

# Queensland Rail's Draft Access Undertaking 1

May 2015



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## Preamble

Queensland Rail was incorporated on 11 July 2008 and is wholly owned by the Rail Authority. Queensland Rail was originally named QR Passenger Pty Ltd and was a subsidiary of Aurizon Operations Limited (formerly QR Limited) responsible for the Above Rail passenger Train Services.

On 30 June 2010, as part of the restructure and privatisation process for Aurizon (formerly QR National):

- Queensland Rail became an independent business – separate from the Aurizon corporate group; and
- the rail network previously managed by Aurizon Network (formerly QR Network Pty Ltd) (now part of the Aurizon corporate group) was divided between Aurizon Network and Queensland Rail.

This resulted in Aurizon Network continuing as the Railway Manager of the rail network in the Central Queensland Coal Region (including part of the North Coast Line) and Queensland Rail becoming the owner and Railway Manager of the remainder of the rail network previously managed by Aurizon Network.

Therefore, from 30 June 2010, Queensland Rail changed from a business which principally operated passenger Trains to a business that also manages a rail network including approximately 8,000 km of Queensland railway track used by freight and passenger Trains.

Queensland Rail's major businesses include passenger Trains (including inner-city commuter and long distance trains), rail holidays, travel centres and managing access to its rail network for a wide variety of Trains including for agricultural products, passengers, general freight, bulk minerals and coal. The needs of Trains on Queensland Rail's network vary greatly due to their different supply chain dynamics, geographic locations, rail corridor characteristics and interactions with other rail traffics.

While Queensland Rail's responsibilities regarding passenger Trains are important, the provision of Access to the Network for freight Trains is also a significant activity for Queensland Rail. Queensland Rail seeks to provide a safe and efficient rail based transport option for freight.

Much of Queensland Rail's network is supported by Transport Service Payments from the Queensland Government. The absence of these Transport Service Payments would result in large parts of the rail network being commercially unviable.

Queensland Rail competes with road transport for most non-coal Train Services as well as coastal shipping, air transport, slurry pipelines and other transport options. In this

sense, a large part of Queensland Rail's network business is not truly monopolistic as it is actively competing with other transport modes.

As part of Aurizon Operations Limited's restructure associated with the formation and privatisation of Aurizon, the 2008 Undertaking, with various modifications, was made to apply to Queensland Rail under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld). The 2008 Undertaking's application to Queensland Rail will be superseded by this Undertaking on its approval by the QCA.

This Undertaking is an access undertaking given in response to an initial undertaking notice under section 133 of the *Queensland Competition Authority Act 1997* (Qld) in relation to the declared service under section 250(1)(b) of the QCA Act. This Undertaking has been developed following extensive consultation with key stakeholders. It provides a balanced approach to the provision of Access and a framework (based on a negotiate/arbitrate model) to manage negotiations in an efficient and transparent manner for Rolling Stock Operators seeking Access to Queensland Rail's Network including addressing matters such as:

- the process for seeking Access in relation to the Network;
- the pricing principles for Access Charges including a Reference Tariff for coal carrying Train Services using the West Moreton Network and Metropolitan Network;
- Network Management Principles for the scheduling and prioritisation of Train Services;
- reporting obligations and dispute resolution; and
- a Standard Access Agreement.

For further information on the negotiation of Access in accordance with the provisions of this Undertaking, please contact:

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Commercial and Strategy

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## Part 1 Application and scope

### 1.1 Duration

This Undertaking is effective during the Term.

### 1.2 Scope

#### 1.2.1 Application of this Undertaking

- (a) Subject to **clause 1.2.1(b)**, this Undertaking applies to negotiations between Queensland Rail and Access Seekers in relation to Access Rights.
- (b) Despite any other provision in this Undertaking:
  - (i) this Undertaking does not apply:
    - (A) to the negotiation or provision of services other than Access;
    - (B) to any matter involving an Access Holder or an Access Agreement, to the extent that compliance with this Undertaking is inconsistent with the relevant Access Agreement; or
    - (C) to any part of the Network for which:
      - (1) the owner is not Queensland Rail or a Related Party of Queensland Rail; and
      - (2) Queensland Rail's contractual or other arrangements with the owner of that part of the Network would prevent it from granting Access Rights, or fully complying with this Undertaking, in relation to that part of the Network; and<sup>1</sup>
  - (ii) Queensland Rail is not obliged to comply with this Undertaking to the extent that it is inconsistent with Queensland Rail's compliance with its Passenger Priority Obligations and Preserved Train Path Obligations.
- (c) Nothing in this Undertaking requires Queensland Rail or any other party to an Access Agreement executed before the Approval Date to vary a term or provision of that Access Agreement.
- (d) Nothing in this Undertaking affects, and this Undertaking is subject to, Queensland Rail's rights under the QCA Act.

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<sup>1</sup> This situation might potentially arise, for example, where Queensland Rail provides Railway Manager related services to an owner of private infrastructure.

### **1.2.2 Procurement of services other than Access**

Unless Queensland Rail otherwise agrees, Access Seekers are responsible for procuring any services other than Access, including Above Rail Services, required for the operation of Train Services.

### **1.2.3 Line diagrams**

Queensland Rail will:

- (a) publish on its website line diagrams showing its rail network including:
  - (i) the parts of that rail network comprising the Network;
  - (ii) existing Private Infrastructure connection points to the Network; and
  - (iii) a description of the amendments made to the line diagrams (if any) since the last version of those line diagrams;
- (b) use reasonable endeavours to keep those line diagrams up to date and accurate in all material respects;
- (c) review and, if applicable, amend the line diagrams during the Term:
  - (i) at intervals of no more than six months; and
  - (ii) if requested by the QCA or an Access Holder or Access Seeker (acting reasonably) from time to time; and
- (d) notify the QCA at intervals of no more than six months during the Term of any amendments to the line diagrams during that time interval.

## **1.3 Consistency and differentiation**

- (a) Queensland Rail will consistently apply this Undertaking to all Access Seekers and requests and negotiations for Access.
- (b) Without limitation to its obligations in this Undertaking, Queensland Rail acknowledges its obligations under sections 100, 104, 125 and 168C of the QCA Act, in particular:
  - (i) in relation to not unfairly differentiating between Access Seekers as required by and subject to section 100 of the QCA Act, including in respect of:
    - (A) the levels of service provided to Access Seekers in relation to the application of the Undertaking (including the negotiation of Access Rights); and
    - (B) the opportunities given to Access Seekers to obtain Access Rights;
  - (ii) in relation to not unfairly differentiating between Access Holders as required by and subject to section 168C of the QCA Act; and



- (iii) in relation to not preventing or hindering a “user’s access to the declared service” as required by and subject to sections 104 and 125 of the QCA Act.

## 1.4 Extensions – Capacity investment framework

### 1.4.1 Application

- (a) This **clause 1.4** applies where an Access Seeker’s requested Access Rights cannot be granted without Extending the Network.
- (b) In this **clause 1.4**, unless the context requires otherwise, a reference to an Access Seeker includes a reference to that Access Seeker’s Customer.
- (c) Nothing in this **clause 1.4**:
  - (i) restricts or otherwise limits Queensland Rail’s ability:
    - (A) to Extend the Network;
    - (B) to fund an Extension or otherwise invest in the Network;
    - (C) to enter into arrangements with other persons (other than Access Seekers) in relation to Extending the Network; or
    - (D) to, at its cost, prepare plans and strategies and undertake studies and investigations in relation to Extending the Network (including Concept Studies, Pre-feasibility Studies and Feasibility Studies); or
  - (ii) obliges Queensland Rail to bear some or all of any Extensions Costs or to incur any Extension Costs in advance of funding being provided by the Access Seeker; or
  - (iii) obliges Queensland Rail act in a way that results in Queensland Rail’s legitimate business interests not being protected.

### 1.4.2 Extending the Network

- (a) If Queensland Rail elects not to fund all or part of the Extension Costs for an Extension, then Queensland Rail will:
  - (i) discuss with the relevant Access Seeker options for that Access Seeker to provide funding for the Extension; and
  - (ii) promptly negotiate and, if terms are agreed, enter into arrangements with that Access Seeker in relation to the funding of the Extension (**Funding Agreement**).

For clarity, a Funding Agreement may also be entered into for a preliminary study or investigation in relation to an Extension such as a Concept Study, Pre-feasibility Study or Feasibility Study where

Queensland Rail elects not to fund all or part of such a study or investigation.

(b) Subject to **clauses 1.4.3 to 1.4.5**, if:

- (i) an Extension is necessary to provide the Additional Capacity required to grant Access Rights requested by an Access Seeker; and
- (ii) Queensland Rail elects not to fund any part of the Extension Costs for the relevant Extension,

then Queensland Rail is only obliged to enter into a Funding Agreement in relation to that part of the Extension Costs that it has elected not to fund if all of the following are satisfied (unless otherwise agreed by Queensland Rail and the relevant Access Seeker):

- (iii) the Access Seeker:
  - (A) agrees to provide funding to Queensland Rail on terms and conditions in a funding agreement agreed in accordance with **clause 1.4.3**;
  - (B) satisfies Queensland Rail (acting reasonably) that it will provide that funding; and
  - (C) agrees to provided a bank guarantee in support of its commitments under the Funding Agreement as agreed by Queensland Rail and the Access Seeker unless this requirement is waived, or another form of security is accepted, by Queensland Rail (acting reasonably);
- (iv) Queensland Rail bears no Extension Costs in relation to Extending the Network that it has not elected to fund;
- (v) the Access Seeker or Queensland Rail has obtained, or is reasonably likely to obtain, all necessary Authorisations reasonably required to Extend the Network;
- (vi) the Access Seeker or Queensland Rail has acquired or procured, or is reasonably likely to acquire or procure, all of the rights and interests in land that, in Queensland Rail's opinion (acting reasonably), are reasonably required to construct, own, operate and manage the Extension, (on terms satisfactory to Queensland Rail (acting reasonably)) including, for example, the inclusion of additional land into Queensland Rail's land tenure arrangements with the State relating to the Network;

- (vii) in Queensland Rail's opinion (acting reasonably), the Extension (including constructing the Extension):
    - (A) is technically feasible;
    - (B) is consistent with the safe and reliable provision of Access and operation of the Network;
    - (C) does not impact on the safety of any person maintaining, operating or using the Network;
    - (D) does not adversely affect existing Access Rights;
    - (E) complies with the engineering, operational and other requirements of Queensland Rail (acting reasonably); and
    - (F) protects Queensland Rail's legitimate business interests;
  - (viii) Access Agreements have been executed with Queensland Rail for the Additional Capacity that is expected to be created by the Extension;
  - (ix) those Access Agreements are or have become unconditional in all material respects except for conditions relating to Extending the Network which cannot be satisfied until the Network has been Extended; and
  - (x) subject to **clause 1.4.3**, all construction, funding, operational and other material arrangements reasonably required for the Extension (including the matters referred to above) have been entered into by each relevant Access Seeker and Queensland Rail and are or have become unconditional in all material respects except for conditions relating to Extending the Network which cannot be satisfied until the Network has been Extended.
- (c) It is acknowledged that an Access Seeker may fund the Extension Costs for an Extension (including any studies or investigations such as a Concept Study, Pre-Feasibility Study or Feasibility Study for the Extension) by executing a Funding Agreement with Queensland Rail in accordance with this Undertaking. For clarity, there is no requirement that there be only a single Funding Agreement per Access Seeker per Extension – for example, an Access Seeker may enter into a Funding Agreement for a Concept Study but the parties may then make a separate decisions about whether a funding agreement is needed for a Pre-feasibility Study, for a Feasibility Study or for the Extension itself.
- (d) Where an Extension is required for the grant of Access Rights to an Access Seeker, the Access Agreement and, if applicable, Funding Agreement may include obligations requiring Queensland Rail to

Extend the Network in accordance with the terms of those agreements.

- (e) Where **clause 1.4.2(b)** applies, Queensland Rail and each relevant Access Seeker must use reasonable endeavours and assist each other to ensure that the requirements set out in **clause 1.4.2(b)** are satisfied. Without limiting the foregoing, Queensland Rail will apply for any Authorisation referred to in **clause 1.4.2(b)(v)** and for land tenure or rights referred to in **clause 1.4.2(b)(vi)** where Queensland Rail is the only party who may, or is the most appropriate party to, apply for same.
- (f) An Access Seeker must fund all costs of Queensland Rail assisting to ensure that the requirements set out in **clause 1.4.2(b)** are satisfied. For clarity, unless Queensland Rail agrees otherwise, Queensland Rail has no obligation to satisfying or assist in satisfying the requirements set out in **clause 1.4.2(b)** if it is required to incur or pay any costs in order to do so.

### 1.4.3 Funding Agreements

- (a) The intent of a Funding Agreement is to have a workable, bankable and credible mechanism for Access Seekers to fund Extensions where Queensland Rail elects not to do so.
- (b) Without limitation to **clauses 1.4.2**, a Funding Agreement must, unless otherwise agreed by Queensland Rail and the relevant Access Seeker:
  - (i) be consistent with this Undertaking;
  - (ii) result in the transaction being structured in a reasonable way for all parties;
  - (iii) ensure Queensland Rail's legitimate business interests are protected;
  - (iv) not result in Queensland Rail bearing some or all of the relevant Extension Costs;
  - (v) require Queensland Rail to use reasonable endeavours to ensure that an Extension is:
    - (A) constructed efficiently and in accordance with Prudent Practices taking into account all of the relevant circumstances (including safety and construction requirements of Queensland Rail);
    - (B) operated and managed by Queensland Rail in a manner that is consistent with Queensland Rail's obligations in relation to the operation and management of the Network under this Undertaking; and

- (vi) without limiting **clauses 1.4.3(b)(i) to (v)**, contain:
  - (A) a methodology so that an Access Seeker funding the relevant Extension Costs receives, over the economic life of the relevant asset, an amount equal to that component of Access Charges received by Queensland Rail that relates to a return on and of the relevant Extension Costs to the extent funded by the Access Seeker – to the extent that it is lawful to do so;
  - (B) provisions which enable an independent auditor to audit compliance with the methodology referred to in **clause 1.4.3(b)(vi)(A)**, from time to time, as reasonably required by the relevant Access Seeker over the economic life of the relevant asset;
  - (C) to the extent that Queensland Rail has not funded the Extension Costs for an Extension, provisions requiring Queensland Rail, if Queensland Rail receives a monetary tax benefit (in relation to the depreciation of that Extension because it is the owner), to pass-through the amount of that monetary tax benefit to that Access Seeker (provided that where Queensland Rail has partially funded the Extension that pass-through is pro-rated accordingly);
  - (D) subject to **clause 1.4.9**, provisions allowing the Access Seeker to require Queensland Rail to seek pre-approval from the QCA for inclusion of the anticipated Extension Costs in the relevant Regulatory Asset Base in accordance with **schedule E** as a precondition to funding; and
  - (E) reasonable provisions including in relation to procurement, project management, project delivery, variations, commissioning, completion, inspection and audit and dispute resolution.
- (c) A Funding Agreement may include requirements for the funding Access Seeker to pay additional fees or amounts for costs to Queensland Rail in relation to the relevant Extension for, without limitation, any additional risks or costs assumed or incurred by Queensland Rail which Queensland Rail would not have assumed or incurred but for the Extension. However, Queensland Rail must act reasonably in determining or calculating, and must provide justification for, any additional risks or costs.

#### **1.4.4 Construction, ownership, operation and management of Extensions**

Unless otherwise agreed by Queensland Rail, an Extension which is funded by an entity other than Queensland Rail must only be constructed, owned, operated and managed by Queensland Rail.

#### **1.4.5 Funding Agreement Register**

- (a) Queensland Rail will maintain a register of Funding Agreements (**Funding Agreement Register**).
- (b) On request by the QCA, Queensland Rail must provide a copy of the Funding Agreement Register to the QCA including for the purposes of resolving a Dispute under **clause 6.1**.

#### **1.4.6 Master planning and extension coordination**

- (a) Queensland Rail will use reasonable endeavours to consult with Access Holders and Access Seekers (and, if applicable, their Customers) as relevant, from to time, in relation to the planning for and coordination of Extensions.
- (b) To the extent that Queensland Rail has a plan or strategy that has been approved by its board or chief executive officer that identifies feasible investment options for increasing Capacity for a Regional Network and that evaluates those options from a total cost, risk and timing perspective (even if indicatively) Queensland Rail will:
  - (i) make that plan or strategy available to Access Holders and Access Seekers (and, if applicable, their Customers) on its website; and
  - (ii) consider any suggestions or other feedback that it receives in respect of that plan or strategy.
- (c) A plan or strategy referred to under **clause 1.4.6(b)** is non-binding and indicative only and does not affect Queensland Rail's or any other person's compliance with the terms of this Undertaking.

#### **1.4.7 Project initiation and process**

- (a) An Access Seeker may:
  - (i) identify a demand for Access Rights that requires Additional Capacity; and
  - (ii) based on that demand, request Queensland Rail to commence a study process to clarify the scope, standard and cost of an Extension for that Additional Capacity.

- (b) Unless otherwise agreed by the Access Seeker and Queensland Rail, the study process will be comprised of:
  - (i) a Concept Study;
  - (ii) a Pre-feasibility Study; and
  - (iii) a Feasibility Study,undertaken by Queensland Rail.
- (c) If Queensland Rail elects not to fund all or part of any study comprised in a study process:
  - (i) the relevant Access Seeker will have the right to fund that study; and
  - (ii) Queensland Rail will undertake that study subject to the Access Seeker entering into a Funding Agreement as set out in **clause 1.4** in relation to that study.

Queensland Rail may exercise its election under this **clause 1.4.7(c)** prior to commencing each study comprised in the study process.

- (d) Without limitation to **clauses 1.4.8, 1.4.9** and **2.10**, or Queensland Rail's discretion to fund all or part of the cost of a study comprised in a study process, Queensland Rail may elect to fund that cost subject to the relevant Access Seeker entering into an agreement to reimburse to Queensland Rail the costs incurred by Queensland Rail in respect of funding the study in circumstances where an Access Agreement is not executed.
- (e) If either Queensland Rail or the relevant Access Seeker considers that the study process should not continue, then the parties will seek to agree whether the study process should continue but if the parties cannot agree then the study process will continue subject to the relevant studies being funded.
- (f) If an Access Seeker (acting reasonably) considers Queensland Rail is not undertaking, or is unnecessarily delaying, a relevant study as part of the study process, then the Access Seeker may refer the matter to the QCA under **clause 6.1.4** as a dispute.

#### **1.4.8 Study funding principles**

- (a) Queensland Rail is not obliged to fund the cost of any study as part of a study process for an Extension.
- (b) Efficient study funding costs relating to a study or investigation (including a Concept Study, Pre-feasibility Study or Feasibility Study) relating to an Access Seeker request for Access:
  - (i) will be capitalised into the cost of the proposed Extension for the development of Access Charges and the calculation of the relevant methodology required pursuant to **clause 1.4.3(b)(vi)(A)**; and

- (ii) included in the relevant Regulatory Asset Base whether or not the proposed Extension proceeds, where the Access Seeker's Train Services are to have, or would have had, Access Charges set by reference to a Reference Tariff.

#### **1.4.9 Pre-approval for inclusion in a Regulatory Asset Base**

(a) Where:

- (i) an Extension has been progressed through the full study process referred to in **clause 1.4.7(b)** and there is a completed Feasibility Study; and
- (ii) the Access Seeker who is proposing to enter into a Funding Agreement for the Extension (acting reasonably) requests Queensland Rail to do so,

Queensland Rail will seek the QCA's pre-approval of the cost of a proposed Extension for inclusion in the relevant Regulatory Asset Base in accordance with **schedule E** prior to execution of a Funding Agreement.

- (b) **Clause 1.4.9(a)** does not restrict or otherwise limit Queensland Rail's ability to seek pre-approval of the cost of a proposed Extension in accordance with **schedule E**.

#### **1.4.10 Disputes**

For clarity, any dispute between an Access Seeker and Queensland Rail in relation to this **clause 1.4** (including in relation to the **schedule E** or to the negotiation of a Funding Agreement) is subject to the dispute resolution process under **clause 6.1**.



## Part 2 Negotiation process

### 2.1 Preparing and submitting an Access Application

#### 2.1.1 Access Applications

- (a) A request for Access Rights must be submitted to Queensland Rail in the form of an Access Application.
- (b) Queensland Rail will publish on its website the application forms for Access Applications (which may identify different requirements for different types of Train Services).
- (c) An Access Seeker must, when submitting an Access Application, unconditionally and irrevocably agree to comply with the requirements, obligations and processes in this Undertaking relating to it or its Access Application and if the Access Seeker does not do so then Queensland Rail may refuse to accept the Access Application.

#### 2.1.2 Preliminary steps

- (a) A prospective Access Seeker may request initial meetings with Queensland Rail, prior to submitting an Access Application, to discuss the proposed Access Application and to clarify any matters relating to the negotiation process including any application requirements under **schedule B**.
- (b) A prospective Access Seeker may give a written request to Queensland Rail for relevant Capacity Information and Queensland Rail will make available that Capacity Information within 10 Business Days after receiving that request.
- (c) Queensland Rail will:
  - (i) make the Preliminary Information available to Access Seekers on its website; and
  - (ii) keep the Preliminary Information to be made available to Access Seekers current and accurate.

### 2.2 Confidentiality

#### 2.2.1 Obligation to keep Confidential Information confidential

- (a) Subject to **clause 2.2.1(b)**, Queensland Rail and each Access Seeker (by submitting an Access Application) acknowledge, as a Recipient, that Confidential Information disclosed to it must:
  - (i) be treated as and kept confidential;
  - (ii) only be used for the purpose for which it was disclosed;

- (iii) be treated as the property of the Disclosing Party; and
  - (iv) subject to **clause 2.2.2(a)**, only be disclosed in accordance with this Undertaking.
- (b) A Recipient of Confidential Information is not required to comply with **clause 2.2.1(a)** in relation to a disclosure or use of Confidential Information to the extent that:
- (i) the Disclosing Party has given its written consent (which must not be unreasonably withheld) to that disclosure or use; or
  - (ii) another Confidentiality Exception applies to that disclosure or use.

## **2.2.2 Requirement for confidentiality agreement**

- (a) Queensland Rail or the relevant Access Seeker may require the other to enter into a confidentiality agreement and, if so, the parties must act reasonably and promptly to negotiate and execute such an agreement which shall govern the confidentiality obligations as between those parties.
- (b) Neither Queensland Rail nor an Access Seeker is obliged to disclose Confidential Information to the other unless a confidentiality agreement on terms satisfactory to it (acting reasonably) has been executed.

## **2.2.3 Ring fencing arrangements**

Queensland Rail does not presently have interests in markets upstream or downstream from the Below Rail Services that are in competition with third parties in those markets and there is no expectation that it is likely to do so during the Term. However, if such interests arise during the Term, then Queensland Rail will inform the QCA and, if requested by the QCA, prepare and submit to the QCA a draft amending access undertaking in accordance with the QCA Act setting out its ring fencing obligations.

## **2.3 Acknowledgment of an Access Application**

### **2.3.1 Requests for additional information or clarification**

Queensland Rail may (acting reasonably) require the Access Seeker to provide additional or clarified information for the purpose of preparing an Indicative Access Proposal. Queensland Rail will notify the Access Seeker of any such requirement within five Business Days after receiving the Access Application.

### **2.3.2 Acknowledging Access Applications**

- (a) Within five Business Days after the later of the receipt of:
  - (i) an Access Application; or
  - (ii) the additional or clarified information required under **clause 2.3.1** in respect of that Access Application,

Queensland Rail will, subject to **clause 2.8**, give the Access Seeker a written acknowledgement of receipt of the Access Application.

- (b) Where Queensland Rail considers that, due to:
- (i) the complexity of the Access Application; or
  - (ii) other extenuating circumstances,
- it would not be reasonable to provide an Indicative Access Proposal within 20 Business Days after acknowledging receipt of the Access Application under **clause 2.3.2(a)**, the written acknowledgement given may state:
- (iii) that the Indicative Access Proposal will not be provided within 20 Business Days after the giving of the acknowledgement and the reasons for this; and
  - (iv) the estimated time by which Queensland Rail will provide the Indicative Access Proposal.
- (c) If the Access Seeker considers that Queensland Rail's estimated time under **clause 2.3.2(b)(iv)** is excessive, then (despite **clause 6.1**):
- (i) the Access Seeker may give an access dispute notice (as defined in the QCA Act) to the QCA; and
  - (ii) the Dispute will be resolved in accordance with Division 5, Part 5 of the QCA Act.
- (d) Where an access dispute notice has been given under **clause 2.3.2(c)** and the QCA makes an access determination in respect of the dispute:
- (i) accepting Queensland Rail's estimate, the acknowledgement given under **clause 2.3.2(a)** continues to apply; or
  - (ii) not accepting Queensland Rail's estimate, the acknowledgement given under **clause 2.3.2(a)** is taken to be amended to be consistent with the QCA's access determination.

## 2.4 Provision of an Indicative Access Proposal

### 2.4.1 Time period for provision of Indicative Access Proposal

Subject to **clause 2.8**, Queensland Rail will use reasonable endeavours to provide an Indicative Access Proposal to the Access Seeker by the later of:

- (a) 20 Business Days after giving the acknowledgment under **clause 2.3.2**; or
- (b) the estimated time stated in the acknowledgement in accordance with **clause 2.3.2(b)** – subject to the outcome of any dispute under **clause 2.3.2(c)**.

## 2.4.2 Inclusions in Indicative Access Proposal

The Indicative Access Proposal will, amongst other things, outline:

- (a) the relevant Rolling Stock, Train Configuration and operating characteristics;
- (b) the results of an indicative Capacity Analysis;
- (c) whether any other Access Seekers have requested Access Rights which, if provided, would limit Queensland Rail's ability to grant Access Rights in accordance with the Indicative Access Proposal; and
- (d) a methodology for calculating Access Charges (including an initial estimate of any applicable rates or other inputs for formulae) including where **clause 3.3(b)** applies details of how that clause has been applied in calculating the initial estimate.

## 2.4.3 Indicative nature

An Indicative Access Proposal is non-binding and, unless it contains express provisions to the contrary, contains arrangements that are only indicative or preliminary in nature. An Indicative Access Proposal does not oblige Queensland Rail to provide Access in accordance with specific terms and conditions (including the methodology for calculating Access Charges or estimated rates and other inputs for formulae) set out in it.

## 2.5 Notification of intent to negotiate

### 2.5.1 Access Seeker to give notice of intent to negotiate

If an Access Seeker intends to proceed with its Access Application on the basis of the relevant Indicative Access Proposal, it must, subject to **clause 2.5.2**, give Queensland Rail written notice of its intention to do so as soon as reasonably practicable after receiving the Indicative Access Proposal.

### 2.5.2 Consequence of late notification of intent

- (a) If an Access Seeker gives the notice referred to in **clause 2.5.1** to Queensland Rail more than 20 Business Days after being given the Indicative Access Proposal, Queensland Rail may review the Indicative Access Proposal and either:
  - (i) give the Access Seeker a revised Indicative Access Proposal; or
  - (ii) proceed on the basis of the existing Indicative Access Proposal.
- (b) If Queensland Rail gives a revised Indicative Access Proposal to an Access Seeker under **clause 2.5.2(a)**, then:
  - (i) the process in this **Part 2** recommences as though the revised Indicative Access Proposal was given to the Access Seeker under **clause 2.4**; and

- (ii) the Access Seeker must comply with this **clause 2.5** in relation to that revised Indicative Access Proposal.
- (c) If an Access Seeker has not given the notice referred to in **clause 2.5.1** within three months after it was given an Indicative Access Proposal, then the Access Seeker is taken to have withdrawn its Access Application.

## 2.6 Competing Access Applications

- (a) If there are Competing Access Seekers and:
  - (i) one of those Competing Access Seekers is a Customer Access Seeker, then
    - (A) this Undertaking and Queensland Rail will treat that Customer Access Seeker as the sole Access Seeker; and
    - (B) Queensland Rail must negotiate solely with that Customer Access Seeker; or
  - (ii) **clause 2.6(a)(i)(A)** does not apply, then:
    - (A) this Undertaking and Queensland Rail will treat the Competing Access Seeker nominated in writing by the Customer to Queensland Rail as the sole Access Seeker; and
    - (B) Queensland Rail must negotiate solely with that nominated Access Seeker.
- (b) Where there are Competing Access Seekers, Queensland Rail will disclose to the Customer the identity of the Competing Access Seekers.
- (c) Where:
  - (i) the Customer does not nominate a Competing Access Seeker under **clause 2.6(a)(ii)** within a reasonable time (which need not be prior to Queensland Rail issuing an Indicative Access Proposal to each Competing Access Seeker); and
  - (ii) a Competing Access Seeker has given a notice of intention under **clause 2.5**,Queensland Rail may by notice to the Customer and Competing Access Seekers, suspend the negotiation process under this **Part 2** for each Competing Access Seeker pending the Customer's nomination.
- (d) Where **clause 2.6(a)(ii)** applies and the Customer nominates a Competing Access Seeker prior to Queensland Rail preparing an Indicative Access Proposal for each Competing Access Seeker,

Queensland Rail will prepare an Indicative Access Proposal only for the Competing Access Seeker nominated by the Customer.

## 2.7 Negotiation of an Access Agreement

### 2.7.1 The negotiation period

- (a) Subject to **clause 2.5.2**, if an Access Seeker gives Queensland Rail a notice under **clause 2.5.1**, then Queensland Rail and the Access Seeker will commence negotiations as soon as reasonably practicable to progress towards an Access Agreement.
- (b) If negotiations have commenced in accordance with **clause 2.7.1(a)**, the period for negotiations (**Negotiation Period**):
  - (i) starts on the day Queensland Rail was given the notice under **clause 2.5.1** (subject to **clause 2.5.2(b)**); and
  - (ii) ends on the earlier of:
    - (A) execution of an Access Agreement by the parties in relation to the relevant Access Application;
    - (B) the Access Seeker notifying Queensland Rail that it no longer wishes to proceed with its Access Application;
    - (C) the date nine months after the date on which the period for negotiations started, or such later date as agreed by the parties;
    - (D) Queensland Rail giving the Access Seeker a Negotiation Cessation Notice; and
    - (E) the occurrence of any other event or circumstance where negotiations cease in accordance with this Undertaking.
- (c) Negotiations for Access cease at the end of the Negotiation Period and Queensland Rail is not obliged to continue negotiations with an Access Seeker after the Negotiation Period for the relevant Access Application has ceased.

### 2.7.2 Issues to be addressed in negotiations

- (a) During the Negotiation Period, Queensland Rail and the Access Seeker will negotiate, and endeavour to agree, the terms of an Access Agreement. In order to facilitate the negotiation process:
  - (i) subject to **clause 2.2.2(b)**, Queensland Rail will provide to the Access Seeker:
    - (A) information that is reasonably required by the Access Seeker in accordance with section 101(1) of the QCA Act, provided such information is

- reasonably able to be provided by Queensland Rail and cannot be reasonably obtained from a source other than Queensland Rail; and
- (B) information in accordance with Queensland Rail's obligation under section 101(2) of the QCA Act to the extent that it has not already been provided, relevant to the negotiations, provided that doing so will not breach a confidentiality obligation binding on Queensland Rail;
- (ii) if requested in writing by the Access Seeker, Queensland Rail will make available to the Access Seeker Capacity Information relevant to the Access Seeker's Access Application;
- (iii) the Access Seeker must, in order for the impacts and requirements of the operations proposed by the Access Seeker to be analysed:
- (A) prepare, and submit to Queensland Rail, a draft Operating Plan<sup>2</sup> prior to the parties undertaking the Interface Risk Assessment; and
- (B) finalise the Operating Plan while the Interface Risk Assessment is being undertaken and prior to the development of an IRMP;
- (iv) the parties must jointly:
- (A) undertake an Interface Risk Assessment<sup>3</sup>; and
- (B) after the Interface Risk Assessment is completed, develop an IRMP,
- unless the parties agree that those matters will be completed after the relevant Access Agreement has been executed in accordance with that Access Agreement;
- (v) the Access Seeker must commission a suitably qualified person, acceptable to Queensland Rail (acting reasonably),

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<sup>2</sup> Queensland Rail will use the Operating Plan to refine and finalise the Train Service Entitlement, the methodology, rates and other inputs for calculating Access Charges and other terms and conditions of the Access Agreement. The Operating Plan will also be used as a basis for any further or refined Capacity Analysis prepared by Queensland Rail.

<sup>3</sup> Queensland Rail will publish on its website information, standards and requirements that the Interface Risk Assessment and IRMP must be consistent with. For example, Queensland Rail will make available a sample IRMP which specifies a list of safety and Rolling Stock issues that should, at a minimum, be addressed by the parties during the Interface Risk Assessment, along with suggested controls for the identified safety and Rolling Stock issues. However, the IRMP developed by the parties may cover additional safety and/or Rolling Stock issues and associated controls depending on the circumstances of the particular operation.

- to prepare an environmental investigation and risk management assessment for the purposes of the Interface Risk Assessment and development of an IRMP;
- (vi) Queensland Rail will provide a methodology for calculating the Access Charges (including any applicable rates or other inputs for formulae);
  - (vii) Queensland Rail will provide a Capacity Analysis to the Access Seeker;
  - (viii) Queensland Rail will provide a detailed description of the relevant Train Service Entitlement and the initial timetable;
  - (ix) the Access Seeker must demonstrate that the Rolling Stock and Train Configurations for which the Access Rights are applicable are consistent with the Interface Standards incorporated in the IRMP; and
  - (x) Queensland Rail will provide the other terms comprising the Access Agreement.
- (b) During the Negotiation Period, Queensland Rail will, if relevant, also negotiate the terms of a separate arrangement with the Access Seeker for the connection of Private Infrastructure to the Network.

## 2.8 Cessation of negotiation process

### 2.8.1 Negotiation Cessation Notice

- (a) Queensland Rail may, at any time, give a notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker (**Negotiation Cessation Notice**) for any one or more of the following reasons:
- (i) the Access Seeker fails to comply with all of the relevant provisions of this Undertaking, and Queensland Rail (acting reasonably) is of the opinion that such non-compliance is material;
  - (ii) Queensland Rail (acting reasonably) is of the opinion that:
    - (A) there is no reasonable likelihood of material compliance by the Access Seeker with the terms and conditions of an Access Agreement; or
    - (B) the Access Seeker has no genuine intention of obtaining, or has no reasonable likelihood of using, the Access Rights requested;
  - (iii) the requirements under **clause 2.8.2** for giving a notice have been satisfied;
  - (iv) the Access Seeker has concurrent requests for Access such that if any one of those requests for Access were granted



- then any one or more of the remainder would not be needed by the Access Seeker; or
- (v) the Access Seeker fails to comply with the dispute resolution process under **clause 6.1** (including any outcome of that dispute resolution process) in relation to the relevant Access Application.
  - (b) Without limitation to **clause 2.8.1(a)(ii)(A)**, it will be reasonable for Queensland Rail to form the opinion that the circumstance in **clause 2.8.1(a)(ii)(A)** exists where, at any time, the Access Seeker does not comply with the requirements under **clause 2.8.3**.
  - (c) In forming an opinion referred to in **clause 2.8.1(a)(ii)(B)**, Queensland Rail may, without limitation, consider any one or more of the following factors:
    - (i) whether the Access Seeker has secured, or is reasonably likely to secure:
      - (A) the rights required to enter and leave the Network (for example, rights to unload at its destination); and
      - (B) if applicable, a rail haulage agreement for the operation of Train Services referred to in its Access Application; and
    - (ii) the promptness of the Access Seeker in conducting its negotiations.

## **2.8.2 Safety considerations**

If:

- (a) the use of any proposed Access Rights sought by an Access Seeker may adversely affect the safety of any persons using or intending to use a passenger Train Service;
- (b) Queensland Rail and the Access Seeker have discussed the matter in **clause 2.8.2(a)** and after those discussions Queensland Rail (acting reasonably) still considers that the circumstance in **clause 2.8.2(a)** continues to apply;
- (c) Queensland Rail (acting reasonably) does not consider that any measures can reasonably and practicably be implemented by Queensland Rail or the Access Seeker to avoid, or mitigate to Queensland Rail's satisfaction (acting reasonably), those adverse affects; and
- (d) refusal to enter into an Access Agreement would be consistent with Queensland Rail acting in accordance with Prudent Practices,

then Queensland Rail may give a Negotiation Cessation Notice to the relevant Access Seeker.

### **2.8.3 Access Seekers must satisfy prudential requirements**

- (a) An Access Seeker must at all times satisfy the following prudential requirements, namely:
  - (i) the Access Seeker must not be Insolvent;
  - (ii) the Access Seeker (and any Related Party of the Access Seeker) must not be, or have been at any time in the previous two years, in Material Default of:
    - (A) this Undertaking (or, if applicable, the 2008 Undertaking);
    - (B) any agreement with Queensland Rail; or
    - (C) any agreement under which access to Private Infrastructure has been provided to the Access Seeker or a Related Party of the Access Seeker; and
  - (iii) the Access Seeker must be able to demonstrate to Queensland Rail that it has the financial capacity to perform its obligations, and satisfy its liabilities, under an Access Agreement (including timely payment of Access Charges or other amounts and of insurance premiums and deductibles under any required policies of insurance).
- (b) Queensland Rail may, at any time, require an Access Seeker to (and, if so required, the Access Seeker must) demonstrate, within a reasonable period of no more than ten Business Days, that the Access Seeker satisfies the prudential requirements set out in **clause 2.8.3(a)**.

## **2.9 Access Agreement**

### **2.9.1 Access Rights granted under an Access Agreement**

The granting of Access Rights occurs when Queensland Rail and the Access Seeker execute an Access Agreement and that Access Agreement is or becomes unconditional.

### **2.9.2 Mutually Exclusive Access Applications**

- (a) Subject to **clause 2.9.2(b)**, this **clause 2.9.2** applies to the extent that:
  - (i) two or more Access Seekers have submitted Access Applications for Access Rights relating to Available Capacity; and
  - (ii) it is not reasonably possible for Queensland Rail to fulfil, in whole, the request for Access Rights made under those Access Applications,

(each a **Mutually Exclusive Access Application**).

- (b) Where the application of **clause 2.9.2(a)** involves Queensland Rail taking into account Competing Access Seekers for a traffic task and:
  - (i) one of those Competing Access Seekers is a Customer Access Seeker:
    - (A) the Customer Access Seeker's Access Application will be used for the purpose of applying **clause 2.9.2(a)**; and
    - (B) the other Competing Access Seekers will not have a position in any queue established under this **clause 2.9.2**;
  - (ii) the relevant Customer has nominated one of the Competing Access Seekers under **clause 2.6(a)(ii)**:
    - (A) the nominated Competing Access Seeker's Access Application will be used for the purpose of applying **clause 2.9.2(a)**; and
    - (B) the other Competing Access Seekers will not have a position in any queue established under this **clause 2.9.2**; or
  - (iii) the relevant Customer has not nominated one of the Competing Access Seekers under **clause 2.6(a)(ii)**:
    - (A) the Competing Access Seeker's Access Application which requires the greatest allocation of Available Capacity will be used for the purpose of applying **clause 2.9.2(a)**; and
    - (B) the Competing Access Seekers will collectively have the same position in any queue established under this **clause 2.9.2** pending the relevant nomination under **clause 2.6(a)(ii)**.
- (c) An Access Application may become a Mutually Exclusive Access Application at any time before an Access Agreement is executed in relation to that Access Application.
- (d) An Access Seeker will be notified as soon as reasonably practicable after Queensland Rail identifies that its Access Application has become a Mutually Exclusive Access Application and the extent to which it is a Mutually Exclusive Access Application.
- (e) Queensland Rail will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it ceases to be a Mutually Exclusive Access Application.
- (f) Where Queensland Rail has identified that there are Mutually Exclusive Access Applications, Queensland Rail will form a queue to

determine which Access Seeker will be allocated Access Rights and will notify each Access Seeker in the queue of their position in that queue.

- (g) The order of a queue established under **clause 2.9.2(f)** will initially be based on the date on which Queensland Rail received each of the Mutually Exclusive Access Applications, so that the Access Application first received by Queensland Rail is first in the queue, and the Access Application received next by Queensland Rail is second in the queue, and so on.
- (h) Queensland Rail may change the order of a queue where:
  - (i) the Negotiation Period for an Access Application in the queue has ended in accordance with **clause 2.7.1(b)**;
  - (ii) a Negotiation Cessation Notice has been given under **clause 2.8.1** relating to an Access Application in the queue;
  - (iii) an Access Application is added to the queue;
  - (iv) in Queensland Rail's opinion, allocating Access in respect of an Access Application in the queue but not first in the queue is more favourable to Queensland Rail's legitimate business interests; or
  - (v) the change is required to comply with this Undertaking – for example, where **clause 2.9.2(b)(iii)** applies and the relevant Customer subsequently nominates one of the Competing Access Seekers under **clause 2.6(a)(ii)**.
- (i) For the purpose of **clause 2.9.2(h)(iv)**, Queensland Rail may make such a decision based on the present value of future returns to Queensland Rail after considering all associated risks but may also take into account other relevant factors including:
  - (i) the relative time likely to be required to finalise an Access Agreement;
  - (ii) the ability of the Access Seeker to satisfy, and to continue (after execution of an Access Agreement) to satisfy, the prudential requirements set out in **clause 2.8.3(a)**; and
  - (iii) any other effects that entering into the Access Agreement may have on Queensland Rail's financial and risk position.
- (j) If Queensland Rail changes the order of a queue, it will notify each Access Seeker in the queue of any change to their position in the queue and the reason for that change.

- (k) An Access Seeker may only assign its position in a queue to another person where:
  - (i) both of the following are satisfied:
    - (A) that other person is either:
      - (1) that Access Seeker's Customer; or
      - (2) a Rolling Stock Operator; and
    - (B) the Access Seeker has entered into an agreement with that other person in relation to the provision of rail haulage services where those parties have agreed that the other person is to hold the relevant Access Rights; or
  - (ii) that other person has acquired the whole of, or control over, the relevant assets of the Access Seeker for which the Access Rights are needed.
- (l) Where a dispute arises in respect of a change of a position in a queue, Queensland Rail will not:
  - (i) implement that change; or
  - (ii) execute an Access Agreement in relation to that queue (unless the resolution of the dispute would not alter the relevant Access Seeker's position in the queue),until after, and in accordance with, the resolution of that dispute (including, if relevant, where the dispute is resolved by being withdrawn).
- (m) This **clause 2.9.2** (including the creation and application of any queue) is subject to **clause 2.9.3(b)** in relation to Renewal Access Seekers.

### 2.9.3 Renewals

- (a) Where an Access Seeker (who is not a Renewal Access Seeker) submits an Access Application for Access Rights concerning the Available Capacity that will arise when an existing Access Agreement expires, Queensland Rail will use reasonable endeavours to notify:
  - (i) the Access Holder for that Access Agreement;
  - (ii) that Access Holder's Customer (if any); and
  - (iii) the relevant Renewal Access Seeker (if any),of Queensland Rail's receipt of that Access Application, as soon as reasonably practicable after receiving it.
- (b) Despite any other provision in this Undertaking to the contrary and subject to **clause 2.9.3(c)**, Queensland Rail may not execute an

Access Agreement with the Access Seeker referred to in **clause 2.9.3(a)** until the earlier of:

- (i) a Renewal Access Seeker fails to, or cannot, submit a relevant Renewal Application to Queensland Rail in respect of the relevant Renewal within the Renewal Timeframe; or
- (ii) where a Renewal Application has been submitted within the Renewal Timeframe:
  - (A) the negotiations with the Renewal Access Seeker have ended in accordance with this Undertaking; or
  - (B) nine months after the later of:
    - (1) the date on which Queensland Rail gave the relevant notice under **clause 2.9.3(a)**; and
    - (2) the date that is three years before the expiry of the relevant Access Agreement.
- (c) **Clause 2.9.3(b)** only applies where:
  - (i) the relevant existing Access Agreement concerns coal carrying Train Services or other bulk mineral carrying Train Services;
  - (ii) the relevant Renewal Application is for a term of:
    - (A) at least the lesser of the period for which the Access Seeker referred to in **clause 2.9.3(a)** is seeking Access Rights and ten years; or
    - (B) the remaining life of the relevant mine as notified in writing to Queensland Rail by the Renewal Access Seeker (where it has no Customer) or otherwise the relevant Customer; and
  - (iii) **clause 2.9.3(c)(ii)(B)** has not previously applied for any past Renewal Application in connection with the relevant Access Rights, unless Queensland Rail agrees otherwise.<sup>4</sup>
- (d) Nothing in this **clause 2.9.3** obliges Queensland Rail to enter into an Access Agreement with a Renewal Access Seeker or to do so on the same terms as the relevant existing Access Agreement for the relevant existing Access Rights.

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<sup>4</sup> Unless Queensland Rail agrees otherwise, **clause 2.9.3(b)** is only intended to operate once where a Renewal Application is for the remaining life of a mine. Any subsequent Renewal Application concerning the relevant Access Rights does not have the benefit of **clause 2.9.3(b)**. In those instances, the Renewal Access Seeker will be treated on the same basis as any other Access Seeker.

#### **2.9.4 Development of Access Agreements**

Unless otherwise agreed between Queensland Rail and the Access Seeker, an Access Agreement must be consistent with:

- (a) this Undertaking; and
- (b) the terms of a Standard Access Agreement applicable to the relevant type of Train Service.

#### **2.9.5 Execution of Access Agreements**

- (a) If:
  - (i) Queensland Rail offers an Access Agreement; and
  - (ii) Queensland Rail and the Access Seeker are ready and willing to execute the Access Agreement,then:
  - (iii) both Queensland Rail and the Access Seeker must use reasonable endeavours to execute the Access Agreement as soon as reasonably practicable provided that Queensland Rail is not required to execute the Access Agreement before the Access Seeker; and
  - (iv) the Access Seeker must execute (and return to Queensland Rail) that Access Agreement within 20 Business Days after receiving Queensland Rail's offer (or such longer period as agreed by Queensland Rail and the Access Seeker).
- (b) If an Access Seeker does not execute (and return to Queensland Rail) the offered Access Agreement within the timeframe set out in **clause 2.9.5(a)(iv)**, then Queensland Rail's offer automatically lapses.
- (c) Despite any other provision in this Undertaking, Queensland Rail may, but is not obliged to, grant Access Rights by agreeing to amend an existing Access Agreement.

#### **2.9.6 Transfer of Access Rights**

An Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement and with the prior written consent of Queensland Rail.

#### **2.9.7 Tripartite Access Agreements**

- (a) If the Access Seeker's Customer is proposed to be party to the Access Agreement to be negotiated with the Access Seeker, then the Access Seeker's Customer must notify Queensland Rail, prior to the start of the relevant Negotiation Period that:
  - (i) a tripartite Access Agreement is required with the Access Seeker's Customer as a party; and

- (ii) the Customer unconditionally and irrevocably agrees to comply with the requirements, obligations and processes in this Undertaking relating to it or the relevant Access Application.
- (b) On and from the giving of a notice under **clause 2.9.7(a)**:
  - (i) the Standard Access Agreement will apply in its tripartite form;
  - (ii) unless the context requires otherwise, a reference to the Access Seeker will include a reference to the Access Seeker's Customer; and
  - (iii) the parties to any dispute in relation to the relevant Access Application will include Queensland Rail, the Access Seeker and the Customer,for the purpose of this Undertaking.

## 2.10 Cost recovery where no Access Agreement

- (a) Where:
  - (i) Queensland Rail:
    - (A) rejects an Access Seeker's request for Access or an Access Application; or
    - (B) refuses to enter into an Access Agreement with an Access Seeker,in accordance with this Undertaking; or
  - (ii) the Negotiation Period applicable to an Access Seeker ends for a reason other than an Access Agreement being executed with the Access Seeker as referred to in **clause 2.7.1(b)(ii)(A)**,the Access Seeker must, on request by Queensland Rail, pay and, if paid by Queensland Rail, reimburse, Queensland Rail its costs and expenses reasonably incurred by Queensland Rail in dealing with the Access Seeker's request for Access including in connection with any negotiations with the Access Seeker.
- (b) Where an Access Seeker fails to pay or reimburse costs and expenses under **clause 2.10(a)**, Queensland Rail may:
  - (i) refuse to accept a future request for Access from that person or a Related Party of that person or in respect of that person as another Access Seeker's Customer, until those costs and expenses are paid or reimbursed in full; and
  - (ii) make any proposed Access Agreement for that person in relation to another current Access Application conditional on



that person paying those costs and expenses within a prescribed time.

## Part 3 Pricing principles

### 3.1 Pricing objectives

#### 3.1.1 Revenue adequacy

Queensland Rail is entitled to earn revenue from providing Access, including from Access Charges and Transport Service Payments, that is at least enough to:

- (a) fully recover all Efficient Costs; and
- (b) provide a return on the value of assets and investment commensurate with the regulatory and commercial risks involved.

If Queensland Rail earns revenue in excess of this, then Queensland Rail may seek to reduce Transport Service Payments rather than Access Charges.

#### 3.1.2 Network utilisation

- (a) Queensland Rail may establish different Access Charges for Train Services serving different markets to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs.
- (b) If the Available Capacity is potentially insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers, then:
  - (i) Queensland Rail may (consistent with the principles set out in **clauses 3.1 to 3.3**) determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers (**Maximum Access Charge**);
  - (ii) the Maximum Access Charge may be quoted to all Access Seekers in respect of the Available Capacity (including any Additional Capacity that Queensland Rail has agreed to provide), irrespective of:
    - (A) any Access Seeker's ability to contribute to the Common Costs; or
    - (B) the Access Charges payable under existing Access Agreements for similar Train Services; and
  - (iii) if Queensland Rail:
    - (A) chooses to allocate Available Capacity to an Access Seeker for an Access Charge less than the Maximum Access Charge; and

- (B) another Access Seeker is willing to pay an Access Charge equal to the Maximum Access Charge,

then when determining a Ceiling Revenue Limit in accordance with **clause 3.2.3** for Train Services using that constrained section of the Network, the Access Charge for the Access Seeker is assumed to be the Maximum Access Charge.

## 3.2 Pricing limits

### 3.2.1 Applying a Ceiling Revenue Limit

In setting the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services, Queensland Rail must do so such that, over the Evaluation Period, the Expected Access Revenue from any one of those Train Services and any combination of those Train Services does not exceed the Ceiling Revenue Limit for that Train Service or combination of Train Services, as applicable.

### 3.2.2 Applying a Floor Revenue Limit

Queensland Rail may (in its absolute discretion) set the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services such that, over the Evaluation Period, the Expected Access Revenue from any one of those Train Services or any combination of those Train Services falls below the Floor Revenue Limit for that Train Service or combination of Train Services, as applicable.

### 3.2.3 Determination of Ceiling Revenue Limit

- (a) The Ceiling Revenue Limit means the aggregate of the following:
- (i) the maximum amount of Expected Access Revenue; and
  - (ii) where the Access Seeker's proposed Train Services comprise all of the Train Services using the relevant part of the Network, the Transport Services Payments (if any) that are reasonably expected to be received by Queensland Rail in respect of that part of the Network (on a pro rata basis for that individual Train Service or combination of Train Services, as applicable),

over the Evaluation Period where the Ceiling Revenue Limit is measured such that the net present value of the cashflows associated with providing Access for the relevant Train Service(s) over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_o + \sum_{t=1}^n \frac{(CRL_t - C_t - M_t - T_t)}{(1 + WACC)^t} + \frac{AV_n}{(1 + WACC)^n}$$

where:

**AV<sub>0</sub>** is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 3.2.3(c)**, at the commencement of the Evaluation Period;

**n** is the number of years in the Evaluation Period;

**t** is each year within the Evaluation Period from one to n;

**CRL<sub>t</sub>** is the Ceiling Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

**C<sub>t</sub>** is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

**M<sub>t</sub>** is the Efficient Costs for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

**T** is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by Queensland Rail and the QCA or, failing such agreement, as determined by the QCA;

**AV<sub>n</sub>** is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 3.2.3(c)**, at the end of the Evaluation Period;

**WACC** has the meaning given to that term in **clause 7.1**.

- (b) It will be necessary, for the purposes of determining the variables under **clause 3.2.3(a)**, make assumptions for the Train Services(s) over the Evaluation Period based on the forecast, as reasonably determined by Queensland Rail, for the Train Service(s) (including making allowance for any changes that are expected to result from the commencement of projects that impact significantly on the Train Service(s)).
- (c) The value of assets used in **clause 3.2.3(a)** is determined using the Depreciated Optimised Replacement Cost (DORC) methodology.

### 3.3 Limits on price differentiation

- (a) Queensland Rail will only differentiate the methodology, rates and other inputs for calculating Access Charges between Access Seekers in accordance with this **clause 3.3**.
- (b) The methodology, rates and other inputs for calculating Access Charges formulated by Queensland Rail for an Access Seeker's Train Services may vary from:
  - (i) an applicable Reference Tariff to reflect differences in the cost and risk to Queensland Rail of providing Access for that Train Service compared to the relevant Reference Train Service; or
  - (ii) if there is no applicable Reference Tariff, the methodology, rates and other inputs for calculating Access Charges for other Access Seekers in respect of Train Services for the same commodity in the same geographical area, on a unit rate basis:
    - (A) to reflect differences in the cost and risk to Queensland Rail of providing Access to that Access Seeker for that Train Service compared to the relevant Train Services for those other Access Seekers; and
    - (B) to reflect:
      - (1) changes that result in Queensland Rail no longer being able to commercially provide Access to Train Services in that geographic area at the current Access Charges (for example, changes in relevant Transport Service Payments);
      - (2) changes in the cost and risk to Queensland Rail of providing Access;
      - (3) changes in circumstances that have had, or may have, a material affect on the ability of Access Holders to pay Access Charges; or
      - (4) limitations on Available Capacity in accordance with **clause 3.1.2(b)**,  
over time.
- (c) Without limitation to this **clauses 3.3(a) and (b)**, this **clause 3.3** applies in respect of all Renewal Applications provided that if:
  - (i) there are no other Access Seekers in respect of Train Services for the same commodity in the same geographical

area as the proposed Train Services under a Renewal Application;

- (ii) the proposed Train Services under the Renewal Application are for the same commodity, the same number of Train Services and otherwise have in all respects the same description and characteristics as the Train Services under the Access Agreement relevant to the Renewal Application; and
- (iii) no Reference Tariff applies to the setting of Access Charges for the proposed Train Services under the Renewal Application,

then **clauses 3.3(a)** and **(b)** will be applied in relation to setting the Access Charges in relation to the proposed Train Services under the Renewal Application as though the reference to “the methodology, rates and other inputs for calculating Access Charges for other Access Seekers in respect of Train Services for the same commodity in the same geographical area” is a reference to “the methodology, rates and other inputs for calculating Access Charges for the Train Services under the existing Access Agreement relevant to the Renewal Application”.

### 3.4 Conflict between pricing principles

If **clauses 3.1** to **3.3** cannot be applied without giving rise to a conflict between those provisions, then those provisions will be applied in the following order of precedence (from highest to lowest) to the extent of that conflict:

- (a) **clause 3.1.1 (Revenue adequacy);**
- (b) **clause 3.3 (Limits on price differentiation);**
- (c) **clause 3.2 (Pricing limits);**
- (d) **clause 3.1.2 (Network utilisation).**

### 3.5 Reference Tariffs

- (a) A Reference Tariff is an acceptable means by which Queensland Rail provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the QCA Act.
- (b) If Queensland Rail formulates an Access Charge for an Access Seeker’s proposed Train Services based on a Reference Tariff, then Queensland Rail is taken to have complied with **clauses 3.1** and **3.2**.
- (c) **Schedule D** specifies the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during this period.

### 3.6 Rate review provisions

Queensland Rail or an Access Seeker may require rate review provisions in an Access Agreement that is being negotiated to enable the methodology, rates and other inputs for calculating Access Charges to be adjusted to be consistent with changes over time in:

- (a) the cost and risk to Queensland Rail of providing Access;
- (b) if a Reference Tariff applies to the Train Service type, the applicable Reference Tariff (including any matters under **schedule D**); and
- (c) if no Reference Tariff applies to the Train Service type, the methodology, rates and other inputs for calculating Access Charges offered to other Access Seekers in respect of a Train Service with similar characteristics to that Access Seeker's proposed Train Service.<sup>5</sup>

### 3.7 QCA Levy

An Access Charge for a Train Service may include a QCA Levy component to be collected for the QCA by Queensland Rail. This component will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to Queensland Rail and allocated amongst Train Service types in a manner approved by the QCA.

### 3.8 Maintenance of Regulatory Asset Bases

Queensland Rail will maintain the Regulatory Asset Bases in accordance with **schedule E**.

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<sup>5</sup> Queensland Rail will determine whether the characteristics of Train Services are similar having regard to all relevant matters including the geographical area within which the Train Services operate, the origin and destination of the Train Services, the duration and quality of the Train Path including arrival and departure times of the day and week, the nature of the Rolling Stock and Train Configuration, characteristics of the Train Services, the commodity transported or transport service and the duration and terms of the relevant Access Agreement.

## Part 4 Operating requirements

### 4.1 Network Management Principles

- (a) All Access Agreements must include obligations for the Access Holder and Queensland Rail to comply with the Network Management Principles.<sup>6</sup>
- (b) Without limitation to **clause 4.1(a)**, Queensland Rail acknowledges its obligations under each Access Agreement to:
  - (i) perform scheduling, Network Control and associated services; and
  - (ii) provide Capacity related information to Access Holders, in accordance with the Network Management Principles and subject to the terms of that Access Agreement.
- (c) Each Train Service Entitlement will:
  - (i) include specified scheduling constraints (which will vary between different types of Train Services); and
  - (ii) be expressed in terms so that it can be used in the development of any MTP and DTP.

### 4.2 Consultation for Through-Running Trains

Queensland Rail will use reasonable endeavours to consult with other Railway Managers as relevant, from to time, in relation to:

- (a) the coordination of maintenance activities;
- (b) the development of MTPs; and
- (c) proposed amendments to the Operating Requirements Manual, with a view to minimising adverse affects in relation to Through-Running Trains.

### 4.3 Operating Requirements Manual

- (a) The Operating Requirements Manual, as at the Approval Date, is that which is set out in **schedule G**.
- (b) Queensland Rail must make the Operating Requirements Manual available (including keeping it available) to Access Seekers and Access Holders.

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<sup>6</sup> For clarity, the Network Management Principles are set out in **schedule F**.



- (c) Access Agreements entered into after the Approval Date must include provisions on the same terms (to the extent reasonably practical) as clause 8 in the Standard Access Agreement.

## Part 5 Reporting

### 5.1 Quarterly network train performance reports

#### 5.1.1 Obligation to publish quarterly report

- (a) Subject to **clause 6.4(c)**, within 30 days after the end of each Quarter in the Term, Queensland Rail will publicly release a quarterly report for that Quarter containing the information set out in **clause 5.1.2** and/or other indicators approved by the QCA from time to time.
- (b) Queensland Rail will use reasonable endeavours to ensure that the information contained in each quarterly report is accurate.
- (c) Queensland Rail must ensure that each quarterly report is accompanied by a responsibility statement signed by the Chief Executive Officer of Queensland Rail.

#### 5.1.2 Content of quarterly report

A quarterly report published under **clause 5.1.1** will:

- (a) contain the following information:
  - (i) a comparison of the information described in **clauses 5.1.2(a)(ii) to 5.1.2(a)(vii)** in relation to the subject Quarter and, subject to **clause 6.4(b)**, the four preceding Quarters (to the extent that those preceding Quarters reported on the same information);
  - (ii) for Train Services that operated in the subject Quarter:
    - (A) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
    - (B) the number and percentage of Train Services that did not reach their destination within the Allotted Time Threshold:
      - (1) due solely to the acts or omissions of Queensland Rail in its capacity as the Railway Manager;
      - (2) due solely to delays attributed to an Access Holder or a Nominated Rolling Stock Operator; and
      - (3) due to any other reason; and
    - (C) the total number of Train Services;
  - (iii) the average Above Rail Delay, Below Rail Delay and Unallocated Delay, in minutes, per 100 train kilometres for

- the aggregate of the Train Services that operated in the subject Quarter;
- (iv) the number and percentage of Train Services scheduled in the DTPs relating to the subject Quarter that were cancelled in each of the following circumstances:
    - (A) where that cancellation can be solely attributed directly to Queensland Rail in its capacity as the Railway Manager;
    - (B) where that cancellation can be solely attributed directly to an Access Holder or a Nominated Rolling Stock Operator; and
    - (C) where that cancellation occurred for any other reason;
  - (v) the number of category A notifiable occurrences (as defined under the TRSA), as reported to the Rail Safety Regulator, for Train Services that operated in the subject Quarter;
  - (vi) the average percentage, and the average number of kilometres, of Track under a temporary speed restriction for the subject Quarter (excluding Track in the Metropolitan Network);
  - (vii) the most recent measure of Track quality, in the subject Quarter (if any), for the Network measured by a quality index with component measures including gauge, top, twist and versine;
  - (viii) the number of written complaints by Access Holders that are verified by Queensland Rail (acting reasonably) as correct in connection with any of the following:
    - (A) the Operating Requirements Manual;
    - (B) an IRMP;
    - (C) any environmental investigation and/or risk management negotiation process or report created pursuant to **clause 2.7.2**;
    - (D) a Rolling Stock authorisation<sup>7</sup>; and
    - (E) the application of the Network Management Principles; and

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<sup>7</sup> That is, an Authority to Travel (being an authorisation issued by Queensland Rail under an Access Agreement which authorises a Rolling Stock Operator to temporarily operate specified Train Services on the Network for a specified period and using specified Train Configurations) or a Train Route Acceptance (which has the same meaning as an Authority to Travel but rather than being temporary applies until the expiry or termination of the Access Rights for the relevant Train Services).

- (ix) an outline as to the cause or causes of any material change in the matters reported under **clauses 5.1.2(a)(ii) to (viii)** relating directly to Queensland Rail's operating performance by comparison to the preceding Quarter; and
- (b) the information referred to in **clauses 5.1.2(a)(ii) to 5.1.2(a)(v)**, will be limited to, and aggregated by, Train Services operated in the following parts of the Network:
  - (i) the West Moreton Network;
  - (ii) the Mt Isa Network;
  - (iii) the North Coast Network; and
  - (iv) the Metropolitan Network.

## 5.2 Annual report on negotiation process

### 5.2.1 Obligation to publish annual report

- (a) Subject to **clauses 6.4(b) and (d)**, within four months after the end of each Year in the Term, or such longer time as agreed by the QCA, Queensland Rail will publicly release an annual report in relation to that Year containing the information set out in **clause 5.2.2**.
- (b) Queensland Rail will use reasonable endeavours to ensure that the information contained in each annual report is accurate.
- (c) Queensland Rail must ensure that each annual report is accompanied by a responsibility statement signed by the Chief Executive Officer of Queensland Rail.

### 5.2.2 Content of annual report

An annual report published under **clause 5.2.1** will contain the following information for the relevant Year:

- (a) the number of requests for Capacity Information received under **clause 2.1.2(b)** and the average time (in Business Days) taken by Queensland Rail to provide that information;
- (b) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clause 2.3.2**;
- (c) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in **clause 2.3.2**, the average delay (in Business Days) by Queensland Rail to acknowledge the Access Applications;
- (d) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe under **clause 2.4.1**;

- (e) the number and percentage of Access Applications received in accordance with this Undertaking for which a time estimate within which an Indicative Access Proposal would be provided to the Access Seeker was provided in an acknowledgement notice given under **clause 2.3.2**;
- (f) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in **clause 2.4.1**, the average delay (in Business Days) by Queensland Rail to provide the Indicative Access Proposals;
- (g) the number of disputes that are:
  - (i) referred to the dispute resolution process under **clause 6.1**; and
  - (ii) referred to the dispute resolution process under **clause 6.1** and determined in favour of the Access Seeker.
- (h) the number and percentage of Access Applications in relation to which Queensland Rail has given a Negotiation Cessation Notice in accordance with **clause 2.8.1**;
- (i) the number of Access Agreements executed by Queensland Rail;
- (j) the number of Access Agreements (excluding agreements which extend or renew an Access Holder's Access Rights that existed immediately prior to execution of the agreement) executed by Queensland Rail for which the negotiation period was:
  - (i) three months or less;
  - (ii) more than three months but not more than six months;
  - (iii) more than six months but not more than 12 months; and
  - (iv) more than 12 months; and
- (k) for each Regional Network (that is, each system):
  - (i) maintenance costs and scope of maintenance performed;
  - (ii) operating expenditure;
  - (iii) the capital investment in the relevant Year;
  - (iv) to the extent that a Reference Tariff applies in relation to that Regional Network:
    - (A) the roll-forward of the relevant Regulatory Asset Base; and
    - (B) the aggregate gtk for Train Services of the type to which the Reference Tariff applies; and

- (v) to the extent that a Reference Tariff does not apply in relation to that Regional Network:
  - (A) for non-passenger Train Services:
    - (1) the aggregate Train Paths used by those Train Services;
    - (2) the aggregate nt; and
    - (3) the aggregate gtk,  
broken down by commodity where appropriate; and
  - (B) for passenger Train Services, the aggregate Train Paths used by those Train Services.

## 5.3 General reporting obligations

### 5.3.1 Accuracy

- (a) Queensland Rail will use reasonable endeavours to ensure the reports referred to in **clauses 5.1** and **5.2** are accurate.
- (b) If, in Queensland Rail's opinion, there is a material error in a report published or provided under **clauses 5.1** or **5.2**, then it will, as soon as reasonably practicable, take the steps it considers reasonable to correct that error.

### 5.3.2 Information requested by the QCA

- (a) Subject to **clause 5.3.2(b)**, the QCA may, by written notice, request Queensland Rail to provide information or a document that the QCA reasonably requires for the purpose of complying with this Undertaking.
- (b) A notice given by the QCA under **clause 5.3.2(a)** must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.
- (c) Queensland Rail will comply with a request by the QCA under **clause 5.3.2(a)** by the day stated in the request unless it has a reasonable excuse for non-compliance.

### 5.3.3 Information about compliance with the Undertaking

Without limitation to this Undertaking, Queensland Rail acknowledges:

- (a) its obligations under section 150AA of the QCA Act; and
- (b) that the QCA may, in accordance with section 150AA of the QCA Act, require Queensland Rail to give the QCA particular information about Queensland Rail's compliance with the Undertaking.

#### 5.3.4 Audit

- (a) If the QCA believes, acting reasonably, that the information contained in a quarterly report or annual report released by Queensland Rail under **clause 5.1** or **5.2** is inaccurate in a material way, the QCA may instruct Queensland Rail to obtain an audit of the relevant quarterly report or annual report (as applicable).
- (b) Where the QCA has instructed Queensland Rail to obtain an audit under **clause 5.3.4(a)**, the QCA may require that the audit be conducted by a third party and, if it does, the following process will apply (unless otherwise agreed by the QCA and Queensland Rail):
  - (i) Queensland Rail will appoint an auditor subject to the QCA's prior approval of the auditor and, if the QCA does not approve a particular auditor, Queensland Rail must nominate an alternative auditor as soon as reasonably practicable;
  - (ii) the auditor will have a duty of care to the QCA in providing the audit and, in the event of a conflict between the auditor's obligations to Queensland Rail and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) prior to commencing the audit, the auditor must agree an audit plan with Queensland Rail, document that audit plan and obtain the QCA's approval of that audit plan;
  - (iv) the audit plan referred to under **clause 5.3.4(b)(iii)** will consist of a proposed work program for the execution of the audit and will include the establishment of an audit liaison group, comprising the auditor, Queensland Rail and the QCA, to provide a forum for the resolution of any audit issues that arise during the course of the audit;
  - (v) Queensland Rail will be responsible for the costs of the auditor;
  - (vi) subject to **clause 5.3.4(b)(vii)**, Queensland Rail will provide any relevant information the auditor reasonably requires to conduct the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with Queensland Rail;
  - (vii) the auditor must enter into a confidentiality deed with Queensland Rail in relation to any information provided by Queensland Rail, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the Audit Report detailed below;

- (viii) the auditor must prepare:
  - (A) a statement (**Audit Statement**):
    - (1) specifying only whether, in the opinion of the auditor, the information contained in the quarterly report or annual report (as applicable) released by Queensland Rail under **clause 5.1** or **5.2** (as applicable) is materially inaccurate; and
    - (2) describing the process adopted for the conduct of the audit; and
  - (B) a report (**Audit Report**):
    - (1) explaining the information set out in the Audit Statement in greater detail; and
    - (2) in the event that the auditor identifies that the information contained in the quarterly report or annual report (as applicable) is inaccurate in a material way, providing information on the inaccuracy.
- (c) Within a reasonable period following Queensland Rail's receipt of a completed Audit Statement and Audit Report, Queensland Rail must provide the Audit Statement and Audit Report to the QCA.
- (d) The QCA may publicly release an Audit Statement and the Audit Report.



## Part 6 Administrative provisions

### 6.1 Dispute and complaint resolution process

#### 6.1.1 Alternative dispute process

Nothing in this **clause 6.1** prevents an Access Seeker and Queensland Rail from agreeing (in each party's absolute discretion) to use a different dispute resolution process or different timeframes to the dispute resolution process or timeframes set out in this **clause 6.1**. However, if an Access Seeker and Queensland Rail do agree a different dispute resolution process or timeframe (as applicable), then:

- (a) the different dispute resolution process or timeframe (as applicable) will be binding on them;
- (b) neither of them may seek to:
  - (i) change the dispute process (except with the agreement of the other); or
  - (ii) alter or challenge the outcome of the dispute process (except in the case of manifest error); and
- (c) in a case of manifest error, either of them may refer the matter to the QCA for arbitration in accordance with Division 5, Part 5 of the QCA Act.

#### 6.1.2 Application of dispute and complaint resolution process

- (a) If any dispute, complaint or question arises between Queensland Rail and an Access Seeker in relation to any provision of this Undertaking, a request for Access or the negotiation of an Access Agreement (**Dispute**), then:
  - (i) that Dispute will be resolved in accordance with this **clause 6.1**; and
  - (ii) either the Access Seeker or Queensland Rail may give the other a notice in writing (**Dispute Notice**) setting out details of the Dispute and that the Dispute is to be dealt with in the manner set out in this **clause 6.1**.
- (b) Disputes in relation to an Access Holder or an Access Agreement must be dealt with in accordance with the provisions of the relevant Access Agreement and must not be dealt with under this Undertaking.

#### 6.1.3 Resolution by escalation

- (a) Within five Business Days (or such longer period as agreed by the parties) after the date on which a party gives the other party a Dispute Notice (**Dispute Notice Date**), representatives of the parties must meet and use reasonable endeavours to resolve the Dispute.

- (b) If the Dispute is not resolved under **clause 6.1.3(a)**, senior management representatives of the parties (who, for a party, are senior to that party's representative(s) referred to in **clause 6.1.3(a)**) must, within ten Business Days (or such longer period as agreed by the parties) after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.
- (c) If the Dispute is not resolved under **clause 6.1.3(b)**, the Dispute must be referred to each party's chief executive officer (or his or her nominee – who, for a party, must be more senior than that party's representative(s) referred to in **clauses 6.1.3(a) and (b)**) who must use reasonable endeavours to resolve the Dispute within ten Business Days (or such longer period as agreed by the parties) after the Dispute has been so referred.

#### **6.1.4 Resolution by QCA**

- (a) If a Dispute is not resolved under **clause 6.1.3** within the last of the applicable time frames, then:
  - (i) either the Access Seeker or Queensland Rail (or both of them) may give an access dispute notice (as defined in the QCA Act) to the QCA; and
  - (ii) the Dispute will be resolved in accordance with Division 5, Part 5 of the QCA Act.
- (b) If a Dispute is referred to the QCA for arbitration in accordance with Division 5, Part 5 of the QCA Act, the QCA must:
  - (i) ask the Rail Safety Regulator to make a decision on those aspects of the Dispute (if any) that relate to safety matters (as defined in the TRSA);
  - (ii) provide to the Access Seeker and Queensland Rail a copy of any decision that it receives from the Rail Safety Regulator; and
  - (iii) not make any access determination in respect of the Dispute relating to a safety matter that is inconsistent with any decision of the Rail Safety Regulator.

#### **6.1.5 Reporting unresolved disputes and complaints to the QCA**

If:

- (a) a Dispute is referred to the dispute resolution process in this **clause 6.1**;
- (b) that Dispute is not resolved by the Access Seeker and Queensland Rail; and

- (c) neither the Access Seeker nor Queensland Rail gives an access dispute notice to the QCA in accordance with **clause 6.1.4(a)(i)**, then, within three months after the Dispute Notice Date, Queensland Rail will report that Dispute (including a brief description of the Dispute) to the QCA.

## 6.2 QCA Decision-making

- (a) The QCA may not make a decision (**Decision**) under this Undertaking that may affect Queensland Rail or another person (including to require Queensland Rail or another person to do, give or submit anything to the QCA, to resolve a Dispute, to approve or consent to or grant anything or to refuse to approve or consent to or grant anything), unless:
- (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by any applicable Law (including this Undertaking);
  - (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
  - (iv) the QCA was authorised to make the Decision under this Undertaking;
  - (v) the QCA's Decision was a proper exercise of the power conferred by this Undertaking and, without limitation, it will not be a proper exercise of power if:
    - (A) the QCA takes an irrelevant consideration into account in the exercise of a power;
    - (B) the QCA fails to take a relevant consideration into account in the exercise of a power; or
    - (C) the QCA exercises:
      - (1) a power for a purpose other than a purpose for which the power is conferred;
      - (2) a discretionary power in bad faith;
      - (3) a personal discretionary power at the discretion or behest of another person;
      - (4) a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
      - (5) a power in a manner that is so unreasonable that no reasonable person could so exercise the power;
      - (6) a power in such a way that the result of the exercise of the power is uncertain; or

- (7) a power in a way that is an abuse of the power;
- (vi) the QCA's Decision involves an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA's Decision was induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was not some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does not exist; and
- (ix) the Decision was otherwise contrary to law or this Undertaking.

For the avoidance of doubt, where words and phrases in this **clause 6.2(a)** are also used under the *Judicial Review Act 1991* (Qld) and are not expressly defined in this Undertaking, then those words and phrases have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (b) The requirements set out in **clause 6.2(a)** also apply to the QCA's conduct in making a Decision.
- (c) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this **clause 6.2**, Queensland Rail and the QCA agree that where Queensland Rail or another person (as applicable) is aggrieved by the Decision or conduct (including if its interests are or would be adversely affected by the Decision or conduct), Queensland Rail or that other person (as applicable) may seek an order suspending the operation of the relevant Decision and a stay of any proceedings under the relevant Decision.
- (d) This **clause 6.2** does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

## 6.3 Notices

### 6.3.1 Form of Notices

A notice or other document relating to this Undertaking (**Notice**) must be in writing in English.

### 6.3.2 Means of giving Notices

In addition to any other lawful means, a Notice may be given by being personally delivered or sent by pre-paid post or email.

### 6.3.3 Effect and receipt of a Notice

- (a) Unless a later time is specified in it, any Notice takes effect and is given from the earlier of the time it is actually given or is taken to be given.
- (b) A Notice is taken to be given, in the case of a Notice given by:
  - (i) hand, at the time of delivery;
  - (ii) post, on the second day following the date of posting (other than a Notice acknowledging the receipt of an Access Application which is taken to be given on the date of posting); and
  - (iii) email, unless the sender receives an automated message that the email has not been delivered, when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email), whichever happens first, provided that, if a Notice is given:
    - (iv) after 5:00pm in the place of receipt; or
    - (v) on a day which is not a Business Day in the place of receipt, it is taken as having been given on the next Business Day.

### 6.3.4 Process service is not affected

This **clause 6.3** does not affect any process or other document relating to litigation, administrative or arbitral proceedings relating to this Undertaking (which may be served in accordance with any other applicable Law).

## 6.4 Transitional provisions

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, requests, time periods, votes, warranties or any other process or thing whatsoever (**Matter**) done, agreed, arising, given, received, undertaken, commenced or established (**Done**) or deemed to be Done under the 2008 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.
- (b) If this Undertaking requires Queensland Rail to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:
  - (i) the relevant report will include information in respect of the period prior to the Approval Date; and

- (ii) Queensland Rail is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the 2008 Undertaking in respect of that same type of report.
- (c) If the Approval Date is the first day of a Quarter, then Queensland Rail will report on the last Quarter prior to the Approval Date in accordance with the requirements of the 2008 Undertaking.
- (d) If the Approval Date is the first day of a Year, then Queensland Rail will report on the prior Year in accordance with the requirements of the 2008 Undertaking.

## Part 7 Definitions and interpretation

### 7.1 Definitions

In this Undertaking:

**2008 Undertaking** means Aurizon Network’s access undertaking as approved by the QCA on 23 October 2008 (as amended pursuant to submissions by Queensland Rail which were approved by the QCA) but only to the extent that it applied to Queensland Rail pursuant to section 9(1)(j) of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld);

**Above Rail Delay** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be solely attributed directly to an Access Holder (or its Nominated Rolling Stock Operator) in operating its Train Services, but excludes:

- (a) cancellations;
- (b) delays resulting from compliance with a Passenger Priority Obligation; and
- (c) delays resulting from a Force Majeure Event;

**Above Rail Services** means those activities, other than Below Rail Services, required to provide and operate Train Services, including Rolling Stock provision, Rolling Stock maintenance, non-Network Control related communications, train crewing, terminal provision and services, freight handling and marketing and the administration of those activities and **Above Rail** has a similar meaning;

**Acceptable Credit Rating** means a current long-term credit rating of at least:

- (a) ‘A’ or better from Standard and Poor’s; or
- (b) ‘A3’ or better from Moody’s.

**Access** means the non-exclusive right to use a specified part of the Network for the purpose of operating Train Services;

**Access Agreement** means an agreement between Queensland Rail and an Access Holder for the provision of Access;

**Access Application** means a request for Access Rights by an Access Seeker that includes:

- (a) the information referred to under **schedule B**; and
- (b) all additional or clarified information required by Queensland Rail (for example, under **clause 2.3.1**);

**Access Charge** means the charge or other amount payable by an Access Holder to Queensland Rail for the provision of Access under an Access

Agreement and includes, except where the context requires otherwise, Take or Pay Charges and Adjustment Charges;

**Access Holder** means a person who holds Access Rights under an Access Agreement;

**Access Rights** means an entitlement to Access in accordance with a specified Train Service Entitlement;

**Access Seeker** means a person who is seeking new or additional Access Rights from Queensland Rail;

**Accredited** means accredited (including exempted from the requirement to be accredited) in accordance with Part 5 of the TRSA;

**Additional Capacity** means the additional capability of the Network to accommodate Train Services that would result from an Extension;

**Ad Hoc Train Service** means any Train Service:

- (a) additional to the number of Train Services permitted under an existing Access Agreement, but otherwise consistent with the Train Service Entitlement and Rolling Stock and Train Configuration authorised pursuant to that existing Access Agreement; or
- (b) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by Queensland Rail;

**Adjustment Charge** has the meaning given to that term in **clause 7.1(a)** of **schedule D**;

**Allotted Time Threshold** means the threshold within which a Train Service is considered to be on time as follows, for a Train Service operated for the purpose of:

- (a) transporting coal, 30 minutes;
- (b) transporting bulk minerals (other than coal), 60 minutes; and
- (c) transporting freight products, 60 minutes;

**Approval Date** means the date on which this Undertaking was approved by the QCA;

**Approved Capital Expenditure** means all capital expenditure accepted into a Regulatory Asset Base by the QCA in accordance with **clause 2.1(a)** of **schedule E**;

**Aurizon Network** means Aurizon Network Pty Ltd ACN 132 181 116;

**Authorisation** means any consent, accreditation, authorisation, registration, filing, lodgement, notification, agreement, licence, certification, commission, permit, approval, exemption, ruling or other permission from, by or with an Authority required by any Law or lawfully required by any Authority;



**Authority** means:

- (a) the Crown or any minister of the Crown;
- (b) any government, federal, state or local government department or other governmental, semi-governmental or judicial body or authority including local government, a court or a tribunal;
- (c) any corporation, authority, body or force constituted for a public purpose (including any police service or force);
- (d) any holder of an office for a public purpose;
- (e) any governmental, semi-governmental or judicial person; and
- (f) any person (whether autonomous or not) who is charged with the administration or enforcement of a Law,

including any officer or agent of the foregoing acting in that capacity but excluding the Rail Authority;

**Available Capacity** means Capacity excluding:

- (a) all Committed Capacity other than, in relation to an Access Application:
  - (i) Committed Capacity that will cease being Committed Capacity prior to the time period for which Capacity is being assessed for that Access Application; and
  - (ii) Capacity that is required to comply with any Passenger Priority Obligation or Preserved Train Path Obligation that can be allocated by Queensland Rail to that Access Application in accordance with that Passenger Priority Obligation or Preserved Train Path Obligation and is not otherwise Committed Capacity;
- (b) Queensland Rail's reasonable requirements for the exclusive use of the Network for the purposes of:
  - (i) performing activities associated with the maintenance or repair of the Network, or undertaking Extensions, including the operation of work Trains; and
  - (ii) attending to and performing activities associated with safety matters or the management of safety risks; and
- (c) Capacity that is not available as a result of:
  - (i) an Operational Constraint from time to time; or
  - (ii) restrictions imposed or required from time to time in accordance with any Law;

**Below Rail Delay** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be solely attributed directly to Queensland Rail in its capacity as the Railway Manager, but excludes:

- (a) cancellations;
- (b) delays resulting from compliance with a Passenger Priority Obligation; and
- (c) delays resulting from a Force Majeure Event;

**Below Rail Services** means the activities associated with the provision and management of the Network, including:

- (a) the construction, maintenance and renewal of Network assets; and
- (b) the network management services required for the safe operation of Train Services on the Network including:
  - (i) Network Control; and
  - (ii) the implementation of procedures and systems, including supporting communications systems, for the safe operation of Train Services and protection of work sites on the Network,

and **Below Rail** has a similar meaning;

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Brisbane or, if and to the extent that this Undertaking expressly refers to another place, in that other place;

**Capacity** means the capability of the Network to accommodate Train Services including all Additional Capacity that is expected to result from Extensions that Queensland Rail has committed to construct;

**Capacity Analysis** means an assessment of:

- (a) whether there is sufficient Available Capacity to accommodate an Access Seeker's requested Access Rights; and
- (b) if there is not sufficient Available Capacity to accommodate the requested Access Rights, the Additional Capacity required to grant the requested Access Rights (including an outline of the investigations and works in relation to identifying and undertaking the Extensions and indicative estimate of the cost of, and timing for, such investigations and works),

which provides a basis for the negotiation of an Access Agreement;

**Capacity Information** means the information referred to under **clause 2 of schedule A**;

**Capital Indicator** means the annual capital expenditure allowance approved by the QCA for the purpose of assessing the relevant Reference Tariff;

**Ceiling Revenue Limit** has the meaning given to that term in **clause 3.2.3**;

**Change in Law** means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Authority;
- (d) the imposition of a requirement for Authorisations not required as at the Approval Date;
- (e) after the date of grant of any Authorisation, a change in the terms, conditions and requirements relating to that Authorisation including any new terms, conditions or requirements; or
- (f) any such Authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on a basis that is materially less favourable than the original Authorisation;

**Change to Credit** means:

- (a)
  - (i) a change in the rate, or basis of calculation, of; or
  - (ii) the introduction or cessation of,  
a credit, rebate, deduction, refund, exemption, concession or any other benefit or allowance (whether or not relating to an Impost), including, without limitation, a fuel tax credit, diesel fuel rebate or similar credit to which Queensland Rail is or was entitled; or
- (b) any change in the funding or other support received by Queensland Rail from any Authority in relation to any relevant part of the Network;

**Committed Capacity** means that portion of the Capacity that is required:

- (a) to meet Train Service Entitlements;
- (b) to comply with any Passenger Priority Obligation or Preserved Train Path Obligation;
- (c) without limitation to **paragraph (b)** of this definition, to comply with any Law (other than Undertaking) requiring Queensland Rail to provide a passenger Train Service with access to the Network; or
- (d) without limitation to **paragraphs (b)** and **(c)** of this definition, to meet Queensland Rail's requirements from time to time for the operation of passenger Train Services;

**Common Costs** means those costs associated with the provision of the Network by Queensland Rail that are not Incremental Costs for any particular Train Service;

**Comparison Train Length** means, in respect of a Train, the amount in metres calculated as the sum of:

- (a) the aggregate of the lengths (in metres) of each item of Rolling Stock comprising or to comprise the Train (including its locomotives) multiplied by 1.02; and
- (b) 125mm multiplied by the number of items of Rolling Stock comprising or to comprise the Train (including its locomotives);<sup>8</sup>

**Competing Access Applications** means the Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task<sup>9</sup>;

**Competing Access Seekers** means the Access Seekers whose Access Applications are Competing Access Applications;

**Concept Study** means a study that:

- (a) identifies possible Extension solutions for creating additional Capacity;
- (b) makes a preliminary assessment of potential costs, benefits and risks involved in those possible Extension solutions;
- (c) unless otherwise agreed by Queensland Rail and the relevant Access Seeker, includes an indicative assessment of:
  - (i) the project objectives in relation to the creation of additional Capacity; and
  - (ii) for the possible Extension solutions:
    - (A) a broad cost estimate with a +/- 50% accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably));
    - (B) a preliminary financial analysis and risk assessment; and
    - (C) indicative timeframes for developing and completing the possible Extension solution; and
- (d) includes a proposed scope, budget, duration and deliverables for a Pre-feasibility Study including the reasons for selecting the possible

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<sup>8</sup> By way of explanation, the 2% and 125mm allowances are allowances for train handling accuracy and slack movement in drawgear (including free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>9</sup> This is a situation where if one of the Access Seekers is granted Access Rights, then the other Access Seekers will no longer need a grant of Access Rights – for example:

- Where two Access Seekers are competing to provide Train Services under a rail haulage agreement with the same Customer for the same Train Service. This might occur where a mine is conducting a competitive tender for the provision of rail haulage services, there is more than one person seeking to provide those rail haulage services and each of those persons submits an Access Application.
- Where an Access Seeker is seeking Access Rights in order to provide Train Services under a rail haulage agreement with a Customer and that Customer is also seeking Access Rights itself for the same Train Service.

Extension solutions that will be considered during that Pre-feasibility Study;

**Confidential Information** means any information, data or other matter (in this definition, **information**) disclosed to a Recipient by, or on behalf of, a Disclosing Party where:

- (a) the disclosure of the information by the Recipient would reasonably be expected to adversely affect the commercial interests of the Disclosing Party; or
- (b) the information is marked or otherwise indicated as confidential at the time of disclosure to the Recipient,

excluding information that:

- (c) was in the Recipient's lawful possession prior to the disclosure; or
- (d) whether before or after the disclosure:
  - (i) is in the public domain through means other than a breach of confidentiality by the Recipient (or anyone to whom the Recipient has disclosed it); or
  - (ii) is received by the Recipient independently from a third party who is free to disclose such information;

**Confidentiality Exception** means:

- (a) any disclosure or use of Confidential Information consented to by the Disclosing Party under **clause 2.2.1(b)(i)**;
- (b) any disclosure of Confidential Information to another person who is a party to the negotiations involving the Disclosing Party and Recipient, provided that the confidentiality obligations under this Undertaking continue to apply to that Confidential Information as if the disclosure was made directly by the Disclosing Party to that other person; or
- (c) any disclosure or use of Confidential Information:
  - (i) to the extent necessary to:
    - (A) the Recipient's directors, officers or employees; or
    - (B) without limiting **paragraph (c)(xii)** of this definition, the directors, officers or employees of a Related Party of the Recipient;
  - (ii) to the extent required or compelled by, or necessary to observe, administer or comply with, any Law;
  - (iii) to the extent consistent with a person's right to disclosure under any Law;

- (iv) without limiting **paragraphs (c)(ii) or (iii)** of this definition, in accordance with this Undertaking (including the Network Management Principles) including:
  - (A) in publishing or providing MTPs and DTPs; and
  - (B) for the purpose of consultations or negotiations relating to a modification of a MTP or the scheduling of a DTP in variation from an MTP;
- (v) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under this Undertaking or the QCA Act);
- (vi) to the extent required under any stock exchange listing requirement or rule;
- (vii) to the Rail Safety Regulator or the QCA;
- (viii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality (which is not waived by the Recipient without the prior written consent of the Disclosing Party);
- (ix) to the Recipient's engineering or other technical consultants and advisers to the extent necessary for the provision of advice to the Recipient (provided they are under a legal obligation not to disclose the Confidential Information to any third party);
- (x) to the Recipient's banker, financier or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential;
- (xi) if Queensland Rail is the Recipient, to any responsible Minister (as defined in the Rail Authority Act);
- (xii) if Queensland Rail is the Recipient, to the extent necessary to:
  - (A) the Rail Authority;
  - (B) the Rail Authority's board members; and
  - (C) the Rail Authority's:
    - (1) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and
    - (2) other officers and employees;

- (xiii) for the purpose of facilitating Network Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Network Control;
- (xiv) by any person involved in clearing an event or incident that is preventing or affecting the operation of Train Services on the Network; or
- (xv) by Queensland Rail for the purpose of responding to, managing or clearing an event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**CPI** means the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0) as published by the Australian Bureau of Statistics (or other successor, authority or instrumentality having jurisdiction in the matter);

**Customer** means a person that the Access Holder or Access Seeker is providing or intending to provide Train Services (as a Rolling Stock Operator) for or on behalf of;

**Customer Access Seeker** means, where there are Competing Access Seekers and one of those Access Seekers (**Principal Access Seeker**) is the Customer for the other Competing Access Seekers, the Principal Access Seeker;

**Daily Train Plan** or **DTP** means a plan that details the scheduled times for all Train Services and any Planned Possessions, Urgent Possessions and Emergency Possessions for a particular day on a specified part of the Network;

**Dangerous Goods** means any substance or thing defined as dangerous goods, explosives or radioactive material under a Dangerous Goods Code or any substance or thing identified as such in a relevant Access Agreement;

**Dangerous Goods Code** means:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail;
- (b) the Australian Code for the Transport of Explosives by Road and Rail; or
- (c) the Code of Practice for the Safe Transport of Radioactive Material, as published and in force from time to time and as amended or replaced;

**Decision** has the meaning given to that term in **clause 6.2(a)**;

**Depreciated Optimised Replacement Cost (DORC)** means the value of assets determined as follows:

- (a) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;
- (b) optimisation of the asset base will occur, but such optimisation will only consider whether or not the infrastructure standard and infrastructure capacity are excessive, given the current and likely future demand, for Access (whether by an Access Seeker, Access Holder or Queensland Rail) and any reasonable spare Capacity in the Network as determined by Queensland Rail, acting reasonably; and
- (c) depreciation of the optimised replacement asset value will reflect the remaining useful service potential of the relevant assets;

**Disclosing Party** means, in respect of Queensland Rail and an Access Seeker, either party to the extent that information is disclosed by or on behalf of that party to the other party during the negotiation of Access (including, as applicable, in an Access Application or by the provision of information prior to an Access Application being made);

**Dispute** has the meaning given to that term in **clause 6.1.2(a)**;

**Dispute Notice** has the meaning given to that term in **clause 6.1.2(a)(ii)**;

**Dispute Notice Date** has the meaning given to that term in **clause 6.1.3(a)**;

**DTMR** means the Department of Transport and Main Roads for the State of Queensland or other department from time to time responsible for the administration of the TIA;

**Efficient Costs** means, for each Year during the Evaluation Period, the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices to provide, operate and maintain the Network at the required service standard and meet its obligations under Access Agreements, having regard to the circumstances in which Queensland Rail operates its business (including any transitional arrangements agreed between Queensland Rail and the QCA) and including business and corporate overheads and QCA Levy;

**Emergency Possession** means a Possession:

- (a) that is required to rectify a fault with the Network:
  - (i) that is considered by Queensland Rail to be dangerous or potentially dangerous to any person; or
  - (ii) where severe speed restrictions have been imposed that affect the scheduled Train Services of Access Holders; and
- (b) that Queensland Rail intends to carry out within five Business Days after the detection of the fault;



**Endorsed Variation Event** means the occurrence of any of the following events:

- (a) a Change in Law, Change to Credit or Impost Change occurs, that either alone or in combination with all other Changes in Law, Changes to Credit or Impost Changes that have occurred since the Approval Date, would cause a change in the costs reflected in any input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law, Change to Credit or Impost Change that have previously resulted in a variation of the Reference Tariff; or
- (b) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry;

**Environmental Harm** means environmental harm as defined in the *Environmental Protection Act 1994* (Qld);

**Escalation Date** means each 1 July in each year;

**Evaluation Period** means:

- (a) for an individual Train Service, the expected duration of the proposed Access Rights in respect of that Train Service; and
- (b) for a combination of Train Services, the lesser of:
  - (i) the expected duration of the longest proposed Access Rights in respect of any one of those Train Services; and
  - (ii) ten years;

**Expected Access Revenue** means:

- (a) for an individual Train Service, the revenue reasonably expected from the Access Charge from that Train Service; and
- (b) for a combination of Train Services, the aggregate revenue reasonably expected from the Access Charges for all Train Services comprising that combination of Train Services, where the expected Access Charges for different Train Service types will be developed on a basis consistent with:
  - (i) if a Reference Tariff is to be developed for a Train Service type, the proposed Reference Tariff; and
  - (ii) if **paragraph (b)(i)** of this definition does not apply, current applicable Access Charges, except as provided in **clause 3.1.2(b)(iii)**;

**Extension** includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Network (excluding Private Infrastructure);

**Extension Costs** means the costs (including any tax, levy or similar amount) related to Extending the Network whether direct or indirect, internal or external or actual or contingent.

**Feasibility Study** means a study that, in relation to a preferred Extension solution identified in a Pre-feasibility Study:

- (a) details the project objective for the preferred Extension solution;
- (b) provides a detailed assessment of technical and operating requirements of the preferred Extension solution;
- (c) includes survey and geotechnical investigations to support the level of design and cost accuracy;
- (d) provides a detailed design for the preferred Extension solution (including independent design verification against Queensland Rail's standards, where Queensland Rail has elected not to fund the Extension and the relevant Access Seekers require it); and
- (e) provides the following details of the preferred Extension solution's scope:
  - (i) an optimised project configuration that would provide the targeted additional Capacity to be created by the preferred Extension solution;
  - (ii) a detailed cost estimate with a +/-10% level of accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably) – for example, for larger projects);
  - (iii) a detailed design and construction project schedule;
  - (iv) the basis on which the project contingency was determined;
  - (v) a financial evaluation, including (if applicable) the estimated impact on the relevant Reference Tariff;
  - (vi) a procurement methodology and report on any previous approaches to the construction market that are relevant to the preferred Extension solution; and
  - (vii) a project management plan comprised of:
    - (A) resource management plan;
    - (B) cost management plan;
    - (C) design management plan
    - (D) quality management plan;
    - (E) safety management plan;
    - (F) schedule management plan;
    - (G) risk management plan;

- (H) project packaging and delivery strategy;
- (I) procurement management plan;
- (J) interface management plan;
- (K) change management plan;
- (L) environmental management plan;
- (M) project phases, milestones and deliverables;
- (N) project risk assessment report; and
- (O) regulators notification, if needed,

and including the outcomes of any analysis and decisions made in relation to the above matters (with reasons, where applicable).

**First Escalation Date** means 1 July 2016;

**Floor Revenue Limit** means the level of revenue that will recover the expected Incremental Cost of providing Access to the individual Train Service or combination of Train Services, as applicable;

**Force Majeure Event** means any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected party; and
- (b) by the exercise of due diligence, the affected party was not reasonably able to prevent or is not reasonably able to overcome,

and includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party;
- (d) a strike, lockout, boycott, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) an act of God;
- (f) war, invasion, act of terrorists, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade, civil disturbance or public disorder;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Prudent Practices or accident or accidental damage to any thing;
- (h) malicious damage or sabotage;

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, tsunami, earthquake, washaway, landslide, explosion, hail, lightning, severe weather conditions or other catastrophe or natural calamity;
- (m) any act or omission of any person other than the affected party or Queensland Rail (including the presence of any such person on or near the Network), without the express authorisation of Queensland Rail, that results in damage to the Network or the use or operation of the Network being prevented or impeded;
- (n) epidemic or quarantine restriction; and
- (o) delay of a supplier due to any of the foregoing whenever arising,

and, where the affected party is an Access Holder, excludes any cause, event or circumstance in connection with any right to access or use Private Infrastructure that is necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with the Access Holder's Access Agreement (including any failure by the Access Holder to obtain and maintain such rights, any exercise or performance of such rights and any inconsistency between such rights and the Access Holder's Access Agreement);

**gtk** means the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rolling Stock utilised in the relevant Train Service (including all goods, products, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service, as calculated in accordance with the relevant Access Agreement;

**Impost** means a tax, excise, charge, levy, duty, fee, impost, rate, royalty, imposition, withholding, fee for any Authorisation or other licence or approval fee or any other charge which is imposed, applied or administered by, or payable to or by any Authority but excluding any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

**Impost Change** means:

- (a) the introduction or imposition of a new Impost;
- (b) a change in the rate, amount or application of an Impost; or
- (c) a change in the basis of calculation of an Impost;

**Incremental Costs** means the costs of providing Access that:

- (a) would not be incurred by Queensland Rail if the individual Train Service or combination of Train Services (as applicable) did not

operate on the basis of the assets reasonably required for the provision of Access, including:

- (i) capital (renewal and expansion) costs; and
  - (ii) the cost of bringing expenditure forward in time; and
- (b) are assessed as Efficient Costs;

**Indicative Access Proposal** means a non-binding written response from Queensland Rail to an Access Application which includes the information set out in **clause 2.4.2**;

**Infrastructure Service Providers** means those parties who provide maintenance, construction and other related services in respect of the Network;

**Insolvent** means, for an Access Seeker, that at any time in the last five years, one or more of the following events has happened in relation to the Access Seeker:

- (a) the Access Seeker has not been able to pay all its debts from the Access Seeker's own money as and when they become due or has stated that it is unable to do so;
- (b) the Access Seeker has been presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) a resolution is passed that the Access Seeker be wound up or placed in liquidation voluntarily or that an administrator be appointed;
- (d) an application or order has been made for the winding up or dissolution of the Access Seeker (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);
- (e) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Access Seeker or in respect of any of its property;
- (f) the Access Seeker has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (g) a mortgagee has entered into possession of any of the Access Seeker's assets or undertakings; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Access Seeker,

provided that, for the purposes of this definition, a reference to the Access Seeker includes any Related Party of the Access Seeker;

**Interface Risk** means a risk to the safety of persons or property or to the environment<sup>10</sup> arising from the interaction between the Access Seeker's proposed operations and any one or more of:

- (a) the Network;
- (b) operations on the Network (including those of other Network Participants and Queensland Rail); and
- (c) persons using the Network, persons on or near the Network or members of the public (including any activities on the Network that may affect those matters),

including risks of Environmental Harm arising out of the Rolling Stock Operator's proposed operations on the Network, provided that a reference to operations in this definition includes railway operations as defined in the TRSA;

**Interface Risk Assessment** means an assessment to:

- (a) identify all reasonably foreseeable Interface Risks;
- (b) evaluate the possibility of the Interface Risks occurring and the safety, commercial and other consequences of those Interface Risks;
- (c) identify appropriate controls and measures to adequately manage all Interface Risks (including any training required for the Access Seeker, any director, officer, employee, contractor, agent or consultant of the Access Seeker and any other person under the control or supervision of, or acting for or on behalf of, the Access Seeker);
- (d) identify the party (as between Queensland Rail and the Access Seeker) responsible for implementing such controls and measures and ensuring their on-going effectiveness;
- (e) identify the applicable safeworking procedures and safety standards to be adhered to including Queensland Rail's safety policies and procedures and the Operating Requirements Manual;
- (f) identify the minimum standards relating to the interface between Rolling Stock and the Network with which the Rolling Stock and Train Configurations must comply in order for them to be able to be operated on the relevant parts of the Network;
- (g) identify the environmental procedures and standards to be adhered to including relevant elements of Queensland Rail's environmental management system and the Operating Requirements Manual;

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<sup>10</sup> Environmental risks include:

- risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous substances and Dangerous Goods, waste and noise; and
- risks of serious environmental harm, material environmental harm and environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld).

- (h) satisfy the requirements under the TRSA (including for an interface agreement (as defined in the TRSA)) or under any other relevant Laws relating to health or safety; and
- (i) satisfy the relevant requirements under the Operating Requirements Manual for such an assessment;

**Interface Standards** means Queensland Rail's minimum requirements or standards relating to the interface between a Train and the Network (including to maintain agreed operating parameters – for example, axle load) with which the applicable Rolling Stock and Train Configurations must comply in order to operate on the Network;

**IRMP** means an interface risk management plan prepared jointly by the Access Seeker and Queensland Rail which incorporates the outcomes of the relevant Interface Risk Assessment;

**Law** includes:

- (a) any statute, ordinance, code, law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;
- (b) the terms of any Authorisation;
- (c) common law and equity;
- (d) this Undertaking; and
- (e) any order, circular, requirement, condition, notice, decree, decision, direction or guidelines of any Authority with which Queensland Rail, an Access Seeker, an Access Holder or other relevant person (as the case may be) is legally required to comply including any requirement to pay fees and charges,

whether now, or at any time in the future, in effect;

**Loading Time** means the time period between:

- (a) the time that a Train Service arrives at the entry signal to the Nominated Loading Facility; and
- (b) the time that the Train Service is ready to depart the Nominated Loading Facility provided that:
  - (i) the Train Service has presented at the exit signal at the Nominated Loading Facility; and
  - (ii) the Rolling Stock Operator for the Train Service has notified the relevant Network Controller that the Train Service is ready to depart the Nominated Loading Facility;

**Master Train Plan** or **MTP** means a plan detailing the scheduled times as advised by Queensland Rail from time to time for all Train Services and any Planned Possessions on a specified part of the Network, where such scheduled times remain unchanged from week to week;

**Margin** means a rate of 4.12%, being the difference between the WACC as at the Approval Date and the risk free rate component of the WACC, expressed as a positive value;

**Material Change** means:

- (a) an Impost Change;
- (b) a Change in Law; or
- (c) a Change to Credit;

**Material Default** means, in respect of any document referred to in **clause 2.8.3(a)(ii)**:

- (a) any breach of a term of that document that could reasonably result or have resulted in the termination of that document; or
- (b) the repeated breach of the terms of that document;

**Maximum Access Charge** has the meaning given to that term in **clause 3.1.2(b)(i)**;

**Metropolitan Network** means that part of the Network bounded to the north by (and including) Nambour station and to the west by (and including) Rosewood and including all branch lines comprised in that part of the Network;

**Moody's** means Moody's Investors Service, Inc. and its Related Parties;

**Mt Isa Network** means that part of the Network bounded to the east by (and including) Stuart and to the west by (and including) Mt Isa and including all branch lines comprised in that part of the Network;

**Negotiation Cessation Notice** has the meaning given to that term in **clause 2.8.1(a)**;

**Negotiation Period** has the meaning given to that term in **clause 2.7.1(b)**;

**Network** means, subject to **clause 1.2.1(b)(i)(C)**, the rail transport infrastructure (as defined in the TIA):

- (a) for which Queensland Rail is the Railway Manager; and
- (b) the use of which is taken, pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) the use of which is referred to in section 249(2) of the QCA Act);

**Network Control** means the control, management and monitoring (including, as applicable, scheduling) of:

- (a) all Train Movements;
- (b) all other operations of Rolling Stock on the Network; and
- (c) any activities affecting or potentially affecting such Train Movements or Rolling Stock operation or the proper, efficient and safe operation and management of the Network;



**Network Control Directions** means instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Network Control (including, in relation to an Access Holder or an Access Agreement, preventing or minimising the effect of a material breach of the relevant Access Agreement);

**Network Controller** means a person appointed by Queensland Rail from time to time to perform Network Control for a relevant part of the Network;

**Network Management Principles** means the principles set out in **schedule F**;

**Network Participant** means:

- (a) any person who holds, or uses any other person's, rights of access to any part of the Network in relation to Train Services; and
- (b) any Accredited rail transport operator (as defined in the TRSA) who uses the Network,

including:

- (c) the relevant Access Holder (and its Nominated Rolling Stock Operator); and
- (d) any person in control of, or operating, any Private Infrastructure that is connected to the Network;

**Nominated Infrastructure** means that part of the Network over which the relevant Reference Train Service travels between the Nominated Loading Facility and Nominated Unloading Facility;

**Nominated Loading Facility** means a loading facility specified for a nominated Reference Train Service in **clause 3.2(a)** of **schedule D**;

**Nominated Rolling Stock Operator** means, for an Access Holder, a Rolling Stock Operator nominated or appointed by that Access Holder in accordance with an Access Agreement for the purpose of operating Train Services for that Access Holder for specified periods in accordance with that Access Holder's Access Rights;

**Nominated Unloading Facility** means an unloading facility specified for a nominated Reference Train Service in **clause 3.2(b)** of **schedule D**;

**North Coast Network** means those parts of the Network bounded to the south by (and including) Nambour station, to the north by (and including) Cairns and to the west by (but excluding) Stuart and including all branch lines comprised in that part of the Network;

**Notice** has the meaning given to that term in **clause 6.3.1**.

**nt** means the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rolling Stock, when loaded, utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rolling Stock (in tonnes) when empty, as calculated in accordance with the relevant Access Agreement;

**Operating Plan** means an operating plan setting out how the proposed Train Services are to be operated and which either:

- (a) is consistent with the template in **schedule C**; or
- (b) where the Access Seeker already has a pre-existing operating plan, includes the same information as that referred to in **schedule C**;

**Operating Requirements Manual** means the document set out in **schedule G**, as amended from time to time by Queensland Rail in accordance with its rights and obligations under Access Agreements;

**Operational Constraint** means any temporary or permanent constraint on the operation or use of any part of the Network imposed by Queensland Rail as it considers necessary in relation to the proper, efficient or safe operation or management of the Network (including speed restrictions, load restrictions, Planned Possessions, Urgent Possessions, Emergency Possessions and signalling or overhead restrictions);

**Passenger Priority Obligations** means the obligations of a Railway Manager pursuant to sections 265 and 266 of the TIA;

**Planned Possession** means a Possession (other than an Urgent Possession or an Emergency Possession) where such Possession is entered into the MTP or DTP and adversely affects the operation of Train Services;

**Possession** means a temporary closure or occupation by Queensland Rail of part of the Network (including closure of Track or isolation of any electrical overhead traction system) for the purpose of carrying out Rail Infrastructure Operations, other work or other activities on or in the proximity of the Network;

**Pre-feasibility Study** means a study that, in relation to the possible Extension solutions identified in a Concept Study for consideration in this stage of the study process (**Possible Extensions**):

- (a) confirms the project objectives in relation to the creation of additional Capacity;
- (b) assesses each of the Possible Extensions in respect of:
  - (i) the technical and operating requirements for that Possible Extension;
  - (ii) an indicative assessment of the additional Capacity that might reasonably be expected by implementing that Possible Extension; and
  - (iii) a preliminary risk assessment for that Possible Extension;
- (c) includes preliminary survey and geotechnical investigation to support the level of design and cost accuracy required for the study;
- (d) identifies as the preferred Extension solution to be studied under a Feasibility Study, the Possible Extension that is fit-for-purpose and the most efficient and effective solution; and

- (e) provides:
- (i) a high level engineering assessment of the preferred Extension solution in respect of the total cost of ownership, after allowing for risk, for the purpose of minimising that total cost of ownership;
  - (ii) analysis of the technical and economic feasibility of the preferred Extension solution and identifies why it is preferred;
  - (iii) a project budget, with a +/-20% level of accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably));
  - (iv) an indicative design and construct schedule for the preferred Extension solution that includes time tolerances; and
  - (v) potential benefits (including Capacity, maintenance and operating benefits) of the preferred Extension solution; and
- (f) includes a proposed scope, budget, duration and deliverables for a Feasibility Study,

and including the outcomes of any analysis and decisions made in relation to the above matters (with reasons, where applicable);

**Preliminary Information** means the information referred to in **clause 1 of schedule A** (as applicable) and, where that information is published on Queensland Rail's website, that information as published on that website from time to time;

**Preserved Train Path Obligations** means the obligations of a Railway Manager pursuant to section 266A of the TIA;

**Private Infrastructure** means rail transport infrastructure (as defined in the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which Queensland Rail is not the Railway Manager;

**Prudent Practices** means the exercise of that degree of diligence, care, foresight, prudence and skill that would reasonably be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**QCA** means the Queensland Competition Authority as established under the QCA Act;

**QCA Act** means the *Queensland Competition Authority Act 1997* (Qld);

**QCA Levy** means the fee allocated to the nominated Train Services to cover the fees imposed by the QCA on beneficiaries of its regulatory services and, for a Reference Train Service, is that amount specified as such for that Reference Train Service in **schedule D**;

**Quarter** means a period of three consecutive months commencing on 1 July, 1 October, 1 January or 1 April;

**Queensland Rail** means Queensland Rail Limited ACN 132 181 090;

**Queensland Rail Cause** means, subject to the exceptions set out below, Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with a Train Service Entitlement as a result of:

- (a) a Planned Possession, Urgent Possession or Emergency Possession;
- (b) the derailment of any Train caused solely by an act or omission of Queensland Rail; or
- (c) any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with any applicable Law or the relevant Access Agreement,

except where Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with a Train Service Entitlement is in any way attributable to the Rolling Stock Operator, another Network Participant (other than Queensland Rail) or any other person, or a Force Majeure Event;

**Rail Authority** means the authority established under section 6 of the Rail Authority Act;

**Rail Authority Act** means the *Queensland Rail Transit Authority Act 2013* (Qld);

**Rail Infrastructure Operations** means:

- (a) the construction of any rail transport infrastructure (as defined in the TIA) to improve, upgrade, expand, extend, replace or vary the whole or any part of the Network;
- (b) any management, maintenance or operational activities relating to the Network, including the improvement, maintenance, repair, modification, installation, removal, renewal or decommissioning of the whole or any part of the Network; and
- (c) any inspections or investigations of the Network;

**Railway Manager** means an Accredited rail infrastructure manager (as defined in the TRSA);

**Rail Safety Regulator** means the chief executive referred to in the TRSA;

**Reasonable Demand** means the aggregate of current contracted demand for Access, likely future demand (within a reasonable timeframe) for Access and any reasonable spare Capacity in the Network as determined by Queensland Rail, acting reasonably;

**Recipient** means, in respect of Queensland Rail and an Access Seeker, either party to the extent that it receives information which is provided by or on behalf of the other party during the negotiation of Access (including, as applicable, in

an Access Application or by the provision of information prior to an Access Application being made);

**Reference Tariff** means a prescribed Access Charge applicable for a specified Reference Train Service, set out in **schedule D**, the purpose of which is to provide information to Access Seekers as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service (as amended, replaced, varied or escalated in accordance with this Undertaking from time to time);

**Reference Train Service** means a notional Train Service described in **clause 3.1 of schedule D** in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions;

**Regional Network** means any of the following:

- (a) the Mt Isa Network;
- (b) the North-Coast Network;
- (c) the West Moreton Network; or
- (d) the Metropolitan Network;

**Regulatory Asset Base** means the asset value accepted by the QCA for the purpose of developing a Reference Tariff, as maintained by Queensland Rail in accordance with **clause 3.8**,<sup>11</sup>

**Related Party** means a related body corporate as defined in the Corporations Act and, for Queensland Rail, includes the Rail Authority;

**Renewal** means, in relation to an Access Holder's Access Rights that are to expire, the Renewal Access Seeker entering into an Access Agreement to hold or continue to hold Access Rights that are equivalent to the relevant Access Holder's Access Rights immediately prior to their expiry (including with the same destination and origin) for a further term commencing immediately after the expiry of the relevant Access Rights;

**Renewal Access Seeker** means, in relation to an Access Holder's Access Rights that are to expire:

- (a) the Access Holder (where the Access Holder has no Customer);<sup>12</sup> or
- (b) a person<sup>13</sup> nominated by the Access Holder's Customer in writing to Queensland Rail;

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<sup>11</sup> Separate Regulatory Asset Bases may be maintained for different Reference Tariff inputs in respect of the same Reference Tariff – with the consequence that each of those Regulatory Asset Bases is relevant to the development of that Reference Tariff.

<sup>12</sup> For example, the mine operator who uses the Access Rights to transport coal from its mine is the Access Holder.

<sup>13</sup> The Customer may nominate itself, the existing Access Holder or any other person. This opportunity to nominate the person who can lodge a Renewal will give the Customer added flexibility concerning, for example, directly holding Access Rights or changing Operators at the end of an Access Agreement's term.

**Renewal Application** means an Access Application by a Renewal Access Seeker solely for a Renewal;

**Renewal Timeframe** means, in relation to the submission of a Renewal Application:

- (a) no later than 20 Business Days after the later of:
  - (i) the date on which Queensland Rail gave the relevant notice under **clause 2.9.3(a)**; and
  - (ii) the date that is three years before the expiry of the relevant Access Agreement; and
- (b) no less than two years before the expiry of the relevant Access Agreement;

**Review Event** means a material change in circumstances:

- (a) that Queensland Rail can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff; and
- (b) in respect of which Queensland Rail has given written notice to the QCA of Queensland Rail's intention to propose a variation to that Reference Tariff under **clause 6 of schedule D**;

**Rolling Stock** means rolling stock (as defined under the TRSA) that operates on or uses Track;

**Rolling Stock Operator** means a rolling stock operator (as defined under the TRSA) who operates or will operate Rolling Stock on the Network;

**rtp** means, for a Train Service, the amount calculated as follows:

$$\text{rtp} = \max[(A/B), (B/A)]$$

where:

- A** is the maximum number of Reference Train Services at full utilisation; and
- B** is the maximum number of the proposed Train Services at full utilisation,

with those maximums being determined using a readily available simulation package, provided that if:

- (a) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services at full utilisation; and
- (b) the scheduled section running times of the proposed Train Service are the same as the nominated section running times for the Reference Train Service,

then rtp is deemed to be one;

**Safety Management System** means Queensland Rail's safety management system (as required under the TRSA);

**Stand Alone provision of Access** means the provision of Access as if the relevant Train Service(s) was (were) the only Train Service(s) provided with Access by Queensland Rail;

**Standard Access Agreement** means a pro forma Access Agreement set out in **schedule H**;

**Standard and Poor's** means Standard and Poor's Financial Services LLC and its Related Parties;

**Take or Pay Charge** means a charge or other amount payable by an Access Holder to Queensland Rail under an Access Agreement in relation to the Access Holder not fully using its Access Rights for a specified period (and for a Reference Train Service is calculated as set out in **clause 5 of schedule D**);

**Term** means the period beginning on the Approval Date and ending on the Terminating Date;

**Terminating Date** means the earlier of:

- (a) 30 June 2020; and
- (b) the date on which this Undertaking is withdrawn in accordance with the QCA Act;

**TIA** means the *Transport Infrastructure Act 1994 (Qld)*;

**Timetabled Service** means a Train Service, the Train Service Entitlement in respect of which is defined in terms of a specified Train Path at a particular time on a particular day and/or week;

**Through-Running Train** means a Train that operates both on the Network (in accordance with a Train Service Entitlement) and Private Infrastructure over its journey from a specified origin to a specified destination;

**Track** means that part of the Network comprising the rail, ballast, sleepers and associated fittings;

**Train** means any self-propelled configuration of Rolling Stock operating as a unit on Track;

**Train Configuration** means the description of the combination of Rolling Stock comprising a Train including the identification number, gross mass and tare mass of individual items of Rolling Stock and the order in which those Rolling Stock items are placed in the Train;

**Train Movement** means the operation of a Train on the Network by a Network Participant;

**Train Path** means the use of a specified portion of the Network, which may include multiple sections in sequential order, at a specified time;

**Train Service** means a Train operating on the Network from a specified origin to a specified destination;

**Train Service Entitlement** means an Access Holder's entitlement under an Access Agreement to operate, in accordance with that Access Agreement, a specified number and type of Train Services over the Network within a specified time period and in accordance with specified scheduling constraints for the purpose of either carrying a specified commodity or providing a specified transport service;

**Transfer** means the relinquishment by an Access Holder under an Access Agreement of all or part of its Access Rights in order to create Available Capacity that can be used to grant new Access Rights to that Access Holder (who will be an Access Seeker in relation to those new Access Rights) or to an Access Seeker nominated by that Access Holder;

**Transferee** means the relevant Access Seeker for a Transfer;

**Transport Service Payments** means payments to Queensland Rail from DTMR or any other Authority for specified Below Rail Services for nominated sections of the Network;

**TRSA** means the *Transport (Rail Safety) Act 2010* (Qld);

**Unallocated Delay** means a delay to a Train Service from its Train Path scheduled in the DTP that is neither an Above Rail Delay nor a Below Rail Delay;

**Undertaking** means this document (including all schedules) as amended from time to time;

**Undertaking Risk Free Rate** means the rate calculated:

- (a) by averaging the yield on a five year Commonwealth Government Bond over a 20 trading day period ending as close as practicable to but not later than the date that Queensland Rail offers an Access Agreement to an Access Seeker; and
- (b) in accordance with:
  - (i) the methodology used by the QCA to determine the yield on such a Commonwealth Government Bond; or
  - (ii) where **paragraph (b)(i)** of this definition does not apply, the methodology agreed between Queensland Rail and the QCA (acting reasonably) from time to time for the purpose of this definition;

**Unloading Time** means the time period between:

- (a) the time that a Train Service arrives at the entry signal to the Nominated Unloading Facility; and
- (b) the time that the Train Service is ready to depart the Nominated Unloading Facility provided that:
  - (i) the Train Service has presented at the exit signal at the Nominated Unloading Facility; and



- (ii) the Rolling Stock Operator for the Train Service has notified the relevant Network Controller that the Train Service is ready to depart the Nominated Unloading Facility;

**Urgent Possession** means a Possession:

- (a) that is required to correct problems in relation to the Network that are considered by Queensland Rail to be potentially dangerous to persons or property; and
- (b) that Queensland Rail intends to carry out within less than three months after the detection of the problem,

other than an Emergency Possession;

**WACC** means the weighted average cost of capital which:

- (a) as at the Approval Date, means a rate of 6.93% nominal post-tax; and
- (b) after the Approval Date, means a rate equivalent to the Undertaking Risk Free Rate plus the Margin;

**West Moreton Network** means that part of the Network comprising the rail corridor from (and including) Rosewood to Miles, excluding all branch lines not directly connecting coal mine loading facilities to that rail corridor; and

**Year** means the period of 12 months commencing 1 July.

## 7.2 Interpretation

- (a) In this Undertaking, unless the context otherwise requires:
  - (i) words in the singular include the plural and vice versa;
  - (ii) any gender includes the other genders;
  - (iii) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
  - (iv) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
  - (v) a reference to a person includes a partnership, joint venture, unincorporated association, corporation, government or statutory body or authority and any other entity recognised by law;
  - (vi) where:
    - (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
    - (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an

agreement is executed or is sought to be executed for or on behalf of that group of persons,

then that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable);

- (vii) a reference to:
- (A) “dollars” or “\$” is a reference to Australian currency;
  - (B) a person includes the person’s legal personal representatives, successors, permitted assignees and persons substituted by novation;
  - (C) employees includes secondees;
  - (D) constructing includes all associated activities such as designing, installing, procuring and commissioning;
  - (E) an Extension includes any part of that Extension;
  - (F) conduct includes:
    - (1) a benefit, remedy, discretion, authority or power; and
    - (2) any omission and any representation, statement or undertaking, whether or not in writing;
  - (G) time is to local time in Brisbane;
  - (H) a month is a reference to a calendar month;
  - (I) subject to **clause 7.2(a)(vii)(J)**, a “Part”, “clause” or “schedule” is a reference to the corresponding Part or clause found in **Part 1 to Part 7** of this Undertaking or “schedule” to this Undertaking as amended or replaced from time to time;
  - (J) in a schedule to this Undertaking:
    - (1) a “Part” or “clause”, is a reference to a Part or clause of that schedule unless otherwise stated; and
    - (2) a “Part” or “clause” of this Undertaking, is a reference to a Part or clause found in **Part 1 to Part 7** of this Undertaking;
  - (K) this or any other document or agreement includes the document or agreement as varied, amended or replaced and despite any change in the identity of the parties to that document or agreement;

- (L) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
  - (M) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
  - (viii) if the date on or by which any act must be done under this Undertaking is not a Business Day, the act must be done on or by the next Business Day;
  - (ix) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
  - (x) if a term used in this agreement has the meaning given, or as defined, under any legislation, then that term has the meaning:
    - (A) given, or as defined, under that legislation from time to time; and
    - (B) where that legislation ceases to define that term, last given, or as last defined, under that legislation; and
  - (xi) if there is any inconsistency between matters contained in a Schedule or the Preamble and **Part 1** to **Part 7** of this Undertaking, the provisions in **Part 1** to **Part 7** of this Undertaking prevail.
- (b) Headings do not affect the interpretation of this Undertaking.
- (c) To the extent that Queensland Rail's obligations under this Undertaking are or become inconsistent with Queensland Rail's obligations under any other Law, this Undertaking does not apply to the extent of that inconsistency.
- (d) If this Undertaking obliges Queensland Rail to provide any information, reports, documents or other material (in whatever form) (**Information**) to the QCA or any other person then, despite any other provision in this Undertaking, Queensland Rail is not required to comply with that obligation if Queensland Rail claims:
- (i) on the ground of self incrimination, a privilege Queensland Rail would be entitled to claim against providing the Information were Queensland Rail a witness in a prosecution for an offence in the Supreme Court; or
  - (ii) that legal professional privilege applies in respect of that Information.

If Queensland Rail does not comply with an obligation on that basis, Queensland Rail must notify the QCA of this and Queensland Rail or

the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.

- (e) Despite any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that Queensland Rail may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).
- (f) The preamble to this Undertaking does not affect the interpretation of this Undertaking and no reference may be made to that preamble to interpret this Undertaking.

# Schedule A

## Preliminary Information and Capacity Information

### 1 Preliminary Information

The following preliminary information will be made available on Queensland Rail's website for Access Seekers:

- (a) **(Introduction)** The criteria for the use of data and the purpose of the preliminary information.
- (b) **(Civil Infrastructure)** A description of the railway and Track and any operational constraints, e.g. grades and curves.
- (c) **(Telecommunications)** A description of the communication system used.
- (d) **(Electric Traction)** A general system description.
- (e) **(Interface Requirements)** Information on track gauge, axle loads, train speeds, Rolling Stock gauge and noise limits.
- (f) **(Locality Information)** Terrain information and climatic conditions and resultant system disruptions.
- (g) **(Committed Corridor Upgrades)** Identification of any relevant committed corridor upgrades.
- (h) **(Maps and Drawings)** Corridor maps and Line Diagrams including plans specifying Track Segments and Mainline Paths.
- (i) **(Level Crossings)** The number of level crossings and the type of protection used.
- (j) **(Train Operations)** Sectional running times (calculated based on the projected average sectional running times), maximum Train lengths incident recovery times.
- (k) **(Systems)** A description of operational, safeworking and signalling systems.
- (l) **(Interface Standards)** A copy of the relevant Interface Standards.
- (m) **(Commercial Information)** The applicable Reference Tariff and Standard Access Agreement (if any).

## 2 Capacity Information

For the purpose of **clauses 2.1.2(b)** and **2.7.2(a)(ii)** of this Undertaking, the Capacity Information is as follows:

- (a) the relevant current Daily Train Plan (being the current Daily Train Plan for the relevant day (or days) of the week) for the relevant part of the Network<sup>14</sup> which, for clarity, will be complete and will not be redacted in any way; and
- (b) the Network Control diagrams, indicating actual running of Train Services against the relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 2(a)**.

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<sup>14</sup> The relevant current Daily Train Plan provided will not show the whole Network, and as such may not show all Train Services that potentially impact on Existing Capacity. However, Queensland Rail will note those other parts of the Network where interaction with other Train Services is most likely to impact on Existing Capacity.

## Schedule B

### Access Application information requirements

#### 1 Application

- (a) Without limiting the information requirements that an Access Application must satisfy in accordance with this Undertaking, an Access Application must satisfy the information requirements set out in this **schedule B**.
- (b) This **schedule B** applies as follows:
  - (i) where the proposed Access Application is solely for a Transfer in respect of Transferred Access Rights, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** and **clause 8** do not apply);
  - (ii) where the proposed Access Application is solely a Renewal Application, **clause 8** applies (and, except as expressly referred to in **clause 8**, **clauses 2 to 7** do not apply); and
  - (iii) subject to **clauses 1(b)(i)** and **(ii)**, for all other proposed Access Applications, **clauses 2 to 6** apply with **clauses 7** and **8** only applying to the extent that (if it does at all) the Access Application also in part relates to a Transfer in respect of Transferred Access Rights or is in part a Renewal Application.

#### 2 Access Seeker and Customer details

Relevant identity and contact details including:

- (a) the Access Seeker's name and contact details;
- (b) if the Access Seeker has a Customer, that Customer's name and contact details; and
- (c) if the Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all of the joint venture participants.

#### 3 Ability to use Access Rights

Information needed to assess matters referred to in **clause 2.8.1(a)** of this Undertaking including the following information about matters to be taken in account under **clause 2.8.1(a)** of this Undertaking:

- (a) where the Access Seeker seeks Access Rights that will be used for a person who is the Access Seeker's Customer, information evidencing that the Access Seeker is reasonably likely to have such a Customer –

and for this purpose the effect that granting the Access Rights to the Access Seeker will have on the Access Seeker's ability to attract a Customer in the future;

- (b) whether the Access Seeker has secured, or is reasonably likely to secure:
  - (i) the rights required to enter and leave the Network (for example, rights to unload at its destination); and
  - (ii) if applicable, a rail haulage agreement for the operation of Train Services referred to in its Access Application, including within timeframes consistent with the Access Application;
- (c) whether the Access Seeker or its Nominated Rolling Stock Operator has sufficient facilities (including Rolling Stock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought; and
- (d) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought.

## 4 Form of Access Agreement

Nominate whether the form of Access Agreement that the Access Seeker is seeking will be in the form of the Standard Access Agreement or, where a different form is proposed, a description of (including the contractual outcomes being sought) and reasons for the proposed form.

## 5 Coal and freight Train Services

### 5.1 General Train Service details

Information describing the requested Train Services, including:

- (a) the route of operation (include diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/commodity;
- (f) the net tonnes of product per annum for each Year of operation, represented on a monthly basis or, where monthly railings are not even, the proposed distribution of net tonnes;
- (g) the proposed sectional run times;



- (h) the proposed maximum dwell times,<sup>15</sup> time at loading facility, time at unloading facility and time at depot;
- (i) the proposed non standard operating modes or methods (if applicable); and
- (j) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Rail Infrastructure at locations specified by Queensland Rail during Possessions or during the operation of a Train Service.

## 5.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service or a variation to an existing Train Service for the Access Seeker;
- (b) required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (c) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (d) the requirements for shunting or dwell times<sup>16</sup> enroute, separately for forward and return journeys.

## 5.3 Rolling Stock details

Information describing the Rolling Stock and Train Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagon;
- (g) the tare mass of each wagon;
- (h) if carrying containers:
  - (i) the tare mass per container; and
  - (ii) the average number of containers per wagon;
- (i) the average proposed load (of product) per wagon;

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<sup>15</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

<sup>16</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

- (j) the maximum proposed gross tonnes per wagon;
- (k) the maximum axle load of locomotives and wagons;
- (l) the gross tonnes and the nominal payload per Train Service, separately for forward and return journeys; and
- (m) the Comparison Train Length for the proposed Train.

#### **5.4 Infrastructure requirements**

Details of any Extensions and Private Infrastructure and any other rail transport infrastructure that may be necessary for operation of the Train Service, where known.

## **6 Passenger Train Services**

### **6.1 General Train Service details**

Information describing the Train Services, including:

- (a) the route of operation (including a diagram, if necessary);
- (b) the proposed term of the Access Agreement;
- (c) the type of passenger traffic (e.g. long distance, commuter, tourist);
- (d) the proposed sectional run times; and
- (e) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Rail Infrastructure at locations specified by Queensland Rail during Possessions or during the operation of a Train Service.

### **6.2 Timetable requirements**

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Network;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys; and
- (e) the requirements for shunting or dwell times<sup>17</sup> enroute, separately for forward and return journeys.

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<sup>17</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

### 6.3 Rolling Stock details

Information describing the Rollingstock, including:

- (a) the total number of locomotives per Train;
- (b) the total number of carriages per Train;
- (c) the total number of passenger multiple units (**PMU**) per Train;
- (d) the type and class of locomotive;
- (e) the mass of each locomotive (including full sand and fuel load);
- (f) the type and class of carriage;
- (g) the nominal gross mass of each carriage;
- (h) the type and class of PMU;
- (i) the average gross mass of PMU;
- (j) the maximum number of vehicles including locomotives, carriages or units within PMU;
- (k) the maximum axle load of locomotives and carriages;
- (l) the Comparison Train Length for the proposed Train;
- (m) the gross tonnes per Train Service, separately for forward and return journeys; and
- (n) the maximum operation speed separately for loaded and empty Trains.

### 6.4 Infrastructure requirements

Details of any Extensions and Private Infrastructure and any other rail transport infrastructure that may be necessary for operation of the Train Service, where known.

## 7 Transfers

Information relating to the Transfer including:

- (a) relevant identity and contact details relating to the Transferee including:
  - (i) the Transferee's name and contact details;
  - (ii) if the Transferee has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferee or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Transferee is not the current Access Holder (**Transferor**) who intends to undertake the relevant Transfer, relevant identify and contact details relating to the Transferor including:
  - (i) the Transferor's name and contact details;

- (ii) if the Transferor has a Customer, that Customer's name and contact details; and
- (iii) if the Transferor or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) details identifying the Transferor's Access Agreement, and the Access Right under it (including by reference to origin and destination), to which the Transfer relates;
- (d) details referred to in **clauses 3 and 4** with reference to the proposed Transfer;
- (e) the proposed date and term for the Transfer;
- (f) the information referred to in **clause 5.1 to 5.3** or **clauses 6.1 to 6.3** (as applicable);
- (g) evidence that the Transferor's Customer and the Transferee's Customer have been notified of, and have agreed to, the Transfer (except where the Transferor's Customer initiated the Transfer by notice to Queensland Rail); and
- (h) any other information that:
  - (i) it is necessary to provide under this Undertaking; or
  - (ii) is otherwise necessary and has been notified to the Access Seeker by Queensland Rail.

Transferors and Transferees should note that where only part of the Transferor's Access Rights are to be relinquished as a part of the Transfer, that relinquishment will only occur based on whole Train Paths from origin to destination.

## 8 Renewals

Information relating to the Renewal including:

- (a) relevant identity and contact details in relation to the Renewing Access Seeker including:
  - (i) the Renewing Access Seeker's name and contact details;
  - (ii) if the Renewing Access Seeker has a Customer, that Customer's name and contact details; and
  - (iii) if the Renewing Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Renewing Access Seeker is not the current Access Holder, relevant contact details for the current Access Holder including:
  - (i) the current Access Holder's name and contact details;

- (ii) if the current Access Holder has a Customer, that Customer's name and contact details; and
  - (iii) if the current Access Holder or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) a description identifying the current Access Agreement to which the Renewal relates;
  - (d) details referred to in **clauses 3 and 4** with reference to the proposed Renewal;
  - (e) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;
  - (f) details of all changes (if any) in:
    - (i) the information referred to in **clause 5.1 to 5.3** or **clauses 6.1 to 6.3** (as applicable)<sup>18</sup>; and
    - (ii) the Operating Plan,from that relating to the relevant existing Access Agreement.<sup>19</sup>

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<sup>18</sup> A Renewal will not require any Extension therefore **clauses 5.4** and **6.4**, as applicable, are not relevant.

<sup>19</sup> It should be noted that a Renewal only arises where a Renewing Access Seeker wishes to hold or to continue to hold (as applicable) Access Rights equivalent to the relevant existing Access Rights. The greater the nature and degree of change the greater the risk that the relevant Access Application will not be a Renewal.

## Schedule C

### Operating Plan Template

***(Insert name of accredited operator responsible for operating train services - include logo and/or picture as required)***

## Operating Plan

for

***(insert title of train services)***

**Document No:** ***(insert identification number for document)***  
**Version:** ***(insert version number)***  
**Date:** ***(insert date of issue)***  
**Authorised by:** ***(insert name of person responsible for authorising operating plan)***

**Document Information**

<b>Current Version:</b>	(Insert current version number)
<b>First Released:</b>	(Insert date first released)
<b>Last Updated:</b>	(Insert date last updated)
<b>Review Before:</b>	(Insert date when due for review)
<b>Content Developer:</b>	(Insert content developer name, if required)
<b>Document Authoriser:</b>	(Insert document authoriser and title)

**Document Amendment History**

Version Number	Date	Section(s) Amended	Summary of the Amendment

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Follow the guidelines in this document to ensure the required information is included. Text in black is suggested headings/wording etc while text in blue provides guidance and should be deleted from final document. Don't forget to update header details.

Note that this document is the primary means of communicating the operational requirements to all involved workers and is of special importance in providing Network Control and train planners with a clear understanding of the train services. Include any information that facilitates this aim.

## 1 Introduction

Provide some general background information in this section regarding the proposed train services.

eg:

- generally describe route and product
- is it a new or modified service?
- is it part of a larger project?

The accredited rail operator who will be responsible for the operation of these train services is (insert name of accredited rolling stock operator).

## 2 Purpose

The draft operating plan must include sufficient detail to fully describe the train services and method of operation including scheduling, route, rolling stock and train configurations.

The draft operating plan may be modified during the negotiation process, however the Operator must finalise the operating plan before train operations commence. The final operating plan must be consistent with the Interface Risk Management Plan (IRMP).

If an Operator wishes to change the operating plan after operations have commenced, Queensland Rail and the Operator will review the interface risk assessment together and agree any necessary updates to the IRMP and/or operating plan.

The purpose of this operating plan is to communicate the operating requirements of the train services to all involved workers and in particular to provide guidance for Queensland Rail Network Controllers.

It describes the required operations on the network, identifies the procedures required and defines relevant responsibilities to enable the train service to be operated safely and reliably and not present any unacceptable risk.

Insert any other applicable information.

### 3 Scope

This operating plan is applicable to the operation of (insert train description) between (insert starting point) and (insert end point) in accordance with Access Agreement (insert title of access agreement).

The network map below indicates the route of the operation.

Insert map of corridors if required to clarify route.

An ATT or TRA must be issued prior to the commencement of this train service.

This procedure is to be read in conjunction with Train Route Acceptance (insert TRA number TRA-XXXX) and/or the relevant Authority to Travel (ATT), if required, which define the specific parts of the network to be used for this operation, the authorised rolling stock and train configurations plus any additional network requirements.

### 4 Definitions

Include definitions of any terms used in this document that require special explanation.

### 5 Associated documents

Include a list of all documents referred to by this plan or documents that are pre-requisites for carrying out this operation - eg Access Agreement, TRA, Technical Standards, Procedures etc.

### 6 Service requirements

Provide details of the proposed train services including:

#### 6.1 Area of operation

- origin
- destination
- entry and exit points
- rolling stock repositioning

#### 6.2 Business aspects

- tonnage profile
- passenger loading & unloading profile
- project service life
- seasonality of haulage / variability of service

### 6.3 Operation

- type of service
- commodity
- train configuration
- special operating parameters
- dangerous goods details
- overload management system
- timing of schedule servicing / provisioning / examining / stowing activities
- crewing plan - crew requirements, location of crew depots, crew change points

### 6.4 Train service levels / Scheduling

- daily, weekly, monthly, annually, as required
- maximum number of services
- dwell times at loading facilities
- dwell times at unloading facilities
- dwell times at crew changes
- dwell times enroute & operational requirements eg for fuelling
- rolling stock operational speed
- indicative timetable requirements (sectional run times)
- connecting services
- critical timings at specified locations
- authority from private infrastructure manager

### 6.5 Alterations to Service Schedule

Where XXXX or Queensland Rail wish to make alterations to the train service, each party will adhere to the requirements set out in the Network Management Principles contained in the Operator Requirements Manual.

## 7 Rolling Stock information

### 7.1 Rolling Stock Data

Insert the appropriate information for the rolling stock being operated – delete any unused rows, columns and tables or add extras as required.

Locomotives		
Class	(Insert the locomotive classes)	
Type	(Insert the locomotive types eg diesel electric, diesel hydraulic, diesel mechanical, electric, steam)	
Number (if applicable)	(Insert the locomotive running number)	
Length	(Insert the length over coupling)	

	lines of each locomotive class)	
Mass	(Insert the mass of each locomotive class in full working order, including fuel and sand, in tonnes)	
Axle Load	(Insert the maximum loading on any locomotive axle)	
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each locomotive class complies with and any out-of-gauge issues)	
Speed	(Insert the maximum approved speed of each locomotive class. If speed in reverse is different, show both forward and reverse)	
Drawgear	(List the drawgear type and strength)	
Train Driver Aids	(List the safeworking and driver alerting equipment fitted eg VCS, ATP, DTC etc)	
Diagram	(Rolling stock diagram number)	

Self Propelled Trains				
Type	(indicate the types of units with fixed rolling stock configuration eg EMU, TILT, RM etc)			
Unit Configuration	(Insert the configuration of vehicles that make up each fixed coupled unit)			
Running Numbers (if applicable)	(Insert the running numbers of the units or vehicles)			
Total Length	(Insert the length of each unit over coupling lines)			
Gross Mass	(Insert the mass of each unit in full working order with maximum number of passengers)			
Tare Mass	(Insert the mass of each empty unit)			
Maximum axle load	(Insert the maximum loading on any axle in the units)			
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each unit complies with and any out-of-gauge issues)			
Speed	(Insert the maximum approved speed of each unit. If speed in reverse is different, show both forward and reverse)			
Drawgear	(List the drawgear type			

Self Propelled Trains				
	and strength)			
Train Driver Aids	(List the safeworking and driver alerting equipment fitted eg VCS, ATP, DTC etc)			
Diagram	(Rolling stock diagram number)			

Passenger Carriages				
Class	(Insert the carriage classes)			
Type	(Insert the carriage types eg sitter, sleeper, dining car etc)			
Length	(Insert the length over coupling lines of each carriage class)			
Gross Mass	(Insert the mass of each carriage in full working order with maximum number of passengers)			
Tare Mass	(Insert the mass of each empty carriage class)			
Axle Load	(Insert the maximum loading on any axle in each carriage class)			
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each carriage class complies with and any out-of-gauge issues)			
Speed	(Insert the maximum approved speed of each carriage class)			
Drawgear	(List the drawgear type and strength)			
Notes	(List any special conditions relating to the operation of each carriage class)			
Diagram	(Rolling stock diagram number)			

Freight Wagons				
Class	(Insert the wagon classes)			
Type	(Insert the wagon types and payload eg open, box, hopper, coal etc)			
Length	(Insert the length over			

Freight Wagons				
	coupling lines of each wagon class)			
Gross Mass	(Insert the mass of each wagon class fully loaded)			
Tare Mass	(Insert the mass of each empty wagon class)			
Axle Load	(Insert the maximum loading on any axle in each wagon)			
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each wagon complies with and any out-of-gauge issues)			
Speed	(Insert the maximum approved speed of each wagon class)			
Drawgear	(List the drawgear type and strength)			
Diagram	(Rolling stock diagram number)			

## 7.2 Train Information

Insert the appropriate information for the train being operated – delete any unused rows. Include provision for movement of rolling stock for recovery, maintenance, operational or other contingency purposes eg vehicle locomotives, train positioning moves.

Train Information		
Description	Payload	(Insert the payload eg coal train, general freight etc)
	Type	(Insert the types of trains eg unit train, container train, general freight etc)
	Operation	(Insert the method of operation eg distributed power, push/pull, headend power etc)
Locomotives	Classes	(Insert the classes of locomotives in the train)
	Number	(Insert the maximum number of locomotives in the train)
	Location	(Insert the locomotive location in the train or any limitations)
Wagons/Carriages	Classes	(Insert the classes of wagons/carriages in the train)
	Number	(Insert the maximum number of wagons/carriages in the train)
	Order	(Insert the wagon/carriage order in the train or any limitations)
Train Mass	Loaded	(Insert the loaded train gross tonnage excluding locos)
	Empty	(Insert the empty train gross tonnage excluding locos)
Train Length	Comparison Length	(Insert the comparison train length for the longest train - including locomotives)
Train Speed	Loaded	(Insert the maximum approved speed of each loaded train)

	Empty	(Insert the maximum approved speed of each empty train)
Load Tables		(Insert relevant load table identification)
Special Conditions	1	(Insert any special conditions related to the operation of the train eg out-of-gauge, overloads etc)
	2	(Insert any special conditions related to the operation of the train eg out-of-gauge, overloads etc)
	3	(Insert any special conditions related to the operation of the train eg out-of-gauge, overloads etc)

### 7.3 Rolling Stock Compliance Status

Provide information regarding the current status of certification of the rolling stock and train configurations to the interface standards. Include reference to certificate numbers where appropriate.

If the rolling stock or train configurations are not yet fully certified, this section should detail:

- any identified non-compliances to interface standards
- any interface standards to which compliance is not yet fully proven eg brake system static testing successfully carried out, full performance compliance to be proven by on-track testing
- any systems not yet functioning eg vigilance system not commissioned

The above items should be backed up by an interim compliance certificate.

## 8 Safety systems

Include in this section details of train safety systems in place eg ATP, vigilance, SPD etc

## 9 Communication systems

Include in this section details of communication systems available for use eg train radio, mobile phone, satellite phone etc.

## 10 Interface arrangements

Include details of interface arrangements for entering/exiting private sidings and other networks including permission from the other track manager.

Include handover details where rolling stock is handed over to/from another rolling stock operator.

## 11 Contingency and recovery

Include in this section any arrangements in the event of failure of the rolling stock, special recovery arrangements regarding coupling etc and any other contingency plans identified as part of the risk assessment. Also include train information and certification for altered train configurations required for recovery eg additional locomotives.

## 12 Emergency management plans

Include in this section any arrangements for the management of emergencies including rolling stock, dangerous goods and other incidents.

## 13 Safety and environment risk assessment

(Enter name of operator) has carried out a safety and environment risk assessment of the proposed train services and has reviewed the Interface Risk Management Plan in the Access Agreement.

Include in this section any additional safety and environmental controls identified to minimise any risks associated with the proposed operation.

## 14 Responsibilities and contact details

Enter details of responsible people and their contact information - phone numbers, emails etc.

Responsibility	Organisation	Contact Person	Title	Contact Details

## 15 General comments

Include any other general information required for the operation of these train services.

## 16 Appendices

Add copies of associated documents, test records, risk assessments etc as necessary



# Schedule D

## Reference Tariffs

### 1 Background

#### 1.1 $AT_{1(W)}$ and $AT_{2(W)}$ – the West Moreton Network Reference Tariff inputs

- (a) Queensland Rail has set the Reference Tariff inputs in this **schedule D** relating to the West Moreton Network (that is,  $AT_{1(W)}$  and  $AT_{2(W)}$ ) consistent with the pricing principles set out in **Part 3** of this Undertaking and section 168A of the QCA Act and the matters discussed in this **clause 1**.
- (b) Applying:
- (i) a generally-accepted regulatory building block approach (including generally-accepted asset valuations consistent with past-regulatory practice);
  - (ii) current rail traffic forecasts on the West Moreton Network; and
  - (iii) sound economic principles,
- the Reference Tariff would generate Expected Access Revenue that is the same as the Ceiling Revenue Limit.
- (c) However, Queensland Rail has elected to set the Reference Tariff at a significantly lower level taking into account:
- (i) the pricing principles under section 168A of the QCA Act;
  - (ii) Queensland Rail's desire to maximise traffic on the West Moreton Network and the potential effect that setting a higher Reference Tariff might have on that objective, particularly having regard to current market circumstances;
  - (iii) the Reference Tariff under the 2008 Undertaking (including Access Charges being paid under existing Access Agreements); and
  - (iv) volume forecasts including Queensland Rail's likely risk exposure to higher or lower volumes.
- (d) In setting the Reference Tariff at a lower level than the level needed to generate Expected Access Revenue at the Ceiling Revenue Limit, Queensland Rail is taking volume risk. Again, this is done having regard to the matters listed in **clause 1.1(c)**.
- (e) After having regard to the matters listed in **clause 1.1(c)**, Queensland Rail's proposed Reference Tariff inputs relating to the West Moreton

Network, when aggregated and expressed on a \$/000gtk basis, result in a nominal Reference Tariff of \$19.41/000gtk.

- (f) For illustrative purposes:
  - (i) the equivalent Reference Tariff inputs under the 2008 Undertaking (including any variations or CPI escalations), when expressed on a \$/000gtk basis, come to \$19.41/000gtk; and
  - (ii) if those Reference Tariff inputs were set at a level such that the Reference Tariff would generate Expected Access Revenue equal to the Ceiling Revenue Limit, then those Reference Tariff inputs, when aggregated and expressed on a \$/000gtk basis, (**Ceiling Price**) would come to \$34.92/000gtk.

## 1.2 **AT<sub>1(M)</sub> and AT<sub>2(M)</sub> – the Metropolitan Network Reference Tariff inputs**

- (a) As coal carrying Train Services transporting coal to the Fisherman Islands coal loader at the Port of Brisbane need to travel over the Metropolitan Network, the Reference Tariff has been structured so that it has specific Reference Tariff inputs relating to the Metropolitan Network (that is, AT<sub>1(M)</sub> and AT<sub>2(M)</sub>).
- (b) While a Regulatory Asset Base has been proposed in relation to the Metropolitan Network, that Regulatory Asset Base does not set an asset value for all of the relevant assets in the Metropolitan Network.
- (c) The Reference Tariff inputs have been separately identified for the Metropolitan Network because:
  - (i) some Train Services to which the Reference Tariff applies only use the Metropolitan Network; and
  - (ii) while the Reference Tariff inputs relating to the Metropolitan Network are, as at the Approval Date, the same as those relating to the West Moreton Network, it is possible that the Reference Tariff inputs relating to the Metropolitan Network and those relating to the West Moreton Network may diverge over time, subject to the QCA's approval.

## 2 Term and application

- (a) The Reference Tariff set out in this **schedule D** is effective during the Term.
- (b) The Reference Tariff applies in relation to setting Access Charges for all coal carrying Train Services operating solely on either the Metropolitan Network or both the West Moreton Network and the Metropolitan Network. In accordance with **clause 3.3(b)(i)** of this Undertaking, those Access Charges will be consistent with the Reference Tariff except to the extent that there are differences in the cost and risk to Queensland Rail

of providing Access for the relevant Train Service compared to the Reference Train Service referred to in **clause 3** below.

- (c) As at the Approval Date this **schedule D** only sets out a single Reference Tariff, despite this Undertaking setting out various provisions that are drafted providing for the possibility that in the future there might be more than one Reference Tariff.

## 3 Reference Train Service

### 3.1 Description of Reference Train Service

The description of the Reference Train Service for the Reference Tariff set out in this **schedule D** is as follows:

- (a) **(Commodity)** The Reference Train Service carries only bulk coal.<sup>20</sup>
- (b) **(Geographic scope)** The Reference Train Service operates:
  - (i) either solely on the Metropolitan Network or on both the West Moreton Network and the Metropolitan Network; and
  - (ii) to and from a specified Nominated Loading Facility and a specified Nominated Unloading Facility.<sup>21</sup>
- (c) **(Characteristics)** Each Reference Train Service:
  - (i) has a maximum Relative Train Length, including the locomotives, of 675 metres;<sup>22</sup>
  - (ii) has two locomotives and 41 wagons;
  - (iii) has a maximum axle load of 15.75 tonne with loading in excess of this maximum axle load dealt with in accordance with the relevant load variation table;<sup>23</sup>
  - (iv) utilises only diesel traction;
  - (v) complies with the maximum speeds permitted on the Nominated Infrastructure as specified by Queensland Rail;
  - (vi) complies with the Interface Standards applicable to the Nominated Infrastructure;

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<sup>20</sup> In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

<sup>21</sup> Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities will be provided by Queensland Rail to Access Seekers on request.

<sup>22</sup> This Train length comprises the following: static train length (which is the straight addition of individual rolling stock lengths) plus an allowance of 2% of this static train length for train handling accuracy and for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>23</sup> As published by Queensland Rail in relation to the Reference Train Service or a Train Service of the same type as the Reference Train Service that identifies allowable overloads for wagons and bogies and specifies relevant Operational Constraints and additional charges, where applicable, for such overloads.

- (vii) is otherwise compatible with the Nominated Infrastructure and requires no additional expenditure by Queensland Rail to implement varied Below Rail controls identified in the IRMP;
  - (viii) operates in accordance with nominated sectional running times specified by Queensland Rail for that Reference Train Service;
  - (ix) has a Loading Time that does not exceed the relevant time specified in **clause 3.2(a)** provided that the Nominated Loading Facility is available for use by the Reference Train Service when that Reference Train Service arrives at the Nominated Loading Facility;
  - (x) has an Unloading Time that does not exceed the relevant time specified in **clause 3.2(b)** provided that the Nominated Unloading Facility is available for use by the Reference Train Service when that Reference Train Service arrives at the Nominated Unloading Facility;
  - (xi) operates with an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
  - (xii) has the ability to operate on the configuration of the Nominated Infrastructure existing at the Approval Date without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements and does not require an Extension;
  - (xiii) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism suitable for use on the West Moreton Network or Metropolitan Network; and
  - (xiv) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at the Approval Date.
- (d) **(Dangerous Goods)** The Reference Train Service does not carry any Dangerous Goods.
- (e) **(Below Rail Services)** The Reference Train Service:
- (i) only requires services from Queensland Rail that are Below Rail Services; and
  - (ii) assumes Below Rail Services comprised in Access are provided in accordance with this Undertaking.
- (f) **(Conditions of Access)** The Reference Train Service will operate in accordance with the terms and conditions of the Standard Access Agreement.

- (g) **(Train Service Entitlement)** The Train Service Entitlement for the Reference Train Service will be:
- (i) based on its Trains being available for operation 24 hours per day and 365 days per year; and
  - (ii) specified in terms of Timetabled Service and will comply with the applicable corridor scheduling procedures.

### 3.2 Loading and unloading facilities

- (a) The Nominated Loading Facilities (together with loading times) are the loading facilities for coal at the following locations:

Nominated Loading Facility locations	Loading Time (hours)
Ebenezer	2
Jondaryan (New Acland)	2
Macalister (Wilkie Creek)	2.5
Columboola (Cameby Downs)	1.7

- (b) The Nominated Unloading Facilities (together with unloading times) are the unloading facilities for coal at the following locations:

Nominated Unloading Facility locations	Unloading Time (hours)
Fisherman Islands coal loader	1.9

## 4 Reference Tariff

### 4.1 Calculation of the Reference Tariff

- (a) The Reference Tariff for a Reference Train Service is calculated as follows:

$$\left( AT_{1(W)} \times \frac{gtk_{(W)}}{1000} \right) + \left( AT_{2(W)} \times rtp_{(W)} \right) + \left( AT_{1(M)} \times \frac{gtk_{(M)}}{1000} \right) + \left( AT_{2(M)} \times rtp_{(M)} \right) + (QCALeVy \times nt) + AC + TP$$

where:

**AT<sub>1(M)</sub>** and **AT<sub>1(W)</sub>** are the variable parts of the Reference Tariff specified as **AT<sub>1(M)</sub>** and **AT<sub>1(W)</sub>** in **clause 4.1(e)** (as varied, amended or replaced from time to time in accordance with this Undertaking or the QCA Act);

**AT<sub>2(M)</sub>** and **AT<sub>2(W)</sub>** are the fixed parts of the Reference Tariff specified as **AT<sub>2(M)</sub>** and **AT<sub>2(W)</sub>** in **clause 4.1(e)** (as varied, amended or replaced from time to time in accordance with this Undertaking or the QCA Act);

- gtk<sub>(w)</sub>** is the gtk for the relevant Train Service relating to the West Moreton Network;
- gtk<sub>(M)</sub>** is the gtk for the relevant Train Service relating to the Metropolitan Network;
- rtp<sub>(w)</sub>** is the rtp for the relevant Train Service relating to the West Moreton Network – which will be zero if the Train Service does not use the West Moreton Network;
- rtp<sub>(M)</sub>** is the rtp for the relevant Train Service relating to the Metropolitan Network;
- AC** is any applicable Adjustment Charge (from time to time).
- TP** is any applicable Take or Pay Charge (from time to time).

- (b) For the purposes of the calculation under **clause 4.1(a)**, the amounts of  $AT_{1(M)}$ ,  $AT_{1(W)}$ ,  $AT_{2(M)}$ ,  $AT_{2(W)}$ , the QCA Levy, any Adjustment Charge and any Take or Pay Charge are GST exclusive. An Access Charge calculated based on the Reference Tariff will have an amount for GST added to it.
- (c) For the purposes of this **schedule D**, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.
- (d) For the purposes of **clause 4.1(a)**, gtk will be assessed for the relevant Train Service over the billing period for the Access Charge which is based on the Reference Tariff being calculated.
- (e) Subject to **clauses 4.2** and **6**, the amount of the Reference Tariff inputs are as follows:

Reference Tariff Input	\$	
	A Train Service not using the West Moreton Network	A Train Service using the West Moreton Network
$AT_{1(M)}$	19.41	9.71
$AT_{2(M)}$	230.5	1568.33
$AT_{1(W)}$	0	9.71
$AT_{2(W)}$	0	3259.66
QCA Levy	0.03684	0.03684

## 4.2 Escalation of Reference Tariff inputs

- (a) Each Reference Tariff input specified in **clause 4.1(e)**, except the QCA Levy, will automatically escalate annually on each Escalation Date

commencing on the First Escalation Date in accordance with the following formula:

$$AT_n = AT_{n-1} \times \left( \frac{CPI_n}{CPI_{n-1}} \right)$$

where:

- AT<sub>n</sub>** means the value of the relevant Reference Tariff input to apply after escalation;
  - AT<sub>n-1</sub>** means the escalated value of the relevant Reference Tariff input immediately prior to the relevant Escalation Date or, for the First Escalation Date, means the relevant Reference Tariff input referred to in **clause 4.1(e)**;
  - CPI<sub>n</sub>** means the CPI for the Quarter which commenced six months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined; and
  - CPI<sub>n-1</sub>** means the CPI for the Quarter which commenced 18 months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined.
- (b) Queensland Rail will publish the escalated Reference Tariff inputs on its website within five Business Days after each Escalation Date commencing with the First Escalation Date.
  - (c) Where an error has been made in the calculation of the escalated Reference Tariff inputs, Queensland Rail will correct the error so that the relevant Reference Tariff inputs are escalated in accordance with **clause 4.2(a)**.
  - (d) For clarity, if:
    - (i) the basis of assessment of the CPI is altered in a material way; or
    - (ii) the CPI ceases (or is likely to cease) to be:
      - (A) published; or
      - (B) published at sufficiently regular intervals for the purpose of the calculation in **clause 4.2(a)**,

Queensland Rail may submit a draft amending access undertaking to the QCA in relation to the amendment or replacement of the CPI.

## 5 Take or pay

- (a) The revenue that Queensland Rail is entitled to earn in relation to Reference Train Services includes Take or Pay Charges in accordance with this **clause 5**.

- (b) Take or Pay Charges will be determined for:
- (i) each Year during which the relevant Train Services are entitled to operate; or
  - (ii) the relevant part of a Year, if the relevant Train Services were only entitled to operate for part of the first or last Year during the term of the relevant Access Agreement because that entitlement commenced on a date other than 1 July or expired or terminated on a date other than 30 June,

**(Take or Pay Period)** and invoiced for each Take or Pay Period after the end of that Take or Pay Period.

- (c) The amount of the Take or Pay Charges for a Take or Pay Period will be the amount which is 80% of the amount calculated for that Take or Pay Period as follows:

$$\left( \left( AT_{1(W)} \times \frac{gtk_{(W)}}{1000} \right) + AT_{2(W)} + \left( AT_{1(M)} \times \frac{gtk_{(M)}}{1000} \right) + AT_{2(M)} \right) * NTNO$$

where:

- (i) **AT<sub>1(M)</sub>**, **AT<sub>1(W)</sub>**, **AT<sub>2(M)</sub>** and **AT<sub>2(W)</sub>** are the Reference Tariff inputs applicable on the last day of that Take or Pay Period;
- (ii) **gtk<sub>(W)</sub>** is the average gtk for the relevant Train Services calculated using a nominal payload as determined by Queensland Rail (acting reasonably) relating to the West Moreton Network;
- (iii) **gtk<sub>(M)</sub>** is the average gtk for the relevant Train Services calculated using a nominal payload as determined by Queensland Rail (acting reasonably) relating to the Metropolitan Network; and
- (iv) **NTNO** means the number of relevant individual Train Services that were entitled to be operated for the Take or Pay Period in accordance with the relevant Train Service Entitlement and did not operate (excluding Train Services that did not operate due to Queensland Rail Cause),

provided always that the amount of Take or Pay Charges for a Take or Pay Period will not be less than zero.

- (d) When invoicing Take or Pay Charges, Queensland Rail will also include information on how the Take or Pay Charge was determined.

## 6 Variation of Reference Tariffs

### 6.1 Obligation to submit a variation

- (a) Queensland Rail:
- (i) may submit a variation of a Reference Tariff to the QCA, if Queensland Rail considers that the variation will promote efficient



investment in the coal transport supply chain in the West Moreton Network or Metropolitan Network; or

- (ii) will submit a variation of a Reference Tariff to the QCA, subject to **clause 6.1(c)** within three months after:
  - (A) Queensland Rail becomes aware that an Endorsed Variation Event, or a Review Event, has occurred; or
  - (B) a written notice being given to Queensland Rail by the QCA in accordance with **clause 6.1(b)**.
- (b) The QCA may give Queensland Rail a written notice requiring it to submit a variation of a Reference Tariff if it has failed to submit a variation of a Reference Tariff under **clause 6.1(a)(ii)(A)** in respect of an Endorsed Variation Event.
- (c) The QCA may grant Queensland Rail an extension of the time for submitting, or resubmitting, a variation of the Reference Tariff if:
  - (i) Queensland Rail requests an extension of time; and
  - (ii) the extension of time is reasonable or necessary.

If the QCA grants Queensland Rail an extension of time under this **clause 6.1(c)**, Queensland Rail must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

## **6.2 Development of Reference Tariff variation by the QCA**

The QCA may develop a variation of a Reference Tariff that is consistent with the requirements under this **clause 6** for such a variation:

- (a) if Queensland Rail does not comply with a written notice given by the QCA under **clause 6.1(b)** or **6.4(c)(ii)** for it to submit, or resubmit, a variation of a Reference Tariff; or
- (b) if the QCA refuses to approve a variation of a Reference Tariff resubmitted by Queensland Rail in accordance with a notice given by the QCA under **clause 6.4(c)(ii)**.

## **6.3 Requirements for Reference Tariff variation**

- (a) A variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 6.1(a)** must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
  - (iii) if the variation is submitted under **clause 6.1(a)(i)**, include information on:
    - (A) the matters set out in **clause 3.2** of **Part 3** of this Undertaking; and

- (B) why Queensland Rail considers that the variation of the Reference Tariff will promote efficient investment in the coal transport supply chain in the West Moreton Network or Metropolitan Network; and
  - (iv) if the variation is submitted under **clause 6.1(a)(ii)(A)**, include evidence that the Endorsed Variation Event or Review Event has occurred.
- (b) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's proposed variation of a Reference Tariff and invite and consider comments from stakeholders regarding that proposed variation (provided that Queensland Rail must be given a reasonable period in which to respond to the QCA in respect of any such comments).

#### **6.4 Decision to approve or refuse to approve variation**

- (a) The QCA may approve a variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 6.1(a)** if the QCA is satisfied:
  - (i) for a variation submitted under **clause 6.1(a)(i)**, that the variation is consistent with the Undertaking;
  - (ii) for a variation submitted in respect of an Endorsed Variation Event or Review Event (Event), that:
    - (A) the Event has occurred; and
    - (B) the variation has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence that caused the Event; and
    - (C) the variation reflects the cost impact on Queensland Rail resulting from the relevant Event (including the impact on incremental maintenance, and incremental capital, costs):
- (b) If the QCA approves a variation to a Reference Tariff:
  - (i) it will give Queensland Rail a notice in writing stating the reasons for its decision;
  - (ii) the variation will apply:
    - (A) from the first day of the month immediately following the date of the occurrence of the Endorsed Variation Event or Review Event (as applicable); or
    - (B) where the date of the occurrence of the Endorsed Variation Event or Review Event is the first day of a month, from that date; and

- (iii) Queensland Rail must:
  - (A) publish details of the variation on its website; and
  - (B) advise Access Holders and Access Seekers, in relation to the relevant Reference Train Service, of the variation.
- (c) If the QCA refuses to approve a variation to a Reference Tariff, it will give Queensland Rail a written notice:
  - (i) stating the reasons for its refusal and the way it considers that the variation should be amended; and
  - (ii) if that variation was required to be submitted by Queensland Rail in relation to an Endorsed Variation Event, requiring Queensland Rail to:
    - (A) vary the Reference Tariff in the way the QCA considers it appropriate; and
    - (B) resubmit the variation to the QCA,  
within 20 Business Days after Queensland Rail receives the notice issued to Queensland Rail under this **clause 6.4(c)**.
- (d) Queensland Rail will comply with a notice given under **clause 6.4(c)(ii)**.
- (e) The QCA may approve a variation to a Reference Tariff that was:
  - (i) resubmitted under **clause 6.4(c)(ii)**; or
  - (ii) developed by the QCA under **clause 6.2**,if the QCA is satisfied that the variation of the Reference Tariff:
  - (iii) is consistent with the matters specified under **clause 6.4(a)** (provided that for the purposes of so applying **clause 6.4(a)** the relevant variation will be treated as though it was submitted by Queensland Rail under the relevant provision in **clause 6.1(a)**); and
  - (iv) if **clause 6.4(e)(i)** applies, is consistent with the relevant notice given by the QCA under **clause 6.4(c)**.
- (f) If the QCA refuses to approve a variation to a Reference Tariff that was resubmitted under **clause 6.4(c)(ii)**, the QCA will give Queensland Rail a notice in writing stating the reasons for its refusal.

## 7 Adjustment Charges

### 7.1 Recovery or reimbursement of Adjustment Charges

- (a) If:
- (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the QCA's approval of that Reference Tariff,<sup>24</sup> or
  - (ii) the QCA approves a variation of a Reference Tariff and that variation applies from or takes effect on a date prior to the QCA's approval of the variation,

Queensland Rail is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder, or to adjust the amount payable by each relevant Access Holder by, the amount (**Adjustment Amount**) which is the sum of:

- (iii) the aggregate of the differences, applicable to that Access Holder for each month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (Effective Date) until the date on which that Reference Tariff was approved by the QCA or the date on which the variation of the Reference Tariff was approved by the QCA, as applicable, between:
  - (A) the Access Charges paid or payable by that Access Holder in respect of the Train Services operated by or for that Access Holder during that month (or part thereof); and
  - (B) the Access Charges that would have been paid or payable by that Access Holder in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariff or the variation of the Reference Tariff referred to in **clause 7.1(a)(i)** or **(ii)** on and from the Effective Date; and
- (iv) the aggregate of the interest calculated in accordance with **clause 7.1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 7.1(a)(iii)**,

by making adjustments to the Access Charges (**Adjustment Charge**) payable by Access Holders so as to recover or reimburse, as applicable, the Adjustment Amount (subject to the provisions of this Undertaking).

- (b) The interest referred to in **clause 7.1(a)(iv)** must be calculated:
- (i) in respect of the amount of each difference comprising the amount calculated in accordance with **clause 7.1(a)(iii)**;

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<sup>24</sup> The Reference Tariff set out in this schedule, as at the Approval Date, only commences on the Approval Date – see **clause 2** of this schedule.

- (ii) on the basis that the interest:
  - (A) accrues and is charged from day to day; and
  - (B) is capitalised at the end of each month and will thereafter itself bear interest;
- (iii) at the rate equal to, for interest accruing in a month:
  - (A) the mid-point of the one month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21st day of the previous month; or
  - (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Queensland Rail (acting reasonably); and
- (iv) for the period commencing on the date when the Access Charges paid or payable by the relevant Access Holder used to calculate the applicable difference in accordance with **clause 7.1(a)(iii)(A)** were due and payable and ending on the date when the Adjustment Charge is to be due and payable.

## **7.2 Obligation to submit Adjustment Charges**

Queensland Rail:

- (a) may, if it submits a variation of a Reference Tariff and that variation is proposed to apply or take effect on a date prior to the date on which the QCA will approve the variation; or
- (b) must, if:
  - (i) the QCA approves a variation of a Reference Tariff and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation; or
  - (ii) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the QCA's approval of that Reference Tariff,

submit proposed Adjustment Charges to the QCA.

## **7.3 Requirements for Adjustment Charge submission**

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause 7.2**, Queensland Rail's submission must, without limitation:
  - (i) identify, subject to **clause 7.3(b)**, the Access Holders to which the proposed Adjustment Charges will apply;
  - (ii) set out the proposed Adjustment Charges for each Access Holder including details of how those proposed Adjustment Charges were calculated; and

- (iii) indicate the billing period(s) in respect of which the proposed Adjustment Charges are to be applied.
- (b) For the purposes of **clause 7.3(a)(i)**:
  - (i) an Adjustment Charge may only apply to an Access Holder (**New Access Holder**) that did not run the Train Services to which that Adjustment Charge relates (**Past Train Services**) if:
    - (A) the Access Holder who ran the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer for the Past Train Services in respect of Train Services with the same origin and destination as the Past Train Services;
    - (B) the New Access Holder has a rail haulage agreement with the Customer referred to in **clause 7.3(b)(i)(A)** (including that Customer's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services or the New Access Holder was that Customer (or is that Customer's successor or assign); and
    - (C) the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services; and
  - (ii) no Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.
- (c) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges (provided that, to the extent that stakeholders provide comments, Queensland Rail must be given a reasonable period in which to provide a response to those comments to the QCA).

#### **7.4 Decision to approve or refuse to approve variation**

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause 7.2**, the QCA must approve:
  - (i) the Access Holders to which the Adjustment Charges will apply;
  - (ii) the Adjustment Charges that are to apply to each Access Holder;

- (iii) the billing period(s) in respect of which the Adjustment Charges will be applied; and
  - (iv) if applicable, the interest rate selected by Queensland Rail under **clause 7.1(b)(iii)(B)** applies, if the QCA is satisfied that Queensland Rail has acted reasonably in selecting that rate.
- (b) If the QCA refuses to approve the proposed Adjustment Charges, the QCA must give Queensland Rail a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charges should be amended so as to constitute (excluding any interest component) a reasonable recovery or reimbursement, as applicable to any under or over recovery of Access Charges by Queensland Rail that relate to each Access Holder; and
  - (ii) requiring Queensland Rail to vary the proposed Adjustment Charges in the way the QCA considers it appropriate and resubmit the amended proposal to the QCA within 20 Business Days after Queensland Rail receives the notice.
- (c) Queensland Rail must comply with a notice given under **clause 7.4(b)**.
- (d) The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under **clause 7.4(b)**.
- (e) Queensland Rail must comply with an approval of the QCA given in accordance with **clause 7.4(a)** or **(d)** including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder.

## **7.5 Review of Access Charges to provide for Adjustment Charges**

- (a) To the extent that Queensland Rail is lawfully able to do so, the calculation of Access Charges under an Access Agreement must be reviewed and varied to provide for the payment of Adjustment Charges approved by the QCA in accordance with **clause 7.4(a)** or **(d)** by the relevant Access Holder including that:
- (b) the Access Charges payable by the Access Holder must include any applicable Adjustment Charge approved by the QCA from time to time in relation to or in connection with:
  - (i) any variation of a Reference Tariff approved by the QCA to apply or take effect on a date prior to the date on which the QCA approves the variation; or
  - (ii) any Reference Tariff that the Undertaking states is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; and
- (c) an Adjustment Charge so determined by the QCA must be applied to the calculation of the amount of the invoice for charges payable by the

Access Holder under the Access Agreement for the relevant billing period.

## 8 Transitional

For the purpose of any Access Agreement executed prior to the Approval Date, the calculation of rtp (as defined under **clause 7.1** of this Undertaking) is taken to be set out in this **schedule D**.



# Schedule E

## Maintaining the Regulatory Asset Bases

### 1 Maintenance of Regulatory Asset Bases

#### 1.1 Roll forward principles

On an annual basis, Queensland Rail will roll forward the asset values in each Regulatory Asset Base, applying the following principles:

- (a) the opening asset value will be indexed for the Year using CPI;
- (b) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile endorsed by the QCA;
- (c) the value of asset disposals and transfers during the Year will be subtracted from the Regulatory Asset Base;
- (d) capital expenditure will be added to the Regulatory Asset Base, where that capital expenditure is accepted into the Regulatory Asset Base by the QCA in accordance with **clause 2.1**; and
- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clause 1.2**.

#### 1.2 Adjusting the value of assets in the Regulatory Asset Base

- (a) The value of assets contained in a Regulatory Asset Base may be increased by Queensland Rail by including:
  - (i) at the end of the Term, the value of intangible assets that were not included in the initial valuation of assets contained in the Regulatory Asset Base; or
  - (ii) the Depreciated Optimised Replacement Cost (DORC) of additional sections of the Network incorporated into the West Moreton Network,provided that the increase in asset value must first be accepted by the QCA.
- (b) The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:
  - (i) the QCA made its decision to accept the capital expenditure in the Regulatory Asset Base on the basis of information provided by Queensland Rail that Queensland Rail knew, or should have known, was false or misleading at the time it provided the information; or

- (ii) circumstances arise in the future where demand for Access has deteriorated to such an extent that regulated prices based on an unoptimised asset value would result in a further decline in demand for Access.

### **1.3 Capital expenditure report**

- (a) Unless otherwise agreed between Queensland Rail and the QCA, Queensland Rail will, within four months after the end of each Year in the Term, provide to the QCA the following details for capital expenditure in the subject Year that Queensland Rail considers should be included in a Regulatory Asset Base:
  - (i) the name of the project;
  - (ii) the location of the project;
  - (iii) the amount of the capital expenditure; and
  - (iv) information, where applicable, to support the QCA's assessment of the prudence of the capital expenditure under **clauses 2 to 5** (except to the extent that the QCA has already accepted that capital expenditure as prudent in scope, standard or cost).
- (b) If the information set out in a report provided to the QCA under this **clause 1.3** is insufficient, the QCA may request additional relevant information in accordance with **clause 2.2(b)**.
- (c) Information provided to the QCA under this **clause 1.3** (including in response to a request under **clause 2.2(b)**) will be accompanied by a statement signed by Queensland Rail's Chief Executive Officer confirming that information is, in all material respects, correct.

### **1.4 Regulatory Asset Base roll forward report to the QCA**

- (a) Unless otherwise agreed between Queensland Rail and the QCA, to the extent that the QCA, under **clause 2.1**, has accepted the capital expenditure into a Regulatory Asset Base, Queensland Rail will, within four weeks after that acceptance, provide to the QCA Queensland Rail's roll-forward of the Regulatory Asset Base under **clause 1.1**, subject to **clause 1.2**, including details of:
  - (i) the opening value of the Regulatory Asset Base for the relevant Year;
  - (ii) indexation of the Regulatory Asset Base;
  - (iii) depreciation of the Regulatory Asset Base;
  - (iv) capital expenditure that is included in the Regulatory Asset Base;
  - (v) disposals and transfers from the Regulatory Asset Base; and
  - (vi) the closing value of the Regulatory Asset Base for the relevant Year (which will be the opening value of the Regulatory Asset Base for the following Year),

separately reported for Rosewood to Jondaryan and Jondaryan to Columboola.

- (b) Information provided to the QCA under this **clause 1.4**:
  - (i) will be accompanied by a statement signed by Queensland Rail's Chief Executive Officer confirming that information is, in all material respects, correct; and
  - (ii) must be based on the roll forward principles in **clause 1.1**.

## 2 Acceptance of capital expenditure into the Regulatory Asset Base

### 2.1 Requirements for acceptance of capital expenditure into the Regulatory Asset Base

- (a) The QCA will accept capital expenditure into a Regulatory Asset Base if that capital expenditure:
  - (i) is or has been accepted as:
    - (A) prudent in scope in accordance with **clause 3**;
    - (B) prudent in the standard of works in accordance with **clause 4**; and
    - (C) prudent in cost in accordance with **clause 5**; and
  - (ii) has been incurred; and
  - (iii) either:
    - (A) the capital expenditure project has been commissioned; or
    - (B) formally discontinued.
- (b) The QCA must notify Queensland Rail in writing if it accepts capital expenditure into a Regulatory Asset Base.
- (c) If the QCA is considering refusing to accept all or part of any capital expenditure into a Regulatory Asset Base:
  - (i) the QCA must give Queensland Rail a draft of the QCA's decision (including a statement of reasons and the way it considers the capital expenditure should be adjusted);
  - (ii) Queensland Rail may revise the capital expenditure and/or provide additional information supporting its view that the capital expenditure should be included in the Regulatory Asset Base; and
  - (iii) the QCA must consider that revision and/or additional information when deciding whether to accept or refuse to accept the capital expenditure into the Regulatory Asset Base.

- (d) If the QCA refuses to accept all or part of any capital expenditure into a Regulatory Asset Base, the QCA must give Queensland Rail a notice of the QCA's decision (including a statement of reasons).
- (e) If Queensland Rail does not obtain the QCA's acceptance of any matters under **clauses 3 to 5** in relation to a capital expenditure project at any time, then this does not affect its right to seek any such acceptance under **clauses 3 to 5** at a later time.
- (f) For the avoidance of doubt, the Capital Indicator does not imply any acceptance by the QCA of that level of capital expenditure into a Regulatory Asset Base.

## 2.2 Assessing prudence of capital expenditure

For the purposes of **clauses 3, 4 and 5**:

- (a) the QCA:
  - (i) in assessing whether capital expenditure is prudent:
    - (A) must only consider information available, or reasonably available, to Queensland Rail at the time of making the investment decision; and
    - (B) may, as it considers necessary:
      - (1) take advice from independent advisors using appropriate benchmarks and experience, provided that it gives Queensland Rail a copy of that advice as soon as reasonably practicable and in any event no later than with its notice under **clause 2.2(a)(ii)**; and
      - (2) consult with relevant stakeholders; and
  - (ii) must give Queensland Rail a notice of any determination that it makes under **clauses 3, 4 or 5** (as applicable) and, if that determination is a refusal to accept anything (in whole or part), that notice must state the reasons for that refusal;
- (b) the QCA may request additional information from Queensland Rail that is reasonably required to make any determination under **clauses 3, 4 or 5** (as applicable) after receiving the request from Queensland Rail to make such a determination; and
- (c) Queensland Rail must respond to a request by the QCA under **clause 2.2(b)** as soon as reasonably practicable after receiving that request.

## 3 Prudence of scope

### 3.1 Assessment of prudence of scope

- (a) Assessing the prudence of scope of works for a capital expenditure project involves assessing whether the works are reasonably required.

- (b) The QCA's acceptance of the prudence of scope for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

### **3.2 Process for acceptance of prudence of scope**

- (a) Queensland Rail may request the QCA to, and the QCA will, accept the scope of a capital expenditure project as prudent if it is Customer or Access Holder specific capital expenditure (provided it is an Access Holder who has no Customer) for a branch line to a mine which is to be included as a loading point for a Reference Tariff, and the scope of the capital expenditure has been accepted by that Customer or Access Holder.
- (b) If **clause 3.2(a)** does not apply or acceptance is not sought or obtained under **clause 3.2(a)**, Queensland Rail, an Access Seeker, an Access Holder or a Customer may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with **clause 3.2(c)**.
- (c) If a request is made under **clause 3.2(b)**, the QCA will accept the scope of a capital expenditure project as prudent if it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 3.2(d)**, that:
  - (i) Queensland Rail had reasonable grounds for proceeding with a project given the circumstances relevant at the time the investment decision was made; or
  - (ii) if **clause 3.2(c)(i)** does not apply, reasonable grounds exist for proceeding.
- (d) The factors that the QCA will have regard to for the purposes of **clause 3.2(c)** are:
  - (i) the need to accommodate what is reasonably required to comply with Access Agreements;
  - (ii) the extent of Reasonable Demand, and the need for new capital expenditure projects to accommodate that demand;
  - (iii) the age and condition of existing assets and the need for replacement capital expenditure projects;
  - (iv) Queensland Rail's obligations under any Laws, including health, safety and environmental Laws;
  - (v) the appropriateness of Queensland Rail's processes to evaluate and select proposed capital expenditure projects, including the extent to which alternatives are evaluated as part of the process;
  - (vi) the extent to which the capital expenditure project was subjected to Queensland Rail's processes to evaluate and select proposed capital expenditure projects; and

- (vii) the extent to which consultation has occurred with relevant stakeholders about the capital expenditure project.

### 3.3 Excluded Capital Expenditure

- (a) If:
  - (i) the capital expenditure for a capital expenditure project has been incurred by Queensland Rail; and
  - (ii) the QCA, in assessing the prudence of scope of that capital expenditure project for the purposes of **clause 3.2(c)**, determines that the scope of the capital expenditure project is in excess of that needed to accommodate Reasonable Demand,

then the QCA may also determine the element of the prudent costs of the capital expenditure project that was not needed to meet Reasonable Demand (**Excluded Capital Expenditure**).

- (b) If the QCA has determined Excluded Capital Expenditure in respect of a capital expenditure project, then:
  - (i) that Excluded Capital Expenditure will be set aside and escalated at the rate of the WACC from the date of commissioning of the capital expenditure project until the full scope of the capital expenditure project is accepted by the QCA as required to meet Reasonable Demand (whether on one occasion or in parts over time); and
  - (ii) when the QCA accepts that all or part of the excluded aspects of the capital expenditure project are required to meet Reasonable Demand:
    - (A) the QCA will accept all or the relevant part of the Excluded Capital Expenditure into the relevant Regulatory Asset Base at its escalated value; and
    - (B) if only part of the Excluded Capital Expenditure is included in a Regulatory Asset Base, **clause 3.3(b)(i)** will continue to apply to the remainder.

## 4 Prudence of standard of works

### 4.1 Assessment of prudence of standard of works

- (a) Assessing the prudence of standard of works for a capital expenditure project involves assessing whether the works are of a reasonable standard to meet the requirements of the scope for that capital expenditure project and are not overdesigned such that they are beyond the requirements of that scope.
- (b) The QCA's acceptance of the prudence of standard of works for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

## **4.2 Process for acceptance of prudence of standard of works**

- (a) Queensland Rail may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 4**.
- (b) If a request is made under **clause 4.2(a)**, the QCA will accept the standard of works of a capital expenditure project as prudent if:
  - (i) it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 4.2(c)**, that:
    - (A) Queensland Rail had reasonable grounds for its design of the relevant infrastructure given the circumstances relevant at the time that the design was prepared; or
    - (B) if Queensland Rail is yet to proceed with the project, reasonable grounds exist for the design of the relevant infrastructure; or
  - (ii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure or existing infrastructure with similar usage levels, or its modern engineering equivalent, to the extent that the standard of the adjacent or existing infrastructure has previously been accepted by the QCA as being reasonable.
- (c) The factors that the QCA will have regard to for the purposes of **clause 4.2(b)(i)** are:
  - (i) the requirements of Rolling Stock Operators and what is reasonably required to comply with Access Agreements;
  - (ii) current and likely future usage levels;
  - (iii) the requirements of the codes developed by the Rail Industry Safety And Standards Board (RISSB) Limited ACN 105 001 465 in relation to the standards required for rail infrastructure in Australia;
  - (iv) the requirements of other relevant Australian design and construction standards;
  - (v) Queensland Rail's design standards contained within the Safety Management System; and
  - (vi) all relevant Law and the requirements of any Authority (including the Safety Regulator).

## **5 Prudence of costs**

### **5.1 Assessment of prudence of costs**

- (a) Assessing the prudence of costs for a capital expenditure project involves assessing whether the costs are reasonable for the scope and standard of work done or to be done.

- (b) The QCA's acceptance of the prudence of costs for a capital expenditure project may be requested at any time (including, for the purposes of **clause 5.2**, prior to the capital expenditure being incurred).

## **5.2 Process for acceptance of prudence of costs where there is an approved procurement strategy**

- (a) If the QCA has approved a procurement strategy for a capital expenditure project under **clause 6.1(b)**, Queensland Rail may request the QCA's acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 5.2**.
- (b) If a request is made under **clause 5.2(a)**, the QCA will accept as prudent:
  - (i) the value of a contract if the QCA is satisfied:
    - (A) that contract provisions regarding contract variations and escalation accord with good commercial practice; and
    - (B) that, after taking into account any certification from an auditor engaged in accordance with **clause 6.2**, the tender for the contract has been conducted in accordance with the approved procurement strategy;
  - (ii) where the value of a contract has been accepted as prudent in accordance with **clause 5.2(b)(i)**, the value of variations and/or escalations under that contract if:
    - (A) the contract has been managed in accordance with the approved procurement strategy;
    - (B) the auditor engaged in accordance with **clause 6.2** has certified that the contract variations and/or escalations have been handled in a manner consistent with the relevant contract provisions; and
    - (C) the QCA is satisfied that the cost of contract variations and/or escalations is otherwise appropriate, having regard to whether:
      - (1) adequate consideration was given to properly managing the risk of contract variations and/or escalation or the allocation of potential risks during the awarding and management of the contract;
      - (2) the contract has been appropriately managed having regard to the matters in **clause 6.1(c)(iv)**; and
      - (3) the contract has been managed with regard to a prudent balance between costs, schedule and minimising disruption to Committed Capacity during construction; and



- (iii) all costs, paid for by or incurred by Queensland Rail, that Queensland Rail can demonstrate were prudently paid for or incurred and solely and directly related to complying with **clause 6**.

### **5.3 General process for acceptance of prudence of costs**

- (a) If **clause 5.2** does not apply or acceptance is not sought or obtained under **clause 5.2**, Queensland Rail may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause 5.3**.
- (b) If a request is made under **clause 5.3(a)**, the QCA will accept the costs of a capital expenditure project as prudent if the costs are reasonable for the scope and standard of works undertaken having regard to the matters set out in **clause 5.3(c)** given the circumstances relevant at the time when the costs were incurred or the capital expenditure project was undertaken (as applicable).
- (c) The factors that the QCA will have regard to for the purposes of **clause 5.3(b)** are:
  - (i) the level of such costs relative to the scale, nature, cost and complexity of the project;
  - (ii) the circumstances prevailing in the markets for:
    - (A) engineering, equipment supply and construction;
    - (B) labour; and
    - (C) materials;
  - (iii) where the QCA has approved a procurement strategy for the capital expenditure project under **clause 6.1(b)**, the extent to which Queensland Rail has achieved compliance with that procurement strategy; and
  - (iv) the manner in which the capital expenditure project has been managed by Queensland Rail given the circumstances at the time when relevant management decisions and actions were made or undertaken, including Queensland Rail's balancing of:
    - (A) safety during construction and operation;
    - (B) compliance with environmental requirements during construction and operation;
    - (C) compliance with Laws and the requirements of Authorities;
    - (D) minimising disruption to the operation of Train Services during construction;
    - (E) accommodating reasonable requests of Access Holders (and, if applicable, their Customers) to amend the scope and sequence of works undertaken to suit their needs;

- (F) minimising whole of asset life costs including future maintenance and operating costs;
- (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
- (H) aligning other elements in the supply chain; and
- (I) meeting contractual timeframes and dealing with external factors.

## 6 Approval of a procurement strategy

### 6.1 Process for the approval of a procurement strategy

- (a) Where the QCA has approved the scope of a capital expenditure project as prudent in accordance with **clause 3**, Queensland Rail may request the QCA's approval of a procurement strategy for all or part of that capital expenditure project.
- (b) If a request is made under **clause 6.1(a)**, the QCA will approve Queensland Rail's procurement strategy if the QCA is satisfied that the procurement strategy:
  - (i) is in accordance with good industry practice;
  - (ii) will generate an efficient and competitive outcome;
  - (iii) will avoid conflict of interest or collusion amongst tenderers;
  - (iv) is prudent in the circumstances of the capital expenditure project including having regard to:
    - (A) the factors set out in **clause 6.1(c)**; and
    - (B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause 5.3**; and
  - (v) will avoid unreasonable exposure to contract variation claims.
- (c) The factors that the QCA will have regard to for the purposes of **clause 6.1(b)(iv)(A)** are whether, in the procurement strategy:
  - (i) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);

- (ii) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
- (iii) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
- (iv) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the capital expenditure project and provides appropriate guidance on the criteria that Queensland Rail should apply to decisions regarding the management of the capital expenditure project, including:
  - (A) safety during construction and operation;
  - (B) compliance with environmental requirements during construction and operation;
  - (C) minimising disruption to Committed Capacity during construction;
  - (D) accommodating the reasonable requests of Access Holders and, if applicable, their Customers to change the scope and sequence of construction to suit their needs;
  - (E) a prudent balance between:
    - (1) a higher price in return for more certainty as to final cost;
    - (2) a lower price accepting that final cost may be less certain; and
    - (3) costs, schedule and minimising disruption to Committed Capacity during construction;
  - (F) minimising whole of asset life costs including future maintenance and operating costs; and
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
- (v) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring that reasonable consideration be given to managing the risk of contract variations and/or escalation and the allocation of potential risks during the management of the contract and requiring the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation; and
- (vi) Queensland Rail has engaged an auditor in accordance with **clause 6.2** to monitor compliance with the procurement strategy.

- (d) The QCA will give Queensland Rail a notice in writing regarding:
  - (i) whether the procurement strategy is approved; and
  - (ii) if the QCA decides not to approve the procurement strategy (in whole or part) the reasons for its refusal and the way the processes under the procurement strategy may be amended to obtain the QCA's approval.

## 6.2 Implementation of approved procurement strategy

- (a) As part of the implementation of a procurement strategy approved by the QCA under **clause 6.1**, Queensland Rail will engage an independent external auditor to audit the compliance of Queensland Rail's tender and contract management processes with the approved procurement strategy approved in accordance with the following process:
  - (i) Queensland Rail will appoint the auditor, after obtaining the QCA's approval of the auditor (including the terms of engagement);
  - (ii) the auditor will be required to acknowledge and accept that the auditor owes a separate duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to Queensland Rail and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) the auditor must agree the processes for conducting an audit with Queensland Rail and obtain the QCA's approval of the audit process (which will consist of a proposed work program, including audit costs, for the execution of the audit);
  - (iv) Queensland Rail will, within a reasonable time, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
  - (v) if required by Queensland Rail, the auditor will enter into a confidentiality agreement with Queensland Rail in relation to any information provided by Queensland Rail to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report detailed in **clause 6.2(a)(vi)** below;
  - (vi) the auditor will compile an audit report:
    - (A) identifying whether Queensland Rail has complied in all material respects with the approved procurement strategy including in relation to contract variations and/or escalation; and

- (B) if the auditor identifies that Queensland Rail has not complied in all material respects with the approved procurement strategy, detailing:
    - (1) the relevant non-compliance;
    - (2) any reasons stated by Queensland Rail for the relevant non-compliance; and
    - (3) whether the non-compliance was reasonable in the circumstances;
  - (vii) the auditor will provide to Queensland Rail and the QCA:
    - (A) progress reports on the audit process every six months; and
    - (B) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and
  - (viii) if the QCA considers that any of the auditor's reports (whether progress reports or a final report) are lacking in detail or otherwise deficient, the QCA may direct Queensland Rail to instruct the auditor to review the relevant report and, in doing so, to address the concerns of the QCA.
- (b) For the purpose of **clause 5**:
- (i) the costs incurred by Queensland Rail in relation to an external auditor engaged in accordance with this **clause 6.2** will form part of the capital expenditure for the relevant capital expenditure project and the QCA will accept those costs as prudent; and
  - (ii) the QCA will treat all other costs paid or incurred by Queensland Rail in implementing or otherwise complying with a procurement strategy approved by the QCA under **clause 6.1** as capital expenditure and will accept those costs for inclusion in the relevant Regulatory Asset Base if the QCA is satisfied that they were prudently incurred.

## 7 Capital Expenditure Carryover Account

- (a) Queensland Rail will maintain registers in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project) in relation to the West Moreton Network and the Metropolitan Network.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the relevant Capital Indicator for West Moreton Network or the Metropolitan Network<sup>25</sup> (as applicable), the difference will be entered in

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<sup>25</sup> For clarity, the Capital Indicator for the Metropolitan Network for the Term is taken to be zero.

the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:

- (i) an under recovery of revenue, where the Approved Capital Expenditure exceeds the relevant Capital Indicator; or
  - (ii) an over recovery of revenue, where the Approved Capital Expenditure is less than the relevant Capital Indicator.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
- (i) a return on capital component, calculated as the difference between the return on capital assumed for the relevant Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the WACC;
  - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the relevant Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
  - (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the relevant Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,

and will be calculated using the modelling parameters and assumptions used to determine the relevant Reference Tariff.

- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the WACC.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining:
  - (i) in relation to the West Moreton Network, the Ceiling Price (as defined under **clause 1.1(f)(ii)** of **schedule D**); and
  - (ii) in relation to the Metropolitan Network, the Reference Tariff input(s) relating to (in whole or part) the Regulatory Asset Base applicable to the Metropolitan Network,

relevant to the next undertaking on the basis of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking and the Reference Tariff last applicable under this Undertaking was set at a level such that it would generate Expected Access Revenue equal to the Ceiling Revenue Limit, the balance in the Capital Expenditure Carryover Account will be recovered from, or returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.

# Schedule F

## Network Management Principles

### 1 Application

Unless otherwise required by any Law, the Network Management Principles set out in this **schedule F** will apply in relation to all Train Services.

### 2 Train Planning Principles

#### 2.1 Master Train Plan Principles

- (a) A MTP will indicate the Capacity necessary to satisfy all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, and time allocated for Planned Possessions.
- (b) Access Holders' Train Service Entitlements and Queensland Rail's passenger Train Services will be allocated particular Train Paths.
- (c) A MTP will be in a form that sets out the time/distance (location) relationship of the Train Services and other activities on the relevant part of the Network and is readily convertible to a DTP.
- (d) Queensland Rail will notify all Access Holders whose activities are affected by any modifications to a MTP at least 20 Business Days prior to the commencement of the modification (except in the case of an Urgent Possession or Emergency Possession).
- (e) Subject to **clause 2.1(f)**, an Access Holder must give Queensland Rail sufficient notice of any requested changes to a MTP to enable Queensland Rail to consider the requested changes and, if Queensland Rail agrees to the making of those modifications, to comply with **clause 2.1(d)**.
- (f) A notice given by an Access Holder under **clause 2.1(e)** must be given no less than:
  - (i) six months prior to the date to which the change relates, where the change relates to a passenger Train Service; or
  - (ii) three months prior to the date to which the change relates, where the change relates to a non-passenger Train Service.
- (g) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under that Access Agreement.

- (h) Queensland Rail will publish on its website the MTPs applicable as at the Approval Date and will update the MTPs published on its website, from time to time, so that the MTPs published are those applicable as at the last semi-anniversary or anniversary of the Approval Date, as applicable.
- (i) Despite **clause 2.1(h)**, an Access Holder or their Customer may (acting reasonably) request a copy of the current MTP from Queensland Rail, from time to time, and if Queensland Rail receives such a request Queensland Rail will provide a copy of the relevant MTP to that Access Holder or Customer as soon as reasonably practicable.
- (j) The MTPs published under **clause 2.1(h)**, or provided under **clause 2.1(i)**, will be complete and will not be redacted in any way.
- (k) Nothing in this **schedule F** requires the preparation and publication of a single MTP that applies to the Network as a whole. Queensland Rail may prepare separate MTPs (and, as a consequence, DTPs) for different parts of the Network.

#### **Modifying a MTP**

- (l) Subject to **clauses 2.1(m)**, a MTP may be modified by Queensland Rail from time to time.
- (m) Queensland Rail will not modify the MTP where the modification would result in an Access Holder's scheduled Train Services not being met, unless Queensland Rail:
  - (i) has consulted with that Access Holder; and
  - (ii) to the extent that the modification is not within the scope of that Access Holder's Train Service Entitlement, has agreed the modifications with that Access Holder (such agreement not to be unreasonably withheld).

## **2.2 Daily Train Plan Principles**

- (a) A DTP will indicate all scheduled Train Services and Planned Possessions in a form that indicates the time/distance (location) relationship of all activities,
- (b) A DTP represents an expected performance target that each Access Holder must comply with for its Train Services, for a particular day of operation for a specified part of the Network.
- (c) At least one Business Day prior to the day of operation, Queensland Rail will schedule a DTP and provide all relevant Access Holders and Infrastructure Service Providers with a copy of that DTP. For clarity, the DTP provided will be complete and will not be redacted in any way.
- (d) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under an Access Agreement.



### **Scheduling a DTP in variation from a MTP**

- (e) A DTP may be scheduled in variation to a MTP by Queensland Rail, without consultation, where, at least two Business Days prior to the day of operation, and prior to the DTP being scheduled:
  - (i) any of the following apply:
    - (A) an Access Holder requests a short-term change to the times at which any of its Train Services, as scheduled in the MTP, operate;
    - (B) an Access Holder requests to run an Ad Hoc Train Service; or
    - (C) Queensland Rail modifies the times at which any of its passenger Train Services, as scheduled in the MTP, operate,provided that the variation does not result in any other Access Holder's scheduled Train Services not being met; or
  - (ii) a Planned Possession is cancelled.
- (f) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail wishes to make a short-term change to the times at which one or more scheduled Train Services operate, provided that:
  - (i) the change is intended to accommodate:
    - (A) the modification of an existing Planned Possession;
    - (B) the creation of an Urgent Possession; or
    - (C) any other Operational Constraint affecting the DTP; and
  - (ii) where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.
- (g) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail makes a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession provided that where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.
- (h) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail and all affected Access

Holders agree to the modification provided that where Queensland Rail seeks such a modification, Queensland Rail:

- (i) invites affected Access Holders to consider the variation in an appropriate forum;<sup>26</sup> at least 36 hours prior to the day of operation; and
  - (ii) gives each of those parties a copy of the proposed variation at least 12 hours prior to the scheduled consideration of the variation.
- (i) For clarity, Queensland Rail may schedule a DTP in variation from a MTP under any one of **clauses 2.2(e) to (h)** even if Queensland Rail cannot do so under, or does not comply with, any of the other of those clauses in respect of that modification.

#### **Making modifications to a DTP once scheduled**

- (j) Queensland Rail may make modifications to a scheduled DTP on a case by case basis without the need for consultation:
- (i) where:
    - (A) before the day of operation, Queensland Rail receives a request from an Access Holder to run an Ad Hoc Train Service; or
    - (B) before a Train Service commences operation, the Access Holder requests a change to the time at which its Train Service will operate and that change is within the scope of the Access Holder's Train Service Entitlement,provided that the modification does not result in any other Access Holder's scheduled Train Services not being met; or
  - (ii) where, before the commencement of a relevant Train Service, Queensland Rail notifies the Access Holder that an Emergency Possession is required.

### **2.3 Minimising the adverse affects of Possessions**

- (a) To the extent that:
- (i) a MTP is to be modified under **clause 2.1**; or
  - (ii) a DTP is to be scheduled in variation from a MTP under **clause 2.2**,

for a Planned Possession, Urgent Possession or Emergency Possession, Queensland Rail will use reasonable endeavours to minimise any material adverse affects on Train Services that will be caused by that modification or variation.

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<sup>26</sup> This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

- (b) In determining what (if anything) can and should be done under **clause 2.3(a)** to minimise any material adverse affects, Queensland Rail may take into account:
  - (i) all relevant commercial, operational and other matters relating to the Network including:
    - (A) the proper, efficient and safe operation and management of the Network; and
    - (B) Prudent Practices; and
  - (ii) the extent to which the modification or variation is consistent with the scope of any relevant Train Service Entitlements.
- (c) For clarity, an Access Holder's Train Services cannot be materially adversely affected for the purpose of this **clause 2.3** to the extent that the modification or variation referred to in **clause 2.3(a)(i)** or **(ii)** does not prevent those Train Services operating substantially in accordance with the Access Holder's Train Service Entitlement.
- (d) The amount of time prior to the relevant Possession commencing may affect the degree of consideration given to minimising adverse affects and what can be done to minimise adverse affects.
- (e) Nothing in this **clause 2.3** obliges Queensland Rail to pay compensation to Access Holders whose Train Services are adversely affected.

### 3 Network Control Principles

#### Objective

- (a) The prime objective of Network Control is to facilitate the safe running of Train Services, and the commencement and completion of Possessions, as scheduled in the DTPs.
- (b) Queensland Rail will manage the Network based on entry/exit times as specified in the DTPs with the objectives of managing Train Services according to their schedule for on time exit, not contributing to late running and, if a Train Service is running late, making up time and holding the gain where reasonably possible.
- (c) A deviation from a DTP by Queensland Rail and/or an Access Holder on the day of running in accordance with this **clause 3** does not necessarily excuse either party from any relevant obligations relating to the conduct in question.

#### Access Holders

- (d) Access Holders must ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not adversely affect a DTP.

**Provision of Network Control information**

- (e) Queensland Rail will provide an Access Holder with:
  - (i) real time Network Control information that indicates actual running of that Access Holder’s Train Services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Network Control diagrams that indicate actual running of that Access Holder’s Train Services against the relevant DTP; and
  - (iii) subject to reasonable terms and conditions, information about the type of Train Services operated on the same network (including, for example, coal, freight, passenger and livestock Train Services) to assist Access Holders to determine whether the Network Controller is applying the principles in this **schedule F** in a consistent manner between Access Holders.

**Traffic Management Decision Making Matrix**

- (f) Where the operation of a Train Service differs from a DTP, the Network Controller will apply the Traffic Management Decision Making Matrix in **clause 3(h)**, for the purposes of giving a Network Control Direction.
- (g) In the context of the Traffic Management Decision Making Matrix the meaning of “On Time”, “Ahead” and “Late” are determined by the scheduling of paths in the relevant DTP. For example, if a Train Service is travelling in accordance with the path allocated to it in the relevant DTP, it is running “On Time”.
- (h) The Traffic Management Decision Making Matrix is as follows:

		Train Service A - Current Status	
		Train Service Running “On Time” or “Ahead”	Train Service Running “Late”
Train Service B - Current Status	Train Service Running “On Time” or “Ahead”	Rule 2	Rule 1
	Train Service Running “Late”	Rule 1	Rule 3

Rule 1. The “Late” Train Service may be given priority provided that the other Train Service will still meet its “On Time” objective, subject to the principles for managing deviations from the DTP in **clause 3(i)**.

Rule 2. Both Train Services must meet their “On Time” objective.

- Rule 3. Give priority to the Train Service that (in the Network Controller’s opinion), based on its performance, will lose the least time (or make up more time) and hold a greater gain, subject to the principles for managing deviations from the DTP in **clause 3(i)**.

**Principles for managing deviations from a DTP**

- (i) It is necessary for Network Controllers to have sufficient discretion to take into account the varying objectives of different traffic types, and the circumstances of a particular part of the Network, in assessing the priority to be given to Train Services and other activities on the Network. Network Controllers will apply the following principles in managing deviations from a DTP:
- (i) a Train Service may be given priority over other Train Services if it is necessary to do so:
- (A) due to, or to avoid, an accident, emergency or incident relating to any part of the Network;
  - (B) to remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected;
  - (C) to remedy, or to mitigate or avoid, any Emergency Possession or Urgent Possession on any part of the Network being prevented or otherwise materially adversely affected; or
  - (D) to ensure the safe operation of any part of the Network;
- (ii) subject to **clause 3(i)(i)**, passenger Train Services may be given priority over other Train Services if the Network Controller believes that this is necessary to seek:
- (A) to bring a “Late” passenger Train Service back to being “On Time” or closer to being “On Time”;
  - (B) to prevent that “Late” passenger Train Service becoming “Later”; or
  - (C) to avoid an “On Time” or “Ahead” passenger Train Service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan Network during any peak period<sup>27</sup> from becoming a “Late” passenger Train Service;
- (iii) subject to **clause 3(i)(i)**, livestock Train Services may be given priority over other Train Services if the Network Controller believes

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<sup>27</sup> The time periods: (a) from 6:00am to 9:00am; and (b) from 3:30pm to 6:30pm, on Business Days or as otherwise notified by Queensland Rail (acting reasonably) from time to time.

that this is desirable taking into consideration the livestock being transported (including, for example, the welfare of the livestock);

- (iv) subject to **clauses 3(i)(i) to (iii)**, a Train Service may be given priority over other Train Services if it is necessary to do so to remedy, or to mitigate or avoid, any Planned Possession on any part of the Network being prevented or otherwise materially adversely affected; and
- (v) subject to **clauses 3(i)(i) to (iv)**, where a Train Service is running “Late” due to a Below Rail Delay, it may be given preference over other Train Services if the Network Controller believes that this is consistent with the critical objectives of the Train Services in question, and that it will result in less aggregated consequential delays to other Train Services than otherwise would be the case.

# Schedule G

## Operating Requirements Manual

# Operating Requirements Manual May 2015

Version 1





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## 1 Introduction

This document sets out practices, standards, systems, protocols, requirements, rules, policies and other information in relation to or in connection with Network Control and the access to and use of the Network by Operators. It also includes interface management and coordination requirements, safeworking procedures, safety standards (including electrical safety requirements), emergency and investigation procedures, requirements for the management of Network Incidents and environmental requirements.

The Glossary in **section 9** sets out how this document should be interpreted and the meaning of certain terms and acronyms.

Where this document refers to standards or other documents that belong to Queensland Rail, Queensland Rail will make the relevant standard or document available to Operators.

This document will be updated by Queensland Rail from time to time. Operators should always refer to the current version of this document. Queensland Rail will maintain the current version of this document on its website.

## 2 Interface Risk Management

### 2.1 Interface Risk Management Assessment

Queensland Rail, as the accredited Rail Infrastructure Manager, and the Operator will jointly conduct an Interface Risk Assessment (IRA) to identify, assess and appropriately manage the safety and environmental risks associated with the Operator's nominated access to Queensland Rail's Network.

For the purposes of developing, reviewing or amending an Interface Risk Assessment:

- (a) Queensland Rail and the Operator will:
  - (i) adhere to Queensland Rail's published risk management framework;
  - (ii) each nominate appropriately qualified and experienced representatives for this purpose;
  - (iii) make relevant information available to each other on a timely basis; and
  - (iv) use reasonable endeavours to ensure that information which the parties provide to one another is accurate and up to date.
- (b) Queensland Rail and the Operator will:
  - (i) establish the context of the interface(s) to be assessed;
  - (ii) identify the Interface Risks associated with the Operator's proposed operations on Queensland Rail's Network;
  - (iii) analyse and evaluate the identified risks;
  - (iv) identify the standards, procedures and systems relevant to the management of the identified interface risks;
  - (v) specify the control measures agreed between Queensland Rail and the Operator to manage those Interface Risks as far as reasonably practicable, including:
    - (A) the relevant standards, procedures and systems of each party;
    - (B) the relevant Interface Standards;
    - (C) the measures outlined in the Operator's Environmental Investigation and Risk Management Report (**EIRMR**);
    - (D) requirements for training, monitoring, awareness, competence and complaint handling; and
    - (E) the audit, inspection and review regime; and

- (vi) identify the party responsible for implementing each control measure.
- (c) Queensland Rail and the Operator will each provide relevant information to the other to assist with the identification of environmental risks. For example:
  - (i) Queensland Rail will provide the Operator with:
    - (A) a copy of any relevant environmental authorities held by Queensland Rail;
    - (B) a copy of any relevant environmental reports;
    - (C) particulars of any enforcement actions relevant to the interface between the parties within one business day of receiving notification of such action;
    - (D) any currently applicable noise levels or limits;
    - (E) particulars of noise complaints and enforcement actions and any relevant stakeholder complaints or concerns; and
    - (F) any other information including any documents from Queensland Rail's Environmental Management System that Queensland Rail considers relevant to the management of environmental risks; and
  - (ii) prior to any Interface Risk Assessment workshop or any other activities associated with the preparation of an Interface Risk Management Plan (**IRMP**), the Operator will provide Queensland Rail with:
    - (A) details of any additional hazards, risks and non-compliances with respect to the Operator's railway operations;
    - (B) the types and general volumes of products or commodities to be transported on Queensland Rail's Network;
    - (C) an EIRMR describing the anticipated environmental risks and proposed controls and management actions associated with the Operator's planned activities;
    - (D) any approved or proposed environmentally relevant activities (as defined under the *Environmental Protection Act 1994* (Qld)); and
    - (E) any information in relation to anything referred to in **section 5**.

## 2.2 Interface Risk Management Plan

The IRMP is an agreed plan between Queensland Rail and the Operator which is to be developed from the outcome of an Interface Risk Assessment. The IRMP formally documents where both parties will:

- (a) implement and maintain measures for managing the safety and environmental risks identified in the Interface Risk Assessment;
- (b) evaluate, test and, if necessary, revise the measures mentioned in **paragraph (a)**;
- (c) assign the roles and responsibilities of each party to the IRMP in relation to the measures mentioned in **paragraph (a)**;
- (d) identify the procedures by which each party will monitor compliance with the obligations under the IRMP; and
- (e) provide for a process for keeping the IRMP under review and how any review will be conducted and implemented.

The IRMP will satisfy the requirements for an interface agreement between two Rail Transport Operators for the purposes of the TRSA and will address the requirements under relevant Laws in relation to the management of Interface Risks.

Typically, an Interface Risk Assessment will be undertaken, and an IRMP will be developed, as part of the negotiation of an Access Agreement. The Standard Access Agreement, for example, assumes this position.

## 2.3 Environmental Risks

Without limitation to the matters that must be considered and addressed in any Interface Risk Assessment and any IRMP, an Interface Risk Assessment and an IRMP must, in relation to risks to the environment:

- (a) comply with all relevant noise management standards, regulations and all other relevant Laws including any currently applicable noise levels or limits;
- (b) where noise from the Operator's Train Services may cause or contribute to applicable noise levels being exceeded, specify measures that the Operator must put in place to prevent that occurring and, if applicable, other relevant measures agreed to by the parties;
- (c) include provisions requiring the Operator to comply with any community liaison requirements of any Law or Authority or of Queensland Rail;
- (d) include provisions requiring each of Queensland Rail and the Operator to:
  - (i) notify each other of any noise or other complaints pertaining to the environment in relation to or in connection with the Operator's Train Services as soon as practicable after such a complaint is received;

- (ii) cooperate with each other in investigating and responding to such complaints; and
  - (iii) invite each other to any community meetings relating to those complaints.
- (e) include provisions requiring the Operator to address Contamination, including:
  - (i) an assessment of the impact of the Operator's operations on Contamination;
  - (ii) detailed control measures to prevent Contamination; and
  - (iii) a requirement to comply with all relevant Contamination standards and relevant Laws; and
- (f) include provisions requiring the Operator to have an Environmental Management System in place prior to commencing Train Services, which:
  - (i) provides for management of the risks identified within the relevant EIRMR;
  - (ii) addresses the issues raised in the IRMP and contains processes and/or procedures for implementing the control measures set out in the IRMP;
  - (iii) addresses all relevant Laws including the requirements of all Authorisations held by Queensland Rail that are relevant to the Operator's Train Services; and
  - (iv) identifies systems (including audit and review systems) and procedures to address all relevant risks to the environment and compliance with all relevant Laws.

Where Baseline Environmental Data is available, Queensland Rail can provide this data to the Operator upon request, prior to the commencement of the Train Services. Where Queensland Rail does not have access to Baseline Environmental Data, the Operator may choose to undertake baseline monitoring for a particular section of the Network. If access to Queensland Rail property is required to support the collection of Baseline Environmental Data, Queensland Rail shall endeavour to provide safe access. When accessing Queensland Rail property, the Operator and/or their representative must comply with all requirements outlined in Queensland Rail's Standard (SAF/STD/0144/SWK) in relation to Accessing the Rail Corridor and such other requirements, directions or conditions of access imposed by Queensland Rail, acting reasonably.

To the extent that no Baseline Environmental Data is available, the Network will be taken to meet all environmental standards for the purpose of assessing any future environmental impacts.

## 2.4 Specific Risks

Without limiting the matters that must be considered and addressed in any Interface Risk Assessment and IRMP, an Interface Risk Assessment and an IRMP must address:

- (a) electrical safety risks associated with Queensland Rail's electrical assets;
- (b) rail safety risks; and
- (c) risks to the work, health and safety of all persons,

that are impacted by the Operator's access to Queensland Rail's Network, as far as is reasonably practicable .

# 3 Safeworking Procedures and Safety Standards

## 3.1 Interface Standards and Safeworking Procedures

In addition to the safeworking procedures, safety standards and other requirements identified in any IRMP agreed with the Operator, the Operator must comply with all instructions and authorities issued by Queensland Rail from time to time in relation to the safety of any person or property or protection to the environment.

Queensland Rail's safeworking procedures and safety standards form part of Queensland Rail's safety management system and may be altered by Queensland Rail from time to time in accordance with document control procedures in **section 7.2** below and the terms of the Access Agreement.

## 3.2 Safeworking Forms

After execution of an Access Agreement with an Operator, Queensland Rail will provide that Operator with copies of all safeworking forms that must be completed and lodged with Queensland Rail from time to time in order for the Operator to operate on the Network.

If the Operator requires additional copies of safeworking forms, electronic copies can be downloaded from Queensland Rail's customer portal.

## 3.3 Operations in electrified railway corridors

Infrastructure and systems associated with Queensland Rail's 25 kV railway electrification network is identified as the works of a prescribed electrical entity under the *Electrical Safety Act 2002* (Qld).

Implementation and ongoing review of Queensland Rail's electrical entity Safety Management System is a legislative requirement for 25 kV railway electrification systems (electrical entity works) to ensure Queensland Rail's works are:

- electrically safe; and
- operated in a manner that is electrically safe.

A map showing the extent of Queensland Rail's network electrification is available on the Queensland Rail customer portal.

### 3.4 Network Security

- (a) The Operator must report any security Incident of which it becomes aware that either has occurred or is occurring on the Queensland Rail Network, to Queensland Rail in a timely manner.
- (b) Where the Operator operates Train Services which carry Dangerous Goods, it must have in place a security plan that complies with all applicable Laws and Dangerous Goods Codes.
- (c) The Operator must provide a security plan to Queensland Rail prior to the Operator commencing any Train Services and thereafter on an annual basis throughout the term of the Access Agreement. Where the Train Services involve the carriage of Security Sensitive Ammonium Nitrate, the security plan must include:
  - (i) evidence that the Operator and the Operator's Train crew are licensed to transport Security Sensitive Ammonium Nitrate;
  - (ii) control measures to ensure that any Security Sensitive Ammonium Nitrate is secure for the duration of the rail journey;
  - (iii) procedures for ensuring only authorised persons have unsupervised access to Security Sensitive Ammonium Nitrate whilst it is being transported on Queensland Rail's Network;
  - (iv) procedures for reporting to Queensland Rail and the appropriate authorities for any incident involving the Security Sensitive Ammonium Nitrate during its journey on Queensland Rail's Network.
- (d) The Operator must clearly identify and list all High Consequence Dangerous Goods ("HCDG") on freight consists relating to Train Services operating or to be operated on the Queensland Rail Network.
- (e) The Operator is to ensure where practicable that no Trains carrying HCDG are delayed or held in the Queensland Rail Network.
- (f) The Operator must ensure that all Trains carrying Dangerous Goods are supervised at all times.
- (g) If for any reason beyond the Operator's control, a Train carrying Dangerous Goods is required to be stowed at an unattended location or isolated siding at any time, then the Operator must arrange for at least one person to remain with the Train at all times.
- (h) The Operator must ensure that if for any reason a Train carrying Security Sensitive Ammonium Nitrate stops on the Queensland Rail Network at any time and for any period of time, a person who is authorised for the purposes of the *Explosives Act 1999* (Qld) and Information Bulletin 53 - Storage requirements for Security Sensitive Ammonium Nitrate remains with the Train at all times. Under no circumstances is the Operator to



leave a Train carrying Security Sensitive Ammonium Nitrate on Queensland Rail's Network unattended.

- (i) Where a Train carrying HCDG other than Security Sensitive Ammonium Nitrate stops on the Queensland Rail's Network at any time and for any period of time, the Operator must liaise with Queensland Rail in relation to the securing of the Train. The Operator's Train crew must remain with the Train and maintain communication with Network Control until such time as the Operator has made arrangements with Queensland Rail for the provision and attendance at the relevant location of private security guards for the purposes of securing the Train. Where Queensland Rail provides private security guards, this will be at the Operator's cost. The Operator must provide Queensland Rail with an indication of the length of time that private security guards must be provided. The Operator's Train crew must continue to remain with the Train until the arrival of the private security guards and until it has been established the private security guards have the ability to maintain two way communications with Network Control.
- (j) In the event that the National Terrorism Public Alert Level is raised with a threat specific to mass passenger transport, the Operator will be required to have all Trains carrying HCDG checked at a practical location prior to the Train entering the Metropolitan Network.

## **4 Emergency Response**

### **4.1 Emergency Management Plan**

The Operator must have an Emergency Management Plan that complies with the requirements of the TRSA.

The Operator must provide a copy of its Emergency Management Plan to Queensland Rail prior to it commencing any Train Services. Operators must work cooperatively with Queensland Rail to ensure Network Incidents and other Emergencies are managed effectively to mitigate the severity and magnitude of any Network Incident. The parties will work together to ensure the risks to the safety of persons arising from the Network Incident or other Emergency are minimised as far as is reasonably practicable.

The Operator must be familiar with, and adhere to, Queensland Rail's Emergency Management Plan as set out in Queensland Rail Standard MD-12-208 and Queensland Rail's emergency response procedures when managing any Network Incident or an Emergency on Queensland Rail's Network. Clear roles and responsibilities will be identified and allocated to the parties within the plan.

Queensland Rail will consult with Operators on the review and amendment of Queensland Rail's Emergency Management Plan and Queensland Rail's emergency response procedures. Where a Network Incident or other Emergency occurs on the Network that impacts both Queensland Rail and the

Operator, Queensland Rail's Emergency Management Plan will outline clear roles and responsibilities for the parties in jointly managing the Emergency.

Operators must test their Emergency Management Plan in so far as it relates to the Queensland Rail Network and the Train Services on an annual basis throughout the term of their Access Agreement and must ensure that both Queensland Rail and Emergency Services are provided with an opportunity to participate in the testing process.

#### **4.2 Incident/Emergency Management**

The Operator must comply with the requirements outlined in Queensland Rail's Emergency Management Plan MD-12-208. The Operator must not, by act or omission, do or fail to do anything inconsistent with or that would cause or contribute to Queensland Rail failing to comply with its Emergency Management Plan and its obligations under the TRSA.

The Operator's Emergency Management Plan must be consistent with Queensland Rail's Emergency Management Plan and must include:

- (a) detailed procedures for the management of emergencies, including all actions that must be taken to prevent, minimise or mitigate any threat or danger to any person, property or the environment;
- (b) specific action plans for preventing or, if not preventable, minimising and mitigating Environmental Harm caused or contributed to by a Incident or other Emergency;
- (c) requirements for immediate and appropriate action to prevent or, if not preventable, minimise and mitigate the adverse effects caused or contributed to by any Incident or other Emergency;
- (d) requirements for relevant Authorities to be informed immediately of any Incident or other Emergency;
- (e) the method for the clean-up of any substance or thing the release of which is caused or contributed to by an Incident or other Emergency such that there is no longer an immediate risk of adverse effects to any person, property or the environment (including Environmental Harm);
- (f) requirements for ensuring that there is not unreasonable Obstruction to Queensland Rail's operations or its Network;
- (g) procedures to ensure compliance by the Operator with all requirements of Laws pertaining to Contamination and/or to ensure compliance with directions of any relevant Authority; and
- (h) requirements for the handling of all Incidents and other Emergencies and procedures for ensuring that all measures taken in response to Incidents and other Emergencies are recorded on a central incident register for the post Incident or other Emergency investigation and debrief process.

### 4.3 Emergency Responses

Queensland Rail is responsible for the overall coordination and management of the response to a Network Incident or other Emergency (**Network Emergency**) (including notifying all relevant Emergency Services) so that Recovery and Restoration are effected as soon as practicable. For clarity, the Operator must comply with all directions given by Queensland Rail during the Recovery and Restoration phase of a Network Emergency.

Where required, the Operator must appoint a controller (**Operator's Controller**), who will work in collaboration with the Queensland Rail Commander to manage the onsite Network Emergency response.

Without limiting the terms of the Operator's Access Agreement, the Operator must:

- (a) ensure the timely Recovery in accordance with the Operator's Emergency Management Plan; and
- (b) assist Queensland Rail with Recovery and Restoration.

During Recovery and Restoration, the Operator must do everything necessary to prevent or, if not preventable, minimise and mitigate, any potential or actual damage or injury to persons, property or the environment or delays to the recommencement of Train Movements.

### 4.4 Investigation of Notifiable Occurrences

#### 4.4.1 Establishment of Joint Investigation Protocols

Queensland Rail and Operators are required to report Category A and Category B Notifiable Occurrences and their categorisation types. The categorisation of an occurrence will dictate the level of investigation and response required by the Operator and/or Queensland Rail.

The Chief Executive of the Department of Transport and Main Roads (the Rail Safety Regulator (**RSR**)) will advise Queensland Rail and the Operator of requirements for investigation and reports into Notifiable Occurrences.

#### **Category A Notifiable Occurrence (Detailed Investigation)**

- (a) Detailed investigations into Category A Notifiable Occurrences may be undertaken jointly by Queensland Rail and the Operator. Queensland Rail will initiate the investigation by the issue of an Instrument of Appointment (**IOA**) which will specify the lead agent and lead investigator. The Operator will be consulted in the development of the IOA, which will include the Terms of Reference (**ToR**) relevant to the scope of the investigation and investigation outcomes, investigation timelines and the make-up of the investigation team.

The commencement and conduct of the investigation must not be delayed while awaiting provision of the IOA.

- (b) A detailed investigation will be commenced as soon as possible following a Category A Notifiable Occurrence. The parties will ensure the site of

the Notifiable Occurrence remains undisturbed, except as required to make the site safe, and until the arrival on site of Queensland Rail Associates.

Queensland Rail and the Operator are required to preserve evidence and share information relevant to Notifiable Occurrences in accordance with the Law and this ORM.

Queensland Rail and the Operator will have a representative at the site of the Notifiable Occurrence within four (4) hours, or as soon as practicable, after notification to Queensland Rail of the Notifiable Occurrence.

- (c) If it is determined that Queensland Rail will be the lead agent for a joint detailed investigation, the conduct of the investigation will be in accordance with the requirements of the Queensland Rail *Detailed Investigation Business Instruction* and the *Joint Investigation Protocols*.

These documents, including any updated versions will be provided to the Operator on the customer portal.

When the Operator is the lead agent for a joint detailed investigation, the Operator's investigation process will apply, subject to the requirements of the Access Agreement and the ORM.

- (d) Where the RSR requests the final detailed investigation report of a Category A Notifiable Occurrence, the report will be provided to the RSR within the required timeframes, or as negotiated with the RSR by the lead agent.
- (e) Queensland Rail and the Operator may conduct detailed investigations without being required by the RSR to do so. In those instances, unless specifically requested later, the RSR will not be supplied with a copy of the investigation report.
- (f) The nominated lead agent will provide a copy of the final investigation report into the Notifiable Occurrence to the other party within a reasonable time after it has been prepared.
- (g) Queensland Rail and the Operator will co-operate in the implementation of all recommendations reasonably made, as part of an investigation report.

#### **Category B Notifiable Occurrences (Routine Investigations)**

- (a) Routine investigations into Category B Notifiable Occurrences will be initiated by Queensland Rail by way of issue of an Instrument of Appointment (IOA). The IOA will include the Terms of Reference (ToR), relevant to the scope of the investigation and investigation outcomes; investigation timelines; and the make-up of the investigation team.

When the Operator is the lead agent, they will conduct the investigation in accordance with the Queensland Rail IOA and ToR, through the nominated lead investigator and team members.

Commencement and conduct of the investigation must not be delayed while awaiting the provision of the IOA.

- (b) The party nominated as the lead agent will provide the other party with a copy of any report produced as a result of a routine investigation into the Notifiable Occurrence.
- (c) Queensland Rail and the Operator will co-operate in the implementation of all reasonable recommendations made in the investigation report.

#### **4.4.2 Membership of Investigating Teams for Category A and Category B investigations**

- (a) The membership of the investigation team will be consistent with the provisions, principles and intent of the TRSA, which will include an appropriate response level to a Notifiable Occurrence that involves initiating the investigation process. All outcomes, including the reporting of safety issues, risk control measures, systemic factors, findings, and any recommendations for action, are to be reported to the RSR.

There is no requirement for Category B investigation reports to be supplied to the RSR, unless specifically requested by the RSR.

- (b) Investigation teams will ensure an appropriate level of independence when conducting their investigations and, where practicable, will not include any persons directly involved in the relevant Notifiable Occurrence in any Recovery or Restoration process.
- (c) Where a joint investigation is conducted, Queensland Rail and the Operator will nominate at least one representative each and make reasonable efforts to ensure the members of the investigation team have the collective knowledge, skills, and expertise to address the range of operational, administrative, and infrastructure issues likely to be encountered and/or requiring action.

Queensland Rail and the Operator may agree to the inclusion of additional members in the investigation team for this purpose.

- (d) The lead investigator for detailed investigations must have appropriate qualifications and/or skills and experience as an investigator in conducting high level and serious safety investigations.

#### **4.4.3 Terms of Reference for Investigations**

- (a) The ToR issued by Queensland Rail for any investigation will be consistent with Queensland Rail's *Detailed Investigation Business Instruction* and will be relevant to the intended scope of the investigation requirements and outcomes.
- (b) The ToR issued by Queensland Rail for any investigation in accordance with this **section 4.4** will be relevant to the intended scope of the investigation and will be designed to determine the cause or causes of the Notifiable Occurrence. The ToR will stipulate what action(s) have

been, or will be taken to prevent a recurrence, including minimising the opportunity for such recurrence.

- (c) Additional terms of reference may be added or deleted depending on the requirements of the investigation and the continuing relevance of the ToRs. This must be agreed to jointly by Queensland Rail and the Operator.

#### **4.4.4 Providing resources to an Investigation**

- (a) For detailed and routine investigations Queensland Rail and the Operator must provide appropriate personnel to assist in providing relevant expertise with respect to equipment and / or infrastructure, and the operation of that equipment and / or infrastructure.
- (b) The Operator must also co-operate in the provision of any assessment requirement for the investigation report in accordance with relevant legislative requirements.

#### **4.4.5 Sharing of Information and Evidence Relevant to an Investigation**

- (a) For detailed and routine investigations the Operator will provide evidence, supporting documentation and reports to Queensland Rail in a timely manner to ensure compliance with the relevant legislation, including RSR timeframes under the TRSA.
- (b) Reports and any visual images contained within those reports are to be handled in accordance with the confidentiality requirements under the relevant Access Agreement

#### **4.4.6 Detailed Investigations Reports**

A copy of all final detailed investigation reports will be supplied to Queensland Rail and the Operator. Each party will be responsible for consideration of, and action on recommendations that are under the control of that party.

Queensland Rail will send a copy of the final detailed investigation report to the RSR.

#### **4.4.7 Inconsistencies/Disagreement**

Queensland Rail and the Operator will conduct investigations in accordance with **section 4**. However, to the extent of any inconsistency, actual or perceived, the provisions of the TRSA and its Regulations will apply.

In the event that agreement cannot be reached between Queensland Rail and the Operator about the cause or causes of a Category A Notifiable Occurrence, or how the investigation is to be conducted, including who the lead agency will be, Queensland Rail will write to the RSR highlighting the differing opinions and the RSR will then consult with Queensland Rail and the Operator after the submission of their respective reports, with a view to establishing concurrence about the progress and outcome of the relevant investigation.

## 5 Train Route Acceptance

The Operator must ensure that any Certification provided to Queensland Rail complies with the requirements set out in Queensland Rail's Train Route Acceptance Standard MD-10-170. Queensland Rail may take into account any matters referred to in this standard in deciding whether Queensland Rail is satisfied with any Certification provided to Queensland Rail by an Operator for the purpose of seeking Queensland Rail's authorisation of Rolling Stock or a Train Configuration.

## 6 Network Control and Network Planning

### 6.1 Responsibility for compliance

The Operator must ensure the Operator's Controller and the Operator's Train crew comply with this paragraph 6.

### 6.2 Operator Requirements for Controller

- (a) The Operator must provide to Queensland Rail (and keep current at all times) the details for the Operator's Controller including that person's name, position and contact details. The contact details:
  - (i) must include primary mobile and after hours contact details; and
  - (ii) must include additional alternative contact details to be used in circumstances where the Operator's Controller is not contactable via its primary mobile or after hours contact details.
- (b) The Operator must not operate Train Services unless Queensland Rail has current details for the Operator's Controller.
- (c) The Operator must ensure, and not operate Train Services unless, the Operator's Controller is:
  - (i) contactable by Queensland Rail Network Controllers at all times when any of the Operator's Trains are on the Network; and
  - (ii) contactable at least 2 hours prior to any of the Operator's Trains entering the Network; and
  - (iii) able to fully comply with this **section 6**.

### 6.3 Consultation between Queensland Rail Network Controller and the Operator's Train crew

- (a) The relevant Queensland Rail Network Controller and the Operator's Train crew must consult and agree upon the location of meal breaks and personal needs breaks for the Train crew.
- (b) If the Operator's Train crew requires relief from operating the Train, the Train crew must only request relief from the Operator's Controller.
- (c) Prior to a Train reaching its destination, the Operator's Controller must:
  - (i) determine whether the Train crew on the Train requires relief;

- (ii) consult with the relevant Queensland Rail Network Controller to determine an appropriate time and location for relief;
  - (iii) arrange relief for the Train crew; and
  - (iv) advise the Train crew of the relief arrangements.
- (d) If members of an Operator's Train crew:
  - (i) are rostered on "change jobs";<sup>1</sup> or
  - (ii) need to change during a Train Service,then the Train crew must notify the relevant Queensland Rail Network Controller of this requirement prior to the Train entering the Network. The Queensland Rail Network Controller must notify the Train crew of the time and location for that change.
- (e) If the Operator's Controller or the Train crew is unable to contact the other directly, a Queensland Rail Network Controller may (but is not obliged to) relay a message from one to the other.

#### **6.4 Procedures for entering and exiting the Network**

- (a) The Operator's Controller must notify the relevant Queensland Rail Network Controller of the anticipated departure time of the Operator's Train at least two hours before the scheduled departure time of that Train. If the anticipated departure time changes, the Operator's Controller must, immediately on becoming aware of the change, notify the Queensland Rail Network Controller of the revised anticipated departure time.
- (b) The Operator's Train crew must notify the relevant Queensland Rail Network Controller when the Operator's Train is ready to enter the Network.
- (c) Prior to the Train entering the Network, the Operator's Controller must give the Train crew:
  - (i) the scheduled times for that Train Service for that day; and
  - (ii) any Train Notices relevant to that Train Service.
- (d) The Operator must comply with the procedures for shunting, entering and exiting yards and any other terminating yard procedures provided to the Operator by Queensland Rail from time to time.

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<sup>1</sup> A Train crew is rostered on "change jobs" where, for example, the Train crew of Train A (which is travelling from X to Z) swaps Trains with the Train crew of Train B (which is travelling from Z to X) at some appropriate point between X and Z, with the result that the relevant Train crews start and end their shifts at the same location.



## 6.5 Network Control Radio Channel

- (a) Queensland Rail will make the Network Control Radio Channel Coverage Maps listed below available to the Operator on the Queensland Rail's website:
  - (i) <https://portal.qr.com.au/Partners/RadioMaps/Radio%20Channels%20for%20hand%20portable%20Radios%20-%20Brisbane%20Suburban%20Area.pdf>;
  - (ii) <https://portal.qr.com.au/Partners/RadioMaps/TCR%20System%20Southern%20Region.pdf>;
  - (iii) <https://portal.qr.com.au/Partners/RadioMaps/TCR%20System%20Central%20Region.pdf>; and
  - (iv) <https://portal.qr.com.au/Partners/RadioMaps/TCR%20System%20Northern%20Region.pdf>.
- (b) For the purposes of the Operator ensuring that its Train drivers are contactable by Queensland Rail Network Controllers, the Operator must ensure that the relevant communications system used by its Train drivers complies with the relevant requirements set out in the relevant IRMP.

## 6.6 Operator's notifications to Queensland Rail Network Controller

- (a) If the Operator's Controller or the Train crew become aware of any event or circumstance that may affect the performance of the Operator's Train, regardless of whether the Train has entered the Network, the Operator's Controller or the Train crew must notify the relevant Queensland Rail Network Controller of the event or circumstance, including the following details:
  - (i) the Train number;
  - (ii) the nature of the event or circumstance; and
  - (iii) the likely impact on the Train's performance.
- (b) At least 15 minutes prior to the departure of the Operator's Train, the Operator's Controller must:
  - (i) provide the relevant Queensland Rail Network Controller with the following information:
    - (A) information regarding the Train crew, including planned relief locations and details of any mandatory breaks;
    - (B) any En Route Locomotive Provisioning requirements, but only if those requirements have previously been agreed in writing with Queensland Rail; and

- (C) if the Train will be in Direct Traffic Control Territory, the start-up code<sup>2</sup> of the leading locomotive;
- (ii) enter the following information about the Train (**Train List**) into Queensland Rail's nominated information system in accordance with any procedures specified by Queensland Rail from time to time:
  - (A) the Operator for the Train Service who is accredited under the TRSA;
  - (B) the Access Agreement under which the Train is operating;
  - (C) the identification number for the applicable Train Route Acceptance TRA or Authority To Travel ATT;
  - (D) the number of the Train;
  - (E) the origin of the Train;
  - (F) the comparison Train length in metres (including locomotives);
  - (G) the number of items of Rolling Stock in the Train;
  - (H) the gross mass of the Train in tonnes;
  - (I) the gross trailing load of the Train in tonnes; and
  - (J) the motive power employed by the Train; and
  - (K) the following information on each item of Rolling Stock in the Train (in the order in which the items of Rolling Stock will be placed, leading end first):
    - (1) the Rolling Stock classification;
    - (2) the Rolling Stock number;
    - (3) the Rolling Stock type (if a locomotive, whether hauling or otherwise);
    - (4) the gross mass of the Rolling Stock in tonnes;
    - (5) a description of the goods carried in the Rolling Stock (including any Dangerous Goods) by class and location on the Train;
    - (6) the destination of each item of Rolling Stock; and
    - (7) any known issues or defects, for example Rolling Stock that is 'out-of-gauge' or that has had its brakes cut out.

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<sup>2</sup> The start-up code for a locomotive that is subject to Direct Traffic Control is a unique code determined and allocated by Queensland Rail for the purposes of Direct Traffic Control.

- (c) If the Operator's Controller cannot comply with **paragraph (b)** because the nominated information system is not accessible by the Operator's Controller, then the Operator's Controller must:
- (i) at least 15 minutes prior to the departure of the Operator's Train, notify the relevant Queensland Rail Network Controller of at least the following information:
    - (A) the Operator for the Train Service who is accredited under the TRSA;
    - (B) the Access Agreement under which the Train is operating;
    - (C) the identification number for the applicable TRA or ATT;
    - (D) the number of the Train;
    - (E) the comparison Train length in metres (including locomotives);
    - (F) the gross trailing load of the Train in tonnes;
    - (G) the following information on each item of Rolling Stock in the Train (in the order in which the items of Rolling Stock will be placed, leading end first):
      - (1) the Rolling Stock classification; and
      - (2) the Rolling Stock number;
    - (H) any known issues or defects, for example Rolling Stock that is 'out-of-gauge' or that has had its brakes cut out; and
    - (I) details of any Dangerous Goods; and
  - (ii) as soon as possible after the nominated information system becomes accessible by the Operator's Controller, enter the Train List for the relevant Train into Queensland Rail's nominated information system in accordance with any procedures specified by Queensland Rail from time to time.
- (d) If the mass, length or configuration of the Train alters during the course of a journey, the Operator's Controller must notify the relevant Queensland Rail Network Controller of the new mass, length and configuration. The Operator's Controller must ensure any changes in a Train List are updated in Queensland Rail's nominated information system in accordance with any procedures specified by Queensland Rail from time to time.

## 6.7 Provision of information by Queensland Rail Network Controller

- (a) If a Queensland Rail Network Controller becomes aware of any event or circumstance that will materially adversely affect the performance of the Operator's Train, the Queensland Rail Network Controller must notify the Operator's Controller of the event or circumstance, including the following details:
  - (i) the Train number;
  - (ii) the nature of the event or circumstance; and
  - (iii) the likely impact on the Train's performance.
- (b) The Queensland Rail Network Controllers located in Brisbane and Townsville must provide the Operator's Controller with a current estimated time of arrival, for each of the Operator's Train Services, at the relevant Operator's depot station or destination, as applicable, in that Queensland Rail Network Controller's relevant Network Control Region:
  - (i) every two hours; and
  - (ii) at additional points in time, when reasonably requested by the Operator or an Operator's Associate (including the Operator's Controller).
- (c) If, for whatever reason, the ETA of a Train Service varies by more than 20 minutes during a two hourly interval between notifications given under **section 6.7(b)**, the relevant Queensland Rail Network Controller must inform the Operator's Controller of the variation as soon as reasonably practicable.
- (d) Whenever reasonably requested by the Operator's Train crew or the Operator's Controller, the relevant Queensland Rail Network Controller must provide information to the Operator regarding events that will materially adversely impact on the performance of the Operator's Train to the extent that such information is known and available to the Queensland Rail Network Controller.

## 6.8 Network Control Centres

Queensland Rail will provide Network Control for the Operator's Trains through the Network Control Centres and Network Control Regions. A map showing the Network Control Centres and Network Control Regions can be viewed at

<https://portal.qr.com.au/ResourceCentre/BusinessProcess/NetworkSystems/Maps%20Schema/Network%20Management/Network%20Information%20Booklet.pdf>.

## 6.9 Network Interface Points between Aurizon and Queensland Rail

A map showing the Network interface points between the Aurizon and the Queensland Rail networks can be viewed at

<https://portal.qr.com.au/ResourceCentre/BusinessProcess/NetworkSystems/Maps%20%20Schema/Network%20Management/Network%20Information%20Booklet.pdf>.

## **6.10 Network Control Boards - Rail Centre 1 Network Control Centre and Townsville Network Control Centre**

### **6.10.1 Train Operations, Traffic Management or Incident Management**

Enquiries by Operators regarding train operations, traffic management or Network Incident management in relation to line sections that are controlled by Rail Centre 1 Network Control Centre must be directed to:

Business Operations Shift Supervisor Brisbane  
Queensland Rail, GPO Box 1492, Brisbane Qld 4001  
Phone: 81-1662 (Rail)  
External: (07) 3072 1662  
Emergency Mobile Contact: 0409 499 829

Enquiries by Operators regarding train operations, traffic management or Network Incident management in relation to line sections that are controlled by Townsville Network Control Centre must be directed to:

Regional Transit Manager Townsville  
Phone: (07) 4772 8207  
Emergency Mobile Contact: 0428 878 545

### **6.10.2 Scheduling & Infrastructure Planning**

Scheduling and infrastructure planning requirements for line sections that are controlled by Rail Centre 1 Network Control Centre or Townsville Network Control Centre are set out in the following documents:

- (a) Master Train Plan Protocols MD-11-945
- (b) Daily Train Plan Protocols MD-11-947; and
- (c) Possession Planning Protocols MD-11-038.

The Operator must comply with the above documents.

Enquiries by Operators regarding scheduling or infrastructure planning in relation to line sections that are controlled by Rail Centre 1 Network Control Centre must be directed to:

Manager Business Operations South  
Supply Chain South,  
Queensland Rail, GPO Box 1492, Brisbane Qld 4001  
Phone: (07) 3072 5076

Enquiries by Operators regarding scheduling or infrastructure planning in relation to line sections that are controlled by Townsville Network Control Centre must be directed to:

Manager Business Operations

Supply Chain South

Queensland Rail, GPO Box 1492, Brisbane Qld 4001

Phone: (07) 3072 5076

and

Regional Manager Strategic Planning

Supply Chain North

Townsville Station, Flinders Street

Phone (07) 47 728 324

## **6.11 Network Control Boards – Mayne Network Control Centre**

### **6.11.1 Train Operations, Traffic Management or Incident Management**

Enquiries by Operator regarding train operations, traffic management or Network Incident management in relation to line sections that are controlled by Mayne Network Control Centre should be directed to:

Network Control Train Control Supervisor, Mayne

Phone: (07) 3606 5970

Emergency Mobile Contact: 0408 703 227

### **6.11.2 Scheduling**

Scheduling requirements for line sections that are controlled by Mayne Network Control Centre are described in the following documents:

- (a) Master Train Plan Protocols MD-11-945; and
- (b) Daily Train Plan Protocols NA-PRO-002.MD-11-947.

The Operator must comply with the above documents.

Enquiries by Operators regarding scheduling in relation to line sections that are controlled by Mayne Network Control Centre must be directed:

- (c) for scheduling enquiries relating to MTPs, DTPs and infrastructure maintenance:

Manager, Operations Planning

Queensland Rail, GPO Box 1492, Brisbane Qld 4001

Phone: (07) 3072 0196

- (d) for all other scheduling enquiries:

Manager, Business Operations South Network,

Supply Chain South

Queensland Rail, GPO Box 1492, Brisbane Qld 4001

Phone: (07) 3072 0196 or 3072 5076

## 7 Communication

### 7.1 Safety Notices

#### 7.1.1 Safety Alerts

If, in Queensland Rail's opinion, a safety Incident has or may occur that affects, or may affect, Queensland Rail or any Operator, then Queensland Rail may give the relevant Operator(s) notice of that incident (**Safety Alert**).

A Safety Alert will provide details of the relevant safety Incident and indicate any requirements that must be complied with by the Operator(s).

On receipt of a Safety Alert, the Operator must ensure that all relevant Operator's Associates are made aware of the contents of the Safety Alert.

#### 7.1.2 Weekly Notices

Queensland Rail gives Weekly Notices to its employees. Amongst the information set out in those Weekly Notices is information about permanent or temporary changes to safety requirements (including information relevant to safety Incidents. Such a change is published in a Weekly Notice prior to the date on which the change takes effect.

However, if Queensland Rail is not issuing a Weekly Notice prior to a time when Queensland Rail considers that a relevant change needs to take effect, then Queensland Rail will include that change in the relevant Train Notice(s) (as required under **section 7.1.3** below) and will subsequently publish the change in the next Weekly Notice.

On the same day that a Weekly Notice is given to Queensland Rail's employees, Queensland Rail will also make available to the Operator an abridged Weekly Notice that extracts information about permanent or temporary changes to safety requirements (including information relevant to safety matters).

The Operator must ensure that each Operator's Associate is aware of, and complies with, the information in each abridged Weekly Notice relevant to that Operator's Associate's responsibilities and activities.

#### 7.1.3 Train Notices

Queensland Rail may issue operational and safety instructions, information, requirements and messages to Operators (**Train Notices**). Typically Train Notices will be issued daily, but can be issued as determined by Queensland Rail.

The Operator must ensure as far as is reasonably practicable that each Operator's Associate is aware of, and complies with, the information in each

Train Notice relevant to that Operator's Associate's responsibilities and activities.

## 7.2 Document Control Procedures

Each Operator must notify Queensland Rail of the name, position and contact details for the Operator's Associate who, on behalf of the Operator, is responsible for document control in connection with the Operator's Access Agreement.

The Operator must ensure the ongoing distribution of this document, and all documents referred to in this document, to the relevant Operator's Associates.

## 7.3 Cooperation between Parties

### 7.3.1 Operational Meetings

Each Operator must notify Queensland Rail of the name, position and contact details of the Operator's Associate who, on behalf of the Operator, will be the Operator's representative for operational meetings.

The Queensland Rail representative for an operational meeting is either or both of the following persons, as applicable:

- (a) GM Customer Service South

Ph: (07) 3072 7679

Fax: (07) 3235 7634

- (b) GM Customer Service North

Ph: (07) 4772 8872

Fax: (07) 4772 8495

The Operator's representative and Queensland Rail's representative for operational meetings are required to meet, at a time and place agreed between the Operator and Queensland Rail, for the purposes of:

- (c) reviewing matters relating to the performance of the Operator's Train Services to identify any remedial actions to prevent, minimise or mitigate any problems;
- (d) reviewing the reliability of the Operator's Trains;
- (e) reviewing any relevant Operational Constraints;
- (f) investigating or reviewing breaches of any relevant safeworking procedures or safety standards (including those referred to in either the relevant IRMP or **section 3** of this document); and
- (g) reviewing any other relevant operational matters in relation to the exercise of rights or compliance with obligations under the Operator's Access Agreement.

Either the Operator or Queensland Rail may, with the prior consent of the other (which consent is not to be unreasonably withheld), invite a guest to an operational meeting.



### 7.3.2 Contractual Meetings

The Operator must notify Queensland Rail of the name, position and contact details of the Operator's Associate who, on behalf of the Operator, will be the Operator's representative for contractual meetings.

The Queensland Rail representative for contractual meetings is:

General Manager Access Revenue

Ph: (07) 3072 3609

Fax: (07) 3072 8248

The Operator's representative and Queensland Rail's representative for contractual meetings are required to meet, at a time and place agreed between the Operator and Queensland Rail, for the purposes of discussing or reviewing commercial and contractual matters.

Either the Operator or Queensland Rail may, with the prior consent of the other (which consent is not to be unreasonably withheld), invite a guest to a contractual meeting.

### 7.4 Government Supported Infrastructure

The parts of the Network that are highlighted in red in Diagrams 1 and 2 below are supported by government funding.

Diagram 1:

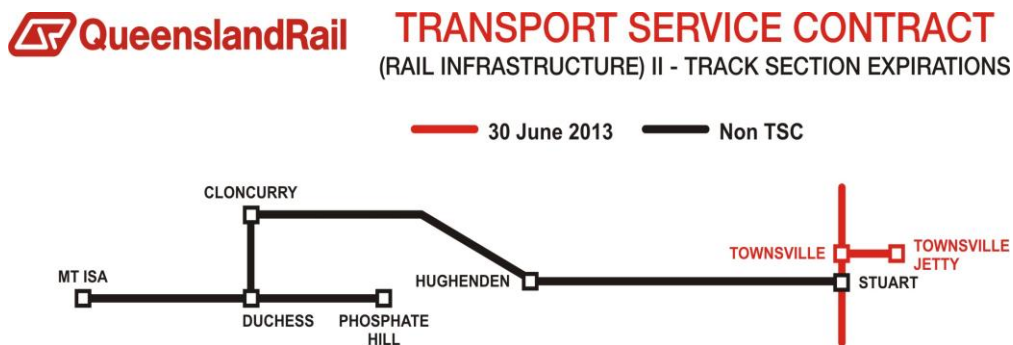
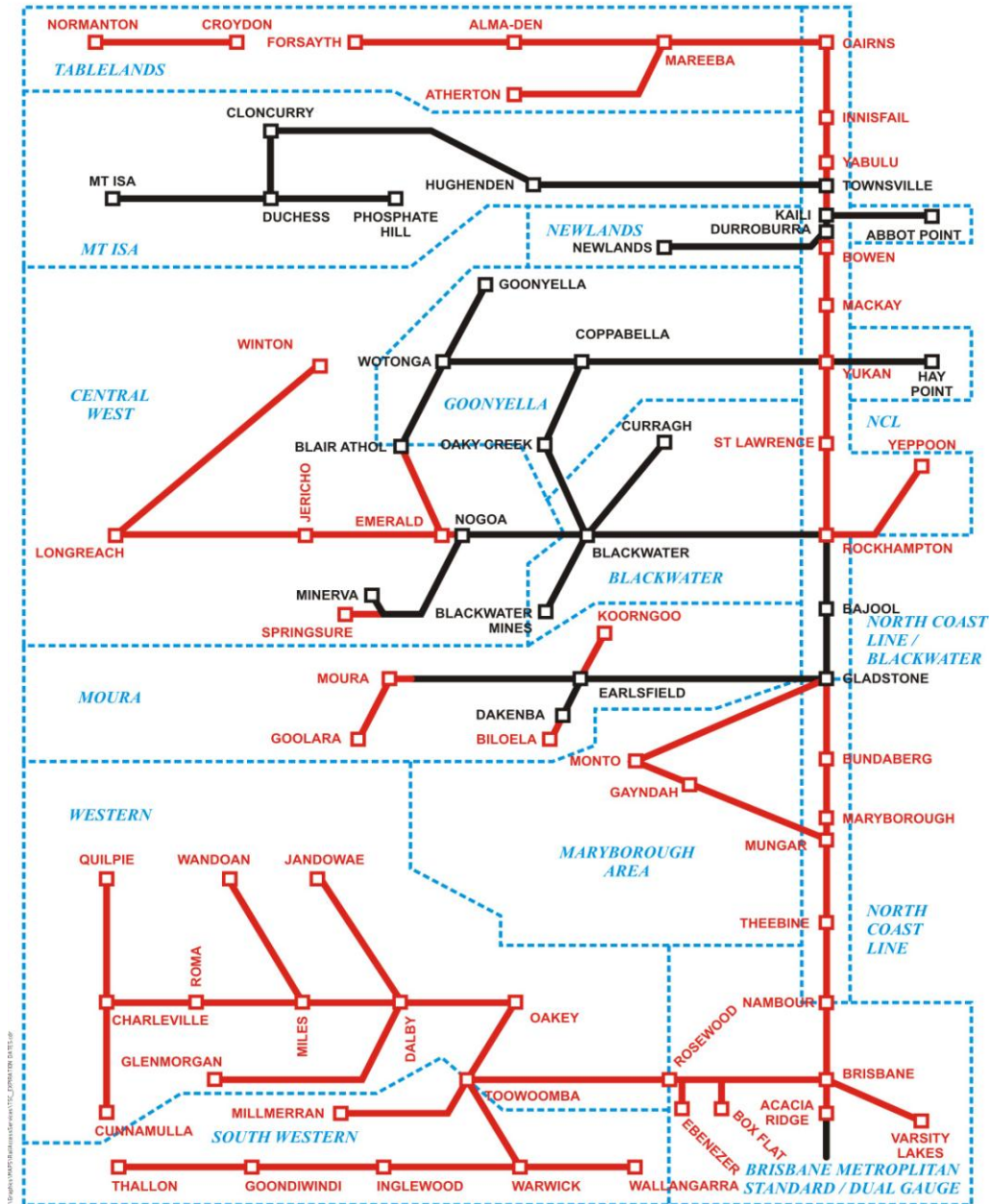


Diagram 2:

**QueenslandRail** **TRANSPORT SERVICE CONTRACT**  
(RAIL INFRASTRUCTURE) II - TRACK SECTION EXPIRATIONS

— 30 June 2013 — Non TSC



## **8 Further information**

If you would like further information on, or have queries regarding the information in, this manual, please contact the General Manager Access Revenue of Queensland Rail on (07) 3072 3609.

## 9 Glossary

### 9.1 Defined terms

Unless the context requires otherwise, terms used but not defined in this document shall have the meanings set out in the Standard Access Agreement.

<b>Access Agreement</b>	As defined in the Access Undertaking.
<b>ATT</b>	Authority to Travel.
<b>Baseline Environmental Data</b>	Data or information pertaining to the environmental management status of, or ongoing environmental risk related to, a particular section of the Queensland Rail Network prior to the execution of an access agreement (e.g. historical contaminated land, air quality, water quality, noise or biosecurity/pest management data).
<b>Comparison Train Length</b>	The calculated train length, for comparison with the loop length, to determine if the train can effectively utilise the loop to cross another train. It is defined as the static train length plus: <ul style="list-style-type: none"> <li>• 2% of the static train length for train handling allowance; and</li> <li>• 125mm per vehicle for coupler and drawgear tolerances.</li> </ul>
<b>Contamination</b>	Contamination as defined by the <i>Environmental Protection Act 1994</i> (Qld) where such contamination is likely to cause or does cause material environmental harm, serious environmental harm or environmental nuisance as those terms are defined in the <i>Environmental Protection Act 1994</i> (Qld).
<b>Direct Traffic Control Territory</b>	That part of the Network for which Direct Traffic Control – MD-10-113 applies as set out in Operational Route Manual – MD-10-533.
<b>DTMR</b>	Queensland Department of Transport and Main Roads.
<b>DTP</b>	Daily Train Plan.
<b>Emergency</b>	An actual or impending situation that may cause injury, loss of life, the destruction of property, harm to the environment or cause the interference, loss or disruption of an organisation's normal business operations, to such an extent that it poses a threat.

**Emergency Management Plan**

A plan (including any amendments from time to time) developed and maintained by Queensland Rail or the Operator which:

- (a) details procedures that are adequate to manage an Emergency, including all actions to be taken to prevent, minimise or mitigate any threat or danger to any person, property or the environment including:
  - (i) the matters outlined in this document that are relevant to the management of Emergencies; and
  - (ii) any matters otherwise referred to in the Access Agreement for inclusion in a plan that details procedures to manage an Emergency (whether or not referred to as an Emergency Management Plan);
- (b) is, at all times, compatible with the relevant Access Agreement and this document; and
- (c) is consistent with the degree of diligence, care, foresight, prudence and skill that would reasonably be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances.

**En Route Locomotive Provisioning**

The provisioning of a Train on the Network.

**Environmental Management System**

A management system that addresses all environmental risks and ensures compliance with all environmental Laws.

**ETA**

Estimated Time of Arrival.

**High Consequence Dangerous Goods**

As defined in Table 1.4.1 of the 18th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods - Model Regulations, 2013.

<b>Interface Standards</b>	Queensland Rail's minimum requirements or standards relating to the interface between a Train and the Network (including to maintain agreed operating parameters – for example, axle load) with which the applicable Rolling Stock and Train Configurations must comply in order to operate on the Network. This includes the Interface Standards (MD-10-194), unless otherwise agreed or specified by Queensland Rail.
<b>MTP</b>	Master Train Plan.
<b>Notifiable Occurrence</b>	A notifiable occurrence as defined in the TRSA.
<b>Operator</b>	Any person who holds, or uses any other person's, rights of access to any part of the Network in relation to Train services and any Accredited rail transport operator (as defined in the TRSA).
<b>Operator's Controller</b>	The person nominated by the Operator from time to time to perform Network Control duties on its behalf, including as set out in this ORM.
<b>Recovery</b>	The action to be taken in respect of any derailed, malfunctioning or immobilised Train for which the Operator is responsible for ensuring the prompt recommencement of Train Movements, including the subsequent retrieval of any such Train.
<b>Restoration</b>	The removal of any Obstruction, the rectification of any Network Incident and the prompt recommencement of Train Movements including all requisite repairs to the Network but excluding Recovery.
<b>Security Sensitive Ammonium Nitrate</b>	As defined in the <i>Explosives Information Bulletin Number 53, 21 November 2008, Version 3</i> available at: <a href="https://www.dnrm.qld.gov.au/mining/safety-and-health/alerts-bulletins-search/alerts-bulletins/explosives/storage-req-security-sensitive-ammonium-nitrate-ssan">https://www.dnrm.qld.gov.au/mining/safety-and-health/alerts-bulletins-search/alerts-bulletins/explosives/storage-req-security-sensitive-ammonium-nitrate-ssan</a>
<b>Standard Access Agreement</b>	The pro forma access agreement attached to the Access Undertaking.
<b>TPO</b>	Track Protection Officer.
<b>TRA</b>	Train Route Acceptance.
<b>Train Notice</b>	A notice referred to in <b>section 7.1.3</b> .
<b>Weekly Notice</b>	a Queensland Rail internal weekly communication to its employees published on its intranet.

## 9.2 Construction

Unless expressed to the contrary, in this document:

- (a) “includes” means includes without limitation, and “including” means including without limitation;
- (b) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
  - (iii) this or any other document includes the document as varied or replaced; and
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

# Schedule H

## Standard Access Agreement



---

Queensland Rail Limited

---

[Insert name of Operator]

---

[Insert name of Operator's Customer] *[Note: Complete only if the Operator's Customer is a party to this agreement – otherwise delete.]*

---

# Access Agreement

*[Note: This agreement is a standard access agreement and is based on the following assumptions, that:*

- *the grant of Access Rights only involves the allocation of Available Capacity;*
- *no provisions relating to the provision of Additional Capacity in respect of an Extension are required;*
- *no conditions precedent are necessary; and*
- *the Access Holder is the rolling stock operator for the relevant Train Services.*

*Without limiting the ability of the parties to negotiate terms, if any of these assumptions are not true, then the parties will need to seek to negotiate amendments.*

*This standard access agreement contains various notes in respect of alternative clauses (for example, in relation to Dangerous Goods or where the Operator's Customer is also a party) and in respect of adjustments that are needed where the Reference Tariff does not apply to the setting of the Access Charges.]*

**Version:** 1

**Date Approved:** [insert date]

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**Date**

## Parties

**Queensland Rail Limited** ABN 71 132 181 090 of Level 15, 295 Ann Street, Brisbane, Queensland (**Queensland Rail**)

**and**

The person set out in **item 1** of **schedule 1 (Operator)**

**and**

The person set out in **item 3** of **schedule 1**

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## Background

- A Queensland Rail operates, and is the Railway Manager for, the Network.
  - B The Operator is seeking, and Queensland Rail has agreed to provide to the Operator, access to the Network for the purposes of the Train Services.
  - C This agreement sets out the terms agreed by the Parties in accordance with which the Operator is granted non-exclusive access to the Network for the Train Services.
- 

## Agreed terms

### 1 Term and renewal

#### 1.1 Term

This agreement:

- (a) commences on the Commencement Date; and
- (b) terminates on the Termination Date (except to the extent that any provisions of this agreement are expressed or implied to survive the expiry or termination of this agreement).

#### 1.2 Right to renewal

- (a) The Parties acknowledge that any rights which the Operator may have in relation to the renewal of this agreement will be as expressly provided in the Access Undertaking.

- (b) Where the Operator seeks a renewal of this agreement, each Party acknowledges that:
  - (i) negotiations in respect of renewal must occur in good faith as required by and subject to the QCA Act and the Access Undertaking; and
  - (ii) the negotiations and any renewal are subject to compliance with all applicable Laws including section 266 and 266A of the TIA as they apply to Queensland Rail.
- (c) In this **clause 1.2** a reference to a renewal is a reference to the execution of a new access agreement that has the effect of continuing all or some of the Train Services under this agreement for a further term.

## 2 Grant

- (a) Queensland Rail grants to the Operator the non-exclusive right to operate the Train Services on the Network commencing on the Commitment Date for those Train Services until the End Date for those Train Services (unless this agreement terminates earlier in accordance with its provisions (including **clauses 15** and **20.2**, as applicable) or any Law) subject to, and in accordance with, this agreement (**Access Rights**).
- (b) The Access Rights create a non-exclusive contractual right and do not give the Operator any right, title or interest of any proprietary nature in the Network.
- (c) The Operator must not:
  - (i) operate on or use any part of the Network that is not expressly permitted in accordance with the Access Rights; or
  - (ii) use the Network for carrying out any provisioning, inspection, testing, maintenance of Rolling Stock, any marshalling, shunting or other relocation of Rolling Stock or storage of Rolling Stock or for any other purpose other than the operation of Train Services, unless as expressly permitted or required in accordance with this agreement (including as directed by Queensland Rail in accordance with this agreement).

## 3 Relationship with Operator's Customer

### 3.1 Application

- (a) This **clause 3** only applies where the Operator's Customer is a Party.
- (b) If this **clause 3** applies but is inconsistent with any other provision of this agreement, then this **clause 3** prevails over that other provision to the extent of the inconsistency.



### **3.2 Transfer of Access Rights**

- (a) The Operator's Customer may, by giving notice to the other Parties, request that a Transfer occur under **clause 21.2** in respect of a Transferee nominated by the Operator's Customer (**Customer Initiated Transfer**).
- (b) Where the Operator's Customer requests a Customer Initiated Transfer, the Parties must do all things necessary to give effect to that Transfer in accordance with **clause 21.2**.
- (c) Where the Operator's Customer considers that the Operator has failed to do anything or to act promptly in complying with **clause 21.2** for the purpose of the Customer Initiated Transfer, then:
  - (i) the Operator's Customer may step in and do anything that the Operator is required to do to comply with **clause 21.2** in relation to that Customer Initiated Transfer; and
  - (ii) any costs or expenses incurred by the Operator's Customer in doing so will be recoverable from the Operator as debt due and owing from the Operator to the Operator's Customer.
- (d) If the Operator's Customer steps in under **clause 3.2(c)**, then Queensland Rail:
  - (i) must accept the Operator's Customer's exercise of rights and compliance with obligations under **clause 21.2** in relation to the Customer Initiated Transfer as if exercised or performed by the Operator; and
  - (ii) does not breach this agreement by doing so.

### **3.3 Information**

- (a) Nothing in **clause 24** prevents or otherwise restricts the Parties from disclosing to one another information in relation to or in connection with this agreement.
- (b) If requested by the Operator's Customer, the Operator and Queensland Rail (as applicable) must promptly provide to the Operator's Customer any information in relation to the exercise of rights or performance of obligations under this agreement.
- (c) Without limitation to **clause 3.3(b)**, where either Queensland Rail or the Operator gives a Notice (including an invoice) under this agreement to the other of them, then that Party must also give a copy of that Notice (including an invoice) to the Operator's Customer.

### **3.4 Participation in Disputes**

- (a) Despite **clause 19**, where:
  - (i) a Dispute Notice is given to the Operator's Customer under **clause 19.1(b)**; and

- (ii) the Dispute is solely between the Operator and Queensland Rail and does not require the Operator's Customer's participation to resolve the Dispute,

the Operator's Customer may elect not to participate in the dispute resolution process under **clause 19** by giving notice to that effect to the other Parties.

- (b) Where the Operator's Customer gives a notice under **clause 3.4(a)**, **clause 19** will apply as though a reference to the Parties does not include the Operator's Customer in relation to that Dispute.

### **3.5 Representations and warranties**

- (a) In addition to any other express or implied representations and warranties in this agreement, the Operator's Customer represents, warrants and undertakes to Queensland Rail that:
  - (i) it is a corporation validly existing under the laws applicable to it;
  - (ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;
  - (iii) its obligations under this agreement are enforceable in accordance with their terms and are fully binding on it;
  - (iv) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;
  - (v) there is:
    - (A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and
    - (B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it, which would or could have a material adverse effect on its ability to perform its obligations under this agreement;
  - (vi) it will as soon as practicable notify Queensland Rail of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the Operator's Customer under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement; and
  - (vii) all information provided by the Operator to Queensland Rail, whether pursuant to this agreement or otherwise, in relation to or in connection with the Train Services, the Operator's rights or

obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive.

- (b) The representations and warranties set out in **clause 3.5(a)** are taken to be given and made on the Commencement Date and on each day during the Term.

## 4 Accreditation

- (a) The Operator must, on the Commitment Date for Train Services and then until the End Date for those Train Services, hold the Accreditation necessary for it to operate those Train Services in accordance with this agreement.
- (b) The Operator must:
  - (i) at least 20 Business Days prior to the Commitment Date, satisfy Queensland Rail (acting reasonably) of its compliance with **clause 4(a)**; and
  - (ii) ensure that Queensland Rail is and continues to be provided with a copy of the Operator's Accreditation, including:
    - (A) all notices from any Authority affecting or likely to affect the Operator's Accreditation;
    - (B) the relevant details of any renewal, suspension, amendment, restriction or termination of that Accreditation; and
    - (C) all accreditation conditions and accreditation notices (as those terms are defined under the TRSA) relating to that Accreditation.
- (c) The Operator must not operate Rolling Stock on the Network unless the Operator holds the Accreditation necessary to do so and then must do so in accordance with that Accreditation and this agreement.

## 5 Payment obligations

### 5.1 Access Charges

- (a) The Operator must pay to Queensland Rail the Access Charges at the times and in the manner set out in this agreement and any other charges or amounts payable in accordance with this agreement.
- (b) The Access Charges include amounts payable in relation to:
  - (i) the reservation of capacity in the Network for the Train Services; and
  - (ii) the utilisation of the Access Rights for the Train Services.
- (c) Where a Train Service does not operate, the Operator is still obliged to pay Access Charges in relation to the reservation of capacity for that

Train Service and in this regard the relevant component of the Access Charges is the Take or Pay Charge.

- (d) (i) After the last day of each calendar month during the Term; and
- (ii) where this agreement has expired or terminated, after that expiration or termination,

Queensland Rail will provide to the Operator an invoice for the Access Charges and any other charges or amounts payable by the Operator under this agreement (if any such amounts are payable) for that month or on or after the expiry or termination of this agreement (as applicable).

- (e) For clarity, Queensland Rail will review and amend **schedule 3** (including to vary or escalate Access Charges Inputs) from time to time in accordance with this agreement.

## **5.2 Obligation to make payments**

- (a) Unless this agreement provides otherwise, the due date for the payment of an amount payable by a Party under this agreement is that date which is ten Business Days from the invoice date (as shown on the invoice for that amount from the other Party).
- (b) After a Party receives an invoice from another Party for an amount payable in accordance with this agreement, the paying Party must, on or prior to the due date for the payment of that amount, either:
  - (i) pay the other Party an amount equal to the amount payable as shown on the invoice; or
  - (ii) if the paying Party disputes on a bona fide basis all or part of the amount payable as shown on the invoice:
    - (A) pay by the due date the amount not in dispute and 50% of the amount in dispute; and
    - (B) give notice in writing to the other Party that it disputes the amount payable as shown on the invoice and a detailed statement as to the reasons for disputing the amount payable.

## **5.3 Method of payment**

A Party must pay any amounts payable to another Party in accordance with this agreement in Australian currency by:

- (a) direct deposit into an account nominated by the invoicing Party for that purpose; or
- (b) such other method as the invoicing Party may reasonably require from time to time.

## **5.4 Disputing payments**

- (a) If a Party has paid the amounts and given a notice in accordance with **clause 5.2(b)(ii)** then, unless the Parties resolve the dispute in

accordance with **clause 19.2**, the dispute must be referred for determination by an Expert under **clause 19.3**.

- (b) Upon resolution of any dispute between the Parties about the calculation of an amount payable as shown on an invoice, if the amount payable as agreed by the Parties or determined by an Expert or a court is more or less than the amount that was paid, then the difference must be paid or refunded by the relevant Party to the other Party within five Business Days after the resolution of the dispute together with interest on that amount calculated in accordance with **clause 5.5** (provided that for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount in dispute would have been due and payable but for the dispute).

## **5.5 Interest on overdue payments**

- (a) If any amount which a Party is required to pay to another Party under this agreement is not paid on or before the due date for payment, interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (b) Interest will be calculated at the Interest Rate and must be paid monthly. Any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.

## **5.6 Adjustments**

- (a) If any change, escalation or variation in the Access Charges is backdated, or otherwise relates, to a date on or before the date on which particular Train Services were operated in accordance with this agreement, then the Access Charges paid or payable in respect of those Train Services must be adjusted by Queensland Rail and the Operator to pass through that change, escalation or variation.
- (b) After taking account of the adjustment referred to under **clause 5.6(a)**:
  - (i) if there has been an under-recovery of Access Charges by Queensland Rail, then the Operator must pay the amount of that under-recovery to Queensland Rail; and
  - (ii) if there has been an over-recovery of Access Charges by Queensland Rail, then Queensland Rail must refund the amount of that over-recovery to the Operator.
- (c) For clarity, if Queensland Rail has issued an invoice for Train Services but the Operator has not yet paid that invoice, then Queensland Rail may issue a replacement or additional invoice for the purposes of giving effect to **clauses 5.6(a)** and **(b)**.
- (d) Any adjustment of an Access Charge in accordance with this **clause 5.6** will include interest calculated in accordance with **clause 5.5** as though the adjustment was due and payable on the date when the original invoice for the Access Charge to which the adjustment relates was due and payable.

- (e) This **clause 5.6** does not apply in relation to an Adjustment Charge (as defined in the Access Undertaking) which is incorporated in any Access Charge in accordance with **schedule 3** and the Access Undertaking.

## **5.7 Interim take or pay notices**

- (a) Queensland Rail may, from time to time, give the Operator a statement of the accrued Take or Pay Charge liability in respect of a particular period. If such a statement is given, Queensland Rail and the Operator will meet, or otherwise discuss that statement, in good faith to seek to agree the accrued Take or Pay Charge liability in respect of that period.
- (b) Queensland Rail may, from time to time, give the Operator a notice under this **clause 5.7(b)** that states the accrued Take or Pay Charge liability in respect of a particular period (**Interim Take or Pay Notice**).
- (c) An Interim Take or Pay Notice is taken to be conclusive evidence of the accrued Take or Pay Charge liability in respect of the relevant period, subject to the resolution of any dispute raised by the Operator in respect of that Interim Take or Pay Notice.
- (d) If the Operator wishes to dispute any matter set out in an Interim Take or Pay Notice, then any Dispute Notice to be given by the Operator under **clause 19** must be given within ten Business Days (or such longer period as agreed by Queensland Rail) after the relevant Interim Take or Pay Notice was given to the Operator. Where the Operator does not give a Dispute Notice within that time period, the Operator is taken to agree that the matters in the relevant Interim Take or Pay Notice are correct.
- (e) Where an Interim Take or Pay Notice is disputed under **clause 5.7(d)** and that dispute has been finally resolved in a way that requires amendments to that Interim Take or Pay Notice, then Queensland Rail will give the Operator an amended Interim Take or Pay Notice (to replace the original Interim Take or Pay Notice) that is consistent with the resolution of the dispute.
- (f) Where two or more Interim Take or Pay Notices relate in whole or part to the same period:
  - (i) if there is any inconsistency between those Interim Take or Pay Notices in respect of that period, then the most recent Interim Take or Pay Notice prevails to the extent of that inconsistency; and
  - (ii) if there is no inconsistency between those Interim Take or Pay Notices in respect of that period, then the Operator has no right to dispute the accrued Take or Pay Charge liability for that period under any of those Interim Take or Pay Notices except to the extent that the Operator still has a right to dispute the earliest of those Interim Take or Pay Notices under **clause 5.7(d)** (including where the Operator has already commenced such a dispute).

- (g) Despite any other provision in this agreement to the contrary and without limitation to **clause 5.7(d)**, the Operator has no right to, and must not, dispute the calculation of a Take or Pay Charge in respect of a Year to the extent that the Take or Pay Charge has been calculated in a manner consistent with the relevant Interim Take or Pay Notices relating to that Year.

## **6 Network management**

### **6.1 Maintenance**

- (a) Queensland Rail will maintain the Network in a condition such that the Operator can operate Train Services in accordance with this agreement.
- (b) Nothing in this agreement obliges Queensland Rail to fund or construct any Extension.
- (c) Queensland Rail reserves the right to permit third parties to carry out Third Party Works on, under or over the land on which the Network is located. Queensland Rail has no liability to any other Party nor will any other Party make a Claim against Queensland Rail for any costs, expenses, losses or damages incurred by that other Party in relation to or as a consequence of Third Party Works.

### **6.2 Network Control**

- (a) Queensland Rail will provide, and has exclusive responsibility for, Network Control in respect of the Network.
- (b) Queensland Rail may exercise Network Control by issuing Network Control Directions to the Operator and the Operator's Associates.
- (c) In exercising Network Control, Queensland Rail may:
  - (i) delay, alter, add, cancel, re-route or re-schedule a Train Service; and
  - (ii) alter the Scheduled Times for Train Services in the Train Schedule.
- (d) The Operator must:
  - (i) comply with Network Control Directions;
  - (ii) ensure that:
    - (A) Train drivers are contactable by the Network Controller to receive Network Control Directions using communications systems which comply with the Operating Requirements Manual; and
    - (B) all of the Operator's Trains are equipped with means of communication to permit the Operator's Associates to comply with this agreement;

- (iii) notify the Network Controller as soon as the Operator becomes aware that it is not possible for the Operator (or the Operator's Associates) to comply with a Network Control Direction or the Operator (or the Operator's Associates) has not complied with a Network Control Direction; and
  - (iv) notify the Network Controller as soon as the Operator becomes aware of any changes or delays in Train Services or any circumstances which have affected or may affect Network Control including the ability of any Train Service to conform to its Scheduled Times.
- (e) Without limitation to **clause 6.2(c)** and despite any other provision of this agreement, Queensland Rail may treat other train services preferentially to the Train Services for the purpose of seeking to:
- (i) bring a passenger train service back to its scheduled running time;
  - (ii) minimise any delay experienced by a passenger train service; or
  - (iii) avoid a passenger train service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan Network during any Peak Period becoming delayed.

### 6.3 Compliance

Queensland Rail must observe and comply with:

- (a) all applicable Laws and Authorisations including Queensland Rail's Accreditation, to the extent that the Laws and Authorisations relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;
- (b) the lawful requirements of relevant Authorities, to the extent that those requirements relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;
- (c) this agreement;
- (d) the IRMP including any safety standards identified in the IRMP as applicable to Queensland Rail;
- (e) the Network Management Principles;
- (f) the Operating Requirements Manual; and
- (g) the Access Undertaking, to the extent that the Access Undertaking relates to Queensland Rail's performance of its obligations or exercise of its rights under this agreement,

and, where observance or compliance with the matters in **paragraphs (a) to (g)** cannot occur because of an inconsistency between those matters, then:

- (h) for the purpose of observance and compliance those matters must be prioritised in the above order (with a matter earlier in the list having a



higher priority for observance and compliance to a matter later in the list);  
and

- (i) Queensland Rail's obligation under this **clause 6.3** is to observe and comply with those matters in that order of priority,

to the extent of the inconsistency.

## **7 Train operations**

### **7.1 Operation of Train Services**

The Operator must only operate Train Services in accordance with this agreement (including the Train Service Description and any Network Control Directions) unless the Operator has obtained the prior written approval of Queensland Rail (for example, an authority to travel) including any terms and conditions of that approval in addition to or varying this agreement in respect of those Train Services (including in respect of the Access Charges applicable) and complies with that approval and those terms and conditions in operating the Train Services.

### **7.2 Additional Train Services**

If the Operator notifies Queensland Rail that it wishes to operate an Additional Train Service, then:

- (a) Queensland Rail must use reasonable endeavours to schedule the Additional Train Service in accordance with the Network Management Principles; and
- (b) on and from the Additional Train Service being scheduled in the relevant Daily Train Plan (as defined under the Access Undertaking), the Additional Train Service will be treated as though it was a Train Service for the purpose of this agreement including in relation to the payment of Access Charges.

### **7.3 Compliance**

- (a) The Operator must observe and comply with:
  - (i) all applicable Laws and Authorisations including the Operator's Accreditation and the Operator's Emergency Management Plan, to the extent that the Laws and Authorisations relate to the Operator's performance of its obligations or exercise of its rights under this agreement;
  - (ii) the lawful requirements of relevant Authorities, to the extent that those requirements relate to the Operator's performance of its obligations or exercise of its rights under this agreement;
  - (iii) this agreement;
  - (iv) the IRMP including any safety standards identified in the IRMP as applicable to the Operator;
  - (v) the Network Management Principles;

- (vi) the Operating Requirements Manual;
- (vii) all Network Control Directions;
- (viii) the relevant requirements of:
  - (A) any Authorisation; and
  - (B) any other consent, approval, lease, licence or other authority,

held by or applying to Queensland Rail, or to which Queensland Rail is a party, from time to time in relation to the Network, other relevant facilities (if any) or land to which the Operator is provided access by Queensland Rail in accordance with this agreement (provided Queensland Rail has notified the Operator of those relevant requirements); and

- (ix) the Access Undertaking, to the extent that the Access Undertaking relates to the Operator's performance of its obligations or exercise of its rights under this agreement,

and, where observance or compliance with the matters in **paragraphs (i) to (ix)** cannot occur because of an inconsistency between those matters, then:

- (x) for the purpose of observance and compliance those matters must be prioritised in the above order (with a matter earlier in the list having a high priority for observance and compliance to a matter later in the list); and
- (xi) the Operator's obligation under this **clause 7.3(a)** is to observe and comply with those matters in that order of priority,

to the extent of the inconsistency.

- (b) Without limitation to **clause 7.3(a)**, the Operator must:

- (i) not access or be upon the Network (or the land on which the Network is located) for any purpose other than to exercise its rights and to comply with its obligations in accordance with this agreement;
- (ii) at all times act in accordance with Prudent Practices;
- (iii) do everything necessary in accordance with Prudent Practices to avoid causing or contributing to any nuisance, annoyance or disturbance to Queensland Rail or the occupiers or users of the Network, or land adjacent to the Network;
- (iv) not do or omit to do anything that would cause or contribute to the Network (or the land on which the Network is located) not being clean, presentable, well maintained and in good repair, appearance and condition;

- (v) not cause or allow any rubbish, debris, freight, substance or thing<sup>1</sup> to be deposited or released on or about the Network (or the land on which the Network is located) except as expressly required by the Operating Requirements Manual or any Network Control Directions;
- (vi) obtain and maintain all necessary Authorisations required for the Operator to exercise the Operator's rights or comply with the Operator's obligations under this agreement;
- (vii) not interfere with, hinder or prejudice:
  - (A) Queensland Rail's conduct of its operations;
  - (B) Queensland Rail's or any other Network Participant's use of the Network; or
  - (C) the functions and obligations of Queensland Rail as a Railway Manager (including under Queensland Rail's Accreditation);
- (viii) not:
  - (A) cause, permit or contribute to any act or omission that may result in Queensland Rail:
    - (1) failing to comply with any Law; or
    - (2) incurring (for clarity, directly or indirectly) any costs or expenses in complying with any Law that Queensland Rail would not otherwise have incurred; or
  - (B) fail to promptly comply with a direction given by Queensland Rail for the purpose of Queensland Rail's compliance with any Law relating to the Network, Queensland Rail's Rail Infrastructure Operations or this agreement (including the Train Services).
- (ix) ensure that its Rolling Stock operate safely, and otherwise be responsible for the operation of its Rolling Stock, on the Network (including ensuring that its Rolling Stock are accompanied at all times while on the Network by a member of the Operator's Associates who has authority to manage, and to keep secure, that Rolling Stock and anything on, or being transported by, that Rolling Stock); and

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<sup>1</sup> But excluding exhaust gases and other substances required to be released in accordance with Prudent Practices for the purposes of operating the Operator's Rolling Stock.

- (x) without limitation to **clause 7.3(b)(ix)**, ensure that the operation of its Rolling Stock (including the loading, unloading and cleaning of its Rolling Stock) is undertaken in a manner that:
  - (A) does not affect:
    - (1) the safe operation of the Rolling Stock or the Network;  
or
    - (2) the operations or activities of Queensland Rail or other Network Participants; and
  - (B) ensures that all things on or in the Operator's Rolling Stock remain on or in the Operator's Rolling Stock (and, if applicable, are secured in position) during transit.
- (c) Where the Operator fails to comply with **clause 7.3(b)(v)**, Queensland Rail may remove and dispose of the relevant rubbish, debris, freight, substance or thing and the Operator must pay Queensland Rail's costs and expenses incurred by Queensland Rail in doing so and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail.
- (d) The Operator must notify Queensland Rail of any failure, or likely failure, by the Operator to comply with this agreement as soon as practicable after the Operator becomes aware of that failure or likely failure.

#### **7.4 Compliance before commencing to operate a Train Service**

- (a) Without limiting any other provisions of this agreement, the Operator must only commence operating Train Services under this agreement if in respect of those Train Services:
  - (i) the Operator has provided all Security as required in accordance with **clause 17**;
  - (ii) an IRMP has been agreed, determined or reviewed in relation to those Train Services in accordance with **clause 9** (except to the extent that **clauses 9.1** to **9.2** do not apply in accordance with **clause 9.3(c)**);
  - (iii) the Operator has done all things necessary in relation to the Operator's Emergency Management Plan to comply with **clause 10.1**;
  - (iv) the Operator has effected all Insurances in accordance with **clause 16** and provided evidence of those Insurances to Queensland Rail in accordance with **clause 16.6(a)**;
  - (v) the Operator holds the Accreditation necessary for it to operate the Train Services and has provided to Queensland Rail all things relating to that Accreditation in accordance with **clause 4(b)(ii)**;
  - (vi) the Operator has observed, complied with or implemented, all aspects of the Operator's Emergency Response Plan, the

- Operator's Accreditation and the IRMP that are required to be complied with prior to Train Services commencing;
- (vii) the Operator has satisfied the requirements in **clause 7.9** which relate to the authorisation of Rolling Stock and Train Configurations; and
  - (viii) the Operator has done all things that are necessary, and which can reasonably be done prior to operating the Train Services, to ensure the Operator's compliance with this agreement including the IRMP.
- (b) Queensland Rail must use reasonable endeavours to cooperate with the Operator to facilitate the Operator's compliance with **clause 7.4(a)**.
  - (c) If the Operator has not complied with **clause 7.4(a)** for the relevant Train Services:
    - (i) by the Compliance Date and Queensland Rail does not reasonably expect that the Operator can do so before the Commitment Date for those Train Services; or
    - (ii) by the Commitment Date for those Train Services,
 then:
    - (iii) provided that Queensland Rail has complied with **clause 7.4(b)**, Queensland Rail may notify the Operator requiring the Operator to comply with **clause 7.4(a)** in respect of those Train Services by a date which is 20 Business Days after the date of that notice; and
    - (iv) where the Operator does not comply with **clause 7.4(a)** by that date (**Failure**), Queensland Rail may, by notice to the Operator:
      - (A) terminate the Operator's Access Rights under this agreement in relation to the relevant Train Services relating to the Failure, but that termination will not affect any Access Rights (if any) under this agreement relating to other Train Services; or
      - (B) where a termination referred to under **clause 7.4(c)(iv)(A)** would result in there being no Train Services under this agreement, terminate this agreement.

## 7.5 Compliance with Scheduled Time

The Operator must only operate Train Services in accordance with the applicable Scheduled Times and the relevant Train Schedule unless:

- (a) the Operator is expressly permitted or required to do otherwise in accordance with this agreement, the Operating Requirements Manual, the Network Management Principles or a Network Control Direction; or
- (b) the Parties agree otherwise.

## 7.6 Alterations to Train Services

- (a) If the Operator is not able to operate a Train Service in accordance with its Scheduled Time, then:
  - (i) the Operator must, as soon as practicable prior to the time when that Train Service was scheduled for operation, notify Queensland Rail that it is not able to operate that Train Service and the reason for its inability; and
  - (ii) if the Operator has complied with **clause 7.6(a)(i)**, then Queensland Rail will use reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service unless this would:
    - (A) alter the Scheduled Times for other Train Movements; or
    - (B) result in Queensland Rail incurring additional costs or expenses.
- (b) If Queensland Rail provides an alternative Scheduled Time for a Train Service in accordance with **clause 7.6(a)(ii)**, the Operator must notify Queensland Rail immediately whether the Operator accepts that alternative Scheduled Time. If the Operator accepts that alternative Scheduled Time, then the Operator must operate the Train Service in accordance with that alternative Scheduled Time. For clarity, **clause 7.6(a)(ii)** does not apply to that alternative Scheduled Time.
- (c) If the Operator is not able to operate a Train Service in accordance with its Scheduled Time or an alternative Scheduled Time made available in accordance with **clause 7.6(a)(ii)** (or has not immediately notified Queensland Rail accepting such an alternative Scheduled Time), Queensland Rail may authorise the operation of another Train Movement at that Scheduled Time.

## 7.7 Operator to supply information

- (a) The Operator must provide and maintain all software, hardware and associated communication links necessary to ensure, to Queensland Rail's satisfaction, an effective interface between the Operator's and Queensland Rail's information systems as nominated by Queensland Rail. The interface with Queensland Rail's information systems will be subject to any requirements and controls specified by Queensland Rail (in its absolute discretion) including to protect the integrity and confidentiality of those information systems and the information contained in them.
- (b) The Operator must provide information to Queensland Rail as required in accordance with the Operating Requirements Manual (including any details in relation to Train Services or contact and other details for interface coordination).

## 7.8 Queensland Rail may supply Data

- (a) The Parties acknowledge that Queensland Rail may from time to time collect data in respect of the Operator's Rolling Stock (**Data**).
- (b) Queensland Rail may from time to time, in its absolute discretion, provide the Operator with access to the Data. The Operator will be responsible for all costs related to the transfer, conversion, modification and storage of any Data made available to the Operator by Queensland Rail.
- (c) Despite any other provision in this agreement, if the Operator receives any data from Queensland Rail that is not in respect of the Operator's Rolling Stock, then the Operator must:
  - (i) immediately notify Queensland Rail, providing details of the relevant data;
  - (ii) not use the data for any purpose;
  - (iii) not disclose the data to any person; and
  - (iv) comply with all directions given by Queensland Rail in relation to that data including the deletion, redirection or return of that data.
- (d) Any intellectual property rights in relation to the Operator's business or Train Services that are discovered or developed, or otherwise come into existence, in connection with the Data are assigned to and vest in Queensland Rail or its nominee on creation.
- (e) The Operator must undertake its own due diligence and investigations in relation to any Data made available by Queensland Rail under this **clause 7.8**. Queensland Rail does not represent or warrant the accuracy or completeness or the standard of care taken in the collection of Data. The Operator acknowledges that Queensland Rail does not owe it any duty of care and that it must independently satisfy itself (without reliance on Queensland Rail) as to the accuracy, completeness or veracity of the Data which Queensland Rail makes available to it.

## 7.9 Authorisation of Rolling Stock and Train Configurations

- (a) The Operator must only operate a Train Service using Rolling Stock or a Train Configuration in respect of which the Operator has:
  - (i) provided to Queensland Rail:
    - (A) a certificate by a suitably qualified person, approved by Queensland Rail and appointed by and at the cost of the Operator, that the Operator's Rolling Stock and Train Configurations comply with the IRMP; and
    - (B) relevant documentation (including reports on trials and/or commissioning tests) demonstrating to the satisfaction of Queensland Rail that the Operator's Rolling Stock and Train Configurations comply with the IRMP, **(Certification)**; and

- (ii) obtained from Queensland Rail a notice indicating that Queensland Rail is satisfied with that Certification for the purposes of those Train Services.

If the Operator obtains a notice referred to in **paragraph (ii)** that is subject to conditions (including conditions relating to the period for which that notice will apply), then the Operator must comply with those conditions and must only operate a Train Service in accordance with those conditions and while that notice applies.

- (b) During the Term, if the Operator wishes to modify any of the Rolling Stock or Train Configurations used for Train Services, then the Operator must not use any such Rolling Stock or Train Configurations unless and until:
  - (i) the IRMP has been reviewed in accordance with **clause 9.2** in relation the modified Rolling Stock or Train Configurations;
  - (ii) the Operator has complied with **clause 7.9(a)** in relation to the modified Rolling Stock or Train Configurations, as applicable; and
  - (iii) the Parties have agreed any amendments to this agreement (including varying the methodology, rates or other inputs for calculating Access Charges) reasonably necessary to reflect the authorisation and use of the modified Rolling Stock or Train Configurations on the Network.

## **7.10 Entering and exiting the Network**

- (a) The Operator is solely responsible for, and bears the cost and risk of, obtaining and maintaining any rights to access or use Private Infrastructure that are necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with this agreement.
- (b) Despite any other provision in this agreement, the Operator is not relieved of any obligations under this agreement (and must continue to comply with all of its obligations under this agreement) even if the Operator cannot or does not obtain or maintain any such rights.

## **7.11 Notification of damage or disrepair**

The Operator must notify Queensland Rail as soon as practicable of any damage to, disrepair of or failure in the operation or function of any part of the Network of which the Operator becomes aware.

# **8 Operating Requirements Manual**

## **8.1 Amendments for safety matters and Material Changes**

- (a) Queensland Rail may amend the Operating Requirements Manual from time to time:
  - (i) in relation to safety matters or a Material Change;
  - (ii) to correct typographic or other minor errors; or



- (iii) to update references to, or details for, persons or positions, in accordance with this **clause 8.1**.
- (b) If amendments to the Operating Requirements Manual only partially relate to safety matters or a Material Change, then those amendments that do relate to safety matters or a Material Change are made under this **clause 8.1**.
- (c) For the purpose of this **clause 8.1**, amendments are in relation to a safety matter even though that safety matter arises because of another matter that is not a safety matter – including for example, a change to the capability of the Network or to the way the Network operates to improve the Network’s efficiency.
- (d) Where Queensland Rail amends the Operating Requirements Manual under this **clause 8.1**, it must notify the Operator of the amendments made including the date on which those amendments take effect.
- (e) Except where Queensland Rail requires immediate or urgent compliance for safety reasons or to comply with any Law, the date specified in a notice under **clause 8.1(d)** must be set so as to allow a reasonable period as determined by Queensland Rail (being no less than ten Business Days where the amendment relates to a safety matter or a Material Change) for the Operator to amend its processes, procedures and plans to comply with the amended Operating Requirements Manual.
- (f) Where Queensland Rail amends the Operating Requirements Manual in accordance with this **clause 8.1**, the Operator must bear its own costs of complying with and otherwise implementing the amendments (including the equipping of Rolling Stock with new or additional equipment or making any other modification to Rolling Stock).

## **8.2 Amendments for matters where clause 8.1 does not apply**

- (a) Where **clause 8.1** does not apply in respect of proposed amendments to the Operating Requirements Manual, Queensland Rail may make those amendments from time to time subject to this **clause 8.2** and **clause 8.3**.
- (b) If, where this **clause 8.2** applies, Queensland Rail considers that a proposed amendment to the Operating Requirements Manual may directly affect the Operator, then Queensland Rail must not make that proposed amendment before notifying the Operator of the proposed amendment and giving the Operator a reasonable period to make submissions on the proposed amendment to Queensland Rail.
- (c) A notice given by Queensland Rail under **clause 8.2(b)** must include details of:
  - (i) the proposed amendment (including the proposed date on which the amendment is to take effect); and
  - (ii) the date by which the Operator may make submissions to Queensland Rail in respect of the proposed amendment.

- (d) Without limiting Queensland Rail's considerations when deciding whether to proceed with any proposed amendment, Queensland Rail must consider any submissions from the Operator.
- (e) Queensland Rail may elect not to proceed with proposed amendments at any time including following a determination by an Expert as referred to in **clause 8.3(d)**.
- (f) If Queensland Rail amends the Operating Requirements Manual it must notify the Operator of the amendments made including, subject to **clause 8.2(g)**, the date on which those amendments take effect.
- (g) Except where Queensland Rail requires immediate or urgent compliance for safety reasons or to comply with any Law, the date specified in a notice under **clause 8.2(f)** must be set so as to allow a reasonable period as determined by Queensland Rail (being no less than ten Business Days) for the Operator to amend its processes, procedures and plans to comply with the amended Operating Requirements Manual.
- (h) Subject to **clause 8.3**, where Queensland Rail amends the Operating Requirements Manual in accordance with this **clause 8.2** the Operator must bear its own costs of complying with and otherwise implementing the amendments (including the equipping of Rolling Stock with new or additional equipment or making any other modification to Rolling Stock).

### **8.3 Compensation**

- (a) This **clause 8.3** only applies:
  - (i) to the extent that the Access Rights under this agreement are within the scope of the Access Undertaking; and
  - (ii) where Queensland Rail's proposed amendments to the Operating Requirements Manual are made under **clause 8.2** (and not **clause 8.1**) in respect of:
    - (A) (**possession protocols**) Queensland Rail's protocols from time to time for managing and scheduling track possessions for the Network (but, for clarity, excluding the Network Management Principles);
    - (B) (**interface coordination**) Queensland Rail's procedures and requirements in respect of the day-to-day operational interactions and exchange of information between Queensland Rail and Network Participants associated with the operation of Trains on the Network including for Network Control, the operation of Trains and entering and exiting all or part of the Network;
    - (C) (**interface standards**) Queensland Rail's minimum requirements or standards relating to the interface between a Train and the Network (including to maintain agreed operating parameters – for example, axle load) with which

the applicable Rolling Stock and Train Configurations must comply in order to operate on the Network; or

- (D) **(emergency and investigation procedures)** the Queensland Rail Emergency Procedures or Queensland Rail's procedures and requirements for the investigation of and response to Network Incidents.

(b) Where the Operator has given a written submission to Queensland Rail in respect of the proposed amendments that:

- (i) expressly states that implementing the proposed amendment would directly result in the Operator suffering an average annual net cost over the remaining term of this agreement in connection with its exercise of rights and compliance with obligations under this agreement that is equivalent to 1% or more of the annual Access Charges (calculated assuming a gtk determined in accordance with **clause 5.2** of **schedule 3** and assuming that rtp equals the number of Train Services that the Operator was entitled to operate for the Year under this agreement) **(Net Material Financial Impact)**; and
- (ii) provides details specifying the anticipated Net Material Financial Impact sufficiently to allow Queensland Rail to consider and assess the anticipated Net Material Financial Impact including:
  - (A) estimates of any additional costs, savings, benefits or detriments to be obtained or suffered (or reasonably expected to be obtained or suffered) by the Operator directly as a result of implementing the proposed amendment; and
  - (B) what (if any) adjustments to the proposed amendments would result in no or a reduced Net Material Financial Impact,

then:

- (iii) the Operator represents and warrants that any estimates and other information given by it in its submission are, in all material respects, true, complete, accurate and not misleading; and
- (iv) the Operator and Queensland Rail must negotiate in good faith to seek to agree:
  - (A) whether and to what extent the Operator may reasonably be anticipated to experience a Net Material Financial Impact; and
  - (B) where a Net Material Financial Impact is anticipated, either:
    - (1) compensation to address the actual Net Material Financial Impact; or

- (2) variations to the proposed amendments to minimise, or avoid there being, a Net Material Financial Impact.
- (c) For the purpose of **clause 8.3(b)(iv)**, Queensland Rail must not be taken to have failed to act in good faith merely because it may take steps and time to coordinate negotiations with its negotiations with other Network Participants in relation to the proposed amendments.
- (d) Where Queensland Rail and the Operator do not agree the relevant matters under **clause 8.3(b)(iv)** within 20 Business Days after the date referred to in **clause 8.2(c)(ii)** (or such longer period as agreed by Queensland Rail and the Operator), Queensland Rail may refer the matter of whether there is a Net Material Financial Impact and the compensation (but not any variations to the proposed amendments) to an Expert for determination in accordance with **clause 19.3**.
- (e) For the purpose of **clause 8.3(d)**, an Expert may (if requested by either or both of Queensland Rail and the Operator):
- (i) first make a determination in relation to the existence or extent of any Net Material Financial Impact; and
  - (ii) defer making a determination on the compensation for a specified period of time (determined by the Expert) to allow Queensland Rail and the Operator the opportunity to reach agreement on the compensation taking into account that preliminary determination.
- (f) Where Queensland Rail and the Operator agree variations to the proposed amendments under **clause 8.3(b)(iv)(B)(2)** (even if compensation has not been agreed), Queensland Rail must only proceed with any varied proposed amendments to the Operating Requirements Manual by recommencing the process under **clauses 8.2 and 8.3** (as applicable) (as well as under access agreements with all other relevant Network Participants) in respect of that new proposal.
- (g) The Operator must use all reasonable endeavours to minimise the Net Material Financial Impact suffered by it as a result of any amendments to the Operating Requirements Manual (including for the purpose of considering proposed amendments).
- (h) Subject to **clause 8.2(e)**, Queensland Rail must account to the Operator in respect of the compensation (if any) agreed or determined under this **clause 8.3** only after:
- (i) Queensland Rail gives a notice under **clause 8.2(f)** making the relevant proposed amendments; and
  - (ii) implementation of the relevant proposed amendments is complete, to Queensland Rail's satisfaction (acting reasonably), including with any modifications to the Operator's systems, equipment or Rolling Stock as required by the amendments having been made.

## 8.4 Replacement of Operating Requirements Manual

- (a) Nothing in **clauses 8.1 to 8.3** restricts or limits Queensland Rail's right to amend or replace the Operating Requirements Manual through the submission of a draft access undertaking or a draft amending access undertaking to the QCA in accordance with the QCA Act.
- (b) For clarity, Queensland Rail must not be taken to have amended the Operating Requirements Manual under either **clause 8.1** or **8.2** where it submits a draft access undertaking or draft amending access undertaking to the QCA in accordance with the QCA Act amending or replacing the Operating Requirements Manual in the Access Undertaking.

## 9 Interface risk management

### 9.1 Compliance with IRMP

- (a) The Operator and Queensland Rail must observe and comply with their respective responsibilities and obligations set out in the IRMP.
- (b) The Operator must use reasonable endeavours to not cause, permit or contribute to any act or omission which may give rise to Interface Risks that are not addressed in the IRMP. If the Operator does cause, permit or contribute to any act or omission that gives rise to, or is likely to give rise to, Interface Risks that are not addressed in the IRMP, the Operator must notify Queensland Rail as soon as practicable of the act or omission (as applicable) and the relevant Interface Risk.
- (c) If either Queensland Rail or the Operator (as applicable) fails to comply with the IRMP it must notify the Operator or Queensland Rail (as applicable) of the non-compliance as and when it becomes aware of such non-compliance. The notice must include details of the nature of the non-compliance and how the non-complying Party has rectified or intends to rectify the non-compliance.

### 9.2 Review of IRMP

- (a) The Operator and Queensland Rail must:
  - (i) upon the reasonable request at any time by either of them; and
  - (ii) for any new or varied Train Services from time to time,but no less than once in any 12 month period, jointly review the IRMP, and amend it (including by replacing it) as necessary, to ensure that the Operator and Queensland Rail continue to agree that the Interface Risk Assessment is still applicable and all Interface Risks are effectively managed under the IRMP.
- (b) For the purposes of a review referred to in **clause 9.2(a)**:
  - (i) if either Queensland Rail or the Operator is not satisfied that the Interface Risk Assessment is still applicable and all Interface Risks

- are effectively managed under the IRMP, then those Parties will undertake a joint Interface Risk Assessment (including, if those Parties agree that it is appropriate, only in relation to specific matters or activities) as part of such a review; and
- (ii) if Queensland Rail and the Operator are not able to agree any matter in relation to such a review, either of those Parties may treat that inability to agree as a Dispute for the purposes of **clause 19**.
- (c) Where the IRMP identifies that training of the Operator's Associates is required and the Operator can only obtain that training from Queensland Rail, then:
- (i) Queensland Rail will provide the Operator with that training; and
  - (ii) the Operator must pay to Queensland Rail a reasonable commercial charge, as determined by Queensland Rail, for doing so.
- (d) For clarity, the Operator must not:
- (i) operate any new or varied Train Services under this agreement unless the IRMP has been reviewed in accordance with this **clause 9.2** in relation to those new or varied Train Services (as applicable); and
  - (ii) use any Rolling Stock or Train Configuration in operating a Train Service unless the IRMP has either been:
    - (A) prepared on the basis of the Train Services being operated using that Rolling Stock or Train Configuration (as applicable); or
    - (B) reviewed in accordance with this **clause 9.2** in relation to that Rolling Stock or Train Configuration (as applicable).

### **9.3 Application of TRSA**

- (a) To the extent that anything under this **clause 9** is inconsistent with the TRSA, the TRSA prevails to the extent of the inconsistency.
- (b) The IRMP and the provisions under this agreement relating to the IRMP (including in relation to compliance with it and its review):
  - (i) together comprise an interface agreement (as defined under the TRSA) between the Operator and Queensland Rail; and
  - (ii) despite any other provision to the contrary in this agreement, may be disclosed to the Rail Safety Regulator to the extent that it is reasonably necessary to do so to comply with this agreement or the TRSA or any other Law.

- (c) Without limiting **clause 9.3(a)**, to the extent that the Rail Safety Regulator has:
  - (i) decided under section 78 of the TRSA an arrangement that is to apply as between the Operator and Queensland Rail; and
  - (ii) stated that arrangement in an interface direction (as defined under the TRSA),  
**clauses 9.1 to 9.2** (including any IRMP) are subject to and must be consistent with that arrangement.

#### **9.4 Rights for Inspection or Audit**

- (a) Subject to **clause 9.4(b)**, if either the Operator or Queensland Rail has reasonable grounds to believe that the other has not complied, or is not complying, with any aspect of the IRMP or any obligation or duty under the TRSA, then that Party may conduct, or require the conduct of, an inspection or audit in respect of that compliance.
- (b) Prior to exercising a right under **clause 9.4(a)**, a Party must:
  - (i) notify the other of those Parties of that belief (including the grounds supporting that belief) and requiring that other Party to demonstrate that they are compliant; and
  - (ii) only proceed to an inspection or audit if that other Party fails to demonstrate compliance to the first Party's satisfaction (acting reasonably).
- (c) Without limiting **clause 9.4(a)**, each of Queensland Rail and the Operator may conduct or require the conduct of an inspection or audit to assess the other's compliance with the IRMP periodically as specified in the IRMP.

#### **9.5 Notice of Inspection or Audit**

The Party (**Inspecting Party**) conducting or requiring the conduct of an inspection or audit referred to in **clause 9.4 (Inspection or Audit)** must give the other Party reasonable prior notice of that Inspection or Audit (except in the case of emergencies or if an event or circumstance referred to in **clauses 14 or 15** has occurred) and that notice must include the following:

- (a) details of the Inspection or Audit to be carried out;
- (b) the name of the person conducting the Inspection or Audit;
- (c) the timing and expected duration of the Inspection or Audit;
- (d) the location of the Inspection or Audit;
- (e) the grounds on which the Inspecting Party requires the Inspection or Audit; and
- (f) the Inspecting Party's requirements (acting reasonably) of the other Party in relation to the Inspection or Audit.

## 9.6 Conduct of Inspection or Audit

- (a) Subject to **clause 9.6(b)**, any Inspection or Audit may be conducted by:
- (i) the Inspecting Party or its appointed representative; or
  - (ii) by a suitably qualified person acceptable to Queensland Rail and the Operator (each acting reasonably).
- (b) If an Inspection or Audit requires access to commercially sensitive information, then:
- (i) the Inspection or Audit must only be conducted by a person referred to in **clause 9.6(a)(ii)**; and
  - (ii) that person must:
    - (A) prior to being provided with the commercially sensitive information, execute a confidentiality deed:
      - (1) in favour of the Party who is subject to the Inspection or Audit;
      - (2) on terms satisfactory to that Party (acting reasonably); and
      - (3) that requires the person:
        - to keep that information confidential;
        - to use it only for the purpose of the Inspection or Audit;
        - to not disclose that information to the Inspecting Party or any other person (or another Party); and
        - to return (or, if applicable, destroy any copy of) that information after completion of the Inspection or Audit,subject to reasonable exceptions including except to the extent:
        - required or compelled by, or necessary to observe, administer or comply with, any Law;
        - consistent with a person's right to disclosure under any Law; and
        - necessary for the conduct of any legal proceedings (including any dispute resolution process under this agreement); and
    - (B) be given access to the commercially sensitive information, once they have executed that confidentiality deed and delivered it to the Party who it is in favour of.



- (c) Each Party must use reasonable endeavours to ensure that an Inspecting Party, its appointed representative or the person appointed to conduct an Inspection or Audit are entitled to enter and be on its land and premises (whether or not owned or leased) for the purposes of carrying out any Inspection or Audit.
- (d) An Inspecting Party, in exercising any right of Inspection or Audit, must:
  - (i) not interfere unreasonably with another Party's Trains and Rolling Stock or the Network;
  - (ii) ensure that the Inspection or Audit does not adversely affect any other Network Participant's Train services or Train Movements;
  - (iii) not cause or contribute to any damage to property or any injury or death of persons;
  - (iv) comply with the health, safety and other requirements as required by another relevant Party (acting reasonably); and
  - (v) use reasonable endeavours to minimise any disruption to the Party who is subject to the Inspection or Audit.
- (e) An Inspecting Party is not liable for:
  - (i) any delays or cancellation of Train Services; or
  - (ii) Claims suffered or incurred by or made or brought by or against another Party,

as a result of the Inspecting Party exercising its rights under this **clause 9.4** provided that the Inspecting Party complies with **clause 9.6(d)**.

## **9.7 Cooperation for Inspection or Audit**

- (a) Each Party must provide all reasonable assistance required by the Inspecting Party in conducting any Inspection or Audit, including allowing the Inspecting Party, its appointed representative or a person appointed to conduct an Inspection or Audit to discuss any relevant matter with that Party's Associates. A member of the Associates of the Party who is subject to the Inspection or Audit may be present at the Inspection or Audit.
- (b) Nothing in **clauses 9.4 to 9.7(a)**:
  - (i) obliges Queensland Rail (as a Party subject to Inspection or Audit), or entitles the Operator (as the Inspecting Party), to do anything that may adversely affect:
    - (A) the operation of Train services by another Network Participant; or
    - (B) Queensland Rail's compliance with another Network Participant's access agreement or, if applicable, the Access Undertaking; or

- (ii) obliges a Party who is subject to an Inspection or Audit, or entitles the Inspecting Party, to do anything that:
  - (A) would result in the Party who is subject to the Inspection or Audit not complying with any Law; or
  - (B) adversely affects the safe operation of the Network including the safety of any person.

## **9.8 Costs for Inspection or Audit**

- (a) For an Inspection or Audit under **clause 9.4(c)**, the Inspecting Party must bear the costs of conducting the Inspection or Audit.
- (b) For an Inspection or Audit under **clause 9.4(a)**:
  - (i) the Party whose operations are Inspected or Audited must bear the reasonable costs of the conduct of the Inspection or Audit to the extent that the stated grounds for requiring the Inspection or Audit are demonstrated to exist; or
  - (ii) the Inspecting Party must bear the costs of conducting such inspection or audit to the extent that the stated grounds for requiring the Inspection or Audit are not demonstrated to exist, as a result of the Inspection or Audit.

## **9.9 Results of Inspection or Audit and general compliance**

- (a) The Inspecting Party must provide the other Party with a copy of the report for the relevant Inspection or Audit.
- (b) An Inspection or Audit by a Party does not relieve either Party of its obligations under this agreement or at Law.

## **9.10 Cooperation for rail safety investigation**

If a rail safety officer, the rail safety regulator, a board of inquiry (as those terms are defined under the TRSA) or other Authority is undertaking an investigation, inquiry or other review in relation to a Party's compliance with its obligations or duties under the TRSA, then the Parties will provide such cooperation and assistance to each other, as is reasonable in the circumstances, in relation to that investigation, inquiry or other review.

# **10 Incident, environmental and emergency management plan requirements**

## **10.1 Operator's Emergency Management Plan**

- (a) Prior to commencing to operate any Train Services (including any new or varied Train Services) the Operator must develop a proposed Operator's Emergency Management Plan which:
  - (i) complies with the TRSA's requirements for an emergency management plan; and

- (ii) except to the extent inconsistent with those requirements:
  - (A) details procedures that are adequate to manage an Incident including all actions to be taken to prevent, minimise or mitigate any threat or danger to any person or property including:
    - (1) the matters outlined in the Operating Requirements Manual, from time to time, relevant to the management of Network Incidents – for example, safety and environment matters; and
    - (2) any matters otherwise referred to in this agreement for inclusion in such a plan;
  - (B) at all times during the Term is compatible with this agreement and the Queensland Rail Emergency Procedures and with Queensland Rail’s emergency management plan; and
  - (C) is consistent with:
    - (1) Prudent Practices, all relevant Laws and all applicable Australian or other industry standards; and
    - (2) this agreement including the Network Management Principles, the IRMP and the Operating Requirements Manual,

and obtain a notice from Queensland Rail that it has no objection to that plan.

- (b) As soon as practicable after receiving the proposed Operator’s Emergency Management Plan, Queensland Rail must either notify the Operator that it:
  - (i) has no objections; or
  - (ii) has objections (including details of those objections),
 to the proposed Operator’s Emergency Management Plan.
- (c) If Queensland Rail notifies the Operator, under **clause 10.1(b)**, that Queensland Rail has objections, then:
  - (i) the Operator must develop an amended plan in accordance with **clause 10.1(a)**; and
  - (ii) **clause 10.1(b)** and this **clause 10.1(c)** will apply in respect of that amended plan.
- (d) If the Operator intends to amend the Operator’s Emergency Management Plan, then:
  - (i) the Operator must notify Queensland Rail and provide Queensland Rail with details of the proposed amendments and the reasons for them;

- (ii) **clauses 10.1(a) to (c)** will also apply in respect of those amendments as if they were a proposed Operator's Emergency Management Plan; and
  - (iii) those amendments will not be effective unless and until the Operator has obtained a notice from Queensland Rail that it has no objection to those amendments.
- (e) The Operator must ensure procedures are in place, and are implemented, which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Management Plan and, to the extent relevant, the Queensland Rail Emergency Procedures and Queensland Rail's emergency management plan.
- (f) Without limitation to Queensland Rail's right to object to a proposed Operator's Emergency Management Plan (or an amendment to the Operator's Emergency Management Plan) under this **clause 10.1**, Queensland Rail may raise an objection if Queensland Rail considers that the proposed Operator's Emergency Management Plan (or the relevant amendment) is inconsistent with Queensland Rail's or another Network Participant's emergency management plan or would adversely affect a coordinated response to a Network Incident or other event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network.
- (g) Queensland Rail may request the Operator to coordinate and cooperate with Queensland Rail or another Network Participant to ensure that the Operator, Queensland Rail and other Network Participants have emergency management plans that are not inconsistent and allow a coordinated response to Network Incidents or other emergencies.
- (h) Without limitation to the Operator's obligations under section 82(3)(c) of the TRSA, if requested by Queensland Rail, the Operator must assist and participate in exercises with Queensland Rail and, if applicable, other Network Participants, to test the effectiveness of the emergency management plans of Queensland Rail, the Operator and, if applicable, other Network Participants including whether those emergency management plans are inconsistent and allow for a coordinated response to Network Incidents or other emergencies.
- (i) Despite **clauses 10.1(f) to (h)** or any other provision of this agreement, Queensland Rail is not obliged to ensure, and does not assume any responsibility for ensuring, that the Operator's Emergency Management Plan:
  - (i) is consistent with Queensland Rail's or any other Network Participant's emergency management plan; or
  - (ii) will allow for a coordinated response to Network Incidents or other emergencies.

- (j) For the purpose of this **clause 10.1**, a reference to an **emergency management plan** is a reference to an emergency management plan as referred to under section 82 of the TRSA and, in the case of the Operator, the Operator's Emergency Management Plan.

## **10.2 Obstructions**

- (a) The Operator must not cause or contribute to any Obstruction or permit to continue any Obstruction to the extent caused or contributed to by the Operator.
- (b) Queensland Rail may do anything that it considers necessary:
  - (i) to remove, rectify, mitigate or otherwise deal with any Obstruction; or
  - (ii) to recommence Train Movements where there is or was an Obstruction,including to move, or remove from the Network, any of the Operator's Rolling Stock (including any freight) that is causing or contributing to an Obstruction or preventing or hindering Train Movements. To the extent that an Obstruction is caused or contributed to by the Operator, the Operator must pay Queensland Rail's costs and expenses incurred by Queensland Rail in relation to that Obstruction (including costs and expenses for doing anything under this **clause 10.2(b)**) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail.
- (c) Queensland Rail will use reasonable endeavours to consult with the Operator, prior to exercising any right under **clause 10.2(b)**, where Queensland Rail intends to interfere with the Operator's Rolling Stock or any other thing for which the Operator is responsible. A failure by Queensland Rail to consult with the Operator does not affect the validity of anything done by Queensland Rail under **clause 10.2(b)**.
- (d) If Queensland Rail gives a Network Control Direction to the Operator to assist Queensland Rail to remove, rectify, mitigate or otherwise deal with an Obstruction caused or contributed to by another Network Participant (including to use any of the Operator's Rolling Stock to move, or remove from the Network, any Rolling Stock of another Network Participant), Queensland Rail will reimburse to the Operator its reasonable direct costs and expenses of providing such assistance.

## **10.3 Notification**

- (a) Queensland Rail will notify the Operator of any Network Incident (other than an Incident) that may reasonably be expected to materially adversely affect the Train Services as soon as practicable after the Network Incident comes to Queensland Rail's attention.

- (b) As soon as practicable after the Operator or the Operator's Associates become aware of:
- (i) any Incident;
  - (ii) any Environmental Harm;
  - (iii) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in:
    - (A) Environmental Harm; or
    - (B) a category A notifiable occurrence (as defined under the TRSA) or any other requirement for Queensland Rail to notify an Authority in accordance any Law;
  - (iv) any Obstruction;
  - (v) any breach or suspected breach of any safeworking procedures, safety standards or other safety requirements set out in the Operating Requirements Manual; or
  - (vi) anything which the Operator observes may cause or contribute to the occurrence of any matter referred to in **clauses 10.3(b)(i) to (v)**,

**(Notifiable Events)**, the Operator must notify Queensland Rail of that Notifiable Event (including any action or intervention taken or being taken by the Operator).

- (c) Where:
- (i) the Operator is required to give a notice under **clause 10.3(b)**; and
  - (ii) a Train Service is affected by, involved with or has caused or contributed to the relevant event,

the Operator's notice must specify the Train Service and provide details of:

- (iii) any substance or thing carried by that Train Service that could potentially cause or contribute to any:
    - (A) Environmental Harm;
    - (B) loss of, damage to or destruction of real or personal property (including property of the other Party); or
    - (C) personal injury to or death of any person; and
  - (iv) any Dangerous Goods (if any) carried by the Train Service.
- (d) Without limitation to **clauses 10.3(b)** and **(c)**, where any substance or thing referred to in **clause 10.3(c)** (including any Dangerous Goods carried by that Train Service) have escaped or been released or discharged or there is a material or imminent risk of such an escape, release or discharge, the Operator must immediately notify Queensland Rail and provide all relevant details of the release, discharge or risk

(including as requested by Queensland Rail) relevant to Queensland Rail's Rail Infrastructure Operations.

- (e) For clarity, **clauses 10.3(c)(iv) or (d)** apply without limitation to **clause 10.5**.

#### **10.4 Management and response**

- (a) If an Incident occurs:
  - (i) the Operator and Queensland Rail must coordinate and manage the response to that Incident in accordance with this agreement and the relevant requirements in the Operating Requirements Manual; and
  - (ii) an investigation into that Incident will be conducted where required, and in accordance with, the relevant provisions of the Operating Requirements Manual and the Operator and Queensland Rail must cooperate, and ensure their Associates cooperate, fully with any such investigation.

#### **10.5 Dangerous Goods**

**[Option A: Where the Train Service is not to carry Dangerous Goods:**

The Operator must ensure that the Train Services do not carry Dangerous Goods. ]

**[Option B: Where the Train Service will or may carry Dangerous Goods:**

- (a) The Operator must ensure that the Train Services do not carry Dangerous Goods, except:
  - (i) as expressly provided in this agreement; or
  - (ii) with the prior permission of Queensland Rail given in accordance with this agreement.
- (b) If the Operator wishes to obtain Queensland Rail's permission to carry any Dangerous Goods, the Operator must first satisfy Queensland Rail (acting reasonably) that:
  - (i) carrying the relevant Dangerous Goods in the manner proposed by the Operator is permitted under all relevant Laws and Authorities and any applicable Dangerous Goods Code;
  - (ii) any Authorisations required under any applicable Law or Dangerous Goods Code have been, or will be, obtained and maintained and are, or will be, available for inspection by Queensland Rail if requested; and
  - (iii) all Laws, including Authorisations, applicable in relation to those Dangerous Goods and all requirements of any applicable Dangerous Goods Code are, or will be, complied with.

- (c) Unless otherwise expressly provided in this agreement, where either **clause 10.5(a)(i)** or **(ii)** are satisfied and the relevant Train Service will carry Dangerous Goods, the Operator must ensure that:
- (i) any Authorisations required under any applicable Law or the applicable Dangerous Goods Code have been obtained prior to the operation of that Train Service and are available for inspection by, or for copies to be provided to, Queensland Rail if requested;
  - (ii) all Laws, including Authorisations, applicable in relation to those Dangerous Goods and all requirements of any applicable Dangerous Goods Code are complied with;
  - (iii) Queensland Rail is notified of the details of the Dangerous Goods (including an accurate description of the Dangerous Goods and the applicable Dangerous Goods United Nations (UN) Number) as soon as practicable prior to the operation of that Train Service; and
  - (iv) before any Dangerous Goods are carried on that Train Service, the Operator's Emergency Management Plan includes procedures for responding to an Incident involving those Dangerous Goods, or any other event or circumstance that gives rise to a material or imminent risk of an escape, release or discharge of those Dangerous Goods.]

## **10.6 Intervention to prevent or mitigate damage**

Where Queensland Rail becomes aware of:

- (a) any event, circumstance, condition, operation, activity or omission in connection with the Network, the Train Services or any other related activity of the Operator which has caused or contributed to or is likely to cause or contribute to:
- (i) any Environmental Harm;
  - (ii) any failure by Queensland Rail to comply with or observe any Law;
  - (iii) Queensland Rail being subject to a lawful direction, order or other requirement by any Authority;
  - (iv) any loss of, damage to or destruction of real or personal property (including property of the other Party); or
  - (v) any personal injury to or death of any person; and
- (b) Queensland Rail:
- (i) considers that action or intervention is required; or
  - (ii) is given a direction by an Authority that action or intervention is required,

to prevent, mitigate or remedy the matter referred to in **clause 10.6(a)**,

then:



- (c) Queensland Rail may notify the Operator of that requirement and, where practicable, any action or intervention that Queensland Rail or, if applicable, the relevant Authority considers necessary to prevent, mitigate or remedy the matter referred to in **clause 10.6(a)**; and
- (d) as soon as practicable after receiving such a notice, the Operator will:
  - (i) comply with the requirements of the applicable Authority and any other requirements specified by Queensland Rail in that notice; and
  - (ii) take whatever other action or intervention is required to prevent, mitigate or remedy the matter referred to in **clause 10.6(a)**.

## 10.7 Noise mitigation

- (a) In addition to any noise mitigation or management requirements under the IRMP, the Operator must pay to Queensland Rail a contribution, as determined by Queensland Rail (acting reasonably), to the costs and expenses incurred by Queensland Rail in relation to any noise mitigation or management measures on the Network, or land adjacent to the Network, that are considered necessary by Queensland Rail (acting reasonably) to comply with noise levels, limits, standards, guidelines or other requirements that Queensland Rail is required to comply with or observe under any applicable Law (**Noise Mitigation Requirements**).
- (b) Queensland Rail will (acting reasonably):
  - (i) consult with the Operator prior to Queensland Rail electing to implement noise mitigation or management measures on the Network, or land adjacent to the Network, to comply with any applicable Noise Mitigation Requirements from time to time; and
  - (ii) notify the Operator of how it will determine the Operator's contribution to its costs and expenses in relation to any noise mitigation or management measures.

## 11 Inspection of Trains and Rolling Stock

- (a) Where:
    - (i) Queensland Rail believes (acting reasonably) that the Operator's Rolling Stock or Train Configurations do not comply with:
      - (A) the authorised Rolling Stock and Train Configurations applicable to the Train Services;
      - (B) any applicable Laws relevant to the Train Services; and
    - (ii) Queensland Rail cannot otherwise reasonably confirm that compliance,
- Queensland Rail may:

- (iii) notify the Operator of its belief (including the grounds supporting that belief) and require the Operator to demonstrate that the Rolling Stock or Train Configurations are compliant; and
- (iv) where the Operator fails to demonstrate compliance:
  - (A) inspect any Trains or Rolling Stock utilised or intended to be utilised for the Train Services; or
  - (B) require the Operator to have an inspection conducted, after giving notice of that inspection or requirement to the Operator and for this purpose Queensland Rail or Queensland Rail's Associates will be entitled at any time to enter and ride on the Operator's Trains or Rolling Stock.
- (b) Queensland Rail may require any of the Operator's Rolling Stock (either loaded or empty) to be available at such location on the Network as Queensland Rail may require (acting reasonably) for weighing, measuring or other inspection at any time specified by Queensland Rail (acting reasonably), provided that Queensland Rail must endeavour to minimise any diversion or delay to a Train Service.
- (c) If any of the Operator's Rolling Stock is reasonably considered by Queensland Rail to be loaded:
  - (i) in excess of its rated carrying capacity; or
  - (ii) in an unsafe or insecure manner,
 then Queensland Rail may:
  - (iii) at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Operator's expense; or
  - (iv) where the Operator fails to immediately remove the excess or adjust the load, arrange for its removal or adjustment and Queensland Rail's costs and expenses of doing so will be a debt due and owing by the Operator to Queensland Rail.
- (d) The Operator must provide all reasonable assistance required by Queensland Rail in conducting any inspection, including allowing Queensland Rail, its appointed representative or a person appointed to conduct an inspection to discuss any relevant matter with the Operator's Associates. A member of the Operator's Associates may be present at the inspection.
- (e) Nothing in this **clause 11** obliges the Operator, or entitles Queensland Rail, to do anything that would result in the Operator not complying with any Law.
- (f) The Operator must bear the reasonable costs of the conduct of the inspection to the extent that the inspection demonstrates that a relevant non-compliance exists.

- (g) Queensland Rail must bear the costs of conducting the inspection to the extent that the inspection demonstrates that no relevant non-compliance exists.
- (h) An inspection by Queensland Rail under this **clause 11** does not relieve the Operator of its obligations under this agreement or at Law.

## 12 Risk and indemnities

### 12.1 Indemnities for personal injury and property damage

- (a) Subject to **clause 13** (and without limitation to **clause 12.2**), the Operator indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:
  - (i) any loss of, damage to or destruction of real or personal property (including property of any Party); or
  - (ii) personal injury to or death of any person,in each case to the extent caused or contributed to by:
  - (iii) a breach of this agreement by the Operator; or
  - (iv) any negligent act or omission of the Operator or the Operator's Associates in the performance of obligations, in the exercise of rights or otherwise in connection with this agreement.
- (b) Subject to **clause 13** (and without limitation to **clause 12.2**), Queensland Rail indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:
  - (i) any loss of, damage to or destruction of real or personal property (including property of any Party); or
  - (ii) personal injury to or death of any person,in each case to the extent caused or contributed to by:
  - (iii) a breach of this agreement by Queensland Rail; or
  - (iv) any negligent act or omission of Queensland Rail or Queensland Rail's Associates in the performance of obligations, in the exercise of rights or otherwise in connection with this agreement.

- (c) Where the Operator's Customer is a Party, and subject to **clause 13**, the Operator's Customer indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:
  - (i) any loss of, damage to or destruction of real or personal property (including property of any Party); or
  - (ii) personal injury to or death of any person,in each case to the extent caused or contributed to by:
  - (iii) a breach of this agreement by the Operator's Customer; or
  - (iv) any negligent act or omission of the Operator's Customer or the Operator's Customer's Associates in the performance of obligations, in the exercise of rights or otherwise in connection with this agreement.

## **12.2 Operator's carriage indemnity**

- (a) This **clause 12.2** only applies where the Operator's Customer is not a Party.
- (b) The Parties acknowledge and agree that if the Operator's Customer were a Party, then **clause 13** should and would apply as if a reference to the Operator in **clause 13** included a reference to the Operator's Customer with the effect of limiting and excluding Claims and liability for Losses as between the Operator's Customer and Queensland Rail – for example, excluding Claims by the Operator's Customer against Queensland Rail for Consequential Loss.
- (c) As there is no contract between Queensland Rail and the Operator's Customer addressing the matters referred to under **clause 12.2(b)**, the Operator indemnifies and will keep indemnified Queensland Rail and its Associates from all Claims by the Operator's Customer (including any Loss arising out of Claims) in a way that gives effect to **clause 13** as if **clause 13** did apply as between Queensland Rail and the Operator's Customer (with any reference to the Operator in **clause 13** being a reference to the Operator's Customer). For example, if the Operator's Customer is not a Party and commences a Claim against Queensland Rail for Consequential Loss, then the Operator will indemnify Queensland Rail for that Consequential Loss.
- (d) For clarity, the indemnity in **clause 12.2(c)** applies in relation to Claims by the Operator's Customer whether or not caused, or contributed to, by any act or omission (including negligence) of Queensland Rail or its Associates.
- (e) The Operator is responsible for all conduct of the Operator's Customer relating to this agreement (including the Train Services). Any act or

omission of the Operator's Customer is deemed to be an act or omission by the Operator for the purposes of this agreement.

### **12.3 Indemnity for Dangerous Goods**

- (a) This **clause 12.3** only applies to the extent that the Train Services carry Dangerous Goods.
- (b) Without limitation to **clauses 12.1(a)** and **12.2**, the Operator indemnifies and will keep indemnified Queensland Rail and its Associates against all:
  - (i) Losses suffered or incurred by; or
  - (ii) Claims brought against or made upon,

Queensland Rail or its Associates (as applicable) arising out of, or in any way associated with Dangerous Goods (including their handling, loading, unloading, transportation, escape, release or discharge and any other acts or omissions relating to them) in connection with or relating to any Mixed Goods Train Service, whether or not caused, or contributed to, by any act or omission (including negligence) of Queensland Rail or its Associates.

### **12.4 Conditions of carriage exclusions and limitations of liability**

Without limiting **clauses 12.2** to **12.3**, the Operator (and where the Operator's Customer is a Party, the Operator's Customer) must:

- (a) ensure Queensland Rail has the benefit of any exclusion or limitation of liability in favour of, or for the benefit of, the Operator under the Operator's conditions of carriage in relation to any person, or any person whose property is, being transported on Train Services including the Operator's Customer; and
- (b) provide to Queensland Rail details of those conditions of carriage in place from time to time relevant to those exclusions and limitations of liability.

### **12.5 Assistance in defence of Claims arising from Network Incidents**

Each Party must provide reasonable assistance to the other Party in the defence of any Claim made against that other Party by a third party arising out of any event in connection with a Network Incident.

### **12.6 Operator responsible for Operator's Associates**

- (a) The Operator may allow any of the Operator's Associates to exercise any of the Operator's rights or to comply with any of the Operator's obligations under this agreement.
- (b) The Operator is responsible for the conduct of the Operator's Associates in exercising any of the Operator's rights or complying with any of the Operator's obligations as if that conduct was the conduct of the Operator itself.

- (c) If the Operator delegates or subcontracts the exercise or performance of any of its rights or obligations under this agreement to any person, then:
  - (i) the Operator remains fully responsible for the exercise or performance of the delegated or subcontracted (as applicable) rights or obligations; and
  - (ii) any conduct of any delegate or subcontractor (as applicable) will be taken to be the conduct of the Operator.
- (d) If the Operator authorises an agent or contractor to exercise its rights or perform its obligations under this agreement, then that authorisation will only have effect for the purpose of this agreement where:
  - (i) the Operator has notified Queensland Rail of that authorisation, including providing details of the authorisation; and
  - (ii) if the authorisation relates to the driving, control or other operation of Rolling Stock for Train Services, Queensland Rail has consented to that authorisation.

## **12.7 Benefit of indemnities in favour of Associates**

- (a) Each Party acknowledges and agrees that its obligation to indemnify the other Party's Associates under this **clause 12** is for the benefit of the other Party's Associates.
- (b) For the purpose of section 55 of the *Property Law Act 1974* (Qld) (and without limiting the operation of that section), each Party acknowledges that any person who is comprised in the other Party's Associates may accept that benefit.
- (c) Each of the Parties acknowledge that valuable consideration was received for the grant of the benefit referred to in **clause 12.7(a)** and that benefit may be enforced by its Associates (as applicable) in accordance with section 55 of the *Property Law Act 1974* (Qld).
- (d) Without limiting **clauses 12.7(a)** to **(c)**, each Party hereby gives notice, for and on behalf of that Party's Associates, to the other Party accepting the benefit of the indemnities under this **clause 12** that are in favour of that Party's Associates. The notice under this **clause 12.7(d)** is taken to be given on each day during the Term (including the Commencement Date and the Termination Date) and on each day after the Termination Date while those indemnities survive the expiry or termination of this agreement.

## **13 Limitations on liability**

### **13.1 No liability for Consequential Loss**

- (a) Subject to **clause 13.1(b)**, despite any other provision in this agreement no Party is liable to another Party for any Consequential Loss suffered or incurred by, or Claimed against, the other Party.

- (b) **Clause 13.1(a)** does not apply in relation to:
  - (i) the indemnities in **clauses 12.2 to 12.3**; or
  - (ii) any Loss suffered or incurred by, or Claimed against:
    - (A) a Party to the extent caused or contributed to by an Inspecting Party failing to comply with its obligations under **clauses 9.4 to 9.10** in relation to conducting that inspection or audit; or
    - (B) Queensland Rail to the extent caused or contributed to by the Operator failing to comply with its obligations under **clause 27.18**.

### **13.2 Limitation on Claims**

A Party must not make any Claim against the other Party under, in relation to or arising out of this agreement or its subject matter including any breach of this agreement by, or any act or omission of, the other Party unless:

- (a) notice and full details of the Claim have been given to the other Party within one year after the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action (and, for clarity, the amount of any Claim is not limited to the amount exceeding that threshold).

### **13.3 Failure to pay amounts**

No exclusion or limitation of liability, or restriction on the existence of or ability to make any Claim, in this **clause 13** applies to Claims made by a Party against the other Party for monies due and payable in accordance with this agreement including, for example, under **clause 5**.

### **13.4 Liability for Network**

- (a) Subject to **clause 13.4(b)**, without limiting any other provisions of this agreement and to the extent permitted by law Queensland Rail and its Associates are not liable to another Party for any Losses, and the other Party must not make any Claim against either Queensland Rail or its Associates, including in respect of any damage to or loss or destruction of any property (including that other Party's property) or any injury to or death of any person, arising out of or in connection with:
  - (i) the standard, capability or condition of the Network; or
  - (ii) any failure of or defect in the Network; or
  - (iii) maintenance of the Network.
- (b) Despite **clause 13.4(a)**, another Party may bring a Claim against Queensland Rail to the extent that Queensland Rail has been negligent in maintaining the Network in a condition such that the Operator can operate Train Services in accordance with this agreement.

- (c) Where Queensland Rail is liable to another Party for a Loss or in respect of a Claim referred to in **clause 13.4(b)**, Queensland Rail's liability is capped at \$50 million in aggregate per any one event or cause of action or series of related events or causes of action.

### **13.5 Claims in respect of delays to Train Movements**

No Party (**Affected Party**) will have or make any Claim against another Party (**Defaulting Party**) in respect of delays to Train Movements unless, and will only have a Claim to the extent that:

- (a) the delay was a result of a breach of this agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; and
- (b) the delay is not attributable to:
- (i) the Affected Party;
  - (ii) another Network Participant or Party (other than the Defaulting Party);
  - (iii) a Force Majeure Event;
  - (iv) a Planned Possession, Urgent Possession or Emergency Possession of the Network in a manner consistent with the Network Management Principles;
  - (v) Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles;
  - (vi) an event, incident or circumstance on Private Infrastructure; or
  - (vii) any action taken by Queensland Rail (acting reasonably) or by an Authority in response to, or as a consequence of, an emergency<sup>2</sup> or a genuine safety risk (including a Network Incident), or any personal injury to or the death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network.

### **13.6 Claims in respect of non-provision of access**

Another Party will not have, and must not make, any Claim against Queensland Rail in respect of the non-provision of access or the cancellation of any Train Service (**Claim Event**) unless, and will only have a Claim to the extent that each of the following is satisfied:

- (a) the Claim Event was a result of a breach of this agreement by, or the negligence of, Queensland Rail;

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<sup>2</sup> An emergency includes any actual or impending circumstance that poses a threat of causing or contributing to:

- injury or death of any person;
- the destruction of or material damage to any real or personal property; or
- a material interference with, or loss or disruption of, a person's normal business operations.



- (b) the Claim Event is not attributable (in whole or part) to:
- (i) a Party other than Queensland Rail;
  - (ii) another Network Participant (other than Queensland Rail);
  - (iii) a Force Majeure Event;
  - (iv) a Planned Possession, Urgent Possession, Emergency Possession or Rail Infrastructure Operations or other works related to such a Possession;
  - (v) Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles;
  - (vi) an event, incident or circumstance on Private Infrastructure; or
  - (vii) any action taken by Queensland Rail (acting reasonably) or by an Authority in response to, or as a consequence of, an emergency<sup>3</sup> or a genuine safety risk (including a Network Incident), or any personal injury to or the death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network;
- (c) a Train Service is cancelled due to Queensland Rail failing to make the Network available for the Operator to operate the Train Service at the Scheduled Time and Queensland Rail was not able to offer a reasonable alternative Scheduled Time; and
- (d) the total number of Train Services cancelled in the relevant month as a result of a failure by Queensland Rail to make the Network available exceeds 10% of the total number of Train Services that the Operator was entitled to operate during that month in accordance with this agreement.

## 14 Suspension

### 14.1 Right of suspension

- (a) Queensland Rail may, by notice in writing to the Operator, immediately suspend the right of the Operator to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
- (i) any event or circumstance described in **clauses 15.1(a) to (k)** occurs;
  - (ii) the Operator fails to comply with a notice given by Queensland Rail requiring the Operator (within the reasonable time specified in

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<sup>3</sup> An emergency includes any actual or impending circumstance that poses a threat of causing or contributing to:

- injury or death of any person;
- the destruction of or material damage to any real or personal property; or
- a material interference with, or loss or disruption of, a person's normal business operations.

that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld)); or

- (iii) the Operator has failed, or in Queensland Rail's opinion the Operator will, or intends to fail, to comply with:
  - (A) any Law or Network Control Direction or the Operating Requirements Manual relating to the operation of Train Services; or
  - (B) any obligation of the Operator under this agreement.
- (b) Such a suspension will continue until such time as the Operator has satisfied Queensland Rail that:
  - (i) the relevant event or circumstance has been remedied or, if applicable, has been avoided and will not re-occur; and
  - (ii) where appropriate, that the Operator has taken action to prevent the recurrence of that event or circumstance.

## 14.2 Details of suspension

A notice of suspension given by Queensland Rail to the Operator in accordance with this **clause 14** must set out:

- (a) the rights of the Operator which are affected by the suspension;
- (b) the reasons for the suspension; and
- (c) the actions the Operator must take to have the suspension lifted.

## 14.3 Effect of suspension

The suspension of any rights by Queensland Rail in accordance with this **clause 14**:

- (a) is revocable at any time by Queensland Rail;
- (b) has no effect upon obligations, debts or liabilities which have accrued before that suspension took effect;
- (c) does not affect or suspend any other obligation of the Operator, including the obligation to pay Access Charges relating to the period of the suspension; and
- (d) is without prejudice to Queensland Rail's other rights and remedies in respect of the relevant default, event or circumstance.

# 15 Default and termination

## 15.1 Termination by Queensland Rail

Subject to **clause 15.3**, without limiting any other rights of termination in this agreement or otherwise existing at Law, Queensland Rail may, by notice in

writing to the other Parties, immediately terminate this agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) the Operator fails, in any material respect, to perform or comply with this agreement;
- (b) the Operator fails to pay when due any amount payable, or to provide and maintain Security, in accordance with this agreement;
- (c) an Insolvency Event occurs in relation to the Operator;
- (d) Queensland Rail ceases to hold the Sublease, any other Land Tenure or any other right or interest that authorises, permits or otherwise entitles Queensland Rail:
  - (i) to grant or otherwise confer on the Operator all or any of the rights referred to in this agreement; or
  - (ii) to enter into or perform this agreement;
- (e) there are no Access Rights under this agreement including as a result of reductions or relinquishments in accordance with **clause 21**;
- (f) a Repeated Breach exists;
- (g) the Operator fails to comply with a notice given by Queensland Rail requiring the Operator (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld));
- (h) the Operator purports to Assign or Charge its rights or interest in this agreement other than in accordance with **clause 22**;
- (i) the Operator fails to comply with the Train Service Description without first obtaining the prior written consent of Queensland Rail;
- (j) the Operator fails to comply with the IRMP or any other safety related obligation under this agreement; or
- (k) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations or exercise its rights under this agreement.

## **15.2 Termination by the Operator**

Subject to **clause 15.3**, without limiting any other rights of termination in this agreement or otherwise existing at Law, the Operator may, by notice in writing to the other Parties, immediately terminate this agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) an Insolvency Event occurs in relation to Queensland Rail;
- (b) Queensland Rail fails to pay when due any amount payable under this agreement; or

- (c) Queensland Rail fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes Queensland Rail's liability for that failure, or where Queensland Rail is not otherwise liable under this agreement for that failure.

### 15.3 Remedy

If an event or circumstance set out in **clause 15.1** or **15.2** (except **clauses 15.1(c) to (f)** and **clause 15.2(a)**) (**Event**) occurs then the relevant Party (**Terminating Party**) may only terminate this agreement if:

- (a) the Terminating Party serves a notice (**Notice to Remedy**) on each other Party (**Defaulting Party**) notifying the Defaulting Party of the Event, providing details of the Event and requiring the Defaulting Party:
  - (i) to remedy the Event (if the Event is capable of being remedied); or
  - (ii) to take action to ensure such an Event does not recur (if the Event is not capable of being remedied),  
  
and specifying a reasonable period in which to do the things in **paragraph (i)** or **(ii)**, as applicable having regard to the nature of the Event (**Relevant Period**) – however, if the Event is one in:
    - (iii) **clause 15.1(b)** or **15.2(b)**, then the Relevant Period must be ten Business Days; or
    - (iv) **clause 15.1(a)** or **15.2(c)**, then the Relevant Period must be 20 Business Days; and
- (b) no Defaulting Party:
  - (i) remedies the Event, if the Event is capable of being remedied; or
  - (ii) takes action to ensure such an Event does not recur and pays, if applicable, reasonable compensation to the Terminating Party in respect of the Event (subject to any relevant exclusions or limitations of liability under this agreement including **clause 13**), if the Event is not capable of being remedied,  
  
within the Relevant Period.

### 15.4 Termination for Change in Control

Queensland Rail may terminate this agreement immediately if:

- (a) there is a Change in Control; and
- (b) the Operator has not obtained Queensland Rail's prior consent to that Change in Control.

### 15.5 Obligations and other rights upon termination or expiration

- (a) A Party's right:
  - (i) to make a Claim or recover damages or avail itself of other remedies under this agreement or at Law; or

- (ii) to recover monies due to it under this agreement, including Access Charges,

is not prejudiced by:

- (iii) the termination or expiry of this agreement (including any termination under this **clause 15**); or
  - (iv) the forbearance by a Party in exercising any rights under this **clause 15**.
- (b) The expiry or termination of this agreement:
    - (i) does not affect the provisions expressed or implied to operate, survive or have effect after such expiry or termination; and
    - (ii) is without prejudice to any Claim or right of action already accrued to any Party in respect of any breach of this agreement.

## **15.6 Removal of Rolling Stock following termination**

- (a) Immediately on expiration of the Term, and as soon as practicable after termination of this agreement for any other reason, the Operator must, at the Operator's cost and risk, remove from the Network (or the land on which the Network is located) all of the Operator's Rolling Stock and all vehicles, equipment, freight, debris, rubbish and other substances or things brought onto the Network (or the land on which the Network is located) by, for or on behalf of the Operator relating to the Train Services.
- (b) If the Operator fails to remove the Operator's Rolling Stock from the Network:
  - (i) Queensland Rail may give a notice to the Operator demanding the removal of Rolling Stock by a time specified by Queensland Rail; and
  - (ii) if the Operator fails to remove that Rolling Stock by that time, Queensland Rail may remove that Rolling Stock and recover the reasonable costs of doing so from the Operator.
- (c) The Operator is liable, and indemnifies Queensland Rail, for all costs and expenses incurred by Queensland Rail in relation to any damage caused to the Network by the Operator in removing any Rolling Stock.
- (d) The Operator must comply with all Network Control Directions, and all other directions issued by Queensland Rail (acting reasonably), in relation to the removal of the Rolling Stock in accordance with this **clause 15.6**.

## 16 Insurance

### 16.1 Obligation to obtain and maintain Insurance

The Operator must:

- (a) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and
- (b) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with **clause 15.6**,

insurance in accordance with Prudent Practices having regard to the Operator's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include (without limitation):

- (c) a public liability policy of insurance:
  - (i) that covers the Operator and each of the Operator's agents, consultants, contractors and their sub-contractors (each an **Insured Party**);
  - (ii) for an amount of not less than \$350 million per occurrence;
  - (iii) the coverage of which includes (without limitation):
    - (A) the rights, interests and liability in respect of any Claim against an Insured Party arising out of:
      - (1) any damage or loss occurring to any property; and
      - (2) injury (including death) to any person, arising out of or in connection with any thing done or omitted to be done in the performance or purported performance of this agreement<sup>4</sup>; and
    - (B) the Operator's operations and activities on the Network; and
  - (iv) that has a maximum deductible for any one claim of \$500,000;
- (d) a carrier liability policy of insurance:
  - (i) that covers the Operator's liability in relation to goods being transported by Train Services;
  - (ii) for an amount of not less than \$10 million per occurrence; and
  - (iii) that has a maximum deductible for any one claim of \$500,000; and

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<sup>4</sup> Including, without limitation, Claims arising out of or in relation to the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening.

- (e) all other insurances that the Operator or the Operator's agents, consultants, contractors and their sub-contractors are required by Law to hold in relation to or in connection with the exercise of rights or the performance of obligations under this agreement.

## **16.2 Insurer**

The Operator must ensure that any Insurance effected and maintained in accordance with **clause 16.1** is with an insurer having an insurance financial strength rating of "A" or better by Standard & Poor's or, if Standard & Poor's ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency.

## **16.3 Essential terms and conditions**

The Operator must ensure that, to the extent permitted by Law, all Insurances effected and maintained in accordance with **clause 16.1** must:

- (a) note the interests of Queensland Rail; and
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Queensland Rail (which consent must not be unreasonably withheld or delayed).

## **16.4 Payment of premium and deductibles**

The Operator:

- (a) must pay when due all premiums, charges and other expenses necessary for effecting and maintaining in force the Insurances; and
- (b) is responsible for the payment of all policy deductibles or excesses for Insurances.

## **16.5 No prejudicial action by the Operator**

The Operator must not do or permit anything to be done (including any omission) which:

- (a) may result in any Insurance being vitiated or rendered void or voidable; or
- (b) would give rise to an entitlement by the insurer to avoid payment of any claim in whole or in part.

## **16.6 Disclosure of Insurance**

- (a) The Operator must provide to Queensland Rail evidence of the insurance policies effected pursuant to this **clause 16** or, if requested by Queensland Rail, copies of such Insurances, to Queensland Rail's reasonable satisfaction:
  - (i) at least ten Business Days prior to the initial Commitment Date;
  - (ii) upon renewal of each Insurance during the Term; and
  - (iii) whenever requested to do so in writing by Queensland Rail.

- (b) If the Operator, whenever required to do so under this agreement, fails to produce to Queensland Rail evidence to the satisfaction of Queensland Rail (acting reasonably) of Insurances that have been effected or maintained by it, Queensland Rail may:
  - (i) effect and maintain the Insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; or
  - (ii) suspend or terminate this agreement under **clause 14.1(a)(i)** or **15.1(a)**.

## **16.7 Compliance**

The Operator must at all times comply with the terms of all Insurances effected under this **clause 16**.

## **16.8 Claims**

- (a) In addition to any other obligation on the Operator, the Operator must:
  - (i) notify Queensland Rail as soon as practicable after the occurrence of any claim under any Insurance (including providing reasonable details of the claim); and
  - (ii) keep Queensland Rail informed of subsequent developments concerning any claim.
- (b) Upon settlement of a claim under any Insurance covering damage to the Network the monies received must be paid to Queensland Rail unless the Operator has already partially or totally indemnified Queensland Rail for the relevant damage (including in respect of the amount of any deductible), in which case the monies will be paid to the Operator but only to the extent that Queensland Rail has been indemnified.

## **16.9 Insurance not a limit of Operator's liability**

The Operator's compliance with any Insurances does not limit the Operator's liabilities or obligations under this agreement.

# **17 Security**

## **17.1 Obligation to provide Security**

- (a) The Operator must:
  - (i) on or before the Commitment Date, provide to Queensland Rail security in the form set out in **clause 17.1(b)** for the Security Amount; and
  - (ii) thereafter maintain that security (including for any increased or decreased amount or any top up) in accordance with this **clause 17**,

**(Security)**.



- (b) Security must be in the form of:
  - (i) a bank guarantee that:
    - (A) is unconditional and irrevocable and in favour of Queensland Rail;
    - (B) is issued by an Australian institution:
      - (1) authorised to carry on a banking business and entitled to call itself a 'bank' pursuant to the *Banking Act 1959* (Cth); and
      - (2) which has a credit rating of "A" or better by Standard & Poor's or, if Standard and Poor's ceases to exist or to provide such credit ratings, the credit rating which most closely corresponds to that credit rating by another agency or person which is recognised in global financial markets as a major ratings agency;
    - (C) requires the issuing bank to pay on demand by Queensland Rail:
      - (1) without recourse to the Operator or any other person;
      - (2) irrespective of the performance or non-performance of the Operator or Queensland Rail under this agreement; and
      - (3) despite any notice or other communication from the Operator or any other person,

an amount or amounts up to the amount specified in the bank guarantee;
    - (D) has no expiry date; and
    - (E) is otherwise in a form acceptable to Queensland Rail; or
  - (ii) any other form acceptable to Queensland Rail (in its absolute discretion).

## **17.2 Recourse to Security**

- (a) A Security may be called upon by Queensland Rail in any circumstance where:
  - (i) the Operator fails to pay, on or before the due date, any amount that is payable by the Operator to Queensland Rail under this agreement; or
  - (ii) Queensland Rail otherwise suffers or incurs a Loss in respect of which the Operator is required to indemnify Queensland Rail in accordance with this agreement.
- (b) If Queensland Rail calls on a Security, the Operator must deliver to Queensland Rail a further Security for the amount called upon, or a

replacement Security for the remaining amount of the existing Security plus the amount called upon in exchange for the existing Security, within five Business Days after Queensland Rail calls on the Security so that the Security held by Queensland Rail is equal to the Security Amount.

- (c) If an Insolvency Event occurs, or Queensland Rail (acting reasonably) suspects that an Insolvency Event has occurred, in relation to the Operator, Queensland Rail may:
  - (i) in respect of any amounts due but unpaid by the Operator under this agreement:
    - (A) decline payment from the Operator of all or part of those amounts; and
    - (B) immediately call upon the Security for those amounts for which payment was so declined; or
  - (ii) in respect of any amounts paid by the Operator under this agreement after the time when the Insolvency Event occurred or Queensland Rail (acting reasonably) suspects that an Insolvency Event occurred:
    - (A) refund all or part of those amounts to the Operator; and
    - (B) immediately call upon the Security for the amounts so refunded.

### **17.3 Review of Security**

- (a) Queensland Rail may:
  - (i) at any time, from time to time, review the amount of the Security Amount, taking into consideration all of the matters that Queensland Rail considers relevant including:
    - (A) the financial performance of the Operator;
    - (B) the Operator's past performance under this agreement (whether in relation to payments or otherwise); and
    - (C) expected future payment obligations under this agreement; and
  - (ii) acting reasonably, determine that the amount of the Security Amount should be increased or decreased.
- (b) If Queensland Rail determines under **clause 17.3(a)** that the amount of the Security Amount should be:
  - (i) increased, the Operator must deliver to Queensland Rail further Security for the amount of the increase, or a replacement Security for the revised amount in exchange for the existing Security; or
  - (ii) decreased, the Operator must deliver to Queensland Rail a replacement Security for the revised amount in exchange for the existing Security,

within ten Business Days after Queensland Rail gives notice of its determination so that the Security held by Queensland Rail is equal to the Security Amount as determined by Queensland Rail.

#### **17.4 Return of Security**

Queensland Rail must, subject to the rights of recourse to the Security under this **clause 17**, return the Security to the Operator as soon as practicable after both of the following occur:

- (a) this agreement has expired or terminated; and
- (b) in Queensland Rail's opinion (acting reasonably) there is no prospect that:
  - (i) money or damages will become owing (whether actually or contingently) by the Operator to Queensland Rail in connection with this agreement; and
  - (ii) any payment towards the satisfaction of the Operator's obligation to pay any amount to Queensland Rail under this agreement will be void, voidable or refundable under any Law (including any Law relating to insolvency),

provided that, in any event, Queensland Rail has no obligation to return the Security to the Operator earlier than three months after the expiry or termination of this agreement.

## **18 Adjustment for changes**

### **18.1 Review of schedule 3**

- (a) This **clause 18.1**:
  - (i) applies to the extent that a Reference Tariff applies to the Train Services (including where a relevant Reference Tariff is approved by the QCA after the Commencement Date); and
  - (ii) does not apply where there is no Reference Tariff that is applicable to the relevant Train Services.
- (b) **Schedule 3** must be reviewed by Queensland Rail as soon as practicable after a Reference Tariff Provision, or any change in a Reference Tariff Provision, is approved by the QCA from time to time. For clarity, Queensland Rail is not obliged to conduct such a review where there ceases to be a Reference Tariff that is relevant to the Train Services.
- (c) The purpose of the review under this **clause 18.1** is to determine the amendments to **schedule 3** that are necessary to ensure **schedule 3** remains consistent with the Reference Tariff Provisions—to the extent that **schedule 3** was consistent with those Reference Tariff Provisions at the Commencement Date (and always subject to any differences referred to in **clause 18.1(d)(ii)**).

- (d) Without limiting the matters that Queensland Rail must consider in a review under **clause 18.1(b)**, any review of **schedule 3** must have regard to the following:
  - (i) any relevant new or varied Reference Tariff;
  - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Provision; and
  - (iii) any other relevant provisions of the Access Undertaking.
- (e) After Queensland Rail's review of **schedule 3**, Queensland Rail must notify the other Parties of the amendments to **schedule 3** that will apply and the date from which those amendments take effect (**Amendment Notice**). For clarity, the amendments may take effect retrospectively, but must not take effect prior to the time when the relevant Reference Tariff Provision, or amendments to the relevant Reference Tariff Provision, take effect as approved by the QCA.
- (f) If the Operator does not accept some or all of the amendments in the Amendment Notice, then:
  - (i) the Operator may only give Queensland Rail a Dispute Notice within ten Business Days after being given that Amendment Notice; and
  - (ii) if the Operator gives such a Dispute Notice and the Parties do not resolve the Dispute in accordance with **clause 19.2**, the Dispute must be referred for determination by an Expert under **clause 19.3**.
- (g) For clarity, in this **clause 18.1** a reference to **schedule 3** includes each other provisions (including defined terms) of this agreement relevant to **schedule 3** but only to the extent that they are directly necessary for the application, or interpretation, of **schedule 3**.
- (h) For clarity, **clause 2.2** of **schedule 3** and **clause 18.1** must not be applied in a manner that will result in any part of an Access Charge Input being escalated twice for the same period based on the change in CPI over that period.

## **18.2 Adjustment for a Material Change**

- (a) This **clause 18.2** does not apply in relation to a Material Change to the extent that the Net Financial Effect of that Material Change has been, or will be, removed as a result of:
  - (i) amendments to **schedule 3** in accordance with **clause 18.1**; or
  - (ii) the escalation or variation of Access Charge Inputs in accordance with this agreement.

- (b) If a Material Change occurs, then Queensland Rail may notify the Operator giving details of the Net Financial Effect of that Material Change.
- (c) Within five Business Days after Queensland Rail gives a notice under **clause 18.2(b)**, the Parties must meet and negotiate, in good faith, adjustments to this agreement, including adjustments to the Access Charges, in order to remove as far as practicable the relevant Net Financial Effect and to put Queensland Rail in the position it would have been in had there been no Material Change.
- (d) If the Parties do not reach agreement within 15 Business Days after Queensland Rail's notice under **clause 18.2(b)** or otherwise resolve the matter in accordance with **clause 19.2**, then the matter must be referred to an Expert for determination in accordance with **clause 19.3**.
- (e) Each Party's obligations under this agreement will continue despite the existence of a Material Change.

## 19 Disputes

### 19.1 Application of Dispute resolution process

If any dispute, complaint or question arises between the Parties in relation to this agreement (**Dispute**), then:

- (a) that Dispute must be resolved in accordance with this **clause 19**; and
- (b) either Party may give the other Parties a notice in writing (**Dispute Notice**) setting out details of the Dispute and requiring that it be dealt with in the manner set out in this **clause 19**.

### 19.2 Resolution by escalation

- (a) Within five Business Days after the date on which a Party gives the other Parties a Dispute Notice (**Dispute Notice Date**), representatives of the Parties must meet and use reasonable endeavours to resolve the Dispute.
- (b) If the Dispute is not resolved under **clause 19.2(a)**, senior management representatives of the Parties (who, for a Party, are senior to that Party's representative(s) referred to in **clause 19.2(a)**) must, within ten Business Days after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.
- (c) If the Dispute is not resolved under **clause 19.2(b)**, the Dispute must be referred to each Party's chief executive officer (or his or her nominee – who, for a Party, must be more senior than that Party's representative(s) referred to in **clauses 19.2(a)** and **(b)**) for resolution.

- (d) Subject to **clauses 19.4** and **19.5**, if the Dispute is not resolved under **clause 19.2(c)** within 20 Business Days after the Dispute Notice Date (or such other time as agreed between the Parties), the relevant Dispute:
  - (i) must, where this agreement requires referral to an Expert; and
  - (ii) may, by agreement of the Parties (in each Party's absolute discretion) in any other case,be referred for resolution by an Expert in accordance with **clause 19.3**.
- (e) If a Party's representative under **clause 19.2(a)** or **19.2(b)** is not authorised:
  - (i) to act on behalf of that Party in relation to the Dispute; or
  - (ii) to resolve the Dispute with immediate binding effect on that Party,the Dispute is deemed to have not been resolved under **clause 19.2(a)** or **19.2(b)** (as applicable).

### **19.3 Resolution by Expert**

- (a) This **clause 19.3** is subject to **clauses 19.4** and **19.5**.
- (b) If a Dispute, or any other matter, is required to be referred to, or determined by, an Expert in accordance with this agreement (including under **clause 19.2(d)**):
  - (i) the Expert must be appointed by agreement between the Parties or, in default of such appointment within ten Business Days after the need to refer the Dispute to an Expert, will be that person nominated, at either Party's request, by:
    - (A) where the Parties agree the Dispute is primarily of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
    - (B) where the Parties agree the Dispute is primarily of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; or
    - (C) in any other case, the President (for the time being) of the Queensland Law Society Inc;
  - (ii) the Expert must:
    - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
    - (B) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;

- (C) not be an employee of a Party or of a Related Party of a Party;
  - (D) not be permitted to act until he or she has given written notice to each Party that he or she is willing and able to accept the appointment;
  - (E) have regard to the provisions of this agreement and consider all submissions (including oral submissions by each Party provided that such oral submissions are made in the presence of the Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;
  - (F) for clarity, only make a determination in a way that is consistent with this agreement;
  - (G) provide the Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;
  - (H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and
  - (I) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including the *Commercial Arbitration Act 2013* (Qld), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (iii) if the Expert is to be nominated by a person referred to in **clause 19.3(b)(i)**, the Parties must comply with and do all things necessary to satisfy and to give effect to the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert; and
  - (iv) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting appointment as the Expert.
- (c) The Parties must do everything reasonably requested by the Expert to assist the Expert including producing information and materials as requested by the Expert and attending any hearing convened by the Expert.

- (d) In the absence of manifest error, a decision of the Expert is final and binding upon the Parties.
- (e) The costs of the Expert (and any advisers engaged by the Expert) will be borne in equal shares by the Parties. Each Party must bear its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

#### **19.4 Resolution of Disputes by Rail Safety Regulator**

- (a) Nothing in this **clause 19** prevents the Operator or Queensland Rail from, at any time, referring any relevant Dispute to the Rail Safety Regulator for resolution in accordance with the TRSA.
- (b) To the extent that any Dispute is referred to the Rail Safety Regulator for resolution in accordance with the TRSA, the process under the TRSA prevails to the extent of any inconsistency with this **clause 19**.
- (c) Without limitation to **clause 19.4(b)**:
  - (i) each Party will:
    - (A) do all things reasonably necessary to inform the Rail Safety Regulator about the matter in dispute; and
    - (B) participate in the dispute resolution process in good faith; and
  - (ii) the Parties agree that it is reasonable for the Rail Safety Regulator to determine the dispute including, if applicable, by giving a safety matter direction or interface direction.

#### **19.5 Resolution of Disputes by Queensland Rail**

If:

- (a) any Dispute is in relation to:
  - (i) proposed amendments to the IRMP; or
  - (ii) the safety of any persons or property, or the environment, on or in relation to the Network or the land on which the Network is located or in relation to the use of the Network;
- (b) that Dispute is not otherwise resolved by the Parties in accordance with **clause 19.2** or **19.3** or by the Rail Safety Regulator; and
- (c) Queensland Rail considers that the failure to resolve that Dispute may have a material adverse affect on Queensland Rail's ability to comply with (or its cost or risk of, or liability for, complying with):
  - (i) this agreement (including any obligation to provide the Operator with access to the Network);
  - (ii) any Laws, Authorisations (including its Accreditation) or Land Tenure; or



(iii) any obligations in relation to other Network Participants, then that Dispute may be determined by Queensland Rail, at its election (acting reasonably), after considering any relevant matters raised by the Operator.

#### **19.6 Determination by court**

If any Dispute is not resolved in accordance with this **clause 19**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.

#### **19.7 Injunctive Relief**

Nothing in this agreement prevents a Party from seeking urgent injunctive relief from a court.

#### **19.8 Dispute not to affect performance of obligations**

The Parties are not relieved from performing their obligations under this agreement because of the existence of a Dispute.

#### **19.9 Extension of time frames**

Where a timeframe applies under this **clause 19** in relation to a Dispute, the Parties may (acting reasonably) agree to vary that timeframe and if the Parties do agree a varied timeframe then this **clause 19** will apply in relation to that Dispute subject to that varied timeframe.

### **20 Force majeure**

#### **20.1 Force Majeure Event occurrence**

- (a) If a Party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for any obligation to pay money) under this agreement, that obligation is suspended during the time and to the extent that the performance of that obligation is prevented or hindered by the Force Majeure Event.
- (b) If the Affected Party wishes to claim the benefit of this clause, it must, as soon as practicable, give notice of the Force Majeure Event to the other Party including reasonable details of:
  - (i) the Force Majeure Event;
  - (ii) the effect of the Force Majeure Event on the performance of the Affected Party's obligations; and
  - (iii) the likely duration of the delay in performance of those obligations.
- (c) Subject to **clause 20.1(d)**, the Affected Party must use reasonable endeavours to remove the effect of the Force Majeure Event as soon as practicable and to identify alternative means to viably perform the relevant obligations or mitigate the effect of the Force Majeure Event, but is not obliged to settle any strike or other labour dispute contrary to its best judgment.

- (d) For the purposes of **clause 20.1(c)**:
  - (i) Queensland Rail is not obliged to fund the repair or replacement of any part of the Network that:
    - (A) is necessary for the Train Services; and
    - (B) is damaged or destroyed by a Force Majeure Event;
  - (ii) if Queensland Rail is not prepared to fund any such repair or replacement, Queensland Rail will notify the Operator of:
    - (A) the repairs or replacement that Queensland Rail is not prepared to undertake unless a Network Participant agrees to pay to Queensland Rail (in advance) the cost of those repairs or that replacement (as applicable); and
    - (B) the estimated cost of those repairs or that replacement (as applicable);
  - (iii) if a Network Participant agrees (on terms satisfactory to Queensland Rail (in its absolute discretion)) to pay to Queensland Rail the cost of those repairs or that replacement (as applicable) in advance of Queensland Rail incurring those costs, or liability for those costs, then Queensland Rail will undertake those repairs or that replacement (as applicable) to a standard consistent with Prudent Practices, but only to the extent that the Network Participant has paid those costs to Queensland Rail; and
  - (iv) if the total cost of the repairs or replacement (as applicable) undertaken by Queensland Rail is less than the amount that the Network Participant paid to Queensland Rail under **clause 20.1(d)(iii)**, Queensland Rail will refund the difference to the Network Participant as soon as reasonably practicable after the total costs of the repairs or replacement (as applicable) have been finally determined by Queensland Rail.
- (e) The Affected Party must keep the other Party informed in relation to the Force Majeure Event, any material change in the Affected Party's ability to perform its obligations and any matters relating to **clause 20.1(c)**.

## 20.2 Termination

If a delay caused by a Force Majeure Event continues for more than three consecutive months, then either Party may terminate this agreement by giving 20 Business Days notice to the other Party.

# 21 Reduction and relinquishment of Access Rights

## 21.1 Reduction of Access Rights

- (a) If the Operator fails to operate all Train Services on Scheduled Train Paths for seven or more (not necessarily consecutive) weeks out of any 12 consecutive weeks when such Train Services are scheduled,

Queensland Rail may, within ten Business Days after the last of those seven occasions, give a notice to the Operator deleting the relevant Train Path from the Train Service Description.

- (b) A Train Service has not been operated on a Scheduled Train Path if the Operator has failed:
  - (i) to present the relevant Train at the scheduled entry point onto the Network; or
  - (ii) to operate the relevant Train so that it completes its full journey, in conformance with the locations and days set out in the Scheduled Train Paths applicable to such Train Service except:
  - (iii) where the prior agreement of Queensland Rail and the Operator has resulted in the Operator using an alternative Train Path for that Train service; and
  - (iv) where the reason for that failure is:
    - (A) a Force Majeure Event; or
    - (B) the failure of Queensland Rail to make the Network available.

## 21.2 Relinquishment of Access Rights

- (a) If the Operator intends to relinquish all or part of the Access Rights, the Operator must give Queensland Rail reasonable notice of its intention to do so specifying:
  - (i) the Access Rights that the Operator intends to relinquish (**Nominated Access Rights**);
  - (ii) if the Operator intends that all or part of the Relinquished Access Rights be used so Queensland Rail can grant specific access rights to a specified Access Seeker (as defined in the Access Undertaking) (**Transfer**), the identity of that Access Seeker (**Transferee**) – and, for clarity, the Operator may itself be that Access Seeker; and
  - (iii) subject to **clause 21.2(b)**, the date (**Relinquishment Date**) on which and the period for which the Nominated Access Rights are to be relinquished.
- (b) The period from the giving of the notice under **clause 21.2(a)** until the Relinquishment Date must not exceed six months.
- (c) The relinquishment of any Nominated Access Rights in accordance with this **clause 21.2** is subject to and conditional on the Operator paying to Queensland Rail the Relinquishment Fee on or before the Relinquishment Date.
- (d) If the Operator pays the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date, then the terms of this agreement will

cease to apply in respect of the Nominated Access Rights on the Relinquishment Date.

- (e) Queensland Rail must facilitate a Transfer in respect of a Transferee if:
  - (i) the relevant access rights to be granted to the Transferee are included in a new or varied access agreement with the Transferee on terms satisfactory to Queensland Rail;
  - (ii) Queensland Rail is satisfied that the new or varied access agreement with the Transferee has been developed in accordance with the requirements of the Access Undertaking;
  - (iii) the Operator has complied with **clauses 21.2(a)** and paid the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date; and
  - (iv) Queensland Rail has sufficient Available Capacity (as defined in the Access Undertaking) so that it can grant all of the relevant access rights to the Transferee without adversely affecting any other third party.
- (f) If the Relinquishment Fee is not paid on or prior to the Relinquishment Date, then the Operator is taken to have withdrawn the notice given under **clause 21.2(a)** and Queensland Rail has no further obligations under this **clause 21.2** in relation to the relevant relinquishment.

## 22 Assignment

### 22.1 Assignment by Queensland Rail

- (a) Queensland Rail may Assign all or part of its rights or obligations under this agreement without the prior consent of the Operator provided that Queensland Rail procures the Assignee to covenant with the Operator by deed to be bound by and to perform the obligations of Queensland Rail under this agreement to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into that deed, Queensland Rail is released and discharged from further liability under this agreement in respect of the obligations which the Assignee has undertaken to be bound by and to perform.

### 22.2 Assignment by the Operator

- (a) The Operator may only Assign all or part of its rights and obligations under this agreement in accordance with this **clause 22.2**.
- (b) The Operator may, provided it is not in default in the performance or observance of any of its obligations under this agreement, Assign the whole of its rights and obligations under this agreement to:
  - (i) subject to **clause 22.2(c)**, a Related Party who is:
    - (A) Accredited to operate Train Services; and

- (B) otherwise capable of performing the obligations of the Operator under this agreement; or
- (ii) a person who is not a Related Party with the prior written consent of Queensland Rail and, where the Operator's Customer is a Party, the Operator's Customer, provided that such consent will not be unreasonably withheld:
  - (A) if Queensland Rail is satisfied that such person:
    - (1) has the financial resources and capability to perform the Operator's obligations under this agreement; and
    - (2) is Accredited to operate the Train Services and otherwise capable of performing the Operator's obligations under this agreement; and
  - (B) in relation to the Operator's Customer, if the Assignee has entered into a rail haulage agreement with the Operator's Customer in relation to the Train Services.
- (c) Where **clause 22.2(b)(i)** applies:
  - (i) the Operator remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee (**Assigned Obligations**); and
  - (ii) the Assignee's performance of the Assigned Obligations will (to the extent of such performance) discharge the Operator's liability for performance of those Assigned Obligations.
- (d) Any Assignment by the Operator of its rights or obligations under this agreement is conditional on and does not take effect until:
  - (i) the Assignee covenants with Queensland Rail by deed, in such terms as Queensland Rail may reasonably require, to be bound by and to perform the obligations of the Operator under this agreement; and
  - (ii) the Assignee provides to Queensland Rail any Security that is required to be provided and maintained in accordance with **clause 17**.

### 22.3 Charging

The Operator may only mortgage, charge, encumber or otherwise grant any security over (**Charge**) all or any of its rights and obligations under this agreement in whole or in part, in favour of any person (**Chargee**), if the Operator, the Chargee and Queensland Rail execute a covenant by deed on terms satisfactory to Queensland Rail (acting reasonably), including terms that the Chargee, and any person (including any receiver or receiver and manager or agent) claiming through the Chargee, must comply with the provisions of this agreement including this **clause 22** in the exercise of its rights in relation to the Charge (including in exercising any power of sale) as if it were originally a Party to this agreement in the position of the Operator.

## 22.4 Effect of Assignment or Charge

Any purported Assignment or Charge in breach of this **clause 22** is of no effect.

## 23 Representations and warranties

- (a) In addition to any other express or implied representations and warranties in this agreement, the Operator represents, warrants and undertakes to Queensland Rail that:
- (i) it is a corporation validly existing under the laws applicable to it;
  - (ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;
  - (iii) it has the resources and capability to perform all of its obligations under this agreement and is able to pay its debts as and when they fall due;
  - (iv) its obligations under this agreement are enforceable in accordance with their terms and are fully binding on it;
  - (v) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;
  - (vi) there is:
    - (A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and
    - (B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it, which would or could have a material adverse effect on its ability to perform its obligations under this agreement;
  - (vii) it will as soon as practicable notify Queensland Rail of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the Operator under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement;
  - (viii) it and its Associates have all of the necessary competencies, skills and experience to exercise its rights (including to operate the Train Services) and perform its obligations, under this agreement in accordance with Prudent Practices;

- (ix) it has assessed the quality and standard of the Network and has satisfied itself as to:
  - (A) the standard and suitability of the Network for the purposes of operating the Train Services; and
  - (B) the ability of the Operator's Rolling Stock to safely interface with, and to operate on, the Network (including the cost, expense and risk of doing so); and
- (x) all information provided by the Operator to Queensland Rail, whether pursuant to this agreement or otherwise, in relation to or in connection with the Train Services, the Operator's rights or obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive.
- (b) The representations and warranties set out in **clause 23(a)** are taken to be given and made on the Commencement Date and on each day during the Term.
- (c) The Operator has the right, at its cost and risk, to inspect the Network (including circumstances of the Network such as fencing and level crossing protection) to satisfy itself for the purpose of **clause 23(a)(ix)** subject to:
  - (i) the Operator giving written notice to Queensland Rail of its request to inspect the Network a reasonable time prior to the date of the intended inspection;
  - (ii) the Operator receiving from Queensland Rail a notice (not to be unreasonably withheld) confirming that the inspection may occur and setting out the requirements for that inspection including in relation to any of the matters referred to in **clauses 23(c)(iii) to (v)**;
  - (iii) that inspection being conducted:
    - (A) in the presence of a nominated representative of Queensland Rail;
    - (B) at a time satisfactory to Queensland Rail; and
    - (C) in a manner that does not cause or contribute to any disruption of, or other adverse affect to, any Train Movements or Rail Infrastructure Operations;
  - (iv) the Operator paying, or if paid by Queensland Rail reimbursing, to Queensland Rail the costs and expenses incurred by Queensland Rail in relation to the Operator's inspection (including the costs and expenses of a representative of Queensland Rail attending the inspection and, if relevant, for any track protection officers) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail; and

- (v) such other conditions as may be required by Queensland Rail in relation to the inspection including compliance with Queensland Rail's safeworking procedures and safety standards.

## 24 Confidentiality

### 24.1 Confidentiality obligation

Subject to **clause 24.2**, a Party (**Recipient**), in respect of the Confidential Information of the other Party (**Disclosing Party**) that is provided to the Recipient by or on behalf of the Disclosing Party, must:

- (a) treat that Confidential Information as (and keep it) confidential;
- (b) only use that Confidential Information for the purposes of this agreement or for which it was disclosed; and
- (c) treat that Confidential Information as the property of the Disclosing Party.

### 24.2 Exceptions

A Recipient of Confidential Information is not required to comply with **clause 24.1** to the extent that:

- (a) the Disclosing Party has given its written consent (which must not be unreasonably withheld) to the relevant disclosure or use; or
- (b) another Confidentiality Exception applies to the relevant disclosure or use.

## 25 Notices

### 25.1 Form of Notice

A notice, demand, certification, process or other communication (**Notice**) relating to this agreement must be in writing in English and may be given by an agent of the sender.

### 25.2 Method of giving a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current delivery address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by facsimile to the Party's current facsimile number for Notices.



### 25.3 Particulars for the giving of Notices

- (a) The particulars for the giving of Notices are initially:

#### Queensland Rail

Delivery address: Floor 14, 305 Edward Street, Brisbane Qld 4000

Postal address: GPO Box 1429, Brisbane Qld 4001

Facsimile: (07) 3072 8389

Attention: General Counsel

#### Operator

As set out in **item 2** of **schedule 1**.

*[Note: If the Operator's Customer is not a party to this agreement, then delete the table below.]*

#### Operator's Customer

As set out in **item 4** of **schedule 1**.

- (b) Each Party may change its particulars for delivery of Notices by notice to each other Party.

### 25.4 Effect and receipt of Notices

- (a) Subject to **clause 25.4(b)**, a Notice is given:
- (i) if personally delivered, at the time of delivery;
  - (ii) if posted, on the third day after the date of posting; and
  - (iii) if sent by facsimile, when the machine from which the facsimile was sent produces a report that the facsimile was sent in full to the facsimile number of the recipient (and that report is conclusive evidence that the addressee received the facsimile in full at the time indicated on that report).
- (b) If a Notice is given:
- (i) after 5:00pm in the place of receipt; or
  - (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken to have been given on the next day which is not a Saturday, Sunday or public holiday in the place of receipt.

### 25.5 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this agreement may be served by any method contemplated by this **clause 25** or in accordance with any applicable law.

## 25.6 Representatives of the Operator

- (a) The persons referred to in **item 10** of **schedule 1** are the Operator's representatives in relation to the relevant matters for which they have been nominated in respect of this agreement or the Train Services.
- (b) The initial contact details for those persons are as set out in **item 10** of **schedule 1**.
- (c) The Operator:
  - (i) must notify Queensland Rail of any changes to those representatives or their contact details on or prior to that change occurring (subject to **clause 25.6(c)(ii)**); and
  - (ii) must ensure that any person ceasing to be such a representative is replaced on or prior to (or, if this is not possible, as soon as practicable after) the time when that person ceases to be a representative.
- (d) Nothing in this **clause 25.6** limits the requirements that may be set out in the Operating Requirements Manual in relation to the nomination of representatives or the provision of contact details for nominated representatives (including, for example, the nomination of persons as incident response coordinators or for the recovery of Rolling Stock).

## 26 GST

### 26.1 Definitions

In this agreement the expressions **adjustment note**, **consideration**, **GST**, **input tax credit**, **supply**, **tax invoice**, **recipient** and **taxable supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 26.2 Sums exclude GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.

### 26.3 Responsibility for GST

- (a) Despite any other provisions in this agreement, if GST is imposed on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this agreement, the recipient must pay to the Supplier an amount equal to the GST payable on the supply.
- (b) Subject to **clause 26.5**, the recipient must pay the amount referred to in **clause 26.3(a)** in addition to and at the same time as payment for the supply is required to be made under this agreement.

### 26.4 Reimbursement of expenses

If this agreement requires a Party to reimburse or indemnify any other Party for any expense, loss or outgoing (**reimbursable expense**) incurred by another

Party, the amount required to be reimbursed or indemnified by the first Party will be the sum of:

- (a) the amount of the reimbursable expense net of input tax credits (if any) to which the other Party (or the representative member of the GST group of which the other Party is a member) is entitled in respect of the reimbursable expense; and
- (b) if the other Party's recovery from the first Party is a taxable supply, any GST payable in respect of that supply.

## **26.5 Tax invoice**

If an amount on account of GST or a GST inclusive price is charged or varied under this agreement, the Supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.

## **26.6 Adjustment**

If the amount of GST paid or payable by the Supplier (or the representative member of the GST group of which the Supplier is a member) on any supply made under this agreement differs from the amount on account of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the Supplier or the Supplier to the recipient, as the case requires.

# **27 General**

## **27.1 Duty**

- (a) The Operator as between the Parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by Queensland Rail) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If Queensland Rail pays any duty (including any fine, interest or penalty) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Operator must pay that amount to Queensland Rail on demand.

## **27.2 Legal costs**

Except as expressly stated otherwise in this agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

## **27.3 Waiver and exercise of rights**

- (a) Waiver of any right arising in relation to a failure to comply with this agreement must be in writing and signed by the Party granting the waiver.

- (b) A single or partial exercise or waiver by a Party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A Party is not liable for any Loss of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (d) A failure or delay in the exercise, or partial exercise, of a right arising from a breach of this agreement does not result in a waiver of that right.

#### **27.4 Amendments**

Except as otherwise provided in this agreement, an amendment of this agreement will only be effective if it is in writing and executed by all Parties.

#### **27.5 Rights cumulative**

Except as expressly stated otherwise in this agreement, the rights of a Party under this agreement are cumulative and are in addition to any other rights of that Party.

#### **27.6 Consents**

Except as expressly stated otherwise in this agreement, a Party may conditionally or unconditionally give or withhold any consent, approval, acceptance or notice of no objection to be given under this agreement and is not obliged to give its reasons for doing so.

#### **27.7 Further steps**

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

#### **27.8 Governing law and jurisdiction**

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in the State of Queensland.
- (b) Each Party irrevocably and unconditionally:
  - (i) agrees that the courts of the State of Queensland and any courts which have jurisdiction to hear appeals from any of those courts are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this agreement may be brought in, and only in, such courts;
  - (ii) waives any objection which it may have now or in the future to the laying of the venue of any Proceedings in such courts and any claim that any such Proceedings have been brought in an inconvenient forum; and
  - (iii) agrees that a final judgment in any Proceedings brought in such courts are conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

## **27.9 Liability**

An obligation of two or more persons binds them separately and together.

## **27.10 Counterparts**

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **27.11 Entire understanding**

- (a) This agreement contains the entire understanding between the Parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect.
- (c) No oral explanation or information provided by any Party to another:
  - (i) affects the meaning or interpretation of this agreement; or
  - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

## **27.12 Relationship of Parties**

This agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

## **27.13 Severability**

- (a) Subject to **clause 27.13(b)**, if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.
- (b) **Clause 27.13(a)** does not apply if severing the provision:
  - (i) materially alters:
    - (A) the scope and nature of this agreement; or
    - (B) the relative commercial or financial positions of the Parties;  
or
  - (ii) would be contrary to public policy.

## **27.14 Survival**

- (a) **Clauses 3.3, 3.4, 5, 6.1(c), 7.8(c) to (e), 12, 13, 15.5, 15.6, 16.8, 17.2, 17.4, 18, 19 and 24 to 28** remain in full force and effect and survive the expiry or termination of this agreement.
- (b) **Clause 15.6** remains in full force and effect and survives the expiry or termination of this agreement until the Operator has fully complied with it.

- (c) All indemnities and exclusions, limitations and other restrictions on liability contained in this agreement survive the expiration or termination of this agreement.
- (d) All representations and warranties in this agreement survive the execution and delivery of this agreement and the completion of the transactions contemplated by it.

#### **27.15 Benefit**

The provisions of this agreement will, subject as otherwise provided in this agreement, continue for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

#### **27.16 No merger**

The rights and obligations of the Parties:

- (a) continue until satisfied in full;
- (b) do not merge on the completion of any transaction contemplated by this agreement; and
- (c) survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **27.17 Enforcement of indemnities**

It is not necessary for a Party to incur expense or make a payment before enforcing an indemnity contained in this agreement.

#### **27.18 Sublease**

- (a) The Parties acknowledges that:
  - (i) Queensland Rail's interest in all or part of the land on which the Network is located and over which the Train Services will operate is or will be held under:
    - (A) the Sublease; or
    - (B) a lease, easement, licence, statutory right or other arrangement or right other than the Sublease, **(Land Tenure)**; and
  - (ii) this agreement is subject to the terms and conditions (including all reservations), whether express or implied, of the Sublease (or the Head Lease) and any other Land Tenure.
- (b) Queensland Rail may, from time to time, do either or both of the following:
  - (i) give the Operator a copy of any Land Tenure (together with any relevant amendments from time to time); or
  - (ii) notify the Operator of any requirements that the Operator must comply with in relation to that Land Tenure (together with any amendments from time to time) **(Tenure Requirements)**.

- (c) Despite any other clause in this agreement and to the extent that the Operator operates Train Services on any part of the Network on land, or otherwise accesses land, that is the subject of any Land Tenure, the Operator must:
  - (i) observe and comply with all relevant obligations of Queensland Rail under that Land Tenure and the Tenure Requirements; and
  - (ii) not act, omit to act or permit, cause or contribute to any act or omission that may result in Queensland Rail:
    - (A) breaching a term of any Land Tenure; or
    - (B) incurring (directly or indirectly) any costs or expenses in complying with a Land Tenure that Queensland Rail would not otherwise have incurred.
- (d) Without limitation to the circumstances where the Operator may fail to comply with **clause 27.18(c)**, the Operator must be taken to fail to comply with **clause 27.18(c)** if the Operator, by act or omission, fails to comply (or permits any non-compliance) with any Tenure Requirements.
- (e) If there is an inconsistency between the terms of this agreement and the terms of any Land Tenure or Tenure Requirements which means that Queensland Rail or the Operator cannot comply with both this agreement and that Land Tenure or those Tenure Requirements, then the terms of that Land Tenure or those Tenure Requirements (as applicable) prevail to the extent of the inconsistency and the provisions of this agreement will be construed accordingly.
- (f) Queensland Rail does not warrant or represent:
  - (i) that it will not surrender all or part of any Land Tenure; or
  - (ii) that any Land Tenure will not be terminated or determined for any reason.
- (g) Queensland Rail will not be liable to the Operator for any Claims which may be brought against or made upon the Operator, or any Losses which the Operator suffers or incurs, in connection with any amendment, replacement, surrender, termination, expiry or determination of any Land Tenure.

### **27.19 Most favoured nation status**

- (a) The Operator may (acting reasonably) notify Queensland Rail that it believes that:
  - (i) Queensland Rail has entered into an access agreement with another Network Participant for a Train service that transports the same commodity in the same geographic area as a Train Service (**Like Train Service**); and
  - (ii) the access charges applicable to the Like Train Service have been developed in contravention of the price differentiation provisions

under the relevant Access Undertaking's pricing principles that applied to the development of those access charges (**Price Differentiation Provisions**),

and provide Queensland Rail with reasons why the Operator considers this to be the case.

- (b) Within 20 Business Days after receiving such a notice, Queensland Rail must notify the Operator:
  - (i) whether it agrees that the access agreement with the other Network Participant is for a Like Train Service including, if it does not agree, its reasons; and
  - (ii) where it does agree with the matter in **clause 27.19(b)(i)**, whether it agrees that the access charges applicable to the Like Train Service have been developed in contravention of the Price Differentiation Provisions including, if it does not agree, its reasons.
- (c) Within 40 Business Days after giving a notice under **clause 27.19(b)** agreeing to the matter in **clause 27.19(b)(ii)**, Queensland Rail must notify the Operator:
  - (i) whether Queensland Rail has been able to vary the access charges applicable to the Like Train Service to rectify the contravention of the Price Differentiation Provisions; or
  - (ii) where Queensland Rail has not been able to vary those access charges, that Queensland Rail agrees to vary the Access Charge to rectify the contravention of the Price Differentiation Provisions including how the Access Charge will be varied.
- (d) If the Operator (acting reasonably) is not satisfied with Queensland Rail's responses under **clauses 27.19(b)** or **(c)**, the dispute must be referred to an Expert for resolution in accordance with **clause 19.3**.
- (e) If:
  - (i) another Network Participant notifies Queensland Rail that it believes:
    - (A) that some or all of the Train Services transport the same commodity in the same geographic area as a Train service operated by that other Network Participant; and
    - (B) that the Access Charges for those Train Services have been developed in contravention of the price differentiation provisions under the relevant Access Undertaking's pricing principles that applied to the development of the Access Charges; and
  - (ii) Queensland Rail agrees with the matters referred to in **clauses 27.19(e)(i)(A)** and **(B)**,



then Queensland Rail may notify the Operator varying the Access Charge to rectify the relevant contravention.

- (f) In this **clause 27.19**, a reference to the Access Charges, or the access charges applicable to another Network Participant's Train service, includes the methodology, rates and other inputs used to calculate those Access Charges or access charges, as applicable.
- (g) This **clause 27.19** only applies in relation to an access agreement or access charges for a Like Train Service where that access agreement was entered into by the relevant parties after the date of this agreement.

## 28 Interpretation

### 28.1 Definitions

In this agreement:

**Access Charge Input** means a rate or other input, used for the purpose of calculating Access Charges, as specified in **clause 1** of **schedule 3** (including as varied, escalated or replaced from time to time in accordance with this agreement).

**Access Charges** means the charges determined in accordance with **schedule 3**.

**Access Rights** has the meaning given in **clause 2(a)**.

**Access Undertaking** means Queensland Rail's access undertaking as approved by the QCA under the QCA Act, from time to time.

**Accreditation** means accreditation (including any exemption from the requirement for such accreditation and any conditions applying to that accreditation or exemption) in accordance with Part 5 of the TRSA and **Accredited** means to have Accreditation.

**Additional Train Service** means the operation of a Train in accordance with this agreement that would be a Train Service but for it being in addition to the Train Service Levels set out in the Train Service Description.

**Affected Party** has the meaning given in **clause 20.1(a)**.

**Assign** means assign, novate, transfer or otherwise deal with, and **Assignment** and **Assignee** have a corresponding meaning.

**Associates** means, for a Party:

- (a) directors, officers, employees, contractors, agents or consultants of that Party; and
- (b) where the Party is:
  - (i) the Operator, any other person under the control or supervision of, or acting for or on behalf of, the Operator in connection or relating to the Train Services; or

- (ii) Queensland Rail, and any other person under the control or supervision of, or acting for or on behalf of, Queensland Rail in connection with or relating to the provision of the Access Rights,

including any worker (as defined under the *Work Health and Safety Act 2011* (Qld)) who carries out work for that Party.

**Authorisation** means any consent, accreditation, authorisation, registration, filing, lodgement, notification, agreement, licence, certification, commission, permit, approval, exemption, ruling or other permission from, by or with an Authority required by any Law or lawfully required by any Authority;

**Authority** means:

- (a) the Crown or any minister of the Crown;
- (b) any government, federal, state or local government department or other governmental, semi-governmental or judicial body or authority including local government, a court or a tribunal;
- (c) any corporation, authority, body or force constituted for a public purpose (including any police service or force);
- (d) any holder of an office for a public purpose;
- (e) any governmental, semi-governmental or judicial person; and
- (f) any person (whether autonomous or not) who is charged with the administration or enforcement of a Law,

including any officer or agent of the foregoing acting in that capacity but excluding the Rail Authority.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Brisbane.

**Certification** has the meaning given in **clause 7.9(a)(i)**.

**Change in Control** means:

- (a) a change in the entity that controls the Operator;
- (b) an entity that controls the Operator ceases to control the Operator; or
- (c) if the Operator is not controlled, another entity acquires control of the Operator,

except where:

- (d) the Operator is listed on the Australian Securities Exchange before, and remains listed after, the relevant change;
- (e) the relevant change relates directly to the initial listing of the Operator on the Australian Securities Exchange; or
- (f) for paragraphs (a) and (b), the ultimate holding company of the Operator remains the same following the relevant change.

For the purposes of this definition “control”, “controls”, “controlled” and “ultimate holding company” have the meaning given to those terms in the Corporations Act.

**Change in Law** means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Authority;
- (d) the imposition of a requirement for Authorisations not required as at the Commencement Date;
- (e) after the date of grant of any Authorisation, a change in the terms, conditions or requirements relating to that Authorisation including any new terms, conditions or requirements;
- (f) any such Authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on a basis that is materially less favourable than the original Authorisation;
- (g) an amendment to or replacement of the Access Undertaking; or
- (h) a change in the application or interpretation of the Access Undertaking resulting from a decision of a court or other Authority.

**Change to Credit** means:

- (a) (i) a change in the rate, or basis of calculation, of; or  
(ii) the introduction or cessation of,  
a credit, rebate, deduction, refund, exemption, concession or any other benefit or allowance (whether or not relating to an Impost), including, without limitation, a fuel tax credit, diesel fuel rebate or similar credit to which Queensland Rail is or was entitled; or
- (b) any change in the funding or other support received by Queensland Rail from any Authority in relation to the Network.

**Charge** has the meaning given in **clause 22.3**.

**Chargee** has the meaning given in **clause 22.3**.

**Claim** means any claim, cause of action, proceeding, liability, suit or demand (including by way of contribution or indemnity) whether:

- (a) arising in contract, in tort (including negligence), under any Law or otherwise; or
- (b) present or future, fixed or unascertained, actual or contingent.

**Claim Event** has the meaning given in **clause 13.6**.

**Commitment Date**, for a Train Service, has the meaning given in **item 8 of schedule 1** for that Train Service.

**Commencement Date** has the meaning given in **item 5 of schedule 1**.

**Compliance Date**, for a Train Service, has the meaning given in **item 7 of schedule 1** for that Train Service.

**Confidential Information** means:

- (a) the terms of this agreement; and
- (b) any information, data or other matter (in this definition, **information**) disclosed to a Recipient by, or on behalf of, a Disclosing Party where:
  - (i) the disclosure of the information by the Recipient would reasonably be expected to adversely affect the commercial interests of the Disclosing Party; or
  - (ii) the information is marked or otherwise indicated as confidential at the time of the disclosure to the Recipient,  
excluding information that:
    - (iii) was in the Recipient's lawful possession prior to the disclosure; or
    - (iv) whether before or after the disclosure:
      - (A) is in the public domain through means other than a breach of confidentiality by the Recipient (or anyone to whom the Recipient has disclosed it); or
      - (B) is received by the Recipient independently from a third party who is free to disclose such information.

**Confidentiality Exception** means:

- (a) any disclosure or use of Confidential Information consented to by the Disclosing Party under **clause 24.2(a)**;
- (b) any disclosure of Confidential Information to another Party, provided that the confidentiality obligations under this agreement continue to apply to that Confidential Information as if the disclosure was made directly by the Disclosing Party to that other Party; or
- (c) any disclosure or use of Confidential Information:
  - (i) to the extent necessary to:
    - (A) the Recipient's directors, officers or employees; or
    - (B) without limiting **paragraph (c)(xii)** of this definition, the directors, officers or employees of a Related Party of the Recipient;

- (ii) to the extent required or compelled by, or necessary to observe, administer or comply with, any Law (other than section 275(1) of the *Personal Property Securities Act 2009* (Cth));
- (iii) to the extent consistent with a person's right to disclosure under any Law;
- (iv) without limiting **paragraphs (c)(ii) or (iii)** of this definition, in accordance with the Access Undertaking (including the Network Management Principles) including:
  - (A) in publishing or providing MTPs and DTPs; and
  - (B) for the purpose of consultations or negotiations relating to a modification of a MTP or the scheduling of a DTP in variation from an MTP,

where, in this definition, MTP and DTP have the meanings given to those terms in the Access Undertaking or the Network Management Principles, as applicable;

- (v) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under the Access Undertaking or the QCA Act);
- (vi) to the extent required under any stock exchange listing requirement or rule;
- (vii) to the Rail Safety Regulator or the QCA;
- (viii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality (which is not waived by the Recipient without the prior written consent of the Disclosing Party);
- (ix) to the Recipient's engineering or other technical consultants and advisers to the extent necessary for the provision of advice to the Recipient (provided they are under a legal obligation not to disclose the Confidential Information to any third party);
- (x) to the Recipient's banker, financier or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential;
- (xi) if Queensland Rail is the Recipient, to any responsible Minister (as defined in the Rail Authority Act);
- (xii) if Queensland Rail is the Recipient, to the extent necessary to:
  - (A) the Rail Authority; and
  - (B) the Rail Authority's board members;

- (C) the Rail Authority's:
- (1) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and
  - (2) other officers and employees;
- (xiii) for the purpose of facilitating Network Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Network Control;
- (xiv) by any person involved in clearing a Network Incident or other event or incident that is preventing or affecting the operation of Train services on the Network; or
- (xv) by Queensland Rail for the purpose of responding to, managing or clearing a Network Incident or other event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network.

**Consequential Loss** means, subject to **paragraphs (e) and (f)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any claim in tort;
- (c) any loss of profits, loss of production, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill, wasted overheads or any damage to credit rating whatsoever; and
- (d) any loss arising out of any Claim by a third party, whether arising in contract, in tort (including negligence), under any law or otherwise and whether present or future, fixed or unascertained, actual or contingent, but does not include:
  - (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
    - (i) the cost of repairing, replacing or reinstating any real or personal property owned or leased by any person (including a Party) that has been lost, damaged or destroyed; or
    - (ii) personal injury to or death of any person; or
  - (f) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPI** means the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0) as published by the Australian Bureau of Statistics (or other successor, authority or instrumentality having jurisdiction in the matter) as varied from time to time in accordance with this agreement.

**Dangerous Goods** means any substance or thing defined as dangerous goods, explosives or radioactive material under a Dangerous Goods Code and includes any substance or thing specifically identified as such in **schedule 2**.

**Dangerous Goods Code** means:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail;
- (b) the Australian Code for the Transport of Explosives by Road and Rail; or
- (c) the Code of Practice for the Safe Transport of Radioactive Material, as published and in force from time to time and as amended or replaced.

**Data** has the meaning given in **clause 7.8(a)**.

**Disclosing Party** has the meaning given in **clause 24.1**.

**Dispute** has the meaning given in **clause 19.1**.

**Dispute Notice** has the meaning given in **clause 19.1(b)**.

**Dispute Notice Date** has the meaning given in **clause 19.2(a)**.

**Emergency Possession** means a Possession:

- (a) that is required to rectify a fault with the Network:
  - (i) that is considered by Queensland Rail to be dangerous or potentially dangerous to any person; or
  - (ii) where severe speed restrictions have been imposed that affect the scheduled Train services of Network Participants; and
- (b) that Queensland Rail intends to carry out within five Business Days after the detection of the fault.

**End Date** means, for a Train Service, the date specified in **item 6 of schedule 1**.

**Environmental Harm** means environmental harm as defined in the *Environmental Protection Act 1994* (Qld).

**Expert** means an expert appointed in accordance with **clause 19.3**.

**Extension** includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Network (excluding Private Infrastructure).

**Force Majeure Event** means any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the Affected Party; and
- (b) by the exercise of due diligence the Affected Party was not reasonably able to prevent or is not reasonably able to overcome,

and includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where

that requirement, order, demand or direction results from any act or omission of the Affected Party;

- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Affected Party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) an act of God;
- (f) war, invasion, act of terrorists, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade, civil disturbance or public disorder;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Prudent Practices or accident or accidental damage to any thing;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, tsunami, earthquake, washaway, landslide, explosion, hail, lightning, severe weather conditions or other catastrophe or natural calamity;
- (m) any act or omission of any third party (including any third party's presence on or near the Network), without the express authorisation of Queensland Rail, that results in damage to the Network or the use or operation of the Network being prevented or impeded;
- (n) epidemic or quarantine restriction; and
- (o) delay of a supplier due to any of the foregoing whenever arising,

and, where the Operator is the Affected Party, excludes any cause, event or circumstance in connection with any right referred to in **clause 7.10** (including any failure by the Operator to obtain and maintain such rights, any exercise or performance of such rights and any inconsistency between such rights and this agreement).

**GST** has the meaning given in **clause 26.1**.

**Head Lease** means the lease from the Governor in Council to the State of Queensland (represented by the Department of Transport and Main Roads) of land on which all or part of the Network is located, granted in accordance with section 240(2) of the TIA.

**Impost** means a tax, excise, charge, levy, duty, fee, impost, rate, royalty, imposition, withholding, fee for any Authorisation or other licence or approval



fee or any other charge which is imposed, applied or administered by, or payable to or by, any Authority but excluding any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.

**Impost Change** means:

- (a) the introduction or imposition of a new Impost;
- (b) a change in the rate, amount or application of an Impost; or
- (c) a change in the basis of calculation of an Impost.

**Incident** means any Network Incident involving the activities of the Operator.

**Insolvency Event** means, in relation to a Party, any one or more of the following events:

- (a) the Party is not able to pay all its debts from the Party's own money as and when they become due or has stated that it is unable to do so;
- (b) the Party has been presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) a resolution is passed that the Party be wound up or placed in liquidation voluntarily or that an administrator be appointed;
- (d) an application or order has been made for the winding up or dissolution of the Party (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);
- (e) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Party or in respect of any of its property;
- (f) the Party has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (g) a mortgagee has entered into possession of any of the Party's assets or undertakings; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Party,

provided that, for the purposes of this definition, a reference to the Party includes any Related Party of the Party.

**Inspection or Audit** has the meaning given in **clause 9.5**.

**Insurance** means those insurances to be effected and maintained in accordance with **clause 16**.

**Interest Rate** means the rate which is the aggregate of:

- (a) 2% per annum; and
- (b) the Commonwealth Bank of Australia's reference rate being the "Reference Rate" quoted by the Commonwealth Bank of Australia (or any successor bank) for borrowers with overdrafts of \$100,000 or more on any relevant date as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect of any relevant date, such other similar rate to the "Reference Rate" specified by a major commercial bank agreed between the Parties or, if not agreed, a rate determined by an Expert in accordance with **clause 19.3**).

**Interface Risk** means a risk to the safety of persons or property or to the environment<sup>5</sup> arising from the interaction between the Operator's proposed operations and any one or more of:

- (a) the Network;
- (b) operations on the Network (including those of other Network Participants and Queensland Rail); and
- (c) persons using the Network, persons on or near the Network or members of the public (including any activities on the Network that may affect those matters),

including risks of Environmental Harm arising out of the Operator's proposed operations on the Network, provided that a reference to operations in this definition includes railway operations as defined in the TRSA.

**Interface Risk Assessment** means an assessment to:

- (a) identify all reasonably foreseeable Interface Risks;
- (b) evaluate the possibility of the Interface Risks occurring and the safety, commercial and other consequences of those Interface Risks;
- (c) identify appropriate controls and measures to adequately manage all Interface Risks (including any training required for the Operator's Associates);
- (d) identify the Party responsible for implementing such controls and measures and ensuring their on-going effectiveness;
- (e) identify the applicable safeworking procedures and safety standards to be adhered to including Queensland Rail's safety policies and procedures and the Operating Requirements Manual;

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<sup>5</sup> Environmental risks include:

- risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous substances and dangerous goods, waste and noise; and
- risks of serious environmental harm, material environmental harm and environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld).

- (f) identify the minimum standards relating to the interface between Rolling Stock and the Network with which the Rolling Stock and Train Configurations must comply in order for them to be able to be operated on the relevant parts of the Network (or, if already agreed, agree variations (if any) to those standards);
- (g) identify:
  - (i) any relevant Laws and the controls, standards and procedures developed from time to time by Queensland Rail to comply with such Laws; and
  - (ii) any relevant elements of Queensland Rail's environmental management system and the Operating Requirements Manual, to be adhered to;
- (h) satisfy the requirements under the TRSA (including for an interface agreement (as defined in the TRSA)) or under any other relevant Laws relating to health or safety; and
- (i) satisfy the relevant requirements under the Operating Requirements Manual for such an assessment.

**IRMP** mean the interface risk management plan set out in **schedule 4**, as amended from time to time in accordance with **clause 9.2**.

**Land Tenure** has the meaning given in **clause 27.18(a)(i)**.

**Law** includes:

- (a) any statute, ordinance, code, law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;
- (b) the terms of any Authorisation;
- (c) common law and equity; and
- (d) any order, circular, requirement, condition, notice, decree, decision, direction or guidelines of any Authority with which the Operator or Queensland Rail (as the case may be) is legally required to comply including any requirement to pay fees and charges,

whether now, or at any time in the future, in effect.

**Loss** means loss, damage, cost or expense including the costs and expenses of defending or settling any Claim (including legal costs and expenses on a full indemnity basis) whether:

- (a) arising in contract, in tort (including negligence), under any Law or otherwise; or
- (b) present or future, fixed or unascertained, actual or contingent.

**Material Change** means:

- (a) an Impost Change;
- (b) a Change in Law; or
- (c) a Change to Credit.

**Metropolitan Network** means that part of the Network bounded to the north by (and including) Nambour station and to the west by (and including) Rosewood and including all branch lines comprised in that part of the Network.

**Mixed Goods Train Service** means any Train Service that is not a Unit Train Service.

**Net Financial Effect** means the net adverse effect in financial terms of a Material Change on Queensland Rail in relation to performing its obligations or exercising its rights under this agreement including any offsetting benefits or adverse effects directly or indirectly connected to the Material Change.

**Net Material Financial Impact** has the meaning in **clause 8.3(b)(i)**.

**Network** means the rail transport infrastructure (as defined in the TIA):

- (a) for which Queensland Rail is the Railway Manager; and
- (b) the use of which is taken, pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) the use of which is referred to in section 249(2) of the QCA Act).

**Network Control** means the control, management and monitoring (including, as applicable, scheduling) of:

- (a) all Train Movements;
- (b) all other operations of Rolling Stock on the Network; and
- (c) any activities affecting or potentially affecting such Train Movements or Rolling Stock operation or the proper, efficient and safe operation and management of the Network.

**Network Control Directions** means instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Network Control (including preventing or minimising the effect of a material breach of this agreement).

**Network Controller** means a person appointed by Queensland Rail from time to time to perform Network Control for a relevant part of the Network.

**Network Control System** means the software, databases and systems used from time to time by Queensland Rail in connection with Network Control.

**Network Incident** means any Rolling Stock derailment, Rolling Stock disablement or breakdown, accident, collision or any other unplanned occurrence on the Network which causes or could cause death or injury to any

person, damage to property or Environmental Harm or a disruption to or cancellation by Queensland Rail of any Train Movement.

**Network Management Principles** has the meaning given to that term in the Access Undertaking (from time to time) or, if the Access Undertaking ceases to define that term, the network management principles included in the Operating Requirements Manual from time to time.

**Network Participant** means:

- (a) any person who holds, or uses any other person's, rights of access to any part of the Network in relation to Train services; and
- (b) any Accredited rail transport operator (as defined in the TRSA) who uses the Network,

including:

- (c) the Operator; and
- (d) any person in control of, or operating, any Private Infrastructure that is connected to the Network.

**Nominated Access Rights** has the meaning given in **clause 21.2(a)(i)**.

**Notice** has the meaning given in **clause 25.1**.

**Obstruction** means any thing or circumstance (including debris or other things on the Network), which has the potential to cause a disruption to or cancellation by Queensland Rail of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by Queensland Rail.

**Operating Requirements Manual** has the meaning given in the Access Undertaking, as amended from time to time by Queensland Rail under **clauses 8.1** or **8.2**.

**Operational Constraint** means any temporary or permanent constraint on the operation or use of any part of the Network imposed by Queensland Rail as it considers necessary in relation to the proper, efficient or safe operation or management of the Network (including speed restrictions, load restrictions, Planned Possessions, Urgent Possessions, Emergency Possessions and signalling or overhead restrictions).

**Operator's Customer** means:

- (a) any person that has a rail haulage agreement or arrangement with the Operator in relation to the Access Rights;
- (b) any consignor of goods to be transported by the Operator;
- (c) any person with title to, or an interest in, any thing to be transported by the Operator; and

- (d) any other person directly or indirectly benefitting from, or for whom the Operator operates, the Train Services,

provided that if **items 3 and 4 of schedule 1** have been completed and the person whose details are set out in **items 3 and 4 of schedule 1** has executed this agreement, then that person is the “Operator’s Customer”.

**Operator’s Emergency Management Plan** means the emergency management plan, including as amended or replaced from time to time,:

- (a) that is developed and maintained by the Operator under **clause 10.1**; and
- (b) for which the Operator has obtained a notice from Queensland Rail, in accordance with **clause 10.1(a)** (and, if applicable, **clause 10.1(d)(iii)**), that Queensland Rail has no objection to that plan (including any amendments).

**Parties** means collectively the parties to this agreement, and **Party** means one of them.

**Peak Periods** means the time periods:

- (a) from 6:00am to 9:00am; and
- (b) from 3:30pm to 6:30pm,

on Business Days or as otherwise notified by Queensland Rail (acting reasonably) from time to time.

**Planned Possession** means a Possession (other than an Urgent Possession or an Emergency Possession) where such Possession is entered into the Train Schedule and adversely affects the operation of Train Services.

**Possession** means the temporary closure or occupation by Queensland Rail of part of the Network (including closure of Track or isolation of any electrical overhead traction system) for the purpose of carrying out Rail Infrastructure Operations, other work or other activities on or in the proximity of the Network.

**Present Value** means the present value calculated at a discount rate equal to the Weighted Average Cost of Capital (WACC) (as defined in the Access Undertaking from time to time).

**Private Infrastructure** means rail transport infrastructure (as defined in the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which Queensland Rail is not the Railway Manager.

**Proceedings** has the meaning given in **clause 27.8(b)(i)**.

**Prudent Practices** means the exercise of that degree of diligence, care, foresight, prudence and skill that would reasonably be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances.

**QCA** means the Queensland Competition Authority established under the QCA Act.

**QCA Act** means the *Queensland Competition Authority Act 1997* (Qld).

**Quarter** means a period of three consecutive months commencing 1 July, 1 October, 1 January or 1 April.

**Queensland Rail Cause** means, subject to the exceptions set out below, Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with this agreement as a result of:

- (a) a Planned Possession, Urgent Possession or Emergency Possession;
- (b) the derailment of any Train caused solely by an act or omission of Queensland Rail; or
- (c) any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with this agreement, the Access Undertaking or any applicable Law,

except where Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with this agreement is in any way attributable to the Operator, another Network Participant (other than Queensland Rail) or any other person, or a Force Majeure Event.

**Queensland Rail Emergency Procedures** means Queensland Rail's emergency procedures as set out in the Operating Requirements Manual.

**Rail Authority** means the authority established under section 6 of the Rail Authority Act.

**Rail Authority Act** means the *Queensland Rail Transit Authority Act 2013* (Qld).

**Rail Infrastructure Operations** means:

- (a) the construction of any rail transport infrastructure (as defined in the TIA) to improve, upgrade, expand, extend, replace or vary the whole or any part of the Network;
- (b) any management, maintenance or operational activities relating to the Network, including the improvement, maintenance, repair, modification, installation, removal, renewal or decommissioning of the whole or any part of the Network; and
- (c) any inspections or investigations of the Network.

**Railway Manager** has means an Accredited rail infrastructure manager (as defined in the TRSA).

**Rail Safety Regulator** means the chief executive referred to in the TRSA.

**Recipient** has the meaning given in **clause 24.1**.

**Reference Tariff** means a prescribed access charge applicable for a specified Reference Train Service as set out in the Access Undertaking.

**Reference Tariff Provisions** means, to the extent that a Reference Tariff applies to the Train Services, the provisions in the Access Undertaking that either set out that Reference Tariff or are directly or indirectly related to the application or interpretation of that Reference Tariff.

**Reference Train Service** means a notional Train service described in the Access Undertaking in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions.

**Related Party** means a related body corporate as defined in the Corporations Act and, for Queensland Rail, includes the Rail Authority.

**Relinquished Access Rights** means the Available Capacity (as defined in the Access Undertaking) that is created as a result of a relinquishment by the Operator of Nominated Access Rights in accordance with **clause 21.2**.

**Relinquishment Date** has the meaning given in **clause 21.2(a)(iii)**.

**Relinquishment Fee** means a fee:

- (a) equivalent to the Present Value of the aggregate of the Take or Pay Charges that would have been payable on and from the Relinquishment Date until the end of the Term if the relevant Access Rights were not relinquished and the Operator did not use those Access Rights; and
- (b) if, prior to the Relinquishment Date, Queensland Rail has granted access rights (with effect on or after the Relinquishment Date) to a third party (including a Transferee) (**New Access Holder**) under an access agreement using the Relinquished Access Rights, adjusted to offset an amount equivalent to the Present Value of the aggregate of the take or pay charges, under that access agreement, payable by the New Access Holder:
  - (i) that are directly attributable to that part of the access rights granted to the New Access Holder derived solely from the Relinquished Access Rights;
  - (ii) for all or part of the same period as that used to calculate the amount under **paragraph (a)**; and
  - (iii) calculated assuming the New Access Holder does not use the relevant access rights,

provided that if this calculation would result in an amount less than zero, then the fee equals zero.

**Repeated Breach** means an event or circumstance where:

- (a) Queensland Rail has given to the Operator at least two notices to remedy a breach of a particular provision of this agreement;
- (b) each notice referred to in **paragraph (a)** relates to a separate breach of the particular provision;



- (c) the Operator commits a further breach of the particular provision; and
- (d) all of the breaches happened within a period of 12 months.

**Rolling Stock** means rolling stock (as defined under the TRSA) that operates on or uses Track.

**Scheduled Time** means the time at which a Train Service has been scheduled by Queensland Rail to operate on the Network as detailed in the Train Schedule or as modified or varied by Queensland Rail from time to time on the day of operation in accordance with the Network Management Principles.

**Scheduled Train Path** means a Train Path that has been scheduled by Queensland Rail in a Train Schedule.

**Security** has the meaning given in **clause 17.1(a)**.

**Security Amount** has, subject to **clause 17.3**, the meaning given in **item 9 of schedule 1**.

**Standard and Poor's** means Standard and Poor's Financial Services LLC and its Related Parties.

**Sublease** means:

- (a) the sublease of the Head Lease between the State of Queensland (represented by the Department of Transport and Main Roads) (as sublessor) and Queensland Rail (as sublessee) for all or part of the land on which the Network is located; and
- (b) any tenure or other right to that land which replaces all or part of that sublease from time to time and entitles Queensland Rail to operate, and provide access to, the Network.

**Take or Pay Charges** means that part of the Access Charges calculated as "TP" in accordance with **schedule 3**. *[Note: Where a Reference Tariff does not apply to the setting of Access Charges, this definition must be checked against what the parties agree to include in **schedule 3**.]*

**Tenure Requirements** has the meaning given in **clause 27.18(b)(ii)**.

**Term** means the term of this agreement as determined in accordance with **clause 1**.

**Termination Date** means the earlier of:

- (a) the latest End Date; and
- (b) the termination of this agreement in accordance with its provisions (including **clauses 15, 7.4(c)(iv)(B)** and **20.2**, as applicable) or any Law.

**Third Party Works** means any works, maintenance of any thing or other activities (including design, construction, testing and commissioning activities) undertaken or required to be undertaken on, over or under the land on which the Network is located:

- (a) by or on behalf of an Authority;

- (b) which Queensland Rail must permit in accordance with any Law or direction from an Authority;
- (c) by or on behalf of a third party who wants and is entitled to install and operate services or other infrastructure on, over or under that land; or
- (d) which Queensland Rail is required to permit either in accordance with the Sublease or because Queensland Rail's rights under the Sublease are subject to the rights of a third party to install and operate services or other infrastructure on, over or under that land.

**TIA** means the *Transport Infrastructure Act 1994* (Qld).

**Track** means that part of the Network comprising the rail, ballast, sleepers and associated fittings.

**Train** means any self-propelled configuration of Rolling Stock operating as a unit on Track.

**Train Configuration** means the description of the combination of Rolling Stock comprising a Train including the identification number, gross mass and tare mass of individual items of Rolling Stock and the order in which those Rolling Stock items are placed in the Train.

**Train Movement** means the operation of a Train on the Network by the Operator or any other Network Participant.

**Train Path** means the use of a specified portion of the Network, which may include multiple sections in sequential order, at a specified time.

**Train Schedule** means the train diagrams, yard schedules, terminal schedules and any other form of train timetable, plan or schedule prepared by Queensland Rail in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Network.

**Train Service** means a Train operating on the Network in accordance with this agreement (including the Train Service Description) and, in **schedule 3**, a Train Service is a one way Train Service – that is, the journey from the origin to the destination is one Train Service, and the return journey from the destination to the origin is a second Train Service.

**Train Service Description** means the details set out in **schedule 2**.

**Transfer** has the meaning given in **clause 21.2(a)(ii)**.

**Transferee** has the meaning given in **clause 21.2(a)(ii)**.

**TRSA** means the *Transport (Rail Safety) Act 2010* (Qld).

**Unit Train Service** means a Train Service where the Train Service Description limits that Train Service to only carrying a single specified commodity.<sup>6</sup>

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<sup>6</sup> For example, if a Train Service only carried coal or only carried passengers, then that Train Service would be a Unit Train Service.

**Urgent Possession** means a Possession:

- (a) that is required to correct problems in relation to the Network that are considered by Queensland Rail to be potentially dangerous to persons or property; and
- (b) that Queensland Rail intends to carry out within less than three months after the detection of the problem,

other than an Emergency Possession.

**Year** means, as applicable:

- (a) the period from the Commencement Date to the next 30 June;
- (b) a 12 month period during the Term subsequent to the period in **paragraph (a)** of this definition (subject to **paragraph (c)** of this definition); and
- (c) if the Termination Date is not 30 June, the period from (and including) 1 July immediately preceding the Termination Date and ending on the Termination Date.

## **28.2 Construction**

Unless expressed to the contrary, in this agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
- (e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation, a government or statutory body or authority and any other entity recognised by law;
  - (ii) a person includes the person’s legal personal representatives, successors, permitted assignees and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) a right includes a benefit, remedy, discretion or power;
- (vi) conduct includes:
  - (A) a benefit, remedy, discretion, authority or power; and
  - (B) any omission and any representation, statement or undertaking, whether or not in writing;
- (vii) time is to local time in Brisbane;
- (viii) a month is a reference to a calendar month;
- (ix) "\$" or "dollars" is a reference to Australian currency;
- (x) this or any other document includes this agreement or that other document, as applicable, as novated, varied or replaced and despite any change in the identity of the Parties or, for another document, the parties to that document;
- (xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (xii) this agreement includes all schedules and annexures to it;
- (xiii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this agreement; and
- (xiv) an Authority includes:
  - (A) any successor to, or replacement of, that Authority;
  - (B) any re-constitution or re-naming of that Authority; and
  - (C) any other Authority who is transferred any of the powers of functions of that Authority;
- (g) if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day;
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (i) if a term used in this agreement has the meaning given to that term, or as defined, under any legislation, then:
  - (i) that term has the meaning given, or as defined, under that legislation from time to time; and
  - (ii) where that legislation ceases to define that term, the meaning given to that term in this agreement is the last meaning given to that term under the relevant legislation; and

- (j) if there is any inconsistency:
  - (i) between matters contained in a schedule to this agreement and other provisions of this agreement that are not contained in a schedule, then those other provisions of this agreement prevail; or
  - (ii) between matters contained in the Access Undertaking and this agreement, the provisions of this agreement prevail.

### **28.3 Headings**

Headings do not affect the interpretation of this agreement.

# Schedule 1

## Reference schedule

1	<b>Operator</b>	[insert name] ABN [insert] of [insert]
2	<b>Operator's particulars for Notices</b>	Delivery address: [insert] Postal address: [insert] Facsimile: [insert] Attention: [insert]
3	<b>Operator's Customer</b>	[Note: If the Operator's Customer is a party to this agreement, then complete items 3 and 4 in the same format as for Items 1 and 2. If the Operator's Customer is not a party to this agreement, then do not insert details in items 3 and 4.]
4	<b>Operator's Customer's particulars for Notices</b>	
5	<b>Commencement Date</b>	[insert date of execution by Parties]
6	<b>End Date</b>	[insert date when access will cease to be available]
7	<b>Compliance Date</b>	[insert date when compliance with clause 7.3(a) should be completed]
8	<b>Commitment Date</b>	[insert date when access is to be available]
9	<b>Security Amount</b>	[insert]
10	<b>Initial details for the Operator's representatives</b>	<b>Representative for Obstructions</b> Name: Position: Phone: Mobile: Facsimile: Email:  <b>Representative for loading of Train Services</b>

		<p>Name:</p> <p>Position:</p> <p>Phone:</p> <p>Mobile:</p> <p>Facsimile:</p> <p>Email:</p> <p><b>Representative for Operational Meetings</b></p> <p>Name:</p> <p>Position:</p> <p>Phone:</p> <p>Mobile:</p> <p>Facsimile:</p> <p>Email:</p> <p><b>Representative for Contractual Meetings</b></p> <p>Name:</p> <p>Position:</p> <p>Phone:</p> <p>Mobile:</p> <p>Facsimile:</p> <p>Email:</p> <p><b>Representative for Document Control</b></p> <p>Name:</p> <p>Position:</p> <p>Phone:</p> <p>Mobile:</p> <p>Facsimile:</p> <p>Email:</p>
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# Schedule 2

## Train Service Description

The details for the Train Service Description are as follows:

<b>Origin</b>	
<b>Destination</b>	
<b>Average Haul Distance</b>	
<b>Traffic Task / Commodity</b>	
<b>Dwell Times<sup>7</sup></b>	
<b>Applicable Network</b>	The part of the Network to be used by the Train Services is described in the train route acceptance in Attachment 3 of this <b>schedule 2</b> .
<b>Rolling Stock and Train Configuration</b>	The details for the Rolling Stock and Train Configuration to be used for the Train Services are set out in the train route acceptance in Attachment 3 of this <b>schedule 2</b> .
<b>Train Service Levels</b>	The description of the Train Service levels is set out in Attachment 1 of this <b>schedule 2</b> .
<b>Special Operating Requirements</b>	The special operating requirements of the Train Service are set out in Attachment 2 of this <b>schedule 2</b> .
<b>Storage</b>	The Train Services do not include the storage of Trains (whether short or long term) on the Network except short term storage as agreed, from time to time, between the Parties (in each Party's absolute discretion).

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<sup>7</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.



<b>Differences from the relevant Reference Train Service</b>	<p>The Train Services must only differ from the Reference Train Service as follows:</p> <ul style="list-style-type: none"> <li>• [insert];</li> <li>• [insert]; and</li> <li>• in accordance with any other differences as expressly set out in this agreement.</li> </ul> <p><i>[Note: Only use where a Reference Tariff applies to set the Access Charges. In all other circumstances this row can be deleted or the words above can be replaced with "Not Applicable".]</i></p>
<b>Dangerous Goods</b>	[insert]

## (A) Attachment 1 – Train Service levels

*[insert relevant Train Services levels including daily, weekly, monthly and/or annual description of Train Services and other details relevant to the preparation of the Master Train Plan, including section run times.]*

*[Note: If a Train Service is only a one way Train Service for the purposes of this description, then this should be specifically referred to in the description.]*

## (B) Attachment 2 – Special operating requirements

### 1 Provisioning locations

The provisioning locations for Train Services are:

- (a) [insert]; and
- (b) any other locations as agreed with Queensland Rail (in its absolute discretion),

except that if a Network Incident or delay occurs that affects more than one Train Service, the provisioning locations will be as agreed between the Parties (acting reasonably) for agreed Train Services and an agreed time period.

### 2 [insert]

*[insert other requirements – for example, exit and entry points, shunting areas]*

## (C) Attachment 3 – Train route acceptance

- 1 Applicable Network  
[insert]
- 2 Rolling Stock and Train Configuration  
[insert]

# Schedule 3

## Calculation of Access Charges and other charges

*[Note: The contents of this schedule 3 are only applicable where the Reference Tariff applies to set the Access Charges. Where the Reference Tariff does not apply in relation to the Access Charges, the contents of this schedule 3 will need to be replaced with terms negotiated by the parties.]*

### 1 Access Charge Inputs

- (a) The Access Charge Inputs (as at the Commencement Date) to apply for specific Train Services are as set out below.

	Origin			
	Destination			
Access Charge Inputs	Variable rate (\$/1000gtk)	AT <sub>1(W)</sub>		
	Fixed rate (\$/Train Path)	AT <sub>2(W)</sub>		
	Variable rate (\$/1000gtk)	AT <sub>1(M)</sub>		
	Fixed rate (\$/Train Path)	AT <sub>2(M)</sub>		
	QCA Levy <sup>8</sup> (\$/Net Tonne)	QL		
	Locomotive Weight (t)		94.5	
	Wagon Weight (Unloaded) (t)		15.2	
	Wagon Weight		63	

<sup>8</sup> The QCA Levy is a fee imposed by the QCA on the beneficiaries of the QCA's regulatory services. This levy will be reviewed and endorsed by the QCA annually.

(Loaded) (t)				
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*[Note: The Locomotive Weight and Wagon Weights shown above are based on the Reference Train Service. If the relevant Train Service differs from the Reference Train Services those number may be different too.]*

Miscellaneous services <sup>9</sup>	Access Charge Input
	Miscellaneous service rate (\$/tkm <sup>10</sup> )
<b>Unscheduled repositioning of Rolling Stock within the Applicable Network described in schedule 2.</b>	
<b>All other such relocations and movements</b>	

- (b) The Access Charge Inputs will be varied or escalated in accordance with **clauses 2 and 3** of this **schedule 3** and **clause 18**, as applicable.

## 2 CPI escalation

### 2.1 Calculation of CPI escalation where a Reference Tariff applies

Where a Reference Tariff continues to apply to the Train Services after the Commencement Date, the Access Charges will be escalated under this agreement in the same manner as that Reference Tariff is escalated from time to time under the Access Undertaking.

### 2.2 Calculation of CPI escalation where no Reference Tariff applies

- (a) This **clause 2.2** only applies where a Reference Tariff ceases to apply in relation to the Train Services.
- (b) The Access Charge Inputs (other than the QCA Levy), and any other charges or rates expressed in this agreement as being subject to escalation, will escalate on each 1 July during the Term (**Escalation Date**), in accordance with the following formula:

$$ACI_n = ACI_{n-1} \times \left( \frac{CPI_n}{CPI_{n-1}} \right)$$

<sup>9</sup> For clarity, a miscellaneous service to which the miscellaneous service rates apply will be treated as a special type of ad hoc train service for the purposes of this agreement including the application of the Network Management Principles and are comprised in 'Ad Hoc Train Services' as referred to under the Network Management Principles.

<sup>10</sup> Where tkm is a reference to train kilometre – that is, each kilometre or part thereof travelled on the Network by the Train(s) or Rolling Stock involved. For example, if the relevant miscellaneous service rate is \$X/tkm and the total tkm for in respect of those miscellaneous services is 1000, then the relevant charge will be X multiplied by 1000.

where:

**ACI<sub>n</sub>** means the amount of the relevant Access Charge Input (or other charge or rate) that commences to apply on the relevant Escalation Date;

**ACI<sub>n-1</sub>** means the amount of the relevant Access Charge Input (or other charge or rate) applicable immediately prior to the relevant Escalation Date;

**CPI<sub>n</sub>** means the CPI for the Quarter which commenced six months prior to the relevant Escalation Date;

**CPI<sub>n-1</sub>** means the CPI for the Quarter which commenced 18 months prior to the relevant Escalation Date.

(c) If:

- (i) the basis of assessment of the CPI is altered in a material way; or
- (ii) the CPI ceases (or is likely to cease) to be:
  - (A) published; or
  - (B) published at sufficiently regular intervals for the purpose of the calculation in **clause 2.2** of this **schedule 3**,

then a Party may notify the other Parties that the CPI is required to be replaced.

(d) After a notice is given in accordance with **clause 2.2(c)** of this **schedule 3**:

- (i) the Parties will negotiate in good faith for the purpose of agreeing to vary or replace the CPI; and
- (ii) if the Parties fail to agree within 30 days after that notice is given, then the matter must be referred to an Expert for determination in accordance with **clause 19.3**.

(e) For clarity, if the Parties reach agreement, or the Dispute is resolved, after the relevant Escalation Date, the Parties agree to retrospectively adjust any Access Charges (or other relevant amounts) invoiced since that date to be consistent with that agreement, or the resolution of the Dispute, in accordance with **clause 5.6**.

### 3 Variation of QCA Levy

Queensland Rail may, from time to time, vary the Access Charge Input for the QCA Levy by giving notice in writing to the Operator of that variation. However, that Access Charge Input must only be varied by Queensland Rail if the QCA:

- (a) requires a change in the QCA Levy;

- (b) has approved a different allocation of the QCA Levy amongst different types of train services; or
- (c) otherwise approves that variation.

## 4 Calculation of invoice for access

### 4.1 Invoice calculations

The amount of the invoice for charges payable by the Operator to Queensland Rail under this agreement for a relevant month is calculated in accordance with the following formula:

$$TC = AC \times (1 + GST) + G$$

where:

- TC** is the total amount of charges payable by the Operator for the relevant month;
- AC** is the sum of VCM, FCM, VCW, FCW and QCAL for each Train Service for the relevant month and, if the relevant month is:
- (a) the last month of the Year; or
  - (b) the month in which this agreement has expired or terminated,
- TP;

**FCM** is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_{2(M)} \times rtp_{(M)}$$

where:

**rtp<sub>(M)</sub>** has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service (or, where a Reference Tariff ceases to apply in relation to the Train Services, as last defined in the Access Undertaking); and

**AT<sub>2(M)</sub>** is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**VCM** is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_{1(M)} \times \frac{gtk_{(M)}}{1000}$$



where:

**gtk<sub>(M)</sub>** is the gross tonne kilometres for the relevant Train Service calculated in accordance with **clause 5.2** of this **schedule 3** relating to the Metropolitan Network; and

**AT<sub>1(M)</sub>** is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**FCW** is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_{2(W)} \times rtp_{(W)}$$

where:

**rtp<sub>(W)</sub>** has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service (or, where a Reference Tariff ceases to apply in relation to the Train Services, as last defined in the Access Undertaking); and

**AT<sub>2(W)</sub>** is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**VCW** is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_{1(W)} \times \frac{gtk_{(W)}}{1000}$$

where:

**gtk<sub>(W)</sub>** is the gross tonne kilometres for the relevant Train Service calculated in accordance with **clause 5.2** of this **schedule 3** relating to the West Moreton Network (as defined under the Access Undertaking or, where that term ceases to be defined in the Access Undertaking, as last defined in the Access Undertaking); and

**AT<sub>1(W)</sub>** is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**QCAL** is the QCA Levy component for the relevant Train Service which is calculated by the formula:

$$QL \times nt$$

where:

**QL** is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as varied from time to time in accordance with this agreement; and

**nt** is the net tonnes for the relevant Train Service calculated in accordance with **clause 5.3** of this **schedule 3**;

**TP** is the take or pay charge for the relevant Year which is the greater of zero and the amount calculated by the formula:

$$\left( \left( AT_{1(W)} \times \frac{gtk_{(W)}}{1000} \right) + AT_{2(W)} + \left( AT_{1(M)} \times \frac{gtk_{(M)}}{1000} \right) + AT_{2(M)} \right) \times NTNO \times 0.8$$

where:

**AT<sub>1(M)</sub>**, **AT<sub>2(M)</sub>**, **AT<sub>1(W)</sub>** and **AT<sub>2(W)</sub>** are the amounts specified as such in **clause 1** of this **schedule 3**, as escalated, or varied, from time to time in accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

**gtk<sub>(M)</sub>** and **gtk<sub>(W)</sub>** are the average gross tonne kilometres for the relevant Train Services calculated in accordance with **clause 5.2** of this **schedule 3** in relation to the Metropolitan Network and West Moreton Network (as defined under the Access Undertaking or, where that term ceases to be defined in the Access Undertaking, as last defined in the Access Undertaking) respectively; and

**NTNO** is the amount calculated by the formula:

$$NTNO = TSEY - TSOY - TSQRCY$$

where:

**TSEY** is the number of Train Services that the Operator was entitled to operate for the Year under this agreement;

**TSOY** is the number of Train Services that the Operator operated for the Year under this agreement; and

**TSQRCY** is the number of relevant Train Services which failed to operate for the Year under this agreement due to a Queensland Rail Cause;

**GST** is the rate of GST (expressed as a decimal) applicable at the time the supply is made; and

**G** is the sum of any other amount due and payable under this agreement not calculated in AC above including, but not limited to:

- (A) charges for any additional GST;
- (B) payments for interest (if any is payable);
- (C) payments for ad-hoc train services and miscellaneous services; and
- (D) any Adjustment Charges (as defined in the Access Undertaking) and any other adjustments (positive or negative).

## 5 Interpretation

### 5.1 Train Services operate in the period in which they commence to operate

For the purposes of **clause 4.1** of this **schedule 3**, a Train Service is taken to have operated in the month or a Year in which it commenced operation from its origin even if that Train Service does not reach its destination until the next month or Year.

### 5.2 Gross tonne kilometres

- (a) The gross tonnes (**gt**) for a Train Service is calculated as the sum of:
  - (i) where **gtk** is being calculated under **clause 4.1** for the purpose of:
    - (A) VCW or VCM, the maximum gross mass as specified in the Network Control System for each locomotive comprised in the Train Service; or
    - (B) TP, the Locomotive Weight (as set out in **clause 1(a)** for the Train Service) multiplied by the number of locomotives comprised in the Train Service;
  - (ii) except where **clause 5.2(a)(iii)** applies, the Wagon Weight (Loaded) (as set out in **clause 1(a)** for the Train Service) multiplied by the number of wagons comprised in the Train Service (for clarity, an empty or partly loaded wagon in a Train Service will be treated as a loaded wagon);
  - (iii) if the Train Service is operated empty (after unloading at its destination), the Wagon Weight (Unloaded) (as set out in **clause 1(a)** for the Train Service) multiplied by the number of empty wagons comprised in the Train Service; and
  - (iv) for all other Rolling Stock, the maximum gross mass specified in the Network Control System for each item of such Rolling Stock comprised in the Train Service.
- (b) For the purpose of **clause 5.2(a)**, the number of wagons comprising a Train Service will be no less than the number of wagons:
  - (i) set out in the Train Service Description for that Train Service; or

- (ii) where no number of wagons is set out in the Train Service Description, for the Reference Train Service relating to the relevant Reference Tariff as set out in the Access Undertaking.
- (c) The gross tonne kilometres (**gtk**) for a Train Service is determined as the multiple of the gt for the Train Service and the distance travelled in kilometres by the Train Service.

*[Note: This standard access agreement is based on a train loading at an origin and travelling to a destination where it is unloaded. Modified provisions will be needed in circumstances where, for example, a train loads at its origin and then travels to an intermediate destination where it is either partially unloaded or further loaded before travelling on to its final destination and unloading.]*

### **5.3 Net tonnes**

The net tonnes (**nt**) for a Train Service is equal to the gt for the Train Service calculated in **clause 5.2(a)** of this **schedule 3** less the sum of:

- (a) the Locomotive Weight (as set out in **clause 1(a)** for the Train Service) multiplied by the number of locomotives comprised in the Train Service;
- (b) the difference between Wagon Weight (loaded) and the Wagon Weight (unloaded) (each as set out in **clause 1(a)** for the Train Service) multiplied by the number of wagons comprised in the Train Service and expressed as a positive number; and
- (c) for all other Rolling Stock, the tare mass specified in the Network Control System for each item of such Rolling Stock comprised in the Train Service.

# Schedule 4

## Interface Risk Management Plan

*[Note: Insert initial IRMP as agreed during the negotiation process with the access seeker.]*

**Executed** as an agreement.

**Executed by Queensland Rail** )  
**Limited** by its duly authorised officer in )  
the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

**Executed by [Insert name of** )  
**Operator]** )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by [Insert name of** )  
**Operator's Customer]** )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

***[Note: If the Operator's Customer is not a party to the agreement, then the execution block above should be deleted.]***