises the ERA's powers under Section 34A of the Act if the ERA believes WestNet's conduct would be construed as hindering or preventing access.

The policy WestNet will apply to possession management is as follows:

- (i) where the maintenance can be carried out without affecting use of Train Paths no notice is required;
- (ii) where WestNet has to take possession because of emergencies related to safety or natural events such as fire or flood WestNet will advise affected Operators as soon as practicable of
 - the circumstances,
 - the likely impact on Train Paths, and
 - the likely duration of the possession;
- (iii) where WestNet requires possession for maintenance activities for periods less than six hours it will give a minimum of 2 days notice;
- (iv) where WestNet requires possession for maintenance activities which will effect Train Paths for periods greater than six hours but less than 48 hours, it will provide a minimum of 2 weeks notice and will negotiate with the Operator(s) for temporary adjustments or changes to Train Paths to facilitate the possession;
- (v) where WestNet requires possession for either major maintenance activities extending beyond 48 hours or where an upgrading will require changes over a long period of time WestNet will give at least six months notice of the works. WestNet will also commence negotiations with affected Operators from the date of the notice to ensure alternative arrangements are made;
- (vi) any notice given under this policy will describe
 - (a) the extent and nature of the works,
 - (b) the potential effect on Train Paths, and
 - (c) what alternative arrangements are proposed;
- (vii) in the event that the time frames for the maintenance activity notified by WestNet are not achievable WestNet will
 - (a) as soon as practical notify effected Operators, and
 - (b) provide a revised and continuing estimate of the anticipated completion time of the works.

3.6 Management of Emergencies

In the event of an emergency which requires WestNet to close all or part of the Network, WestNet will notify all affected Operators as soon as practical of:

1. the nature of the incident;
2. the likely effect and duration of the effect on Train Paths; and
3. develop with the Operator(s) a recovery plan in accordance with the provisions of the relevant Access Agreement(s).

3.7 Management of daily issues related to Train Operations

Daily issues (such as the imposition of temporary speed restrictions) will be managed in accordance with;

- (a) the WestNet's Network Rules; and
- (b) the relevant Access Agreement.

(Operators are provided with the WestNet's Network Rules as part of the Access Agreement).

WestNet will at all times maintain the Network (but only in so far as the Network is relevant to the Operator's Train Paths) to the highest of:

- (a) the standard existing as at the commencement date of the Access Agreement; or
- (b) if WestNet is required to be an Accredited Owner, the minimum standard required to maintain its Accreditation as a track owner; or
- (c) any other standards as the parties may agree.

When required by the condition of the Network or any part of the Network, WestNet may (to the extent of such requirement only) give notice of speed and weight restrictions and the Operator must comply with such a notice.

4. DISPUTES AND PERFORMANCE MONITORING

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.

Those 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) firstly, negotiation of the dispute between the parties within a 7 day time limit and using reasonable endeavours;
- (b) secondly, by mediation between the equivalent Chief Executive Officers and after if no agreement has been reached 14 days by expert mediation; and
- (c) thirdly, by arbitration in accordance with the Commercial Arbitration Act 1985.

No later than 90 days after the commencement of an Access Agreement, the parties will meet for the purpose of identifying and agreeing on the means of measuring the performance of each party under the agreement. The agreed means are referred to as Key Performance Indicators.

When agreed, the Key Performance Indicators must be set out in writing signed by both parties. The parties will also agree in writing:

1. the manner in which, and the frequency with which, the Key Performance Indicators are to be monitored and recorded;
2. the consequences in relation to rights and obligations under the Access Agreement or otherwise of not meeting or of exceeding Key Performance Indicators; and
3. any other relevant arrangements relating to the use of Key Performance Indicators in connection with the Access Agreement.

When recorded in writing and signed by the parties the agreed arrangements relating to Key Performance Indicators will constitute part of an Access Agreement. The parties may in writing signed by each of them vary the terms of the Key Performance Indicators. The Key Performance Indicators are relevant to both parties and must be complied with during the access agreement unless a shorter period is specified. WestNet and the Operator will monitor the appropriateness of the Key Performance Indicators.

The parties must meet when agreed but not less than quarterly for the purpose of discussing and determining actual performance against the Key Performance Indicators. The parties will jointly determine the appropriateness of the Key Performance Indicators for the purpose of reward or penalty.

5. COMPLIANCE AND REVIEW

The ERA will review the T.M.G. in 2011 through a public consultation process. This review will commence on 1 October 2011 and WestNet will provide the ERA with its proposed revision of its T.M.G. on this date. Subsequent reviews will commence on 1 October every five years thereafter, with WestNet providing its proposed T.M.G. by this date.

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 T.M.G. at any time and Access Seekers and Operators can at any time request the ERA to consider amendments.

The ERA will monitor WestNet's compliance with the Train Management Guidelines through an audit of WestNet's obligations under its Train Management Guidelines conducted every two years. This audit will be carried out by an Independent Auditor approved by the ERA, with WestNet managing and funding the audit. The scope of the audit will be determined by the ERA.

The final audit report will be provided to the ERA. The ERA will publish this report on its web site (excluding confidential information).

The ERA can also commission special audits at any time on any T.M.G. issue where additional assurance is required.

6. ANNEXURES

6.1 Control and Management of access to Network

6.1.1 Network Management

Control of the Network and management of access to the Network subject to the Act and Code, remains at all times with WestNet.

6.1.2 WestNet's Warranty of Entitlement to Grant Access

WestNet warrants that it is entitled to grant to the Operator the rights of access to the Network as specified in an Access Agreement.

6.1.3 Network Access Provider's Obligations

WestNet will at all times during the term of an Access Agreement:

- (a) undertake the function of Train Control over the Network;
- (a) comply with the Train Management Guidelines;
- (b) safely and efficiently operate the Network so that any permitted use of the Network by the Operator is facilitated promptly and effectively in accordance with the Access Agreement;
- (c) make the Network available to enable the Operator to use the Train Paths granted by WestNet on agreed terms;
- (d) maintain and operate the Train Control centre and a communication system for the purpose of communication with the Operator and other users of the Network, and to facilitate the Operator's access to that communication system;
- (e) use its reasonable endeavours to provide the Operator with details, as soon as reasonably practicable of all operating incidents which have affected or could potentially affect the ability of any Train to retain its Train Path, or else affect its security or safety or the security and safety of the freight or passengers; and
- (f) comply with all applicable Acts of the Commonwealth and State Parliaments, subordinate legislation, municipal by-laws and other laws in any way applicable to WestNet's management and control of the Network.

6.1.4 Operators Warranty in Relation to Rolling Stock Standards

The Operator will warrant at all times during an access agreement that:

- (a) each Train operated by the Operator on the Network is at all times in a good and safe operational condition; and
- (b) all of the equipment used by the Operator on or in connection with the Network is maintained to a sufficient standard of safety and to a sufficient level of operational efficiency but in any case to standards at least as high as those set out in all relevant volumes as amended or superseded from time to time of:
 - (i) the "Railways of Australia Manual of Engineering Standards and Practices"; or
 - (ii) the draft code of practice on Rolling Stock issued or published by the Australasian Railways Association; or
 - (iii) if that draft code of practice on Rolling Stock is subsequently endorsed by the Commonwealth of Australia (including, without

limitation, any of its governmental departments or authorities) for national implementation on the Network, then such code of practice once it is so endorsed.

6.1.5 Operators Warranty in Relation to Train Crew

The Operator will warrant at the Commencement Date and at all times during an access term that each Train operated by the Operator on the Network will be operated by a Train Crew consisting of a person or persons who:

- (a) are qualified under WestNet's Network Rules and have an appropriate track access permit in accordance with the WestNet's Network Rules; and
- (b) have knowledge of the route over which the Train Crew will operate the Train in accordance with the Operator's Procedures; and
- (c) be qualified in the operation of the Rolling Stock used to operate the Train in accordance with the Operator's Procedures.

6.1.6 Operator's Obligations

The Operator must at all times:

- (a) use its best endeavours to ensure that its use of the Network complies with the Train Paths applicable to each Service;
- (b) comply with all WestNet's Train Control Directions immediately;
- (c) conduct itself in accordance with Instructions issued;
- (d) if it becomes aware that material non-compliance by a Service with the applicable Train Path (or any other Train Path which is provided) has occurred or is a reasonable possibility, notify the Train Control Centre immediately;
- (e) ensure that its use of the Network is carried out in such a way as to minimise obstruction of the Network and so that use of the Network by any other user authorised by WestNet is not prevented or delayed (other than through use of the Network in accordance with the T.M.G. or any Access Agreement or through proper compliance with an Instruction validly given);
- (f) comply with all applicable Acts of the Commonwealth and State Parliaments, subordinate legislation, municipal by-laws and other laws in any way applicable to operation of the Services or its use of the Network;
- (g) not materially change, alter, repair, deface, damage or otherwise affect any part of the Network;
- (h) provide and maintain communications equipment which is compatible with the equipment used in the Train Control Centre and use such equipment to communicate with the Train Control Centre. If WestNet proposes to change communications equipment in the Train Control Centre and the proposal will result in the Operator having to replace or upgrade its communications equipment, WestNet will give reasonable notice to and consult with, the Operator and the Operator will replace or upgrade the communications equipment to be compatible with the equipment used in the Train Control Centre;
- (i) provide to WestNet any information related to the operation of the Services (excluding commercial information) as WestNet reasonably requires to enable it to properly perform its functions and discharge its obligations to the Operator, other operators, its owner and the public;
- (j) provide to WestNet a Train Manifest in a format acceptable to WestNet for each Service not less than 15 minutes prior to that Service commencing use of the Network and provide written notice of any detail of the Train Manifest

which changes during the course of the operation of the Service over the Network;

- (k) inform WestNet as soon as reasonably practicable of any cancellation or intended cancellation by the Operator of any Service; and
- (l) provide reasonable assistance to WestNet when necessary to facilitate the clearing of a blockage of the Network caused by a failed train. An operator is not required to provide assistance if it will incur cost and risk unless agreement is reached on how the costs and risks will be shared.

6.2 Environmental and Dangerous Goods

Each party must comply with all environmental laws and with their respective environmental policies (in so far as they comply with the law), including all applicable laws and lawful policies dealing with dangerous goods.

6.2.1 Notification of Carriage of Certain Materials

Other than in the case of Trains which are wholly passenger Trains, the Operator must include in all Train Manifests such detail in relation to the identification of dangerous goods as is required by the Dangerous Goods Code and as is otherwise reasonably required by WestNet (on terms not inconsistent with the Dangerous Goods Code).

6.2.2 Notification of Incident involving Dangerous Goods

Other than in the case of Trains which are wholly passenger Trains, the Operator will provide to WestNet details, at the earliest practicable time after the Operator becomes aware, of all incidents (including non-compliance with relevant codes, regulations, bylaws or other statutory provisions) involving dangerous goods including but not limited to any spillage, leakage or container or package damage associated with the movement of any Train on the Network.

6.2.3 Notification of Environmental Condition

Where:

- (a) WestNet becomes aware that, as a result of the activities of the Operator under this Agreement, an Environmental Condition exists or has occurred and WestNet reasonably considers that action or intervention is required to prevent, mitigate or remedy that Environmental Condition; or
- (b) WestNet is given a direction by a competent authority that some action or intervention is required to prevent, mitigate or remedy an Environmental Condition resulting from the activities of the Operator under this Agreement,

then WestNet must inform the Operator of the relevant requirements and, where practicable, any steps which WestNet reasonably considers will be necessary to prevent, mitigate or remedy the situation, and the Operator must immediately, or as soon as reasonably practicable after receiving such notice, implement such requirements and steps and any other necessary action so that the Environmental Condition is no longer present or the Environmental Damage is rectified.

7. DEFINITIONS

Access Agreement	means an agreement entered into by an Operator and WestNet governing access for the Operator to run Services on the Network
Access Manager	means the person or agent appointed from time to time by WestNet to manage the function of Train Control and to manage compliance with the T.M.G.
Accredited Operator	means an Operator who is Accredited or taken to be Accredited under the Rail Safety Act 1998.
Act	means the Railways (Access) Act 1998.
Code	means the Railways (Access) Code 2000 established under the Act.
Conditional Train Path	means the entitlement of the Operator to use a Train Path on the Network which is included on the Master Control Diagram and will be available to the Operator to whom it is allocated but otherwise can be re-allocated on a temporary basis. They can be allocated because of the requirements for; (i) optional destinations; (ii) to provide reserve or surge capacity; (iii) because of known seasonal or intermittent requirements.
Dangerous Goods Code	Means the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the National Road Transport Commission (or successor body) from time to time.
Environmental Condition	means any Environmental Damage or any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Damage and which in WestNet's reasonable opinion could result in WestNet or any other person incurring any material liability or being subjected to a direction of any competent authority.
Environmental Damage	means any material injury or damage to persons, living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration.
Economic Regulation Authority (ERA)	means the Western Australian Independent Rail Access Regulator under Section 13 of the Act..
Flexible Scheduled Train Path (Freight)	means the entitlement of the Operator to use a Train Path which has a fixed entry and exit time but which can be changed at short notice providing it does not impinge on a Scheduled Train Path (Freight or Passenger)
Force Majeure	means any circumstances beyond the reasonable control of a party which occur without the negligence of that party and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, sabotage,

executive or administrative order or act of either general or particular application of any government prohibition or restriction by domestic or foreign laws, regulations or policies (other than laws specifically for that purpose passed by the Commonwealth), quarantine or customs restrictions, strike, lockout or industrial dispute, breakdown or damage to or confiscation of property but does not include breakdown or delay of any Trains or Rolling Stock operated by the Operator.

Instructions

means all instructions and directions, issued by WestNet from time to time which:

- (a) ensure, facilitate or encourage the proper, efficient, safe and lawful
 - (i) use of and access to the Network by all Network users, and
 - (ii) management of the Network by WestNet;
- (b) are consistent with the Train Management Guidelines; and
- (c) are given with a view to minimising the disruption to the Operator in a manner which is reasonable in the circumstances and taking into account the valid objectives of WestNet (as set out in paragraphs (a) and (b) of this definition of "Instructions") in issuing the instruction or direction;

but does not include instructions and directions which:

- (d) derogate from the Train Paths;
- (e) prevent the Operator from running a Service of the nature of the Services contemplated at the Commencement Date or as agreed between the parties from time to time; or
- (f) are given for the purpose only of achieving WestNet internal commercial objectives unrelated to the valid objectives of WestNet as set out in paragraphs (a) and (b) of this definition of "Instructions";

unless the instructions or directions:

- (g) are Train Control Directions properly given;
- (h) relate to safety;
- (i) are given to implement or support the Train Management Guidelines;
- (j) are necessary to prevent or to minimise the effect of a material breach of an Access Agreement; or
- (k) are otherwise authorised by an Access Agreement.

Master Control Diagram

means a diagrammatic or electronic record covering specific parts of the Network which shows:

- (iv) all Scheduled Train Paths (Freight or Passenger);
- (v) all Flexible Scheduled Train Paths (Freight);

(vi) all Conditional Train Paths; and

(vii) all Reserved Train Paths.

Network

means the track and infrastructure controlled by WestNet to which Access has or can be granted to an Operator to operate Services under an Access Agreement.

Operator

means the Operator or Operator's which have access to the WestNet Network under an Access Agreement or have made an application for Access under Section 8 of the Code.

Operator's Procedures

means the rules and practices used by an Operator for the operation and utilisation of the Rolling Stock in accordance with their accreditation under the Rail Safety Act 1998.

Rail Access Management System

means the computer system operated by WestNet for the purpose of preparing Train consists and monitoring Train progress on the Network and generally for the purpose of Train Control, including for the provision of information relating to timetables, special train notices, temporary speed restrictions and track warnings.

Reserved Train Path

means the future entitlement of the Operator to use a Train Path on the Network and is only received where there are reasonable contractual commitments for its future use.

Rolling Stock

means a locomotive, carriage, wagon or other vehicle suitable for use on a railway.

Scheduled Train Path (Freight)

means the entitlement of the Operator to use a Train Path for freight services which has a fixed entry and exit time.

Scheduled Train Path (Passenger)

means the entitlement of the Operator to use a Train Path on the Network for Passenger Services which has a fixed entry and exit time and fixed intervals for passenger stops in between.

Service

means a train run by the Operator using the Network by which the Operator provides railway freight or passenger service.

Train

means a locomotive and with or without wagons used to operate Services.

Train Control

means the control of Trains by WestNet or its agents on the Network.

Train Controller

means a person or agent appointed by WestNet to carry out the function of Train Control.

Train Control Centre

means the facility or facilities maintained and operated by WestNet or its agents at any geographic location for the purposes of communication with Train Crew in order to exercise the control of Trains.

Train Control Directions

means all Instructions issued by WestNet or its agents relating to management, continuity and safe operation of Train movements on the Network, including Instructions concerning the actual movement, deployment or placement of Trains, but only to the extent such Instructions:

- (a) are consistent with these Train Management Guidelines; and
- (b) are reasonably made with a view to minimising the disruption to the Operator in a manner which is reasonable in the circumstances and taking into account the valid objectives of WestNet in issuing the Instruction.

Train Manifest

means a written notice (including, if agreed, in electronic form) prepared by the Operator in relation to a Service and containing the following details in relation to that Service:

- (a) the designated Train number for the Service and its origin and destination;
- (b) the date the Service will commence its operation on the Network;
- (c) the identification number of the locomotive or locomotives that will operate the service in the order in which they will form the Train;
- (d) the number of vehicles in the Train;
- (e) the gross mass of the Train;
- (f) the length of the Train;
- (g) for each vehicle in the Train in the order in which they will be placed, leading end first, the following information
 - (i) vehicle number,
 - (ii) vehicle classification,
 - (iii) vehicle type, and
 - (iv) gross weight of vehicle; and
- (h) the class of any dangerous goods (as described in the Dangerous Goods Code) carried on the vehicle.

Train Path

means an entitlement to operate a Service on the Network and has departure, transit and arrival times between the entry and exit points on the Network and includes the following types of Train Path – Conditional Train Path, Scheduled Train Path (Passenger), Scheduled Train Path (Freight), Flexible Scheduled Train Path (Freight) and Reserved Train Path.

Train Management Guidelines (T.M.G.)

means the current Train Management Guidelines approved in accordance with Section 43(4) of the Code.

Train Path Policy (T.P.P.)

means the current statement of policy approved in accordance with Section 44(3) of the Code.

WestNet

means WestNet Rail Pty Limited.

WestNet's Network Rules

means WestNet's rules (including the Appendix to the Rules and Working Timetables) issued in accordance with WestNet's Safety Management Plan approved under Section 10 of the Rail Safety Act 1998 together with any amendments, deletions or additions made in accordance with the Safety Management Plan and all policies and notices issued by WestNet for the purpose of ensuring the safe use of the Network.

Working Timetables

means the train timetables and operating data for all or part of the network issued as part of the WestNet's Network Rules and as amended from time to time.

END OF DOCUMENT