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20 April 2017

Economic Regulation Authority
Level 4, Albert Facey House
469 Wellington Street
PERTH WA 6000

Submitted on the ERA website

Dear Sirs

Re: ROY HILL INFRASTRUCTURE PTY LTD – PROPOSED COSTING PRINCIPLES, OVER-PAYMENT RULES, TRAIN PATH POLICY AND TRAIN MANAGEMENT GUIDELINES

On behalf of Roy Hill Infrastructure Pty Ltd (**RHI**), in Andrew Barclay's absence on leave and in response to the Authority's draft decision documents issued by the Authority on 24 March 2017 we attach the following submissions and other documents:

1. Costing Principles – (i) RHI's Submissions document April 2017 and (ii) the Costings Principles document marked to show changes reflecting RHI's Submissions document.
2. Over-payment Rules – (i) RHI's separate Submissions document April 2017 and (ii) the Over-payment Rules document marked to show changes reflecting RHI's separate Submissions document.
3. Train Path Policy – (i) RHI's further separate Submissions document April 2017 and (ii) the Train Path Policy document marked to show changes reflecting RHI's further separate Submissions document.
4. Train Management Guidelines – (i) RHI's final separate Submissions document April 2017 and (ii) the Train Path Policy document marked to show changes reflecting RHI's final separate Submissions document.

The primary concerns of RHI in relation to the draft decisions are as follows:

- (a) In relation to the Train Path Policy and the Train Management Guidelines, it is important that the documents reflect the actual activities of RHI's rail operations personnel. For example, the scheduling principles set out in Part 3 of RHI's Train Management Guidelines have been drafted after discussions with RHI's rail operations personnel so that they reflect actual train scheduling processes. The Authority has suggested that we should replace RHI's description of that activity with a description of TPI's scheduling procedures (on page 8 of the draft decision), which is not appropriate.
- (b) The Part 5 Instruments and the Authority need to acknowledge the interests of other stakeholders in the railway. Importantly, RHI's financiers have dictated that all train movements must be consistent with the RH Requirements, which comprise the Disclosed Requirements and other requirements. The RH Requirements are defined to mean, while RHI's financing arrangements are in place, "...the detailed technical, performance and operational standards under documents and related agreements in connection with any aspect of the Roy Hill Project..."

- (c) The acknowledgement of the interests of RHI's financiers in the railway also requires an acknowledgement of the interests of other companies in the Roy Hill group (in particular, Roy Hill Holdings Pty Ltd and Roy Hill Iron Ore Pty Ltd) and the interests of Roy Hill customers. It is important that the Part 5 Instruments acknowledge that RHI must seek to maximize the efficiency of the RHI railway and minimise the operating costs of the RHI railway. This requires the application of the "run when ready" operational philosophy so that RHI has the flexibility to adjust the number of trains run each day and the departure times of those trains, rather than being fixed to a defined schedule of departure and arrival times. The suggestion that the RHI railway should run to a defined schedule of departure and arrival times is not practical.
- (d) Clearly, RHI intends to comply fully with the obligations RHI assumed under the State Agreement, and the obligations imposed on RHI by the *Railways (Access) Act 1988 (WA)* and the *Railways (Access) Code 2000 (WA)*. Therefore, in response to the last two bullet points of the notice dated 24 March 2017 issued by the Authority, RHI accepts that the Part 5 Instruments may be amended to refer specifically to:
- (i) a prohibition from unfairly discriminating between one proponent and another, including its own operations, when negotiating access agreements (subject to the priority arrangements set out in the train path policy); and
 - (ii) the objectives of each instrument as laid out in the Code.

If you would like to discuss any aspect of this letter and the attached submissions, please telephone Andrew Barclay on 0429 724 691 once he returns from leave on 1 May 2017 or me on 08 6242 1158/0411 021589.

Yours faithfully

Julian Hill
Senior Legal Counsel

cc: Andrew Barclay by email - abarclay@andrewbarclay.com.au

Encs: Costing Principles; Over-payment Rules; Train Path Policy; and Train Management Guidelines

ROY HILL INFRASTRUCTURE PTY LTD
SUBMISSION TO ECONOMIC REGULATION AUTHORITY
DRAFT DECISION DATED MARCH 2017 – PROPOSED COSTING PRINCIPLES

1 INTRODUCTION

This submission is made by Roy Hill Infrastructure Pty Ltd (**RHI**) in response to the invitation by the Economic Regulation Authority (**Authority**) dated 24 March 2017 for written submissions on the Authority's draft decision published in March 2017 (**Draft Decision**) in relation to RHI's proposed Costing Principles.

RHI's response to the amendments suggested by the Authority to RHI's proposed Costing Principles is set out below.

2 REQUIRED AMENDMENT 1 - INTRODUCTION

The Authority has suggested that Part 1 of RHI's proposed Costing Principles should be amended such that:

- (a) Part 1.1(d) is deleted;
- (b) the words "Floor Price and the Ceiling Price required under clause" are replaced with "costs referred to in section" in 1.1(e)(i);
- (c) Part 1.1(e)(ii) is deleted;
- (d) the words "the ERA under" are removed from 1.1 (h); and
- (e) Parts 1.3(d) and 1.4 are deleted.

This submission will deal with each of these proposed amendments separately.

(a) that Part 1.1(d) is deleted

Part 1.1(d) of RHI's proposed Costing Principles states that:

"To the extent that the Act and the Code impose additional costs and burdens on RHH and its subsidiary companies (either directly or indirectly), these Costing Principles permit the complete recovery of all of those costs."

The Authority does not accept Part 1.1(d) for inclusion in RHI's costing principles because the RHI railway was constructed pursuant to a commercial agreement between the WA Government and RHI (namely the State Agreement), and in the view of the ERA the costs imposed on RHI by the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010 (WA)*, the *Railways Access Act 1998 (Act)* and the *Railways (Access) Code 2000 (Code)* are not "additional costs but the normal costs of

operating an open access railway and costs which are anticipated in the commercial agreement” (paragraphs 16-19 of the Authority’s draft decision).

The Authority made a similar comment in its draft decision on RHI’s proposed Segregation Arrangements. At paragraph 15 of the draft decision on RHI’s Segregation Arrangements the Authority commented that “...any cost incurred by RHI in providing access should be considered in the context of RHI having contractual obligations to provide third party access. Therefore segregation is not imposing additional costs and burdens. These costs are normal costs associated with operating a regulated open access railway.”

As RHI commented in its response to the Authority’s Draft Decision on the Segregation Arrangements, it is incorrect to suggest that the implementation of the Costing Principles and the Segregation Arrangements (and indeed the other Part 5 instruments required by Code) does not impose additional costs on RHI. Although it is correct that RHI agreed in the State Agreement to provide third party access onto its railway, RHI did not agree to provide that third party access free of charge. Part 1.1(d) merely makes the point that RHI intends to recover any costs from the third party which are incurred as a result of RHI providing third party access to RHI’s railway. RHI notes that the Authority’s final decision on RHI’s proposed Segregation Arrangements published in April 2017 (at paragraph 23) acknowledges that RHI may recover these costs from an Operator:

“The Authority did not suggest in its Draft Decision that RHI has agreed to provide access at no cost, or denied recovery of these costs. The recovery of costs is a matter dealt with in a railway owner’s costing principles and is not relevant to the implementation of Segregation Arrangements.”

The Authority’s Final Decision in relation to RHI’s Segregation Arrangements that “the recovery of costs is a matter dealt with in a railway owner’s costing principles”, together with the Authority’s comment that RHI is not denied recovery of these costs, supports the submission by RHI that Part 1.1(d) of RHI’s existing Costing Principles should be retained.

The Code itself accepts that the provision of access by a railway owner to third parties will involve additional costs. The term “incremental costs”, which is defined in Schedule 4, Division 1, clause 1 of the Code, is intended to cover the additional costs referred to in Part 1.1(d) of RHI’s draft Costing Principles – being those (a) operating costs and (b) where applicable, the capital costs and overheads attributable to the performance of the railway owner’s access related functions, that the railway owner would be able to avoid “.... if it were not to provide access to that operator or group of operators.”

RHI submits that Part 1.1(d) should not be deleted from RHI’s Costing Principles. If the Authority will not accept Part 1.1(d) in its present form, RHI requests that the Authority consider the following wording, which is intended to follow the wording in the definition of “incremental costs” in the Code:

“To the extent that RHH and its subsidiary companies incur operating costs, capital costs and overheads attributable to the performance of RHI’s access related functions, as a consequence of providing access to third parties (either directly or indirectly), these Costing Principles permit the complete recovery of all of those costs.”

- (b) the words “Floor Price and the Ceiling Price required under clause” are replaced with “costs referred to in section” in 1.1(e)(i)**

RHI accepts these proposed amendments.

- (c) Part 1.1(e)(ii) is deleted**

The Authority should explain why it has requested that Part 1.1(e)(ii) be deleted. The Pilbara Infrastructure Pty Ltd (TPI) and the Brookfield Rail (BR) documents both contain a very similar clause to that included in RHI’s proposed Costing Principles. Although it is not important from a practical point of view, RHI considers that Part 1.1(e)(ii) should be retained so that RHI’s Costing Principles are consistent with the Costing Principles accepted by the Authority for TPI and BR.

RHI suggests that paragraph 1.1(e)(ii) should be retained, but so that the paragraph is consistent with the amended paragraph 1.1(e)(i), RHI would accept that the words “Floor Price and the Ceiling Price” should be deleted and replaced by “Floor and Ceiling costs”.

- (d) the words “the ERA under” are removed from 1.1(h)**

RHI accepts that the words “the ERA under ...” may be deleted from paragraph 1.1(h). An alternative proposal, which would make the clause consistent with the documents previously approved by the Authority for TPI and BR would be to amend the beginning of paragraph 1.1(h) to provide “The Overpayment Rules (determined by the ERA under Part 5, section 47 of the Code) are linked to the Costing Principles.”

- (f) Parts 1.3(d) and 1.4 are deleted**

The Authority should explain why it has requested the deletion of Parts 1.3(d) and 1.4 of the draft RHI Costing Principles, because similar clauses are included in the BR Costing Principles (as the last paragraph of Part 1.3 and Part 1.5 of the BR Costing Principles). The Authority correctly points out in paragraph 23 of its draft decision that the statement in Part 1.3(d) accurately reflects section 4A of the Railways Access Code - if the parties chose to carry out negotiations, and reach an agreement, outside the Code, the Part 5 Instruments are not to be taken into account in determining the parties’ rights and obligations. RHI considers that it is important that this principle is repeated in full in its Costing Principles.

The service quality commitment set out in part 1.4 is also set out in the BR's Costing Principles (in para 1.5), so the Authority should explain why it is suggesting that the part should not be repeated in RHI's Costing Principles.

3 REQUIRED AMENDMENT 2 – DETERMINATION OF CAPITAL COSTS

RHI's response to the amendments requested by the Authority to Part 2 of RHI's proposed Costing Principles, which deals with the determination of capital costs, is as follows:

(a) The Authority has requested that Part 2.1(b) is replaced with:

“Incremental costs will include capital costs only where RHI assesses that it is necessary to make capital expenditure (of the type referred to in 2.3(c) of these Costing Principles) to provide the proposed access.”

RHI submits that Part 2.1(b) should not be amended. The paragraph is similar to the second paragraph of Part 2.1 of BR's Costing Principles. The only difference between Part 2.1 of BR's Costing Principles and RHI's proposed Costing Principles is that RHI has emphasized that RHI cannot be obliged to commit any additional capital expenditure required to provide a Service to the third party access seeker. Therefore, Part 2.1(b) includes statements that “... Incremental Costs will include a capital charge only where RHI has agreed that it is necessary to make capital expenditure...” and “...these circumstances will arise only where RHI has agreed at its complete discretion, to fund capital expenditure...”

Otherwise, Part 2.1(b) of RHI's proposed Costing Principles is identical to the second paragraph of BR's Costing Principles and should be retained. The last two sentences of Part 2.1(b) should be retained because they provide detail around how an operator's incremental costs will be calculated.

(b) The Authority has suggested that the second paragraph of 2.4(a)(i) is replaced with:

“RHI considers that the network as constructed can meet current and reasonably projected demand for all users taken together. If RHI requires additional infrastructure to meet its own projected demand in conjunction with an access proposal, then it will demonstrate the basis of and financial commitment to the demand projection.”

RHI acknowledges that the amendments requested by the Authority are consistent with the equivalent paragraphs in the TPI and BR Costing Principles. It would appear that the history of those paragraphs is that the BR document correctly refers to “all users taken together” because the BR railway has more than one user, and the TPI document has merely reflected the previously approved BR document. Nevertheless, the statements in the second paragraph of Part 2.4(a)(i) of RHI's Costing Principles that “...the existing

network can meet the reasonably projected demand by RHI...” and that “... if RHI received a request for access from a third party the capacity of the network would have to be increased...” are correct, and should be retained. The RHI railway has been constructed to service the 55 mtpa maximum capacity permitted by the State Agreement (see sections 10(2) (a) of the State Agreement, and the detailed proposals required to be submitted to Government by section 10 of the State Agreement) rather than to service “all users”.

RHI agrees with the Authority that if the cost of additional infrastructure is sought to be included in the capital cost, RHI (rather than the third party access seeker, as RHI has proposed in its Costing Principles) must demonstrate the basis of the demand projection and the commitment to the capital expenditure.

- (c) The Authority has requested that Part 2.4(a)(iv) is amended by deleting the word “however” and replacing the word “included” with “excluded”.

RHI considers that certain diversion costs should be included in the calculation of the replacement cost of the RHI railway. The replacement cost calculations should include any costs incurred by Roy Hill to avoid man made infrastructure, such as construct a railway around and over (or under) the existing BHP and FMG/TPI railways. If the ERA continues to insist that such diversion costs are excluded from the calculation of replacement costs, the ERA should explain where those costs would be included in the calculation for the purposes of the Costing Principles.

At paragraph 33 of the Draft Decision the Authority has commented that:

“RHI has proposed economic lives which are significantly shorter than those approved for inclusion in the Brookfield Rail and the Pilbara Infrastructure Costing Principles”.

The financial modelling of the Roy Hill mine is based on an expected mine life of 16 years, which is the reason why most assets referred to in Annexure A of RHI’s proposed Costing Principles are allocated an expected economic life of 16 years. Only those assets which have an expected life of less than 16 years are allocated an economic life of less than 16 years.

- (d) The Authority has suggested that the second paragraph of Part 2.4(a)(ix) is removed. The second paragraph states:

“This evaluation is based on generally accepted industry lives and RHI’s own experience. The economic life of assets adopted by RHI are generally consistent with those accepted in other regimes.”

This paragraph is very similar to the equivalent paragraph in the BR Costing Principles.

The Authority has suggested (at paragraph 45 of the Authority’s draft decision) that *“the experience of other railways in the Pilbara is also more significant than the experience of*

railway owners subject to other regimes, as these regimes do not cater for heavy haulage railways of the type owned by RHI.”

RHI submits that the paragraph should be retained because it provides an explanation as to how the economic life of the infrastructure has been assessed. If the Authority considers it necessary, the first sentence of the paragraph could be amended to provide “This evaluation is based on general accepted industry lives, the experience of other railways in the Pilbara and RHI’s own experiences.” The second sentence of the paragraph should be retained. A similar sentence has been accepted in the BR Costing principles.

- (e) The Authority has suggested that the words “nominal pre tax” are replaced with “annual” in Part 2.5.

This amendment is acceptable. RHI accepts that although the Authority has calculated the nominal and real pre-tax WACC in the past (for example, the determination issued on 28 October 2016), the Code does not require that the Authority make those calculations.

- (f) The Authority has suggested that Parts 2.6(d) and 2.6(e) of RHI’s proposed Costing Principles are replaced with:

“This formula calculates the costs at the beginning of the period. Provisions for the calculation of working capital amounts based on the consideration of the midpoint of the annuity period are made at Part 3.3(c)(v).”

RHI submits that Parts 2.6(d) and 2.6(e) should not be deleted from the Costing Principles, as they explain more fully how the calculation of the annuity set out in Part 2.6 will work. Similar paragraphs are included in the BR and TPI Costing Principles. The annuity formula has been reviewed in some detail by the Finance Department at RHI, which considers that it is important that a third party access seeker understand that:

- (i) the formula is based on the payment of the annuity in advance;
- (ii) if the annuity is paid in advance, under or over payments must be balanced at the end of the period, following the calculation of the actual amounts for the year;
- (iii) if amounts are not paid in advance, a further working capital charge must be included in the “operating costs” to be paid by the third party; and
- (iv) the amount to be included in the “operating costs” to be paid by the third party will depend upon whether the annuity is paid monthly or six monthly in advance.

It is correct that there is a relationship between Part 2.6(d) and Part 2.6(e) on the one hand and Part 3.3(c)(v) on the other hand. However it is important that all parts are retained – Parts 2.6(d) and 2.6(e) set out the reason why “working capital” amounts are to be included as “operating costs”, and Part 3.3(c)(v) sets out how the amount to be

included in “operating costs” is to be calculated. RHI notes that both the BR and TPI Costing Principles include separate paragraphs similar to Parts 2.6(d) and 2.6(e) on the one hand and Part 3.3 of the RHI Costing Principles on the other hand.

4 REQUIRED AMENDMENT 3 – DETERMINATION OF “OPERATING COSTS”

- (a) The Authority has suggested that references to “has determined” in Part 3.1 should be changed to “will determine”.

RHI accepts this change.

- (b) The Authority has suggested that the last paragraph of Part 3.3(c)(iii) be deleted.

The last paragraph of Part 3.3(c)(iii) is:

“ These costs include the whole of any additional costs incurred by RHI resulting from the provision of access to another Operator in managing the network (including the entire costs of employing or engaging any additional persons required as a consequence of complying with RHI’s obligations to provide access under the Act or the Code).”

The purpose of this paragraph is to ensure that a third party access seeker appreciates that if it is necessary for RHI to employ or engage additional staff or contractors as a consequence of the provision of third party access, the third party will pay the entire costs of those additional staff. RHI submits that the paragraph should be retained in the RHI Costing Principles.

- (c) The Authority has suggested that Part 3.3(c)(vi) be deleted.

The effect of Part 3.3(c)(vi) is that the cost of insurances, or if RHI elects to self-insure, an amount equal to the insurance costs which would have otherwise been incurred by Roy Hill, may be included in “operating costs”. The Authority has suggested, and RHI accepts, that the costs of insurances may be included in “overhead costs” rather than “operating costs.”

Accordingly, RHI suggests that Part 3.3(c)(vi) (Insurances) should be included in Part 4 as a new Part 4.4.

- (d) The Authority has suggested that Part 3.5 should be deleted.

The effect of Part 3.5 is that “operating costs” are to be paid annually in advance, and Part 3.5 states that any under or over-payments should be calculated and refunded or paid promptly after the end of the year.

As stated in paragraph 62 of the draft decision, the Authority considers that the payment mechanisms should be included in the access agreement between the third party and RHI, rather than in the Costing Principles. RHI submits that it is appropriate

that the payment mechanisms be included in the Costing Principles. Compensation would be payable to RHI for any deviations from the payment mechanisms set out in the Costing Principles.

5 REQUIRED AMENDMENT 4 – OVERHEAD COSTS

- (a) The Authority has suggested that Part 4.1 be amended by replacing the word “railway infrastructure” with “access related functions”.

The reference to “railway infrastructure” is consistent with the terminology used in both the BR and TPI Costing Principles. For the sake of consistency, it would be best if the term “railway infrastructure” was retained in the RHI Costing Principles.

- (b) The Authority has suggested that in Part 4.2 the words “determined” and “Details of” are replaced with “reviewed” and “Allocation criteria for” respectively, and the word “included” is removed.

These amendments proposed by the Authority are acceptable to RHI.

- (c) The Authority has suggested that Part 4.3 is removed.

The effect of Part 4.3 is that “overhead costs” should be paid annually in advance based on budgeted costs, and Part 4.3 states that any under or over-payments should be calculated and refunded or paid promptly after the end of the year.

As suggested previously, the Authority considers (at paragraph 72 of the Costing Principles) that the payment mechanisms for the operating costs and the overhead costs should be included in any access agreement between the third party and RHI. RHI submits that it is appropriate that the payment mechanisms be included in the Costing Principles. Compensation would be payable for any deviations from the payment mechanisms set out in the Costing Principles.

6 REQUIRED AMENDMENT 5 – OTHER MATTERS

- (a) The Authority has suggested that the words “predetermined” in Part 5.1(a) are replaced with “redetermined”. RHI accepts that change.
- (b) The Authority has suggested that Part 5.1(c) should be deleted and replaced by an indexation mechanism which references “CPI minus the X factor”. RHI has instead included an indexation calculation based on actual cost increases or the applicable CPI for the Pilbara region.

The purpose of the proposed RHI indexation mechanism to actual costs and to the CPI for the Pilbara region is to seek to ensure that the indexation structure is as accurate as

possible. Further, it is important that cost increases include any additional imposts which might be imposed or incurred as a result of any changes to policy or Government regulation. For example, the indexation mechanism should be able to capture additional costs, or cost increases, which arise as a consequence of a change in policy prohibiting or restricting the availability of FIFO workers.

If the Authority insists that any indexation is based on CPI for the average of the Eight Capital Cities All Groups CPI index, although the TPI and the BR Costing Principles allow an X factor of -0.25, RHI is not aware of any reason why a reduction is appropriate. The indexation should be the full CPI calculated amount.

- (c) The Authority has suggested that the words “annual Operating” are replaced with “Overhead” in part 5.2.

RHI notes that the TPI Costing Principles include the allowance for asymmetric risk as an “annual Operating Cost”. The Authority should explain why it has taken a different view in relation to the RHI Costing principles.

Attached to this submission is a revised draft of the Costing Principles, which incorporates the amendments required by the Authority which Roy Hill has advised in this response are acceptable.

Roy Hill Infrastructure Pty Ltd

April 2017

ROY HILL INFRASTRUCTURE PTY LTD
SUBMISSION TO ECONOMIC REGULATION AUTHORITY
DRAFT DECISION DATED MARCH 2017 – PROPOSED OVER-PAYMENT RULES

1 INTRODUCTION

This submission is made by Roy Hill Infrastructure Pty Ltd (**RHI**) in response to the invitation by the Economic Regulation Authority (**Authority**) dated 24 March 2017 for written submissions on the Authority's draft decision published in March 2017 (**Draft Decision**) in relation to RHI's proposed Over-payment Rules.

RHI's response to the amendments required by the Authority to RHI's proposed Over-payment Rules is set out below.

2 REQUIRED AMENDMENT 1 –BASIS OF OVER-PAYMENT RULES

- (a) The Authority has required that the words "Regime Revenue/ Non Regime Revenue" are replaced with "Access Revenue/Non Access Revenue" in Parts 2.3(a) and 2.3(b).

The reason why RHI used the terms "Regime Revenue/ Non Regime Revenue" is because those words better reflect the revenue referred to – for example, in the Over-payment rules approved by the Authority for The Pilbara Infrastructure Pty Ltd (**TPI**) and Brookfield Rail (**BR**) the term "Non Access Revenue" refers to revenue paid to the railway owner for access to the railway, but outside the rail access regime. It is confusing to define "Non Access Revenue" to be revenue derived from granting access to the railway. Therefore RHI considered that the terms "Regime Revenue" and "Non Regime Revenue" were preferable.

RHI considers that the defined terms in the RHI Over-payment Rules should be "Regime Revenue" and "Non Regime Revenue" as they better describe the type of revenue to be received.

- (b) The Authority has required that the words "to Operators" and "...in accordance with the ERA's approved set of Costing Principles to apply to RHI" are deleted from clause 2.3(b). The omission of the words "to Operators" in fact would be incorrect. "Regime Revenue" (which the Authority has requested to be renamed Access Revenue) is all income received by RHI for the provision of access to the RHI Railway only from Operators – it does not include revenue from users who have access to the RHI Railway negotiated outside the Code.

RHI notes that the words required to be deleted have been accepted by the Authority in the BR Over-payment Rules. RHI is not aware of any reason why the words should be permitted in the BR Over-payment Rules, but not permitted in the RHI Over-payment Rules.

- (c) The Authority has required that Part 2.3(c) be deleted and replaced.

RHI's proposed Part 2.3(c) is identical to the second paragraph of Part 2.3 of the TPI Over-payment Rules, and the final paragraph of Part 2.3 of the BR Over-payment Rules. Therefore it is difficult to understand why the Authority has suggested that Part 2.3(c) should be deleted from the RHI Over-payment Rules. The paragraph appears to correctly outline certain aspects of the calculation of Over-payments:

- (i) revenue received from users who have negotiated access agreements with RHI outside the Code should be included in the evaluation of RHI's compliance with the Floor Price Test and the Ceiling Price Test;
- (ii) the Code does not confer on a user who has negotiated access outside the Code an entitlement to a refund of any over-payments; and
- (iii) the rights of any user who has negotiated a refund outside the Code may be prescribed in the user's access agreement.

RHI is not aware of any reason why these principles should not be included in the RHI Over-payment rules.

- (d) The Authority has required that in Part 2.4(c) the words "... and if RHI has Access Agreements with Operators under the Code" are replaced with "and if Access Agreements are in place".

This amendment is acceptable as it merely uses the defined term "Access Agreement", which is defined to include only agreements between an operator who has negotiated an Access Agreement under the Code.

- (e) The Authority has required that the words "The ERA has determined that" are deleted from Part 2.5(c).

This amendment is acceptable to RHI. It is correct that the three year period is prescribed in section 47(2)(b) of the Code. RHI notes that the error continues in the BR Over-payment Rules.

- (f) The Authority has required that the title to Part 2.7 be changed to "Allocation of Non Access Revenue" and all references to "non-regime" be changed to "non-access" in that Part.

RHI's reservations concerning this amendment are outlined earlier in paragraph 2(a) of this submission – it will undoubtedly lead to confusion to use the term "non access revenue" to refer to revenue derived from providing access to the RHI railway to certain category of users.

3 REQUIRED AMENDMENT 2- ALLOCATION OF AN OVER-PAYMENT

- (a) The Authority has requested that the words “who have negotiated their access agreements inside the Code” in Part 3(a) are deleted.

The amendment is acceptable, as the words required may be deleted without adversely affecting the meaning of the Part because all Operators (as defined) will have negotiated an access agreement inside the Code.

- (b) The Authority has requested that the words “Regime Revenue and Non Regime Revenue above the floor accumulated on a route section divided by the aggregate of all Operators’ Regime Revenue and Non Regime Revenue” are deleted.

The amendment is acceptable. RHI agrees that the words are not necessary and may be deleted without adversely affecting the meaning of the paragraph. RHI notes that the words are included in paragraph 2.8 of the BR Over-payment Rules.

4 REQUIRED AMENDMENT 3 – THE OVER-PAYMENT RULES

- (a) The Authority has suggested that Part 4(a) may be deleted, as it is not necessary to nominate a Commencement Date for the application of the Over-payment Rules. On the understanding that the Over-payment Rules will apply from the date they are approved by the Authority, RHI accepts that paragraph 4(a) may be deleted from the Over-payment Rules.

- (b) The Authority has required that the words “the 10 percent amount” in Part 4(e) should be replaced by “a 10 percent amount”. This amendment is acceptable as it does not change the substance of the Part – an over-payment will arise only if the revenue is greater than 10% above the ceiling for that route section. RHI notes that the words “the 10 percent amount” are used in both the TPI (paragraph 4.2) and BR (paragraph 3.5) Over-payment Rules.

- (c) The Authority has required that the words in Part 4(f) “(who have negotiated their Access Agreements inside the Code)” are deleted. RHI accepts that these words may be deleted, as they are redundant, given the definition of the term “Operators”. RHI notes that the words are included in paragraph 3.6 of the BR Over-payment Rules.

- (d) The Authority has required that the formula shown at Part 4(f) is altered to reflect the wording suggested at paragraph 47 of the Authority’s draft decision.

The wording of the formula in Part 4(f) of the RHI Over-payment Rules is identical to the wording of the formula in paragraph 3.6 of the BR Over-payment Rules, and paragraph 4.3 of the TPI Over-payment Rules.

RHI agrees that the Authority's wording of the formula in paragraph 47 of the draft decision is correct, and results in a calculation of the correct amount of the repayment. Nevertheless, the formula in the RHI, TPI and BR Over-payment Rules must be the same. If the formula is to be changed in the RHI Over-payment rules, then it must be changed in the TPI and BR Over-payment Rules also.

- (e) The Authority has required that the three notes below the formula in paragraph 4 (f) are deleted. The three notes should not be deleted as they assist the interpretation and application of the formula.

RHI notes that the three notes are included in the BR Over-payment Rules.

- (f) The Authority has required that Part 4(j) should make provision for an interest rate associated with the long term bond rate to be applied to the over-payment account. The proposed RHI Over-payment Rules provide for the interest credited to the account to be "any interest actually paid on the amount standing to the credit of the Over-payment account."

RHI acknowledges that both the TPI (at paragraph 4.7) and the BR (at paragraph 3.11) Over-payment Rules require that interest at the rate "equal to the 10 year long term bond rate" be credited to the over-payment account. However, the differences between the interest to be credited to the over-payment account in the TPI and the BR Over-payment Rules on the one hand and the RHI Over-payment Rules on the other hand are quite deliberate – it is clear that the interest actually paid on the over-payment account should be the amount credited to the account and paid on the account, rather than interest calculated at an arbitrary rate which may (and most likely will) not be the actual amount of interest paid on the account. This change will not necessarily favour RHI – it could work in favour of the Operators who are entitled to receive a payment. If the 10 year long term bond rate is less than the amount of interest actually paid on the account, the operator will receive the greater amount.

Accordingly RHI submits that Part 4(j) should not be changed.

- (g) The Authority has submitted that Part 4(k) and Part 4(m) should be deleted.

Part 4(k) was included in the RHI proposed Over-payment Rules to clarify the basis on which interest would be distributed to operators. RHI accepts that Part 4(m) may not be strictly necessary as the distribution principles are set out in the formula and therefore may be deleted.

Part 4(m) deals with distributions to users of the railway who have negotiated an access agreement outside the Code. The statement in Part 4(m) that payments will be retained by RHI subject to any contrary provision in the access agreement is accurate and should be retained in the Over-payment Rules.

- (h) The Authority has required that the words “with Access Agreements negotiated inside the Code” are deleted from Part 4(q).

RHI appreciates that words “with Access Agreements negotiated inside the Code” are not necessary given the definition of the term “Operator” in Part 7. RHI notes that the words have been included in both the TPI (at paragraph 4.12) and the BR (at paragraph 3.17) Over-payment Rules.

5 REQUIRED AMENDMENT 4 – APPLICATION OF THE OVER-PAYMENT RULES

- (a) The Authority has required that Part 5 is amended by replacing the words “Non Regime Operator” with “entity”, “Regime” is to be replaced by “Code”, and “that Route Section comprised only Non Regime Operators” are replaced with “no access to that Route section was provided under an access agreement” in Part 5(d).

These amendments are acceptable to RHI as they are only changes to reflect the amended defined terms.

Attached to this submission is a revised draft of the Over-payment Rules, which incorporates the amendments required by the Authority which Roy Hill has advised in this response are acceptable.

Roy Hill Infrastructure Pty Ltd

April 2017

ROY HILL INFRASTRUCTURE PTY LTD

SUBMISSION TO ECONOMIC REGULATION AUTHORITY

DRAFT DECISION DATED MARCH 2017 – PROPOSED TRAIN PATH POLICY

1 INTRODUCTION

This submission is made by Roy Hill Infrastructure Pty Ltd (**RHI**) in response to the invitation by the Economic Regulation Authority (**Authority**) dated 24 March 2017 for written submissions on the Authority's draft decision published in March 2017 (**Draft Decision**) in relation to RHI's proposed Train Path Policy (**TPP**).

RHI's response to the amendments suggested by the Authority to RHI's proposed TPP is set out below.

2 REQUIRED AMENDMENT 1 - INTRODUCTION

- (a) The Authority has suggested that Parts 1.1(b) to (e) of the TPP are deleted and replaced by the following:

“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:

- (a) the allocation of train paths; and*
- (b) 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.”

RHI submits that the paragraph above proposed by the Authority may be included in RHI's TPP as Part 1.1(b).

However, it is important that the existing Parts 1.1(b) to (e) of RHI's proposed TPP are not deleted from the TPP. RHI submits that the existing Parts 1.1(b) to (e) should be retained in RHI's TPP and renumbered Parts 1.1(c) – (f). The current Part 1.1(b) sets out the relationship between RHI, Roy Hill Holdings Pty Ltd (**RHH**) and their financiers. That relationship significantly influences the implementation of RHI's TPP, and RHI's Train Management Guidelines. As stated in Part 1.1(b), RHI, RHH and their financiers have accepted significant financial and commercial risk in constructing the railway, and the TPP should recognize that tonnages reserved for Roy Hill Iron Ore Pty Ltd (**RHIO**) on the railway is a means by which their investment is protected.

RHI acknowledged in the Agreement dated 22 June 2010 between the State of Western Australia, RHI, RHH and RHIO titled the Railway (Roy Hill Infrastructure Pty Ltd) Agreement 2010 (the **State Agreement**) that “one of the intentions of the State and the Company in entering into the [State Agreement] is that the Access Act and the Access Code apply... to and in respect of the Railway” (clause 15(3) of the State Agreement).

Further, RHI has committed to “... after the Railway Operation Date use all reasonable endeavours to promote access to, and attract customers for the Railway...” (clause 15 (7) of the State Agreement).

RHI fully intends to comply with the obligations assumed by it under the State Agreement. Indeed, prior to completion of construction of the railway, RHI has had negotiations with third parties who have expressed an interest in negotiating access arrangements with RHI.

However that acknowledgement and the commitment shown by RHI, RHH and RHIO to promote access to, and attract customers to the RHI railway, cannot be to the detriment of the financial obligations assumed by the Roy Hill companies to its financiers, or increase the risk profile of the lenders to the Roy Hill companies. Third parties with whom RHI has negotiated for access to the RHI railway have acknowledged the interests of the Roy Hill companies to maximize the efficiency of the railway, and the interests of Roy Hill’s financiers, to ensure that their interests are not adversely affected by the use of the railway by a third party.

The Authority should understand that the TPP and the TMG must recognise the interests of the Roy Hill companies and their financiers in the Railway. Access seekers with whom the Roy Hill companies have negotiated for access have recognised the interests of Roy Hill’s financiers in their negotiations with Roy Hill.

Accordingly the current Parts 1.1 (b) – (e) should be retained in the TPP (but renumbered Parts 1.1(c) – (f) after the inclusion of the paragraph proposed by the Authority referred to above).

- (b) The Authority has suggested that Part 1.2 and Part 1.3 are deleted and replaced with text equivalent to Parts 1.2 and 1.3 of TPI’s Train Path Policy.

The following re-drafting of Part 1.2 and Part 1.3 would be acceptable to RHI:

“1.2 Purpose of the Train Path Policy

- (a) *The objective of the TPP is to provide a framework to apply to the allocation and management of network capacity to:*
- (i) *ensure that RHI’s contractual obligations to any person using RHI’s railway are fulfilled;*
 - (ii) *maximize the efficient utilisation of RHI’s railway;*
 - (iii) *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;*
 - (iv) *provide for the safe and reliable use of RHI’s railway.*
- (b) *When determining whether the allocation and management of capacity on the RHI Railway unfairly discriminates between the proposed rail operations of an Operator and the rail operations of RHI (for the purposes of satisfying the objective in*

paragraph 1.2(iii) above), the background factors referred to in sections 1.1(c) and 1.1(d) of this Train Path Policy must be taken into account.

Part 1.3 *[insert existing Part 1.2 of RHI's proposed TPP, as Part 1.3]*

1.4 Relationship Between TPP and Train Management Guidelines (TMG)

(a) The TPP and the TMG are closely related. There are three key aspects to the allocation and management of capacity:

- (i) the initial assessment and allocation of capacity, resulting in the specification of a service entitlement for each Operator, which will be governed by their Access Agreement. The principles governing this assessment and allocation are contained in the TPP. This includes any permanent changes to the service entitlement that are subsequently made.*
- (ii) The short term scheduling of train paths to fulfil each Operator's service entitlement. This is addressed in the TMG.*
- (iii) The daily operation of services in real time, which is also addressed in the TMG.*

(b) The main function of the TPP will therefore be to provide a framework governing:

- (i) the initial assessment and allocation of capacity;*
- (ii) the management of capacity, including:
(A) permanent variations to service entitlements;
(B) resumptions of service entitlements; and
(C) review of service entitlements.*

1.5 Application of TPP

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).

3 REQUIRED AMENDMENT 2 – TYPES OF SERVICE

The Authority has suggested that Part 2 of the TPP should be deleted.

RHI submits that Part 2 of the TPP should be retained, as it reflects how the capacity of the RHI railway will actually be used.

It is not appropriate to replace Part 2 of RHI's TPP with Part 2 of TPI's TPP or indeed BR's TPP (as appears to be suggested in paragraph 31 of the Authority's draft decision) because they do not reflect how the capacity of the RHI railway will be determined and allocated.

Put simply, the maximum capacity of the existing RHI railway is 55 mtpa as constructed (which is the minimum capacity of the railway as specified in clause 10(2)(a)(i) of the State Agreement and which is the capacity referred to in the Detailed Proposals required to be submitted by RHI to the State Government in accordance with clause 10 of the State Agreement).

RHIO (as the Foundation User) intends to use and transport 55 mtpa on the RHI railway. That amount is the “Foundation Tonnage” referred to in Part 2.1(c) of the TPP.

However, a third party may contract for access to the RHI railway (for example, if the third party pays for the capital costs of the additional infrastructure required to increase the capacity of the RHI railway above 55mtpa). This is the “Contracted Service” referred to in Part 2.1(a) of the TPP. The third party may also request further access in addition to the “Contracted Service”, and that further access is referred to as the additional trains in Part 2.1(b).

Since Part 2 accurately reflects the allocation of capacity on the RHI railway, it should not be deleted.

4 REQUIRED AMENDMENT 3 – ORDER OF PRIORITY

The Authority has suggested that Part 3 of the proposed TPP should be deleted and replaced with the text equivalent to Part 2 of TPI’s TMG.

RHI submits that Part 3 of the proposed RHI TPP deals with different issues from the issues dealt with in Part 2 of the TPI TPP. Part 3 of the RHI TPP addresses the priority allocation of existing capacity on the RHI railway. In contrast, Part 2 of the TPI TPP deals with the calculation and assessment of the capacity of the existing TPI railway and any enhancements which may be necessary to satisfy the requirements of a third party access seeker.

Accordingly, RHI submits that the Authority’s request can be accommodated by:

- (a) Retaining Part 3 of RHI’s proposed TPP. It is important that Part 3 of RHI’s existing TPP is retained, because it accurately reflects how capacity on the RHI railway will be allocated. That is, the Foundation User (RHIO) will have first priority for all Foundation Tonnage, and third parties will have second priority for their Contracted Tonnage. This proposed priority structure has been acknowledged and accepted by third parties with whom RHI has commenced to negotiate access arrangements.
- (b) Inserting into Part 3 of RHI’s TPP paragraphs which are equivalent to Part 2 of the TPI TPP, to the limited extent to which they are applicable. RHI has outlined below the extent to which RHI considers that Part 2 of the TPI TPP is applicable to the RHI TPP. Part 2 of the TPI TPP deals with the assessment of the capacity of the existing TPI railway, which is not necessary in relation to the existing RHI railway, because the existing RHI railway has a capacity of 55mtpa. However such an assessment may be necessary in relation to an application by a third party if capacity enhancements are required.

- (c) Therefore, to comply with the Authority's suggestion to include Part 2 of the TPI TPP in the RHI TPP, RHI submits that the following may be included in Part 3 of the RHI TPP, as Part 3.5.

“3.5 Capacity analysis

- (a) *When RHI receives an access proposal from a Proponent, RHI will undertake a capacity analysis. The purpose of the 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 the capacity enhancements are likely to be required.*
- (b) *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; and*
 - (ii) *the need for the capacity analysis process to be transparent to the proponent and for RHI to maintain a 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.*
- (c) *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.*
- (d) *Pursuant to section 7 of the Code, RHI will on request provide the proponent with the information required under that section.*
- (e) *The process for allocation of train paths as part of the negotiation process for access will be:*
- (i) *the operator will request a train path;*
 - (ii) *RHI will refer to its scheduling to:*
 - (A) *determine if the path is available;*
 - (B) *if possible, seek changes to or 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*
 - (iii) *at all times maintain dialogue with the operator to ensure all alternatives are explored.*
- (f) *The finalisation of the capacity analysis will enable the finalisation of the resultant service entitlement, initial timetable (if relevant), charges and associated arrangements.*
- (g) *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 will*

not be granted without the approval of the Authority in accordance with section 10 of the Code. If the Authority grants approval then RHI will commence negotiations.

- (h) RHI will apply the following guidelines for request for new train paths either prior to or after the commencement of an access agreement. Otherwise train paths will be allocated on a first come first served basis.*
- (i) 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; 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;*
 - (B) market growth based on trend data; or*
 - (iii) the Operator can demonstrate a committed new project with agreed funding.*
- (j) For the purposes of such negotiations, RHI will effectively reserve an unused train path to the Operator for a minimum of two months. RHI reserves the right to terminate negotiations with that Operator after that period of time.*
- (k) 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.*
- (l) If a proponent believes that RHI has not complied with the TPP or the Code in relation to the allocation of access rights, the proponent may have recourse to a dispute resolution mechanism under the Access Agreement. If no Access Agreement is in place, the proponent may seek to have the matter arbitrated as a dispute in accordance with section 26 of the Code. “*

5 REQUIRED AMENDMENT 4 – APPLYING THESE PRIORITY RULES

The Authority has suggested that Part 4 of RHI’s proposed TPP should be deleted. The explanation for this suggestion is only that “the prioritisation of train paths serving the railway owner’s above rail operations over train paths contracted by other operators is not accepted as the basis for application of the Train Path Policy.”

RHI submits that Part 4 of RHI’s proposed TPP should be retained. Part 4 deals with important issues – “the Full Service Objective”, which obliges RHI to ensure that sufficient services are available to enable each Operator to receive its Contracted Services (Part 4.2),

the priority of safety (Part 4.3) and the priority which is to apply in normal operating circumstances (Part 4.4), in emergencies (Part 4.5) and for remedial services (Part 4.6).

These suggested clauses have been derived from arrangements which were to be entered into after lengthy negotiations with a third party access seeker. They resolve commercial and practical issues which may be of concern to a third party access seeker and they should be retained in the TPP.

For the reasons which have been explained in detail in paragraph 4 of RHI's response to the Authority's draft decision on the Train Management Guidelines the references to "RH Requirements" and "Disclosed Requirements" in Part 4.8 need to be retained.

6 REQUIRED AMENDMENT 5 – PROVISION OF ACCESS TO UNDERUTILISED TRAIN PATH

- (a) RHI accepts that the heading to Part 5 may be amended to reflect a broader range of issues. RHI would suggest the heading "Management of Capacity".
- (b) As suggested by the Authority, RHI accepts that additional paragraphs may be included in the TPP to deal with the following issues:
 - (i) permanent variation of Train Paths;
 - (ii) removal of a service entitlement due to a transfer of a contract between operators;
 - (iii) review of service entitlements; and
 - (iv) cancellation of services using Train Paths.
- (c) The Authority has suggested that text equivalent to Part 4.3 of TPI's TPP and Appendix A should be included in RHI's TPP.

Part 4.3 of TPI's TPP permits an Operator to sell the rights to use a Train Path to another Operator in accordance with the provisions set out in Appendix A. Appendix A details a scheme for the trading in Train Paths.

The right of an Operator to sell rights to use a Train Path, or to assign rights under an Access Agreement, should be set out in the Access Agreement between RHI and the Operator. They should not be set out in the TPP. An Operator should not have an automatic right to sell rights to use a Train Path. RHI will deal with the issue on a case by case basis, in the same way that the TPI TPP acknowledges in relation to the right of an Operator to assign rights under an Access Agreement.

Attached to this submission is a revised draft of the TPP, which incorporates the amendments required by the Authority which Roy Hill has advised in this response are acceptable.

Roy Hill Infrastructure Pty Ltd

19 April 2017

ROY HILL INFRASTRUCTURE PTY LTD

SUBMISSION TO ECONOMIC REGULATION AUTHORITY

DRAFT DECISION DATED MARCH 2017 – PROPOSED TRAIN MANAGEMENT GUIDELINES

1 INTRODUCTION

This submission is made by Roy Hill Infrastructure Pty Ltd (**RHI**) in response to the invitation by the Economic Regulation Authority (**Authority**) dated 24 March 2017 for written submissions on the Authority's draft decision published in March 2017 (**Draft Decision**) in relation to RHI's proposed Train Management Guidelines (**TMG**).

RHI's response to the amendments suggested by the Authority to RHI's proposed TMG is set out below.

2 REQUIRED AMENDMENT 1 - INTRODUCTION

(a) The Authority has suggested that Part 1.1(c) and Part 1.1(e) of the TMG be deleted.

RHI submits that Part 1.1(c) and Part 1.1(e) should not be deleted from the TMG. Part 1.1(c) importantly sets out the basic principles and rules on which the railway will be managed. RHI will operate the railway on a "run when ready" philosophy, so as to maximise the efficiency of the railway and minimise operating costs. Departure times of trains will be determined by availability of rolling stock and production, not by reference to a schedule of defined departure and arrival times. It is simply commercially unrealistic to think that the operating philosophy of the RHI railway would be otherwise.

RHI also submits that when it determines whether it has complied with its obligations under section 16 of the Code to not unfairly discriminate between third party Operators and RHI, or an associate of RHI, RHI must be able to take into account the background (namely, the implementation of the "run when ready" philosophy) to the Train Management Guidelines set out in paragraphs 1.1(c) and 1.1(d) of the Train Management Guidelines.

(b) The Authority has suggested that Part 1.2 and Part 1.3 be deleted and replaced with text equivalent to Parts 1.2 and 1.3 of the TMG approved by the Authority for use by The Pilbara Infrastructure Pty Ltd (**TPI**).

RHI considers that the following redrafting of Part 1.2 and Part 1.3, which would satisfy RHI's requirements but which are also similar to Parts 1.2 and 1.3 of TPI's TMG, would be acceptable to RHI:

"1.2 Purpose of these Guidelines

(a) The objective of these Guidelines is to provide a framework to apply to the real time management of Services to be operated on the RHI railway in order to:

- (i) ensure that RHI's contractual obligations to any Operator using RHI's railway are fulfilled;*
- (ii) maximize the efficient utilisation of RHI's railway;*

- (iii) *ensure that all Services are operated on the RHI railway 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*
 - (iv) *provide for the safe and reliable use of RHI's railway in accordance with the RH Requirements and RHI's "run when ready" philosophy.*
- (b) *The allocation of train paths will be determined in accordance with the Train Path Policy. The main functions of these Train Management Guidelines will be to:*
- (i) *govern the day to day scheduling and management of these paths, including temporary reallocations of paths and the ad hoc allocation of additional paths in accordance with RHI's "run when ready" operational philosophy;*
 - (ii) *provide a framework to resolve conflicts between Operators in an equitable manner and 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;*
 - (iii) *manage interruptions to network availability due to circumstances beyond RHI's control;*
 - (iv) *manage Possessions, Disruptions, repairs, maintenance, works and upgrades to the RHI railway; and*
 - (v) *manage incidents and emergencies.*
- (c) *When determining whether the management of Services to be operated on the RHI Railway, and the resolution of conflicts between Operators, unfairly discriminates between the proposed rail operations of an Operator and the rail operations of RHI, or an associate of RHI (for the purposes of satisfying the objective in paragraph 1.2(c) above and function of these Train Management Guidelines in paragraph 1.2(f) above), the background factors referred to in sections 1.1(c) and 1.1(d) of these Train Management Guidelines must be taken into account.*
- (d) *RHI acknowledges the requirements for the provisions of the Train Management Guidelines to adhere to the requirements set out in section 16 of the Code.*

1.3 Pre Conditions

These Guidelines 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). Before a Service can operate on the RHI railway, the Operator must:

- (a) *have an executed Access Agreement in place and have fulfilled all necessary conditions under that Access Agreement; and*
- (b) *provide RHI with such details of Trains and Services as are requested by RHI.."*

- (c) The Authority has suggested that Part 1.4 be deleted from the TMG.

Part 1.4 (now Part 1.5 of the revised TMG, following the inclusion of Parts 1.2 and 1.3 suggested at paragraph 2(b) above) does not need to be deleted from the TMG. Part 1.5 states that if the Regime (namely the Act and the Code) applies to the amendment of the TMG, the TMG may be amended only in accordance with the Regime. This conclusion is consistent with the concerns expressed by the Authority in paragraph 16 of the draft

decision. If the Regime does not apply to the TMG, the TMG may be amended by RHI in its reasonable discretion. Part 1.5 may remain in the TMG.

3 REQUIRED AMENDMENT 2 – CONTRACTUAL ARRANGEMENTS

The Authority has suggested that Part 2 of the TMG should be deleted.

RHI submits that Part 2 of the TMG should be retained.

Parts 2.1, 2.2 and 2.5 should be retained in their present form without any amendment. Despite the comments by the Authority in paragraph 21 of the draft decision, the statement in Part 2.1 that “ a person must have an Access Agreement to receive Services from RHI ” is correct since the definitions of “Access Agreement” and “Services” include only arrangements under the Code.

Similarly the statements in Part 2.2 of the TMG are correct, and the system assumptions (which is a descriptive term used by those working in the train control area to describe the assumptions which underpin the operation of the RHI railway) will be applied by the train controllers in determining scheduling.

In relation to Part 2.3, RHI would submit that if there is an inconsistency between an Access Agreement and the TMG, it would be preferable if the Access Agreement prevailed because the Access Agreement is a particular document negotiated between the operator and RHI. In contrast, the TMG is a general document which will apply to all access provided to operators under the Code.

4 REQUIRED AMENDMENT 3 – SCHEDULING PRINCIPLES

The Authority has suggested that Part 3 of the TMG should be deleted and replaced with text equivalent to Part 2 of TPI’s TMG. Alternatively the Authority has suggested that Part 3 of the TMG should be substantially amended by deleting references to the “RH Requirements”, “Disclosed Requirements”, RHI’s “run when ready” philosophy, and RHI’s “run when ready operational strategy”.

Part 3 should not be deleted because it sets out how the rail function at RHI will operate. The proposed structure of an Annual Schedule (described in part 3.2.1), refined to a Quarterly Schedule (described in part 3.2.2) and then further refined to a weekly schedule (part 3.2.3) and then a 72 hour plan (part 3.3) accurately reflects the practice of the rail operations function at RHI. RHI queries why the Authority would suggest that these paragraphs should be replaced by a description of how the rail operation function at TPI operates, which is different to the RHI operation.

Part 2 of TPI’s TMG adopts the concepts of “Timetabled Traffic” and “Cyclic Traffic”. “Timetabled Traffic” is defined in the TPI TMG to mean “...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...”. “Cyclic Traffic” is defined to mean “... 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 constraints...”.

RHI does not intend to operate any “Timetabled Traffic” as referred to in TPI’s TMG. Although the three monthly and fortnightly scheduling referred to in paragraph 2.2 of the TPI TMG only applies to “Cyclic Traffic”, not “Timetabled Traffic”, since RHI does not intend

to operate any “Timetabled Traffic” on the RHI railway it is not appropriate that the RHI TMG include Part 2 of the TPI TMG.

The Disclosed Requirements and the RH Requirements are dictated to RHI by third parties, namely financiers. Financiers also require that the “run when ready” philosophy dictates appropriate scheduling. It is not commercially possible for the RHI railway to operate in any way other than in accordance with the “Disclosed Requirements”, the “RHI Requirements” and the “run when ready” philosophy. Third party access seekers with whom RHI has previously opened discussions for access in the past have accepted that RHI must comply with requirements imposed on RHI by its financiers, and RHI submits that the Authority should make the same acknowledgement.

5 REQUIRED AMENDMENT 4 – DAY OF OPERATIONS MANAGEMENT

- (a) The Authority has suggested that all references to “RH Requirements” and “Disclosed Requirements” in Part 4 should be deleted. RHI has explained at paragraph 4 above that the references to “RH Requirements” and “Disclosed Requirements” need to be retained in the TMG.
- (b) The Authority has suggested that the reference to “Services” may be replaced by “train path” or “entitlement to run a service”. The term “Service” is defined in the TMG as “Access to RHI’s railway and any other services or facilities agreed to be provided by RHI to the Operator as set out in the Operator’s Access Agreement.” Whenever used in RHI’s TMG, the term “Service” is intended only to mean “access to the RHI railway”. RHI does not agree that any confusion should exist, and therefore would submit that no amendment is necessary.
- (c) The Authority has suggested that Part 4.9 (Management of Daily Issues) and Part 4.10 (RH Requirements) are deleted.

RHI submits that Parts 4.9 and 4.10 should not be deleted from the TMG because they accurately reflect the way in which RHI will manage the RHI railway and the relationship with Operators. RHI is, and intends to continue, managing the RHI railway in accordance with the RH Requirements, and any access agreement entered into with a third party access seeker will prescribe the relationship between the RH Requirements and the Disclosed Requirements.

- (d) The Authority has suggested that text equivalent to Parts 4.2 - 4.5 of TPI’s TMG are included in RHI’s TMG.

Parts 4.2 – 4.5 of the TPI’s TMG deal with management of emergencies or other incidents (Part 4.2), network blockages (Part 4.2.1), train activities following an incident or an emergency (Part 4.3), management of issues affecting daily operations (Part 4.4) and disputes (Part 4.5). To the extent that these issues are not already dealt with elsewhere in the TMG or the Train Path Policy, RHI acknowledges that they may be included in the TMG.

Attached to this submission is a revised draft of the Train Management Guidelines, which incorporates those amendments suggested by the Authority which Roy Hill has advised in this response are acceptable.

Roy Hill Infrastructure Pty Ltd

19 April 2017



Costing Principles

[DRAFT APRIL 2017]

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Draft

Document approval				
	Name	Position Title	Signature	Date
Author				
Reviewers				
Approver				

Revision Register			
Version	Date	Position Title	Amendment / Reason for revision

Costing Principles

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1. Introduction

1.1 Background

- (a) Roy Hill Infrastructure Pty Ltd (**RHI**) owns and operates the RHI Railway from the Roy Hill Mine to Port Hedland in the Pilbara region of Western Australia.
- (b) The purpose of the *Railways (Access) Act 1988* (**the Act**) and the Railways (Access) Code 2000 (**the Code**) is to establish a rail access regime that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations. The Act requires the RHI Railway to be made available for access by third party rail Operators.
- (c) RHI is a wholly owned subsidiary of Roy Hill Holdings Pty Ltd (**RHH**). RHH, through its subsidiary companies, will be a vertically integrated business. RHH will construct and operate the mining operation at the Roy Hill Mine, transport the Product on the RHI Railway to the port of Port Hedland, export the Product through the port of Port Hedland and market the product.
- (d) To the extent that the Act and the Code impose additional costs and burdens on RHH and its subsidiary companies (either directly or indirectly), these Costing Principles permit the complete recovery of all of those costs.

~~*ALT.- To the extent that RHH and its subsidiary companies incur operating costs, capital costs and overheads attributable to the performance of RHI's access related functions, as a consequence of providing access to third parties (either directly or indirectly), these Costing Principles permit the complete recovery of all of those costs.*~~

- (e) The objectives of these Costing Principles are:
 - (i) to provide the framework for the calculation and determination of the **costs referred to in section 9(1)(c)(i)** of the Code; and
 - (ii) to define the manner in which the keeping and presentation of the railway owner's accounts and financial records so far as they relate to the determination of the **Floor and Ceiling costs** will occur.
- (f) As required by clause 9(1) of the Code, RHI will, when requested by a person seeking access, provide that person with:
 - (i) the Floor Price and the Ceiling Price for the proposed access;
 - (ii) the incremental costs and the total costs on which those prices have been calculated; and
 - (iii) a copy of these Costing Principles.
- (g) Capitalised expressions and expressions defined in section 7 of these Costing Principles have the meanings set out in that section.

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Costing Principles

(h) The Over-payment Rules (required by section 47 of part 5 of the Code) are linked to the Costing Principles. The Over-payment Rules set out the methodology for dealing with over payments where a breach of the ceiling price test (referred to in clause 8 of Schedule 4 of the Code) has occurred.

[ALT: The Over-payment Rules (determined by the ERA under Part 5, section 47 of the Code) are linked to the Costing Principles. The Over-payment Rules set out the methodology for dealing with over payments where a breach of the ceiling price test (referred to in clause 8 of Schedule 4 of the Code) has occurred.]

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1.2 Development of Costing Principles

These Costing Principles have been developed on the basis that they are a set of principles that will need to be supported by databases and costing models containing considerable detail, which will change from time to time.

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1.3 Relevance of Costing Principles

- (a) The Costing Principles are a statement of the principles, rules and practices that RHI will apply to calculate the incremental costs and the total costs over the applicable Route Section, as required to be established under the Code.
- (b) The Code also allows RHI to negotiate prices between the Floor Price and the Ceiling Price and as such the incremental costs and the total costs only provide the lower and upper boundaries to potential final prices for access which will be established by negotiations (and if necessary arbitration).
- (c) Although this document only refers to the Costing Principles, RHI notes that clause 13 of Schedule 4 to the Code provides guidelines on which negotiated access prices under the Code are to be based.
- (d) RHI is prepared to discuss access with interested parties either within the requirements of the Code or outside the Code. The rights and protection offered under the Code are not extended to negotiations and agreements undertaken outside the Code.

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1.4 Service quality commitment

- (a) RHI will adopt economically and technically efficient practices to provide a network which maintains service quality at the specified operational levels for the network.
- (b) RHI will negotiate specific KPIs (covering both RHI and the Operator's performance) in its Access Agreements to measure operational performance of itself and the Operator. This may include financial incentives or penalties.

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1.5 Structure of this document

This statement of Costing Principles is structured into seven sections:

- (a) Section 2 – Determination of capital costs;
- (b) Section 3 – Determination of operating costs;

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- (c) Section 4 – Determination of overhead costs;
- (d) Section 5 – Other matters;
- (e) Section 6 – Compliance and review;
- (f) Section 7 – Definitions; and
- (g) Section 8 – Annexures.

2. Determination of capital costs

2.1 Introduction

- (a) The total costs, and in certain circumstances the incremental costs, include a capital charge which is intended to reflect the cost to RHI of establishing and replacing infrastructure capacity over time. The Code sets out the basis for determining the capital charge based on an annuity formula, calculated having regard to the gross replacement cost of the infrastructure, its economic life and an allowable rate of return. The capital charge, using the annuity formula, compensates RHI for both the return on capital and for capital depreciation of the infrastructure.

- (b) Incremental costs will include a capital charge only where RHI has agreed that it is necessary to make capital expenditure to provide the Service (either because of the need to expand capacity or because of the characteristics of the Service requested) and RHI has agreed, at its complete discretion, to fund the capital expenditure. In such cases, it is appropriate to include the cost of this capital in the incremental costs. These circumstances will only arise where RHI has agreed, at its complete discretion, to fund capital expenditure, and will usually be limited to situations where capacity has to be expanded to meet the Operator's requirements. In calculating an Operator's incremental cost, the economic life assumption underpinning the annuity payment calculation for these types of capital costs will be based on the economic life of assets listed in Annexure A. If the assets service a time limited project, then the annuity will be based on that shorter life, and the ERA will be advised as to the reasons for the shorter life assumption. There are five key elements which underpin the determination of the appropriate capital charge:

- (i) infrastructure to be included in the calculations;
- (ii) gross replacement value;
- (iii) economic life of the asset;
- (iv) allowable return; and
- (v) annuity calculation.

Each of these elements is discussed below.

2.2 Capital Costs associated with Land

- (a) Capital costs will be calculated to include amounts for the amortisation of:

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Costing Principles

- (i) the costs incurred by RHI to acquire any interest in land; and
 - (ii) any other costs incurred by RHI in relation to the acquisition of any interest in land (including costs incurred in connection with Aboriginal heritage or native title issues or other transaction costs).
- (b) The capital cost associated with land and the methodology used by RHI for its calculation will be reviewed by the ERA as part of each incremental cost and total cost determination.

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2.3 What infrastructure is included?

- (a) Capital costs will include all amounts intended to reflect the cost of establishing and replacing infrastructure capacity over time (including the acquisition costs of the land on which the infrastructure is located, if that cost is not included in these Costing Principles elsewhere as an operating cost). The amount will be an annuity calculated in respect of the value of the infrastructure assets, the appropriate rate of return and the economic life of assets, and will apply to all of the railway infrastructure owned by RHI that is defined as “railway infrastructure” under Part 1 of the Code, including:
- (i) railway track, associated track structures, over and under track structures, supports (including supports for equipment or items associated with the use of a railway);
 - (ii) tunnels and bridges;
 - (iii) stations and platforms;
 - (iv) train control systems, signalling systems and communications systems;
 - (v) buildings and workshops; and
 - (vi) associated plant, machinery and equipment.
- (b) Railway infrastructure is taken to include any cuttings or embankments.
- (c) Assets which support operating functions will be included in the operating cost or overhead cost calculations as appropriate. Assets included in this category are motor vehicles, computers, printers, facsimile machines, photocopiers, system hardware and software, mobile and fixed communications, office furniture and equipment. The cost of these assets will be calculated on a net basis.

2.4 Gross Replacement Values

- (a) There are a number of underlying assumptions which affect the calculation of Gross Replacement Values (**GRV**) including:

(i) **Capacity of infrastructure**

The infrastructure is required to be optimised to meet current and reasonably projected demand.

RHI considers that the network as constructed can meet current and reasonably projected demand for all users taken together. If RHI requires additional infrastructure to meet its own projected

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demand in conjunction with an access proposal, then it will demonstrate the basis of and financial commitment to the demand projection.

RHI believes that the existing network can meet the reasonably projected demand by RHI. If RHI received a request for access from a third party, the capacity of the the existing network would have to be increased. RHI would include the costs of the additional infrastructure required to meet the projected demand from the third party, and RHI would need to demonstrate:

- (a) the basis of the demand projection; and
- (b) a commitment to the capital expenditure.

(ii) Route optimisation

RHI will assume that the optimised network is provided by the rail track within the existing corridor of the land and therefore the resulting lateral alignment of the network is considered efficient.

(iii) Contributed assets

There are at present no contributed assets on RHI's existing network. However, in the future, it is possible that individual third parties may contribute capital towards the construction of the network. In such a case, contributed assets will be included in the cost of capital for the purpose of calculating the GRV and the total costs applicable to a Route Section. Contributed assets may include both government and operator contributed assets, and the cost of operating and maintaining these assets will also be included in the calculation of total costs.

In the case of Government and operator contributed assets, the value of the contributed capital will be accounted for as an equivalent annuity payment which is to be included in the revenue earned on the asset, for the purpose of calculating total costs.

As an illustration, if RHI contributed 50% of the capital cost of a new level crossing, with the other 50% coming from another source, then for the purpose of the total costs calculation, the full cost of the level crossing calculated as an annuity would be added to the total costs of the relevant Route Section. As for the 50% contribution from the other source, that amount would be annualised and treated as revenue for the purpose of the calculation of total costs of that Route Section.

(iv) Greenfields Site

For the purposes of calculating the GRV, the replacement cost calculations are to assume a Greenfields site. However, costs related to constructing around and over other existing railways and rail traffic, and other surface diversions shall be included in the replacement cost calculations.

(v) Modern Equivalent Assets

Replacement values are to be assessed on the basis of Modern Equivalent Assets (MEA), and current market tested unit rates for materials, where appropriate.

The key steps required to complete a GRV estimate based on MEA are:

- (A) identify the Route Section or Route Sections that the GRV is being calculated for;
- (B) assess the existing railway infrastructure specification to ensure that the MEA test is appropriate;

- (C) review asset databases to ensure the population of assets is correct;
- (D) confirm existing network capacity will meet current and reasonably expected future demand on the network;
- (E) confirm unit rates are based on Efficient Costs;
- (F) complete an analysis of each asset class to optimise the network to a MEA; and
- (G) calculate the current GRV of the railway infrastructure using the MEA or existing asset specification if appropriate.

The key capital cost drivers RHI will adopt to ensure a MEA network are:

- (H) the operating track standard (axle load, speed);
- (I) population of supporting infrastructure (bridges, culverts); and
- (J) topography of route (gradient and track curvature).

(vi) Unit rates

RHI will determine the unit rates to be included in the RHI costing model (which may be reviewed by an independent engineering consultant) and, where these rates have any adjustment for scale or scope or the impact of location, these assumptions will be included.

This information is contained in the RHI costing model and will be made available to the ERA and contains information of the source and the assumptions that are currently used in the model.

In addition, RHI will identify and provide to the ERA, unit rate information and assumptions that it considers can be released as part of the public consultation process for the ERA's determination under clause 9 of Schedule 4 to the Code on the incremental costs and total costs to apply to the applicable Route Section.

(vii) Design, construction and project management fees

If design, construction and management fees are not included elsewhere in the capital cost of infrastructure, RHI will apply design, construction and project management fees at a rate of 20% of the total cost of the infrastructure and based on the life of the project.

Because RHI uses primary unit rates for establishing construction costs, it is appropriate to charge the full project management on the materials cost calculated for the infrastructure (which materials costs shall include travel and accommodation, fuel consumption for construction activities and equipment and plant hire). In cases where such fees are included in unit rates, RHI accepts that the project management fee should be reduced to account for such charges, keeping total design, construction and project management fees in line with a 20% limit.

(viii) Financing charge during railway infrastructure construction

The Code requires that the GRV for railway infrastructure be applied as part of the calculation of the capital charge. Consistent with this approach, RHI will include in the capital cost an allowance for its cost of capital and related financing fees and charges during the construction period.

Costing Principles

RHI will apply the WACC determined by the ERA to the construction cash flows to calculate the financing charge. Upon completion of construction, the interest calculation ceases. In determining the annuity payment attributed to such costs, the life of the project will be used.

Construction rates will vary depending on scale and scope and also the geography and the impact of other infrastructure on the applicable Route Section. RHI will use an appropriate average construction rate. This rate will be based on the entire RHI Railway and allocated to the applicable Route Section on a per kilometre basis. The ERA may consider a higher or lower rate in some sections of the network and adjust the construction rate accordingly.

(ix) Economic life

RHI has evaluated the economic life of its infrastructure based on the application of MEA with new components and key determinants of asset life such as environmental factors, which will have an impact to extend or reduce the life of the asset.

This evaluation is based on generally accepted industry lives and RHI's own experience. The economic life of assets adopted by RHI are generally consistent with those accepted in other regimes.

[ALT: This evaluation is based on generally accepted industry lives, the experience of other railways in the Pilbara and RHI's own experiences. The economic life of assets adopted by RHI are generally consistent with those accepted in other regimes.]

In calculating a total (and if appropriate an incremental) cost, the economic life assumption underpinning the annuity payment calculation for these types of capital costs will be based on the economic life of assets listed in Annexure A unless a shorter life is adopted due to the assets servicing a time limited project. In assessing the life of a project serviced by the assets, RHI may have regard to the term of contractual arrangements that are entered into by the parties. The ERA will be advised as to the reasons for any shorter life assumption.

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2.5 Allowable return

In accordance with the Code, the **annual** WACC as applied to the RHI Railway will be determined by the ERA and reviewed (by the ERA) each year at 30 June.

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2.6 The annuity calculation

- The annuity calculation provides a return on capital and implicitly provides for depreciation of the asset.
- RHI has adopted the methodology (applying the PMT formula) used in a Microsoft Excel spreadsheet to calculate the annuity required.
- The MS Excel terminology for the Annuity formula (PMT) is described:

Rate of Interest:	be set at the relevant WACC as defined by the Code.
Nper:	be expressed in years and based on the lesser of (a)the economic life of

Costing Principles

	the asset; and (b) the life of the project.
Pv:	is the GRV of the relevant Route Section.
Fv:	is the salvage value, if any, which remains at end of economic life. At the end of the economic life of an asset, or at the end of the life of the project, the salvage value is to be set at zero.
Type:	be set at the start of the period by inputting 1.

- (d) This formula estimates the annual capital charge at the beginning of the period. Payments are calculated annually in advance based on this formula for estimating the capital charge. Any underpayments or overpayments will be calculated promptly after the end of each financial year against actual costs incurred during the year, and any adjustment will be refunded or paid (as appropriate) promptly after the finalisation of the calculation.
- (e) If amounts are not paid annually in advance, the ERA has determined that RHI can include in its operating costs a proxy for the working capital required due to the effects of the formula (refer to section 3.3). The appropriate methodology is to calculate the charge annually in arrears but this is not possible under the definition in the Code where economic life for the GRV of the railway infrastructure is to be expressed by reference to number of years of useful life.

3. Determination of “Operating Costs”

3.1 Introduction

RHI **will determine** its Operating Costs based on the Efficient Costs of maintaining the MEA network.

3.2 Efficient cost tests

- (a) RHI will test whether or not its Operating Costs used for determining the incremental costs and total costs are efficient as follows:
- (i) benchmarking will be used where it is available and comparable;
 - (ii) for certain processes and activities unit costs from competitive tendering may be used;
 - (iii) if the maintenance programs are based on accepted industry standards for maintenance which describe the scope and frequency of the activity then this may be considered to be efficient;
 - (iv) actual costs may be used where the consumption and scope are efficient (e.g. train controller’s salaries if the number of controllers and their range of duties are efficient by benchmarking); and
 - (v) actual costs may also be used where the costs:

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- (A) come from a competitive market such as insurance; or
 - (B) are regulatory costs (such as the cost of Rail Safety Accreditation).
- (b) In measuring efficiency, RHI recognises that these costs change over time especially as a result of innovation and technological change.

3.3 RHI's definition of "Operating Costs"

- (a) In determining what maintenance activities are required to maintain MEA infrastructure in a GRV based regime, major periodical maintenance activities (**MPM**) have not been included. For the purpose of these Costing Principles, this is because MPM is assumed to extend the economic life of the assets.
- (b) However, it is noted that the use and definition of MPM has a wide variety of applications and interpretation in the rail industry. There are some activities which are included in both MPM or in Cyclical Maintenance in a GRV based regime and are not exclusive to either regime. For this reason, in these Costing Principles, RHI uses the defined terms "Routine Maintenance" and "Cyclical Maintenance" to describe the activities it will include in its Operating Costs.
- (c) For present purposes, RHI has five categories of Operating Costs in the Costing Model as follows:
- (i) Routine Maintenance for track and for signals and communications;
 - (ii) Cyclical Maintenance for track and for signals and communications;
 - (iii) Network Management Costs;
 - (iv) Land Related Operating Costs and
 - (v) Working Capital Charge.

Note that the expression "Operating Costs" is also defined in the Code.

(i) Routine Maintenance and Cyclical Maintenance for track

RHI has developed a track maintenance model which calculates the cost of maintaining the track infrastructure in accordance with the defined assumptions documented in these Costing Principles. The assumptions adopted in this process are set out below.

The track infrastructure is new at year 1 and is maintained to realise the defined economic life of components of the asset. The infrastructure maintenance levels and the frequency of the activities are deemed to comply with the Australian Standard AS4292 (Parts 1 and 2) which specifies the safety requirements of the Railway Safety Management System.

The maintenance regime is broadly classified into two categories:

- (A) Routine Maintenance; and
- (B) Cyclical Maintenance.

There are two major activity classifications within Routine Maintenance, namely:

- (C) routine inspections; and
- (D) routine maintenance, which typically follows the inspection process.

The inspection regime includes patrolling, on-train inspection, track condition monitoring (using recorder vehicles), defined event inspections by patroller and inspection of structures.

Routine Maintenance is therefore the corrective action taken as a follow up to routine inspections.

Cyclical Maintenance comprises tasks that are undertaken at regular intervals to ensure that assets achieve their expected asset life and include:

- (1) track resurfacing, rail grinding, ballast top up and cleaning, rail defect removal and structures maintenance to achieve economic life; and
- (2) firebreaks, scrub slashing, drainage, access roads and road seal on level crossings to meet operational and safety requirements.

The cost of repairing infrastructure as a result of incidents such as fire and flood and damage caused to the track as a result of derailments or accidents, has been included in maintenance costs but only to the extent they are not recoverable under insurance policies or direct from operators. The cost of repairing infrastructure will not be included if it can be shown that RHI is grossly negligent in its responsibility as a railway owner. While RHI intends to calculate such “incident costs” based on a historical cost approach, RHI understands that the ERA will decide such costs having regard to the manner in which the cost of incidents is calculated when determining the incremental costs and total costs on the various routes as part of the review conducted under clause 9 of Schedule 4 to the Code.

The track maintenance model is incorporated into the Costing Model and includes all the assumptions and prices used in that model. As the level of maintenance activity varies over the life of the asset, it is appropriate to calculate the net present value of the projected stream of maintenance costs that occurs over the life of the asset, starting with the assumption of a new asset in year 1. The annualised value of this stream of costs is then used to represent an average annual maintenance charge over the life of the asset. These are costs included in the definition of “Operating Costs” in clause 1 of Schedule 4 to the Code.

(ii) Routine Maintenance and Cyclical Maintenance for signalling and communications

Signalling and communications costs are largely based on Routine Maintenance because of the safety and operating requirements of these systems.

Routine Maintenance is based on industry accepted inspection regimes and on fault history and includes specified periodical inspections and procedures (including testing), and responses to faults.

Cyclical Maintenance is significantly less important for signalling and communications - it includes component rebuilds to achieve economic life.

The signal and communications maintenance model is incorporated as part of the Costing Model. The annual charge is based on an annualised value of the net present value of maintenance costs stream. Maintenance costs are allocated to Route Sections according to train movements.

These are costs included in Part (b) of the definition of “Operating Costs” in clause 1 of Schedule 4 to the Code and the NPV of the cash flows is then used to calculate an average annual maintenance charge over the life of the asset.

(iii) Network Management Costs

RHI will incur costs which are directly related to the operational management of the network as defined in Part (b) of the definition of “Operating Costs” in clause 1 of Schedule 4 to the Code.

These costs reflect a centralised train control system and include compliance costs with RHI’s rail safety accreditation requirements under the Rail Safety National Law, train scheduling and requirements for emergency management.

These costs include the whole of any additional costs incurred by RHI resulting from the provision of access to another Operator in managing the network (including the entire cost of employing or engaging any additional persons required as a consequence of complying with RHI’s obligations to provide access under the Act and the Code).

(iv) Land Related Operating Costs

Land Related Operating Costs are any payments made in respect of any lease or licence that RHI (or any related company of RHI) holds over any land. These payments will relate only to land used for constructing, maintaining or operating the RHI Railway and are not capital costs.

(v) Working Capital Charge

If the capital charge is not paid annually in advance, because of the limitations of the Code in calculating the annuity formula described in section 2.6, RHI will include in its Operating Costs an annual “Working Capital Charge” that is calculated by multiplying the WACC by the annuity. However, if the capital charge is paid monthly in advance, RHI will include in its Operating Costs an annual “Working Capital Charge” that is calculated by multiplying half of the WACC by the annuity.

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The cost of any insurances taken out by or on behalf of RHI (or any related company of RHI) will be included in RHI’s Operating Costs. If RHI (or any related company of RHI) elects to self insure any part of the assets which form part of the Project or any aspect of the business conducted by RHI (or any related company of RHI) an amount equal to the cost which would have been incurred had RHI (or any related company of RHI) taken out or effected insurance with an external provider will be included in the costs of RHI. ¶

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3.4 Allocation of Operating Costs

- (a) Track and signalling maintenance costs are directly allocated to Route Sections based on the nature and population of the infrastructure.
- (b) Centralised train control cost will be apportioned directly to routes based upon actual train control resources managing traffic over each route. Allocation of non-sector specific operating costs including costs in part (a) of the definition of Operating Costs in Schedule 4 of the Code is in accordance with the allocation rules using GTK or train movements and listed in Annexure B. The allocation of Operating Costs will in the first instance be apportioned to the applicable Route Section and subsequent allocation to the applicable Route Section will be determined by the ERA as part of the incremental cost and total cost determinations.

3.5 Payment of Operating Costs

Amounts payable for Operating Costs will be paid annually in advance based on budgeted costs. Any underpayments or overpayments will be calculated promptly after the end of each financial year against actual costs incurred during the year, and any adjustment will be refunded or paid (as appropriate) promptly after the finalisation of the calculation.

4. Overhead Costs

4.1 Definition of “Overhead Costs”

RHI is a separate legal entity and has an efficient overhead structure which relates to its business of access provision. RHI also sources corporate and related functions from its immediate parent company, Roy Hill Holdings Pty Ltd. Nonetheless, only those Overhead Costs attributable to activities related to the Code’s definition of “railway infrastructure” will be included in the calculation of incremental costs and total costs.

4.2 Allocation of Overhead Costs

The allocation of Overhead Costs will, in the first instance, be apportioned to a Route Section and subsequent allocation to the Route Section level will be reviewed by the ERA as part of the calculation of incremental costs and total costs.

Allocation criteria for Overhead Costs are set out in Annexure B.

4.3 Payment of Overhead Costs

Amounts payable for Overhead Costs will be paid annually in advance based on budgeted costs. Any underpayments or overpayments will be calculated promptly after the end of each financial year against actual costs incurred during the year, and any adjustment will be refunded or paid (as appropriate) promptly after the finalisation of the calculation.

4.4 Insurances

The cost of any insurances taken out by or on behalf of RHI (or any related company of RHI) will be included in RHI’s Overhead Costs. If RHI (or any related company of RHI) elects to self insure any part of the assets which form part of the Project or any aspect of the business conducted by RHI (or any related company of RHI) an amount equal to the cost which would have been incurred had RHI (or any related company of RHI) taken out or effected insurance with an external provider will be included in the costs of RHI.

5. Other matters

5.1 Incremental Costs and Total Costs variations

- (a) Following any determination of incremental costs and total costs, the costs may be indexed annually, for a period of up to five years. The purpose of the indexation is to enable the administration of the Over-payment Rules in relation to revenues received under Access Agreements and to enable total costs to reflect a reasonable return to RHI over the five year period without requiring RHI or the ERA to re-determine costs over that period.
- (b) Costs determined for the purposes of administering the Over-payment Rules will remain unadjusted following the expiration of the five year determination period, unless superseded by costs approved by the ERA in a subsequent determination.

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Costing Principles

- (c) RHI will index the incremental costs and the total costs annually based on any actual cost increases which have occurred for the year (or if those actual cost increases cannot be calculated, then the applicable CPI for the Pilbara region of Western Australia). Cost increases will include any additional costs which might be incurred as a consequence of any change in law, or change in policy (Government, local Council or otherwise), which might adversely affect the cost of conducting RHI's business (including without limitation any policy changes which affect employees, consultants and contractors of RHI or its subsidiaries).

[ALT- RHI will index incremental and Total Costs based on CPI. In determining CPI, the Australian Bureau of Statistics weighted Average of Eight Capital Cities All Groups CPI will be used. The annual change will be calculated as a percentage change in the average of the four quarters to March of each year from the average of the previous four quarters.]

- (d) RHI will submit the annual inflation adjusted incremental costs and total costs for determined routes to the ERA for review and approval.

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5.2 Asymmetric risk

RHI will include an allowance for asymmetric risk as an annual Operating Cost in its model and in its calculation of incremental costs and total costs. The allowance and the methodology used by RHI for its calculation will be reviewed by the ERA as part of each determination of incremental costs and total costs.

6. Compliance and review

- (a) These Costing Principles 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.
- (b) The ERA has the power under the Code to amend these Costing Principles at any time and Operators and persons seeking access can at any time request the ERA to consider amendments.

7. Definitions

In these Costing Principles:

Access Agreement	means an agreement in writing under the Code between RHI and an entity for access to the RHI Railway by that entity.
Act	means the <i>Railways (Access) Act 1998 (WA)</i> .
Ceiling Price	has the same meaning as in clause 9(4) of the Code.
Code	means the Railways (Access) Code 2000 established under the Act.
Costing Model	means the model that RHI uses to calculate total costs and includes

the associated models and data bases for:

- (a) the track, signalling and communications models which calculate the GRV of the rail infrastructure;
- (b) track, signalling and communications maintenance models;
- (c) the model of Operating Costs;
- (d) the Overhead Cost and other costs allocation model;
- (e) track population data bases; and
- (f) the usage model which records from RAMS the GTK usage and train movement by Route Section,

and supporting detail for these models including unit rates, assumptions and sources of information as well as the physical characteristics of the rail infrastructure including distance and specifications.

Costing Principles means these principles, rules and practices, approved by the ERA in accordance with section 46 of the Code.

CPI means the Weighted Average of Eight Capital Cities All Group Consumer Price Index published by the Australian Bureau of Statistics or the Australian Statistician.

Cyclical maintenance means tasks undertaken at regular intervals (for example, annually) which are necessary to achieve the expected asset life.

Tasks could include (but are not limited to):

- (a) track resurfacing - rail grinding, calculation, ballast top up and cleaning, rail defect removal, and structures maintenance;
- (b) signalling and communications - servicing, component replacement and cleaning;
- (c) track - firebreaks, scrub slashing, drainage, access roads, road seal on level crossings;
- (d) signalling and communications - upgrading of components; and
- (e) change out for detailed servicing.

Efficient Costs means those costs that would be incurred by a body managing the railways network and adopting efficient practices applicable to the provision of railway infrastructure, including the practice of operating a particular route in combination with other routes for the achievement of efficiencies.

Economic Regulation means the Economic Regulation Authority established by the

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Costing Principles

Authority (ERA)	<i>Economic Regulation Authority Act 2003 (WA).</i>
Floor Price	has the same meaning as in clause 9(4) of the Code.
incremental costs	has the same meaning as in clause 1 of schedule 4 of the Code.
GRV	means the gross replacement value of the railway infrastructure calculated as the lowest current cost to replace the existing assets with assets that: <ul style="list-style-type: none">(a) have the capacity to provide the level of service that meets the actual and reasonably projected demand; and(b) are, if appropriate, MEA.
GTK	means gross tonne kilometre.
MEA	means “modern equivalent asset”, being an optimised network that is re-configured using current modern technology serving the current load with some allowances for reasonably projected demand growth up to three years into the future. The MEA excludes any unused or underutilised assets and allows for potential cost savings that may have resulted from technological improvement.
MPM	means “major programmed maintenance” activities which are, or are associated with, partial asset renewal to maintain functional condition of the infrastructure and which occur at intervals greater than one year.
Network Management	means activities that are undertaken in the provision of train management. Functions include access management, train scheduling, operations planning, RAMS management, customer service and safe working management.
Operator	has the same meaning as in clause 3 of the Code.
Operating Costs	means those costs which fall within the meaning of the term “Operating Costs” in section 3 of these Costing Principles.
Overhead Costs	means those costs which fall within the meaning of the term “Overhead Costs” in section 4 of these Costing Principles.
Over-payment Rules	means the rules for RHI determined by the ERA in accordance with clause 47 of the Code, which deal with the payment of amounts in excess of total costs.
Product	means product produced by the Roy Hill Mine.
Rail Safety National Law	means the <i>Rail Safety National Law (WA) Act 2015 and the Rail Safety National Law (WA) Regulations 2015.</i>

Costing Principles

RAMS	means the Rail Access Management System computer system operated by RHI 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.
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.
RHI Rules	means RHI's Rules issued in accordance with RHI's Safety Management Plan approved under the Rail Safety National Law together with any amendments, deletions or additions made in accordance with the Safety Management Plan and all policies and notices issued by RHI for the purpose of ensuring the safe use of the rail network.
Route Section or Route Sections	means a section, or the sections (if any), into which the RHI Railway is divided for management and costing purposes in accordance with Schedule 2 of the Code.
Routine Maintenance	means regular and ongoing maintenance activities, which are required to meet specific levels of defined safety and operational standards and commences from day one of operation and is generally continuous for the life of the operation. There are two major activity classifications: <ul style="list-style-type: none">(a) routine inspections of:<ul style="list-style-type: none">(i) track, which includes patrolling; track recording using on track recording technology, ultrasonic testing, site inspections; and structures inspections; and(ii) signalling and communications, which includes programmed inspections and systems and equipment testing;(b) routine maintenance which is usually undertaken as a result of the inspection process and comprises maintenance of:<ul style="list-style-type: none">(i) track, which includes change out of failed sleepers or components; cross boring; recanting of curves; geometry corrections and tamping following inspections; turnout maintenance, minor formation repairs; and fastening replacement ; and(ii) signalling and communications, which includes scheduled services, replacements and cleaning, etc.
Services	means any services provided under an Access Agreement which may

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include any one or more of the following:

- (a) the provision of access to the Railway;
- (b) the receipt of Product from the Operator (or another person) at a loading point;
- (c) the transportation of Product from a loading point to an unloading point; and
- (d) the delivery of Product to the Operator (or another person) at an unloading point.

total costs

means the total of all:

- (a) Operating Costs;
- (b) capital costs; and
- (c) Overhead Costs,

attributable to the performance of the railway owner's access related functions whether by the railway owner or an associate as defined in the Code, as defined in clause 1 of schedule 4 to the Code.

WACC

means the target long term weighted average cost of capital appropriate to the railway infrastructure expressed as an annual interest rate and determined by the ERA in accordance with clause 3 of schedule 4 to the Code.

Annexures

Annexure A - Economic Life of Assets

Assets	RH Economic Life (Years)
--------	--------------------------

Track Structure

Earthworks	16
Ballast	16
Sleepers	16
Turnouts/Catchpoints	16
Insulated Joints	16
Bridges	16
Level Crossings	16
Culverts	16
Rail structures and infrastructure	16

External Access Roads 16

Internal Access Roads 16

Signalling & Communications

Radio Base Stations	7
Towers	16
Enclosures	16
Level Crossings (active warning & monitoring)	15
Signalling Equipment	15
Detection Devices	15
Site facilities, equipment rooms, location cases etc.	16
Electronic equipment	10
Computer/network equipment	5

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Costing Principles

Useful Life for Metal Rail Component of Track Structure	Curve Radius			
	< 1,000m	1,000m to 3,000m	> 3,000m	Tangent Track

RH Economic Life (Years)	17	17	16	16
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Annexure B - Operating and Overhead allocation table

Cost Classification	Description	Inclusions	Allocation
Operating Costs	Network management	Access management; train scheduling and operations planning; RAMS management; safe working management; telephone charges and radio licences	Train numbers
	Infrastructure Management Costs	Maintenance management; engineering support; and inventory holding costs.	GTK
	Centralised train control	Total train control function	GTK

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Overhead Costs	RHI Overhead Costs	Corridor management; access compliance costs; net cost of computers; office equipment; furniture; motor vehicles; safety accreditation costs; and RHI management costs. Information systems, Payroll, Human resource management; accounting/finance, company secretarial and legal are included as part of RHI overhead.	GTK & Train Numbers Proportion to be agreed by the ERA during floor and ceiling cost determinations.
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Notes

Two proxies are used to allocate Overhead Costs. GTK's are used to allocate costs which vary more in quantum due to volumes moved, and train movements are used to allocate costs which vary more in quantum due to the number of train movements.

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Over-payment Rules

[DRAFT APRIL 2017]

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Document approval				
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Reviewers				
Approver				

Revision Register			
Version	Date	Position Title	Amendment / Reason for revision

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1. Introduction

- (a) Section 47(1) of the Railways (Access) Code 2000 (**Code**) requires each Railway Owner to prepare and submit to the ERA a statement of the rules (**Over-payment Rules**) that are to apply where breaches of the Ceiling Price Test occur on the part of that Railway Owner that could not reasonably be avoided.
- (b) The expression “**Ceiling Price Test**” is used in clause 8 of Schedule 4 to the Code. There are two separate tests: a Ceiling Price Test that must be met for each Operator in isolation (clauses 8(1) and (2) of Schedule 4) as well as a combined Ceiling Price Test (which is the Ceiling Price Test referred to in clause 8(3) of Schedule 4).
- (c) Clause 8 of Schedule 4 states that the “**Total Revenue**” earned on a particular Route must not exceed the “**Total Costs**” attributable to that Route.
- (d) If an Over-payment occurs, the Over-payment is deemed to be allowable within the Code provided the following applies:
 - (i) the Railway Owner can show that the Over-payment could not be reasonably avoided;
 - (ii) the Over-payment is at all times within a percentage limit;
 - (iii) all Over-payments are reimbursed to Operators within each successive three year period; and
 - (iv) the method of reimbursing Operators follows the rules set out in these Over-payment Rules.
- (e) This document outlines the Over-payment Rules that will apply to RHI. These Over-payment Rules set out a mechanism to:
 - (i) calculate the amount by which Total Revenue earned on a particular Route Section exceeds the Total Costs attributable to the Route Section; and
 - (ii) reimburse Operators who are provided with access under the Code to that Route Section in the event of an Over-payment.

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2. Basis of Over-payment Rules

2.1. Definitions of Route and Route Section

- (a) The Route Section is the basic unit to which the Over-payment Rules apply. A **“Route Section”** is a section of a Route on the railway network that has been divided for management and costing purposes.
- (b) The term **“Route”** referred to in this document has the meaning ascribed in clause 8 of Schedule 4 to the Code. A negotiated route (in an Access Agreement) could equate to a Route Section (or part thereof) or be a combination of several Route Sections.

2.2. One regulatory Ceiling

- (a) Each Route Section has one regulatory Ceiling that will apply to all Operators when negotiating access prices and will be the basis for determining whether Total Revenue earned on a particular Route Section has exceeded the Total Costs incurred on that Route Section.
- (b) Total Costs will be calculated by RHI using methods set out in the Costing Principles, and submitted for approval by the ERA as required by clauses 9 and 10 of Schedule 4 to the Code.

2.3. What constitutes revenue in the Ceiling Price Test under clause 8 of schedule 4 to the Code?

- (a) In assessing the extent of over-payments under section 47 and clause 8(1) of schedule 4 to the Code, all Regime Revenue and Non-Regime Revenue received by RHI for a Route Section, or part of a Route Section, and associated Railway Infrastructure will be included to calculate the Total Revenue attributable to that Route Section of the RHI Railway.
- (b) Total Revenue is the sum of Regime Revenue and Non-Regime Revenue. Regime Revenue is all income received by RHI for the provision of access to the RHI Railway to Operators. Non-Regime Revenue may include private and government contributions in accordance with the ERA’s approved set of Costing Principles to apply to RHI.
- (c) Revenue from Non Regime Operators will also be included in evaluating RHI’s compliance with the Floor Price Test and Ceiling Price Test. Furthermore, in assessing the extent of the Over-payment under section 47 of the Code, Non Regime Revenue from Non Regime Operators is included in the Ceiling Price Test. However, since the Code does not provide Non Regime Operators a legal entitlement to any refund of any Over-payment, such Over-

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Over-payment Rules

payments will be retained by RHI unless otherwise specified in an access agreement with the Non Regime Operator.

2.4. Breaches of the Ceiling Price Test

- (a) Section 47(1) of the Code states that the Over-payment Rules are to apply where breaches occur on the part of the Railway Owner that could not reasonably be avoided.
- (b) RHI will assess Total Revenues earned on particular Route Sections on a periodic basis to determine whether or not there is likely to be a breach of the Ceiling Price Test. Where it is possible to forecast potential Over-payments, RHI will seek to negotiate new access prices with affected Operators to ensure that Revenue remains within the Ceiling.
- (c) If breaches of the Ceiling Price Test occur as a result of variations in traffic volume or revenues that are deemed to be temporary or unpredictable in nature, and if Access Agreements are in place, then RHI will advise the ERA of such circumstances and will follow the procedure set out in these rules to deal with such Over-payments.

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2.5. Over-payments and Under-recoveries

- (a) For the purposes of these rules, the expression “**Over-payment**” means the amount of Total Revenue received by RHI for a Route Section that exceeds the Total Costs attributed to the Route Section for a one-year period.
- (b) Conversely, the expression “**Under-recovery**” refers to a situation where the Total Revenues to the Railway Owner on a Route Section for a one-year period are less than the Total Costs attributed to that Route Section.
- (c) Net Over-payments will be assessed over a successive three-year period, during which Over-payments in a particular year may be balanced out by Under-recoveries in a subsequent year or preceding year within the three-year period. Net Over-payments in a three-year period will be paid back to Operators in accordance with these rules.
- (d) Conversely, where an Under-recovery occurs the Operator is not required to pay RHI compensation for such Under-recovery. However, where a net Under-recovery occurs in a particular 3 year period, there are circumstances under which RHI will be allowed to carry-over this net Under-recovery as an accounting balance into the subsequent three-year period, which may be used to offset Over-payments in that subsequent three-year period. The circumstances where this will be allowed to occur are set out in example 4 in section 4 of these rules.

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Over-payment Rules

- (e) Example 4 refers to a situation where, as a result of having to reimburse Operators during the three-year period because the Over-payment is greater than 10 per cent of the Ceiling (refer to the Over-payment Rule 5 in section 3), there are insufficient funds in the interest bearing account for RHI to recoup an Under-recovery that has occurred during the same three-year period. In this instance, RHI will put a case to the ERA to carry the Under-recovery credits over to the next three years up to the amount RHI has been required to refund to Operators as a result of exceeding the 10 per cent limit. If allowed, the carry forward will only apply for that one additional successive three-year period.

2.6. Allocation of Access Revenue

- (a) Under section 9(1)(c)(i) of the Code, RHI is only required to provide one Floor Price and one Ceiling Price for a proposed access to a Route (i.e. from origin to destination) even though the access proposal could traverse multiple Route Sections.
- (b) Since price is determined on a Route or multiple Route basis, and Total Costs are determined on a Route Section basis, it is necessary to distribute Total Revenue earned over one or more Routes to individual Route Sections. The distribution of such Total Revenue will be done according to the following rules:
- (i) Total Revenue derived from a Route can only be allocated to the Route Sections on that Route; and
 - (ii) RHI will allocate Total Revenue to cover the costs attributed to the applicable Route Sections in the following order:
 - (A) incremental costs against all applicable Route Sections;
 - (B) up to the Ceiling on all applicable branch or feeder (dedicated) Route Sections; and
 - (C) up to the Ceiling on all applicable shared Route Sections.
- (c) The justification for the ordering of the allocation process is based on the following economic principles:
- (i) first, to avoid cross subsidisation between Route Sections, Total Revenue allocated to each Route Section must at least cover the incremental cost; and
 - (ii) second, recovery of capital costs on branch or feeder lines ranks ahead of shared lines on the basis that there is no other traffic on these lines to fund the dedicated infrastructure and unless those costs are covered the line may close.

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Over-payment Rules

- (d) If RHI and the Operators have reached agreement to a different Total Revenue allocation arrangement in an Access Agreement that arrangement will prevail.

2.7. Allocation of Non-Regime Revenue

- (a) Non-Regime Revenue (private or government contributions) will only be allocated to the Route Section for which the contribution was received.
- (b) Where a capital contribution is made whether it be private or government, the value of the contribution to be used in the Ceiling Price Test is to be expressed as an annualised amount taking into account the Total Cost, expected life and Weighted Average Cost of Capital determined by the ERA. Where capital is spent over multiple Route Sections, the actual expenditure will be allocated appropriately into each Route Section based on the actual expenditure on each individual Route Section at the time it was incurred. The allocation principles for Regime Revenue do not apply to Non-Regime Revenue.

3. Allocation of an Over-payment

The following process will apply in the allocation of an Over-payment on a Route Section:

- (a) Where an Over-payment on a Route Section results from the Ceiling Price Test, all Operators who have contributed to the Total Revenue on that Route Section will be entitled to a share of the Over-payment;
- (b) The proportion of Over-payment due to each Operator will be determined by each Operator's annual contribution to all revenues received above the floor recorded on the Route Section over the preceding 12-month period from July to June. An Operator paying only the incremental cost on the Route will not be considered for any refund as this would compromise the Floor Price Test in the Code.

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4. The Over-payment Rules

- (a) These Over-payment Rules apply where breaches of the Ceiling could not reasonably be avoided.
- (b) RHI is to calculate Over-payments in respect of each Route Section for a financial year.
- (c) In these Over-payment Rules, a financial year is the year beginning on 1 July and ending on 30 June.
- (d) Where an Over-payment is greater than a 10 per cent amount allowable for breaches of the Ceiling for that Route Section for the financial year, RHI must reimburse the Operators

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Over-payment Rules

on that Route Section for the amount of the Over-payment calculated according to the pro-rata formula in rule (e) by 30 September of the following financial year.

(e) Payments to Operators will be apportioned based on the total annual Regime Revenue above the Floor Price by each Operator on the Route. The following formula is to apply:

$$\frac{\text{An Operator's annual Regime Revenue above the Floor Price paid plus annual Non Regime Revenue received by the Railway Owner for the Route Section}}{\text{Total annual Regime Revenue above the Floor plus total annual Non Regime Revenue for the Route Section}} \times \text{Amount of net Over-payment plus interest accrued for the Route Section}$$

[ALT - (If the formula is to be changed in the RHI Over-payment Rules, then it must be changed in the TPI and BR Over-payment Rules also):

$$\frac{\text{The Operator's (i) annual access payments above the Operator's incremental cost plus (ii) annual non-access payments for the route section}}{\text{Total of all entities' (i) annual access payments above the total incremental cost of the combined operations on the route of all entities plus (ii) annual non-access payments for the route section}}$$

Notes:

- (i) Includes Regime and Non-Regime Operators.
- (ii) Only Operators who have negotiated inside the Code are eligible for a share of the net Over-payment as prescribed in the Code.
- (iii) Each Non Regime Operator is entitled to a share of the net Over-payment provided that its access agreement contains a provision which entitles that Non Regime Operator to any Over-payment. Accordingly, their share will be calculated using the formula in its access agreement.

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Over-payment Rules

(f) RHI is to establish in its accounting records an account to be known as the “Over-payment Account”.

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(g) The Over-payment Account is to be credited with all Over-payments that are equal to or less than the 10 per cent amount allowable for breaches of the Ceiling Price level for the financial year.

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(h) Any Over-payment for the previous financial year shall be calculated by 31 July of each year and credited to the Over-payment Account. The Over-payment will be treated as if were credited to the Over-payment Account on 1 July of each year.

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(i) RHI will also credit to the Over-payment Account any interest actually paid on the amount standing to the credit of the Over-payment Account and calculated daily on the balance from time to time standing to the credit of the Over-payment Account.

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(j) At the end of each three-year period the amount standing to the credit of the Over-payment Account (due to Operators, refer to section 4) must be distributed by RHI to Operators (who have negotiated inside the Code) for the amount of the Over-payment calculated according to the pro-rata formula in rule (e) by 30 September.

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(k) Payments to Non-Regime Operators will be retained by RHI, subject to the terms of any access agreement to the contrary.

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(l) No payment is to be made from the Over-payment Account without the prior approval of the ERA.

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(m) If there are Operators with Access Agreements under the Regime, then the Over-payment Accounts must be audited each year by an Independent Auditor appointed by RHI at RHI’s expense. The audit must be completed by 31 August. The audit will ensure that each of the amounts credited to the Over-payment Account is correct and in respect of the audit for the year which is the end of the three-year period that the interest credited and payment of amounts from the Over-payment Account is appropriate and consistent with these Over-payment Rules. The auditor’s report is to be provided to the ERA as soon as it is completed, and is to be confirmed by the ERA.

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(n) If the audited and confirmed Over-payment is different to that calculated by RHI in rule (h) or rule (i), an adjustment is to be made to the Over-payment Account as if it occurred on 31 July.

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(o) RHI must enter into a legally binding agreement with those Operators. That agreement should contain the provisions described in part 1 of schedule 1 to these Over-payment Rules. The agreement must remain in force and effect and bind the parties to the

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Over-payment Rules

agreement so long as any amount remains standing to the credit of the Over-payment Account and has not been distributed in accordance with rule (j).

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5. Application of the Over-payment Rules

- (a) The examples shown in Table 1 below demonstrate how the Over-payment Rules apply. Years 1, 2 and 3 show Over-payments and Under-recoveries (denoted by a minus sign) for a Route Section. All Operators are also assumed to be in the Regime and have met their Floor Costs.
- (b) The annual interest rate assumed is 5% compounded which, given the deposit occurs annually, will only apply to Year 1 and Year 2 deposits. In the examples below, it is also assumed that the Ceiling Cost for the Route Section is \$100,000, and Over-payments in excess of \$10,000 are reimbursed immediately.
- (c) Example 4 refers to the one exception in which the carrying over of Under-recovery credits to the next three- year period may apply. In this example, RHI incurred a breach of 20 per cent above the Ceiling in Year 1. At the end of Year 1, it has to reimburse to Operators \$10,000 and deposit \$10,000 into the interest bearing account. However, in Year 2, RHI incurred an Under-recovery of 15 per cent. Assuming that the revenue from access is exactly at the Ceiling in Year 3, there are now insufficient funds to compensate RHI in the interest bearing account for the three-year period. In this example, the ERA may approve a carry-over in under-recovery credits of \$5,000.
- (d) If an entity has negotiated access outside the Code then its share of the Over-payments would go to RHI. For instance, if in example 3 no access to that Route section was provided under an access agreement then the total accrued principal in the interest bearing account (i.e. \$15,000), and interest earned (i.e. \$1,275), would go to RHI.

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Over-payment Rules

Table 1. Examples illustrating operation of the trust account

	Example 1	Example 2	Example 3	Example 4
<i>Net annual over or under payment</i>				
Year 1	\$10,000	\$10,000	\$10,000	\$20,000
Year 2	- \$10,000	- \$30,000	\$5,000	-\$15,000
Year 3	\$0	\$0	- \$10,000	\$0
<i>Total of the three-year period</i>	\$0	- \$20,000	\$5,000	\$5,000
Reimbursed to Operators	\$0	\$0	\$0	\$10,000
<i>Accrued Principal in Trust</i>	\$10,000	\$10,000	\$15,000	\$10,000
<i>Accrued Interest in Trust</i>	\$1,025	\$1,025	\$1,275	\$1,025
<i>Refund to RHI.....</i>	\$10,000	\$10,000	\$10,000	\$10,000
<i>Refund to Operators</i>	\$1,025	\$1,025	\$6,275	\$1,025
<i>Carry forward of credit</i>	\$0	\$0	\$0	\$5,000

6. Compliance and review

- (a) Stakeholders have the ability to express any concern to the ERA which may arise at any time and the ERA will investigate such claims.
- (b) The ERA has the power under the Code to amend the Over-payment Rules at any time and Access Seekers and Operators can at any time request the ERA to consider amendments.
- (c) The ERA can also commission special audits to monitor RHI's compliance with the Over payment Rules at any time on any issue relating to these Over-payment Rules where it takes the view (acting reasonably) that additional assurance is required.

7. Definitions

In these Over-payment Rules the following terms have the following meanings:

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 Related Function	means the functions involved in arranging the provision of access to Railway Infrastructure under the Code.
Access Seeker	means a person seeking access to the RHI Railway.

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Over-payment Rules

Act	means the <i>Railways (Access) Act 1998</i> (WA).
Capital Costs	means those costs which fall within the meaning of the term “Capital Costs” in section 2 of the Costing Principles.
Ceiling	means an amount equal to Total Costs.
Ceiling Price	has the same meaning as in clause 9(4) of the Code.
Ceiling Price Test	means the test in clause 8 of schedule 4 of the Code to determine the maximum price which may be paid by an Operator for access to a Route and associated railway infrastructure.
Code	means the Railways (Access) Code 2000 established under the Act
Costing Principles	means the principles, rules and practices determined by the ERA in accordance with section 46 of the Code.
Economic Regulation Authority (ERA)	means the Economic Regulation Authority established by the Economic Regulation Authority Act 2003.
Floor	means the sum equal to the total incremental costs.
Floor Price	has the same meaning as in clause 9(4) of the Code.
Floor Price Test	means the test set out in clause 7 of schedule 4 of the Code to determine the minimum price which may be paid by an Operator for access to a Route and associated railway infrastructure.
incremental costs	means incremental costs as defined in clause 1 of schedule 4 to the Code.
Independent Auditor	means an auditor independent of RHI approved by the ERA.
Non-Regime Operator	means an entity to which RHI provides access to the RHI Railway under arrangements outside the Code.
Non-Regime Revenue	means revenue other than Regime Revenue received by RHI that may include private and government
Operating Costs	means the those costs which fall within the meaning of the term “Operating Costs” in section 3 of the Costing Principles.

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Operator	means an entity to which RHI provides access to the RHI Railway under an Access Agreement.
Overhead Costs	means those costs which fall within the meaning of the term “Overhead Costs” in section 4 of the Costing Principles.
Over-payment	is defined in section 2.5(a) of these Over-payment Rules.
Railway Infrastructure	has the same meaning as in section 3 of the Code.
Railway Owner	means the person having the management and control of the use of the Railway Infrastructure.
Regime Revenue	means revenue received by RHI from Operators for track access under an Access Agreement.
RHI	means Roy Hill Infrastructure Pty Ltd ABN 60 130 249 633.
RHI Railway	means the Railway and Railway Infrastructure owned and controlled by RHI to which access has or can be
Route	is defined in section 2.1(b) of these
Route Section	is defined in section 2.1(a) of these Overpayment Rules.
Total Costs	means, as defined in clause 1 of schedule 4 to the Code, the total of all: (a) Operating Costs; (b) Capital Costs; and (a) Overhead Costs, attributable to the performance of the Railway Owner’s Access Related Functions incurred by either the Railway Owner or an associate.
Total Revenue	means Regime Revenue and Non-Regime Revenue.
Under-recovery	is defined in section 2.5(b) of these Over-payment Rules.

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Over-payment Rules

Schedule 1

To be attached to RHI's track Access Agreement as a schedule for Operators who have negotiated an Access Agreement inside the Access Regime.

Part 1 – Prescribed Provisions

1. Establishment of Over-payments Account

Within seven (7) days of the date of this agreement RHI must, in accordance with rule 7 of the Over-payment Rules, establish within its books of account an account to be styled Over-payments Account and must maintain that account at all times during the continuation of this agreement.

2. Operation of Over-payments Account

RHI must at all times operate the Over-payments Account in a manner consistent with the requirements of the Over-payment Rules and must make payments to the Operator in a manner and at the times contemplated by the Over-payment Rules.

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Train Path Policy

[DRAFT DATED APRIL 2017]

Draft

Document approval				
	Name	Position Title	Signature	Date
Author				
Reviewers				
Approver				

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Version	Date	Position Title	Amendment / Reason for revision

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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 Services 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:

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- (a) the allocation of Train Paths; and
- (b) 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).

- (c) Roy Hill Holdings Pty Ltd (**RHH**) supported by the RH Financiers has undertaken substantial commercial and operational risk in developing the Roy Hill Project for the benefit of RHH's shareholders. The tonnages reserved for Roy Hill Iron Ore Pty Ltd (**RHIO** or the **Foundation User**) under the contact between RHI and the Foundation User for rail haulage capacity on the RHI Railway are a vital element in protecting RHH's investment in the RHI Railway.
- (d) RHI will operate the RHI Railway on a "run when ready" operational philosophy. "Run when ready" means that RHI has the flexibility to adjust the number of Trains run each day and the departure times of those Trains so that the Trains are aligned to RHI's transport task requirement (that is, Trains required to be run to optimally meet Roy Hill's production requirements, crew availability and operational practices) rather than being fixed to a defined schedule of departure and arrival times. By employing the "run when ready" model RHI will, subject to the constraints of its available Rolling Stock, maximise the efficiency of the RHI Railway and minimise the RHI Railway's operating costs.
- (e) The operational planning and execution of all activity on the RHI Railway (including the crossings/passing of Trains on the RHI Railway) will be at the discretion of RHI.
- (f) RHI's Train Path Policy and the Train Management Guidelines must be considered in the context of, and therefore must align with, RHI's "run when ready" operational philosophy.

1.2 Purpose of Train Path Policy

- (a) The objective of the TPP is to provide a framework to apply to the allocation and management of network capacity to:
- (i) ensure that RHI's contractual obligations to any person using RHI's Railway are fulfilled;
 - (ii) maximize the efficient utilisation of RHI's Railway;

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- (iii) 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
- (iv) provide for the safe and reliable use of RHI's Railway.

(b) When determining whether the allocation and management of capacity on the RHI Railway unfairly discriminates between the proposed rail operations of an Operator and the rail operations of RHI (for the purposes of satisfying the objective in paragraph 1.2(iii) above), the background factors referred to in sections 1.1(c) and 1.1(d) of this Train Path Policy must be taken into account.

1.3 Priority

- (a) This policy sets out, among other things, the order of priority RHI will apply in those operational circumstances where it may not be able in accordance with RHI's "run when ready" operational philosophy and in accordance with the RH Requirements to schedule Trains to accommodate all Operators' requirements.
- (b) The RH Requirements include, but are not limited to, the requirement that RHI must operate the RHI Railway in a manner that ensures loaded Trains will always have priority:
 - (i) when running on the RHI Railway and when crossing the RHI Railway mainline at any of the crossing loops located along the RHI Railway;
 - (ii) in the event of a delay at a terminal or intermediate locations for crossing and passing movements and in the event of a delay in recommencing a disrupted Train service; and
 - (iii) under circumstances where RHI considers it to be in the best interest of the Operators.
- (c) These rules apply to each Operator on the RHI Railway in accordance with the Access Agreement executed by the Operator.

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1.4 Relationship between TPP and Train Management Guidelines (TMG)

- (a) The TPP and the TMG are closely related. There are three key aspects to the allocation and management of capacity:
 - (i) 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.
 - (ii) the short term scheduling of Train Paths to fulfil each Operator's service entitlement. This is addressed in the TMG.
 - (iii) the daily operation of services in real time, which is also addressed in the TMG.

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(b) The main function of the TPP will therefore be to provide a framework governing:

(i) the initial assessment and allocation of capacity;

(ii) the management of capacity, including:

(A) permanent variations to Service Entitlements;

(B) resumptions of Service Entitlements; and

(C) review of Service Entitlements.

1.5 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).

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<#>This policy does not apply to the process by which a person enters into an Access Agreement. Access Agreements are entered into by negotiation in accordance with any applicable access regime.¶

2 Types of Service

2.1 Definitions

- (a) For the purposes of these rules and an Access Agreement, an Access Agreement may provide for an Operator to receive a “**Contracted Service**” which is the primary reserved Service under an Access Agreement which may be offered to an Operator on the RHI Railway.
- (b) Contracted Service may be supplemented by a service under an Access Agreement which may be offered to an Operator to enable it to request to run additional Trains.
- (c) In addition there is one special category of Contracted Service which is the service provided to the Foundation User to haul “**Foundation Tonnage**”. The Foundation Tonnage is all Tonnage hauled by RHI for the Foundation User from time to time.

2.2 Aggregation of Contracted Services

If this Policy refers to an Operator’s Contracted Services and the Operator has more than one Access Agreement or more than one project under any Access Agreement or both then the reference is to be read as a reference to the aggregate, across all of the Operator’s projects and Access Agreements, of its Contracted Services.

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3 Order of Priority

3.1 Higher priority prevails if necessary

- (a) RHI may Disrupt the provision of Services to an Operator in a Category in the Order of Priority to the extent that RHI, acting reasonably, in good faith and in accordance with GRIP, judges necessary to ensure that an Operator in a higher-ranked Category receives all (or, if that is impossible, as much as possible of) its Contracted Services in a Contract Year (as that term is defined in the relevant Access Agreement).
- (b) Without limiting the preceding paragraph, the Foundation User at all times has, in respect of the Foundation Tonnage, priority over all other Operators to Services in respect of the full capacity of the RHI Railway from time to time including the Operational Reserve.

3.2 The priority categories

For the purposes of these rules and an Access Agreement, the “Order of Priority” between the “Categories” is as follows, with Category 1 having the highest priority:

Category	Entitlement holder	Entitlement quantity
1 Foundation Tonnage	the Foundation User	Full Foundation Tonnage as varied at the discretion of RHI from time to time.
2 Other Contracted Services	Parties to other Access Agreements	An Operator’s Contracted Services will be specified in, and under the terms of, its Access Agreement.
3 Ordinary Additional Services	Any person with tonnage in Category 2	An Operator’s entitlement (if any) to Ordinary Additional Services will be determined from time to time under the terms of its Access Agreement.

3.3 Apportionment within Category 2

Should it prove necessary RHI will apportion the available tonnage within Category 2 in accordance with GRIP having regard to any Access Agreements it may have entered into with a person regarding Category 2 entitlements.

3.4 Apportionment within Category 3

- (a) Should it prove necessary RHI will apportion the available tonnage within Category 3 in its discretion but without discriminating unfairly between Operators.
- (b) No tonnage in Category 3 is guaranteed to be scheduled or hauled.
- (c) An Operator Access Agreement may grant the Operator more specific or additional rights in relation to Category 3 tonnage but Category 3 will always rank below Categories 1 and 2.

3.5 Capacity Analysis

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- (a) When RHI receives an access proposal from a Proponent, RHI will undertake a capacity analysis. The purpose of the 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 the capacity enhancements are likely to be required.
- (b) 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 a 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.
- (c) 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.
- (d) Pursuant to section 7 of the Code, RHI will on request provide the Proponent with the information required under that section.
- (e) The process for allocation of Train Paths as part of the negotiation process for access will be:
- (i) the Operator will request a Train Path;
 - (ii) RHI will refer to its scheduling to:
 - (A) determine if the Train Path is available;
 - (B) if possible, seek changes to or 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
 - (iii) at all times maintain dialogue with the Operator to ensure all alternatives are explored.
- (f) The finalisation of the capacity analysis will enable the finalisation of the resultant Service Entitlement, initial timetable (if relevant), charges and associated arrangements.
- (g) 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 will not be granted without the approval of the Authority in accordance with section 10 of the Code. If the Authority grants approval then RHI will commence negotiations.

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- (h) RHI will apply the following guidelines for request for new Train Paths either prior to or after the commencement of an Access Agreement. Otherwise Train Paths will be allocated on a first come first served basis.
- (i) 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; 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;
 - (B) market growth based on trend data; or
 - (iii) the Operator can demonstrate a committed new project with agreed funding.
- (j) For the purposes of such negotiations, RHI will effectively reserve an unused Train Path to the Operator for a minimum of two months. RHI reserves the right to terminate negotiations with that Operator after that period of time.
- (k) 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.
- (l) If a Proponent believes that RHI has not complied with the TPP or the Code in relation to the allocation of access rights, the Proponent may have recourse to a dispute resolution mechanism under the Access Agreement. If no Access Agreement is in place, the Proponent may seek to have the matter arbitrated as a dispute in accordance with section 26 of the Code.

4 Applying these priority rules

4.1 Application of this section 4

RHI will endeavour acting reasonably, in good faith and in accordance with the RH Requirements to:

- (a) minimise the extent to which it has recourse to section 3.1; and
- (b) meet the Full Service Objective in section 4.2 in accordance with this section 4,

provided that, to the extent of any conflict or inconsistency, section 3.1 prevails over this section 4.

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4.2 Full Service Objective

The objective for the RHI Railway is that, so far as practicable and in accordance with the RH Requirements and its “run when ready” operating philosophy, RHI will, in respect of a year, ensure sufficient services to enable each Operator to receive its Contracted Services across that year (**Full Service Objective**).

4.3 Safety first

Despite anything else in these rules, RHI may depart from these rules whenever necessary for safety reasons, including preventing damage to any equipment or injury to a person.

4.4 Priority in normal operational circumstances

In normal operational circumstances and to the extent that it is consistent with the “run when ready” operating philosophy RHI will endeavour to achieve the Full Service Objective by:

- (a) indicating estimated scheduling of trains under the Train Management Guidelines;
- (b) despatching and running trains and dealing with conflicts between trains, including dealing with any normal operational issues, breakdowns, maintenance and other works, Possessions and delays in loading or unloading; and
- (c) determining whether and when an additional Train may be available.

4.5 Priority during and after emergencies etc.

During:

- (a) an emergency, event of Force Majeure or other abnormal or extreme operating circumstance, including any Disruption (**Emergency**); and
- (b) the period following such an event or circumstance which is required in accordance with the RH Requirements for normal operational conditions to be re-established,

RHI will so far as is practicable in the circumstances use reasonable endeavours to achieve the Full Service Objective or alternatively to minimise the extent to which the Full Service Objective is not achieved. However, in Disrupting a Train RHI must act in accordance with the Operator’s Access Agreement, this Train Path Policy and the Train Management Guidelines.

4.6 Priority for remedial Services

- (a) An Operator Access Agreement may identify circumstances in which a shortfall has occurred between the Services requested to be provided in a period and the Services actually provided in the period (**Shortfall**). An Access Agreement may deal with the remediation of Shortfalls. The following rules apply unless the Access Agreement provides otherwise:
 - (i) if a Shortfall has occurred in respect of an Operator, RHI may under the Train Management Guidelines from time to time run one or more Trains with a view to remedying the Shortfall; and

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- (ii) RHI may in its discretion determine the priority it assigns to a Train intended to remedy the Shortfall but must not assign a higher priority than a Train intended to deliver the original tonnage.
- (b) For the avoidance of doubt, any remediation of any Shortfalls discussed in this section 4.6 must not interfere with the priority conferred on the Foundation Tonnage by section 3.2 of this Train Path Policy and shall always be consistent with RHI's "run when ready" operating philosophy.

4.7 Register of decisions

Whenever RHI Disrupts a Service under section 3.1 it will record the decision and associated reasons in a register. The parts of the decision which relate to an Operator are to be made available to the Operator and (subject to the rules of any Access Agreement relating to confidentiality and to disputes) to any dispute resolver appointed under the Operator's Access Agreement, but in either case any information provided to the Operator may be redacted, consolidated or otherwise de-identified as necessary to preserve the confidentiality of other Operators.

4.8 RH Requirements

- (a) An Operator's Access Agreement may (as between the Operator and RHI) set out detail on the content and application of the RH Requirements including the extent to and manner in which the RH Requirements may be disclosed directly or indirectly to the Operator (**Disclosed Requirements**). Such detail may also set out how issues or disputes concerning the content or application of, or conflicts or inconsistencies between, RH Requirements, Disclosed Requirements and GRIP are to be resolved.
- (b) Despite anything else in this Train Path Policy:
 - (i) RHI may at all times apply the RH Requirements in connection with this Train Path Policy; and
 - (ii) if this Train Path Policy requires RHI to apply the RH Requirements in respect of a matter but the RH Requirements do not prescribe a standard for the matter then RHI must apply GRIP if GRIP sets a standard for the matter; and
 - (iii) nothing in this Train Path Policy serves to require the design, procurement, construction, commissioning, operation and maintenance of the RHI Railway to be inconsistent with or derogate from the RH Requirements.

5 Management of Capacity

5.1 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

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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 5.3. Changes that would result in a reduction in an Operator's Service Entitlements will be evaluated in accordance with section 5.2.

5.2 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.

5.3 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;

(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.

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(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.

5.4 Identification of an underutilised Train Path

- (a) Access Agreements will include clauses which provide for the implementation of sections 5.4(b) to 5.4(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);
 - (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.

5.5 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:

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- (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.

5.6 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.

5.7 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.
- (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.
- (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

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(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 5.7, 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.

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5.8 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;

(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);

(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.

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6 Definitions and Interpretation

6.1 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.

6.2 Definitions

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

Access Agreement	means an agreement in writing under the Code between RHI and an entity for access to the RHI Railway by that entity.
Capacity	<u>means the number of rail operations that can be accommodated on the RHI Railway 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.</u>
Categories	Is defined in section 3.2 and Category has a similar meaning.
Contracted Service	is defined in section 2.1(a).
Disclosed Requirements	is defined in section 4.8(a).
Disruption	means any delay, rescheduling, re-routing or cancellation of a Train and any other delay, suspension, cancellation, interruption or disruption of the provision of a haulage service and Disrupt has a similar meaning.
Emergency	is defined in section 4.5(a).
Economic Regulation Authority (ERA)	means the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003</i> (WA).
Force Majeure	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 (in the case of RHI) the RH Requirements or (in the case of an Operator) GRIP and the Disclosed Requirements, the Party is not reasonably able to prevent or overcome including (subject to

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	<p>having satisfied the foregoing requirements):</p> <p>(a) acts of God, epidemics, cyclones, tidal waves, landslides, lightning, earthquakes, floods, washouts, storms, fire or extreme weather conditions; or</p> <p>(b) strikes, lockouts, work bans, boycotts, barricades, picketing or industrial disturbances; or</p> <p>(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</p> <p>(d) explosions, breakages, mechanical and electrical breakdowns, failures of equipment, derailments, 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 the Services or any ancillary services under the applicable Access Agreement.</p>					
Foundation Tonnage	means all tonnage hauled by RHI for the Foundation User from time-to-time.					
Foundation User	is defined in section 1.1(b).					
Full Service Objective	is defined in section 4.2.					
GRIP or Good Rail Industry Practice	means:					
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	<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>
Monitoring Period	is defined in section 5.1(c)(i).
Operational Reserve	<p>means from time to time the aggregate of:</p> <p>(a) the number of tonnes by which the total overall rail haulage capacity of the RHI Railway (determined under the RH Requirements) exceeds the sum of all RHI's obligations to provide Services to each Operator (including the Foundation User), in order to provide reliability, robustness, operational flexibility and resilience and to ensure that, in normal operating circumstances, RHI can satisfy those obligations; and</p> <p>(b) any additional uncontracted rail haulage capacity of the RHI Railway from time to time, in excess of that determined under paragraph (a) of this definition.</p>
Operator	has the same meaning as in clause 3 of the Code.
Order of Priority	is defined in section 3.2.
Ordinary Additional Service	is a service (other than a Contracted Service) under an Access Agreement which may be offered to an Operator on the RHI Railway to enable it to request to run additional Trains.
Possession	means the closure, occupation, use or other removal from service 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 does or is reasonably likely to Disrupt or otherwise adversely impact on the provision of Services.

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Product	means iron ore of all grades and all products from the processing of iron ore and may also include other products required by RHI in connection with the Roy Hill Project.
Proponent	<u>means an entity who has submitted a proposal for Access under the Code.</u>
Railway Agreement Act	means the <i>Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010</i> (WA).
RH Financiers	means the financiers of the Roy Hill Project.
RH Financier Assumptions	means the risk, cost, operational or other assumptions or bases upon which the Roy Hill Project's financing was obtained.
RHH	means Roy Hill Holdings Pty Ltd ABN 71 123 721 077
RHI	means Roy Hill Infrastructure Pty Ltd ABN 60 130 249 633
RHIO	means Roy Hill Iron Ore Pty Ltd ACN 123 722 038
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> .
RH Requirements	means, subject to clause 4.8: (a) the detailed technical, performance and operational standards under documents and related agreements in connection with any aspect of the Roy Hill Project, including the RH Financier Assumptions; and (b) if at any time RHI's financing arrangements in respect of the Roy Hill Project end, GRIP.
Rolling Stock	means a locomotive, carriage, wagon or other vehicle for use on a railway
Service Entitlement	<u>means an Operator's entitlement under an Access Agreement to operate Train services in accordance with this Train Path Policy. Service Entitlements will consist of a number of Services within a particular period of time as specified in the Access Agreement.</u>
Services	means access to the RHI Railway and any other services or facilities agreed to be provided by RHI to the Operator as set out in an Access Agreement. Service has a similar meaning.
Shortfall	is defined in section 4.6.

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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	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 5.1(c)(iii).

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Train Management Guidelines

[DRAFT APRIL 2017]

Draft

Document approval				
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1. Introduction

1.1 Background

- (a) Roy Hill Infrastructure Pty Ltd (**RHI**) owns and operates the RHI Railway from the Roy Hill Mine to Port Hedland in the Pilbara region of Western Australia.
- (b) The RHI Railway falls under the provisions of the Railways (Access) Code 2000 (**Code**). Section 43 of the Code requires the railway owner to prepare and submit a set of train management guidelines (**Guidelines**) to the Regulator for approval. This is a statement of the principles, rules and practices that are to be applied and followed by RHI but only in relation to:
 - (i) the performance of its functions in relation to the rail network and associated infrastructure to which the Code applies; and
 - (ii) that performance as it relates to requirements imposed on RHI by or under the Code or the *Railways (Access) Act 1998 (WA)* (**Act**).
- (c) RHI will operate the RHI Railway on a “run when ready” operational philosophy. “Run when ready” means that RHI has the flexibility to adjust the number of Trains run each day and the departure times of those Trains so that the Trains are aligned to RHI’s transport task requirement (that is Trains required to be run to optimally meet RHIO's production requirements, crew availability and operational practices) rather than being fixed to a defined schedule of departure and arrival times. By employing the “run when ready” model, subject to the constraints of its available Rolling Stock, RHI will maximise the efficiency of the RHI Railway and minimise the RHI Railway’s operating costs.
- (d) The operational planning and execution of all activity on the RHI Railway (including the crossings/ passing of Trains on the RHI Railway) will be at the discretion of RHI’s train control team.
- (e) RHI’s Train Path Policy and the Train Management Guidelines must be considered in the context of, and therefore must align with, RHI’s “run when ready” operational philosophy.

1.2 Purpose of these Guidelines

- (a) The objective of these Guidelines is to provide a framework to apply to the real time management of Services to be operated on the RHI railway in order to:
 - (i) ensure that RHI’s contractual obligations to any Operator using RHI’s railway are fulfilled;
 - (ii) maximize the efficient utilisation of RHI’s railway;
 - (iii) ensure that all Services are operated on the RHI railway 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
 - (iv) provide for the safe and reliable use of RHI’s railway in accordance with the RH Requirements and RHI’s “run when ready” philosophy.
- (b) The allocation of Train Paths will be determined in accordance with the Train Path Policy. The main functions of these Train Management Guidelines will be to:

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- (i) govern the day to day scheduling and management of these paths, including temporary reallocations of paths and the ad hoc allocation of additional paths in accordance with RHI's "run when ready" operational philosophy;
 - (ii) provide a framework to resolve conflicts between Operators in an equitable manner and 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;
 - (iii) manage interruptions to network availability due to circumstances beyond RHI's control;
 - (iv) manage Possessions, Disruptions, repairs, maintenance, works and upgrades to the RHI railway; and
 - (v) manage incidents and emergencies.
- (c) When determining whether the management of Services to be operated on the RHI Railway, and the resolution of conflicts between Operators, unfairly discriminates between the proposed rail operations of an Operator and the rail operations of RHI, or an associate of RHI (for the purposes of satisfying the objective in paragraph 1.2(a)(iii) above and the function of these Train Management Guidelines in paragraph 1.2(b)(ii) above), the background factors referred to in sections 1.1(c) and 1.1(d) of these Train Management Guidelines must be taken into account.
- (d) RHI acknowledges the requirements for the provisions of the Train Management Guidelines to adhere to the requirements set out in section 16 of the Code.

1.3 Pre Conditions

These Guidelines 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). Before a Service can operate on the RHI railway, the Operator must:

- (a) have an executed Access Agreement in place and have fulfilled all necessary conditions under that Access Agreement; and
- (b) provide RHI with such details of Trains and Services as are requested by RHI.

1.4 Application of these Guidelines

These Guidelines apply to all Operators who receive Services on the RHI Railway.

1.5 Amendment of these Guidelines

These Guidelines may be amended from time to time as follows:

- (a) if the Access Regime applies to the amendment of these Guidelines they may be amended in accordance with the Access Regime; and
- (b) otherwise, subject to any Operator's Access Agreement, amendments may be made by RHI in its reasonable discretion from time to time.

2. Contractual arrangements

2.1 Operator must have Access Agreement

A person must have an Access Agreement to receive Services from RHI.

2.2 Operator's Contracted Services

- (a) Each Operator's rights to Services will be specified in terms of its annual Contracted Services subject to all conditions in its Access Agreement.
- (b) The Operator's rights are limited to those under its Access Agreement. The Operator has no right to insist that RHI schedule Trains at any particular time.

2.3 Access Agreement prevails

In the event of a conflict or inconsistency between RHI's or an Operator's rights under an Access Agreement and these Guidelines, the Access Agreement prevails.

2.4 Train Path Policy prevails

The Train Path Policy applies to anything done under these Guidelines. In the event of a conflict or inconsistency between the Train Path Policy and these Guidelines, the Train Path Policy prevails.

2.5 System Assumptions apply

Where necessary RHI may apply the system assumptions established from time to time under an Access Agreement or the Access Regime, as applicable, when developing, amending and implementing a schedule under these Guidelines.

3. Scheduling principles

3.1 Operator's forecasting and requests for Services

3.1.1 Operator's annual, quarterly and weekly forecasts

- (a) Each Operator must keep RHI fully informed of its forecast Service requirements in sufficient time to enable RHI to take the information into account in the Quarterly Schedules and Weekly Schedules, including:
 - (i) at least three months prior to 1 January each year, each Operator must provide a non-binding, indicative forecast of the Services it will require each week of the coming year (this will assist RHI's determination of the Quarterly Schedule);
 - (ii) at least one month before the start of each Quarter, each Operator must provide an updated non-binding, indicative forecast for the coming Quarter of the Services it will require each week in the relevant Quarter; and
 - (iii) a weekly Services request must be submitted to RHI before 1400 hours each Tuesday for the week commencing on the following Monday (six days hence) to provide a firm forecast of the Services it will require in the week.
- (b) An Operator must promptly inform RHI of any changes from the forecasts referred to in this section 3.1.1 and must promptly, reasonably and in good faith cooperate with RHI in managing any schedule adjustments which RHI determines (acting reasonably in good faith and in accordance with the RH Requirements) are made necessary or desirable by the changes.

3.1.2 Operator's obligations in forecasting requirements and requesting Services

An Operator's forecasts and any changes to those forecasts, must be:

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- (a) made reasonably and in good faith and be consistent with the applicable Disclosed Requirements and with GRIP;
- (b) consistent with its Contracted Services; and
- (c) determined, subject to reasonable operational requirements (such as maintenance outages), so as to evenly distribute the Operator's Services across the forecast period.

3.1.3 Consequences of Operator non-compliance with this section 3

An Access Agreement may deal with the consequences of an Operator's non-compliance with this section 3. The following rules apply unless an Access Agreement provides otherwise:

- (a) it is the Operator's risk and responsibility to provide RHI with sufficient information to enable RHI to schedule Trains for the Operator under these Guidelines; and
- (b) if the Operator fails to provide or delays the provision of information to RHI under this section 3 such that RHI is unable to schedule a Train or is otherwise required to Disrupt a Train then such Disruption is an "**Authorised Disruption**".

3.2 Rail Schedules

3.2.1 Annual Schedule

- (a) RHI will develop and maintain an annual schedule (**Annual Schedule**). The Annual Schedule will align with RHI's "run when ready" operational philosophy and will register:
 - (i) each Operator's Contracted Services;
 - (ii) the typical number of Trains per week (based on the reference Train nominated by RHI) required for each Operator, to enable provision of the Operator's Contracted Services;
 - (iii) indicative requirements for scheduled Possessions; and
 - (iv) the Payload of a typical Train (based on the reference train nominated by RHI).
- (b) RHI (acting reasonably and in good faith and in accordance with the RH Requirements) may modify the Annual Schedule from time to time as it sees fit, including to reflect the addition of a new Operator or Access Agreement or any change to scheduled Possessions. The Annual Schedule will be in a format that can be readily converted to a Quarterly Schedule and Weekly Schedule. RHI is not bound by any Train times, Possessions or other information shown in the Annual Schedule.

3.2.2 Quarterly Schedule

- (a) RHI will, based on the Annual Schedule among other things, prepare, and may amend from time to time, an indicative and preliminary quarterly schedule (**Quarterly Schedule**) showing the indicative Services for each Operator for each week of the relevant Quarter.
- (b) In preparing the Quarterly Schedule, RHI will in accordance with the RH Requirements and RHI's "run when ready" operational philosophy:
 - (i) make allowance for all scheduled Possessions for the Quarter;
 - (ii) plan to accommodate each Operator's forecast Services under section 3 for the Quarter;

- (iii) if it so elects under section 4.3 remediate any Shortfalls in accordance with section 4.3; and
 - (iv) subject to an Operator’s Access Agreement and the Train Path Policy use reasonable endeavours to accommodate each Operator’s anticipated requirements or requests for Additional Trains.
- (c) If RHI is unable to accommodate an Operator’s preferred schedule in the Quarterly Schedule RHI will provide the Operator with a proposed alternative plan and provide a reasonable opportunity for consultation with the Operator.
- (d) RHI may establish the Quarterly Schedule in any way it sees fit in its reasonable discretion and in accordance with the RH Requirements and RHI’s “run when ready” operating strategy. RHI is not bound by any Train times, Possessions or other information shown in the Quarterly Schedule.
- (e) The Quarterly Schedule will be updated by RHI monthly, at the beginning of each month, showing the indicative Services for each Operator for each week of the relevant month. In preparing the updated Quarterly Schedule RHI will incorporate any changes or amendments to an Operator’s forecast scheduled Possessions which an Operator has advised RHI.

3.2.3 Weekly Schedule

- (a) To the extent possible given RHI’s “run when ready” operational philosophy, and to enable the real time management of Services, RHI will prepare an indicative weekly schedule of train movements (**Weekly Schedule**) as amended from time to time. The Weekly Schedule will be the main working document referenced by RHI in managing day-to-day Train movements.
- (b) The primary purpose of the Weekly Schedule will be to provide Operators with indicative scheduled times of availability to the Operator for Train movements on the RHI Railway. The Weekly Schedule will align with RHI’s “run when ready” operational philosophy and will also set out for each Scheduled Train the Train’s Payload (but only if different from that registered for a typical Train ((based on the reference train nominated by RHI) in the Annual Schedule).
- (c) RHI may, subject to the provisions of this section 3, establish the Weekly Schedule in any way it sees fit in its reasonable discretion in accordance with the RH Requirements.
- (d) In preparing and administering the Weekly Schedule, RHI:
- (i) will take into account the Quarterly Schedule;
 - (ii) will use reasonable endeavours in the time available to consult with Operators;
 - (iii) may consult with other persons; and
 - (iv) will endeavour to take account of each Operator’s requirements but must also consider other Operators, the RH Requirements, the need to schedule each Operator’s remedial Services (**Remedial Services**), scheduled Possessions and its own operational and maintenance needs.
- (e) As a result no Operator is guaranteed to have a Train scheduled at the time it has requested. An Access Agreement may specify the consequences of any non-availability of any Train movements.
- (f) Once the Weekly Schedule is prepared RHI will notify each Operator of its indicative Scheduled Train times.

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- (g) RHI is not bound by any Train times, Possessions or other information shown in the Weekly Schedule, whether or not it is finalised under section 3.2.3.

3.2.4 Operator may request changes to Weekly Schedule

An Operator may from time to time request RHI to adjust a Weekly Schedule or 72 Hour Plan. RHI will consider the request in its reasonable discretion in accordance with the RH Requirements.

3.3 72 Hour Plan

- (a) RHI will on each day finalise a plan (**72 Hour Plan**) for a portion of the Weekly Schedule for the next 72 hours of operations across the RHI Railway and provide to each Operator that portion so far as it relates to the Operator.
- (b) The portions of the Weekly Schedule which are specified in the 72 Hour Plan operate as the Service Schedule for an Operator's Access Agreement. A Train run which has been specified in the Service Schedule is a **Scheduled Train** for an Operator's Access Agreement. However, RHI may:
 - (i) at any time modify a Weekly Schedule or 72 Hour Plan to the extent reasonably required in accordance with the RH Requirements and RHI's "run when ready" operational philosophy to accommodate any changed circumstances or an Operator's request under section 3; and
 - (ii) where reasonably appropriate in accordance with the RH Requirements and RHI's "run when ready" operational philosophy depart from a Weekly Schedule or 72 hour plan, without formal modification.
- (c) An Operator must ensure that its Trains are manned and Ready in accordance with the 72 Hour Plan. An Access Agreement may specify the consequences of an Operator failing to do so.

4. Day of operations management

4.1 Running the Scheduled Trains

RHI will use reasonable endeavours in accordance with the RH Requirements to:

- (a) run a Scheduled Train within 120 minutes of its planned departure and arrival times; and
- (b) cause Scheduled Trains which are running late, when compared with the 72 Hour Plan, to recover the lost time,

except where it is not appropriate to do so because to do so would not comply with RHI's "run when ready" operational philosophy.

4.2 Early and Late Trains

If an Operator seeks early access for a train to enter the RHI Railway, RHI will consider any request by the Operator for that early access to the RHI Railway in accordance with the RHI Requirements and the RHI "run when ready" operational philosophy. However, RHI does not have any obligation to accept any request by an Operator for early access to enter the RHI Railway.

If an Operator seeks late access for a train to enter the RHI Railway the Operator must use best endeavours (including by making additional resources available) and, in accordance with the Disclosed Requirements and GRIP, to recover the lost time. However, in relation to any train in respect of which an

Operator has sought late access, RHI retains absolute discretion to require that the train access the RHI Railway only within its planned departure and arrival times.

4.3 Recovery of Shortfalls

- (a) An Operator Access Agreement may identify circumstances in which a shortfall has occurred between the Services requested to be provided in a period and the Services actually delivered in the period (**Shortfall**).
- (b) An Access Agreement may deal with the remediation of Shortfalls (including prescribing a period in respect of which Shortfalls are to be remedied) (**Remedial Period**). Unless an Access Agreement provides otherwise section 4.6 of the Train Path Policy will apply to the remediation of any Shortfalls.
- (c) It is the Operator's responsibility to ensure that it is Ready for each Scheduled Train including one scheduled under this section 4.3. An Access Agreement may specify the consequences if the Operator is not Ready, including that the Services scheduled to be provided by the Scheduled Train are foregone.

4.4 Operator and RHI consultation protocols

- (a) If RHI or the Operator becomes aware that a Scheduled Train may not run on time then each party will endeavour to advise the other, as soon as reasonably practicable, of the magnitude of the delay and estimated time of departure or arrival.
- (b) If an Operator becomes aware of any circumstance which may cause a Scheduled Train to not arrive, run or depart on time the Operator must advise RHI as soon as reasonably practicable of the circumstance and its anticipated or likely impact on the 72 Hour Plan.
- (c) The Operator and RHI must maintain a 24-hour communications link in accordance with the Access Agreement unless otherwise agreed.

4.5 Operator must be Ready

- (a) An Operator is "**Ready**" to accept the provision of a Service if:
 - (i) the facilities and infrastructure (including loading and unloading facilities) required by the Operator to accept the provision of a Service are complete and may be used by the Operator; and
 - (ii) the Operator believes on reasonable grounds that in accordance with these Guidelines, the Disclosed Requirements and GRIP, that the Operator will be ready and able to use/ enter the RHI Railway in accordance with the Service Schedule.
- (b) It is the responsibility of the Operator to be Ready to accept the provision of a Service for a Scheduled Train.
- (c) By 1000 hours each day each Operator must give RHI unqualified written notice (**Confirmation**) confirming that the Operator is Ready to accept the provision of a Service for the Scheduled Trains within the next 48 hours.
- (d) If at any time an Operator ceases to be Ready to accept the provision of a Service for a Scheduled Train it must immediately notify RHI and thereafter in accordance with the Disclosed Requirements and GRIP keep RHI continuously updated. Such notification shall provide the

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circumstances and likely or possible effect the Operator expects (in accordance with the Disclosed Requirements and GRIP) to be able to accept the Service. If an Operator determines that it is no longer Ready for a Scheduled Train it must withdraw its Confirmation in respect of the Scheduled Train. RHI and the Operator will then discuss in good faith whether RHI will still run the Scheduled Train.

- (e) Unless an Access Agreement provides otherwise RHI may (as an Authorised Disruption) Disrupt any Train in respect of which the Operator does not provide, or provides then withdraws, an unqualified Confirmation.

4.6 Train activities following a delay

Following a delay on the RHI Railway, and subject to each Operator's Access Agreement, RHI will endeavour so far as is reasonably practicable in accordance with the RH Requirements, its "run when ready" operational philosophy and its contractual obligations to:

- (a) resume Services as promptly as reasonably practicable;
- (b) consult with affected Operators as to their requirements including shipping and production requirements; and
- (c) resume running Trains in the order determined by RHI in its absolute discretion, and taking into account any Possessions under section 4.7.

4.7 Possessions

- (a) RHI will manage all Possessions in its absolute discretion. RHI will, in accordance with the RH Requirements:
 - (i) take reasonable steps to minimise any Disruption to Scheduled Trains as a result of any Possession;
 - (ii) use reasonable endeavours to consult with Operators whose Services are or may be affected by a Possession;
 - (iii) use reasonable endeavours to notify Operators when a Possession is made necessary by an emergency or Force Majeure, setting out reasonable details (to the extent reasonably practicable) of the circumstances and the likely extent and duration of any Disruption to Services.
- (b) Planned Possessions will be communicated in the Annual Schedule, Quarterly Schedule, Weekly Schedule and 72 Hour Plan.
- (c) If a Possession is likely to continue beyond the notified end time RHI will use reasonable endeavours to notify Operators of the revised end time.
- (d) An Access Agreement may specify the treatment of any Disruption, Shortfall, cost or other consequence arising from a Possession, which will be subject to the application of the RH Requirements and the system assumptions.

4.8 Management of emergencies

In the event of an emergency or any other situation which RHI determines requires urgent or unilateral action, which requires RHI to Disrupt Services, or requires a change or departure from a Rail Schedule or

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72 Hour Plan, RHI may do so as it sees fit. An Access Agreement may specify the consequences of any such Disruption. Without limiting RHI's discretion under this section 4.8 RHI will endeavour to notify affected Operators as soon as practicable of the nature of the incident and its likely effect and duration.

4.9 Management of daily issues

RHI will manage daily issues (such as the imposition of temporary speed restrictions) in accordance with the RH Requirements.

4.10 Network blockages

- (a) A Train failure which results in a blockage of the RHI railway will be cleared using alternative locomotives and crews arranged by the relevant Operator of that Train or by RHI. The relevant Operator will co-operate fully with RHI. In determining the strategy to recover the failed Train and clear the blockage from the RHI railway, consideration may also be given, in consultation with the Operator of the failed Train, to:
- (i) a reduction of loading;
 - (ii) continuing at a reduced speed;
 - (iii) arranging an alternative locomotive and continuing; or
 - (iv) amalgamating trains.
- (b) Operators, other than the Operator whose Train has failed, must provide reasonable assistance to RHI when necessary to facilitate the clearing of a blockage of the RHI railway caused by a failed Train.
- (c) An Operator is not required to provide assistance if it will incur costs 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.
- (d) 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 RHI within the earliest possible time so as not to impede the operation of the RHI railway.

4.11 Train Activities following an incident or an emergency

Following a major delay which has impacted the provision of Services on the RHI railway, then subject to each Operator's Service Entitlement, RHI will ensure that Trains resume service in the order that they were scheduled to run prior to the event causing the delay, if practical, subject to consultation with the Operator's as to their positions and needs including factors such as crewing arrangements, sensitive freight and shipping and production requirements.

4.13 Management of Issues affecting Daily Operations

- (a) Daily issues (such as the imposition of temporary speed restrictions) will be managed in accordance with:
- (i) the rules applying to the RHI railway at that time; and
 - (ii) the relevant Access Agreement.

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- (b) RHI will maintain the RHI railway (but only so far as the RHI railway is relevant to the Operator's Train Paths) to the highest level consistent with its obligations under Access Agreement or the requirements of RHI under the applicable Rail Safety legislation.
- (c) When required by the condition of the RHI railway, RHI may give notice of any speed and weight restrictions and the Operators must comply with such a notice.

4.14 Disputes

- (a) Any disputes 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. These circumstances are set out in section 25 (2) of the Code.
- (b) Once an Access Agreement has been entered into, disputes will be resolved by a three-stage process as follows:
 - (i) First, by negotiation of the dispute between the parties with a seven day time limit and using reasonable endeavours;
 - (ii) Secondly, by mediation between the Chief Executive Officers of the parties and after 14 days if no agreement is reached by expert mediation; and
 - (iii) Thirdly, by arbitration in accordance with the *Commercial Arbitration Act 1985*.
- (c) If no Access Agreement is yet in place, an Access Seeker seeking access under the Code may seek to have the matter arbitrated as a dispute in accordance with section 26 (1) of the Code.

4.15 RH Requirements

- (a) An Access Agreement may (as between the Operator and RHI) set out detail on the content and application of the RH Requirements. Such detail includes the extent to which and manner in which the RH Requirements may be disclosed directly or indirectly to the Operator (to become Disclosed Requirements). The Access Agreement may also detail how issues or disputes concerning the content or application of, or conflicts or inconsistencies between, RH Requirements, Disclosed Requirements and GRIP are to be resolved.
- (b) Despite anything else in these Guidelines:
 - (i) RHI may at all times apply the RH Requirements in connection with these Guidelines; and
 - (ii) if these Guidelines require RHI to apply the RH Requirements in respect of a matter but the RH Requirements do not prescribe a standard for the matter then RHI must apply GRIP (if GRIP sets a standard for the matter); and
 - (iii) nothing in these Guidelines serves to require the design, procurement, construction, commissioning, operation and maintenance of the RHI Railway to be inconsistent with or derogate from the RH Requirements.

5. Interpretation

5.1 Access Agreement and Guidelines interpretation rules apply

- (a) The definitions and rules of interpretation in an Access Agreement or other third party contract which refers to these Guidelines apply also to the interpretation of this document unless the Access Agreement, the third party contract, or this document expressly states otherwise. Such rules and interpretation are also subject to any provision of the Access Regime (if the Access Regime applies to these Guidelines)
- (b) Unless indicated otherwise references to sections are to sections of these Guidelines.

5.2 Definitions

In these Guidelines, unless the contrary intention is apparent:

72 Hour Plan	is defined in section 3.3(a).
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 Regime	means a regime under a statute or other law governing the provision of access to Services on the RHI Railway, including under: (a) the Act and the Code; or (b) an Access Undertaking under the <i>Competition and Consumer Act 2010</i> (Cth).
Additional Train	means a Train which is in addition to the Trains which have been (or will be) scheduled to haul the Operator’s Contracted Services
Annual Schedule	is defined in section 3.2.1(a).
Authorised Disruption	has the meaning given to it in section 3.1.3(b).
Confirmation	is defined in section 4.5(c).
Contracted Services	has the meaning given in the Train Path Policy.
Disclosed Requirements	in respect of an Operator, has the meaning given under the Operator’s Access Agreement.
Disruption	means any delay, rescheduling, re-routing or cancellation of a Train and any other delay, suspension, cancellation, interruption or disruption of the provision of a Service and Disrupt has a similar meaning.
Force Majeure	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

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	<p>due diligence and care consistent with (in the case of RHI) the RH Requirements or (in the case of an Operator) GRIP and the Disclosed Requirements, 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, collapses of gantries, loaders or conveyors, accident to machinery or lines or pipes; or (e) actions or inactions by, or orders, judgments or rulings, injunctions, decisions of enforcement actions of any State or Federal court; or (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 (g) denial of access to the RHI Railway by any government agency, railway track closure or blockage; or (h) a failure or malfunction of any software or goods supplied or used by RHI in providing the Services or any ancillary services under the applicable Access Agreement.
<p>GRIP or Good Rail Industry Practice</p>	<p>means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and</p>

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	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).
Guidelines	means these Train Management Guidelines.
Operator	has the same meaning as in clause 3 of the Code.
Payload	<p>means</p> <p>(a) in respect of a Scheduled Train, the payload specified for the Train in the Service Schedule; and</p> <p>(b) in respect of a wagon in a Scheduled Train, the payload specified for the wagon in the Service Schedule,</p> <p>and in either case if no such payload is specified means a payload determined by RHI acting reasonably in accordance with the Disclosed Requirements.</p>
Planned Possession	means a Possession which is planned and included in a Schedule.
Possession	means the closure, occupation, use or other removal from service by RHI or its workers of part of the RHI Railway for the purposes of carrying out maintenance, enhancement, or other work on or near the RHI Railway, which does or is reasonably likely to Disrupt or otherwise adversely impact on the provision of Services.
Quarter	means any period of three consecutive months commencing on 1 July, 1 October, 1 January or 1 April.
Quarterly Schedule	is defined in section 3.2.2(a).
Rail Schedule	means, as applicable, a Weekly Schedule, a Quarterly Schedule or an Annual Schedule.
Railway Agreement Act	means the <i>Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010 (WA)</i> .
Ready	has the meaning given in section 4.5.
Remedial Period	is defined in section 4.3(b).

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Remedial Services	is defined in section 3.2.3(d)(iv).
RH Requirements	means, subject to section 4.15: (a) the detailed technical, performance and operational standards under documents and related agreements in connection with any aspect of the Roy Hill Project, including the RH Financier Assumptions; and (b) if at any time RHI’s financing arrangements in respect of the Roy Hill Project end, GRIP.
RHI Railway	means the railway constructed pursuant to the Railway Agreement Act 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.
Scheduled Train	is defined in section 3.3(b).
Service Schedule	means the schedule for the operation of Trains established from time to time by RHI.
Services	means Access to RHI’s Railway and any other services or facilities agreed to be provided by RHI to the Operator as set out in the Operator’s Access Agreement.
Shortfall	has the meaning given in section 4.3(a).
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 Path Policy	means the supplementary document of that name, as established and amended by RHI from time to time, which sets out, amongst other things, the order of priority that RHI will apply in scheduling Trains on the RHI Railway.
Operator	has the meaning given in the definition of the expression Access Agreement.
Weekly Schedule	is defined in section 3.2.3(a).

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