

Standard Access Principles

Railways (Access) Code 2000 (WA)

Schedule 3 – Matters for which provision to be made in access agreement

1. The period for which access is provided and arrangements for renewals	<p>The initial access period of any Access Agreement is to be determined following receipt of the access seeker's proposal.</p> <p>Any additional, extended or substituted agreement must be agreed in writing between RHI and the access seeker.</p>
2. The routes, including the railway infrastructure, to which access is provided	<p>All or part of the RHI railway – to be determined following receipt of the relevant access proposal and subject to the infrastructure capacity and available capacity of the requested route.</p> <p>At the time of writing, the RHI railway consists of a single track 344km standard-gauge railway between the Roy Hill mine and Port Hedland with four passing loops.</p>
3. The services to be provided by the access holder	<p>The full scope of services is to be determined following receipt of the access seeker's proposal – but at a minimum, the access holder will be required to provide the following services in respect of its rolling stock:</p> <ul style="list-style-type: none"> • Stabling, refuelling and maintenance; • Loading and unloading; and • Provision of software, hardware and communication links to ensure interface with RHI systems.
4. The allocation of train paths that have ceased to be used by the access holder	<p>If the access holder fails to operate more than 75% of scheduled services in any two consecutive calendar months, then Roy Hill may issue a notice to the access holder regarding the underutilisation and requiring the access holder to demonstrate a sustained requirement for the access rights (Underutilisation Notice).</p> <p>If the Underutilisation Notice is issued and the access holder does not demonstrate an improvement in utilisation to RHI's reasonable satisfaction in the following calendar month, then RHI may issue a further notice to permanently reduce the access holder's rights.</p>
5. Prices and charges	<ul style="list-style-type: none"> • The price for access, and any indexation of pricing, is to be determined in accordance with RHI's then-current Costing Principles approved or determined pursuant to section 47H of the <i>Railways Access Code 2000 (WA)</i> (Code). • Payments are expressed in Australian dollars and are exclusive of GST. The Access Agreement will include a GST gross-up clause. • Payments will be due within 20 Business Days of issue of a valid tax invoice from RHI, without set-off or deduction. Payment is to be made by direct deposit into a bank account nominated by RHI. • Late payments will be subject to interest at RHI's overdraft rate plus 2%, calculated on a daily basis.

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	Any Overpayment will be reconciled in accordance with RHI's then-current Over-payment Rules under section 47 of the Code.
6. Route control and management	<p>Subject to compliance with the approved segregation arrangements under the Code, RHI remains responsible for management of the rail network at all times.</p> <p>In accordance with Item 2 above, the Access Holder will be allocated a specific timetabled route or routes. In addition, the Access Holder may make ad hoc requests for additional routes, but this will be subject to availability.</p>
7. Train control, operations and consultation procedures	<p>RHI remains responsible for train control on its rail network at all times. The Access holder must comply with all train control directions and must promptly notify RHI of any issues.</p> <p>The access holder shall work to establish an Interface Risk Assessment with RHI to assess and manage the ongoing interface and operational risks posed by the access holder's activities on the RHI railway.</p> <p>Where any change to a train path is required, RHI will use reasonable endeavours to mitigate the impact of any train control directions on the access holder (except where caused or contributed to by the access holder).</p>
8. Other services to be provided by the railway owner	<ul style="list-style-type: none"> • Provision and maintenance of "below rail" infrastructure including track infrastructure and signalling and communications systems. • Train control (as described in Item 7 above); • Track maintenance; • Providing appropriate inductions for Access Holder personnel accessing the RHI Railway; and • Any other services agreed in writing by RHI. <p>For the avoidance of doubt, this excludes:</p> <ul style="list-style-type: none"> • loading and unloading of rolling stock; • train marshalling, queuing and staging; • inspection, testing or maintenance of rolling stock; • any right or entitlement to access rail-adjacent premises owned or controlled by RHI; and • any obligation to fund or construct any extension to the railway, <p>unless otherwise agreed in writing between RHI and the Access Holder.</p>
9. Certification of the access holder's staff and contractors	<p>The Access Holder must:</p> <ul style="list-style-type: none"> • hold accreditation as a rolling stock operator under the Rail Safety National Law, and provide a copy of its accreditation information to RHI; • comply with RHI's Rail Safety Management Plan at all times; • ensure that its personnel accessing the RHI railway have completed all required rail safe working inductions • comply with the terms of RHI's existing safety interface agreements (with copies of any relevant safety interface agreements to be provided by RHI upon receipt of an access proposal); and • hold all applicable licences and permits relevant to the transport of dangerous goods on any route.
(a) As being competent to carry out functions in rail operations; and	
(b) To ensure compliance with the railway owner's safety standards under any written law	

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<p>10. The standards and other requirements to be met in respect of rolling stock</p>	<p>At the time of writing, the Roy Hill “<i>Authorisation to Access and Operate on the Roy Hill Rail Network Procedure</i>” OP-PRO-00997 is the overarching document which governs the use of third-party rolling stock on the RHI railway.</p> <p>Beneath this overarching procedure, there are a number of rules and standards which must be adhered to (for example, Australian Standard AS7501 <i>Rolling stock compliance certification</i>).</p> <p>As these documents are subject to regular review and update, any Access Agreement will refer to the then-current documentation, which RHI will provide to an access seeker following receipt of an access proposal.</p>
<p>11. Performance standards to be met by the railway owner and the access holder.</p>	<p>Refer to the Roy Hill “<i>Authorisation to Access and Operate on the Roy Hill Rail Network Procedure</i>” OP-PRO-00997 (as updated from time to time).</p>
<p>12. The powers of the railway owner in relation to:</p> <p>(a) the inspection of;</p> <p>(b) the obtaining of information about; and</p> <p>(c) the testing of,</p> <p>the access holder’s rolling stock and equipment.</p>	<p>Refer to the Roy Hill “<i>Authorisation to Access and Operate on the Roy Hill Rail Network Procedure</i>” OP-PRO-00997 (as updated from time to time).</p> <p>For example, the access seeker will be required to obtain certification from an Independent Competent Person (ICP) that its rolling stock has been designed, constructed and verified in accordance with RHI Rolling Stock Interface Standards. This may include on-track testing on the RHI Rail Network.</p> <p>The frequency of recertification is dependent on the class of the rolling stock and if any modification has been made.</p>
<p>13. Emergencies and service interruptions</p>	<ul style="list-style-type: none"> • The access holder must prepare and implement an emergency management plan for its use of the RHI railway in consultation with the railway owner and in accordance with the Rail Safety National Law. • The access holder acknowledges that the RHI railway will be periodically closed for maintenance shutdowns. • The Access Agreement is to include a force majeure clause to cover unforeseen events (e.g. weather events, industrial action or other significant disruptions preventing the safe use of the RHI railway).
<p>14. Environmental standards</p>	<p>The Access Holder must:</p> <ul style="list-style-type: none"> • comply with Roy Hill’s Environmental Management System (OP-MAN-00003) (as updated from time to time); and • comply with all laws and not cause or contribute to any environmental harm (as that term is defined in the <i>Environmental Protection Act 1986 (WA)</i>).
<p>15. Indemnities and insurances</p>	<p>Indemnities</p> <p>The Access Agreement is to include mutual indemnities between the parties, with standard exclusions for:</p> <ul style="list-style-type: none"> • negligent or wrongful acts or omissions; and • any defaults under the Access Agreement.

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	<p>Insurances</p> <p>The Access Holder must effect and maintain the following insurances at all times during the term of the Access Agreement for use of the RHI mainline:</p> <ul style="list-style-type: none">• public liability insurance of not less than \$100 million per occurrence;• a carrier liability policy of insurance that covers the Access Holder's liability in relation to goods being transported on the RHI railway by the Access Holder for an amount of not less than \$10 million per occurrence;• workers compensation insurance in respect of any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Access Holder on the RHI Railway; and• any other insurances required by law. <p>Additional insurances may be required if the Access Holder is granted access to additional RHI yards or facilities. These insurances will be determined following receipt of an Access Proposal, having regard to the nature of the proposal.</p> <p>All insurances held by the Access Holder in accordance with the Access Agreement must:</p> <ul style="list-style-type: none">• ensure RHI is listed as a named insured;• include a cross-liability clause under which the policy operates as if a separate policy of insurance had been issued to each of named insured; and• include a waiver of subrogation clause in which the insurer agrees to waive all rights of subrogation or action against any of the insured persons. <p>The Access Holder must provide certificates of currency for each of the required insurances on an annual basis or as otherwise requested.</p>
<p>16. Variation and termination of the agreement</p>	<p>Variations</p> <p>Any variation to the Access Agreement must be in writing and signed by both parties.</p> <p>Termination</p> <p>The Access Agreement may be terminated in the event of:</p> <ul style="list-style-type: none">• mutual written agreement of both parties;• default (see Item 17 below) provided that the party in default has received a notice and has been given a period of not less than 20 Business Days (or such longer period as is reasonable in the circumstances) to remedy the default; or• an extended event of force majeure (see Item 13 above).
<p>17. Breaches and defaults arising from the agreement</p>	<p>The agreement shall contain a default clause, with a cure period as detailed in Item 16 above.</p> <p>In the event of an immediate risk to the safety of RHI railway operations, RHI may suspend access to the RHI Railway until the default has been remedied.</p>

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18. Determination of liability arising from incidents	<p>Materiality threshold</p> <p>A party must not make a claim (except for any payment against the other party for monies due and payable) unless the amount of the claim exceeds \$100,000.</p> <p>Consequential loss</p> <p>The Access Agreement will contain a mutual exclusion of consequential loss, with exceptions for:</p> <ul style="list-style-type: none">• death or personal injury;• gross negligence, fraud or wilful misconduct;• liabilities for which a party is indemnified under an insurance policy required to be held under the Access Agreement; and• liabilities which, by law, a party cannot contract out of or limit. <p>Proportionate liability</p> <p>The provisions of Part 1F of the <i>Civil Liability Act 2002 (WA)</i> will be excluded from applying to the Access Agreement.</p>
19. The resolution of disputes arising in the carrying out of the agreement	<ul style="list-style-type: none">• The Access Agreement is to be governed by the laws of Western Australia.• Disputes are to be resolved in the following order of escalation:<ul style="list-style-type: none">○ Conference between senior representatives of each party to attempt to resolve the dispute in good faith.○ Confidential arbitration (to be held in Perth before a single arbitrator, in accordance with the ACICA Arbitration Rules).
20. Investigations and inquiries	<ul style="list-style-type: none">• The Access Holder must:<ul style="list-style-type: none">○ permit audits to be conducted by RHI or its nominee;○ permit the right of reasonable access to its facilities and relevant records in relation to the Access Agreement; and○ provide all reasonable assistance for the purposes of carrying out an audit of the Access Holder's compliance with the Access Agreement.• If either party is the subject of an investigation, inspection or audit from ONRSR relating to the RHI railway, the parties must provide such co-operation and assistance as is reasonable in the circumstances.
21. Confidentiality requirements or restrictions on the use or dissemination of information	<ul style="list-style-type: none">• Each party and its personnel must not use, disclose or make public any confidential information under the Access Agreement, except:<ul style="list-style-type: none">○ to the extent required under any written law (including but not limited to the <i>Rail Safety National Law</i> and the Code;○ to its professional advisors (including lawyers, accountants and financial advisors) on a "need-to-know" basis, provided that such advisors are bound by confidentiality obligations at least as restrictive as those contained in the Access Agreement;○ for information which is or becomes publicly known through no wrongful act of the receiving party; or○ with the prior written consent of the other party.• Each party must implement and maintain all reasonable security measures and controls to protect the confidentiality of any confidential information.

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22. Assignment of rights and obligations	<ul style="list-style-type: none">• The Access Holder must not assign or deal with any right under the Access Agreement without the prior written consent of RHI.• Any proposed assignee must demonstrate the financial and managerial ability required by the Code.• The consent of RHI (such consent not to be unreasonably withheld) is also required for any change in control of the entity comprising the Access Holder.
23. Security for the payment of amounts becoming payable under the agreement	<ul style="list-style-type: none">• The Access Holder must provide a bank guarantee for an amount equal to 3 months of the initial contract payments under the Access Agreement.• The bank guarantee must be:<ul style="list-style-type: none">○ an unconditional, irrevocable, pay-on demand banker's undertaking with no fixed expiry date○ from an Australian bank of a bank that is licenced and operating as a bank in Australia and has a Standard & Poor's long-term issuer credit rating of AA minus or better; and○ in a form approved by RHI (acting reasonably).
24. Additional matters	<p>Costs</p> <p>Each party must pay its own legal and other costs of negotiating, preparing, executing and performing its obligations under the Access Agreement.</p> <p>Native title</p> <p>The RHI railway has been constructed following agreement with the Nyiyaparli, Palyku and Kariyarra people. There are native title agreements in place which govern the operation of the RHI railway across the respective interface areas.</p> <p>Any third party seeking to operate on the RHI railway may be required to enter into a direct agreement with the relevant interfacing groups, dependent on the requested route(s) in an access proposal.</p>