

## **Deed of Variation (No. 1)**

Rail Freight Corridor Land Use Agreement (StandardGauge) and  
Railway Infrastructure Lease

### **Public Transport Authority of Western Australia**

exercising powers including powers under sections 42 and 43 of the Rail Freight System Act 2000 and section 13 of the Public Transport Authority Act 2003

### **The Honourable Christian Porter MLA**

exercising powers including powers under section 20 of the Rail Freight System Act 2000

### **Brookfield StandardGauge Pty Ltd**

ACN 094 819 360

This Variation Deed made at *21st June on 2012*

**Parties**      **Public Transport Authority of Western Australia**, exercising powers including powers under sections, 42 and 43 of the *Rail Freight System Act 2000* (WA) and section 13 of the *Public Transport Authority Act 2003* (WA) (**PTA**)

**The Honourable Christian Porter MLA**, Treasurer of the State of Western Australia, exercising powers including powers under section 20 of the *Rail Freight System Act 2000* (WA) (**Treasurer**)

**Brookfield StandardGauge Pty Ltd ACN 094 819 360** of 8-10 Adams Drive, Welshpool, Western Australia, formerly named WestNet StandardGauge Pty Ltd (**Network Lessee**)

### Background

- A. The Parties or their respective predecessors are parties to the Principal Agreement.
- B. By the EGR Project Agreement:
  - (i) the PTA undertook to upgrade the standard gauge railway between Koolyanobbing and West Kalgoorlie (Line 108) in the manner described as 'Resleeper Works'; and
  - (ii) the Network Lessee agreed to maintain that upgraded section of railway in the same condition received on the Variation Date.
- C. Pursuant to clause 30 of the Principal Agreement, the Parties have agreed to vary the Principal Agreement on the terms and conditions set out in this deed to reflect the obligation of the Network Lessee, on and from the Variation Date, to maintain the upgraded section of railway to revised performance standards.
- D. This deed should be read in conjunction with the Principal Agreement on the basis that the operative parts of this deed are, for the purposes of section 16 of the *Property Law Act 1969* (WA), supplemental to the Principal Agreement.

### The Parties agree

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#### 1. Definitions

In this deed:

**"Act"** means the *Rail Freight System Act 2000* (WA).

**"EGR Project Agreement"** means the agreement made between the PTA, Brookfield Rail Pty Ltd ABN 42 094 721 301 (formerly named WestNet Rail Pty Ltd) on behalf of the Network Lessee, and Pacific National (ACT) Limited ABN 48 052 134 362, undated but executed in or about 28 May 2007 and bearing PTA seal number 108/2007.

**"Network Lessee"** means Brookfield StandardGauge Pty Ltd ACN 094 819 360.

**"Parties"** means the parties to this deed.

**"Principal Agreement"** means the agreement headed "Rail Freight Corridor Land Use Agreement (StandardGauge) and Railway Infrastructure Lease" dated 17 December 2000 between the Hon. Murray Criddle MLC exercising powers under section 42 and 43 of the *Rail Freight System Act 2000* (WA), The Western Australian Government Railways Commission exercising powers under section 8(7) and 44 of the *Rail Freight System Act 1999* (WA) and section 62 of the *Government Railways Act 1904* (WA), The Hon. Richard Fairfax Court MLA, Treasurer of the State of Western Australia exercising powers under section 20 of the *Rail Freight System Act 2000* (WA), WestNet StandardGauge Pty Ltd ACN 094 736 900, Australia Western Railroad Pty Ltd ACN 094 792 275 and Australian Railroad Group Pty Ltd ACN 080 579 308.

**"Resleepering Works"** means the works described in Schedule 2 of the EGR Project Agreement.

**"Variation Date"** means the date of completion of the Resleepering Works namely 31 August 2008.

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## **2. Variation to Principal Agreement**

The Parties agree that on and from the Variation Date the Principal Agreement is amended by re-numbering clause 15.3 as clause 15.3(a) and by adding the following clause 15.3(b):

"For the purposes of the Koolyanobbing – West Kalgoorlie section (Line 108), but without limiting the obligations of the Network Lessee to comply with sections 12(6), (7) and (8) of the Act, Fit for Purpose means the Leased Railway Infrastructure is to meet and be maintained as railway track with 100% concrete sleepers, designed to 47 kg/m rail, to achieve 21T axle load at 115 km/hr and 23T axle load at 90 km/hr, with sleeper spacing being nominally 667mm apart.

The concrete sleepers must accommodate an upgrade in size from 47 kg/m to 60 kg/m in the future, with the use of "gauge spacers" fitted to accommodate the smaller rail in the interim."

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## **3. Confirmation and ratification**

In all other respects, the Parties hereby confirm and ratify the Principal Agreement.

EXECUTED as a deed

Signed for and on behalf of the  
**PUBLIC TRANSPORT AUTHORITY  
OF WESTERN AUSTRALIA** by  
an officer of the Authority duly authorised by  
the Authority pursuant to section 51(5) of  
the Public Transport Authority Act 2003 for that  
purpose:



Witness (signature)

*Teresa Michelle D'Adamo*

Name (please print)

*C1 - Public Transport Centre*

Address

*West Parade, Perth*

Address

*Solicitor*

Occupation

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Signature of Duly Authorised Officer

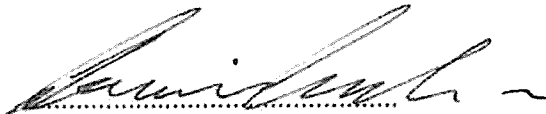
*MARK BURCESS*

Name (Please Print)

*MANAGING DIRECTOR*

Position held

Signed by the said  
**Honourable Christian Porter MLA**  
in the presence of:



Signature of Witness

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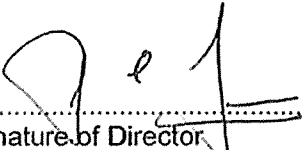
Signature

*Dominic Creighton*

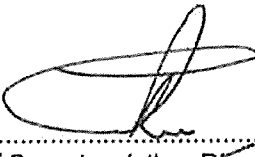
Name of Witness in full

Executed by  
Brookfield StandardGauge Pty Ltd  
ACN 094 819 360 in accordance  
with section 127 of the Corporations Act 2001  
in the presence of:

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Signature of Director

Paul Larson  
.....  
Name of Director in full

  
.....  
Signature of Secretary/other Director

Allen Rose.  
.....  
Name of Secretary/other Director in full

