

## Attachment A

QR's proposed  
organisational structure  
effective 1 July 2008

## Attachment B

List of detailed amendments  
to QR Network's 2008  
Access Undertaking relative to  
QR Limited's 2005  
Access Undertaking

QLD Competition Authority  
Date Received  
12-May-2008

## Attachment C

Draft 2008 Access Undertaking  
(clean)

## Attachment D

### Draft 2008 Undertaking

(mark-up to the  
2005 Access Undertaking)

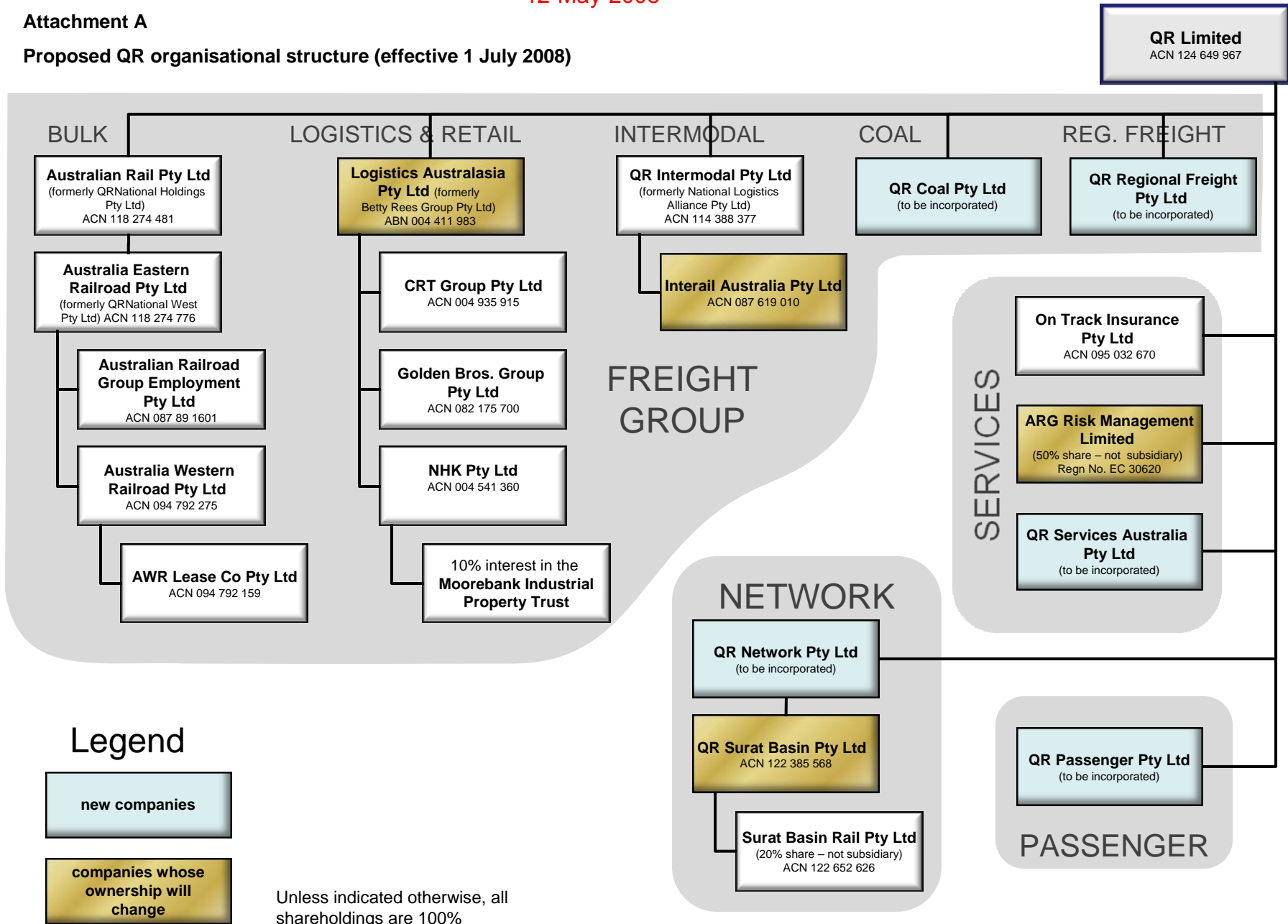
## Attachment E

# Clean copies of Access Holder and Operator Standard Access Agreements

(together with a mark-up only of those pages  
which are amended relative to the 2005 Undertaking)

Attachment A

Proposed QR organisational structure (effective 1 July 2008)



## QR Network's 2008 Access Undertaking

### Description of Variations from the 2005 Undertaking

It is intended that QR Network's 2008 Undertaking (the **2008 Undertaking**) is "transitional" in nature effectively transferring QR Limited's access undertaking approved by the QCA on 30 June 2006 (the **2005 Undertaking**) to QR Network. Substantive changes from the 2005 Undertaking have been avoided in preparing the 2008 Undertaking.

Brief descriptions of the principle variations from the 2005 Undertaking are outlined below.

Reference	Explanation
General	References to QR and Network Access generally become references to QR Network in the draft undertaking. There are exceptions to this, as in some instances this change is not be appropriate.
General	References to the Chief Executive Officer of QR and the QR Chief Executive have been changed to the QR Network Chief Executive, except where this change would not be appropriate.
2.1(c)(ii)	This provision has been amended so that to the extent that a Related Party of QR Network (and not QR Network) owns or has the authority to authorise an Access Seeker or Access Holder to access land, then entry on land is included in Access for the purposes of the draft undertaking.
2.1(f)	This provision has been amended consistent with the amendments to Subparagraph 2.1(c)(ii). In addition, the references to Third Party have also been deleted so that the provision now applies to all Access Seekers.
2.1(h)	Notwithstanding that it is intended QR Network will be the entity that supplies electric energy to QR Operational Business Groups in connection with Access (if electric energy is to be supplied), the provision has been amended to address circumstances where a Related Party of QR Network (rather than QR Network) is supplying electric energy to QR Operational Business Groups for Access.
2.2(d), (f), (g) and (h)	<p>These provisions have been updated to reflect the restructure of QR into separate legal entities.</p> <p>In particular, the separation into legal entities means that access to Rail Transport Infrastructure for which QR Network is not the Railway Manager no longer simply involves an internal reallocation of responsibilities. If Access is required to be provided by QR Network to an Access Seeker in respect of such infrastructure, QR Network must first obtain responsibility for the relevant infrastructure from the relevant Related Party of QR Network.</p>
2.3(b)	Paragraph 2.3(b) has been amended so that it is clear that the draft undertaking will be applied from 1 July 2008 even if the draft undertaking is approved by the QCA prior to or after that date.

Reference	Explanation
2.4	The last sentence of this provision is not necessary and, in any event, QR Network will not be a party to any rail haulage agreements.
2.5.1	These provisions have been amended to provide that the references to the Commencing Date are to 30 June 2006 (i.e. the equivalent date under the 2005 Undertaking).
2.5.2	<p>These transitional provisions seek to ensure that the practical effect of the 2005 Undertaking is maintained under the draft undertaking so that as far as practicable there is effectively a transfer of QR's rights and obligations under the 2005 Undertaking to QR Network. It is intended that the transition from QR to QR Network as access provider should have no practical implications for Access Seekers or Access Holders.</p> <p>Paragraph (a) is a successor provision for groups, divisions and positions referred to in the 2005 Undertaking but which no longer exist or are not defined under the draft undertaking.</p> <p>Paragraph (b) seeks to ensure that all things done under the 2005 Undertaking or processes that have been commenced under the 2005 Undertaking continue under the draft undertaking.</p> <p>Paragraph (c) provides that the rights and obligations that QR would have had under the 2005 Undertaking in relation to the period prior to the Commencing Date may be exercised and must be complied with by QR Network.</p> <p>Paragraph (d) seeks to ensure that if there is any ambiguity or uncertainty in the meaning of the draft undertaking, the draft undertaking will be interpreted so that it has the same substantive effect as if the 2005 Undertaking were still in place.</p> <p>Paragraph (e) provides that all Internal Access Agreements in place immediately prior to the Commencing Date are deemed to continue after the Commencing Date.</p> <p>Paragraphs (f) and (g) provide a process for the conversion of Internal Access Agreements into Access Agreements. It is intended that the existing effect of the Internal Access Agreements will be maintained. Each Access Agreement arising thereby will be taken as having been executed when the corresponding Internal Access Agreement was put in place.</p> <p>Paragraph (h) relates to a circumstance where Reference Tariffs are applied retrospectively to a period prior to the Commencing Date.</p>
3.1(b) & (c)	The first sentence in each case has been deleted as it is not needed.
3.1(b)(vii) & (c)(iv)	QR Network will provide all Yard Control services at Major Yards (ie yards at Acacia Ridge, Fisherman Islands, Rockhampton, Callemondah, Jilalan, Coppabella, Paget, Townsville and Portsmith). Yard Control services at other yards will be provided by QR Operational Business Groups on behalf of QR Network.
3.1(d)	The first and last references to QR are unchanged, as the varying of the structure of QR Limited's subsidiaries is a matter for QR Limited.



Reference	Explanation
3.1(e)	This has been updated to reflect the restructure and the transformation of business groups into subsidiaries.
3.2.1	<p>Modifications have been made to the obligation to prepare Financial Statements to provide for the following circumstances:</p> <ul style="list-style-type: none"> <li>• if QR prepares consolidated financial statements for itself and Related Parties of QR (including QR Network); and</li> <li>• if not, then for QR Network's preparation of audited general purpose financial statements (and, if necessary, audited supplementary financial statements).</li> </ul> <p>If QR Network is preparing its own financial statements it will have statutory obligations in respect of their auditing independent of the draft undertaking. Any supplementary financial statements will also be included in such audit processes. It is therefore intended that the audit processes for Financial Statements under the draft undertaking will only apply to Financial Statements prepared by QR Network where QR has prepared consolidated financial statements for itself and its Related Parties.</p> <p>Financial Statements will be certified by the QR Network Chief Executive. QR Network will not have a Chairman.</p> <p>The definition of "Costing Manual" has also been adjusted in light of these two potential approaches to the preparation of financial statements.</p>
3.3(d)(ii)	<p>A provision has been included such that to the extent that QR Network discloses Confidential Information to a Related Party of QR Network, in addition to the requirements of the draft undertaking such disclosure can only occur where there is an agreement with the Related Party with provisions for the purpose of the keeping the Confidential Information confidential. However, if QR Network becomes aware of a breach of such provisions it must notify the QCA of that breach and the actions it has or proposes to take to rectify that breach and to prevent further improper use or disclosure of the Confidential Information.</p> <p>The reference to QR's shareholding ministers has been retained as QR Network still needs to be able to disclose Confidential Information to these ministers if requested.</p>
3.3.1(c)(i) & (iii)	These provisions have been updated to delete provisions rendered unnecessary as a result of the restructure.
3.3.2(a)	As QR Limited will be the ultimately holding company for QR Network, this provision has been expanded to include disclosure to the Chief Executive Officer of QR, the Chief Financial Officer of QR and the QR Board and their respective Support Staff.
3.3.2(b)	References to the divisions and groups referred to in this provision have been updated consistent with the restructure proposals.

Reference	Explanation
3.3.2(e) & (f)	In the context "QR employee or group" has been retained and expanded to include employee's or groups in Related Parties of QR other than QR Network.
3.3.2(i)	The Chief Management Accounting Division has been deleted as the division no longer exists.
3.3.2(j) & (k)	Given the restructure and the duplication of registers in these paragraphs, paragraph (k) have been deleted. QR Network will continue to maintain a ringfencing register with the names of persons in QR or a Related Party of QR other than QR Network to be included as applicable.
3.3.2(l) to (n) & (q)	Various references to QR have been retained and expanded to include Related Parties of QR. This is appropriate given the restructure and to maintain the existing effect as under the 2005 Undertaking.
3.5.1(a)	An amendment has been provided such that a Third Party Access Seeker or Third Party Access Holder can make a complaint to QR Network if it considers that a Related Party of QR Network has breached a confidentiality deed or confidentiality provisions in another arrangement pursuant to which Confidential Information was disclosed to it by QR Network.
5.3	<p>The reference to Internal Access Agreements have been changed to Access Agreement with QR or a Related Party of QR. No new Internal Access Agreements will be created after the draft undertaking commences. Internal Access Agreements in effect immediately prior to the Commencing Date will be converted under the draft undertaking into Access Agreements.</p> <p>Paragraph (c) and (d) have been deleted as these provisions will no longer be required.</p>
5.4(a) & (b)	The references to Internal Access Agreements have been deleted as these references will no longer be required.
6.1.2	The reference to Internal Access Agreements have been changed to Access Agreement with QR or a Related Party of QR.
6.4.4	This provision has been given a new heading and the remainder of the provision has been deleted with the exception of the former paragraph (c) which has been amended to take into account the expert determination made under the 2005 Undertaking.
6.5.3(a)(iii)	Consistent with the position under the 2005 Undertaking, this provision has been modified such that assets given to or sold to QR Network by QR or a Related Party of QR are not included in the Access Conditions Register.

Reference	Explanation
7.4.1(d), 7.4.3(c)(i)(A), 7.4.3(g)(i) & 7.4.4(g)(iii)	The references to Commencing Date have been replaced with 30 June 2006. This maintains the position under the 2005 Undertaking.  Paragraph (ii) of the definition of "Relinquishment Fee" has similarly been amended.
9.1(c)	The reference to 2001 Undertaking has been updated to the 2005 Undertaking.
9.1(k)	The provision has been amended to take account of the restructure of QR Limited and to provide greater clarity.
9.2.1	This provision has been adjusted for consistency with Subclause 3.2.1.
9.2.2(g)(i)	This provision has been amended so that it is clear that the information relating to the period prior to the Commencing Date relates to QR and the 2005 Undertaking.
9.4(a)	This provision has been updated as the appointment of a Compliance Officer will not be necessary.
10.1	New definitions have been inserted for: <ul style="list-style-type: none"> <li>• 2005 Undertaking;</li> <li>• Internal Access Agreement;</li> <li>• QR Network;</li> <li>• QR Services Australia; and</li> <li>• QR Train Services.</li> </ul> The definition of Network Access has been deleted.
10.1 "Access Agreement"	This definition has been amended to take account of the Internal Access Agreements transitioned across to QR Network's access undertaking.  In addition, QR Network will have Access Agreements that are in respect of more than one Train Service. The QCA's proposed drafting has been inserted such that for particular provisions of the draft undertaking, such agreements are to be treated as though they are comprised of multiple agreements (ie one agreement for each individual Train Service) and to allow for the QCA to determine that this interpretation will be applied to other provisions if it considered that necessary.
10.1 "Authority"	This definition has been amended so that QR Limited cannot be an Authority.
10.1 "Compliance Officer"	This definition has been updated for the restructure and the fact that a Compliance Officer already exists.

Reference	Explanation
10.1 "QR Operational Business Groups"	This definition has been expanded to include subsidiaries of QR (other than QR Network).
Schedule B	<p>The confidentiality deed has been updated to reflect the restructure and for consistency with the amendments to the confidentiality provisions in Part 3 of the draft undertaking.</p> <p>Clause 4 (Liquidated Damages) and Clause 5 (Compensation for loss in excess of \$50,000) have been modified to include references to a breach by a Related Party of QR Network of a confidentiality provisions in an agreement with QR Network pursuant to which Confidential Information was disclosed.</p>
Schedule F, Part A, Clause 5.2	The reference in the definition of "Change in Law", "Endorsed Variation Event" and "Total Actual Revenue" to "Commencing Date" have been updated to 30 June 2006 to maintain the position under the 2005 Undertaking.
Schedule F, Part B	The references in Subclauses 2.2.2 and 2.2.6 to the "Commencing Date" have been updated to 30 June 2006 to maintain the position under the 2005 Undertaking.
Schedule F, Part B, Clause 3	Provisions for the backdating of Revised Reference Tariffs and the amendment of the 2005 Undertaking in respect of the Form of Regulation have been deleted, as these provisions are no longer needed.
Schedule FB, Paragraph 2.3.1(a), 2.3.2(b) and (c), 2.3.3(b) and 2.3.4(b)	References to QR in various instances have been amended to refer to QR Network except for the period prior to the Commencing Date where the consideration of matters must be by reference to QR. For example, it may be that it was QR not QR Network who made the investment decision, sought Customer acceptance for Capacity enhancements or did other matters relevant to those provisions.
Schedule FB, Clause 4.2 "Approved Capital Expenditure"	The definition has been amended so that it is clear that Approved Capital Expenditure includes capital expenditure approved by the QCA prior to the Commencing Date under the 2005 Undertaking.

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## VOLUME 2 – STANDARD ACCESS AGREEMENTS

### STANDARD ACCESS AGREEMENT (ACCESS HOLDER) FOR COAL CARRYING TRAIN SERVICES

### STANDARD ACCESS AGREEMENT (OPERATOR) FOR COAL CARRYING TRAIN SERVICES





## PART 1. PREAMBLE

- (a) QR Network has developed this Undertaking to provide a framework to manage negotiations with Access Seekers for Access to Rail Infrastructure for the purpose of operating Train Services.
- (b) This Undertaking has been prepared in accordance with the Act. The intent of the Undertaking is to:
- (i) ensure that Access is negotiated in a competitively neutral environment;
  - (ii) ensure that Access negotiations are conducted expeditiously on a commercial basis between QR Network and Access Seekers;
  - (iii) provide a mechanism for the exchange of information between QR Network and Access Seekers necessary to facilitate the negotiation process;
  - (iv) establish pricing principles to be employed by QR Network in negotiating Access and which provide guidance in the resolution of a pricing dispute;
  - (v) outline the manner in which QR Network will manage the utilisation of Capacity;
  - (vi) outline the interface considerations to be addressed for Access Seekers and Access Holders to obtain and maintain Access;
  - (vii) outline the principles to be incorporated in an Access Agreement;
  - (viii) provide for a binding dispute resolution process to apply during negotiations for Access;
  - (ix) provide that actions pursuant to the Undertaking are consistent with the objectives for rail under s.2(2)(d) of the TIA; and
  - (x) seek to encourage the efficient use of the Rail Transport Infrastructure by establishing an efficient process for obtaining Third Party Access thereby facilitating competition.
- (c) This Undertaking will be consistently applied to Access Applications where those applications are within the scope of this Undertaking as set out in Part 2.
- (d) For further information on the negotiation of Access in accordance with the provisions of this Undertaking, contact:

QR Network Pty Ltd  
21st Floor, 127 Creek Street  
Brisbane Qld 4000

Phone: (07) 3235 3144  
Fax: (07) 3235 3930  
Email: network.access@qr.com.au

## **PART 2. SCOPE AND ADMINISTRATION OF UNDERTAKING**

### **2.1 SCOPE**

- (a) This Undertaking provides for the negotiation of Access required for the operation of Train Services by Access Seekers.
- (b) Activities that an Access Seeker may seek to undertake on the Rail Infrastructure as part of the operation of a Train Service include:
- (i) mainline running of a Train from its origin to its destination, including:
    - the use of passing loops to facilitate mainline running of the Train; and
    - Train queuing and staging required to facilitate the running of a Train Service from its origin to its destination, including before and after loading and unloading of a Train;
  - (ii) loading and unloading of a Train at facilities other than Other Rail Infrastructure;
  - (iii) Train marshalling and shunting at the following times:
    - in preparation for running of the Train Service;
    - before or after loading or unloading of the Train; and
    - before or after maintenance and provisioning of the Train; and
  - (iv) Train stowage in the following circumstances:
    - as required for crew changes, meal breaks and on Track maintenance and provisioning of the Train; and
    - where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure.
- (c) Access will include, in addition to the use of the Rail Infrastructure:
- (i) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
    - (A) signalling;
    - (B) Train Control Services and associated communication;
    - (C) access to walkways immediately adjacent to, and crew changeover points connecting to, track which is the responsibility of QR Network; and
    - (D) the provision of electric transmission infrastructure on electrified sections of the track so as to permit the acquisition of electric energy for traction;
  - (ii) entry upon land:
    - (A) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure (for example, the entry of land beneath Rail Infrastructure for the purpose of exercising Access Rights in respect of the Rail Infrastructure); or

- (B) for access to the walkways and crew changeover points referred to in Subparagraph 2.1(c)(i)(C) (to the same degree as is available to QR Operational Business Groups),
- provided that:
- (C) the land is owned by QR Network or a Related Party of QR Network; or
- (D) QR Network or a Related Party of QR Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land and the entry is not inconsistent with the terms of that lease, licence or other arrangement.
- (d) This Undertaking covers the provision of Access to Rail Infrastructure for the purpose of operating Train Services only. Access Holders shall be responsible for the provision of any other services, including Above Rail Services, required for the operation of their Train Services.
- (e) This Undertaking is not applicable to the negotiation of Access to Rail Infrastructure for the purpose of operating Train Services that are used for transportation between Queensland and another state and that utilise Standard Gauge Track and Standard Gauge Rollingstock (referred to as "Interstate Train Services"). Access Seekers may negotiate Access for the operation of Interstate Train Services in accordance with the relevant access regime.
- (f) Where the land upon which the Rail Infrastructure is situated is not owned by QR Network or a Related Party of QR Network and any one of those entities does not, through a lease, licence or other arrangement with the owners of the land (including, for example, a sublease from Queensland Transport) or pursuant to the TIA, have the authority to authorise Access Seekers to access that land, it is the responsibility of the Access Seeker to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated. In such circumstances, the Preliminary Information provided by QR Network to the Access Seeker will provide information to assist the Access Seeker in obtaining such approval, as specified in Part A of Schedule D.
- (g) This Undertaking, despite anything else contained in it, is subject to QR Network complying with its Passenger Priority Obligations, which shall override the provisions of this Undertaking to the extent of any inconsistency.
- (h) Subject to this Paragraph 2.1(h), to the extent that QR Network or a Related Party of QR Network ("Supplier") sells or supplies a QR Operational Business Group with electric energy in connection with Access, QR Network cannot refuse to, if QR Network is a Supplier, sell or supply electric energy to another Access Seeker or Access Holder (or, if QR Network is not a Supplier, procure such a sale or supply from a Supplier). However, the sale or supply of electric energy is not part of Access and, except as specifically referred to in this Undertaking, is not subject to the provisions of this Undertaking. Further, despite any other provision of this Undertaking, QR Network will not be obliged to sell or supply electric energy to an Access Holder (or procure such a sale or supply from a Related Party of QR Network), or to agree to sell or supply electric energy to an Access Seeker (or to procure such a sale or supply from a Related Party of QR Network):

- (i) if QR Network or a Related Party of QR Network (who is a Supplier) is not lawfully entitled to sell or supply electricity to the relevant Access Holder or Access Seeker under the *Electricity Act 1994 (Qld)*; or
- (ii) on terms that would be unreasonable or uncommercial.

If a Dispute arises between an Access Holder or Access Seeker and QR Network regarding a refusal by QR Network to sell or supply electric energy (or procure such a sale or supply from a Related Party of QR Network) or the proposed terms and conditions on which QR Network (or a Related Party of QR Network) offers to sell or supply electric energy to the Access Holder or Access Seeker, the Dispute may be referred to Dispute resolution in accordance with Clause 4.7.

## **2.2 REVIEW OF RAIL INFRASTRUCTURE**

- (a) The Line Diagrams in Schedule A indicate those parts of the rail network that are not Rail Infrastructure, as at April 2004, for the purpose of this Undertaking.
- (b) Subject to this Clause 2.2, QR Network will review and amend the Line Diagrams immediately after the Commencing Date and, if necessary, thereafter during the Term at intervals of no greater than six (6) months to reflect changes that have been made to the configuration or management of the rail network. QR Network will publish the current version of the Line Diagrams on its website.
- (c) Where, in the QCA's reasonable opinion, a material change may have been made to the configuration or management of the rail network that is not reflected in the Line Diagrams, the QCA may request in writing that QR Network review and, if necessary amend the Line Diagrams in accordance with Paragraph 2.2(b). QR Network will perform such a review and make any necessary amendments to the Line Diagrams within thirty (30) days of receiving the written request from the QCA.
- (d) QR Network will not:
  - (i) assign or transfer existing or new Rail Transport Infrastructure from QR Network to QR or a Related Party of QR; or
  - (ii) remove existing Rail Transport Infrastructure (except where such Rail Transport Infrastructure is already identified in the Line Diagrams for future removal) or amend the Line Diagrams to identify any existing Rail Transport Infrastructure for future removal, except where the change:
    - (A) is minor or administrative in nature;
    - (B) reflects an agreement between Queensland Transport and QR Network to cease Queensland Transport funding for the provision of the relevant Rail Transport Infrastructure through Transport Service Payments and to remove the relevant Rail Transport Infrastructure; or
    - (C) does not reflect a permanent reduction in Capacity (for example, where level crossings are removed or reconfigurations of track are undertaken without affecting an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking),unless the QCA has approved a Draft Amending Undertaking incorporating the corresponding amendment to the Line Diagrams.

- (e) Where an Access Seeker or Access Holder is reasonably of the opinion that amended Line Diagrams prepared and published in accordance with Paragraph 2.2(b) reflect a change to the configuration or management of the rail network that contravenes Paragraph 2.2(d), the Access Seeker or Access Holder may, in writing, request QR Network to review the amendment and amend the Line Diagrams accordingly.
- (f) If an Access Seeker is reasonably of the opinion that access to Rail Transport Infrastructure that is not Rail Infrastructure for the purpose of this Undertaking, is required for the purpose of obtaining access to the Declared Service, then the Access Seeker may make a request in writing that QR Network obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly.
- (g) In considering a request made in accordance with Paragraph 2.2(f), QR Network will obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly if, in QR Network's reasonable opinion, this is appropriate having regard to the following principles:
  - (i) subject to Subparagraphs 2.2(g)(iv) and 2.2(g)(v), the responsibility for Rail Transport Infrastructure should be allocated in a way that enables QR Network to operate as a stand alone provider of the Declared Service, except in relation to stations and platforms which are managed in the manner provided in Subparagraph 3.1(c)(iii);
  - (ii) the existing market shares of QR Operational Business Groups should not be a factor in the allocation of responsibility for Rail Transport Infrastructure;
  - (iii) subject to Subparagraphs 2.2(g)(iv) and 2.2(g)(v), responsibility for Rail Transport Infrastructure should be allocated in a way that reasonably allows for Access Seekers to undertake activities of the type identified in Paragraph 2.1(b);
  - (iv) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between QR Network and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by a QR business group or a Related Party of QR other than QR Network;
  - (v) any facility that is not owned or leased by QR Network and is accessible from track managed by QR Network (referred to as a "Private Facility") should be accessible from Rail Infrastructure, except where the agreement between QR Network and the Private Facility manager explicitly accepts that the Private Facility is accessible from track managed by a QR business group or a Related Party of QR other than QR Network; and
  - (vi) QR Network is not obliged to agree to obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly if the use of that Rail Transport Infrastructure is outside the scope of the Declared Service.

- (h) QR Network must:
- (i) where QR Network receives a request from an Access Seeker or Access Holder under Paragraph 2.2(e);
    - (A) notify the QCA in writing of the request;
    - (B) review the relevant amendment to the Line Diagrams; and
    - (C) within thirty (30) days of QR Network receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether QR Network accept that the change to the management or configuration of the network was in contravention of Paragraph 2.2(d) and, if so, the action that QR Network proposes to take to remedy this contravention;
  - (ii) within thirty (30) days of QR Network receiving the Access Seeker's request under Paragraph 2.2(f), give the Access Seeker written notice of whether QR Network will obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams; and
  - (iii) undertake any required amendments to the Line Diagrams within fourteen (14) days of:
    - (A) where the matter has not been referred to Dispute resolution under Paragraph 2.2(i), the giving of the notice under Subparagraph 2.2(h)(i) or Subparagraph 2.2(h)(ii); or
    - (B) where the matter has been referred to Dispute resolution under Paragraph 2.2(i), the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (i) If:
- (i) an Access Seeker or Access Holder disagrees with the results of the consideration of the Access Seeker's or Access Holder's request under Paragraph 2.2(e) or, where relevant, the action that is proposed to remedy a contravention of Paragraph 2.2(d); or
  - (ii) an Access Seeker disagrees with the results of the consideration of the Access Seeker's request under Paragraph 2.2(f),
- it may refer the issue to the Dispute resolution process set out in Clause 4.7.

### **2.3 DURATION OF UNDERTAKING**

- (a) This Undertaking comes into operation on the date that it is approved by the QCA.
- (b) This Undertaking will be applied from 1 July 2008 ("Commencing Date") even if this Undertaking is approved by the QCA prior to or after the Commencing Date.
- (c) Subject to Clause 2.5, all Access Applications lodged with QR prior to the Commencing Date, including any negotiations for Access based on an Indicative Access Proposal provided by QR prior to the Commencing Date, will be dealt with in accordance with the provisions of this Undertaking.

- (d) This Undertaking will apply until 30 June 2009 (“Terminating Date”) unless withdrawn as provided for in the Act.

## **2.4 CONTRACTUAL ARRANGEMENTS**

This Undertaking applies only to the negotiation of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require QR Network or any other party to an existing Access Agreement to vary a term or provision of that agreement.

## **2.5 TRANSITIONAL PROVISIONS**

### **2.5.1 Access Applications submitted prior to 30 June 2006**

- (a) For the purposes of this Clause 2.5, the terms “Access Seeker”, “Access Application”, “Indicative Access Proposal”, “Reference Tariff” and “Negotiation Period” have the meanings given under Clause 10.1 of the 2001 Undertaking unless a contrary intention appears.
- (b) Where:
- (i) an Access Seeker has submitted an Access Application to QR and received an Indicative Access Proposal from QR prior to 30 June 2006;
  - (ii) the Negotiation Period in respect of that Access Application has commenced but has not ceased in accordance with Paragraph 4.5.1(c) of the 2001 Undertaking; and
  - (iii) the Access Seeker gives QR a written notice, within thirty (30) days of 30 June 2006, that the Access Seeker elects to continue negotiating Access under the 2001 Undertaking,
- the following will apply:
- (iv) the Access Seeker and QR Network will continue negotiations, in respect of the Access Rights sought, in accordance with the Non-Pricing Provisions, Parts 4 and 6 and Subclauses 7.4.1 and 7.5.1 of this Undertaking and any Reference Tariffs endorsed under that Part 6 and the Standard Access Agreements under this Undertaking;
  - (v) the Negotiation Period in respect of the relevant Access Application for the purposes of this Undertaking will be taken to commence when the Negotiation Period commenced under the 2001 Undertaking and will cease in accordance with Paragraph 4.5.1(e) of this Undertaking;
  - (vi) any reference in the Non-Pricing Provisions to:
    - (A) Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of the 2001 Undertaking or any provision thereof shall be a reference to Part 4, Part 6, Subclauses 7.4.1, Subclause 7.5.1 or any equivalent provision respectively of this Undertaking; and
    - (B) a Reference Tariff, Standard Access Agreement or any term defined by reference to a provision of Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of the 2001 Undertaking shall be a reference to a

Reference Tariff, a Standard Access Agreement or the equivalent term respectively as defined under this Undertaking; and

- (vii) for the avoidance of doubt, any reference in Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of this Undertaking or a Standard Access Agreement under this Undertaking to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule will be a reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule of this Undertaking.
- (c) Where:
- (i) an Access Seeker has submitted an Access Application to QR prior to 30 June 2006; and
  - (ii) any one or more of Subparagraphs 2.5(b)(i), (ii) or (iii) have not been satisfied,
- the following will apply:
- (iii) the Access Seeker and QR Network will continue negotiations, in respect of the Access Rights sought, in accordance with this Undertaking; and
  - (iv) where the Negotiation Period has commenced but not ceased in accordance with Paragraph 4.5.1(e) of the 2001 Undertaking, the Negotiation Period in respect of the relevant Access Application for the purposes of this Undertaking will be taken to commence when the Negotiation Period commenced under the 2001 Undertaking and will cease in accordance with Paragraph 4.5.1(e) of this Undertaking.
- (d) In addition to Paragraphs 2.5(b) and (c) where an Access Seeker has submitted an Access Application to QR prior to 30 June 2006 and a provision of this Undertaking applicable to the Access Application refers to any act, document or thing provided, given or otherwise done (for example, the providing of an Indicative Access Proposal) and an equivalent act, document or thing has been provided, given or otherwise done under the 2001 Undertaking, the act, document or thing will be deemed to have been provided, given or otherwise done under this Undertaking (even though the date when this occurred is prior to 30 June 2006) but only to the extent that this is reasonably necessary to give meaning and effect to the applicable provisions of this Undertaking and for the continuance of negotiations pursuant to Subparagraphs 2.5(b)(iv) or (c)(iii) as applicable.

## 2.5.2 Restructure of QR

Notwithstanding any provision to the contrary in this Undertaking:

- (a) if:
- (i) the 2005 Undertaking referred to a group, division or position of QR;
  - (ii) this Undertaking contains the same reference to that group, division or position; and
  - (iii) that group, division or position no longer exists and is not defined in this Undertaking,

then that reference is to the successor or replacement group, division or position with substantially the same functions and responsibilities as the group, division or position at the time immediately prior to the Commencing Date;



- (b) all acts, agreements, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever (“Matter”) done, arising, given, received, undertaken, commenced or established (“Done”) under the 2005 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though this Undertaking commenced on 30 June 2006, the Matter was Done under this Undertaking and anything Done by or in relation to QR was Done by or in relation to QR Network;
- (c) if, had the 2005 Undertaking not been withdrawn, QR would have had rights or obligations (“2005 Requirements”) thereunder in relation to or in connection with a period prior to the Commencing Date, QR Network’s equivalent rights and obligations under this Undertaking are deemed to include those 2005 Requirements and QR Network may exercise and must comply with (as applicable) those 2005 Requirements as if it were QR and the 2005 Undertaking still applied (including, for example, for revenue cap adjustments, the payment, recovery or reimbursement of charges and quarterly and annual reporting obligations);
- (d) if any ambiguity or uncertainty arises as to the meaning of this Undertaking, this Undertaking is intended to have and should be interpreted such that it has the same substantive effect as if:
  - (i) the 2005 Undertaking still applied;
  - (ii) QR Network was “Network Access” under the 2005 Undertaking; and
  - (iii) QR business groups and the Related Parties of QR were QR business groups under the 2005 Undertaking;
- (e) for the purposes of this Undertaking and subject to Subparagraph 2.5.2(f), Internal Access Agreements are deemed:
  - (i) to continue after the Commencing Date; and
  - (ii) to be arrangements between QR Network and QR;
- (f) QR Network will convert each Internal Access Agreement to an Access Agreement between QR Network and QR or a Related Party of QR by executing an Access Agreement with QR or a Related Party of QR provided that the terms of the Access Agreement only vary from the Internal Access Agreement:
  - (i) to the extent necessary for the conversion from an Internal Access Agreement to an Access Agreement; and
  - (ii) to reflect the restructure of QR;
- (g) for the purposes of this Undertaking:
  - (i) the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) is deemed to be the date when the Internal Access Agreement it replaces was put in place; and
  - (ii) an Access Agreement executed in accordance with Subparagraph 2.5.2(f) is deemed to not be for new or renewed QR Train Services; and
- (h) if this Undertaking (either in its initially approved form or as amended) provides rights to, or imposes obligations on, QR Network relating to a period prior to the Commencing Date, actions taken by QR relevant to those rights or obligations prior to the Commencing Date are deemed to be the actions of QR Network.

For example, if this Undertaking provides for a new Reference Tariff to be retrospectively applied to Train Services operating prior to the Commencing Date and allows adjustment for QR Network's under or over recovery, the Access Charges paid to QR prior to the Commencing Date will be deemed to have been paid to QR Network in calculating the necessary adjustment.

## **PART 3. RINGFENCING ARRANGEMENTS**

### **3.1 ORGANISATIONAL STRUCTURE**

- (a) QR has established its organisational structure to facilitate the separation of the management of Rail Infrastructure from the operation of Train Services. QR Network has been established as a subsidiary of QR, separate from QR Operational Business Groups. In addition, within QR there are service and corporate groups whose purpose is to provide support activities for both QR Network and QR Operational Business Groups, and to provide core corporate functions.
- (b) The primary function of QR Network is to manage the provision of Below Rail Services, with the exception of services associated with stations and platforms. In performing this function, the responsibilities of QR Network include the:
  - (i) negotiation of Access Agreements with Access Seekers and management of Access Agreements with Access Holders. Where Access is required for Below Rail Services provided by a facility that is not managed by QR Network, QR Network will negotiate for Access to that facility by the Access Seeker as an agent for the QR business group or the Related Party of QR Network that manages that facility;
  - (ii) development and management of agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Transport Service Payments;
  - (iii) provision and/or procurement of appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR Network's obligations to Access Holders and Queensland Transport;
  - (iv) assessment, allocation and management of Capacity and Available Capacity;
  - (v) provision of scheduling and Train Control Services in all areas of the Rail Infrastructure, in accordance with the Network Management Principles (noting that certain Train Control Services as specified in Subparagraph 3.1(c)(iv) are performed by a QR Operational Business Group on behalf of QR Network);
  - (vi) provision of electric transmission infrastructure on electrified sections of the Track to enable Access Holders to run electric Train Services, and (subject to Paragraph 2.1(h)) the procurement of traction power on electrified sections of the Track, including the management of power supply from other parties, where an Access Seeker or Access Holder requests QR Network to provide that electric energy; and
  - (vii) provision of Yard Control and Field Incident Management, but with the exception of Yard Control services at yards other than Major Yards where these services are performed by a QR Operational Business Group on behalf of QR Network.
- (c) The responsibilities of the QR Operational Business Groups include the:

- (i) operation of Train Services;
- (ii) provision and/or procurement of appropriate levels of maintenance and investment for Above Rail Services;
- (iii) management of stations and platforms, including the provision or procurement of appropriate levels of maintenance and investment for stations and platforms; and
- (iv) performance of the following Below Rail Services on behalf of QR Network:
  - Field Incident Management;
  - Yard Control services at yards other than Major Yards; and
  - scheduling and Train Control Services in the Metropolitan Region of QR Network's network, in accordance with the Network Management Principles.
- (d) If QR wishes to vary its organisational structure during the term of this Undertaking such that QR Operational Business Groups become responsible for the provision of functions, in addition to those specified in Paragraph 3.1(c), integral to the provision of Below Rail Services, QR Network will submit a Draft Amending Undertaking to the QCA. Upon approval of the Draft Amending Undertaking by the QCA, QR may implement the restructure.
- (e) By way of example, the following structural changes, if proposed, would require QR Network to submit a Draft Amending Undertaking to the QCA in accordance with Paragraph 3.1(d):
  - (i) QR wishes to wind up QR Network;
  - (ii) QR Network wishes to assign to a QR Operational Business Group any of QR Network's existing functions, including the performance of scheduling and Train Control Services, other than to the extent already contemplated in Subparagraph 3.1(c)(iv);
  - (iii) if QR Network has arrangements with:
    - (A) QR Services Australia for any construction, maintenance or associated services for the purpose of providing Below Rail Services; or
    - (B) QR for any services (including safety and environmental services) for the purpose of processing Access Applications or providing Below Rail Services,and QR Network seeks to terminate those arrangements and execute an agreement with another QR Operational Business Group for the provision of such services.
- (f) During the Term, QR Network and the QCA may agree to jointly review the appropriateness of Yard Control services at major yards other than Callemondah continuing to be performed by a QR Operational Business Group. QR Network will, after first obtaining the approval of the QCA, take whatever reasonable steps are required to implement the findings of any such review.

## **3.2 ACCOUNTING SEPARATION**

### **3.2.1 Preparation of Financial Statements**

- (a) QR Network will develop, on an annual basis:
  - (i) if QR prepares consolidated financial statements for itself and Related Parties of QR (including QR Network), financial statements for Below Rail Services provided by QR Network, as identified in Paragraph 3.1(b); or
  - (ii) if QR does not prepare such consolidated financial statements:
    - (A) audited general purpose financial statements in accordance with relevant legislation and applicable Australian accounting standards; and
    - (B) if necessary, an audited supplementary financial statement, (referred to as the “Financial Statements”) which separately identify the Central Queensland Coal Region from the rest of the network and are otherwise developed in accordance with the methodology and format set out in the Costing Manual.
- (b) The Financial Statements will be certified by the QR Network Chief Executive as being in accordance with the Costing Manual and, for Financial Statements prepared under Subparagraph 3.2.1(a)(i), will be audited in accordance with Subclause 3.2.2.

### **3.2.2 Audit of Financial Statements**

- (a) A qualified auditor will conduct the audit of the Financial Statements within six (6) months of the end of the Year to which the Financial Statements relate, or such longer time as agreed by the QCA. The auditor should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.
- (b) QR Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the auditor at different times throughout the relevant Year.
- (c) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA’s approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Paragraph 3.2.2(d).
- (d) If, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR Network that its approval of that auditor in relation to the next audit of the Financial Statements is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit.
- (e) The auditor will have a 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 QR Network and

its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence.

- (f) The auditor will examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, and will prepare an audit certificate that specifies:
  - (i) the scope of the audit;
  - (ii) the level of access that the auditor was provided to QR Network's financial information, including the relevant information systems;
  - (iii) whether or not the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
  - (iv) if the auditor identifies that the Financial Statements have not been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.
- (g) Prior to commencing the audit, the auditor must agree an audit plan with QR Network, document that audit plan and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.
- (h) QR Network will provide the auditor with access to QR Network's financial records and information systems necessary for the purpose of conducting the audit, as well as providing any relevant information the auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.
- (i) The auditor will be required to enter into a confidentiality deed in relation to any information provided by QR Network, 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 certificate.
- (j) Upon completion of the audit, the auditor must provide a copy of the audit certificate, and any accompanying letter to management explaining the audit findings in greater detail, to both QR Network and the QCA.

### **3.3 MANAGEMENT OF CONFIDENTIAL INFORMATION**

- (a) For the purpose of Clause 3.3:
  - (i) "Confidential Information", in addition to the meaning as defined in Clause 10.1, includes information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure

of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and

- (ii) that other party shall be deemed to be the owner of such Confidential Information.
- (b) The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information:
- (i) disclosed by Third Party Access Seekers or Third Party Access Holders to QR Network, or disclosed by QR Network to Third Party Access Seekers or Third Party Access Holders, as part of an Access Application or Indicative Access Proposal (including any related discussions or disclosures of information), negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or
  - (ii) collected by an Access Holder or QR Network in the performance of an Access Agreement,
- except that they do not apply to the handling of Confidential Information which relates solely in all material respects to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services. Where a document or discussion is comprised of information only some of which would be information to which Clause 3.3 applies, Clause 3.3 will not apply to the remainder of the information in the document or discussion to the extent that QR Network can clearly separate this information from the information to which Clause 3.3 applies.
- (c) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR Network to enter into a confidentiality deed with the Third Party Access Seeker. Similarly, at any time during the negotiation process, QR Network may require a Third Party Access Seeker to enter into a confidentiality deed with QR Network. The confidentiality deed will be in the form specified in Schedule B, unless otherwise agreed between QR Network and the Third Party Access Seeker.
- (d) QR Network, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed by or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:
- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
  - (ii) the disclosure and/or use is:
    - required or compelled by any law;
    - required or compelled by any order of a court;
    - required or compelled by notice validly issued by any Authority;

- necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;
- required under any stock exchange listing requirement or rule;
- to the Safety Regulator;
- to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
- to the recipient's banker 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 owner of the Confidential Information;
- requested by QR's shareholding ministers;
- for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
- by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or
- subject to Paragraph 3.3.2(a), to a Related Party of QR Network ("QR Party") provided that the disclosure is in accordance with Paragraphs 3.3.2(b) to (i) and subject to a legally enforceable agreement between QR Network and the QR Party with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network (provided that QR Network must notify the QCA of any breach of such provisions of which QR Network becomes aware, and the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure).

### 3.3.1 External Flows of Confidential Information

- (a) QR Network will not, where reasonably practicable, appoint an external consultant or independent advisor to provide advice in relation to Confidential Information, where that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter.
- (b) In the context of Subparagraph 3.3(d)(i), it would be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
  - (i) specifying the individual/s employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;



- (ii) specifying that those individual/s must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
  - (iii) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.
- (c) Also in the context of Subparagraph 3.3(d)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
  - (i) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group;
  - (ii) specifying the individual/s employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract and, where QR Network has not been able to reasonably avoid appointing an external consultant or independent advisor to review and provide advice in relation to such Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter in accordance with Paragraph 3.3.1(a), after receiving the recipient's assurance that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter;
  - (iii) specifying that those individual/s must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network; and
  - (iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder.
- (d) For the purposes of this Undertaking , a person who has been a consultant or contractor to either QR Network or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

### **3.3.2 Internal Flows of Confidential Information**

- (a) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to:
  - (i) individuals within QR Network (including the QR Network Chief Executive, QR Network Board and their respective Support Staff); and

- (ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and their respective Support Staff.
- (b) Subject to Paragraph 3.3.2(c), QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to those groups within QR specified in this Paragraph 3.3.2(b), provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement:
- (i) Rollingstock Engineering Division within QR Services Australia in relation to Rollingstock or Rollingstock interface issues;
- (ii) Property Division within QR in relation to real property issues; and
- (iii) QR Services Australia employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues.
- (c) A Third Party Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in paragraph 3.3.2(b). If a Third Party Access Seeker gives such a notice to QR Network, then:
- (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
- (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternate mechanism. If the parties fail to agree on an alternate mechanism, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7;
- (iii) all reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Subparagraph 3.3.2(c)(ii) may be recovered by QR Network from the Third Party Access Seeker as a debt due and owing. All relevant timeframes applicable to QR Network under this Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and
- (iv) if:
- the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can obtain the information it requires to respond to the Access Application; or
  - the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process;
- QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b).
- (d) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Operational Business Group where:
- (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure;

- (ii) such disclosure is required for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
  - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
  - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
- (e) If, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR Network wishes to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR employee or group (or an employee or group of a Related Party of QR other than QR Network) not specified in Paragraphs 3.3.2(a), (b) or (d), or to a group specified in Paragraph 3.3.2(b) on an issue not specified in that Paragraph, QR Network must:
  - (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
  - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (f) QR Network will not, where reasonably practicable, disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR employee (or an employee of a Related Party of QR) where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Paragraph 3.3.2(b), QR Network must obtain the consent of the owner of the Confidential Information prior to making the disclosure.
- (g) If, during the process of responding to an Access Application or negotiating an Access Agreement, QR Network seeks the consent of an Access Seeker for the disclosure of Confidential Information pursuant to Paragraph 3.3.2 (e) or (f) and:
  - (i) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) ; or
  - (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant

timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.

This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.

- (h) If, during the process of administering an Access Agreement, QR Network seeks the consent of an Access Holder for the disclosure of Confidential Information pursuant to Paragraph 3.3.2(e) or (f), such consent shall not be unreasonably withheld. If the owner of the Confidential Information fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, consent shall be deemed to have been given. This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.
- (i) The Ringfencing Compliance Officer, and QR employees in Internal Audit and Information Services Division will from time to time, in the course of performing their duties, have access to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information. QR Network is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.
- (j) QR Network will establish and maintain a ring fencing register for the purpose of recording the names of those persons, within QR or a Related Party of QR other than QR Network (excluding those persons gaining access to Confidential Information in accordance with Paragraph 3.3.2(i)) to whom QR Network discloses Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.
- (k) [Not used]
- (l) QR Network will ensure that all QR employees (and all employees of a Related Party of QR) receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ring fencing training and awareness session.
- (m) Where QR Network employees leave QR Network to work elsewhere in QR (or a Related Party of QR), they will undergo a debriefing process to remind them of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3 and will be asked to sign an acknowledgement of having undergone such a debriefing process.
- (n) Where QR Network employees in management levels 2, 3 and 4, leave QR Network to work:

- (i) in a QR Operational Business Group, they will not, for a period of three (3) months, work on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in QR Network; or
  - (ii) in QR (or a Related Party of QR other than a QR Operational Business Group), they will not, for a period of three (3) months, work for a QR Operational Business Group on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in QR Network.
- (o) A QR Network employee must not concurrently work in a working group on a project with staff from a QR Operational Business Group:
- (i) if the activities of the working group affect or could affect the operations of Third Party Access Holders or Third Party Access Seekers on the Queensland network; and
  - (ii) unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker referred to under Subparagraph 3.3.2(o)(i) on the Queensland network which, if disclosed to the QR Operational Business Group, could provide the QR Operational Business Group with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (p) QR Network must not temporarily transfer a QR Network employee to a role in a QR Operational Business Group:
- (i) if the activities of the QR Operational Business Group affect or could affect the operations of Third Party Access Holders or Third Party Access Seekers on the Queensland network; and
  - (ii) unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker referred to under Subparagraph 3.3.2(p)(i) on the Queensland network which, if disclosed to the QR Operational Business Group, could provide the QR Operational Business Group with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (q) In making all decisions in relation to the temporary transfer of QR Network employees to roles in QR (or a Related Party of QR other than QR Network), QR Network must have regard to the potential implications of any such transfer on QR Network's obligations under this Undertaking to manage Confidential Information to avoid as far as practicable, the risk that Confidential Information will be disclosed that could affect Third Parties Access Holders' or Third Party Access Seekers' operations on the Queensland network.

### **3.4 DECISION MAKING**

- (a) Subject to Paragraph 3.4(b), QR Network will comply with the following decision making principles when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:

- (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
  - (ii) the decision is made in a manner that is consistent between Access Seekers and/or Access Holders in the same circumstances; and
  - (iii) either:
    - (A) the decision is required in order to comply with:
      - a law;
      - a lawful direction of an Authority;
      - this Undertaking;
      - the Access Agreements of adversely affected Access Holders;
      - an access code made under the Act;
    - (B) the decision is made in accordance with QR Network's documented policies and procedures; or
    - (C) the reasons for the decision are documented by QR Network.
- (b) Decisions made in relation to a reasonable act done in, and for, or to prevent an emergency (including an emergency that involves, or may involve, injury to persons or damage to property) are exempt from the decision making process prescribed by Paragraph 3.4(a).

### **3.5 COMPLIANCE AND ENFORCEMENT**

The following compliance and enforcement obligations apply to QR Network's conduct in meeting its obligations under Clause 3.3 and Clause 3.4.

#### **3.5.1 Complaint Handling**

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR Network has breached one or more of its obligations under Clause 3.3 or Clause 3.4, or that a Related Party of QR Network has breached a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, they may lodge a written complaint with QR Network.
- (b) QR Network will advise the QCA, as soon as practicable, of any complaints it receives from Third Party Access Seekers and Third Party Access Holders pursuant to Paragraph 3.5.1(a).
- (c) QR Network will conduct an investigation of those complaints referred to in Paragraph 3.5.1(a), and advise the complainant and the QCA in writing of the outcome of the investigation and QR Network's proposed response, if any. QR Network will use reasonable endeavours to complete its investigation and advise the complainant and the QCA of the results of its investigation within twenty-eight (28) days of receiving the complaint in question.
- (d) Where a complaint relates to an alleged breach by QR Network of obligations under Clause 3.4 and the complainant is not satisfied with the outcome of QR

Network's investigation, the complainant can apply to the QCA seeking an audit of the relevant QR Network decision(s) the subject of the complaint.

### 3.5.2 Audits

- (a) Where:
- (i) the QCA has a reasonable basis for believing that a decision(s) of QR Network ("Identified Decision(s)") has resulted, or may result in a material adverse effect on an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access; and
  - (ii) the Identified Decision(s) was made since the completion of the last annual audit under this Subclause 3.5.2 or the audit is being undertaken as part of resolving a Dispute,
- the QCA may require QR Network to undertake an audit of the Identified Decision(s) to determine whether QR Network has complied with its obligations in Clause 3.4. Paragraphs 3.5.2(c) to (i) will apply in respect to the audit as if a reference to an annual audit is a reference to an audit required under this Paragraph 3.5.2(a).
- (b) QR Network's compliance with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1 will be audited annually.
- (c) In considering QR Network's compliance with the above obligations, the auditor may take into account QR Network's compliance with any relevant internal procedures.
- (d) The QCA may require the annual audit, referred to in Paragraph 3.5.2(b), to be conducted by an external party, and if it does, the following process will apply:
- (i) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 3.5.2(d)(ii);
  - (ii) if, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR Network that its approval of that auditor in relation to the next external audit of QR Network's compliance with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1 is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;
  - (iii) the auditor will have a 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 QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence; and
  - (iv) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA,

during the course of the audit, to provide a forum for the resolution of any audit issues that arise.

- (e) QR Network will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.
- (f) The auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below.
- (g) The auditor will compile an audit report identifying:
  - (i) whether QR Network has complied in all material respects with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1;
  - (ii) if the auditor identifies that QR Network has not complied in all material respects with the obligations specified above, details on the relevant non-compliance; and
  - (iii) the process adopted for the conduct of the audit.
- (h) The auditor will provide a copy of the annual audit report to QR Network and the QCA upon completion of the audit.
- (i) The QCA may publish the annual audit report referred to in Paragraph 3.5.2(g).



## **PART 4. NEGOTIATION FRAMEWORK**

### **4.1 ACCESS APPLICATION**

- (a) Requests for Access are to be submitted to QR Network in the form of an Access Application.
- (b) Subject to Paragraph 4.2(d), Access Seekers must provide as part of their Access Application all information reasonably necessary for QR Network to evaluate their Access Application and prepare an Indicative Access Proposal. Schedule C provides the information required to be included in Access Applications. Prior to submitting the Access Application, the Access Seeker may seek initial meetings with QR Network to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular the information requirements set out in Schedule C.
- (c) Upon request by the Access Seeker at any time (including prior to the lodging of an Access Application), QR Network will provide to the Access Seeker Preliminary Information relative to the corridor of interest.
- (d) QR Network will use reasonable efforts to make the Preliminary Information available to the Access Seeker within fourteen (14) days of QR Network receiving the Access Seeker's request if the information contained in the Preliminary Information has been previously compiled, otherwise within thirty (30) days of QR Network receiving the request. QR Network will advise the Access Seeker if the Preliminary Information is expected to take longer than fourteen (14) days to provide and, if so, will advise the Access Seeker of its estimate of the time required to deliver the Preliminary Information and the reasons for the additional time required.
- (e) QR Network will use reasonable efforts to ensure that any Preliminary Information provided under Paragraph 4.1(c) will reflect the most current information available to QR Network. QR Network will identify the currency of the Preliminary Information provided.
- (f) For the provision of Preliminary Information under this Clause 4.1, QR Network will be entitled to levy the charge specified in Schedule D for the relevant information.

### **4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION**

- (a) Upon receiving an Access Application from an Access Seeker, QR Network must, subject to Paragraph 4.2(b), acknowledge the receipt of the Access Application by giving a notice in writing to the Access Seeker within five (5) Business Days of its receipt.
- (b) Prior to acknowledging an Access Application, QR Network may seek:
  - (i) additional information where QR Network can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal (either because the Access Application did not include the information contained in Schedule C, or because there are special

circumstances of the Access Application which result in the additional information being reasonably necessary for QR Network to prepare an Indicative Access Proposal); or

- (ii) clarification of the information that has been provided in the Access Application.

In such circumstances, QR Network will advise the Access Seeker of the additional information or the clarification required within five (5) Business Days of receipt of the Access Application. Upon receiving the additional information or clarification from the Access Seeker, the additional information or clarification forms part of the Access Application and QR Network must give the Access Seeker a written notice acknowledging the receipt of the Access Application within five (5) Business Days.

- (c) QR Network will use reasonable efforts to provide an Indicative Access Proposal to an Access Seeker within thirty (30) days of the date on which QR Network gives an Acknowledgement Notice to the Access Seeker. However, in assessing an Access Application, QR Network may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within that thirty (30) day period. In these circumstances:
  - (i) the Acknowledgment Notice given must state that the Indicative Access Proposal will not be provided within the thirty (30) day period and the reasons for this; and
  - (ii) within five (5) Business Days of the date on which QR Network gives an Acknowledgement Notice to the Access Seeker, QR Network must advise the Access Seeker of its estimate of the time required to deliver the Indicative Access Proposal.

Where the Access Seeker is of the view that the time estimated for preparation of the Indicative Access Proposal is excessive, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR Network will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by QR Network or as otherwise determined by the QCA pursuant to this Paragraph 4.2(c).

- (d) QR Network recognises that there may be circumstances where an Access Seeker is able to provide a reasonable description of its proposed Train Service taking into account the information requirements set out in Schedule C or requested by QR Network in accordance with Paragraph 4.2(b), but is not able to provide all of the detailed information requirements set out in Schedule C or requested by QR Network in accordance with Paragraph 4.2(b). In such circumstances, QR Network will acknowledge the Access Application and prepare an Indicative Access Proposal, conditional upon assumptions made by QR Network relating to the detailed information not provided by the Access Seeker.
- (e) For the purpose of clarity, in the circumstances covered by Paragraphs 4.2(b) and 4.2(d) QR Network will be deemed to have received an Access Application on the date it received the first request for Access notwithstanding such request does not include all of the information specified in Paragraph 4.1(b) or the additional information or clarification requested by QR Network in accordance with Paragraph 4.2(b), provided that QR Network reasonably considers the first request provides a reasonable description of the Access Seeker's proposed

Train Services sufficient for QR Network to prepare an Indicative Access Proposal conditional upon certain assumptions made by QR Network relating to the detailed information not provided by the Access Seeker. If QR Network reasonably considers that the first request does not provide a reasonable description of the Access Seeker's proposed Train Services sufficient for the above purpose, QR Network will not be deemed to have received an Access Application unless and until the Access Seeker provides QR Network with all information specified in Schedule C and requested by QR Network in accordance with Paragraph 4.2(b).

### **4.3 INDICATIVE ACCESS PROPOSAL**

- (a) The Indicative Access Proposal will set out:
- (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
  - (ii) a summary of the applicable operating characteristics (e.g. frequency, transit time, commodity carried);
  - (iii) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights and, if not, either an outline of the works, and an indicative estimate of the cost of such works, required to provide the additional Capacity necessary to accommodate the requested Access Rights, or an outline of the requirements for an investigation into the provision of sufficient Capacity for the requested Access Rights;
  - (iv) advice in respect of the existence of other Access Seekers who have submitted an Access Application in respect of Access which, if it were to be provided, would limit the ability of QR Network to provide Access in accordance with the Indicative Access Proposal;
  - (v) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6, including advice as to whether QR Network has applied Subparagraph 6.1.1(b)(i), Subparagraph 6.1.1(c)(i) or Subparagraph 6.1.1(c)(ii) in determining the estimate of the Access Charge and if so:
    - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
    - (B) the impact that the factor has on the Access Charge; and
    - (C) how that impact on the Access Charge was determined;
  - (vi) details of the additional information required for QR Network to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in Paragraph 4.5.2(a); and
  - (vii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date that QR Network dispatches the Indicative Access Proposal to the Access Seeker, or such later date as QR Network specifies provided that this later date is acceptable to the Access Seeker.
- (b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR Network

to provide Access in accordance with the specific terms and conditions, including Access Charge, contained within it.

- (c) If, after thirty (30) days following QR Network's giving of an Acknowledgment Notice to an Access Seeker, or if applicable after expiration of the time estimated by QR Network or determined by the QCA in accordance with Paragraph 4.2(c), the Access Seeker believes that QR Network is not making reasonable progress in the preparation of the Indicative Access Proposal, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4.
- (d) If the Access Seeker believes that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify QR Network of its concerns in writing within thirty (30) days of receipt of the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker agree at their discretion.
- (e) QR Network will use reasonable efforts to respond to these concerns including, where appropriate, making revisions to the Indicative Access Proposal, within fourteen (14) days of the notification of the concerns in accordance with Paragraph 4.3(d). QR Network may consider that due to the complexity of the concerns or due to other extenuating circumstances, it is not reasonable to provide a response within fourteen (14) days of notification of those concerns. In these circumstances QR Network will advise the Access Seeker within five (5) Business Days of the Access Seeker's notification to QR Network, of QR Network's estimate of the time required to deliver the response. Where the Access Seeker is of the view that the time estimated for preparation of the response pursuant to this Paragraph is excessive, they may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR Network will use reasonable efforts to provide the response within the estimated time period provided by QR Network or as otherwise determined by the QCA pursuant to this Paragraph.
- (f) If the Access Seeker is satisfied with the response received from QR Network in accordance with Paragraph 4.3(e), including any revision to the Indicative Access Proposal, it must notify QR Network of its intention to proceed with negotiations before the expiry of the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker agree at their discretion. In the event that the Access Seeker is not satisfied with the response from QR Network, including any revision to the Indicative Access Proposal, the Access Seeker may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7. The Access Seeker must commence this Dispute resolution process within 30 (thirty) days of receiving QR Network's response or such other timeframe as QR Network and the Access Seeker agree at their discretion.
- (g) Where a Dispute is referred for resolution in accordance with Paragraph 4.3(f) the Access Seeker must notify QR Network in writing within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR Network and the Access Seeker agree at their discretion, whether the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.

#### **4.4 NOTIFICATION OF INTENT**

- (a) Except as provided in Paragraphs 4.3(f) and 4.3(g), if the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the Indicative Access Proposal.
- (b) Except as provided in Paragraphs 4.3(f) and 4.3(g), if the Access Seeker gives a notification of its intention to progress its Access Application after the expiry date of the Indicative Access Proposal but not later than six (6) months after that date, QR Network will review the Indicative Access Proposal and, if considered necessary by QR Network, prepare a revised Indicative Access Proposal in accordance with Clause 4.3. Where:
  - (i) a revised Indicative Access Proposal is prepared and the Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the revised Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the revised Indicative Access Proposal; or
  - (ii) a revised Indicative Access Proposal is not considered necessary by QR Network, the Access Seeker's notification of its intention is taken to be validly given even though it is given after the expiry date of the Indicative Access Proposal,

Provided that in either case, if a queue has been established, or is subsequently established, for the Access Rights in accordance with Paragraph 7.4.1(c) the date on which QR Network received the Access Application will be deemed to be the date on which the Access Seeker gave QR Network its notification of intent under this Paragraph 4.4(b).

#### **4.5 NEGOTIATION PROCESS**

##### **4.5.1 Negotiation Period**

- (a) Once the Negotiation Period has commenced both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement. Subject to Paragraph 4.5.1(b), the Negotiation Period shall commence upon the Access Seeker providing a notification of intent in accordance with Clause 4.4.
- (b) If QR Network has established a queue in accordance with Paragraph 7.4.1(c), QR Network has no obligation to negotiate with an Access Seeker other than the Access Seeker whose Access Application is first in the queue and only in respect of the Access sought by that Access Application. In this instance, the Negotiation Period will commence from the time the Access Seeker is notified by QR Network that it is first in the queue, unless QR Network and the Access Seeker had commenced negotiating towards an Access Agreement prior to the formation of the queue in which case:
  - (i) if the Access Seeker is first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided QR Network notification of its intent pursuant to Clause 4.4; and

- (ii) if the Access Seeker is not first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided QR Network notification of its intent pursuant to Clause 4.4 but the Negotiation Period will be put on hold until the Access Seeker is notified by QR Network that it is first in the queue.
- (c) Where negotiations have commenced with one or more Access Seeker while a queue does not exist, and QR Network subsequently forms a queue in accordance with Paragraph 7.4.1(c), QR Network will:
  - (i) cease negotiations with all Access Seekers who have Access Applications in the newly formed queue except for the Access Seeker whose Access Application is first in the queue; and
  - (ii) notify all Access Seekers seeking the mutually exclusive Access Rights of the formation of the queue and their respective positions in the queue.
- (d) Where negotiations have commenced and progressed to a significant extent with the first Access Seeker in a queue and QR Network subsequently changes the order of the queue in accordance with Paragraphs 7.4.1(e) – (h) such that the Access Seeker is no longer first in the queue QR Network will:
  - (i) notify the Access Seeker of this fact in accordance with Paragraph 7.4.1(i), and give the Access Seeker thirty (30) days within which to demonstrate to QR Network's satisfaction that it should regain first position in the queue; and
  - (ii) advise the Access Seeker who is first in the queue following the reordering of the queue that their Negotiation Period has been put on hold pending the other Access Seeker's attempt to satisfy the requirements of Paragraph (i) above.
- (e) The Negotiation Period will cease upon any of the following events:
  - (i) execution of an Access Agreement in respect of the Access sought by the Access Seeker;
  - (ii) written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
  - (iii) QR Network issuing a Negotiation Cessation Notice to the Access Seeker pursuant to Paragraph 4.6(b); or
  - (iv) the expiration of nine (9) months from the commencement of the Negotiation Period unless:
    - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
    - (B) a Dispute arises between the parties that either party has sought to resolve in accordance with the Dispute resolution process outlined in Clause 4.7, in which case the Negotiation Period will continue until the resolution of the Dispute and for any further time agreed by the parties or determined during the Dispute resolution process.

- (f) If the Negotiation Period ceases and the Access Seeker was in a queue established by QR Network in accordance with Paragraph 7.4.1(c), the Access Seeker will be removed from the queue.

#### 4.5.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR Network and the Access Seeker will negotiate and endeavour to agree on the elements comprising the Access Agreement. In order to facilitate this process:
- (i) QR Network will provide Additional Information relevant to the corridor of interest to the Access Seeker, to the extent required either by the Access Seeker or as part of the Access Agreement, which may include any information outlined in Part A of Schedule D not provided as part of the Preliminary Information and the information outlined in Part B of Schedule D;
  - (ii) an Operating Plan is to be prepared by the Access Seeker in accordance with Subclause 8.1.4;
  - (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker, jointly with QR Network, in accordance with Subclause 8.1.2 and an Interface Risk Management Plan is to be developed and agreed in accordance with Subclause 8.1.3;
  - (iv) an Environmental Investigation and Risk Management Report must be undertaken and prepared by the Access Seeker in accordance with Subclause 8.2.1;
  - (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR Network including advice as to whether QR Network has applied Subparagraph 6.1.1(b)(i), Subparagraph 6.1.1(c)(i) or Subparagraph 6.1.1(c)(ii) in determining the Access Charge and if so:
    - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
    - (B) the impact that the factor has on the Access Charge; and
    - (C) how that impact on the Access Charge was determined;
  - (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR Network and any necessary Capacity enhancements to accommodate Access by the Access Seeker are to be advised by QR Network;
  - (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR Network, consistent with Clause 7.2;
  - (viii) the Access Seeker is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Subclause 8.1.6; and

- (ix) other terms and conditions comprising the Access Agreement are to be provided by QR Network consistent with Clause 5.1.
- (b) During the Negotiation Period, the Access Seeker may review and revise the information provided to QR Network in the Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that an Access Seeker's revision of information provided to QR Network in the Access Application has substantially altered the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view. If, within five (5) Business Days of QR Network giving the notice:
  - (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue negotiating on the original Access Application without the proposed changes, the negotiation process under this Undertaking will continue; or
  - (ii) the notice in Paragraph 4.5.2(b)(i) is not given:
    - (A) the provision of the revised information will be deemed to be a written notice referred to and given under Subparagraph 4.5.1(e)(ii) in respect of the original Access Application; and
    - (B) the original Access Application and revised information will together comprise a new Access Application deemed to have been received by QR Network on the date five (5) Business Days after QR Network gave the notice under this Paragraph 4.5.2(b).
- (c) Where Additional Information is required to be provided in accordance with Subparagraph 4.5.2(a)(i), QR Network will use reasonable endeavours to supply the relevant Additional Information to the Access Seeker within a reasonable timeframe. QR Network will use reasonable endeavours to ensure that any information provided will reflect the most current information available to QR Network. QR Network will identify the currency of the information provided.
- (d) QR Network will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.
- (e) In respect of the details required to be developed by the parties in accordance with Paragraph 4.5.2(a), subject to Paragraph 4.5.2(f) below, the parties may agree to finalise certain aspects after the execution of the Access Agreement. In such circumstances the parties may choose to address the issue in question in a preliminary manner only during the Negotiation Period and then provide a mechanism to address any subsequently identified cost or operating impact after execution of the Access Agreement.
- (f) Where an Access Agreement is executed but the obligations of the parties are conditional upon the completion of schedules to the Access Agreement, the securing of port capacity or the satisfaction of some other condition:
  - (i) the parties must act reasonably and in good faith to comply with those conditions within an agreed timeframe specified in the Access Agreement that is sufficient for QR Network to prepare for the proposed Train Services to commence on the nominated start date; and



- (ii) following the satisfaction of all conditions, QR Network may, acting reasonably, adjust Access Charges under the Access Agreement to reflect the extent that QR Network's costs or risks, when considered after those conditions have been satisfied, are increased or decreased beyond what was anticipated at the date of the Access Agreement.

Any disputes in relation to any matter referred to in this Paragraph 4.5.2(f) shall be determined by the dispute resolution process under the Access Agreement or, if there is none, under Clause 4.7 of this Undertaking.

- (g) QR Network will be responsible for the investigation and design of any necessary enhancements to the Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR Network will be entitled to require that the Access Seeker pay QR Network's reasonable costs for such investigation and design.
- (h) If at any time prior to the execution of an Access Agreement with the Access Seeker, another Access Seeker (other than an Access Seeker that was the subject of advice provided in the Indicative Access Proposal pursuant to Subparagraph 4.3(a)(iv)) submits an Access Application where that Access would limit the ability of QR Network to provide Access in accordance with the Access Rights being negotiated, QR Network will notify the Access Seeker of the existence of the Access Application as soon as reasonably practicable but no later than prior to the provision of an Indicative Access Proposal to the other Access Seeker. The provisions of Subclause 7.4.1 detail how QR Network will deal with each of the Access Seekers in the event that they both notify QR Network, in accordance with Clause 4.4, that they intend to progress their Access Applications and QR Network is unable to provide both parties with the Access Rights they seek.
- (i) If at any time during the Negotiation Period, a Dispute arises between the parties that, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7.

#### **4.6 NEGOTIATION CONDITIONS**

- (a) At any time during the Negotiation Period an Access Seeker may give QR Network written notification that it no longer wishes to proceed with its Access Application.
- (b) At any time during the Negotiation Period, QR Network may, within fourteen (14) days of deciding that it will not enter into an Access Agreement with the Access Seeker, give notice to an Access Seeker of that decision and identify the reasons for the decision (referred to as a "Negotiation Cessation Notice") if:
  - (i) the Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR Network considers on reasonable grounds that such noncompliance is material;
  - (ii) QR Network is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;

- (iii) QR Network is of the reasonable opinion that the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
  - (iv) QR Network gives a Negotiation Cessation Notice under Subparagraph 3.3.2(c)(iv) or 3.3.2(g)(i);
  - (v) except in the circumstances outlined in Paragraph 4.7.3(i), an Access Seeker does not comply with a determination of an expert pursuant to Subclause 4.7.3 in relation to a dispute about the Access Seeker's Access Application; or
  - (vi) an Access Seeker does not comply with a determination of the QCA pursuant to Subclause 4.7.4 in relation to a dispute about the Access Seeker's Access Application.
- (c) Without limitation, it will be reasonable for QR Network to form the opinion that the circumstances in Subparagraph 4.6(b)(ii) apply, if:
- (i) the Access Seeker is Insolvent; or
  - (ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.
- (d) Without limitation, when QR Network is forming an opinion as to whether the circumstances in Subparagraph 4.6(b)(iii) apply, QR Network may consider any one or more of the following factors:
- (i) whether the Access Seeker has secured or is reasonably likely to secure the rights required to leave the QR Network network in order to unload at its destination, for instance, port capacity or capacity to unload at a power station;
  - (ii) whether the Access Seeker (if they are seeking to be an Access Holder and not an operator) has secured or is reasonably likely to secure a rail haulage agreement required to operate the Train Services the subject of the Access Application; and
  - (iii) the speed and timeliness of the Access Seeker in conducting its negotiations, including whether QR Network has determined under Paragraph 4.6(e) that an Access Seeker first in a queue has taken an unreasonable or excessive amount of time negotiating an Access Agreement.
- (e) An Access Seeker who is in a queue but not first in that queue may notify QR Network that it considers that the time taken by the Access Seeker first in the queue to negotiate an Access Agreement with QR Network is unreasonable or excessive. QR Network will determine whether the time taken by the Access Seeker first in the queue is unreasonable or excessive having regard to the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances. QR Network will make its

determination and advise both Access Seekers of its decision within seven (7) Business Days of receiving the notification.

- (f) If an Access Seeker disputes that QR Network was entitled to give it a Negotiation Cessation Notice, then the Access Seeker may refer the matter to Dispute resolution in accordance with Clause 4.7. In such circumstances, for the purposes of Paragraph 4.6(b), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR Network's favour. If the resolution of the Dispute identifies that QR Network was not entitled to give the Access Seeker a Negotiation Cessation Notice, QR Network will recommence negotiations with that Access Seeker immediately.
- (g) QR Network shall have the right at its option to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Subparagraph 4.6(b)(iii). QR Network may seek acknowledgement of the Access Seeker's liability for costs as part of the negotiation for Access.

## **4.7 DISPUTE RESOLUTION**

### **4.7.1 Disputes**

- (a) If any dispute or question ("Dispute") arises under this Undertaking or in relation to the negotiation of Access between a Third Party Access Seeker and QR Network then, unless otherwise expressly agreed by both parties, such Dispute shall be resolved in accordance with this Clause 4.7 and either party may give to the other party to the Dispute notice in writing ("Dispute Notice") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 4.7.
- (b) Unless otherwise agreed by the parties, Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

### **4.7.2 Chief Executive Resolution**

- (a) Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall within seven (7) days of the Dispute Notice be referred in the first instance to the QR Network Chief Executive (or his or her nominee) and the Chief Executive of the Third Party Access Seeker (or his or her nominee) for resolution.
- (b) If:
  - (i) resolution is not reached within fourteen (14) days; or
  - (ii) either Chief Executive appoints a nominee in accordance with Paragraph 4.7.2(a) that is unacceptable to the other party,the relevant Dispute may, by agreement between QR Network and the Third Party Access Seeker, be referred for resolution by an expert in accordance with

Subclause 4.7.3. Failing such agreement, either party may refer the Dispute to the QCA in accordance with Subclause 4.7.4.

### 4.7.3 Expert Determination

Where a matter is referred to an expert in accordance with this Clause 4.7 or as otherwise specified in accordance with this Undertaking then the following shall apply:

- (a) An expert shall be appointed by the parties, or where agreement cannot be reached by the parties within fourteen (14) days, an expert shall be appointed by:
  - (i) the President of CPA Australia if the parties agree that the matters are financial matters;
  - (ii) the President of the Institution of Engineers Australia if the parties agree that the matters are non-financial matters; and
  - (iii) the President of the Queensland Law Society Incorporated where the parties cannot agree on the nature of the particular dispute, or in situations where the parties agree that it is appropriate that the President of the Queensland Law Society Incorporated appoint an expert, given the nature of the matter in dispute.
- (b) In any event the expert shall:
  - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
  - (ii) 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 before his or her appointment; and
  - (iii) not be an employee of the Access Seeker or QR Network or of a Related Party of either of them.
- (c) The expert shall not act until the expert has given written notice of the acceptance of his or her appointment to both parties.
- (d) The parties shall upon request by the expert, provide or make available to the expert:
  - (i) all information in their possession or control; and
  - (ii) all assistance;that the expert may reasonably require. Any such information or assistance must be provided as soon as reasonably practicable.
- (e) Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking.
- (f) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment.

- (g) The expert shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (h) The expert shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990 (Qld)*, shall not apply to the expert or to the determination or to the procedures by which the expert may reach that determination.
- (i) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Subclause 4.7.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Subclause 4.7.4.
- (j) Unless otherwise agreed by the parties:
  - (i) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
  - (ii) each party shall bear their own costs of participating in the expert determination.

#### **4.7.4 Determination by the Queensland Competition Authority**

- (a) If a Dispute is referred to the QCA in accordance with this Clause 4.7, or as otherwise specified in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:
  - (i) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and
  - (ii) any determination by the QCA is consistent with the provisions of this Undertaking.
- (c) If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.

- (d) Where the QCA calls upon the Safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.
- (e) Where a matter is referred to the Safety Regulator for resolution in accordance with Subparagraph 8.1.3(f)(ii), the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportions as the Safety Regulator determines.
- (f) If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4 and that Dispute relates to Subparagraph 6.5.2(c)(i), QR Network will bear the onus of demonstrating to the QCA that QR Network's risk in the stated circumstances is material.

## **PART 5: ACCESS AGREEMENTS**

### **5.1 DEVELOPMENT OF ACCESS AGREEMENTS**

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation process.
- (b) The parties to the Access Agreement will be QR Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services, but if the Access Holder is not the Railway Operator, it must ensure that the relevant Train Services are operated by a Railway Operator.
- (c) The Railway Operator of the Train Services need not have received Accreditation prior to execution of the Access Agreement. The Railway Operator must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.
- (d) Unless otherwise agreed between QR Network and the Access Seeker, the Access Agreement must be consistent with:
  - (i) the terms of a Standard Access Agreement incorporated in Volume 2 of this Undertaking if the Train Services are of the same type specified in that Standard Access Agreement; and
  - (ii) subject to Paragraph 5.1(e), for Train Services of a type for which a Standard Access Agreement has not been incorporated in Volume 2 of this Undertaking, the principles outlined in the Standard Access Agreement summary that is contained in Schedule E.
- (e) QR Network recognises that Schedule E does not provide an exhaustive list of the issues that may be included in an Access Agreement. As a result, whilst the terms of a Standard Access Agreement incorporated in Volume 2 of this Undertaking will provide guidance as to how the principles outlined in Schedule E may be reflected in an Access Agreement for a different type of Train Service, QR Network acknowledges that varied terms and conditions to those specified in a Standard Access Agreement incorporated in Volume 2 may be required in such circumstances.
- (f) Once the Access Seeker has notified QR Network that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR Network will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Access Seeker for execution.
- (g) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR Network.
- (h) QR Network will execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement, or such longer period as the Access Seeker and QR Network agree is reasonably necessary bearing in mind the lead time that would be required to accommodate the development of the Customer's infrastructure (such as a mine) and/or elements of the transport logistics chain, as well as

development of rail infrastructure, relevant to the Access Application lodged by the Access Seeker.

## **5.2 DEVELOPMENT OF NEW STANDARD ACCESS AGREEMENT**

- (a) QR Network will submit a proposed standard access agreement for a specified type of Train Service not covered by a Standard Access Agreement (“Proposed Standard Access Agreement”):
  - (i) within sixty (60) days of a notice being received from the QCA in accordance with Paragraph 5.2(b); or
  - (ii) otherwise at QR Network’s discretion.
- (b) The QCA may give QR Network a notice requiring it to submit a Proposed Standard Access Agreement if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Standard Access Agreement for that specified type of Train Service not covered by a Standard Access Agreement.
- (c) The QCA may develop a Proposed Standard Access Agreement that is consistent with the Undertaking and the principles contained in Schedule E if:
  - (i) QR Network does not comply with a notice given by the QCA under Paragraph 5.2(b) or Subparagraph 5.2(h)(ii) for it to submit, or resubmit, a Proposed Standard Access Agreement (whichever is applicable); or
  - (ii) the QCA refuses to approve a Proposed Standard Access Agreement resubmitted by QR Network.
- (d) Where QR Network submits, or the QCA develops, a Proposed Standard Access Agreement, the QCA will:
  - (i) publish the Proposed Standard Access Agreement;
  - (ii) invite persons to make submissions on the Proposed Standard Access Agreement to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time.
- (e) The QCA may approve a Proposed Standard Access Agreement (including a Proposed Standard Access Agreement developed by the QCA) only if the QCA:
  - (i) is satisfied that the Proposed Standard Access Agreement is consistent with this Undertaking and principles contained in Schedule E;
  - (ii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
  - (iii) the QCA has complied with Paragraph 5.2(d).
- (f) The QCA will consider a Proposed Standard Access Agreement given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a Proposed Standard Access Agreement under this



- Subclause 5.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (g) If the QCA approves a Proposed Standard Access Agreement submitted under Paragraph 5.2(a), or resubmitted under Subparagraph 5.2(h)(ii):
- (i) the Standard Access Agreement will apply from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
  - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
  - (iii) QR Network must:
    - (A) publish a new version of Volume 2 which includes the Standard Access Agreement; and
    - (B) advise Access Holders and Access Seekers, in respect of the specified Train Services to which the Standard Access Agreement applies, that a Standard Access Agreement has been approved.
- (h) If the QCA refuses to approve a Proposed Standard Access Agreement, the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the Proposed Standard Access Agreement should be amended; and
  - (ii) where the Proposed Standard Access Agreement has been submitted by QR Network in response to a notice given by the QCA under Paragraph 5.2(b), requiring QR Network to amend the Proposed Standard Access Agreement in the way the QCA considers it appropriate and resubmit the amended Proposed Standard Access Agreement to the QCA within 30 days of the notice.
- (i) If QR Network complies with the notice given under Paragraph 5.2(h)(ii) above, the QCA may approve the resubmitted Proposed Standard Access Agreement in accordance with Paragraph 5.2(j).
- (j) The QCA may approve the resubmitted Proposed Standard Access Agreement only if the QCA:
- (i) is satisfied that it is in accordance with the notice under Paragraph 5.2(h);
  - (ii) is satisfied that it is consistent with this Undertaking and principles contained in Schedule E; and
  - (iii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.
- (k) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a Proposed Standard Access Agreement, if:
- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
  - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.

- (l) If the QCA grants QR Network an extension of time under Paragraph 5.2(k) above, QR Network must submit, or resubmit, a Proposed Standard Access Agreement, (whichever is applicable) within the time specified by the QCA.
- (m) The QCA may not make a decision under this Clause 5.2 requiring QR Network to submit a Proposed Standard Access Agreement, or approving or refusing to approve a Proposed Standard Access Agreement, unless:
  - (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by law or 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 would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
    - (A) taking an irrelevant consideration into account in the exercise of a power;
    - (B) failing to take a relevant consideration into account in the exercise of a power;
    - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
    - (D) an exercise of a discretionary power in bad faith;
    - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
    - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
    - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
    - (I) any other exercise of a power in a way that is an abuse of the power;
  - (vi) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);
  - (vii) the QCA's decision was not induced or affected by fraud;
  - (viii) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of 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 exist; and
  - (ix) the decision was not otherwise contrary to law or this Undertaking.

For the avoidance of doubt, the terms of this Paragraph 5.2(m) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).
- (n) The requirements set out in Paragraph 5.2(m) also apply to the QCA's conduct in making a decision under this Clause 5.2.

- (o) If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Clause 5.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.
- (p) This Clause 5.2 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).
- (q) Nothing in this Clause 5.2 affects the rights of QR Network under section 142 and related provisions of the Act.

### **5.3 ACCESS AGREEMENTS FOR NEW OR RENEWED QR SERVICES**

- (a) The development of Access Agreements with QR or a Related Party of QR for new or renewed QR Train Services will be subject to this Undertaking, provided that QR does not prevent or hinder Access in any way contrary to s.104 or s.125 of the Act.
- (b) Where there is a Reference Tariff and a Standard Access Agreement incorporated in Volume 2 of this Undertaking for a type of Train Service, and an Access Agreement with QR or a Related Party of QR for a new or renewed QR Train Service of that type is consistent with that Reference Tariff and Standard Access Agreement, then QR will be deemed to have complied with Paragraph 5.3(a).

### **5.4 DISCLOSURE OF ACCESS AGREEMENTS**

- (a) Except as provided for in Paragraph 5.4(d), QR Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services.
- (b) QR Network will permit the disclosure to the QCA of the Below Rail aspects of Access Agreements (including Access Charges) for all Train Services for new or renewed Train Services.
- (c) For the purposes of Paragraphs 5.4(a) and 5.4(b), the Below Rail aspects of Access Agreements will not include:
  - (i) insurance provisions;
  - (ii) contact details included in the Interface Coordination Plan;
  - (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
  - (iv) Interface Risk Management Plan; and
  - (v) Environmental Investigation and Risk Management Report.

- (d) Where a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request where it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.

## **PART 6. PRICING PRINCIPLES**

### **6.1 PRICE DIFFERENTIATION**

In developing Access Charges QR Network will apply the pricing principles set out in this Part 6. In the event of a conflict between these pricing principles, QR Network will apply the pricing principles in the following order of precedence (from highest to lowest):

- (a) Limits on Price Differentiation (Subclause 6.1.2);
- (b) Pricing Limits (Clause 6.2);
- (c) Rail Infrastructure Utilisation (Subclause 6.3.1);
- (d) Revenue Adequacy (Subclause 6.3.2).

#### **6.1.1 Limits on Price Differentiation**

- (a) QR Network will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders within a relevant market except as provided for in this Subclause 6.1.1.
- (b) Where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker may only vary from the Reference Tariff:
  - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service; or
  - (ii) where the Access Charge is for a new or renewed Train Service travelling from a mine on the corridor between Burngrove and Coppabella to the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone), to be less than the applicable Reference Tariff provided that:
    - (A) this is for the purpose of reducing QR Network's asset stranding risk on the corridor between Burngrove and Gladstone; and
    - (B) where Access Seekers are directly competing with each other for the purpose of operating the new or renewed Train Service, the Access Charge offered to each of those Access Seekers will only vary between the Access Seekers so as to reflect differences in the cost or risk to QR Network of providing Access as a result of differences in the type of Train Services proposed by the relevant Access Seeker.
- (c) Where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area may only vary from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, either:
  - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to other Train Services of that type; or

- (ii) over time, to reflect:
  - (A) changes in the cost or risk to QR Network of providing Access;
  - (B) changes in relevant Transport Service Payments, where such changes have the result that QR Network can no longer commercially provide Access to Train Services in that specified geographic area at the current Access Charges;
  - (C) Changes in Market Circumstances; or
  - (D) limitations on Available Capacity in accordance with Paragraph 6.3.1(b).
- (d) QR Network will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:
  - (i) where a Reference Tariff is applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time; or
  - (ii) where there is no Reference Tariff applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area,

provided that QR Network will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.

- (e) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Paragraph 6.1.1(d), if an Access Holder (referred to in this Paragraph as the Aggrieved Access Holder) can demonstrate to QR Network's reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, QR Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Subclause 6.1.1, and if QR Network is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Subclause 6.1.1, then QR Network will alter the Access Charge for the Aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.

### **6.1.2 Establishment of Access Charges for QR Train Services**

In developing Access Agreements with QR or a Related Party of QR in accordance with Subclause 5.3, QR Network will not establish Access Charges for QR Train Services for the purpose of preventing or hindering Access by a Third Party Access Seeker into any market in competition with the QR Operational Business Group providing those QR Train Services.

## **6.2 PRICING LIMITS**

### **6.2.1 Definition of Pricing Limits**

In determining Access Charges, QR Network will observe price limits in respect of the following elements:

- (i) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between Individual Train Services and determined in accordance with Subclause 6.2.2; and
- (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services and determined in accordance with Subclause 6.2.3.

### **6.2.2 Price Limits for Individual Train Services**

- (a) Price limits will apply in respect to Access Charges to be established for each individual Train Service (referred to as “Individual Train Service”) such that, over the Evaluation Period, the relevant Access Charge for the Individual Train Service:
  - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for the Individual Train Service; and
  - (ii) will not:
    - (A) where the Individual Train Service is the only Train Service using a section of the Rail Infrastructure, exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant the Rail Infrastructure; or
    - (B) otherwise, exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.2(a)(ii), a Revenue Limit will be established for the Individual Train Service. The Revenue Limit for an Individual Train Service will reflect the Stand Alone Cost of providing Access for the Individual Train Service over the Evaluation Period. The Revenue Limit will be determined in accordance with Subclause 6.2.4.

### **6.2.3 Price Limits on Train Service Combinations**

- (a) In addition to Subclause 6.2.2, price limits will apply in respect of Access Charges to be established for Individual Train Services such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Paragraph 6.2.3(c)) for any combination of Train Services incorporating the Individual Train Service:

- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure; and
  - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.3(a)(ii), a Revenue Limit will be established for identified combinations of Train Services. The Revenue Limit for a combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the Evaluation Period. The Revenue Limit for the combination of Train Services will be determined in accordance with Subclause 6.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
  - (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with the Reference Tariff proposed; and
  - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with current applicable Access Charges, except as provided in Subparagraph 6.3.1(b)(ii).
- (d) If QR Network incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Subparagraph 6.2.2(a)(i) or Subparagraph 6.2.3(a)(i), then provided that QR Network observes the limits on price differentiation set out in Subclause 6.1.1 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR Network shall be deemed not to be in breach of Subclause 6.2.2 or Subclause 6.2.3.

#### **6.2.4 Definition of Revenue Limit**

- (a) The Revenue Limit will be determined as the maximum amount of expected revenue, including:
  - (i) Access revenue (determined consistent with Paragraph 6.2.3(c)) that may be earned from Access Charges; and
  - (ii) where the Individual Train Service or combination of Train Services (as appropriate) includes all of the Train Services using a section of the Rail Infrastructure, any Transport Services Payments towards the relevant section of Rail Infrastructure,



over the Evaluation Period, measured such that the net present value of the cashflows associated with providing Access for the Individual Train Service or the combination of Train Services (as appropriate) over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_0 + \sum_{t=1}^n \frac{(RL_t - C_t - M_t - T_t)}{(1+ROA)^t} + \frac{AV_n}{(1+ROA)^n}$$

where:

$AV_0$  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 Paragraph 6.2.4(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 1 to  $n$ ;

$RL_t$  is the Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

$C_t$  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;

$M_t$  is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

$ROA$  is the maximum allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA;

$T$  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 QR Network and the QCA or, failing such agreement, as determined by the QCA; and

$AV_n$  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 Paragraph 6.2.4(c), at the end of the Evaluation Period.

(b) In order to determine the amount of each of the variables set out in Paragraph 6.2.4(a), it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of major projects that individually impact significantly on the traffic task. In such circumstances, expected

increases in traffic task shall be incorporated into the forecast following service commitment.

- (c) The value of assets used in Paragraph 6.2.4(a) will be determined using:
  - (i) where applicable, the value of the assets for the relevant area of the network contained in the Regulatory Asset Base, where the value of those assets is maintained in accordance with Schedule FB; or
  - (ii) where there is no value for the assets for the relevant area of the network contained in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.

### **6.3 PRICING OBJECTIVES**

#### **6.3.1 Rail Infrastructure Utilisation**

- (a) Access Holders serve a number of different markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR Network will be entitled to establish different Access Charges for Access Holders serving different markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.
- (b) Where Available Capacity is limited, and QR Network reasonably considers in accordance with Paragraph 7.4.1(n) that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified:
  - (i) QR Network may establish an Access Charge based on the highest Access Charge QR Network is likely to achieve from the current or likely Access Seekers (provided that the highest Access Charge is developed in accordance with the pricing principles set out in this Part 6), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure (referred to in this Paragraph as the "Maximum Access Charge"). The Maximum Access Charge may then be quoted to all Access Seekers seeking Access in respect of the relevant Available Capacity, irrespective of a particular Access Seeker's ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services; and
  - (ii) if QR Network has received mutually exclusive Access Applications and QR Network chooses to allocate Available Capacity to an Access Application where the Access Seeker will pay an Access Charge that is less than the Maximum Access Charge in preference to an Access Application where the Access Seeker would pay an Access Charge that is equal to the Maximum Access Charge and would otherwise be able to utilise that Available Capacity, then for the purpose of assessing a Revenue Limit in accordance with Subclause 6.2.4 for all Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge.

### **6.3.2 Revenue Adequacy**

Provided that QR Network complies with the pricing constraints described in Subclauses 6.1.1 and 6.1.2 and Clause 6.2, QR Network will be entitled to earn revenue from the provision of Access, including both Access Charges and Transport Service Payments, that is sufficient to achieve full recovery of Efficient Costs (providing for any transitional arrangements agreed with the QCA), including an adequate rate of return on the value of assets reasonably required. Where QR Network earns revenue in excess of this its first objective will be to reduce the Transport Service Payments.

## **6.4 REFERENCE TARIFFS**

### **6.4.1 Application of Reference Tariffs**

- (a) It is recognised that, for Individual Train Services, there may be a large range between the price limits established in Clause 6.2 within which Access Charges may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR Network may develop Reference Tariffs for certain types of Train Services.
- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR Network will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with Paragraph 6.1.1(d).
- (d) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.
- (e) Where the QCA has approved a Reference Tariff submitted to it by QR Network, that Reference Tariff will be an acceptable means by which QR Network provides Access Seekers with information about the matters listed in s.101(2)(a) to (c) of the Act, as provided for in accordance with s.101(4) of the Act.

### **6.4.2 Establishment of Reference Tariffs for new Reference Train Services**

- (a) QR Network will submit a proposed Reference Tariff for a new Reference Train Service to the QCA:
  - (i) if required in accordance with Paragraph 6.4.2(c);
  - (ii) subject to Paragraph 6.4.2(d), within sixty (60) days of a notice being received from the QCA in accordance with Paragraph 6.4.2(c); or

- (iii) otherwise at QR Network's discretion.
  
- (b) Where a new coal mine is developed and Train Services servicing that mine will utilise Rail Infrastructure in the Central Queensland Coal Region or Western System, the Train Services travelling between the mine (or where the mine is or will be located on Private Infrastructure, the point where that Private Infrastructure connects to the Rail Infrastructure) and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with the requirements of Schedule F.
  
- (c) The QCA may give QR Network a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Reference Tariff for a new Reference Train Service.
  
- (d) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a proposed Reference Tariff for a new Reference Train Service, if:
  - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
  - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
  
- (e) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
  - (i) QR Network does not comply with a notice given by the QCA under Paragraph 6.4.2(c) or Subparagraph 6.4.2(j)(ii) for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
  - (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by QR Network.
  
- (f) Where QR Network submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
  - (i) publish the proposed Reference Tariff;
  - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time.
  
- (g) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
  - (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
  - (ii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
  - (iii) the QCA has complied with Paragraph 6.4.2(f).

- (h) The QCA will consider a proposed Reference Tariff for a new Reference Train Service given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a proposed Reference Tariff for a new Reference Train Service under this Subclause 6.4.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (i) If the QCA approves a proposed Reference Tariff for a new Reference Train Service submitted under Paragraph 6.4.2(a), or resubmitted under Subparagraph 6.4.2(k)(ii):
- (i) the proposed Reference Tariff will apply from the earlier of:
- (A) the date of the QCA decision;
- (B) where Paragraph 6.4.2(b) applies, the date of the first Train Service servicing the new coal mine; and
- (C) where Paragraph 6.4.2(c) applies, the date when the relevant notice is given by the QCA,
- except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
- (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
- (iii) QR Network must:
- (A) publish a new version of Schedule F which includes the Reference Tariff; and
- (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (j) If the QCA refuses to approve a proposed Reference Tariff for a new Reference Train Service the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
- (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under Paragraph 6.4.2(c), requiring QR Network to amend the proposed Reference Tariff in the way the QCA considers it appropriate and resubmit the amended proposed Reference Tariff to the QCA within thirty (30) days of the notice.
- (k) If QR Network complies with the notice given under Paragraph 6.4.2(j)(ii) above, the QCA may approve the resubmitted proposed Reference Tariff in accordance with Paragraph 6.4.2(l).
- (l) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;

- (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
  - (iii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.
- (m) Subject to the provisions of Subclauses 6.4.2 and 6.4.3, a proposed Reference Tariff may be withdrawn at any time by the party who developed the proposed Reference Tariff.
- (n) If the QCA grants QR Network an extension of time under Paragraph 6.4.2(d), QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.
- (o) The QCA may not make a decision under this Subclause 6.4.2 requiring QR Network to submit a proposed Reference Tariff, or approving or refusing to approve a proposed Reference Tariff, unless:
  - (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by law or 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 would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
    - (A) taking an irrelevant consideration into account in the exercise of a power;
    - (B) failing to take a relevant consideration into account in the exercise of a power;
    - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
    - (D) an exercise of a discretionary power in bad faith;
    - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
    - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
    - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
    - (I) any other exercise of a power in a way that is an abuse of the power;
  - (vi) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);

- (vii) the QCA's decision was not induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of 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 exist; and
- (ix) the decision was not otherwise contrary to law or this Undertaking.

For the avoidance of doubt, the terms of this Paragraph 6.4.2(o) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (p) The requirements set out in Paragraph 6.4.2(o) also apply to QCA's conduct in making a decision under this Subclause 6.4.2.
- (q) If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Subclause 6.4.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.
- (r) This Subclause 6.4.2 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).
- (s) Nothing in this Subclause 6.4.2 affects the rights of QR Network under section 142 and related provisions of the Act.

#### **6.4.3 Review of Reference Tariffs**

Schedule F will specify the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during this period.

#### **6.4.4 Interpretation of Undertaking where a new coal mine is to be included in a Reference Train Service**

This Undertaking will be interpreted so that, where a Train Service to a new coal mine is to be incorporated into a new or existing Reference Train Service in accordance with Paragraph 6.4.2(b):

- (a) for the purposes of calculating the Common Cost contribution as provided within Subclause 4.1.1 of Schedule F, Part B, the level of Common Cost contribution will be determined using the relevant spur and mainline distances from the mine to its most common destination for the total haul distance, irrespective of whether the mine is or will be located adjacent to Private Infrastructure;
- (b) for the purposes of assessing a Reference Tariff for a new coal carrying Train service/s that will operate over both Private Infrastructure and Rail Infrastructure in accordance with Subclause 4.1.2 of Schedule F, Part B, the

Reference Tariff applying to the Train service/s will be the higher of (on a \$/net tonne basis):

- (i) the Reference Tariff for the most relevant existing Reference Train Service; or
  - (ii) the sum of the new coal carrying Train service's Private Incremental Costs, the Incremental Costs of using any Rail Infrastructure specifically related to the new coal carrying Train service/s, and required minimum Common Cost contribution determined in accordance with Subclause 4.1.1 of Schedule F, Part B (on the basis that any reference to a Train Service in Subclause 4.1.1 shall be read as a reference to a Train service/s referred to in this Paragraph 6.4.4(b)),  
with the Access Charge payable to QR for the operation of the Train service/s being the applicable Reference Tariff less the Private Incremental Costs; and
- (c) for the purpose of Subclause 4.1.3 of Schedule F, Part B, the loading facility for the new Reference Train Service will be the point at which the Train is loaded, irrespective of whether this point is located adjacent to Private Infrastructure or Rail Infrastructure.

## **6.5 STRUCTURE OF ACCESS CHARGES AND CONDITIONS TO ACCESS**

### **6.5.1 Structure of Access Charges**

- (a) Where a Reference Tariff is applicable for a Train Service type, the structure of Access Charges for that Train Service type will be in accordance with the documentation for that Reference Tariff.
- (b) Where there is no Reference Tariff applicable for the Train Service type, the structure of Access Charges for that Train Service type will be negotiated with individual Access Seekers depending on their particular requirements and may include:
  - (i) an initial upfront component as a condition to being granted Access Rights;
  - (ii) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure;
  - (iii) one or more ongoing variable components based on usage of the Rail Infrastructure; or
  - (iv) any other structure or combination as agreed by QR Network and the Access Seeker.
- (c) Access Charges for any Train Service type may include a QCA Levy to be collected for the QCA by QR Network. This component of Access Charges will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to QR Network and allocated amongst Train Service types in a manner approved by the QCA.



## 6.5.2 Access Conditions

- (a) Notwithstanding Subclause 6.5.1, QR Network may require an Access Seeker to agree to certain condition/s (additional to those in the relevant Standard Access Agreement) before being granted Access Rights (“Access Conditions”), to the extent that this is reasonably required in order to mitigate QR Network’s exposure to the financial risks associated with providing Access for the Access Seeker’s proposed Train Service.
- (b) For the purposes of Paragraph 6.5.2(a), it will be deemed to be reasonable for QR Network to require Access Conditions, to the extent reasonably required, in order to mitigate QR Network’s exposure to financial risks resulting from QR Network constructing additional Rail Infrastructure or modifying existing Rail Infrastructure where there will be no more than one Customer using that additional or modified Rail Infrastructure (for example, a new rail spur or increasing the height of tunnels to accommodate a single Customer’s taller than usual trains) and that additional or modified Rail Infrastructure would not be required had the Access Seeker not sought Access for its Train Services.
- (c) For the purposes of Paragraph 6.5.2(a), it will be deemed to be unreasonable for QR Network to require Access Conditions in order to mitigate QR Network’s exposure to the financial risks resulting from QR Network:
  - (i) constructing additional Rail Infrastructure or modifying existing Rail Infrastructure where that additional or modified Rail Infrastructure is likely to be used by a number of Customers, Access Seekers or Access Holders such that QR Network’s risk of being unable to recover the costs of the enhancements if any one of those Customers, Access Seekers or Access Holders ceases to require all or part of the relevant Train Services is not material; or
  - (ii) constructing Rail Infrastructure, for the purpose of increasing Capacity for the operation of Reference Train Services, that will form part of the Central Queensland Coal Region Mainline.
- (d) In the event of a Dispute arising in relation to QR Network seeking to require an Access Condition in circumstances not within Paragraphs 6.5.2(b) or (c), the issue shall be subject to the Dispute resolution process set out in Clause 4.7. In the event of the QCA being required to determine such a Dispute, the QCA will assess whether QR Network is allowed to impose such an Access Condition pursuant to Paragraph 6.5.2(a).
- (e) Where QR Network requires an Access Condition in accordance with Paragraph 6.5.2(a), the form of the Access Condition may include, to the extent that is reasonably required to mitigate QR Network’s exposure to the relevant financial risks:
  - (i) an upfront contribution;
  - (ii) an ongoing charge separate to the Access Charge for facilitation of Access which is payable irrespective of actual usage (“Access Facilitation Charge”);
  - (iii) a prepayment of all or part of an Access Facilitation Charge;

- (iv) an additional take or pay arrangement;
  - (v) a further additional take or pay arrangement to address 'back-end' payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal mine, the undepreciated component of any relevant additional Rail Infrastructure or modification of existing Rail Infrastructure that was constructed solely for the purpose of the mine) and a bank guarantee for an equivalent or lesser amount payable on demand, or other form of security acceptable to QR Network, acting reasonably, to support payment under the take or pay arrangement;
  - (vi) an agreement to forfeit any right to relinquish Capacity that may arise under this Access Undertaking; or
  - (vii) any combination of the above conditions,
- provided that QR Network cannot require an Access Seeker to accept an Access Condition that is inconsistent with the Act or this Undertaking.
- (f) If an Access Condition results in QR Network earning revenue from the Access Seeker's Access that is in addition to the ongoing Access Charge (eg an upfront contribution or Access Facilitation Charge), QR Network will:
    - (i) negotiate an agreement separate from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) which will provide for payment of a rebate to that party or their nominee, where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the extent that this component is separately funded through the additional revenue (eg depreciation and the non-diversifiable component of the return on any relevant additional Rail Infrastructure, or modification of existing Rail Infrastructure); or
    - (ii) exclude the cost components separately funded through the additional revenue (eg the value of any additional Rail Infrastructure, or modification of existing Rail Infrastructure to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine the ongoing Access Charge.
  - (g) Where QR Network has sought an Access Condition from a party ("First Party") in relation to the construction of additional Rail Infrastructure, or the modification of existing Rail Infrastructure and Access is granted to another party ("Subsequent Party") to operate Train Services using all or part of that additional Rail Infrastructure, or modification of existing Rail Infrastructure, QR Network will either:
    - (i) negotiate an agreement with the First Party where a rebate paid in accordance with Paragraph 6.5.2(f) includes the amount provided in the Access Charge paid by the Subsequent Party for the cost component to the extent that the component is separately funded through the additional revenue (eg depreciation and the non-diversifiable component of the return on the relevant additional Rail Infrastructure or modification of existing Rail Infrastructure); or
    - (ii) renegotiate the terms of the First Party's Access Conditions and enter into Access Conditions with the Subsequent Party, so that both parties share the responsibility that was originally borne solely by the First Party.

- (h) For the purposes of determining whether another Customer or Subsequent Party uses (or will use) a modification of Rail Infrastructure within the meaning of this Subclause 6.5.2, the Customer or Subsequent Party will be deemed not to do so unless the particular characteristics of the Customer or Subsequent Party's Train Service would also have resulted in the modification being required to be made in order for Access to be provided to the Customer or Subsequent Party. (For example, if QR Network increased the height of tunnels to provide Access to an Access Seeker using taller than usual trains, Customers or Subsequent Parties operating train services through those tunnels will not use that modification unless they use trains of a height that would also have required the height of the tunnels to be increased.)

### 6.5.3 Access Conditions Register

- (a) QR Network will maintain a register ("Access Conditions Register") of any:
- (i) conditions to Access that result in QR Network earning revenue from an Access Holder's Access that is in addition to the ongoing Access Charge (in accordance with Paragraph 6.5.2(f));
  - (ii) revenue paid by a party other than an Access Holder to QR Network in order to directly fund capital expenditure on the Rail Infrastructure incurred by QR Network; and/or
  - (iii) Rail Infrastructure assets given to QR Network or sold to QR Network at significantly less than market value (except where such assets are given to or sold to QR Network by QR or a Related Party of QR).
- (b) The Access Conditions Register will identify:
- (i) the person paying revenue or providing the assets;
  - (ii) the nature of the Access Conditions (if applicable);
  - (iii) the date when the arrangement commenced;
  - (iv) the costs and assets to which the arrangement relates;
  - (v) the amount of the additional revenue; and
  - (vi) the action that QR Network has taken in accordance with Paragraph 6.5.2(f).
- (c) The QCA may, within one (1) month of the end of a Year, request QR Network in writing to conduct an audit of the Access Conditions Register.
- (d) The audit will follow a process agreed to by QR Network and the QCA (acting reasonably) or, failing such agreement, QR Network will make the information from the Access Conditions Register available to the QCA for the QCA to review.

## **PART 7. CAPACITY MANAGEMENT**

### **7.1 NETWORK MANAGEMENT PRINCIPLES**

- (a) QR Network will perform scheduling, Train Control and associated services in accordance with the Network Management Principles.
- (b) QR Network will provide capacity related information to Access Holders in accordance with the Network Management Principles.

### **7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING**

- (a) The Train Service Entitlement of an Access Holder will be defined in terms of a number of Train Services that can be operated in a given time period subject to constraints agreed between QR Network and the Access Holder. Timetabled Traffics are likely to be defined in terms of a Train Path between certain locations, on particular days, and at particular times. Cyclic Traffics are likely to be defined in terms of a number of Train Services within a particular period of time. The application of constraints is likely to vary significantly between different types of Train Services and may include, but will not necessarily be limited to, the following:
  - (i) specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
  - (ii) maximum time period between Train Services;
  - (iii) minimum time period between Train Services;
  - (iv) average Below Rail Transit Time;
  - (v) the agreed threshold for on-time running of the Train Services;
  - (vi) regularity of timetable reviews and the applicable review process; and
  - (vii) allowable modifications of timetable, e.g. cancellation or deferral of services.
- (b) As outlined in Subclause 4.5.2, as part of the negotiation process, QR Network will develop an initial specification of a Train Service Entitlement for an Access Seeker. QR Network and the Access Seeker will further refine this specification of the Train Service Entitlement during the negotiation process. The Train Service Entitlement will finally be incorporated into the relevant Access Agreement.
- (c) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR Network and the Access Holder will then be required to adhere to unless and until such time as the timetable is varied in accordance with the Network Management Principles.
- (d) QR Network will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, WTP and DTP, to

optimise the use of the Rail Infrastructure as circumstances change from time to time. In doing so, QR Network will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.

### **7.3 CAPACITY ANALYSIS**

- (a) QR Network may undertake an Initial Capacity Assessment as part of the preparation of an Indicative Access Proposal. An Initial Capacity Assessment will determine if there is likely to be sufficient Available Capacity to meet the Access Seeker's requirements and, if not, the extent to which Capacity enhancements are likely to be required.
- (b) Where QR Network considers that there are major impediments to the provision of sufficient Capacity to meet the requirements of the Access Seeker, and that the Capacity enhancements that might be necessary would have a significant bearing on the economics of the proposed operation, then the Initial Capacity Assessment, if undertaken, may be conducted in more detail. This may add some time to the preparation of the Indicative Access Proposal and may be a reason for QR Network advising, in accordance with Paragraph 4.2(c), that an Indicative Access Proposal will not be available within thirty (30) days of QR Network's acknowledgment of the Access Application.
- (c) The results of the Initial Capacity Assessment, if undertaken, will be indicative only and will be subject to confirmation by a Capacity Analysis undertaken as part of the negotiation process. As outlined in Subclause 4.5.2, as part of the negotiation process QR Network will undertake a Capacity Analysis. The Capacity Analysis will be conducted in a more comprehensive manner than the Initial Capacity Assessment and will include an investigation of the operational impacts of the proposed Access Rights based on the further detail provided by the Access Seeker in its Operating Plan (see Subclause 8.1.4 for further detail). The Capacity Analysis will confirm whether there is sufficient Available Capacity to meet the Access Seeker's requirements and, if not, detail the requirements for Capacity enhancements. The Capacity Analysis will enable the finalisation of the resultant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

### **7.4 CAPACITY ALLOCATION**

#### **7.4.1 Allocation of Capacity**

- (a) Subject to Paragraphs 7.4.1(b) – (n), Access Rights will be allocated to the first Access Seeker with whom QR Network can negotiate and execute an acceptable Access Agreement. QR Network will provide all Access Seekers with a consistent level of service and opportunity to obtain Access Rights subject to the express provisions of this Undertaking.
- (b) If, at any time, two or more Access Seekers are seeking Access with respect to mutually exclusive Access Rights, each of the Access Seekers who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with

Subparagraph 4.3(a)(iv) or Paragraph 4.5.2(h) that there is one or more other Access Seekers seeking to negotiate for mutually exclusive Access Rights. Failure to give such notification will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

- (c) QR Network will identify whether it is possible for one or all of the Access Seekers seeking to negotiate for mutually exclusive Access Rights to modify their requirements in order to allow all Access Applications to be accommodated. If QR Network cannot identify a way in which all Access Applications can be accommodated, or if one or more of the Access Seekers does not want to change their Access Application, and as a result there are still two or more Access Seekers seeking to negotiate for mutually exclusive Access Rights, each of whom have notified QR Network, in accordance with Clause 4.4, of their intention to progress their Access Application on the basis of the arrangements outlined in the Indicative Access Proposal, QR Network will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights.
- (d) The order of a queue established in accordance with Paragraph 7.4.1(c) will initially be based upon:
  - (i) where the Access Application was lodged prior to 30 June 2006, application by QR Network of the principles for allocation of capacity specified in Subclause 7.4.1 of the 2001 Undertaking (with the initial order of priority in the queue of such Access Applications being determined in accordance with how favourable each Access Application is in terms of the commercial performance of Below Rail Services such that, for example, the first queue position is given to the Access Application most favourable in terms of the commercial performance of Below Rail Services); and
  - (ii) where the Access Application was lodged on or after 30 June 2006, the date on which QR Network received the relevant Access Applications, so that the Access Application received by QR Network at the earliest time is first in the queue, and the Access Application received next by QR Network is second in the queue, and so on, provided that any such Access Applications will be placed after any Access Applications referred to in Subparagraph 7.4.1(d)(i).
- (e) Once formed, QR Network may change the order of a queue where:
  - (i) the Negotiation Period for an Access Seeker has ceased in accordance with Paragraph 4.5.1(e);
  - (ii) QR Network reasonably considers that an Access Seeker has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise Access at the level sought, taking into account in both instances and without limitation, the factors listed in Subparagraphs 4.6(d)(i)-(iii);
  - (iii) QR Network reasonably considers that the commercial performance of Below Rail Services is better served, as described in Paragraphs 7.4.1(f) and 7.4.1(g), by allocating Access to an Access Seeker who is in the queue but not first in the queue;

- (iv) two or more of the Access Applications relate to the same traffic type (for example, coal traffic) and specific principles are included in this Undertaking for the allocation of Capacity for that traffic type, in which case QR Network may change the order of the queue in accordance with those specified principles; or
  - (v) QR Network receives a new Access Application and this is added to an existing queue for mutually exclusive Access Rights.
- (f) QR Network will assess the ability of Access Seekers to contribute to the commercial performance of Below Rail Services by comparing the net present value (“NPV”) of contribution to the Common Costs of providing the Rail Infrastructure for the total haul for the different traffics subject to the different Access Applications in the queue. In determining the NPV of contribution to the Common Costs of providing the Rail Infrastructure for the total haul of a particular traffic, QR Network will include any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of QR Network not providing Access to the particular traffic (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Payments). If a traffic presents an NPV of contribution to the Common Costs that is 2% or more higher than the NPV of contribution to Common Costs for another traffic in the queue, and the first traffic is the subject of an Access Application lower in the queue than the second traffic, QR Network may move the Access Application relating to the first traffic so that it is above the Access Application relating to the second traffic in the queue. However, QR Network will not use this assessment to raise the position of any Access Seeker’s Access Application for coal carrying Train Service operating within the Central Queensland Coal Region above any other Access Application for coal carrying Train Service operating within the Central Queensland Coal Region within the queue. If QR Network, in assessing the NPV of contribution to Common Costs of different traffics subject to different Access Applications under this Paragraph 7.4.1(f), took into account a contribution from other sources of revenue that would reduce or be eliminated as a consequence of QR Network not providing Access to the particular traffic:
  - (i) on request by any Access Seeker adversely affected by that assessment, QR Network must provide the Access Seeker with a copy of the reasons for the assessment; and
  - (ii) in the event of a Dispute, the onus is on QR Network to demonstrate to the QCA’s satisfaction that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of QR Network not providing Access to the particular traffic.
- (g) Where a queue contains multiple Access Applications for coal carrying Train Services from different mines in the Central Queensland Coal Region, as between those Access Applications, QR Network will place a later Access Application seeking an Access Agreement term of at least ten (10) years in the queue ahead of an earlier Access Application seeking a term of less than ten (10) years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement.

- (h) In the circumstances covered by Subparagraphs 7.4.1(e)(iii) and (iv), QR Network may change the order of the queue in the manner specified in Paragraphs 7.4.1(f) and 7.4.1(g) above without removing any Access Seeker from the queue.
- (i) QR Network will notify each Access Seeker who has an Access Application in a queue of any change to the position of their Access Application in the queue and the reason/s for that change.
- (j) An Access Seeker may only assign its position in a queue to another party where:
  - (i) that party is an operator and the Access Seeker has entered into an agreement with that operator to provide the Train Services and wishes that operator to hold the Access Rights; or
  - (ii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.
- (k) Where mutually exclusive Access Rights are sought by two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (in other words, the Access Rights sought relate to the same traffic task) (“Competing Applications”), and there is insufficient Available Capacity to satisfy any one of the Competing Applications as well as one or more other Access Applications for mutually exclusive Access Rights, then provided all of the Access Seekers have notified QR Network of their intention to progress their Access Applications on the basis of the arrangements outlined in the Indicative Access Proposal, QR Network will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights. The formation and operation of the queue will be no different than otherwise would be the case under this Clause 7.4.1 except for the following:
  - (i) subject to Subparagraph 7.4.1(k)(iii) below, the Competing Applications will be collectively positioned in the queue as though they were a single application;
  - (ii) the date of the Competing Applications, for the purposes of the queue, will be deemed to be that of the earliest of the Competing Applications; and
  - (iii) where the Competing Applications are first in the queue, QR Network will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in Schedule E. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR Network’s reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.



- (l) Where mutually exclusive Access Rights are sought by two or more Access Seekers with Competing Applications and Paragraph 7.4.1(k) does not apply, QR Network will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in Schedule E. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR Network's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.
- (m) Disputes concerning positions in a queue or any other aspect of QR Network's management of a queue may be referred to the QCA under Subclause 4.7.4 for resolution. In the event of such a Dispute, QR Network will not implement any change to any Access Seeker's position in the queue unless and until the Dispute is resolved in favour of such a change in position.
- (n) QR Network will expand the Capacity of the Rail Infrastructure in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where QR Network reasonably considers that, in respect of the Capacity expansion, the expected net additional Below Rail revenue, less any expected costs associated with the expansion, is sufficient to commercially justify the required expenditure.

#### **7.4.2 Capacity Resumption**

- (a) Where an Access Holder, for any reason other than the occurrence of a Force Majeure Event or the failure of QR Network to make the Access Holder's Access Rights available, does not operate:
- (i) a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists; or
  - (ii) all of the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks out of any twelve (12) consecutive weeks,
- the terms of the Access Agreement will provide that QR Network may, within sixty (60) days of the last day of the relevant twelve (12) occasions or weeks (whichever is relevant), by notice in writing, reduce from a nominated date (referred to as the "Date of Resumption") the Access Holder's Access Rights by:
- (iii) deleting the Scheduled Train Path referred to in Subparagraph 7.4.2(a)(i) from the Access Holder's Train Service Entitlement; or
  - (iv) reducing the Access Holder's Nominated Weekly Train Services referred to in Subparagraph 7.4.2(a)(ii), provided that the number of remaining Nominated Weekly Train Services is no less than the Access Holder's average weekly usage during the relevant twelve (12) week period,

provided that the Access Holder cannot demonstrate, to QR Network's reasonable satisfaction, a sustained requirement for the Access Rights that have not been utilised, and QR Network is satisfied that it can demonstrate that it has:

- (v) a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question; or
  - (vi) a reasonable expectation of a commercial benefit for the provision of Below Rail Services sufficiently material to justify the resumption of the Capacity used by the Access Rights in question.
- (b) QR Network may withdraw the notice provided in accordance with Paragraph 7.4.2(a) at any time prior to the Date of Resumption or fourteen (14) days following the conclusion of a dispute resolution process pursuant to Paragraph 7.4.2(d), whichever is the later. However, if QR Network had originally provided the notice in response to a written request by an Access Seeker under Paragraph 7.4.2(e), then QR Network may (at its election) withdraw the notice only if:
- (i) the Access Seeker who requested the resumption consents to the withdrawal of the notice; or
  - (ii) the Access Rights that QR Network is able to resume are not sufficient to enable QR Network to provide to the Access Seeker the Access Rights sought by the Access Seeker, and the Access Seeker has not agreed to accept the lesser Access Rights that QR Network would be able to provide.
- (c) Where QR Network resumes an Access Holder's Access Rights in accordance with this Subclause 7.4.2, the Access Charge payable by the Access Holder will be varied in accordance with the terms of its Access Agreement and the Access Agreement will be varied accordingly.
- (d) Where QR Network makes a decision to resume an Access Holder's Access Rights in accordance with Paragraph 7.4.2(a), and the Access Holder believes that QR Network's decision is not justified in the circumstances after having regard to the factors specified in Paragraph 7.4.2(a), the Access Holder may, within twenty-one (21) days of receiving notification from QR Network in accordance with Paragraph 7.4.2(a), refer the matter to the Dispute resolution process contained in its Access Agreement. In these circumstances, QR Network will not implement resumption until the Dispute resolution process has been concluded, and then may implement the resumption only to the extent that such resumption is consistent with the outcomes of the Dispute resolution process.
- (e) Where an Access Seeker has been notified in accordance with Paragraph 7.5.2(d) that an Access Holder has triggered the criteria in Subparagraph 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker may, within thirty (30) days of such notification, submit a written request to QR Network for it to resume Access Rights from an Access Holder in accordance with Paragraph 7.4.2(a). QR Network will provide notice to the Access Holder in accordance with Paragraph 7.4.2(a) provided that the Access Seeker has provided QR Network with a legally enforceable written undertaking (supported by security if required by QR Network) that it will:

- (i) reimburse QR Network for all of QR Network's reasonable costs associated with it seeking the resumption of the relevant Access Rights from the Access Holder, including the costs of QR Network participating in any dispute resolution process;
  - (ii) enter into an Access Agreement with QR Network upon terms and conditions agreed with QR Network in accordance with the negotiation process specified in this Undertaking, or failing agreement, resolved in accordance with the Dispute resolution process specified in this Undertaking, in respect of Access Rights equivalent to the relevant Access Rights should they be resumed from the Access Holder, and that QR Network's obligation to provide such equivalent Access Rights to the Access Seeker will commence at the same time that the relevant Access Rights are resumed from the Access Holder; and
  - (iii) indemnify QR Network if QR Network incurs a net loss as a result of the resumption of the relevant Access Rights from the Access Holder and the taking up of the equivalent Access Rights by the Access Seeker, such loss to be calculated and paid when the Access Seeker enters into an Access Agreement with QR Network in respect of the equivalent Access Rights, and shall be determined as the present value of any future reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets) due to the net effect of the relevant resumption of Access Rights and the taking up of the equivalent Access Rights by the Access Seeker, considered over the remaining term of the Access Holder's existing Access Agreement on the assumption that the Access Holder does not utilise those Access Rights for such remaining term.
- (f) QR Network will provide written advice to the Access Seeker of whether or not it will resume the Access Rights in question, and if so the Date of Resumption, within seven (7) days of the decision being reached on whether or not the Access Rights can be resumed in accordance with Paragraph 7.4.2(a).

### **7.4.3 Capacity Relinquishment**

- (a) This Subclause 7.4.3 describes when an Access Holder may relinquish Access Rights upon the payment of a Relinquishment Fee. This Subclause 7.4.3 also describes how this Relinquishment Fee may be reduced if QR Network enters into an Access Agreement with another Access Holder that has been identified by QR Network (provided that QR Network could not have entered into the Access Agreement in the absence of such relinquishment) in order to reflect the resultant variation in contribution to QR Network's Common Costs in relation to the section of corridor that is common between the relinquished Access Rights and new Access Rights.
- (b) Unless otherwise specified in the Access Holder's Access Agreement and provided the Access Holder has given QR Network reasonable notice of its intention to do so, an Access Holder may relinquish Access Rights upon payment of a Relinquishment Fee.
- (c) The period from the provision of the notice of intention to relinquish, pursuant to Paragraph 7.4.3(b), until the date of payment of the Relinquishment Fee shall not:

- (i) exceed two (2) years, where:
  - (A) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
  - (B) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region; or
- (ii) exceed six (6) months, where Subparagraph 7.4.3(c)(i) does not apply.

During such period, the terms of the Access Agreement will continue to apply in respect of the Access Rights which the Access Holder intends to relinquish.

(d) QR Network will reduce the Relinquishment Fee in accordance with Paragraph 7.4.3(f) if:

- (i) a new Access Holder has entered into an Access Agreement with QR Network in respect of Access Rights that QR Network could not have provided without using the whole or part of the relinquished Access Rights;
- (ii) following the provision of the notice of intention to relinquish, but prior to the payment of the Relinquishment Fee, QR Network's obligation to provide the Access Rights under the new Access Agreement has commenced; and
- (iii) no other Access Holder is seeking to transfer Access Rights in accordance with Subclause 7.4.4 or relinquish Access Rights in accordance with this Subclause 7.4.3 that more closely resemble the Access Rights sought by the new Access Holder.

e) Where QR Network identifies an opportunity for it to enter into an Access Agreement with an Access Seeker that would result in a reduction to an Access Holder's Relinquishment Fee pursuant to Paragraph 7.4.3(d), QR Network will not unreasonably delay the process for negotiating and executing an Access Agreement with such Access Seeker.

f) Subject to Paragraph 7.4.3(h), QR Network will reduce the Relinquishment Fee by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to the relative contribution.

g) Where:

- i) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
- ii) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region,

the amount payable by the Access Holder to QR Network under Paragraph 7.4.3(b) will not exceed fifty percentage points (50%) of the Relinquishment Fee (as determined prior to any reduction under Paragraph 7.4.3(f)).

- h) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).

#### 7.4.4 Capacity Transfer

- (a) This Subclause 7.4.4 describes when and how an Access Holder may transfer all or part of its Access Rights to an Access Seeker, upon the payment to QR Network of a transfer fee (if applicable) designed so that QR Network should not be financially disadvantaged as a result of such transfer. This Subclause 7.4.4 acknowledges that transfers may occur for Train Services with the same origin and destination, or for Train Services with a different origin and destination. Given that the financial consequences to QR Network as a result of a transfer will differ in these situations, this Subclause 7.4.4 provides different mechanisms for determining the transfer fee in such situations, which are broadly described as follows:
- (i) for the transfer of Access Rights with the same origin and destination, the transfer fee reflects any reduction in contribution to QR Network's Common Costs over the remaining term of the existing Access Holder's Access Agreement, as a result of the transfer; and
  - (ii) for the transfer of Access Rights with a different origin and destination, the transfer fee reflects the Relinquishment Fee that would have been paid if the existing Access Holder had relinquished its Access Rights, where such Relinquishment Fee is reduced in order to reflect the resultant variation in contribution to QR Network's Common Costs in relation to:
    - for transfers of Access Rights within an Individual Coal System, provided that the new Access Rights are for a new traffic task (as described in Subparagraph 7.4.4(e)(ii)), the shorter of the haul distance of the relinquished Access Rights and the haul distance of the new Access Rights; and
    - for all other transfers, the section of corridor that is common between the relinquished Access Rights and new Access Rights.

Schedule M contains a worked example of the calculation of a transfer fee.

This Subclause 7.4.4 also describes the circumstances in which a Customer or Customers may require an Access Holder to transfer its Access Rights to an Access Seeker.

- (b) Subject to Paragraphs 7.4.4(c) - (e), an Access Holder may agree to transfer Access Rights to an Access Seeker, provided that the Access Seeker is seeking Access Rights with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic) as the Access Holder's Access Rights.
- (c) The transfer of Access Rights between an Access Holder and an Access Seeker will be effected as a reduction in the Access Rights of the Access Holder, conditional upon the corresponding Access Rights being included in a new or varied Access Agreement with the Access Seeker, and that QR Network's obligation to provide Access under that new or varied Access

Agreement commences at the same time as the incumbent Access Holder's Access Agreement is varied or terminated (whichever is applicable).

- (d) The transfer of Access Rights with the same origin and destination between an Access Holder and an Access Seeker will only occur if:
- (i) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking; and
  - (ii) the Access Holder has paid to QR Network, where applicable, a transfer fee determined by QR Network as equivalent to the present value, calculated at a discount rate equal to the Discount Rate, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant relinquishment of Access Rights and the take up of corresponding Access Rights by the Access Seeker on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0).
- (e) The transfer of Access Rights with a different origin and destination between an Access Holder and an Access Seeker will only occur if:
- (i) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;
  - (ii) the Access Holder has paid to QR Network, where applicable, a transfer fee equivalent to the Relinquishment Fee, provided that:
    - for Access Rights for coal carrying Train Services operating in the Central Queensland Coal Region, where the Access Rights are for the purpose of a new traffic task (that is, a traffic task, being the transportation of specified net tonnes of coal between a specified origin and destination, that was not included in the forecast traffic task for that period used in the determination of the relevant Reference Tariff); or
    - for Access Rights for Train Services other than coal carrying Train Services operating in the Central Queensland Coal Region,the Relinquishment Fee will be reduced in accordance with Paragraph 7.4.3(f); and
  - (iii) no other Access Holder is seeking to transfer Access Rights that more closely resemble the Access Rights sought by the Access Seeker.
- (f)
- (i) Subject to Paragraph 7.4.4(g), where an Access Holder has a Customer or Customers, who has or have provided concurrent written notification to QR Network and the relevant Access Holder that they intend to vary or terminate their rail haulage agreement(s) with the Access Holder and use another Access Seeker for some or all of their rail haulage services, then QR Network will reduce the Access Rights of the Access Holder necessary for the Customer or Customers to effect the termination or variation of the relevant rail haulage agreement(s), provided that:

- (A) the equivalent Access Rights (“Transferred Access Rights”) are included in a new or varied Access Agreement with the Access Seeker (“New Access Agreement”); and
- (B) that New Access Agreement commences at the same time as the Access Holder’s Access Agreement (“Old Access Agreement”) is varied or terminated (whichever is applicable).
- (ii) The terms of the Old Access Agreement relating to Take or Pay (as defined in Schedule F) and Relinquishment Fees will apply to the New Access Agreement:
  - (A) to the extent that the New Access Agreement relates to the Transferred Access Rights; and
  - (B) until the date that the Transferred Access Rights would have terminated under the Old Access Agreement.
- (iii) For the purpose of this Paragraph 7.4.4(f), Access Rights are deemed to be equivalent if those Access Rights relate to Train Services with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic), the same origin and destination and transporting the same net tonnage of the same commodity.
- (g) The transfer of Access Rights as initiated by an Access Holder’s Customer or Customers in accordance with Paragraph 7.4.4(f) will only be permitted to proceed if:
  - (i) the Customer or Customers has or have warranted to QR Network in writing that they either are the sole end Customer or collectively constitute one hundred percentage points (100%) of the Customers, in respect of any Train Services operated by the Access Holder pursuant to the Access Rights that they are requesting QR Network to transfer from the Access Holder to the Access Seeker;
  - (ii) where there is more than one Customer in respect of the Train Services operated by the Access Holder pursuant to the Access Rights sought to be transferred under Paragraph 7.4.4(f), all the Customers warrant to QR Network in writing that they have agreed to request QR Network to transfer the Access Rights in respect of those Train Services from the Access Holder to the Access Seeker;
  - (iii) the Access Holder’s rail haulage agreement or rail haulage agreements with its Customer or Customers was or were signed after 1 March 2002 or, where a relevant rail haulage agreement was signed on or before 1 March 2002 and the particulars of that agreement (such as the parties, and term of that agreement) were notified to the QCA prior to 30 June 2006, the agreement has been varied after 1 March 2002 to extend the term of the agreement and the period that is the extension of that term has commenced;
  - (iv) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;
  - (v) the Customer or Customers has or have provided QR Network with a legally enforceable written undertaking (including security if required by QR Network) that the Customer or Customers will indemnify QR Network if QR Network incurs a net loss as a result of the transfer;

- (vi) the Customer or Customers has or have paid to QR Network, where applicable, a transfer fee determined by QR Network as equivalent to the present value, calculated at a discount rate equal to the Discount Rate, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant transfer of Access Rights and the take up of the equivalent Access Rights by the Access Seeker on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0);
  - (vii) where information is provided by the Access Holder pursuant to Paragraph 7.4.4(h), the information provided, in QR Network's reasonable opinion, does not show that the transfer of the Access Rights would not comply with Paragraphs 7.4.4(f) and (g); and
  - (viii) where a Dispute has been referred to the QCA pursuant to Paragraph 7.4.4(i), the Dispute has been resolved in favour of the transfer of Access Rights being permitted.
- (h) An Access Holder may, within fifteen (15) Business Days of being given a notice under Subparagraph 7.4.4(f), notify QR Network in writing of any reasons and supporting evidence as to why Subparagraphs 7.4.4(g)(i), (ii) or (iii) are not satisfied.
- (i) Where:
- (i) a transfer of Access Rights is initiated in accordance with Paragraph 7.4.4(f); and
  - (ii) a Dispute arises between the Customer or Customers initiating the transfer and the Access Holder as to whether Subparagraphs 7.4.4(g)(i), (ii) and (iii) are satisfied and therefore whether the transfer should be permitted,
- either the Customer or Customers or the Access Holder may refer the Dispute to the QCA for the determination of the Dispute under Subclause 4.7.4. QR Network will not be a party to the Dispute resolution process but QR Network will abide by the QCA's determination of the Dispute. If the QCA considers that it is necessary for QR Network to participate in the Dispute resolution process in order to resolve the Dispute, QR Network will participate and QR Network's costs will be borne by the Customer or Customers initiating the transfer and the Access Holder in the proportions determined by the QCA.
- (j) Access Rights may only otherwise be transferred by an Access Holder assigning its respective rights and obligations under an Access Agreement in accordance with the assignment provisions of that Access Agreement.

## **7.5 CAPACITY REGISTERS**

### **7.5.1 Committed Capacity Register**



- (a) Except as provided in Paragraph 7.5.1(b), no Access Holder is to assume that it has Access Rights beyond the term of its Access Agreement.
- (b) Where an Access Seeker requests Access that will utilise Capacity that would otherwise be Available Capacity because of the expiration of an existing Access Agreement for coal carrying Train Services, QR Network will approach the Access Holder of the existing Access Agreement, as well as the Customer served by that Access Agreement if they are entered on the Committed Capacity Register, and ask them if they wish to retain the Access Rights in question beyond the term of their current Access Agreement:
- (i) if the existing Access Holder (or Customer) advises QR Network within ninety (90) days of QR Network's notification under Subparagraph 7.5.1(b) that it does wish to retain the Access Rights in question for the existing mine which has the benefit of the Access under the existing Access Agreement or a Replacement Mine; and
  - (ii) a new Access Agreement is executed for the Train Services (not in excess of the Train Services provided for under the existing Access Agreement) or the term of the current Access Agreement is extended, for a term of the lesser of ten (10) years or the remaining life of the existing mine, up to two (2) years prior to the expiry of the existing Access Agreement or such longer period where an Access Seeker is willing and able to sign an unconditional Access Agreement for the relevant Capacity at that time, or as otherwise agreed between the existing Access Holder (or Customer) and QR Network,
- the Capacity that is required to provide the coal carrying Train Services under the new or extended Access Agreement with the existing Access Holder (or Customer) will not be Available Capacity.
- (c) Where an Access Seeker requests Access which will commence within two (2) years of the expiration of an existing Access Agreement and which will utilise Capacity that will only become available following the expiration of that Access Agreement, QR Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register established in accordance with Paragraph 7.5.1(d) as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.
- (d) QR Network will maintain a Committed Capacity Register that will identify parties who have an interest (whether as the existing holder or otherwise) in Committed Capacity or existing Access Rights. The Committed Capacity Register will identify:
- (i) the party who has an interest in the Committed Capacity or Access Rights;
  - (ii) the Committed Capacity or Access Rights in which they have an interest; and
  - (iii) the nature of that interest.

An Access Holder with Access Rights under an Access Agreement will be automatically placed on the register. Queensland Transport will be automatically placed on the register in respect of Committed Capacity. If any other party has an interest in existing Access Rights and wishes to be included in the register it must notify QR Network in writing.

### **7.5.2 Capacity Resumption Register**

- (a) If the Indicative Access Proposal for an Access Seeker identifies that QR Network does not have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, and QR Network cannot justify a Capacity enhancement in accordance with Paragraph 7.4.1(n) in order to create sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, if requested by the Access Seeker, QR Network will place the Access Seeker on the Capacity Resumption Register.
- (b) The Capacity Resumption Register will identify:
  - (i) the Access Seeker who has an interest in Access Rights; and
  - (ii) the Access Rights in which they have an interest.
- (c) An Access Seeker will remain on the Capacity Resumption Register until:
  - (i) QR Network notifies the Access Seeker that Capacity availability changes will occur within the next two (2) years such that QR Network will have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services; or
  - (ii) six (6) months after its initial entry onto the Capacity Resumption Register, except if, prior to its removal from the Capacity Resumption Register under this Subclause 7.5.2, the Access Seeker has notified QR Network in writing that it remains interested in the relevant Access Rights, then six (6) months after the last such notification, or as otherwise reasonably agreed between QR Network and the Access Seeker.
- (d) If, in relation to Access Rights recorded in the Capacity Resumption Register, the relevant Access Holder triggers the criteria in Subparagraphs 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker recorded as having an interest in those Access Rights will be notified by QR Network within twenty-one (21) days of the relevant trigger occurring. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.
- (e) Nothing in this Subclause 7.5.2 derogates from the general principles for the allocation of Capacity outlined in Subclause 7.4.1.

## **PART 8. INTERFACE CONSIDERATIONS**

### **8.1 INTERFACE RISK MANAGEMENT PROCESS**

#### **8.1.1 Overview**

- (a) As Railway Manager, QR Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are appropriately managed in accordance with this Part 8.
- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing a plan for managing those Interface Risks, QR Network and the Access Seeker or Access Holder will participate in the Interface Risk Management Process. This process will commence with an Interface Risk Assessment and culminate in an Interface Risk Management Plan ('IRMP').
- (c) In progressing the Interface Risk Management Process, QR Network and the Access Seeker or Access Holder are responsible for:
  - (i) ensuring that their representatives involved in the process have the appropriate competence to ensure that the process is conducted in a diligent manner;
  - (ii) ensuring that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
  - (iii) using reasonable endeavours to ensure that all information provided is accurate.
- (d) The Interface Risk Management Process outlined in this Clause 8.1 shall be conducted for all new Train Services and for any variation to Train Services including changes in the Operating Plan or Rollingstock specification, and a new or varied IRMP, as the case may be, must be agreed between the Access Seeker or the Access Holder and QR Network prior to the operation of such new or varied Train Services. For the avoidance of doubt, a variation to existing Train Services will not require a new IRMP, varying the existing IRMP for those Train Services will be sufficient.

#### **8.1.2 The Interface Risk Assessment**

- (a) Schedule HA contains a sample IRMP which specifies a list of safety and Rollingstock 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 Rollingstock issues. The IRMP developed by the parties may cover additional safety and/or Rollingstock issues and associated controls depending on the circumstances of the particular operation.
- (b) Prior to undertaking the Interface Risk Assessment, the Access Seeker or Access Holder will provide a draft Operating Plan to QR Network in accordance with Subclause 8.1.4.

- (c) In addition, the Access Seeker or Access Holder will evaluate its planned operation and consider any unique issues that will need to be assessed and prior to undertaking the Interface Risk Assessment, provide to QR Network a checklist of safety hazards, the risks of which are to be evaluated as part of the Interface Risk Assessment. The list of issues included in the safety checklist and Schedule HA are not intended to be exhaustive of the issues considered as part of the Interface Risk Assessment.
- (d) The safety checklist, Schedule HA and the Access Seeker's or Access Holder's draft Operating Plan will support the hazard identification and risk assessment process undertaken through the Interface Risk Assessment.
- (e) The Access Seeker or Access Holder and QR Network will identify all reasonably foreseeable Interface Risks relating to the following interfaces:
  - (i) between the Access Seeker's or Access Holder's proposed operation and the Rail Infrastructure;
  - (ii) between the Access Seeker's or Access Holder's proposed operation and existing operations on the Rail Infrastructure;
  - (iii) between the Access Seeker's or Access Holder's proposed operation and QR Network's staff or other Access Holders' staff; and
  - (iv) between the Access Seeker's or Access Holder's proposed operation and QR Network's or other Access Holder's interfaces with members of the public.
- (f) The parties will then analyse and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of such, before agreeing which of QR Network's Safeworking Procedures and Safety Standards are applicable to the proposed operation, and determining the additional control measures, including Rollingstock Interface Standards, required to manage the applicable Interface Risks.
- (g) The parties must consider and agree controls appropriate to the Interface Risk in question. QR Network may propose compliance with relevant QR Network Rollingstock Interface Standards, or equivalent standards, as control measures.
- (h) Along with the Safety Standards, Safeworking Procedures, and Rollingstock Interface Standards, QR Network and the Access Seeker or Access Holder will agree the audit, inspection and review measures to be implemented to ensure that the relevant standards and procedures are complied with at all times and continue to be effective in managing the applicable Interface Risks. Subclause 8.1.7 specifies QR Network's minimum audit, inspection and review requirements.

### **8.1.3 The Interface Risk Management Plan ('IRMP')**

- (a) Once the Interface Risk Assessment is complete, the Access Seeker or Access Holder and QR Network must jointly develop and agree the IRMP.
- (b) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between QR Network and the Access Seeker or Access Holder for the Interface Risks identified and assessed during the Interface Risk Assessment. As such, it will specify:

- (i) which Safeworking Procedures and Safety Standards are applicable to the proposed operation;
  - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation;
  - (iii) the audit, inspection and review regime agreed between the parties; and
  - (iv) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (c) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network shall ensure that its Safety Management System incorporates the elements agreed with the Access Seeker or Access Holder in the IRMP, that QR Network is responsible for implementing.
- (d) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) will incorporate into its Safety Management System:
- (i) the elements agreed in the IRMP, that the Access Seeker or Access Holder is responsible for implementing; and
  - (ii) necessary processes for ensuring that the Access Seeker or Access Holder, its Rollingstock, Rollingstock Configurations and Train Services, at all times comply with the requirements of the Access Agreement, including the agreed IRMP.
- (e) The IRMP will become a schedule to the Access Seeker's or Access Holder's Access Agreement. If an Access Agreement has already been negotiated before the finalisation of the IRMP, the implementation of the IRMP may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and Environmental Investigation and Risk Management Report ("EIRMR").
- (f) If the Access Seeker or Access Holder and QR Network cannot agree any aspect of the IRMP, then either party may give to the other party notice in writing of the dispute ("IRMP Dispute Notice"), whereupon either party may then refer the matter to an expert for resolution in accordance with Subclause 4.7.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a party gives an IRMP Dispute Notice to the other party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Subparagraph 8.1.3(f)(ii) or the QCA in accordance with Subparagraph 8.1.3(f)(iii), either party may still refer the matter to an expert for resolution in accordance with Subclause 4.7.3;
  - (ii) if the matter has not been referred to an expert in accordance with Subparagraph 8.1.3(f)(i), or to the QCA in accordance with Subparagraph 8.1.3(f)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either party may refer the matter to the Safety Regulator through any process that the Safety Regulator considers appropriate; and
  - (iii) if the matter has not been referred to an expert in accordance with Subparagraph 8.1.3(f)(i), or to the Safety Regulator in accordance with

Subparagraph 8.1.3(f)(ii), then either party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Subclause 4.7.4;

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either party is not satisfied with the determination which the expert makes, then notwithstanding Paragraph 4.7.3(i), either party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Subparagraph 8.1.3(f)(ii) or the QCA under Subparagraph 8.1.3(f)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding upon the parties.

- (g) If an expert, the Safety Regulator or the QCA is called upon, under Paragraph 8.1.3(f), to make a determination the effect of which would be to establish the content of any aspect of the IRMP, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a dispute under Clause 8.1.3(f) that may from time to time be determined by the Safety Regulator.

#### **8.1.4 Operating Plan**

- (a) In order to analyse the impacts and requirements of the operations proposed by an Access Seeker or Access Holder on the Rail Infrastructure, the Access Seeker or Access Holder must submit a draft Operating Plan to QR Network during the negotiation process.
- (b) Details of the contents typically required in an Operating Plan for new or varied Train Services are set out in Schedule K. While the draft Operating Plan may be subject to change during the negotiation process, an Access Seeker or Access Holder must finalise its Operating Plan during the Interface Risk Management Process, as the IRMP must be consistent with the Operating Plan.
- (c) The Operating Plan will be utilised by QR Network to refine and finalise the Train Service Entitlement, Interface Coordination Plan, Access Charge and other terms and conditions of the Access Agreement. It will also be used as a basis for the Capacity Analysis.
- (d) If, during the course of an Access Agreement, an Access Holder wishes to change its Operating Plan, QR Network and the Access Holder will undertake a further Interface Risk Assessment in respect of such change in accordance with the process outlined in Subclause 8.1.2 and jointly develop and agree any necessary revisions to the IRMP in accordance with Subclause 8.1.3.

#### **8.1.5 Provision of Assistance by QR Network**

- (a) Where QR Network and an Access Seeker or Access Holder agree that training of the Access Seeker's or Access Holder's staff or contractors is required as a control, or part of a control, to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Seeker or Access Holder can only

obtain that training from QR Network, QR Network will provide the Access Seeker or Access Holder with that training.

- (b) Where QR Network provides training in accordance with Paragraph 8.1.5(a), it will be entitled to recover a reasonable commercial charge for providing such training.

### **8.1.6 Rollingstock Authorisation**

- (a) In order to ensure only Rollingstock and Rollingstock Configurations that comply with the terms of the IRMP operate on the Rail Infrastructure:
  - (i) all Rollingstock must be authorised by QR Network; and
  - (ii) all Rollingstock Configurations must be authorised by QR Network, prior to operation on the Rail Infrastructure.
- (b) To obtain authorisation of:
  - (i) Rollingstock, the Access Seeker or Access Holder must demonstrate to QR Network that the Rollingstock has been designed, constructed or modified and appropriately tested to comply with the agreed Rollingstock Interface Standards in its IRMP;
  - (ii) Rollingstock Configurations, the Access Seeker or Access Holder must demonstrate to QR Network that the Rollingstock has been configured and operates in a manner that complies with the agreed Rollingstock Interface Standards in its IRMP.

To demonstrate this compliance, the Access Seeker or Access Holder must certify that the Rollingstock and Rollingstock Configurations meet the Rollingstock Interface Standards, by producing certificates of compliance prepared by a party who QR Network and the Access Seeker or Access Holder accept as being competent for the purpose of providing such certification. QR Network may require the Access Seeker or Access Holder or the certifying party to provide it with documentation demonstrating the Rollingstock and Rollingstock Configurations are in compliance with the Rollingstock Interface Standards agreed in the IRMP. Such documentation may include the certificate of compliance, reports on trials and/or commissioning tests.

- (c) Authorisation of Rollingstock and Rollingstock Configurations may be sought concurrently.
- (d) Where QR Network is not satisfied, on the basis of the documentation provided by an Access Seeker or Access Holder or a certifying party in accordance with Paragraphs 8.1.6(b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP, either QR Network or the Access Seeker or Access Holder may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP for resolution by an expert in accordance with Subclause 4.7.3.

### **8.1.7 Audit, Inspection and Review**

- (a) The Access Holder must have in place processes to ensure that it complies with its IRMP at all times in its operations on the Rail Infrastructure.
- (b) QR Network and the Access Holder must inform each other of any failure to comply with the relevant IRMP, as and when they become aware of such non-compliance. This will include advice on the nature of the non-compliance and how the relevant party has rectified or intends to rectify the non-compliance.
- (c) In addition, where such failure is relevant to its operations on the Rail Infrastructure, the Access Holder must inform QR Network of any failure to comply with:
  - (i) any applicable laws;
  - (ii) QR Network Train Control directions; and
  - (iii) the Rollingstock and Rollingstock Configurations authorised under the Access Agreement.
- (d) In addition, QR Network will provide the Access Holder with Above Rail Rollingstock incident information concerning that Access Holder's Train Services.
- (e) Where QR Network has reasonable grounds to believe that the Access Holder has not or is not complying with any aspect of its IRMP, then QR Network may conduct or require the conduct of an audit or inspection of the relevant aspect of the Access Holder's Train Services provided that QR Network advises the Access Holder in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by QR Network, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of the Access Holder, and the Access Holder has a legitimate commercial reason for wanting to withhold access to that information from QR Network, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by the Access Holder, but who shall be prohibited from disclosing that commercially sensitive information to QR Network. In carrying out such an inspection or audit, QR Network must not interfere unreasonably with the Access Holder's Rollingstock or Trains and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the Access Holder's business activities.
- (f) Where the Access Holder has reasonable grounds to believe that QR Network has not or is not complying with any aspect of the relevant IRMP, it may conduct or require the conduct of an audit or inspection of the relevant aspect of the Rail Infrastructure provided that the Access Holder advises QR Network in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by the Access Holder, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of QR Network, and QR Network has a legitimate commercial reason for wanting to withhold access to that information from the Access Holder, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by QR Network, but who shall be prohibited



from disclosing that commercially sensitive information to the Access Holder. In carrying out such an inspection or audit, the Access Holder must not interfere unreasonably with QR Network's provision of Above Rail Services and Below Rail Services and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR Network or other Access Holders.

- (g) Any other rights of inspection or audit will be specified in the Access Agreement.
- (h) At any time that either party has reasonable grounds to believe that the IRMP is no longer effective either in managing the Interface Risks that it was intended to manage or in managing new Interface Risks, QR Network and the Access Holder will, in accordance with the Access Agreement, jointly review the effectiveness of the IRMP in addressing the Interface Risks posed by the Access Holder's operations on the Rail Infrastructure.
- (i) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of inspections, audits and/or reviews conducted in accordance with the processes outlined in this Subclause 8.1.7.
- (j) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Trains, or the right of an Access Holder's Train Services to operate on the relevant part of the Rail Infrastructure during the course of the Access Holder's Access Agreement.
- (k) The Access Holder's Access Agreement will specify the circumstances in which QR Network may vary System-wide Requirements, including Safeworking Procedures, Safety Standards and Rollingstock Interface Standards, during the course of an Access Holder's Access Agreement.
- (l) Where an Access Holder (or group of Access Holders) and QR Network agree to vary Rollingstock Interface Standards, either in accordance with Paragraph 8.1.7(k) or as otherwise agreed, and such variation(s) involve an additional cost funded exclusively by that Access Holder (or group of Access Holders), QR Network will be entitled to restrict other Access Holders from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.
- (m) The party whose operations are audited or inspected under Paragraph 8.1.7(e) or (f) shall bear the reasonable costs of conducting such audit or inspection unless it is demonstrated that the stated grounds for requiring the conduct of the audit did not exist. In circumstances where the stated grounds for such audit have not been demonstrated to exist, the party that required the conduct of the audit or inspection shall bear the costs of conducting such audit or inspection.

## **8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS**

### **8.2.1 Environmental Investigation and Risk Management Report**

- (a) As outlined in Clause 4.5, as part of the negotiation process or as otherwise specified in an Access Agreement, the Access Seeker or Access Holder will commission a suitably qualified person, reasonably acceptable to both QR Network and the Access Seeker or Access Holder, to prepare an Environmental Investigation and Risk Management Report ("EIRMR") containing an environmental investigation component and an environmental risk management component which respectively identify:
- (i) possible risks of Environmental Harm arising out of the proposed use of the Rail Infrastructure by the Access Seeker or Access Holder, including risks associated with those matters identified in Schedule J; and
  - (ii) the manner in which the Access Seeker or Access Holder proposes to address the possible risks of Environmental Harm identified, as well as the roles and responsibilities, including financial responsibility, for the control measures proposed (including an audit regime).
- (b) In order to ensure that an appropriate EIRMR is developed, QR Network will disclose to an Access Seeker or Access Holder on a timely basis all relevant information, reasonably available to it, relating to the environmental impact of the Access Seeker's or Access Holder's proposed operations on the Rail Infrastructure. This information may include:
- (i) details of any Environmental Authorities held by QR Network that are relevant to the operation by the Access Seeker or Access Holder of its proposed Train Services on the Rail Infrastructure;
  - (ii) relevant environmental reports;
  - (iii) a copy of QR Network's Code of Practice for Railway Noise Management;
  - (iv) any currently applicable noise levels or limits;
  - (v) particulars of noise complaints and enforcement actions; and
  - (vi) any other information from QR Network's Environmental Management System ("EMS") considered relevant by QR Network to the development of an appropriate EIRMR.
- (c) If an Access Seeker or Access Holder has an existing EMS that it proposes to use in connection with its proposed operation on the Rail Infrastructure, the EIRMR should also detail the relevant parts of the Access Seeker's or Access Holder's existing EMS, including how those parts address the risks identified in the EIRMR. Extracts of the relevant parts of the EMS should also be included in the EIRMR.
- (d) The Access Seeker or Access Holder must provide a copy of the EIRMR to QR Network for its consideration.
- (e) QR Network will consider whether the EIRMR adequately addresses the issues outlined in Paragraph 8.2.1(a) and advise the Access Seeker or Access Holder of its decision.
- (f) In order to assist QR Network in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR Network all relevant information reasonably available to it relating to the environmental impact of its proposed operations on the Rail Infrastructure.

- (g) If, in QR Network's reasonable opinion, the EIRMR discloses areas of risk that cannot be adequately managed by the proposals included in the EIRMR, or the EIRMR fails to identify and adequately deal with additional relevant environmental risks, QR Network may notify the Access Seeker or Access Holder in writing of the risks not adequately managed or not identified or adequately dealt with.
- (h) If QR Network considers that the EIRMR does adequately address the issues outlined in Paragraph 8.2.1(a), or if QR Network fails to give the Access Seeker or Access Holder the notice referred to in Paragraph 8.2.1(g) within thirty (30) days of receipt (or such other period as the parties, acting reasonably, agree), the EIRMR will be accepted.
- (i) If QR Network gives the Access Seeker or Access Holder a notice pursuant to Paragraph 8.2.1(g), the Access Seeker or Access Holder may respond to QR Network, by a date agreed by the parties, with a written proposal that:
  - (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in the notice provided pursuant to Paragraph 8.2.1(g);
  - (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR Network of assuming all or some portion of the risk;
  - (iii) where risk abatement or attenuation measures are proposed pursuant to Subparagraph 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
  - (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.
- (j) QR Network may, exercising reasonable discretion, accept or reject all or part of the Access Seeker's or Access Holder's proposal (the "Proposal"). If QR Network accepts the Proposal, it will be incorporated into and form part of the EIRMR, which will then be accepted. If QR Network rejects all or part of the Proposal, it may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with.
- (k) If the Access Seeker or Access Holder fails to submit its Proposal within the specified time, or if QR Network rejects all or part of the Proposal, then either QR Network or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the Proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks, to Dispute resolution or determination in accordance with Clause 4.7 if an Access Agreement has not already been signed, or if an Access Agreement has already been signed, in accordance with the Dispute resolution process provided therein.
- (l) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR does adequately manage the risks or does identify and adequately deal with the risks, then the EIRMR (as modified by the Proposal, where applicable) will be accepted.

- (m) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder amends the EIRMR in accordance with the expert's or QCA's determination and/or recommendations, the EIRMR (as amended) will be accepted.
- (n) The accepted EIRMR will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the IRMP.
- (o) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder fails, within the timeframe nominated by the expert or QCA, to amend the EIRMR in accordance with the expert's or QCA's determination and/or recommendations, QR Network may cease negotiations or terminate the Access Agreement (whichever is applicable).
- (p) A new or varied EIRMR shall be prepared as outlined in this Subclause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

## **8.2.2 Environmental Management System**

- (a) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) must have in place an EMS that:
  - (i) has regard to the issues raised in the EIRMR and contains procedures for implementing the risk management proposals identified in it. The EIRMR will include the results of any determination referred to in Paragraph 8.2.1(k) and any amendment of the EIRMR arising from the recommendations of any environmental audit or review undertaken in accordance with Paragraph 8.2.3(e);
  - (ii) addresses all relevant legislative requirements including the requirements of the Environmental Authorities held by QR Network from time to time that are relevant to the Access Seeker's or Access Holder's Train Services; and
  - (iii) identifies systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with Environmental Laws.
- (b) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network will ensure that the elements included in the EIRMR, which QR Network is responsible for implementing, are incorporated in QR Network's EMS.

### 8.2.3 Audit and Review of EIRMR

- (a) As noted in Subparagraph 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.
- (b) An Access Holder will provide QR Network with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder that are relevant to the operation of its Train Services on the Rail Infrastructure.
- (c) QR Network will provide an Access Holder with copies of those parts of QR Network's environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.
- (d) An Access Holder must advise QR Network of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR Network must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR Network becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Paragraph 8.2.3(d).
- (e) If QR Network becomes aware of:
  - (i) any inadequacy of the Access Holder's EIRMR due to:
    - any change in Environmental Laws of relevance to the Access Holder's Train Services; or
    - any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
  - (ii) any non-compliance by the Access Holder with the EIRMR,  
then QR Network may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of its EIRMR and/or the Access Holder's compliance with it. The review will only deal with:
    - (iii) the extent to which the EIRMR appears not to address a change in applicable Environmental Laws; or
    - (iv) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
    - (v) the extent of non-compliance by the Access Holder with its EIRMR,  
whichever is applicable in the circumstances.
- (f) If directed by QR Network to undertake a review in accordance with Paragraph 8.2.3(e), the Access Holder will ensure the review is carried out and will provide QR Network with a copy of the review report not later than three (3) months after the notice was received from QR Network.
- (g) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of a review carried out in accordance with Paragraph 8.2.3(e), including the implementation of changes to the EIRMR.

- (h) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Train Services, on environmental grounds, during the course of the Access Holder's Access Agreement.

### **8.3 ADJOINING INFRASTRUCTURE**

- (a) Unless otherwise agreed, where a Third Party Access Seeker or Third Party Access Holder proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR Network will not be Railway Manager, QR Network reserves the right to design, project manage, construct, commission, maintain, upgrade, and in any other way manage the Connecting Infrastructure, provided that:
- (i) in undertaking any tasks associated with this right, QR Network may only undertake a reasonable standard of works bearing in mind the nature of the traffic and the current or planned service standards for the Rail Infrastructure; and
  - (ii) the Third Party Access Seeker or Third Party Access Holder:
    - (A) is given a reasonable period within which to provide comments to QR Network on any design or construction matters; and
    - (B) may provide comments to QR Network identifying any matters relating to QR Network's proposed project management of the construction of the Connecting Infrastructure that will result in unreasonable costs or delays being incurred by the Third Party Access Seeker or Third Party Access Holder.
- (b) The Third Party Access Seeker or Third Party Access Holder will pay QR Network an amount, for work carried out in accordance with Paragraph 8.3(a), which is reasonable given the terms and conditions of the agreement governing the development of the Connecting Infrastructure, provided that QR Network will pay the reasonable costs (excluding Consequential Loss) incurred by the Third Party Access Seeker or Third Party Access Holder where QR Network has unreasonably delayed the development of the Connecting Infrastructure.
- (c) Where the Third Party Access Seeker or Third Party Access Holder and QR Network cannot agree as to:
- (i) whether works referred to under Subparagraph 8.3(a)(i) are to a reasonable standard;
  - (ii) what is a reasonable period within which to provide comments to QR Network under Subparagraph 8.3(a)(ii)(A);
  - (iii) whether QR Network's proposed project management of the construction of the Connecting Infrastructure will result in unreasonable costs or delays being incurred by the Third Party Access Seeker or Third Party Access Holder;
  - (iv) an amount payable under Paragraph 8.3(b);
  - (v) whether QR Network has unreasonably delayed the construction of Connecting Infrastructure; or
  - (vi) any other aspect of a Rail Connection Agreement,

then, subject to any other remedies sought by a party at law, either party may initiate the dispute resolution process in Clause 4.7.

## **PART 9. REPORTING**

### **9.1 QUARTERLY PERFORMANCE REPORTS**

- (a) QR Network will publicly release a quarterly report in relation to each complete Quarter within the Term and which contains the information set out in Paragraphs 9.1(e) to (k). QR Network will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.
- (b) The quarterly reports will be publicly released within thirty (30) days of the end of the subject Quarter.
- (c) In publishing a quarterly report in accordance with Paragraph 9.1(a), QR Network will include in the quarterly report a comparative presentation of the information in the subject Quarter and the four (4) preceding Quarters in respect of the information set out in Paragraphs 9.1(e) to 9.1(k). To the extent that a preceding Quarter is not within the Term, the information for the preceding Quarter for the purposes of the comparative presentation shall be that published for that Quarter under the 2005 Undertaking.
- (d) Where a quarterly report has been published in accordance with Paragraph 9.1(a) and QR Network has actual knowledge of a material error in the quarterly report, QR Network will, as soon as practicable but no later than the date by which the next quarterly report is to be publicly released, publish either, at QR Network's discretion, an erratum or a corrected quarterly report identifying the material errors. An error will be a material error where:
  - (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
  - (ii) otherwise, QR Network or the QCA considers the error to be material.In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the quarterly report unless the QCA has otherwise been notified or is aware of the error.
- (e) Information on the reliability of Train Services that have operated in the subject Quarter, as follows:
  - (i) number and percentage of Healthy Train Services that reach their destination within the Agreed Exit Threshold;
  - (ii) number and percentage of Healthy Train Services that do not reach their destination within the Agreed Exit Threshold solely due to delays attributed to QR Network as Railway Manager;
  - (iii) number and percentage of Healthy Train Services that do not reach their destination within the Agreed Exit Threshold, but excluding those Train Services identified in Subparagraph 9.1(e)(ii);
  - (iv) number and percentage of Unhealthy Train Services that do not deteriorate further, within the Agreed Deterioration Threshold;
  - (v) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, solely due to delays attributed to QR Network as Railway Manager;



- (vi) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, due solely to delays attributed to an Access Holder or to unallocated reasons;
  - (vii) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, but excluding those Train Services identified in Subparagraphs 9.1(e)(v) or (vi); and
  - (viii) number and percentage of Unhealthy Train Services that do not reach their destination within the Agreed Exit Threshold.
- (f) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
- (i) for all Train Services, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
  - (ii) for all Train Services, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres;
  - (iii) for all Train Services, the average Unallocated Delay, in minutes, per one hundred (100) train kilometres; and
  - (iv) for all coal carrying Train Services operating in the Central Queensland Coal Region:
    - (A) the average actual Below Rail Transit Time; and
    - (B) the percentage of Train Services where the agreed Maximum Transit Time has been exceeded.
- (g) Information on the availability of the network for Train Services in the subject Quarter, as follows:
- (i) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to QR Network as Railway Manager;
  - (ii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to an Access Holder (which would include cancellations attributable to a Railway Operator appointed by the Access Holder);
  - (iii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR Network as Railway Manager; and
  - (iv) the percentage of Agreed Paths which QR Network, as Railway Manager, does not make available for coal carrying Train Services operating in the Central Queensland Coal Region.
- (h) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (i) Information on speed restrictions, being the average percentage and the average number of kilometres of Track under temporary speed restriction.

- (j) Information on QR Network's billing performance, being the number of instances where an Access Holder has made a complaint to QR Network about an incorrectly calculated bill, and where QR Network's investigation into the complaint identifies that the bill was incorrectly calculated.
- (k) In respect of the treatment by Train Control of Third Party Access Holder Train Services and the Train Services of QR Operational Business Groups, operating in direct competition with each other, the following information regarding complaints from each of Third Party Access Holders collectively and QR Operational Business Groups as Access Holders collectively that QR Network Train Control has made a decision in breach of QR Network's traffic management decision making matrix contained in Schedule G, Part B, Appendix 2, of this Undertaking:
- (i) the number of complaints received by QR Network;
  - (ii) of the complaints received by QR Network, the number which are currently being assessed by QR Network;
  - (iii) of the complaints received by QR Network, the number which, after being assessed by QR Network, were verified; and
  - (iv) of the complaints which were verified, the number of verified complaints expressed per 100 train paths used by either, as relevant, the Third Party Access Holders collectively or QR Operational Business Groups as Access Holders collectively.
- (l) For the purposes of Paragraphs 9.1(e) to (k) other than Paragraph 9.1(i) and Subparagraphs 9.1(f)(iv) and (g)(iv), the Train Services will be aggregated as follows:
- (i) Train Services operated for the purpose of transporting bulk coal and mineral products;
  - (ii) Train Services operated for the purpose of transporting freight products, other than those products referred to in Subparagraph 9.1(l)(i); and
  - (iii) Train Services operated for the purpose of providing long distance passenger transport.
- (m) For the purposes of Paragraph 9.1(i), information on speed restrictions will be reported in the following segments:
- (i) the Central Queensland Coal Region; and
  - (ii) the remainder of the network, with the exception of:
    - the Metropolitan Region; and
    - Standard Gauge Rail Infrastructure.

## **9.2 ANNUAL REPORTS**

### **9.2.1 Annual Financial Report**

Within six (6) months after the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release Financial Statements in relation to the subject Year, that have been prepared and certified by the QR Network Chief Executive in accordance with Subclause 3.2.1 and, for Financial Statements

prepared under Subparagraph 3.2.1(a)(i), which will be accompanied by the audit certificate prepared in accordance with Subclause 3.2.2.

## 9.2.2 Annual Performance Report

- (a) Within four (4) months of the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release an annual performance report in relation to the subject Year (either complete or partial) containing the information set out in Paragraphs 9.2.2(c) to (f) and which will be accompanied by an audit certificate prepared in accordance with Subclause 9.5 in respect of QR Network's compliance with its obligations under this Subclause 9.2.2.
- (b) Where an annual performance report has been published in accordance with Paragraph 9.2.2(a) and QR Network has actual knowledge of a material error in the annual performance report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected annual performance report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
  - (ii) otherwise, QR Network or the QCA considers the error to be material.

In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the annual performance report unless the QCA has otherwise been notified or is aware of the error.

- (c) Subject to Paragraph 9.2.2(g), information in relation to QR Network's compliance with the Undertaking over the subject Year, or such part of the subject Year within the Term, as follows:
- (i) the number and percentage of requests for Preliminary Information received in accordance with this Undertaking and responded to within the applicable timeframe nominated in Paragraph 4.1(d);
  - (ii) for those requests for Preliminary Information received in accordance with this Undertaking not responded to within the applicable timeframe nominated in Paragraph 4.1(d), the average delay (in days) taken to provide the Preliminary Information;
  - (iii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Paragraph 4.2(a) or (b);
  - (iv) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Paragraph 4.2(a) or (b), the average delay (in days) taken to acknowledge the Access Applications;
  - (v) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Paragraph 4.2(c);
  - (vi) the number and percentage of Access Applications received in accordance with this Undertaking for which an extension of time for

- provision of an Indicative Access Proposal is sought by QR Network in accordance with Paragraph 4.2(c);
- (vii) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Paragraph 4.2(c), the average delay (in days) taken to provide the Indicative Access Proposals;
  - (viii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7;
  - (ix) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7 and QR Network was found to have committed a breach of the Undertaking;
  - (x) the number of instances where QR Network has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3; and
  - (xi) the number of instances where QR Network has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR Network was found to have committed a breach of those ring fencing obligations.
- (d) Subject to Paragraph 9.2.2(g), information in relation to the outcome of QR Network's negotiations with Access Seekers over the subject Year, or such part of the subject Year within the Term, as follows:
- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
  - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
  - (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.
- (e) Information on network service quality most recently measured within the subject Year, being Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (f) For the purpose of Paragraph 9.2(e), the network service quality will be reported in the following segments:
- (i) the Central Queensland Coal Region; and
  - (ii) the remainder of the network, with the exception of:
    - the Metropolitan Region; and

- Standard Gauge Rail Infrastructure.
- (g) The information referred to under Paragraphs 9.2.2(c) and (d) will be taken to include the equivalent information in respect of:
- (i) any part of the subject Year that is prior to the Commencing Date (in relation to QR and the 2005 Undertaking as applicable); and
  - (ii) QR Network's negotiations with Access Seekers where Paragraph 2.5(b) applies.

### 9.2.3 Maintenance Cost Report

- (a) Within four (4) months after the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release an annual report of actual maintenance costs containing the information set out in Paragraph 9.2.3(b) for the geographic areas specified in Paragraph 9.2.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will report its actual maintenance costs in the subject Year compared to the forecast maintenance costs accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance costs.
- (c) The actual and forecast maintenance costs will be separately reported for each Individual Coal System Infrastructure and for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted forecast maintenance costs for the purpose of assessing the relevant Reference Tariffs unless otherwise agreed by QR Network and the QCA.
- (d) Where a report has been published in accordance with Paragraph 9.2.3(a) and QR Network has actual knowledge of a material error in the report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
  - (ii) otherwise, QR Network or the QCA considers the error to be material.

In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the report unless the QCA has otherwise been notified or is aware of the error.

### 9.2.4 Regulatory Asset Base Report

- (a) Within one (1) month after notification by the QCA of its acceptance of QR Network's roll forward of the Regulatory Asset Base, QR Network will publicly release an annual report of changes to the Regulatory Asset Base, containing the information set out in Paragraph 9.2.4(b) for the geographic areas specified in Paragraph 9.2.4(c) in a format to be agreed with the QCA from time to time.

- (b) QR Network will report for the subject Year the roll forward of the Regulatory Asset Base including details of:
- (i) the opening value of the Regulatory Asset Base for the subject 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, separately identifying individual projects with a value in excess of \$10 million;
  - (v) disposals and transfers from the Regulatory Asset Base;
  - (vi) the closing value of the Regulatory Asset Base for the subject Year; and
  - (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.
- (c) The roll forward of QR Network's Regulatory Asset Base will be separately reported for each Individual Coal System Infrastructure and any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s) unless otherwise agreed by QR Network and the QCA.

### **9.3 REPORTING TO THE QCA**

- (a) The QCA has the right, by written notice, to request that QR Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of performing its obligations or functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking. The notice 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.
- (b) QR Network will comply with a request by the QCA under Paragraph 9.3(a) by the day stated in the notice unless QR Network has a reasonable excuse for non compliance.
- (c) QR Network will provide to the QCA information in accordance with Schedule MB which information shall be accompanied by a responsibility statement signed by the QR Network Chief Executive.
- (d) QR Network will report to the QCA any breaches of this Undertaking of which QR Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by QR Network in respect of the breach, at the following times:
- (i) within ten (10) business days of the end of each calendar month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar month; and
  - (ii) in relation to other breaches, as soon as QR Network becomes aware of the breach,
- except where:

- (iii) if that information was sought from QR Network by the QCA under section 105 or 126 of the Act, QR Network could lawfully refuse to provide it to the QCA.

Where QR Network does not report a breach or a remedial action proposed or taken by QR Network to the QCA on the basis of Subparagraph 9.3(d)(iii), QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of whether the exception in Subparagraph 9.3(d)(iii) applies.

#### **9.4 COMPLIANCE OFFICER**

- (a) Without affecting QR Network's liability to discharge all its obligations under the Undertaking, the Compliance Officer is to be responsible for using best efforts to undertake the following activities:
  - (i) notifying the QR Network Chief Executive:
    - (A) as soon as possible of any material breach of the Undertaking by QR Network and advising of any remedial action proposed or taken by QR Network in respect of the breach; and
    - (B) in respect of other breaches and the remedial action proposed or taken by QR Network in respect of those breaches, on a monthly basis;
  - (ii) taking all steps necessary to ensure that QR Network is able to meet its obligations under Subclause 3.2.1, Paragraphs 9.1(a) and (b), Subclauses 9.2.1 to 9.2.4 and Clause 9.3; and
  - (iii) taking all steps necessary to ensure that QR Network is able to meet any other obligation under the Undertaking nominated by the QR Network Chief Executive and agreed to by the QCA in writing.
- (b) The QR Network Chief Executive will be responsible for taking all steps necessary for ensuring that QR Network is able to meet any other reporting obligation or activity imposed on QR Network by the Undertaking not identified or nominated under Paragraph 9.3(a).

#### **9.5 AUDIT OF PERFORMANCE REPORT**

- (a) QR Network's compliance with its obligations under Clause 9.1 and Subclause 9.2.2 ("Reporting Obligations") will be audited annually.
- (b) The QCA may require the annual audit, referred to in Paragraph 9.5(a), to be conducted by an external party, and if it does, the following process will apply:
  - (i) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 9.5(b)(ii);
  - (ii) if, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may

- advise QR Network that its approval of that auditor in relation to the next external audit of QR Network's compliance with the Reporting Obligations is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;
- (iii) the auditor will have a 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 QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence; and
  - (iv) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.
- (c) QR Network will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.
  - (d) The auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below.
  - (e) The auditor will compile an audit certificate identifying:
    - (i) whether QR Network has complied in all material respects with the Reporting Obligations;
    - (ii) in the event that the auditor identifies that QR Network has not complied in all material respects with the Reporting Obligations, information as to the relevant non-compliance; and
    - (iii) the process adopted for the conduct of the audit.
  - (f) At the same time as it releases the annual performance report under Paragraph 9.2.2(a), QR Network will provide to the QCA a copy of any letter or report from the auditor accompanying the audit certificate which explains the audit findings in greater detail.



## PART 10. DEFINITIONS & INTERPRETATIONS

### 10.1 DEFINITIONS

In this Undertaking, unless inconsistent with the context, the following words and expressions shall have the respective meanings set out below:

**“2001 Undertaking”** means the access undertaking prepared by QR and approved by the QCA pursuant to the Act which commenced on 1 March 2002 (as amended during the term of that access undertaking);

**“2005 Undertaking”** means the access undertaking prepared by QR and approved by the QCA pursuant to the Act which commenced on 30 June 2006 (as amended during the term of that access undertaking);

**“Above Rail Delay”** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to an Access Holder (including a Railway Operator appointed by the Access Holder) in operating its Train Services, but excludes:

- (i) cancellations;
- (ii) delays resulting from compliance with a Passenger Priority Obligation; and
- (iii) 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 Rollingstock provision, Rollingstock maintenance, non Train Control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services and **“Above Rail”** has a similar meaning;

**“Access”** means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services;

**“Access Agreement”** means an agreement between QR Network and an Access Holder for the provision of Access and, subject to Subparagraph 2.5.2(e), includes an Internal Access Agreement. For the purposes of Paragraph 5.1(h), Paragraph 7.4.1(g), Subclause 7.4.2, Subclause 7.5.1 and the definition of “Evaluation Period” in Clause 10.1, agreements providing for multiple Train Services are deemed to be separate Access Agreements for each Train Service. This different meaning does not apply to System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A, Schedule F. To the extent that the QCA considers that Access Agreement should have that different meaning for the purposes of any other provisions of this Undertaking, it will:

- notify QR Network and other interested stakeholders of the additional provision (or provisions) to which it considers that different meaning should apply;
- provide QR Network and other interested stakeholders with a reasonable time in which to provide submissions in relation to that proposal;
- consider any submissions received from QR Network and other interested stakeholders, and the matters set out in section 138(2) of the Act; and

- determine whether that different meaning should apply to the provision (or provisions) proposed.

If during the term of this Undertaking the QCA determines that that different meaning of Access Agreement should apply to any additional provisions, it will be deemed that for the purposes of those provisions Access Agreement has that meaning;

**“Access Application”** means a request for Access by an Access Seeker which has been prepared in writing and which complies with the information requirements of Paragraph 4.1(b);

**“Access Charge”** means the price paid by an Access Holder for Access under an Access Agreement;

**“Access Conditions”** has the meaning given in Paragraph 6.5.2(a).

**“Access Conditions Register”** means a register maintained by QR Network and including the information identified in Subclause 6.5.3;

**“Access Coordination Plan”** means a document compiled by QR Network from an Access Agreement for provision to those persons providing scheduling and Train Control Services, and detailing operational and interface information concerning the Access Holder’s operation to assist in the performance of scheduling, Train Control Services and associated incident management services;

**“Access Holder”** means a party who holds Access Rights;

**“Access Rights”** means the entitlement of an Access Holder to Access in accordance with a specified Train Service Entitlement;

**“Access Seeker”** means a party who is seeking new or additional Access Rights;

**“Accreditation”** means accreditation in accordance with Part 3, Chapter 7 of the TIA and **“Accredited”** has a similar meaning;

**“Acknowledgment Notice”** means a notice given to an Access Seeker under Paragraph 4.2(a) or Paragraph 4.2(b) acknowledging the receipt of an Access Application;

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

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

- (i) additional to the number of Train Services permitted under an existing Access Agreement, but otherwise consistent with the Train Service Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing Access Agreement; or
- (ii) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by QR Network;

**“Additional Information”** means that information that is to be provided by QR Network to an Access Seeker during the Negotiation Period as set out in Schedule D, excluding any information that is provided as part of the Preliminary Information, but

only to the extent required either by the Access Seeker or as part of the Access Agreement;

**“Agreed Deterioration Threshold”** means the threshold allowance for deviations from a Train Path within which a Train Service is considered to be on time, as agreed between QR Network and the Access Holder in its Train Service Entitlement;

**“Agreed Exit Threshold”** means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR Network and the Access Holder in its Train Service Entitlement;

**“Agreed Paths”** means the lesser of:

- (i) the number of Train Paths required for the operation of the number of Train Services that an Access Holder is entitled to operate as specified under an Access Agreement (as varied from time to time in accordance with the Access Agreement); and
- (ii) the actual Train Paths that QR Network agrees, upon request by the Access Holder from time to time, to make available for the operation of the Access Holder’s Train Services.

**“Authority”** means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR Network (but excluding QR);

**“Available Capacity”** means Capacity that is not Committed Capacity and, subject to Paragraph 7.5.1(b), includes Capacity that will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

**“Below Rail Delay”** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to QR Network acting as Railway Manager, but excludes:

- (i) cancellations;
- (ii) delays resulting from compliance with a Passenger Priority Obligation; and
- (iii) delays resulting from a Force Majeure Event;

**“Below Rail Services”** means the activities associated with the provision and management of Rail Infrastructure, including the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including Train Control Services and the implementation of Safeworking Procedures and **“Below Rail”** has a similar meaning;

**“Below Rail Transit Time”** means, for a Train Service travelling between its origin and destination, the sum of:

- (i) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;
- (ii) identified Below Rail Delays for that Train Service;

- (iii) time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (i) of this definition; and
- (iv) delays due to Operational Constraints directly caused by the activities of QR Network in maintaining the Rail Infrastructure or due to a fault or deficiency in the Rail Infrastructure provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (ii) or (iii) of this definition;

**“Business Day”** means a day which is not a Saturday, Sunday or bank, special 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 a specified section of Rail Infrastructure to accommodate Train Services within a specified time period after providing for QR Network’s reasonable requirements for the exclusive utilisation of that specified section of Rail Infrastructure for the purposes of performing activities associated with the repair or enhancement of the Rail Infrastructure, including the operation of work Trains;

**“Capacity Analysis”** means an assessment of the extent to which a specified section of Rail Infrastructure has Available Capacity and whether that Available Capacity is sufficient for the proposed Access Rights and, if the Available Capacity is not sufficient for the proposed Access Rights, an assessment of Rail Infrastructure expansion or other Capacity enhancement required to meet those proposed Access Rights;

**“Capacity Resumption Register”** means a register maintained by QR Network and including the information identified in Paragraph 7.5.2(b);

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

**“Central Queensland Coal Region Mainline”** means, for the purposes of Subparagraph 6.5.2(c)(ii), that part of the Central Queensland Coal Region where the Rail Infrastructure serves, or as a result of the grant of Access Rights to which the proposed Access Conditions relate would serve, more than one mine;

**“Central Queensland Coal Region”** means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine;
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;
- (iv) from the port of Abbot Point to Newlands mine; and
- (v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

**“Changes in Market Circumstances”** means changes in circumstances which have occurred in any market and which have had, or will have, a material effect on an Access Holder’s ability to pay the Access Charges;

**“Claim”** means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including costs and expenses of defending or settling any action, proceeding, claim or demand;

**“Commencing Date”** has the meaning given to that term in Paragraph 2.3(b);

**“Committed Capacity”** means that portion of the Capacity that is required to meet the Train Service Entitlements of Access Holders and to comply with any Passenger Priority Obligation;

**“Committed Capacity Register”** means a register maintained by QR Network and including the information identified in Paragraph 7.5.1(d);

**“Common Corridor”** means:

- (i) in relation to transfers of Access Rights for coal carrying Train Services within an Individual Coal System in accordance with Paragraph 7.4.4(e), the part of the Rail Infrastructure that will be utilised by the new Access Holder’s relevant Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced, provided that where the distance from the new Access Holder’s origin to its destination is greater than the distance from the existing Access Holder’s origin to its destination (“existing Access Holder’s haul distance”), the Common Corridor will only extend from the new Access Holder’s destination (unloading facility) for a distance equal to the existing Access Holder’s haul distance; and
- (ii) in all circumstances other than those described in Subparagraph (i) of this definition, that part of the Rail Infrastructure that was utilised by the existing Access Holder for the Train Services for which Access Rights are being relinquished and will also be utilised by the new Access Holder’s Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced;

**“Common Costs”** means those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure;

**“Compliance Officer”** means the QR Network employee designated as such by the QR Network Chief Executive for the purposes of Paragraph 9.4(a);

**“Confidential Information”** means any information, data or other matter (“information”) disclosed to a party by, or on behalf of, another party where:

- (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
- (ii) the information is marked confidential by a party when disclosed;

provided that such information:

- is not already in the public domain;

- does not become available to the public through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c);
- was not in the other party's lawful possession prior to such disclosure; and
- is not received by the other party independently from a third party free to disclose such information, data or other matter;

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

- the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c); or
- the information has been received by the recipient independently from a third party free to disclose the information;

**“Connecting Infrastructure”** means the infrastructure including, but not limited to, the track, signalling and electrical overhead traction system (if applicable), which connects the Rail Infrastructure to Private Infrastructure, including those elements of the Private Infrastructure that impact upon QR Network's management of the Rail Infrastructure and any part of the Rail Infrastructure that is varied or created to facilitate the creation of the Private Infrastructure;

**“Consequential Loss”** means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort; and
- (iii) any loss of profits, production, revenue, use, contract, opportunity or goodwill or wasted overheads whatsoever,

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

**“Contested Train Path”** means a Train Path in respect of which more than one Access Holder has expressed an interest in operating a Train Service in the week in question;

**“Corporations Act”** means the *Corporations Act 2001 (Cth)* and the Corporations Regulations made under it, as amended from time to time;

**“Costing Manual”** means a manual prepared by QR Network and approved by the QCA from time to time that identifies the following matters:

- (i) for Financial Statements prepared under Subparagraph 3.2.1(a)(i):
  - (A) the process for identifying, from QR's audited general purpose financial statements, the cost base for Below Rail Services, separate from other services provided by QR or Related Parties of QR to which those Financial Statements relate; and
  - (B) within the cost base for Below Rail Services, the process for identifying the costs of Below Rail Services provided by QR Network separate from

the costs of Below Rail Services provided by QR Operational Business Groups (i.e. the management of stations and platforms);

- (ii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
- (iii) the format of Financial Statements;

**“Cross Subsidy”** means where the Access Charges payable in respect of one Train Service or combination of Train Services are insufficient to meet:

- (i) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and
- (ii) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services,

and the shortfall is contributed to by another Train Service or combination of Train Services;

**“Customer”** means a person or entity that the Access Holder or Access Seeker is providing or intending to provide Train Services for or on behalf of, and for the purpose of providing such Train Services to the Customer, the Access Seeker or Access Holder is acquiring or has acquired Access Rights to the Rail Infrastructure except, for the purposes of Subclause 7.4.4, where “Customer” has the more limited meaning of a person or entity that has a rail haulage agreement with the Access Holder in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement;

**“Cyclic Traffic”** means a traffic whose Train Service Entitlements is defined in terms of a number of Train Services within a particular period of time, for example, a year, month or week. Coal traffic is an example of such traffic;

**“Daily Train Plan”** or **“DTP”** means that document detailing 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 Rail Infrastructure;

**“Depreciated Optimised Replacement Cost”** means the value of assets determined in the following manner:

- (i) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;
- (ii) 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 requirements of Access Holders; and
- (iii) depreciation of the optimised replacement asset value will be undertaken on a straight line basis over the useful life of the assets;

**“Declared Service”** means the service that is declared under the Act in accordance with s.6 of the *Queensland Competition Authority Regulation 2007* (Qld);

**“Discount Rate”** means the rate equivalent to the ROA, as defined in Paragraph 6.2.4 (a);

**“Dispute”** has the meaning given to that term in Paragraph 4.7.1(a);

**“Draft Amending Undertaking”** means a document specifying amendments to the relevant provisions of this Undertaking, which is submitted to the QCA in the circumstances envisaged in Part 5 of the Act;

**“Efficient Cost”** means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR Network operates, and including any transitional arrangements agreed between QR Network and the QCA to reflect the transition from QR Network’s actual cost to that efficient cost;

**“Emergency Possession”** is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Rail Infrastructure that is considered dangerous to either Access Holders and/or QR Network employees, or where severe speed restrictions have been imposed, affecting the scheduled Train Services of Access Holders. The possession must be carried out less than seven (7) days from the detection of the problem;

**“Environmental Authorities”** means:

- (i) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the EP Act; or
- (ii) any authority which has effect under section 619 of the EP Act;

**“Environmental Investigation and Risk Management Report”** or **“EIRMR”** is a report containing the matters referred to it in Paragraph 8.2.1(a);

**“Environmental Harm”** means serious or material environmental harm or environmental nuisance as defined in the EP Act;

**“Environmental Laws”** means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies and relevant approved codes of practice and the conditions of all licences, approvals, consents, permissions or permits issued thereunder or amended from time to time;

**“Environmental Management System”** or **“EMS”** means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licenses;

**“EPA”** means the Environmental Protection Agency - an authority established under the EP Act;

**“EP Act”** means the *Environmental Protection Act 1994 (Qld)*;

**“Evaluation Period”** means:



- (i) when in reference to an individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Agreement in respect of the relevant Train Service;
- (ii) when in reference to a combination of Train Services for the purpose of determining a Reference Tariff to apply for some or all of those Train Services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train Services other than referred to in Subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not exceed ten (10) years;

**“Field Incident Management”** means the field management of incidents and accidents occurring on or affecting the Rail Infrastructure;

**“Financial Statements”** has the meaning given to that term in Paragraph 3.2.1(a);

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

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

and includes:

- (iii) 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 ;
- (iv) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (v) act of God;
- (vi) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (vii) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (viii) malicious damage or sabotage;
- (ix) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (x) failure of electricity supply from the electricity grid;
- (xi) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (xii) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (xiii) delay of a supplier due to any of the foregoing whenever arising;

**“Good Engineering Practices”** means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that

would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**“Healthy Train Service”** means a Train Service that has experienced no cumulative delay, within an Agreed Threshold, attributable to an Above Rail Delay or Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

**“Incremental Costs”** means those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access;

**“Indicative Access Proposal”** means a non-binding response from QR Network to an Access Application, prepared in writing and including the information set out in Clause 4.3;

**“Individual Coal System”** means any one of the following:

- (i) all coal carrying Train Services operating to or from the port of Abbot Point on the Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train Services operating to or from the ports of Hay Point or Dalrymple Bay on the Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine and Rolleston mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train Services operating to or from the Stanwell Power Station on the Rail Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura; or
- (v) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

**“Individual Coal System Infrastructure”** means any one of the following:

- (i) that Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;

- (ii) that Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory mine branch line;
- (iii) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

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

**“Initial Capacity Assessment”** means a preliminary Capacity Analysis undertaken in a manner to give an indicative assessment of Available Capacity only and which will require further analysis as part of the final Capacity Analysis;

**“Insolvent”** means where one of the following events has happened in relation to the Access Seeker:

- (i) the Access Seeker is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in s.459F(1) of the Corporations Act;
- (ii) a meeting is convened to place it in voluntary liquidation or to appoint an administrator, unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (iii) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (iv) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets, if that appointment is not revoked within fourteen (14) days after it is made; or
- (v) the Access Seeker resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

**“Interface Coordination Plan”** means a plan that identifies the procedures to be followed and the responsible officers from both QR Network and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under an Access Agreement other than those specified in the Network Management Principles;

**“Interface Risk Assessment”** means an assessment that ensures that the Interface Risks are properly managed within a risk management framework and which will identify all reasonably foreseeable hazards related to the Interface Risks, assess the risks of such hazards occurring and the implications of such hazards occurring as well as nominating suitable control mechanisms to manage the Interface Risks;

**“Interface Risk Management Plan”** or **“IRMP”** means a document that identifies the Interface Risks associated with the Access Seeker’s or Access Holder’s proposed operations and outlines both the control mechanisms agreed between QR Network and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

**“Interface Risk Management Process”** means a risk management framework to evaluate and address Interface Risks, conducted collaboratively by QR Network and an Access Seeker or Access Holder;

**“Interface Risks”** means all risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Access Seeker’s or Access Holder’s proposed operations and:

- (i) the Rail Infrastructure;
- (ii) the operation of other Train Services; and
- (iii) any other activities on the Rail Infrastructure that affect QR Network staff or QR Network’s interfaces with members of the public;

**“Internal Access Agreement”** means an arrangement in place immediately prior to the Commencing Date between Network Access (as defined under the 2005 Undertaking) and another QR business group for the provision of Access for the purpose of QR operated Train Services;

**“Line Diagrams”** means a diagrammatical representation of the rail network identifying:

- (i) the configuration of the network; and
- (ii) the parts of the network which are managed by QR Network, a QR Operational Business Group or a person other than QR Network;

**“Major Periodic Maintenance”** means activities that renovate the Rail Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year, and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering;

**“Major Yards”** means yards at Acacia Ridge, Fisherman Islands, Rockhampton, Callemondah, Jilalan, Coppabella, Paget, Townsville and Portsmith;

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

**“Material Default”** means:

- (i) repeated failure to comply with any non trivial terms and/or conditions of a relevant agreement; or
- (ii) any breach of a fundamental term and/or condition of a relevant agreement, where a fundamental term and/or condition is one that if breached gives rise to a remedy of termination,

where a relevant agreement is as described in Subparagraph 4.6(c)(ii);

**“Material Environmental Harm”** means material environmental harm as defined in the EP Act;

**“Maximum Transit Time”** means the maximum Below Rail Transit Time for the relevant Train Service type that QR Network may provide under an Access Agreement;

**“Metropolitan Region”** means the Rail Infrastructure bounded to the north by Nambour and to the west by Rosewood;

**“Negotiation Cessation Notice”** has the meaning given to that term in Paragraph 4.6(b) ;

**“Negotiation Period”** means the period during which the terms and conditions of an Access Agreement will be negotiated and which commences as specified in Paragraph 4.5.1(a) and concludes upon any of the events set out in Paragraph 4.5.1(e);

**“Network Management Principles”** are the principles set out in Schedule G;

**“New Access Agreement”** has the meaning given in Subparagraph 7.4.4(f)(i)(A);

**“Noise Planning Levels”** means the planning levels for railways referred to in the *Environmental Protection (Noise) Policy 1997*;

**“Nominated Weekly Train Services”** means, for a Cyclic Traffic, the number of Train Services that an Access Holder has an entitlement to operate during any one week period, as specified in its Train Service Entitlement;

**“Non-Pricing Provisions”** means the provisions of the 2001 Undertaking other than:

- (i) Parts 4 and 6 and Subclauses 7.4.1 and 7.5.1 of the 2001 Undertaking;
- (ii) any Reference Tariffs (as defined under the 2001 Undertaking) endorsed under Part 6 of the 2001 Undertaking; and
- (iii) the Standard Access Agreements included in Volume 2 of the 2001 Undertaking;

**“Old Access Agreement”** has the meaning given in Subparagraph 7.4.4(f)(i)(B);

**“Operating Plan”** is a description of how the proposed Train Services are to be operated, including the matters identified in Schedule K;

**“Operational Constraint”** means any restriction on the use of any part of the Rail Infrastructure that impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Urgent Possessions, Emergency Possessions or signalling or overhead restrictions;

**“Other Rail Infrastructure”** has the meaning given to that term in the TIA;

**“Out-Of-Course Running”** means the circumstances that occur when the actual running of one or more Train Service/s differs, by more than the relevant agreed threshold/s, from that provided in the DTP;

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

**“Planned Possessions”** means the temporary closure and/or occupation by QR Network of part of the Rail Infrastructure, including but not limited to closure of track or isolation of any electrical overhead traction system, for the purpose of carrying out infrastructure maintenance, enhancement, or other work on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property where such closure or occupation is entered into the MTP and adversely impacts upon the operation of Train Services;

**“Predominant Train Service”** means the type of Train Service which at the Commencing Date is projected to utilise more Train Paths than any other type of Train Service utilising the relevant rail corridor during the Term;

**“Preliminary Information”** means that information that QR Network will be required to provide to an Access Seeker, if and to the extent requested by the Access Seeker, where the scope of such information is as set out in Schedule D;

**“Private Efficient Cost”** means the cost for each Year, during the period for which the relevant Reference Tariff will apply, that reflects the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the relevant Private Infrastructure to the required service standard;

**“Private Incremental Costs”** means those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train service or combination of Train services (as appropriate) did not operate, where those costs are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure;

**“Private Infrastructure”** means the infrastructure, including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which a party other than QR Network is the Railway Manager (whether or not they are Accredited);

**“Proposed Standard Access Agreement”** has the meaning given to that term in Paragraph 5.2(a);

**“QCA”** means the Queensland Competition Authority as established by the Act;

**“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;

**“Quarter”** means the periods of three (3) months commencing 1 July, 1 October, 1 January and 1 April;

**“Queensland Transport”** means the Department of Transport for the State of Queensland or other department from time to time responsible for the administration of the TIA;

**“QR”** means QR Limited ACN 124 649 967;

“**QR Network**” means QR Network Pty Ltd ACN [insert];

“**QR Network Board**” means the board of directors of QR Network as comprised from time to time;

“**QR Network Chief Executive**” means the chief executive from time to time of QR Network currently referred to as the Executive General Manager;

“**QR Network Rollingstock Interface Standards**” are those standards set by QR Network for the purpose of defining the minimum requirements for Rollingstock to safely operate on the Rail Infrastructure;

“**QR Network’s Code of Practice for Railway Noise Management**” means QR Network’s code of practice for railway noise management approved under the EP Act;

“**QR Operational Business Groups**” means business groups within QR or Related Parties of QR (other than QR Network) that undertake the operation of Train Services for transporting passengers or freight for reward;

“**QR Services Australia**” means QR Services Australia Pty Ltd ACN [insert];

“**QR Train Services**” means Train Services provided or to be provided by a QR Operational Business Group;

“**Rail Connection Agreement**” means an agreement by which QR Network agrees to the connection of the Rail Infrastructure to Private Infrastructure;

“**Rail Infrastructure**” means Rail Transport Infrastructure including all stations and platforms but excluding the track and associated infrastructure on those parts of the network identified on the Line Diagrams as the responsibility of a Related Party of QR Network;

“**Rail Transport Infrastructure**” means rail transport infrastructure as defined in the TIA for which QR Network or a Related Party of QR Network is the Railway Manager;

“**Railway Manager**” has the meaning given to that term in the TIA;

“**Railway Operator**” has the meaning given to that term in the TIA;

“**Reduction Factor**” means:

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the new Access Holder’s Trains in respect of which Access Rights could not have been provided without using the whole or part of the Access Rights relinquished by the existing Access Holder; and

B = the annual train kilometres over the Rail Infrastructure attributable to the Train Services for which the existing Access Holder is seeking to relinquish Access Rights;

“**Reference Tariff**” is an Access Charge applicable for a specified Reference Train Service, set out in Schedule F or established by QR Network and authorised by the

QCA in accordance with Subclause 6.4.2, 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, varied or escalated in accordance with this Undertaking from time to time);

**“Reference Train Service”** means a notional Train Service identified in respect to 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;

**“Regulatory Asset Base”** means the asset value accepted by the QCA for the Central Queensland Coal Region;

**“Related Party”** has the meaning given to related body corporate in the Corporations Act;

**“Relinquishment Fee”** means:

- (i) in respect of an Access Agreement that includes an obligation to pay take or pay in the event that an Access Holder does not operate Train Services, other than an Access Agreement for Train Services specified in Subparagraph (ii) of this definition, the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement if the Access Agreement remained on foot but the Access Holder did not operate the relevant Train Services;
- (ii) subject to Clause 3 of Part B, for coal carrying Train Services included in Access Agreements in place on the day immediately prior to 30 June 2006 (or New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Paragraph 7.4.4(f) of the Undertaking), the amount that would be payable over the following two (2) year period if the Access Holder were to pay 40% (forty percentage points) of the Access Charge that would be payable if it operated the relevant Train Services; and
- (iii) in respect of an Access Agreement other than those nominated in Subparagraphs (i) or (ii), the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as a result of the operation of the relevant Train Services and payment of the applicable Access Charge;

**“Replacement Mine”** means a mine that is:

- (i) operated by the same operator as an existing mine referred to in Paragraph 7.5.1(b);
- (ii) in the same geographic area as the existing mine referred to above such that Train Services for the Replacement Mine use substantially the same Train paths as Train Services for the existing mine; and
- (iii) producing a volume of coal substantially equivalent to a reduction in existing volume from the existing mine.

**“Revenue Limit”** for the purposes of Subclause 6.2.2 and 6.2.3 is the maximum revenue that QR Network should be entitled to earn from the provision of Access to



the relevant Train Service(s) over the Evaluation Period as determined in accordance with Subclause 6.2.4;

**“Ringfencing Compliance Officer”** means the person designated as such by QR Network for the purposes of Paragraph 3.3.2(i);

**“Rollingstock”** means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the Track;

**“Rollingstock Configuration”** means the description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

**“Rollingstock Interface Standards”** are the minimum standards relating to the interface between Rollingstock and the Rail Infrastructure with which the Rollingstock and Rollingstock Configurations must comply in order for them to be able to be operated on the relevant parts of the Rail Infrastructure;

**“Safety Management System”** means:

- (i) in respect of a Railway Operator, a system developed by the Railway Operator to manage all risks associated with the operation of Train Services including specifically those risks identified in the relevant Interface Risk Assessment; and
- (ii) in respect of a Railway Manager, a system developed by the Railway Manager to manage all risks associated with the provision of Rail Infrastructure and safe management of Train operations on the Rail Infrastructure, including specifically those risks identified in Interface Risk Assessments undertaken with Access Seekers and Access Holders;

and which forms a basis upon which the Railway Operator or Railway Manager becomes Accredited;

**“Safety Regulator”** means the Chief Executive of Queensland Transport (or his delegate) operating in accordance with Chapter 7 of the TIA;

**“Safety Standards”** means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR Network policies and all standards relating to safety, including occupational health and safety, prescribed by any laws;

**“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of work sites on the Rail Infrastructure;

**“Scheduled Train Path”** means, for a Timetabled Traffic, the entitlement of an Access Holder, as identified in its Train Service Entitlement, to use a specified portion of the Rail Infrastructure at the times and between the locations specified in the relevant MTP, so as to allow the passage of one Train;

**“Serious Environmental Harm”** means serious environmental harm as defined in the EP Act;

**“Stand Alone Costs”** means those costs that QR Network would incur if the relevant Train Service(s) was (were) the only Train Service(s) provided Access by QR Network, and where those costs are assessed as the Efficient Costs and on the basis of the assets reasonably required for the provision of Access, and **“Stand Alone”** has a similar meaning;

**“Standard Access Agreement”** means a pro forma Access Agreement, incorporating terms and conditions that are consistent with Schedule E, set out in Volume 2 of this Undertaking or approved by the QCA in accordance with Clause 5.2;

**“Standard Gauge”** means a nominal gauge between rails of 1435 mm;

**“State”** means the state of Queensland;

**“Support Staff”** means the person or persons who provide clerical and administrative assistance to the relevant Board, chief executive or nominated manager, as the case may be, and in particular, includes the positions of Company Secretary and Assistant Company Secretary;

**“System-wide Requirements”** means the Network Management Principles, possession protocols, Interface Coordination Plan, the Rollingstock Interface Standards, Safeworking Procedures and Safety Standards, QR Network emergency procedures and QR Network’s investigation procedures;

**“Term”** means the period between the Commencing Date and the Terminating Date;

**“Terminating Date”** has the meaning given to that term in Paragraph 2.3(d);

**“Third Party”** means a party other than QR or a Related Party of QR;

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

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

**“Track”** means that part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

**“Train”** means any configuration of Rollingstock operating as a unit on the Track;

**“Train Controller”** means a person performing Train Control Services from within a Train Control centre;

**“Train Control Services”** means the management and monitoring of Train movements and of all other operation of Rollingstock on the Rail Infrastructure and of any activities affecting or potentially affecting such Train movements or Rollingstock operation. Train Control Services specifically include:

- (i) recording Train running times on Train diagrams and in QR Network’s information systems;
- (ii) reporting of incidents occurring on the Rail Infrastructure;
- (iii) managing incidents occurring on the Rail Infrastructure from within a Train Control centre; and

(iv) exchanging information with Access Holders;  
and **“Train Control”** has a related meaning;

**“Train Orders”** means raling requests for a nominated period of time submitted to QR Network, by or on behalf of an Access Holder, to assist in the scheduling of Train Services.

**“Train Path”** means the occupation of a specified portion of Rail Infrastructure, which may include multiple sections in sequential order, for a specified time;

**“Train Service”** means the operation of a Train between specified origins and destinations on the Rail Infrastructure;

**“Train Service Entitlement”** means an Access Holder’s entitlement under an Access Agreement to operate a specified number and type of Train Services over the Rail Infrastructure 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;

**“Transport Service Payments”** means payments to QR Network from Queensland Transport in consideration of specified Below Rail Services for nominated sections of Rail Infrastructure;

**“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 schedules) which is an undertaking for the purposes of the Act;

**“Urgent Possession”** is similar to a Planned Possession, except that these possessions are required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) months from the detection of the problem;

**“Unhealthy Train Service”** means a Train Service that has experienced a cumulative delay, outside an Agreed Threshold, attributable to an Above Rail Delay or an Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

**“Yard Control”** means the control of Train movements, and other activities affecting Train movements, at those locations that are not under the direct control of a Train Controller;

**“Weekly Train Plan”** or **“WTP”** means a seven (7) day plan that details the scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the relevant week;

**“Western System”** means the rail corridor from the port at Fisherman’s Island to Macalister (Wilkie Creek), including all branch lines directly connecting coal mine loading facilities and coal unloading facilities to this corridor; and

**“Year”** means the period of twelve (12) months commencing 1 July.

## **10.2 INTERPRETATION**

In this Undertaking unless the context otherwise requires:

- (a) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retains responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
- (b) reference to a person includes any other entity recognised by law and vice versa;
- (c) reference to “dollars” or “\$” means a reference to Australian dollars;
- (d) words importing the singular number includes the plural number and vice versa;
- (e) words importing any gender include the other gender;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (h) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (i) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (j) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;
- (k) clause headings are for reference purpose only;
- (l) any reference to the words “include” or “including” must be read as if they are followed by the words “without limitation”;
- (m) any reference to time is to local time in Queensland;
- (n) reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule is a reference to the corresponding Part, Clause, Subclause, Paragraph, Subparagraph or Schedule to this Undertaking as amended or replaced from time to time;
- (o) reference to this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
- (p) reference to any legislation includes all legislation under and amendments to that legislation and any legislation passed in substitution for that legislation or incorporating any of its provisions to the extent that they are incorporated;
- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions in the body of the Undertaking prevail;
- (r) QR Network may be taken to have engaged in conduct for a purpose referred to in Subclause 6.1.2 even though, after all the evidence has been considered, the existence of the relevant purpose is ascertainable only by inference from the conduct of QR Network or other relevant circumstances;

- (s) where in this Undertaking QR Network is prohibited from engaging in conduct for the purpose of preventing or hindering Access, QR Network will be taken to have engaged in such conduct if, having regard to the criteria set out in Paragraph 10.2(t), QR Network provides or proposes to provide Access to QR (or a Related Party of QR) on more favourable terms than the terms on which QR Network provides Access to a competing Third Party Access Holder, or proposes to provide Access to a competing Third Party Access Seeker; and
- (t) for Paragraph 10.2(s), the criteria are the terms, taken as a whole, on which QR Network provides or proposes to provide Access to QR (or a Related Party of QR) and the competitor having regard, in particular, to:
  - (i) the Access Charge to be paid by QR (or a Related Party of QR) and the competitor; and
  - (ii) the nature and quality of the Access provided or proposed to be provided to QR (or a Related Party of QR) and the competitor;

### **10.3 NOTICES**

- (a) Subject to Paragraph 10.3(b), where this Undertaking requires a notice or document be given to a person, the notice or document will be given:
  - (i) when the notice or document is personally delivered to the person;
  - (ii) where the person is a body corporate, when the person has been served in the way provided for the service of documents under the Corporations Act or another applicable law;
  - (iii) if the notice or document is posted, on the earliest of the following:
    - (A) where the notice is an Acknowledgement Notice, on the date the notice is posted;
    - (B) where the notice (other than an Acknowledgement Notice) is posted within Australia to an Australian address, three (3) Business Days after posting; or
    - (C) in any other case, ten (10) Business Days after posting; or
  - (iv) if the notice is sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee (and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report).
- (b) If a notice or document is given:
  - (i) after 5:00 pm in the place of receipt; or
  - (ii) on a day which is not a Business Day in the place of receipt,then it will be deemed to have been given at 9.00 am on the next day which is a Business Day in the place of receipt.

**SCHEDULE A**

***Rail Access Line Diagrams***



## **SCHEDULE B**

### ***Confidentiality Deed***

#### **BETWEEN**

**QR Network Pty Ltd (ACN [insert])** of Level 14, 305 Edward Street, Brisbane in the State of Queensland

(“**QR Network**”)

#### **AND**

(“**Access Seeker**”)

#### **RECITALS**

- A.** The Access Seeker has made or intends to make enquiries of QR Network regarding the provision of Access and the parties may commence negotiation of the terms of an Access Agreement under which QR Network will provide the Access Seeker with Access to the Rail Infrastructure;
- B.** In the course of the Access Seeker’s enquiry and/or during the negotiations for the provision of Access to the Access Seeker and/or during the term of the Access Agreement it is envisaged that the parties will have to provide each other with Confidential Information;
- C.** This deed sets out the terms upon which the parties will disclose Confidential Information to each other.



## OPERATIVE PROVISIONS

### 1. Definitions

1.1. Unless the context otherwise requires, and subject to Clause 1.2, terms defined in the Undertaking have the same meanings when used in this deed.

1.2. In this deed, the following words and expressions shall have the respective meanings:

**“Confidential Information”** means:

- (a) any information, data or other matter (‘information’) disclosed to a party by, or on behalf of, another party in contemplation of, or during the course of, the negotiations for Access in respect of which this deed was signed, or during the term of the Access Agreement that results from those Access negotiations, where:-
- (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
  - (ii) the information is marked confidential by a party when disclosed; and
- (b) any information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement, which party shall be deemed to be the owner of such Confidential Information;

provided that such information;

- is not disclosed in relation to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services;
- is not already in the public domain;
- does not become available to the public through means other than a breach of the confidentiality provisions in this deed;
- was not in the other party’s lawful possession prior to such disclosure; and
- is not received by the other party independently from a third party free to disclose such information, data or other matter;

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

- the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- the information is now in the public domain through means other than a breach of the confidentiality provisions in this deed; or
- the information has been received by the recipient independently from a third party free to disclose the information;

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**“Permitted Purpose”** means a purpose associated with responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.

**“Undertaking”** means the access undertaking prepared by QR Network and approved by the QCA in accordance with the Act.

## 2. Disclosure and Use of Confidential Information

2.1. Each party (“Recipient”) undertakes to keep confidential and not disclose any Confidential Information of the other party (“Owner”) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this deed or the Undertaking, and to use Confidential Information of the other party only for a Permitted Purpose, unless:

a) the Owner provides its prior written approval, which approval shall not be unreasonably withheld; or

b) the disclosure and/or use is:

- (i) required or compelled by any law;
- (ii) required or compelled by any order of a court;
- (iii) required or compelled by notice validly issued by any Authority;
- (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under the Undertaking or the Act;
- (v) required under any stock exchange listing requirement or rule;
- (vi) to the Safety Regulator;  
to the Recipient’s solicitors, barristers, or accountants under a duty of confidentiality;
- (vii) to the Recipient’s banker 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 Owner;
- (viii) requested by QR’s shareholding ministers;
- (ix) for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
- (x) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or
- (xi) subject to clause 2.4(a), to a Related Party of QR Network (“QR Party”) provided that the disclosure is in accordance with clauses 2.4(b) to (i) and subject to a legally enforceable agreement between QR Network and the QR Party with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network (provided

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that QR Network must notify the QCA of any breach of such provisions of which QR Network becomes aware, and the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure).

2.2. For the purposes of Clause 2.1(a), it is deemed to be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by an Access Seeker to that Access Seeker's external consultant/s, independent adviser/s or Customer/s where the Access Seeker enters into a contract with the recipient of the Confidential Information on the following terms:

- a) specifying the individual/s employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;
- b) specifying that those individual/s must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
- c) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.

2.3. For the purposes of Clause 2.1(a), it is deemed to be unreasonable for the Access Seeker to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:

- a) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group;
- b) specifying the individual/s employed by the recipient who may have access to the Access Seeker's Confidential Information provided under the contract and, where QR Network has not been able to reasonably avoid appointing an external consultant or independent advisor to review, and provide advice in relation to Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter, after receiving the recipient's assurance that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter;
- c) specifying that those individual/s must not disclose the Access Seeker's Confidential Information provided under the contract to any person outside of QR Network; and
- d) if required by the Access Seeker, requiring the recipient to execute a confidentiality deed in favour of the Access Seeker on terms and conditions reasonably satisfactory to the Access Seeker.

- 2.4. a) QR Network may disclose the Access Seeker's Confidential Information to:
- (i) individuals within QR Network (including the QR Network Chief Executive, QR Network Board and their respective Support Staff); and
  - (ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and their respective Support Staff.
- b) Subject to Clause 2.4(c), QR Network may disclose the Access Seeker's Confidential Information to those groups within QR specified in this Paragraph, provided that disclosure to each recipient is limited to the extent necessary to carry out a Permitted Purpose:
- (i) Rollingstock Engineering Division, QR Services Australia in relation to Rollingstock or Rollingstock Interface issues;
  - (ii) Property Division, QR in relation to real property issues; and
  - (iii) QR Services Australia employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues.
- c) The Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 2.4(b). If the Access Seeker gives such a notice to QR Network, then:
- (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
  - (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby whereby QR Network can obtain the information it requires to respond to the Access Application and the Access Seeker will not unreasonably withhold its agreement to this alternate mechanism. If the parties fail to agree on an alternate mechanism either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7 of the Undertaking;
  - (iii) all reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Clause 2.4(c)(ii) may be recovered by QR Network from the Access Seeker as a debt due and owing. All relevant timeframes applicable to QR Network under the Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and
  - (iv) If
    - the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can reasonably obtain the information it requires to respond to the Access Application; or
    - the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process;

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QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) of the Undertaking.

- d) QR Network may disclose the Access Seeker's Confidential Information to a QR Operational Business Group where:
- (i) the Access Seeker approves such disclosure;
  - (ii) such disclosure is required for a Permitted Purpose in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
  - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
  - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
- e) If, for a Permitted Purpose, QR Network wishes to disclose the Access Seeker's Confidential Information to a QR employee or group (or an employee or group of a Related Party of QR other than QR Network) not specified in Clauses 2.4(a), (b) or (d), or to a group specified in Clause 2.4(b) on an issue not specified in that Clause, QR Network must:
- (i) obtain the consent of the Access Seeker prior to making the disclosure; and
  - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the Permitted Purpose.
- f) QR Network will not, where reasonably practicable, disclose the Access Seeker's Confidential Information to a QR employee (or an employee of a Related Party of QR) where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 2.4(b), QR Network must obtain the consent of the Access Seeker prior to making the disclosure.
- g) If, during the process of responding to an Access Application or negotiating an Access Agreement, QR Network seeks the consent of an Access Seeker for the disclosure of Confidential Information pursuant to Clause 2.4 (e) or (f) and:
- (i) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) of the Undertaking; or
  - (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR

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Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.

This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.

**h)** If, during the process of administering an Access Agreement, QR Network seeks the consent of the Access Seeker for the disclosure of Confidential Information pursuant to Paragraph 2.4(e) or (f), such consent shall not be unreasonably withheld. If the Access Seeker fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, consent shall be deemed to have been given. This Clause does not apply where QR Network has requested consent to disclose the Confidential Information to a QR Operational Business Group.

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**i)** The Access Seeker acknowledges that the Ringfencing Compliance Officer, and QR employees in Internal Audit and Information Services Division will from time to time, in the course of their duties, have access to the Access Seeker's Confidential Information. QR Network is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Access Seeker.

2.5. For the purpose of this deed, a person who has been a consultant or contractor to either QR Network or the Access Seeker for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

### 3. General Obligations

3.1. Each Recipient acknowledges and agrees that:

**a)** the Confidential Information of the Owner is confidential to the Owner and is and remains at all times the valuable and exclusive property of the Owner;

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**b)** the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this deed by persons to whom the Recipient discloses the Confidential Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Recipient disclosed that Confidential Information);

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**c)** the Recipient shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of the Owner except to the extent necessary to carry out a Permitted Purpose;

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- d) this deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Owner;
- e) the Recipient shall secure and protect the Confidential Information received from the Owner from unauthorised disclosure, access or use;
- f) the Owner may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this deed or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it; and
- g) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Owner shall be entitled to specific performance of this deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed.

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#### 4. Liquidated Damages

- 4.1. Subject to Clause 5.1, where the Access Seeker can establish that a QR Operational Business Group is in possession of the Access Seeker's Confidential Information, QR Network will pay to the Access Seeker an amount of \$10,000 by way of liquidated damages in full and final settlement of any claim that the Access Seeker may have against QR Network in respect of the breach, UNLESS QR Network can establish that the QR Operational Business Group came into possession of the Confidential Information by means other than as a result of a breach by QR Network of Clause 2.4 or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it.
- 4.2. Any Dispute arising in connection with this Clause may be referred to the QCA. The QCA's review will determine whether QR Network is liable to pay the complainant the liquidated damages specified in Clause 4.1.

#### 5. Compensation for loss in excess of \$50,000

- 5.1 If the Access Seeker is able to establish that it has suffered more than \$50,000 loss or damage as a result of a breach by QR Network of Clause 2.4 or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, this deed shall not preclude the Access Seeker from taking action to recover compensation from QR Network in any court of competent jurisdiction. In these circumstances the parties agree that QR Network shall not be liable to the Access Seeker for the payment of liquidated damages in accordance with

Clause 4.

## **6. General**

- 6.1. Nothing in this deed obliges either party to disclose any particular Confidential Information or enter into any further agreement with the other party if it decides, in its absolute discretion, that it is not in its commercial interests to do so.
- 6.2. Unless otherwise terminated by mutual consent in writing, this deed will continue in force notwithstanding:
  - a) any subsequent termination of any discussions or negotiations between the parties; or
  - b) the return of all copies of the Confidential Information to the Owner.
- 6.3. This deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 6.4. The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this deed derogates from any obligation of QR Network under the Undertaking with respect to the Confidential Information.
- 6.5. In this deed, references to Clauses are references to Clauses contained in this deed unless otherwise stated.

**[Appropriate execution clauses to be included.]**



## **SCHEDULE C**

### ***Summary of Information Requirements as part of Access Application***

#### **1. ACCESS SEEKER'S NAME AND CONTACT DETAILS**

(if the Access Seeker is an unincorporated joint venture, all parties should be identified)

#### **2. COAL & FREIGHT TRAIN SERVICES**

##### *(a) Train Service Description*

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Method of transporting freight (e.g. containers, louvered wagons, bulk wagons)
- Description of freight
- Net tonnes of product per annum each year of operation, represented on a monthly basis (where monthly railings are not even)

##### *(b) Timetable Requirements*

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service on the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term
- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant
- Requirements for shunting or dwell times enroute, separately for forward and return journeys

##### *(c) Rollingstock Details*

- Proposed number of locomotives per Train
- Proposed number of wagons per Train
- Type and class of locomotive
- Mass of each locomotive (includes full sand and fuel load)
- Type and class of wagons
- Nominal gross mass of wagon
- Tare mass of each wagon

- Tare mass per container
- Average number of containers per wagon
- Average proposed load (of product) per wagon
- Maximum proposed gross tonnes per wagon
- Maximum axle load
- Gross tonnes per Train Service, separately for forward and return journeys
- Total length of train (including locomotives)

(d) *Infrastructure Requirements*

- Details of any infrastructure enhancements that may be necessary for operation of service, where known

### 3. PASSENGER TRAIN SERVICES

(a) *Train Service Description*

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Type of passenger traffic (e.g. long distance, commuter, tourist)

(b) *Timetable Requirements*

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service for the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term
- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys
- Requirements for shunting or dwell times enroute, separately for forward and return journeys

(c) *Rollingstock Details*

- Total number of locomotives per Train
- Total number of carriages per Train
- Total number of passenger multiple units (PMU) per Train
- Type and class of locomotive
- Mass of each locomotive (including full sand and fuel load)
- Type and class of carriage
- Nominal gross mass of each carriage
- Type and class of PMU
- Average gross mass of PMU

- Maximum number of vehicles
- Maximum axle load
- Total length of Train (including locomotives)
- Gross tonnes per Train Service, separately for forward and return journeys
- Maximum operation speed separately for loaded and empty Trains

(d) *Infrastructure Requirements*

- Details of any infrastructure enhancements that may be necessary for operation of service, where known

## SCHEDULE D

### *Preliminary and Additional Information*

#### PART A. PRELIMINARY INFORMATION

##### 1. Information Pack

Content	Cost	System Definition
(a) Introduction <ul style="list-style-type: none"> <li>• Criteria for use of data</li> <li>• Purpose of document</li> </ul>	\$500.00 per system	Blackwater
(b) Civil Infrastructure <ul style="list-style-type: none"> <li>• Description of the railway</li> <li>• Description of Track</li> <li>• Operational constraints, eg grades and curves</li> </ul>		Brisbane Metropolitan
(c) Signals and Operational Systems <ul style="list-style-type: none"> <li>• Description of safeworking systems</li> </ul>		Central Western
(d) Telecommunications <ul style="list-style-type: none"> <li>• Description of communication system used</li> </ul>		Goonyella
(e) Electric Traction <ul style="list-style-type: none"> <li>• General system description</li> </ul>		Maryborough
(f) Rollingstock Interface Requirements <ul style="list-style-type: none"> <li>• Track gauge</li> <li>• Axle load/s</li> <li>• Train speed/s</li> <li>• Rollingstock gauge</li> <li>• Noise limits</li> </ul>		Moura
(g) Locality Information <ul style="list-style-type: none"> <li>• Terrain information</li> <li>• Climatic conditions and resultant system disruptions</li> </ul>		Mt Isa
(h) Committed Corridor Upgrades		Newlands
(i) Relevant Maps and Drawings (CD version) <ul style="list-style-type: none"> <li>• Corridor maps</li> <li>• Working plan and section drawings</li> </ul>		North Coast Line
(j) Level Crossings <ul style="list-style-type: none"> <li>• Number of level crossings</li> <li>• Type of protection used</li> </ul>		South Western
(k) Train Operations <ul style="list-style-type: none"> <li>• Sectional running times (calculated based on the projected average sectional running times for the</li> </ul>		Tablelands
		Western

Predominant Train Service) <ul style="list-style-type: none"> <li>• Maximum Train lengths</li> <li>• Incident recovery times</li> </ul> (l) Description of Systems <ul style="list-style-type: none"> <li>• Operational</li> <li>• Safeworking</li> </ul> (m) Capacity Information <ul style="list-style-type: none"> <li>• MTP *</li> </ul>		
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\* The MTP is provided subject to the following caveats:

- The identity of other Access Holders will not be detailed on the information provided;
- The terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
- The MTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.

## 2. Access to Rail Corridor

Content	Cost
Access to the rail corridor *	Nil

\* This advice will identify if QR Network does not have authority to authorise Access Seekers to access land upon which Rail Infrastructure on a route nominated by the Access Seeker is situated and, if so, will include the following information:

- Identification of the relevant party (including that party's name, address and contact details) that the Access Seeker would need to obtain approval from to gain access to that land, where this information is reasonably available to QR Network;
- Advice as to the nature and extent of the rights, if any, that QR Network holds in relation to the relevant land; and
- A notice that may be provided to that party identifying that QR Network has no objection to the Access Seeker negotiating for access to that land.

## 3. Rollingstock Interface Standards

Content	Cost
QR Network Rollingstock Interface Standards *	\$1,000.00 per set

\* QR Network Rollingstock Interface Standards are provided subject to the following caveats:

- QR Network will provide uncontrolled versions of the documents; and
- Changes may occur to the documents subsequent to their provision.

4. Commercial Information

Content	Cost
Reference Tariffs	Nil
Applicable QR Network Standard Access Agreement	Nil

- Blackwater System
  - Central Blackwater Cluster
  - North Blackwater Cluster
  - Stanwell Cluster
  - South West Blackwater
- Goonyella System
  - North Goonyella Cluster
  - South Goonyella Cluster
  - West Goonyella Cluster
  - Gregory Branch via Goonyella Cluster
  - Central Goonyella Cluster
- Moura System
- Newlands System
- Western System

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## **PART B. ADDITIONAL INFORMATION**

### **1. Capacity Information**

- a) The relevant current DTP, assessed in accordance with Paragraph (b) below, for the relevant part of the Rail Infrastructure subject to the following caveats:
  - (i) the identity of other Access Holders will not be detailed on the information provided;
  - (ii) the terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
  - (iii) the DTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact upon the Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.
- b) The relevant current DTP will be assessed as:
  - (i) for an Access Application in respect of a Timetabled Traffic, the current DTP for the relevant day (or days) of the week; or
  - (ii) for an Access Application in respect of a Cyclic Traffic, the current DTPs for a week, unless QR Network reasonably believes that provision of DTPs for a longer period of time is required in order that the DTPs show a use of Capacity that is representative of current utilisation.
- c) Access to Train Control diagrams, indicating actual running of Train Services against the relevant DTP, for those days for which the DTP has been provided in accordance with Paragraph (a) above.

### **2. Information for EIRMR**

- a) All relevant information reasonably available to QR Network that is required for the purpose of the Access Seeker's EIRMR, in accordance with Paragraph 8.2.1(b).

### **3. Information for Interface Risk Assessment**

- a) All relevant information reasonably available to QR Network that is required for the purpose of the Interface Risk Assessment, in accordance with Paragraph 8.1.1(c).

### **4. Other Information**

- a) Other information as follows:
  - (iv) information required in accordance with s.101(2) of the Act, to the extent that this information has not already been provided; and

- (v) other information that is reasonably required by the Access Seeker in accordance with s.101(1) of the Act, provided such information is reasonably able to be provided by QR Network and cannot be reasonably obtained from a source other than QR Network.



## **SCHEDULE E**

### ***Principles for inclusion in Standard Access Agreement***

#### **1. Access Rights**

- The Access Agreement will provide for non-exclusive Train Service Entitlements for the operation of Train Services in terms of agreed service levels over the nominated network.
- Long term Train Service Entitlements can be varied only in accordance with agreed scheduling procedures specified in the Access Agreement or as otherwise agreed between the parties. The Network Management Principles should guide the performance of the scheduling function by QR Network and be incorporated by reference in the Access Agreement.
- It is the responsibility of the Access Seeker entering into an Access Agreement with QR Network to ensure that the operator of Train Services utilising the Access Rights is Accredited.
- Access Agreements will be for a specified term and include a good faith negotiation process for renewal.

#### **2. Access Charges**

- Access Charges are to be agreed between the parties and payable in accordance with reasonable payment terms set out in the Access Agreement. Late payments or credits by either party will bear interest at an agreed default rate.
- The Access Agreement will provide for a fair and reasonable mechanism for dealing with bona fide Disputed invoices.
- The Access Agreement may provide for periodic review of Access Charges.
- Unless otherwise stated, all amounts payable under the Access Agreement are exclusive of GST.
- In appropriate cases QR Network may require lodgement of a security deposit to secure performance by the Access Holder of its obligations under the Access Agreement having regard to QR Network's reasonable assessment of the creditworthiness of the Access Holder. Any required security deposit should reflect the cash flow risk that QR Network has taken on.
- Where there are no security arrangements in place and a user defaults on its payments, QR Network is entitled to require some form of security deposit

equivalent to its financial exposure, where the default was not attributable to a legitimate Dispute.

- An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by QR Network.

### **3. Train Service Entitlements**

- The Access Holder shall not be entitled to commence Train Services unless and until all provisions of the Access Agreement required to be completed or complied with prior to the commencement of Train Services have been completed or complied with by the due date specified in the Access Agreement. QR Network will use all reasonable endeavours to cooperate with the Access Holder to facilitate the Access Holder's completion or compliance with such requirements.
- The Access Holder must only operate Trains of the nominated specification for the transport of the nominated product type over the nominated network.
- The Access Agreement will contain provisions regarding the resumption of capacity by QR Network. Unless otherwise agreed by the parties, the provisions will include objective criteria to assess consistently under-utilised capacity, a requirement that there be either a reasonable expectation of a sustained alternative demand or a reasonable expectation of a commercial benefit for the provision and management of the infrastructure sufficiently material to justify the resumption of capacity and a Dispute resolution process conducted by an expert. Appropriate adjustments will be made to the Access Charges payable following a reduction in Train Service Entitlements.

### **4. Day-to-Day Train Movements**

- QR Network is to have responsibility for Train Control and shall exercise Train Control having regard to the safe conduct of rail operations on the nominated network.
- QR Network and the Access Holder shall ensure that the operation of Train Services is in accordance with entry and exit times in the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles or varied in the circumstances specified in the Access Agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the Access Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).
- The Network Management Principles establish the procedures QR Network must follow in varying the Daily Train Plan.
- The Access Holder is required to comply with all QR Network Train Control directions and ensure all Trains and Rollingstock are equipped with

appropriate communication systems to comply with the agreed Rollingstock Interface Standards.

## 5. Train Operations

- The Access Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.
- QR Network and the Access Holder are to comply with all laws, Safeworking Procedures and Safety Standards and all other train operations requirements in the Access Agreement. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all Railway Operators on the nominated network.
- The Access Holder must obtain certification from an appropriately qualified person whom both parties accept as being competent to provide certification for the Access Holder's Rollingstock and Rollingstock Configurations. QR Network has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rollingstock and Rollingstock Configurations are as agreed by the two parties in the IRMP and, if QR Network is so satisfied the Rollingstock and Rollingstock Configurations so certified will be included in the Rollingstock specification as being authorised to operate on the nominated network subject to continuing compliance with the IRMP and the Rollingstock specification.
- The Access Agreement will specify relevant Rollingstock Interface Standards. QR Network may vary the agreed Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards and other System-wide Requirements in respect to the management of the Rail Infrastructure in the following circumstances:
  - on safety grounds, acting reasonably, at any time following consultation with the Access Holder and the provision of reasonable notice to the Access Holder. In such circumstances, each party is responsible for its own costs (including the costs of additional or modified equipment) in complying with the system wide change;
  - in any other circumstance requiring a system wide change, QR Network may, acting reasonably, negotiate such changes with the Access Holder and the Access Holder must not unreasonably withhold its consent to the change. Each party is responsible for costs in complying with the system wide change (including the cost of additional or modified equipment or modification of either party's Rollingstock) as agreed between them or, failing agreement, as determined by an expert.
- The parties should agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially based incentives and sanctions. The performance levels may also be reviewed periodically.
- The Access Holder is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock Configurations comply with all applicable laws, the Rollingstock

specification and the Rollingstock Interface Standards specified in the Access Agreement.

- QR Network may suspend the operation of Rollingstock and Trains for actual non-compliance or (acting reasonably) anticipated non-compliance with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property. QR Network may also suspend the operation of the affected Rollingstock and Trains for actual non-compliance where such non-compliance does not create a risk to the safety of any person or a material risk to property and the Access Holder has failed to rectify the non-compliance within a reasonable period of time. Where QR Network suspends Rollingstock and/or Trains in these circumstances, the suspension will only apply until the non-compliance is rectified or in the event of anticipated non-compliance, the Access Holder has demonstrated that it is in compliance.
- Where QR Network suspends an Access Holder's Rollingstock and/or Trains, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.
- The Access Holder must ensure all loadings of Rollingstock are secure.

## **6. Infrastructure Management**

- QR Network is responsible for the management and control of the nominated network.
- QR Network will carry out maintenance work on the nominated network such that, subject to any agreed criteria and the Network Management Principles, the infrastructure is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- QR Network may impose operational constraints (such as speed or load restrictions) for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance work, emergency repairs and enhancements. In carrying out such work QR Network will use its reasonable endeavours to minimise disruption to Train Services so that the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- The Access Agreement will contain possession protocols for consultation with the Access Holder regarding maintenance that will impact on the Access Holder's schedule.
- The Access Agreement will contain provisions requiring the parties to provide advice to each other in relation to factors that could affect the Access Holder's operation of Train Services or the integrity of the nominated network.

- Prior to the commencement of Train Services, the Access Holder may, subject to reasonable terms and conditions, inspect the nominated network for the purposes of assessing the operational, environmental and safety risks with respect to the infrastructure, as well as the standard of the infrastructure comprising the nominated network including, but not limited to, fencing and at-grade crossings. QR Network will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where QR Network fails to maintain the infrastructure such that, subject to any agreed criteria (including those specified in the Network Management Principles), it is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.

## **7. Incident Management**

- Prior to the commencement of Train Services the Access Holder is required to develop an emergency response plan containing procedures for dealing with incidents which must be compatible with QR Network's emergency procedures.
- In the event of an incident, QR Network is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the Access Holder, take any action it considers reasonably necessary to recommence services as soon as possible. The Access Holder is responsible for recovery of its Rollingstock in accordance with its emergency response plan.
- The Access Holder must cooperate and assist with the restoration of the network in accordance with directions from Train Controllers seeking to coordinate the clearance of network blockages. Any Access Holder so directed should be adequately compensated for doing so and is entitled to expect that all rail operators will be subject to the same obligation. QR Network has the right to pass through the cost of clearing the blockage to the party that has caused the damage.
- Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the Access Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.

## **8. Environmental Protection and Other Issues**

- All Environmental Laws, regulations and relevant guidelines must be complied with.
- Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network. Auditing requirements should be linked to the environmental risks posed by an Access Holder's Train Services and be established in that Access Holder's

Environmental Investigation and Risk Management Report (EIRMR) which should be amended as necessary from time to time to address ongoing risk and compliance issues.

- The Access Holder is required to inform QR Network of non-compliance with its Environmental Investigation and Risk Management Report (EIRMR) and provide details of how it intends to address the non-compliance. The Access Holder is required to rectify the non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR Network and any action required by the EPA.
- The Access Holder should comply with its obligations under the EP Act including any notices or directions it receives from the EPA. The Access Holder is required to inform QR Network of non-compliance with the Access Holder's obligations under the EP Act. Failure to comply with such an obligation, where that failure causes or threatens Serious Environmental Harm, establishes grounds for a material event of default.
- QR Network reserves the right to suspend the right of an Access Holder to operate on the nominated network if, in QR Network's reasonable opinion, the Access Holder's Train Services cause or threaten Material Environmental Harm or Serious Environmental Harm. A suspension will only apply until the Access Holder demonstrates to QR Network that the circumstances that gave rise to QR Network's right to suspend have ceased to exist.
- Where QR Network suspends an Access Holder's Train Services on environmental grounds, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.

## **9. Accreditation**

- QR Network must have and maintain Accreditation as a Railway Manager under the TIA to the extent required to perform its obligations under the Access Agreement.
- An operator Accredited as a Railway Operator under the TIA must operate Train Services and the operator must maintain such Accreditation to the extent required to perform its obligations under the Access Agreement.

## **10. Access Holder's Staff**

- The Access Holder is responsible for demonstrating through the Interface Risk Assessment process that it has in place a process for ensuring the competence of its staff performing safety related work.
- QR Network reserves the right to suspend the right of the Access Holder's Train Services to operate on the nominated network in the event of breach or (acting reasonably) anticipated breach of any laws relating to rail safety, QR Network Train Control directions, Safeworking Procedures or Safety

Standards. A suspension will only apply until the breach is rectified or, in the event of an anticipated breach, the Access Holder has demonstrated to QR Network that it is in compliance.

- Where QR Network suspends an Access Holder's Train Services, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.

## 11. Safety Risk Management

- Safety risk management must be addressed by risk identification through the Interface Risk Assessment process and the formulation of an IRMP. The parties will be required to comply with the IRMP.

## 12. Inspection and Audit Rights

- Rights of inspection and audit in relation to each party's compliance with the Access Agreement and inspection of Trains and Rollingstock shall be included in the Access Agreement.
- The Access Agreement will specify the terms and conditions on which the parties can carry out such inspections and audits.
- Each party will, in carrying out any inspection or audit, give the other party reasonable notice and use reasonable endeavours to minimise disruption to the other party's operations.

## 13. Insurance

- The Access Agreement will provide for insurances to be effected by the parties to appropriately provide for the relevant insurance risks.

## 14. Indemnities and Liabilities

- Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff.
- The Access Holder is solely liable for and is required to release and indemnify QR Network for any damage to property or personal injury or death of any person being transported on Train Services except to the extent that the damage or harm is caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of QR Network or its staff. Unless otherwise agreed, the Access Holder shall extend to QR Network any exclusion or limitation of liability afforded by the Access Holder's conditions of carriage with its customers.

## 15. Limitation of Liability

- The liabilities of the parties for default shall be limited as agreed in the Access Agreement.
  - Except as otherwise provided in the Access Agreement, neither party has any liability for Consequential Loss or loss of profits in any circumstances.
  - Unless otherwise agreed in the Access Agreement, where a party:
    - (whether QR Network or the Access Holder), requires the conduct of an audit or inspection under Paragraph 8.1.7(e) or (f) of the Undertaking (as applicable); or
    - (being QR Network), suspends an Access Holder's Rollingstock, Trains and/or Train Services;
- that party (referred to as the "First Party") will be liable for damages (including damages for Consequential Loss) to the other party in respect of loss or damage arising from the conduct of the audit or inspection or the suspension (as applicable) if, and only if, no reasonable person in the position of the First Party could have formed the view that the stated grounds for such an audit, inspection or suspension existed (such circumstances being referred to as the "Liability Trigger"), provided that the other party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the audit or inspection or the suspension. The First Party shall bear the burden of establishing that the Liability Trigger has not occurred.
- The Access Agreement will specify the circumstances in which the Access Holder has a claim against QR Network for the non-provision of Access or the cancellation of a Train Service caused by breach of the Access Agreement or negligence by QR Network.
  - The Access Agreement will specify the circumstances in which each party has a claim against the other party for delays to Train movements caused by breach of the Access Agreement or negligence by the other party.
  - Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

## 16. Material Change

- Access Charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to QR Network of performing its obligations under the Access Agreement.
- A material change shall be limited to changes in taxes, laws or funding from QR Network's Transport Service Payments. The effects of material changes should be assessed on a case-by-case basis and in consultation with the Access Holder.
- An independent expert will determine any Dispute regarding the impact on Access Charges as a result of a material change.

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**17. Disputes**

- Any Dispute between the parties is to be firstly referred in writing to the respective chief executives for resolution. If the Dispute is not resolved, then the parties may agree to refer the Dispute for resolution by an expert or arbitration. If there is no agreement to resolve the Dispute in this manner then the Dispute is to be determined by a court.

**18. Default, Suspension and Termination**

- The Access Agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.

**19. Force Majeure Event**

- The obligations of either party (other than an obligation to pay monies due) will be suspended where by reason of a Force Majeure Event that party is delayed in, or prevented from, carrying out its obligations under the Access Agreement. The Access Agreement will provide for relief in respect of the payment of Access Charges to the extent that QR Network is unable to provide Access Rights because of a Force Majeure Event affecting QR Network.
- If infrastructure on specified lightly trafficked corridors of the nominated network is damaged by a Force Majeure Event and in QR Network's reasonable opinion the cost of repairing the damage is not economic, QR Network may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.
- The Access Agreement will provide for a process that might result in termination of the Access Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

**20. Assignment**

- The Access Holder may assign the whole of its rights and obligations under the Access Agreement to a related body corporate, provided that the assignor remains liable for the performance of obligations under the Access Agreement or to a non-related body corporate, with the prior written consent of QR Network (such consent not to be unreasonably withheld).
- A change in control of an Access Holder not a publicly listed corporation will be deemed to be an assignment of the Access Agreement.

**21. QR Network's Access Undertaking**

- The parties will comply with all applicable laws.

- The parties will comply with the terms of the Undertaking, including the ring fencing obligations, in effect from time to time, unless otherwise agreed in the Access Agreement.

## **SCHEDULE F**

### ***Reference Tariff Schedules***

#### **SECTION 1. COAL CARRYING TRAIN SERVICES**

##### **Part A. - General Provisions**

##### **1. Scope**

This Section specifies the Reference Tariffs applicable to nominated coal carrying Reference Train Services. This Section also specifies the methodology that will be used for determining a new Reference Tariff for a new coal carrying Reference Train Service where required in accordance with the Undertaking.

This Section has been developed by QR Network in accordance with the principles contained in Part 6 of this Undertaking and has been endorsed by the QCA for application in accordance with the terms and conditions set out in this Section. Part A contains the provisions that generically apply to all coal carrying Reference Train Services, Part B identifies the requirements specific to each nominated Reference Train Service on the Central Queensland Coal Region subject to this Section and Part C identifies the requirements specific to each nominated Reference Train Service on the Western System subject to this Section. The requirements set out in Parts B and C must always be read in conjunction with the provisions of Part A.

Each Reference Train Service includes a defined level of Below Rail Services as specified in Part 2 of the Undertaking. Consistent with Part 2 of the Undertaking, the Reference Train Service does not include any Above Rail Services such as the carrying out of any provisioning, inspection, testing and maintenance of Rollingstock, or storage, marshalling, shunting or other relocation of Rollingstock.

A varied Access Charge shall be applicable to Train Services that vary from the Reference Train Service characteristics specified in Clause 2.3 of this Part A and/or operate under terms and conditions with agreed variations from the requirements of Clause 2.4 of this Part A, but otherwise satisfy the nominated Reference Train Service description, whereby the varied Access Charge varies from the applicable Reference Tariff due to differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service. Clause 4 of this Part A describes how an Access Charge will vary from the Reference Tariff for specified variations of a Train Service from the Reference Train Service.

The provisions of this Section will be the basis for Access Charges negotiated for new Access Agreements for relevant Train Services or for rate review provisions that specifically refer to the Reference Tariff for the nominated Reference Train Service.

## 2. Reference Train Service Description

### 2.1 Commodity Type

The Reference Train Service carries bulk coal. In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

### 2.2 Geographic Scope

2.2.1 The Reference Train Service operates on the rail corridor directly connecting specified Nominated Loading Facility/ies and specified Nominated Unloading Facility/ies.

2.2.2 A new coal loading facility may only be added to the existing Nominated Loading Facilities for a Reference Train Service if it satisfies the requirements in relation to:

- (a) additional loading facilities that are set out in Part B or Part C for the relevant Reference Train Service; and
- (b) for coal carrying Train Services in the Central Queensland Coal Region, the minimum contribution to Common Costs, as set out in Clause 4.1 of Part B.

2.2.3 Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Information Pack for the relevant system.

### 2.3 Reference Train Service Characteristics

2.3.1 Each Reference Train Service:

- (a) has a maximum length (including the locomotive/s) as specified in Part B or Part C for that Reference Train Service;
- (b) has a maximum axle load as specified in Part B or Part C for that Reference Train Service with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table;
- (c) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Information Pack;
- (d) complies with QR Network's Rollingstock Interface Standards applicable to the Nominated Infrastructure;
- (e) is otherwise compatible with the Nominated Infrastructure described in the relevant Information Pack and requires no additional expenditure by QR Network to implement varied Below Rail controls identified in the IRMP or EIRMR;
- (f) operates in accordance with nominated sectional running times specified in the relevant Information Pack;
- (g) does not exceed the Loading Times specified in Part B or Part C for that Reference Train Service;
- (h) does not exceed the Unloading Times specified in Part B or Part C for that Reference Train Service;

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- (i) operates as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (j) has the ability to operate on the configuration of the Nominated Infrastructure existing at the Commencing Date without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements;
- (k) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism;
- (l) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at the Commencing Date;
- (m) measured as an average over a Year, has a maximum Stowage period for each Train Service no greater than that specified in Part B for that Reference Train Service; and
- (n) has any other characteristics specified for that Reference Train Service set out in Parts B or C.

## 2.4 Conditions of Access

2.4.1 The Reference Train Service will operate in accordance with the terms and conditions of the Standard Access Agreement for coal carrying services that is incorporated in Volume 2 of this Undertaking.

2.4.2 Under the Access Agreement, QR Network will commit to operate the Rail Infrastructure such that, on average over a Year, the Below Rail Transit Time specified in Part B can be achieved for the relevant Reference Train Service.

## 3. Access Charge

### 3.1 Reference Tariff

3.1.1 The applicable Reference Tariff for a nominated Reference Train Service shall be assessed in accordance with the methodologies established in Clause 2 of Part B and Clause 4 of Part C.

### 3.2 Escalation of Reference Tariff

3.2.1 Each component of a Reference Tariff, except the QCA Levy, will automatically escalate on each Escalation Date in accordance with the following formula:

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

where:

$AT_n$  means the value of the relevant Reference Tariff component to apply after escalation;

$AT_{n-1}$  means the escalated value of the relevant Reference Tariff component immediately prior to the relevant Escalation Date, or in the case of the First Escalation Date means the relevant Reference Tariff component

specified in Part B or Part C for each nominated Reference Train Service;

CPI<sub>n</sub> means the Consumer Price Index: All Groups - Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter which commenced 6 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 Consumer Price Index: All Groups - Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter which commenced 9 months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined.

3.2.2 Within seven (7) days of each Escalation Date following the Commencing Date, QR Network will publish the escalated components of the Reference Tariff on its website.

3.2.3 Where an error has been made in the calculation of the escalated components of a Reference Tariff, QR Network must correct the error so that the relevant components of the Reference Tariff are escalated in accordance with Subclause 3.2.1.

### 3.3 Variation of Reference Tariffs

3.3.1 QR Network will submit a variation of a Reference Tariff to the QCA:

- (a) in accordance with this Clause 3.3, if an Endorsed Variation Event or a Review Event occurs; or
- (b) subject to Subclause 3.3.3, within sixty (60) days:
  - (i) of a written notice being received from the QCA in accordance with Subclause 3.3.2; or
  - (ii) after the end of each Year of the Term if required to submit a variation under Subclause 3B of Part B.

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3.3.2 The QCA may give QR Network a written notice requiring QR Network to submit a variation of a Reference Tariff if:

- (a) the QCA does not approve a variation of a Reference Tariff submitted by QR Network; or
- (b) QR Network fails to submit a variation of a Reference Tariff:
  - (i) within sixty (60) days of the QCA determining that an Endorsed Variation Event or a Review Event has occurred; or
  - (ii) it is required to submit under Subparagraph 3.3.1(b)(ii).

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3.3.3 The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a variation of a Reference Tariff if:

- (a) QR Network provides a written request to the QCA for an extension of time which includes the reasons why QR Network requires the extension of time; and
- (b) the extension of time is reasonable or necessary.

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If the QCA grants QR Network an extension of time under this Subclause 3.3.3, QR Network must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

3.3.4 The QCA may develop a variation of a Reference Tariff that is consistent with the requirements specified in this Clause 3.3 for the variation of a Reference Tariff:

- (a) if QR Network does not comply with a written notice given by the QCA under Subclause 3.3.2 or Paragraph 3.3.9(b) 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 QR Network.

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3.3.5 Where an Endorsed Variation Event occurs:

- (a) QR Network must, within sixty (60) days of QR Network knowing that an Endorsed Variation Event has occurred, submit a variation of the relevant Reference Tariff (including evidence that the Endorsed Variation Event has occurred and details of the methodology, data and assumptions used to vary the Reference Tariff);
- (b) if the QCA considers it appropriate, the QCA may publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that:
  - (i) the Endorsed Variation Event has occurred; and
  - (ii) the variation of the Reference Tariff:
    - (A) is consistent with the change in the cost resulting from the Endorsed Variation Event;
    - (B) reflects the impact of the relevant Endorsed Variation Event on the financial position of QR Network's Below Rail Services (including the impact of incremental maintenance and incremental capital costs); and
    - (C) has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence causing the Endorsed Variation Event.

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3.3.6 Where a Review Event occurs:

- (a) QR Network must, within sixty (60) days of QR Network knowing that a Review Event has occurred, submit a variation of the relevant Reference Tariff (including evidence that the Review Event has occurred and details of the methodology, data and assumptions used to vary the Reference Tariff);
- (b) the QCA will publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that:
  - (i) the Review Event has occurred; and
  - (ii) the variation of the relevant Reference Tariff:

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(A) is consistent with the change in the cost resulting from the Review Event;

(B) reflects the impact of the relevant Review Event on the financial position of QR Network's Below Rail Services (including the impact of incremental maintenance and incremental capital costs); and

(iii) has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence causing the Review Event.

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3.3.7 Where QR Network submits a variation of a Reference Tariff in accordance with Subparagraph 3.3.1(b)(ii):

(a) the variation must:

- (i) nominate the Reference Tariff to be varied;
- (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff; and
- (iii) include details of and reasons for any amount used in preparing that variation in lieu of an Increment having been determined by the QCA;

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(b) the QCA may, to the extent it considers it appropriate to do so:

- (i) publish details of QR Network's proposed variation of the relevant Reference Tariff; and
- (ii) invite and consider comments from stakeholders regarding the proposed variation,

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(including in relation to any Increment sought by QR Network, or any deduction that should be made from System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A). To the extent that stakeholders provide comments, QR Network must be given a reasonable period in which to provide a response to those comments to the QCA;

(c) the QCA may adjust the variation but only to the extent that:

- (i) the QCA has made a determination under Subparagraph 3B.2.1(b) of Part B in relation to an Increment; or
- (ii) the QCA has made a determination regarding a deduction from System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A; and

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(d) the QCA will approve the proposed variation of the Reference Tariff if the QCA is satisfied that the variation of the Reference Tariff is in accordance with Clause 3B of Part B and subject to any adjustment under Paragraph 3.3.7(c).

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3.3.7A In making any determination regarding a deduction from System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A, the QCA must have reference to:

- (a) any comments received from stakeholders pursuant to an invitation for comments made under Paragraph 3.3.7(b);



- (b) any response received from QR Network in relation to such stakeholder comments; and
- (c) any Claims for breach or negligence that have been made by an Access Holder under an Access Agreement in relation to the relevant Individual Coal System Infrastructure during the relevant Year and any response received from QR Network in relation to any such Claims (although the absence of any such Claims is not determinative).

3.3.7B The QCA must not make a determination to deduct an amount from System Allowable Revenue to the extent that QR Network has already paid compensation or damages under an Access Agreement in relation to the relevant breach or negligence.

3.3.7C Where a Claim, dispute or question, which may involve a determination as to whether a particular act or omission constitutes a breach or negligence, is the subject of proceedings before an expert, an arbitrator, a court or a tribunal or the subject of any other dispute resolution process ("Dispute Proceedings"), the QCA will not make a determination to deduct an amount from System Allowable Revenue until those Dispute Proceedings (including any appeal proceedings) have been finalised. The QCA will consider whether such a determination should be made upon the next time that QR Network submits a variation to the relevant Reference Tariff pursuant to Subclause 3.3.7 following finalisation of the Dispute Proceedings (including any appeal proceedings), and in doing so will be bound by any decision of the expert, arbitrator, court or tribunal as to whether the relevant act or omission constituted a breach or negligence by QR Network.

3.3.8 If the QCA approves a variation to a Reference Tariff:

- (a) the QCA will give QR Network a notice in writing stating the reasons for the QCA's decision;
- (b) the variation to the Reference Tariff will apply:
  - (i) from the Escalation Date immediately following the date of the occurrence of the Endorsed Variation Event or Review Event;
  - (ii) if the date of the occurrence of the Endorsed Variation Event or Review Event is the same as an Escalation Date, from the date of the occurrence of the Endorsed Variation Event or Review Event; or
  - (iii) if that variation arose as a result of the operation of Clause 3B and Paragraph 3.3.1(b)(ii), from 1 July of the Year following the Year in which the variation was submitted; and
- (c) QR Network must:
  - (i) publish the varied Reference Tariff on its website; and
  - (ii) advise Access Holders and Access Seekers, in respect of the relevant Reference Train Service, of the variation to the Reference Tariff.

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3.3.9 If the QCA refuses to approve a variation to a Reference Tariff, the QCA will give QR Network a notice in writing:

- (a) stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and
- (b) requiring QR Network to vary the Reference Tariff in the way the QCA considers it appropriate and resubmit the variation to the QCA within thirty (30) days of QR Network receiving the notice.

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3.3.10 QR Network must comply with a notice given under Paragraph 3.3.9.

3.3.11 The QCA may approve a resubmitted variation to a Reference Tariff or a variation to a Reference Tariff developed by the QCA under Paragraph 3.3.4, if the QCA is satisfied that the variation of the Reference Tariff:

- (a) is consistent with the matters specified under Subparagraph 3.3.5(c), 3.3.6(c) or 3.3.7(d) (as applicable); and
- (b) has been amended or developed in accordance with the QCA's decision.

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#### 3.4 Varied Components of Applicable Access Charge

3.4.1 Nothing in this Section will preclude QR Network and the Access Holder agreeing to Access Charges that have varied cash flows but the same net present value as the Reference Tariff as applied in accordance with the other provisions of this Section.

3.4.2 Varied cash flows could be achieved by variations to the structure of the charges and/or variations to the escalation arrangements. In any case the variation from the specified application of the Reference Tariff will be assessed on the basis of the risks and costs, including opportunity cost, associated with the timing of the resultant cash flows.

3.4.3 Nothing in this Section will preclude QR Network from seeking Access Conditions, pursuant to Subclause 6.5.2 of the Undertaking.

#### 3.5 Access Charges in the Central Queensland Coal Region

3.5.1 Unless prior written approval from the QCA is received, QR Network must calculate all Access Charges used for coal-carrying Train Services in the Central Queensland Coal Region by reference to the same components as Reference Train Services (AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, the QCA Levy, and AT<sub>5</sub> and EC if appropriate), even if the Train Service does not constitute a Reference Train Service.

### 4. Variations to Reference Train Service

Where a Train Service differs from the Reference Train Service due to it not complying with Paragraph 2.3.1(f), then QR Network will, unless otherwise agreed with the QCA, quote an Access Charge that varies from the Reference Tariff by applying the following principles:

- (a) an estimate of the number of reference Train Paths used by the proposed Train Service will be determined as follows:

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$rtp = \frac{\text{maximum number of Reference Train Services at full utilisation}}{\text{maximum number of proposed Train Services at full utilisation}}$

This value of  $rtp$  is used for the purpose of Clause 2.1 of Part B;

- (b) an estimate of the maximum number of train paths available for a Reference Train Service and for the proposed Train Service will be carried out using a readily available simulation package; and
- (c) in accordance with Subparagraph 4.3(a)(v) or Subparagraph 4.5.2(v) of the Undertaking (as applicable), QR Network will advise the Access Seeker how it has determined the value of  $rtp$ .

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## 5. Definitions and Interpretation

5.1 In this Section, references to Parts, Clauses, Subclauses, Paragraphs and Subparagraphs are references to Parts, Clauses, Subclauses Paragraphs and Subparagraphs contained in this Section unless otherwise stated.

5.2 The following definitions are specific to this Schedule. In addition to these definitions, Part 10 of the Undertaking sets out the definitions of defined terms used in this Section and applicable to the Undertaking generally:

**“AT<sub>2-4</sub>”** means the aggregate of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of Access Charges;

**“Billing Period”** means a period of a calendar month;

**“Change in Law”** means:

- (i) any amendment, repeal, modification or enactment of any Law;
- (ii) 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;
- (iii) the making of any new directive, or any change in an existing directive, of any Authority;
- (iv) the imposition of a requirement for authorisations not required as at 30 June 2006;
- (v) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (vi) 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 conditions which are materially less favourable than those attached to the original authorisation.

**“Change in Relevant Taxes”** means:

- (i) the imposition of a new Relevant Tax;
- (ii) an increase in the rate of a Relevant Tax; or
- (iii) a change in the basis of calculation of a Relevant Tax;

**“Distribution Entities”** has the same meaning as given to that term in the *Electricity Act 1994 (Qld)*;

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

- (a) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since 30 June 2006, would cause a change in the costs reflected in, for Reference Tariffs specified in Part B, the AT<sub>3</sub>, AT<sub>4</sub>, and/or AT<sub>5</sub> components of the relevant Reference Tariff and, for Reference Tariffs specified in Part C, the AT<sub>1</sub> component of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (b) a change in the regulatory pricing of Queensland Electricity Transmission Corporation Limited that, either alone or in combination with all other changes in the regulatory pricing of the Queensland Electricity Transmission Corporation Limited that have occurred since 30 June 2006 and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT<sub>5</sub> component of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (c) a change in the pricing of one or more Distribution Entities and/or Retail Entities that either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Retail Entities that have occurred since 30 June 2006 and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in AT<sub>5</sub> and/or the EC component of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (d) for Reference Tariffs specified in Part B, a new Reference Tariff being approved for a new Reference Train Service which will operate on an existing Individual Coal System Infrastructure and an adjustment to the Reference Tariff/s for existing Reference Train Services operating on that same Individual Coal System Infrastructure is necessary to reflect the contribution to Common Costs made by the new Reference Train Service; or
- (e) 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.

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**“Energy Charge” or “EC”** means that component specified in each applicable Reference Tariff in Part B for the supply of electric energy;

**“Escalation Date”** means the date being 1 January, 1 April, 1 July and 1 October in each year;

**“First Escalation Date”** means that date identified as the first escalation date for each nominated Reference Train Service in Part B or Part C;

**“GST”** means a tax in the nature of a supply or goods or services tax levied or imposed by the Commonwealth of Australia;

“**Increment**” means the amount as calculated under Clause 3B.2 of Part B;

“**Information Pack**” means the document issued by QR Network meeting the requirements of Clause 1 of Part A of Schedule D and relevant to the system in which the Nominated Infrastructure is located;

“**Law**” or “**Laws**” means a statute, ordinance, rule or regulation;

“**Loading Time**” means the time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Loading Facility until it has completed loading, presented at the exit signal, is ready to depart the Nominated Loading Facility and has advised the relevant Train Controller accordingly;

“**Load Variation Table**” means a table published by QR Network in respect to a nominated Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“**Nominated Infrastructure**” means that Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies;

“**Nominated Loading Facility**” means a loading facility specified for a nominated Reference Train Service in Part B or Part C, and “**Nominated Loading Facilities**” has a corresponding meaning;

“**Nominated Unloading Facility**” means an unloading facility specified for a nominated Reference Train Service in Part B or Part C, and “**Nominated Unloading Facilities**” has a corresponding meaning;

“**QR Network Cause**” means where QR Network is unable to make Rail Infrastructure available for the operation of Train Services in accordance with an Access Holder’s Train Service Entitlement as a result of:

- (i) Planned Possessions, Urgent Possessions or Emergency Possessions;
- (ii) a Force Majeure Event; or
- (iii) any other action by QR Network, acting as Railway Manager, which may directly result in the Rail Infrastructure not being so available;

provided that the above reasons are not in any way attributable to the Access Holder;

“**Relevant Tax**” means a tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR Network by, or payable by QR Network to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

“**Retail Entities**” has the same meaning as given to that term in the *Electricity Act 1994 (Qld)*;

“**Review Event**” means a material change in circumstances which QR Network and the QCA agree may give rise to a need to vary a Reference Tariff, but only where QR Network has given written notice to the QCA of QR Network’s intention to propose a variation to that Reference Tariff under Clause 3.3 of Part A;

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“**Storage**” means the storage of individual items of Rollingstock, long-term storage of Trains, or short-term storage of Trains where the Access Holder does not operate Train Services in accordance with its Train Service Entitlement;

“**Stowage**” means the short-term storage of Trains on the Rail Infrastructure, at locations specified by QR Network exercising its reasonable discretion, for the purpose of:

- (i) enabling an Access Holder to carry out scheduled Above Rail Services normally carried out during a scheduled operational cycle (such as crew changes, meal breaks, and provisioning) in accordance with the relevant Train Service Entitlement; and/or
- (ii) providing an Access Holder with a place to temporarily store its Train/s:
  - between scheduled Train Services in accordance with the relevant Train Service Entitlement; or
  - when the Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown situation or temporary outage of the Access Holder, the loading facility or the unloading facility, and/or unavailability of the Nominated Infrastructure; but does not include Storage;

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“**System Allowable Revenue**” means:

- (i) for AT<sub>2-4</sub> in relation to an Individual Coal System Infrastructure, the total revenue from AT<sub>2-4</sub> arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.4, 6.4, 7.5 and 8.5 of Part B (as amended from time to time); and
- (ii) for the AT<sub>5</sub> component of Access Charges for either the Blackwater System or the Goonyella System, the total revenue from the AT<sub>5</sub> component of Access Charges arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.4 and 6.4 of Part B (as amended from time to time),

less

(iii) for:

- paragraph (i) of this definition any revenue from AT<sub>2-4</sub>; or
- paragraph (ii) of this definition any revenue from the AT<sub>5</sub> component of Access Charges,

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that (subject to Subclauses 3.3.7A to 3.3.7C) the QCA reasonably determines that QR Network would have otherwise been entitled to earn under all Access Agreements in relation to that Individual Coal System Infrastructure during the relevant Year, but which QR Network was not entitled to earn due to its own breach of an Access Agreement or negligence in the provision of Below Rail Services, provided that if that breach or negligence resulted in the non-provision of less than 10% of the total number of Train Services scheduled under an affected Access Agreement for any month during the relevant Year then no deduction will be made for revenue that QR Network was not entitled to

earn under that Access Agreement in connection with that breach or negligence.

**“System Forecast”** means the gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in Part B;

**“System Gtk”** means the sum of the gtk for all coal carrying Train Services to the extent those Train Services travel on the relevant Individual Coal System Infrastructure over the relevant period;

**“Take or Pay”** means that part of the Access Charge payable pursuant to Subclause 2.2 of Part B or Clause 5 of Part C;

**“Total Actual Revenue”** means:

- (i) for AT<sub>2-4</sub> in relation to an Individual Coal System Infrastructure, the total revenue from AT<sub>2-4</sub> (including the amount of any Take or Pay amounts, Relinquishment Fees and transfer fees under Subclause 7.4.4 of the Undertaking which QR Network is entitled to be paid but, for the avoidance of doubt, less the amount of any reductions of those amounts in accordance with the Undertaking, and with the revenue from the AT<sub>2</sub> component calculated to reflect any variations made pursuant to clause 4 of Part A) arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network has actually earned over the relevant Year (whether or not actually collected by QR Network); and
- (ii) for the AT<sub>5</sub> component of Access Charges for each of the Blackwater System or the Goonyella System, the total revenue from the AT<sub>5</sub> component of Access Charges arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network has actually earned over the relevant Year (whether or not actually collected by QR Network),

provided that:

- (iii) in calculating the Take or Pay amounts, Relinquishment Fees and transfer fees under Subclause 7.4.4 of the Undertaking which QR Network is entitled to be paid for the purposes of determining the Total Actual Revenue for AT<sub>2-4</sub> under paragraph (i), QR Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Undertaking or the 2001 Undertaking, as applicable) that applied on the date of execution or renewal of an Access Agreement except for:

- those Access Agreements which have been altered from that form in accordance with the terms of the Undertaking or the 2001 Undertaking (as applicable) which applied on that date, for which QR Network's entitlement will be calculated to reflect the terms of such Access Agreements;
- a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under or prior to the 2001 Undertaking, pursuant to Paragraph 7.4.4(f) of the Undertaking, which has not been renewed after 30 June 2006, for which QR Network's entitlement to Take or Pay amounts and Relinquishment Fees will be calculated on the basis that QR Network has contracted on the terms of:

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- (A) for an Old Access Agreement executed under the 2001 Undertaking, the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; or
- (B) for an Old Access Agreement executed prior to the 2001 Undertaking, the terms of that Old Access Agreement; and

- for the avoidance of doubt, an Access Agreement executed prior to the 2001 Undertaking, for which QR Network's entitlement will be calculated to reflect the terms of that Access Agreement.

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**“Unloading Time”** means the time between a Train Service arriving at a Nominated Unloading Facility and that same Train departing the Nominated Unloading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Unloading Facility until it has completed unloading, presented at the exit signal, is ready to depart the Nominated Unloading Facility and has advised the relevant Train Controller accordingly.



## Part B. - Provisions Specific to Reference Train Services in the Central Queensland Coal Region

### 1. Reference Train Service Characteristics

- 1.1 Further to Subclause 2.3.1 of Schedule F, Part A, the Reference Train Service has, measured as an average over a Year, a maximum Stowage period for each Train Service no greater than that specified in Clauses 5 to 8 of this Part B for that Reference Train Service.
- 1.2 An Access Seeker for a Reference Train Service will have its Train Service Entitlement:
- (a) based on its Trains being available for operation 24 hours per day and 360 days per year; and
  - (b) specified in terms of a Cyclic Traffic operated evenly throughout each yearly, monthly and weekly period, and will comply with the applicable coal corridor scheduling procedures.

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### 2. Access Charge

#### 2.1 Reference Tariff

- 2.1.1 The applicable Reference Tariff for a nominated Reference Train Service shall be assessed as:

$$\left( AT_1 \times \frac{gk}{1000} \right) + (AT_2 \times rtp) + \left( AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left( AT_5 \times \frac{egtk}{1000} \right) + \left( EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt)$$

where:

- AT<sub>1</sub> is the incremental maintenance tariff specified as AT<sub>1</sub> for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- AT<sub>2</sub> is the incremental capacity tariff specified as AT<sub>2</sub> for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- AT<sub>3</sub> is the allocative part of the Reference Tariff that is levied on a net tonne kilometre basis specified as AT<sub>3</sub> for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- AT<sub>4</sub> is the allocative part of the Reference Tariff that is levied on a net tonne basis specified as AT<sub>4</sub> for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- AT<sub>5</sub> is the electric access tariff that is levied on an egtk basis specified as AT<sub>5</sub> for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- gk is the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;
- rtp is the number of reference Train Paths used by the relevant Train Service where a Reference Train Service uses one reference Train Path;
- nt is the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the

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- relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty;
- ntk is the net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) travelled by the Train Service;
- egtk is the electric gross tonne kilometres attributed to the relevant Train Service, being the gtk for the Train Service if that Train Service uses electric traction, and zero if the Train Service does not use electric traction;
- EC is the electric energy charge specified as EC for the nominated Reference Train Service in Clauses 5 to 8 of this Part B; and
- QCA Levy is the fee allocated to the nominated Reference Train Service to cover the fees imposed by the QCA upon beneficiaries of its regulatory services specified in Clauses 5 to 8 of this Part B.

Where the above terms are used elsewhere in this Part B they shall have the same meaning.

- 2.1.2 The amounts of AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub>, EC and the QCA Levy specified in Clauses 5 to 8 of this Part B are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.
- 2.1.3 For the purposes of this Part B, 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.
- 2.1.4 For the purposes of this Clause 2.1 the measures gtk, rtp, ntk, nt and egtk shall be assessed for the relevant Train Service over the Billing Period for which the Reference Tariff is being calculated.

## 2.2 Take or Pay

- 2.2.1 QR Network will be entitled to earn Take or Pay revenue in accordance with the provisions of this Subclause 2.2.
- 2.2.2 For Train Services for which Access Agreements are executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking), the Take or Pay arrangements will be as specified in Subclause 2.2.3. For Train Services included in Access Agreements in place on the day immediately prior to 30 June 2006 (and not subsequently renewed after 30 June 2006) or New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Paragraph 7.4.4(f) of the Undertaking, the Take or Pay arrangements will be as specified in Subclause 2.2.5.
- 2.2.3 Take or Pay revenue from a particular Reference Train Service will be determined for each Year, and invoiced following completion of that Year, as, subject to Subclause 2.2.4, the amount which is one hundred percentage points (100%) of the amount calculated by multiplying:

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- (a)  $AT_2$ ,  $AT_3$  and  $AT_4$  (at the rate applicable in the final Quarter of the Year); by
  - (b) the rtp, nt and ntk (as applicable) calculated by:
    - (i) the rtp, nt and ntk (as applicable) that would have been achieved for the subject Year had the full contracted entitlement been railed for the relevant Train Service; less
    - (ii) the rtp, nt and ntk (as applicable) not railed for the subject Year due to the non operation of Train Services for a QR Network Cause; less
    - (iii) the rtp, nt and ntk (as applicable) railed for the subject Year,
- provided always that the amount of Take or Pay for the Year shall not be less than zero.

2.2.4 Notwithstanding Subclause 2.2.3, Take or Pay shall not be payable for a Year where the System GtK exceeds 100% of the System Forecast identified for the nominated Reference Train Service, less the gtk not achieved due to the non operation of Train Services for a QR Network Cause.

2.2.5 Take or Pay revenue from a particular Reference Train Service will be determined in accordance with Clause 3.2 of the 2001 Undertaking, until such time that the amendments to Schedule F developed in accordance with Clause 3 take effect in accordance with Clause 3.8.

2.2.6 Notwithstanding Subclause 2.2.3, where the Total Actual Revenue for  $AT_{2-4}$  for an Individual Coal System Infrastructure less the aggregate amount of Take or Pay that QR Network would be entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking) ("Total Revenue") is:

- (a) greater than or equal to the System Allowable Revenue for  $AT_{2-4}$  in relation to that Individual Coal System Infrastructure, Take or Pay shall not be payable for that Year under Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking) ("UT2 Agreements");
- (b) less than the System Allowable Revenue for  $AT_{2-4}$  in relation to that Individual Coal System Infrastructure:
  - (i) QR Network will calculate the aggregate amount of Take or Pay that QR Network would be entitled to earn from all UT2 Agreements ("Total Actual Take or Pay"); and
  - (ii) if the Total Actual Take or Pay exceeds the amount by which the System Allowable Revenue for  $AT_{2-4}$  exceeds the Total Revenue for that Individual Coal System Infrastructure ("Maximum Take or Pay Amount"), then:

- (A) QR Network will calculate for each relevant Access Holder, the proportion that the Access Holder's Take or Pay amount bears to the Total Actual Take or Pay ("Proportion"); and
- (B) each relevant Access Holder's Take or Pay amount will be reduced to equal that Access Holder's Proportion of the Maximum Take or Pay Amount.

In determining what QR Network would be entitled to earn for the purposes of this Subclause 2.2.6, QR Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Undertaking or the 2001 Undertaking, as applicable) that applied on the date of execution or renewal of an Access Agreement, except for

- those Access Agreements which have been altered from that form in accordance with the terms of the Undertaking or the 2001 Undertaking (as applicable) which applied on that date, for which QR Network's entitlement will be calculated to reflect the terms of such Access Agreements; and
- a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under or prior to the 2001 Undertaking, pursuant to Paragraph 7.4.4(f) of the Undertaking, which has not been renewed after 30 June 2006, for which QR Network's entitlement to Take or Pay amounts will be calculated on the basis that QR Network has contracted on the terms of:
  - (A) for an Old Access Agreement executed under the 2001 Undertaking, the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; or
  - (B) for an Old Access Agreement executed prior to the 2001 Undertaking, the terms of the Old Access Agreement; and
- for the avoidance of doubt, an Access Agreement executed prior to the 2001 Undertaking, for which QR Network's entitlement will be calculated to reflect the terms of that Access Agreement.

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2.2.7 In order to calculate nt, ntk and gtk for the purposes of Subparagraphs 2.2.3(b)(i) and (ii), QR Network will:

- (a) identify from the Access Agreement the number of train paths that would have been utilised had the full contracted entitlement been attained; and
- (b) determine the number of train paths that were not utilised due to a QR Network Cause,

and convert this to nt, ntk and gtk by using a nominal payload per loaded Train Service as reasonably determined by QR Network.

2.2.8 QR Network shall provide to the Access Holder information on how it has determined the amount of the Take or Pay at the same time as it is invoiced.

### 3. Review of Access Charges

The components for Reference Tariffs specified in this Part B are applicable:

- (a) where denoted as "Reference Tariff (\$) July 05", from 1 July 2005 to 30 June 2007; and
- (b) where denoted as "Revised Reference Tariff (\$) July 07" (i.e. for Revised Reference Tariffs), from 1 July 2007.

### 3B. Revenue Cap Adjustment

#### 3B.1 Calculation of Revenue Adjustment Amounts

After the end of each Year, QR Network will calculate the following amounts (each a "Revenue Adjustment Amount") for each relevant Individual Coal System Infrastructure:

- (a) an "AT<sub>2-4</sub> Revenue Adjustment Amount", by subtracting the System Allowable Revenue for AT<sub>2-4</sub> from the Total Actual Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure for that Year; and
- (b) an "AT<sub>5</sub> Revenue Adjustment Amount", by subtracting the System Allowable Revenue for AT<sub>5</sub> from the Total Actual Revenue for AT<sub>5</sub> for the relevant Individual Coal System Infrastructure for that Year.

For the avoidance of doubt, a Revenue Adjustment Amount calculated under this Clause 3B.1 may be a negative or a positive number.

#### 3B.2 Calculation of Increment

3B.2.1 The Increment is calculated as follows for each relevant Individual Coal System Infrastructure:

- (a) where the Total Actual Revenue for AT<sub>2-4</sub> is less than or equal to the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure, the Increment equals zero (0);
- (b) subject to Paragraph 3B.2.1(c), where:
  - (i) the Total Actual Revenue for AT<sub>2-4</sub> is greater than the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure;
  - (ii) QR Network is required by Subclause 3B.3.3 of Part B to submit a variation of relevant Reference Tariffs to the QCA; and
  - (iii) the QCA, when considering that variation, is reasonably satisfied that the difference between the Total Actual Revenue for AT<sub>2-4</sub> and the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure ("Difference") has, in whole or part, arisen as a direct result of whole of coal

chain activities or initiatives of QR Network (or its contractors) which have increased the efficiency of the Below Rail network,

the Increment equals that proportion of the Difference, as determined by the QCA taking into account the extent to which the Difference has in whole or part arisen as a direct result of the whole of coal chain activities or initiatives of QR Network (or its contractors).

- (c) In no circumstance will the Increment exceed an amount equal to two percentage points (2%) of the System Allowable Revenue for AT<sub>2-4</sub>.

### 3B.3 Revenue Adjustment

3B.3.1 Where a Revenue Adjustment Amount has been calculated under Clause 3B.1 of Part B the equivalent System Allowable Revenue to that used in the calculation of that Revenue Adjustment Amount for the relevant Individual Coal System Infrastructure for the Year after the Year in which that Revenue Adjustment Amount was calculated ("2<sup>nd</sup> Year System Allowable Revenue") will be adjusted in accordance with this Clause 3B.3.

3B.3.2 A 2<sup>nd</sup> Year System Allowable Revenue shall be adjusted as follows:

- (a) for an AT<sub>2-4</sub> Revenue Adjustment Amount, by subtracting from the relevant 2<sup>nd</sup> Year System Allowable Revenue:
- (i) that AT<sub>2-4</sub> Revenue Adjustment Amount less the amount of the relevant Increment; and
  - (ii) a return on capital amount, calculated by reference to the Discount Rate as applied to the amount in Subparagraph 3B.3.2(a)(i) over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year;
- (b) for an AT<sub>5</sub> Revenue Adjustment Amount, by subtracting from the relevant 2<sup>nd</sup> Year System Allowable Revenue:
- (i) that AT<sub>5</sub> Revenue Adjustment Amount; and
  - (ii) a return on capital amount, calculated by reference to the Discount Rate as applied to the amount in Subparagraph 3B.3.2(b)(i) over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year.

3B.3.3 Where a 2<sup>nd</sup> Year System Allowable Revenue is adjusted under this Clause 3B.3, QR Network shall submit a variation of the relevant Reference Tariffs to the QCA with the object of recovering from or returning to Access Holders, as the case may be, the amount of the adjustment during the relevant Year using the modeling parameters and assumptions used to determine Reference Tariffs for the relevant Year.

## 4. Reference Tariffs for New Coal Carrying Train Services

#### 4.1 Minimum contribution to Common Costs

4.1.1 Each coal carrying Train Service in the Central Queensland Coal Region will be expected to make a minimum contribution towards QR Network's Common Costs determined as follows:

(a) if the Train Service utilises Rail Infrastructure in the Goonyella, Blackwater or Moura coal systems, the minimum contribution towards QR Network's Common Costs for non-electrification related costs will be calculated as follows:

(i) subject to Subparagraphs (ii) and (iii), the minimum Common Cost contribution will be the greater of the following:

(A) for a Train Service in the Goonyella coal system:

Common Cost contribution (cents/000 gtk) =	$240 - 0.3M - S$
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(B) for a Train Service in the Blackwater coal system:

Common Cost contribution (cents/000 gtk) =	$350 - 0.3M - S$
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(C) for a Train Service in the Moura coal system:

Common Cost contribution (cents/000 gtk) =	$800 - 0.6M - 6S$
--------------------------------------------	-------------------

(D) for a Train Service in the Goonyella, Blackwater or Moura coal system, \$1.00/000 gtk,

where, for Subparagraphs 4.1.1(a)(i)(A), (B) and (C):

**M** is the relevant mine's mainline length in kilometres;

**S** is the relevant mine's spur length in kilometres;

(ii) the minimum Common Cost contribution calculated in accordance with Subparagraph (i) is based on the assumption that the new Train Service will use a similar number of Train Paths per gross tonne as the Predominant Train Service on the Individual Coal System Infrastructure. If the new Train Service uses significantly more Train Paths than the Predominant Train Service, then QR Network may apply to the QCA for a variation in the new Train Service's Common Cost contribution. The QCA will approve such a variation if it considers that the Common Cost contribution for the new Train Service, if calculated in accordance with Subparagraph (i), would be manifestly inadequate; and

(iii) the minimum Common Cost contribution will be escalated from 1 July 2005 in accordance Clause 3.2 of Part A;

(b) if the Train Service utilises Rail Infrastructure in the Newlands coal system, the new Train Service will make a contribution towards QR Network's Common Costs, provided that where two mines load from mine specific spur lines attached to the same corridor, all other things being equal in respect of the two Train Services, a lower Access Charge (when expressed in \$/net tonne terms) would apply for Train Services carrying coal from a mine with a shorter haul distance than for Train Services carrying coal from a mine with a longer haul distance;

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- (c) the minimum Common Cost contributions for the use of electrical infrastructure will be determined in each case, taking into account all of the relevant circumstances, consistent with the principles underlying the Common Cost contributions in respect of Rail Infrastructure that is not electrical infrastructure;
- (d) to the extent that this Subclause 4.1.1 does not specify the Common Cost contribution to be made by a new Train Service, the amount of the Common Cost contribution will be established in accordance with the principles set out in this Subclause 4.1.1 as part of the development of a new Reference Tariff for new Reference Train Services in accordance with Subclause 6.4.2 of the Undertaking.

4.1.2 The Reference Tariff for a new coal carrying Train Service will be the higher of (on a \$/net tonne basis):

- (a) the Reference Tariff for the most relevant existing Reference Train Service; or
- (b) the sum of the new coal carrying Train Service's Incremental Costs and required minimum Common Cost contribution determined in accordance with Subclause 4.1.1.

4.1.3 Where the Reference Tariff for a new coal carrying Train Service is established under:

- (a) Paragraph 4.1.2(a), the loading facility for the new Train Service will be added into the relevant existing Reference Train Service; or
- (b) Paragraph 4.1.2(b), a new Reference Train Service will be established which will incorporate the new Train Service.

4.1.4 Where QR Network enters into an Access Agreement with an Access Seeker in relation to Train Services carrying coal from a new mine prior to the authorisation of the applicable Reference Tariff, the Access Charge for that Train Service will be reviewed following authorisation of the Reference Tariff to ensure that it is consistent with the Reference Tariff.

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## 5. Blackwater System

### 5.1 Application of this Clause

This Clause 5 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 5.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 5.3 Reference Train Service Description

5.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1709<sup>1</sup> metres;

<sup>1</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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).



- (b) a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>2</sup> loading, or otherwise generates a loading equivalent to M220;
- (c) unless specified otherwise in Clause 5.5, 5.6, 5.7 or 5.8, utilisation of either electric or diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 3.2 hours.

5.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of twenty-seven percentage points (27%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of twenty-seven percentage points (27%).

5.3.3 For the Central Blackwater Cluster, additional elements are specified in Clause 5.5. For the North Blackwater Cluster, additional elements are specified in Clause 5.6. For the Stanwell Cluster, additional elements are specified in Clause 5.7. For the South West Blackwater cluster, additional elements are specified in Clause 5.8.

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<sup>2</sup> As specified in the ANZRC Railway Bridge Design Manual 1974

## 5.4 System Forecast and System Allowable Revenues

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>	System Allowable Revenue – AT <sub>5</sub>
2005/06	22,498,740		
2006/07	28,948,620	126,859,868	24,842,392
2007/08	29,947,878	146,966,171	22,965,416
2008/09	31,115,104	157,635,006	30,597,009

## 5.5 Central Blackwater Cluster

### 5.5.1 Reference Train Service Description

#### 5.5.1.1 Loading Facilities

##### *Nominated Loading Facilities*

*Average Loading Time (hours) per  
return trip assessed on a monthly basis*

- |                                              |     |
|----------------------------------------------|-----|
| • Boonal                                     | 4.6 |
| • Koorilgah                                  | 5.0 |
| • Curragh                                    | 3.3 |
| • Boorgoon                                   | 3.8 |
| • Kinrola                                    | 5.5 |
| • Laleham/South Blackwater Mine <sup>3</sup> | 4.5 |

#### 5.5.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

*Average Unloading Time (hours) per  
return trip assessed on a monthly basis*

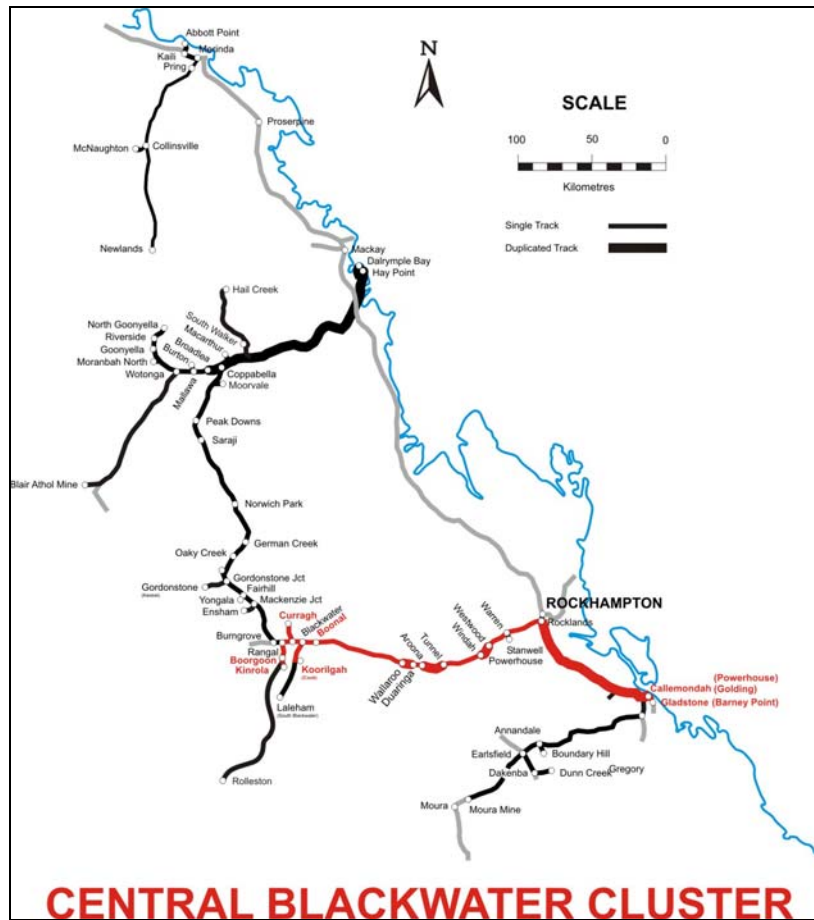
- |                                             |                  |
|---------------------------------------------|------------------|
| • Golding/RG Tanna Terminal                 | 2.6              |
| • Barney Point                              | 5.0              |
| • Gladstone Power Station                   | 4.3              |
| • Cement Australia                          | 6.0              |
| • Queensland Alumina Ltd (QAL) <sup>4</sup> | 13.7             |
| • Comalco Refinery                          | 3.1 <sup>5</sup> |

<sup>3</sup> Although not a loading facility, the average Loading Time for the Laleham/South Blackwater Mine represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>4</sup> The average Unloading Time for the QAL refinery represents the average time the the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>5</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

5.5.1.3 Cluster Map



(Note, the cluster map is shown in colour)

5.5.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Bluff and Burngrove or to any of the branch lines to any Nominated Loading Facility but not including the corridor towards Gregory beyond Burngrove.

## 5.5.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	2.727	3.14
AT <sub>4</sub>	0.833	0.96
AT <sub>5</sub>	1.576	1.72
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 5.6 North Blackwater Cluster

### 5.6.1 Reference Train Service Description

#### 5.6.1.1 Loading Facilities

##### *Nominated Loading Facilities*

##### *Average Loading Time (hours) per return trip assessed on a monthly basis*

- |                |                  |
|----------------|------------------|
| • Ensham       | 3.2              |
| • Kestrel      | 3.6              |
| • Gregory      | 2.8              |
| • Oaky Creek   | 3.6              |
| • German Creek | 3.0              |
| • Yongala      | 4.2 <sup>6</sup> |

#### 5.6.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

##### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

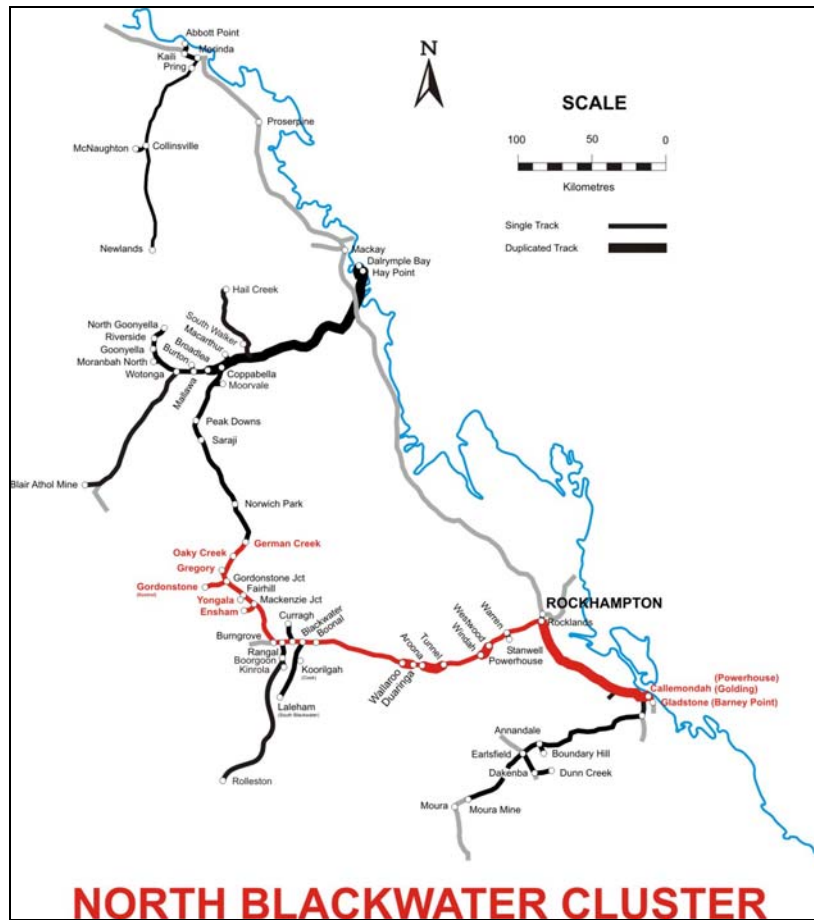
- |                                             |                  |
|---------------------------------------------|------------------|
| • Golding/RG Tanna Terminal                 | 2.6              |
| • Barney Point                              | 5.0              |
| • Gladstone Power Station                   | 4.3              |
| • Cement Australia                          | 6.0              |
| • Queensland Alumina Ltd (QAL) <sup>7</sup> | 13.7             |
| • Comalco Refinery                          | 3.1 <sup>8</sup> |

<sup>6</sup> This is an estimate of loading time for this Loading Facility based on the actual data to date. QR Network will review this loading time following the Commencing Date. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

<sup>7</sup> The average Unloading Time for the QAL refinery represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>8</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

5.6.1.3 Cluster Map



(Note, the cluster map is shown in colour)

5.6.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Burngrove and German Creek or to any of the branch lines to any Nominated Loading Facility but not including the corridor towards Coppabella.

## 5.6.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	-	-
AT <sub>4</sub>	1.669	1.92
AT <sub>5</sub>	1.576	1.72
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 5.7 Stanwell Cluster

### 5.7.1 Reference Train Service Description

#### 5.7.1.1 Loading Facilities

##### *Nominated Loading Facilities*

##### *Average Loading Time (hours) per return trip assessed on a monthly basis*

• Boonal	4.6
• Boorgoon	3.8
• Curragh	3.3
• Ensham	3.2
• Gregory	2.8
• Kestrel	3.6
• Kinrola	5.5
• Koorilgah	5.0
• Laleham/South Blackwater Mine <sup>9</sup>	4.5
• Yongala	4.2 <sup>10</sup>

#### 5.7.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

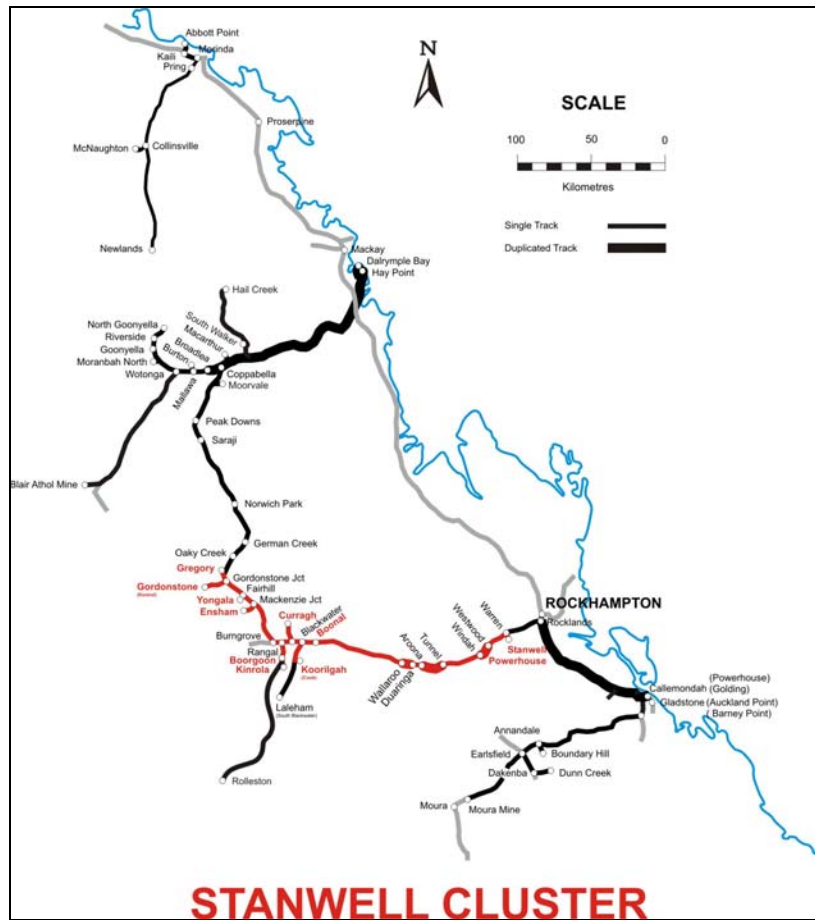
##### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

• Stanwell Powerhouse	2.3
-----------------------	-----

<sup>9</sup> Although not a loading facility, the average Loading Time for the Laleham/South Blackwater Mine represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>10</sup> This is an estimate of loading time for this Loading Facility based on the actual data to date. QR Network will review this loading time following the Commencing Date. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

### 5.7.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 5.7.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Bluff and Gregory mine, or to any branch lines to any Nominated Loading Facility but not including the corridor towards Oaky Creek.

## 5.7.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	2.240	2.58
AT <sub>4</sub>	0.413	0.48
AT <sub>5</sub>	1.576	1.72
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 5.8 South West Blackwater

### 5.8.1 Reference Train Service Description

5.8.1.1 The Reference Train Service utilises diesel traction only.

#### 5.8.1.2 Loading Facilities

*Nominated Loading Facilities*

- Rolleston

*Average Loading Time (hours) per return trip assessed on a monthly basis*

2.2

#### 5.8.1.3 Unloading Facilities

*Nominated Unloading Facilities*

- Golding/RG Tanna Terminal
- Barney Point
- Gladstone Power Station
- Cement Australia
- Queensland Alumina Ltd (QAL)<sup>11</sup>
- Comalco Refinery

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

2.6

5.0

4.3

6.0

13.7

3.1<sup>12</sup>

<sup>11</sup> The average Unloading Time for the QAL refinery represents the average time the the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>12</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.





## 5.8.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	5.504	5.78
AT <sub>4</sub>	2.317	2.43
AT <sub>5</sub>	-	-
EC	-	-
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6. Goonyella System

### 6.1 Application of this Clause

This Clause 6 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 6.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 6.3 Reference Train Service Description

6.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 2082<sup>13</sup> metres;
- (b) a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>14</sup> loading, or otherwise generates a loading equivalent to M220;
- (c) utilisation of either electric or diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.8 hours.

6.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of twenty-three percentage points (23%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure

<sup>13</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>14</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

(as included in the relevant Access Agreement) plus (+) a factor of twenty-three percentage points (23%).

6.3.3 For the North Goonyella Cluster, additional elements are specified in Clause 6.5. For the South Goonyella Cluster, additional elements are specified in Clause 6.6. For the West Goonyella Cluster, additional elements are specified in Clause 6.7. For the Gregory via Goonyella Cluster, additional elements are specified in Clause 6.8. For the Central Goonyella Cluster, additional elements are specified in Clause 6.9.

#### 6.4 System Forecast and System Allowable Revenues

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>	System Allowable Revenue – AT <sub>5</sub>
2005/06	29,729,473		
2006/07	34,232,302	116,283,563	35,532,668
2007/08	37,066,523	131,994,028	40,214,743
2008/09	37,465,285	137,313,940	41,658,723

#### 6.5 North Goonyella Cluster

##### 6.5.1 Reference Train Service Description

###### 6.5.1.1 Loading Facilities

###### *Nominated Loading Facilities*

###### *Average Loading Time (hours) per return trip assessed on a monthly basis*

• South Walker Creek	3.8
• Macarthur/Coppabella	3.9
• Burton	3.8
• Moranbah North	3.9
• Goonyella	3.9
• Riverside	4.6
• North Goonyella	4.3
• Moorvale	3.9
• Carborough Downs	3.5 <sup>15</sup>
• Isaac Plains	3.5 <sup>16</sup>

###### 6.5.1.2 Unloading Facilities

###### *Nominated Unloading Facilities*

###### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

• Dalrymple Bay	2.8
• Hay Point	2.8

<sup>15</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

<sup>16</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.



## 6.5.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	800	846.98
AT <sub>3</sub>	2.127	2.28
AT <sub>4</sub>	0.379	0.40
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.6 South Goonyella Cluster

### 6.6.1 Reference Train Service Description

#### 6.6.1.1 Loading Facilities

*Nominated Loading Facilities*

*Average Loading Time (hours) per return trip assessed on a monthly basis*

- |                |                   |
|----------------|-------------------|
| • Peak Downs   | 4.2               |
| • Saraji       | 4.4               |
| • Norwich Park | 3.9               |
| • German Creek | 2.9               |
| • Oaky Creek   | 3.8               |
| • Millennium   | 3.0 <sup>17</sup> |

#### 6.6.1.2 Unloading Facilities

*Nominated Unloading Facilities*

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

- |                 |     |
|-----------------|-----|
| • Dalrymple Bay | 2.8 |
| • Hay Point     | 2.8 |

<sup>17</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.



## 6.6.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	960	1,016.59
AT <sub>3</sub>	2.216	2.37
AT <sub>4</sub>	0.529	0.57
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.7 West Goonyella Cluster

### 6.7.1 Reference Train Service Description

#### 6.7.1.1 Loading Facilities

*Nominated Loading Facilities*

- Blair Athol

*Average Loading Time (hours) per return trip assessed on a monthly basis*

3.1

#### 6.7.1.2 Unloading Facilities

*Nominated Unloading Facilities*

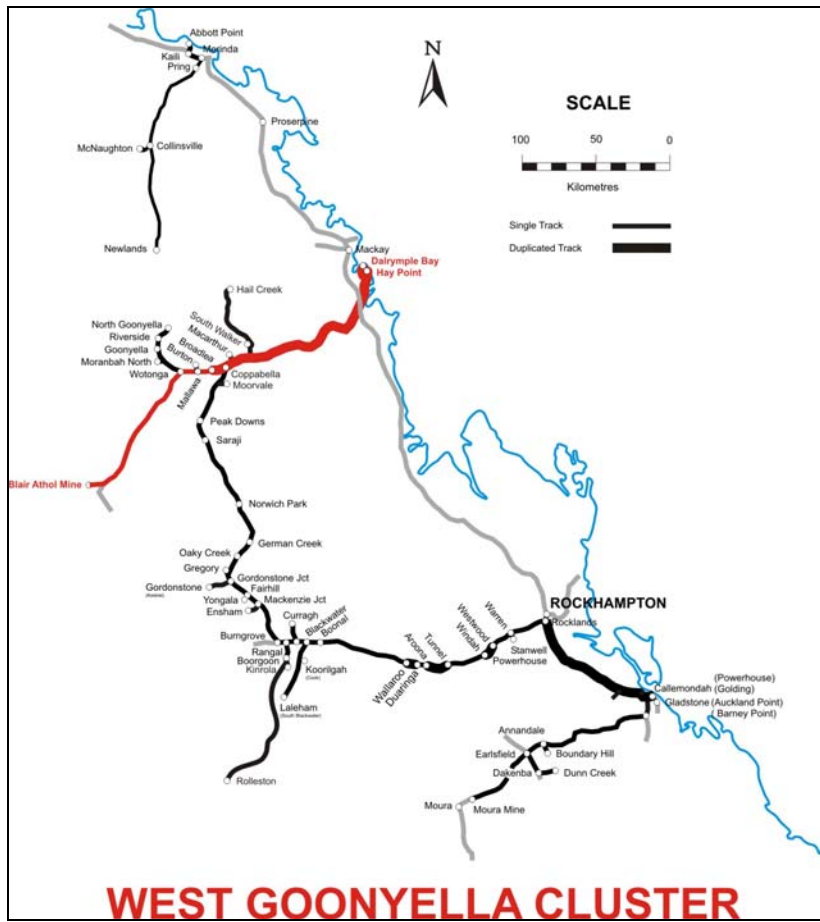
- Dalrymple Bay
- Hay Point

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

2.8

2.8

6.7.1.3 Cluster Map



(Note, the cluster map is shown in colour)

6.7.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Wotonga and Blair Athol.



## 6.7.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	800	846.98
AT <sub>3</sub>	2.254	2.41
AT <sub>4</sub>	0.630	0.67
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.8. Gregory Branch via Goonyella Cluster

### 6.8.1 Reference Train Service Description

#### 6.8.1.1 Loading Facilities

*Nominated Loading Facilities*

*Average Loading Time (hours) per return trip assessed on a monthly basis*

- |                         |     |
|-------------------------|-----|
| • Gregory               | 3.6 |
| • Kestrel <sup>18</sup> | 4.8 |
| • Ensham <sup>18</sup>  | 4.2 |

#### 6.8.1.2 Unloading Facilities

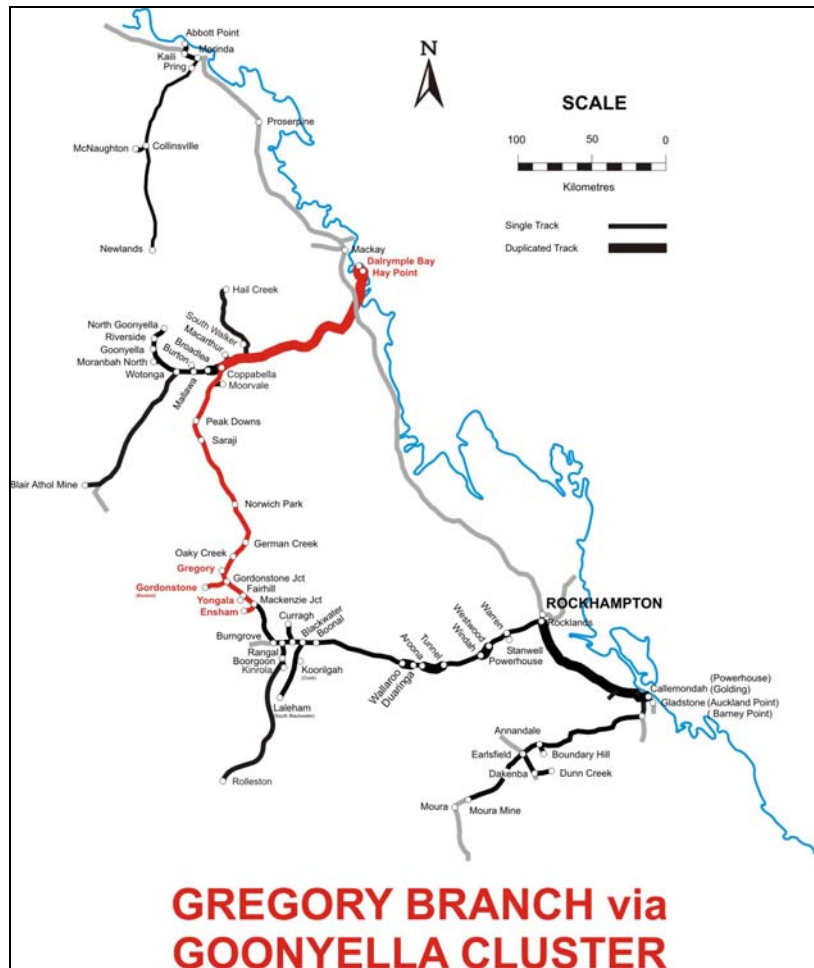
*Nominated Unloading Facilities*

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

- |                 |     |
|-----------------|-----|
| • Dalrymple Bay | 2.8 |
| • Hay Point     | 2.8 |

<sup>18</sup> These mines do not have angles to the north.

6.8.1.3 Cluster Map



(Note, the cluster map is shown in colour)

6.8.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Gregory mine and Burngrove or to any of the branch lines to any Nominated Loading Facility but excluding the corridors towards Oaky Creek and Bluff.

## 6.8.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	960	1,016.59
AT <sub>3</sub>	2.630	2.81
AT <sub>4</sub>	0.823	0.88
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.9. Central Goonyella Cluster

### 6.9.1 Reference Train Service Description

#### 6.9.1.1 Loading Facilities

*Nominated Loading Facilities*

- Hail Creek

*Average Loading Time (hours) per return trip assessed on a monthly basis*

4.1

#### 6.9.1.2 Unloading Facilities

*Nominated Unloading Facilities*

- Dalrymple Bay
- Hay Point

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

2.8

2.8



## 6.9.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	800	846.98
AT <sub>3</sub>	3.624	3.83
AT <sub>4</sub>	0.656	0.69
AT <sub>5</sub>	1.004	1.25
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007

## 7. Moura Cluster

### 7.1 Application of this Clause

This Clause 7 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 7.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 7.3 Reference Train Service Description

7.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1000<sup>19</sup> metres;
- (b) a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>20</sup> loading, or otherwise generates a loading equivalent to M220;
- (c) utilisation of diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 3.2 hours.

7.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of thirty percentage points (30%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included

<sup>19</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>20</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

in the relevant Access Agreement) plus (+) a factor of thirty percentage points (30%).

### 7.3.3 Loading Facilities

<i>Nominated Loading Facilities</i>	<i>Average Loading Time (hours) per return trip assessed on a monthly basis</i>
• Boundary Hill	3.4
• Dunn Creek/Callide Coal Fields	4.2
• Moura Mine	3.6
• Baralaba	4.9 <sup>21</sup>

### 7.3.4 Unloading Facilities

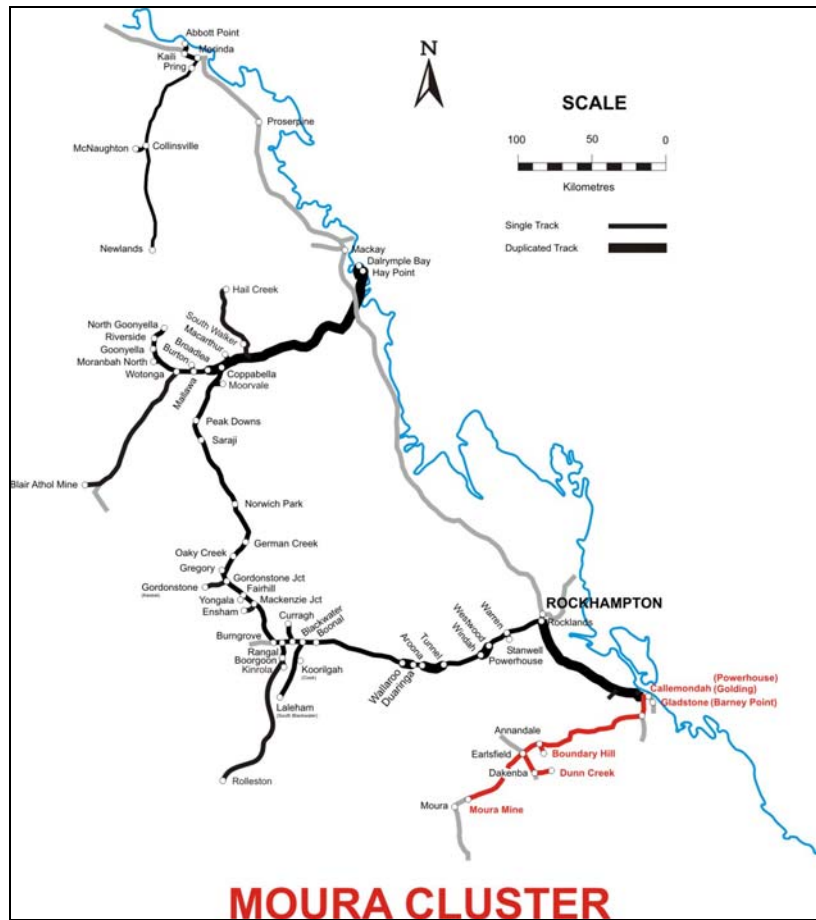
<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i> <i>Year</i>
• Golding/RG Tanna Terminal	1.5
• Barney Point	3.1
• Gladstone Power Station	3.3
• Queensland Alumina Ltd (QAL) <sup>22</sup>	8.9
• Cement Australia	4.3
• Comalco Refinery	3.1 <sup>23</sup>

<sup>21</sup> This is an estimate of loading time for this Loading Facility based on the actual data to date. QR Network will review this loading time following the Commencing Date. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

<sup>22</sup> The average Unloading Time for the QAL refinery represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>23</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

7.3.5 Cluster Map



(Note, the cluster map is shown in colour)

7.3.6 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Annandale and Moura Mine or to any of the branch lines to any Nominated Loading Facility.

## 7.4 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	1.158	1.34
AT <sub>2</sub>	416	440.54
AT <sub>3</sub>	5.880	6.70
AT <sub>4</sub>	0.961	1.09
AT <sub>5</sub>	0	-
EC	0	-
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 7.5 System Forecast and System Allowable Revenue

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>
2005/06	2,404,936	
2006/07	3,431,372	28,440,217
2007/08	3,414,578	31,090,943
2008/09	4,069,312	37,749,042

## 8. Newlands Cluster

### 8.1 Application of this Clause

This Clause 8 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 8.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 8.3 Reference Train Service Description

8.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1380<sup>24</sup> metres;
- (b) a maximum axle load of 20 tonne for a wheel configuration consistent with M160<sup>25</sup> loading, or otherwise generates a loading equivalent to M160;

<sup>24</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>25</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.



- (c) utilisation of diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 2.4 hours.

8.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of eighteen percentage points (18%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of eighteen percentage points (18%).

### 8.3.3 Loading Facilities

<i>Nominated Loading Facilities</i>	<i>Average Loading Time (hours) per return trip assessed on a monthly basis</i>
• Newlands	1.8
• McNaughton	2.5
• Sonoma	2.0 <sup>26</sup>

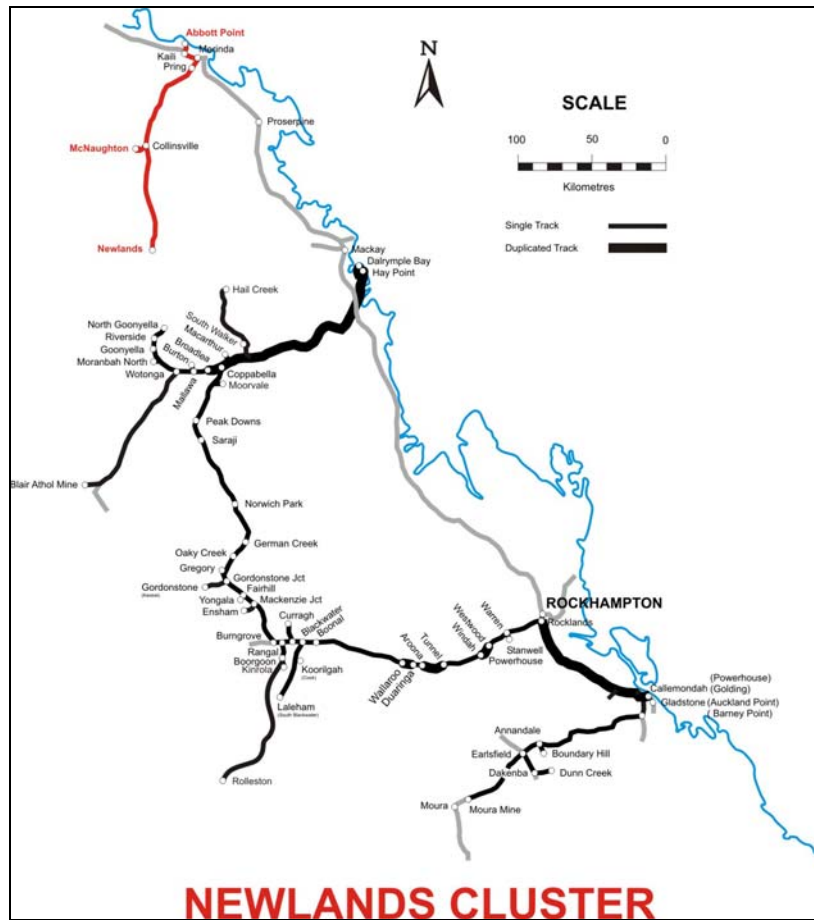
### 8.3.4 Unloading Facilities

<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i>
• Abbot Point	1.6

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<sup>26</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

8.3.5 Cluster Map



(Note, the cluster map is shown in colour)

8.3.6 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Collinsville and Newlands, or to the Line Section between Collinsville and McNaughton.

#### 8.4 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	1.203	1.39
AT <sub>2</sub>	186	196.97
AT <sub>3</sub>	4.652	5.00
AT <sub>4</sub>	0.658	0.71
AT <sub>5</sub>	0	-
EC	0	-
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

#### 8.5 System Forecast and System Allowable Revenue

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>
2005/06	2,844,447	
2006/07	3,674,026	23,307,925
2007/08	3,718,598	24,953,480
2008/09	3,718,598	25,577,317

## Part C. – Provisions Specific to Individual Reference Train Services in the Western System

### 1. Application of this Clause

This Part C should be read in conjunction with Part A of this Schedule F.

### 2. Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 3. Reference Train Service Characteristics

3.1 Further to Subclause 2.3.1 of Schedule F, Part A, the Reference Train Service has the following characteristics:

- (a) a train length (including the locomotive/s) of 675 metres<sup>27</sup>;
- (b) a maximum axle load of 15.75 tonne; and
- (c) utilisation of diesel traction.

3.2 An Access Seeker for a Reference Train Service will have its Train Service Entitlement:

- (a) based on its Trains being available for operation 24 hours per day and 360 days per year; and
- (b) specified in terms of Timetabled Traffic and will comply with the applicable corridor scheduling procedures.

#### 3.3 Loading Facilities

<i>Nominated Loading Facilities</i>	<i>Average Loading Time (hours) per return trip assessed on a monthly basis</i>
• Ebenezer	2.3
• Jondaryan (New Acland)	2.5
• Macalister (Wilkie Creek)	3.3

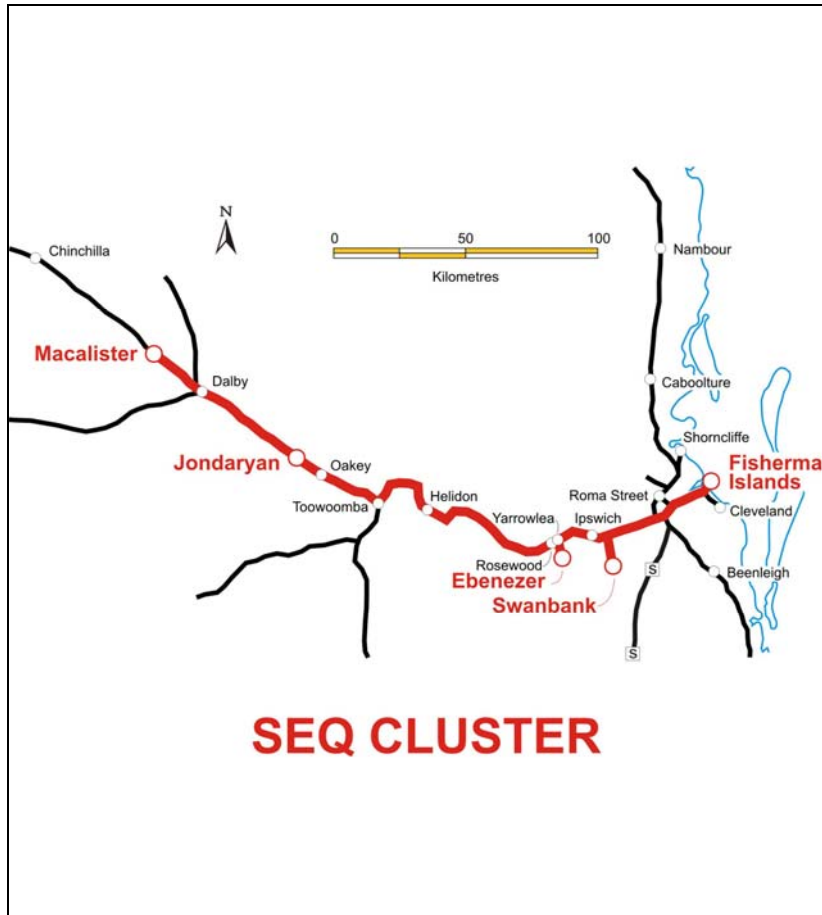
#### 3.4 Unloading Facilities

<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i>
• Fisherman Islands coal loader	2.3
• Swanbank	2.0 <sup>28</sup>

<sup>27</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>28</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

### 3.5 Cluster Map



(Note, the cluster map is shown in colour)

### 3.6 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Bundamba and Macalister or to any of the branch lines to any Nominated Loading Facility

## 4. Reference Tariff

4.1 The applicable Reference Tariff for the nominated Reference Train Service shall be assessed as:

$$\left( AT_1 \times \frac{gk}{1000} \right) + (QCALevy \times nt)$$

where:

- AT<sub>1</sub> is the variable part of the Reference Tariff that is levied on a gross tonne kilometre basis specified as AT<sub>1</sub> for the nominated Reference Train Service in this Part C;
- gtk is the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;
- nt is the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty; and

QCA Levy is the fee allocated to the nominated Reference Train Service to cover the fees imposed by the QCA upon beneficiaries of its regulatory services.

- 4.2 The amounts of AT<sub>1</sub> and the QCA Levy specified in this Part C are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.
- 4.3 For the purposes of this Part C, 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.
- 4.4 For the purposes of this Clause 4, the gtk measure shall be assessed for the relevant Train Service over the Billing Period for which the Reference Tariff is being calculated.
- 4.5 The amount of the Reference Tariff is:
- (a) The Reference Tariff components (as at 1 July 2005) are:

Reference Tariff Component	Reference Tariff \$
AT <sub>1</sub>	10.50
QCA Levy	0.00588

- (b) The First Escalation Date is 1 October 2005.

## 5. Take or Pay

- 5.1 QR Network will be entitled to earn Take or Pay revenue in accordance with the provisions of this Clause 5.
- 5.2 Take or Pay revenue from a particular Reference Train Service will be determined for each Year, and invoiced following completion of that Year, as the amount which is eighty percentage points (80%) of the amount calculated by multiplying:

- (a)  $AT_1$  (at the rate applicable in the final Quarter of the Year); by
- (b) the gtk calculated by:
  - (i) the gtk that would have been achieved for the subject Year had the full contracted entitlement been railed for the relevant Train Service; less
  - (ii) the gtk not railed for the subject Year due to the non operation of Train Services for a QR Network Cause; less
  - (iii) the gtk railed for the subject Year;

provided always that the amount of Take or Pay for the Year shall not be less than zero.

5.3 In order to calculate gtk for the purposes of Subparagraphs 5.2(b)(i) and (ii), QR Network will:

- (a) identify from the Access Agreement the number of train paths that would have been utilised had the full contracted entitlement been attained; and
- (b) determine the number of train paths that were not utilised due to a QR Network Cause,

and convert this to gtk by using a nominal payload per loaded Train Service as reasonably determined by QR Network.

5.4 QR Network shall provide to the Access Holder information on how it has determined the amount of the Take or Pay at the same time as it is invoiced.

**Schedule FB*****Maintenance Of Regulatory Asset Base For Central Queensland Coal Region*****1. CENTRAL QUEENSLAND REGULATORY ASSET BASE**

- 1.1 QR Network will maintain a Regulatory Asset Base for the Central Queensland Coal Region for the purposes of Paragraph 6.2.4(c) of this Undertaking.
- 1.2 For the purposes of Clause 1.1, on an annual basis, QR Network will roll forward the asset values in its Regulatory Asset Base, applying the following principles:
- (a) the opening asset valued will be indexed for the Year using the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No. 6401.0), as first published;
  - (b) depreciation of the assets will be calculated for the Year on a straight line basis, using the QCA endorsed asset lives;
  - (c) the value of asset disposals and transfers during the Year will be subtracted from the Regulatory Asset Base;
  - (d) prudent capital expenditure will be added to the Regulatory Asset Base, where prudent capital expenditure is that accepted by the QCA in accordance with Clause 2 of this Schedule; and
  - (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with Clauses 1.3 to 1.6 of this Schedule.
- 1.3 The value of assets contained in the Regulatory Asset Base may be increased by QR Network if:
- (a) it is at the end of the Term and QR Network is seeking to include a valuation for intangible assets, being a matter that was not considered as part of the initial valuation of assets contained in the Regulatory Asset Base; or
  - (b) additional sections of existing Rail Infrastructure are incorporated into the Central Queensland Coal Region, in which case the additional sections will be initially valued in accordance with the Depreciated Optimised Replacement Cost methodology,
- provided that the increase in asset value must first be accepted by the QCA.
- 1.4 The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:
- (a) the QCA made its decision to accept the expenditure in the Regulatory Asset Base on the basis of information provided by QR Network that QR Network knew, or should have known, was false or misleading at the time it provided the information;



- (b) circumstances arise in the future where demand has deteriorated to such an extent that regulated prices on an unoptimised asset would result in a further decline in demand; or
- (c) it becomes clear that there is a possibility of actual (not hypothetical) bypass.

For clarity, a reduction or cessation in the utilisation of a section of QR Network's Rail Infrastructure within an Individual Coal System Infrastructure will not result in a reduction in any asset values in the Regulatory Asset Base for that Individual Coal System Infrastructure unless it triggers the criteria above.

## **2. ACCEPTANCE OF CAPITAL EXPENDITURE INTO THE REGULATORY ASSET BASE**

### **2.1 General Capital Expenditure Approval Process**

- (a) The QCA will determine what capital expenditure should be accepted into QR Network's Regulatory Asset Base, which is used for the purposes of assessing Reference Tariffs. The QCA's prior approval is not required for any capital expenditure.
- (b) The QCA will accept all prudent capital expenditure into the Regulatory Asset Base. Prudence has three aspects:
  - (i) prudence in scope;
  - (ii) prudence in standard of works; and
  - (iii) prudence in cost.

The QCA's consideration of prudent capital expenditure will be in accordance with Clause 2.3 of this Schedule.

- (c) While Reference Tariffs may include a Capital Indicator at the beginning of a regulatory period, this does not imply an acceptance by the QCA of this level of capital expenditure for inclusion in the Regulatory Asset Base. The assessment of whether actual capital expenditure will be accepted into the Regulatory Asset Base will only be made after the expenditure has been incurred, subject to Clause 2.2 of this Schedule which provides for pre-approval by the QCA of certain aspects of the capital expenditure. For clarity, actual capital works undertaken by QR Network during a regulatory period may be deemed to not be prudent and therefore not accepted by the QCA for inclusion in the Regulatory Asset Base, even though total capital expenditure may be within the amount incorporated into the Reference Tariffs.
- (d) If, in assessing the prudence of QR Network's capital expenditure, the QCA considers that the scope of capacity enhancement is in excess of that needed to accommodate current contracted demand, likely future demand within a reasonable timeframe and any spare capacity considered appropriate (referred to as "Reasonable Demand") the prudent costs associated with that capacity enhancement (as specified by the QCA) will be set aside and escalated at the rate of CPI until a future point in time when the capacity enhancements are accepted by the QCA as required to meet Reasonable Demand. At

this time, the QCA will accept the capital expenditure into the Regulatory Asset Base at its escalated value.

- (e) QR Network will provide a copy of its strategic asset management plan to the QCA, describing the general standards QR Network will apply in determining whether to incur capital expenditure by replacing assets within the Regulatory Asset Base rather than maintaining the existing assets (on approval by the QCA being the Network Asset Management Plan). The Network Asset Management Plan is not intended to be binding on QR Network, or represent a pre-assessment of prudence by the QCA, but is intended to provide a useful guide as to the prudence of the scope of QR Network's proposed Asset Replacement Expenditure. QR Network will advise the QCA of any proposed amendments to the Network Asset Management Plan over the Term. If the QCA assesses any proposed amendments to the Network Asset Management Plan as material, it will notify QR Network and those amendments will not be taken into account when considering consistency with the Network Asset Management Plan in accordance with this Schedule, unless the strategic asset management plan including the proposed amendments is resubmitted by QR Network for approval by the QCA, and is approved by the QCA.
- (f) The QCA will consider for inclusion in the Regulatory Asset Base any capital expenditure submitted by QR Network and either:
  - (i) advise QR Network in writing that it has approved the capital expenditure for inclusion in the Regulatory Asset Base; or
  - (ii) if the QCA is considering refusing approving an element of QR Network's capital expenditure for inclusion in the Regulatory Asset Base, the QCA will give to QR Network a preliminary notice of the QCA's decision, stating the reasons and the way it considers it appropriate to adjust the amount of the capital expenditure.
- (g) If the QCA gives QR Network a preliminary notice under Paragraph 2.1(f) of this Schedule:
  - (i) within thirty (30) days of QR Network being given the preliminary notice, QR Network may revise the amount of the capital expenditure and/or provide additional information supporting its view that the capital expenditure was prudent; and
  - (ii) the QCA will consider the information provided under Subparagraph 2.1(g)(i) and either approve or refuse to approve the capital expenditure.

## 2.2 Regulatory Pre-Approval of the Scope of Capital Expenditure

- (a) The QCA will accept the scope of a capital expenditure project as prudent if:
  - (i) it is Asset Replacement Expenditure and the total amount proposed to be expended over the regulatory period is consistent with the asset age and composition of the assets in the Central Queensland Coal Region and asset replacement is

- in accordance with QR Network's Network Asset Management Plan. However, the QCA retains the right to review the composition of Asset Replacement Expenditure; or
- (ii) it is General Expansion Capital Expenditure and the scope of the capital expenditure has been accepted by Customers in accordance with Paragraph 2.2.2(d); or
  - (iii) it is Customer specific capital expenditure for a spur line to a mine which is to be included as a loading point for a Reference Tariff developed in accordance with Part 6 of the Undertaking, and the scope of the capital expenditure has been accepted by the Customer concerned.
- (b) The QCA will consider, if requested, a QR Network submission seeking regulatory pre-approval of the standard of a capital expenditure project accepted by Customers in accordance with Paragraph 2.2.2(d), provided that QR Network has provided sufficient information to the QCA to allow it to reasonably consider the request for pre-approval given the criteria set out in Subclause 2.3.3. In such cases, the QCA will consider prudence of standard in accordance with Subclause 2.3.3 of this Schedule. The QCA will advise QR Network whether it will provide pre-approval of the standard of the capital expenditure project.
- (c) The QCA will consider, if requested, a submission from QR Network, an Access Seeker, an Access Holder or a Customer seeking regulatory pre-approval of the scope of a capital expenditure project where a capital expenditure project has not been accepted by Customers in accordance with Paragraph 2.2.2(d) (including a project that has been omitted from the Master Plan and/or the Customer Group acceptance process under Paragraph 2.2.2), provided that QR Network, the Access Seeker, the Access Holder or the Customer (as the case may be) has provided sufficient information to the QCA to allow it to reasonably consider the request for pre-approval given the criteria set out in Subclause 2.3.2. In such cases, the QCA will consider the prudence of the scope of the capital expenditure project taking into account the extent to which QR Network has achieved compliance with Paragraph 2.2.2(d), and the criteria set out in Subclause 2.3.2 of this Schedule. The QCA will advise QR Network whether it will provide pre-approval of the scope of the capital expenditure project.
- (d) In all circumstances other than those specified in this Clause 2.2, the QCA will assess the prudence of the scope, standard and costs of capital expenditure projects when QR Network submits them for inclusion in the Regulatory Asset Base using the approach outlined in Clause 2.3 of this Schedule.

#### 2.2.1. Master Plan Process

- (a) QR Network will establish a Coal System Master Planning Forum comprising:
  - (i) Customers for coal carrying Train Services;

- (ii) Access Holders that hold Access Rights for coal carrying Train Services and Access Seekers that are seeking Access Rights for coal carrying Train Services;
- (iii) the owners and/or operators of ports utilised by coal carrying Train Services and other coal unloading destinations;
- (iv) the Queensland Resources Council, as an observer only; and
- (v) the QCA, as an observer only.

QR Network must provide all participants with at least ten (10) Business Days prior notice of any proposed meetings of the Coal System Master Planning Forum and, at least five (5) Business Days prior to the proposed meeting, provide each participant with an agenda of the issues to be discussed, and any materials to be considered in the meeting.

- (b) QR Network will actively involve the Coal System Master Planning Forum in the development of a comprehensive Coal System Master Plan. The Coal System Master Plan must be for a minimum of three (3) years but can extend to a longer time period.
- (c) QR Network is to provide an updated Coal System Master Plan to the Coal System Master Planning Forum by the end of June each year.
- (d) The Coal System Master Plan must contain information on the following categories of capital expenditure:
  - (i) Asset Replacement Expenditure, (provided at an aggregated level only);
  - (ii) General Expansion Capital Expenditure, further categorised into:
    - (A) projects for which Customer Group acceptance is sought; and
    - (B) projects for which Customer Group acceptance is not sought; and
  - (iii) Customer specific spur projects.
- (e) A Customer Group is defined as all Customers who have responsibility for Reference Tonnes. Reference Tonnes means that portion of a Customer's annual tonnage that:
  - (i) is charged, or will be charged, an Access Charge which is based on a Reference Tariff (including for the avoidance of doubt, Access Charges which are varied from the Reference Tariff pursuant to Paragraph 6.1.1(b) of the Undertaking or Clause 4 of Part A of Schedule F);
  - (ii) will have its Access Charge affected at any future time by the inclusion in the Regulatory Asset Base of the capital expenditure projects for which Customer acceptance is sought (i.e. typically within the same Individual Coal System Infrastructure); and
  - (iii) is:

- (A) currently included in an Access Agreement that will be in force at the time that is five (5) years after the approval is sought for the number of tonnes specified in the Access Agreement for a twelve (12) month period starting five (5) years after the first day of the month in which the approval is sought and where there is a legally binding commitment to that tonnage in the Access Agreement (even if this commitment is conditional upon completion of the required Capacity Enhancements or upon other conditions which are the responsibility of QR Network to satisfy or can be waived by QR Network); or
  - (B) where annual tonnage is included in an Access Agreement which is due to expire within the next five (5) years, and it is reasonably expected that the Access Agreement will be extended or a new Access Agreement entered in respect of substantially the same annual tonnages from the existing mine which has the benefit of the Access under the existing Access Agreement or a Replacement Mine (taking into account factors such as whether the relevant Customer or Access Holder is seeking an extension of the Access Agreement and the projected remaining life of the mine or Replacement Mine referred to in this Subparagraph 2.2.1(e)(iii)(B)), the annual tonnage in the last year of the Access Agreement.
- (f) QR Network will identify which Customers comprise a particular Customer Group with reference to Access Agreements that are in place at the date that Customer Group acceptance of capital projects is sought.
- (g) QR Network will provide sufficiently detailed information on scope, standard and preliminary costs in order for projects to be considered by Customer Groups. This will include information that:
  - (i) identifies, by Central Queensland Coal Region and by Individual Coal System Infrastructure, capacity analysis information, reasons for the expansion, identification of the projects that will be required to provide increased Capacity to meet increased demand and estimated trigger points for each project;
  - (ii) identifies for each specific project, the scope of the project and describes the general standard of works, the additional capacity to be delivered by the expansion and preliminary cost information;
  - (iii) quantifies the impact on existing capacity during construction and measures for ameliorating this impact; and
  - (iv) provides the rationale for the choice of project, including the consideration of alternative solutions. QR Network should present both a preliminary analysis of the other track solutions considered by QR Network, as well as an indicative assessment of alternative supply chain solutions arising from

discussions with other (present and prospective) logistics providers in the coal supply chain (note that this may involve capacity solutions which QR Network cannot deliver, but which may present a better system solution).

In the event that the information provided by QR Network is inadequate or inappropriate, this may form a bona fide basis for an objection pursuant to Paragraph 2.2.2(b).

- (h) Customers are to jointly have access to QR Network's capacity analysis model via one appointed external consultant (at the Customers' cost) to undertake a peer review of the model and the model's output. QR Network will run a reasonable range of scenarios for consideration by Customers. Capacity modelling is to be undertaken on the basis of upfront agreement about model parameters and the sensitivity analysis to be conducted on these modelling parameters, with any dispute on model parameters being referred to the QCA for resolution.

#### 2.2.2 Customer Acceptance of Projects

- (a) QR Network may seek a Customer Group acceptance of the scope of capital expenditure projects that are included in the Coal System Master Plan prior to proceeding with the projects in order to gain pre-approval of the scope of the project in accordance with Subparagraph 2.2(a)(ii). If QR Network seeks such Customer acceptance:
  - (i) QR Network will provide a written request to each Customer in the Customer Group and provide advice on:
    - (A) the specific list of capital expenditure projects from the Coal System Master Plan for which it is seeking Customer Group acceptance; and
    - (B) QR Network's assessment of the Customer's Reference Tonnes and the total number of Reference Tonnes relating to the list of capital expenditure projects. If, after discussions with QR Network, within two (2) weeks of receiving the written request under Paragraph 2.2.2(a), any party wishes to query these tonnages or the composition of the Customer Group, they should notify the QCA to seek verification. QR Network and the notifying party must, on request from the QCA, make available all documents necessary to verify the Customer's tonnages or its assessment of the Customer Group (and the QCA will confine its assessment to the information provided). The QCA shall notify QR Network and the notifying party of its decision within two (2) weeks of receiving this notification; and
  - (ii) QR Network will notify contemporaneously any Customer which has not been included within the Customer Group on the basis of QR Network's assessment that Subparagraph 2.2.1(e)(iii)(B) has not been satisfied. If, after discussions with QR Network, within two (2) weeks of receiving such notification, the Customer wishes to query its non-inclusion in the Customer Group, they should notify the QCA to seek

verification. QR Network and the notifying party must, on request from the QCA, make available all documents necessary to verify whether the Customer should have been included in the Customer Group and, if so, the Customer's Reference Tonnes (and the QCA will confine its assessment to the information provided). The QCA shall notify QR Network and the notifying party of its decision within two (2) weeks of receiving this notification. The Customer in question bears the onus of demonstrating to the QCA's satisfaction that Subparagraph 2.2.1(e)(iii)(B) was satisfied.

- (b) Unless a Customer in a Customer Group has, within six (6) weeks of receiving the request under Subparagraph 2.2.2(a)(i), lodged with QR Network bona fide objections to the proposed capital expenditure including reasons why it believes the proposed capital expenditure is not required, then the Customer will be deemed to have accepted the scope of the proposed capital expenditure projects. If any Customer provides information, and claims confidentiality to the extent that it cannot be disclosed to the QCA, that confidential information will be disregarded.
- (c) When determining objections, QR Network may seek QCA approval to disregard any votes on the basis that a specific objection is not bona fide. The QCA shall consult with that Customer in reaching a decision. The QCA shall advise QR Network and that Customer of its decision within two (2) weeks of receiving this request from QR Network.
- (d) Customer acceptance of the scope of a capital expenditure project will be deemed to have been received if at least 60% of the Customer Group (as assessed by weighting Customers in accordance with their Reference Tonnes) accepts the scope of the proposed capital expansion projects.
- (e) Within ten (10) weeks of QR Network having sought acceptance of proposed capital expenditure projects under Paragraph 2.2.2(a), QR Network will notify each member of the Customer Group of the results of the vote. In the event that a project has not been accepted by the Customer Group, QR Network will provide each member with details regarding the number and percentage of objections received and, on request, will make available any objecting submissions, excluding any specific sections which the submitting Customer has specified as confidential.
- (f) A Customer who considers that a project should receive regulatory pre-approval of scope, notwithstanding that Customer acceptance has not been secured, may apply to the QCA under Paragraph 2.2(c). In this case, QR Network will, on request from the QCA, make available to the QCA all relevant documents, including any confidential elements of objections.

## 2.3 Prudency of Capital Expenditure

### 2.3.1 Assessment of Prudency of Capital Expenditure

- (a) In assessing whether the capital expenditure undertaken is prudent, the QCA will:

- (i) only consider information that was, or would reasonably have been, available to QR Network (or, for a period prior to the Commencing Date, QR) at the time of making the investment decision (and in assessing the prudence of capital expenditure on the basis of that information, the QCA can take into account any advice or comments received pursuant to Paragraph 2.3.1(b) of this Schedule); and
  - (ii) take into account the extent to which QR Network (or, for a period prior to the Commencing Date, QR) has achieved compliance with Paragraph 2.2.2(d) of this Schedule. For example, where a significant number of Customers have accepted the scope of works but the threshold test for Paragraph 2.2.2(d) has not been met.
- (b) The QCA will take advice as it considers necessary from independent advisors using appropriate benchmarks and experience, and consult as it considers necessary with relevant stakeholders.

### 2.3.2 Prudence of Scope of Works

- (a) Assessing the prudence of scope of works involves assessing whether the works are reasonably required.
- (b) The QCA will accept the scope of capital projects:
  - (i) if it has been approved by a Customer Group under Paragraph 2.2.2(d) of this Schedule; or
  - (ii) if QR Network can demonstrate to the QCA's reasonable satisfaction, having regard to the factors set out in Paragraph 2.3.2(c) of this Schedule, QR Network (or, for a period prior to the Commencing Date, QR) had reasonable grounds for proceeding with a project given the circumstances relevant at the time the investment decision was made.
- (c) In assessing the scope of capital expenditure projects QCA shall have regard to, inter alia:
  - (i) the Coal System Master Plan, if any;
  - (ii) the need to accommodate what is reasonably required to comply with Access Agreements;
  - (iii) the extent of Reasonable Demand, and the need for new capital projects to accommodate that demand;
  - (iv) the age and condition of existing assets, the need for replacement capital projects, and consistency with the Network Asset Management Plan;
  - (v) QR Network's (or, for a period prior to the Commencing Date, QR's) legislative requirements, including relating to workplace health and safety and environmental requirements;
  - (vi) the appropriateness of QR Network's (or, for a period prior to the Commencing Date, QR's) processes to evaluate and select proposed capital projects, including the extent to which alternatives are evaluated as part of the process;



- (vii) the extent to which capital projects that were undertaken were subjected to the capital evaluation and selection process; and
- (viii) the extent to which consultation has occurred with relevant stakeholders about the proposed capital projects.

### 2.3.3 Prudency of Standard of Works

- (a) Assessing the prudency of standard of works involves assessing whether the works are of a reasonable standard to meet the requirements of the scope and are not overdesigned such that they are beyond the requirements of the scope.
- (b) The QCA will accept the standard of the works undertaken where:
  - (i) QR Network can demonstrate to the QCA's reasonable satisfaction, having regard to the factors set out in Paragraph 2.3.3(c), QR Network (or, for a period prior to the Commencing Date, QR) had reasonable grounds for its design of the infrastructure standards; or
  - (ii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure and/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) Where QR Network proposes to depart from the standard and configuration of adjacent and/or existing infrastructure with similar usage levels in assessing the standard of the works undertaken, or where the standard of such existing or adjacent infrastructure has not been approved by the QCA, the QCA will have regard to, inter alia:
  - (i) the requirements of operators and what is reasonably required to comply with Access Agreements;
  - (ii) current and likely future usage levels;
  - (iii) the requirements of the National Codes of Practice;
  - (iv) the requirements of other relevant Australian design and construction standards;
  - (v) QR Network's design standards contained within its Safety Management System and which is accepted by the Safety Regulator; and
  - (vi) all relevant legislation, including requirements by any Authority (e.g. the Safety Regulator and the EPA).

### 2.3.4 Prudency of Costs

- (a) Assessing the prudency of costs involves assessing whether the costs are reasonable for the scope and standard of work done.
- (b) In assessing the reasonableness of the cost of works undertaken, the QCA will have regard to, inter alia:
  - (i) QR Network's Network Asset Management Plan;

- (ii) QR Network's Coal System Master Plan;
  - (iii) the level of such costs relative to the scale, nature, cost and complexity of the project;
  - (iv) the circumstances prevailing in the markets for engineering, equipment supply and construction;
  - (v) QR Networks's Procurement Policy approved by the QCA under Paragraph 2.3.4(c) of this Schedule; and
  - (vi) the manner in which the capital works have been managed, including but not limited to the manner in which QR Network (or, for a period prior to the Commencing Date, QR) has balanced the needs of:
    - (A) safety during construction and operation;
    - (B) compliance with environmental requirements during construction and operation;
    - (C) minimising disruption to the operation of Train Services during construction;
    - (D) accommodating reasonable requests of Access Holders to amend the scope and sequence of works undertaken to suit their needs;
    - (E) minimising whole of asset life costs including future maintenance and operating costs;
    - (F) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
    - (G) aligning other elements in the supply chain; and
    - (H) meeting contractual timeframes and dealing with external factors.
- (c) QR Network will submit a Procurement Policy to the QCA for approval. The Procurement Policy will identify:
- (i) the procurement options available to QR Network, eg tender for individual project, tender for program, alliance, internal provision of services;
  - (ii) the reasons why QR Network may choose to use the alternate options;
  - (iii) the mechanisms QR Network will use to ensure that it achieves value for money in its procurement; and
  - (iv) the manner in which QR Network can demonstrate that it has followed this Procurement Policy.
- (d) The QCA will approve or not approve QR Network's Procurement Policy and advise QR Network accordingly.

### **3. CAPITAL EXPENDITURE CARRYOVER ACCOUNT**

#### **3.1 Capital Indicator**

- (a) For the purpose of determining Reference Tariffs for the Central Queensland Coal Region, a Capital Indicator of \$160 million per year has been included. This amount has been allocated as follows:
  - (i) 7.5% to electrification assets in the Blackwater system;
  - (ii) 35% to non-electrification assets in the Blackwater system;
  - (iii) 7.5% to electrification assets in the Goonyella system;
  - (iv) 35% to non-electrification assets in the Goonyella system;
  - (v) 10% to the Moura system; and
  - (vi) 5% to the Newlands System.
- (b) For the purposes of calculating the Reference Tariffs, it has been assumed that the Capital Indicator will be used for assets with an average life of thirty-five (35) years;

### 3.2 Capital Expenditure Carryover Account

- (a) QR Network will maintain a register in which it will annually record all Approved Capital Expenditure. The register will include the following information:
  - (i) capital expenditure by project;
  - (ii) categorisation of capital expenditure based on Individual Coal System Infrastructure; and
  - (iii) for the Blackwater and Goonyella coal systems, categorisation of capital expenditure to that related to electrification assets and that not related to electrification assets.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, the difference will give rise to an entry in the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:
  - (i) an under recovery of revenue, if the Approved Capital Expenditure exceeds the Capital Indicator; or
  - (ii) an over recovery of revenue, if the Approved Capital Expenditure is less than the 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 Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the Discount Rate;
  - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the 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 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 Reference Tariffs.

- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the Discount Rate.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking, 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.

#### 4. Definitions and Interpretation

4.1 In this Schedule, references to Parts, Clauses, Subclauses, Paragraphs and Subparagraphs are references to Parts, Clauses, Subclauses Paragraphs and Subparagraphs contained in this Schedule unless otherwise stated.

4.2 The following definitions are specific to this Schedule. In addition to these definitions, Part 10 of the Undertaking sets out the definitions of defined terms used in this Schedule and applicable to the Undertaking generally:

**“Approved Capital Expenditure”** means all capital expenditure approved by the QCA in accordance with Clause 2 of Schedule FB (or, for a period prior to the Commencing Date, Clause 2, Schedule FB of the 2005 Undertaking), except for capital expenditure for a new spur line to a mine where the Train Services servicing that mine are included in a new Reference Train Service and the value of that new spur line is included in a new Reference Tariff;

**“Asset Replacement Expenditure”** means expenditure on capital projects required to maintain the existing capacity of the Rail Infrastructure (for example, the replacement of life expired or obsolete assets);

**“Capital Expenditure Carryover Account”** means the account maintained by QR Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in Clause 3.2 of this Schedule;

**“Coal System Master Plan”** means the plan relating to QR Network’s proposed capital expenditure projects containing the information specified under Paragraph 2.2.1(d) of this Schedule;

**“Coal System Master Planning Forum”** means the forum of that name established under Paragraph 2.2.1(a) of this Schedule;

**“Customer Group”** has the meaning given to that term in Paragraph 2.2.1(e) of this Schedule;

**“General Expansion Capital Expenditure”** means expenditure on capital projects required to expand the existing capacity of the Rail Infrastructure,

where that Rail Infrastructure is utilised for the benefit of more than one Customer or more than one Access Holder;

**“National Codes of Practice”** means the codes developed by the Australian Rail Association to identify, at a high level, the standards required for rail infrastructure in Australia;

**“Network Asset Management Plan”** means the plan prepared by QR Network and approved by the QCA under Paragraph 2.1(e) of this Schedule;

**“Procurement Policy”** means the policy approved by the QCA under Paragraph 2.3.4(c) of this Schedule;

**“Queensland Resources Council”** means the Queensland Resources Council Ltd ABN 59 050 486 952;

**“Reasonable Demand”** has meaning given to that term in Paragraph 2.1(d) of this Schedule;

**“Reference Tonnes”** has the meaning given to that term in Paragraph 2.2.1(e) of this Schedule;

## **SCHEDULE G**

### ***Network Management Principles***

#### **Part A. Scheduling Principles**

##### **1. Train Service Entitlements**

- a) Access Holders operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology<sup>1</sup>.
- b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), a Weekly Train Plan (WTP), where necessary, and a Daily Train Plan (DTP).
- c) Where an Access Seeker's required Capacity cannot be met fully, the Access Seeker may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and if the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

##### **2. Master Train Plan Principles**

- a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train Services and other activities on the Rail Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train Paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements. In other words, the Train Paths indicated in the MTP for Cyclic Traffic need not necessarily represent the Train Paths that those Train Services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train Paths indicated in the MTP may well indicate the actual Train Path that a Train Service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.
- b) Unless otherwise expressly provided in an Access Holder's Access Agreement, the MTP may be modified, as specified in Paragraphs c), d), e) and f) of these MTP Principles, where:
  - i) an Access Holder notifies QR Network that it wishes to make a long-term change to the **times** at which its Train Service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train

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<sup>1</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of train paths per specified period of time.

- Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
- ii) QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - iii) a Planned Possession is cancelled;
  - iv) QR Network notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - v) QR Network notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train Service/s operate, provided that change is within the scope of the relevant Access Holders' Train Service Entitlement/s and is intended to accommodate:
    - the creation of a new or additional Train Service Entitlement, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP;
  - vi) QR Network notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlement/s, provided that change is intended to accommodate:
    - the creation of new Planned Possessions or the modification of existing Planned Possessions;
    - the creation of an additional Train Service Entitlement, through either the signing of an Access Agreement or the variation of an existing Access Agreement; or
    - any other Operational Constraint affecting the MTP;
- provided that where the change to the **times** at which scheduled Train Service/s operate results in any existing Access Holder's Train Service Entitlement not being met, such change is only made with the

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<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their Access Agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

agreement of such Access Holder/s, such agreement not to be unreasonably withheld;

- vii) QR Network notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the times<sup>4</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Access Holders' Train Service Entitlements, QR Network has made reasonable efforts to mitigate the impact on that Access Holder. Any limitations upon QR Network's ability to exercise this right will be specified in individual Access Agreements;
- viii) an Access Holder's Access Agreement allows QR Network to alter the Access Holder's Train Service Entitlement, for instance by resuming Capacity through the Capacity resumption process outlined in Part 7 of this Undertaking; and
- ix) QR Network, Infrastructure Service Providers, and all affected Access Holders, otherwise agree.
- c) QR Network may make modifications to the MTP, within the scope of Subparagraphs b)(i), b)(ii), b)(iii) and b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
- d) QR Network may make modifications to the MTP, within the scope of Subparagraphs b)(v), b)(vi) and b)(vii) of these MTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- e) Where a change is being sought to the MTP that falls within the scope of Subparagraphs b)(ix) of these MTP Principles, QR Network will invite Infrastructure Service Providers and all Access Holders whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum<sup>5</sup>. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.
- f) QR Network must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.
- g) As a result of QR Network's obligations in accordance with Paragraph f), where reference is made in Paragraph b) of these MTP Principles to an Access Holder notifying QR Network that it wishes to vary its Train Service Entitlement or Train Service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.

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<sup>4</sup> See footnote 2 above.

<sup>5</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.



- h) The cancellation of a Train Service or Train Services in accordance with the above MTP Principles, does not necessarily excuse either QR Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for Train Controllers in carrying out their duties.

### 3. Weekly Train Plan Principles

- a) In parts of QR Network's network where Cyclic Traffics operate (for instance the Central Queensland Coal Region) there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A WTP will be scheduled utilising Planned Possessions, the Train Paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, each Access Holder's Train Service Entitlement and Train Orders for the particular week in question.
- b) In the Central Queensland Coal Region, Train Orders for the coming week must, unless otherwise advised by QR Network, be submitted to QR Network before 1200 hours on Wednesday.
- c) The process of scheduling Cyclic Traffics in the WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Access Holders and Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process applies only for the allocation of a Contested Train Path between Access Holders for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 1.
- d) QR Network will advise Access Holders of the WTP once it is developed in accordance with the above steps.

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### 4. Daily Train Plan Principles

- a) The DTP will indicate all scheduled Train Services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Rail Infrastructure.
- b) In scheduling Cyclic Traffics on the DTP, QR Network may first schedule a WTP as discussed in the WTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- c) QR Network will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Access Holders and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in Paragraphs e), f), and g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:

- i) an Access Holder notifies QR Network that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train Service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Service/s not being met or a Planned Possession not being met;
  - ii) QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - iii) a Planned Possession is cancelled;
  - iv) QR Network notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, provided the change is intended to accommodate:
    - the modification of an existing Planned Possession;
    - the creation of an Urgent Possession; or
    - any other Operational Constraint affecting the DTP;provided that where the change to scheduled Train Service/s results in any existing Access Holder's Train Service Entitlement not being met, such change is only made with the agreement of such Access Holder/s, such agreement not to be unreasonably withheld;
  - v) QR Network requests 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; and
  - vi) QR Network, Infrastructure Service Providers, and all affected Access Holders otherwise agree.
- e) QR Network may make modifications from the MTP or WTP (where applicable), within the scope of Subparagraphs d)(i), d)(ii), and d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
- f) QR Network may make modifications from the MTP or WTP (where applicable), within the scope of Subparagraphs d)(iv) and d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- g) Where a change is being sought from the MTP or WTP that falls within the scope of Subparagraph d)(vi) of these DTP Principles, QR Network will invite Infrastructure Service Providers and all Access Holders whose scheduled Train Service/s are affected by the change to consider the modification in an

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<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.

- h) Other than as detailed in Paragraph i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
- i) Once the DTP is scheduled, variations to the DTP may only be made where:
  - i) before the day of operation, QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
  - ii) before the commencement of the relevant Train Service/s, an Access Holder notifies QR Network that it wishes to make a change to the **times**<sup>9</sup> at which its Train Service/s operate, provided that change is within the scope of the Access Holder's Train Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or
  - iii) before the commencement of the relevant Train Service/s, QR Network notifies an Access Holder that an Emergency Possession is required.
- j) QR Network may make modifications to the DTP within the scope of Subparagraphs i) i), i) ii) and i) iii) of these DTP principles on a case by case basis without the need for consultation.
- k) The cancellation of a Train Service or Train Services in accordance with the above DTP Principles, does not necessarily excuse either QR Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- l) The DTP will represent the expected train operation performance target over its period.
- m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control principles.

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<sup>8</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.

<sup>9</sup> See Footnote 2 above.

## Part B. Train Control Principles

- a) The fundamental objective of Train Control will be to facilitate the safe running of Train Services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- b) The ability of QR Network and/or an Access Holder to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- c) The following general principles apply to Access Holders and Train Controllers:
  - i) all parties will ensure that operational safety is maintained through compliance with Safeworking Procedures, Safety Standards, Rollingstock Interface Standards, applicable IRMPs and EIRMRs;
  - ii) Access Holders will 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 prevent the DTP from being met; and
  - iii) QR Network will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate reason for Train Controllers to alter a scheduled Train Service.
- e) The traffic management decision making matrix, at Appendix 2, will be provided to assist Train Controllers in the resolution of disputes in accordance with the above principles.
- f) QR Network will provide Access Holders with:
  - i) real time Train 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 Train Control diagrams that indicates actual running of that Access Holder's Train Services against the relevant DTP; and
  - iii) information about the type of Train Services<sup>29</sup> operated by other Access Holders' on the same network to assist Access Holders to determine whether the Train Controller is applying the principles in this Schedule G in a consistent manner between Access Holders.

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<sup>29</sup> For instance, freight Train Services, passenger Train Services or coal Train Services.

## Appendix 1

### Contested Train Path Decision-making Process

QR Network will determine who gets a Contested Train Path, by:

- firstly, eliminating from consideration any Access Holder whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR Network still has spare Capacity available, QR Network may determine which of the parties seeking the Contested Train Path get that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR Network may determine which of the parties gets the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR Network will document the parties' agreement and keep a record of such<sup>10</sup>.
- then, considering the number of Train Services per week that each Access Holder has a contractual entitlement to in accordance with their Train Service Entitlement. If QR Network is behind (in the contract year to date) in providing an Access Holder with its contracted Train Services, that Access Holder will get priority over an Access Holder that QR Network is either ahead or on target (in the contract year to date) in providing contracted Train Services to. Where QR Network is behind in providing contracted Train Services to more than one Access Holder, the Access Holder most behind (in terms of Train Services provided as a percentage of contracted Train Services) will get first priority over others; and
- finally, where the above considerations do not assist QR Network in making a decision regarding which requested Train Service is scheduled, QR Network will unilaterally determine which Train Service/s get scheduled, and will keep a record of that decision and the reasoning behind that decision. QR Network will ensure that, over time, no Access Holder is favoured over another, and where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to 10 services per week, and another Access Holder has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on 2 out of 3 consecutive occasions.

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<sup>10</sup> QR Network envisages that this step will take into account the requirements of the relevant destinations of the Train Services in question. In the coal system, for instance, the ports and domestic users, if they are not Access Holders themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Access Holders in determining the priority of Train Services requested in their weekly train request.

## Appendix 2

### Traffic Management Decision Making Matrix

#### Notes for the application of the Traffic Management Decision Making Matrix

As a generic principle for the performance of Train Control, QR Network recognises (as noted in paragraph a) of Part B of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of 'on time running', and accordingly, running to the DTP will always result in the most efficient use of the Rail Infrastructure and provide those parties using the Rail Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train Services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR Network considers it necessary to permit Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 and 6 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a Train Controller's ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train Services, as expressed in their Train Service Entitlements.

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 DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running "On Time".

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
Train B		Objective	On Time Exit	On Time Exit	1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

### Rules for the application of the Traffic Management Decision Making Matrix

- Rule 1. Subject to rules 5 and 6 Train B may be given priority on condition Train A will still meet its “On Time” objective.
- Rule 2. Both trains must meet their “On Time” objective.
- Rule 3. Subject to rules 5 and 6 Train A may be given priority on condition Train B will still meet its “On Time” objective.
- Rule 4. Subject to rules 5 and 6 give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or the requirements of a Passenger Priority Obligation.
- Rule 6. Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other trains if the Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.

**SCHEDULE HA****Sample Interface Risk Management Plan**

References SAA = Operator Access Agreement – Coal											
Categories (Items) A - Planning (pre-event)      D - En-route B - Entering QR Network's Network      E - Stabling C - Preparing a Train Service      F - Emergency/Contingency											
ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
A1	Delays	Possessions on the Nominated Network are not communicated effectively to the Access Seeker	Commercial loss due to operational delays and/or service cancellations.	QR Network will provide the Access Seeker with a copy of the Possession Protocols (as amended from time to time) which detail the management of possessions of the track.							
A2	Collision Derailment Operational delays Property damage	Nominated Network Operational and Safety matters known to QR Network are not communicated to the Access Seeker in an agreed, consistent manner on an on-going basis	Injury or death Commercial loss	Schedule 10 SAA specifies the procedure for communication of Safety Alerts, Weekly Notices and Train Notices.							
A3	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall	New or altered operation requires changes to the existing infrastructure.	Incidents/accidents occurring due to inappropriate use of existing infrastructure.	Access Seeker will identify all changes to the existing network infrastructure required prior to operation and submit 'Infrastructure Change Request' in accordance with QR Network procedure.	Note: The process of 'Infrastructure Change' is separate to the process of negotiating access and will be subject to individual risk assessment.						
A4	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall Dangerous Goods Spill Fire/Explosion	New or altered operation requires development of transfer facilities on the Nominated Network.	Incidents/accidents occurring due to inappropriate use of existing infrastructure.	Access Seeker will identify any requirements for the development of transfer facilities and submit a request to QR Network. QR Network will provide design advice to ensure compatibility with existing infrastructures, Rollingstock and operations.	Note: The process of negotiating a Transfer Facilities License is separate to the process of negotiating access and will be subject to individual risk assessment.						
A5	Collision Derailment Operational Delays	Non-compliance with IRMP	Injury or death Commercial loss	Access Seeker and QR Network to agree an audit, inspection and review regime to be included here in IRMP							

<sup>1</sup> C = Consequences<sup>2</sup> L = Likelihood<sup>3</sup> R = Residual Risk



References SAA = Operator Access Agreement – Coal											
Categories (Items) A - Planning (pre-event)      D - En-route B - Entering QR Network's Network      E - Stabling C - Preparing a Train Service      F - Emergency/Contingency											
ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
B1	Operational delays	Access Seeker does not have an agreement to access other QR Network facilities (NOT the Nominated Network) that it requires for access to Nominated Network	Commercial loss	Schedule 11 SAA details agreements for matters ancillary to access to the Nominated Network, including access to other QR Network facilities such as stations, platforms etc.							
B2	Operational delays	Access Seeker does not have an agreement to access private facilities that it requires for access to Nominated Network	Commercial loss	Clause 5.11 SAA requires Access Seeker to demonstrate to QR Network's reasonable satisfaction, prior to commencement of Train Services, that it has agreements with owners/operators of Private Facilities necessary to enable Access Seeker to operate Train Services. A 'Connection Agreement' will be required where QR Network's Network interfaces with private railway infrastructure.	Note: The process to develop a 'Connection Agreement' is separate to the process of negotiating access and will be subject to individual risk assessment.						
B3	Operational delays	Unauthorised Rollingstock or Rollingstock Configuration (eg too long, too heavy or Rollingstock in the wrong order) refused entry to Network.	Commercial loss	Access Seeker/QR Network to agree Rollingstock Interface Standards to apply to cover: Train Separation Safeworking Principles Train Safety Systems Rollingstock Dynamic Performance Rollingstock Visibility and Audibility Emergency Equipment on Rollingstock Rollingstock Interior Environment Electrical Equipment for Rollingstock Electrification Safety Pantograph Technical Requirements Electric Traction Infrastructure General Technical Requirements Rollingstock Cab Layout Rollingstock Structural Requirements Rollingstock Drawgear Containers and Removable Structures attached to Rollingstock Axle Bearings for Rollingstock Bogie Structural Requirements Wheels for Rollingstock Wheelset Assembly Axles for Rollingstock Wheel Defect Identification and Rectification Rollingstock Electromagnetic Compatibility Locomotive and Passenger Vehicle Access Passenger Vehicle Interior Crashworthiness s4.3 Glazing On Track Vehicles Rollingstock Fire Performance Steam Locomotive Technical Requirements Operational Route Manual Module OR 5 Loading and Securing of Freight Manual Train Route Acceptance Rollingstock Brake System Requirements Operational Integrity of Trains	SAF/STD/0006/SIG SAF/STD/0076/SIG SAF/SPC/0069/RSK SAF/STD/0026/RSK SAF/STD/0049/RSK SAF/STD/0051/RSK SAF/STD/0052/RSK SAF/STD/0054/RSK STD/0039/SWK SAF/STD/0093/RSK SAF/STD/0098/ELE  SAF/STD/0055/RSK SAF/STD/0057/RSK SAF/STD/0060/RSK SAF/STD/0097/RSK  SAF/STD/0058/RSK SAF/STD/0066/RSK SAF/SPC/0024/RSK SAF/SPC/0025/RSK SAF/SPC/0026/RSK SAF/SPC/0025/RSK SAF/STD/0120/RSK SAF/STD/0062/RSK SAF/STD/0059/RSK SAF/STD/0116/RSK SAF/STD/0057/RSK SAF/STD/0094/RSK STD/0071/SWK STD/0022/SWK SAF/STD/0114/SWK SAF/STD/0064/RSK SAF/STD/0035/SWK						

References SAA = Operator Access Agreement – Coal											
Categories (Items) A - Planning (pre-event)                      D - En-route B - Entering QR Network's Network            E - Stabling C - Preparing a Train Service                  F - Emergency/Contingency											
ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
				Mobile Voice Radio Communication Systems Event Recorders Observance of Signals Manual SG 10 DTC Manual Rail Tank Cars Rural Fire Management Rollingstock to be designed to comply with nominated Rollingstock outline including centre and end throws. Maximum sway of Rollingstock not to infringe kinematic outline. Rollingstock to comply with allowable axle loads specified in STD/0071/SWK. Assessment of L/V ratio for Rollingstock Configurations for worst buff and draft forces and curve radii to be carried out. Load tables to be provided by Access Seeker for all routes to be travelled. Comparison train length not to exceed the minimum loop length for the route listed in STD/0071/SWK. Noise levels to comply with the requirements of ROA Manual of Standards and Practices s 13.4.1  Compliance of Rollingstock and Rollingstock Configurations to Rollingstock Interface Standards to be determined by assessment, certification and testing as agreed by Access Seeker/QR Network.  Any potential non-compliance to the above Rollingstock Interface Standards to be addressed here in IRMP	SAF/STD/0014/TEL SAF/SPC/0061/RSK STD/0037/SWK STD/0041/SWK SAF/STD/0056/RSK SAF/STD/0020/WHS  or alternative agreed standards						
B4	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Train Separation DG Spill Fire/Explosion	Procedures for entering and exiting the Nominated Network (including shunting/entering and exiting yards) are not clear or consistent between different operators.	Incidents occurring due to non-existent or inconsistent entry/exit procedures being used.	Entry/exit procedures to/from private sidings and yards are specified in Schedule 10 SAA – Interface Coordination Plan.							

References SAA = Operator Access Agreement – Coal											
Categories (Items) A - Planning (pre-event)      D - En-route B - Entering QR Network's Network      E - Stabling C - Preparing a Train Service      F - Emergency/Contingency											
ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
B5	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Train Separation Rough Ride DG Spill Fire/Explosion	Operational Communication Protocols (including communications between train crew, support staff, train controllers, and supervisors/managers) between Access Seeker, QR Network and other users of the Nominated Network are incompatible and/or inconsistent	Incidents occurring due to non-existent or inconsistent communication procedures being used.	Schedule 10 SAA – Interface Coordination Plan sets out process for development of and communication of Train Lists and Operational Communication Protocols.  Radio equipment on trains must be compatible with QR Network radio system, other trains and ground personnel as well as portable radios in accordance with QR Network's SAF/STD/0014/TEL Mobile Voice Radio Communication Systems.  Protocols for hand (including radio) communication will be in accordance with agreed Standards.	STD/0037/SWK – Observance of Signals STD/0036/SWK – General Operational Safety STD/0088/SWK – Shunting Procedures Manual; or agreed alternative standards.						
B6	Derailment Strike Infrastructure Damage Operational delays	Access Seeker staff or contractors do not carry out trackside access safely or are not competent to operate equipment on or near the Nominated Network (eg road vehicles, plant)	Injury or death Commercial loss	Access Seeker staff and contractors must at all times have completed trackside safety training required in accordance with agreed standards  Access Seeker workers and contractors will be provided with and wear PPE in accordance with local (location and industry specific) requirements and SAF/STD/0032/WHS.	STD/0038/SWK - Track and Trackside Safety Manual, STD/0039/SWK - Electrification Safety Manual; SAF/STD/0011/COM - Safety Training and Accreditation or agreed alternative standards and training package.						
B7	Delays	Access Seeker staff or contractors do not have access to specific locations and/or infrastructure.	Incidents (delays) occurring due to lack of access to conduct routine operations.	QR Network will assist Access Seekers in identifying all required points of secured access to the Nominated Network and keys required to operate specific infrastructure. QR Network shall arrange access in accordance with Access Seeker requirements.							
C1	Collision Derailment Strike Infra. Damage R/stock Damage Delays Slip, trip, fall	Infrastructure provided on the Nominated Network (e.g. points, signals, levers, etc.) are not operated correctly.	Incidents/accidents occurring due to lack of skills/knowledge to operate track and trackside infrastructure.	Access Seeker staff and contractors who are required to operate equipment and or infrastructure provided by the Network Manager shall be competent to do so in accordance with agreed standards.	STD/0036/SWK– General Operational Safety STD/0037/SWK– Observance of Signals STD/0038/SWK- Track and Trackside Safety Manual, STD/0040/SWK –Remote Control Signalling Manual STD/0041/SWK – Direct Traffic Control Manual STD/0088/SWK– Shunting Procedures Manual SAF/STD/0119/SWK – Safety in Yards, Facilities, Sidings and Workshops or agreed alternative standards						
C2	Strike Operational delays Infrastructure damage	Facilities for servicing Rollingstock on QR Network tracks inadequate (eg coaling/watering)	Injury or death Commercial loss	Facilities and procedures agreed for servicing Rollingstock will be detailed in Schedule 1 SAA.	STD/0036/SWK General Operations Safety Manual STD/0038/SWK Track and Trackside Safety Manual or agreed alternative standards						
C3	Infrastructure damage Strike Infrastructure damage Operational delays	Spillage or disposal of load or fuel during loading/unloading, servicing, provisioning or in transit.	Injury or death Commercial loss	Access Seeker to develop procedures for the design, maintenance and loading of Rollingstock to prevent spillage of bulk loads, and contamination of the infrastructure by dropping or leakage of oil, fuel, sewage or other contaminating material and include in EIRMR.	SAF/STD/0035/SWK Operational Integrity of Trains STD/0036/SWK General Operations Safety Manual or agreed alternative standards						

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Categories (Items) A - Planning (pre-event)      D - En-route B - Entering QR Network's Network      E - Stabling C - Preparing a Train Service      F - Emergency/Contingency											
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						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
C4	Infrastructure damage	Disposal of waste products	Commercial loss	Access Seeker to dispose of waste products in accordance with approved EIRMR.							
C5	Strike Operational delays Infrastructure damage	Facilities for freight handling on Nominated Network inadequate	Injury or death Commercial loss	Freight will only be loaded/unloaded in locations and in accordance with procedures detailed in Schedule 1 SAA.	STD/0036/SWK - General Operational Safety Manual STD/0038/SWK - Track and Trackside Safety Manual or agreed alternative standards						
C6	Derailment Operational delays Infrastructure damage	Rollingstock loaded in excess of its capacity (overloads not detected or removed).	Injury or death Commercial loss	Access Seeker to develop procedures to ensure Rollingstock is not loaded beyond its structural capability.  Clauses 5.8 and 12.2(c) of SAA permit QR Network to require removal or reduction of overloaded Rollingstock.  Access Seeker is responsible for checking loading before entry to network.							
C7	Chemical spill Fire or explosion Infrastructure damage Operational delays	Dangerous goods not loaded/transported safely (freight wagons on passenger trains, oxygen cylinders for passenger medical use, small gas bottles etc in baggage, gas/fuel in dining cars), failure of fuel tanks	Injury or death, Commercial loss	Carriage and loading of dangerous goods must be in accordance with agreed standard.	SAF/STD/0079/STD – Acceptance, handling and transport of dangerous goods SAF/STD/0057/RSK Rollingstock Structural Requirements SAF/STD/0056/RSK or alternative agreed standards						
C8	Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall	Passenger are not suitably managed to avoid incidents/accidents on the network during normal operations and emergency situations.	Incidents/accidents occurring due to inadequate supervision and management of passengers.	Access Seeker will ensure its Emergency Response Plan contains adequate procedures for supervision/management of passengers to avoid injury or interference with other network operations and to deal with an accident specific to passenger traffic.	SPC/0022WHS Operational Emergency Procedures SAF/STD/0008/COM – Emergency, Preparedness, Response and Recovery or agreed alternative procedures						
C9	Collision Derailment Operational delays	Mechanically defective Rollingstock is included in the train or the train, brakes or any other safety related system is not complete and operational throughout the length of the train.	Injury or death Commercial loss	Access Seeker to develop Rollingstock maintenance and train testing procedures.	SAF/STD/0035/SWK - Operational Integrity of Trains STD/0036/SWK - General Operational Safety Manual or agreed alternative standards						
D1	Derailment Operational Delays	Adverse weather conditions (e.g. heat, flood, high winds) affect Rollingstock performance.	Injury or death Commercial loss	Access Seeker and QR Network to: <ul style="list-style-type: none"> <li>consider likelihood of extreme weather conditions occurring on the Nominated Network</li> <li>advise each other of any limitations of Rollingstock or rail infrastructure that likely extreme weather conditions produce</li> </ul> Agreed controls (e.g. reduced speeds) shall be documented in Schedule 4 SAA. Other operating restrictions shall be documented in Schedule 1 SAA.							
D2	Collision Derailment Operational delays	Train not compatible with safeworking system.	Injury or death Commercial loss	Access Seeker to have process to apply when secondary protection systems or train safety systems are not operational.	STD/0041/SWK Direct Traffic Control Manual STD/0046/SWK ATP Manual SAF/STD/0076/SWK						

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References SAA = Operator Access Agreement – Coal											
Categories (Items) A - Planning (pre-event)                      D - En-route B - Entering QR Network's Network        E - Stabling C - Preparing a Train Service                F - Emergency/Contingency											
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						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
D3	Derailment Rollingstock Damage	Train speed exceeds capability of the Rollingstock or infrastructure	Injury or death Commercial loss	Schedule 4 SAA sets out the authorised Rollingstock and Rollingstock configurations that the Access Seeker may operate and any restrictions placed upon configurations, operations and/or any other special conditions.							
D4	Derailment Strike Rollingstock Damage	Train strikes object on Nominated Network	Injury or death Commercial loss	Operator's Emergency Response Plan (required by Clause 7 SAA) must detail how Access Seeker will deal with such an Incident.  Refer Item B3 for Rollingstock requirements							
D5	Collision Derailment Rollingstock damage Operational delays	Train marshalling not compatible with Rollingstock requirements. Buff or draft forces result in L/V ratio too high leading to derailment.	Injury or death Commercial loss	The authorised Rollingstock Configurations that the Access Seeker may operate are listed in Schedule 4 SAA. Access Seeker responsible for developing appropriate controls for marshalling of Rollingstock within a Train.							
D6	Operational delays	Train produces excessive noise	Commercial loss	Access Seeker to ensure noise is controlled in accordance with its EIRMR.							
D7	Operational delays	Train produces air pollution	Commercial loss	Access Seeker to ensure air pollution is controlled in accordance with its EIRMR							
D8	Infrastructure damage Operational delays	Train causes trackside fire	Commercial loss	Access Seeker to ensure fire risk is controlled in accordance with its EIRMR							
D9	Collision Derailment Strike Infra. Damage R/stock Damage Delays Train Separation Rough Ride	Access Seeker does not source appropriate aids to assist in training and assessing safeworking and route for operational workers (traincrew, etc.).	Incidents/accidents occurring due to inadequate/inappropriate skills (training and or assessment).	QR Network will assist Access Seeker with training where unable to be obtained from other source.  Refer Item A1 for pilot arrangements (re-routing) during closures.							
D10	Collision Derailment Operational delays Property damage	Train and Route restrictions (and changes thereto) relevant to the Access Seeker's proposed train service are not communicated by QR Network to the Access Seeker	Injury or death Commercial loss	Permanent route restrictions pertaining to the Nominated Network, Rollingstock (axle load, maximum train lengths, noise limits, train speeds, and Rollingstock gauge) and/or loading/unloading are detailed in Schedule 4 SAA.  Refer Item A2 for communication procedures							

References SAA = Operator Access Agreement – Coal											
Categories (Items) A - Planning (pre-event)                      D - En-route B - Entering QR Network's Network        E - Stabling C - Preparing a Train Service                F - Emergency/Contingency											
ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
D11	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall Train Separation Rough Ride DG Spill Fire/Explosion	Operator fails to report an Incident, accident, damaged/missing infrastructure or unusual occurrences that impact on the Nominated Network or other Operators on the Nominated Network	Incidents occurring due to non-existent or inconsistent communication procedures being used.	Clause 7.3 SAA requires Operator to report any incident/accident or unusual event that may impact network operations to QR Network Train Control (including accidents occurring off QR Network's Network.  Clause 7.4 SAA requires Operator to notify QR Network as soon as reasonably practicable after an incident or accident occurs.	SAF/STD/0012/COM Incident/Accident Reporting, Recording and Investigation or agreed alternative standard						
E1	Collision Derailment Strike Infra. Damage R/stock Damage Delays DG Spill Fire/Explosion	Rollingstock and trains are not securely stabled/stowed on the Nominated Network.	Incidents occurring due to non-existent or inconsistent stabling procedures being used.	All stabling/stowage of Rollingstock and Trains on the Nominated Network is detailed in Schedule 1 SAA and must be carried out in accordance with agreed procedures.	STD/0036/SWK General Operational Safety or alternative operating procedure agreed by parties (and attached at Attachment A).						
F1	Collision Derailment Operational delays	Rollingstock becomes mechanically defective during train movement.	Injury or death Commercial loss	Access Seeker is responsible for determining scope and frequency of Rollingstock inspections to ensure that Rollingstock is safe to complete its trip and include inspection/audit regime.	STD/0035/SWK - Operational Integrity of Trains or agreed alternative standard						
F2	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall Train Separation Rough Ride DG Spill Fire/Explosion	QR Network Train Control fails to advise Operator of an Incident or other occurrence that impacts upon their Train Services	Incidents occurring due to non-existent or inconsistent communication procedures being used.	Clause 7.3 SAA requires QR Network to notify Operator of all incidents/accidents involving their operation or Rollingstock.							
F3	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall DG Spill Fire/Explosion	There is no agreed, coordinated procedure for responding to Incidents and Emergencies on the Nominated Network (including processes for communication)	Incidents occurring due to in-appropriate or un-coordinated emergency management.	Access Seeker must develop an Emergency Response Plan which contains procedures that are adequate for dealing with an accident specific to the type of traffic and location, and is at all times compatible with the QR Network's Emergency Procedures (including QR Network's SPC/0022WHS Operational Emergency Procedures, and SAF/STD/0008/COM – Emergency, Preparedness, Response and Recovery) and the relevant Access Agreement. Refer Clause 7 SAA							

References  
 SAA = Operator Access Agreement – Coal

Categories (Items)  
**A - Planning (pre-event)**      **D - En-route**  
**B - Entering QR Network's Network**      **E - Stabling**  
**C - Preparing a Train Service**      **F - Emergency/Contingency**

ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
F4	Collision Derailment Operational delays	Train does not comply with the requirements (Standards/procedures etc) set out in this IRMP and Access Seeker's Access Agreement while being recovered.	Injury or death Commercial loss	Clause 7.4 SAA details how incident management is to occur on the Nominated Network.							
F5	Operational delays	Rollingstock not compatible with QR Network or other Railway Access Seeker's Rollingstock for the purpose of recovery Rollingstock has specific recovery requirements (eg Tilt Train)	Injury or death Commercial loss	Access Seeker's Rollingstock must be recovered in accordance with its Emergency Response Plan.  Clause 7.4 SAA outlines management of Incident Response, including Restoration and Recovery.							
	Any other issue particular to the planned operation										

The agreed Interface Standards are to be documented here after completion of the Interface Risk Assessment:	
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The agreed Safeworking Procedures and Safety Standards are to be documented here after completion of the Interface Risk Assessment:	
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I hereby certify that the Rollingstock and Rollingstock configurations listed above:  
comply with the agreed Interface Standards except as noted above  
will be operated in accordance with all other controls listed above  
will be managed in accordance with this Interface Risk Management Plan throughout their operation

I have objective evidence of compliance with the agreed Interface Standards such as Compliance Plans, Certificates of Compliance and Test Reports, which will be retained for 7 years.

Where professional engineering services are required to certify compliance, such certification shall be carried out by the following registered professional engineer:

Name: \_\_\_\_\_  
Qualifications: \_\_\_\_\_  
Address: \_\_\_\_\_

Access Seeker: \_\_\_\_\_  
Access Seeker's Representative: \_\_\_\_\_  
Position/Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_



## **SCHEDULE J**

### ***Issues for EIRMR***

This list is to be taken as the minimum environmental issues to be addressed in the EIRMR, and the EIRMR should not be restricted only to the issues included in this list.

#### **1. Water Quality Management**

The Third Party Access Seeker must consider the impact of its proposed operations on storm water systems and natural waterways. In doing so, all relevant water quality standards and regulations must be met.

In the EIRMR the Third Party Access Seeker must nominate all sensitive surrounding environments including important wetlands, rivers, creeks, lakes and dams within close proximity of their proposed operations (and stating whether they are fresh or salt water).

The Third Party Access Seeker should consider reviewing existing water quality monitoring information that may be available at loading/unloading locations and along the intended route of operation. For example, the Qld Department of Natural Resources and Mines (DNR&M) provide a water quality monitoring and information dissemination service on its website:

<http://www.nrm.qld.gov.au/asdd/qsii2/ANZQL0132001679.html>.

In conjunction with the Australian and New Zealand Environment and Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000), such water quality monitoring information may be useful to define acceptable standards for water quality at locations in the EIRMR.

#### **2. Air Pollution Management**

The Third Party Access Seeker must consider the impact of its proposed operations on air quality. In doing so, all relevant air quality standards and regulations must be met.

The Third Party Access Seeker must undertake an assessment of the likelihood for dust and/or exhaust emissions to cause nuisance at the nearest sensitive receptors. Sensitive receptors are:

- (a) any form of dwelling/home;
- (b) a library, childcare centre, kindergarten, school, college, university or educational institution; and
- (c) a hospital, surgery or other medical institution.

Information about the type and chemical composition of product may also be useful in determining its potential to generate dust.

QR Network will indicate whether there have been any complaints about dust and/or exhaust emissions in the area of the proposed operation.

### **3. Contaminated Land Management**

The Third Party Access Seeker must consider the impact of its proposed operations on land contamination. In doing so, all practicable control measures to prevent the contamination of land must be undertaken.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated Land (Chem. Unit 1991) or by other standards considered acceptable by the relevant Authorities.

### **4. Nature Conservation**

The Third Party Access Seeker must consider the impact of its proposed operations on the flora and fauna.

The Third Party Access Seeker must review existing EPA regional ecosystem information relevant to the route of operation and identify any locations within 100 metres of the rail corridor that are listed as rare or vulnerable or endangered regional ecosystems.

Information on all regional ecosystems mapping is available at:

[http://www.epa.qld.gov.au/nature\\_conservation](http://www.epa.qld.gov.au/nature_conservation)

[/biodiversity/regional\\_ecosystems/introduction\\_and\\_status/Regional\\_Ecosystem\\_Maps](http://www.epa.qld.gov.au/biodiversity/regional_ecosystems/introduction_and_status/Regional_Ecosystem_Maps).

The EIRMR must include an assessment of the risk associated with wildfires being caused by exhaust/sparks from the Third Party Access Seeker's Rollingstock.

### **5. Management of Hazardous Substances and Dangerous Goods**

The Third Party Access Seeker must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Third Party Access Seeker. In particular, the Third Party Access Seeker must ensure that QR Network's requirements for the management of hazardous substances and dangerous goods are complied with.

### **6. Waste Management**

The Third Party Access Seeker must consider the impact of any waste produced by its proposed operations. In doing so, any collection, removal, transport and disposal of any waste generated during operations must comply with all relevant government and local authority requirements.

### **7. Environmental Noise Management**

The Third Party Access Seeker must consider the impact of any noise produced by its proposed operations. In particular, the Third Party Access Seeker must meet the requirements of the Rail Noise Plan referred to in the Environmental Protection Policy (Noise) and, where appropriate, must comply with QR Network's requirements for meeting the Rail Noise Plan referred to above.

## **8. Environmental Monitoring**

The Third Party Access Seeker must address the requirements of environmental monitoring to ensure that the environmental standards are met.

## **9. Education, Awareness and Training**

The Third Party Access Seeker must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Management System.

## **10. Complaint Handling**

The Third Party Access Seeker must consider how it will handle complaints that it receives concerning the impact of its proposed operation upon any of the environmental issues listed above.

## **SCHEDULE K**

### ***Operating Plan***

#### **1. Area of Operation**

- Origin
- Destination
- Cycle description (including nominated stops enroute)
- Entry and exit points onto Rail Infrastructure
- Details regarding repositioning of Rollingstock (prior to, during and after operation of the service)

#### **2. Business Plan**

- Tonnage profile (five year forecast)
- Passenger loading and unloading profile
- Anticipated project service life
- Seasonality of haulage/variability of services (peaks and troughs)

#### **3. Operation**

- Type of service (passenger, freight)
- Commodity
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)
- Special operating parameters (eg. key arrival and departure windows)
- Dangerous goods details
- Overload management system
- Timing of scheduled servicing/provisioning activities

#### **4. Service Levels**

- Train service levels, nominated weekly, monthly and annually
- Maximum number of one way Train Services per year – contracted Train Paths
- Dwell times at loading facility (minimum and maximum)
- Dwell times at unloading facility (minimum and maximum)
- Dwell times enroute and operational requirements
- Rollingstock operational speed
- Indicative timetable requirements (sectional run times)
- Any connecting services
- Any critical timings at specified locations
- Authority from Private Infrastructure manager to enter/exit a facility (loading/unloading/en route)

#### **5. Train Service Planning**

- Train Service planning/requesting preference
- Train Service cancelling preference

## **6. Train Information**

- Type
- Class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation (push/pull)
- Traction type
- Safety systems
- Communication system
- Train length

## **7. Crewing Plan**

- Train Service crew requirements
- Location of crew depots
- Crew change points
- Dwell times at change points (minimum and maximum)

## **8. Recovery Methods**

- Recovery of marked off Rollingstock at loading/unloading locations/enroute
- Recovery of derailments
- Recovery of failed locomotives

## SCHEDULE M

### *Transfer Fee – Worked Example*

#### Calculation of the transfer fee outlined in Subclause 7.4.4 of the Undertaking.

Subclause 7.4.4 of the Undertaking ensures that a present value concept is consistently applied to the assessment of values for transfer fee calculations.

This Schedule provides a number of worked examples of the capacity transfer fee to provide an indication of how a transfer fee might affect different access holders under different scenarios.

The key underlying assumptions contained in the following worked examples are:

- (i) All examples relate to the Central Queensland Coal Region;
- (ii) full CPI indexation is applied to reference tariffs;
- (iii) Discount Rate is 8.43%;
- (iv) CPI indexation is 2.5%;
- (v) full (100%) take or pay obligations (AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub>) apply to access agreements in question;
- (vi) reference tariffs are those applying to the 1 April 2006 to 30 June 2006 period;
- (vii) trains are assumed to be 10,000 net tonnes and diesel hauled;
- (viii) contribution to common costs is defined as the sum of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> reference tariff revenues;
- (ix) South Goonyella base period reference tariffs: AT<sub>2</sub> \$/path = \$860, AT<sub>3</sub> \$'000ntk = \$2.725, and AT<sub>4</sub> \$nt = \$0.684;
- (x) existing access rights relate to a South Goonyella loading point with a 240 km haul; and
- (xi) existing access rights expire in five (5) years, with annual tonnage of 5 million tonnes.

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This Schedule illustrates two examples for transfers of capacity under Subclause 7.4.4 of the Undertaking, namely:

- (i) transfer of access rights with the same origin and destination; and
- (ii) transfer of access rights with a different origin and destination but within an individual coal system.

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Within each of these categories, the interaction of the value of a range of parameters will determine whether a transfer fee is payable and if so, how much that fee will be. The critical factors include:

- (i) cluster location and associated reference tariffs;
- (ii) remaining contract term;
- (iii) contract tonnes over the remaining term; and
- (iv) haul distance.

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**Category 1 - Transfer of access rights with same origin and destination (Paragraph 7.4.4(d) of the Undertaking)**

This category requires that the origin and the destination applicable for the transfer of access rights be identical. While a wide range of scenarios are possible, the specific example is a scenario in which the transfer results in a new agreement with the same term but lower annual tonnage.

The Transfer Fee for this category is defined as the difference between the present value of the contribution to common costs from the existing agreement less the present value of the contribution to common costs under the new agreement subject to such amount being \$0 or greater.

The present value of the contribution to common costs under the existing agreement is \$31.6 million.

**Original agreement contribution to common costs**

Year	1	2	3	4	5
Tonnes (millions)	5	5	5	5	5
Paths (10,000 net tonne train)	1,000	1,000	1,000	1,000	1,000
Contribution to common costs (\$m)	7.6	7.8	8.0	8.2	8.4
PV of CCC (\$m)	\$31.60				

Note: Year 1 contribution to common costs =  $\$860 \times 1000 + \$2.725 \times 1.2 \text{ million} + 0.684 \times 5 \text{ million} = \$7.55 \text{ million}$

The example involves a reduction in tonnage from 5 million tonnes per annum to 2.5 million tonnes per annum. All other factors remain the same. Thus the expected contribution to common costs will decrease from a present value of \$31.6 million to \$15.8 million resulting in a reduction of \$15.8 million. The resultant transfer fee will therefore be \$15.8 million.

**Example – reduced tonnes**

Year	1	2	3	4	5
Tonnes (millions)	2.5	2.5	2.5	2.5	2.5
Paths (10,000 net tonne train)	500	500	500	500	500
Contribution to common costs (\$m)	3.8	3.9	4.0	4.1	4.2
PV of New CCC (\$m)	\$15.80				

Note: Year 1 contribution to common costs =  $\$860 \times 500 + \$2.725 \times 0.6 \text{ million} + 0.684 \times 2.5 \text{ million} = \$3.77 \text{ million}$

**Category 2 - Transfer of access rights which have different origin and destination but the same system (Paragraph 7.4.4(e) and Paragraph 7.4.4(f) of the Undertaking)**

This category captures those transfers where the origin and/or destination are different between the existing and revised agreements but are nevertheless within the same system. The example developed here is a scenario where the transfer results in a new agreement with an origin in the same cluster but a shorter haul with all other terms being the same. The Transfer Fee for this category is defined as the Relinquishment Fee. Such amount must be \$0 or greater. For the Central Queensland Coal Region, the Relinquishment Fee is defined as the present value of the take or pay obligation applicable under the agreement reduced by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. For the purpose of this example the take or pay obligation is assumed to be 100% of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> revenue over the remaining life of the agreement and therefore is the same as the present value of the contribution to common costs of the existing agreement. The present value of the contribution to common costs under the existing agreement and therefore the unadjusted Relinquishment Fee is \$31.6 million.

This example involves a reduction in haul distance of 20 km from 240 km to 220 km. The cluster remains the same (South Goonyella) and all other factors are held constant. As such, the applicable Reduction Factor is determined as follows:

$$\text{Reduction factor} = A/B$$

Where:

A = the annual train kilometres over the Common Corridor attributable to the new Access Holder's Trains in respect of which Access Rights could not have been provided without using the whole or part of the Access Rights relinquished by the existing Access Holder; and  
B = the annual train kilometres over the Rail Infrastructure attributable to the Train Services for which the existing Access Holder is seeking to relinquish Access Rights.

For the purposes of this example the Common Corridor length would be equal to the haul distance for the new haul, i.e. 220 km. hence

$$A = 1000 \times 220; \text{ and}$$

$$B = 1000 \times 240$$

The resultant Reduction Factor is determined as 0.917 and the Reduced Relinquishment Fee and hence the Transfer Fee becomes \$2.62 million as shown in the Table below.

**Example – reduced haul distance same cluster**

Year	1	2	3	4	5
Tonnes (millions)	5	5	5	5	5
Paths (10,000 net tonne train)	1,000	1,000	1,000	1,000	1,000
Contribution to common costs (\$m)	7.6	7.8	8.0	8.2	8.4
Unadjusted Relinquishment Fee (\$m)	\$31.60				
Reduction Factor	0.917				
Reduced Relinquishment Fee/Transfer Fee (\$m)	31.60-(31.60*0.917) = \$2.62				

Note: Year 1 contribution to common costs = \$860\*1000 + \$2.725\*1.2 million + 0.684\*5 million = \$7.55 million



## Schedule MB

### *Reporting to the QCA*

#### 1. OPERATIONAL DATA REQUIREMENTS

(a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) months of the end of the subject Year, the following operational information to the QCA:

(i) the gross tonne kilometres (gtk) attributed to the relevant Train Services, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Services (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Services;

(ii) the net tonnes (nt) attributed to the relevant Train Services, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Services (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty;

(iii) the number of equivalent reference Train Paths used by the relevant Train Services where a Reference Train Service uses one reference Train Path (one-way train paths);

(iv) the net tonne kilometres (ntk) attributed to the relevant Train Services, being the nt for the Train Services multiplied by the distance (in kilometres) travelled by the Train Services;

(v) the electric gross tonne kilometres (egtk) attributed to the relevant Train Services, being the gtk for the Train Services if the Train Services use electric traction, and zero if the Train Services do not use electric traction; and

(vi) the electric energy charge (specified as EC) for the nominated Reference Train Service.

(b) The information provided in accordance with Paragraph 1(a) will be reported in the following categories:

(i) all coal carrying Train Services that operated within each Individual Coal System Infrastructure in the subject Year;

(ii) all coal carrying Train Services that fall within the definition of an individual Reference Train Service in the subject Year; and

(iii) all coal carrying Train Services that operate within each Individual Coal System Infrastructure classified by origin and destination in the subject Year.

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#### 2. CAPITAL EXPENDITURE

(a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) months of the end of the relevant Year, details of the capital expenditure for that Year that QR Network considers should be included in its Regulatory Asset Base.

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- (b) Information that QR Network will provide on its capital expenditure for the purposes of Paragraph 2(a) will include:
- (i) the name of the project;
  - (ii) the location of the project;
  - (iii) the amount of capital expenditure; and
  - (iv) information to support the QCA's assessment of the prudence of the capital expenditure in accordance with Clause 2.1 of Schedule FB.

### 3. ROLL-FORWARD OF REGULATORY ASSET BASE

- (a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) weeks of receiving the QCA's advice on its approval of capital expenditure for inclusion in the Regulatory Asset Base under Clause 2.1 of Schedule FB for the relevant Year QR Network's proposed roll-forward of the Regulatory Asset Base in accordance with Clause 1.2 of Schedule FB, including details of:

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- (i) the opening value of the Regulatory Asset Base for the subject 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 subject Year.

- (b) The roll forward of QR Network's Regulatory Asset Base will be separately reported for:

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- (i) each Individual Coal System Infrastructure; and
- (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s),

unless otherwise agreed by QR Network and the QCA.

### 4. MAINTENANCE COST INFORMATION

- (a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) months of the end of the subject Year the following report on QR Network's actual maintenance costs:

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- (i) QR Network will report its actual maintenance cost in the subject Year compared to the forecast maintenance cost accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance cost; and
- (ii) the actual maintenance costs will be reported by the following categories and expenditure item classification, unless otherwise agreed by the QCA:

**CATEGORY****EXPENDITURE ITEM****Facilities**

- \_\_\_ Emergency Work
- \_\_\_ Programmed Work
- \_\_\_ Electricity
- \_\_\_ Rates

**Facilities Total**

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**Structures**

- \_\_\_ Steel Bridge Painting (Contract)
- \_\_\_ Bridge Repairs
- \_\_\_ Drainage Construction and Renewal
- \_\_\_ Structures and Civil Inspections
- \_\_\_ Structures Corridor Maintenance

**Structures Total**

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**Telecommunications**

- \_\_\_ Control and ECO Telephone Maintenance
- \_\_\_ Corrective Telecommunications Backbone Network Maintenance
- \_\_\_ Preventative Telecommunications Backbone Network Maintenance
- \_\_\_ Telecommunications Backbone Modifications

**Telecommunications Total**

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**Track**

- Ballast for ML BCM
- Ballast Undercutting - Main Line
- Ballast Undercutting - Turnouts
- Complete Turnout Replacement
- Crossings OLC and OCC
- Fire / Vegetation Control
- Formation Repairs
- GPR Testing
- Maintenance Ballast
- Major Earthworks (non-formation)
- Major Fencing Renewal / Construction
- Major Rail Joint Elimination / Repair
- Major Rail Renewal
- Major Track Reconditioning
- Mechanised Resleepering
- Minor Yard Maintenance
- Per Way Corridor Maintenance
- Rail Grinding - Mainline
- Rail Grinding - Turnouts
- Rail Stress Adjustment
- Resurfacing - Mainline
- Resurfacing - Turnouts
- Sleeper Cluster Management
- Track Inspections
- Track Recording
- Turnout Component Replacement
- Ultrasonic Testing

**Track Total**

**Trackside Systems**  
(Excluding Electric  
Maintenance)

- Cable Route Maintenance
- Corrective FS and TSC Maintenance
- Corrective Signalling Maintenance -  
    Yards
- Level Crossing Protection
- Major Network Corridor Signal

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- \_\_\_ Op System for Civil Infrastructure
- \_\_\_ Preventative FS and TSC Maintenance
- \_\_\_ Preventative Signalling Maintenance - Yards
- \_\_\_ Signalling Control Systems
- \_\_\_ Train Protection Systems Maintenance
- \_\_\_ Tramway Crossing
- \_\_\_ Wayside Monitoring Systems Maintenance
- \_\_\_ Weighbridge Maintenance

**Trackside Systems Total (Excluding Electric Maintenance)**

**Electric Overhead**

- \_\_\_ Corrective Overhead Maintenance
- \_\_\_ Power Systems Control
- \_\_\_ Preventative Overhead Maintenance
- \_\_\_ Network Corridor Renewals - Traction Power

**Electric Overhead Total**

**Stocktake**

- \_\_\_ Stock take

**Stocktake Total**

**Total Maintenance Cost**

**Total Maintenance Cost**

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(b) The actual and forecast maintenance costs will be separately reported for:

- (i) each Individual Coal System Infrastructure; and
- (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of QR Network's forecast maintenance costs for the purposes of assessing the relevant Reference Tariff(s),

unless otherwise agreed by QR Network and the QCA.

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**VOLUME 2 – STANDARD ACCESS AGREEMENTS**

**STANDARD ACCESS AGREEMENT (ACCESS HOLDER) FOR COAL CARRYING TRAIN SERVICES**

**STANDARD ACCESS AGREEMENT (OPERATOR) FOR COAL CARRYING TRAIN SERVICES**

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## PART 1. PREAMBLE

(a) QR Network has developed this Undertaking to provide a framework to manage negotiations with Access Seekers for Access to Rail Infrastructure for the purpose of operating Train Services.

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(b) This Undertaking has been prepared in accordance with the Act. The intent of the Undertaking is to:

(i) ensure that Access is negotiated in a competitively neutral environment;

(ii) ensure that Access negotiations are conducted expeditiously on a commercial basis between QR Network and Access Seekers;

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(iii) provide a mechanism for the exchange of information between QR Network and Access Seekers necessary to facilitate the negotiation process;

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(iv) establish pricing principles to be employed by QR Network in negotiating Access and which provide guidance in the resolution of a pricing dispute;

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(v) outline the manner in which QR Network will manage the utilisation of Capacity;

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(vi) outline the interface considerations to be addressed for Access Seekers and Access Holders to obtain and maintain Access;

(vii) outline the principles to be incorporated in an Access Agreement;

(viii) provide for a binding dispute resolution process to apply during negotiations for Access;

(ix) provide that actions pursuant to the Undertaking are consistent with the objectives for rail under s.2(2)(d) of the TIA; and

(x) seek to encourage the efficient use of the Rail Transport Infrastructure by establishing an efficient process for obtaining Third Party Access thereby facilitating competition.

(c) This Undertaking will be consistently applied to Access Applications where those applications are within the scope of this Undertaking as set out in Part 2.

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

QR Network Pty Ltd  
21st Floor, 127 Creek Street  
Brisbane Qld 4000

Deleted: General Manager  
Rail Access Services  
Network Access

Deleted: QR

Phone: (07) 3235 3144

Fax: (07) 3235 3930

Email: network.access@qr.com.au

## PART 2. SCOPE AND ADMINISTRATION OF UNDERTAKING

### 2.1 SCOPE

- (a) This Undertaking provides for the negotiation of Access required for the operation of Train Services by Access Seekers.
- (b) Activities that an Access Seeker may seek to undertake on the Rail Infrastructure as part of the operation of a Train Service include:
- (i) mainline running of a Train from its origin to its destination, including:
    - the use of passing loops to facilitate mainline running of the Train; and
    - Train queuing and staging required to facilitate the running of a Train Service from its origin to its destination, including before and after loading and unloading of a Train;
  - (ii) loading and unloading of a Train at facilities other than Other Rail Infrastructure;
  - (iii) Train marshalling and shunting at the following times:
    - in preparation for running of the Train Service;
    - before or after loading or unloading of the Train; and
    - before or after maintenance and provisioning of the Train; and
  - (iv) Train stowage in the following circumstances:
    - as required for crew changes, meal breaks and on Track maintenance and provisioning of the Train; and
    - where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure.
- (c) Access will include, in addition to the use of the Rail Infrastructure:
- (i) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
    - (A) signalling;
    - (B) Train Control Services and associated communication;
    - (C) access to walkways immediately adjacent to, and crew changeover points connecting to, track which is the responsibility of QR Network; and
    - (D) the provision of electric transmission infrastructure on electrified sections of the track so as to permit the acquisition of electric energy for traction;
  - (ii) entry upon land:
    - (A) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure (for example, the entry of land beneath Rail Infrastructure for the purpose of exercising Access Rights in respect of the Rail Infrastructure); or

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- (B) for access to the walkways and crew changeover points referred to in Subparagraph 2.1(c)(i)(C) (to the same degree as is available to QR Operational Business Groups),

provided that:

- (C) the land is owned by QR Network or a Related Party of QR Network; or

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- (D) QR Network or a Related Party of QR Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land, and the entry is not inconsistent with the terms of that lease, licence or other arrangement.

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- (d) This Undertaking covers the provision of Access to Rail Infrastructure for the purpose of operating Train Services only. Access Holders shall be responsible for the provision of any other services, including Above Rail Services, required for the operation of their Train Services.

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- (e) This Undertaking is not applicable to the negotiation of Access to Rail Infrastructure for the purpose of operating Train Services that are used for transportation between Queensland and another state and that utilise Standard Gauge Track and Standard Gauge Rollingstock (referred to as “Interstate Train Services”). Access Seekers may negotiate Access for the operation of Interstate Train Services in accordance with the relevant access regime.

- (f) Where the land upon which the Rail Infrastructure is situated is not owned by QR Network or a Related Party of QR Network and any one of those entities does not, through a lease, licence or other arrangement with the owners of the land (including, for example, a sublease from Queensland Transport) or pursuant to the TIA, have the authority to authorise Access Seekers to access that land, it is the responsibility of the Access Seeker to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated. In such circumstances, the Preliminary Information provided by QR Network to the Access Seeker will provide information to assist the Access Seeker in obtaining such approval, as specified in Part A of Schedule D.

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- (g) This Undertaking, despite anything else contained in it, is subject to QR Network complying with its Passenger Priority Obligations, which shall override the provisions of this Undertaking to the extent of any inconsistency.

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- (h) Subject to this Paragraph 2.1(h), to the extent that QR Network or a Related Party of QR Network (“Supplier”) sells or supplies a QR Operational Business Group with electric energy in connection with Access, QR Network cannot refuse to, if QR Network is a Supplier, sell or supply electric energy to another Access Seeker or Access Holder (or, if QR Network is not a Supplier, procure such a sale or supply from a Supplier). However, the sale or supply of electric energy is not part of Access and, except as specifically referred to in this Undertaking, is not subject to the provisions of this Undertaking. Further, despite any other provision of this Undertaking, QR Network will not be obliged to sell or supply electric energy to an Access Holder (or procure such a sale or supply from a Related Party of QR Network), or to agree to sell or supply electric energy to an Access Seeker (or to procure such a sale or supply from a Relate Party of QR Network):

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- (i) if QR Network or a Related Party of QR Network (who is a Supplier) is not  
lawfully entitled to sell or supply electricity to the relevant Access Holder  
or Access Seeker under the *Electricity Act 1994 (Qld)*; or

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- (ii) on terms that would be unreasonable or uncommercial.

If a Dispute arises between an Access Holder or Access Seeker and QR  
Network regarding a refusal by QR Network to sell or supply electric energy (or  
procure such a sale or supply from a Related Party of QR Network) or the  
proposed terms and conditions on which QR Network (or a Related Party of QR  
Network) offers to sell or supply electric energy to the Access Holder or Access  
Seeker, the Dispute may be referred to Dispute resolution in accordance with  
Clause 4.7.

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## 2.2 REVIEW OF RAIL INFRASTRUCTURE

- (a) The Line Diagrams in Schedule A indicate those parts of the rail network that  
are not Rail Infrastructure, as at April 2004, for the purpose of this Undertaking.

- (b) Subject to this Clause 2.2, QR Network will review and amend the Line  
Diagrams immediately after the Commencing Date and, if necessary, thereafter  
during the Term at intervals of no greater than six (6) months to reflect changes  
that have been made to the configuration or management of the rail network.  
QR Network will publish the current version of the Line Diagrams on its website.

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- (c) Where, in the QCA's reasonable opinion, a material change may have been  
made to the configuration or management of the rail network that is not  
reflected in the Line Diagrams, the QCA may request in writing that QR  
Network review and, if necessary amend the Line Diagrams in accordance with  
Paragraph 2.2(b). QR Network will perform such a review and make any  
necessary amendments to the Line Diagrams within thirty (30) days of receiving  
the written request from the QCA.

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- (d) QR Network will not:

- (i) assign or transfer existing or new Rail Transport Infrastructure from QR  
Network to QR or a Related Party of QR; or

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- (ii) remove existing Rail Transport Infrastructure (except where such Rail  
Transport Infrastructure is already identified in the Line Diagrams for  
future removal) or amend the Line Diagrams to identify any existing Rail  
Transport Infrastructure for future removal, except where the change:

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- (A) is minor or administrative in nature;

- (B) reflects an agreement between Queensland Transport and QR  
Network to cease Queensland Transport funding for the provision of  
the relevant Rail Transport Infrastructure through Transport Service  
Payments and to remove the relevant Rail Transport Infrastructure;  
or

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- (C) does not reflect a permanent reduction in Capacity (for example,  
where level crossings are removed or reconfigurations of track are  
undertaken without affecting an Access Holder's Access other than  
in accordance with an Access Agreement or this Undertaking).

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unless the QCA has approved a Draft Amending Undertaking incorporating the  
corresponding amendment to the Line Diagrams.

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for new Rail Transport  
Infrastructure to a QR business  
group other than Network  
Access.¶

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(e) Where an Access Seeker or Access Holder is reasonably of the opinion that amended Line Diagrams prepared and published in accordance with Paragraph 2.2(b) reflect a change to the configuration or management of the rail network that contravenes Paragraph 2.2(d), the Access Seeker or Access Holder may, in writing, request QR Network to review the amendment and amend the Line Diagrams accordingly.

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(f) If an Access Seeker is reasonably of the opinion that access to Rail Transport Infrastructure, that is not Rail Infrastructure for the purpose of this Undertaking, is required for the purpose of obtaining access to the Declared Service, then the Access Seeker may make a request in writing that QR Network obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly.

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(g) In considering a request made in accordance with Paragraph 2.2(f), QR Network will obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly if, in QR Network's reasonable opinion, this is appropriate having regard to the following principles:

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(i) subject to Subparagraphs 2.2(g)(iv) and 2.2(g)(v), the responsibility for Rail Transport Infrastructure should be allocated in a way that enables QR Network to operate as a stand alone provider of the Declared Service, except in relation to stations and platforms which are managed in the manner provided in Subparagraph 3.1(c)(iii);

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(ii) the existing market shares of QR Operational Business Groups should not be a factor in the allocation of responsibility for Rail Transport Infrastructure;

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(iii) subject to Subparagraphs 2.2(g)(iv) and 2.2(g)(v), responsibility for Rail Transport Infrastructure should be allocated in a way that reasonably allows for Access Seekers to undertake activities of the type identified in Paragraph 2.1(b);

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(iv) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between QR Network and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by a QR business group or a Related Party of QR other than QR Network;

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(v) any facility that is not owned or leased by QR Network and is accessible from track managed by QR Network (referred to as a "Private Facility") should be accessible from Rail Infrastructure, except where the agreement between QR Network and the Private Facility manager explicitly accepts that the Private Facility is accessible from track managed by a QR business group or a Related Party of QR other than QR Network; and

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(vi) QR Network is not obliged to agree to obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly if the use of that Rail Transport Infrastructure is outside the scope of the Declared Service.

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(h) QR Network must:

(i) where QR Network receives a request from an Access Seeker or Access Holder under Paragraph 2.2(e);

(A) notify the QCA in writing of the request;

(B) review the relevant amendment to the Line Diagrams; and

(C) within thirty (30) days of QR Network receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether QR Network accepts that the change to the management or configuration of the network was in contravention of Paragraph 2.2(d) and, if so, the action that QR Network proposes to take to remedy this contravention;

(ii) within thirty (30) days of QR Network receiving the Access Seeker's request under Paragraph 2.2(f), give the Access Seeker written notice of whether QR Network will obtain responsibility for the relevant Rail Transport Infrastructure and amend the Line Diagrams; and

(iii) undertake any required amendments to the Line Diagrams within fourteen (14) days of:

(A) where the matter has not been referred to Dispute resolution under Paragraph 2.2(i), the giving of the notice under Subparagraph 2.2(h)(i) or Subparagraph 2.2(h)(ii); or

(B) where the matter has been referred to Dispute resolution under Paragraph 2.2(i), the resolution of the Dispute in favour of the Access Seeker or Access Holder.

(i) If:

(i) an Access Seeker or Access Holder disagrees with the results of the consideration of the Access Seeker's or Access Holder's request under Paragraph 2.2(e) or, where relevant, the action that is proposed to remedy a contravention of Paragraph 2.2(d); or

(ii) an Access Seeker disagrees with the results of the consideration of the Access Seeker's request under Paragraph 2.2(f),

it may refer the issue to the Dispute resolution process set out in Clause 4.7.

### 2.3 DURATION OF UNDERTAKING

(a) This Undertaking comes into operation on the date that it is approved by the QCA.

(b) This Undertaking will be applied from 1 July 2008, ("Commencing Date") even if this Undertaking is approved by the QCA prior to or after the Commencing Date.

(c) Subject to Clause 2.5, all Access Applications lodged with QR prior to the Commencing Date, including any negotiations for Access based on an Indicative Access Proposal provided by QR prior to the Commencing Date, will be dealt with in accordance with the provisions of this Undertaking.

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- (d) This Undertaking will apply until 30 June 2009 (“Terminating Date”) unless withdrawn as provided for in the Act.

## 2.4 CONTRACTUAL ARRANGEMENTS

This Undertaking applies only to the negotiation of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require QR Network or any other party to an existing Access Agreement to vary a term or provision of that agreement.

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## 2.5 TRANSITIONAL PROVISIONS

### 2.5.1 Access Applications submitted prior to 30 June 2006

- (a) For the purposes of this Clause 2.5, the terms “Access Seeker”, “Access Application”, “Indicative Access Proposal”, “Reference Tariff” and “Negotiation Period” have the meanings given under Clause 10.1 of the 2001 Undertaking unless a contrary intention appears.

- (b) Where:

- (i) an Access Seeker has submitted an Access Application to QR and received an Indicative Access Proposal from QR prior to 30 June 2006;
- (ii) the Negotiation Period in respect of that Access Application has commenced but has not ceased in accordance with Paragraph 4.5.1(c) of the 2001 Undertaking; and
- (iii) the Access Seeker gives QR a written notice, within thirty (30) days of 30 June 2006, that the Access Seeker elects to continue negotiating Access under the 2001 Undertaking,

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the following will apply:

- (iv) the Access Seeker and QR Network will continue negotiations, in respect of the Access Rights sought, in accordance with the Non-Pricing Provisions, Parts 4 and 6 and Subclauses 7.4.1 and 7.5.1 of this Undertaking and any Reference Tariffs endorsed under that Part 6 and the Standard Access Agreements under this Undertaking;
- (v) the Negotiation Period in respect of the relevant Access Application for the purposes of this Undertaking will be taken to commence when the Negotiation Period commenced under the 2001 Undertaking and will cease in accordance with Paragraph 4.5.1(e) of this Undertaking;
- (vi) any reference in the Non-Pricing Provisions to:
- (A) Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of the 2001 Undertaking or any provision thereof shall be a reference to Part 4, Part 6, Subclauses 7.4.1, Subclause 7.5.1 or any equivalent provision respectively of this Undertaking; and
- (B) a Reference Tariff, Standard Access Agreement or any term defined by reference to a provision of Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of the 2001 Undertaking shall be a reference to a

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Reference Tariff, a Standard Access Agreement or the equivalent term respectively as defined under this Undertaking; and

- (vii) for the avoidance of doubt, any reference in Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of this Undertaking or a Standard Access Agreement under this Undertaking to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule will be a reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule of this Undertaking.

(c) Where:

- (i) an Access Seeker has submitted an Access Application to QR prior to 30 June 2006; and

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- (ii) any one or more of Subparagraphs 2.5(b)(i), (ii) or (iii) have not been satisfied,

the following will apply:

- (iii) the Access Seeker and QR Network will continue negotiations, in respect of the Access Rights sought, in accordance with this Undertaking; and

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- (iv) where the Negotiation Period has commenced but not ceased in accordance with Paragraph 4.5.1(e) of the 2001 Undertaking, the Negotiation Period in respect of the relevant Access Application for the purposes of this Undertaking will be taken to commence when the Negotiation Period commenced under the 2001 Undertaking and will cease in accordance with Paragraph 4.5.1(e) of this Undertaking.

- (d) In addition to Paragraphs 2.5(b) and (c) where an Access Seeker has submitted an Access Application to QR prior to 30 June 2006 and a provision of this Undertaking applicable to the Access Application refers to any act, document or thing provided, given or otherwise done (for example, the providing of an Indicative Access Proposal) and an equivalent act, document or thing has been provided, given or otherwise done under the 2001 Undertaking, the act, document or thing will be deemed to have been provided, given or otherwise done under this Undertaking (even though the date when this occurred is prior to 30 June 2006) but only to the extent that this is reasonably necessary to give meaning and effect to the applicable provisions of this Undertaking and for the continuance of negotiations pursuant to Subparagraphs 2.5(b)(iv) or (c)(iii) as applicable.

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## 2.5.2 Restructure of QR

Notwithstanding any provision to the contrary in this Undertaking:

(a) if:

- (i) the 2005 Undertaking referred to a group, division or position of QR;

- (ii) this Undertaking contains the same reference to that group, division or position; and

- (iii) that group, division or position no longer exists and is not defined in this Undertaking.

then that reference is to the successor or replacement group, division or position with substantially the same functions and responsibilities as the group, division or position at the time immediately prior to the Commencing Date;

- (b) all acts, agreements, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever (“Matter”) done, arising, given, received, undertaken, commenced or established (“Done”) under the 2005 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though this Undertaking commenced on 30 June 2006, the Matter was Done under this Undertaking and anything Done by or in relation to QR was Done by or in relation to QR Network;
- (c) if, had the 2005 Undertaking not been withdrawn, QR would have had rights or obligations (“2005 Requirements”) thereunder in relation to or in connection with a period prior to the Commencing Date, QR Network’s equivalent rights and obligations under this Undertaking are deemed to include those 2005 Requirements and QR Network may exercise and must comply with (as applicable) those 2005 Requirements as if it were QR and the 2005 Undertaking still applied (including, for example, for revenue cap adjustments, the payment, recovery or reimbursement of charges and quarterly and annual reporting obligations);
- (d) if any ambiguity or uncertainty arises as to the meaning of this Undertaking, this Undertaking is intended to have and should be interpreted such that it has the same substantive effect as if:
- (i) the 2005 Undertaking still applied;
  - (ii) QR Network was “Network Access” under the 2005 Undertaking; and
  - (iii) QR business groups and the Related Parties of QR were QR business groups under the 2005 Undertaking;
- (e) for the purposes of this Undertaking and subject to Subparagraph 2.5.2(f), Internal Access Agreements are deemed:
- (i) to continue after the Commencing Date; and
  - (ii) to be arrangements between QR Network and QR;
- (f) QR Network will convert each Internal Access Agreement to an Access Agreement between QR Network and QR or a Related Party of QR by executing an Access Agreement with QR or a Related Party of QR provided that the terms of the Access Agreement only vary from the Internal Access Agreement:
- (i) to the extent necessary for the conversion from an Internal Access Agreement to an Access Agreement; and
  - (ii) to reflect the restructure of QR;
- (g) for the purposes of this Undertaking:
- (i) the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) is deemed to be the date when the Internal Access Agreement it replaces was put in place; and
  - (ii) an Access Agreement executed in accordance with Subparagraph 2.5.2(f) is deemed to not be for new or renewed QR Train Services; and
- (h) if this Undertaking (either in its initially approved form or as amended) provides rights to, or imposes obligations on, QR Network relating to a period prior to the Commencing Date, actions taken by QR relevant to those rights or obligations prior to the Commencing Date are deemed to be the actions of QR Network.

For example, if this Undertaking provides for a new Reference Tariff to be retrospectively applied to Train Services operating prior to the Commencing Date and allows adjustment for QR Network's under or over recovery, the Access Charges paid to QR prior to the Commencing Date will be deemed to have been paid to QR Network in calculating the necessary adjustment.

## PART 3. RINGFENCING ARRANGEMENTS

### 3.1 ORGANISATIONAL STRUCTURE

- (a) QR has established its organisational structure to facilitate the separation of the management of Rail Infrastructure from the operation of Train Services. QR Network has been established as a subsidiary of QR, separate from QR Operational Business Groups. In addition, within QR there are service and corporate groups whose purpose is to provide support activities for both QR Network and QR Operational Business Groups, and to provide core corporate functions.
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- (b) The primary function of QR Network is to manage the provision of Below Rail Services, with the exception of services associated with stations and platforms. In performing this function, the responsibilities of QR Network include the:
- Deleted: The Group General Manager of Network Access reports directly to the QR Chief Executive.  
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- (i) negotiation of Access Agreements with Access Seekers and management of Access Agreements with Access Holders. Where Access is required for Below Rail Services provided by a facility that is not managed by QR Network, QR Network will negotiate for Access to that facility by the Access Seeker as an agent for the QR business group or the Related Party of QR Network that manages that facility;
- (ii) development and management of agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Transport Service Payments;
- (iii) provision and/or procurement of appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR Network's obligations to Access Holders and Queensland Transport;
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- (iv) assessment, allocation and management of Capacity and Available Capacity;
- (v) provision of scheduling and Train Control Services in all areas of the Rail Infrastructure, in accordance with the Network Management Principles (noting that certain Train Control Services as specified in Subparagraph 3.1(c)(iv) are performed by a QR Operational Business Group on behalf of QR Network);
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- (vi) provision of electric transmission infrastructure on electrified sections of the Track to enable Access Holders to run electric Train Services, and (subject to Paragraph 2.1(h)) the procurement of traction power on electrified sections of the Track, including the management of power supply from other parties, where an Access Seeker or Access Holder requests QR Network to provide that electric energy; and
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- (vii) provision of Yard Control and Field Incident Management, but with the exception of Yard Control services at yards other than Major Yards, where these services are performed by a QR Operational Business Group on behalf of QR Network.
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- (c) The responsibilities of the QR Operational Business Groups include the:
- Deleted: The Group General Managers of QR Operational Business Groups report directly to the QR Chief Executive.

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- (i) operation of Train Services;
- (ii) provision and/or procurement of appropriate levels of maintenance and investment for Above Rail Services;
- (iii) management of stations and platforms, including the provision or procurement of appropriate levels of maintenance and investment for stations and platforms; and
- (iv) performance of the following Below Rail Services on behalf of QR Network:

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- Field Incident Management;
- Yard Control services at yards other than Major Yards; and
- scheduling and Train Control Services in the Metropolitan Region of QR Network's network, in accordance with the Network Management Principles.

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- (d) If QR wishes to vary its organisational structure during the term of this Undertaking such that QR Operational Business Groups become responsible for the provision of functions, in addition to those specified in Paragraph 3.1(c), integral to the provision of Below Rail Services, QR Network will submit a Draft Amending Undertaking to the QCA. Upon approval of the Draft Amending Undertaking by the QCA, QR may implement the restructure.

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- (e) By way of example, the following structural changes, if proposed, would require QR Network to submit a Draft Amending Undertaking to the QCA in accordance with Paragraph 3.1(d):

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- (i) QR wishes to wind up QR Network;
- (ii) QR Network wishes to assign to a QR Operational Business Group any of QR Network's existing functions, including the performance of scheduling and Train Control Services, other than to the extent already contemplated in Subparagraph 3.1(c)(iv);

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- (iii) if QR Network has arrangements with:

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- (A) QR Services Australia for any construction, maintenance or associated services for the purpose of providing Below Rail Services; or

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- (B) QR for any services (including safety and environmental services) for the purpose of processing Access Applications or providing Below Rail Services,

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and QR Network seeks to terminate those arrangements and execute an agreement with another QR Operational Business Group for the provision of such services.

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- (f) During the Term, QR Network and the QCA may agree to jointly review the appropriateness of Yard Control services at major yards other than Callemondah continuing to be performed by a QR Operational Business Group. QR Network will, after first obtaining the approval of the QCA, take whatever reasonable steps are required to implement the findings of any such review.

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## 3.2 ACCOUNTING SEPARATION

### 3.2.1 Preparation of Financial Statements

(a) QR Network will develop, on an annual basis;

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(i) if QR prepares consolidated financial statements for itself and Related Parties of QR (including QR Network), financial statements for Below Rail Services provided by QR Network, as identified in Paragraph 3.1(b); or

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(ii) if QR does not prepare such consolidated financial statements:

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(A) audited general purpose financial statements in accordance with relevant legislation and applicable Australian accounting standards;  
and

(B) if necessary, an audited supplementary financial statement,

(referred to as the "Financial Statements") which separately identify the Central Queensland Coal Region from the rest of the network, and are otherwise developed in accordance with the methodology and format set out in the Costing Manual.

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(b) The Financial Statements will be certified by the QR Network Chief Executive as being in accordance with the Costing Manual and, for Financial Statements prepared under Subparagraph 3.2.1(a)(i), will be audited in accordance with Subclause 3.2.2.

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### 3.2.2 Audit of Financial Statements

(a) A qualified auditor will conduct the audit of the Financial Statements within six (6) months of the end of the Year to which the Financial Statements relate, or such longer time as agreed by the QCA. The auditor should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.

(b) QR Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the auditor at different times throughout the relevant Year.

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(c) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Paragraph 3.2.2(d).

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(d) If, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR Network that its approval of that auditor in relation to the next audit of the Financial Statements is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit.

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(e) The auditor will have a 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 QR Network and

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its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence.

- (f) The auditor will examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, and will prepare an audit certificate that specifies:
  - (i) the scope of the audit;
  - (ii) the level of access that the auditor was provided to QR Network's financial information, including the relevant information systems; Deleted: QR
  - (iii) whether or not the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
  - (iv) if the auditor identifies that the Financial Statements have not been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.
- (g) Prior to commencing the audit, the auditor must agree an audit plan with QR Network, document that audit plan and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise. Deleted: QR Deleted: QR Deleted: QR
- (h) QR Network will provide the auditor with access to QR Network's financial records and information systems necessary for the purpose of conducting the audit, as well as providing any relevant information the auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network. Deleted: QR Deleted: QR Deleted: QR
- (i) The auditor will be required to enter into a confidentiality deed in relation to any information provided by QR Network, 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 certificate. Deleted: QR
- (j) Upon completion of the audit, the auditor must provide a copy of the audit certificate, and any accompanying letter to management explaining the audit findings in greater detail, to both QR Network and the QCA. Deleted: QR

### 3.3 MANAGEMENT OF CONFIDENTIAL INFORMATION

- (a) For the purpose of Clause 3.3:
  - (i) "Confidential Information", in addition to the meaning as defined in Clause 10.1, includes information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure Deleted: Network Access

of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and

- (ii) that other party shall be deemed to be the owner of such Confidential Information.

- (b) The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information:

- (i) disclosed by Third Party Access Seekers or Third Party Access Holders to QR Network, or disclosed by QR Network to Third Party Access Seekers or Third Party Access Holders, as part of an Access Application or Indicative Access Proposal (including any related discussions or disclosures of information), negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or

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- (ii) collected by an Access Holder or QR Network in the performance of an Access Agreement,

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except that they do not apply to the handling of Confidential Information which relates solely in all material respects to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services. Where a document or discussion is comprised of information only some of which would be information to which Clause 3.3 applies, Clause 3.3 will not apply to the remainder of the information in the document or discussion to the extent that QR Network can clearly separate this information from the information to which Clause 3.3 applies.

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- (c) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR Network to enter into a confidentiality deed with the Third Party Access Seeker. Similarly, at any time during the negotiation process, QR Network may require a Third Party Access Seeker to enter into a confidentiality deed with QR Network. The confidentiality deed will be in the form specified in Schedule B, unless otherwise agreed between QR Network and the Third Party Access Seeker.

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- (d) QR Network, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed by or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:

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- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
- (ii) the disclosure and/or use is:
- required or compelled by any law;
  - required or compelled by any order of a court;
  - required or compelled by notice validly issued by any Authority;



- necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;
- required under any stock exchange listing requirement or rule;
- to the Safety Regulator;
- to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
- to the recipient's banker 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 owner of the Confidential Information;
- requested by QR's shareholding ministers;
- for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
- by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or
- subject to Paragraph 3.3.2(a), to a Related Party of QR Network ("QR Party") provided that the disclosure is in accordance with Paragraphs 3.3.2(b) to (i) and subject to a legally enforceable agreement between QR Network and the QR Party with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network, (provided that QR Network must notify the QCA of any breach of such provisions of which QR Network becomes aware, and the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure).

### 3.3.1 External Flows of Confidential Information

- (a) QR Network will not, where reasonably practicable, appoint an external consultant or independent advisor to provide advice in relation to Confidential Information, where that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter.
- (b) In the context of Subparagraph 3.3(d)(i), it would be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) specifying the individual/s employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;

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- (ii) specifying that those individual/s must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and Deleted: QR  
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- (iii) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network. Deleted: QR  
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- (c) Also in the context of Subparagraph 3.3(d)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group; Deleted: that the duty of confidentiality under the contract is owed not just to QR but to Network Access within QR, and
- (ii) specifying the individual/s employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract and, where QR Network has not been able to reasonably avoid appointing an external consultant or independent advisor to review and provide advice in relation to such Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter in accordance with Paragraph 3.3.1(a), after receiving the recipient's assurance that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter; Deleted: QR
- (iii) specifying that those individual/s must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network; and Deleted: :
- (iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder. Deleted: <#>any person outside of QR; or¶¶ <#>any QR staff other than those within Network Access; and¶¶  
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- (d) For the purposes of this Undertaking, a person who has been a consultant or contractor to either QR Network or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party. Deleted: QR

### 3.3.2 Internal Flows of Confidential Information

- (a) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to: Deleted: QR
- (i) individuals within QR Network (including the QR Network Chief Executive, QR Network Board and their respective Support Staff); and Deleted: Network Access

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- (ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and their respective Support Staff. Deleted: QR
- (b) Subject to Paragraph 3.3.2(c), QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to those groups within QR specified in this Paragraph 3.3.2(b), provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement: Deleted: QR
- (i) Rollingstock Engineering Division within QR Services Australia in relation to Rollingstock or Rollingstock interface issues; Deleted: Shared Services Group
- (ii) Property Division within QR in relation to real property issues; and Deleted: Shared Services Group
- (iii) QR Services Australia employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues. Deleted: Infrastructure Services Group
- (c) A Third Party Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in paragraph 3.3.2(b). If a Third Party Access Seeker gives such a notice to QR Network, then: Deleted: QR  
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- (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted; Deleted: QR
- (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternate mechanism. If the parties fail to agree on an alternate mechanism, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7; Deleted: QR  
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- (iii) all reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Subparagraph 3.3.2(c)(ii) may be recovered by QR Network from the Third Party Access Seeker as a debt due and owing. All relevant timeframes applicable to QR Network under this Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; Deleted: QR  
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and
- (iv) if: Deleted: QR
- the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can obtain the information it requires to respond to the Access Application; or
  - the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process;
- QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b). Deleted: QR
- (d) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Operational Business Group where: Deleted: QR
- (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure;

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- (ii) such disclosure is required for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
  - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
  - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
- (e) If, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR Network wishes to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR employee or group (or an employee or group of a Related Party of QR other than QR Network) not specified in Paragraphs 3.3.2(a), (b) or (d), or to a group specified in Paragraph 3.3.2(b) on an issue not specified in that Paragraph, QR Network must:
- (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
  - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (f) QR Network will not, where reasonably practicable, disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR employee (or an employee of a Related Party of QR) where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Paragraph 3.3.2(b), QR Network must obtain the consent of the owner of the Confidential Information prior to making the disclosure.
- (g) If, during the process of responding to an Access Application or negotiating an Access Agreement, QR Network seeks the consent of an Access Seeker for the disclosure of Confidential Information pursuant to Paragraph 3.3.2 (e) or (f) and:
- (i) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) ; or
  - (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant

- timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.
- This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.
- (h) If, during the process of administering an Access Agreement, QR Network seeks the consent of an Access Holder for the disclosure of Confidential Information pursuant to Paragraph 3.3.2(e) or (f), such consent shall not be unreasonably withheld. If the owner of the Confidential Information fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, consent shall be deemed to have been given. This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.
- (i) The Ringfencing Compliance Officer, and QR employees in Internal Audit and Information Services Division will from time to time, in the course of performing their duties, have access to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information. QR Network is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.
- (j) QR Network will establish and maintain a ring fencing register for the purpose of recording the names of those persons, within QR or a Related Party of QR other than QR Network, (excluding those persons gaining access to Confidential Information in accordance with Paragraph 3.3.2(i)) to whom QR Network discloses Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.
- (k) [Not used]
- (l) QR Network will ensure that all QR employees (and all employees of a Related Party of QR) receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ring fencing training and awareness session.
- (m) Where QR Network employees leave QR Network to work elsewhere in QR (or a Related Party of QR), they will undergo a debriefing process to remind them of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3 and will be asked to sign an acknowledgement of having undergone such a debriefing process.
- (n) Where QR Network employees in management levels 2, 3 and 4, leave QR Network to work:
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- (i) in a QR Operational Business Group, they will not, for a period of three (3) months, work on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in QR Network; or
- (ii) in QR (or a Related Party of QR other than a QR Operational Business Group), they will not, for a period of three (3) months, work for a QR Operational Business Group on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in QR Network.
- (o) A QR Network employee must not concurrently work in a working group on a project with staff from a QR Operational Business Group:
- (i) if the activities of the working group affect or could affect the operations of Third Party Access Holders or Third Party Access Seekers on the Queensland network; and
- (ii) unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker referred to under Subparagraph 3.3.2(o)(i) on the Queensland network which, if disclosed to the QR Operational Business Group, could provide the QR Operational Business Group with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (p) QR Network must not temporarily transfer a QR Network employee to a role in a QR Operational Business Group:
- (i) if the activities of the QR Operational Business Group affect or could affect the operations of Third Party Access Holders or Third Party Access Seekers on the Queensland network; and
- (ii) unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker referred to under Subparagraph 3.3.2(p)(i) on the Queensland network which, if disclosed to the QR Operational Business Group, could provide the QR Operational Business Group with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (q) In making all decisions in relation to the temporary transfer of QR Network employees to roles in QR (or a Related Party of QR other than QR Network), QR Network must have regard to the potential implications of any such transfer on QR Network's obligations under this Undertaking to manage Confidential Information to avoid as far as practicable, the risk that Confidential Information will be disclosed that could affect Third Parties Access Holders' or Third Party Access Seekers' operations on the Queensland network.

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### 3.4 DECISION MAKING

- (a) Subject to Paragraph 3.4(b), QR Network will comply with the following decision making principles when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:

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- (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
- (ii) the decision is made in a manner that is consistent between Access Seekers and/or Access Holders in the same circumstances; and
- (iii) either:
  - (A) the decision is required in order to comply with:
    - a law;
    - a lawful direction of an Authority;
    - this Undertaking;
    - the Access Agreements of adversely affected Access Holders;
    - an access code made under the Act;
  - (B) the decision is made in accordance with QR Network's documented policies and procedures; or
  - (C) the reasons for the decision are documented by QR Network.

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- (b) Decisions made in relation to a reasonable act done in, and for, or to prevent an emergency (including an emergency that involves, or may involve, injury to persons or damage to property) are exempt from the decision making process prescribed by Paragraph 3.4(a).

### 3.5 COMPLIANCE AND ENFORCEMENT

The following compliance and enforcement obligations apply to QR Network's conduct in meeting its obligations under Clause 3.3 and Clause 3.4.

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#### 3.5.1 Complaint Handling

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR Network has breached one or more of its obligations under Clause 3.3 or Clause 3.4, or that a Related Party of QR Network has breached a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, they may lodge a written complaint with QR Network.
- (b) QR Network will advise the QCA, as soon as practicable, of any complaints it receives from Third Party Access Seekers and Third Party Access Holders pursuant to Paragraph 3.5.1(a).
- (c) QR Network will conduct an investigation of those complaints referred to in Paragraph 3.5.1(a), and advise the complainant and the QCA in writing of the outcome of the investigation and QR Network's proposed response, if any. QR Network will use reasonable endeavours to complete its investigation and advise the complainant and the QCA of the results of its investigation within twenty-eight (28) days of receiving the complaint in question.
- (d) Where a complaint relates to an alleged breach by QR Network of obligations under Clause 3.4 and the complainant is not satisfied with the outcome of QR

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Network's investigation, the complainant can apply to the QCA seeking an audit of the relevant QR Network decision(s) the subject of the complaint.

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### 3.5.2 Audits

(a) Where:

- (i) the QCA has a reasonable basis for believing that a decision(s) of QR Network ("Identified Decision(s)") has resulted, or may result in a material adverse effect on an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access; and
- (ii) the Identified Decision(s) was made since the completion of the last annual audit under this Subclause 3.5.2 or the audit is being undertaken as part of resolving a Dispute,

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the QCA may require QR Network to undertake an audit of the Identified Decision(s) to determine whether QR Network has complied with its obligations in Clause 3.4. Paragraphs 3.5.2(c) to (i) will apply in respect to the audit as if a reference to an annual audit is a reference to an audit required under this Paragraph 3.5.2(a).

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(b) QR Network's compliance with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1 will be audited annually.

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(c) In considering QR Network's compliance with the above obligations, the auditor may take into account QR Network's compliance with any relevant internal procedures.

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(d) The QCA may require the annual audit, referred to in Paragraph 3.5.2(b), to be conducted by an external party, and if it does, the following process will apply:

- (i) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 3.5.2(d)(ii);
- (ii) if, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR Network that its approval of that auditor in relation to the next external audit of QR Network's compliance with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1 is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;
- (iii) the auditor will have a 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 QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence; and
- (iv) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA,

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during the course of the audit, to provide a forum for the resolution of any audit issues that arise.

- (e) QR Network will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.

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- (f) The auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below.

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- (g) The auditor will compile an audit report identifying:

- (i) whether QR Network has complied in all material respects with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1;
- (ii) if the auditor identifies that QR Network has not complied in all material respects with the obligations specified above, details on the relevant non-compliance; and
- (iii) the process adopted for the conduct of the audit.

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- (h) The auditor will provide a copy of the annual audit report to QR Network and the QCA upon completion of the audit.

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- (i) The QCA may publish the annual audit report referred to in Paragraph 3.5.2(g).

## PART 4. NEGOTIATION FRAMEWORK

### 4.1 ACCESS APPLICATION

- (a) Requests for Access are to be submitted to QR Network in the form of an Access Application. Deleted: QR
- (b) Subject to Paragraph 4.2(d), Access Seekers must provide as part of their Access Application all information reasonably necessary for QR Network to evaluate their Access Application and prepare an Indicative Access Proposal. Schedule C provides the information required to be included in Access Applications. Prior to submitting the Access Application, the Access Seeker may seek initial meetings with QR Network to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular the information requirements set out in Schedule C. Deleted: QR
- (c) Upon request by the Access Seeker at any time (including prior to the lodging of an Access Application), QR Network will provide to the Access Seeker Preliminary Information relative to the corridor of interest. Deleted: QR
- (d) QR Network will use reasonable efforts to make the Preliminary Information available to the Access Seeker within fourteen (14) days of QR Network receiving the Access Seeker's request if the information contained in the Preliminary Information has been previously compiled, otherwise within thirty (30) days of QR Network receiving the request. QR Network will advise the Access Seeker if the Preliminary Information is expected to take longer than fourteen (14) days to provide and, if so, will advise the Access Seeker of its estimate of the time required to deliver the Preliminary Information and the reasons for the additional time required. Deleted: QR  
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- (e) QR Network will use reasonable efforts to ensure that any Preliminary Information provided under Paragraph 4.1(c) will reflect the most current information available to QR Network. QR Network will identify the currency of the Preliminary Information provided. Deleted: QR  
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- (f) For the provision of Preliminary Information under this Clause 4.1, QR Network will be entitled to levy the charge specified in Schedule D for the relevant information. Deleted: QR

### 4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION

- (a) Upon receiving an Access Application from an Access Seeker, QR Network must, subject to Paragraph 4.2(b), acknowledge the receipt of the Access Application by giving a notice in writing to the Access Seeker within five (5) Business Days of its receipt. Deleted: QR
- (b) Prior to acknowledging an Access Application, QR Network may seek: Deleted: QR
- (i) additional information where QR Network can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal (either because the Access Application did not include the information contained in Schedule C, or because there are special Deleted: QR

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circumstances of the Access Application which result in the additional information being reasonably necessary for QR Network to prepare an Indicative Access Proposal); or

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- (ii) clarification of the information that has been provided in the Access Application.

In such circumstances, QR Network will advise the Access Seeker of the additional information or the clarification required within five (5) Business Days of receipt of the Access Application. Upon receiving the additional information or clarification from the Access Seeker, the additional information or clarification forms part of the Access Application and QR Network must give the Access Seeker a written notice acknowledging the receipt of the Access Application within five (5) Business Days.

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- (c) QR Network will use reasonable efforts to provide an Indicative Access Proposal to an Access Seeker within thirty (30) days of the date on which QR Network gives an Acknowledgement Notice to the Access Seeker. However, in assessing an Access Application, QR Network may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within that thirty (30) day period. In these circumstances:

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- (i) the Acknowledgment Notice given must state that the Indicative Access Proposal will not be provided within the thirty (30) day period and the reasons for this; and

- (ii) within five (5) Business Days of the date on which QR Network gives an Acknowledgement Notice to the Access Seeker, QR Network must advise the Access Seeker of its estimate of the time required to deliver the Indicative Access Proposal.

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Where the Access Seeker is of the view that the time estimated for preparation of the Indicative Access Proposal is excessive, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR Network will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by QR Network or as otherwise determined by the QCA pursuant to this Paragraph 4.2(c).

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- (d) QR Network recognises that there may be circumstances where an Access Seeker is able to provide a reasonable description of its proposed Train Service taking into account the information requirements set out in Schedule C or requested by QR Network in accordance with Paragraph 4.2(b), but is not able to provide all of the detailed information requirements set out in Schedule C or requested by QR Network in accordance with Paragraph 4.2(b). In such circumstances, QR Network will acknowledge the Access Application and prepare an Indicative Access Proposal, conditional upon assumptions made by QR Network relating to the detailed information not provided by the Access Seeker.

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- (e) For the purpose of clarity, in the circumstances covered by Paragraphs 4.2(b) and 4.2(d) QR Network will be deemed to have received an Access Application on the date it received the first request for Access notwithstanding such request does not include all of the information specified in Paragraph 4.1(b) or the additional information or clarification requested by QR Network in accordance with Paragraph 4.2(b), provided that QR Network reasonably considers the first request provides a reasonable description of the Access Seeker's proposed

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Train Services sufficient for QR Network to prepare an Indicative Access Proposal conditional upon certain assumptions made by QR Network relating to the detailed information not provided by the Access Seeker. If QR Network reasonably considers that the first request does not provide a reasonable description of the Access Seeker's proposed Train Services sufficient for the above purpose, QR Network will not be deemed to have received an Access Application unless and until the Access Seeker provides QR Network with all information specified in Schedule C and requested by QR Network in accordance with Paragraph 4.2(b).

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### 4.3 INDICATIVE ACCESS PROPOSAL

(a) The Indicative Access Proposal will set out:

- (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
- (ii) a summary of the applicable operating characteristics (e.g. frequency, transit time, commodity carried);
- (iii) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights and, if not, either an outline of the works, and an indicative estimate of the cost of such works, required to provide the additional Capacity necessary to accommodate the requested Access Rights, or an outline of the requirements for an investigation into the provision of sufficient Capacity for the requested Access Rights;
- (iv) advice in respect of the existence of other Access Seekers who have submitted an Access Application in respect of Access which, if it were to be provided, would limit the ability of QR Network to provide Access in accordance with the Indicative Access Proposal;
- (v) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6, including advice as to whether QR Network has applied Subparagraph 6.1.1(b)(i), Subparagraph 6.1.1(c)(i) or Subparagraph 6.1.1(c)(ii) in determining the estimate of the Access Charge and if so:
  - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
  - (B) the impact that the factor has on the Access Charge; and
  - (C) how that impact on the Access Charge was determined;
- (vi) details of the additional information required for QR Network to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in Paragraph 4.5.2(a); and
- (vii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date that QR Network dispatches the Indicative Access Proposal to the Access Seeker, or such later date as QR Network specifies provided that this later date is acceptable to the Access Seeker.

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(b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR Network

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to provide Access in accordance with the specific terms and conditions, including Access Charge, contained within it.

- (c) If, after thirty (30) days following QR Network's giving of an Acknowledgment Notice to an Access Seeker, or if applicable after expiration of the time estimated by QR Network or determined by the QCA in accordance with Paragraph 4.2(c), the Access Seeker believes that QR Network is not making reasonable progress in the preparation of the Indicative Access Proposal, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4.

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- (d) If the Access Seeker believes that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify QR Network of its concerns in writing within thirty (30) days of receipt of the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker agree at their discretion.

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- (e) QR Network will use reasonable efforts to respond to these concerns including, where appropriate, making revisions to the Indicative Access Proposal, within fourteen (14) days of the notification of the concerns in accordance with Paragraph 4.3(d). QR Network may consider that due to the complexity of the concerns or due to other extenuating circumstances, it is not reasonable to provide a response within fourteen (14) days of notification of those concerns. In these circumstances QR Network will advise the Access Seeker within five (5) Business Days of the Access Seeker's notification to QR Network, of QR Network's estimate of the time required to deliver the response. Where the Access Seeker is of the view that the time estimated for preparation of the response pursuant to this Paragraph is excessive, they may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR Network will use reasonable efforts to provide the response within the estimated time period provided by QR Network or as otherwise determined by the QCA pursuant to this Paragraph.

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- (f) If the Access Seeker is satisfied with the response received from QR Network in accordance with Paragraph 4.3(e), including any revision to the Indicative Access Proposal, it must notify QR Network of its intention to proceed with negotiations before the expiry of the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker agree at their discretion. In the event that the Access Seeker is not satisfied with the response from QR Network, including any revision to the Indicative Access Proposal, the Access Seeker may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7. The Access Seeker must commence this Dispute resolution process within 30 (thirty) days of receiving QR Network's response or such other timeframe as QR Network and the Access Seeker agree at their discretion.

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- (g) Where a Dispute is referred for resolution in accordance with Paragraph 4.3(f) the Access Seeker must notify QR Network in writing within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR Network and the Access Seeker agree at their discretion, whether the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.

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#### 4.4 NOTIFICATION OF INTENT

(a) Except as provided in Paragraphs 4.3(f) and 4.3(g), if the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the Indicative Access Proposal.

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(b) Except as provided in Paragraphs 4.3(f) and 4.3(g), if the Access Seeker gives a notification of its intention to progress its Access Application after the expiry date of the Indicative Access Proposal but not later than six (6) months after that date, QR Network will review the Indicative Access Proposal and, if considered necessary by QR Network, prepare a revised Indicative Access Proposal in accordance with Clause 4.3. Where:

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(i) a revised Indicative Access Proposal is prepared and the Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the revised Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the revised Indicative Access Proposal; or

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(ii) a revised Indicative Access Proposal is not considered necessary by QR Network, the Access Seeker's notification of its intention is taken to be validly given even though it is given after the expiry date of the Indicative Access Proposal,

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Provided that in either case, if a queue has been established, or is subsequently established, for the Access Rights in accordance with Paragraph 7.4.1(c) the date on which QR Network received the Access Application will be deemed to be the date on which the Access Seeker gave QR Network its notification of intent under this Paragraph 4.4(b).

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#### 4.5 NEGOTIATION PROCESS

##### 4.5.1 Negotiation Period

(a) Once the Negotiation Period has commenced both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement. Subject to Paragraph 4.5.1(b), the Negotiation Period shall commence upon the Access Seeker providing a notification of intent in accordance with Clause 4.4.

(b) If QR Network has established a queue in accordance with Paragraph 7.4.1(c), QR Network has no obligation to negotiate with an Access Seeker other than the Access Seeker whose Access Application is first in the queue and only in respect of the Access sought by that Access Application. In this instance, the Negotiation Period will commence from the time the Access Seeker is notified by QR Network that it is first in the queue, unless QR Network and the Access Seeker had commenced negotiating towards an Access Agreement prior to the formation of the queue in which case:

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(i) if the Access Seeker is first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided QR Network notification of its intent pursuant to Clause 4.4; and

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- (ii) if the Access Seeker is not first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided QR Network notification of its intent pursuant to Clause 4.4 but the Negotiation Period will be put on hold until the Access Seeker is notified by QR Network that it is first in the queue.
- (c) Where negotiations have commenced with one or more Access Seeker while a queue does not exist, and QR Network subsequently forms a queue in accordance with Paragraph 7.4.1(c), QR Network will:
  - (i) cease negotiations with all Access Seekers who have Access Applications in the newly formed queue except for the Access Seeker whose Access Application is first in the queue; and
  - (ii) notify all Access Seekers seeking the mutually exclusive Access Rights of the formation of the queue and their respective positions in the queue.
- (d) Where negotiations have commenced and progressed to a significant extent with the first Access Seeker in a queue and QR Network subsequently changes the order of the queue in accordance with Paragraphs 7.4.1(e) – (h) such that the Access Seeker is no longer first in the queue QR Network will:
  - (i) notify the Access Seeker of this fact in accordance with Paragraph 7.4.1(i), and give the Access Seeker thirty (30) days within which to demonstrate to QR Network's satisfaction that it should regain first position in the queue; and
  - (ii) advise the Access Seeker who is first in the queue following the reordering of the queue that their Negotiation Period has been put on hold pending the other Access Seeker's attempt to satisfy the requirements of Paragraph (i) above.
- (e) The Negotiation Period will cease upon any of the following events:
  - (i) execution of an Access Agreement in respect of the Access sought by the Access Seeker;
  - (ii) written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
  - (iii) QR Network issuing a Negotiation Cessation Notice to the Access Seeker pursuant to Paragraph 4.6(b); or
  - (iv) the expiration of nine (9) months from the commencement of the Negotiation Period unless:
    - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
    - (B) a Dispute arises between the parties that either party has sought to resolve in accordance with the Dispute resolution process outlined in Clause 4.7, in which case the Negotiation Period will continue until the resolution of the Dispute and for any further time agreed by the parties or determined during the Dispute resolution process.

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- (f) If the Negotiation Period ceases and the Access Seeker was in a queue established by QR Network in accordance with Paragraph 7.4.1(c), the Access Seeker will be removed from the queue.

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#### 4.5.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR Network and the Access Seeker will negotiate and endeavour to agree on the elements comprising the Access Agreement. In order to facilitate this process:

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- (i) QR Network will provide Additional Information relevant to the corridor of interest to the Access Seeker, to the extent required either by the Access Seeker or as part of the Access Agreement, which may include any information outlined in Part A of Schedule D not provided as part of the Preliminary Information and the information outlined in Part B of Schedule D;

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- (ii) an Operating Plan is to be prepared by the Access Seeker in accordance with Subclause 8.1.4;

- (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker, jointly with QR Network, in accordance with Subclause 8.1.2 and an Interface Risk Management Plan is to be developed and agreed in accordance with Subclause 8.1.3;

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- (iv) an Environmental Investigation and Risk Management Report must be undertaken and prepared by the Access Seeker in accordance with Subclause 8.2.1;

- (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR Network including advice as to whether QR Network has applied Subparagraph 6.1.1(b)(i), Subparagraph 6.1.1(c)(i) or Subparagraph 6.1.1(c)(ii) in determining the Access Charge and if so:

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- (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;

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- (B) the impact that the factor has on the Access Charge; and

- (C) how that impact on the Access Charge was determined;

- (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR Network and any necessary Capacity enhancements to accommodate Access by the Access Seeker are to be advised by QR Network;

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- (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR Network, consistent with Clause 7.2;

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- (viii) the Access Seeker is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Subclause 8.1.6; and



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(ix) other terms and conditions comprising the Access Agreement are to be provided by QR Network consistent with Clause 5.1.

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(b) During the Negotiation Period, the Access Seeker may review and revise the information provided to QR Network in the Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that an Access Seeker's revision of information provided to QR Network in the Access Application has substantially altered the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view. If, within five (5) Business Days of QR Network giving the notice:

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(i) the Access Seeker gives QR Network a notice in writing that it wishes to continue negotiating on the original Access Application without the proposed changes, the negotiation process under this Undertaking will continue; or

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(ii) the notice in Paragraph 4.5.2(b)(i) is not given:

(A) the provision of the revised information will be deemed to be a written notice referred to and given under Subparagraph 4.5.1(e)(ii) in respect of the original Access Application; and

(B) the original Access Application and revised information will together comprise a new Access Application deemed to have been received by QR Network on the date five (5) Business Days after QR Network gave the notice under this Paragraph 4.5.2(b).

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(c) Where Additional Information is required to be provided in accordance with Subparagraph 4.5.2(a)(i), QR Network will use reasonable endeavours to supply the relevant Additional Information to the Access Seeker within a reasonable timeframe. QR Network will use reasonable endeavours to ensure that any information provided will reflect the most current information available to QR Network. QR Network will identify the currency of the information provided.

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(d) QR Network will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.

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(e) In respect of the details required to be developed by the parties in accordance with Paragraph 4.5.2(a), subject to Paragraph 4.5.2(f) below, the parties may agree to finalise certain aspects after the execution of the Access Agreement. In such circumstances the parties may choose to address the issue in question in a preliminary manner only during the Negotiation Period and then provide a mechanism to address any subsequently identified cost or operating impact after execution of the Access Agreement.

(f) Where an Access Agreement is executed but the obligations of the parties are conditional upon the completion of schedules to the Access Agreement, the securing of port capacity or the satisfaction of some other condition:

(i) the parties must act reasonably and in good faith to comply with those conditions within an agreed timeframe specified in the Access Agreement that is sufficient for QR Network to prepare for the proposed Train Services to commence on the nominated start date; and

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- (ii) following the satisfaction of all conditions, QR Network may, acting reasonably, adjust Access Charges under the Access Agreement to reflect the extent that QR Network's costs or risks, when considered after those conditions have been satisfied, are increased or decreased beyond what was anticipated at the date of the Access Agreement.

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Any disputes in relation to any matter referred to in this Paragraph 4.5.2(f) shall be determined by the dispute resolution process under the Access Agreement or, if there is none, under Clause 4.7 of this Undertaking.

- (g) QR Network will be responsible for the investigation and design of any necessary enhancements to the Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR Network will be entitled to require that the Access Seeker pay QR Network's reasonable costs for such investigation and design.

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- (h) If at any time prior to the execution of an Access Agreement with the Access Seeker, another Access Seeker (other than an Access Seeker that was the subject of advice provided in the Indicative Access Proposal pursuant to Subparagraph 4.3(a)(iv)) submits an Access Application where that Access would limit the ability of QR Network to provide Access in accordance with the Access Rights being negotiated, QR Network will notify the Access Seeker of the existence of the Access Application as soon as reasonably practicable but no later than prior to the provision of an Indicative Access Proposal to the other Access Seeker. The provisions of Subclause 7.4.1 detail how QR Network will deal with each of the Access Seekers in the event that they both notify QR Network, in accordance with Clause 4.4, that they intend to progress their Access Applications and QR Network is unable to provide both parties with the Access Rights they seek.

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- (i) If at any time during the Negotiation Period, a Dispute arises between the parties that, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7.

#### 4.6 NEGOTIATION CONDITIONS

- (a) At any time during the Negotiation Period an Access Seeker may give QR Network written notification that it no longer wishes to proceed with its Access Application.

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- (b) At any time during the Negotiation Period, QR Network may, within fourteen (14) days of deciding that it will not enter into an Access Agreement with the Access Seeker, give notice to an Access Seeker of that decision and identify the reasons for the decision (referred to as a "Negotiation Cessation Notice") if:

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- (i) the Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR Network considers on reasonable grounds that such noncompliance is material;

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- (ii) QR Network is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;

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(iii) QR Network is of the reasonable opinion that the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;

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(iv) QR Network gives a Negotiation Cessation Notice under Subparagraph 3.3.2(c)(iv) or 3.3.2(g)(i);

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(v) except in the circumstances outlined in Paragraph 4.7.3(i), an Access Seeker does not comply with a determination of an expert pursuant to Subclause 4.7.3 in relation to a dispute about the Access Seeker's Access Application; or

(vi) an Access Seeker does not comply with a determination of the QCA pursuant to Subclause 4.7.4 in relation to a dispute about the Access Seeker's Access Application.

(c) Without limitation, it will be reasonable for QR Network to form the opinion that the circumstances in Subparagraph 4.6(b)(ii) apply, if:

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(i) the Access Seeker is Insolvent; or

(ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.

(d) Without limitation, when QR Network is forming an opinion as to whether the circumstances in Subparagraph 4.6(b)(iii) apply, QR Network may consider any one or more of the following factors:

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(i) whether the Access Seeker has secured or is reasonably likely to secure the rights required to leave the QR Network network in order to unload at its destination, for instance, port capacity or capacity to unload at a power station;

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(ii) whether the Access Seeker (if they are seeking to be an Access Holder and not an operator) has secured or is reasonably likely to secure a rail haulage agreement required to operate the Train Services the subject of the Access Application; and

(iii) the speed and timeliness of the Access Seeker in conducting its negotiations, including whether QR Network has determined under Paragraph 4.6(e) that an Access Seeker first in a queue has taken an unreasonable or excessive amount of time negotiating an Access Agreement.

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(e) An Access Seeker who is in a queue but not first in that queue may notify QR Network that it considers that the time taken by the Access Seeker first in the queue to negotiate an Access Agreement with QR Network is unreasonable or excessive. QR Network will determine whether the time taken by the Access Seeker first in the queue is unreasonable or excessive having regard to the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances. QR Network will make its

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determination and advise both Access Seekers of its decision within seven (7) Business Days of receiving the notification.

- (f) If an Access Seeker disputes that QR Network was entitled to give it a Negotiation Cessation Notice, then the Access Seeker may refer the matter to Dispute resolution in accordance with Clause 4.7. In such circumstances, for the purposes of Paragraph 4.6(b), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR Network's favour. If the resolution of the Dispute identifies that QR Network was not entitled to give the Access Seeker a Negotiation Cessation Notice, QR Network will recommence negotiations with that Access Seeker immediately.

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- (g) QR Network shall have the right at its option to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Subparagraph 4.6(b)(iii). QR Network may seek acknowledgement of the Access Seeker's liability for costs as part of the negotiation for Access.

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## 4.7 DISPUTE RESOLUTION

### 4.7.1 Disputes

- (a) If any dispute or question ("Dispute") arises under this Undertaking or in relation to the negotiation of Access between a Third Party Access Seeker and QR Network then, unless otherwise expressly agreed by both parties, such Dispute shall be resolved in accordance with this Clause 4.7 and either party may give to the other party to the Dispute notice in writing ("Dispute Notice") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 4.7.
- (b) Unless otherwise agreed by the parties, Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

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### 4.7.2 Chief Executive Resolution

- (a) Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall within seven (7) days of the Dispute Notice be referred in the first instance to the QR Network Chief Executive, (or his or her nominee) and the Chief Executive of the Third Party Access Seeker (or his or her nominee) for resolution.
- (b) If:
- (i) resolution is not reached within fourteen (14) days; or
  - (ii) either Chief Executive appoints a nominee in accordance with Paragraph 4.7.2(a) that is unacceptable to the other party,
- the relevant Dispute may, by agreement between QR Network and the Third Party Access Seeker, be referred for resolution by an expert in accordance with

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Subclause 4.7.3. Failing such agreement, either party may refer the Dispute to the QCA in accordance with Subclause 4.7.4.

#### 4.7.3 Expert Determination

Where a matter is referred to an expert in accordance with this Clause 4.7 or as otherwise specified in accordance with this Undertaking then the following shall apply:

- (a) An expert shall be appointed by the parties, or where agreement cannot be reached by the parties within fourteen (14) days, an expert shall be appointed by:
  - (i) the President of CPA Australia if the parties agree that the matters are financial matters;
  - (ii) the President of the Institution of Engineers Australia if the parties agree that the matters are non-financial matters; and
  - (iii) the President of the Queensland Law Society Incorporated where the parties cannot agree on the nature of the particular dispute, or in situations where the parties agree that it is appropriate that the President of the Queensland Law Society Incorporated appoint an expert, given the nature of the matter in dispute.
  
- (b) In any event the expert shall:
  - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
  - (ii) 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 before his or her appointment; and
  - (iii) not be an employee of the Access Seeker or QR Network or of a Related Party of either of them.
  
- (c) The expert shall not act until the expert has given written notice of the acceptance of his or her appointment to both parties.
  
- (d) The parties shall upon request by the expert, provide or make available to the expert:
  - (i) all information in their possession or control; and
  - (ii) all assistance;that the expert may reasonably require. Any such information or assistance must be provided as soon as reasonably practicable.
  
- (e) Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking.
  
- (f) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment.

- (g) The expert shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (h) The expert shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990 (Qld)*, shall not apply to the expert or to the determination or to the procedures by which the expert may reach that determination.
- (i) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Subclause 4.7.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Subclause 4.7.4.
- (j) Unless otherwise agreed by the parties:
  - (i) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
  - (ii) each party shall bear their own costs of participating in the expert determination.

#### 4.7.4 Determination by the Queensland Competition Authority

- (a) If a Dispute is referred to the QCA in accordance with this Clause 4.7, or as otherwise specified in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:
  - (i) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and
  - (ii) any determination by the QCA is consistent with the provisions of this Undertaking.
- (c) If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.

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- (d) Where the QCA calls upon the Safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.
- (e) Where a matter is referred to the Safety Regulator for resolution in accordance with Subparagraph 8.1.3(f)(ii), the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportions as the Safety Regulator determines.
- (f) If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4 and that Dispute relates to Subparagraph 6.5.2(c)(i), QR Network will bear the onus of demonstrating to the QCA that QR Network's risk in the stated circumstances is material.

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## PART 5: ACCESS AGREEMENTS

### 5.1 DEVELOPMENT OF ACCESS AGREEMENTS

(a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation process.

(b) The parties to the Access Agreement will be QR Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services, but if the Access Holder is not the Railway Operator, it must ensure that the relevant Train Services are operated by a Railway Operator.

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(c) The Railway Operator of the Train Services need not have received Accreditation prior to execution of the Access Agreement. The Railway Operator must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.

(d) Unless otherwise agreed between QR Network and the Access Seeker, the Access Agreement must be consistent with:

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(i) the terms of a Standard Access Agreement incorporated in Volume 2 of this Undertaking if the Train Services are of the same type specified in that Standard Access Agreement; and

(ii) subject to Paragraph 5.1(e), for Train Services of a type for which a Standard Access Agreement has not been incorporated in Volume 2 of this Undertaking, the principles outlined in the Standard Access Agreement summary that is contained in Schedule E.

(e) QR Network recognises that Schedule E does not provide an exhaustive list of the issues that may be included in an Access Agreement. As a result, whilst the terms of a Standard Access Agreement incorporated in Volume 2 of this Undertaking will provide guidance as to how the principles outlined in Schedule E may be reflected in an Access Agreement for a different type of Train Service, QR Network acknowledges that varied terms and conditions to those specified in a Standard Access Agreement incorporated in Volume 2 may be required in such circumstances.

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(f) Once the Access Seeker has notified QR Network that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR Network will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Access Seeker for execution.

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(g) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR Network.

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(h) QR Network will execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement, or such longer period as the Access Seeker and QR Network agree is reasonably necessary bearing in mind the lead time that would be required to accommodate the development of the Customer's infrastructure (such as a mine) and/or elements of the transport logistics chain, as well as

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development of rail infrastructure, relevant to the Access Application lodged by the Access Seeker.

## 5.2 DEVELOPMENT OF NEW STANDARD ACCESS AGREEMENT

- (a) QR Network will submit a proposed standard access agreement for a specified type of Train Service not covered by a Standard Access Agreement (“Proposed Standard Access Agreement”):
- (i) within sixty (60) days of a notice being received from the QCA in accordance with Paragraph 5.2(b); or
  - (ii) otherwise at QR Network’s discretion.
- (b) The QCA may give QR Network a notice requiring it to submit a Proposed Standard Access Agreement if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Standard Access Agreement for that specified type of Train Service not covered by a Standard Access Agreement.
- (c) The QCA may develop a Proposed Standard Access Agreement that is consistent with the Undertaking and the principles contained in Schedule E if:
- (i) QR Network does not comply with a notice given by the QCA under Paragraph 5.2(b) or Subparagraph 5.2(h)(ii) for it to submit, or resubmit, a Proposed Standard Access Agreement (whichever is applicable); or
  - (ii) the QCA refuses to approve a Proposed Standard Access Agreement resubmitted by QR Network.
- (d) Where QR Network submits, or the QCA develops, a Proposed Standard Access Agreement, the QCA will:
- (i) publish the Proposed Standard Access Agreement;
  - (ii) invite persons to make submissions on the Proposed Standard Access Agreement to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time.
- (e) The QCA may approve a Proposed Standard Access Agreement (including a Proposed Standard Access Agreement developed by the QCA) only if the QCA:
- (i) is satisfied that the Proposed Standard Access Agreement is consistent with this Undertaking and principles contained in Schedule E;
  - (ii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
  - (iii) the QCA has complied with Paragraph 5.2(d).
- (f) The QCA will consider a Proposed Standard Access Agreement given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a Proposed Standard Access Agreement under this

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- (g) If the QCA approves a Proposed Standard Access Agreement submitted under Paragraph 5.2(a), or resubmitted under Subparagraph 5.2(h)(ii):
- (i) the Standard Access Agreement will apply from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
- (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
- (iii) QR Network must:
- (A) publish a new version of Volume 2 which includes the Standard Access Agreement; and
- (B) advise Access Holders and Access Seekers, in respect of the specified Train Services to which the Standard Access Agreement applies, that a Standard Access Agreement has been approved.
- (h) If the QCA refuses to approve a Proposed Standard Access Agreement, the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the Proposed Standard Access Agreement should be amended; and
- (ii) where the Proposed Standard Access Agreement has been submitted by QR Network in response to a notice given by the QCA under Paragraph 5.2(b), requiring QR Network to amend the Proposed Standard Access Agreement in the way the QCA considers it appropriate and resubmit the amended Proposed Standard Access Agreement to the QCA within 30 days of the notice.
- (i) If QR Network complies with the notice given under Paragraph 5.2(h)(ii) above, the QCA may approve the resubmitted Proposed Standard Access Agreement in accordance with Paragraph 5.2(j).
- (j) The QCA may approve the resubmitted Proposed Standard Access Agreement only if the QCA:
- (i) is satisfied that it is in accordance with the notice under Paragraph 5.2(h);
- (ii) is satisfied that it is consistent with this Undertaking and principles contained in Schedule E; and
- (iii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.
- (k) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a Proposed Standard Access Agreement, if:
- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
- (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.

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- (l) If the QCA grants QR Network an extension of time under Paragraph 5.2(k) above, QR Network must submit, or resubmit, a Proposed Standard Access Agreement, (whichever is applicable) within the time specified by the QCA.
- (m) The QCA may not make a decision under this Clause 5.2 requiring QR Network to submit a Proposed Standard Access Agreement, or approving or refusing to approve a Proposed Standard Access Agreement, unless:
- (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by law or 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 would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
    - (A) taking an irrelevant consideration into account in the exercise of a power;
    - (B) failing to take a relevant consideration into account in the exercise of a power;
    - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
    - (D) an exercise of a discretionary power in bad faith;
    - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
    - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
    - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
    - (I) any other exercise of a power in a way that is an abuse of the power;
  - (vi) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);
  - (vii) the QCA's decision was not induced or affected by fraud;
  - (viii) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of 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 exist; and
  - (ix) the decision was not otherwise contrary to law or this Undertaking.
- For the avoidance of doubt, the terms of this Paragraph 5.2(m) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).
- (n) The requirements set out in Paragraph 5.2(m) also apply to the QCA's conduct in making a decision under this Clause 5.2.

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- (o) If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Clause 5.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.
- (p) This Clause 5.2 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).
- (q) Nothing in this Clause 5.2 affects the rights of QR Network under section 142 and related provisions of the Act.

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### 5.3 ACCESS AGREEMENTS FOR NEW OR RENEWED QR SERVICES

- (a) The development of Access Agreements with QR or a Related Party of QR for new or renewed QR Train Services will be subject to this Undertaking, provided that QR does not prevent or hinder Access in any way contrary to s.104 or s.125 of the Act.
- (b) Where there is a Reference Tariff and a Standard Access Agreement incorporated in Volume 2 of this Undertaking for a type of Train Service, and an Access Agreement with QR or a Related Party of QR for a new or renewed QR Train Service of that type is consistent with that Reference Tariff and Standard Access Agreement, then QR will be deemed to have complied with Paragraph 5.3(a).

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### 5.4 DISCLOSURE OF ACCESS AGREEMENTS

- (a) Except as provided for in Paragraph 5.4(d), QR Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services.
- (b) QR Network will permit the disclosure to the QCA of the Below Rail aspects of Access Agreements (including Access Charges) for all Train Services for new or renewed Train Services.
- (c) For the purposes of Paragraphs 5.4(a) and 5.4(b), the Below Rail aspects of Access Agreements will not include:
  - (i) insurance provisions;
  - (ii) contact details included in the Interface Coordination Plan;
  - (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
  - (iv) Interface Risk Management Plan; and
  - (v) Environmental Investigation and Risk Management Report.

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<#>Internal Access Agreements in respect of new QR Train Services will be developed prior to the commencement of operation of the relevant Train Services on the Rail Infrastructure.¶  
¶  
<#>These Internal Access Agreements will be made available to the QCA for review if the QCA so requires.¶

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- (d) Where a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request where it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.

## PART 6. PRICING PRINCIPLES

### 6.1 PRICE DIFFERENTIATION

In developing Access Charges QR Network will apply the pricing principles set out in this Part 6. In the event of a conflict between these pricing principles, QR Network will apply the pricing principles in the following order of precedence (from highest to lowest):

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- (a) Limits on Price Differentiation (Subclause 6.1.2);
- (b) Pricing Limits (Clause 6.2);
- (c) Rail Infrastructure Utilisation (Subclause 6.3.1);
- (d) Revenue Adequacy (Subclause 6.3.2).

#### 6.1.1 Limits on Price Differentiation

(a) QR Network will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders within a relevant market except as provided for in this Subclause 6.1.1.

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(b) Where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker may only vary from the Reference Tariff:

(i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service; or

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(ii) where the Access Charge is for a new or renewed Train Service travelling from a mine on the corridor between Burngrove and Coppabella to the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone), to be less than the applicable Reference Tariff provided that:

(A) this is for the purpose of reducing QR Network's asset stranding risk on the corridor between Burngrove and Gladstone; and

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(B) where Access Seekers are directly competing with each other for the purpose of operating the new or renewed Train Service, the Access Charge offered to each of those Access Seekers will only vary between the Access Seekers so as to reflect differences in the cost or risk to QR Network of providing Access as a result of differences in the type of Train Services proposed by the relevant Access Seeker.

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(c) Where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area may only vary from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, either:

(i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to other Train Services of that type; or

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(ii) over time, to reflect:

(A) changes in the cost or risk to QR Network of providing Access;

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(B) changes in relevant Transport Service Payments, where such changes have the result that QR Network can no longer commercially provide Access to Train Services in that specified geographic area at the current Access Charges;

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(C) Changes in Market Circumstances; or

(D) limitations on Available Capacity in accordance with Paragraph 6.3.1(b).

(d) QR Network will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:

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(i) where a Reference Tariff is applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time; or

(ii) where there is no Reference Tariff applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area,

provided that QR Network will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.

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(e) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Paragraph 6.1.1(d), if an Access Holder (referred to in this Paragraph as the Aggrieved Access Holder) can demonstrate to QR Network's reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, QR Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Subclause 6.1.1, and if QR Network is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Subclause 6.1.1, then QR Network will alter the Access Charge for the Aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.

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## 6.1.2 Establishment of Access Charges for QR Train Services

In developing Access Agreements with QR or a Related Party of QR in accordance with Subclause 5.3, QR Network will not establish Access Charges for QR Train Services for the purpose of preventing or hindering Access by a Third Party Access Seeker into any market in competition with the QR Operational Business Group providing those QR Train Services.

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## 6.2 PRICING LIMITS

### 6.2.1 Definition of Pricing Limits

In determining Access Charges, QR Network will observe price limits in respect of the following elements:

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- (i) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between Individual Train Services and determined in accordance with Subclause 6.2.2; and
- (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services and determined in accordance with Subclause 6.2.3.

### 6.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply in respect to Access Charges to be established for each individual Train Service (referred to as “Individual Train Service”) such that, over the Evaluation Period, the relevant Access Charge for the Individual Train Service:
  - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for the Individual Train Service; and
  - (ii) will not:
    - (A) where the Individual Train Service is the only Train Service using a section of the Rail Infrastructure, exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant the Rail Infrastructure; or
    - (B) otherwise, exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.2(a)(ii), a Revenue Limit will be established for the Individual Train Service. The Revenue Limit for an Individual Train Service will reflect the Stand Alone Cost of providing Access for the Individual Train Service over the Evaluation Period. The Revenue Limit will be determined in accordance with Subclause 6.2.4.

### 6.2.3 Price Limits on Train Service Combinations

- (a) In addition to Subclause 6.2.2, price limits will apply in respect of Access Charges to be established for Individual Train Services such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Paragraph 6.2.3(c)) for any combination of Train Services incorporating the Individual Train Service:



- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure; and
  - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.3(a)(ii), a Revenue Limit will be established for identified combinations of Train Services. The Revenue Limit for a combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the Evaluation Period. The Revenue Limit for the combination of Train Services will be determined in accordance with Subclause 6.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
- (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with the Reference Tariff proposed; and
  - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with current applicable Access Charges, except as provided in Subparagraph 6.3.1(b)(ii).
- (d) If QR Network incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Subparagraph 6.2.2(a)(i) or Subparagraph 6.2.3(a)(i), then provided that QR Network observes the limits on price differentiation set out in Subclause 6.1.1 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR Network shall be deemed not to be in breach of Subclause 6.2.2 or Subclause 6.2.3.

#### 6.2.4 Definition of Revenue Limit

- (a) The Revenue Limit will be determined as the maximum amount of expected revenue, including:
  - (i) Access revenue (determined consistent with Paragraph 6.2.3(c)) that may be earned from Access Charges; and
  - (ii) where the Individual Train Service or combination of Train Services (as appropriate) includes all of the Train Services using a section of the Rail Infrastructure, any Transport Services Payments towards the relevant section of Rail Infrastructure,

over the Evaluation Period, measured such that the net present value of the cashflows associated with providing Access for the Individual Train Service or the combination of Train Services (as appropriate) over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_0 + \sum_{t=1}^n \frac{(RL_t - C_t - M_t - T_t)}{(1+ROA)^t} + \frac{AV_n}{(1+ROA)^n}$$

where:

$AV_0$  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 Paragraph 6.2.4(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 1 to  $n$ ;

$RL_t$  is the Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

$C_t$  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;

$M_t$  is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

$ROA$  is the maximum allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA;

$T$  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 QR Network and the QCA or, failing such agreement, as determined by the QCA; and

$AV_n$  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 Paragraph 6.2.4(c), at the end of the Evaluation Period.

(b) In order to determine the amount of each of the variables set out in Paragraph 6.2.4(a), it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of major projects that individually impact significantly on the traffic task. In such circumstances, expected

increases in traffic task shall be incorporated into the forecast following service commitment.

- (c) The value of assets used in Paragraph 6.2.4(a) will be determined using:
  - (i) where applicable, the value of the assets for the relevant area of the network contained in the Regulatory Asset Base, where the value of those assets is maintained in accordance with Schedule FB; or
  - (ii) where there is no value for the assets for the relevant area of the network contained in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.

### 6.3 PRICING OBJECTIVES

#### 6.3.1 Rail Infrastructure Utilisation

- (a) Access Holders serve a number of different markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR Network will be entitled to establish different Access Charges for Access Holders serving different markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.

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- (b) Where Available Capacity is limited, and QR Network reasonably considers in accordance with Paragraph 7.4.1(n) that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified:

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- (i) QR Network may establish an Access Charge based on the highest Access Charge QR Network is likely to achieve from the current or likely Access Seekers (provided that the highest Access Charge is developed in accordance with the pricing principles set out in this Part 6), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure (referred to in this Paragraph as the "Maximum Access Charge"). The Maximum Access Charge may then be quoted to all Access Seekers seeking Access in respect of the relevant Available Capacity, irrespective of a particular Access Seeker's ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services; and

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- (ii) if QR Network has received mutually exclusive Access Applications and QR Network chooses to allocate Available Capacity to an Access Application where the Access Seeker will pay an Access Charge that is less than the Maximum Access Charge in preference to an Access Application where the Access Seeker would pay an Access Charge that is equal to the Maximum Access Charge and would otherwise be able to utilise that Available Capacity, then for the purpose of assessing a Revenue Limit in accordance with Subclause 6.2.4 for all Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge.

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### 6.3.2 Revenue Adequacy

Provided that QR Network complies with the pricing constraints described in Subclauses 6.1.1 and 6.1.2 and Clause 6.2, QR Network will be entitled to earn revenue from the provision of Access, including both Access Charges and Transport Service Payments, that is sufficient to achieve full recovery of Efficient Costs (providing for any transitional arrangements agreed with the QCA), including an adequate rate of return on the value of assets reasonably required. Where QR Network earns revenue in excess of this its first objective will be to reduce the Transport Service Payments.

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## 6.4 REFERENCE TARIFFS

### 6.4.1 Application of Reference Tariffs

(a) It is recognised that, for Individual Train Services, there may be a large range between the price limits established in Clause 6.2 within which Access Charges may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR Network may develop Reference Tariffs for certain types of Train Services.

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(b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.

(c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR Network will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with Paragraph 6.1.1(d).

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(d) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.

(e) Where the QCA has approved a Reference Tariff submitted to it by QR Network, that Reference Tariff will be an acceptable means by which QR Network provides Access Seekers with information about the matters listed in s.101(2)(a) to (c) of the Act, as provided for in accordance with s.101(4) of the Act.

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### 6.4.2 Establishment of Reference Tariffs for new Reference Train Services

(a) QR Network will submit a proposed Reference Tariff for a new Reference Train Service to the QCA:

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- (i) if required in accordance with Paragraph 6.4.2(c);
- (ii) subject to Paragraph 6.4.2(d), within sixty (60) days of a notice being received from the QCA in accordance with Paragraph 6.4.2(c); or

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- (iii) otherwise at QR Network's discretion.
- (b) Where a new coal mine is developed and Train Services servicing that mine will utilise Rail Infrastructure in the Central Queensland Coal Region or Western System, the Train Services travelling between the mine (or where the mine is or will be located on Private Infrastructure, the point where that Private Infrastructure connects to the Rail Infrastructure) and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with the requirements of Schedule F.
- (c) The QCA may give QR Network a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Reference Tariff for a new Reference Train Service.
- (d) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a proposed Reference Tariff for a new Reference Train Service, if:
- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
- (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (e) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
- (i) QR Network does not comply with a notice given by the QCA under Paragraph 6.4.2(c) or Subparagraph 6.4.2(j)(ii) for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
- (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by QR Network.
- (f) Where QR Network submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
- (i) publish the proposed Reference Tariff;
- (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
- (iii) consider any submission it receives within the time.
- (g) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
- (ii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
- (iii) the QCA has complied with Paragraph 6.4.2(f).

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- (h) The QCA will consider a proposed Reference Tariff for a new Reference Train Service given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a proposed Reference Tariff for a new Reference Train Service under this Subclause 6.4.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (i) If the QCA approves a proposed Reference Tariff for a new Reference Train Service submitted under Paragraph 6.4.2(a), or resubmitted under Subparagraph 6.4.2(k)(ii):
- (i) the proposed Reference Tariff will apply from the earlier of:
- (A) the date of the QCA decision;
- (B) where Paragraph 6.4.2(b) applies, the date of the first Train Service servicing the new coal mine; and
- (C) where Paragraph 6.4.2(c) applies, the date when the relevant notice is given by the QCA,
- except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
- (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
- (iii) QR Network must:
- (A) publish a new version of Schedule F which includes the Reference Tariff; and
- (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (j) If the QCA refuses to approve a proposed Reference Tariff for a new Reference Train Service the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
- (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under Paragraph 6.4.2(c), requiring QR Network to amend the proposed Reference Tariff in the way the QCA considers it appropriate and resubmit the amended proposed Reference Tariff to the QCA within thirty (30) days of the notice.
- (k) If QR Network complies with the notice given under Paragraph 6.4.2(j)(ii) above, the QCA may approve the resubmitted proposed Reference Tariff in accordance with Paragraph 6.4.2(l).
- (l) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;

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- (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
- (iii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.
- (m) Subject to the provisions of Subclauses 6.4.2 and 6.4.3, a proposed Reference Tariff may be withdrawn at any time by the party who developed the proposed Reference Tariff.
- (n) If the QCA grants QR Network an extension of time under Paragraph 6.4.2(d), QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.
- (o) The QCA may not make a decision under this Subclause 6.4.2 requiring QR Network to submit a proposed Reference Tariff, or approving or refusing to approve a proposed Reference Tariff, unless:
  - (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by law or 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 would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
    - (A) taking an irrelevant consideration into account in the exercise of a power;
    - (B) failing to take a relevant consideration into account in the exercise of a power;
    - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
    - (D) an exercise of a discretionary power in bad faith;
    - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
    - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
    - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
    - (I) any other exercise of a power in a way that is an abuse of the power;
  - (vi) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);

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- (vii) the QCA's decision was not induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of 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 exist; and
- (ix) the decision was not otherwise contrary to law or this Undertaking.

For the avoidance of doubt, the terms of this Paragraph 6.4.2(o) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (p) The requirements set out in Paragraph 6.4.2(o) also apply to QCA's conduct in making a decision under this Subclause 6.4.2.
- (q) If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Subclause 6.4.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.
- (r) This Subclause 6.4.2 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).
- (s) Nothing in this Subclause 6.4.2 affects the rights of QR Network under section 142 and related provisions of the Act.

### 6.4.3 Review of Reference Tariffs

Schedule F will specify the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during this period.

### 6.4.4 Interpretation of Undertaking where a new coal mine is to be included in a Reference Train Service

This Undertaking will be interpreted so that, where a Train Service to a new coal mine is to be incorporated into a new or existing Reference Train Service in accordance with Paragraph 6.4.2(b):

- (a) for the purposes of calculating the Common Cost contribution as provided within Subclause 4.1.1 of Schedule F, Part B, the level of Common Cost contribution will be determined using the relevant spur and mainline distances from the mine to its most common destination for the total haul distance, irrespective of whether the mine is or will be located adjacent to Private Infrastructure;
- (b) for the purposes of assessing a Reference Tariff for a new coal carrying Train service/s that will operate over both Private Infrastructure and Rail Infrastructure in accordance with Subclause 4.1.2 of Schedule F, Part B, the

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Deleted: (a) QR and the QCA have agreed to refer for expert determination the question whether it is beyond the QCA's power to require QR to amend this Undertaking such that Reference Tariffs and/or contributions to Common Costs will be calculated on a basis which takes account of the length of non-declared rail infrastructure as well as the length of declared rail infrastructure over which coal is transported.¶

¶ (b) Where the expert determination is that it is beyond the QCA's power to require an amendment referred to in Paragraph 6.4.4(a), this Undertaking will be interpreted so that, where a Train Service to a new coal mine is to be incorporated into a new or existing Reference Train Service in accordance with Paragraph 6.4.2(b):¶

(i) the Train Service travelling between: ¶  
(A) where the mine is or will be located adjacent to Rail Infrastructure, the mine; or¶  
(B) where the mine is or will be located adjacent to Private Infrastructure, the point where that Private Infrastructure connects to the Rail Infrastructure, ¶

and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with the requirements of Schedule F; and¶

(ii) for the purpose of Subclause 4.1.3 of Schedule F, Part B, the loading facility for the new or existing Reference Train Service will be the point where that Private Infrastructure connects to the Rail Infrastructure.¶

¶ (c) Where the expert determination is that it is not beyond the QCA's power to require an amendment referred to in Paragraph 6.4.4(a), t

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Reference Tariff applying to the Train service/s will be the higher of (on a \$/net tonne basis):

- (i) the Reference Tariff for the most relevant existing Reference Train Service; or
- (ii) the sum of the new coal carrying Train service's Private Incremental Costs, the Incremental Costs of using any Rail Infrastructure specifically related to the new coal carrying Train service/s, and required minimum Common Cost contribution determined in accordance with Subclause 4.1.1 of Schedule F, Part B (on the basis that any reference to a Train Service in Subclause 4.1.1 shall be read as a reference to a Train service/s referred to in this Paragraph 6.4.4(b)).

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with the Access Charge payable to QR for the operation of the Train service/s being the applicable Reference Tariff less the Private Incremental Costs; and

- (c) for the purpose of Subclause 4.1.3 of Schedule F, Part B, the loading facility for the new Reference Train Service will be the point at which the Train is loaded, irrespective of whether this point is located adjacent to Private Infrastructure or Rail Infrastructure.

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<#>In the event of the expert failing to make a determination that satisfies either Paragraph 6.4.4(b) or (c), the question in Paragraph 6.4.4(a) will be referred to an independent body, forum or another expert as agreed between QR and the QCA. Failing such agreement within thirty (30) days of the expert determination (or a refusal by the expert to make a determination) QR may within a further fifteen (15) days apply to the Supreme Court of Queensland for a determination of the question under Paragraph 6.4.4(a). A determination by an independent body, forum, other expert or the Supreme Court of Queensland under this Paragraph 6.4.4(d) will be deemed to be an expert determination for the purposes of Paragraph 6.4.4(b) or (c).¶  
¶  
<#>Until either:¶  
(i) Paragraph 6.4.4(c) is satisfied;¶  
(ii) the fifteen (15) days in which QR was entitled to apply to the Supreme Court of Queensland under Paragraph 6.4.4(d) has expired without QR making such an application; or¶  
(iii) on application by QR to the Supreme Court of Queensland the Court provides a final order other than a finding in accordance with Paragraph 6.4.4(b),¶  
Reference Tariffs and contributions to Common Costs will be calculated in accordance with Paragraph 6.4.4(b) as if the condition in Paragraph 6.4.4(b) has been satisfied.¶  
¶  
<#>Where any one of the events described in Subparagraphs 6.4.4(e)(i), (ii) or (iii) occurs, Reference Tariffs and contributions to Common Costs will be calculated in accordance with Paragra... [2]

## 6.5 STRUCTURE OF ACCESS CHARGES AND CONDITIONS TO ACCESS

### 6.5.1 Structure of Access Charges

- (a) Where a Reference Tariff is applicable for a Train Service type, the structure of Access Charges for that Train Service type will be in accordance with the documentation for that Reference Tariff.
- (b) Where there is no Reference Tariff applicable for the Train Service type, the structure of Access Charges for that Train Service type will be negotiated with individual Access Seekers depending on their particular requirements and may include:
  - (i) an initial upfront component as a condition to being granted Access Rights;
  - (ii) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure;
  - (iii) one or more ongoing variable components based on usage of the Rail Infrastructure; or
  - (iv) any other structure or combination as agreed by QR Network and the Access Seeker.
- (c) Access Charges for any Train Service type may include a QCA Levy to be collected for the QCA by QR Network. This component of Access Charges will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to QR Network and allocated amongst Train Service types in a manner approved by the QCA.

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### 6.5.2 Access Conditions

(a) Notwithstanding Subclause 6.5.1, QR Network may require an Access Seeker to agree to certain condition/s (additional to those in the relevant Standard Access Agreement) before being granted Access Rights (“Access Conditions”), to the extent that this is reasonably required in order to mitigate QR Network’s exposure to the financial risks associated with providing Access for the Access Seeker’s proposed Train Service.

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(b) For the purposes of Paragraph 6.5.2(a), it will be deemed to be reasonable for QR Network to require Access Conditions, to the extent reasonably required, in order to mitigate QR Network’s exposure to financial risks resulting from QR Network constructing additional Rail Infrastructure or modifying existing Rail Infrastructure where there will be no more than one Customer using that additional or modified Rail Infrastructure (for example, a new rail spur or increasing the height of tunnels to accommodate a single Customer’s taller than usual trains) and that additional or modified Rail Infrastructure would not be required had the Access Seeker not sought Access for its Train Services.

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(c) For the purposes of Paragraph 6.5.2(a), it will be deemed to be unreasonable for QR Network to require Access Conditions in order to mitigate QR Network’s exposure to the financial risks resulting from QR Network:

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(i) constructing additional Rail Infrastructure or modifying existing Rail Infrastructure where that additional or modified Rail Infrastructure is likely to be used by a number of Customers, Access Seekers or Access Holders such that QR Network’s risk of being unable to recover the costs of the enhancements if any one of those Customers, Access Seekers or Access Holders ceases to require all or part of the relevant Train Services is not material; or

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(ii) constructing Rail Infrastructure, for the purpose of increasing Capacity for the operation of Reference Train Services, that will form part of the Central Queensland Coal Region Mainline.

(d) In the event of a Dispute arising in relation to QR Network seeking to require an Access Condition in circumstances not within Paragraphs 6.5.2(b) or (c), the issue shall be subject to the Dispute resolution process set out in Clause 4.7. In the event of the QCA being required to determine such a Dispute, the QCA will assess whether QR Network is allowed to impose such an Access Condition pursuant to Paragraph 6.5.2(a).

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(e) Where QR Network requires an Access Condition in accordance with Paragraph 6.5.2(a), the form of the Access Condition may include, to the extent that is reasonably required to mitigate QR Network’s exposure to the relevant financial risks:

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- (i) an upfront contribution;
- (ii) an ongoing charge separate to the Access Charge for facilitation of Access which is payable irrespective of actual usage (“Access Facilitation Charge”);
- (iii) a prepayment of all or part of an Access Facilitation Charge;

- (iv) an additional take or pay arrangement;
  - (v) a further additional take or pay arrangement to address ‘back-end’ payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal mine, the undepreciated component of any relevant additional Rail Infrastructure or modification of existing Rail Infrastructure that was constructed solely for the purpose of the mine) and a bank guarantee for an equivalent or lesser amount payable on demand, or other form of security acceptable to QR Network, acting reasonably, to support payment under the take or pay arrangement;
  - (vi) an agreement to forfeit any right to relinquish Capacity that may arise under this Access Undertaking; or
  - (vii) any combination of the above conditions,
- provided that QR Network cannot require an Access Seeker to accept an Access Condition that is inconsistent with the Act or this Undertaking.

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- (f) If an Access Condition results in QR Network earning revenue from the Access Seeker’s Access that is in addition to the ongoing Access Charge (eg an upfront contribution or Access Facilitation Charge), QR Network will:

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- (i) negotiate an agreement separate from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) which will provide for payment of a rebate to that party or their nominee, where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the extent that this component is separately funded through the additional revenue (eg depreciation and the non-diversifiable component of the return on any relevant additional Rail Infrastructure, or modification of existing Rail Infrastructure); or
- (ii) exclude the cost components separately funded through the additional revenue (eg the value of any additional Rail Infrastructure, or modification of existing Rail Infrastructure to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine the ongoing Access Charge.

- (g) Where QR Network has sought an Access Condition from a party (“First Party”) in relation to the construction of additional Rail Infrastructure, or the modification of existing Rail Infrastructure and Access is granted to another party (“Subsequent Party”) to operate Train Services using all or part of that additional Rail Infrastructure, or modification of existing Rail Infrastructure, QR Network will either:

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- (i) negotiate an agreement with the First Party where a rebate paid in accordance with Paragraph 6.5.2(f) includes the amount provided in the Access Charge paid by the Subsequent Party for the cost component to the extent that the component is separately funded through the additional revenue (eg depreciation and the non-diversifiable component of the return on the relevant additional Rail Infrastructure or modification of existing Rail Infrastructure); or
- (ii) renegotiate the terms of the First Party’s Access Conditions and enter into Access Conditions with the Subsequent Party, so that both parties share the responsibility that was originally borne solely by the First Party.

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- (h) For the purposes of determining whether another Customer or Subsequent Party uses (or will use) a modification of Rail Infrastructure within the meaning of this Subclause 6.5.2, the Customer or Subsequent Party will be deemed not to do so unless the particular characteristics of the Customer or Subsequent Party's Train Service would also have resulted in the modification being required to be made in order for Access to be provided to the Customer or Subsequent Party. (For example, if QR Network increased the height of tunnels to provide Access to an Access Seeker using taller than usual trains, Customers or Subsequent Parties operating train services through those tunnels will not use that modification unless they use trains of a height that would also have required the height of the tunnels to be increased.)

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### 6.5.3 Access Conditions Register

- (a) QR Network will maintain a register ("Access Conditions Register") of any:
- (i) conditions to Access that result in QR Network earning revenue from an Access Holder's Access that is in addition to the ongoing Access Charge (in accordance with Paragraph 6.5.2(f));
  - (ii) revenue paid by a party other than an Access Holder to QR Network in order to directly fund capital expenditure on the Rail Infrastructure incurred by QR Network; and/or
  - (iii) Rail Infrastructure assets given to QR Network or sold to QR Network at significantly less than market value (except where such assets are given to or sold to QR Network by QR or a Related Party of QR).

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- (b) The Access Conditions Register will identify:
- (i) the person paying revenue or providing the assets;
  - (ii) the nature of the Access Conditions (if applicable);
  - (iii) the date when the arrangement commenced;
  - (iv) the costs and assets to which the arrangement relates;
  - (v) the amount of the additional revenue; and
  - (vi) the action that QR Network has taken in accordance with Paragraph 6.5.2(f).

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- (c) The QCA may, within one (1) month of the end of a Year, request QR Network in writing to conduct an audit of the Access Conditions Register.

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- (d) The audit will follow a process agreed to by QR Network and the QCA (acting reasonably) or, failing such agreement, QR Network will make the information from the Access Conditions Register available to the QCA for the QCA to review.

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## PART 7. CAPACITY MANAGEMENT

### 7.1 NETWORK MANAGEMENT PRINCIPLES

- (a) QR Network will perform scheduling, Train Control and associated services in accordance with the Network Management Principles.
- (b) QR Network will provide capacity related information to Access Holders in accordance with the Network Management Principles.

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### 7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING

- (a) The Train Service Entitlement of an Access Holder will be defined in terms of a number of Train Services that can be operated in a given time period subject to constraints agreed between QR Network and the Access Holder. Timetabled Traffics are likely to be defined in terms of a Train Path between certain locations, on particular days, and at particular times. Cyclic Traffics are likely to be defined in terms of a number of Train Services within a particular period of time. The application of constraints is likely to vary significantly between different types of Train Services and may include, but will not necessarily be limited to, the following:
  - (i) specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
  - (ii) maximum time period between Train Services;
  - (iii) minimum time period between Train Services;
  - (iv) average Below Rail Transit Time;
  - (v) the agreed threshold for on-time running of the Train Services;
  - (vi) regularity of timetable reviews and the applicable review process; and
  - (vii) allowable modifications of timetable, e.g. cancellation or deferral of services.
- (b) As outlined in Subclause 4.5.2, as part of the negotiation process, QR Network will develop an initial specification of a Train Service Entitlement for an Access Seeker. QR Network and the Access Seeker will further refine this specification of the Train Service Entitlement during the negotiation process. The Train Service Entitlement will finally be incorporated into the relevant Access Agreement.
- (c) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR Network and the Access Holder will then be required to adhere to unless and until such time as the timetable is varied in accordance with the Network Management Principles.
- (d) QR Network will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, WTP and DTP, to

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optimise the use of the Rail Infrastructure as circumstances change from time to time. In doing so, QR Network will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.

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### 7.3 CAPACITY ANALYSIS

(a) QR Network may undertake an Initial Capacity Assessment as part of the preparation of an Indicative Access Proposal. An Initial Capacity Assessment will determine if there is likely to be sufficient Available Capacity to meet the Access Seeker's requirements and, if not, the extent to which Capacity enhancements are likely to be required.

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(b) Where QR Network considers that there are major impediments to the provision of sufficient Capacity to meet the requirements of the Access Seeker, and that the Capacity enhancements that might be necessary would have a significant bearing on the economics of the proposed operation, then the Initial Capacity Assessment, if undertaken, may be conducted in more detail. This may add some time to the preparation of the Indicative Access Proposal and may be a reason for QR Network advising, in accordance with Paragraph 4.2(c), that an Indicative Access Proposal will not be available within thirty (30) days of QR Network's acknowledgment of the Access Application.

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(c) The results of the Initial Capacity Assessment, if undertaken, will be indicative only and will be subject to confirmation by a Capacity Analysis undertaken as part of the negotiation process. As outlined in Subclause 4.5.2, as part of the negotiation process QR Network will undertake a Capacity Analysis. The Capacity Analysis will be conducted in a more comprehensive manner than the Initial Capacity Assessment and will include an investigation of the operational impacts of the proposed Access Rights based on the further detail provided by the Access Seeker in its Operating Plan (see Subclause 8.1.4 for further detail). The Capacity Analysis will confirm whether there is sufficient Available Capacity to meet the Access Seeker's requirements and, if not, detail the requirements for Capacity enhancements. The Capacity Analysis will enable the finalisation of the resultant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

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### 7.4 CAPACITY ALLOCATION

#### 7.4.1 Allocation of Capacity

(a) Subject to Paragraphs 7.4.1(b) – (n), Access Rights will be allocated to the first Access Seeker with whom QR Network can negotiate and execute an acceptable Access Agreement. QR Network will provide all Access Seekers with a consistent level of service and opportunity to obtain Access Rights subject to the express provisions of this Undertaking.

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(b) If, at any time, two or more Access Seekers are seeking Access with respect to mutually exclusive Access Rights, each of the Access Seekers who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with

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Subparagraph 4.3(a)(iv) or Paragraph 4.5.2(h) that there is one or more other Access Seekers seeking to negotiate for mutually exclusive Access Rights. Failure to give such notification will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

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- (c) QR Network will identify whether it is possible for one or all of the Access Seekers seeking to negotiate for mutually exclusive Access Rights to modify their requirements in order to allow all Access Applications to be accommodated. If QR Network cannot identify a way in which all Access Applications can be accommodated, or if one or more of the Access Seekers does not want to change their Access Application, and as a result there are still two or more Access Seekers seeking to negotiate for mutually exclusive Access Rights, each of whom have notified QR Network, in accordance with Clause 4.4, of their intention to progress their Access Application on the basis of the arrangements outlined in the Indicative Access Proposal, QR Network will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights.

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- (d) The order of a queue established in accordance with Paragraph 7.4.1(c) will initially be based upon:

(i) where the Access Application was lodged prior to 30 June 2006, application by QR Network of the principles for allocation of capacity specified in Subclause 7.4.1 of the 2001 Undertaking (with the initial order of priority in the queue of such Access Applications being determined in accordance with how favourable each Access Application is in terms of the commercial performance of Below Rail Services such that, for example, the first queue position is given to the Access Application most favourable in terms of the commercial performance of Below Rail Services); and

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(ii) where the Access Application was lodged on or after 30 June 2006, the date on which QR Network received the relevant Access Applications, so that the Access Application received by QR Network at the earliest time is first in the queue, and the Access Application received next by QR Network is second in the queue, and so on, provided that any such Access Applications will be placed after any Access Applications referred to in Subparagraph 7.4.1(d)(i).

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- (e) Once formed, QR Network may change the order of a queue where:

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(i) the Negotiation Period for an Access Seeker has ceased in accordance with Paragraph 4.5.1(e);

(ii) QR Network reasonably considers that an Access Seeker has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise Access at the level sought, taking into account in both instances and without limitation, the factors listed in Subparagraphs 4.6(d)(i)-(iii);

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(iii) QR Network reasonably considers that the commercial performance of Below Rail Services is better served, as described in Paragraphs 7.4.1(f) and 7.4.1(g), by allocating Access to an Access Seeker who is in the queue but not first in the queue;

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(iv) two or more of the Access Applications relate to the same traffic type (for example, coal traffic) and specific principles are included in this Undertaking for the allocation of Capacity for that traffic type, in which case QR Network may change the order of the queue in accordance with those specified principles; or

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(v) QR Network receives a new Access Application and this is added to an existing queue for mutually exclusive Access Rights.

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(f) QR Network will assess the ability of Access Seekers to contribute to the commercial performance of Below Rail Services by comparing the net present value (“NPV”) of contribution to the Common Costs of providing the Rail Infrastructure for the total haul for the different traffics subject to the different Access Applications in the queue. In determining the NPV of contribution to the Common Costs of providing the Rail Infrastructure for the total haul of a particular traffic, QR Network will include any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of QR Network not providing Access to the particular traffic (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Payments). If a traffic presents an NPV of contribution to the Common Costs that is 2% or more higher than the NPV of contribution to Common Costs for another traffic in the queue, and the first traffic is the subject of an Access Application lower in the queue than the second traffic, QR Network may move the Access Application relating to the first traffic so that it is above the Access Application relating to the second traffic in the queue. However, QR Network will not use this assessment to raise the position of any Access Seeker’s Access Application for coal carrying Train Service operating within the Central Queensland Coal Region above any other Access Application for coal carrying Train Service operating within the Central Queensland Coal Region within the queue. If QR Network, in assessing the NPV of contribution to Common Costs of different traffics subject to different Access Applications under this Paragraph 7.4.1(f), took into account a contribution from other sources of revenue that would reduce or be eliminated as a consequence of QR Network not providing Access to the particular traffic:

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(i) on request by any Access Seeker adversely affected by that assessment, QR Network must provide the Access Seeker with a copy of the reasons for the assessment; and

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(ii) in the event of a Dispute, the onus is on QR Network to demonstrate to the QCA’s satisfaction that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of QR Network not providing Access to the particular traffic.

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(g) Where a queue contains multiple Access Applications for coal carrying Train Services from different mines in the Central Queensland Coal Region, as between those Access Applications, QR Network will place a later Access Application seeking an Access Agreement term of at least ten (10) years in the queue ahead of an earlier Access Application seeking a term of less than ten (10) years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement.

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(h) In the circumstances covered by Subparagraphs 7.4.1(e)(iii) and (iv), QR Network may change the order of the queue in the manner specified in Paragraphs 7.4.1(f) and 7.4.1(g) above without removing any Access Seeker from the queue.

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(i) QR Network will notify each Access Seeker who has an Access Application in a queue of any change to the position of their Access Application in the queue and the reason/s for that change.

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(j) An Access Seeker may only assign its position in a queue to another party where:

(i) that party is an operator and the Access Seeker has entered into an agreement with that operator to provide the Train Services and wishes that operator to hold the Access Rights; or

(ii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.

(k) Where mutually exclusive Access Rights are sought by two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (in other words, the Access Rights sought relate to the same traffic task) (“Competing Applications”), and there is insufficient Available Capacity to satisfy any one of the Competing Applications as well as one or more other Access Applications for mutually exclusive Access Rights, then provided all of the Access Seekers have notified QR Network of their intention to progress their Access Applications on the basis of the arrangements outlined in the Indicative Access Proposal, QR Network will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights. The formation and operation of the queue will be no different than otherwise would be the case under this Clause 7.4.1 except for the following:

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(i) subject to Subparagraph 7.4.1(k)(iii) below, the Competing Applications will be collectively positioned in the queue as though they were a single application;

(ii) the date of the Competing Applications, for the purposes of the queue, will be deemed to be that of the earliest of the Competing Applications; and

(iii) where the Competing Applications are first in the queue, QR Network will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in Schedule E. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR Network’s reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.

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(l) Where mutually exclusive Access Rights are sought by two or more Access Seekers with Competing Applications and Paragraph 7.4.1(k) does not apply, QR Network will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in Schedule E. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR Network's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.

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(m) Disputes concerning positions in a queue or any other aspect of QR Network's management of a queue may be referred to the QCA under Subclause 4.7.4 for resolution. In the event of such a Dispute, QR Network will not implement any change to any Access Seeker's position in the queue unless and until the Dispute is resolved in favour of such a change in position.

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(n) QR Network will expand the Capacity of the Rail Infrastructure in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where QR Network reasonably considers that, in respect of the Capacity expansion, the expected net additional Below Rail revenue, less any expected costs associated with the expansion, is sufficient to commercially justify the required expenditure.

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## 7.4.2 Capacity Resumption

(a) Where an Access Holder, for any reason other than the occurrence of a Force Majeure Event or the failure of QR Network to make the Access Holder's Access Rights available, does not operate:

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- (i) a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists; or
- (ii) all of the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks out of any twelve (12) consecutive weeks,

the terms of the Access Agreement will provide that QR Network may, within sixty (60) days of the last day of the relevant twelve (12) occasions or weeks (whichever is relevant), by notice in writing, reduce from a nominated date (referred to as the "Date of Resumption") the Access Holder's Access Rights by:

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- (iii) deleting the Scheduled Train Path referred to in Subparagraph 7.4.2(a)(i) from the Access Holder's Train Service Entitlement; or
- (iv) reducing the Access Holder's Nominated Weekly Train Services referred to in Subparagraph 7.4.2(a)(ii), provided that the number of remaining Nominated Weekly Train Services is no less than the Access Holder's average weekly usage during the relevant twelve (12) week period,

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provided that the Access Holder cannot demonstrate, to QR Network's reasonable satisfaction, a sustained requirement for the Access Rights that have not been utilised, and QR Network is satisfied that it can demonstrate that it has:

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- (v) a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question; or
- (vi) a reasonable expectation of a commercial benefit for the provision of Below Rail Services sufficiently material to justify the resumption of the Capacity used by the Access Rights in question.

(b) QR Network may withdraw the notice provided in accordance with Paragraph 7.4.2(a) at any time prior to the Date of Resumption or fourteen (14) days following the conclusion of a dispute resolution process pursuant to Paragraph 7.4.2(d), whichever is the later. However, if QR Network had originally provided the notice in response to a written request by an Access Seeker under Paragraph 7.4.2(e), then QR Network may (at its election) withdraw the notice only if:

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- (i) the Access Seeker who requested the resumption consents to the withdrawal of the notice; or
- (ii) the Access Rights that QR Network is able to resume are not sufficient to enable QR Network to provide to the Access Seeker the Access Rights sought by the Access Seeker, and the Access Seeker has not agreed to accept the lesser Access Rights that QR Network would be able to provide.

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(c) Where QR Network resumes an Access Holder's Access Rights in accordance with this Subclause 7.4.2, the Access Charge payable by the Access Holder will be varied in accordance with the terms of its Access Agreement and the Access Agreement will be varied accordingly.

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(d) Where QR Network makes a decision to resume an Access Holder's Access Rights in accordance with Paragraph 7.4.2(a), and the Access Holder believes that QR Network's decision is not justified in the circumstances after having regard to the factors specified in Paragraph 7.4.2(a), the Access Holder may, within twenty-one (21) days of receiving notification from QR Network in accordance with Paragraph 7.4.2(a), refer the matter to the Dispute resolution process contained in its Access Agreement. In these circumstances, QR Network will not implement resumption until the Dispute resolution process has been concluded, and then may implement the resumption only to the extent that such resumption is consistent with the outcomes of the Dispute resolution process.

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(e) Where an Access Seeker has been notified in accordance with Paragraph 7.5.2(d) that an Access Holder has triggered the criteria in Subparagraph 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker may, within thirty (30) days of such notification, submit a written request to QR Network for it to resume Access Rights from an Access Holder in accordance with Paragraph 7.4.2(a). QR Network will provide notice to the Access Holder in accordance with Paragraph 7.4.2(a) provided that the Access Seeker has provided QR Network with a legally enforceable written undertaking (supported by security if required by QR Network) that it will:

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- (i) reimburse QR Network for all of QR Network's reasonable costs associated with it seeking the resumption of the relevant Access Rights from the Access Holder, including the costs of QR Network participating in any dispute resolution process;
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- (ii) enter into an Access Agreement with QR Network upon terms and conditions agreed with QR Network in accordance with the negotiation process specified in this Undertaking, or failing agreement, resolved in accordance with the Dispute resolution process specified in this Undertaking, in respect of Access Rights equivalent to the relevant Access Rights should they be resumed from the Access Holder, and that QR Network's obligation to provide such equivalent Access Rights to the Access Seeker will commence at the same time that the relevant Access Rights are resumed from the Access Holder; and
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- (iii) indemnify QR Network if QR Network incurs a net loss as a result of the resumption of the relevant Access Rights from the Access Holder and the taking up of the equivalent Access Rights by the Access Seeker, such loss to be calculated and paid when the Access Seeker enters into an Access Agreement with QR Network in respect of the equivalent Access Rights, and shall be determined as the present value of any future reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets) due to the net effect of the relevant resumption of Access Rights and the taking up of the equivalent Access Rights by the Access Seeker, considered over the remaining term of the Access Holder's existing Access Agreement on the assumption that the Access Holder does not utilise those Access Rights for such remaining term.
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- (f) QR Network will provide written advice to the Access Seeker of whether or not it will resume the Access Rights in question, and if so the Date of Resumption, within seven (7) days of the decision being reached on whether or not the Access Rights can be resumed in accordance with Paragraph 7.4.2(a).
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### 7.4.3 Capacity Relinquishment

- (a) This Subclause 7.4.3 describes when an Access Holder may relinquish Access Rights upon the payment of a Relinquishment Fee. This Subclause 7.4.3 also describes how this Relinquishment Fee may be reduced if QR Network enters into an Access Agreement with another Access Holder that has been identified by QR Network (provided that QR Network could not have entered into the Access Agreement in the absence of such relinquishment) in order to reflect the resultant variation in contribution to QR Network's Common Costs in relation to the section of corridor that is common between the relinquished Access Rights and new Access Rights.
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- (b) Unless otherwise specified in the Access Holder's Access Agreement and provided the Access Holder has given QR Network reasonable notice of its intention to do so, an Access Holder may relinquish Access Rights upon payment of a Relinquishment Fee.
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- (c) The period from the provision of the notice of intention to relinquish, pursuant to Paragraph 7.4.3(b), until the date of payment of the Relinquishment Fee shall not:

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- (i) exceed two (2) years, where:
  - (A) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
  - (B) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region; or
- (ii) exceed six (6) months, where Subparagraph 7.4.3(c)(i) does not apply.

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During such period, the terms of the Access Agreement will continue to apply in respect of the Access Rights which the Access Holder intends to relinquish.

- (d) QR Network will reduce the Relinquishment Fee in accordance with Paragraph 7.4.3(f) if:

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- (i) a new Access Holder has entered into an Access Agreement with QR Network in respect of Access Rights that QR Network could not have provided without using the whole or part of the relinquished Access Rights;
- (ii) following the provision of the notice of intention to relinquish, but prior to the payment of the Relinquishment Fee, QR Network's obligation to provide the Access Rights under the new Access Agreement has commenced; and
- (iii) no other Access Holder is seeking to transfer Access Rights in accordance with Subclause 7.4.4 or relinquish Access Rights in accordance with this Subclause 7.4.3 that more closely resemble the Access Rights sought by the new Access Holder.

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- e) Where QR Network identifies an opportunity for it to enter into an Access Agreement with an Access Seeker that would result in a reduction to an Access Holder's Relinquishment Fee pursuant to Paragraph 7.4.3(d), QR Network will not unreasonably delay the process for negotiating and executing an Access Agreement with such Access Seeker.

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- f) Subject to Paragraph 7.4.3(h), QR Network will reduce the Relinquishment Fee by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to the relative contribution.

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- g) Where:

- i) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
- ii) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region,

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the amount payable by the Access Holder to QR Network under Paragraph 7.4.3(b) will not exceed fifty percentage points (50%) of the Relinquishment Fee (as determined prior to any reduction under Paragraph 7.4.3(f)).

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- h) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).

#### 7.4.4 Capacity Transfer

- (a) This Subclause 7.4.4 describes when and how an Access Holder may transfer all or part of its Access Rights to an Access Seeker, upon the payment to QR Network of a transfer fee (if applicable) designed so that QR Network should not be financially disadvantaged as a result of such transfer. This Subclause 7.4.4 acknowledges that transfers may occur for Train Services with the same origin and destination, or for Train Services with a different origin and destination. Given that the financial consequences to QR Network as a result of a transfer will differ in these situations, this Subclause 7.4.4 provides different mechanisms for determining the transfer fee in such situations, which are broadly described as follows:

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- (i) for the transfer of Access Rights with the same origin and destination, the transfer fee reflects any reduction in contribution to QR Network's Common Costs over the remaining term of the existing Access Holder's Access Agreement, as a result of the transfer; and

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- (ii) for the transfer of Access Rights with a different origin and destination, the transfer fee reflects the Relinquishment Fee that would have been paid if the existing Access Holder had relinquished its Access Rights, where such Relinquishment Fee is reduced in order to reflect the resultant variation in contribution to QR Network's Common Costs in relation to:

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- for transfers of Access Rights within an Individual Coal System, provided that the new Access Rights are for a new traffic task (as described in Subparagraph 7.4.4(e)(ii)), the shorter of the haul distance of the relinquished Access Rights and the haul distance of the new Access Rights; and
- for all other transfers, the section of corridor that is common between the relinquished Access Rights and new Access Rights.

Schedule M contains a worked example of the calculation of a transfer fee.

This Subclause 7.4.4 also describes the circumstances in which a Customer or Customers may require an Access Holder to transfer its Access Rights to an Access Seeker.

- (b) Subject to Paragraphs 7.4.4(c) - (e), an Access Holder may agree to transfer Access Rights to an Access Seeker, provided that the Access Seeker is seeking Access Rights with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic) as the Access Holder's Access Rights.
- (c) The transfer of Access Rights between an Access Holder and an Access Seeker will be effected as a reduction in the Access Rights of the Access Holder, conditional upon the corresponding Access Rights being included in a new or varied Access Agreement with the Access Seeker, and that QR Network's obligation to provide Access under that new or varied Access

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Agreement commences at the same time as the incumbent Access Holder's Access Agreement is varied or terminated (whichever is applicable).

(d) The transfer of Access Rights with the same origin and destination between an Access Holder and an Access Seeker will only occur if:

(i) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking; and

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(ii) the Access Holder has paid to QR Network, where applicable, a transfer fee determined by QR Network as equivalent to the present value, calculated at a discount rate equal to the Discount Rate, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant relinquishment of Access Rights and the take up of corresponding Access Rights by the Access Seeker on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0).

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(e) The transfer of Access Rights with a different origin and destination between an Access Holder and an Access Seeker will only occur if:

(i) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;

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(ii) the Access Holder has paid to QR Network, where applicable, a transfer fee equivalent to the Relinquishment Fee, provided that:

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- for Access Rights for coal carrying Train Services operating in the Central Queensland Coal Region, where the Access Rights are for the purpose of a new traffic task (that is, a traffic task, being the transportation of specified net tonnes of coal between a specified origin and destination, that was not included in the forecast traffic task for that period used in the determination of the relevant Reference Tariff); or
- for Access Rights for Train Services other than coal carrying Train Services operating in the Central Queensland Coal Region,

the Relinquishment Fee will be reduced in accordance with Paragraph 7.4.3(f); and

(iii) no other Access Holder is seeking to transfer Access Rights that more closely resemble the Access Rights sought by the Access Seeker.

(f)

(i) Subject to Paragraph 7.4.4(g), where an Access Holder has a Customer or Customers, who has or have provided concurrent written notification to QR Network and the relevant Access Holder that they intend to vary or terminate their rail haulage agreement(s) with the Access Holder and use another Access Seeker for some or all of their rail haulage services, then QR Network will reduce the Access Rights of the Access Holder necessary for the Customer or Customers to effect the termination or variation of the relevant rail haulage agreement(s), provided that:

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- (A) the equivalent Access Rights (“Transferred Access Rights”) are included in a new or varied Access Agreement with the Access Seeker (“New Access Agreement”); and
- (B) that New Access Agreement commences at the same time as the Access Holder’s Access Agreement (“Old Access Agreement”) is varied or terminated (whichever is applicable).
- (ii) The terms of the Old Access Agreement relating to Take or Pay (as defined in Schedule F) and Relinquishment Fees will apply to the New Access Agreement:
  - (A) to the extent that the New Access Agreement relates to the Transferred Access Rights; and
  - (B) until the date that the Transferred Access Rights would have terminated under the Old Access Agreement.
- (iii) For the purpose of this Paragraph 7.4.4(f), Access Rights are deemed to be equivalent if those Access Rights relate to Train Services with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic), the same origin and destination and transporting the same net tonnage of the same commodity.
- (g) The transfer of Access Rights as initiated by an Access Holder’s Customer or Customers in accordance with Paragraph 7.4.4(f) will only be permitted to proceed if:
  - (i) the Customer or Customers has or have warranted to QR Network in writing that they either are the sole end Customer or collectively constitute one hundred percentage points (100%) of the Customers, in respect of any Train Services operated by the Access Holder pursuant to the Access Rights that they are requesting QR Network to transfer from the Access Holder to the Access Seeker;
  - (ii) where there is more than one Customer in respect of the Train Services operated by the Access Holder pursuant to the Access Rights sought to be transferred under Paragraph 7.4.4(f), all the Customers warrant to QR Network in writing that they have agreed to request QR Network to transfer the Access Rights in respect of those Train Services from the Access Holder to the Access Seeker;
  - (iii) the Access Holder’s rail haulage agreement or rail haulage agreements with its Customer or Customers was or were signed after 1 March 2002 or, where a relevant rail haulage agreement was signed on or before 1 March 2002 and the particulars of that agreement (such as the parties, and term of that agreement) were notified to the QCA prior to 30 June 2006, the agreement has been varied after 1 March 2002 to extend the term of the agreement and the period that is the extension of that term has commenced;
  - (iv) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;
  - (v) the Customer or Customers has or have provided QR Network with a legally enforceable written undertaking (including security if required by QR Network) that the Customer or Customers will indemnify QR Network if QR Network incurs a net loss as a result of the transfer;



- (vi) the Customer or Customers has or have paid to QR Network, where applicable, a transfer fee determined by QR Network as equivalent to the present value, calculated at a discount rate equal to the Discount Rate, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant transfer of Access Rights and the take up of the equivalent Access Rights by the Access Seeker on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0);
- (vii) where information is provided by the Access Holder pursuant to Paragraph 7.4.4(h), the information provided, in QR Network's reasonable opinion, does not show that the transfer of the Access Rights would not comply with Paragraphs 7.4.4(f) and (g); and
- (viii) where a Dispute has been referred to the QCA pursuant to Paragraph 7.4.4(i), the Dispute has been resolved in favour of the transfer of Access Rights being permitted.
- (h) An Access Holder may, within fifteen (15) Business Days of being given a notice under Subparagraph 7.4.4(f), notify QR Network in writing of any reasons and supporting evidence as to why Subparagraphs 7.4.4(g)(i), (ii) or (iii) are not satisfied.
- (i) Where:
- (i) a transfer of Access Rights is initiated in accordance with Paragraph 7.4.4(f); and
  - (ii) a Dispute arises between the Customer or Customers initiating the transfer and the Access Holder as to whether Subparagraphs 7.4.4(g)(i), (ii) and (iii) are satisfied and therefore whether the transfer should be permitted,
- either the Customer or Customers or the Access Holder may refer the Dispute to the QCA for the determination of the Dispute under Subclause 4.7.4. QR Network will not be a party to the Dispute resolution process but QR Network will abide by the QCA's determination of the Dispute. If the QCA considers that it is necessary for QR Network to participate in the Dispute resolution process in order to resolve the Dispute, QR Network will participate and QR Network's costs will be borne by the Customer or Customers initiating the transfer and the Access Holder in the proportions determined by the QCA.
- (j) Access Rights may only otherwise be transferred by an Access Holder assigning its respective rights and obligations under an Access Agreement in accordance with the assignment provisions of that Access Agreement.

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## 7.5 CAPACITY REGISTERS

### 7.5.1 Committed Capacity Register

- (a) Except as provided in Paragraph 7.5.1(b), no Access Holder is to assume that it has Access Rights beyond the term of its Access Agreement.
- (b) Where an Access Seeker requests Access that will utilise Capacity that would otherwise be Available Capacity because of the expiration of an existing Access Agreement for coal carrying Train Services, QR Network will approach the Access Holder of the existing Access Agreement, as well as the Customer served by that Access Agreement if they are entered on the Committed Capacity Register, and ask them if they wish to retain the Access Rights in question beyond the term of their current Access Agreement:
- (i) if the existing Access Holder (or Customer) advises QR Network within ninety (90) days of QR Network's notification under Subparagraph 7.5.1(b) that it does wish to retain the Access Rights in question for the existing mine which has the benefit of the Access under the existing Access Agreement or a Replacement Mine; and
- (ii) a new Access Agreement is executed for the Train Services (not in excess of the Train Services provided for under the existing Access Agreement) or the term of the current Access Agreement is extended, for a term of the lesser of ten (10) years or the remaining life of the existing mine, up to two (2) years prior to the expiry of the existing Access Agreement or such longer period where an Access Seeker is willing and able to sign an unconditional Access Agreement for the relevant Capacity at that time, or as otherwise agreed between the existing Access Holder (or Customer) and QR Network,
- the Capacity that is required to provide the coal carrying Train Services under the new or extended Access Agreement with the existing Access Holder (or Customer) will not be Available Capacity.
- (c) Where an Access Seeker requests Access which will commence within two (2) years of the expiration of an existing Access Agreement and which will utilise Capacity that will only become available following the expiration of that Access Agreement, QR Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register established in accordance with Paragraph 7.5.1(d) as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.
- (d) QR Network will maintain a Committed Capacity Register that will identify parties who have an interest (whether as the existing holder or otherwise) in Committed Capacity or existing Access Rights. The Committed Capacity Register will identify:
- (i) the party who has an interest in the Committed Capacity or Access Rights;
- (ii) the Committed Capacity or Access Rights in which they have an interest; and
- (iii) the nature of that interest.

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An Access Holder with Access Rights under an Access Agreement will be automatically placed on the register. Queensland Transport will be automatically placed on the register in respect of Committed Capacity. If any other party has an interest in existing Access Rights and wishes to be included in the register it must notify QR Network in writing.

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## 7.5.2 Capacity Resumption Register

(a) If the Indicative Access Proposal for an Access Seeker identifies that QR Network does not have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, and QR Network cannot justify a Capacity enhancement in accordance with Paragraph 7.4.1(n) in order to create sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, if requested by the Access Seeker, QR Network will place the Access Seeker on the Capacity Resumption Register.

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(b) The Capacity Resumption Register will identify:

- (i) the Access Seeker who has an interest in Access Rights; and
- (ii) the Access Rights in which they have an interest.

(c) An Access Seeker will remain on the Capacity Resumption Register until:

- (i) QR Network notifies the Access Seeker that Capacity availability changes will occur within the next two (2) years such that QR Network will have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services; or
- (ii) six (6) months after its initial entry onto the Capacity Resumption Register, except if, prior to its removal from the Capacity Resumption Register under this Subclause 7.5.2, the Access Seeker has notified QR Network in writing that it remains interested in the relevant Access Rights, then six (6) months after the last such notification, or as otherwise reasonably agreed between QR Network and the Access Seeker.

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(d) If, in relation to Access Rights recorded in the Capacity Resumption Register, the relevant Access Holder triggers the criteria in Subparagraphs 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker recorded as having an interest in those Access Rights will be notified by QR Network within twenty-one (21) days of the relevant trigger occurring. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

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(e) Nothing in this Subclause 7.5.2 derogates from the general principles for the allocation of Capacity outlined in Subclause 7.4.1.

## PART 8. INTERFACE CONSIDERATIONS

### 8.1 INTERFACE RISK MANAGEMENT PROCESS

#### 8.1.1 Overview

- (a) As Railway Manager, QR Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are appropriately managed in accordance with this Part 8. Deleted: QR
- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing a plan for managing those Interface Risks, QR Network and the Access Seeker or Access Holder will participate in the Interface Risk Management Process. This process will commence with an Interface Risk Assessment and culminate in an Interface Risk Management Plan ('IRMP'). Deleted: QR
- (c) In progressing the Interface Risk Management Process, QR Network and the Access Seeker or Access Holder are responsible for:
  - (i) ensuring that their representatives involved in the process have the appropriate competence to ensure that the process is conducted in a diligent manner;
  - (ii) ensuring that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
  - (iii) using reasonable endeavours to ensure that all information provided is accurate.Deleted: QR
- (d) The Interface Risk Management Process outlined in this Clause 8.1 shall be conducted for all new Train Services and for any variation to Train Services including changes in the Operating Plan or Rollingstock specification, and a new or varied IRMP, as the case may be, must be agreed between the Access Seeker or the Access Holder and QR Network prior to the operation of such new or varied Train Services. For the avoidance of doubt, a variation to existing Train Services will not require a new IRMP, varying the existing IRMP for those Train Services will be sufficient. Deleted: QR

#### 8.1.2 The Interface Risk Assessment

- (a) Schedule HA contains a sample IRMP which specifies a list of safety and Rollingstock 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 Rollingstock issues. The IRMP developed by the parties may cover additional safety and/or Rollingstock issues and associated controls depending on the circumstances of the particular operation.
- (b) Prior to undertaking the Interface Risk Assessment, the Access Seeker or Access Holder will provide a draft Operating Plan to QR Network in accordance with Subclause 8.1.4. Deleted: QR

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- (c) In addition, the Access Seeker or Access Holder will evaluate its planned operation and consider any unique issues that will need to be assessed and prior to undertaking the Interface Risk Assessment, provide to QR Network a checklist of safety hazards, the risks of which are to be evaluated as part of the Interface Risk Assessment. The list of issues included in the safety checklist and Schedule HA are not intended to be exhaustive of the issues considered as part of the Interface Risk Assessment.
- (d) The safety checklist, Schedule HA and the Access Seeker's or Access Holder's draft Operating Plan will support the hazard identification and risk assessment process undertaken through the Interface Risk Assessment.
- (e) The Access Seeker or Access Holder and QR Network will identify all reasonably foreseeable Interface Risks relating to the following interfaces:
- (i) between the Access Seeker's or Access Holder's proposed operation and the Rail Infrastructure;
  - (ii) between the Access Seeker's or Access Holder's proposed operation and existing operations on the Rail Infrastructure;
  - (iii) between the Access Seeker's or Access Holder's proposed operation and QR Network's staff or other Access Holders' staff; and
  - (iv) between the Access Seeker's or Access Holder's proposed operation and QR Network's or other Access Holder's interfaces with members of the public.
- (f) The parties will then analyse and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of such, before agreeing which of QR Network's Safeworking Procedures and Safety Standards are applicable to the proposed operation, and determining the additional control measures, including Rollingstock Interface Standards, required to manage the applicable Interface Risks.
- (g) The parties must consider and agree controls appropriate to the Interface Risk in question. QR Network may propose compliance with relevant QR Network Rollingstock Interface Standards, or equivalent standards, as control measures.
- (h) Along with the Safety Standards, Safeworking Procedures, and Rollingstock Interface Standards, QR Network and the Access Seeker or Access Holder will agree the audit, inspection and review measures to be implemented to ensure that the relevant standards and procedures are complied with at all times and continue to be effective in managing the applicable Interface Risks. Subclause 8.1.7 specifies QR Network's minimum audit, inspection and review requirements.

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### 8.1.3 The Interface Risk Management Plan ('IRMP')

- (a) Once the Interface Risk Assessment is complete, the Access Seeker or Access Holder and QR Network must jointly develop and agree the IRMP.
- (b) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between QR Network and the Access Seeker or Access Holder for the Interface Risks identified and assessed during the Interface Risk Assessment. As such, it will specify:

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- (i) which Safeworking Procedures and Safety Standards are applicable to the proposed operation;
  - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation;
  - (iii) the audit, inspection and review regime agreed between the parties; and
  - (iv) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (c) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network shall ensure that its Safety Management System incorporates the elements agreed with the Access Seeker or Access Holder in the IRMP, that QR Network is responsible for implementing.
- (d) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) will incorporate into its Safety Management System:
- (i) the elements agreed in the IRMP, that the Access Seeker or Access Holder is responsible for implementing; and
  - (ii) necessary processes for ensuring that the Access Seeker or Access Holder, its Rollingstock, Rollingstock Configurations and Train Services, at all times comply with the requirements of the Access Agreement, including the agreed IRMP.
- (e) The IRMP will become a schedule to the Access Seeker's or Access Holder's Access Agreement. If an Access Agreement has already been negotiated before the finalisation of the IRMP, the implementation of the IRMP may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and Environmental Investigation and Risk Management Report ("EIRMR").
- (f) If the Access Seeker or Access Holder and QR Network cannot agree any aspect of the IRMP, then either party may give to the other party notice in writing of the dispute ("IRMP Dispute Notice"), whereupon either party may then refer the matter to an expert for resolution in accordance with Subclause 4.7.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a party gives an IRMP Dispute Notice to the other party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Subparagraph 8.1.3(f)(ii) or the QCA in accordance with Subparagraph 8.1.3(f)(iii), either party may still refer the matter to an expert for resolution in accordance with Subclause 4.7.3;
  - (ii) if the matter has not been referred to an expert in accordance with Subparagraph 8.1.3(f)(i), or to the QCA in accordance with Subparagraph 8.1.3(f)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either party may refer the matter to the Safety Regulator through any process that the Safety Regulator considers appropriate; and
  - (iii) if the matter has not been referred to an expert in accordance with Subparagraph 8.1.3(f)(i), or to the Safety Regulator in accordance with

Subparagraph 8.1.3(f)(ii), then either party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Subclause 4.7.4;

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either party is not satisfied with the determination which the expert makes, then notwithstanding Paragraph 4.7.3(i), either party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Subparagraph 8.1.3(f)(ii) or the QCA under Subparagraph 8.1.3(f)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding upon the parties.

- (g) If an expert, the Safety Regulator or the QCA is called upon, under Paragraph 8.1.3(f), to make a determination the effect of which would be to establish the content of any aspect of the IRMP, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a dispute under Clause 8.1.3(f) that may from time to time be determined by the Safety Regulator.

#### 8.1.4 Operating Plan

- (a) In order to analyse the impacts and requirements of the operations proposed by an Access Seeker or Access Holder on the Rail Infrastructure, the Access Seeker or Access Holder must submit a draft Operating Plan to QR Network during the negotiation process. Deleted: QR
- (b) Details of the contents typically required in an Operating Plan for new or varied Train Services are set out in Schedule K. While the draft Operating Plan may be subject to change during the negotiation process, an Access Seeker or Access Holder must finalise its Operating Plan during the Interface Risk Management Process, as the IRMP must be consistent with the Operating Plan.
- (c) The Operating Plan will be utilised by QR Network to refine and finalise the Train Service Entitlement, Interface Coordination Plan, Access Charge and other terms and conditions of the Access Agreement. It will also be used as a basis for the Capacity Analysis. Deleted: QR
- (d) If, during the course of an Access Agreement, an Access Holder wishes to change its Operating Plan, QR Network and the Access Holder will undertake a further Interface Risk Assessment in respect of such change in accordance with the process outlined in Subclause 8.1.2 and jointly develop and agree any necessary revisions to the IRMP in accordance with Subclause 8.1.3. Deleted: QR

#### 8.1.5 Provision of Assistance by QR Network

- (a) Where QR Network and an Access Seeker or Access Holder agree that training of the Access Seeker's or Access Holder's staff or contractors is required as a control, or part of a control, to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Seeker or Access Holder can only Deleted: QR

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obtain that training from QR Network, QR Network will provide the Access Seeker or Access Holder with that training.

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- (b) Where QR Network provides training in accordance with Paragraph 8.1.5(a), it will be entitled to recover a reasonable commercial charge for providing such training.

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### 8.1.6 Rollingstock Authorisation

- (a) In order to ensure only Rollingstock and Rollingstock Configurations that comply with the terms of the IRMP operate on the Rail Infrastructure:

(i) all Rollingstock must be authorised by QR Network; and

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(ii) all Rollingstock Configurations must be authorised by QR Network, prior to operation on the Rail Infrastructure.

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- (b) To obtain authorisation of:

(i) Rollingstock, the Access Seeker or Access Holder must demonstrate to QR Network that the Rollingstock has been designed, constructed or modified and appropriately tested to comply with the agreed Rollingstock Interface Standards in its IRMP;

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(ii) Rollingstock Configurations, the Access Seeker or Access Holder must demonstrate to QR Network that the Rollingstock has been configured and operates in a manner that complies with the agreed Rollingstock Interface Standards in its IRMP.

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To demonstrate this compliance, the Access Seeker or Access Holder must certify that the Rollingstock and Rollingstock Configurations meet the Rollingstock Interface Standards, by producing certificates of compliance prepared by a party who QR Network and the Access Seeker or Access Holder accept as being competent for the purpose of providing such certification. QR Network may require the Access Seeker or Access Holder or the certifying party to provide it with documentation demonstrating the Rollingstock and Rollingstock Configurations are in compliance with the Rollingstock Interface Standards agreed in the IRMP. Such documentation may include the certificate of compliance, reports on trials and/or commissioning tests.

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- (c) Authorisation of Rollingstock and Rollingstock Configurations may be sought concurrently.

- (d) Where QR Network is not satisfied, on the basis of the documentation provided by an Access Seeker or Access Holder or a certifying party in accordance with Paragraphs 8.1.6(b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP, either QR Network or the Access Seeker or Access Holder may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP for resolution by an expert in accordance with Subclause 4.7.3.

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### 8.1.7 Audit, Inspection and Review



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(a) The Access Holder must have in place processes to ensure that it complies with its IRMP at all times in its operations on the Rail Infrastructure.

(b) QR Network and the Access Holder must inform each other of any failure to comply with the relevant IRMP, as and when they become aware of such non-compliance. This will include advice on the nature of the non-compliance and how the relevant party has rectified or intends to rectify the non-compliance.

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(c) In addition, where such failure is relevant to its operations on the Rail Infrastructure, the Access Holder must inform QR Network of any failure to comply with:

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(i) any applicable laws;

(ii) QR Network Train Control directions; and

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(iii) the Rollingstock and Rollingstock Configurations authorised under the Access Agreement.

(d) In addition, QR Network will provide the Access Holder with Above Rail Rollingstock incident information concerning that Access Holder's Train Services.

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(e) Where QR Network has reasonable grounds to believe that the Access Holder has not or is not complying with any aspect of its IRMP, then QR Network may conduct or require the conduct of an audit or inspection of the relevant aspect of the Access Holder's Train Services provided that QR Network advises the Access Holder in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by QR Network, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of the Access Holder, and the Access Holder has a legitimate commercial reason for wanting to withhold access to that information from QR Network, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by the Access Holder, but who shall be prohibited from disclosing that commercially sensitive information to QR Network. In carrying out such an inspection or audit, QR Network must not interfere unreasonably with the Access Holder's Rollingstock or Trains and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the Access Holder's business activities.

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(f) Where the Access Holder has reasonable grounds to believe that QR Network has not or is not complying with any aspect of the relevant IRMP, it may conduct or require the conduct of an audit or inspection of the relevant aspect of the Rail Infrastructure provided that the Access Holder advises QR Network in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by the Access Holder, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of QR Network, and QR Network has a legitimate commercial reason for wanting to withhold access to that information from the Access Holder, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by QR Network, but who shall be prohibited

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from disclosing that commercially sensitive information to the Access Holder. In carrying out such an inspection or audit, the Access Holder must not interfere unreasonably with QR Network's provision of Above Rail Services and Below Rail Services and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR Network or other Access Holders.

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- (g) Any other rights of inspection or audit will be specified in the Access Agreement.
- (h) At any time that either party has reasonable grounds to believe that the IRMP is no longer effective either in managing the Interface Risks that it was intended to manage or in managing new Interface Risks, QR Network and the Access Holder will, in accordance with the Access Agreement, jointly review the effectiveness of the IRMP in addressing the Interface Risks posed by the Access Holder's operations on the Rail Infrastructure.
- (i) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of inspections, audits and/or reviews conducted in accordance with the processes outlined in this Subclause 8.1.7.
- (j) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Trains, or the right of an Access Holder's Train Services to operate on the relevant part of the Rail Infrastructure during the course of the Access Holder's Access Agreement.
- (k) The Access Holder's Access Agreement will specify the circumstances in which QR Network may vary System-wide Requirements, including Safeworking Procedures, Safety Standards and Rollingstock Interface Standards, during the course of an Access Holder's Access Agreement.
- (l) Where an Access Holder (or group of Access Holders) and QR Network agree to vary Rollingstock Interface Standards, either in accordance with Paragraph 8.1.7(k) or as otherwise agreed, and such variation(s) involve an additional cost funded exclusively by that Access Holder (or group of Access Holders), QR Network will be entitled to restrict other Access Holders from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.
- (m) The party whose operations are audited or inspected under Paragraph 8.1.7(e) or (f) shall bear the reasonable costs of conducting such audit or inspection unless it is demonstrated that the stated grounds for requiring the conduct of the audit did not exist. In circumstances where the stated grounds for such audit have not been demonstrated to exist, the party that required the conduct of the audit or inspection shall bear the costs of conducting such audit or inspection.

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## 8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS

### 8.2.1 Environmental Investigation and Risk Management Report

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- (a) As outlined in Clause 4.5, as part of the negotiation process or as otherwise specified in an Access Agreement, the Access Seeker or Access Holder will commission a suitably qualified person, reasonably acceptable to both QR Network and the Access Seeker or Access Holder, to prepare an Environmental Investigation and Risk Management Report ("EIRMR") containing an environmental investigation component and an environmental risk management component which respectively identify:
- (i) possible risks of Environmental Harm arising out of the proposed use of the Rail Infrastructure by the Access Seeker or Access Holder, including risks associated with those matters identified in Schedule J; and
  - (ii) the manner in which the Access Seeker or Access Holder proposes to address the possible risks of Environmental Harm identified, as well as the roles and responsibilities, including financial responsibility, for the control measures proposed (including an audit regime).
- (b) In order to ensure that an appropriate EIRMR is developed, QR Network will disclose to an Access Seeker or Access Holder on a timely basis all relevant information, reasonably available to it, relating to the environmental impact of the Access Seeker's or Access Holder's proposed operations on the Rail Infrastructure. This information may include:
- (i) details of any Environmental Authorities held by QR Network that are relevant to the operation by the Access Seeker or Access Holder of its proposed Train Services on the Rail Infrastructure;
  - (ii) relevant environmental reports;
  - (iii) a copy of QR Network's Code of Practice for Railway Noise Management;
  - (iv) any currently applicable noise levels or limits;
  - (v) particulars of noise complaints and enforcement actions; and
  - (vi) any other information from QR Network's Environmental Management System ("EMS") considered relevant by QR Network to the development of an appropriate EIRMR.
- (c) If an Access Seeker or Access Holder has an existing EMS that it proposes to use in connection with its proposed operation on the Rail Infrastructure, the EIRMR should also detail the relevant parts of the Access Seeker's or Access Holder's existing EMS, including how those parts address the risks identified in the EIRMR. Extracts of the relevant parts of the EMS should also be included in the EIRMR.
- (d) The Access Seeker or Access Holder must provide a copy of the EIRMR to QR Network for its consideration.
- (e) QR Network will consider whether the EIRMR adequately addresses the issues outlined in Paragraph 8.2.1(a) and advise the Access Seeker or Access Holder of its decision.
- (f) In order to assist QR Network in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR Network all relevant information reasonably available to it relating to the environmental impact of its proposed operations on the Rail Infrastructure.

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(g) If, in QR Network's reasonable opinion, the EIRMR discloses areas of risk that cannot be adequately managed by the proposals included in the EIRMR, or the EIRMR fails to identify and adequately deal with additional relevant environmental risks, QR Network may notify the Access Seeker or Access Holder in writing of the risks not adequately managed or not identified or adequately dealt with.

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(h) If QR Network considers that the EIRMR does adequately address the issues outlined in Paragraph 8.2.1(a), or if QR Network fails to give the Access Seeker or Access Holder the notice referred to in Paragraph 8.2.1(g) within thirty (30) days of receipt (or such other period as the parties, acting reasonably, agree), the EIRMR will be accepted.

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(i) If QR Network gives the Access Seeker or Access Holder a notice pursuant to Paragraph 8.2.1(g), the Access Seeker or Access Holder may respond to QR Network, by a date agreed by the parties, with a written proposal that:

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- (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in the notice provided pursuant to Paragraph 8.2.1(g);
- (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR Network of assuming all or some portion of the risk;
- (iii) where risk abatement or attenuation measures are proposed pursuant to Subparagraph 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
- (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.

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(j) QR Network may, exercising reasonable discretion, accept or reject all or part of the Access Seeker's or Access Holder's proposal (the "Proposal"). If QR Network accepts the Proposal, it will be incorporated into and form part of the EIRMR, which will then be accepted. If QR Network rejects all or part of the Proposal, it may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with.

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(k) If the Access Seeker or Access Holder fails to submit its Proposal within the specified time, or if QR Network rejects all or part of the Proposal, then either QR Network or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the Proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks, to Dispute resolution or determination in accordance with Clause 4.7 if an Access Agreement has not already been signed, or if an Access Agreement has already been signed, in accordance with the Dispute resolution process provided therein.

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(l) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR does adequately manage the risks or does identify and adequately deal with the risks, then the EIRMR (as modified by the Proposal, where applicable) will be accepted.

- (m) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder amends the EIRMR in accordance with the expert's or QCA's determination and/or recommendations, the EIRMR (as amended) will be accepted.
- (n) The accepted EIRMR will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the IRMP.
- (o) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder fails, within the timeframe nominated by the expert or QCA, to amend the EIRMR in accordance with the expert's or QCA's determination and/or recommendations, QR Network may cease negotiations or terminate the Access Agreement (whichever is applicable).
- (p) A new or varied EIRMR shall be prepared as outlined in this Subclause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

## 8.2.2 Environmental Management System

- (a) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) must have in place an EMS that:
  - (i) has regard to the issues raised in the EIRMR and contains procedures for implementing the risk management proposals identified in it. The EIRMR will include the results of any determination referred to in Paragraph 8.2.1(k) and any amendment of the EIRMR arising from the recommendations of any environmental audit or review undertaken in accordance with Paragraph 8.2.3(e);
  - (ii) addresses all relevant legislative requirements including the requirements of the Environmental Authorities held by QR Network from time to time that are relevant to the Access Seeker's or Access Holder's Train Services; and
  - (iii) identifies systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with Environmental Laws.
- (b) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network will ensure that the elements included in the EIRMR, which QR Network is responsible for implementing, are incorporated in QR Network's EMS.

### 8.2.3 Audit and Review of EIRMR

(a) As noted in Subparagraph 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.

(b) An Access Holder will provide QR Network with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder that are relevant to the operation of its Train Services on the Rail Infrastructure.

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(c) QR Network will provide an Access Holder with copies of those parts of QR Network's environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.

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(d) An Access Holder must advise QR Network of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR Network must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR Network becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Paragraph 8.2.3(d).

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(e) If QR Network becomes aware of:

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- (i) any inadequacy of the Access Holder's EIRMR due to:
- any change in Environmental Laws of relevance to the Access Holder's Train Services; or
  - any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or

(ii) any non-compliance by the Access Holder with the EIRMR,

then QR Network may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of its EIRMR and/or the Access Holder's compliance with it. The review will only deal with:

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(iii) the extent to which the EIRMR appears not to address a change in applicable Environmental Laws; or

(iv) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or

(v) the extent of non-compliance by the Access Holder with its EIRMR, whichever is applicable in the circumstances.

(f) If directed by QR Network to undertake a review in accordance with Paragraph 8.2.3(e), the Access Holder will ensure the review is carried out and will provide QR Network with a copy of the review report not later than three (3) months after the notice was received from QR Network.

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(g) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of a review carried out in accordance with Paragraph 8.2.3(e), including the implementation of changes to the EIRMR.

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- (h) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Train Services, on environmental grounds, during the course of the Access Holder's Access Agreement.

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### 8.3 ADJOINING INFRASTRUCTURE

- (a) Unless otherwise agreed, where a Third Party Access Seeker or Third Party Access Holder proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR Network will not be Railway Manager, QR Network reserves the right to design, project manage, construct, commission, maintain, upgrade, and in any other way manage the Connecting Infrastructure, provided that:

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- (i) in undertaking any tasks associated with this right, QR Network may only undertake a reasonable standard of works bearing in mind the nature of the traffic and the current or planned service standards for the Rail Infrastructure; and

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- (ii) the Third Party Access Seeker or Third Party Access Holder:

- (A) is given a reasonable period within which to provide comments to QR Network on any design or construction matters; and

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- (B) may provide comments to QR Network identifying any matters relating to QR Network's proposed project management of the construction of the Connecting Infrastructure that will result in unreasonable costs or delays being incurred by the Third Party Access Seeker or Third Party Access Holder.

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- (b) The Third Party Access Seeker or Third Party Access Holder will pay QR Network an amount, for work carried out in accordance with Paragraph 8.3(a), which is reasonable given the terms and conditions of the agreement governing the development of the Connecting Infrastructure, provided that QR Network will pay the reasonable costs (excluding Consequential Loss) incurred by the Third Party Access Seeker or Third Party Access Holder where QR Network has unreasonably delayed the development of the Connecting Infrastructure.

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- (c) Where the Third Party Access Seeker or Third Party Access Holder and QR Network cannot agree as to:

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- (i) whether works referred to under Subparagraph 8.3(a)(i) are to a reasonable standard;

- (ii) what is a reasonable period within which to provide comments to QR Network under Subparagraph 8.3(a)(ii)(A);

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- (iii) whether QR Network's proposed project management of the construction of the Connecting Infrastructure will result in unreasonable costs or delays being incurred by the Third Party Access Seeker or Third Party Access Holder;

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- (iv) an amount payable under Paragraph 8.3(b);

- (v) whether QR Network has unreasonably delayed the construction of Connecting Infrastructure; or

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- (vi) any other aspect of a Rail Connection Agreement,

then, subject to any other remedies sought by a party at law, either party may initiate the dispute resolution process in Clause 4.7.



## PART 9. REPORTING

### 9.1 QUARTERLY PERFORMANCE REPORTS

(a) QR Network will publicly release a quarterly report in relation to each complete Quarter within the Term and which contains the information set out in Paragraphs 9.1(e) to (k). QR Network will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.

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(b) The quarterly reports will be publicly released within thirty (30) days of the end of the subject Quarter.

(c) In publishing a quarterly report in accordance with Paragraph 9.1(a), QR Network will include in the quarterly report a comparative presentation of the information in the subject Quarter and the four (4) preceding Quarters in respect of the information set out in Paragraphs 9.1(e) to 9.1(k). To the extent that a preceding Quarter is not within the Term, the information for the preceding Quarter for the purposes of the comparative presentation shall be that published for that Quarter under the 2005 Undertaking.

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(d) Where a quarterly report has been published in accordance with Paragraph 9.1(a) and QR Network has actual knowledge of a material error in the quarterly report, QR Network will, as soon as practicable but no later than the date by which the next quarterly report is to be publicly released, publish either, at QR Network's discretion, an erratum or a corrected quarterly report identifying the material errors. An error will be a material error where:

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(i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or

(ii) otherwise, QR Network or the QCA considers the error to be material.

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In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the quarterly report unless the QCA has otherwise been notified or is aware of the error.

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(e) Information on the reliability of Train Services that have operated in the subject Quarter, as follows:

(i) number and percentage of Healthy Train Services that reach their destination within the Agreed Exit Threshold;

(ii) number and percentage of Healthy Train Services that do not reach their destination within the Agreed Exit Threshold solely due to delays attributed to QR Network as Railway Manager;

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(iii) number and percentage of Healthy Train Services that do not reach their destination within the Agreed Exit Threshold, but excluding those Train Services identified in Subparagraph 9.1(e)(ii);

(iv) number and percentage of Unhealthy Train Services that do not deteriorate further, within the Agreed Deterioration Threshold;

(v) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, solely due to delays attributed to QR Network as Railway Manager;

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- (vi) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, due solely to delays attributed to an Access Holder or to unallocated reasons;
  - (vii) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, but excluding those Train Services identified in Subparagraphs 9.1(e)(v) or (vi); and
  - (viii) number and percentage of Unhealthy Train Services that do not reach their destination within the Agreed Exit Threshold.
- (f) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
- (i) for all Train Services, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
  - (ii) for all Train Services, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres;
  - (iii) for all Train Services, the average Unallocated Delay, in minutes, per one hundred (100) train kilometres; and
  - (iv) for all coal carrying Train Services operating in the Central Queensland Coal Region:
    - (A) the average actual Below Rail Transit Time; and
    - (B) the percentage of Train Services where the agreed Maximum Transit Time has been exceeded.
- (g) Information on the availability of the network for Train Services in the subject Quarter, as follows:
- (i) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to QR Network as Railway Manager; Deleted: QR
  - (ii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to an Access Holder (which would include cancellations attributable to a Railway Operator appointed by the Access Holder);
  - (iii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR Network as Railway Manager; Deleted: QR  
and
  - (iv) the percentage of Agreed Paths which QR Network, as Railway Manager, does not make available for coal carrying Train Services operating in the Central Queensland Coal Region. Deleted: QR
- (h) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (i) Information on speed restrictions, being the average percentage and the average number of kilometres of Track under temporary speed restriction.

(j) Information on QR Network's billing performance, being the number of instances where an Access Holder has made a complaint to QR Network about an incorrectly calculated bill, and where QR Network's investigation into the complaint identifies that the bill was incorrectly calculated.

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(k) In respect of the treatment by Train Control of Third Party Access Holder Train Services and the Train Services of QR Operational Business Groups, operating in direct competition with each other, the following information regarding complaints from each of Third Party Access Holders collectively and QR Operational Business Groups as Access Holders collectively that QR Network Train Control has made a decision in breach of QR Network's traffic management decision making matrix contained in Schedule G, Part B, Appendix 2, of this Undertaking:

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(i) the number of complaints received by QR Network;

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(ii) of the complaints received by QR Network, the number which are currently being assessed by QR Network;

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(iii) of the complaints received by QR Network, the number which, after being assessed by QR Network, were verified; and

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(iv) of the complaints which were verified, the number of verified complaints expressed per 100 train paths used by either, as relevant, the Third Party Access Holders collectively or QR Operational Business Groups as Access Holders collectively.

(l) For the purposes of Paragraphs 9.1(e) to (k) other than Paragraph 9.1(i) and Subparagraphs 9.1(f)(iv) and (g)(iv), the Train Services will be aggregated as follows:

(i) Train Services operated for the purpose of transporting bulk coal and mineral products;

(ii) Train Services operated for the purpose of transporting freight products, other than those products referred to in Subparagraph 9.1(l)(i); and

(iii) Train Services operated for the purpose of providing long distance passenger transport.

(m) For the purposes of Paragraph 9.1(i), information on speed restrictions will be reported in the following segments:

(i) the Central Queensland Coal Region; and

(ii) the remainder of the network, with the exception of:

- the Metropolitan Region; and
- Standard Gauge Rail Infrastructure.

## 9.2 ANNUAL REPORTS

### 9.2.1 Annual Financial Report

Within six (6) months after the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release Financial Statements in relation to the subject Year, that have been prepared and certified by the QR Network Chief Executive in accordance with Subclause 3.2.1 and, for Financial Statements

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prepared under Subparagraph 3.2.1(a)(i), which will be accompanied by the audit certificate prepared in accordance with Subclause 3.2.2.

## 9.2.2 Annual Performance Report

(a) Within four (4) months of the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release an annual performance report in relation to the subject Year (either complete or partial) containing the information set out in Paragraphs 9.2.2(c) to (f) and which will be accompanied by an audit certificate prepared in accordance with Subclause 9.5 in respect of QR Network's compliance with its obligations under this Subclause 9.2.2.

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(b) Where an annual performance report has been published in accordance with Paragraph 9.2.2(a) and QR Network has actual knowledge of a material error in the annual performance report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected annual performance report identifying the material errors. An error will be a material error where:

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(i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or

(ii) otherwise, QR Network or the QCA considers the error to be material.

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In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the annual performance report unless the QCA has otherwise been notified or is aware of the error.

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(c) Subject to Paragraph 9.2.2(g), information in relation to QR Network's compliance with the Undertaking over the subject Year, or such part of the subject Year within the Term, as follows:

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(i) the number and percentage of requests for Preliminary Information received in accordance with this Undertaking and responded to within the applicable timeframe nominated in Paragraph 4.1(d);

(ii) for those requests for Preliminary Information received in accordance with this Undertaking not responded to within the applicable timeframe nominated in Paragraph 4.1(d), the average delay (in days) taken to provide the Preliminary Information;

(iii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Paragraph 4.2(a) or (b);

(iv) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Paragraph 4.2(a) or (b), the average delay (in days) taken to acknowledge the Access Applications;

(v) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Paragraph 4.2(c);

(vi) the number and percentage of Access Applications received in accordance with this Undertaking for which an extension of time for

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provision of an Indicative Access Proposal is sought by QR Network in accordance with Paragraph 4.2(c);

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- (vii) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Paragraph 4.2(c), the average delay (in days) taken to provide the Indicative Access Proposals;
- (viii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7;
- (ix) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7 and QR Network was found to have committed a breach of the Undertaking;
- (x) the number of instances where QR Network has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3; and
- (xi) the number of instances where QR Network has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR Network was found to have committed a breach of those ring fencing obligations.

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(d) Subject to Paragraph 9.2.2(g), information in relation to the outcome of QR Network's negotiations with Access Seekers over the subject Year, or such part of the subject Year within the Term, as follows:

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- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
- (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
- (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.

(e) Information on network service quality most recently measured within the subject Year, being Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.

(f) For the purpose of Paragraph 9.2(e), the network service quality will be reported in the following segments:

- (i) the Central Queensland Coal Region; and
- (ii) the remainder of the network, with the exception of:
  - the Metropolitan Region; and

- Standard Gauge Rail Infrastructure.
- (g) The information referred to under Paragraphs 9.2.2(c) and (d) will be taken to include the equivalent information in respect of:
- (i) any part of the subject Year that is prior to the Commencing Date (in relation to QR and the 2005 Undertaking as applicable); and
  - (ii) QR Network's negotiations with Access Seekers where Paragraph 2.5(b) applies.

### 9.2.3 Maintenance Cost Report

- (a) Within four (4) months after the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release an annual report of actual maintenance costs containing the information set out in Paragraph 9.2.3(b) for the geographic areas specified in Paragraph 9.2.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will report its actual maintenance costs in the subject Year compared to the forecast maintenance costs accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance costs.
- (c) The actual and forecast maintenance costs will be separately reported for each Individual Coal System Infrastructure and for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted forecast maintenance costs for the purpose of assessing the relevant Reference Tariffs unless otherwise agreed by QR Network and the QCA.
- (d) Where a report has been published in accordance with Paragraph 9.2.3(a) and QR Network has actual knowledge of a material error in the report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
  - (ii) otherwise, QR Network or the QCA considers the error to be material.
- In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the report unless the QCA has otherwise been notified or is aware of the error.

### 9.2.4 Regulatory Asset Base Report

- (a) Within one (1) month after notification by the QCA of its acceptance of QR Network's roll forward of the Regulatory Asset Base, QR Network will publicly release an annual report of changes to the Regulatory Asset Base, containing the information set out in Paragraph 9.2.4(b) for the geographic areas specified in Paragraph 9.2.4(c) in a format to be agreed with the QCA from time to time.

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- (b) QR Network will report for the subject Year the roll forward of the Regulatory Asset Base including details of:

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- (i) the opening value of the Regulatory Asset Base for the subject 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, separately identifying individual projects with a value in excess of \$10 million;
- (v) disposals and transfers from the Regulatory Asset Base;
- (vi) the closing value of the Regulatory Asset Base for the subject Year; and
- (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.

- (c) The roll forward of QR Network's Regulatory Asset Base will be separately reported for each Individual Coal System Infrastructure and any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s) unless otherwise agreed by QR Network and the QCA.

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### 9.3 REPORTING TO THE QCA

- (a) The QCA has the right, by written notice, to request that QR Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of performing its obligations or functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking. The notice 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.

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- (b) QR Network will comply with a request by the QCA under Paragraph 9.3(a) by the day stated in the notice unless QR Network has a reasonable excuse for non compliance.

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- (c) QR Network will provide to the QCA information in accordance with Schedule MB which information shall be accompanied by a responsibility statement signed by the QR Network Chief Executive.

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- (d) QR Network will report to the QCA any breaches of this Undertaking of which QR Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by QR Network in respect of the breach, at the following times:

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- (i) within ten (10) business days of the end of each calendar month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar month; and

- (ii) in relation to other breaches, as soon as QR Network becomes aware of the breach,

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except where:

- (iii) if that information was sought from QR Network by the QCA under section 105 or 126 of the Act, QR Network could lawfully refuse to provide it to the QCA.

Where QR Network does not report a breach or a remedial action proposed or taken by QR Network to the QCA on the basis of Subparagraph 9.3(d)(iii), QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of whether the exception in Subparagraph 9.3(d)(iii) applies.

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#### 9.4 COMPLIANCE OFFICER

- (a) Without affecting QR Network's liability to discharge all its obligations under the Undertaking, the Compliance Officer is, to be responsible for using best efforts to undertake the following activities:

- (i) notifying the QR Network Chief Executive:

- (A) as soon as possible of any material breach of the Undertaking by QR Network and advising of any remedial action proposed or taken by QR Network in respect of the breach; and
- (B) in respect of other breaches and the remedial action proposed or taken by QR Network in respect of those breaches, on a monthly basis;

- (ii) taking all steps necessary to ensure that QR Network is able to meet its obligations under Subclause 3.2.1, Paragraphs 9.1(a) and (b), Subclauses 9.2.1 to 9.2.4 and Clause 9.3; and

- (iii) taking all steps necessary to ensure that QR Network is able to meet any other obligation under the Undertaking nominated by the QR Network Chief Executive and agreed to by the QCA in writing.

- (b) The QR Network Chief Executive will be responsible for taking all steps necessary for ensuring that QR Network is able to meet any other reporting obligation or activity imposed on QR Network by the Undertaking not identified or nominated under Paragraph 9.3(a).

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#### 9.5 AUDIT OF PERFORMANCE REPORT

- (a) QR Network's compliance with its obligations under Clause 9.1 and Subclause 9.2.2 ("Reporting Obligations") will be audited annually.

- (b) The QCA may require the annual audit, referred to in Paragraph 9.5(a), to be conducted by an external party, and if it does, the following process will apply:

- (i) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 9.5(b)(ii);
- (ii) if, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may

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- advise QR Network that its approval of that auditor in relation to the next external audit of QR Network's compliance with the Reporting Obligations is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;
- (iii) the auditor will have a 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 QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence; and Deleted: QR
- (iv) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise. Deleted: QR  
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- (c) QR Network will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network. Deleted: QR  
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- (d) The auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below. Deleted: QR  
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- (e) The auditor will compile an audit certificate identifying:
- (i) whether QR Network has complied in all material respects with the Reporting Obligations; Deleted: QR
- (ii) in the event that the auditor identifies that QR Network has not complied in all material respects with the Reporting Obligations, information as to the relevant non-compliance; and Deleted: QR
- (iii) the process adopted for the conduct of the audit.
- (f) At the same time as it releases the annual performance report under Paragraph 9.2.2(a), QR Network will provide to the QCA a copy of any letter or report from the auditor accompanying the audit certificate which explains the audit findings in greater detail. Deleted: QR

## PART 10. DEFINITIONS & INTERPRETATIONS

### 10.1 DEFINITIONS

In this Undertaking, unless inconsistent with the context, the following words and expressions shall have the respective meanings set out below:

**“2001 Undertaking”** means the access undertaking prepared by QR and approved by the QCA pursuant to the Act which commenced on 1 March 2002 (as amended during the term of that access undertaking);

**“2005 Undertaking”** means the access undertaking prepared by QR and approved by the QCA pursuant to the Act which commenced on 30 June 2006 (as amended during the term of that access undertaking);

**“Above Rail Delay”** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to an Access Holder (including a Railway Operator appointed by the Access Holder) in operating its Train Services, but excludes:

- (i) cancellations;
- (ii) delays resulting from compliance with a Passenger Priority Obligation; and
- (iii) 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 Rollingstock provision, Rollingstock maintenance, non Train Control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services and **“Above Rail”** has a similar meaning;

**“Access”** means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services;

**“Access Agreement”** means an agreement between QR Network and an Access Holder for the provision of Access and, subject to Subparagraph 2.5.2(e), includes an Internal Access Agreement. For the purposes of Paragraph 5.1(h), Paragraph 7.4.1(g), Subclause 7.4.2, Subclause 7.5.1 and the definition of “Evaluation Period” in Clause 10.1, agreements providing for multiple Train Services are deemed to be separate Access Agreements for each Train Service. This different meaning does not apply to System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A, Schedule F. To the extent that the QCA considers that Access Agreement should have that different meaning for the purposes of any other provisions of this Undertaking, it will:

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- notify QR Network and other interested stakeholders of the additional provision (or provisions) to which it considers that different meaning should apply;
- provide QR Network and other interested stakeholders with a reasonable time in which to provide submissions in relation to that proposal;
- consider any submissions received from QR Network and other interested stakeholders, and the matters set out in section 138(2) of the Act; and

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- determine whether that different meaning should apply to the provision (or provisions) proposed.

If during the term of this Undertaking the QCA determines that that different meaning of Access Agreement should apply to any additional provisions, it will be deemed that for the purposes of those provisions Access Agreement has that meaning;

Deleted: will include arrangements between Network Access and other QR business groups for the provision of Access for the purpose of QR operated Train Services;

**“Access Application”** means a request for Access by an Access Seeker which has been prepared in writing and which complies with the information requirements of Paragraph 4.1(b);

**“Access Charge”** means the price paid by an Access Holder for Access under an Access Agreement;

**“Access Conditions”** has the meaning given in Paragraph 6.5.2(a).

**“Access Conditions Register”** means a register maintained by QR Network and including the information identified in Subclause 6.5.3;

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**“Access Coordination Plan”** means a document compiled by QR Network from an Access Agreement for provision to those persons providing scheduling and Train Control Services, and detailing operational and interface information concerning the Access Holder’s operation to assist in the performance of scheduling, Train Control Services and associated incident management services;

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**“Access Holder”** means a party who holds Access Rights;

**“Access Rights”** means the entitlement of an Access Holder to Access in accordance with a specified Train Service Entitlement;

**“Access Seeker”** means a party who is seeking new or additional Access Rights;

**“Accreditation”** means accreditation in accordance with Part 3, Chapter 7 of the TIA and **“Accredited”** has a similar meaning;

**“Acknowledgment Notice”** means a notice given to an Access Seeker under Paragraph 4.2(a) or Paragraph 4.2(b) acknowledging the receipt of an Access Application;

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

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

- additional to the number of Train Services permitted under an existing Access Agreement, but otherwise consistent with the Train Service Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing Access Agreement; or
- varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by QR Network;

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**“Additional Information”** means that information that is to be provided by QR Network to an Access Seeker during the Negotiation Period as set out in Schedule D, excluding any information that is provided as part of the Preliminary Information, but

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only to the extent required either by the Access Seeker or as part of the Access Agreement;

**“Agreed Deterioration Threshold”** means the threshold allowance for deviations from a Train Path within which a Train Service is considered to be on time, as agreed between QR Network and the Access Holder in its Train Service Entitlement;

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**“Agreed Exit Threshold”** means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR Network and the Access Holder in its Train Service Entitlement;

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**“Agreed Paths”** means the lesser of:

- (i) the number of Train Paths required for the operation of the number of Train Services that an Access Holder is entitled to operate as specified under an Access Agreement (as varied from time to time in accordance with the Access Agreement); and
- (ii) the actual Train Paths that QR Network agrees, upon request by the Access Holder from time to time, to make available for the operation of the Access Holder’s Train Services.

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**“Authority”** means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR Network (but excluding QR);

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**“Available Capacity”** means Capacity that is not Committed Capacity and, subject to Paragraph 7.5.1(b), includes Capacity that will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

**“Below Rail Delay”** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to QR Network acting as Railway Manager, but excludes:

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- (i) cancellations;
- (ii) delays resulting from compliance with a Passenger Priority Obligation; and
- (iii) delays resulting from a Force Majeure Event;

**“Below Rail Services”** means the activities associated with the provision and management of Rail Infrastructure, including the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including Train Control Services and the implementation of Safeworking Procedures and **“Below Rail”** has a similar meaning;

**“Below Rail Transit Time”** means, for a Train Service travelling between its origin and destination, the sum of:

- (i) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;
- (ii) identified Below Rail Delays for that Train Service;

- (iii) time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (i) of this definition; and
- (iv) delays due to Operational Constraints directly caused by the activities of QR Network in maintaining the Rail Infrastructure or due to a fault or deficiency in the Rail Infrastructure provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (ii) or (iii) of this definition;

**“Business Day”** means a day which is not a Saturday, Sunday or bank, special 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 a specified section of Rail Infrastructure to accommodate Train Services within a specified time period after providing for QR Network's reasonable requirements for the exclusive utilisation of that specified section of Rail Infrastructure for the purposes of performing activities associated with the repair or enhancement of the Rail Infrastructure, including the operation of work Trains;

**“Capacity Analysis”** means an assessment of the extent to which a specified section of Rail Infrastructure has Available Capacity and whether that Available Capacity is sufficient for the proposed Access Rights and, if the Available Capacity is not sufficient for the proposed Access Rights, an assessment of Rail Infrastructure expansion or other Capacity enhancement required to meet those proposed Access Rights;

**“Capacity Resumption Register”** means a register maintained by QR Network and including the information identified in Paragraph 7.5.2(b);

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

**“Central Queensland Coal Region Mainline”** means, for the purposes of Subparagraph 6.5.2(c)(ii), that part of the Central Queensland Coal Region where the Rail Infrastructure serves, or as a result of the grant of Access Rights to which the proposed Access Conditions relate would serve, more than one mine;

**“Central Queensland Coal Region”** means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine;
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;
- (iv) from the port of Abbot Point to Newlands mine; and
- (v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

**“Changes in Market Circumstances”** means changes in circumstances which have occurred in any market and which have had, or will have, a material effect on an Access Holder’s ability to pay the Access Charges;

**“Claim”** means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including costs and expenses of defending or settling any action, proceeding, claim or demand;

**“Commencing Date”** has the meaning given to that term in Paragraph 2.3(b);

**“Committed Capacity”** means that portion of the Capacity that is required to meet the Train Service Entitlements of Access Holders and to comply with any Passenger Priority Obligation;

**“Committed Capacity Register”** means a register maintained by QR Network and including the information identified in Paragraph 7.5.1(d);

**“Common Corridor”** means:

- (i) in relation to transfers of Access Rights for coal carrying Train Services within an Individual Coal System in accordance with Paragraph 7.4.4(e), the part of the Rail Infrastructure that will be utilised by the new Access Holder’s relevant Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced, provided that where the distance from the new Access Holder’s origin to its destination is greater than the distance from the existing Access Holder’s origin to its destination (“existing Access Holder’s haul distance”), the Common Corridor will only extend from the new Access Holder’s destination (unloading facility) for a distance equal to the existing Access Holder’s haul distance; and
- (ii) in all circumstances other than those described in Subparagraph (i) of this definition, that part of the Rail Infrastructure that was utilised by the existing Access Holder for the Train Services for which Access Rights are being relinquished and will also be utilised by the new Access Holder’s Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced;

**“Common Costs”** means those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure;

**“Compliance Officer”** means the QR Network employee designated as such by the QR Network Chief Executive for the purposes of Paragraph 9.4(a);

**“Confidential Information”** means any information, data or other matter (“information”) disclosed to a party by, or on behalf of, another party where:

- (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
- (ii) the information is marked confidential by a party when disclosed;

provided that such information:

- is not already in the public domain;

- does not become available to the public through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c);
- was not in the other party's lawful possession prior to such disclosure; and
- is not received by the other party independently from a third party free to disclose such information, data or other matter;

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

- the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c); or
- the information has been received by the recipient independently from a third party free to disclose the information;

**“Connecting Infrastructure”** means the infrastructure including, but not limited to, the track, signalling and electrical overhead traction system (if applicable), which connects the Rail Infrastructure to Private Infrastructure, including those elements of the Private Infrastructure that impact upon QR Network's management of the Rail Infrastructure and any part of the Rail Infrastructure that is varied or created to facilitate the creation of the Private Infrastructure;

**“Consequential Loss”** means:

- any special, indirect or consequential loss or damage;
- any economic loss in respect of any claim in tort; and
- any loss of profits, production, revenue, use, contract, opportunity or goodwill or wasted overheads whatsoever,

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

**“Contested Train Path”** means a Train Path in respect of which more than one Access Holder has expressed an interest in operating a Train Service in the week in question;

**“Corporations Act”** means the *Corporations Act 2001 (Cth)* and the Corporations Regulations made under it, as amended from time to time;

**“Costing Manual”** means a manual prepared by QR Network and approved by the QCA from time to time that identifies the following matters:

- for Financial Statements prepared under Subparagraph 3.2.1(a)(i):

(A) the process for identifying, from QR's audited general purpose financial statements, the cost base for Below Rail Services, separate from other services provided by QR or Related Parties of QR to which those Financial Statements relate, and

(B) within the cost base for Below Rail Services, the process for identifying the costs of Below Rail Services provided by QR Network, separate from

the costs of Below Rail Services provided by QR Operational Business Groups (i.e. the management of stations and platforms);

- (ii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
- (iii) the format of Financial Statements;

**“Cross Subsidy”** means where the Access Charges payable in respect of one Train Service or combination of Train Services are insufficient to meet:

- (i) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and
- (ii) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services,

and the shortfall is contributed to by another Train Service or combination of Train Services;

**“Customer”** means a person or entity that the Access Holder or Access Seeker is providing or intending to provide Train Services for or on behalf of, and for the purpose of providing such Train Services to the Customer, the Access Seeker or Access Holder is acquiring or has acquired Access Rights to the Rail Infrastructure except, for the purposes of Subclause 7.4.4, where “Customer” has the more limited meaning of a person or entity that has a rail haulage agreement with the Access Holder in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement;

**“Cyclic Traffic”** means a traffic whose Train Service Entitlements is defined in terms of a number of Train Services within a particular period of time, for example, a year, month or week. Coal traffic is an example of such traffic;

**“Daily Train Plan”** or **“DTP”** means that document detailing 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 Rail Infrastructure;

**“Depreciated Optimised Replacement Cost”** means the value of assets determined in the following manner:

- (i) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;
- (ii) 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 requirements of Access Holders; and
- (iii) depreciation of the optimised replacement asset value will be undertaken on a straight line basis over the useful life of the assets;

**“Declared Service”** means the service that is declared under the Act in accordance with s.6 of the *Queensland Competition Authority Regulation 2007* (Qld);



“**Discount Rate**” means the rate equivalent to the ROA, as defined in Paragraph 6.2.4 (a);

“**Dispute**” has the meaning given to that term in Paragraph 4.7.1(a);

“**Draft Amending Undertaking**” means a document specifying amendments to the relevant provisions of this Undertaking, which is submitted to the QCA in the circumstances envisaged in Part 5 of the Act;

“**Efficient Cost**” means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR Network operates, and including any transitional arrangements agreed between QR Network and the QCA to reflect the transition from QR Network’s actual cost to that efficient cost;

“**Emergency Possession**” is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Rail Infrastructure that is considered dangerous to either Access Holders and/or QR Network employees, or where severe speed restrictions have been imposed, affecting the scheduled Train Services of Access Holders. The possession must be carried out less than seven (7) days from the detection of the problem;

“**Environmental Authorities**” means:

- (i) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the EP Act; or
- (ii) any authority which has effect under section 619 of the EP Act;

“**Environmental Investigation and Risk Management Report**” or “**EIRMR**” is a report containing the matters referred to it in Paragraph 8.2.1(a);

“**Environmental Harm**” means serious or material environmental harm or environmental nuisance as defined in the EP Act;

“**Environmental Laws**” means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies and relevant approved codes of practice and the conditions of all licences, approvals, consents, permissions or permits issued thereunder or amended from time to time;

“**Environmental Management System**” or “**EMS**” means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licenses;

“**EPA**” means the Environmental Protection Agency - an authority established under the EP Act;

“**EP Act**” means the *Environmental Protection Act 1994 (Qld)*;

“**Evaluation Period**” means:

- (i) when in reference to an individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Agreement in respect of the relevant Train Service;
- (ii) when in reference to a combination of Train Services for the purpose of determining a Reference Tariff to apply for some or all of those Train Services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train Services other than referred to in Subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not exceed ten (10) years;

**“Field Incident Management”** means the field management of incidents and accidents occurring on or affecting the Rail Infrastructure;

**“Financial Statements”** has the meaning given to that term in Paragraph 3.2.1(a);

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

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

and includes:

- (iii) 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 ;
- (iv) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (v) act of God;
- (vi) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (vii) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (viii) malicious damage or sabotage;
- (ix) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (x) failure of electricity supply from the electricity grid;
- (xi) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (xii) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (xiii) delay of a supplier due to any of the foregoing whenever arising;

**“Good Engineering Practices”** means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that

would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**“Healthy Train Service”** means a Train Service that has experienced no cumulative delay, within an Agreed Threshold, attributable to an Above Rail Delay or Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

**“Incremental Costs”** means those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access;

**“Indicative Access Proposal”** means a non-binding response from QR Network to an Access Application, prepared in writing and including the information set out in Clause 4.3;

**“Individual Coal System”** means any one of the following:

- (i) all coal carrying Train Services operating to or from the port of Abbot Point on the Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train Services operating to or from the ports of Hay Point or Dalrymple Bay on the Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine and Rolleston mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train Services operating to or from the Stanwell Power Station on the Rail Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura; or
- (v) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

**“Individual Coal System Infrastructure”** means any one of the following:

- (i) that Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;

- (ii) that Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory mine branch line;
- (iii) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

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

**“Initial Capacity Assessment”** means a preliminary Capacity Analysis undertaken in a manner to give an indicative assessment of Available Capacity only and which will require further analysis as part of the final Capacity Analysis;

**“Insolvent”** means where one of the following events has happened in relation to the Access Seeker:

- (i) the Access Seeker is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in s.459F(1) of the Corporations Act;
- (ii) a meeting is convened to place it in voluntary liquidation or to appoint an administrator, unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (iii) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (iv) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets, if that appointment is not revoked within fourteen (14) days after it is made; or
- (v) the Access Seeker resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

**“Interface Coordination Plan”** means a plan that identifies the procedures to be followed and the responsible officers from both QR Network and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under an Access Agreement other than those specified in the Network Management Principles;

**“Interface Risk Assessment”** means an assessment that ensures that the Interface Risks are properly managed within a risk management framework and which will identify all reasonably foreseeable hazards related to the Interface Risks, assess the risks of such hazards occurring and the implications of such hazards occurring as well as nominating suitable control mechanisms to manage the Interface Risks;

**“Interface Risk Management Plan”** or **“IRMP”** means a document that identifies the Interface Risks associated with the Access Seeker’s or Access Holder’s proposed operations and outlines both the control mechanisms agreed between QR Network and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

**“Interface Risk Management Process”** means a risk management framework to evaluate and address Interface Risks, conducted collaboratively by QR Network and an Access Seeker or Access Holder;

**“Interface Risks”** means all risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Access Seeker’s or Access Holder’s proposed operations and:

- (i) the Rail Infrastructure;
- (ii) the operation of other Train Services; and
- (iii) any other activities on the Rail Infrastructure that affect QR Network staff or QR Network’s interfaces with members of the public;

**“Internal Access Agreement”** means an arrangement in place immediately prior to the Commencing Date between Network Access (as defined under the 2005 Undertaking) and another QR business group for the provision of Access for the purpose of QR operated Train Services;

**“Line Diagrams”** means a diagrammatical representation of the rail network identifying:

- (i) the configuration of the network; and
- (ii) the parts of the network which are managed by QR Network, a QR Operational Business Group or a person other than QR Network;

**“Major Periodic Maintenance”** means activities that renovate the Rail Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year, and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleeping;

**“Major Yards”** means yards at Acacia Ridge, Fisherman Islands, Rockhampton, Callemondah, Jilalan, Coppabella, Paget, Townsville and Portsmouth;

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

**“Material Default”** means:

- (i) repeated failure to comply with any non trivial terms and/or conditions of a relevant agreement; or
- (ii) any breach of a fundamental term and/or condition of a relevant agreement, where a fundamental term and/or condition is one that if breached gives rise to a remedy of termination,

where a relevant agreement is as described in Subparagraph 4.6(c)(ii);

**“Material Environmental Harm”** means material environmental harm as defined in the EP Act;

**“Maximum Transit Time”** means the maximum Below Rail Transit Time for the relevant Train Service type that QR Network may provide under an Access Agreement;

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**“Metropolitan Region”** means the Rail Infrastructure bounded to the north by Nambour and to the west by Rosewood;

**“Negotiation Cessation Notice”** has the meaning given to that term in Paragraph 4.6(b) ;

**“Negotiation Period”** means the period during which the terms and conditions of an Access Agreement will be negotiated and which commences as specified in Paragraph 4.5.1(a) and concludes upon any of the events set out in Paragraph 4.5.1(e);

**“Network Management Principles”** are the principles set out in Schedule G;

Deleted: “Network Access” means the business group established within QR to manage the provision of Below Rail Services with the exception of stations and platforms;¶

**“New Access Agreement”** has the meaning given in Subparagraph 7.4.4(f)(i)(A);

**“Noise Planning Levels”** means the planning levels for railways referred to in the *Environmental Protection (Noise) Policy 1997*;

**“Nominated Weekly Train Services”** means, for a Cyclic Traffic, the number of Train Services that an Access Holder has an entitlement to operate during any one week period, as specified in its Train Service Entitlement;

**“Non-Pricing Provisions”** means the provisions of the 2001 Undertaking other than:

- (i) Parts 4 and 6 and Subclauses 7.4.1 and 7.5.1 of the 2001 Undertaking;
- (ii) any Reference Tariffs (as defined under the 2001 Undertaking) endorsed under Part 6 of the 2001 Undertaking; and
- (iii) the Standard Access Agreements included in Volume 2 of the 2001 Undertaking;

**“Old Access Agreement”** has the meaning given in Subparagraph 7.4.4(f)(i)(B);

**“Operating Plan”** is a description of how the proposed Train Services are to be operated, including the matters identified in Schedule K;

**“Operational Constraint”** means any restriction on the use of any part of the Rail Infrastructure that impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Urgent Possessions, Emergency Possessions or signalling or overhead restrictions;

**“Other Rail Infrastructure”** has the meaning given to that term in the TIA;

**“Out-Of-Course Running”** means the circumstances that occur when the actual running of one or more Train Service/s differs, by more than the relevant agreed threshold/s, from that provided in the DTP;

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

**“Planned Possessions”** means the temporary closure and/or occupation by QR Network of part of the Rail Infrastructure, including but not limited to closure of track or isolation of any electrical overhead traction system, for the purpose of carrying out infrastructure maintenance, enhancement, or other work on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property where such closure or occupation is entered into the MTP and adversely impacts upon the operation of Train Services;

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**“Predominant Train Service”** means the type of Train Service which at the Commencing Date is projected to utilise more Train Paths than any other type of Train Service utilising the relevant rail corridor during the Term;

**“Preliminary Information”** means that information that QR Network will be required to provide to an Access Seeker, if and to the extent requested by the Access Seeker, where the scope of such information is as set out in Schedule D;

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**“Private Efficient Cost”** means the cost for each Year, during the period for which the relevant Reference Tariff will apply, that reflects the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the relevant Private Infrastructure to the required service standard;

**“Private Incremental Costs”** means those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train service or combination of Train services (as appropriate) did not operate, where those costs are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure;

**“Private Infrastructure”** means the infrastructure, including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which a party other than QR Network is the Railway Manager (whether or not they are Accredited);

**“Proposed Standard Access Agreement”** has the meaning given to that term in Paragraph 5.2(a);

**“QCA”** means the Queensland Competition Authority as established by the Act;

**“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;

**“Quarter”** means the periods of three (3) months commencing 1 July, 1 October, 1 January and 1 April;

**“Queensland Transport”** means the Department of Transport for the State of Queensland or other department from time to time responsible for the administration of the TIA;

**“QR”** means QR Limited ACN 124 649 967;

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“**QR Network**” means QR Network Pty Ltd **ACN [insert]**;

“**QR Network Board**” means the board of directors of **QR Network** as comprised from time to time;

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“**QR Network Chief Executive**” means the **chief executive** from time to time of QR Network currently referred to as the **Executive General Manager**;

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“**QR Network Rollingstock Interface Standards**” are those standards set by **QR Network** for the purpose of defining the minimum requirements for Rollingstock to safely operate on the Rail Infrastructure;

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“**QR Network’s Code of Practice for Railway Noise Management**” means **QR Network’s** code of practice for railway noise management approved under the EP Act;

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“**QR Operational Business Groups**” means business groups within QR **or Related Parties of QR (other than QR Network)**, that undertake the operation of Train Services for transporting passengers or freight for reward;

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“**QR Services Australia**” means QR Services Australia Pty Ltd **ACN [insert]**;

“**QR Train Services**” means Train Services provided or to be provided by a QR Operational Business Group;

“**Rail Connection Agreement**” means an agreement by which **QR Network** agrees to the connection of the Rail Infrastructure to Private Infrastructure;

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“**Rail Infrastructure**” means Rail Transport Infrastructure including all stations and platforms but excluding the track and associated infrastructure on those parts of the network identified on the Line Diagrams as the responsibility of a **Related Party of QR Network**;

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“**Rail Transport Infrastructure**” means rail transport infrastructure as defined in the TIA for which QR **Network or a Related Party of QR Network** is the Railway Manager;

“**Railway Manager**” has the meaning given to that term in the TIA;

“**Railway Operator**” has the meaning given to that term in the TIA;

“**Reduction Factor**” means:

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the new Access Holder’s Trains in respect of which Access Rights could not have been provided without using the whole or part of the Access Rights relinquished by the existing Access Holder; and

B = the annual train kilometres over the Rail Infrastructure attributable to the Train Services for which the existing Access Holder is seeking to relinquish Access Rights;

“**Reference Tariff**” is an Access Charge applicable for a specified Reference Train Service, set out in Schedule F or established by **QR Network** and authorised by the

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QCA in accordance with Subclause 6.4.2, 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, varied or escalated in accordance with this Undertaking from time to time);

**“Reference Train Service”** means a notional Train Service identified in respect to 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;

**“Regulatory Asset Base”** means the asset value accepted by the QCA for the Central Queensland Coal Region;

**“Related Party”** has the meaning given to related body corporate in the Corporations Act;

**“Relinquishment Fee”** means:

- (i) in respect of an Access Agreement that includes an obligation to pay take or pay in the event that an Access Holder does not operate Train Services, other than an Access Agreement for Train Services specified in Subparagraph (ii) of this definition, the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement if the Access Agreement remained on foot but the Access Holder did not operate the relevant Train Services;
- (ii) subject to Clause 3 of Part B, for coal carrying Train Services included in Access Agreements in place on the day immediately prior to 30 June 2006 (or New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Paragraph 7.4.4(f) of the Undertaking), the amount that would be payable over the following two (2) year period if the Access Holder were to pay 40% (forty percentage points) of the Access Charge that would be payable if it operated the relevant Train Services; and
- (iii) in respect of an Access Agreement other than those nominated in Subparagraphs (i) or (ii), the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as a result of the operation of the relevant Train Services and payment of the applicable Access Charge;

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**“Replacement Mine”** means a mine that is:

- (i) operated by the same operator as an existing mine referred to in Paragraph 7.5.1(b);
- (ii) in the same geographic area as the existing mine referred to above such that Train Services for the Replacement Mine use substantially the same Train paths as Train Services for the existing mine; and
- (iii) producing a volume of coal substantially equivalent to a reduction in existing volume from the existing mine.

**“Revenue Limit”** for the purposes of Subclause 6.2.2 and 6.2.3 is the maximum revenue that QR Network should be entitled to earn from the provision of Access to

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the relevant Train Service(s) over the Evaluation Period as determined in accordance with Subclause 6.2.4;

**“Ringfencing Compliance Officer”** means the person designated as such by QR Network for the purposes of Paragraph 3.3.2(i);

**“Rollingstock”** means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the Track;

**“Rollingstock Configuration”** means the description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

**“Rollingstock Interface Standards”** are the minimum standards relating to the interface between Rollingstock and the Rail Infrastructure with which the Rollingstock and Rollingstock Configurations must comply in order for them to be able to be operated on the relevant parts of the Rail Infrastructure;

**“Safety Management System”** means:

- (i) in respect of a Railway Operator, a system developed by the Railway Operator to manage all risks associated with the operation of Train Services including specifically those risks identified in the relevant Interface Risk Assessment; and
- (ii) in respect of a Railway Manager, a system developed by the Railway Manager to manage all risks associated with the provision of Rail Infrastructure and safe management of Train operations on the Rail Infrastructure, including specifically those risks identified in Interface Risk Assessments undertaken with Access Seekers and Access Holders;

and which forms a basis upon which the Railway Operator or Railway Manager becomes Accredited;

**“Safety Regulator”** means the Chief Executive of Queensland Transport (or his delegate) operating in accordance with Chapter 7 of the TIA;

**“Safety Standards”** means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR Network policies and all standards relating to safety, including occupational health and safety, prescribed by any laws;

**“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of work sites on the Rail Infrastructure;

**“Scheduled Train Path”** means, for a Timetabled Traffic, the entitlement of an Access Holder, as identified in its Train Service Entitlement, to use a specified portion of the Rail Infrastructure at the times and between the locations specified in the relevant MTP, so as to allow the passage of one Train;

**“Serious Environmental Harm”** means serious environmental harm as defined in the EP Act;

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“**Stand Alone Costs**” means those costs that QR Network would incur if the relevant Train Service(s) was (were) the only Train Service(s) provided Access by QR Network, and where those costs are assessed as the Efficient Costs and on the basis of the assets reasonably required for the provision of Access, and “**Stand Alone**” has a similar meaning;

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“**Standard Access Agreement**” means a pro forma Access Agreement, incorporating terms and conditions that are consistent with Schedule E, set out in Volume 2 of this Undertaking or approved by the QCA in accordance with Clause 5.2;

“**Standard Gauge**” means a nominal gauge between rails of 1435 mm;

“**State**” means the state of Queensland;

“**Support Staff**” means the person or persons who provide clerical and administrative assistance to the relevant Board, chief executive or nominated manager, as the case may be, and in particular, includes the positions of Company Secretary and Assistant Company Secretary;

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“**System-wide Requirements**” means the Network Management Principles, possession protocols, Interface Coordination Plan, the Rollingstock Interface Standards, Safeworking Procedures and Safety Standards, QR Network emergency procedures and QR Network’s investigation procedures;

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“**Term**” means the period between the Commencing Date and the Terminating Date;

“**Terminating Date**” has the meaning given to that term in Paragraph 2.3(d);

“**Third Party**” means a party other than QR or a Related Party of QR;

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

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

“**Track**” means that part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

“**Train**” means any configuration of Rollingstock operating as a unit on the Track;

“**Train Controller**” means a person performing Train Control Services from within a Train Control centre;

“**Train Control Services**” means the management and monitoring of Train movements and of all other operation of Rollingstock on the Rail Infrastructure and of any activities affecting or potentially affecting such Train movements or Rollingstock operation. Train Control Services specifically include:

- (i) recording Train running times on Train diagrams and in QR Network’s information systems;
- (ii) reporting of incidents occurring on the Rail Infrastructure;
- (iii) managing incidents occurring on the Rail Infrastructure from within a Train Control centre; and

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(iv) exchanging information with Access Holders;  
and **“Train Control”** has a related meaning;

**“Train Orders”** means railing requests for a nominated period of time submitted to QR Network, by or on behalf of an Access Holder, to assist in the scheduling of Train Services.

**“Train Path”** means the occupation of a specified portion of Rail Infrastructure, which may include multiple sections in sequential order, for a specified time;

**“Train Service”** means the operation of a Train between specified origins and destinations on the Rail Infrastructure;

**“Train Service Entitlement”** means an Access Holder’s entitlement under an Access Agreement to operate a specified number and type of Train Services over the Rail Infrastructure 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;

**“Transport Service Payments”** means payments to QR Network from Queensland Transport in consideration of specified Below Rail Services for nominated sections of Rail Infrastructure;

**“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 schedules) which is an undertaking for the purposes of the Act;

**“Urgent Possession”** is similar to a Planned Possession, except that these possessions are required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) months from the detection of the problem;

**“Unhealthy Train Service”** means a Train Service that has experienced a cumulative delay, outside an Agreed Threshold, attributable to an Above Rail Delay or an Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

**“Yard Control”** means the control of Train movements, and other activities affecting Train movements, at those locations that are not under the direct control of a Train Controller;

**“Weekly Train Plan”** or **“WTP”** means a seven (7) day plan that details the scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the relevant week;

**“Western System”** means the rail corridor from the port at Fisherman’s Island to Macalister (Wilkie Creek), including all branch lines directly connecting coal mine loading facilities and coal unloading facilities to this corridor; and

**“Year”** means the period of twelve (12) months commencing 1 July.

## 10.2 INTERPRETATION

In this Undertaking unless the context otherwise requires:

- (a) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retains responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
- (b) reference to a person includes any other entity recognised by law and vice versa;
- (c) reference to “dollars” or “\$” means a reference to Australian dollars;
- (d) words importing the singular number includes the plural number and vice versa;
- (e) words importing any gender include the other gender;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (h) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (i) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (j) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;
- (k) clause headings are for reference purpose only;
- (l) any reference to the words “include” or “including” must be read as if they are followed by the words “without limitation”;
- (m) any reference to time is to local time in Queensland;
- (n) reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule is a reference to the corresponding Part, Clause, Subclause, Paragraph, Subparagraph or Schedule to this Undertaking as amended or replaced from time to time;
- (o) reference to this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
- (p) reference to any legislation includes all legislation under and amendments to that legislation and any legislation passed in substitution for that legislation or incorporating any of its provisions to the extent that they are incorporated;
- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions in the body of the Undertaking prevail;
- (r) QR Network may be taken to have engaged in conduct for a purpose referred to in Subclause 6.1.2 even though, after all the evidence has been considered, the existence of the relevant purpose is ascertainable only by inference from the conduct of QR Network or other relevant circumstances;

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- (s) where in this Undertaking QR Network is prohibited from engaging in conduct for the purpose of preventing or hindering Access, QR Network will be taken to have engaged in such conduct if, having regard to the criteria set out in Paragraph 10.2(t), QR Network provides or proposes to provide Access to QR (or a Related Party of QR) on more favourable terms than the terms on which QR Network provides Access to a competing Third Party Access Holder, or proposes to provide Access to a competing Third Party Access Seeker; and
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- (t) for Paragraph 10.2(s), the criteria are the terms, taken as a whole, on which QR Network provides or proposes to provide Access to QR (or a Related Party of QR) and the competitor having regard, in particular, to:
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- (i) the Access Charge to be paid by QR (or a Related Party of QR) and the competitor; and
- (ii) the nature and quality of the Access provided or proposed to be provided to QR (or a Related Party of QR) and the competitor;

### 10.3 NOTICES

- (a) Subject to Paragraph 10.3(b), where this Undertaking requires a notice or document be given to a person, the notice or document will be given:
- (i) when the notice or document is personally delivered to the person;
- (ii) where the person is a body corporate, when the person has been served in the way provided for the service of documents under the Corporations Act or another applicable law;
- (iii) if the notice or document is posted, on the earliest of the following:
- (A) where the notice is an Acknowledgement Notice, on the date the notice is posted;
- (B) where the notice (other than an Acknowledgement Notice) is posted within Australia to an Australian address, three (3) Business Days after posting; or
- (C) in any other case, ten (10) Business Days after posting; or
- (iv) if the notice is sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee (and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report).
- (b) If a notice or document is given:
- (i) after 5:00 pm in the place of receipt; or
- (ii) on a day which is a not a Business Day in the place of receipt,
- then it will be deemed to have been given at 9.00 am on the next day which is a Business Day in the place of receipt.

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In the event of the expert failing to make a determination that satisfies either Paragraph 6.4.4(b) or (c), the question in Paragraph 6.4.4(a) will be referred to an independent body, forum or another expert as agreed between QR and the QCA.

Failing such agreement within thirty (30) days of the expert determination (or a refusal by the expert to make a determination) QR may within a further fifteen (15) days apply to the Supreme Court of Queensland for a determination of the question under Paragraph 6.4.4(a). A determination by an independent body, forum, other expert or the Supreme Court of Queensland under this Paragraph 6.4.4(d) will be deemed to be an expert determination for the purposes of Paragraph 6.4.4(b) or (c).

Until either:

- (i) Paragraph 6.4.4(c) is satisfied;
- (ii) the fifteen (15) days in which QR was entitled to apply to the Supreme Court of Queensland under Paragraph 6.4.4(d) has expired without QR making such an application; or
- (iii) on application by QR to the Supreme Court of Queensland the Court provides a final order other than a finding in accordance with Paragraph 6.4.4(b),

Reference Tariffs and contributions to Common Costs will be calculated in accordance with Paragraph 6.4.4(b) as if the condition in Paragraph 6.4.4(b) has been satisfied.

Where any one of the events described in Subparagraphs 6.4.4(e)(i), (ii) or (iii) occurs, Reference Tariffs and contributions to Common Costs will be calculated in accordance with Paragraph 6.4.4(c) as if the condition in Paragraph 6.4.4(c) has been satisfied and the effect of that interpretation will be backdated as if it had taken effect from 1 July 2005. This will require payment of the difference between Access Charges paid by each relevant Access Holder since 1 July 2005 because of the Reference Tariffs and Access Charges being calculated by QR as set out in the Undertaking (as current at the Commencing Date) and the Access Charges that would have been paid by those Access Holders since 1 July 2005 if the Reference Tariffs and Access Charges were calculated in accordance with the interpretation in Paragraph 6.4.4(c), by:

- (i) in the event of the difference being positive (over-recovery), QR to each relevant Access Holder; or
- (ii) in the event of the difference being negative (under-recovery), each relevant Access Holder to QR.

This payment is due within thirty (30) days of Paragraph 6.4.4(c) being satisfied. In the event of an Access Holder not paying any money owed to QR pursuant to this Undertaking, QR may seek to recover this additional money by incorporating it as a component of that Access Holder's future Access Charges.

## **SCHEDULE A**

### ***Rail Access Line Diagrams***

| QR Network Access Undertaking

QLD Competition Authority  
Date Received  
12-May-2008

July 2008

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## SCHEDULE B

### *Confidentiality Deed*

#### BETWEEN

QR Network Pty Ltd (ACN [insert]) of Level 14, 305 Edward Street, Brisbane in the State of Queensland

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("QR Network")

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#### AND

("Access Seeker")

#### RECITALS

- A. The Access Seeker has made or intends to make enquiries of QR Network regarding the provision of Access and the parties may commence negotiation of the terms of an Access Agreement under which QR Network will provide the Access Seeker with Access to the Rail Infrastructure;
- B. In the course of the Access Seeker's enquiry and/or during the negotiations for the provision of Access to the Access Seeker and/or during the term of the Access Agreement it is envisaged that the parties will have to provide each other with Confidential Information;
- C. This deed sets out the terms upon which the parties will disclose Confidential Information to each other.

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## OPERATIVE PROVISIONS

### 1. Definitions

- 1.1. Unless the context otherwise requires, and subject to Clause 1.2, terms defined in the Undertaking have the same meanings when used in this deed.
- 1.2. In this deed, the following words and expressions shall have the respective meanings:

**“Confidential Information”** means:

- (a) any information, data or other matter (‘information’) disclosed to a party by, or on behalf of, another party in contemplation of, or during the course of, the negotiations for Access in respect of which this deed was signed, or during the term of the Access Agreement that results from those Access negotiations, where:-
- (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
  - (ii) the information is marked confidential by a party when disclosed; and
- (b) any information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement, which party shall be deemed to be the owner of such Confidential Information;

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provided that such information;

- is not disclosed in relation to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services;
- is not already in the public domain;
- does not become available to the public through means other than a breach of the confidentiality provisions in this deed;
- was not in the other party’s lawful possession prior to such disclosure; and
- is not received by the other party independently from a third party free to disclose such information, data or other matter;

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

- the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- the information is now in the public domain through means other than a breach of the confidentiality provisions in this deed; or
- the information has been received by the recipient independently from a third party free to disclose the information;

“Permitted Purpose” means a purpose associated with responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.

“Undertaking” means the access undertaking prepared by QR Network and approved by the QCA in accordance with the Act.

## 2. Disclosure and Use of Confidential Information

2.1. Each party (“Recipient”) undertakes to keep confidential and not disclose any Confidential Information of the other party (“Owner”) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this deed or the Undertaking, and to use Confidential Information of the other party only for a Permitted Purpose, unless:

- a) the Owner provides its prior written approval, which approval shall not be unreasonably withheld; or
- b) the disclosure and/or use is:
  - (i) required or compelled by any law;
  - (ii) required or compelled by any order of a court;
  - (iii) required or compelled by notice validly issued by any Authority;
  - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under the Undertaking or the Act;
  - (v) required under any stock exchange listing requirement or rule;
  - (vi) to the Safety Regulator;  
to the Recipient’s solicitors, barristers, or accountants under a duty of confidentiality;
  - (vii) to the Recipient’s banker 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 Owner;
  - (viii) requested by QR’s shareholding ministers;
  - (ix) for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services; ~~or~~
  - (x) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; ~~or~~
  - (xi) subject to clause 2.4(a), to a Related Party of QR Network (“QR Party”) provided that the disclosure is in accordance with clauses 2.4(b) to (i) and subject to a legally enforceable agreement between QR Network and the QR Party with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network (provided

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that QR Network must notify the QCA of any breach of such provisions of which QR Network becomes aware, and the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure).

2.2. For the purposes of Clause 2.1(a), it is deemed to be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by an Access Seeker to that Access Seeker's external consultant/s, independent adviser/s or Customer/s where the Access Seeker enters into a contract with the recipient of the Confidential Information on the following terms:

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a) specifying the individual/s employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;

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b) specifying that those individual/s must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and

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c) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.

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2.3. For the purposes of Clause 2.1(a), it is deemed to be unreasonable for the Access Seeker to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:

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a) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group;

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b) specifying the individual/s employed by the recipient who may have access to the Access Seeker's Confidential Information provided under the contract and, where QR Network has not been able to reasonably avoid appointing an external consultant or independent advisor to review, and provide advice in relation to Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter, after receiving the recipient's assurance that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter;

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c) specifying that those individual/s must not disclose the Access Seeker's Confidential Information provided under the contract to any person outside of QR Network; and

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d) if required by the Access Seeker, requiring the recipient to execute a confidentiality deed in favour of the Access Seeker on terms and conditions reasonably satisfactory to the Access Seeker.

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2.4. a) QR Network may disclose the Access Seeker's Confidential Information to:

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(i) individuals within QR Network (including the QR Network Chief Executive, QR Network Board and their respective Support Staff); and

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(ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and their respective Support Staff.

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b) Subject to Clause 2.4(c), QR Network may disclose the Access Seeker's Confidential Information to those groups within QR specified in this Paragraph, provided that disclosure to each recipient is limited to the extent necessary to carry out a Permitted Purpose:

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(i) Rollingstock Engineering Division, QR Services Australia in relation to Rollingstock or Rollingstock Interface issues;

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(ii) Property Division, QR in relation to real property issues; and

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(iii) QR Services Australia employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues.

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c) The Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 2.4(b). If the Access Seeker gives such a notice to QR Network, then:

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(i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;

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(ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby whereby QR Network can obtain the information it requires to respond to the Access Application and the Access Seeker will not unreasonably withhold its agreement to this alternate mechanism. If the parties fail to agree on an alternate mechanism either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7 of the Undertaking;

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(iii) all reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Clause 2.4(c)(ii) may be recovered by QR Network from the Access Seeker as a debt due and owing. All relevant timeframes applicable to QR Network under the Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and

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(iv) If

- the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can reasonably obtain the information it requires to respond to the Access Application; or
- the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process;

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QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) of the Undertaking.

- d) QR Network may disclose the Access Seeker's Confidential Information to a QR Operational Business Group where:

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- (i) the Access Seeker approves such disclosure;
- (ii) such disclosure is required for a Permitted Purpose in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
- (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
- (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.

- e) If, for a Permitted Purpose, QR Network wishes to disclose the Access Seeker's Confidential Information to a QR employee or group (or an employee or group of a Related Party of QR other than QR Network) not specified in Clauses 2.4(a), (b) or (d), or to a group specified in Clause 2.4(b) on an issue not specified in that Clause, QR Network must:

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- (i) obtain the consent of the Access Seeker prior to making the disclosure; and
- (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the Permitted Purpose.

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- f) QR Network will not, where reasonably practicable, disclose the Access Seeker's Confidential Information to a QR employee (or an employee of a Related Party of QR) where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 2.4(b), QR Network must obtain the consent of the Access Seeker prior to making the disclosure.

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- g) If, during the process of responding to an Access Application or negotiating an Access Agreement, QR Network seeks the consent of an Access Seeker for the disclosure of Confidential Information pursuant to Clause 2.4 (e) or (f) and:

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- (i) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) of the Undertaking; or
- (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR

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QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.

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This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.

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- h) If, during the process of administering an Access Agreement, QR Network seeks the consent of the Access Seeker for the disclosure of Confidential Information pursuant to Paragraph 2.4(e) or (f), such consent shall not be unreasonably withheld. If the Access Seeker fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, consent shall be deemed to have been given. This Clause does not apply where QR Network has requested consent to disclose the Confidential Information to a QR Operational Business Group.

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- i) The Access Seeker acknowledges that the Ringfencing Compliance Officer, and QR employees in Internal Audit and Information Services Division will from time to time, in the course of their duties, have access to the Access Seeker's Confidential Information. QR Network is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Access Seeker.

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- 2.5. For the purpose of this deed, a person who has been a consultant or contractor to either QR Network or the Access Seeker for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

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### 3. General Obligations

- 3.1. Each Recipient acknowledges and agrees that:

- a) the Confidential Information of the Owner is confidential to the Owner and is and remains at all times the valuable and exclusive property of the Owner;
- b) the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this deed by persons to whom the Recipient discloses the Confidential Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Recipient disclosed that Confidential Information);
- c) the Recipient shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of the Owner except to the extent necessary to carry out a Permitted Purpose;

- d) this deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Owner;
- e) the Recipient shall secure and protect the Confidential Information received from the Owner from unauthorised disclosure, access or use;
- f) the Owner may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this deed or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it; and
- g) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Owner shall be entitled to specific performance of this deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed.

#### 4. Liquidated Damages

- 4.1. Subject to Clause 5.1, where the Access Seeker can establish that a QR Operational Business Group is in possession of the Access Seeker's Confidential Information, QR Network will pay to the Access Seeker an amount of \$10,000 by way of liquidated damages in full and final settlement of any claim that the Access Seeker may have against QR Network in respect of the breach, UNLESS QR Network can establish that the QR Operational Business Group came into possession of the Confidential Information by means other than as a result of a breach by QR Network of Clause 2.4 or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it.
- 4.2. Any Dispute arising in connection with this Clause may be referred to the QCA. The QCA's review will determine whether QR Network is liable to pay the complainant the liquidated damages specified in Clause 4.1.

#### 5. Compensation for loss in excess of \$50,000

- 5.1 If the Access Seeker is able to establish that it has suffered more than \$50,000 loss or damage as a result of a breach by QR Network of Clause 2.4 or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, this deed shall not preclude the Access Seeker from taking action to recover compensation from QR Network in any court of competent jurisdiction. In these circumstances the parties agree that QR Network shall not be liable to the Access Seeker for the payment of liquidated damages in accordance with

Clause 4.

## 6. General

- 6.1. Nothing in this deed obliges either party to disclose any particular Confidential Information or enter into any further agreement with the other party if it decides, in its absolute discretion, that it is not in its commercial interests to do so.
- 6.2. Unless otherwise terminated by mutual consent in writing, this deed will continue in force notwithstanding:
  - a) any subsequent termination of any discussions or negotiations between the parties; or
  - b) the return of all copies of the Confidential Information to the Owner.
- 6.3. This deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 6.4. The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this deed derogates from any obligation of QR Network under the Undertaking with respect to the Confidential Information.
- 6.5. In this deed, references to Clauses are references to Clauses contained in this deed unless otherwise stated.

**[Appropriate execution clauses to be included.]**

## **SCHEDULE C**

### ***Summary of Information Requirements as part of Access Application***

#### **1. ACCESS SEEKER'S NAME AND CONTACT DETAILS**

(if the Access Seeker is an unincorporated joint venture, all parties should be identified)

#### **2. COAL & FREIGHT TRAIN SERVICES**

##### *(a) Train Service Description*

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Method of transporting freight (e.g. containers, louvered wagons, bulk wagons)
- Description of freight
- Net tonnes of product per annum each year of operation, represented on a monthly basis (where monthly railings are not even)

##### *(b) Timetable Requirements*

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service on the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term
- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant
- Requirements for shunting or dwell times enroute, separately for forward and return journeys

##### *(c) Rollingstock Details*

- Proposed number of locomotives per Train
- Proposed number of wagons per Train
- Type and class of locomotive
- Mass of each locomotive (includes full sand and fuel load)
- Type and class of wagons
- Nominal gross mass of wagon
- Tare mass of each wagon

- Tare mass per container
- Average number of containers per wagon
- Average proposed load (of product) per wagon
- Maximum proposed gross tonnes per wagon
- Maximum axle load
- Gross tonnes per Train Service, separately for forward and return journeys
- Total length of train (including locomotives)

(d) *Infrastructure Requirements*

- Details of any infrastructure enhancements that may be necessary for operation of service, where known

### 3. PASSENGER TRAIN SERVICES

(a) *Train Service Description*

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Type of passenger traffic (e.g. long distance, commuter, tourist)

(b) *Timetable Requirements*

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service for the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term
- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys
- Requirements for shunting or dwell times enroute, separately for forward and return journeys

(c) *Rollingstock Details*

- Total number of locomotives per Train
- Total number of carriages per Train
- Total number of passenger multiple units (PMU) per Train
- Type and class of locomotive
- Mass of each locomotive (including full sand and fuel load)
- Type and class of carriage
- Nominal gross mass of each carriage
- Type and class of PMU
- Average gross mass of PMU

- Maximum number of vehicles
- Maximum axle load
- Total length of Train (including locomotives)
- Gross tonnes per Train Service, separately for forward and return journeys
- Maximum operation speed separately for loaded and empty Trains

(d) *Infrastructure Requirements*

- Details of any infrastructure enhancements that may be necessary for operation of service, where known



## **SCHEDULE D**

### ***Preliminary and Additional Information***

#### **PART A. PRELIMINARY INFORMATION**

##### **1. Information Pack**

<b>Content</b>	<b>Cost</b>	<b>System Definition</b>
(a) Introduction <ul style="list-style-type: none"> <li>Criteria for use of data</li> <li>Purpose of document</li> </ul>	\$500.00 per system	Blackwater
(b) Civil Infrastructure <ul style="list-style-type: none"> <li>Description of the railway</li> <li>Description of Track</li> <li>Operational constraints, eg grades and curves</li> </ul>		Brisbane Metropolitan
(c) Signals and Operational Systems <ul style="list-style-type: none"> <li>Description of safeworking systems</li> </ul>		Central Western
(d) Telecommunications <ul style="list-style-type: none"> <li>Description of communication system used</li> </ul>		Goonyella
(e) Electric Traction <ul style="list-style-type: none"> <li>General system description</li> </ul>		Maryborough
(f) Rollingstock Interface Requirements <ul style="list-style-type: none"> <li>Track gauge</li> <li>Axle load/s</li> <li>Train speed/s</li> <li>Rollingstock gauge</li> <li>Noise limits</li> </ul>		Moura
(g) Locality Information <ul style="list-style-type: none"> <li>Terrain information</li> <li>Climatic conditions and resultant system disruptions</li> </ul>		Mt Isa
(h) Committed Corridor Upgrades		Newlands
(i) Relevant Maps and Drawings (CD version) <ul style="list-style-type: none"> <li>Corridor maps</li> <li>Working plan and section drawings</li> </ul>		North Coast Line
(j) Level Crossings <ul style="list-style-type: none"> <li>Number of level crossings</li> <li>Type of protection used</li> </ul>		South Western
(k) Train Operations <ul style="list-style-type: none"> <li>Sectional running times (calculated based on the projected average sectional running times for the</li> </ul>		Tablelands
		Western

Predominant Train Service) <ul style="list-style-type: none"> <li>• Maximum Train lengths</li> <li>• Incident recovery times</li> </ul> (l) Description of Systems <ul style="list-style-type: none"> <li>• Operational</li> <li>• Safeworking</li> </ul> (m) Capacity Information <ul style="list-style-type: none"> <li>• MTP *</li> </ul>		
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\* The MTP is provided subject to the following caveats:

- The identity of other Access Holders will not be detailed on the information provided;
- The terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
- The MTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.

## 2. Access to Rail Corridor

Content	Cost
Access to the rail corridor *	Nil

\* This advice will identify if QR Network does not have authority to authorise Access Seekers to access land upon which Rail Infrastructure on a route nominated by the Access Seeker is situated and, if so, will include the following information:

- Identification of the relevant party (including that party's name, address and contact details) that the Access Seeker would need to obtain approval from to gain access to that land, where this information is reasonably available to QR Network;
- Advice as to the nature and extent of the rights, if any, that QR Network holds in relation to the relevant land; and
- A notice that may be provided to that party identifying that QR Network has no objection to the Access Seeker negotiating for access to that land.

## 3. Rollingstock Interface Standards

Content	Cost
QR Network Rollingstock Interface Standards *	\$1,000.00 per set

\* QR Network Rollingstock Interface Standards are provided subject to the following caveats:

- QR Network will provide uncontrolled versions of the documents; and
- Changes may occur to the documents subsequent to their provision.

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#### 4. Commercial Information

Content		Cost
Reference Tariffs	<p><u>Blackwater System</u></p> <ul style="list-style-type: none"> <li>➤ Central Blackwater Cluster</li> <li>➤ North Blackwater Cluster</li> <li>➤ Stanwell Cluster</li> <li>➤ South West Blackwater</li> </ul> <p><u>Goonyella System</u></p> <ul style="list-style-type: none"> <li>➤ North Goonyella Cluster</li> <li>➤ South Goonyella Cluster</li> <li>➤ West Goonyella Cluster</li> <li>➤ Gregory Branch via Goonyella Cluster</li> <li>➤ Central Goonyella Cluster</li> </ul> <p><u>Moura System</u></p> <p><u>Newlands System</u></p> <p><u>Western System</u></p>	Nil
Applicable QR Network Standard Access Agreement		Nil

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## PART B. ADDITIONAL INFORMATION

### 1. Capacity Information

- a) The relevant current DTP, assessed in accordance with Paragraph (b) below, for the relevant part of the Rail Infrastructure subject to the following caveats:
- (i) the identity of other Access Holders will not be detailed on the information provided;
  - (ii) the terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
  - (iii) the DTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact upon the Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.
- b) The relevant current DTP will be assessed as:
- (i) for an Access Application in respect of a Timetabled Traffic, the current DTP for the relevant day (or days) of the week; or
  - (ii) for an Access Application in respect of a Cyclic Traffic, the current DTPs for a week, unless QR Network reasonably believes that provision of DTPs for a longer period of time is required in order that the DTPs show a use of Capacity that is representative of current utilisation.
- c) Access to Train Control diagrams, indicating actual running of Train Services against the relevant DTP, for those days for which the DTP has been provided in accordance with Paragraph (a) above.

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### 2. Information for EIRMR

- a) All relevant information reasonably available to QR Network that is required for the purpose of the Access Seeker's EIRMR, in accordance with Paragraph 8.2.1(b).

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### 3. Information for Interface Risk Assessment

- a) All relevant information reasonably available to QR Network that is required for the purpose of the Interface Risk Assessment, in accordance with Paragraph 8.1.1(c).

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### 4. Other Information

- a) Other information as follows:
- (iv) information required in accordance with s.101(2) of the Act, to the extent that this information has not already been provided; and

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- (v) other information that is reasonably required by the Access Seeker in accordance with s.101(1) of the Act, provided such information is reasonably able to be provided by QR Network and cannot be reasonably obtained from a source other than QR Network.

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## **SCHEDULE E**

### ***Principles for inclusion in Standard Access Agreement***

#### **1. Access Rights**

- The Access Agreement will provide for non-exclusive Train Service Entitlements for the operation of Train Services in terms of agreed service levels over the nominated network.
- Long term Train Service Entitlements can be varied only in accordance with agreed scheduling procedures specified in the Access Agreement or as otherwise agreed between the parties. The Network Management Principles should guide the performance of the scheduling function by QR Network and be incorporated by reference in the Access Agreement. Deleted: QR
- It is the responsibility of the Access Seeker entering into an Access Agreement with QR Network to ensure that the operator of Train Services utilising the Access Rights is Accredited. Deleted: QR
- Access Agreements will be for a specified term and include a good faith negotiation process for renewal.

#### **2. Access Charges**

- Access Charges are to be agreed between the parties and payable in accordance with reasonable payment terms set out in the Access Agreement. Late payments or credits by either party will bear interest at an agreed default rate.
- The Access Agreement will provide for a fair and reasonable mechanism for dealing with bona fide Disputed invoices.
- The Access Agreement may provide for periodic review of Access Charges.
- Unless otherwise stated, all amounts payable under the Access Agreement are exclusive of GST.
- In appropriate cases QR Network may require lodgement of a security deposit to secure performance by the Access Holder of its obligations under the Access Agreement having regard to QR Network's reasonable assessment of the creditworthiness of the Access Holder. Any required security deposit should reflect the cash flow risk that QR Network has taken on. Deleted: QR
- Where there are no security arrangements in place and a user defaults on its payments, QR Network is entitled to require some form of security deposit Deleted: QR

equivalent to its financial exposure, where the default was not attributable to a legitimate Dispute.

- An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by QR Network.

### 3. Train Service Entitlements

- The Access Holder shall not be entitled to commence Train Services unless and until all provisions of the Access Agreement required to be completed or complied with prior to the commencement of Train Services have been completed or complied with by the due date specified in the Access Agreement. QR Network will use all reasonable endeavours to cooperate with the Access Holder to facilitate the Access Holder's completion or compliance with such requirements.
- The Access Holder must only operate Trains of the nominated specification for the transport of the nominated product type over the nominated network.
- The Access Agreement will contain provisions regarding the resumption of capacity by QR Network. Unless otherwise agreed by the parties, the provisions will include objective criteria to assess consistently under-utilised capacity, a requirement that there be either a reasonable expectation of a sustained alternative demand or a reasonable expectation of a commercial benefit for the provision and management of the infrastructure sufficiently material to justify the resumption of capacity and a Dispute resolution process conducted by an expert. Appropriate adjustments will be made to the Access Charges payable following a reduction in Train Service Entitlements.

### 4. Day-to-Day Train Movements

- QR Network is to have responsibility for Train Control and shall exercise Train Control having regard to the safe conduct of rail operations on the nominated network.
- QR Network and the Access Holder shall ensure that the operation of Train Services is in accordance with entry and exit times in the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles or varied in the circumstances specified in the Access Agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the Access Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).
- The Network Management Principles establish the procedures QR Network must follow in varying the Daily Train Plan.
- The Access Holder is required to comply with all QR Network Train Control directions and ensure all Trains and Rollingstock are equipped with

appropriate communication systems to comply with the agreed Rollingstock Interface Standards.

## 5. Train Operations

- The Access Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.

- QR Network and the Access Holder are to comply with all laws, Safeworking Procedures and Safety Standards and all other train operations requirements in the Access Agreement. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all Railway Operators on the nominated network.

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- The Access Holder must obtain certification from an appropriately qualified person whom both parties accept as being competent to provide certification for the Access Holder's Rollingstock and Rollingstock Configurations. QR Network has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rollingstock and Rollingstock Configurations are as agreed by the two parties in the IRMP and, if QR Network is so satisfied the Rollingstock and Rollingstock Configurations so certified will be included in the Rollingstock specification as being authorised to operate on the nominated network subject to continuing compliance with the IRMP and the Rollingstock specification.

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- The Access Agreement will specify relevant Rollingstock Interface Standards. QR Network may vary the agreed Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards and other System-wide Requirements in respect to the management of the Rail Infrastructure in the following circumstances:

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- on safety grounds, acting reasonably, at any time following consultation with the Access Holder and the provision of reasonable notice to the Access Holder. In such circumstances, each party is responsible for its own costs (including the costs of additional or modified equipment) in complying with the system wide change;
- in any other circumstance requiring a system wide change, QR Network may, acting reasonably, negotiate such changes with the Access Holder and the Access Holder must not unreasonably withhold its consent to the change. Each party is responsible for costs in complying with the system wide change (including the cost of additional or modified equipment or modification of either party's Rollingstock) as agreed between them or, failing agreement, as determined by an expert.

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- The parties should agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially based incentives and sanctions. The performance levels may also be reviewed periodically.
- The Access Holder is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock Configurations comply with all applicable laws, the Rollingstock



specification and the Rollingstock Interface Standards specified in the Access Agreement.

- QR Network may suspend the operation of Rollingstock and Trains for actual non-compliance or (acting reasonably) anticipated non-compliance with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property. QR Network may also suspend the operation of the affected Rollingstock and Trains for actual non-compliance where such non-compliance does not create a risk to the safety of any person or a material risk to property and the Access Holder has failed to rectify the non-compliance within a reasonable period of time. Where QR Network suspends Rollingstock and/or Trains in these circumstances, the suspension will only apply until the non-compliance is rectified or in the event of anticipated non-compliance, the Access Holder has demonstrated that it is in compliance.
- Where QR Network suspends an Access Holder's Rollingstock and/or Trains, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.
- The Access Holder must ensure all loadings of Rollingstock are secure.

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## 6. Infrastructure Management

- QR Network is responsible for the management and control of the nominated network.
- QR Network will carry out maintenance work on the nominated network such that, subject to any agreed criteria and the Network Management Principles, the infrastructure is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- QR Network may impose operational constraints (such as speed or load restrictions) for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance work, emergency repairs and enhancements. In carrying out such work QR Network will use its reasonable endeavours to minimise disruption to Train Services so that the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- The Access Agreement will contain possession protocols for consultation with the Access Holder regarding maintenance that will impact on the Access Holder's schedule.
- The Access Agreement will contain provisions requiring the parties to provide advice to each other in relation to factors that could affect the Access Holder's operation of Train Services or the integrity of the nominated network.

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- Prior to the commencement of Train Services, the Access Holder may, subject to reasonable terms and conditions, inspect the nominated network for the purposes of assessing the operational, environmental and safety risks with respect to the infrastructure, as well as the standard of the infrastructure comprising the nominated network including, but not limited to, fencing and at-grade crossings. QR Network will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where QR Network fails to maintain the infrastructure such that, subject to any agreed criteria (including those specified in the Network Management Principles), it is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.

## 7. Incident Management

- Prior to the commencement of Train Services the Access Holder is required to develop an emergency response plan containing procedures for dealing with incidents which must be compatible with QR Network's emergency procedures.
- In the event of an incident, QR Network is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the Access Holder, take any action it considers reasonably necessary to recommence services as soon as possible. The Access Holder is responsible for recovery of its Rollingstock in accordance with its emergency response plan.
- The Access Holder must cooperate and assist with the restoration of the network in accordance with directions from Train Controllers seeking to coordinate the clearance of network blockages. Any Access Holder so directed should be adequately compensated for doing so and is entitled to expect that all rail operators will be subject to the same obligation. QR Network has the right to pass through the cost of clearing the blockage to the party that has caused the damage.
- Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the Access Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.

## 8. Environmental Protection and Other Issues

- All Environmental Laws, regulations and relevant guidelines must be complied with.
- Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network. Auditing requirements should be linked to the environmental risks posed by an Access Holder's Train Services and be established in that Access Holder's

Environmental Investigation and Risk Management Report (EIRMR) which should be amended as necessary from time to time to address ongoing risk and compliance issues.

- The Access Holder is required to inform QR Network of non-compliance with its Environmental Investigation and Risk Management Report (EIRMR) and provide details of how it intends to address the non-compliance. The Access Holder is required to rectify the non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR Network and any action required by the EPA.

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- The Access Holder should comply with its obligations under the EP Act including any notices or directions it receives from the EPA. The Access Holder is required to inform QR Network of non-compliance with the Access Holder's obligations under the EP Act. Failure to comply with such an obligation, where that failure causes or threatens Serious Environmental Harm, establishes grounds for a material event of default.

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- QR Network reserves the right to suspend the right of an Access Holder to operate on the nominated network if, in QR Network's reasonable opinion, the Access Holder's Train Services cause or threaten Material Environmental Harm or Serious Environmental Harm. A suspension will only apply until the Access Holder demonstrates to QR Network that the circumstances that gave rise to QR Network's right to suspend have ceased to exist.

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- Where QR Network suspends an Access Holder's Train Services on environmental grounds, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.

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## 9. Accreditation

- QR Network must have and maintain Accreditation as a Railway Manager under the TIA to the extent required to perform its obligations under the Access Agreement.
- An operator Accredited as a Railway Operator under the TIA must operate Train Services and the operator must maintain such Accreditation to the extent required to perform its obligations under the Access Agreement.

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## 10. Access Holder's Staff

- The Access Holder is responsible for demonstrating through the Interface Risk Assessment process that it has in place a process for ensuring the competence of its staff performing safety related work.
- QR Network reserves the right to suspend the right of the Access Holder's Train Services to operate on the nominated network in the event of breach or (acting reasonably) anticipated breach of any laws relating to rail safety, QR Network Train Control directions, Safeworking Procedures or Safety

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Standards. A suspension will only apply until the breach is rectified or, in the event of an anticipated breach, the Access Holder has demonstrated to QR Network that it is in compliance.

- Where QR Network suspends an Access Holder's Train Services, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.

## 11. Safety Risk Management

- Safety risk management must be addressed by risk identification through the Interface Risk Assessment process and the formulation of an IRMP. The parties will be required to comply with the IRMP.

## 12. Inspection and Audit Rights

- Rights of inspection and audit in relation to each party's compliance with the Access Agreement and inspection of Trains and Rollingstock shall be included in the Access Agreement.
- The Access Agreement will specify the terms and conditions on which the parties can carry out such inspections and audits.
- Each party will, in carrying out any inspection or audit, give the other party reasonable notice and use reasonable endeavours to minimise disruption to the other party's operations.

## 13. Insurance

- The Access Agreement will provide for insurances to be effected by the parties to appropriately provide for the relevant insurance risks.

## 14. Indemnities and Liabilities

- Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff.
- The Access Holder is solely liable for and is required to release and indemnify QR Network for any damage to property or personal injury or death of any person being transported on Train Services except to the extent that the damage or harm is caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of QR Network or its staff. Unless otherwise agreed, the Access Holder shall extend to QR Network any exclusion or limitation of liability afforded by the Access Holder's conditions of carriage with its customers.

## 15. Limitation of Liability

- The liabilities of the parties for default shall be limited as agreed in the Access Agreement.
- Except as otherwise provided in the Access Agreement, neither party has any liability for Consequential Loss or loss of profits in any circumstances.
- Unless otherwise agreed in the Access Agreement, where a party:

- (whether QR Network or the Access Holder), requires the conduct of an audit or inspection under Paragraph 8.1.7(e) or (f) of the Undertaking (as applicable); or
- (being QR Network), suspends an Access Holder's Rollingstock, Trains and/or Train Services;

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that party (referred to as the "First Party") will be liable for damages (including damages for Consequential Loss) to the other party in respect of loss or damage arising from the conduct of the audit or inspection or the suspension (as applicable) if, and only if, no reasonable person in the position of the First Party could have formed the view that the stated grounds for such an audit, inspection or suspension existed (such circumstances being referred to as the "Liability Trigger"), provided that the other party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the audit or inspection or the suspension. The First Party shall bear the burden of establishing that the Liability Trigger has not occurred.

- The Access Agreement will specify the circumstances in which the Access Holder has a claim against QR Network for the non-provision of Access or the cancellation of a Train Service caused by breach of the Access Agreement or negligence by QR Network.
- The Access Agreement will specify the circumstances in which each party has a claim against the other party for delays to Train movements caused by breach of the Access Agreement or negligence by the other party.
- Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

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## 16. Material Change

- Access Charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to QR Network of performing its obligations under the Access Agreement.
- A material change shall be limited to changes in taxes, laws or funding from QR Network's Transport Service Payments. The effects of material changes should be assessed on a case-by-case basis and in consultation with the Access Holder.
- An independent expert will determine any Dispute regarding the impact on Access Charges as a result of a material change.

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## 17. Disputes

- Any Dispute between the parties is to be firstly referred in writing to the respective chief executives for resolution. If the Dispute is not resolved, then the parties may agree to refer the Dispute for resolution by an expert or arbitration. If there is no agreement to resolve the Dispute in this manner then the Dispute is to be determined by a court.

## 18. Default, Suspension and Termination

- The Access Agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.

## 19. Force Majeure Event

- The obligations of either party (other than an obligation to pay monies due) will be suspended where by reason of a Force Majeure Event that party is delayed in, or prevented from, carrying out its obligations under the Access Agreement. The Access Agreement will provide for relief in respect of the payment of Access Charges to the extent that QR Network is unable to provide Access Rights because of a Force Majeure Event affecting QR Network.

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- If infrastructure on specified lightly trafficked corridors of the nominated network is damaged by a Force Majeure Event and in QR Network's reasonable opinion the cost of repairing the damage is not economic, QR Network may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.

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- The Access Agreement will provide for a process that might result in termination of the Access Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

## 20. Assignment

- The Access Holder may assign the whole of its rights and obligations under the Access Agreement to a related body corporate, provided that the assignor remains liable for the performance of obligations under the Access Agreement or to a non-related body corporate, with the prior written consent of QR Network (such consent not to be unreasonably withheld).

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- A change in control of an Access Holder not a publicly listed corporation will be deemed to be an assignment of the Access Agreement.

## 21. QR Network's Access Undertaking

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- The parties will comply with all applicable laws.

- The parties will comply with the terms of the Undertaking, including the ring fencing obligations, in effect from time to time, unless otherwise agreed in the Access Agreement.

## **SCHEDULE F**

### ***Reference Tariff Schedules***

#### **SECTION 1. COAL CARRYING TRAIN SERVICES**

##### **Part A. - General Provisions**

##### **1. Scope**

This Section specifies the Reference Tariffs applicable to nominated coal carrying Reference Train Services. This Section also specifies the methodology that will be used for determining a new Reference Tariff for a new coal carrying Reference Train Service where required in accordance with the Undertaking.

This Section has been developed by [QR Network](#) in accordance with the principles contained in Part 6 of this Undertaking and has been endorsed by the QCA for application in accordance with the terms and conditions set out in this Section. Part A contains the provisions that generically apply to all coal carrying Reference Train Services, Part B identifies the requirements specific to each nominated Reference Train Service on the Central Queensland Coal Region subject to this Section and Part C identifies the requirements specific to each nominated Reference Train Service on the Western System subject to this Section. The requirements set out in Parts B and C must always be read in conjunction with the provisions of Part A.

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Each Reference Train Service includes a defined level of Below Rail Services as specified in Part 2 of the Undertaking. Consistent with Part 2 of the Undertaking, the Reference Train Service does not include any Above Rail Services such as the carrying out of any provisioning, inspection, testing and maintenance of Rollingstock, or storage, marshalling, shunting or other relocation of Rollingstock.

A varied Access Charge shall be applicable to Train Services that vary from the Reference Train Service characteristics specified in Clause 2.3 of this Part A and/or operate under terms and conditions with agreed variations from the requirements of Clause 2.4 of this Part A, but otherwise satisfy the nominated Reference Train Service description, whereby the varied Access Charge varies from the applicable Reference Tariff due to differences in cost or risk to [QR Network](#) of providing Access for that Train Service compared to the Reference Train Service. Clause 4 of this Part A describes how an Access Charge will vary from the Reference Tariff for specified variations of a Train Service from the Reference Train Service.

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The provisions of this Section will be the basis for Access Charges negotiated for new Access Agreements for relevant Train Services or for rate review provisions that specifically refer to the Reference Tariff for the nominated Reference Train Service.



## 2. Reference Train Service Description

### 2.1 Commodity Type

The Reference Train Service carries bulk coal. In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

### 2.2 Geographic Scope

2.2.1 The Reference Train Service operates on the rail corridor directly connecting specified Nominated Loading Facility/ies and specified Nominated Unloading Facility/ies.

2.2.2 A new coal loading facility may only be added to the existing Nominated Loading Facilities for a Reference Train Service if it satisfies the requirements in relation to:

- (a) additional loading facilities that are set out in Part B or Part C for the relevant Reference Train Service; and
- (b) for coal carrying Train Services in the Central Queensland Coal Region, the minimum contribution to Common Costs, as set out in Clause 4.1 of Part B.

2.2.3 Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Information Pack for the relevant system.

### 2.3 Reference Train Service Characteristics

2.3.1 Each Reference Train Service:

- (a) has a maximum length (including the locomotive/s) as specified in Part B or Part C for that Reference Train Service;
- (b) has a maximum axle load as specified in Part B or Part C for that Reference Train Service with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table;
- (c) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Information Pack;
- (d) complies with QR Network's Rollingstock Interface Standards applicable to the Nominated Infrastructure;
- (e) is otherwise compatible with the Nominated Infrastructure described in the relevant Information Pack and requires no additional expenditure by QR Network to implement varied Below Rail controls identified in the IRMP or EIRMR;
- (f) operates in accordance with nominated sectional running times specified in the relevant Information Pack;
- (g) does not exceed the Loading Times specified in Part B or Part C for that Reference Train Service;
- (h) does not exceed the Unloading Times specified in Part B or Part C for that Reference Train Service;

- (i) operates as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (j) has the ability to operate on the configuration of the Nominated Infrastructure existing at the Commencing Date without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements;
- (k) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism;
- (l) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at the Commencing Date;
- (m) measured as an average over a Year, has a maximum Stowage period for each Train Service no greater than that specified in Part B for that Reference Train Service; and
- (n) has any other characteristics specified for that Reference Train Service set out in Parts B or C.

## 2.4 Conditions of Access

2.4.1 The Reference Train Service will operate in accordance with the terms and conditions of the Standard Access Agreement for coal carrying services that is incorporated in Volume 2 of this Undertaking.

2.4.2 Under the Access Agreement, QR Network will commit to operate the Rail Infrastructure such that, on average over a Year, the Below Rail Transit Time specified in Part B can be achieved for the relevant Reference Train Service.

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## 3. Access Charge

### 3.1 Reference Tariff

3.1.1 The applicable Reference Tariff for a nominated Reference Train Service shall be assessed in accordance with the methodologies established in Clause 2 of Part B and Clause 4 of Part C.

### 3.2 Escalation of Reference Tariff

3.2.1 Each component of a Reference Tariff, except the QCA Levy, will automatically escalate on each Escalation Date in accordance with the following formula:

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

where:

$AT_n$  means the value of the relevant Reference Tariff component to apply after escalation;

$AT_{n-1}$  means the escalated value of the relevant Reference Tariff component immediately prior to the relevant Escalation Date, or in the case of the First Escalation Date means the relevant Reference Tariff component

specified in Part B or Part C for each nominated Reference Train Service;

CPI<sub>n</sub> means the Consumer Price Index: All Groups - Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter which commenced 6 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 Consumer Price Index: All Groups - Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter which commenced 9 months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined.

3.2.2 Within seven (7) days of each Escalation Date following the Commencing Date, QR Network will publish the escalated components of the Reference Tariff on its website.

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3.2.3 Where an error has been made in the calculation of the escalated components of a Reference Tariff, QR Network must correct the error so that the relevant components of the Reference Tariff are escalated in accordance with Subclause 3.2.1.

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### 3.3 Variation of Reference Tariffs

3.3.1 QR Network will submit a variation of a Reference Tariff to the QCA:

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- (a) in accordance with this Clause 3.3, if an Endorsed Variation Event or a Review Event occurs; or
- (b) subject to Subclause 3.3.3, within sixty (60) days:
  - (i) of a written notice being received from the QCA in accordance with Subclause 3.3.2; or
  - (ii) after the end of each Year of the Term if required to submit a variation under Subclause 3B of Part B.

3.3.2 The QCA may give QR Network a written notice requiring QR Network to submit a variation of a Reference Tariff if:

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- (a) the QCA does not approve a variation of a Reference Tariff submitted by QR Network; or
- (b) QR Network fails to submit a variation of a Reference Tariff:
  - (i) within sixty (60) days of the QCA determining that an Endorsed Variation Event or a Review Event has occurred; or
  - (ii) it is required to submit under Subparagraph 3.3.1(b)(ii).

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3.3.3 The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a variation of a Reference Tariff if:

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- (a) QR Network provides a written request to the QCA for an extension of time which includes the reasons why QR Network requires the extension of time; and
- (b) the extension of time is reasonable or necessary.

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If the QCA grants QR Network an extension of time under this Subclause 3.3.3, QR Network must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

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3.3.4 The QCA may develop a variation of a Reference Tariff that is consistent with the requirements specified in this Clause 3.3 for the variation of a Reference Tariff:

- (a) if QR Network does not comply with a written notice given by the QCA under Subclause 3.3.2 or Paragraph 3.3.9(b) 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 QR Network.

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3.3.5 Where an Endorsed Variation Event occurs:

- (a) QR Network must, within sixty (60) days of QR Network knowing that an Endorsed Variation Event has occurred, submit a variation of the relevant Reference Tariff (including evidence that the Endorsed Variation Event has occurred and details of the methodology, data and assumptions used to vary the Reference Tariff);
- (b) if the QCA considers it appropriate, the QCA may publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that:
  - (i) the Endorsed Variation Event has occurred; and
  - (ii) the variation of the Reference Tariff:
    - (A) is consistent with the change in the cost resulting from the Endorsed Variation Event;
    - (B) reflects the impact of the relevant Endorsed Variation Event on the financial position of QR Network's Below Rail Services (including the impact of incremental maintenance and incremental capital costs); and
    - (C) has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence causing the Endorsed Variation Event.

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3.3.6 Where a Review Event occurs:

- (a) QR Network must, within sixty (60) days of QR Network knowing that a Review Event has occurred, submit a variation of the relevant Reference Tariff (including evidence that the Review Event has occurred and details of the methodology, data and assumptions used to vary the Reference Tariff);
- (b) the QCA will publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that:
  - (i) the Review Event has occurred; and
  - (ii) the variation of the relevant Reference Tariff:

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- (A) is consistent with the change in the cost resulting from the Review Event;
- (B) reflects the impact of the relevant Review Event on the financial position of QR Network's Below Rail Services (including the impact of incremental maintenance and incremental capital costs); and
- (iii) has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence causing the Review Event.

3.3.7 Where QR Network submits a variation of a Reference Tariff in accordance with Subparagraph 3.3.1(b)(ii):

- (a) the variation must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff; and
  - (iii) include details of and reasons for any amount used in preparing that variation in lieu of an Increment having been determined by the QCA;
- (b) the QCA may, to the extent it considers it appropriate to do so:
  - (i) publish details of QR Network's proposed variation of the relevant Reference Tariff; and
  - (ii) invite and consider comments from stakeholders regarding the proposed variation,
    - (including in relation to any Increment sought by QR Network, or any deduction that should be made from System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A). To the extent that stakeholders provide comments, QR Network must be given a reasonable period in which to provide a response to those comments to the QCA;
- (c) the QCA may adjust the variation but only to the extent that:
  - (i) the QCA has made a determination under Subparagraph 3B.2.1(b) of Part B in relation to an Increment; or
  - (ii) the QCA has made a determination regarding a deduction from System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A; and
- (d) the QCA will approve the proposed variation of the Reference Tariff if the QCA is satisfied that the variation of the Reference Tariff is in accordance with Clause 3B of Part B and subject to any adjustment under Paragraph 3.3.7(c).

3.3.7A In making any determination regarding a deduction from System Allowable Revenue under subparagraph (iii) of the definition in Clause 5.2 of Part A, the QCA must have reference to:

- (a) any comments received from stakeholders pursuant to an invitation for comments made under Paragraph 3.3.7(b);

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- (b) any response received from QR Network in relation to such stakeholder comments; and
- (c) any Claims for breach or negligence that have been made by an Access Holder under an Access Agreement in relation to the relevant Individual Coal System Infrastructure during the relevant Year and any response received from QR Network in relation to any such Claims (although the absence of any such Claims is not determinative).

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3.3.7B The QCA must not make a determination to deduct an amount from System Allowable Revenue to the extent that QR Network has already paid compensation or damages under an Access Agreement in relation to the relevant breach or negligence.

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3.3.7C Where a Claim, dispute or question, which may involve a determination as to whether a particular act or omission constitutes a breach or negligence, is the subject of proceedings before an expert, an arbitrator, a court or a tribunal or the subject of any other dispute resolution process ("Dispute Proceedings"), the QCA will not make a determination to deduct an amount from System Allowable Revenue until those Dispute Proceedings (including any appeal proceedings) have been finalised. The QCA will consider whether such a determination should be made upon the next time that QR Network submits a variation to the relevant Reference Tariff pursuant to Subclause 3.3.7 following finalisation of the Dispute Proceedings (including any appeal proceedings), and in doing so will be bound by any decision of the expert, arbitrator, court or tribunal as to whether the relevant act or omission constituted a breach or negligence by QR Network.

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3.3.8 If the QCA approves a variation to a Reference Tariff:

- (a) the QCA will give QR Network a notice in writing stating the reasons for the QCA's decision;
- (b) the variation to the Reference Tariff will apply:
  - (i) from the Escalation Date immediately following the date of the occurrence of the Endorsed Variation Event or Review Event;
  - (ii) if the date of the occurrence of the Endorsed Variation Event or Review Event is the same as an Escalation Date, from the date of the occurrence of the Endorsed Variation Event or Review Event; or
  - (iii) if that variation arose as a result of the operation of Clause 3B and Paragraph 3.3.1(b)(ii), from 1 July of the Year following the Year in which the variation was submitted; and
- (c) QR Network must:
  - (i) publish the varied Reference Tariff on its website; and
  - (ii) advise Access Holders and Access Seekers, in respect of the relevant Reference Train Service, of the variation to the Reference Tariff.

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3.3.9 If the QCA refuses to approve a variation to a Reference Tariff, the QCA will give QR Network a notice in writing:

(a) stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and

(b) requiring QR Network to vary the Reference Tariff in the way the QCA considers it appropriate and resubmit the variation to the QCA within thirty (30) days of QR Network receiving the notice.

3.3.10 QR Network must comply with a notice given under Paragraph 3.3.9.

3.3.11 The QCA may approve a resubmitted variation to a Reference Tariff or a variation to a Reference Tariff developed by the QCA under Paragraph 3.3.4, if the QCA is satisfied that the variation of the Reference Tariff:

(a) is consistent with the matters specified under Subparagraph 3.3.5(c), 3.3.6(c) or 3.3.7(d) (as applicable); and

(b) has been amended or developed in accordance with the QCA's decision.

### 3.4 Varied Components of Applicable Access Charge

3.4.1 Nothing in this Section will preclude QR Network and the Access Holder agreeing to Access Charges that have varied cash flows but the same net present value as the Reference Tariff as applied in accordance with the other provisions of this Section.

3.4.2 Varied cash flows could be achieved by variations to the structure of the charges and/or variations to the escalation arrangements. In any case the variation from the specified application of the Reference Tariff will be assessed on the basis of the risks and costs, including opportunity cost, associated with the timing of the resultant cash flows.

3.4.3 Nothing in this Section will preclude QR Network from seeking Access Conditions, pursuant to Subclause 6.5.2 of the Undertaking.

### 3.5 Access Charges in the Central Queensland Coal Region

3.5.1 Unless prior written approval from the QCA is received, QR Network must calculate all Access Charges used for coal-carrying Train Services in the Central Queensland Coal Region by reference to the same components as Reference Train Services (AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, the QCA Levy, and AT<sub>5</sub> and EC if appropriate), even if the Train Service does not constitute a Reference Train Service.

## 4. Variations to Reference Train Service

Where a Train Service differs from the Reference Train Service due to it not complying with Paragraph 2.3.1(f), then QR Network will, unless otherwise agreed with the QCA, quote an Access Charge that varies from the Reference Tariff by applying the following principles:

(a) an estimate of the number of reference Train Paths used by the proposed Train Service will be determined as follows:

$$\text{rtp} = \frac{\text{maximum number of Reference Train Services at full utilisation}}{\text{maximum number of proposed Train Services at full utilisation}}$$

This value of rtp is used for the purpose of Clause 2.1 of Part B;

- (b) an estimate of the maximum number of train paths available for a Reference Train Service and for the proposed Train Service will be carried out using a readily available simulation package; and
- (c) in accordance with Subparagraph 4.3(a)(v) or Subparagraph 4.5.2(v) of the Undertaking (as applicable), QR Network will advise the Access Seeker how it has determined the value of rtp.

## 5. Definitions and Interpretation

5.1 In this Section, references to Parts, Clauses, Subclauses, Paragraphs and Subparagraphs are references to Parts, Clauses, Subclauses Paragraphs and Subparagraphs contained in this Section unless otherwise stated.

5.2 The following definitions are specific to this Schedule. In addition to these definitions, Part 10 of the Undertaking sets out the definitions of defined terms used in this Section and applicable to the Undertaking generally:

**“AT<sub>2-4</sub>”** means the aggregate of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of Access Charges;

**“Billing Period”** means a period of a calendar month;

**“Change in Law”** means:

- (i) any amendment, repeal, modification or enactment of any Law;
- (ii) 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;
- (iii) the making of any new directive, or any change in an existing directive, of any Authority;
- (iv) the imposition of a requirement for authorisations not required as at 30 June 2006;
- (v) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (vi) 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 conditions which are materially less favourable than those attached to the original authorisation.

**“Change in Relevant Taxes”** means:

- (i) the imposition of a new Relevant Tax;
- (ii) an increase in the rate of a Relevant Tax; or
- (iii) a change in the basis of calculation of a Relevant Tax;



**“Distribution Entities”** has the same meaning as given to that term in the *Electricity Act 1994 (Qld)*;

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

- (a) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since 30 June 2006, would cause a change in the costs reflected in, for Reference Tariffs specified in Part B, the AT<sub>3</sub>, AT<sub>4</sub>, and/or AT<sub>5</sub> components of the relevant Reference Tariff and, for Reference Tariffs specified in Part C, the AT<sub>1</sub> component of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (b) a change in the regulatory pricing of Queensland Electricity Transmission Corporation Limited that, either alone or in combination with all other changes in the regulatory pricing of the Queensland Electricity Transmission Corporation Limited that have occurred since 30 June 2006 and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT<sub>5</sub> component of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (c) a change in the pricing of one or more Distribution Entities and/or Retail Entities that either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Retail Entities that have occurred since 30 June 2006 and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in AT<sub>5</sub> and/or the EC component of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (d) for Reference Tariffs specified in Part B, a new Reference Tariff being approved for a new Reference Train Service which will operate on an existing Individual Coal System Infrastructure and an adjustment to the Reference Tariff/s for existing Reference Train Services operating on that same Individual Coal System Infrastructure is necessary to reflect the contribution to Common Costs made by the new Reference Train Service; or
- (e) 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.

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**“Energy Charge” or “EC”** means that component specified in each applicable Reference Tariff in Part B for the supply of electric energy;

**“Escalation Date”** means the date being 1 January, 1 April, 1 July and 1 October in each year;

**“First Escalation Date”** means that date identified as the first escalation date for each nominated Reference Train Service in Part B or Part C;

**“GST”** means a tax in the nature of a supply or goods or services tax levied or imposed by the Commonwealth of Australia;

“**Increment**” means the amount as calculated under Clause 3B.2 of Part B;

“**Information Pack**” means the document issued by QR Network meeting the requirements of Clause 1 of Part A of Schedule D and relevant to the system in which the Nominated Infrastructure is located;

“**Law**” or “**Laws**” means a statute, ordinance, rule or regulation;

“**Loading Time**” means the time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Loading Facility until it has completed loading, presented at the exit signal, is ready to depart the Nominated Loading Facility and has advised the relevant Train Controller accordingly;

“**Load Variation Table**” means a table published by QR Network in respect to a nominated Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“**Nominated Infrastructure**” means that Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies;

“**Nominated Loading Facility**” means a loading facility specified for a nominated Reference Train Service in Part B or Part C, and “**Nominated Loading Facilities**” has a corresponding meaning;

“**Nominated Unloading Facility**” means an unloading facility specified for a nominated Reference Train Service in Part B or Part C, and “**Nominated Unloading Facilities**” has a corresponding meaning;

“**QR Network Cause**” means where QR Network is unable to make Rail Infrastructure available for the operation of Train Services in accordance with an Access Holder’s Train Service Entitlement as a result of:

(i) Planned Possessions, Urgent Possessions or Emergency Possessions;

(ii) a Force Majeure Event; or

(iii) any other action by QR Network, acting as Railway Manager, which may directly result in the Rail Infrastructure not being so available;

provided that the above reasons are not in any way attributable to the Access Holder;

“**Relevant Tax**” means a tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR Network by, or payable by QR Network to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

“**Retail Entities**” has the same meaning as given to that term in the *Electricity Act 1994 (Qld)*;

“**Review Event**” means a material change in circumstances which QR Network and the QCA agree may give rise to a need to vary a Reference Tariff, but only where QR Network has given written notice to the QCA of QR Network’s intention to propose a variation to that Reference Tariff under Clause 3.3 of Part A;

“**Storage**” means the storage of individual items of Rollingstock, long-term storage of Trains, or short-term storage of Trains where the Access Holder does not operate Train Services in accordance with its Train Service Entitlement;

“**Stowage**” means the short-term storage of Trains on the Rail Infrastructure, at locations specified by QR Network exercising its reasonable discretion, for the purpose of:

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- (i) enabling an Access Holder to carry out scheduled Above Rail Services normally carried out during a scheduled operational cycle (such as crew changes, meal breaks, and provisioning) in accordance with the relevant Train Service Entitlement; and/or
- (ii) providing an Access Holder with a place to temporarily store its Train/s:
  - between scheduled Train Services in accordance with the relevant Train Service Entitlement; or
  - when the Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown situation or temporary outage of the Access Holder, the loading facility or the unloading facility, and/or unavailability of the Nominated Infrastructure; but does not include Storage;

“**System Allowable Revenue**” means:

- (i) for AT<sub>2-4</sub> in relation to an Individual Coal System Infrastructure, the total revenue from AT<sub>2-4</sub> arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.4, 6.4, 7.5 and 8.5 of Part B (as amended from time to time); and

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- (ii) for the AT<sub>5</sub> component of Access Charges for either the Blackwater System or the Goonyella System, the total revenue from the AT<sub>5</sub> component of Access Charges arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.4 and 6.4 of Part B (as amended from time to time),

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less

- (iii) for:
  - paragraph (i) of this definition any revenue from AT<sub>2-4</sub>; or
  - paragraph (ii) of this definition any revenue from the AT<sub>5</sub> component of Access Charges,

that (subject to Subclauses 3.3.7A to 3.3.7C) the QCA reasonably determines that QR Network would have otherwise been entitled to earn under all Access Agreements in relation to that Individual Coal System Infrastructure during the relevant Year, but which QR Network was not entitled to earn due to its own breach of an Access Agreement or negligence in the provision of Below Rail Services, provided that if that breach or negligence resulted in the non-provision of less than 10% of the total number of Train Services scheduled under an affected Access Agreement for any month during the relevant Year then no deduction will be made for revenue that QR Network was not entitled to

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earn under that Access Agreement in connection with that breach or negligence.

**“System Forecast”** means the gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in Part B;

**“System Gtk”** means the sum of the gtk for all coal carrying Train Services to the extent those Train Services travel on the relevant Individual Coal System Infrastructure over the relevant period;

**“Take or Pay”** means that part of the Access Charge payable pursuant to Subclause 2.2 of Part B or Clause 5 of Part C;

**“Total Actual Revenue”** means:

(i) for AT<sub>2-4</sub> in relation to an Individual Coal System Infrastructure, the total revenue from AT<sub>2-4</sub> (including the amount of any Take or Pay amounts, Relinquishment Fees and transfer fees under Subclause 7.4.4 of the Undertaking which QR Network is entitled to be paid but, for the avoidance of doubt, less the amount of any reductions of those amounts in accordance with the Undertaking, and with the revenue from the AT<sub>2</sub> component calculated to reflect any variations made pursuant to clause 4 of Part A) arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network has actually earned over the relevant Year (whether or not actually collected by QR Network); and

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(ii) for the AT<sub>5</sub> component of Access Charges for each of the Blackwater System or the Goonyella System, the total revenue from the AT<sub>5</sub> component of Access Charges arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network has actually earned over the relevant Year (whether or not actually collected by QR Network),

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provided that:

(iii) in calculating the Take or Pay amounts, Relinquishment Fees and transfer fees under Subclause 7.4.4 of the Undertaking which QR Network is entitled to be paid for the purposes of determining the Total Actual Revenue for AT<sub>2-4</sub> under paragraph (i), QR Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Undertaking or the 2001 Undertaking, as applicable) that applied on the date of execution or renewal of an Access Agreement except for:

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- those Access Agreements which have been altered from that form in accordance with the terms of the Undertaking or the 2001 Undertaking (as applicable) which applied on that date, for which QR Network's entitlement will be calculated to reflect the terms of such Access Agreements;

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- a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under or prior to the 2001 Undertaking, pursuant to Paragraph 7.4.4(f) of the Undertaking, which has not been renewed after 30 June 2006, for which QR Network's entitlement to Take or Pay amounts and Relinquishment Fees will be calculated on the basis that QR Network has contracted on the terms of:

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- (A) for an Old Access Agreement executed under the 2001 Undertaking, the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; or
- (B) for an Old Access Agreement executed prior to the 2001 Undertaking, the terms of that Old Access Agreement; and
- for the avoidance of doubt, an Access Agreement executed prior to the 2001 Undertaking, for which QR Network's entitlement will be calculated to reflect the terms of that Access Agreement.

**“Unloading Time”** means the time between a Train Service arriving at a Nominated Unloading Facility and that same Train departing the Nominated Unloading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Unloading Facility until it has completed unloading, presented at the exit signal, is ready to depart the Nominated Unloading Facility and has advised the relevant Train Controller accordingly.

## Part B. - Provisions Specific to Reference Train Services in the Central Queensland Coal Region

### 1. Reference Train Service Characteristics

- 1.1 Further to Subclause 2.3.1 of Schedule F, Part A, the Reference Train Service has, measured as an average over a Year, a maximum Stowage period for each Train Service no greater than that specified in Clauses 5 to 8 of this Part B for that Reference Train Service.
- 1.2 An Access Seeker for a Reference Train Service will have its Train Service Entitlement:
- based on its Trains being available for operation 24 hours per day and 360 days per year; and
  - specified in terms of a Cyclic Traffic operated evenly throughout each yearly, monthly and weekly period, and will comply with the applicable coal corridor scheduling procedures.

### 2. Access Charge

#### 2.1 Reference Tariff

- 2.1.1 The applicable Reference Tariff for a nominated Reference Train Service shall be assessed as:

$$\left( AT_1 \times \frac{gk}{1000} \right) + (AT_2 \times rtp) + \left( AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left( AT_5 \times \frac{egtk}{1000} \right) + \left( EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt)$$

where:

- $AT_1$  is the incremental maintenance tariff specified as  $AT_1$  for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- $AT_2$  is the incremental capacity tariff specified as  $AT_2$  for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- $AT_3$  is the allocative part of the Reference Tariff that is levied on a net tonne kilometre basis specified as  $AT_3$  for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- $AT_4$  is the allocative part of the Reference Tariff that is levied on a net tonne basis specified as  $AT_4$  for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- $AT_5$  is the electric access tariff that is levied on an egtk basis specified as  $AT_5$  for the nominated Reference Train Service in Clauses 5 to 8 of this Part B;
- $gk$  is the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;
- $rtp$  is the number of reference Train Paths used by the relevant Train Service where a Reference Train Service uses one reference Train Path;
- $nt$  is the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the

- relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty;
- ntk is the net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) travelled by the Train Service;
- egtk is the electric gross tonne kilometres attributed to the relevant Train Service, being the gtk for the Train Service if that Train Service uses electric traction, and zero if the Train Service does not use electric traction;
- EC is the electric energy charge specified as EC for the nominated Reference Train Service in Clauses 5 to 8 of this Part B; and
- QCA Levy is the fee allocated to the nominated Reference Train Service to cover the fees imposed by the QCA upon beneficiaries of its regulatory services specified in Clauses 5 to 8 of this Part B.

Where the above terms are used elsewhere in this Part B they shall have the same meaning.

- 2.1.2 The amounts of AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub>, EC and the QCA Levy specified in Clauses 5 to 8 of this Part B are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.
- 2.1.3 For the purposes of this Part B, 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.
- 2.1.4 For the purposes of this Clause 2.1 the measures gtk, rtp, ntk, nt and egtk shall be assessed for the relevant Train Service over the Billing Period for which the Reference Tariff is being calculated.

## 2.2 Take or Pay

- 2.2.1 QR Network will be entitled to earn Take or Pay revenue in accordance with the provisions of this Subclause 2.2.
- 2.2.2 For Train Services for which Access Agreements are executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking), the Take or Pay arrangements will be as specified in Subclause 2.2.3. For Train Services included in Access Agreements in place on the day immediately prior to 30 June 2006 (and not subsequently renewed after 30 June 2006) or New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Paragraph 7.4.4(f) of the Undertaking, the Take or Pay arrangements will be as specified in Subclause 2.2.5.
- 2.2.3 Take or Pay revenue from a particular Reference Train Service will be determined for each Year, and invoiced following completion of that Year, as, subject to Subclause 2.2.4, the amount which is one hundred percentage points (100%) of the amount calculated by multiplying:

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- (a)  $AT_2$ ,  $AT_3$  and  $AT_4$  (at the rate applicable in the final Quarter of the Year); by
- (b) the rtp, nt and ntk (as applicable) calculated by:
  - (i) the rtp, nt and ntk (as applicable) that would have been achieved for the subject Year had the full contracted entitlement been railed for the relevant Train Service; less
  - (ii) the rtp, nt and ntk (as applicable) not railed for the subject Year due to the non operation of Train Services for a QR Network Cause; less
  - (iii) the rtp, nt and ntk (as applicable) railed for the subject Year,

provided always that the amount of Take or Pay for the Year shall not be less than zero.

2.2.4 Notwithstanding Subclause 2.2.3, Take or Pay shall not be payable for a Year where the System GtK exceeds 100% of the System Forecast identified for the nominated Reference Train Service, less the gtk not achieved due to the non operation of Train Services for a QR Network Cause.

2.2.5 Take or Pay revenue from a particular Reference Train Service will be determined in accordance with Clause 3.2 of the 2001 Undertaking, until such time that the amendments to Schedule F developed in accordance with Clause 3 take effect in accordance with Clause 3.8.

2.2.6 Notwithstanding Subclause 2.2.3, where the Total Actual Revenue for  $AT_{2-4}$  for an Individual Coal System Infrastructure less the aggregate amount of Take or Pay that QR Network would be entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking) ("Total Revenue") is:

- (a) greater than or equal to the System Allowable Revenue for  $AT_{2-4}$  in relation to that Individual Coal System Infrastructure, Take or Pay shall not be payable for that Year under Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking) ("UT2 Agreements");

- (b) less than the System Allowable Revenue for  $AT_{2-4}$  in relation to that Individual Coal System Infrastructure:

- (i) QR Network will calculate the aggregate amount of Take or Pay that QR Network would be entitled to earn from all UT2 Agreements ("Total Actual Take or Pay"); and
- (ii) if the Total Actual Take or Pay exceeds the amount by which the System Allowable Revenue for  $AT_{2-4}$  exceeds the Total Revenue for that Individual Coal System Infrastructure ("Maximum Take or Pay Amount"), then:



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- (A) QR Network will calculate for each relevant Access Holder, the proportion that the Access Holder's Take or Pay amount bears to the Total Actual Take or Pay ("Proportion"); and
- (B) each relevant Access Holder's Take or Pay amount will be reduced to equal that Access Holder's Proportion of the Maximum Take or Pay Amount.

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In determining what QR Network would be entitled to earn for the purposes of this Subclause 2.2.6, QR Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Undertaking or the 2001 Undertaking, as applicable) that applied on the date of execution or renewal of an Access Agreement, except for

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- those Access Agreements which have been altered from that form in accordance with the terms of the Undertaking or the 2001 Undertaking (as applicable) which applied on that date, for which QR Network's entitlement will be calculated to reflect the terms of such Access Agreements; and
- a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under or prior to the 2001 Undertaking, pursuant to Paragraph 7.4.4(f) of the Undertaking, which has not been renewed after 30 June 2006, for which QR Network's entitlement to Take or Pay amounts will be calculated on the basis that QR Network has contracted on the terms of:
  - (A) for an Old Access Agreement executed under the 2001 Undertaking, the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; or
  - (B) for an Old Access Agreement executed prior to the 2001 Undertaking, the terms of the Old Access Agreement; and
- for the avoidance of doubt, an Access Agreement executed prior to the 2001 Undertaking, for which QR Network's entitlement will be calculated to reflect the terms of that Access Agreement.

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2.2.7 In order to calculate nt, ntk and gtk for the purposes of Subparagraphs 2.2.3(b)(i) and (ii), QR Network will:

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- (a) identify from the Access Agreement the number of train paths that would have been utilised had the full contracted entitlement been attained; and
- (b) determine the number of train paths that were not utilised due to a QR Network Cause,

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and convert this to nt, ntk and gtk by using a nominal payload per loaded Train Service as reasonably determined by QR Network.

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2.2.8 QR Network shall provide to the Access Holder information on how it has determined the amount of the Take or Pay at the same time as it is invoiced.

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### 3. Review of Access Charges

The components for Reference Tariffs specified in this Part B are applicable:

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(a) where denoted as "Reference Tariff (\$) July 05", from 1 July 2005 to 30 June 2007; and

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(b) where denoted as "Revised Reference Tariff (\$) July 07" (i.e. for Revised Reference Tariffs), from 1 July 2007.

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#### 3B. Revenue Cap Adjustment

Deleted: (b) The backdating of Revised Reference Tariffs will require payment of the difference in the Access Charges:

##### 3B.1 Calculation of Revenue Adjustment Amounts

After the end of each Year, QR Network will calculate the following amounts (each a "Revenue Adjustment Amount") for each relevant Individual Coal System Infrastructure:

- (a) an "AT<sub>2-4</sub> Revenue Adjustment Amount", by subtracting the System Allowable Revenue for AT<sub>2-4</sub> from the Total Actual Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure for that Year; and
- (b) an "AT<sub>5</sub> Revenue Adjustment Amount", by subtracting the System Allowable Revenue for AT<sub>5</sub> from the Total Actual Revenue for AT<sub>5</sub> for the relevant Individual Coal System Infrastructure for that Year.

(i) paid by each relevant Access Holder from 1 July 2007 to the date on which the QCA approved the amendment to Schedule F incorporating the Revised Reference Tariffs; and  
(ii) that would have been paid by that Access Holder during that period if the Revised Reference Tariffs had applied.  
In the event of the difference being:  
(iii) positive (over-recovery) from QR to each relevant Access Holder; or  
(iv) negative (under-recovery), from each relevant Access Holder to QR.

For the avoidance of doubt, a Revenue Adjustment Amount calculated under this Clause 3B.1 may be a negative or a positive number.

(c) The payment of the difference under Paragraph 3.1(b) is due within thirty (30) days of the date on which the QCA approved the amendment to Schedule F incorporating the Revised Reference Tariffs. In the event of an Access Holder not paying the money owed to QR pursuant to this clause 3.1, QR may recover that outstanding money by incorporating it as a component of that Access Holder's future Access Charges.

##### 3B.2 Calculation of Increment

3B.2.1 The Increment is calculated as follows for each relevant Individual Coal System Infrastructure:

- (a) where the Total Actual Revenue for AT<sub>2-4</sub> is less than or equal to the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure, the Increment equals zero (0);
- (b) subject to Paragraph 3B.2.1(c), where:
  - (i) the Total Actual Revenue for AT<sub>2-4</sub> is greater than the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure;
  - (ii) QR Network is required by Subclause 3B.3.3 of Part B to submit a variation of relevant Reference Tariffs to the QCA; and
  - (iii) the QCA, when considering that variation, is reasonably satisfied that the difference between the Total Actual Revenue for AT<sub>2-4</sub> and the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure ("Difference") has, in whole or part, arisen as a direct result of whole of coal

3.2 Following the Commencing Date, QR will consult with the Queensland Resources Council and the QCA regarding when and how the Reference Tariffs will vary between 1 July 2006 to the Terminating Date to address volume risk. This consultation will include consideration of:  
(a) broad options for the regulatory framework, including a price cap model, a revenue cap model or a hybrid of these models; and  
(b) within the broad options, the detailed processes in accordance with which they would operate.

3.3 QR will submit a pro [1]

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chain activities or initiatives of QR Network (or its contractors) which have increased the efficiency of the Below Rail network,

the Increment equals that proportion of the Difference, as determined by the QCA taking into account the extent to which the Difference has in whole or part arisen as a direct result of the whole of coal chain activities or initiatives of QR Network (or its contractors).

- (c) In no circumstance will the Increment exceed an amount equal to two percentage points (2%) of the System Allowable Revenue for AT<sub>2-4</sub>.

### 3B.3 Revenue Adjustment

3B.3.1 Where a Revenue Adjustment Amount has been calculated under Clause 3B.1 of Part B the equivalent System Allowable Revenue to that used in the calculation of that Revenue Adjustment Amount for the relevant Individual Coal System Infrastructure for the Year after the Year in which that Revenue Adjustment Amount was calculated ("2<sup>nd</sup> Year System Allowable Revenue") will be adjusted in accordance with this Clause 3B.3.

3B.3.2 A 2<sup>nd</sup> Year System Allowable Revenue shall be adjusted as follows:

- (a) for an AT<sub>2-4</sub> Revenue Adjustment Amount, by subtracting from the relevant 2<sup>nd</sup> Year System Allowable Revenue:
- (i) that AT<sub>2-4</sub> Revenue Adjustment Amount less the amount of the relevant Increment; and
  - (ii) a return on capital amount, calculated by reference to the Discount Rate as applied to the amount in Subparagraph 3B.3.2(a)(i) over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year;
- (b) for an AT<sub>5</sub> Revenue Adjustment Amount, by subtracting from the relevant 2<sup>nd</sup> Year System Allowable Revenue:
- (i) that AT<sub>5</sub> Revenue Adjustment Amount; and
  - (ii) a return on capital amount, calculated by reference to the Discount Rate as applied to the amount in Subparagraph 3B.3.2(b)(i) over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year.

3B.3.3 Where a 2<sup>nd</sup> Year System Allowable Revenue is adjusted under this Clause 3B.3, QR Network shall submit a variation of the relevant Reference Tariffs to the QCA with the object of recovering from or returning to Access Holders, as the case may be, the amount of the adjustment during the relevant Year using the modeling parameters and assumptions used to determine Reference Tariffs for the relevant Year.

## 4. Reference Tariffs for New Coal Carrying Train Services

#### 4.1 Minimum contribution to Common Costs

4.1.1 Each coal carrying Train Service in the Central Queensland Coal Region will be expected to make a minimum contribution towards QR Network's Common Costs determined as follows:

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(a) if the Train Service utilises Rail Infrastructure in the Goonyella, Blackwater or Moura coal systems, the minimum contribution towards QR Network's Common Costs for non-electrification related costs will be calculated as follows:

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(i) subject to Subparagraphs (ii) and (iii), the minimum Common Cost contribution will be the greater of the following:

(A) for a Train Service in the Goonyella coal system:

Common Cost contribution (cents/'000 gtk) =	$240 - 0.3M - S$
---------------------------------------------	------------------

(B) for a Train Service in the Blackwater coal system:

Common Cost contribution (cents/'000 gtk) =	$350 - 0.3M - S$
---------------------------------------------	------------------

(C) for a Train Service in the Moura coal system:

Common Cost contribution (cents/'000 gtk) =	$800 - 0.6M - 6S$
---------------------------------------------	-------------------

(D) for a Train Service in the Goonyella, Blackwater or Moura coal system, \$1.00/'000 gtk,

where, for Subparagraphs 4.1.1(a)(i)(A), (B) and (C):

**M** is the relevant mine's mainline length in kilometres;

**S** is the relevant mine's spur length in kilometres;

(ii) the minimum Common Cost contribution calculated in accordance with Subparagraph (i) is based on the assumption that the new Train Service will use a similar number of Train Paths per gross tonne as the Predominant Train Service on the Individual Coal System Infrastructure. If the new Train Service uses significantly more Train Paths than the Predominant Train Service, then QR Network may apply to the QCA for a variation in the new Train Service's Common Cost contribution. The QCA will approve such a variation if it considers that the Common Cost contribution for the new Train Service, if calculated in accordance with Subparagraph (i), would be manifestly inadequate; and

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(iii) the minimum Common Cost contribution will be escalated from 1 July 2005 in accordance Clause 3.2 of Part A;

(b) if the Train Service utilises Rail Infrastructure in the Newlands coal system, the new Train Service will make a contribution towards QR Network's Common Costs, provided that where two mines load from mine specific spur lines attached to the same corridor, all other things being equal in respect of the two Train Services, a lower Access Charge (when expressed in \$/net tonne terms) would apply for Train Services carrying coal from a mine with a shorter haul distance than for Train Services carrying coal from a mine with a longer haul distance;

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- (c) the minimum Common Cost contributions for the use of electrical infrastructure will be determined in each case, taking into account all of the relevant circumstances, consistent with the principles underlying the Common Cost contributions in respect of Rail Infrastructure that is not electrical infrastructure;
- (d) to the extent that this Subclause 4.1.1 does not specify the Common Cost contribution to be made by a new Train Service, the amount of the Common Cost contribution will be established in accordance with the principles set out in this Subclause 4.1.1 as part of the development of a new Reference Tariff for new Reference Train Services in accordance with Subclause 6.4.2 of the Undertaking.

4.1.2 The Reference Tariff for a new coal carrying Train Service will be the higher of (on a \$/net tonne basis):

- (a) the Reference Tariff for the most relevant existing Reference Train Service; or
- (b) the sum of the new coal carrying Train Service's Incremental Costs and required minimum Common Cost contribution determined in accordance with Subclause 4.1.1.

4.1.3 Where the Reference Tariff for a new coal carrying Train Service is established under:

- (a) Paragraph 4.1.2(a), the loading facility for the new Train Service will be added into the relevant existing Reference Train Service; or
- (b) Paragraph 4.1.2(b), a new Reference Train Service will be established which will incorporate the new Train Service.

4.1.4 Where QR Network enters into an Access Agreement with an Access Seeker in relation to Train Services carrying coal from a new mine prior to the authorisation of the applicable Reference Tariff, the Access Charge for that Train Service will be reviewed following authorisation of the Reference Tariff to ensure that it is consistent with the Reference Tariff.

## 5. Blackwater System

### 5.1 Application of this Clause

This Clause 5 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 5.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 5.3 Reference Train Service Description

5.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1709<sup>1</sup> metres;

<sup>1</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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).

- (b) a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>2</sup> loading, or otherwise generates a loading equivalent to M220;
- (c) unless specified otherwise in Clause 5.5, 5.6, 5.7 or 5.8, utilisation of either electric or diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 3.2 hours.

5.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of twenty-seven percentage points (27%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of twenty-seven percentage points (27%).

5.3.3 For the Central Blackwater Cluster, additional elements are specified in Clause 5.5. For the North Blackwater Cluster, additional elements are specified in Clause 5.6. For the Stanwell Cluster, additional elements are specified in Clause 5.7. For the South West Blackwater cluster, additional elements are specified in Clause 5.8.

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<sup>2</sup> As specified in the ANZRC Railway Bridge Design Manual 1974

## 5.4 System Forecast and System Allowable Revenues

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>	System Allowable Revenue – AT <sub>5</sub>
2005/06	22,498,740		
2006/07	28,948,620	126,859,868	24,842,392
2007/08	29,947,878	146,966,171	22,965,416
2008/09	31,115,104	157,635,006	30,597,009

## 5.5 Central Blackwater Cluster

### 5.5.1 Reference Train Service Description

#### 5.5.1.1 Loading Facilities

##### *Nominated Loading Facilities*

*Average Loading Time (hours) per  
return trip assessed on a monthly basis*

- |                                              |     |
|----------------------------------------------|-----|
| • Boonal                                     | 4.6 |
| • Koorilgah                                  | 5.0 |
| • Curragh                                    | 3.3 |
| • Boorgoon                                   | 3.8 |
| • Kinrola                                    | 5.5 |
| • Laleham/South Blackwater Mine <sup>3</sup> | 4.5 |

#### 5.5.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

*Average Unloading Time (hours) per  
return trip assessed on a monthly basis*

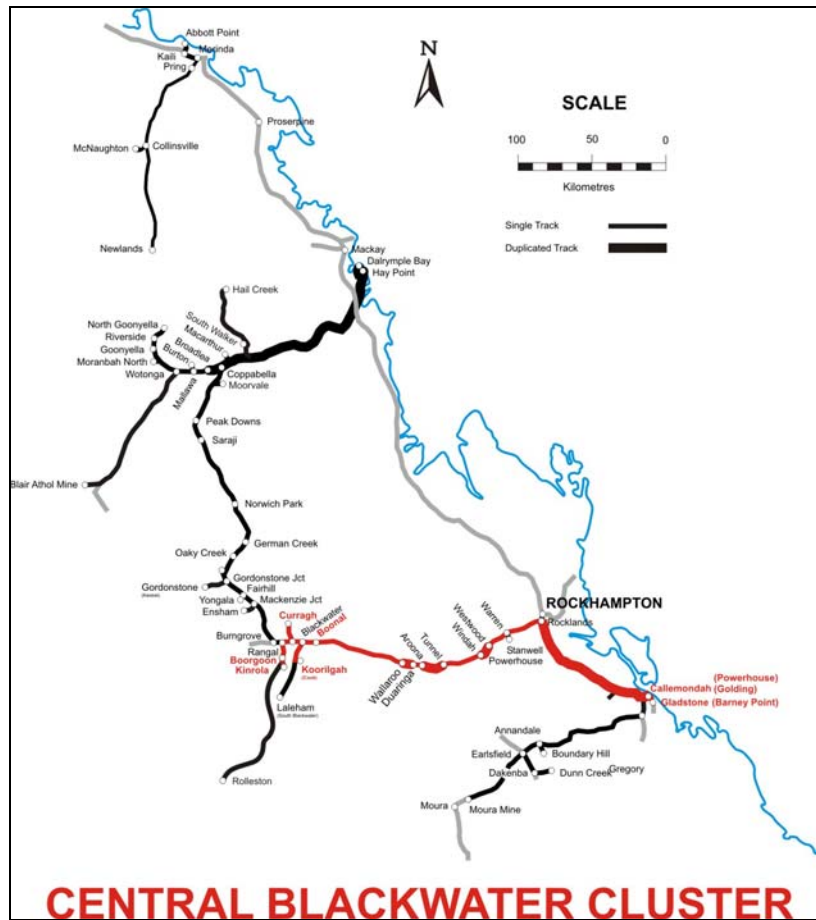
- |                                             |                  |
|---------------------------------------------|------------------|
| • Golding/RG Tanna Terminal                 | 2.6              |
| • Barney Point                              | 5.0              |
| • Gladstone Power Station                   | 4.3              |
| • Cement Australia                          | 6.0              |
| • Queensland Alumina Ltd (QAL) <sup>4</sup> | 13.7             |
| • Comalco Refinery                          | 3.1 <sup>5</sup> |

<sup>3</sup> Although not a loading facility, the average Loading Time for the Laleham/South Blackwater Mine represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>4</sup> The average Unloading Time for the QAL refinery represents the average time the the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>5</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

### 5.5.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 5.5.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Bluff and Burngrove or to any of the branch lines to any Nominated Loading Facility but not including the corridor towards Gregory beyond Burngrove.



## 5.5.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	2.727	3.14
AT <sub>4</sub>	0.833	0.96
AT <sub>5</sub>	1.576	1.72
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 5.6 North Blackwater Cluster

### 5.6.1 Reference Train Service Description

#### 5.6.1.1 Loading Facilities

##### *Nominated Loading Facilities*

##### *Average Loading Time (hours) per return trip assessed on a monthly basis*

- Ensham 3.2
- Kestrel 3.6
- Gregory 2.8
- Oaky Creek 3.6
- German Creek 3.0
- Yongala 4.2<sup>6</sup>

#### 5.6.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

##### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

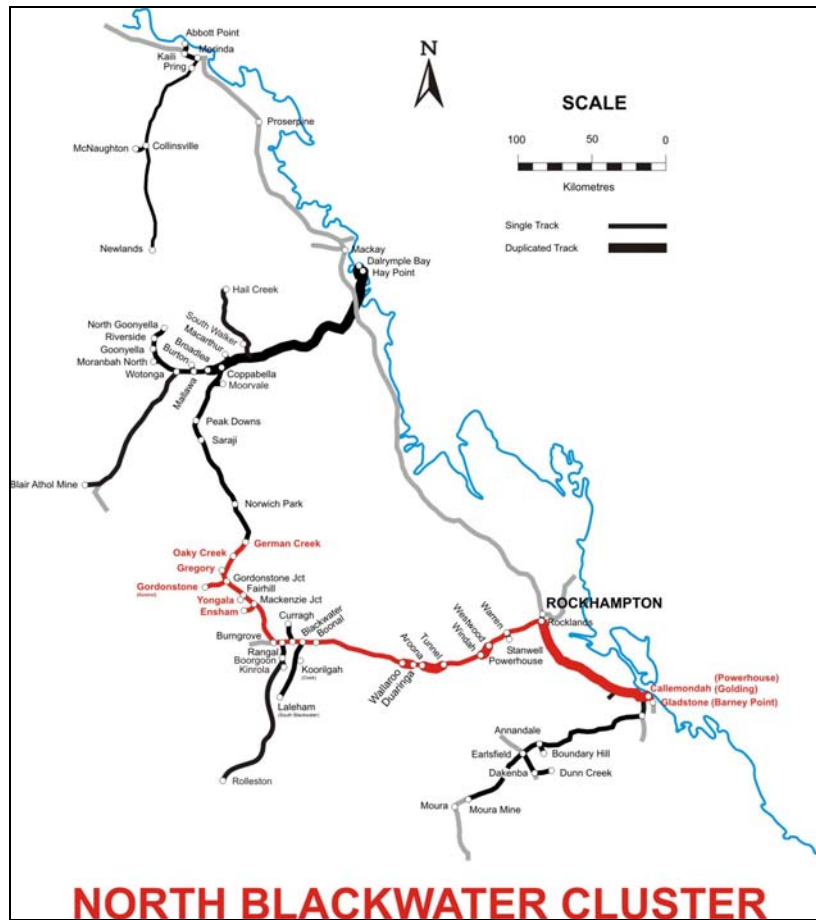
- Golding/RG Tanna Terminal 2.6
- Barney Point 5.0
- Gladstone Power Station 4.3
- Cement Australia 6.0
- Queensland Alumina Ltd (QAL)<sup>7</sup> 13.7
- Comalco Refinery 3.1<sup>8</sup>

<sup>6</sup> This is an estimate of loading time for this Loading Facility based on the actual data to date. QR Network will review this loading time following the Commencing Date. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

<sup>7</sup> The average Unloading Time for the QAL refinery represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>8</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

### 5.6.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 5.6.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Burngrove and German Creek or to any of the branch lines to any Nominated Loading Facility but not including the corridor towards Coppabella.

## 5.6.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	-	-
AT <sub>4</sub>	1.669	1.92
AT <sub>5</sub>	1.576	1.72
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 5.7 Stanwell Cluster

### 5.7.1 Reference Train Service Description

#### 5.7.1.1 Loading Facilities

##### *Nominated Loading Facilities*

##### *Average Loading Time (hours) per return trip assessed on a monthly basis*

• Boonal	4.6
• Boorgoon	3.8
• Curragh	3.3
• Ensham	3.2
• Gregory	2.8
• Kestrel	3.6
• Kinrola	5.5
• Koorilgah	5.0
• Laleham/South Blackwater Mine <sup>9</sup>	4.5
• Yongala	4.2 <sup>10</sup>

#### 5.7.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

##### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

• Stanwell Powerhouse	2.3
-----------------------	-----

<sup>9</sup> Although not a loading facility, the average Loading Time for the Laleham/South Blackwater Mine represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>10</sup> This is an estimate of loading time for this Loading Facility based on the actual data to date. QR Network will review this loading time following the Commencing Date. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.



## 5.7.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	2,240	2.58
AT <sub>4</sub>	0.413	0.48
AT <sub>5</sub>	1.576	1.72
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 5.8 South West Blackwater

### 5.8.1 Reference Train Service Description

5.8.1.1 The Reference Train Service utilises diesel traction only.

#### 5.8.1.2 Loading Facilities

##### *Nominated Loading Facilities*

- Rolleston

*Average Loading Time (hours) per return trip assessed on a monthly basis*

2.2

#### 5.8.1.3 Unloading Facilities

##### *Nominated Unloading Facilities*

- Golding/RG Tanna Terminal
- Barney Point
- Gladstone Power Station
- Cement Australia
- Queensland Alumina Ltd (QAL)<sup>11</sup>
- Comalco Refinery

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

2.6

5.0

4.3

6.0

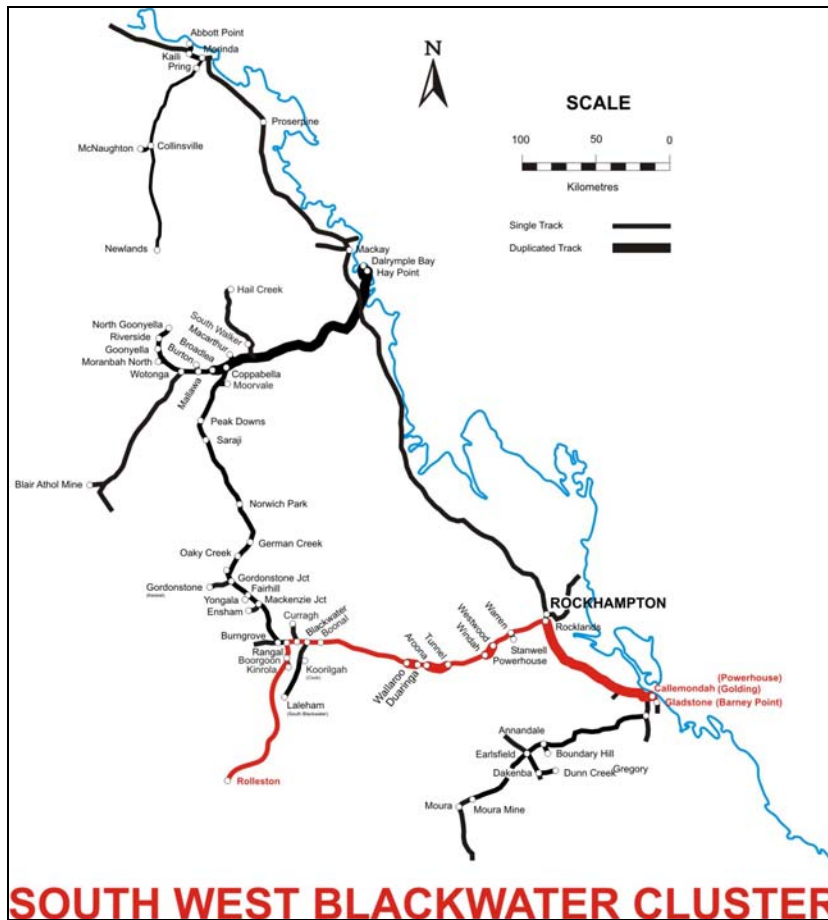
13.7

3.1<sup>12</sup>

<sup>11</sup> The average Unloading Time for the QAL refinery represents the average time the the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>12</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

### 5.8.1.4 Cluster Map



(Note, the cluster map is shown in colour)

### 5.8.1.5 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between the Kinrola branch junction and Rolleston.

## 5.8.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.618	0.71
AT <sub>2</sub>	1,389	1,470.72
AT <sub>3</sub>	5.504	5.78
AT <sub>4</sub>	2.317	2.43
AT <sub>5</sub>	-	-
EC	-	-
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6. Goonyella System

### 6.1 Application of this Clause

This Clause 6 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 6.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 6.3 Reference Train Service Description

6.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 2082<sup>13</sup> metres;
- (b) a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>14</sup> loading, or otherwise generates a loading equivalent to M220;
- (c) utilisation of either electric or diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.8 hours.

6.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of twenty-three percentage points (23%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure

<sup>13</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>14</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

(as included in the relevant Access Agreement) plus (+) a factor of twenty-three percentage points (23%).

6.3.3 For the North Goonyella Cluster, additional elements are specified in Clause 6.5. For the South Goonyella Cluster, additional elements are specified in Clause 6.6. For the West Goonyella Cluster, additional elements are specified in Clause 6.7. For the Gregory via Goonyella Cluster, additional elements are specified in Clause 6.8. For the Central Goonyella Cluster, additional elements are specified in Clause 6.9.

## 6.4 System Forecast and System Allowable Revenues

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>	System Allowable Revenue – AT <sub>5</sub>
2005/06	29,729,473		
2006/07	34,232,302	116,283,563	35,532,668
2007/08	37,066,523	131,994,028	40,214,743
2008/09	37,465,285	137,313,940	41,658,723

## 6.5 North Goonyella Cluster

### 6.5.1 Reference Train Service Description

#### 6.5.1.1 Loading Facilities

##### *Nominated Loading Facilities*

##### *Average Loading Time (hours) per return trip assessed on a monthly basis*

- South Walker Creek 3.8
- Macarthur/Coppabella 3.9
- Burton 3.8
- Moranbah North 3.9
- Goonyella 3.9
- Riverside 4.6
- North Goonyella 4.3
- Moorvale 3.9
- Carborough Downs 3.5<sup>15</sup>
- Isaac Plains 3.5<sup>16</sup>

#### 6.5.1.2 Unloading Facilities

##### *Nominated Unloading Facilities*

##### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

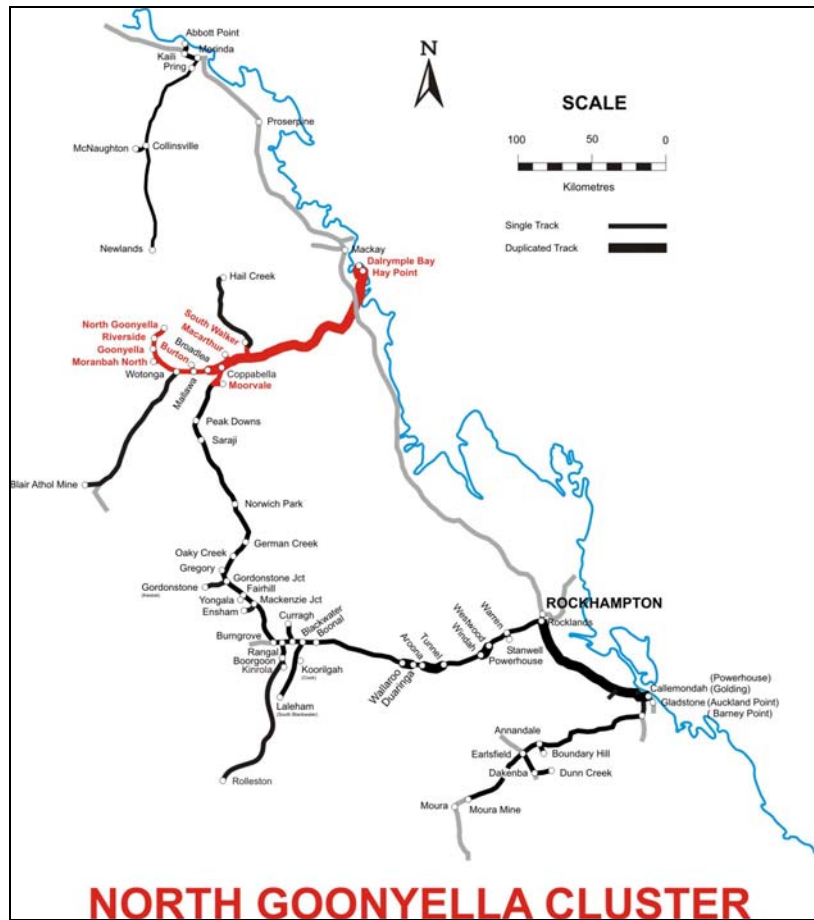
- Dalrymple Bay 2.8
- Hay Point 2.8

<sup>15</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

<sup>16</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.



### 6.5.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 6.5.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Mindi and North Goonyella or between Coppabella and Moorvale Junction or to any of the branch lines to any Nominated Loading Facility but excluding the corridors between Wotonga and Blair Athol and between Moorvale Junction and Oak Creek.

## 6.5.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	800	846.98
AT <sub>3</sub>	2.127	2.28
AT <sub>4</sub>	0.379	0.40
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.6 South Goonyella Cluster

### 6.6.1 Reference Train Service Description

#### 6.6.1.1 Loading Facilities

*Nominated Loading Facilities*

*Average Loading Time (hours) per return trip assessed on a monthly basis*

- |                |                   |
|----------------|-------------------|
| • Peak Downs   | 4.2               |
| • Saraji       | 4.4               |
| • Norwich Park | 3.9               |
| • German Creek | 2.9               |
| • Oaky Creek   | 3.8               |
| • Millennium   | 3.0 <sup>17</sup> |

#### 6.6.1.2 Unloading Facilities

*Nominated Unloading Facilities*

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

- |                 |     |
|-----------------|-----|
| • Dalrymple Bay | 2.8 |
| • Hay Point     | 2.8 |

<sup>17</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.



## 6.6.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	960	1,016.59
AT <sub>3</sub>	2.216	2.37
AT <sub>4</sub>	0.529	0.57
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.7 West Goonyella Cluster

### 6.7.1 Reference Train Service Description

#### 6.7.1.1 Loading Facilities

*Nominated Loading Facilities*

- Blair Athol

*Average Loading Time (hours) per return trip assessed on a monthly basis*

3.1

#### 6.7.1.2 Unloading Facilities

*Nominated Unloading Facilities*

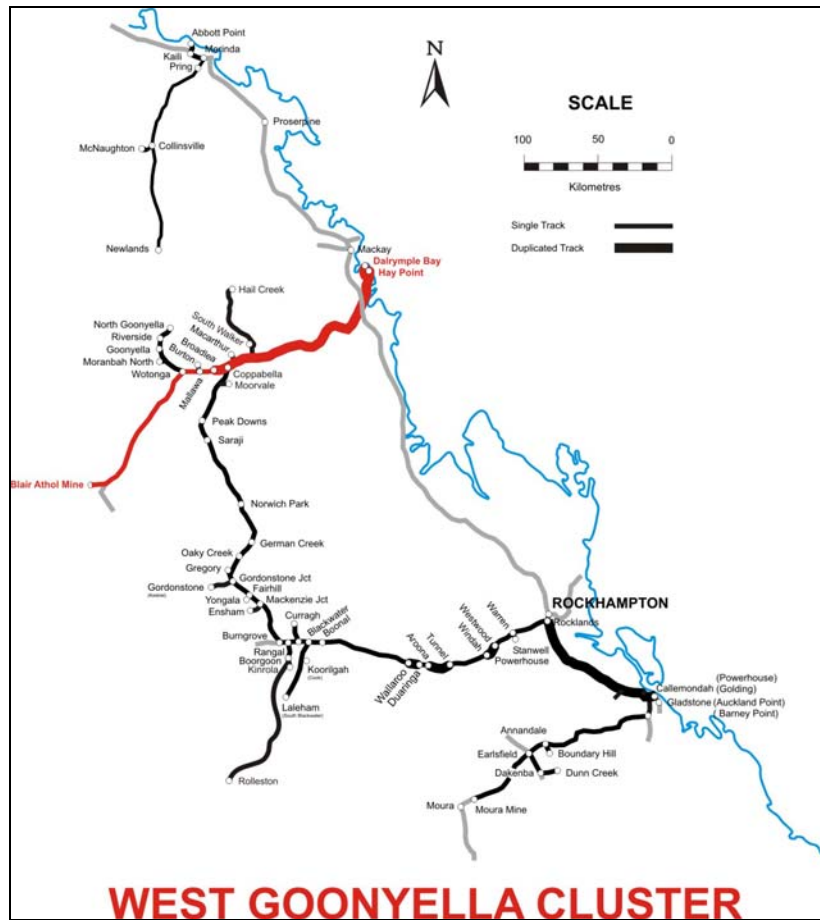
- Dalrymple Bay
- Hay Point

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

2.8

2.8

### 6.7.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 6.7.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Wotonga and Blair Athol.

## 6.7.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	800	846.98
AT <sub>3</sub>	2.254	2.41
AT <sub>4</sub>	0.630	0.67
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.8. Gregory Branch via Goonyella Cluster

### 6.8.1 Reference Train Service Description

#### 6.8.1.1 Loading Facilities

*Nominated Loading Facilities*

*Average Loading Time (hours) per return trip assessed on a monthly basis*

- |                         |     |
|-------------------------|-----|
| • Gregory               | 3.6 |
| • Kestrel <sup>18</sup> | 4.8 |
| • Ensham <sup>18</sup>  | 4.2 |

#### 6.8.1.2 Unloading Facilities

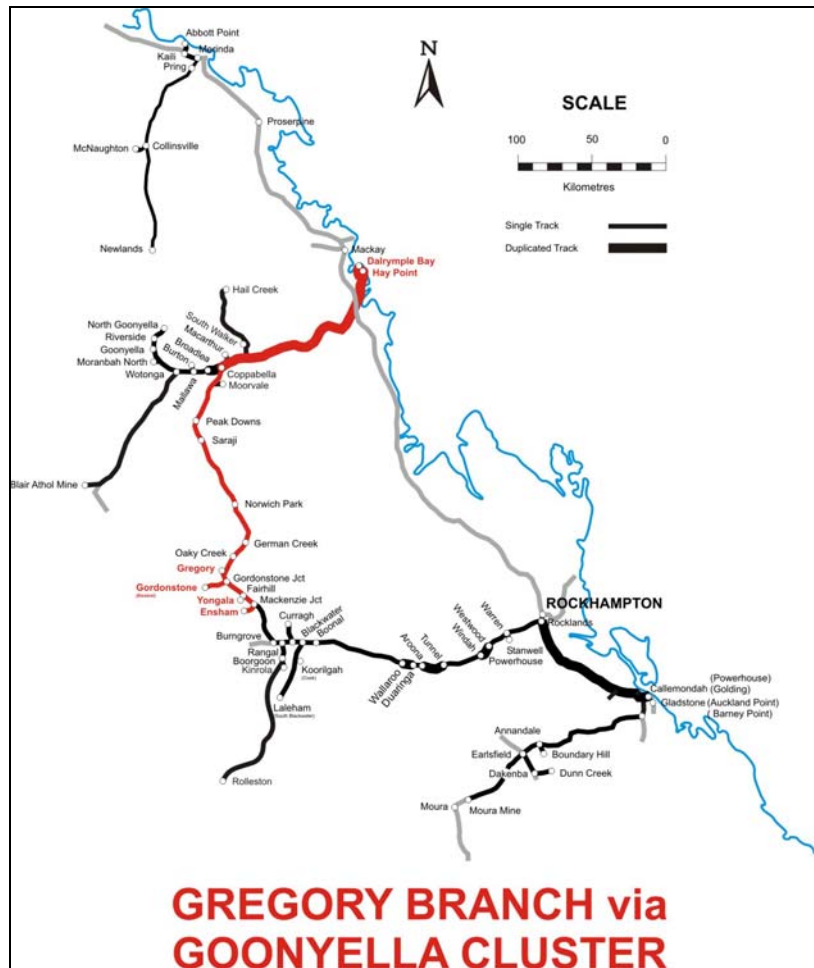
*Nominated Unloading Facilities*

*Average Unloading Time (hours) per return trip assessed on a monthly basis*

- |                 |     |
|-----------------|-----|
| • Dalrymple Bay | 2.8 |
| • Hay Point     | 2.8 |

<sup>18</sup> These mines do not have angles to the north.

### 6.8.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 6.8.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Gregory mine and Burngrove or to any of the branch lines to any Nominated Loading Facility but excluding the corridors towards Oaky Creek and Bluff.

## 6.8.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	960	1,016.59
AT <sub>3</sub>	2.630	2.81
AT <sub>4</sub>	0.823	0.88
AT <sub>5</sub>	1.004	1.06
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 6.9. Central Goonyella Cluster

### 6.9.1 Reference Train Service Description

#### 6.9.1.1 Loading Facilities

*Nominated Loading Facilities*

- Hail Creek

*Average Loading Time (hours) per return trip assessed on a monthly basis*

4.1

#### 6.9.1.2 Unloading Facilities

*Nominated Unloading Facilities*

- Dalrymple Bay
- Hay Point

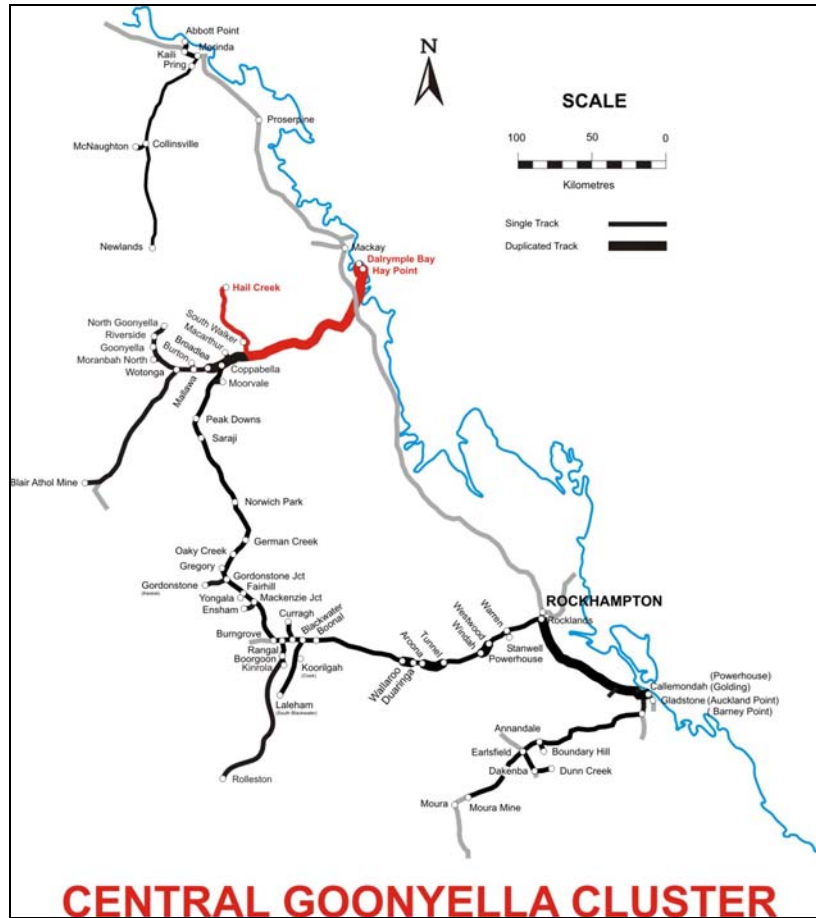
*Average Unloading Time (hours) per return trip assessed on a monthly basis*

2.8

2.8



### 6.9.1.3 Cluster Map



(Note, the cluster map is shown in colour)

### 6.9.1.4 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between South Walker Creek Junction and Hail Creek.

## 6.9.2 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	0.427	0.49
AT <sub>2</sub>	800	846.98
AT <sub>3</sub>	3.624	3.83
AT <sub>4</sub>	0.656	0.69
AT <sub>5</sub>	1.004	1.25
EC	0.451	0.477
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007

## 7. Moura Cluster

### 7.1 Application of this Clause

This Clause 7 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 7.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 7.3 Reference Train Service Description

7.3.1 The Reference Train Service has the following characteristics:

- a maximum length (including the locomotive/s) of 1000<sup>19</sup> metres;
- a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>20</sup> loading, or otherwise generates a loading equivalent to M220;
- utilisation of diesel traction; and
- measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 3.2 hours.

7.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of thirty percentage points (30%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included

<sup>19</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>20</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

in the relevant Access Agreement) plus (+) a factor of thirty percentage points (30%).

### 7.3.3 Loading Facilities

<i>Nominated Loading Facilities</i>	<i>Average Loading Time (hours) per return trip assessed on a monthly basis</i>
• Boundary Hill	3.4
• Dunn Creek/Callide Coal Fields	4.2
• Moura Mine	3.6
• Baralaba	4.9 <sup>21</sup>

### 7.3.4 Unloading Facilities

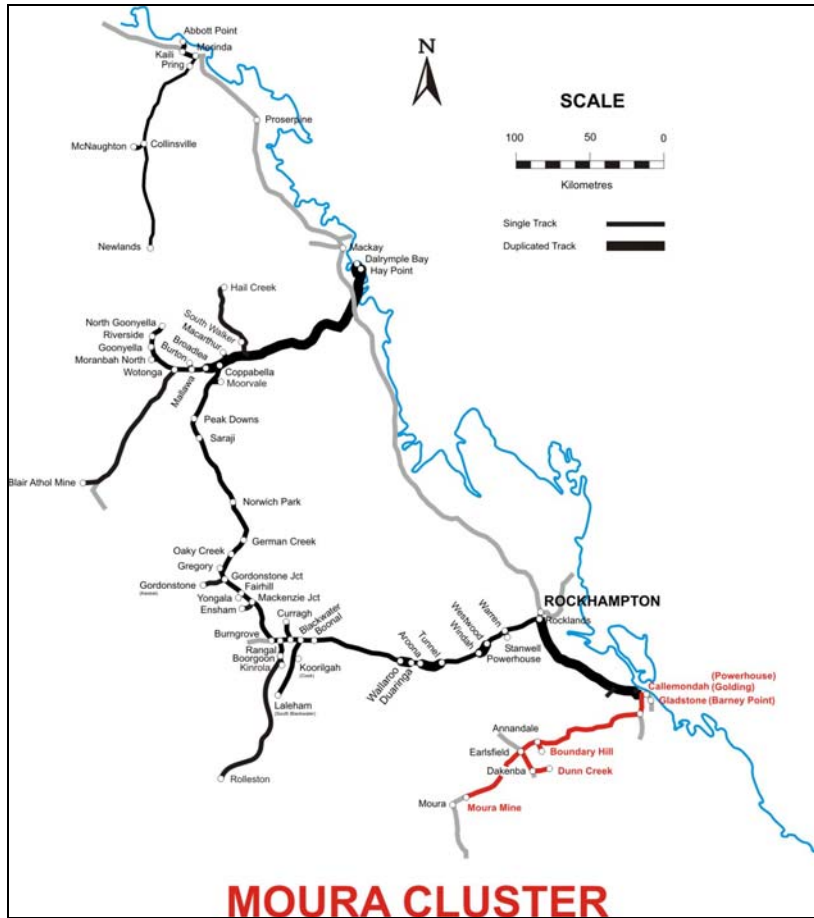
<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i> <i>Year</i>
• Golding/RG Tanna Terminal	1.5
• Barney Point	3.1
• Gladstone Power Station	3.3
• Queensland Alumina Ltd (QAL) <sup>22</sup>	8.9
• Cement Australia	4.3
• Comalco Refinery	3.1 <sup>23</sup>

<sup>21</sup> This is an estimate of loading time for this Loading Facility based on the actual data to date. QR Network will review this loading time following the Commencing Date. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

<sup>22</sup> The average Unloading Time for the QAL refinery represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>23</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

### 7.3.5 Cluster Map



(Note, the cluster map is shown in colour)

### 7.3.6 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Annandale and Moura Mine or to any of the branch lines to any Nominated Loading Facility.

## 7.4 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	1.158	1.34
AT <sub>2</sub>	416	440.54
AT <sub>3</sub>	5.880	6.70
AT <sub>4</sub>	0.961	1.09
AT <sub>5</sub>	0	-
EC	0	-
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

## 7.5 System Forecast and System Allowable Revenue

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>
2005/06	2,404,936	
2006/07	3,431,372	28,440,217
2007/08	3,414,578	31,090,943
2008/09	4,069,312	37,749,042

## 8. Newlands Cluster

### 8.1 Application of this Clause

This Clause 8 should be read in conjunction with Part A and Clauses 1 to 4 of Part B of this Schedule F.

### 8.2 Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 8.3 Reference Train Service Description

8.3.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1380<sup>24</sup> metres;
- (b) a maximum axle load of 20 tonne for a wheel configuration consistent with M160<sup>25</sup> loading, or otherwise generates a loading equivalent to M160;

<sup>24</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>25</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

- (c) utilisation of diesel traction; and
- (d) measured as an average over a Year, a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 2.4 hours.

8.3.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of eighteen percentage points (18%). If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of eighteen percentage points (18%).

### 8.3.3 Loading Facilities

#### *Nominated Loading Facilities*

#### *Average Loading Time (hours) per return trip assessed on a monthly basis*

- |              |                   |
|--------------|-------------------|
| • Newlands   | 1.8               |
| • McNaughton | 2.5               |
| • Sonoma     | 2.0 <sup>26</sup> |

### 8.3.4 Unloading Facilities

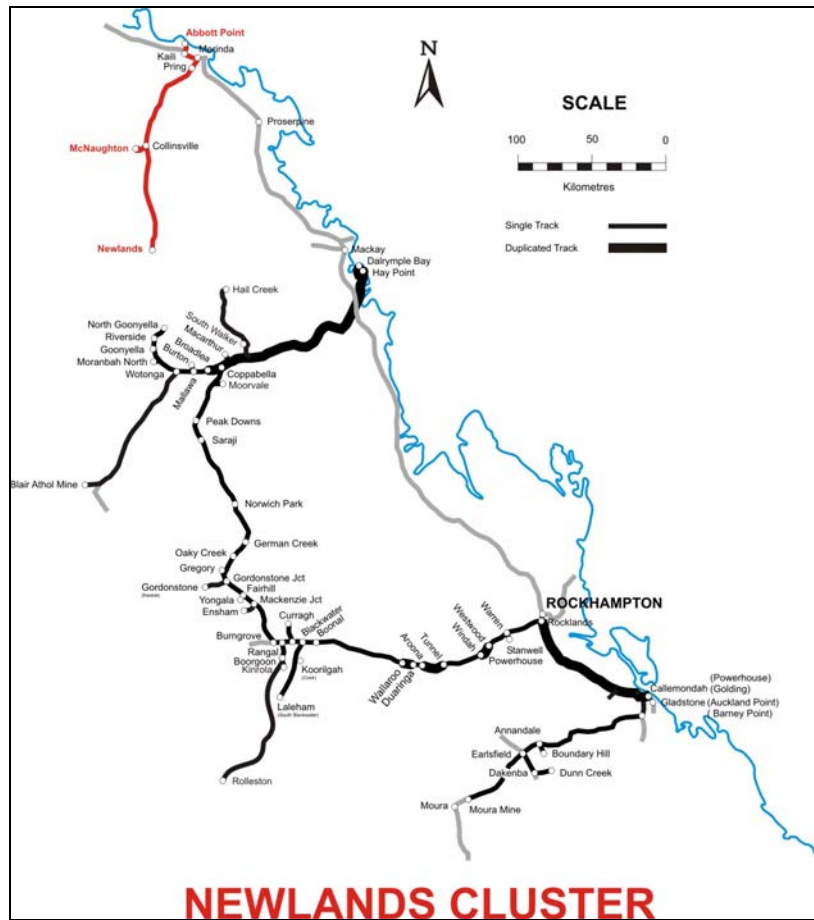
#### *Nominated Unloading Facilities*

#### *Average Unloading Time (hours) per return trip assessed on a monthly basis*

- |               |     |
|---------------|-----|
| • Abbot Point | 1.6 |
|---------------|-----|

<sup>26</sup> This is an estimate of loading time for this Loading Facility. QR Network will review this loading time following commencement of the operation of Train Services from this Loading Facility. Until such review and approval of this or a varied loading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating from this Loading Facility from the Reference Tariff due to the actual loading time for this Train Service varying from this estimate.

### 8.3.5 Cluster Map



(Note, the cluster map is shown in colour)

### 8.3.6 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Collinsville and Newlands, or to the Line Section between Collinsville and McNaughton.

#### 8.4 Reference Tariff

(a) The Reference Tariff components are:

Reference Tariff Component	Reference Tariff (\$) July 05	Revised Reference Tariff (\$) July 07
AT <sub>1</sub>	1.203	1.39
AT <sub>2</sub>	186	196.97
AT <sub>3</sub>	4.652	5.00
AT <sub>4</sub>	0.658	0.71
AT <sub>5</sub>	0	-
EC	0	-
QCA Levy	0.00588	0.0056

(b) The First Escalation Date for the Revised Reference Tariff is 1 October 2007.

#### 8.5 System Forecast and System Allowable Revenue

Year	System Gtk ,000 gtk	System Allowable Revenue – AT <sub>2-4</sub>
2005/06	2,844,447	
2006/07	3,674,026	23,307,925
2007/08	3,718,598	24,953,480
2008/09	3,718,598	25,577,317



## Part C. – Provisions Specific to Individual Reference Train Services in the Western System

### 1. Application of this Clause

This Part C should be read in conjunction with Part A of this Schedule F.

### 2. Term

The term of this Reference Tariff is from 1 July 2005 to the Terminating Date.

### 3. Reference Train Service Characteristics

3.1 Further to Subclause 2.3.1 of Schedule F, Part A, the Reference Train Service has the following characteristics:

- (a) a train length (including the locomotive/s) of 675 metres<sup>27</sup>;
- (b) a maximum axle load of 15.75 tonne; and
- (c) utilisation of diesel traction.

3.2 An Access Seeker for a Reference Train Service will have its Train Service Entitlement:

- (a) based on its Trains being available for operation 24 hours per day and 360 days per year; and
- (b) specified in terms of Timetabled Traffic and will comply with the applicable corridor scheduling procedures.

#### 3.3 Loading Facilities

<i>Nominated Loading Facilities</i>	<i>Average Loading Time (hours) per return trip assessed on a monthly basis</i>
-------------------------------------	---------------------------------------------------------------------------------

- |                             |     |
|-----------------------------|-----|
| • Ebenezer                  | 2.3 |
| • Jondaryan (New Acland)    | 2.5 |
| • Macalister (Wilkie Creek) | 3.3 |

#### 3.4 Unloading Facilities

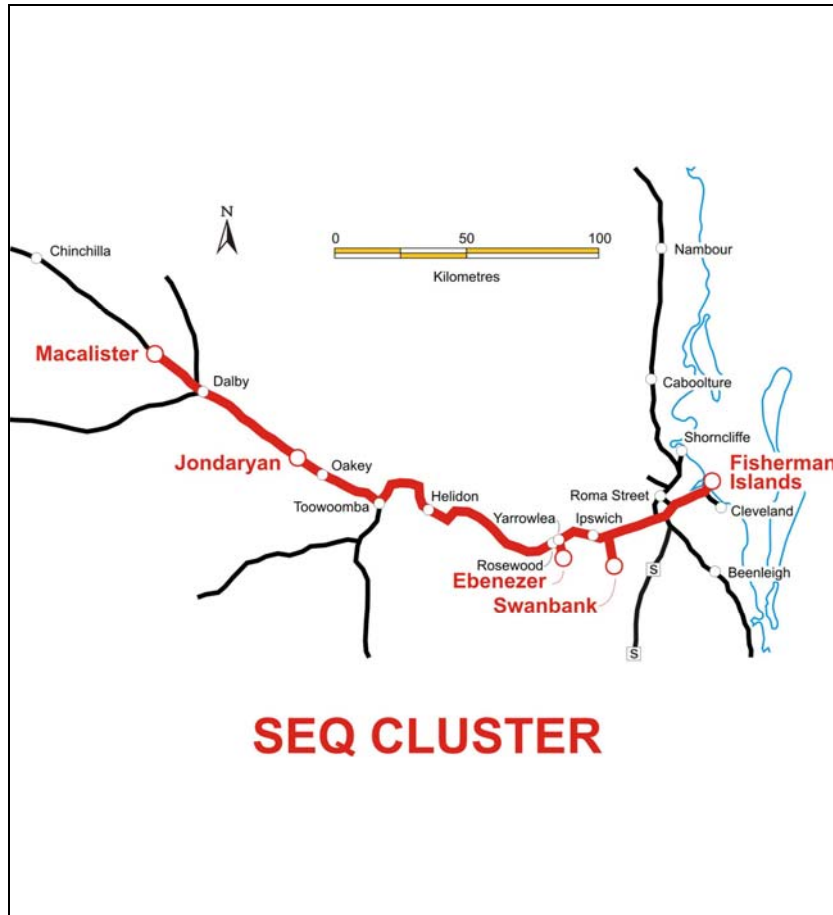
<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i>
---------------------------------------	-----------------------------------------------------------------------------------

- |                                 |                   |
|---------------------------------|-------------------|
| • Fisherman Islands coal loader | 2.3               |
| • Swanbank                      | 2.0 <sup>28</sup> |

<sup>27</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock 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>28</sup> This is an estimate of unloading time for this Unloading Facility based on the actual data to date. QR Network will review this unloading time following the Commencing Date. Until such review and approval of this or a varied unloading time by the QCA, QR Network will not vary the Access Charge for a Train Service operating to this Unloading Facility from the Reference Tariff due to the actual unloading time for this Train Service varying from the estimate.

### 3.5 Cluster Map



(Note, the cluster map is shown in colour)

### 3.6 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if the loading facility itself, or the new Rail Infrastructure that will connect the loading facility to the existing Rail Infrastructure, will connect to the existing Rail Infrastructure at a point on the corridor between Bundamba and Macalister or to any of the branch lines to any Nominated Loading Facility

## 4. Reference Tariff

4.1 The applicable Reference Tariff for the nominated Reference Train Service shall be assessed as:

$$\left( AT_1 \times \frac{gk}{1000} \right) + (QCALevy \times nt)$$

where:

- AT<sub>1</sub> is the variable part of the Reference Tariff that is levied on a gross tonne kilometre basis specified as AT<sub>1</sub> for the nominated Reference Train Service in this Part C;
- gtk is the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;
- nt is the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty; and

QCA Levy is the fee allocated to the nominated Reference Train Service to cover the fees imposed by the QCA upon beneficiaries of its regulatory services.

- 4.2 The amounts of AT<sub>1</sub> and the QCA Levy specified in this Part C are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.
- 4.3 For the purposes of this Part C, 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.
- 4.4 For the purposes of this Clause 4, the gtk measure shall be assessed for the relevant Train Service over the Billing Period for which the Reference Tariff is being calculated.
- 4.5 The amount of the Reference Tariff is:
- (a) The Reference Tariff components (as at 1 July 2005) are:

Reference Tariff Component	Reference Tariff \$
AT <sub>1</sub>	10.50
QCA Levy	0.00588

- (b) The First Escalation Date is 1 October 2005.

## 5. Take or Pay

- 5.1 QR Network will be entitled to earn Take or Pay revenue in accordance with the provisions of this Clause 5.
- 5.2 Take or Pay revenue from a particular Reference Train Service will be determined for each Year, and invoiced following completion of that Year, as the amount which is eighty percentage points (80%) of the amount calculated by multiplying:

- (a)  $AT_1$  (at the rate applicable in the final Quarter of the Year); by
- (b) the gtk calculated by:
  - (i) the gtk that would have been achieved for the subject Year had the full contracted entitlement been railed for the relevant Train Service; less
  - (ii) the gtk not railed for the subject Year due to the non operation of Train Services for a QR Network Cause; less
  - (iii) the gtk railed for the subject Year;

provided always that the amount of Take or Pay for the Year shall not be less than zero.

- 5.3 In order to calculate gtk for the purposes of Subparagraphs 5.2(b)(i) and (ii), QR Network will:

- (a) identify from the Access Agreement the number of train paths that would have been utilised had the full contracted entitlement been attained; and
- (b) determine the number of train paths that were not utilised due to a QR Network Cause,

and convert this to gtk by using a nominal payload per loaded Train Service as reasonably determined by QR Network.

- 5.4 QR Network shall provide to the Access Holder information on how it has determined the amount of the Take or Pay at the same time as it is invoiced.

## Schedule FB

### **Maintenance Of Regulatory Asset Base For Central Queensland Coal Region**

#### **1. CENTRAL QUEENSLAND REGULATORY ASSET BASE**

1.1 QR Network will maintain a Regulatory Asset Base for the Central Queensland Coal Region for the purposes of Paragraph 6.2.4(c) of this Undertaking.

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1.2 For the purposes of Clause 1.1, on an annual basis, QR Network will roll forward the asset values in its Regulatory Asset Base, applying the following principles:

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- (a) the opening asset valued will be indexed for the Year using the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No. 6401.0), as first published;
- (b) depreciation of the assets will be calculated for the Year on a straight line basis, using the QCA endorsed asset lives;
- (c) the value of asset disposals and transfers during the Year will be subtracted from the Regulatory Asset Base;
- (d) prudent capital expenditure will be added to the Regulatory Asset Base, where prudent capital expenditure is that accepted by the QCA in accordance with Clause 2 of this Schedule; and
- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with Clauses 1.3 to 1.6 of this Schedule.

1.3 The value of assets contained in the Regulatory Asset Base may be increased by QR Network if:

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- (a) it is at the end of the Term and QR Network is seeking to include a valuation for intangible assets, being a matter that was not considered as part of the initial valuation of assets contained in the Regulatory Asset Base; or
- (b) additional sections of existing Rail Infrastructure are incorporated into the Central Queensland Coal Region, in which case the additional sections will be initially valued in accordance with the Depreciated Optimised Replacement Cost methodology,

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provided that the increase in asset value must first be accepted by the QCA.

1.4 The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:

- (a) the QCA made its decision to accept the expenditure in the Regulatory Asset Base on the basis of information provided by QR Network that QR Network knew, or should have known, was false or misleading at the time it provided the information;

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- (b) circumstances arise in the future where demand has deteriorated to such an extent that regulated prices on an unoptimised asset would result in a further decline in demand; or
- (c) it becomes clear that there is a possibility of actual (not hypothetical) bypass.

For clarity, a reduction or cessation in the utilisation of a section of QR Network's Rail Infrastructure within an Individual Coal System Infrastructure will not result in a reduction in any asset values in the Regulatory Asset Base for that Individual Coal System Infrastructure unless it triggers the criteria above.

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## 2. ACCEPTANCE OF CAPITAL EXPENDITURE INTO THE REGULATORY ASSET BASE

### 2.1 General Capital Expenditure Approval Process

- (a) The QCA will determine what capital expenditure should be accepted into QR Network's Regulatory Asset Base, which is used for the purposes of assessing Reference Tariffs. The QCA's prior approval is not required for any capital expenditure.
- (b) The QCA will accept all prudent capital expenditure into the Regulatory Asset Base. Prudence has three aspects:
  - (i) prudence in scope;
  - (ii) prudence in standard of works; and
  - (iii) prudence in cost.

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The QCA's consideration of prudent capital expenditure will be in accordance with Clause 2.3 of this Schedule.

- (c) While Reference Tariffs may include a Capital Indicator at the beginning of a regulatory period, this does not imply an acceptance by the QCA of this level of capital expenditure for inclusion in the Regulatory Asset Base. The assessment of whether actual capital expenditure will be accepted into the Regulatory Asset Base will only be made after the expenditure has been incurred, subject to Clause 2.2 of this Schedule which provides for pre-approval by the QCA of certain aspects of the capital expenditure. For clarity, actual capital works undertaken by QR Network during a regulatory period may be deemed to not be prudent and therefore not accepted by the QCA for inclusion in the Regulatory Asset Base, even though total capital expenditure may be within the amount incorporated into the Reference Tariffs.
- (d) If, in assessing the prudence of QR Network's capital expenditure, the QCA considers that the scope of capacity enhancement is in excess of that needed to accommodate current contracted demand, likely future demand within a reasonable timeframe and any spare capacity considered appropriate (referred to as "Reasonable Demand") the prudent costs associated with that capacity enhancement (as specified by the QCA) will be set aside and escalated at the rate of CPI until a future point in time when the capacity enhancements are accepted by the QCA as required to meet Reasonable Demand. At

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this time, the QCA will accept the capital expenditure into the Regulatory Asset Base at its escalated value.

- (e) QR Network will provide a copy of its strategic asset management plan to the QCA, describing the general standards QR Network will apply in determining whether to incur capital expenditure by replacing assets within the Regulatory Asset Base rather than maintaining the existing assets (on approval by the QCA being the Network Asset Management Plan). The Network Asset Management Plan is not intended to be binding on QR Network, or represent a pre-assessment of prudence by the QCA, but is intended to provide a useful guide as to the prudence of the scope of QR Network's proposed Asset Replacement Expenditure. QR Network will advise the QCA of any proposed amendments to the Network Asset Management Plan over the Term. If the QCA assesses any proposed amendments to the Network Asset Management Plan as material, it will notify QR Network and those amendments will not be taken into account when considering consistency with the Network Asset Management Plan in accordance with this Schedule, unless the strategic asset management plan including the proposed amendments is resubmitted by QR Network for approval by the QCA, and is approved by the QCA.

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- (f) The QCA will consider for inclusion in the Regulatory Asset Base any capital expenditure submitted by QR Network and either:

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(i) advise QR Network in writing that it has approved the capital expenditure for inclusion in the Regulatory Asset Base; or

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(ii) if the QCA is considering refusing approving an element of QR Network's capital expenditure for inclusion in the Regulatory Asset Base, the QCA will give to QR Network a preliminary notice of the QCA's decision, stating the reasons and the way it considers it appropriate to adjust the amount of the capital expenditure.

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- (g) If the QCA gives QR Network a preliminary notice under Paragraph 2.1(f) of this Schedule:

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(i) within thirty (30) days of QR Network being given the preliminary notice, QR Network may revise the amount of the capital expenditure and/or provide additional information supporting its view that the capital expenditure was prudent; and

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(ii) the QCA will consider the information provided under Subparagraph 2.1(g)(i) and either approve or refuse to approve the capital expenditure.

## 2.2 Regulatory Pre-Approval of the Scope of Capital Expenditure

- (a) The QCA will accept the scope of a capital expenditure project as prudent if:

(i) it is Asset Replacement Expenditure and the total amount proposed to be expended over the regulatory period is consistent with the asset age and composition of the assets in the Central Queensland Coal Region and asset replacement is

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in accordance with QR Network's Network Asset Management Plan. However, the QCA retains the right to review the composition of Asset Replacement Expenditure; or

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- (ii) it is General Expansion Capital Expenditure and the scope of the capital expenditure has been accepted by Customers in accordance with Paragraph 2.2.2(d); or
- (iii) it is Customer specific capital expenditure for a spur line to a mine which is to be included as a loading point for a Reference Tariff developed in accordance with Part 6 of the Undertaking, and the scope of the capital expenditure has been accepted by the Customer concerned.

- (b) The QCA will consider, if requested, a QR Network submission seeking regulatory pre-approval of the standard of a capital expenditure project accepted by Customers in accordance with Paragraph 2.2.2(d), provided that QR Network has provided sufficient information to the QCA to allow it to reasonably consider the request for pre-approval given the criteria set out in Subclause 2.3.3. In such cases, the QCA will consider prudence of standard in accordance with Subclause 2.3.3 of this Schedule. The QCA will advise QR Network whether it will provide pre-approval of the standard of the capital expenditure project.

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- (c) The QCA will consider, if requested, a submission from QR Network, an Access Seeker, an Access Holder or a Customer seeking regulatory pre-approval of the scope of a capital expenditure project where a capital expenditure project has not been accepted by Customers in accordance with Paragraph 2.2.2(d) (including a project that has been omitted from the Master Plan and/or the Customer Group acceptance process under Paragraph 2.2.2), provided that QR Network, the Access Seeker, the Access Holder or the Customer (as the case may be) has provided sufficient information to the QCA to allow it to reasonably consider the request for pre-approval given the criteria set out in Subclause 2.3.2. In such cases, the QCA will consider the prudence of the scope of the capital expenditure project taking into account the extent to which QR Network has achieved compliance with Paragraph 2.2.2(d), and the criteria set out in Subclause 2.3.2 of this Schedule. The QCA will advise QR Network whether it will provide pre-approval of the scope of the capital expenditure project.

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- (d) In all circumstances other than those specified in this Clause 2.2, the QCA will assess the prudence of the scope, standard and costs of capital expenditure projects when QR Network submits them for inclusion in the Regulatory Asset Base using the approach outlined in Clause 2.3 of this Schedule.

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#### 2.2.1. Master Plan Process

- (a) QR Network will establish a Coal System Master Planning Forum comprising:
  - (i) Customers for coal carrying Train Services;

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- (ii) Access Holders that hold Access Rights for coal carrying Train Services and Access Seekers that are seeking Access Rights for coal carrying Train Services;
- (iii) the owners and/or operators of ports utilised by coal carrying Train Services and other coal unloading destinations;
- (iv) the Queensland Resources Council, as an observer only; and
- (v) the QCA, as an observer only.

QR Network must provide all participants with at least ten (10) Business Days prior notice of any proposed meetings of the Coal System Master Planning Forum and, at least five (5) Business Days prior to the proposed meeting, provide each participant with an agenda of the issues to be discussed, and any materials to be considered in the meeting.

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- (b) QR Network will actively involve the Coal System Master Planning Forum in the development of a comprehensive Coal System Master Plan. The Coal System Master Plan must be for a minimum of three (3) years but can extend to a longer time period.

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- (c) QR Network is to provide an updated Coal System Master Plan to the Coal System Master Planning Forum by the end of June each year.

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- (d) The Coal System Master Plan must contain information on the following categories of capital expenditure:
  - (i) Asset Replacement Expenditure, (provided at an aggregated level only);
  - (ii) General Expansion Capital Expenditure, further categorised into:
    - (A) projects for which Customer Group acceptance is sought; and
    - (B) projects for which Customer Group acceptance is not sought; and
  - (iii) Customer specific spur projects.
- (e) A Customer Group is defined as all Customers who have responsibility for Reference Tonnes. Reference Tonnes means that portion of a Customer's annual tonnage that:
  - (i) is charged, or will be charged, an Access Charge which is based on a Reference Tariff (including for the avoidance of doubt, Access Charges which are varied from the Reference Tariff pursuant to Paragraph 6.1.1(b) of the Undertaking or Clause 4 of Part A of Schedule F);
  - (ii) will have its Access Charge affected at any future time by the inclusion in the Regulatory Asset Base of the capital expenditure projects for which Customer acceptance is sought (i.e. typically within the same Individual Coal System Infrastructure); and
  - (iii) is:

- (A) currently included in an Access Agreement that will be in force at the time that is five (5) years after the approval is sought for the number of tonnes specified in the Access Agreement for a twelve (12) month period starting five (5) years after the first day of the month in which the approval is sought and where there is a legally binding commitment to that tonnage in the Access Agreement (even if this commitment is conditional upon completion of the required Capacity Enhancements or upon other conditions which are the responsibility of QR Network to satisfy or can be waived by QR Network); or
- (B) where annual tonnage is included in an Access Agreement which is due to expire within the next five (5) years, and it is reasonably expected that the Access Agreement will be extended or a new Access Agreement entered in respect of substantially the same annual tonnages from the existing mine which has the benefit of the Access under the existing Access Agreement or a Replacement Mine (taking into account factors such as whether the relevant Customer or Access Holder is seeking an extension of the Access Agreement and the projected remaining life of the mine or Replacement Mine referred to in this Subparagraph 2.2.1(e)(iii)(B)), the annual tonnage in the last year of the Access Agreement.
- (f) QR Network will identify which Customers comprise a particular Customer Group with reference to Access Agreements that are in place at the date that Customer Group acceptance of capital projects is sought.
- (g) QR Network will provide sufficiently detailed information on scope, standard and preliminary costs in order for projects to be considered by Customer Groups. This will include information that:
- (i) identifies, by Central Queensland Coal Region and by Individual Coal System Infrastructure, capacity analysis information, reasons for the expansion, identification of the projects that will be required to provide increased Capacity to meet increased demand and estimated trigger points for each project;
  - (ii) identifies for each specific project, the scope of the project and describes the general standard of works, the additional capacity to be delivered by the expansion and preliminary cost information;
  - (iii) quantifies the impact on existing capacity during construction and measures for ameliorating this impact; and
  - (iv) provides the rationale for the choice of project, including the consideration of alternative solutions. QR Network should present both a preliminary analysis of the other track solutions considered by QR Network, as well as an indicative assessment of alternative supply chain solutions arising from

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discussions with other (present and prospective) logistics providers in the coal supply chain (note that this may involve capacity solutions which QR Network cannot deliver, but which may present a better system solution).

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In the event that the information provided by QR Network is inadequate or inappropriate, this may form a bona fide basis for an objection pursuant to Paragraph 2.2.2(b).

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- (h) Customers are to jointly have access to QR Network's capacity analysis model via one appointed external consultant (at the Customers' cost) to undertake a peer review of the model and the model's output. QR Network will run a reasonable range of scenarios for consideration by Customers. Capacity modelling is to be undertaken on the basis of upfront agreement about model parameters and the sensitivity analysis to be conducted on these modelling parameters, with any dispute on model parameters being referred to the QCA for resolution.

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### 2.2.2 Customer Acceptance of Projects

- (a) QR Network may seek a Customer Group acceptance of the scope of capital expenditure projects that are included in the Coal System Master Plan prior to proceeding with the projects in order to gain pre-approval of the scope of the project in accordance with Subparagraph 2.2(a)(ii). If QR Network seeks such Customer acceptance:

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- (i) QR Network will provide a written request to each Customer in the Customer Group and provide advice on:

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- (A) the specific list of capital expenditure projects from the Coal System Master Plan for which it is seeking Customer Group acceptance; and

- (B) QR Network's assessment of the Customer's Reference Tonnes and the total number of Reference Tonnes relating to the list of capital expenditure projects. If, after discussions with QR Network, within two (2) weeks of receiving the written request under Paragraph 2.2.2(a), any party wishes to query these tonnages or the composition of the Customer Group, they should notify the QCA to seek verification. QR Network and the notifying party must, on request from the QCA, make available all documents necessary to verify the Customer's tonnages or its assessment of the Customer Group (and the QCA will confine its assessment to the information provided). The QCA shall notify QR Network and the notifying party of its decision within two (2) weeks of receiving this notification; and

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- (ii) QR Network will notify contemporaneously any Customer which has not been included within the Customer Group on the basis of QR Network's assessment that Subparagraph 2.2.1(e)(iii)(B) has not been satisfied. If, after discussions with QR Network, within two (2) weeks of receiving such notification, the Customer wishes to query its non-inclusion in the Customer Group, they should notify the QCA to seek

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verification. QR Network and the notifying party must, on request from the QCA, make available all documents necessary to verify whether the Customer should have been included in the Customer Group and, if so, the Customer's Reference Tonnes (and the QCA will confine its assessment to the information provided). The QCA shall notify QR Network and the notifying party of its decision within two (2) weeks of receiving this notification. The Customer in question bears the onus of demonstrating to the QCA's satisfaction that Subparagraph 2.2.1(e)(iii)(B) was satisfied.

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- (b) Unless a Customer in a Customer Group has, within six (6) weeks of receiving the request under Subparagraph 2.2.2(a)(i), lodged with QR Network bona fide objections to the proposed capital expenditure including reasons why it believes the proposed capital expenditure is not required, then the Customer will be deemed to have accepted the scope of the proposed capital expenditure projects. If any Customer provides information, and claims confidentiality to the extent that it cannot be disclosed to the QCA, that confidential information will be disregarded.

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- (c) When determining objections, QR Network may seek QCA approval to disregard any votes on the basis that a specific objection is not bona fide. The QCA shall consult with that Customer in reaching a decision. The QCA shall advise QR Network and that Customer of its decision within two (2) weeks of receiving this request from QR Network.

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- (d) Customer acceptance of the scope of a capital expenditure project will be deemed to have been received if at least 60% of the Customer Group (as assessed by weighting Customers in accordance with their Reference Tonnes) accepts the scope of the proposed capital expansion projects.

- (e) Within ten (10) weeks of QR Network having sought acceptance of proposed capital expenditure projects under Paragraph 2.2.2(a), QR Network will notify each member of the Customer Group of the results of the vote. In the event that a project has not been accepted by the Customer Group, QR Network will provide each member with details regarding the number and percentage of objections received and, on request, will make available any objecting submissions, excluding any specific sections which the submitting Customer has specified as confidential.

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- (f) A Customer who considers that a project should receive regulatory pre-approval of scope, notwithstanding that Customer acceptance has not been secured, may apply to the QCA under Paragraph 2.2(c). In this case, QR Network will, on request from the QCA, make available to the QCA all relevant documents, including any confidential elements of objections.

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## 2.3 Prudency of Capital Expenditure

### 2.3.1 Assessment of Prudency of Capital Expenditure

- (a) In assessing whether the capital expenditure undertaken is prudent, the QCA will:

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- (i) only consider information that was, or would reasonably have been, available to QR Network (or, for a period prior to the Commencing Date, QR) at the time of making the investment decision (and in assessing the prudence of capital expenditure on the basis of that information, the QCA can take into account any advice or comments received pursuant to Paragraph 2.3.1(b) of this Schedule); and
  - (ii) take into account the extent to which QR Network (or, for a period prior to the Commencing Date, QR) has achieved compliance with Paragraph 2.2.2(d) of this Schedule. For example, where a significant number of Customers have accepted the scope of works but the threshold test for Paragraph 2.2.2(d) has not been met.
- (b) The QCA will take advice as it considers necessary from independent advisors using appropriate benchmarks and experience, and consult as it considers necessary with relevant stakeholders.

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### 2.3.2 Prudence of Scope of Works

- (a) Assessing the prudence of scope of works involves assessing whether the works are reasonably required.
- (b) The QCA will accept the scope of capital projects:
  - (i) if it has been approved by a Customer Group under Paragraph 2.2.2(d) of this Schedule; or
  - (ii) if QR Network can demonstrate to the QCA's reasonable satisfaction, having regard to the factors set out in Paragraph 2.3.2(c) of this Schedule, QR Network (or, for a period prior to the Commencing Date, QR) had reasonable grounds for proceeding with a project given the circumstances relevant at the time the investment decision was made.
- (c) In assessing the scope of capital expenditure projects QCA shall have regard to, inter alia:
  - (i) the Coal System Master Plan, if any;
  - (ii) the need to accommodate what is reasonably required to comply with Access Agreements;
  - (iii) the extent of Reasonable Demand, and the need for new capital projects to accommodate that demand;
  - (iv) the age and condition of existing assets, the need for replacement capital projects, and consistency with the Network Asset Management Plan;
  - (v) QR Network's (or, for a period prior to the Commencing Date, QR's) legislative requirements, including relating to workplace health and safety and environmental requirements;
  - (vi) the appropriateness of QR Network's (or, for a period prior to the Commencing Date, QR's) processes to evaluate and select proposed capital projects, including the extent to which alternatives are evaluated as part of the process;

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- (vii) the extent to which capital projects that were undertaken were subjected to the capital evaluation and selection process; and
- (viii) the extent to which consultation has occurred with relevant stakeholders about the proposed capital projects.

### 2.3.3 Prudency of Standard of Works

- (a) Assessing the prudency of standard of works involves assessing whether the works are of a reasonable standard to meet the requirements of the scope and are not overdesigned such that they are beyond the requirements of the scope.
- (b) The QCA will accept the standard of the works undertaken where:
  - (i) QR Network can demonstrate to the QCA's reasonable satisfaction, having regard to the factors set out in Paragraph 2.3.3(c), QR Network (or, for a period prior to the Commencing Date, QR) had reasonable grounds for its design of the infrastructure standards; or
  - (ii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure and/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) Where QR Network proposes to depart from the standard and configuration of adjacent and/or existing infrastructure with similar usage levels in assessing the standard of the works undertaken, or where the standard of such existing or adjacent infrastructure has not been approved by the QCA, the QCA will have regard to, inter alia:
  - (i) the requirements of operators and what is reasonably required to comply with Access Agreements;
  - (ii) current and likely future usage levels;
  - (iii) the requirements of the National Codes of Practice;
  - (iv) the requirements of other relevant Australian design and construction standards;
  - (v) QR Network's design standards contained within its Safety Management System and which is accepted by the Safety Regulator; and
  - (vi) all relevant legislation, including requirements by any Authority (e.g. the Safety Regulator and the EPA).

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### 2.3.4 Prudency of Costs

- (a) Assessing the prudency of costs involves assessing whether the costs are reasonable for the scope and standard of work done.
- (b) In assessing the reasonableness of the cost of works undertaken, the QCA will have regard to, inter alia:
  - (i) QR Network's Network Asset Management Plan;

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- (ii) QR Network's Coal System Master Plan;
- (iii) the level of such costs relative to the scale, nature, cost and complexity of the project;
- (iv) the circumstances prevailing in the markets for engineering, equipment supply and construction;
- (v) QR Networks's Procurement Policy approved by the QCA under Paragraph 2.3.4(c) of this Schedule; and
- (vi) the manner in which the capital works have been managed, including but not limited to the manner in which QR Network (or, for a period prior to the Commencing Date, QR) has balanced the needs of:
  - (A) safety during construction and operation;
  - (B) compliance with environmental requirements during construction and operation;
  - (C) minimising disruption to the operation of Train Services during construction;
  - (D) accommodating reasonable requests of Access Holders to amend the scope and sequence of works undertaken to suit their needs;
  - (E) minimising whole of asset life costs including future maintenance and operating costs;
  - (F) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
  - (G) aligning other elements in the supply chain; and
  - (H) meeting contractual timeframes and dealing with external factors.
- (c) QR Network will submit a Procurement Policy to the QCA for approval. The Procurement Policy will identify:
  - (i) the procurement options available to QR Network, eg tender for individual project, tender for program, alliance, internal provision of services;
  - (ii) the reasons why QR Network may choose to use the alternate options;
  - (iii) the mechanisms QR Network will use to ensure that it achieves value for money in its procurement; and
  - (iv) the manner in which QR Network can demonstrate that it has followed this Procurement Policy.
- (d) The QCA will approve or not approve QR Network's Procurement Policy and advise QR Network accordingly.

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### 3. CAPITAL EXPENDITURE CARRYOVER ACCOUNT

#### 3.1 Capital Indicator

- (a) For the purpose of determining Reference Tariffs for the Central Queensland Coal Region, a Capital Indicator of \$160 million per year has been included. This amount has been allocated as follows:
  - (i) 7.5% to electrification assets in the Blackwater system;
  - (ii) 35% to non-electrification assets in the Blackwater system;
  - (iii) 7.5% to electrification assets in the Goonyella system;
  - (iv) 35% to non-electrification assets in the Goonyella system;
  - (v) 10% to the Moura system; and
  - (vi) 5% to the Newlands System.
- (b) For the purposes of calculating the Reference Tariffs, it has been assumed that the Capital Indicator will be used for assets with an average life of thirty-five (35) years;

### 3.2 Capital Expenditure Carryover Account

- (a) QR Network will maintain a register in which it will annually record all Approved Capital Expenditure. The register will include the following information:
  - (i) capital expenditure by project;
  - (ii) categorisation of capital expenditure based on Individual Coal System Infrastructure; and
  - (iii) for the Blackwater and Goonyella coal systems, categorisation of capital expenditure to that related to electrification assets and that not related to electrification assets.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, the difference will give rise to an entry in the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:
  - (i) an under recovery of revenue, if the Approved Capital Expenditure exceeds the Capital Indicator; or
  - (ii) an over recovery of revenue, if the Approved Capital Expenditure is less than the 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 Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the Discount Rate;
  - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the 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 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 Reference Tariffs.

- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the Discount Rate.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking, 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.

#### 4. Definitions and Interpretation

4.1 In this Schedule, references to Parts, Clauses, Subclauses, Paragraphs and Subparagraphs are references to Parts, Clauses, Subclauses Paragraphs and Subparagraphs contained in this Schedule unless otherwise stated.

4.2 The following definitions are specific to this Schedule. In addition to these definitions, Part 10 of the Undertaking sets out the definitions of defined terms used in this Schedule and applicable to the Undertaking generally:

**“Approved Capital Expenditure”** means all capital expenditure approved by the QCA in accordance with Clause 2 of Schedule FB (or, for a period prior to the Commencing Date, Clause 2, Schedule FB of the 2005 Undertaking), except for capital expenditure for a new spur line to a mine where the Train Services servicing that mine are included in a new Reference Train Service and the value of that new spur line is included in a new Reference Tariff;

**“Asset Replacement Expenditure”** means expenditure on capital projects required to maintain the existing capacity of the Rail Infrastructure (for example, the replacement of life expired or obsolete assets);

**“Capital Expenditure Carryover Account”** means the account maintained by QR Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in Clause 3.2 of this Schedule;

**“Coal System Master Plan”** means the plan relating to QR Network’s proposed capital expenditure projects containing the information specified under Paragraph 2.2.1(d) of this Schedule;

**“Coal System Master Planning Forum”** means the forum of that name established under Paragraph 2.2.1(a) of this Schedule;

**“Customer Group”** has the meaning given to that term in Paragraph 2.2.1(e) of this Schedule;

**“General Expansion Capital Expenditure”** means expenditure on capital projects required to expand the existing capacity of the Rail Infrastructure,

where that Rail Infrastructure is utilised for the benefit of more than one Customer or more than one Access Holder;

**“National Codes of Practice”** means the codes developed by the Australian Rail Association to identify, at a high level, the standards required for rail infrastructure in Australia;

**“Network Asset Management Plan”** means the plan prepared by QR Network and approved by the QCA under Paragraph 2.1(e) of this Schedule;

**“Procurement Policy”** means the policy approved by the QCA under Paragraph 2.3.4(c) of this Schedule;

**“Queensland Resources Council”** means the Queensland Resources Council Ltd ABN 59 050 486 952;

**“Reasonable Demand”** has meaning given to that term in Paragraph 2.1(d) of this Schedule;

**“Reference Tonnes”** has the meaning given to that term in Paragraph 2.2.1(e) of this Schedule;

## **SCHEDULE G**

### ***Network Management Principles***

#### **Part A. Scheduling Principles**

##### **1. Train Service Entitlements**

- a) Access Holders operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology<sup>1</sup>.
- b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), a Weekly Train Plan (WTP), where necessary, and a Daily Train Plan (DTP).
- c) Where an Access Seeker's required Capacity cannot be met fully, the Access Seeker may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and if the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

##### **2. Master Train Plan Principles**

- a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train Services and other activities on the Rail Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train Paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements. In other words, the Train Paths indicated in the MTP for Cyclic Traffic need not necessarily represent the Train Paths that those Train Services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train Paths indicated in the MTP may well indicate the actual Train Path that a Train Service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.
- b) Unless otherwise expressly provided in an Access Holder's Access Agreement, the MTP may be modified, as specified in Paragraphs c), d), e) and f) of these MTP Principles, where:
  - i) an Access Holder notifies QR Network that it wishes to make a long-term change to the **times** at which its Train Service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train

<sup>1</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of train paths per specified period of time.

Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;

- ii) QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;

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- iii) a Planned Possession is cancelled;

- iv) QR Network notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;

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- v) QR Network notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train Service/s operate, provided that change is within the scope of the relevant Access Holders' Train Service Entitlement/s and is intended to accommodate:

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- the creation of a new or additional Train Service Entitlement, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
- the creation of new Planned Possessions or the modification of existing Planned Possessions; or
- any other Operational Constraint affecting the MTP;

- vi) QR Network notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlement/s, provided that change is intended to accommodate:

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- the creation of new Planned Possessions or the modification of existing Planned Possessions;
- the creation of an additional Train Service Entitlement, through either the signing of an Access Agreement or the variation of an existing Access Agreement; or
- any other Operational Constraint affecting the MTP;

provided that where the change to the **times** at which scheduled Train Service/s operate results in any existing Access Holder's Train Service Entitlement not being met, such change is only made with the

<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their Access Agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

agreement of such Access Holder/s, such agreement not to be unreasonably withheld;

- vii) QR Network notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the times<sup>4</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Access Holders' Train Service Entitlements, QR Network has made reasonable efforts to mitigate the impact on that Access Holder. Any limitations upon QR Network's ability to exercise this right will be specified in individual Access Agreements;

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- viii) an Access Holder's Access Agreement allows QR Network to alter the Access Holder's Train Service Entitlement, for instance by resuming Capacity through the Capacity resumption process outlined in Part 7 of this Undertaking; and

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- ix) QR Network, Infrastructure Service Providers, and all affected Access Holders, otherwise agree.

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- c) QR Network may make modifications to the MTP, within the scope of Subparagraphs b)(i), b)(ii), b)(iii) and b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.

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- d) QR Network may make modifications to the MTP, within the scope of Subparagraphs b)(v), b)(vi) and b)(vii) of these MTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.

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- e) Where a change is being sought to the MTP that falls within the scope of Subparagraphs b)(ix) of these MTP Principles, QR Network will invite Infrastructure Service Providers and all Access Holders whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum<sup>5</sup>. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.

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- f) QR Network must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.

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- g) As a result of QR Network's obligations in accordance with Paragraph f), where reference is made in Paragraph b) of these MTP Principles to an Access Holder notifying QR Network that it wishes to vary its Train Service Entitlement or Train Service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.

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<sup>4</sup> See footnote 2 above.

<sup>5</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.

- h) The cancellation of a Train Service or Train Services in accordance with the above MTP Principles, does not necessarily excuse either QR Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for Train Controllers in carrying out their duties.

### 3. Weekly Train Plan Principles

- a) In parts of QR Network's network where Cyclic Traffics operate (for instance the Central Queensland Coal Region) there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A WTP will be scheduled utilising Planned Possessions, the Train Paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, each Access Holder's Train Service Entitlement and Train Orders for the particular week in question.
- b) In the Central Queensland Coal Region, Train Orders for the coming week must, unless otherwise advised by QR Network, be submitted to QR Network before 1200 hours on Wednesday.
- c) The process of scheduling Cyclic Traffics in the WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Access Holders and Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process applies only for the allocation of a Contested Train Path between Access Holders for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 1.
- d) QR Network will advise Access Holders of the WTP once it is developed in accordance with the above steps.

### 4. Daily Train Plan Principles

- a) The DTP will indicate all scheduled Train Services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Rail Infrastructure.
- b) In scheduling Cyclic Traffics on the DTP, QR Network may first schedule a WTP as discussed in the WTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- c) QR Network will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Access Holders and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in Paragraphs e), f), and g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:

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- i) an Access Holder notifies QR Network that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train Service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Service/s not being met or a Planned Possession not being met;
- ii) QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
- iii) a Planned Possession is cancelled;
- iv) QR Network notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, provided the change is intended to accommodate:
- the modification of an existing Planned Possession;
  - the creation of an Urgent Possession; or
  - any other Operational Constraint affecting the DTP;
- provided that where the change to scheduled Train Service/s results in any existing Access Holder's Train Service Entitlement not being met, such change is only made with the agreement of such Access Holder/s, such agreement not to be unreasonably withheld;
- v) QR Network requests 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; and
- vi) QR Network, Infrastructure Service Providers, and all affected Access Holders otherwise agree.
- e) QR Network may make modifications from the MTP or WTP (where applicable), within the scope of Subparagraphs d)(i), d)(ii), and d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
- f) QR Network may make modifications from the MTP or WTP (where applicable), within the scope of Subparagraphs d)(iv) and d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- g) Where a change is being sought from the MTP or WTP that falls within the scope of Subparagraph d)(vi) of these DTP Principles, QR Network will invite Infrastructure Service Providers and all Access Holders whose scheduled Train Service/s are affected by the change to consider the modification in an

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<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.

- h) Other than as detailed in Paragraph i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
- i) Once the DTP is scheduled, variations to the DTP may only be made where:
  - i) before the day of operation, QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
  - ii) before the commencement of the relevant Train Service/s, an Access Holder notifies QR Network that it wishes to make a change to the **times**<sup>9</sup> at which its Train Service/s operate, provided that change is within the scope of the Access Holder's Train Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or
  - iii) before the commencement of the relevant Train Service/s, QR Network notifies an Access Holder that an Emergency Possession is required.
- j) QR Network may make modifications to the DTP within the scope of Subparagraphs i) i), i) ii) and i) iii) of these DTP principles on a case by case basis without the need for consultation.
- k) The cancellation of a Train Service or Train Services in accordance with the above DTP Principles, does not necessarily excuse either QR Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- l) The DTP will represent the expected train operation performance target over its period.
- m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control principles.

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<sup>8</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.

<sup>9</sup> See Footnote 2 above.



## Part B. Train Control Principles

- a) The fundamental objective of Train Control will be to facilitate the safe running of Train Services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- b) The ability of QR Network and/or an Access Holder to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- c) The following general principles apply to Access Holders and Train Controllers:
- i) all parties will ensure that operational safety is maintained through compliance with Safeworking Procedures, Safety Standards, Rollingstock Interface Standards, applicable IRMPs and EIRMRs;
  - ii) Access Holders will 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 prevent the DTP from being met; and
  - iii) QR Network will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate reason for Train Controllers to alter a scheduled Train Service.
- e) The traffic management decision making matrix, at Appendix 2, will be provided to assist Train Controllers in the resolution of disputes in accordance with the above principles.
- f) QR Network will provide Access Holders with:
- i) real time Train 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 Train Control diagrams that indicates actual running of that Access Holder's Train Services against the relevant DTP; and
  - iii) information about the type of Train Services<sup>29</sup> operated by other Access Holders' on the same network to assist Access Holders to determine whether the Train Controller is applying the principles in this Schedule G in a consistent manner between Access Holders.

<sup>29</sup> For instance, freight Train Services, passenger Train Services or coal Train Services.

## Appendix 1 Contested Train Path Decision-making Process

QR Network will determine who gets a Contested Train Path, by:

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- firstly, eliminating from consideration any Access Holder whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR Network still has spare Capacity available, QR Network may determine which of the parties seeking the Contested Train Path get that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR Network may determine which of the parties gets the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR Network will document the parties' agreement and keep a record of such<sup>10</sup>.
- then, considering the number of Train Services per week that each Access Holder has a contractual entitlement to in accordance with their Train Service Entitlement. If QR Network is behind (in the contract year to date) in providing an Access Holder with its contracted Train Services, that Access Holder will get priority over an Access Holder that QR Network is either ahead or on target (in the contract year to date) in providing contracted Train Services to. Where QR Network is behind in providing contracted Train Services to more than one Access Holder, the Access Holder most behind (in terms of Train Services provided as a percentage of contracted Train Services) will get first priority over others; and
- finally, where the above considerations do not assist QR Network in making a decision regarding which requested Train Service is scheduled, QR Network will unilaterally determine which Train Service/s get scheduled, and will keep a record of that decision and the reasoning behind that decision. QR Network will ensure that, over time, no Access Holder is favoured over another, and where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to 10 services per week, and another Access Holder has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on 2 out of 3 consecutive occasions.

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<sup>10</sup> QR Network envisages that this step will take into account the requirements of the relevant destinations of the Train Services in question. In the coal system, for instance, the ports and domestic users, if they are not Access Holders themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Access Holders in determining the priority of Train Services requested in their weekly train request.

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## Appendix 2 Traffic Management Decision Making Matrix

### Notes for the application of the Traffic Management Decision Making Matrix

As a generic principle for the performance of Train Control, QR Network recognises (as noted in paragraph a) of Part B of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of 'on time running', and accordingly, running to the DTP will always result in the most efficient use of the Rail Infrastructure and provide those parties using the Rail Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train Services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR Network considers it necessary to permit Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 and 6 have been included for this purpose.

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- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a Train Controller's ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train Services, as expressed in their Train Service Entitlements.

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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 DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running "On Time".

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
Train B		Objective	On Time Exit	On Time Exit	1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

### Rules for the application of the Traffic Management Decision Making Matrix

- Rule 1. Subject to rules 5 and 6 Train B may be given priority on condition Train A will still meet its “On Time” objective.
- Rule 2. Both trains must meet their “On Time” objective.
- Rule 3. Subject to rules 5 and 6 Train A may be given priority on condition Train B will still meet its “On Time” objective.
- Rule 4. Subject to rules 5 and 6 give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or the requirements of a Passenger Priority Obligation.
- Rule 6. Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other trains if the Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.

**SCHEDULE HA**

**Sample Interface Risk Management Plan**

References SAA = Operator Access Agreement – Coal												
Categories (Items) A - Planning (pre-event)                      D - En-route B - Entering QR Network's Network                      E - Stabling C - Preparing a Train Service                      F - Emergency/Contingency												
ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete	
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>				
A1	Delays	Possessions on the Nominated Network are not communicated effectively to the Access Seeker	Commercial loss due to operational delays and/or service cancellations.	QR Network will provide the Access Seeker with a copy of the Possession Protocols (as amended from time to time) which detail the management of possessions of the track.								Deleted: QR
A2	Collision Derailment Operational delays Property damage	Nominated Network Operational and Safety matters known to QR Network are not communicated to the Access Seeker in an agreed, consistent manner on an on-going basis	Injury or death Commercial loss	Schedule 10 SAA specifies the procedure for communication of Safety Alerts, Weekly Notices and Train Notices.								Deleted: QR
A3	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall	New or altered operation requires changes to the existing infrastructure.	Incidents/accidents occurring due to inappropriate use of existing infrastructure.	Access Seeker will identify all changes to the existing network infrastructure required prior to operation and submit 'Infrastructure Change Request' in accordance with QR Network procedure.	Note: The process of 'Infrastructure Change' is separate to the process of negotiating access and will be subject to individual risk assessment.							Deleted: Network Access
A4	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall Dangerous Goods Spill Fire/Explosion	New or altered operation requires development of transfer facilities on the Nominated Network.	Incidents/accidents occurring due to inappropriate use of existing infrastructure.	Access Seeker will identify any requirements for the development of transfer facilities and submit a request to QR Network. QR Network will provide design advice to ensure compatibility with existing infrastructures, Rollingstock and operations.	Note: The process of negotiating a Transfer Facilities License is separate to the process of negotiating access and will be subject to individual risk assessment.							Deleted: Network Access Deleted: QR
A5	Collision Derailment Operational Delays	Non-compliance with IRMP	Injury or death Commercial loss	Access Seeker and QR Network to agree an audit, inspection and review regime to be included here in IRMP								Deleted: QR

<sup>1</sup> C = Consequences  
<sup>2</sup> L = Likelihood  
<sup>3</sup> R = Residual Risk

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References  
 SAA = Operator Access Agreement – Coal

Categories (Items)  
 A - Planning (pre-event) D - En-route  
 B - Entering QR Network's Network E - Stabling  
 C - Preparing a Train Service F - Emergency/Contingency

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ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
B1	Operational delays	Access Seeker does not have an agreement to access other QR Network facilities (NOT the Nominated Network) that it requires for access to Nominated Network	Commercial loss	Schedule 11 SAA details agreements for matters ancillary to access to the Nominated Network, including access to other QR Network facilities such as stations, platforms etc.							
B2	Operational delays	Access Seeker does not have an agreement to access private facilities that it requires for access to Nominated Network	Commercial loss	Clause 5.11 SAA requires Access Seeker to demonstrate to QR Network's reasonable satisfaction, prior to commencement of Train Services, that it has agreements with owners/operators of Private Facilities necessary to enable Access Seeker to operate Train Services. A 'Connection Agreement' will be required where QR Network's Network interfaces with private railway infrastructure.	Note: The process to develop a 'Connection Agreement' is separate to the process of negotiating access and will be subject to individual risk assessment.						
B3	Operational delays	Unauthorised Rollingstock or Rollingstock Configuration (eg too long, too heavy or Rollingstock in the wrong order) refused entry to Network.	Commercial loss	Access Seeker/QR Network to agree Rollingstock Interface Standards to apply to cover: Train Separation Safeworking Principles Train Safety Systems Rollingstock Dynamic Performance Rollingstock Visibility and Audibility Emergency Equipment on Rollingstock Rollingstock Interior Environment Electrical Equipment for Rollingstock Electrification Safety Pantograph Technical Requirements Electric Traction Infrastructure General Technical Requirements Rollingstock Cab Layout Rollingstock Structural Requirements Rollingstock Drawgear Containers and Removable Structures attached to Rollingstock Axle Bearings for Rollingstock Bogie Structural Requirements Wheels for Rollingstock Wheelset Assembly Axles for Rollingstock Wheel Defect Identification and Rectification Rollingstock Electromagnetic Compatibility Locomotive and Passenger Vehicle Access Passenger Vehicle Interior Crashworthiness s4.3 Glazing On Track Vehicles Rollingstock Fire Performance Steam Locomotive Technical Requirements Operational Route Manual Module OR 5 Loading and Securing of Freight Manual Train Route Acceptance Rollingstock Brake System Requirements Operational Integrity of Trains	SAF/STD/0006/SIG SAF/STD/0076/SIG SAF/SPC/0069/RSK SAF/STD/0026/RSK SAF/STD/0049/RSK SAF/STD/0051/RSK SAF/STD/0052/RSK SAF/STD/0054/RSK STD/0039/SWK SAF/STD/0093/RSK SAF/STD/0098/ELE  SAF/STD/0055/RSK SAF/STD/0057/RSK SAF/STD/0060/RSK SAF/STD/0097/RSK  SAF/STD/0058/RSK SAF/STD/0066/RSK SAF/SPC/0024/RSK SAF/SPC/0025/RSK SAF/SPC/0026/RSK SAF/SPC/0025/RSK SAF/STD/0120/RSK SAF/STD/0062/RSK SAF/STD/0059/RSK SAF/STD/0116/RSK SAF/STD/0057/RSK SAF/STD/0094/RSK STD/0071/SWK STD/0022/SWK SAF/STD/0114/SWK SAF/STD/0064/RSK SAF/STD/0035/SWK						

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 SAA = Operator Access Agreement – Coal

Categories (Items)  
 A - Planning (pre-event) D - En-route  
 B - Entering QR Network's Network E - Stabling  
 C - Preparing a Train Service F - Emergency/Contingency

ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
				Mobile Voice Radio Communication Systems Event Recorders Observance of Signals Manual SG 10 DTC Manual Rail Tank Cars Rural Fire Management Rollingstock to be designed to comply with nominated Rollingstock outline including centre and end throws. Maximum sway of Rollingstock not to infringe kinematic outline. Rollingstock to comply with allowable axle loads specified in STD/0071/SWK. Assessment of L/V ratio for Rollingstock Configurations for worst buff and draft forces and curve radii to be carried out. Load tables to be provided by Access Seeker for all routes to be travelled. Comparison train length not to exceed the minimum loop length for the route listed in STD/0071/SWK. Noise levels to comply with the requirements of ROA Manual of Standards and Practices s 13.4.1  Compliance of Rollingstock and Rollingstock Configurations to Rollingstock Interface Standards to be determined by assessment, certification and testing as agreed by Access Seeker/QR Network.  Any potential non-compliance to the above Rollingstock Interface Standards to be addressed here in IRMP	SAF/STD/0014/TEL SAF/SPC/0061/RSK STD/0037/SWK STD/0041/SWK SAF/STD/0056/RSK SAF/STD/0020/WHS  or alternative agreed standards						
B4	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Train Separation DG Spill Fire/Explosion	Procedures for entering and exiting the Nominated Network (including shunting/entering and exiting yards) are not clear or consistent between different operators.	Incidents occurring due to non-existent or inconsistent entry/exit procedures being used.	Entry/exit procedures to/from private sidings and yards are specified in Schedule 10 SAA – Interface Coordination Plan.							

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 A - Planning (pre-event) D - En-route  
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ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete	
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>				
B5	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Train Separation Rough Ride DG Spill Fire/Explosion	Operational Communication Protocols (including communications between train crew, support staff, train controllers, and supervisors/managers) between Access Seeker, QR Network and other users of the Nominated Network are incompatible and/or inconsistent	Incidents occurring due to non-existent or inconsistent communication procedures being used.	Schedule 10 SAA – Interface Coordination Plan sets out process for development of and communication of Train Lists and Operational Communication Protocols.  Radio equipment on trains must be compatible with QR Network radio system, other trains and ground personnel as well as portable radios in accordance with QR Network's SAF/STD/0014/TEL Mobile Voice Radio Communication Systems.  Protocols for hand (including radio) communication will be in accordance with agreed Standards.	STD/0037/SWK – Observance of Signals STD/0036/SWK – General Operational Safety STD/0088/SWK – Shunting Procedures Manual; or agreed alternative standards.							
B6	Derailment Strike Infrastructure Damage Operational delays	Access Seeker staff or contractors do not carry out trackside access safely or are not competent to operate equipment on or near the Nominated Network (eg road vehicles, plant)	Injury or death Commercial loss	Access Seeker staff and contractors must at all times have completed trackside safety training required in accordance with agreed standards  Access Seeker workers and contractors will be provided with and wear PPE in accordance with local (location and industry specific) requirements and SAF/STD/0032/WHS.	STD/0038/SWK - Track and Trackside Safety Manual, STD/0039/SWK - Electrification Safety Manual; SAF/STD/0011/COM - Safety Training and Accreditation or agreed alternative standards and training package.							
B7	Delays	Access Seeker staff or contractors do not have access to specific locations and/or infrastructure.	Incidents (delays) occurring due to lack of access to conduct routine operations.	QR Network will assist Access Seekers in identifying all required points of secured access to the Nominated Network and keys required to operate specific infrastructure. QR Network shall arrange access in accordance with Access Seeker requirements.								
C1	Collision Derailment Strike Infra. Damage R/stock Damage Delays Slip, trip, fall	Infrastructure provided on the Nominated Network (e.g. points, signals, levers, etc.) are not operated correctly.	Incidents/accidents occurring due to lack of skills/knowledge to operate track and trackside infrastructure.	Access Seeker staff and contractors who are required to operate equipment and or infrastructure provided by the Network Manager shall be competent to do so in accordance with agreed standards.	STD/0036/SWK– General Operational Safety STD/0037/SWK– Observance of Signals STD/0038/SWK- Track and Trackside Safety Manual, STD/0040/SWK –Remote Control Signalling Manual STD/0041/SWK – Direct Traffic Control Manual STD/0088/SWK– Shunting Procedures Manual SAF/STD/0119/SWK – Safety in Yards, Facilities, Sidings and Workshops or agreed alternative standards							
C2	Strike Operational delays Infrastructure damage	Facilities for servicing Rollingstock on QR Network tracks inadequate (eg coaling/watering)	Injury or death Commercial loss	Facilities and procedures agreed for servicing Rollingstock will be detailed in Schedule 1 SAA.	STD/0036/SWK General Operations Safety Manual STD/0038/SWK Track and Trackside Safety Manual or agreed alternative standards							
C3	Infrastructure damage Strike Infrastructure damage Operational delays	Spillage or disposal of load or fuel during loading/unloading, servicing, provisioning or in transit.	Injury or death Commercial loss	Access Seeker to develop procedures for the design, maintenance and loading of Rollingstock to prevent spillage of bulk loads, and contamination of the infrastructure by dropping or leakage of oil, fuel, sewage or other contaminating material and include in EIRMR.	SAF/STD/0035/SWK Operational Integrity of Trains STD/0036/SWK General Operations Safety Manual or agreed alternative standards							

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						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
C4	Infrastructure damage	Disposal of waste products	Commercial loss	Access Seeker to dispose of waste products in accordance with approved EIRMR.							
C5	Strike Operational delays Infrastructure damage	Facilities for freight handling on Nominated Network inadequate	Injury or death Commercial loss	Freight will only be loaded/unloaded in locations and in accordance with procedures detailed in Schedule 1 SAA.	STD/0036/SWK - General Operational Safety Manual STD/0038/SWK - Track and Trackside Safety Manual or agreed alternative standards						
C6	Derailment Operational delays Infrastructure damage	Rollingstock loaded in excess of its capacity (overloads not detected or removed).	Injury or death Commercial loss	Access Seeker to develop procedures to ensure Rollingstock is not loaded beyond its structural capability.  Clauses 5.8 and 12.2(c) of SAA permit QR Network to require removal or reduction of overloaded Rollingstock.  Access Seeker is responsible for checking loading before entry to network.							
C7	Chemical spill Fire or explosion Infrastructure damage Operational delays	Dangerous goods not loaded/transported safely (freight wagons on passenger trains, oxygen cylinders for passenger medical use, small gas bottles etc in baggage, gas/fuel in dining cars), failure of fuel tanks	Injury or death, Commercial loss	Carriage and loading of dangerous goods must be in accordance with agreed standard.	SAF/STD/0079/STD – Acceptance, handling and transport of dangerous goods SAF/STD/0057/RSK Rollingstock Structural Requirements SAF/STD/0056/RSK or alternative agreed standards						
C8	Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall	Passenger are not suitably managed to avoid incidents/accidents on the network during normal operations and emergency situations.	Incidents/accidents occurring due to inadequate supervision and management of passengers.	Access Seeker will ensure its Emergency Response Plan contains adequate procedures for supervision/management of passengers to avoid injury or interference with other network operations and to deal with an accident specific to passenger traffic.	SPC/0022WHS Operational Emergency Procedures SAF/STD/0008/COM – Emergency, Preparedness, Response and Recovery or agreed alternative procedures						
C9	Collision Derailment Operational delays	Mechanically defective Rollingstock is included in the train or the train, brakes or any other safety related system is not complete and operational throughout the length of the train.	Injury or death Commercial loss	Access Seeker to develop Rollingstock maintenance and train testing procedures.	SAF/STD/0035/SWK - Operational Integrity of Trains STD/0036/SWK - General Operational Safety Manual or agreed alternative standards						
D1	Derailment Operational Delays	Adverse weather conditions (e.g. heat, flood, high winds) affect Rollingstock performance.	Injury or death Commercial loss	Access Seeker and QR Network to: <ul style="list-style-type: none"> <li>consider likelihood of extreme weather conditions occurring on the Nominated Network</li> <li>advise each other of any limitations of Rollingstock or rail infrastructure that likely extreme weather conditions produce</li> </ul> Agreed controls (e.g. reduced speeds) shall be documented in Schedule 4 SAA. Other operating restrictions shall be documented in Schedule 1 SAA.							
D2	Collision Derailment Operational delays	Train not compatible with safeworking system.	Injury or death Commercial loss	Access Seeker to have process to apply when secondary protection systems or train safety systems are not operational.	STD/0041/SWK Direct Traffic Control Manual STD/0046/SWK ATP Manual SAF/STD/0076/SWK						

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References  
 SAA = Operator Access Agreement – Coal

Categories (Items)  
 A - Planning (pre-event) D - En-route  
 B - Entering QR Network's Network E - Stabling  
 C - Preparing a Train Service F - Emergency/Contingency

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ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
D3	Derailment Rollingstock Damage	Train speed exceeds capability of the Rollingstock or infrastructure	Injury or death Commercial loss	Schedule 4 SAA sets out the authorised Rollingstock and Rollingstock configurations that the Access Seeker may operate and any restrictions placed upon configurations, operations and/or any other special conditions.							
D4	Derailment Strike Rollingstock Damage	Train strikes object on Nominated Network	Injury or death Commercial loss	Operator's Emergency Response Plan (required by Clause 7 SAA) must detail how Access Seeker will deal with such an Incident.  Refer Item B3 for Rollingstock requirements							
D5	Collision Derailment Rollingstock damage Operational delays	Train marshalling not compatible with Rollingstock requirements. Buff or draft forces result in L/V ratio too high leading to derailment.	Injury or death Commercial loss	The authorised Rollingstock Configurations that the Access Seeker may operate are listed in Schedule 4 SAA. Access Seeker responsible for developing appropriate controls for marshalling of Rollingstock within a Train.							
D6	Operational delays	Train produces excessive noise	Commercial loss	Access Seeker to ensure noise is controlled in accordance with its EIRMR.							
D7	Operational delays	Train produces air pollution	Commercial loss	Access Seeker to ensure air pollution is controlled in accordance with its EIRMR							
D8	Infrastructure damage Operational delays	Train causes trackside fire	Commercial loss	Access Seeker to ensure fire risk is controlled in accordance with its EIRMR							
D9	Collision Derailment Strike Infra. Damage R/stock Damage Delays Train Separation Rough Ride	Access Seeker does not source appropriate aids to assist in training and assessing safeworking and route for operational workers (traincrew, etc.).	Incidents/accidents occurring due to inadequate/inappropriate skills (training and or assessment).	QR Network will assist Access Seeker with training where unable to be obtained from other source.  Refer Item A1 for pilot arrangements (re-routing) during closures.							
D10	Collision Derailment Operational delays Property damage	Train and Route restrictions (and changes thereto) relevant to the Access Seeker's proposed train service are not communicated by QR Network to the Access Seeker	Injury or death Commercial loss	Permanent route restrictions pertaining to the Nominated Network, Rollingstock (axle load, maximum train lengths, noise limits, train speeds, and Rollingstock gauge) and/or loading/unloading are detailed in Schedule 4 SAA.  Refer Item A2 for communication procedures							

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References  
SAA = Operator Access Agreement – Coal

Categories (Items)  
**A - Planning (pre-event)**      **D - En-route**  
**B - Entering QR Network's Network**      **E - Stabling**  
**C - Preparing a Train Service**      **F - Emergency/Contingency**

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ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete	
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>				
D11	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall Train Separation Rough Ride DG Spill Fire/Explosion	Operator fails to report an Incident, accident, damaged/missing infrastructure or unusual occurrences that impact on the Nominated Network or other Operators on the Nominated Network	Incidents occurring due to non-existent or inconsistent communication procedures being used.	Clause 7.3 SAA requires Operator to report any incident/accident or unusual event that may impact network operations to QR Network Train Control (including accidents occurring off QR Network's Network.  Clause 7.4 SAA requires Operator to notify QR Network as soon as reasonably practicable after an incident or accident occurs.	SAF/STD/0012/COM Incident/Accident Reporting, Recording and Investigation or agreed alternative standard							
E1	Collision Derailment Strike Infra. Damage R/stock Damage Delays DG Spill Fire/Explosion	Rollingstock and trains are not securely stabled/stowed on the Nominated Network.	Incidents occurring due to non-existent or inconsistent stabling procedures being used.	All stabling/stowage of Rollingstock and Trains on the Nominated Network is detailed in Schedule 1 SAA and must be carried out in accordance with agreed procedures.	STD/0036/SWK General Operational Safety or alternative operating procedure agreed by parties (and attached at Attachment A).							
F1	Collision Derailment Operational delays	Rollingstock becomes mechanically defective during train movement.	Injury or death Commercial loss	Access Seeker is responsible for determining scope and frequency of Rollingstock inspections to ensure that Rollingstock is safe to complete its trip and include inspection/audit regime.	STD/0035/SWK - Operational Integrity of Trains or agreed alternative standard							
F2	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall Train Separation Rough Ride DG Spill Fire/Explosion	QR Network Train Control fails to advise Operator of an Incident or other occurrence that impacts upon their Train Services	Incidents occurring due to non-existent or inconsistent communication procedures being used.	Clause 7.3 SAA requires QR Network to notify Operator of all incidents/accidents involving their operation or Rollingstock.								Deleted: QR Deleted: QR
F3	Collision Derailment Strike Infra. Damage R/stock Damage Delays Electric Shock Slip, trip, fall DG Spill Fire/Explosion	There is no agreed, coordinated procedure for responding to Incidents and Emergencies on the Nominated Network (including processes for communication)	Incidents occurring due to in-appropriate or un-coordinated emergency management.	Access Seeker must develop an Emergency Response Plan which contains procedures that are adequate for dealing with an accident specific to the type of traffic and location, and is at all times compatible with the QR Network's Emergency Procedures (including QR Network's SPC/0022WHS Operational Emergency Procedures, and SAF/STD/0008/COM – Emergency, Preparedness, Response and Recovery) and the relevant Access Agreement. Refer Clause 7 SAA								Deleted: QR Deleted: QR

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References  
 SAA = Operator Access Agreement – Coal

Categories (Items)  
 A - Planning (pre-event) D - En-route  
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ITEM	Accident/Incident	Hazard/Cause	Consequences	Controls (This list is suggested only for discussion purposes and not meant to be comprehensive – Access Seeker should review and amend to suit their particular operation and requirements)	Comments Evaluation of risks and controls (QR Network will accept alternative controls to those specified provided they achieve the same or a lower residual risk as the specified controls)	Residual Risk			Reference Documents	Responsible Manager	Time to Complete
						C <sup>1</sup>	L <sup>2</sup>	R <sup>3</sup>			
F4	Collision Derailment Operational delays	Train does not comply with the requirements (Standards/procedures etc) set out in this IRMP and Access Seeker's Access Agreement while being recovered.	Injury or death Commercial loss	Clause 7.4 SAA details how incident management is to occur on the Nominated Network.							
F5	Operational delays	Rollingstock not compatible with QR Network or other Railway Access Seeker's Rollingstock for the purpose of recovery Rollingstock has specific recovery requirements (eg Tilt Train)	Injury or death Commercial loss	Access Seeker's Rollingstock must be recovered in accordance with its Emergency Response Plan.  Clause 7.4 SAA outlines management of Incident Response, including Restoration and Recovery.							
	Any other issue particular to the planned operation										

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The agreed Interface Standards are to be documented here after completion of the Interface Risk Assessment:

The agreed Safeworking Procedures and Safety Standards are to be documented here after completion of the Interface Risk Assessment:

I hereby certify that the Rollingstock and Rollingstock configurations listed above:  
comply with the agreed Interface Standards except as noted above  
will be operated in accordance with all other controls listed above  
will be managed in accordance with this Interface Risk Management Plan throughout their operation

I have objective evidence of compliance with the agreed Interface Standards such as Compliance Plans, Certificates of Compliance and Test Reports, which will be retained for 7 years.

Where professional engineering services are required to certify compliance, such certification shall be carried out by the following registered professional engineer:

Name: \_\_\_\_\_

Qualifications: \_\_\_\_\_

Address: \_\_\_\_\_

Access Seeker: \_\_\_\_\_

Access Seeker's Representative: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE J**

### ***Issues for EIRMR***

This list is to be taken as the minimum environmental issues to be addressed in the EIRMR, and the EIRMR should not be restricted only to the issues included in this list.

#### **1. Water Quality Management**

The Third Party Access Seeker must consider the impact of its proposed operations on storm water systems and natural waterways. In doing so, all relevant water quality standards and regulations must be met.

In the EIRMR the Third Party Access Seeker must nominate all sensitive surrounding environments including important wetlands, rivers, creeks, lakes and dams within close proximity of their proposed operations (and stating whether they are fresh or salt water).

The Third Party Access Seeker should consider reviewing existing water quality monitoring information that may be available at loading/unloading locations and along the intended route of operation. For example, the Qld Department of Natural Resources and Mines (DNR&M) provide a water quality monitoring and information dissemination service on its website:

<http://www.nrm.qld.gov.au/asdd/qsii2/ANZQL0132001679.html>.

In conjunction with the Australian and New Zealand Environment and Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000), such water quality monitoring information may be useful to define acceptable standards for water quality at locations in the EIRMR.

#### **2. Air Pollution Management**

The Third Party Access Seeker must consider the impact of its proposed operations on air quality. In doing so, all relevant air quality standards and regulations must be met.

The Third Party Access Seeker must undertake an assessment of the likelihood for dust and/or exhaust emissions to cause nuisance at the nearest sensitive receptors. Sensitive receptors are:

- (a) any form of dwelling/home;
- (b) a library, childcare centre, kindergarten, school, college, university or educational institution; and
- (c) a hospital, surgery or other medical institution.

Information about the type and chemical composition of product may also be useful in determining its potential to generate dust.

QR Network will indicate whether there have been any complaints about dust and/or exhaust emissions in the area of the proposed operation.

### 3. Contaminated Land Management

The Third Party Access Seeker must consider the impact of its proposed operations on land contamination. In doing so, all practicable control measures to prevent the contamination of land must be undertaken.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated Land (Chem. Unit 1991) or by other standards considered acceptable by the relevant Authorities.

### 4. Nature Conservation

The Third Party Access Seeker must consider the impact of its proposed operations on the flora and fauna.

The Third Party Access Seeker must review existing EPA regional ecosystem information relevant to the route of operation and identify any locations within 100 metres of the rail corridor that are listed as rare or vulnerable or endangered regional ecosystems.

Information on all regional ecosystems mapping is available at:

[http://www.epa.qld.gov.au/nature\\_conservation](http://www.epa.qld.gov.au/nature_conservation)

[/biodiversity/regional\\_ecosystems/introduction\\_and\\_status/Regional\\_Ecosystem\\_Maps](http://www.epa.qld.gov.au/biodiversity/regional_ecosystems/introduction_and_status/Regional_Ecosystem_Maps).

The EIRMR must include an assessment of the risk associated with wildfires being caused by exhaust/sparks from the Third Party Access Seeker's Rollingstock.

### 5. Management of Hazardous Substances and Dangerous Goods

The Third Party Access Seeker must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Third Party Access Seeker. In particular, the Third Party Access Seeker must ensure that QR Network's requirements for the management of hazardous substances and dangerous goods are complied with.

### 6. Waste Management

The Third Party Access Seeker must consider the impact of any waste produced by its proposed operations. In doing so, any collection, removal, transport and disposal of any waste generated during operations must comply with all relevant government and local authority requirements.

### 7. Environmental Noise Management

The Third Party Access Seeker must consider the impact of any noise produced by its proposed operations. In particular, the Third Party Access Seeker must meet the requirements of the Rail Noise Plan referred to in the Environmental Protection Policy (Noise) and, where appropriate, must comply with QR Network's requirements for meeting the Rail Noise Plan referred to above.

## 8. Environmental Monitoring

The Third Party Access Seeker must address the requirements of environmental monitoring to ensure that the environmental standards are met.

## 9. Education, Awareness and Training

The Third Party Access Seeker must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Management System.

## 10. Complaint Handling

The Third Party Access Seeker must consider how it will handle complaints that it receives concerning the impact of its proposed operation upon any of the environmental issues listed above.



## **SCHEDULE K**

### ***Operating Plan***

#### **1. Area of Operation**

- Origin
- Destination
- Cycle description (including nominated stops enroute)
- Entry and exit points onto Rail Infrastructure
- Details regarding repositioning of Rollingstock (prior to, during and after operation of the service)

#### **2. Business Plan**

- Tonnage profile (five year forecast)
- Passenger loading and unloading profile
- Anticipated project service life
- Seasonality of haulage/variability of services (peaks and troughs)

#### **3. Operation**

- Type of service (passenger, freight)
- Commodity
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)
- Special operating parameters (eg. key arrival and departure windows)
- Dangerous goods details
- Overload management system
- Timing of scheduled servicing/provisioning activities

#### **4. Service Levels**

- Train service levels, nominated weekly, monthly and annually
- Maximum number of one way Train Services per year – contracted Train Paths
- Dwell times at loading facility (minimum and maximum)
- Dwell times at unloading facility (minimum and maximum)
- Dwell times enroute and operational requirements
- Rollingstock operational speed
- Indicative timetable requirements (sectional run times)
- Any connecting services
- Any critical timings at specified locations
- Authority from Private Infrastructure manager to enter/exit a facility (loading/unloading/en route)

#### **5. Train Service Planning**

- Train Service planning/requesting preference
- Train Service cancelling preference

## 6. Train Information

- Type
- Class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation (push/pull)
- Traction type
- Safety systems
- Communication system
- Train length

## 7. Crewing Plan

- Train Service crew requirements
- Location of crew depots
- Crew change points
- Dwell times at change points (minimum and maximum)

## 8. Recovery Methods

- Recovery of marked off Rollingstock at loading/unloading locations/enroute
- Recovery of derailments
- Recovery of failed locomotives

## **SCHEDULE M**

### ***Transfer Fee – Worked Example***

#### **Calculation of the transfer fee outlined in Subclause 7.4.4 of the Undertaking.**

Subclause 7.4.4 of the Undertaking ensures that a present value concept is consistently applied to the assessment of values for transfer fee calculations.

This Schedule provides a number of worked examples of the capacity transfer fee to provide an indication of how a transfer fee might affect different access holders under different scenarios.

The key underlying assumptions contained in the following worked examples are:

- (i) All examples relate to the Central Queensland Coal Region;
- (ii) full CPI indexation is applied to reference tariffs;
- (iii) Discount Rate is 8.43%;
- (iv) CPI indexation is 2.5%;
- (v) full (100%) take or pay obligations (AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub>) apply to access agreements in question;
- (vi) reference tariffs are those applying to the 1 April 2006 to 30 June 2006 period;
- (vii) trains are assumed to be 10,000 net tonnes and diesel hauled;
- (viii) contribution to common costs is defined as the sum of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> reference tariff revenues;
- (ix) South Goonyella base period reference tariffs: AT<sub>2</sub> \$/path = \$860, AT<sub>3</sub> \$'000ntk = \$2.725, and AT<sub>4</sub> \$nt = \$0.684;
- (x) existing access rights relate to a South Goonyella loading point with a 240 km haul; and
- (xi) existing access rights expire in five (5) years, with annual tonnage of 5 million tonnes.

This Schedule illustrates two examples for transfers of capacity under Subclause 7.4.4 of the Undertaking, namely:

- (i) transfer of access rights with the same origin and destination; and
- (ii) transfer of access rights with a different origin and destination but within an individual coal system.

Within each of these categories, the interaction of the value of a range of parameters will determine whether a transfer fee is payable and if so, how much that fee will be. The critical factors include:

- (i) cluster location and associated reference tariffs;
- (ii) remaining contract term;
- (iii) contract tonnes over the remaining term; and
- (iv) haul distance.

**Category 1 - Transfer of access rights with same origin and destination (Paragraph 7.4.4(d) of the Undertaking)**

This category requires that the origin and the destination applicable for the transfer of access rights be identical. While a wide range of scenarios are possible, the specific example is a scenario in which the transfer results in a new agreement with the same term but lower annual tonnage.

The Transfer Fee for this category is defined as the difference between the present value of the contribution to common costs from the existing agreement less the present value of the contribution to common costs under the new agreement subject to such amount being \$0 or greater.

The present value of the contribution to common costs under the existing agreement is \$31.6 million.

**Original agreement contribution to common costs**

Year	1	2	3	4	5
Tonnes (millions)	5	5	5	5	5
Paths (10,000 net tonne train)	1,000	1,000	1,000	1,000	1,000
Contribution to common costs (\$m)	7.6	7.8	8.0	8.2	8.4
PV of CCC (\$m)	\$31.60				

Note: Year 1 contribution to common costs =  $\$860 \times 1000 + \$2.725 \times 1.2 \text{ million} + 0.684 \times 5 \text{ million} = \$7.55 \text{ million}$

The example involves a reduction in tonnage from 5 million tonnes per annum to 2.5 million tonnes per annum. All other factors remain the same. Thus the expected contribution to common costs will decrease from a present value of \$31.6 million to \$15.8 million resulting in a reduction of \$15.8 million. The resultant transfer fee will therefore be \$15.8 million.

**Example – reduced tonnes**

Year	1	2	3	4	5
Tonnes (millions)	2.5	2.5	2.5	2.5	2.5
Paths (10,000 net tonne train)	500	500	500	500	500
Contribution to common costs (\$m)	3.8	3.9	4.0	4.1	4.2
PV of New CCC (\$m)	\$15.80				

Note: Year 1 contribution to common costs =  $\$860 \times 500 + \$2.725 \times 0.6 \text{ million} + 0.684 \times 2.5 \text{ million} = \$3.77 \text{ million}$

**Category 2 - Transfer of access rights which have different origin and destination but the same system (Paragraph 7.4.4(e) and Paragraph 7.4.4(f) of the Undertaking)**

This category captures those transfers where the origin and/or destination are different between the existing and revised agreements but are nevertheless within the same system. The example developed here is a scenario where the transfer results in a new agreement with an origin in the same cluster but a shorter haul with all other terms being the same. The Transfer Fee for this category is defined as the Relinquishment Fee. Such amount must be \$0 or greater. For the Central Queensland Coal Region, the Relinquishment Fee is defined as the present value of the take or pay obligation applicable under the agreement reduced by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. For the purpose of this example the take or pay obligation is assumed to be 100% of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> revenue over the remaining life of the agreement and therefore is the same as the present value of the contribution to common costs of the existing agreement. The present value of the contribution to common costs under the existing agreement and therefore the unadjusted Relinquishment Fee is \$31.6 million.

This example involves a reduction in haul distance of 20 km from 240 km to 220 km. The cluster remains the same (South Goonyella) and all other factors are held constant. As such, the applicable Reduction Factor is determined as follows:

$$\text{Reduction factor} = A/B$$

Where:

A = the annual train kilometres over the Common Corridor attributable to the new Access Holder's Trains in respect of which Access Rights could not have been provided without using the whole or part of the Access Rights relinquished by the existing Access Holder; and  
B = the annual train kilometres over the Rail Infrastructure attributable to the Train Services for which the existing Access Holder is seeking to relinquish Access Rights.

For the purposes of this example the Common Corridor length would be equal to the haul distance for the new haul, i.e. 220 km. hence

$$A = 1000 \times 220; \text{ and}$$

$$B = 1000 \times 240$$

The resultant Reduction Factor is determined as 0.917 and the Reduced Relinquishment Fee and hence the Transfer Fee becomes \$2.62 million as shown in the Table below.

**Example – reduced haul distance same cluster**

Year	1	2	3	4	5
Tonnes (millions)	5	5	5	5	5
Paths (10,000 net tonne train)	1,000	1,000	1,000	1,000	1,000
Contribution to common costs (\$m)	7.6	7.8	8.0	8.2	8.4
Unadjusted Relinquishment Fee (\$m)	\$31.60				
Reduction Factor	0.917				
Reduced Relinquishment Fee/Transfer Fee (\$m)	31.60-(31.60*0.917) = \$2.62				

Note: Year 1 contribution to common costs = \$860\*1000 + \$2.725\*1.2 million + 0.684\*5 million = \$7.55 million

## Schedule MB

### *Reporting to the QCA*

#### 1. OPERATIONAL DATA REQUIREMENTS

- (a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) months of the end of the subject Year, the following operational information to the QCA:
- (i) the gross tonne kilometres (gtk) attributed to the relevant Train Services, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Services (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Services;
  - (ii) the net tonnes (nt) attributed to the relevant Train Services, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Services (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty;
  - (iii) the number of equivalent reference Train Paths used by the relevant Train Services where a Reference Train Service uses one reference Train Path (one-way train paths);
  - (iv) the net tonne kilometres (ntk) attributed to the relevant Train Services, being the nt for the Train Services multiplied by the distance (in kilometres) travelled by the Train Services;
  - (v) the electric gross tonne kilometres (egtk) attributed to the relevant Train Services, being the gtk for the Train Services if the Train Services use electric traction, and zero if the Train Services do not use electric traction; and
  - (vi) the electric energy charge (specified as EC) for the nominated Reference Train Service.
- (b) The information provided in accordance with Paragraph 1(a) will be reported in the following categories:
- (i) all coal carrying Train Services that operated within each Individual Coal System Infrastructure in the subject Year;
  - (ii) all coal carrying Train Services that fall within the definition of an individual Reference Train Service in the subject Year; and
  - (iii) all coal carrying Train Services that operate within each Individual Coal System Infrastructure classified by origin and destination in the subject Year.

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#### 2. CAPITAL EXPENDITURE

- (a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) months of the end of the relevant Year, details of the capital expenditure for that Year that QR Network considers should be included in its Regulatory Asset Base.

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(b) Information that QR Network will provide on its capital expenditure for the purposes of Paragraph 2(a) will include:

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- (i) the name of the project;
- (ii) the location of the project;
- (iii) the amount of capital expenditure; and
- (iv) information to support the QCA's assessment of the prudence of the capital expenditure in accordance with Clause 2.1 of Schedule FB.

### 3. ROLL-FORWARD OF REGULATORY ASSET BASE

(a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) weeks of receiving the QCA's advice on its approval of capital expenditure for inclusion in the Regulatory Asset Base under Clause 2.1 of Schedule FB for the relevant Year QR Network's proposed roll-forward of the Regulatory Asset Base in accordance with Clause 1.2 of Schedule FB, including details of:

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- (i) the opening value of the Regulatory Asset Base for the subject 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 subject Year.

(b) The roll forward of QR Network's Regulatory Asset Base will be separately reported for:

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- (i) each Individual Coal System Infrastructure; and
- (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s),

unless otherwise agreed by QR Network and the QCA,

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### 4. MAINTENANCE COST INFORMATION

(a) QR Network will, unless otherwise agreed between QR Network and the QCA, provide within four (4) months of the end of the subject Year the following report on QR Network's actual maintenance costs:

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- (i) QR Network will report its actual maintenance cost in the subject Year compared to the forecast maintenance cost accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance cost; and
- (ii) the actual maintenance costs will be reported by the following categories and expenditure item classification, unless otherwise agreed by the QCA:

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**CATEGORY**

**EXPENDITURE ITEM**

**Facilities**

- Emergency Work
- Programmed Work
- Electricity
- Rates

**Facilities Total**

**Structures**

- Steel Bridge Painting (Contract)
- Bridge Repairs
- Drainage Construction and Renewal
- Structures and Civil Inspections
- Structures Corridor Maintenance

**Structures Total**

**Telecommunications**

- Control and ECO Telephone Maintenance
- Corrective Telecommunications Backbone Network Maintenance
- Preventative Telecommunications Backbone Network Maintenance
- Telecommunications Backbone Modifications

**Telecommunications Total**



**Track**

- Ballast for ML BCM
- Ballast Undercutting - Main Line
- Ballast Undercutting - Turnouts
- Complete Turnout Replacement
- Crossings OLC and OCC
- Fire / Vegetation Control
- Formation Repairs
- GPR Testing
- Maintenance Ballast
- Major Earthworks (non-formation)
- Major Fencing Renewal / Construction
- Major Rail Joint Elimination / Repair
- Major Rail Renewal
- Major Track Reconditioning
- Mechanised Resleepering
- Minor Yard Maintenance
- Per Way Corridor Maintenance
- Rail Grinding - Mainline
- Rail Grinding - Turnouts
- Rail Stress Adjustment
- Resurfacing - Mainline
- Resurfacing - Turnouts
- Sleeper Cluster Management
- Track Inspections
- Track Recording
- Turnout Component Replacement
- Ultrasonic Testing

**Track Total**

**Trackside Systems**  
(Excluding Electric  
Maintenance)

- Cable Route Maintenance
- Corrective FS and TSC Maintenance
- Corrective Signalling Maintenance -  
Yards
- Level Crossing Protection
- Major Network Corridor Signal

- Op System for Civil Infrastructure
- Preventative FS and TSC Maintenance
- Preventative Signalling Maintenance - Yards
- Signalling Control Systems
- Train Protection Systems Maintenance
- Tramway Crossing
- Wayside Monitoring Systems Maintenance
- Weighbridge Maintenance

**Trackside Systems Total (Excluding Electric Maintenance)**

**Electric Overhead**

- Corrective Overhead Maintenance
- Power Systems Control
- Preventative Overhead Maintenance
- Network Corridor Renewals - Traction Power

**Electric Overhead Total**

**Stocktake**

- Stock take

**Stocktake Total**

**Total Maintenance Cost**

**Total Maintenance Cost**

(b) The actual and forecast maintenance costs will be separately reported for:

- each Individual Coal System Infrastructure; and
- any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of QR Network's forecast maintenance costs for the purposes of assessing the relevant Reference Tariff(s),

unless otherwise agreed by QR Network and the QCA.

- (b) The backdating of Revised Reference Tariffs will require payment of the difference in the Access Charges:
- (i) paid by each relevant Access Holder from 1 July 2007 to the date on which the QCA approved the amendment to Schedule F incorporating the Revised Reference Tariffs; and
  - (ii) that would have been paid by that Access Holder during that period if the Revised Reference Tariffs had applied.
- In the event of the difference being:
- (iii) positive (over-recovery) from QR to each relevant Access Holder; or
  - (iv) negative (under-recovery), from each relevant Access Holder to QR.
- (c) The payment of the difference under Paragraph 3.1(b) is due within thirty (30) days of the date on which the QCA approved the amendment to Schedule F incorporating the Revised Reference Tariffs. In the event of an Access Holder not paying the money owed to QR pursuant to this clause 3.1, QR may recover that outstanding money by incorporating it as a component of that Access Holder's future Access Charges.
- 3.2 Following the Commencing Date, QR will consult with the Queensland Resources Council and the QCA regarding when and how the Reference Tariffs will vary between 1 July 2006 to the Terminating Date to address volume risk. This consultation will include consideration of:
- (a) broad options for the regulatory framework, including a price cap model, a revenue cap model or a hybrid of these models; and
  - (b) within the broad options, the detailed processes in accordance with which they would operate.
- 3.3 QR will submit a proposed amendment to Schedule F (referred to as a "*Proposed Schedule F Amendment*") between 1 December 2006 and 28 February 2007 which incorporates amendments to the Undertaking to specify:
- (a) the form of regulation to apply from 1 July 2006, including when and how Reference Tariffs will vary to address volume risk;
  - (b) the Take or Pay arrangements to apply from 1 July 2006;
  - (c) the amount of the Relinquishment Fee to apply from 1 July 2006 for Access Agreements in existence at the day immediately prior to the Commencing Date;
  - (d) the definition of Review Event to apply from 1 July 2006; and
  - (e) any consequential amendments to the Undertaking that are necessary on the basis of the form of regulation to apply (such as coal volume trigger monitoring in the event of using a price cap model).

- 3.4 The QCA may develop a Proposed Schedule F Amendment that is consistent with this Undertaking and the principles contained in Schedule F if:
- (a) QR does not comply with Clause 3.3 or a notice given by the QCA under Paragraph 3.9(b) for it to resubmit a Proposed Schedule F Amendment; or
  - (b) the QCA refuses to approve a Proposed Schedule F Amendment resubmitted by QR.
- 3.5 Where QR submits, or the QCA develops, a Proposed Schedule F Amendment, the QCA will:
- (a) publish the Proposed Schedule F Amendment;
  - (b) invite persons to make submissions on the Proposed Schedule F Amendment to the QCA within a reasonable period of time specified by the QCA; and
  - (c) consider any submission it receives within the time.
- 3.6 The QCA may approve a Proposed Schedule F Amendment (including a Proposed Schedule F Amendment developed by the QCA) only if the QCA:
- (a) is satisfied that the Proposed Schedule F Amendment is consistent with this Undertaking and principles contained in Schedule F;
  - (b) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
  - (c) the QCA has complied with Clause 3.5.
- 3.7 The QCA will consider a Proposed Schedule F Amendment given to it by QR and either approve or refuse to approve it within sixty (60) days after the QCA receives a Proposed Schedule F Amendment under this Clause 3 or such further period as the QCA and QR may agree or as the QCA may reasonably determine and notify to QR.
- 3.8 If the QCA approves a Proposed Schedule F Amendment submitted under Clause 3.3, or resubmitted under Paragraph 3.9(b):
- (a) the amendment to Schedule F will apply from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
  - (b) the varied Reference Tariffs incorporated in the Proposed Schedule F Amendment will be backdated as if they had applied from 1 July 2006. This will require payment of the difference in Access Charges paid by each relevant Access Holder since 1 July 2006 because of the continued applicability of the current Part B Reference Tariffs (in accordance with Paragraph 3.1(b)) and the Access Charges that would have been paid by

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those Access Holders since 1 July 2006 if the varied Reference Tariffs incorporated in the Proposed Schedule F Amendment had applied, from:

- (i) in the event of the difference being positive (over-recovery), QR to each relevant Access Holder;
- (ii) in the event of the difference being negative (under-recovery), each relevant Access Holder to QR.

This payment is due within thirty (30) days of the amendment to Schedule F applying in accordance with Paragraph 3.8(a). In the event of an Access Holder not paying any money owed to QR pursuant to Paragraph 3.8(b), QR may recover this additional money by incorporating it as a component of that Access Holder's future Access Charges;

- (c) the QCA will give QR a notice in writing stating the reasons for its decision; and
- (d) QR must:
  - (i) publish a new version of Schedule F; and
  - (ii) advise Access Holders and Access Seekers, in respect of the specified Train Services to which the amended Schedule F applies, that an amended Schedule F has been approved.

3.9 If the QCA refuses to approve a Proposed Schedule F Amendment the QCA will give QR a notice in writing:

- (a) stating the reasons for its refusal and the way in which the QCA considers that the Proposed Schedule F Amendment should be amended; and
- (b) requiring QR to amend the Proposed Schedule F Amendment in the way the QCA considers it appropriate and resubmit the amended Proposed Schedule F Amendment to the QCA within thirty (30) days of the notice.

3.10 If QR complies with the notice given under Paragraph 3.9(b) above, the QCA may approve the resubmitted Proposed Schedule F Amendment in accordance with Clause 3.11.

3.11 The QCA may approve the resubmitted Proposed Schedule F Amendment only if the QCA:

- (a) is satisfied that the resubmitted Proposed Schedule F Amendment is in accordance with the notice under Clause 3.9;
- (b) is satisfied that the resubmitted Proposed Schedule F Amendment is consistent with this Undertaking and principles contained in Schedule F; and
- (c) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.

- 3.12 The QCA may grant QR an extension of the time for submitting, or resubmitting, a Proposed Schedule F Amendment, if:
- (a) QR provides a written request to the QCA for an extension of time which outlines the reasons why QR requires the extension of time; and
  - (b) the QCA, acting reasonably, considers that an extension of time is appropriate.
- 3.13 If the QCA grants QR an extension of time under Clause 3.12 above, QR must submit, or resubmit, a Proposed Schedule F Amendment, (whichever is applicable) within the time specified by the QCA.
- 3.14 The QCA may not make a decision under this Clause 3 approving or refusing to approve a Proposed Schedule F Amendment, unless:
- (a) the QCA observed the rules of natural justice;
  - (b) the QCA observed any procedures that were required by law or this Undertaking;
  - (c) the QCA had jurisdiction to make the decision under this Undertaking;
  - (d) the QCA was authorised to make the decision under this Undertaking;
  - (e) the QCA's decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
    - (i) taking an irrelevant consideration into account in the exercise of a power;
    - (ii) failing to take a relevant consideration into account in the exercise of a power;
    - (iii) an exercise of a power for a purpose other than a purpose for which the power is conferred;
    - (iv) an exercise of a discretionary power in bad faith;
    - (v) an exercise of a personal discretionary power at the discretion or behest of another person;
    - (vi) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (vii) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
    - (viii) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
    - (ix) any other exercise of a power in a way that is an abuse of the power;

- (f) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);
- (g) the QCA's decision was not induced or affected by fraud;
- (h) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of 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 exist; and
- (i) the decision was not otherwise contrary to law or this Undertaking.

For the avoidance of doubt, the terms of this Clause 3.14 are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- 3.15 The requirements set out in Clause 3.14 also apply to the QCA's conduct in making a decision under this Clause 3.
- 3.16 If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Clause 3, QR and the QCA agree that QR may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.
- 3.17 This Clause 3 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).
- 3.18 Nothing in this Clause 3 affects the rights of QR under section 142 and related provisions of the Act.

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**QR NETWORK PTY LTD**

**and**

**[\*\*\*]**

**ACCESS AGREEMENT  
COAL**



**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200

**BETWEEN** **QR NETWORK PTY LTD** ACN (insert) of Level 14, 305 Edward Street, Brisbane, Queensland (“**QR**”)

**AND** The party specified in Item 1 of the Reference Schedule (“**Access Holder**”)

## **RECITALS**

- A** QR is responsible for the provision of the Infrastructure and Train Control.
- B** QR has agreed to grant non-exclusive rights to the Access Holder for the operation of Train Services by the Operator over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Agreement.
- C** The Parties may enter into separate agreements for the provision of services by QR to the Access Holder other than the Access Rights.

## **OPERATIVE PROVISIONS**

1. In this Agreement words and expressions which are defined in the General Conditions of Contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - (a) Reference Schedule attached to this Agreement as **Schedule A**;
  - (b) General Conditions of Contract attached to this Agreement as **Schedule B**; and
  - (c) all Schedules, exhibits and annexures to this Agreement.

and Clause 1.2 of the General Conditions of Contract shall apply to the extent that there is any inconsistency between any of the above documents.

## **ACCESS RIGHTS**

### **1. Grant of Access Rights**

In consideration of the Access Holder agreeing to pay the Access Charges and other payments to be made to QR by the Access Holder, QR grants to, and will provide, the Access Holder Access Rights in accordance with the Train Service Description for the operation of Train Services by the Operator on and from the Commitment Date on the terms in, and subject to the conditions of, this Agreement.

### **2. Nature and Scope of Access Rights**

- (a) The Access Rights granted under Clause 1 are non-exclusive contractual rights and do not give the Access Holder any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Access Holder must not:

- (i) operate on or use, or permit the Operator to operate on or use, any part of the Infrastructure that is not specifically included in the Nominated Network; or
- (ii) use, or permit the Operator to use, the Nominated Network for carrying out any provisioning, inspection, testing, maintenance of Rollingstock, any marshalling, shunting or other relocation of Rollingstock or storage of Rollingstock or for any other purpose other than the operation of Train Services

unless specifically directed by QR to do so in accordance with the provisions of this Agreement or as specified in this Agreement.

- (c) The Parties acknowledge and agree QR is required to provide the Access Holder with certain benefits, rights and services in accordance with Paragraphs 2.1(c) and 2.1(h) of QR's Access Undertaking, and to the extent that these requirements are relevant to the Access Holder's Access Rights it is intended the terms on which they are provided are detailed in this Agreement.

### 3. Ancillary Services

In consideration of the Access Holder agreeing to pay the charges for Ancillary Services, QR will provide the Ancillary Services (if any) set out in **Schedule 11**.

### 4. Renewal

If the Access Holder gives notice to QR not less than twelve (12) Months prior to the Termination Date of its intention to seek a renewal of the Term, QR will consult with the Access Holder in good faith to negotiate an extension or renewal of the Term provided always that:

- (a) subject to any provision to the contrary in QR's Access Undertaking, the Access Holder will not be granted priority over any other party seeking access to the Nominated Network; and
- (b) the chief executive of the Department of Transport has a right in priority to the Operator and any other party seeking access to reserve the capacity which is committed to the Operator under this Agreement with effect on and from the Termination Date for existing or proposed regularly scheduled passenger services.

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## **SCHEDULE A**

## **REFERENCE SCHEDULE**

**REFERENCE SCHEDULE**

This Reference Schedule forms part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_  
made between QR and the Access Holder listed in Item 1 below.

Item

1. **Access Holder:**  
Name  
ACN  
Address
  
2. **Commencement Date:**
  
3. **Termination Date:**
  
4. **Commitment Date:**
  
5. **Security Deposit:**  
(General Conditions of  
Contract Clause 2.4 (a))  
Subject to QR's reasonable assessment of the  
creditworthiness of the Access Holder, the Security Deposit  
(if applicable) will be an amount equivalent to the greater of  
twelve (12) weeks Access Charges determined as if the  
Access Holder made maximum use of its Access Rights or  
the deductible for any one loss as specified in **Schedule 7**
  
6. **Date for Completion of Matters  
prior to the Commencement of  
Train Services:**  
(General Conditions of Contract  
Clause 3.1(c))

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## **SCHEDULE B**

# **GENERAL CONDITIONS OF CONTRACT**

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## **SCHEDULES**

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## GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract form part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 2008 made between QR and the Access Holder.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless inconsistent with the context, the following words and expressions shall have the respective following meanings:

“**Access Charges**” means the charges determined in accordance with **Schedule 3** payable to QR by the Access Holder for the Access Rights and any interest payable in relation to such charges pursuant to this Agreement;

“**Access Holder’s Proposal**” has the meaning given to that term in Clause 8.1(c);

“**Access Holder’s Representative**” means the person for the time being appointed pursuant to paragraph 3.2 of Part 3 of **Schedule 10**;

“**Access Holder’s Staff**” means employees, contractors, volunteers and agents of the Access Holder and the Operator and any other person under the control or supervision of the Access Holder or the Operator who is involved in any activity associated with the Train Services;

“**Access Rights**” means the rights of access to the Nominated Network granted pursuant to this Agreement;

“**Accreditation**” means accreditation in accordance with Part 4 of Chapter 6 of the Transport Infrastructure Act and “**Accredited**” means to have Accreditation;

“**Agreed Deterioration Threshold**” means the threshold allowance for deviations from a Train path within which a Train Service is considered to be on time, as agreed between QR and the Access Holder in **Schedule 1**;

“**Agreed Exit Threshold**” means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR and the Access Holder in **Schedule 1**;

“**Agreement**” or “**this Agreement**” means the Agreement, Reference Schedule and General Conditions of Contract between QR and the Access Holder and includes all annexures, Schedules and exhibits to this Agreement;

“**Allowable Threshold**” means [*a % agreed between the Parties*] of the total number of Train Services scheduled for a Billing Period;

“**Ancillary Services**” means those services (if any) in addition to Access Rights which QR has agreed to supply to the Access Holder and which are set out in **Schedule 11**;

“**Assign**” means to assign, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, and “**Assignment**” and “**Assignee**” shall have comparable meanings;

“**Authority**” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a

public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR (but excluding QR Limited ACN 124 649 967);

**“Average Transit Time”** means the target average time scheduled for the relevant Train Service type from Origin to Destination or from Destination to Origin which comprises the relevant Sectional Running Times, delays for passing of other Trains on the Nominated Network, Operational Constraints relating to the Infrastructure (other than Operational Constraints attributable to a Railway Operator or a Force Majeure Event) but excluding Planned Dwell Times and which may be varied in accordance with the Interface Coordination Plan;

**“Base Access Charges”** means the Base Access Charges specified in **Schedule 3** and incorporates the elements thereof;

**“Billing Period”** means the period of a Month;

**“Board of Inquiry”** means a board of inquiry established under the Transport Infrastructure Act;

**“Central Queensland Coal Region”** means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine;
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;
- (iv) from the port of Abbot Point to Newlands mine; and
- (v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

**“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 date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; 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 being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

**“Change in Relevant Taxes”** means:

- (a) the imposition of a new Relevant Tax;

- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax;

**“Claim”** means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including the costs and expenses of defending or settling any action, proceeding, claim or demand;

**“Commencement Date”** means the date of execution of this Agreement as specified in Item 2 of the Reference Schedule;

**“Commitment Date”** means the date on which the Access Rights will be available to the Access Holder as specified in Item 4 of the Reference Schedule;

**“Common Corridor”** means:

- (i) for transfers of Access Rights within an Individual Coal System pursuant to Clause 3.3, that part of the Infrastructure that will be utilised by the New Railway Operator’s Trains in respect of which the Access Holder’s Relinquishment Fee is to be reduced provided that where the distance from the New Railway Operator’s origin to destination for its relevant train service is greater than the distance from the Access Holder’s Origin to Destination (“Access Holder’s haul distance”), the Common Corridor will only extend from the New Railway Operator’s destination (unloading facility) for a distance equal to the Access Holder’s haul distance;
- (ii) in all circumstances other than those described in subparagraph (i), that part of the Infrastructure that was utilised by the Access Holder (through the Operator) for the Train Services for which Access Rights are being relinquished and will also be utilised by the New Railway Operator’s Trains in respect of which the Access Holder’s Relinquishment Fee is to be reduced;

**“Common Costs”** means those costs associated with the provision of Infrastructure that are not Incremental Costs for any particular Train service using that Infrastructure;

**“Consequential Loss”** means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort;
- (iii) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever;
- (iv) any loss arising out of any Claim by a Third Party (other than a Claim in respect of loss or destruction of or damage to real or personal property or personal injury to or death of any person),

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

**“Contaminating Materials”** means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable or inflammable, harmful to the environment (including any life form) or may cause pollution, contamination or otherwise cause damage;

**“Corporation”** has the meaning assigned to it by the Corporations Act;



“**Corporations Act**” means the Corporations Act 2001 (Cwth);

“**Cyclic Traffic**” means a traffic such as coal traffic whose Train Service Description is defined in **Schedule 1** in terms of a number of Train Services within a particular period of time, for example, a year, month or week;

“**Daily Train Plan**” or “**DTP**” means that document detailing the scheduled times for all Train services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure;

“**Dangerous Goods**” means any substance or article prescribed as Dangerous Goods under the Dangerous Goods Code;

“**Dangerous Goods Code**” means the following codes prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications as amended or varied from time to time or any other codes developed to replace or supplement them:

- (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; and
- (c) the Code of Practice for the Safe Transport of Radioactive Material;

“**Default Rate**” means 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) plus 2%;

“**Destination**” means the destination or destinations described in **Schedule 1**;

“**Efficient Cost**” means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR operates, and including any transitional arrangements agreed between QR and the QCA to reflect the transition from QR’s actual cost to that efficient cost;

“**Emergency Possession**” is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Infrastructure that is considered dangerous to either a Railway Operator’s and/or QR’s Staff, or where severe speed restrictions have been imposed affecting the scheduled Train services of Railway Operators. Such possession must be carried out less than seven (7) days from the detection of the problem;

“**Enhancement**” means the improvement, upgrading or other variation of the whole or any part of the Infrastructure which affects the capabilities of the Infrastructure and any major replacement programme for elements of the Infrastructure;

“**Environmental Authorities**” means:

- (a) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the *Environmental Protection Act 1994* (Qld); or

- (b) any authority which has effect under section 619 of the *Environmental Protection Act 1994* (Qld);

“**Environmental Harm**” means serious or material environmental harm or environmental nuisance as defined in the *Environmental Protection Act 1994*;

“**Environmental Investigation and Risk Management Report**” means the environmental investigation and risk management report referred to in Clause 8.1(a) and included in Part 1 of **Schedule 9**;

“**Environmental Laws**” means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies, guidelines, regulations and relevant approved codes of practice and the conditions of all licences, notices, directions, approvals, consents, permissions or permits issued thereunder or amended from time to time;

“**Environmental Management System**” means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licences;

“**Environmental Protection Agency**” means the authority established under the *Environmental Protection Act 1994*;

“**Equivalent Access Rights**” means access rights which have the same Origin/Destination and have the same format of Train Service Description (that is, such as Cyclic Traffic) as the Access Rights under this Agreement which are being relinquished by the Access Holder under Clause 3.3;

“**Escalation Date**” means the date being 1 January, 1 April, 1 July and 1 October in each year during the Term, being the dates on which the Access Charges and other charges payable by the Access Holder to QR under this Agreement are to be escalated in accordance with **Schedule 3**;

“**Evaluation Period**” means:

- (i) when in reference to an individual Train service, the period which is equal to the length of the expected duration of the existing or proposed access agreement in respect of the relevant Train service;
- (ii) when in reference to a combination of Train services for the purpose of determining a Reference Tariff to apply for some or all of those Train services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train services other than referred to in subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed access agreement in respect of any of the Train services comprising the combination of Train services, provided that such period does not exceed ten (10) years;

“**First Escalation Date**” means the Escalation Date identified as the First Escalation Date in Table 1.2 of **Schedule 3** for each Train Service type;

“**Forecast Traffic**” means the current tonnage forecast upon which an applicable Reference Tariff is based;

“**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:
- (i) 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;
  - (ii) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;
  - (iii) act of God;
  - (iv) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
  - (v) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
  - (vi) malicious damage or sabotage;
  - (vii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - (viii) failure of electricity supply from the electricity grid;
  - (ix) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
  - (x) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
  - (xi) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement;

**“Good Engineering Practices”** means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**“GST”** means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia;

**“GST Inclusive Reimbursement”** is the amount calculated by the formula:

$$(A - C) \times (1+B)$$

Where:

A = the GST inclusive amount paid by a Party for a Reimbursable Item;

B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made;  
and

C = any GST input tax credit that the Party can claim in respect of that Reimbursable Item;

**“Incident”** means any Network Incident involving the activities of the Operator;

**“Incremental Costs”** means those costs of providing access rights, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train service or combination of Train services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of access rights;

**“Individual Coal System”** means any one of the following:

- (i) all coal carrying Train services operating to or from the port of Abbot Point on the Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train services operating to or from the ports of Hay Point or Dalrymple Bay on the Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train services operating to or from the Stanwell Power Station on the Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;  
or
- (v) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

**“Individual Coal System Infrastructure”** means the relevant one of the following:

- (i) that Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) that Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory branch line;

- (iii) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

**“Infrastructure”** means all rail transport infrastructure as defined in the Transport Infrastructure Act:

- (a) for which QR is the Accredited Railway Manager; or
- (b) for which QR is required to obtain responsibility for under Clause 2.2 of QR’s Access Undertaking (as that provision is amended, varied or replaced from time to time);

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

**“Insolvency Event”** means the happening of any of the following events in relation to a Party:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one Month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within fourteen (14) days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

**“Interface Coordination Plan”** means the plan detailed in **Schedule 10** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party (or the Operator as applicable), in respect of all regular operational interfaces between the Parties (and between QR and the Operator) that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles;

**“Interface Risk Assessment”** means an assessment of the risks associated with the Operator’s operations insofar as they interface with the Infrastructure and other Train services as provided in Clause 11;

**“Interface Risk Management Plan”** means the plan referred to in Clause 11 and included in Part 2 of **Schedule 9**;

**“Interface Risks”** means all the risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Operator’s operations and:

- (i) the Nominated Network;
- (ii) the operation of other Train services; and
- (iii) any other activities on the Nominated Network that affect QR’s Staff or QR’s interfaces with members of the public;

**“Investigation”** means an investigation conducted in accordance with **Schedule 8**;

**“Land”** means the land on which the Nominated Network is situated and which is:

- (a) land owned or controlled by QR;
- (b) land in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii) of QR’s Access Undertaking (as that provision is amended, varied or replaced from time to time);

**“Landowner”** has the meaning given to that term in Clause 22.18;

**“Law” or “Laws”** means a statute, ordinance, rule or regulation;

**“Load Variation Table”** means a table published by QR in respect to the relevant Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

**“Maintenance Work”** means any work involving repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Infrastructure (other than Enhancements) and includes any inspections or investigations of the Infrastructure;

**“Master Book of Rules”** means QR’s standards for Safeworking Procedures;

**“Master Train Plan” or “MTP”** means that document detailing the scheduled times as advised by QR from time to time for all Train services operating on the Infrastructure (where such scheduled times remain unchanged from week to week) and any Planned Possessions;

**“Material Change”** has the meaning given to that term in Clause 16.1(a);

**“Material Environmental Harm”** means material environmental harm as defined in the Environmental Protection Act 1994;

**“Maximum Allowable Gross Tonnage”** means the Maximum Allowable Gross Tonnage for a Wagon, Wagon bogie or Train as specified in **Schedule 4**;

**“Maximum Desirable Gross Tonnage”** means the Maximum Desirable Gross Tonnage for a Wagon as specified in **Schedule 4**;

**“Maximum Transit Time”** means the maximum below rail transit time for the relevant Train Service type that QR may utilise under this Agreement;

**“Month”** means calendar month, and **“Monthly”** has a corresponding meaning;

**“Network Incident”** means any Rollingstock derailment, Rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence on the Infrastructure which causes or could cause injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by QR of any Train Movement;

**“Network Management Principles”** means the principles for the provision of Train Control and scheduling as specified in Part 1 of **Schedule 10**;

**“Noise Planning Levels”** means the planning levels for railways referred to in the Environmental Protection (Noise) Policy 1997;

**“Nominated Annual Train Services”** means the number of Train Services that the Access Holder is entitled to operate during any one (1) year for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

**“Nominated Monthly Train Services”** means the number of Train Services that the Access Holder is entitled to operate during any one (1) month period for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

**“Nominated Network”** means that part of the Infrastructure detailed in Part 1 of **Schedule 2**;

**“Nominated Weekly Train Services”** means the number of Train Services that the Access Holder is entitled to operate during any one (1) week period as specified in **Schedule 1** or as varied in accordance with this Agreement;

**“Obstruction”** means any circumstance relating to the whole or any part of the Infrastructure or private siding, including debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation by QR of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by QR;

**“One Way Train Service”** means a Train Service operating in one direction only on the Nominated Network either from Origin to Destination or from Destination to Origin as the case may be;

**“Operational Constraint”** means any restriction on the use of any part of the Infrastructure which impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Emergency Possessions, Urgent Possessions or signalling or overhead restrictions;

**“Operator”** means the Accredited Railway Operator that is contracted by the Access Holder to operate the Train Services on behalf of the Access Holder in accordance with the Access Holder’s Access Rights;

**“Operator Performance Level”** means the Operator Performance Level specified in Part 1 of **Schedule 5**;

**“Operator’s Controller”** means the person for the time being nominated in that position pursuant to **Schedule 10** ;

**“Operator’s Emergency Response Plan”** means the plan as defined in Clause 7.1(a);

**“Operator’s Incident Response Coordinator”** means the person appointed pursuant to paragraph 4.2 of Part 4 of **Schedule 10**;

**“Operator’s Recovery Team Leader”** means the person appointed pursuant to paragraph 4.3 of Part 4 of **Schedule 10**;

**“Operator’s Safety Management System”** means the system referred to in Clause 11(a)(iii);

**“Origin”** means the origin or origins described in **Schedule 1**;

**“Other Dwell Times”** means, for any other designated activity, the time period from when a Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant QR Train Controller accordingly;

**“Overload Charge”** means the charge determined in accordance with Part 6 of **Schedule 3**;

**“Overload Detector”** means a weighing mechanism other than a Weighbridge agreed upon for use by the Parties and specified in Part 6B of Schedule 2;

**“Party”** means a party to this Agreement, and **“Parties”** means the parties to this Agreement. For the avoidance of doubt, the Operator is not a party to this Agreement;

**“Passenger Priority Obligations”** means the obligations of a Railway Manager pursuant to sections 265 and 266 of the Transport Infrastructure Act;

**“Performance Levels”** means the QR Performance Level and the Operator Performance Level;

**Planned Dwell Times** means any of Time at Mine, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule;

**“Planned Possession”** means the temporary closure and/or occupation by QR of a part of the Infrastructure including, but not limited to, closure of Track or isolation of any electrical overhead traction system for the purpose of carrying out Maintenance Work, Enhancement or other work on or in the proximity of the Infrastructure which may affect the safety of any person or property where such closure, occupation or isolation is entered into the Train Schedule and adversely impacts upon the operation of Train services;

**“Possession Protocols”** means the protocols developed and advised by QR from time to time (as varied in accordance with this Agreement) for managing and scheduling track possessions of the Infrastructure;

**“Private Facilities”** means sidings, loading and unloading facilities and any other facilities of any kind which are required by the Operator to operate the Train Services and which do not form part of the Nominated Network;

**“Private Facilities Agreement”** has the meaning given to that term in Clause 5.11;

**“QR Cause”** means where QR is unable to make available the Infrastructure for Train services at the Scheduled Time in the Train Schedule or at a reasonable alternate Scheduled Time as a result of

- (i) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (ii) a Force Majeure Event which prevents QR from making the Infrastructure available for Train services in accordance with the relevant access rights; or
- (iii) any other action by QR which directly resulted in the Infrastructure not being so available,

where such inability by QR is not attributable in any way to a Railway Operator or QR complying with its Passenger Priority Obligations;



**“QR Commander”** means a member of QR’s Staff who has been delegated responsibility for the direction and coordination of QR’s and the Access Holder’s and/or Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with external agencies;

**“QR Emergency Procedures”** means the procedures developed and advised by QR from time to time (as varied by QR in accordance with this Agreement) for dealing with a Network Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;

**“QR Performance Level”** means the QR Performance Level specified in Part 1 of **Schedule 5**;

**“QR Representative”** means the QR officer specified in **Schedule 10**;

**“QR Train Control Direction”** means any instruction or direction (whether given orally or in writing, by means of signal or other similar device) issued by QR or on behalf of QR relating to Train Movements;

**“QR Train Controller”** means the person nominated by QR as the supervisor of Train Movements on the relevant part of the Nominated Network and whose details are specified in **Schedule 10**;

**“QR’s Access Undertaking”** means the access undertaking submitted by QR to the Queensland Competition Authority and approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time;

**“QR’s Right of Way”** means the strip of property on which earthworks, traction wiring equipment, tunnels, bridges, fences and track are constructed for the operation of Rollingstock. Where the at grade boundaries for the Right of Way are not readily identifiable they will be regarded as being at least ten (10) metres from the centre line of the track;

**“QR’s Staff”** means the employees, contractors and agents of QR and any other person under the control or supervision of QR involved in the provision of Access Rights;

**“Quarter”** means each period of three (3) consecutive Months commencing 1 January, 1 April, 1 July or 1 October in each year, and **“Quarterly”** has a corresponding meaning;

**“Queensland Competition Authority”** or **“QCA”** means the authority established under the Queensland Competition Authority Act 1997;

**“Rail Safety Accreditation Unit”** or **“RSAU”** means the Rail Safety Accreditation Unit of the Department of Transport for the State;

**“Railway Manager”** has the meaning given to that term in the Transport Infrastructure Act;

**“Railway Operator”** means, as the context allows:

- (a) any party that holds rights of access to all or any part of the Infrastructure (including, but not limited to, the Access Holder); and
- (b) any Accredited railway operator (including, but not limited to, the Operator);

**“Recovery”** means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Access Holder and/or Operator is responsible to enable prompt

recommencement of Train Movements, including the subsequent retrieval of any such Rollingstock;

**“Reduction Factor”** means for the purposes of Clause 3.3(d):

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the New Railway Operator’s Trains that utilise the access rights referred to in Clause 3.3(b) for which the Access Holder’s Relinquishment Fee is to be reduced; and

B = the annual train kilometres over the Nominated Network attributable to the Train Services for which the Access Holder is seeking to relinquish Access Rights;

**“Reference Tariff”** means an access charge applicable to a specified Reference Train Service over a specified part of the Infrastructure as specified in QR’s Access Undertaking;

**“Reference Tariff Schedule”** means the schedule attached to QR’s Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service;

**“Reference Train Service”** means a notional Train service identified 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 the terms and conditions of the specified access agreement;

**“Reimbursable Item”** means an item of expense incurred by either Party in respect of which that Party is entitled under this Agreement to be reimbursed by the other Party;

**“Related Body Corporate”** has the meaning given to that term in the Corporations Act;

**“Relevant Escalation Date”** means the Escalation Date occurring immediately prior to the last day of the Billing Period for which the invoice for the Access Charges payable in respect of that Billing Period is being prepared;

**“Relevant Rollingstock”** means any Rollingstock of the Access Holder (or Operator) with a minimum value of ONE MILLION DOLLARS (\$1,000,000) and which has been nominated as Relevant Rollingstock in Part 3 of **Schedule 4**;

**“Relevant Tax”** means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR by, or payable by QR to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

**“Relinquishment Fee”** means the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the Term of this Agreement if the Agreement remained on foot but the Access Holder did not operate the relevant Train Services;

**“Removal Expert”** means the person for the time being holding the position of Safety Regulator or such other person as agreed between the Parties;

**“Restoration”** means the removal of any Obstruction, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure but does not include Recovery;

**“Review Date”** means the date determined as the Review Date pursuant to Clause 3.1.2 of Schedule 3;

**“Rollingstock”** means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track and where used in respect of the Access Holder’s (or Operator’s) Rollingstock includes Rollingstock which is owned, hired or leased by the Access Holder or Operator, supplied by a contractor of the Access Holder or Operator or is otherwise in the possession or control of the Access Holder or Operator;

**“Rollingstock Configuration”** means the description of the combinations of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

**“Rollingstock Interface Standards”** means those Rollingstock Interface Standards agreed as part of the Interface Risk Assessment and included in the Interface Risk Management Plan;

**“Safety Regulator”** means the person for the time being holding the position of Safety Regulator in the Rail Safety Accreditation Unit (RSAU);

**“Safety Related Work”** means safety activity in one or more of the following:

- (a) driving and operation of Trains;
- (b) control of the movement of Trains;
- (c) the design, construction, repair, maintenance, upgrading, inspection and/or testing of Track, Rollingstock, civil and electric traction infrastructure, Signalling and/or Telecommunications Equipment; and
- (d) any other duties prescribed by QR as safety related work;

**“Safety Standards”** means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR policies as specified in Schedule 6 or varied in accordance with Clause 5.10 of this Agreement and all standards relating to safety, including occupational health and safety, prescribed by any Laws;

**“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure as specified in Part 1 of Schedule 6 or varied in accordance with Clause 5.10 of this Agreement;

**“Schedule”** means a schedule to this Agreement and any other schedule which amends, replaces or substitutes a schedule to this Agreement issued from time to time by QR pursuant to Clause 22.20;

**“Scheduled Time”** means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as detailed in the Train Schedule or as amended or altered by QR from time to time on the day of operation pursuant to the Network Management Principles provided that such amendments or alterations do not result in a notice for cancellation by the Operator pursuant to Clause 5.3(d);

**“Sectional Running Times”** means the time period measured from the time a Train Service passes the signal controlling entry into a track section between two relevant specified locations on the Nominated Network to the time the Train Service arrives at the signal controlling entry into the

next track section between two relevant specified locations on the Nominated Network, and does not include an allowance for Planned Dwell Times;

**“Security Deposit”** means initially an amount equal to the amount specified in Item 5 of the Reference Schedule;

**“Security Interest Rate”** means the “Cash Rate: average 11am rate” 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 included in another publication agreed between the Parties) less 0.5%;

**“Serious Environmental Harm”** means serious environmental harm as defined in the Environmental Protection Act 1994;

**“Signalling and Telecommunications Equipment”** means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control;

**“State”** means the State of Queensland;

**“Stowage”** means the short-term storage of Trains on the Nominated Network at locations specified by QR but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

**“System Forecast”** means the forecast of Gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in the relevant Reference Tariff Schedule;

**“System Gtk”** means the actual Gtk achieved by all coal carrying Train services to the extent those Train services travel on the relevant Individual Coal System Infrastructure over the relevant period;

**“System Wide Requirements ”** means the Network Management Principles, the Possession Protocols, the Interface Coordination Plan, the Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards, the QR Emergency Procedures and QR’s Investigation Procedures;

**“Tax Invoice”** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);

**“Term”** means the term of this Agreement, commencing on the Commencement Date and ending on the Termination Date;

**“Termination Date”** means the date specified in Item 3 of the Reference Schedule or such earlier date upon which this Agreement is terminated pursuant to the provisions of this Agreement;

**“Third Party”** means a person other than the Access Holder or QR;

**“Time at Depot”** means the period from when a Train Service arrives at the entry signal to the depot until it has completed all activities at the depot, is ready to depart the depot and has advised the relevant QR Train Controller accordingly;

**“Time at Mine”** means the time period from when a Train Service arrives at the entry signal to the specified mine loading facility until it has completed loading, has presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Time at Unloading Facility”** means the time period from when a Train Service arrives at the entry signal to the specified unloading facility until it has completed unloading, presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Track”** means the part of the Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

**“Train”** means any configuration of Rollingstock operating as a unit on the Track;

**“Train Control”** means the scheduling and control of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation;

**“Train List”** means the information required to be supplied by the Access Holder (or the Operator) in accordance with Part 2 of **Schedule 10** in respect of each individual Train Service to be operated on the Nominated Network;

**“Train Movement”** means the operation of a Train on the Infrastructure by the Operator, QR or any Railway Operator;

**“Train Schedule”** means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by QR prior to the day of operation in accordance with the Interface Coordination Plan showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure;

**“Train Service”** means the running of a Train between specified origins and destinations by the Operator (including any Stowage) in accordance with a Train Service Description;

**“Train Service Description”** means the description of a Train Service detailed in Part 1 of **Schedule 1**;

**“Train Service Levels”** means collectively the Nominated Weekly Train Services, the Nominated Monthly Train Services and the Nominated Annual Train Services specified in **Schedule 1**;

**“Transport Infrastructure Act”** means the Transport Infrastructure Act 1994;

**“Urgent Possession”** is similar to a Planned Possession, except that such a possession is required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) Months from the detection of the problem;

**“Variation Notice”** has the meaning given to that term in Clause 3.2(a);

**“Wagon”** means any Rollingstock designed to carry any load other than passengers;

**“Weekly Train Plan”** or **“WTP”** means a seven (7) day plan that details the scheduled times for all Train services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Infrastructure on each day of the relevant week;

**“Weighbridge”** means a weighbridge or weightometer certified under the Trade Measurement Act 1990, as specified in Part 6A of Schedule 2; and

“Year” (when used with a capital) means the period from (and including) the first day of the Month in which the Commitment Date occurs to (but not including) the first anniversary thereof, and from every twelve (12) Month period thereafter except that the last year will end on the date of expiry or termination of this Agreement.

## 1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body and conversely;
  - (ii) a person includes its legal personal representative, successors and assigns;
  - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
  - (iv) conduct includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
  - (vii) time is to local time in Queensland;
  - (viii) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
  - (ix) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the parties;
  - (x) any thing (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
  - (xi) a Clause is to a clause of the General Conditions of Contract to this Agreement;
  - (xii) a Schedule is to a schedule to this Agreement (as amended from time to time in accordance with this Agreement);

- (xiii) any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
  - (xiv) any Authority, association or body whether statutory or otherwise shall, in the event of any such Authority, association or body ceasing to exist or being re-constituted, re-named or replaced or the powers or functions thereof being transferred to any other Authority, association or body, be deemed to refer respectively to the Authority, association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof; and
- (e) if there is any inconsistency between matters contained in a Schedule and any other provisions of the Agreement, the other provisions of the Agreement prevail. If there is any inconsistency between matters contained in QR's Access Undertaking and this Agreement, the provisions of this Agreement prevail.

## **2. CHARGES**

### **2.1 Access Charges**

The Access Holder must pay to QR:

- (a) the Access Charges at the times and in the manner set out in this Agreement;
- (b) the charges for Ancillary Services (if any) calculated and payable in the manner set out in this Agreement;
- (c) any other charges or amounts payable in accordance with this Agreement; and
- (d) on demand and without prejudice to the rights, powers and remedies of QR under this Agreement or otherwise at Law, interest at the Default Rate calculated on daily balances and payable daily on any amount outstanding in respect of an invoice, including any disputed amount which is subsequently determined to be payable to QR, from the day after the invoice is due to be paid until the date that the amount outstanding is paid in full, and all interest payable but unpaid at the end of each Month shall be capitalised by QR and such capitalised amount shall itself bear interest at the Default Rate.

### **2.2 Invoicing**

Unless agreed otherwise between the Parties:

- (a) QR will provide to the Access Holder an invoice for the Access Charges, charges for Ancillary Services (if any) and any other charges or amounts payable by the Access Holder under this Agreement as soon as practicable after the end of each Billing Period or, where this Agreement has expired or terminated on a date other than 30 June and the invoice is for annual take or pay charges, as soon as practicable after the first 30 June following that expiration or termination.
- (b) The first Billing Period will commence on the Commitment Date and end on the last day of the Month in which the Commitment Date falls, and each subsequent Billing Period during the Term will commence on the day following the last day of the immediately preceding Billing Period.

- (c) Subject to Clause 2.2(d), the Access Holder must pay to QR the amount of the invoice referred to in Clause 2.2(a) within fourteen (14) days after receipt of the invoice.
- (d) Where the Access Holder bona fide disputes an amount or amounts claimed in an invoice it shall give notice of that dispute (setting out in detail the grounds for its objection) to QR within fourteen (14) days after receipt of the invoice. Notwithstanding the Access Holder's objection to any amounts claimed in an invoice, the Access Holder must pay to QR the undisputed portion of the amount or amounts claimed in the relevant invoice together with 50% of the disputed portion within fourteen (14) days after receipt of the invoice.
- (e) Any dispute as to the amount claimed in an invoice shall be resolved by an expert in accordance with Clause 17.3. Upon resolution of such dispute in accordance with Clause 17.3:
  - (i) the Access Holder must pay to QR the amount (if any) determined to be payable by the Access Holder to QR together with the interest on that amount calculated in accordance with Clause 2.1(d) within fourteen (14) days after being notified of the expert's determination; or
  - (ii) QR must credit to the Access Holder in the form of a deduction from the invoice for Access Charges and other charges for the Billing Period immediately following a resolution in accordance with Clause 17.3 any amount found to have been overpaid by the Access Holder together with interest on that amount at the Default Rate calculated on daily balances from the date of payment of the amount overpaid to the date of such credit. Such interest payable but unpaid at the end of each Month shall be capitalised and such capitalised amount shall itself bear interest at the Default Rate.
- (f) When providing the Access Holder with an invoice which includes, in whole or part, an amount for an annual take or pay charge, QR shall provide the Access Holder with information on how QR determined the amount of the annual take or pay charge.

### **2.3 GST**

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If a Party is required to pay GST on any amount payable or other consideration to be provided under this Agreement, then the other Party must pay to that Party an amount equal to the GST payable on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, then a Party must pay the other Party in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) Each invoice prepared pursuant to Clause 2.2(a) shall take the form of a Tax Invoice.

### **2.4 Obligation to Grant Security**

- (a) The Security Deposit (if applicable) shall initially be for the amount specified in Item 5 of the Reference Schedule. If a Security Deposit is applicable the Access Holder must deliver to QR, prior to the operation of Train Services, security for the performance of the Access Holder's obligations under this Agreement in the form of:



- (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
  - (ii) any other security reasonably acceptable to QR,  
and containing such other terms and conditions as are reasonably acceptable to QR.
- (b) Where the Access Holder has delivered a Security Deposit to QR in the form of cash, QR will pay interest to the Access Holder annually at the Security Interest Rate published on the day the Security Deposit is provided. The Security Interest Rate shall be reset on the first business day of each Month (“Reset Date”) for that Month. Such interest shall be capitalised at each Reset Date and such capitalised interest shall itself bear interest at the Security Interest Rate.
- (c) The Access Holder may, with QR’s consent, replace any Security Deposit provided by the Access Holder in accordance with this Clause with another form of Security Deposit acceptable to QR. If the Access Holder replaces the Security Deposit with another form of Security Deposit then QR will release the initial Security Deposit in accordance with Clause 2.6(b).
- (d) The provision and continuance of the Security Deposit (or of any additional or replacement Security Deposit provided by the Access Holder in accordance with Clause 2.4(c) or Clause 2.4(f)) is a condition of the performance by QR of its obligations under this Agreement.
- (e) If at any time during the Term QR does not hold a Security Deposit from the Access Holder, the Access Holder must provide a Security Deposit within fourteen (14) days after receipt of a notice from QR where:
- (i) an event of default by the Access Holder in regard to payment of any amount due under this Agreement has occurred, that event of default is not the subject of a bona fide dispute between the Parties and such default continues for seven (7) days after notice of such default from QR; or
  - (ii) in the event of an Assignment or at any time during the Term, if QR is reasonably of the opinion that the Access Holder is:
    - (A) no longer financially sound;
    - (B) no longer able to meet its debts as and when they fall due; or
    - (C) not otherwise capable of performing its obligations under this Agreement.
- (f) If at any time during the Term the Security Deposit held by QR is less than the amount determined in accordance with Item 5 of the Reference Schedule (including for reasons that QR has drawn on or applied the Security Deposit in accordance with Clause 2.5), the Access Holder must increase the Security Deposit by the amount determined by QR as required to ensure that the amount of Security Deposit accords with Item 5 of the Reference Schedule, and deliver to QR an additional or replacement Security Deposit to reflect the change within fourteen (14) days after receipt of notice from QR.
- (g) If the Access Holder considers its financial circumstances have changed such that a Security Deposit would no longer be required, the Access Holder may request QR in

writing (but not more than once in any twelve (12) Month Period) to review the creditworthiness of the Access Holder and QR will undertake such a review.

## 2.5 Exercise of Security

The Security Deposit will be held by QR as security for the performance of the obligations of the Access Holder under this Agreement and may be called upon by QR in any circumstances where QR suffers direct loss or damage as a result of default by the Access Holder under this Agreement and is entitled to be compensated for such loss or damage under this Agreement.

## 2.6 Return of Security

QR must repay or return to the Access Holder (and where appropriate provide to the Access Holder any necessary releases in relation to) any Security Deposit provided by the Access Holder under Clause 2.4:

- (a) subject to QR's rights of recourse to the Security Deposit in Clause 2.5, promptly after the Termination Date;
- (b) on receipt of an additional or replacement Security Deposit provided by the Access Holder in accordance with Clause 2.4(c) or 2.4(f); or
- (c) following a review pursuant to Clause 2.4(g), QR, acting reasonably, finds that it is not necessary for the Access Holder to provide QR with a Security Deposit.

## 2.7 Weighbridges and Overload Detectors

- (a) Where an operational Weighbridge or Overload Detector is located en route between Origin and Destination the Access Holder must ensure that the Operator uses reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner to facilitate weighing.
- (b) Where a Weighbridge or Overload Detector is located en route between Origin and Destination, the Party responsible for that Weighbridge or Overload Detector (as specified in Part 6 of **Schedule 2**) must use reasonable endeavours to ensure that:
  - (i) such Weighbridge or Overload Detector is available; and
  - (ii) Trains are operated in a manner that the Weighbridge or Overload Detector weighs the Trains.
- (c) QR may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Access Holder.
- (d) The Access Holder must ensure that the Operator uses reasonable endeavours to ensure that the mass of any Wagon or Train operated by it under this Agreement does not exceed the relevant Maximum Allowable Gross Tonnage.
- (e) In the event that any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, the Access Holder must cause the Operator to reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage. QR may direct a Train to a specific siding or location to allow such reduction and the Access Holder must cause the Operator to comply with such direction.

- (f) In the event that any Wagon operated by the Operator is determined to be in excess of the relevant Maximum Desirable Gross Tonnage, QR may:
- (i) charge the Access Holder (and the Access Holder must pay) an Overload Charge (in accordance with Part 6 of **Schedule 3**) in respect of that Wagon; and
  - (ii) impose any Operational Constraints which QR considers to be reasonable in the circumstances.

QR will include the Overload Charge in the invoice for Access Charges for the Billing Period immediately following such determination for payment by the Access Holder.

- (g) The Weighbridges to be used by QR in the calculation of Access Charges are those specified in Part 6A of **Schedule 2**.
- (h) Where the Trains are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in Part 6B of **Schedule 2** must use reasonable endeavours to:
- (i) keep a record of the gross mass of each loaded Wagon and Train (and the Access Holder must use reasonable endeavours to ensure such information is obtained from the operator of the Weighbridge or Overload Detector where the Weighbridge or Overload Detector is not owned or controlled by QR);
  - (ii) provide such record to the party loading the Trains; and
  - (iii) provide such record to the other Party within fourteen (14) days of the end of each Month.
- (i) If either Party reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the accuracy of such Weighbridge or Overload Detector to be tested, and the Weighbridge or Overload Detector shall be deemed to have malfunctioned from the date of such notice until such testing has been carried out and/or the Weighbridge or Overload Detector has been recalibrated and the mass will be determined in accordance with Part 2 of **Schedule 3**. Testing will be carried out in accordance with the following procedure:
- (i) As soon as reasonably practicable the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** must ensure that a suitably qualified person conducts a test of the calibration of the Weighbridge or Overload Detector and makes any adjustments required to correct the calibration.
  - (ii) Except in the case of manifest error or fraud, the determination of the person conducting the test will be final and binding on the Parties.
  - (iii) Where the person conducting the test determines that the Weighbridge or Overload Detector is measuring within the tolerances specified in Part 6 of **Schedule 2**, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given pursuant to this Clause 2.7(i) and the Access Charges (including any Overload Charge) will be determined from that date according to Part 5 of **Schedule 3**. The invoice for Access Charges in respect of the Billing Period following such determination will be adjusted to appropriately account for the difference in payment of Access Charges

arising from having treated the Weighbridge or Overload Detector as malfunctioning pursuant to this Clause 2.7(i).

- (iv) The cost of conducting such test shall be met by:
  - (A) the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** in the event that the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in Part 6 of **Schedule 2**; or
  - (B) the Party giving notice under this Clause 2.7(i) in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of **Schedule 2**.
- (j) Notwithstanding any other provision in this Agreement, neither Party will be liable to the other for any damage, loss, cost or expense that the other may suffer or incur as a result of that Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement.
- (k) Notwithstanding any other provision in this Agreement, neither Party shall have any Claim against the other Party as a result of or arising from any delay to or cancellation of Train Services as a result of the operation of Clause 2.7(i).

### 3. TRAIN SERVICE ENTITLEMENTS

#### 3.1 Train Services

- (a) Without limiting any other provision of this Agreement, the Access Holder must not commence (or allow the Operator to commence) any Train Services unless and until the Access Holder has done each of the following in respect to those Train Services:
  - (i) if applicable, delivered to QR the Security Deposit in accordance with Clause 2.4;
  - (ii) provided to QR a certificate of compliance for all of the Access Holder's and/or Operator's Rollingstock and Rollingstock Configurations in accordance with Clause 5.9 and QR has authorised such Rollingstock and Rollingstock Configurations;
  - (iii) demonstrated to QR that the Access Holder has entered into agreements in respect of the Private Facilities as required by Clause 5.11 (if applicable);
  - (iv) provided to QR a copy of the Operator's Emergency Response Plan which must be compatible with the QR Emergency Procedures;
  - (v) provided to QR an acceptable Environmental Investigation and Risk Management Report in accordance with Clause 8.1;
  - (vi) implemented, or caused the Operator to implement, those elements of the Environmental Investigation and Risk Management Report, if applicable, which are to be implemented prior to the commencement of Train Services;
  - (vii) complied with the community liaison requirements referred to in Clause 8.6(a);

- (viii) provided to QR evidence of the Operator's Accreditation as required by Clause 9.1(a);
  - (ix) conducted an Interface Risk Assessment in accordance with Clause 11(a);
  - (x) devised in collaboration with QR and the Operator an Interface Risk Management Plan and implemented, or caused the Operator to implement, the elements of such plan required to be implemented prior to the commencement of Train Services;
  - (xi) caused the Operator to develop the Operator's Safety Management System and incorporate into that system the elements and process referred to in Clause 11(a)(iii); and
  - (xii) taken out and/or caused the Operator to have taken out (as appropriate) the insurances required under Clause 13 and provided to QR evidence of that insurance as required by Clause 13.3.
- (b) QR will use all reasonable endeavours to cooperate with the Access Holder and/or Operator (as applicable) to facilitate the Access Holder's completion or compliance with Clause 3.1(a).
- (c) If the Access Holder has not done (or caused to be done) each of the acts, matters or things specified in Clause 3.1(a) for its initial Train Services by
- (i) the date specified in Item 6 of the Reference Schedule and QR has no reasonable expectation that the Access Holder can commence the operation of Train Services by the Commitment Date; or
  - (ii) by the Commitment Date
- then QR may, provided that QR has complied with Clause 3.1(b), notify the Access Holder in writing of its intention to terminate this Agreement, and if the Access Holder has not complied with all the requirements of Clause 3.1(a) by a date which is thirty (30) days after the date of the notice, QR may terminate this Agreement.
- (d) The Access Holder must cause the Operator to operate Train Services only in accordance with the Train Service Description and this Agreement. Unless acting under a QR Train Control Direction, the Access Holder must ensure that the Operator does not operate Train Services which do not comply with the Train Service Description without the prior written approval of QR, which approval may specify terms in addition to or varying the terms of this Agreement in respect of those Train Services, including the Access Charges applicable. The Access Holder must ensure that the Operator complies with such terms in operating the Train Services.
- (e) For the avoidance of doubt, the Access Holder acknowledges and agrees that it is only entitled to exercise its Access Rights under this Agreement through the Operator, and that it is the Operator, and not the Access Holder, that will operate the Access Holder's Train Services under this Agreement.

### **3.2 Reduction of Access Rights**

- (a) If:
  - (i) during any twelve (12) consecutive weeks during the Term, the Operator fails, for any reason other than due to a Force Majeure Event or the failure

of QR to make the Access Rights available, to operate all the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks; and

- (ii) QR is satisfied that it can demonstrate that it has:
- (A) a reasonable expectation of a sustained alternative demand for that part of the Access Rights that have not been utilised: or
  - (B) a reasonable expectation of a commercial benefit for the provision of and management of the Infrastructure sufficiently material to justify the resumption of that part of the Access Rights that have not been utilised,

then QR may, within sixty (60) days of the last day of the relevant twelve (12) week period, give a notice (“**Variation Notice**”) to the Access Holder proposing that the Access Holder’s entitlement to operate Train Services be reduced from a nominated date (being a date at least twenty-one (21) days after the Access Holder receives the Variation Notice) (“**Date of Resumption**”) to a level specified in the notice which level shall be no less than that which is equivalent to the Access Holder’s average weekly usage of the Nominated Weekly Train Services during the relevant twelve (12) week period.

- (b) After receipt of a Variation Notice the Access Holder shall have the opportunity to demonstrate to QR’s reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services).
- (c) If the Access Holder fails to demonstrate to QR’s reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services), the Access Holder’s entitlement to operate Train Services shall be reduced to the level specified in the Variation Notice with effect on and from the Date of Resumption.
- (d) If the Access Holder does not agree with the reduction of the Access Holder’s entitlement proposed by QR pursuant to Clause 3.2(a), the Access Holder may, within twenty one (21) days of receipt of the Variation Notice, notify QR in writing that it disputes the proposed reduction in which case the Access Holder may refer the dispute for determination by an expert in accordance with Clause 17.3 of this Agreement. The expert will determine whether the conditions for a reduction in Access Rights set out in Clause 3.2(a) have been met and whether the Access Holder has demonstrated, to QR’s reasonable satisfaction, a sustained requirement for that part of the Access Rights to which the reduction would apply. QR must not effect the reduction proposed in the Variation Notice until resolution of the dispute and may only implement a reduction consistent with the expert’s determination.
- (e) QR may withdraw the Variation Notice at any time prior to the Date of Resumption or fourteen (14) days following the resolution of the dispute, whichever is the later.
- (f) In the event that the Access Holder’s entitlement to operate Train Services is reduced in accordance with this Clause 3.2, the Agreement (including the Base Access Charges) will be varied accordingly.
- (g) The Access Holder shall have no claim or entitlement to compensation as a result of any reduction in Train Services pursuant to this Clause 3.2.

### 3.3 Relinquishment and Transfer of Access Rights

- (a) Where the Access Holder wishes to relinquish some or all of its Access Rights and no other existing or prospective Railway Operator (“**New Railway Operator**”) has agreed to take up New Access Rights pursuant to Clause 3.3(g) or Other Access Rights pursuant to Clause 3.3(h) then provided that:
- (i) the Access Holder has given to QR reasonable notice of its intention to relinquish such Access Rights; and
  - (ii) the Access Holder pays to QR the Relinquishment Fee within:
    - (A) two (2) years of the notice provided in accordance with Clause 3.3(a)(i), where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region; or
    - (B) six (6) Months of the notice provided in accordance with Clause 3.3(a)(i), in any other case,

then from the date of payment of the Relinquishment Fee, the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights. During the period between when the notice of intention is given and the Relinquishment Fee is paid, the terms of the Agreement will continue to apply in respect of the Access Rights which the Access Holder intends to relinquish.

- (b) The Relinquishment Fee payable under Clause 3.3(a)(ii) will be reduced in accordance with Clause 3.3(d) where:
- (i) a Railway Operator has entered into an access agreement with QR in respect of access rights that QR could not have provided without using the whole or part of the relinquished Access Rights;
  - (ii) following the provision of notice pursuant to Clause 3.3(a)(i), but prior to the payment of the Relinquishment Fee pursuant to Clause 3.3(a)(ii), QR’s obligation to provide such access rights under the new access agreement has commenced; and
  - (iii) no other Railway Operator is seeking to transfer or relinquish access rights that more closely resemble the access rights sought by the New Railway Operator.
- (c) Where QR is negotiating an access agreement with a New Railway Operator that, if executed, would reasonably be expected to result in a reduction to the Access Holder’s Relinquishment Fee pursuant to Clause 3.3(b), QR will not unreasonably delay the process for negotiating and executing an access agreement with that New Railway Operator.
- (d) Where Clause 3.3(b) applies, and subject to Clause 3.3(f), the Relinquishment Fee will be reduced by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the New Railway Operator’s average contribution to Common Costs per train kilometre for its relevant Train services is less than the Access Holder’s average contribution to Common Costs per train kilometre for its relevant Train Services, the Reduction Factor will be decreased in proportion to the relative contribution.

- (e) Where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region, the amount payable by the Operator to QR under Clause 3.3(a) will not exceed 50% of the Relinquishment Fee (as determined prior to any reduction under Clause 3.3(d)).
- (f) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).
- (g) Where the Access Holder wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights which are Equivalent Access Rights (“**New Access Rights**”), then provided that:
  - (i) the Access Holder has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the New Access Rights;
  - (ii) QR has, following the receipt of notice pursuant to Clause 3.3(g)(i), entered into an access agreement with that New Railway Operator for the New Access Rights and QR’s obligation to provide such New Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable); and
  - (iii) the Access Holder pays to QR, where applicable, within fourteen (14) days of receipt of an invoice from QR, a transfer fee, determined by QR as equivalent to the present value, considered over the remaining Term, of any future expected reductions in contributions to QR’s Common Costs in providing the Infrastructure (including the return earned on Infrastructure assets) due to the net effect of the relevant relinquishment of the Access Holder’s Access Rights and the take up of the New Access Rights on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining Term, and provided that in no circumstances will the transfer fee be less than zero (0),

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of such Access Rights.

- (h) Where the Access Holder wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights with a different origin/destination but with the same format of Train service description as the Access Rights (that is, a Cyclic Traffic) (“**Other Access Rights**”) then provided that:
  - (i) the Access Holder has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the Other Access Rights;
  - (ii) QR has, following the receipt of notice pursuant to Clause 3.3(h)(i), entered into an access agreement with that New Railway Operator for the Other Access Rights and QR’s obligation to provide such Other Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable);
  - (iii) the Access Holder has paid to QR, where applicable, a transfer fee equivalent to the Relinquishment Fee that would have been payable for relinquishment of the Access Rights provided that:
    - (A) where (and only where) the Other Access Rights are for the transportation of specified net tonnes of coal between a specified



origin and destination that have not been included in the Forecast Traffic; or

- (B) where the Other Access Rights are for Train services other than coal carrying Train services operating in the Central Queensland Coal Region,

the transfer fee will be reduced in accordance with Clause 3.3(d); and

- (iv) no other Railway Operator is seeking to transfer access rights that more closely resemble the access rights sought by the New Railway Operator

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights.

- (i) Where Access Rights have been reduced, relinquished or transferred in accordance with this Agreement to the extent that there is no longer any Access Rights, QR will be entitled to terminate this Agreement.

### 3.4 Forecasts

- (a) For the purposes of permitting QR to plan for the maintenance and upgrading of the Infrastructure, the Access Holder will, within thirty (30) days after being requested to do so by QR (such requests to be made not more than once in any six (6) Month period), provide to QR a forecast in writing representing the Access Holder's best estimate for the next six (6) year period specified by QR in its request of:

- (i) the number and frequency of Train Services it will require;
- (ii) the gross tonnage it will transport (or cause the Operator to transport);
- (iii) the average number of gross tonnes per Train it will transport (or cause the Operator to transport); and
- (iv) any changes in Rollingstock or Rollingstock Configuration which will vary any of the above,

such forecast of the above information to be made up of:

- (i) a forecast for each Month of the first year of such period; and
- (ii) a forecast for each of the remaining five (5) years of such period.

- (b) QR will, within thirty (30) days after being requested to do so by the Access Holder (such requests to be made not more than once in any six (6) Month period), provide to the Access Holder forecasts of planned major Enhancements relating to the Nominated Network for each of the next six (6) years.

- (c) The information and/or forecasts provided pursuant to Clauses 3.4(a) or (b) shall be prepared and supplied in good faith however the information and/or forecasts shall not be a representation or warranty as to the accuracy of the information and/or forecasts itself and the parties have no liability in any respect for the information and/or forecasting.

#### **4. DAY TO DAY TRAIN MOVEMENTS**

##### **4.1 Train Control**

QR will provide and will have exclusive responsibility for Train Control in respect of the Nominated Network.

##### **4.2 Train Control Rights and Obligations**

- (a) QR must exercise Train Control by the issue of QR Train Control Directions to the Operator and the Access Holder's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control QR shall have regard to the safe conduct of rail operations on the Infrastructure and:
  - (i) may delay, alter or add a Train Service;
  - (ii) may cancel, re-route or re-schedule a Train Service;
  - (iii) may alter the Scheduled Times for Train Services in the Train Schedule; and
  - (iv) may impose any Operational Constraint on the Nominated Network consistent with Clause 6.2.
- (c) The Access Holder must:
  - (i) ensure the Operator complies with QR Train Control Directions;
  - (ii) ensure the Access Holder's Staff comply with QR Train Control Directions;
  - (iii) ensure that Train drivers are contactable by the QR Train Controller to receive QR Train Control Directions;
  - (iv) ensure the Operator notifies the QR Train Controller as soon as the Operator becomes aware that it is not possible for the Operator or the Access Holder's Staff to comply with a QR Train Control Direction or the Operator or the Access Holder's Staff have not complied with a QR Train Control Direction; and
  - (v) ensure the Operator notifies the QR Train 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 Train Control including the ability of any Train Service to conform to its Scheduled Times.

##### **4.3 Train Control Communications**

The Access Holder must ensure all Trains are equipped with or have available means of communication to permit the Access Holder's Staff to comply with this Agreement (including the Rollingstock Interface Standards and the relevant Safeworking Procedures).

#### **5. TRAIN OPERATIONS**

## 5.1 Compliance

- (a) To the extent relevant to the performance of its obligations under this Agreement, the Access Holder must observe and comply with, and/or cause the Operator to observe and comply with (as applicable):
- (i) all applicable Laws;
  - (ii) the conditions of the Operator's Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) the Rollingstock and Rollingstock Configurations authorised in accordance with Clause 5.9;
  - (v) the Train Service Description (subject to the Network Management Principles);
  - (vi) the description of the relevant Reference Train Service except as otherwise specified in this Agreement;
  - (vii) QR Train Control Directions;
  - (viii) the Safeworking Procedures and Safety Standards;
  - (ix) the Network Management Principles;
  - (x) the Interface Coordination Plan;
  - (xi) to the extent applicable, the QR Emergency Procedures;
  - (xii) the Operator's Emergency Response Plan;
  - (xiii) the Environmental Investigation and Risk Management Report;
  - (xiv) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by QR from time to time and the permits, approvals and licences in respect of facilities to which access is provided by QR to the Access Holder;
  - (xv) the Interface Risk Management Plan (including the Rollingstock Interface Standards);
  - (xvi) subject to the provision of reasonable notice specifying relevant licences and permits and their applicability to the Access Holder and/or Operator, to the extent applicable to the Access Holder and/or Operator, all licences and permits affecting the operations of QR; and
  - (xvii) to the extent applicable to the Access Holder, the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (b) To the extent relevant to the performance of its obligations under this Agreement, QR must observe and comply with:
- (i) all applicable Laws;

- (ii) the conditions of its Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) to the extent applicable, QR Train Control Directions;
  - (v) the Safeworking Procedures and Safety Standards;
  - (vi) to the extent applicable, the Train Service Description (subject to the Network Management Principles);
  - (vii) the Network Management Principles;
  - (viii) the Interface Coordination Plan;
  - (ix) QR's Emergency Procedures;
  - (x) the Interface Risk Management Plan;
  - (xi) all licences and permits affecting the operations of QR; and
  - (xii) the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (c) QR must ensure that as far as practicable:
- (i) the Network Management Principles;
  - (ii) the Safeworking Procedures and Safety Standards; and
  - (iii) QR's Emergency Procedures

will be applied consistently for all Railway Operators on the Nominated Network.

## **5.2 Compliance with Scheduled Time**

- (a) QR must use reasonable endeavours to, and the Access Holder must cause the Operator to use reasonable endeavours to:
- (i) operate Train Services in accordance with the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles, varied in the circumstances specified in this Agreement or otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
  - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service shall be deemed to operate in accordance with its Scheduled Time if it does not vary more than three (3) minutes from the Scheduled Time.

## **5.3 Alterations to Train Services**

- (a) The Access Holder must ensure that if the Operator does not propose to operate a Train Service the Operator must, prior to the scheduled operation of the Train Service, advise QR of the cancellation of such Train Service and the reason for such cancellation.

- (b) In the event that a Train Service is unable to operate in accordance with its Scheduled Time then, provided that the Access Holder has complied with Clause 5.2(a), QR will use its reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service provided that QR will be under no obligation to alter the scheduled times for other Train Movements.
- (c) In the event that for any reason the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule or at any other Scheduled Time advised by QR in accordance with Clause 5.3(b), QR may authorise the operation of another Train Movement at that Scheduled Time.
- (d) In the event that a Train Service is for any reason unable to commence to operate in accordance with its Scheduled Time and following bona fide consultation between QR and the Operator it is not possible for QR to provide an alternative Scheduled Time reasonably acceptable to both parties, such Train Service may be cancelled by either QR or the Operator giving notice to the other party as soon as practicable.

#### 5.4 Notification

- (a) QR must notify the Operator's Controller (such notification to include where relevant the anticipated effect on the relevant Train Service) as soon as reasonably practicable after QR discovers or becomes aware of any circumstances including Obstructions (other than those circumstances of which the Operator is aware or ought to have been aware) which:
  - (i) have materially affected, or could potentially materially affect, the ability of any Train Service to comply with its Scheduled Time; or
  - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Access Holder's Staff.
- (b) QR must at the earliest possible time after becoming aware of the relevant changes advise the Operator's Controller from time to time of changes to advices previously provided pursuant to Clause 5.4(a).
- (c) The Operator must inform QR of any failure to comply with:
  - (i) any applicable Laws relevant to the Operator's Train Services;
  - (ii) QR Train Control Directions; and
  - (iii) the Rollingstock and Rollingstock Configurations authorised in **Schedule 4**.

#### 5.5 Operator to Supply Information

The Access Holder must cause the Operator to provide to QR, and at all times maintain operable, all necessary software, hardware and associated communication links to establish, to QR's reasonable satisfaction, an interface with QR's information systems and must provide information to QR in relation to each Train Service prior to operation on the Nominated Network in accordance with paragraph 2.1 of Part 2 of **Schedule 10**. The interface with QR's information systems will be subject to any controls specified by QR to protect the integrity and confidentiality of the systems and the information contained therein.

## 5.6 Performance Levels

- (a) The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in Part 1 of **Schedule 5**. A failure by either Party to achieve the relevant Performance Level will not constitute a breach of this Agreement and the only consequences of such failure as between the Parties shall be the consequences set out in this Clause 5.6.
- (b) If the Operator does not comply with the Operator Performance Level then the Access Holder must pay to QR the amount determined in accordance with **Schedule 5** as part of the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following QR becoming entitled to that amount.
- (c) If QR does not comply with the QR Performance Level then QR will credit to the Access Holder the amount determined in accordance with **Schedule 5** by way of a deduction from the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following the Access Holder becoming entitled to that amount.
- (d) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six (6) Months after the Commitment Date or any previous review of the Performance Levels. If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties may agree on varied Performance Levels and any associated variations to the Agreement including the Base Access Charges and the Train Service Description. If the Parties are unable to agree to such variations, then the existing Performance Levels shall continue to apply unless varied by QR in accordance with the provisions of Clause 5.6(e).
- (e) In the event that the Access Holder and/or the Operator
  - (i) does not comply in any material respect with the Train Service Description; and
  - (ii) the Access Holder fails to demonstrate to the reasonable satisfaction of QR when requested to do so, that the Access Holder and/or the Operator will consistently comply with the Train Service Description for the remainder of the Termthen, following consultation with the Access Holder, QR will be entitled to:
  - (iii) vary the Train Service Description to a level it reasonably expects to be achievable by the Access Holder and/or the Operator for the remainder of the Term having regard to the extent of previous compliance with the Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to a Railway Operator (other than the Access Holder or the Operator) or to QR); and
  - (iv) vary the Agreement (including, without limitation, the Operator Performance Level and the Base Access Charges) to reflect the impact of the change in the Train Service Description.
- (f) The Access Holder shall be entitled to dispute any variation proposed by QR pursuant to Clause 5.6(e) and such dispute will be referred to an expert for resolution in accordance with Clause 17.3.

## 5.7 Interface Coordination Plan

- (a) QR and the Access Holder agree to comply with the Interface Coordination Plan in exercising their rights and performing their obligations under this Agreement.
- (b) QR will provide the Operator with that information identified in paragraph 3(f) of Part 1 of **Schedule 10** relevant to the Operator's operation of Train Services.

## 5.8 Operation of Trains and Rollingstock

The Access Holder is responsible for the safe operation of its (or the Operator's) Rollingstock on the Nominated Network and must ensure that at all times whilst the Operator is operating on the Nominated Network:

- (a) the Access Holder's or Operator's Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards);
- (b) the Operator operates only authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**; and
- (c) all loading and unloading of the Access Holder's or Operator's Rollingstock is undertaken in a manner that:
  - (i) is consistent with the requirements of **Schedule 4** and the Rollingstock Interface Standards;
  - (ii) does not affect the safe operation of the Rollingstock; and
  - (iii) ensures that all items on or in the Access Holder's or Operator's Rollingstock remain secured in position during transit.

## 5.9 Authorisation of Rollingstock & Rollingstock Configurations

- (a) Prior to the operation of any Train Services the Access Holder must:
  - (i) cause the Operator to implement the control measures devised in the Interface Risk Management Plan relevant to assessing the compatibility of the Access Holder's or Operator's Rollingstock and Rollingstock Configurations with the Nominated Network; and
  - (ii) without limiting Clause 5.9(a)(i), provide to QR a certificate by a suitably qualified person whom both QR and the Access Holder accept as being competent to provide such certification as to the compliance of the Access Holder's or Operator's Rollingstock and Rollingstock Configurations with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Rollingstock and Rollingstock Configurations the subject of that certificate shall then, subject to QR's reasonable satisfaction with the certificate provided, be authorised by QR and included in **Schedule 4** as the authorised Rollingstock and Rollingstock Configurations.
- (b) If requested to do so by QR, the Access Holder must provide to QR (or procure the certifying party to provide to QR) relevant documentation (including reports on trials and/or commissioning tests) demonstrating that the Rollingstock and Rollingstock

Configurations comply with the Interface Risk Management Plan including the Rollingstock Interface Standards.

- (c) Where QR is not satisfied, on the basis of documentation provided by the Access Holder or the certifying party in accordance with Clauses 5.9(a) and (b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan, either Party may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan for resolution by an expert in accordance with Clause 17.3.
- (d) In the event that during the Term the Access Holder (or Operator) wishes to:
  - (i) modify any of the Access Holder's or Operator's authorised Rollingstock or Rollingstock Configurations; or
  - (ii) have additional Rollingstock or Rollingstock Configurations authorised for use on the Nominated Network,

then prior to using any such modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network:

- (i) the Access Holder must notify QR (giving details of the relevant modification or additional Rollingstock or Rollingstock Configurations);
- (ii) if QR considers it reasonably necessary to do so, the Access Holder must conduct (or cause to be conducted) a supplementary Interface Risk Assessment jointly with QR in accordance with Clause 11 (and the provisions of that Clause shall apply if there is any dispute between the Parties in relation to the conduct of the supplementary Interface Risk Assessment);
- (iii) the Access Holder must provide to QR a certificate of compliance in respect of the modified or additional Rollingstock or Rollingstock Configurations in accordance with Clauses 5.9(a) to (c);
- (iv) the Interface Risk Management Plan shall be amended to reflect any changes agreed or determined in accordance with this Clause 5.9(d), and the Parties shall make any other amendments to this Agreement (including QR varying the Base Access Charges) which may be reasonably necessary to reflect the authorisation and use of the modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network; and
- (v) QR must advise the Access Holder of any variations to the Base Access Charges payable by the Access Holder as a result of the authorisation of such modified or additional Rollingstock or Rollingstock Configurations. If the Access Holder disputes the variations to the Base Access Charges advised by QR in accordance with this Clause, either Party may refer the dispute to the QCA for determination in accordance with Clause 17.6.

#### **5.10 Amendments to System Wide Requirements**

- (a) QR may, acting reasonably, amend a System Wide Requirement by the issue of a notice ("**Amendment Notice**"):



- (i) on safety grounds, at any time without the consent of the Access Holder subject to providing reasonable notice of the proposed amendment and consulting with the Access Holder prior to its implementation;
  - (ii) if required pursuant to a Material Change; and
  - (iii) in any other circumstance, subject to negotiating the Access Holder's agreement to such proposed amendment prior to its implementation in accordance with this Clause 5.10 (the Access Holder's agreement not to be unreasonably withheld or delayed).
- (b) The Amendment Notice issued by QR pursuant to Clause 5.10(a) must include details of the proposed amendments to the extent reasonably necessary so as to properly inform the Access Holder of the terms of the proposed amendments and to enable the Access Holder to assess the consequences and impact for the Access Holder (and the Operator) of the proposed amendments and details of the proposed implementation date.
- (c) In respect of any amendment proposed pursuant to Clause 5.10(a)(iii), the Access Holder shall provide advice to QR as to whether:
- (i) the proposed amendments will materially impact on the Access Holder's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Agreement over a sustained period of time notwithstanding the Access Holder's entitlement to reach agreement with QR in terms of the funding of any material financial impact pursuant to Clause 5.10(e)(ii); or
  - (ii) the Access Holder will suffer a net material financial impact (that is, a net cost) equivalent to 1% or greater of the annual Access Charges directly as a result of the proposed amendments.
- (d) Where the Access Holder has provided advice to QR pursuant to Clause 5.10(c)(i) and has satisfied QR, acting reasonably, within thirty (30) days of receipt by QR of that advice, that the Operator's operation of Train Services under this Agreement will be fundamentally frustrated over a sustained period of time directly as a result of the proposed amendments notwithstanding the Access Holder's entitlement to reach agreement with QR in terms of the funding of any net material financial impact pursuant to Clause 5.10(e)(ii), QR will not implement the proposed amendments. In the event that the Access Holder is unable to so satisfy QR, QR may implement the proposed amendments at any time except that:
- (i) in the event that the circumstances outlined in Clause 5.10(c)(ii) exist, such implementation shall be subject to Clause 5.10(e); or
  - (ii) in the event that the Access Holder disputes QR's finding, either Party may refer the dispute for determination by an expert in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the determination of the expert.
- (e) Where the Access Holder has provided advice to QR pursuant to Clause 5.10(c)(ii) that the relevant circumstances exist then:
- (i) within thirty (30) days of providing such advice the Access Holder shall provide to QR further advice of such net material financial impact including estimates of any additional costs, savings, benefits or detriments to be obtained

or suffered or reasonably expected to be obtained or suffered, by the Access Holder directly as a result of implementing the proposed amendments and the Access Holder shall warrant that any estimates given by it are accurate on the basis of the information reasonably available to it and sufficiently detailed to enable QR to reasonably assess such net material financial impact; and

- (ii) the Parties will negotiate in good faith to agree appropriate financial arrangements between them with respect to such net material financial impact and, failing agreement within a further thirty (30) day period, either Party may refer the matter of appropriate financial arrangements to an expert for determination in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the expert's determination.
- (f) In making his determination the expert must have regard to, except in circumstances where consequences are otherwise provided under this Agreement, the costs and benefits accruing to the Access Holder but excluding any costs associated with other entitlements of QR under this Agreement.
- (g) The Access Holder shall use all reasonable endeavours to minimise the net material financial impact suffered by it due to the proposed amendments.
- (h) Notwithstanding Clause 5.10(e), where any System Wide Requirement is varied on safety grounds, each Party will fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (i) At any time following a determination pursuant to Clause 5.10(e), QR may elect not to proceed with the proposed amendments.
- (j) The Parties must account to each other in respect of the contributions agreed or determined pursuant to Clause 5.10(e)(ii) following completion of the implementation of the proposed amendments and subsequent modifications to the Access Holder's or Operator's systems, equipment or Rollingstock as required by the amendments.
- (k) Where QR implements the proposed amendments in accordance with this Clause 5.10, the relevant System Wide Requirement will be altered accordingly following completion of the implementation of the proposed amendments. The Parties must (and the Access Holder must cause the Operator to) undertake all necessary action and make all necessary amendments to the Interface Risk Management Plan, the Environmental Investigation and Risk Management Report and/or the Operator's Emergency Response Plan in response to the relevant amendments including providing QR with a further certificate of compliance where the Access Holder's or Operator's Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement. QR will allow a reasonable period for the Access Holder and/or Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where QR may require immediate compliance.
- (l) In the event that QR undertakes an Enhancement, QR will only be required to vary the Rollingstock Interface Standards to reflect the impact of the Enhancement where the Parties have agreed as to the level and method of contribution to the funding of the Enhancement by the Access Holder.

## 5.11 Private Facilities

Prior to the commencement of any Train Services, the Access Holder must demonstrate to the reasonable satisfaction of QR that the Access Holder has entered into agreements with the owners or operators of the Private Facilities to enable the Operator to operate Train Services in the manner contemplated in this Agreement (“**Private Facilities Agreements**”). The Access Holder must use reasonable endeavours to maintain the Private Facilities Agreements in full force and effect for the period the Private Facilities are required for the operation of Train Services.

## 6. INFRASTRUCTURE MANAGEMENT

### 6.1 Management and Control of the Nominated Network

QR is responsible for the management of the Nominated Network and shall retain control over all activities on the Nominated Network.

### 6.2 Maintenance of the Nominated Network

- (a) QR must carry out Maintenance Work on the Nominated Network such that, subject to any agreed criteria and the Network Management Principles:
  - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
  - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) QR may impose either temporarily or permanently such Operational Constraints as it considers necessary for the protection of any person or any property (including the Infrastructure) or to facilitate the performance of Maintenance Work or Enhancements provided that in exercising its rights under this Clause 6.2(b) QR must:
  - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternate Scheduled Times having regard to the reasonable requirements of the Operator); and
  - (ii) comply with the relevant procedures specified in the Interface Coordination Plan.
- (c) Except to the extent that an Operational Constraint resulted from a breach by QR of this Agreement, any delays or cancellations of Train Services caused by or resulting from Operational Constraints shall not constitute a default by QR of its obligations under this Agreement and QR will not be liable for any Claims suffered or incurred by or made or brought by or against the Access Holder or Operator as a result of or arising from the imposition of such an Operational Constraint.
- (d) The Access Holder must (and must cause the Operator to) notify QR as soon as is reasonably practicable of any damage to or disrepair or failure in operation or function of any part of the Infrastructure of which the Access Holder or Operator (as applicable) becomes aware.
- (e) The Access Holder must provide reasonable cooperation to QR in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are

consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.

### 6.3 Inspection by Access Holder

- (a) Subject to Clause 6.3(b), the Access Holder may, prior to the initial commencement of Train Services, at its cost and risk, inspect the Infrastructure and circumstances surrounding the Infrastructure comprising the Nominated Network including, but not limited to, fencing and level crossing protection in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with operation of Train Services on the Infrastructure.
- (b) Any inspection by the Access Holder under Clause 6.3(a) shall be subject to:
  - (i) the Access Holder providing reasonable written notice to QR of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
  - (ii) any such inspection being conducted in the presence of a representative of QR; and
  - (iii) such other reasonable conditions as may be imposed by QR on such inspection including, but not limited to, compliance with QR's Safeworking Procedures and Safety Standards;

and shall be conducted in such a manner as to not cause any disruption to any Train Movements or to the undertaking of Maintenance Work or Enhancements.

## 7. INCIDENT MANAGEMENT

### 7.1 Operator's Emergency Response Plan

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services) the Access Holder must cause the Operator to develop and submit to QR a plan (the "**Operator's Emergency Response Plan**") which:
  - (i) contains the set of procedures developed by the Operator which are adequate for dealing with an Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;
  - (ii) without limiting Clause 7.1(a)(i) includes the matters outlined in Part 3 of **Schedule 6** relevant to the Operator's use of the Nominated Network; and
  - (iii) must at all times during the Term be compatible with the QR Emergency Procedures and this Agreement.
- (b) If QR is not reasonably satisfied that the Operator's Emergency Response Plan complies with Clause 7.1(a), QR must notify the Access Holder and if the Parties cannot agree on a mutually acceptable course of action to address QR's concerns within fourteen (14) days after the date of QR's notice, either Party may refer the matter to an expert in accordance with Clause 17.3. The expert will be required to determine whether or not the Operator's Emergency Response Plan:
  - (i) is compatible with the QR Emergency Procedures and this Agreement; and

- (ii) otherwise complies with Clause 7.1(a).

If the expert determines that the Operator's Emergency Response Plan:

- (i) is not compatible with the QR Emergency Procedures and this Agreement, he must determine how the non-compliance should be rectified and the Access Holder must cause the Operator to rectify the Operator's Emergency Response Plan accordingly; or
  - (ii) is compatible with the QR Emergency Procedures and this Agreement, the Operator's Emergency Response Plan must be treated as complying with Clause 7.1(a).
- (c) The Access Holder must ensure that any amendments to the Operator's Emergency Response Plan comply with the requirements contained in Clause 7.1(a).
  - (d) If the Operator intends to amend the Operator's Emergency Response Plan, the Access Holder must cause the Operator to notify QR of that fact, providing QR with details of the proposed amendments and the reasons for them. Within ten (10) days after receipt of that notice QR must notify the Access Holder if QR disputes any such proposed amendments, in which case any such dispute shall be resolved in accordance with the procedures set out in Clause 7.1(b).
  - (e) No amendment to the Operator's Emergency Response Plan to the extent that it relates to the Operator's operations on the Nominated Network will be effective until it has been made in a manner permitted by this Clause 7.1.
  - (f) The Access Holder must be able to demonstrate to QR that procedures are in place which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Response Plan and, to the extent relevant, the QR Emergency Procedures and that they are being observed.
  - (g) The Access Holder must ensure that at all times sufficient members of the Access Holder's Staff are appropriately qualified to participate in Investigations and that the names and positions of those members of the Access Holder's Staff are maintained in the Operator's Emergency Response Plan.

## **7.2 Obstructions**

The Access Holder must not (and must ensure that the Operator does not) cause any Obstruction or permit to continue any Obstruction caused by the Access Holder or Operator.

## **7.3 Notification**

- (a) The Access Holder must cause the Operator to notify the QR Train Controller as soon as reasonably practicable after the Operator or the Access Holder's Staff discover or become aware of:
  - (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
  - (ii) anything which the Operator observes may cause or contribute to the occurrence of an Incident or Obstruction.
- (b) QR must notify the Access Holder of all Incidents involving the Access Holder's or Operator's Rollingstock.

#### 7.4 Management of Incident Response

- (a) QR will be responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) The Access Holder must (or must cause the Operator to) arrange Recovery and cooperate with and assist QR in Restoration. The Access Holder will be responsible for effecting timely Recovery in accordance with the Operator's Emergency Response Plan. Where QR reasonably believes that more timely recommencement of Train Movements can be achieved by QR, then QR may, subject to using reasonable efforts to consult with the Access Holder, take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Access Holder's or Operator's Rollingstock) and recover such reasonable direct costs incurred by QR in doing so. The Access Holder must pay to QR such reasonable direct costs incurred by QR.
- (c) If an Incident occurs the Access Holder will (or will cause the Operator to) as soon as reasonably practicable notify QR and:
  - (i) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise the occurrence of injury to any person or damage to any property (including environmental damage) where there is an imminent risk of such injury or damage but otherwise take no action without the prior approval of QR, which approval shall not be unreasonably withheld; and
  - (ii) comply with the directions of QR in respect of the coordination and management of Restoration and Recovery.
- (d)
  - (i) Both Parties must use all reasonable endeavours to ensure (and the Access Holder must cause the Operator to use all reasonable endeavours to ensure) that any property damage or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised provided that QR, subject to QR using reasonable efforts to consult with the Access Holder, will have the right to take such action (including to give directions to the Access Holder and the Operator and the Access Holder's Staff and to remove or require the Access Holder or Operator to remove any of their Rollingstock) as QR considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to Clause 7.4(d)(ii) and (iv), QR shall have no liability for any damage to or loss of freight or Rollingstock caused by such actions.
  - (ii) Where pursuant to Clause 7.4(d)(i) QR seeks to remove or require the Access Holder or Operator to remove any Relevant Rollingstock where QR considers such removal reasonably necessary to recommence Train Movements as soon as practicable and such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock, QR and the Access Holder must:
    - (A) use all reasonable efforts to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and at least within a period of six (6) hours after the occurrence of the Incident or such longer period as the Parties may agree; and
    - (B) if the Parties do not consult or reach agreement within a period of six (6) hours or such longer period as agreed, they will refer the

decision to the chief executive officers of each Party or their nominated delegate as specified in **Schedule 10** who must in good faith seek to agree a course of action within two (2) hours of the referral to them or such longer period as the Parties may agree.

- (iii) Where the chief executive officers of each Party or their nominated delegates, do not consult or do not agree within the specified period in Clause 7.4(d)(ii)(B), QR must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to the Removal Expert who shall assess whether, having regard to:
  - (A) the potential to further damage the Relevant Rollingstock;
  - (B) the impact on QR's ability to effect Restoration; and
  - (C) the time critical nature of the decision,the course of action proposed by QR is reasonable.
- (iv) QR shall be entitled to progress with the proposed course of action unless the Removal Expert assesses that QR's proposed course of action is unreasonable.
- (e) QR may, where it is reasonable and practicable in the circumstances to do so, issue a QR Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of QR and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of QR or another Railway Operator). The Access Holder must cause the Operator to comply with any such QR Train Control Direction. The Access Holder may recover from QR (on behalf of the Operator) such reasonable direct costs incurred by the Operator in complying with this Clause 7.4(e) as agreed and failing agreement within thirty (30) days after notice by the Access Holder to QR as determined by an expert in accordance with Clause 17.3.
- (f) In assessing the costs to be recovered under Clause 7.4(b) or Clause 7.4(e) for the use of Rollingstock, regard shall be had to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (g) Except as otherwise provided in this Agreement QR will not be liable for any delays, cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder or the Operator as a result of complying with a request by QR pursuant to Clause 7.4(e).

## 7.5 Investigations

- (a) In the event of an Incident, an Investigation into the Incident in the circumstances set out in **Schedule 8** must be commenced as soon as practicable unless otherwise agreed between the Parties and must be conducted in the manner and by the persons prescribed in **Schedule 8**.
- (b) Each Party must cooperate and ensure their respective staff cooperate fully with any Investigation and the Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the requirements of **Schedule 8**.

**8. ENVIRONMENTAL MANAGEMENT AND PROTECTION**

**8.1 Environmental Management**

- (a) The Access Holder must, prior to the commencement of any Train Services (including any new or varied Train Services):
- (i) cause a suitably qualified person reasonably acceptable to both Parties to prepare a report (“**Environmental Investigation and Risk Management Report**”) containing an environmental investigation component and an environmental risk management component which respectively identify:
- (A) possible risks of Environmental Harm arising out of the proposed use of the Nominated Network by the Operator, including risks associated with those matters identified in Part 3 of **Schedule 6**; and
- (B) the manner in which the Operator proposes to address the possible risks of Environmental Harm identified in the Environmental Investigation and Risk Management Report as well as the roles and responsibilities, including financial responsibility, for the control measures proposed and an audit regime,
- provided that if the Operator has an existing Environmental Management System it proposes to use in connection with the proposed Train Services on the Nominated Network, the Environmental Investigation and Risk Management Report should also detail the extent to which the Operator believes its existing Environmental Management System addresses the risks identified in the Environmental Investigation and Risk Management Report; and
- (ii) provide a copy of the Environmental Investigation and Risk Management Report to QR for its consideration and, if requested by QR, a copy of the relevant parts of the Operator’s existing Environmental Management System referred to in the Environmental Investigation and Risk Management Report.
- (b) If the Environmental Investigation and Risk Management Report discloses areas of risk which, in the reasonable opinion of QR, cannot be adequately managed by the proposals set out in the Environmental Investigation and Risk Management Report or, in the reasonable opinion of QR, fails to identify and adequately deal with additional relevant environmental risks, then QR may give notice to that effect to the Access Holder within thirty (30) days after the date on which the Environmental Investigation and Risk Management Report was provided to QR (or such other period as the Parties, acting reasonably, may agree), detailing the risks not so adequately managed or not so identified or adequately dealt with. If QR does not give such notice, the Environmental Investigation and Risk Management Report shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (c) If QR gives notice pursuant to Clause 8.1(b) the Access Holder may respond, by a date agreed by the Parties, with a written proposal which demonstrates how the Access Holder proposes to manage those risks (“**Access Holder’s Proposal**”). The Access Holder’s Proposal must:



- (i) contain an investigation of the areas of risk and/or additional relevant environmental risks referred to in Clause 8.1(b);
  - (ii) (A) specify risk abatement or attenuation measures which the Access Holder proposes to undertake in relation to them; and/or  
(B) specify how the Access Charges might contain a component reflecting the cost to QR of assuming all or some portion of the risk;
  - (iii) in relation to paragraph (ii)(A) specify a timeframe for implementation of those measures; and
  - (iv) specify details of any public consultation the Access Holder proposes to undertake in connection with the implementation of any such measures.
- (d) QR may, in the exercise of its reasonable discretion, accept or reject all or part of the Access Holder's Proposal.
- (e) If QR accepts the Access Holder's Proposal, then it will be incorporated into and form part of the Environmental Investigation and Risk Management Report which shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (f) If the Access Holder fails to submit to QR an Access Holder's Proposal by the date agreed by the Parties, or if QR refuses to accept all or part of the Access Holder's Proposal, QR may advise the Access Holder of the risks not adequately managed or not identified or adequately dealt with, and then either Party may refer the issue of whether the Environmental Investigation and Risk Management Report and/or the Access Holder's Proposal does or does not adequately manage or does or does not identify or adequately deal with the relevant environmental risks to an expert in accordance with Clause 17.3.
- (g) If the expert determines that the Environmental Investigation and Risk Management Report and/or Access Holder's Proposal does adequately manage the risks or identifies and adequately deals with the risks, then the Environmental Investigation and Risk Management Report as modified by the Access Holder's Proposal (if applicable) will be accepted, included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (h) If the expert determines that the Environmental Investigation and Risk Management Report and/or Access Holder's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks, then provided the Access Holder amends the Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, the Environmental Investigation and Risk Management Report as amended will be accepted and included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (i) If the expert determines that the Environmental Investigation and Risk Management Report and/or Access Holder's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks and the Access Holder fails to amend the Environmental Investigation and Risk Management Report in accordance with the

expert's determination and/or recommendations within the time frame specified by the expert, QR may terminate this Agreement.

- (j) The Parties agree to implement the determination of the expert.

## **8.2 Environmental Management System**

- (a) The Access Holder must cause the Operator to, prior to the commencement of any Train Services (including any new or varied Train Services), have in place an Environmental Management System. The Environmental Management System prepared by the Operator must:
  - (i) have regard to the issues raised in the Environmental Investigation and Risk Management Report and contain procedures for implementing the risk management proposals identified in it. The Environmental Investigation and Risk Management Report includes the results of any expert determination referred to in Clause 8.1(f) or any amendment of the Environmental Investigation and Risk Management Report arising from the recommendations of any environmental audit or review conducted pursuant to Clause 8.7;
  - (ii) address all legislative requirements, including the requirements of the Environmental Authorities held by QR from time to time that are relevant to the Train Services to be operated by the Operator under this Agreement; and
  - (iii) identify systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with all Environmental Laws.
- (b) Prior to the commencement of any Train Services (including any new or varied Train Services), QR will ensure that the elements of the Environmental Investigation and Risk Management Report which QR is responsible for implementing are incorporated into QR's Environmental Management System.

## **8.3 Carriage of Dangerous Goods on Train Services**

- (a) The Access Holder must ensure that where Dangerous Goods are to be carried on a particular Train Service:
  - (i) all requirements of the Dangerous Goods Code are fully complied with (including placement of relevant, accurate and current documentation on Trains);
  - (ii) QR is advised of the details of the Dangerous Goods (including a description and the applicable Dangerous Goods United Nations (UN) Number) prior to the operation of a Train as part of the Train List; and
  - (iii) any authorisation or prior approvals required under the Dangerous Goods Code have been obtained and are available for inspection by QR if so requested.
- (b) The Access Holder must ensure that, where there is any likelihood of Train Services carrying Dangerous Goods and before any Dangerous Goods can be carried on Train Services, the Operator's Emergency Response Plan prepared in accordance with

Clause 7.1 includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried.

#### **8.4 Noise Management during Train Services**

- (a) In addition to any noise attenuation or management measures which may form part of or be identified in the Environmental Investigation and Risk Management Report, the Access Holder shall contribute to, as reasonably determined by QR, the costs incurred by QR in taking noise abatement measures on or adjacent to the Nominated Network considered reasonably necessary by QR where the Noise Planning Levels are, or but for the taking of these measures by QR, would be exceeded during the Term.
- (b) If, during the Term, the Noise Planning Levels are reduced such that noise from the Nominated Network exceeds the new Noise Planning Levels, QR may elect, in its absolute discretion, to implement noise abatement measures on the Nominated Network to ensure compliance with the new Noise Planning Levels. The Access Holder shall contribute to the cost of those noise abatement measures as reasonably determined by QR.
- (c) If the Access Holder disputes any determination made by QR in accordance with this Clause 8.4 regarding the contribution of costs, either Party may refer that dispute to an expert in accordance with Clause 17.3.

#### **8.5 Spillage of Contaminating Materials**

- (a) Where:
  - (i) the activities of the Access Holder or Operator under this Agreement result in any release, spillage or leakage of any Contaminating Material, or QR is reasonably of the opinion that those activities are causing or likely to cause contamination or Environmental Harm, and QR reasonably considers that action is required to prevent, mitigate or remedy that contamination or Environmental Harm; or
  - (ii) QR is given a direction, notice or order by a relevant Authority that some action is required to prevent, mitigate or remedy any actual or threatened contamination or Environmental Harm resulting from, or contributed to by, the activities of the Access Holder or Operator under this Agreement,then QR may notify the Access Holder of the action which is required and the Access Holder must at its cost, as soon as reasonably practicable after receiving such notice, implement such action or cause such action to be implemented.
- (b) If, in QR's reasonable opinion, any action pursuant to Clause 8.5(a) ought best be undertaken by QR, then QR may elect to undertake such action and the Access Holder shall pay to QR the costs incurred by QR in doing so.
- (c) If the Access Holder disputes any action taken by QR in accordance with this Clause 8.5, either Party may refer the dispute to an expert in accordance with Clause 17.3 and if the expert determines the dispute in favour of the Access Holder, QR will reimburse the Access Holder for the costs incurred by the Access Holder as a result of the actions taken by the Access Holder at QR's request (or, if applicable, QR will bear the costs incurred by QR in accordance with Clause 8.5(b) and shall not be able to recover those costs from the Access Holder) to the extent determined by the expert.

**8.6 Community Liaison and Environmental Complaint Procedures**

- (a) Prior to the commencement of any Train Services the Access Holder and/or Operator shall take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by QR, and shall invite QR to be represented at any community meetings organised by the Access Holder and/or Operator.
- (b) In the event that QR, the Access Holder or the Operator receives noise complaints or other complaints dealing with environmental issues in relation to the Nominated Network, both QR and the Access Holder shall inform each other of those complaints as soon as reasonably practicable and shall cooperate in investigating and responding to those complaints.

**8.7 Audit and Review of Environmental Investigation and Risk Management Report**

- (a) The Access Holder will provide QR with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder (or Operator) in respect of its Train Services on the Nominated Network.
- (b) QR will provide the Access Holder with copies of those parts of QR's environmental audits that are relevant to the operation of the Access Holder's Train Services on the Nominated Network.
- (c) If QR becomes aware of:
  - (i) any inadequacy of the Environmental Investigation and Risk Management Report due to:
    - (A) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
    - (B) any conduct on the part of the Access Holder or Operator which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
  - (ii) any non-compliance by the Access Holder or Operator with the Environmental Investigation and Risk Management Report,

then, in addition to any other rights QR may have under this Agreement, QR may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of the Environmental Investigation and Risk Management Report and/or the Access Holder's or Operator's compliance with it. The review will only deal with:

- (i) the extent to which the Environmental Investigation and Risk Management Report appears not to address a change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
- (ii) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
- (iii) the extent of non-compliance by the Access Holder or Operator with the Environmental Investigation and Risk Management Report,

whichever is applicable in the circumstances.

- (d) If directed by QR to undertake a review in accordance with Clause 8.7(c), the Access Holder will ensure the review is carried out and will provide QR with a copy of the review report within a reasonable time after the review has been completed (and in any case, not later than three (3) Months after the notice from QR requiring the review).
- (e) The Access Holder must implement (or cause to be implemented) the reasonable recommendations arising from each review under this Clause 8.7, and the Parties shall amend the Environmental Investigation and Risk Management Report and this Agreement (including any variations to the Base Access Charges) as appropriate.
- (f) Either Party may refer any dispute as to the nature or extent of any amendments to the Environmental Investigation and Risk Management Report or this Agreement that ought to be made to an expert for resolution in accordance with Clause 17.3.

## **8.8 Notification**

- (a) The Access Holder must advise (and must cause the Operator to advise) QR of any failure by the Access Holder or Operator to comply with the Environmental Investigation and Risk Management Report and the Operator's Environmental Management System to the extent relevant to this Agreement as and when the Access Holder or Operator becomes aware of such failure and provide details of how it intends to address the non-compliance. The Access Holder must remedy (or cause the Operator to remedy) such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR and any action required by the Environmental Protection Agency.
- (b) QR must advise the Access Holder of any failure by QR to comply with the Environmental Investigation and Risk Management Report and QR's Environmental Management System to the extent relevant to this Agreement as and when QR becomes aware of such failure. QR must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of the Access Holder and any action required by the Environmental Protection Agency.
- (c) The Access Holder must advise (and must cause the Operator to advise) QR of any failure to comply with their obligations under the Environmental Protection Act 1994 ("EPA"), including any notices or directions relating to the operation of Train Services that they receive from the Environmental Protection Agency. Failure by the Access Holder or the Operator to comply with its obligations under the EPA, where that failure causes or threatens to cause Serious Environmental Harm, entitles QR to terminate in accordance with Clause 20.
- (d) QR will notify the Access Holder of any changes to any Environmental Authorities held by QR or variations to any other environmental information provided by QR to the Access Holder relevant to the operation of Train Services.

## **9. ACCREDITATION**

### **9.1 Evidence of Accreditation**

- (a) The Access Holder must on or before the commencement of any Train Services provide to QR evidence of the Operator's Accreditation (including all conditions and/or variations).

- (b) QR must have and maintain Accreditation to the extent required to perform its obligations under this Agreement and, if requested to do so in writing by the Access Holder, must provide to the Access Holder copies of documentation evidencing currency, renewal or amendment of QR's Accreditation within five (5) days of such request. The Access Holder must ensure that the Operator has and maintains Accreditation to the extent required to operate the Train Services under this Agreement and, if requested to do so in writing by QR, provide to QR copies of documentation evidencing currency, renewal or amendment of the Operator's Accreditation within five (5) days of such request.
- (c) QR will notify the Access Holder as soon as possible of any notice from an Authority affecting or likely to affect QR's Accreditation and will provide a copy of that notice to the Access Holder on request. The Access Holder will cause the Operator to notify QR as soon as possible of any notice from an Authority affecting or likely to affect the Operator's Accreditation and to provide a copy of that notice to QR on request.

## **10. ACCESS HOLDER'S STAFF**

### **10.1 Safety of Staff**

The Access Holder and the Operator will be fully responsible and liable for the health and safety of the Access Holder's Staff and the personal property of the Access Holder's Staff, and the Access Holder indemnifies and releases QR to the extent permitted by law from any liability in relation to the Access Holder's Staff except to the extent that such liability is caused by the wilful default or negligence of QR or QR's Staff.

### **10.2 Qualifications of Access Holder's Staff**

The Access Holder must:

- (a) ensure that all risks associated with Safety Related Work (including the competence of all Access Holder's Staff to safely and properly discharge their duties related to the exercise of the Access Holder's rights or performance of its obligations under this Agreement) are addressed in the Interface Risk Assessment;
- (b) ensure that all Access Holder's Staff hold and keep current all qualifications and accreditations required under any Law and as specified in Part 2 of **Schedule 9** and undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (c) meet all costs of any training and/or testing required to meet the requirements of this Clause 10.2; and
- (d) keep QR advised of the names and position titles of all Access Holder's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Access Holder's Staff whose details have been provided to QR in accordance with this Clause 10.2 and who satisfy the requirements of this Clause 10.2.

### **10.3 Entry onto Land**

The Access Holder must ensure that the Access Holder's Staff do not enter upon the Land in a manner inconsistent with the Interface Coordination Plan, the Interface Risk Management Plan or the Operator's Emergency Response Plan without the prior written approval of QR and that, in the

event such approval is given, the relevant Access Holder's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

## 11. INTERFACE RISK MANAGEMENT

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services):
  - (i) the Access Holder must conduct an Interface Risk Assessment jointly with QR and the Operator in order to:
    - (A) identify all reasonably foreseeable Interface Risks to the Access Holder, the Operator, QR and all persons and property and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of those Interface Risks;
    - (B) agree the applicable controls and measures to adequately address the Interface Risks identified (including any training required for the Operator's Staff) and the Party responsible for implementation of such controls and measures and ensuring their on-going effectiveness;
    - (C) agree an audit, inspection and review regime;
    - (D) agree the applicable Safeworking Procedures and Safety Standards having regard to existing QR and industry practices;
    - (E) agree the Rollingstock Interface Standards (or, if already agreed, agree variations to the Rollingstock Interface Standards); and
    - (F) agree any consequential changes to the provisions of the Agreement, including the applicable Access Charges;
  - (ii) the Parties must incorporate the above agreed outcomes, as applicable, into:
    - (A) the Interface Risk Management Plan which shall be included in Part 2 of **Schedule 9**;
    - (B) Part 1 of **Schedule 6**;
    - (C) **Schedule 3**; and
    - (D) the relevant provisions of the Agreement; and
  - (iii) the Access Holder must cause the Operator to develop the Operator's Safety Management System which must incorporate:
    - (A) the risks identified and the controls and measures and other elements included in the Interface Risk Management Plan that the Access Holder or Operator is responsible for implementing; and
    - (B) necessary processes for ensuring that the Access Holder, the Operator, their Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the agreed Interface Risk Management Plan.

- (b) If the Parties are unable to agree any element of the Interface Risk Assessment or the Interface Risk Management Plan (including the Rollingstock Interface Standards), each Party may give notice in writing to the other Party of the dispute (“**Dispute Notice**”) whereupon either Party may refer the matter in dispute (“Dispute”) to an expert for resolution in accordance with Clause 17.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a Party gives a Dispute Notice to the other Party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 11(b)(ii) or the QCA in accordance with Clause 11(b)(iii), either Party may still refer the matter to an expert for resolution in accordance with Clause 17.3;
  - (ii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the QCA in accordance with Clause 11(b)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either Party may refer the matter to the Safety Regulator; and
  - (iii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the Safety Regulator in accordance with Clause 11(b)(ii), then either Party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Clause 17.6,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either Party is not satisfied with the determination of the expert, then notwithstanding Clause 17.3(i), either Party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 11(b)(ii) or the QCA under Clause 11(b)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding on the Parties.

If an expert, the Safety Regulator or the QCA is called upon under this Clause to make a determination the effect of which would be to establish the content of any aspect of the Interface Risk Management Plan, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a Dispute under this Clause that may from time to time be determined by the Safety Regulator.

Where a Dispute is referred to the QCA in accordance with this Clause, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either Party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the Parties a copy of any advice it receives from the Safety Regulator.

Where the QCA seeks advice from the Safety Regulator in relation to a Dispute, the costs of the Safety Regulator shall be borne by the Parties in such proportion as the QCA determines.

- (c) Prior to the commencement of any of the Access Holder’s Train Services, QR must incorporate the elements of the Interface Risk Management Plan it has agreed to be responsible for implementing into QR’s safety management system.
- (d) The Parties must advise each other of any failure to comply with the Interface Risk Management Plan as and when the Party becomes aware of such non-compliance,



including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

- (e) If at any time during the Term, either Party has reasonable grounds to believe that the Interface Risk Management Plan is no longer effective either in managing the Interface Risks it was intended to manage or in managing new or varied Interface Risks, the Parties must conduct a further joint Interface Risk Assessment to review the Interface Risks which are no longer effectively managed by the current Interface Risk Management Plan or the new or varied Interface Risks (as the case may be).
- (f) Where a Party has reasonable grounds to believe that the other Party (or the Operator) has not or is not complying with any aspect of the Interface Risk Management Plan (including the Rollingstock Interface Standards) then, in accordance with the provisions of Clause 12, that Party may conduct or require the conduct of an inspection or audit of the relevant aspect of the Access Holder's Train Services or the Nominated Network (as applicable).
- (g) The Parties shall amend the Interface Risk Management Plan and this Agreement (including making any variations to the Base Access Charges) if, subsequent to an audit or inspection of the Interface Risk Management Plan, the Parties agree that such amendment is required having regard to the findings of such inspection or audit and, failing agreement, either Party may refer the issue of the need for such amendment to an expert for determination in accordance with Clause 17.3.
- (h) Where QR and the Access Holder agree that training of the Access Holder's Staff is required as a control or part of a control to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Holder and/or the Operator can only obtain that training from QR, QR will provide the Access Holder and/or the Operator with that training and be entitled to recover from the Access Holder a reasonable commercial charge for providing such training.

## 12. INSPECTION AND AUDIT RIGHTS

### 12.1 Rights of Inspection and Audit

In addition to the rights of inspection and audit specified in Clauses 6 and 11(f) and subject to the provisions of this Clause 12, either Party may conduct or require the conduct of an inspection or audit relevant to assessing the other Party's (or Operator's) compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Safeworking Procedures and Safety Standards periodically as specified in the Interface Risk Management Plan.

### 12.2 Inspection of Trains and Rollingstock

- (a) Where QR reasonably believes that the Access Holder's or Operator's Rollingstock or Rollingstock Configurations do not comply with:
  - (i) the authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**;
  - (ii) the Interface Risk Management Plan (including the Rollingstock Interface Standards); or
  - (iii) any applicable Laws relevant to the Access Holder's Train Services,

and QR cannot otherwise determine whether this is the case, QR may inspect any Trains or Rollingstock which is utilised or intended to be utilised in the operation of Train Services or require the Access Holder to have an inspection conducted and for this purpose QR or QR's Staff will be entitled at any time to enter and ride on the Trains or Rollingstock.

- (b) QR shall have the right to require any of the Access Holder's or Operator's Rollingstock (either loaded or empty) to be available at such location as QR may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by QR.
- (c) Notwithstanding the provisions of Clause 2.7, if any of the Access Holder's or Operator's Rollingstock is reasonably considered by QR to be loaded in excess of the limits specified in **Schedule 4** or in an unsafe or insecure manner, then QR may at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Access Holder's expense. If the Operator fails to immediately remove the excess or adjust the load, QR may arrange for its removal or adjustment and the Access Holder will be responsible for all resultant costs incurred by QR.

### **12.3 Notice of Inspection or Audit**

The Party conducting or requiring the conduct of an inspection or audit must give the other Party reasonable prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in Clauses 19 or 20 has occurred and such notice shall 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 upon which the Party requires the inspection or audit; and
- (f) the Party's requirements of the other Party in relation to the inspection or audit.

### **12.4 Conduct of Inspection or Audit**

- (a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the relevant Party, its appointed representative or by a suitably qualified person reasonably acceptable to both Parties, provided that if the inspection or audit would require access to commercially sensitive information of a Party and that Party has a legitimate commercial reason for wanting to withhold access to that information from the other Party, then the inspection or audit shall be conducted by a suitably qualified independent person reasonably acceptable to both Parties who shall be given access to the commercially sensitive information by the Party the subject of the inspection or audit but who shall be prohibited from disclosing that commercially sensitive information to the other Party.
- (b) The Access Holder shall use reasonable endeavours to ensure that QR, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the Access Holder) on which the Access Holder's or Operator's Rollingstock is located from time

to time (which location is specified in a notice pursuant to Clause 12.3) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.

- (c) In exercising any right of inspection or audit under this Agreement, a Party must not interfere unreasonably with the other Party's or the Operator's Trains and Rollingstock or Train Movements on the Nominated Network and must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other Party's or the Operator's business activities.
- (d) Subject to Clause 12.4(e), a Party conducting an inspection or audit ("**Inspecting Party**") will not be liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other Party as a result of the exercise by the Inspecting Party of its rights under this Clause 12 provided the Inspecting Party complies with Clause 12.4(c).
- (e) The Access Holder will be liable for and will indemnify QR in respect of any Claim made against QR by another Railway Operator as a result of a delay or cancellation of a Train service of that other Railway Operator as a result of the exercise by the Access Holder of its inspection or audit rights under this Clause 12, provided that the Access Holder will not be liable for, or be required to indemnify QR in respect of, any such Claim where:
  - (i) the Access Holder has complied with Clause 12.4(c) in exercising its inspection or audit rights; and
  - (ii) the inspection or audit reveals that QR is in breach of its obligations under this Agreement.

## 12.5 Cooperation by the Parties

Each Party shall provide (and the Access Holder shall cause the Operator to provide) all reasonable assistance required by the other Party in conducting any inspection or audit under this Agreement, including allowing a Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with QR's Staff or the Access Holder's Staff (as applicable). A member of QR's Staff or the Access Holder's Staff (as applicable) may be present at the inspection or audit.

## 12.6 Costs of Inspection or Audit

- (a) The Party who conducts or requires the conduct of an inspection or audit under Clause 6 or an agreed periodic audit shall bear the reasonable costs of conducting the inspection or audit.
- (b) The Party whose operations are inspected or audited under Clause 11(f) or Clause 12.2 shall bear the reasonable costs of conducting the inspection or audit unless it is demonstrated that the stated grounds for requiring the conduct of the inspection or audit did not exist. In circumstances where the stated grounds for such inspection or audit have not been demonstrated to exist, the Party that required the conduct of the inspection or audit shall bear the costs of conducting such inspection or audit.

## 12.7 Copies of Reports

The Parties must provide each other with a copy of any report of any inspection or audit undertaken pursuant to this Clause 12 in respect of its compliance (or the compliance of the

Operator) with the Interface Risk Management Plan (including the Rollingstock Interface Standards).

## **12.8 Consequences of Inspection or Audit**

Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under Clauses 11(f) or 12.2(a)(ii) of this Agreement, that Party will be liable to the other Party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit. The Party who required the conduct of the inspection or audit shall bear the burden of establishing that a reasonable person in its position could have formed that view.

## **12.9 Parties' Obligations**

An inspection or audit by a Party under this Agreement shall not relieve the other Party of its obligations under this Agreement or at Law.

## **13. INSURANCE BY ACCESS HOLDER**

### **13.1 Maintain Insurance Policies**

The Access Holder must, and/or (as appropriate) must cause the Operator to, prior to the commencement of Train Services at their expense take out and subsequently maintain current at all times during the Term insurance with a Corporation licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to QR) those policies of insurance required by this Agreement.

### **13.2 Required Insurance Policies**

The Access Holder must take out and maintain, and/or (as appropriate) must cause the Operator to take out and maintain, insurance for the risks and on the terms specified in **Schedule 7**.

### **13.3 Disclosure of Insurance Policies**

The Access Holder must provide, and cause the Operator to provide, to QR evidence of the insurance policies effected pursuant to this Clause 13 or, if requested by QR, copies of such insurance policies, to QR's reasonable satisfaction:

- (a) at least fourteen (14) days prior to the commencement of Train Services;
- (b) upon renewal of each insurance policy during the Term; and
- (c) whenever reasonably requested to do so in writing by QR.

### **13.4 Failure to Disclose Insurance Policies**

If the Access Holder or Operator, whenever required to do so under this Agreement, fails to produce to QR evidence to the reasonable satisfaction of QR of insurances that have been effected or maintained by it, QR may:

- (a) effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Access Holder to QR; and/or
- (b) terminate this Agreement pursuant to Clause 20.1(g).

### **13.5 Minimum Terms of Policies**

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law:

- (a) note the interests of the Access Holder or Operator (as applicable), any contractor and QR;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of QR (which consent shall not be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 7**.

### **13.6 Access Holder Not to Render Policy Void**

The Access Holder must not, and must ensure that the Operator does not, render any of the insurances effected in accordance with this Clause 13 void or voidable or liable to refusal of any claim.

### **13.7 Compliance**

The Access Holder must, and must cause the Operator to, at all times comply with the terms and conditions of all insurance policies effected pursuant to this Clause 13.

### **13.8 Notice of Potential Claims**

In addition to any other obligation on the Access Holder pursuant to this Agreement, the Access Holder must, and must cause the Operator to, notify QR as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement, notify QR of that event in reasonable detail and thereafter keep QR informed of subsequent developments concerning any claim.

### **13.9 Access Holder to pay all excess/deductibles**

The Access Holder must in respect of any claims by it or any other insured for which it is responsible (including the Operator), pay and bear, or must cause the Operator to pay and bear (as appropriate), all excesses/deductibles provided for in any insurances effected in accordance with this Clause 13.

### **13.10 Settlement of Claims**

Upon settlement of a claim under any policy required by this Agreement covering damage to Infrastructure the monies received must be paid to QR unless the Access Holder has already partially or totally indemnified QR for the relevant damage, in which case the monies shall be paid to the Access Holder or Operator (as applicable) but only to the extent that QR has been indemnified.

## **14. INDEMNITIES AND LIABILITIES**

### **14.1 Indemnity by Access Holder**

Subject to Clause 14.3, the Access Holder is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims of any nature suffered or incurred by or made or brought against QR, its directors or QR's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of QR) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Access Holder or Operator or Access Holder's Staff.

### **14.2 Indemnity by QR**

Subject to Clause 14.3, QR is solely liable for and releases, indemnifies and will keep indemnified the Access Holder, its directors and Access Holder's Staff against all Claims of any nature suffered or incurred by or made or brought against the Access Holder, its directors or the Access Holder's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of the Access Holder) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff.

### **14.3 Liability to Third Parties**

Notwithstanding Clause 14.1 or Clause 14.2, the Access Holder is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims due to or arising out of this Agreement in respect of damage to or loss of any property or personal injury to or death of any person where such person or property is being transported on Train Services except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff. Unless otherwise agreed, the Access Holder shall extend to QR or cause the Operator to extend to QR any exclusion or limitation of liability afforded by the Operator's conditions of carriage with its or the Access Holder's customers and shall provide to QR details of the Operator's conditions of carriage relevant to QR's liability in place from time to time.

### **14.4 Liability from Infrastructure Standard**

Notwithstanding any other provision of this Agreement, QR will not be liable to the Access Holder or Operator and the Access Holder and Operator will not have or make any Claim against QR in respect of any loss of or damage to real or personal property, including property of the Access Holder or Operator, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure except to the extent that such loss, damage, injury, cost or expense results directly from the failure of QR to perform its obligations under Clause 6.2(a).

### **14.5 Defence of Claims**

The Parties shall render each other, and the Access Holder shall cause the Operator to render, all reasonable assistance in the defence of any Claim made against a Party by a Third Party arising out of any Incident or other event giving rise to a Claim.

**14.6 Continuation of Indemnities**

The releases and indemnities contained in this Clause 14 for the benefit of either Party continue in full force and effect as to any Claims occurring or arising from any act occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

**14.7 Determination of Liability**

In the event of an Incident involving the Access Holder or Operator or any other event which results or could result in a Claim by or against the Access Holder, Operator or QR, liability as between the Access Holder and QR shall for the purposes of this Clause 14 be determined:

- (a) as agreed between the Parties;
- (b) failing such agreement within one (1) Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to Clause 14.8; or
- (c) where the amount of the Claim exceeds the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and either Party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.

**14.8 Loss Adjuster**

Where a matter is to be referred to a loss adjuster in accordance with Clause 14.7 then the following provisions of this Clause shall apply:

- (a) The loss adjuster shall be appointed by the Parties, or in default of such appointment within fourteen (14) days after the need to appoint a loss adjuster, by the President of The Chartered Institute of Loss Adjusters Australasian Division.
- (b) In any event, the loss adjuster shall:
  - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
  - (ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to fully disclose any such interest or duty before his appointment; and
  - (iii) not be an employee of the Access Holder, Operator or QR or of a Related Body Corporate of any of them.
- (c) The loss adjuster appointed pursuant to this Clause 14.8 shall not be permitted to act until he has given written notice of the acceptance of his appointment to both Parties.
- (d) Any loss adjuster appointed pursuant to this Clause 14.8 shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties.
- (e) Any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

- (f) Each Party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any employee, agent or contractor (including employees, agents or contractors of the Operator) involved in or with knowledge of the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (g) Each Party must make available to the loss adjuster any files, documents, data, recordings or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation.
- (h) The loss adjuster will determine the quantum of the relevant Claim and the liability of the Access Holder and/or QR in respect of such Claim and shall provide a copy of his report on such matters to each of the Parties within a reasonable time after his appointment.
- (i) In the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

#### **14.9 Costs**

The costs of the loss adjuster shall be borne by the Parties in such proportions as liability is determined by the loss adjuster or where the liability is determined by a Court, in such proportions as liability is determined by the Court.

#### **14.10 Relationship with Operator**

- (a) Nothing in this Agreement creates or constitutes any contract between QR and the Operator.
- (b) The Access Holder is responsible for all conduct of the Operator under this Agreement. Any act or omission of the Operator shall be deemed to be an act or omission by the Access Holder for the purposes of this Agreement.
- (c) In no event shall QR be liable to the Operator for any loss or damage suffered or incurred by the Operator except to the extent that QR would have been liable to the Access Holder had the loss or damage suffered or incurred by the Operator instead been suffered or incurred by the Access Holder, and taking into account the limitations upon liability contained in this Agreement. The Access Holder shall indemnify and shall keep indemnified QR, its directors and QR's Staff against any additional liability to the Operator.
- (d) QR acknowledges and agrees that the Access Holder may engage more than one Operator to operate Train Services contemplated by this Agreement provided that where there is more than one Operator to be so appointed:
  - (i) the Access Holder must provide to QR the name and contact details (and any other information reasonably required by QR) for each Operator so appointed;
  - (ii) the Access Holder must notify QR which Train Services are to be operated by each Operator, and must advise QR in advance of any subsequent change in the allocation of Train Services between Operators;



- (iii) references in this Agreement to the “Operator” shall be construed to mean each of the Operators in respect of Train Services operated (or to be operated) by them or, where the context requires, shall be construed to mean any one or more of the Operators.
- (e) QR acknowledges and agrees that the Access Holder may from time to time change the Operator for all or any part of the Train Services contemplated by this Agreement provided that:
  - (i) the Access Holder must provide to QR the name and contact details (and any other information reasonably required by QR) for each new Operator so appointed;
  - (ii) the Access Holder must notify QR which Train Services are to be operated by each new Operator; and
  - (iii) for the avoidance of doubt, references in this Agreement to the “Operator” shall be construed to include the new Operator in respect of the Train Services operated (or to be operated) by it.
- (f) Where:
  - (i) a new Operator is appointed by the Access Holder in place of, or in addition to, an existing Operator or Operators, or an Operator is removed by the Access Holder; or
  - (ii) the Access Holder makes any change in the allocation of Train Services between Operators

QR and the Access Holder shall negotiate and agree any amendments to this Agreement (including the Schedules) that may be necessary to reflect the relevant appointment, removal or change in allocation.
- (g) For the avoidance of doubt, nothing in this Clause 14.10 entitles the Access Holder to make any change in Operators, or in the allocation of Train Services between Operators, where this would result in the use of Access Rights in addition to those granted to the Access Holder under this Agreement unless QR has first agreed to amend this Agreement to provide for the grant of additional Access Rights to the Access Holder to facilitate the change.

## **15. LIMITATION OF LIABILITY**

### **15.1 No Liability for Consequential Loss**

Except as otherwise expressly provided in Clauses 12.8 and 19.3(b), neither Party shall in any circumstances be liable to the other for (and the indemnities in Clauses 14.1 and 14.2 shall not extend to) any Consequential Loss.

### **15.2 Limitation on Claims**

Neither Party shall make any Claim against the other in respect of the neglect or default of that Party under the Agreement unless:

- (a) notice of the Claim has been given to the other within twelve (12) Months of the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds FIFTY THOUSAND DOLLARS (\$50,000.00) in respect of any one event or cause of action or series of related events or causes of action (provided that if this condition is satisfied then the Party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of FIFTY THOUSAND DOLLARS (\$50,000.00)).

### 15.3 Claims in respect of non-provision of Access

The Access Holder shall not have or make any Claim against QR in respect of the non-provision of Access or cancellation of any Train Service unless, and shall only have a claim to the extent that:

- (a) a Train Service is cancelled as a result of a failure by QR to make the Infrastructure available for the Access Holder to operate the Train Service at the Scheduled Time in the Train Schedule and QR was unable to schedule the Train Service at a reasonable alternative time; and
- (b) the failure by QR to make the Infrastructure available was a result of a breach of this Agreement by QR, or negligence on the part of QR; and
- (c) the failure by QR to make the Infrastructure available is not attributable to:
  - (i) the Access Holder or the Operator;
  - (ii) another Railway Operator (other than QR);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
  - (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5** and the total number of Train Services cancelled in a Billing Period as a result of a failure by QR to make the Infrastructure available exceeds the Allowable Threshold; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the non-provision of Access or cancellation of Train Services is of a magnitude which is beyond the scope of that performance and adjustments regime.

### 15.4 Claims in respect of delays to Train Movements

Neither Party (the “**Affected Party**”) shall have or make any Claim against the other Party (the “**Defaulting Party**”) in respect of delays to Train Movements unless, and shall 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 (or the Operator where the Access Holder is the Affected Party);
  - (ii) another Railway Operator (other than the Defaulting Party);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
  - (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (c) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the delays are of a magnitude which is beyond the scope of that performance and adjustments regime.

## 16. MATERIAL CHANGE

### 16.1 Meaning of Material Change

In this Clause 16:

- (a) “**Material Change**” means a:
  - (i) Change in Relevant Taxes;
  - (ii) Change in Law;
  - (iii) change in the funding from governments in respect of that part of the Nominated Network specified in Part 4 of **Schedule 2**; or
  - (iv) matter deemed to be a Material Change under Clause 22.18(b); and
- (b) “**Net Financial Effect**” means the net effect in financial terms of a Material Change on QR 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. Any change in the funding from governments in respect of the Nominated Network which is adverse to QR shall, to the extent that change affects the

financial position of QR, be deemed to be an additional cost to QR of performing its obligations under this Agreement.

## 16.2 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the relevant Train Service under this Agreement then:
  - (i) if at any time after the date of this Agreement a Material Change occurs which affects the financial position of QR or the cost to QR of performing its obligations under this Agreement, QR may notify the Access Holder giving details of the Net Financial Effect of the Material Change;
  - (ii) within fourteen (14) days after receipt of a notice under Clause 16.2(a)(i), the Parties shall meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return QR to the position it would have been in had it not been for the Material Change. If the Parties do not reach agreement within twenty (20) days of QR's notice, the matter will be referred to an expert for determination in accordance with Clause 17.3.
- (b) If a Reference Tariff is applicable to the relevant Train Service under this Agreement then the relevant Reference Tariff Schedule will provide for the consequences of Material Change.

## 16.3 Parties Obligations

The Parties' obligations under this Agreement will continue notwithstanding the existence of a Material Change.

## 17. DISPUTES

### 17.1 Method

If any claim, dispute or question ("**Dispute**") arises under this Agreement or in relation to the Access Rights then unless otherwise expressly provided to the contrary in this Agreement such Dispute shall be resolved in accordance with this Clause 17 and either Party may give to the other Party to the Dispute a notice in writing ("**Dispute Notice**") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 17.

### 17.2 Chief Executive Resolution

Except as otherwise provided in this Agreement, the Parties hereby agree that any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the chief executive of QR (or his nominee) and the chief executive of the Access Holder (or his nominee) for the purposes of this Clause 17.2 for resolution. Failing such resolution within fourteen (14) days or in the event that either chief executive appoints a nominee that is unacceptable to the other Party, the relevant Dispute may by agreement between QR and the Access Holder be referred for resolution by an expert in accordance with Clause 17.3 or by arbitration in accordance with Clause 17.4.

### 17.3 Expert

Where any matter may be referred to an expert pursuant to Clause 17.2 or is required by this Agreement to be referred to an expert then except as otherwise provided for in this Agreement, the matter must be referred for determination by a person:

- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by, in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia and, in the case of what the Parties agree are non-financial matters, the President for the time being of the Institution of Engineers, Australia and, in the case of what the Parties agree are combined financial and non-financial matters or where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate by the President for the time being of the Queensland Law Society Incorporated;
- (b) who has appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Access Holder, Operator or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment;
- (f) who shall have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at his request and who must provide both Parties with a copy of his determination in the form of a report within a reasonable time after his appointment;
- (g) who shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (h) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination;
- (i) whose decision, in the absence of manifest error, shall be final and binding upon the Parties; and
- (j) whose costs (and the costs of any advisers to the expert) shall be borne by the Parties in equal shares with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

Any determination made by an expert must be consistent with the provisions of this Agreement.

**17.4 Arbitration**

The Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Access Holder and QR and failing agreement upon such arbitrator within fourteen (14) days after the date of written notice from one Party to the other requiring the appointment of an arbitrator then to an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference shall be an arbitration within the meaning of the Commercial Arbitration Act 1990 (Qld) and subject to the provisions relating to arbitration contained in that Act.

**17.5 Determination by Court**

If any Dispute is not resolved in accordance with Clause 17.2 nor referred to an expert in accordance with Clause 17.3, nor referred to arbitration by agreement of the Parties in accordance with Clause 17.4, nor referred to the QCA in accordance with Clause 17.6, then the Dispute shall be referred to the courts of the State.

**17.6 Queensland Competition Authority (QCA)**

The Parties may agree to refer and where required by this Agreement shall refer any Dispute to the QCA.

**18. FORCE MAJEURE**

**18.1 Claim of Force Majeure**

If by reason of a Force Majeure Event occurring either Party is wholly or partially unable to carry out its obligations under this Agreement (other than an obligation to pay monies), that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and that part of the Nominated Network affected;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to remedy the situation; and
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event.

No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

**18.2 Suspension of Obligations**

If by reason of a Force Majeure Event affecting all or any part of the Nominated Network either Party is delayed or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay monies) then the obligations of that Party will be suspended during that time and to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

### 18.3 Duty to Mitigate

Each Party will use (and the Access Holder will cause the Operator to use) all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event.

### 18.4 End of period of Force Majeure

Subject to Clauses 18.5 and 18.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement at which time it must issue a notice to the other Party advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

### 18.5 Termination for Loss or Damage to Nominated Network

- (a) In the event that any part of the Nominated Network specified in Part 2 of **Schedule 2** is damaged or destroyed by a Force Majeure Event and in QR's reasonable opinion the cost of repairing such damage or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network, QR may by written notice advise the Access Holder of:
- (i) the estimated cost of effecting the necessary repairs or replacement; and
  - (ii) QR's intention to not repair or replace the relevant part of the Nominated Network unless the Access Holder and any other Railway Operator using that part of the Nominated Network pay the amounts specified by QR towards the cost of effecting the necessary repairs or replacement.
- (b) If the Access Holder gives notice to QR advising that it will bear the whole, or that part requested by QR, of the cost of necessary repairs or replacement, then QR will proceed with the repairs or replacement within a reasonable time after receipt by QR from the Access Holder of payment of the relevant amount subject to reaching agreement with any other Railway Operator using the affected part of the Nominated Network. Where the Access Holder pays to QR the whole of the estimated cost, QR must, upon completion of the necessary repairs or replacement, refund to the Access Holder any amount by which the amount paid by the Access Holder exceeds the actual cost and the Access Holder shall pay to QR the amount by which the actual cost exceeds the amount paid by the Access Holder.
- (c) If within sixty (60) days after receipt of a notice from QR under Clause 18.5(a) the Access Holder has not given notice to QR pursuant to Clause 18.5(b) indicating that it will pay the whole, or that part requested by QR, of the cost of the necessary repairs or replacement, QR shall have the right to terminate this Agreement by giving not less than thirty (30) days notice in writing to the Access Holder, without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

### 18.6 Termination after extended Force Majeure Event

If by reason of a Force Majeure Event a Party ("affected Party") is rendered unable to perform its obligations under this Agreement for a period of more than three (3) consecutive Months, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one (1) Month of the end of the three (3) Month period the other Party may terminate this Agreement by thirty (30) days written notice to the affected Party and the provisions of this Agreement relating to

termination set out in Clauses 20.4 and 20.5 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

## 19. SUSPENSION

### 19.1 Right of Suspension

- (a) QR may, by notice in writing to the Access Holder prior to or immediately following the suspension, suspend the right of the Access Holder to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
- (i) the Access Holder fails to pay when due any amount payable under this Agreement and such default continues for seven (7) days after notice from QR to the Access Holder of the default;
  - (ii) the Access Holder (or Operator) fails to meet or comply with:
    - (A) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 5.1(a)(v), 7.3 and 8.6) of this Agreement and QR is of the reasonable opinion that such failure either:
      - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Access Holder or Operator) or other users of the Infrastructure (including Infrastructure Service Providers); or
      - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property; or
    - (B) the Train Service Description and QR is of the reasonable opinion that such failure either:
      - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Access Holder or Operator) or other users of the Infrastructure (including Infrastructure Service Providers) and that QR has sought to avoid such adverse effects by rescheduling Trains and changing Train priority in accordance with the Network Management Principles provided that QR will not be obliged to take any action that may cause any additional cost or risk to QR or an adverse impact on any Railway Operator (other than the Access Holder or Operator); or
      - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property;
  - (iii) an Insolvency Event occurs in relation to the Access Holder;
  - (iv) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement;



- (v) the Access Holder or Operator fails to comply with the requirements of a notice given by QR (within the reasonable time specified in that notice) requiring the Access Holder or Operator to cease conduct which in the reasonable opinion of QR is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm;
- (vi) the Access Holder or Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for seven (7) days after notice from QR to the Access Holder of the default;
- (vii) the Access Holder fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for seven (7) days after notice from QR to the Access Holder of the default;
- (viii) the Access Holder or Operator fails to provide, prior to the departure of the Train pursuant to Clause 5.5, information that is reasonably required by QR in relation to the relevant Train in accordance with Part 2 of **Schedule 10**;
- (ix) the Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement;
- (x) the Access Holder is in default of the due performance of any other obligation under this Agreement, and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (xi) the events or circumstances referred to in Clause 20.1(b), (c) or (f) exist.

Such suspension shall continue until such time as the Access Holder has remedied the relevant default, or caused the Operator to remedy the relevant default, and (where appropriate) taken action to prevent its recurrence.

- (b) QR may suspend the right of the Access Holder to operate any Train Services on the Nominated Network in the event of breach or, acting reasonably, anticipated breach by the Access Holder or Operator of:
  - (i) any Laws relating to rail safety relevant to the operation of Train Services;
  - (ii) QR Train Control Directions given in a manner not inconsistent with the Network Management Principles;
  - (iii) Safeworking Procedures; or
  - (iv) Safety Standards,

and QR is of the reasonable opinion that such breach has caused or such anticipated breach is likely to cause, an increased risk to the safety of any person or material risk to property.

Such suspension may be effected by notice in writing prior to or immediately following the suspension and shall continue until such time as the breach is rectified or, in the event of anticipated breach, the Access Holder has demonstrated that it and the Operator are in compliance. The Access Holder must ensure that upon such suspension the relevant Access Holder's Staff immediately ceases to perform functions on the Nominated Network until such time as the suspension is lifted by QR.

- (c) QR may suspend the operation of the Access Holder's or Operator's Rollingstock or Rollingstock Configurations:
- (i) for actual non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where the Access Holder and/or the Operator has failed to rectify such non-compliance within a reasonable period of time; or
  - (ii) for actual non-compliance or (acting reasonably) anticipated non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.

Such suspension may be effected by notice in writing to the Access Holder prior to or immediately following the suspension and shall continue until the Access Holder and/or Operator has rectified the non-compliance or, in the event of anticipated non-compliance, the Access Holder has demonstrated that it and the Operator are in compliance.

## **19.2 Details of Suspension**

Where QR has a right under this Clause 19 to suspend rights of the Access Holder, the notice of suspension given in writing by QR to the Access Holder must set out:

- (a) the rights of the Access Holder which are affected by the suspension;
- (b) the reasons for the suspension; and
- (c) the actions the Access Holder and/or Operator must take to have the suspension lifted.

## **19.3 Effect of Suspension**

- (a) The suspension of any rights does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement and shall be without prejudice to QR's other rights and remedies in respect of that or any other default.
- (b) Where QR suspends some or all of the Access Holder's Train Services, QR will be liable to the Access Holder in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in QR's position could have formed the view that the stated grounds for the suspension existed, provided that the Access Holder must use all reasonable endeavours to mitigate the loss or damage arising from the suspension. QR shall bear the burden of establishing that a reasonable person in QR's position could have formed that view.

## **20. TERMINATION**

### **20.1 Termination by QR**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, QR may, by notice in writing to the Access Holder, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) the Access Holder fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (b) the Access Holder or Operator fails to comply in any material respect with:
  - (i) any obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 7.3 and 8.6) of this Agreement; or
  - (ii) any QR Train Control Direction within the control of the Access Holder or Operator, any Safeworking Procedures or Safety Standard,and such default continues for, or the Access Holder or the Operator has failed to take reasonable action to prevent recurrence of the default within, thirty (30) days after notice from QR to the Access Holder of the default;
- (c) the Access Holder or Operator fails to comply in any material respect with the Train Service Description and fails to demonstrate to the reasonable satisfaction of QR, within sixty (60) days after notice from QR to do so, that the Access Holder or Operator will consistently comply with the Train Service Description for the remainder of the Term provided that QR, acting reasonably, has determined not to vary the Train Service Description having regard to relevant factors including:
  - (i) the impact on other users of the Infrastructure (including Infrastructure Service Providers); and
  - (ii) the efficient utilisation of the Infrastructure;
- (d) an Insolvency Event occurs in relation to the Access Holder and such default continues for a period of sixty (60) days;
- (e) the Operator's Accreditation is suspended, cancelled or amended so that it cannot operate the Train Services or otherwise perform the Access Holder's obligations generally under this Agreement, and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (f) where the Environmental Protection Agency gives the Access Holder or Operator a direction, notice or order about the conduct of the Access Holder and/or Operator in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the Access Holder or Operator fails, within the time:
  - (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or
  - (ii) otherwise agreed to by the Environmental Protection Agency,to
  - (iii) comply with the direction, notice or order, as modified by any court order (if applicable); or
  - (iv) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental

Protection Agency in relation to the requirements of the direction, notice or order,

and such failure continues for thirty (30) days after notice by QR to the Access Holder or Operator to remedy such failure;

- (g) the Access Holder or Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (h) the Access Holder fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (i) the Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement;
- (j) the Access Holder is in default of the due performance of any other obligation under this Agreement, and such default continues for sixty (60) days after notice from QR to the Access Holder of the default,

provided that QR has first exercised its corresponding right of suspension under Clause 19.1.

## **20.2 Termination by the Access Holder**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, the Access Holder may, by notice in writing to QR, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) an Insolvency Event in relation to QR occurs and such default continues for a period of sixty (60) days;
- (b) QR's Accreditation is cancelled such that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from the Access Holder to QR of the default;
- (c) QR fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from the Access Holder to QR of the default;
- (d) QR is in default of the due performance of any other obligation under this Agreement and such default continues for sixty (60) days after notice from the Access Holder to QR of the default.

## **20.3 Grounds for Termination to be specified**

A notice of termination given under Clauses 20.1 or 20.2 must set out the grounds for the termination.

## **20.4 Obligations and other rights upon termination or expiration**

- (a) Neither termination of this Agreement by a Party pursuant to this Clause 20 nor expiration of this Agreement prejudices:

- (i) a Party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law; or
  - (ii) either Party's rights to recover monies due to it under this Agreement.
- (b) Upon termination of this Agreement QR and the Access Holder shall be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts. Any liability in respect of such antecedent breach shall be limited in the manner provided in this Agreement.

## **20.5 Removal of Rollingstock following termination**

- (a) Immediately on expiration of the Term, and as soon as practicable following termination of this Agreement for any other reason the Access Holder must, at the Access Holder's cost, remove (or cause the Operator to remove) all of the Access Holder's or Operator's Rollingstock from the Nominated Network.
- (b) If the Access Holder fails to remove (or cause to be removed) the Access Holder's or Operator's Rollingstock from the Nominated Network, QR may serve notice on the Access Holder demanding the removal of Rollingstock within a specified time.
- (c) If the Access Holder fails to have removed any of the Access Holder's or Operator's Rollingstock from the Nominated Network the subject of the notice of demand within the time specified in the notice of demand issued by QR in accordance with Clause 20.5(b), QR is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Access Holder.
- (d) The Access Holder is liable, and will indemnify QR, for any costs incurred by QR in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Access Holder or Operator in removing any Rollingstock in accordance with this Clause.
- (e) The Access Holder and/or Operator shall comply with all reasonable directions issued by QR in relation to the removal of the Rollingstock in accordance with this Clause.

## **21. ASSIGNMENT**

### **21.1 Assignment by QR**

QR may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Access Holder provided that QR procures the Assignee to covenant with the Access Holder by deed to be bound by and to perform the obligations of QR under this Agreement to the extent of the rights and obligations Assigned to the Assignee. Upon the Assignee entering into that deed QR will be released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

### **21.2 Assignment by the Access Holder**

- (a) Subject to the following provisions of this Clause 21.2, the Access Holder shall not Assign its rights or obligations, or any part thereof, under this Agreement without the prior written consent of QR, which consent may not be unreasonably withheld.

- (b) The Access Holder 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) a Related Body Corporate of the Access Holder which is capable of performing the obligations of the Access Holder under this Agreement provided that the Access Holder shall remain liable for the performance of the duties, responsibilities and obligations assumed by the Assignee and provided however that performance by the Assignee will pro tanto discharge the Access Holder from liability for performance of those duties, responsibilities and obligations that are Assigned; or
  - (ii) a person other than a Related Body Corporate of the Access Holder with the prior written consent of QR, provided that such consent will not be unreasonably withheld if QR is satisfied that such person:
    - (A) is financially sound; and
    - (B) is otherwise capable of performing the obligations of the Access Holder under this Agreement.
- (c) Any Assignment by the Access Holder of its rights or obligations under this Agreement will be conditional upon and will not take effect until the Assignee covenants with QR by deed, in such terms as QR may reasonably require, to be bound by and to perform the obligations of the Access Holder and Operator under this Agreement.
- (d) Except where the Access Holder is a company the shares in which are quoted by the Australian Stock Exchange Limited, any change in shareholding of the Access Holder altering the effective control of the Access Holder will be deemed to be an Assignment of this Agreement.
- (e) The Access Holder shall not:
- (i) register, record or enter in its books any transfer of any share or shares in the capital of the Access Holder;
  - (ii) deal with any beneficial interest in any such share or shares;
  - (iii) issue any new share or shares; or
  - (iv) take or attempt to take any action having the effect:
    - (A) of altering the control of the Access Holder; or
    - (B) that the shareholders of the Access Holder at the date of this Agreement together beneficially hold or control less than 51% of the voting rights of capital in the Access Holder,
- until the requirements of this Clause 21.2 have been complied with.

### 21.3 Charging

A Party (“**Chargor**”) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (“**Chargee**”) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee shall

first covenant in writing in favour of the other Party (“**Non-Charging Party**”), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this Clause 21 as if it were originally a party hereto, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this Clause 21.

## **22. GENERAL**

### **22.1 Variation/Amendment**

Except as otherwise provided in this Agreement any variation or amendment to this Agreement must be in writing signed by both Parties.

### **22.2 Confidentiality**

The Parties shall comply with the provisions of the confidentiality deed set out in **Schedule 12**.

### **22.3 Intellectual Property**

All material supplied or made available by one Party (“the Supplier”) to the other Party remains the intellectual property of the Supplier and cannot be reproduced nor used for any purpose other than the purpose for which it was supplied without the approval of the Supplier.

### **22.4 Entire Agreement**

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.
- (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.

### **22.5 Non-merger**

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

### **22.6 Authority to enter into Agreement**

- (a) The Parties represent and warrant to and covenant with each other that they have full power to enter into and perform their obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Parties respectively enforceable in accordance with its terms.

- (b) If this Agreement is executed by an attorney the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

**22.7 Interpretation not to disadvantage a Party**

In the interpretation of this Agreement no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part thereof.

**22.8 Relationship**

- (a) The relationship between the Parties is entirely contractual and nothing in this Agreement creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (b) This Agreement is for the exclusive benefit of the Parties and does not create any rights in any Third Parties.

**22.9 Notices**

(a) **Form of Notice**

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a QR Train Control Direction or a direction from the QR Commander) ("**Notice**") must be in writing and signed by an authorised officer of that Party and may, if so agreed by QR, be in electronic form.

(b) **Method of Service**

A Notice may be given by:

- (i) being personally delivered on a Party;
- (ii) being left at the Party's current address for service;
- (iii) being sent to the Party's current address for service by pre-paid ordinary mail; or
- (iv) being sent by facsimile transmission to the Party's current facsimile number for service provided that a copy of the notice is then delivered by one of the means described above.

(c) **Deemed Notice**

A Notice is deemed given if:

- (i) personally delivered, upon delivery;
- (ii) posted to an address in Australia, three (3) days after posting;
- (iii) sent by facsimile, on the next day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number.



(d) **Addresses for Service**

(i) Each Party's address for service is:

**QR:**

Address: [\*\*\*]

Facsimile [\*\*\*]

Attention: [\*\*\*]

**Access Holder**

Address: [\*\*\*]

Facsimile: [\*\*\*]

Attention: [\*\*\*]

(ii) A Party may from time to time change its particulars of service by giving written notice of that change to the other Party.

**22.10 Certificate**

A certificate signed by any duly authorised officer of QR as to a matter or as to a sum payable to QR in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

**22.11 Costs**

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

**22.12 Stamp Duty**

- (a) The Access Holder is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If QR pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under or in connection with it, the Access Holder must reimburse QR the amount paid upon demand.

**22.13 Waiver and Exercise of Rights**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.

- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of succeeding defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

#### **22.14 Computation of Time**

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

#### **22.15 Severance of invalid or illegal terms**

- (a) If any term of this Agreement, or its application to any Party, person or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:
  - (i) that term or its application to such Party, person or circumstance is severable from this Agreement;
  - (ii) the remainder of this Agreement, excluding the severed part, remains in force and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
  - (iii) to the extent permissible by law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this Clause as to a replacement term. If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with Clause 22.15(a)(i) and (ii).

#### **22.16 Rights Cumulative**

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

#### **22.17 Approvals and Consents**

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

#### **22.18 Ownership of Land**

The Access Holder acknowledges that the land identified in Part 5 of **Schedule 2**:

- (a) is not owned or controlled by QR; and
- (b) is not land to which Subparagraph 2.1(c)(ii)(C) of QR's Access Undertaking applies and in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii)(C)

of QR's Access Undertaking (as those provisions are amended, varied or replaced from time to time) as part of access to the Nominated Network,

and agrees that in respect of that land owned or controlled by another person ("Landowner") then:

- (c) the Access Holder will comply (and will cause the Operator to comply) with the requirements of the Landowner in relation to that land as notified to the Access Holder by QR from time to time;
- (d) if, after the date of this Agreement, there is a change in the costs incurred by QR due to the requirements of the Landowner in respect of that land, then that change shall be deemed to be a Material Change; and
- (e) if QR's rights in respect of that land are terminated for any reason other than the default of QR of any agreement that affects QR's use of that land or other than by agreement with the Landowner, then QR may by notice to the Access Holder suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that land.

#### **22.19 Implementation of Agreement**

Each Party must promptly execute all documents and do all such acts and things as is necessary or desirable to implement and give full effect to the provisions of this Agreement.

#### **22.20 Schedules**

In the event that the content of a Schedule requires variation or replacement in accordance with this Agreement, QR shall issue to the Access Holder a replacement Schedule which shall upon issue be substituted for and replace the relevant Schedule in this Agreement. Nothing in a Schedule shall be varied in any way except by the issue of a replacement Schedule by QR in accordance with this Clause.

#### **22.21 Governing Law and Jurisdiction**

This Agreement shall be interpreted according to the Laws for the time being in force in the State and each of the Parties submits to the jurisdiction of the courts of the State and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.

#### **22.22 Most Favoured Nation Status**

- (a) If the Access Holder believes on reasonable grounds that:
  - (i) QR has entered into an access agreement with another Railway Operator for a Train service that transports the same specified commodity in the same specified geographic area as a Train Service provided in accordance with this Agreement ("Like Train Service"); and
  - (ii) the Access Charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking,

the Access Holder may provide written notification to QR which must include the reasons why the Access Holder considers this to be the case.

- (b) Within thirty (30) days of receipt of such notification, QR must advise the Access Holder:
- (i) whether or not QR agrees that the access agreement with the other Railway Operator is for a Like Train Service and, if not, the reasons why QR considers this to be the case;
  - (ii) if QR agrees that the access agreement with the other Railway Operator is for a Like Train Service, whether or not QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking and, if not, the reasons why QR considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
  - (iii) if QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation then within sixty (60) days of advice provided pursuant to Clause 22.22(b) QR must advise the Access Holder:
    - (A) whether or not QR has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in QR's Access Undertaking; or
    - (B) if QR has not been able to vary the access charge applicable to the Like Train Service that QR agrees to the reduction of the Access Charge payable by the Access Holder including the amount of the proposed reduced Access Charge.
- (c) If the Access Holder does not agree with QR's response to its notification, the dispute shall be referred to an expert for resolution in accordance with Clause 17.3.
- (d) If:
- (i) another Railway Operator provides QR with notification that it believes that some or all of the Access Holder's Train Services are a Like Train Service to a Train service operated by the other Railway Operator, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking; and
  - (ii) QR agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking,

then QR has the right by notice to the Access Holder to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in QR's Access Undertaking.

**EXECUTION**

Executed in Queensland

**SIGNED** for and on behalf of )

**QR NETWORK PTY LTD** )

in the presence of: )

\_\_\_\_\_

Witness

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

**[the ACCESS HOLDER]** )

in the presence of: )

\_\_\_\_\_

Witness

\_\_\_\_\_

Print Name

\_\_\_\_\_

Witness

\_\_\_\_\_

Print Name

**Note:** QR will require the Access Holder to execute this Agreement either:

- (a) under seal; or
- (b) under s127(i) of the Corporations Act; or
- (c) under a duly executed Power of Attorney.

QLD Competition Authority  
Date Received  
12-May-2008



**QR NETWORK PTY LTD**

Deleted: QUEENSLAND  
RAIL

Deleted: ABN 47 564 947 264

**and**

**[\*\*\*]**

Deleted: ABN[

**ACCESS AGREEMENT  
COAL**

THIS AGREEMENT is made on the

day of

200

**BETWEEN** QR NETWORK PTY LTD ACN (insert) of Level 14, 305 Edward Street, Brisbane, Queensland, ("QR")

**AND** The party specified in Item 1 of the Reference Schedule ("**Access Holder**")

**Deleted: QUEENSLAND RAIL**, a body corporate established pursuant to the Government Owned Corporations Act 1993 and having its principal office at Rail Centre 1, 305 Edward Street, Brisbane in the State of Queensland

## RECITALS

- A** QR is responsible for the provision of the Infrastructure and Train Control.
- B** QR has agreed to grant non-exclusive rights to the Access Holder for the operation of Train Services by the Operator over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Agreement.
- C** The Parties may enter into separate agreements for the provision of services by QR to the Access Holder other than the Access Rights.

## OPERATIVE PROVISIONS

- 1.** In this Agreement words and expressions which are defined in the General Conditions of Contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract.
- 2.** The following documents shall be deemed to form and be read and construed as part of this Agreement:
- (a) Reference Schedule attached to this Agreement as **Schedule A**;
  - (b) General Conditions of Contract attached to this Agreement as **Schedule B**; and
  - (c) all Schedules, exhibits and annexures to this Agreement.

and Clause 1.2 of the General Conditions of Contract shall apply to the extent that there is any inconsistency between any of the above documents.

## ACCESS RIGHTS

### 1. Grant of Access Rights

In consideration of the Access Holder agreeing to pay the Access Charges and other payments to be made to QR by the Access Holder, QR grants to, and will provide, the Access Holder Access Rights in accordance with the Train Service Description for the operation of Train Services by the Operator on and from the Commitment Date on the terms in, and subject to the conditions of, this Agreement.

### 2. Nature and Scope of Access Rights

- (a) The Access Rights granted under Clause 1 are non-exclusive contractual rights and do not give the Access Holder any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Access Holder must not:

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- (i) operate on or use, or permit the Operator to operate on or use, any part of the Infrastructure that is not specifically included in the Nominated Network; or
- (ii) use, or permit the Operator to use, the Nominated Network for carrying out any provisioning, inspection, testing, maintenance of Rollingstock, any marshalling, shunting or other relocation of Rollingstock or storage of Rollingstock or for any other purpose other than the operation of Train Services

unless specifically directed by QR to do so in accordance with the provisions of this Agreement or as specified in this Agreement.

- (c) The Parties acknowledge and agree QR is required to provide the Access Holder with certain benefits, rights and services in accordance with Paragraphs 2.1(c) and 2.1(h) of QR's Access Undertaking, and to the extent that these requirements are relevant to the Access Holder's Access Rights it is intended the terms on which they are provided are detailed in this Agreement.

### 3. Ancillary Services

In consideration of the Access Holder agreeing to pay the charges for Ancillary Services, QR will provide the Ancillary Services (if any) set out in **Schedule 11**.

### 4. Renewal

If the Access Holder gives notice to QR not less than twelve (12) Months prior to the Termination Date of its intention to seek a renewal of the Term, QR will consult with the Access Holder in good faith to negotiate an extension or renewal of the Term provided always that:

- (a) subject to any provision to the contrary in QR's Access Undertaking, the Access Holder will not be granted priority over any other party seeking access to the Nominated Network; and
- (b) the chief executive of the Department of Transport has a right in priority to the Operator and any other party seeking access to reserve the capacity which is committed to the Operator under this Agreement with effect on and from the Termination Date for existing or proposed regularly scheduled passenger services.



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## **SCHEDULE A**

### **REFERENCE SCHEDULE**

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**REFERENCE SCHEDULE**

This Reference Schedule forms part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 2008 made between QR and the Access Holder listed in Item 1 below.

Item

1. **Access Holder:**

Name
<a href="#"><u>ACN</u></a>
Address
  
2. **Commencement Date:**
  
3. **Termination Date:**
  
4. **Commitment Date:**
  
5. **Security Deposit:**

(General Conditions of Contract Clause 2.4 (a))	Subject to QR's reasonable assessment of the creditworthiness of the Access Holder, the Security Deposit (if applicable) will be an amount equivalent to the greater of twelve (12) weeks Access Charges determined as if the Access Holder made maximum use of its Access Rights or the deductible for any one loss as specified in <b>Schedule 7</b>
-------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
  
6. **Date for Completion of Matters prior to the Commencement of Train Services:**

(General Conditions of Contract Clause 3.1(c))
------------------------------------------------

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## **SCHEDULE B**

### **GENERAL CONDITIONS OF CONTRACT**

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GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract form part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 200 made between QR and the Access Holder.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless inconsistent with the context, the following words and expressions shall have the respective following meanings:

“**Access Charges**” means the charges determined in accordance with **Schedule 3** payable to QR by the Access Holder for the Access Rights and any interest payable in relation to such charges pursuant to this Agreement;

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“**Access Holder’s Proposal**” has the meaning given to that term in Clause 8.1(c);

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“**Access Holder’s Representative**” means the person for the time being appointed pursuant to paragraph 3.2 of Part 3 of **Schedule 10**;

Deleted: <#>any amount which Paragraph 6.4.4(f) of QR’s Access Undertaking or Paragraph 3.8(b) of Schedule F, Part B of QR’s Access Undertaking provide that QR may recover from the Access Holder as a component of the Access Holder’s access charges;¶

“**Access Holder’s Staff**” means employees, contractors, volunteers and agents of the Access Holder and the Operator and any other person under the control or supervision of the Access Holder or the Operator who is involved in any activity associated with the Train Services;

Deleted: “**Access Holder**” means the party specified in Item 1 of the Reference Schedule, its successors and permitted assigns;¶¶

“**Access Rights**” means the rights of access to the Nominated Network granted pursuant to this Agreement;

“**Accreditation**” means accreditation in accordance with Part 4 of Chapter 6 of the Transport Infrastructure Act and “**Accredited**” means to have Accreditation;

“**Agreed Deterioration Threshold**” means the threshold allowance for deviations from a Train path within which a Train Service is considered to be on time, as agreed between QR and the Access Holder in **Schedule 1**;

“**Agreed Exit Threshold**” means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR and the Access Holder in **Schedule 1**;

“**Agreement**” or “**this Agreement**” means the Agreement, Reference Schedule and General Conditions of Contract between QR and the Access Holder and includes all annexures, Schedules and exhibits to this Agreement;

“**Allowable Threshold**” means [*a % agreed between the Parties*] of the total number of Train Services scheduled for a Billing Period;

“**Ancillary Services**” means those services (if any) in addition to Access Rights which QR has agreed to supply to the Access Holder and which are set out in **Schedule 11**;

“**Assign**” means to assign, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, and “**Assignment**” and “**Assignee**” shall have comparable meanings;

“**Authority**” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a

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public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR (but excluding QR Limited ACN 124 649 967);

**“Average Transit Time”** means the target average time scheduled for the relevant Train Service type from Origin to Destination or from Destination to Origin which comprises the relevant Sectional Running Times, delays for passing of other Trains on the Nominated Network, Operational Constraints relating to the Infrastructure (other than Operational Constraints attributable to a Railway Operator or a Force Majeure Event) but excluding Planned Dwell Times and which may be varied in accordance with the Interface Coordination Plan;

**“Base Access Charges”** means the Base Access Charges specified in **Schedule 3** and incorporates the elements thereof;

**“Billing Period”** means the period of a Month;

**“Board of Inquiry”** means a board of inquiry established under the Transport Infrastructure Act;

**“Central Queensland Coal Region”** means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine;
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;
- (iv) from the port of Abbot Point to Newlands mine; and
- (v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

**“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 date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; 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 being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

**“Change in Relevant Taxes”** means:

- (a) the imposition of a new Relevant Tax;

- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax;

**“Claim”** means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including the costs and expenses of defending or settling any action, proceeding, claim or demand;

**“Commencement Date”** means the date of execution of this Agreement as specified in Item 2 of the Reference Schedule;

**“Commitment Date”** means the date on which the Access Rights will be available to the Access Holder as specified in Item 4 of the Reference Schedule;

**“Common Corridor”** means:

- (i) for transfers of Access Rights within an Individual Coal System pursuant to Clause 3.3, that part of the Infrastructure that will be utilised by the New Railway Operator’s Trains in respect of which the Access Holder’s Relinquishment Fee is to be reduced provided that where the distance from the New Railway Operator’s origin to destination for its relevant train service is greater than the distance from the Access Holder’s Origin to Destination (“Access Holder’s haul distance”), the Common Corridor will only extend from the New Railway Operator’s destination (unloading facility) for a distance equal to the Access Holder’s haul distance;
- (ii) in all circumstances other than those described in subparagraph (i), that part of the Infrastructure that was utilised by the Access Holder (through the Operator) for the Train Services for which Access Rights are being relinquished and will also be utilised by the New Railway Operator’s Trains in respect of which the Access Holder’s Relinquishment Fee is to be reduced;

**“Common Costs”** means those costs associated with the provision of Infrastructure that are not Incremental Costs for any particular Train service using that Infrastructure;

**“Consequential Loss”** means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort;
- (iii) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever;
- (iv) any loss arising out of any Claim by a Third Party (other than a Claim in respect of loss or destruction of or damage to real or personal property or personal injury to or death of any person),

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

**“Contaminating Materials”** means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable or inflammable, harmful to the environment (including any life form) or may cause pollution, contamination or otherwise cause damage;

**“Corporation”** has the meaning assigned to it by the Corporations Act;

“Corporations Act” means the Corporations Act 2001 (Cwth);

“Cyclic Traffic” means a traffic such as coal traffic whose Train Service Description is defined in **Schedule 1** in terms of a number of Train Services within a particular period of time, for example, a year, month or week;

“Daily Train Plan” or “DTP” means that document detailing the scheduled times for all Train services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure;

“Dangerous Goods” means any substance or article prescribed as Dangerous Goods under the Dangerous Goods Code;

“Dangerous Goods Code” means the following codes prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications as amended or varied from time to time or any other codes developed to replace or supplement them:

- (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; and
- (c) the Code of Practice for the Safe Transport of Radioactive Material;

“Default Rate” means 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) plus 2%;

“Destination” means the destination or destinations described in **Schedule 1**;

“Efficient Cost” means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR operates, and including any transitional arrangements agreed between QR and the QCA to reflect the transition from QR’s actual cost to that efficient cost;

“Emergency Possession” is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Infrastructure that is considered dangerous to either a Railway Operator’s and/or QR’s Staff, or where severe speed restrictions have been imposed affecting the scheduled Train services of Railway Operators. Such possession must be carried out less than seven (7) days from the detection of the problem;

“Enhancement” means the improvement, upgrading or other variation of the whole or any part of the Infrastructure which affects the capabilities of the Infrastructure and any major replacement programme for elements of the Infrastructure;

“Environmental Authorities” means:

- (a) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the *Environmental Protection Act 1994* (Qld); or

- (b) any authority which has effect under section 619 of the *Environmental Protection Act 1994* (Qld);

“**Environmental Harm**” means serious or material environmental harm or environmental nuisance as defined in the *Environmental Protection Act 1994*;

“**Environmental Investigation and Risk Management Report**” means the environmental investigation and risk management report referred to in Clause 8.1(a) and included in Part 1 of **Schedule 9**;

“**Environmental Laws**” means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies, guidelines, regulations and relevant approved codes of practice and the conditions of all licences, notices, directions, approvals, consents, permissions or permits issued thereunder or amended from time to time;

“**Environmental Management System**” means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licences;

“**Environmental Protection Agency**” means the authority established under the *Environmental Protection Act 1994*;

“**Equivalent Access Rights**” means access rights which have the same Origin/Destination and have the same format of Train Service Description (that is, such as Cyclic Traffic) as the Access Rights under this Agreement which are being relinquished by the Access Holder under Clause 3.3;

“**Escalation Date**” means the date being 1 January, 1 April, 1 July and 1 October in each year during the Term, being the dates on which the Access Charges and other charges payable by the Access Holder to QR under this Agreement are to be escalated in accordance with **Schedule 3**;

“**Evaluation Period**” means:

- (i) when in reference to an individual Train service, the period which is equal to the length of the expected duration of the existing or proposed access agreement in respect of the relevant Train service;
- (ii) when in reference to a combination of Train services for the purpose of determining a Reference Tariff to apply for some or all of those Train services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train services other than referred to in subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed access agreement in respect of any of the Train services comprising the combination of Train services, provided that such period does not exceed ten (10) years;

“**First Escalation Date**” means the Escalation Date identified as the First Escalation Date in Table 1.2 of **Schedule 3** for each Train Service type;

“**Forecast Traffic**” means the current tonnage forecast upon which an applicable Reference Tariff is based;

“**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:
- (i) 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;
  - (ii) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;
  - (iii) act of God;
  - (iv) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
  - (v) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
  - (vi) malicious damage or sabotage;
  - (vii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - (viii) failure of electricity supply from the electricity grid;
  - (ix) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
  - (x) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
  - (xi) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement;

**“Good Engineering Practices”** means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**“GST”** means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia;

**“GST Inclusive Reimbursement”** is the amount calculated by the formula:

$$(A - C) \times (1+B)$$

Where:

A = the GST inclusive amount paid by a Party for a Reimbursable Item;

B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made;  
and

C = any GST input tax credit that the Party can claim in respect of that Reimbursable Item;

“**Incident**” means any Network Incident involving the activities of the Operator;

“**Incremental Costs**” means those costs of providing access rights, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train service or combination of Train services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of access rights;

“**Individual Coal System**” means any one of the following:

- (i) all coal carrying Train services operating to or from the port of Abbot Point on the Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train services operating to or from the ports of Hay Point or Dalrymple Bay on the Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train services operating to or from the Stanwell Power Station on the Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;  
or
- (v) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

“**Individual Coal System Infrastructure**” means the relevant one of the following:

- (i) that Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) that Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory branch line;

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- (iii) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

**“Infrastructure”** means all rail transport infrastructure as defined in the Transport Infrastructure Act;

(a) \_\_\_\_\_ for which QR is the Accredited Railway Manager; or

(b) \_\_\_\_\_ for which QR is required to obtain responsibility for under Clause 2.2 of QR’s Access Undertaking (as that provision is amended, varied or replaced from time to time);

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

**“Insolvency Event”** means the happening of any of the following events in relation to a Party:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one Month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within fourteen (14) days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

**“Interface Coordination Plan”** means the plan detailed in **Schedule 10** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party (or the Operator as applicable), in respect of all regular operational interfaces between the Parties (and between QR and the Operator) that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles;

**“Interface Risk Assessment”** means an assessment of the risks associated with the Operator’s operations insofar as they interface with the Infrastructure and other Train services as provided in Clause 11;

**“Interface Risk Management Plan”** means the plan referred to in Clause 11 and included in Part 2 of **Schedule 9**;

“**Interface Risks**” means all the risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Operator’s operations and:

- (i) the Nominated Network;
- (ii) the operation of other Train services; and
- (iii) any other activities on the Nominated Network that affect QR’s Staff or QR’s interfaces with members of the public;

“**Investigation**” means an investigation conducted in accordance with **Schedule 8**;

“**Land**” means the land on which the Nominated Network is situated and which is:

- (a) [land](#) owned or controlled by QR;
- (b) [land in respect of which entry is required to be given by QR under Subparagraph 2.1\(c\)\(ii\) of QR’s Access Undertaking \(as that provision is amended, varied or replaced from time to time\)](#);

“**Landowner**” has the meaning given to that term in Clause 22.18;

“**Law**” or “**Laws**” means a statute, ordinance, rule or regulation;

“**Load Variation Table**” means a table published by QR in respect to the relevant Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“**Maintenance Work**” means any work involving repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Infrastructure (other than Enhancements) and includes any inspections or investigations of the Infrastructure;

“**Master Book of Rules**” means QR’s standards for Safeworking Procedures;

“**Master Train Plan**” or “**MTP**” means that document detailing the scheduled times as advised by QR from time to time for all Train services operating on the Infrastructure (where such scheduled times remain unchanged from week to week) and any Planned Possessions;

“**Material Change**” has the meaning given to that term in Clause 16.1(a);

“**Material Environmental Harm**” means material environmental harm as defined in the Environmental Protection Act 1994;

“**Maximum Allowable Gross Tonnage**” means the Maximum Allowable Gross Tonnage for a Wagon, Wagon bogie or Train as specified in **Schedule 4**;

“**Maximum Desirable Gross Tonnage**” means the Maximum Desirable Gross Tonnage for a Wagon as specified in **Schedule 4**;

“**Maximum Transit Time**” means the maximum below rail transit time for the relevant Train Service type that QR may utilise under this Agreement;

“**Month**” means calendar month, and “**Monthly**” has a corresponding meaning;

“**Network Incident**” means any Rollingstock derailment, Rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence on the Infrastructure which causes or could cause injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by QR of any Train Movement;

“**Network Management Principles**” means the principles for the provision of Train Control and scheduling as specified in Part 1 of **Schedule 10**;

“**Noise Planning Levels**” means the planning levels for railways referred to in the Environmental Protection (Noise) Policy 1997;

“**Nominated Annual Train Services**” means the number of Train Services that the Access Holder is entitled to operate during any one (1) year for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

“**Nominated Monthly Train Services**” means the number of Train Services that the Access Holder is entitled to operate during any one (1) month period for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

“**Nominated Network**” means that part of the Infrastructure detailed in Part 1 of **Schedule 2**;

“**Nominated Weekly Train Services**” means the number of Train Services that the Access Holder is entitled to operate during any one (1) week period as specified in **Schedule 1** or as varied in accordance with this Agreement;

“**Obstruction**” means any circumstance relating to the whole or any part of the Infrastructure or private siding, including debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation by QR of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by QR;

“**One Way Train Service**” means a Train Service operating in one direction only on the Nominated Network either from Origin to Destination or from Destination to Origin as the case may be;

“**Operational Constraint**” means any restriction on the use of any part of the Infrastructure which impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Emergency Possessions, Urgent Possessions or signalling or overhead restrictions;

“**Operator**” means the Accredited Railway Operator that is contracted by the Access Holder to operate the Train Services on behalf of the Access Holder in accordance with the Access Holder’s Access Rights;

“**Operator Performance Level**” means the Operator Performance Level specified in Part 1 of **Schedule 5**;

“**Operator’s Controller**” means the person for the time being nominated in that position pursuant to **Schedule 10** ;

“**Operator’s Emergency Response Plan**” means the plan as defined in Clause 7.1(a);

“**Operator’s Incident Response Coordinator**” means the person appointed pursuant to paragraph 4.2 of Part 4 of **Schedule 10**;

“**Operator’s Recovery Team Leader**” means the person appointed pursuant to paragraph 4.3 of Part 4 of **Schedule 10**;

“**Operator’s Safety Management System**” means the system referred to in Clause 11(a)(iii);

“**Origin**” means the origin or origins described in **Schedule 1**;

“**Other Dwell Times**” means, for any other designated activity, the time period from when a Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant QR Train Controller accordingly;

“**Overload Charge**” means the charge determined in accordance with Part 6 of **Schedule 3**;

“**Overload Detector**” means a weighing mechanism other than a Weighbridge agreed upon for use by the Parties and specified in Part 6B of Schedule 2;

“**Party**” means a party to this Agreement, and “**Parties**” means the parties to this Agreement. For the avoidance of doubt, the Operator is not a party to this Agreement;

“**Passenger Priority Obligations**” means the obligations of a Railway Manager pursuant to sections 265 and 266 of the Transport Infrastructure Act;

“**Performance Levels**” means the QR Performance Level and the Operator Performance Level;

**Planned Dwell Times** means any of Time at Mine, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule;

“**Planned Possession**” means the temporary closure and/or occupation by QR of a part of the Infrastructure including, but not limited to, closure of Track or isolation of any electrical overhead traction system for the purpose of carrying out Maintenance Work, Enhancement or other work on or in the proximity of the Infrastructure which may affect the safety of any person or property where such closure, occupation or isolation is entered into the Train Schedule and adversely impacts upon the operation of Train services;

“**Possession Protocols**” means the protocols developed and advised by QR from time to time (as varied in accordance with this Agreement) for managing and scheduling track possessions of the Infrastructure;

“**Private Facilities**” means sidings, loading and unloading facilities and any other facilities of any kind which are required by the Operator to operate the Train Services and which do not form part of the Nominated Network;

“**Private Facilities Agreement**” has the meaning given to that term in Clause 5.11;

“**QR Cause**” means where QR is unable to make available the Infrastructure for Train services at the Scheduled Time in the Train Schedule or at a reasonable alternate Scheduled Time as a result of

- (i) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (ii) a Force Majeure Event which prevents QR from making the Infrastructure available for Train services in accordance with the relevant access rights; or
- (iii) any other action by QR which directly resulted in the Infrastructure not being so available,

where such inability by QR is not attributable in any way to a Railway Operator or QR complying with its Passenger Priority Obligations;

**Deleted:** “QR” means Queensland Rail, a body corporate established pursuant to the Government Owned Corporations Act 1993, its successors and assigns;¶

“**QR Commander**” means a member of QR’s Staff who has been delegated responsibility for the direction and coordination of QR’s and the Access Holder’s and/or Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with external agencies;

“**QR Emergency Procedures**” means the procedures developed and advised by QR from time to time (as varied by QR in accordance with this Agreement) for dealing with a Network Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;

“**QR Performance Level**” means the QR Performance Level specified in Part 1 of **Schedule 5**;

“**QR Representative**” means the QR officer specified in **Schedule 10**;

“**QR Train Control Direction**” means any instruction or direction (whether given orally or in writing, by means of signal or other similar device) issued by QR or on behalf of QR relating to Train Movements;

“**QR Train Controller**” means the person nominated by QR as the supervisor of Train Movements on the relevant part of the Nominated Network and whose details are specified in **Schedule 10**;

“**QR’s Access Undertaking**” means the access undertaking submitted by QR to the Queensland Competition Authority and approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time;

“**QR’s Right of Way**” means the strip of property on which earthworks, traction wiring equipment, tunnels, bridges, fences and track are constructed for the operation of Rollingstock. Where the at grade boundaries for the Right of Way are not readily identifiable they will be regarded as being at least ten (10) metres from the centre line of the track;

“**QR’s Staff**” means the employees, contractors and agents of QR and any other person under the control or supervision of QR involved in the provision of Access Rights;

“**Quarter**” means each period of three (3) consecutive Months commencing 1 January, 1 April, 1 July or 1 October in each year, and “**Quarterly**” has a corresponding meaning;

“**Queensland Competition Authority**” or “**QCA**” means the authority established under the Queensland Competition Authority Act 1997;

“**Rail Safety Accreditation Unit**” or “**RSAU**” means the Rail Safety Accreditation Unit of the Department of Transport for the State;

“**Railway Manager**” has the meaning given to that term in the Transport Infrastructure Act;

“**Railway Operator**” means, as the context allows:

- (a) any party that holds rights of access to all or any part of the Infrastructure (including, but not limited to, the Access Holder); and
- (b) any Accredited railway operator (including, but not limited to, the Operator);

“**Recovery**” means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Access Holder and/or Operator is responsible to enable prompt

recommencement of Train Movements, including the subsequent retrieval of any such Rollingstock;

**“Reduction Factor”** means for the purposes of Clause 3.3(d):

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the New Railway Operator’s Trains that utilise the access rights referred to in Clause 3.3(b) for which the Access Holder’s Relinquishment Fee is to be reduced; and

B = the annual train kilometres over the Nominated Network attributable to the Train Services for which the Access Holder is seeking to relinquish Access Rights;

**“Reference Tariff”** means an access charge applicable to a specified Reference Train Service over a specified part of the Infrastructure as specified in QR’s Access Undertaking;

**“Reference Tariff Schedule”** means the schedule attached to QR’s Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service;

**“Reference Train Service”** means a notional Train service identified 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 the terms and conditions of the specified access agreement;

**“Reimbursable Item”** means an item of expense incurred by either Party in respect of which that Party is entitled under this Agreement to be reimbursed by the other Party;

**“Related Body Corporate”** has the meaning given to that term in the Corporations Act;

**“Relevant Escalation Date”** means the Escalation Date occurring immediately prior to the last day of the Billing Period for which the invoice for the Access Charges payable in respect of that Billing Period is being prepared;

**“Relevant Rollingstock”** means any Rollingstock of the Access Holder (or Operator) with a minimum value of ONE MILLION DOLLARS (\$1,000,000) and which has been nominated as Relevant Rollingstock in Part 3 of **Schedule 4**;

**“Relevant Tax”** means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR by, or payable by QR to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

**“Relinquishment Fee”** means the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the Term of this Agreement if the Agreement remained on foot but the Access Holder did not operate the relevant Train Services;

**“Removal Expert”** means the person for the time being holding the position of Safety Regulator or such other person as agreed between the Parties;

**“Restoration”** means the removal of any Obstruction, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure but does not include Recovery;



**“Review Date”** means the date determined as the Review Date pursuant to Clause 3.1.2 of **Schedule 3**;

**“Rollingstock”** means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track and where used in respect of the Access Holder’s (or Operator’s) Rollingstock includes Rollingstock which is owned, hired or leased by the Access Holder or Operator, supplied by a contractor of the Access Holder or Operator or is otherwise in the possession or control of the Access Holder or Operator;

**“Rollingstock Configuration”** means the description of the combinations of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

**“Rollingstock Interface Standards”** means those Rollingstock Interface Standards agreed as part of the Interface Risk Assessment and included in the Interface Risk Management Plan;

**“Safety Regulator”** means the person for the time being holding the position of Safety Regulator in the Rail Safety Accreditation Unit (RSAU);

**“Safety Related Work”** means safety activity in one or more of the following:

- (a) driving and operation of Trains;
- (b) control of the movement of Trains;
- (c) the design, construction, repair, maintenance, upgrading, inspection and/or testing of Track, Rollingstock, civil and electric traction infrastructure, Signalling and/or Telecommunications Equipment; and
- (d) any other duties prescribed by QR as safety related work;

**“Safety Standards”** means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR policies as specified in **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement and all standards relating to safety, including occupational health and safety, prescribed by any Laws;

**“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure as specified in Part 1 of **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement;

**“Schedule”** means a schedule to this Agreement and any other schedule which amends, replaces or substitutes a schedule to this Agreement issued from time to time by QR pursuant to Clause 22.20;

**“Scheduled Time”** means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as detailed in the Train Schedule or as amended or altered by QR from time to time on the day of operation pursuant to the Network Management Principles provided that such amendments or alterations do not result in a notice for cancellation by the Operator pursuant to Clause 5.3(d);

**“Sectional Running Times”** means the time period measured from the time a Train Service passes the signal controlling entry into a track section between two relevant specified locations on the Nominated Network to the time the Train Service arrives at the signal controlling entry into the

next track section between two relevant specified locations on the Nominated Network, and does not include an allowance for Planned Dwell Times;

**“Security Deposit”** means initially an amount equal to the amount specified in Item 5 of the Reference Schedule;

**“Security Interest Rate”** means the “Cash Rate: average 11am rate” 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 included in another publication agreed between the Parties) less 0.5%;

**“Serious Environmental Harm”** means serious environmental harm as defined in the Environmental Protection Act 1994;

**“Signalling and Telecommunications Equipment”** means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control;

**“State”** means the State of Queensland;

**“Stowage”** means the short-term storage of Trains on the Nominated Network at locations specified by QR but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

**“System Forecast”** means the forecast of Gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in the relevant Reference Tariff Schedule;

**“System Gtk”** means the actual Gtk achieved by all coal carrying Train services to the extent those Train services travel on the relevant Individual Coal System Infrastructure over the relevant period;

**“System Wide Requirements ”** means the Network Management Principles, the Possession Protocols, the Interface Coordination Plan, the Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards, the QR Emergency Procedures and QR’s Investigation Procedures;

**“Tax Invoice”** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);

**“Term”** means the term of this Agreement, commencing on the Commencement Date and ending on the Termination Date;

**“Termination Date”** means the date specified in Item 3 of the Reference Schedule or such earlier date upon which this Agreement is terminated pursuant to the provisions of this Agreement;

**“Third Party”** means a person other than the Access Holder or QR;

**“Time at Depot”** means the period from when a Train Service arrives at the entry signal to the depot until it has completed all activities at the depot, is ready to depart the depot and has advised the relevant QR Train Controller accordingly;

**“Time at Mine”** means the time period from when a Train Service arrives at the entry signal to the specified mine loading facility until it has completed loading, has presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Time at Unloading Facility”** means the time period from when a Train Service arrives at the entry signal to the specified unloading facility until it has completed unloading, presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Track”** means the part of the Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

**“Train”** means any configuration of Rollingstock operating as a unit on the Track;

**“Train Control”** means the scheduling and control of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation;

**“Train List”** means the information required to be supplied by the Access Holder (or the Operator) in accordance with Part 2 of **Schedule 10** in respect of each individual Train Service to be operated on the Nominated Network;

**“Train Movement”** means the operation of a Train on the Infrastructure by the Operator, QR or any Railway Operator;

**“Train Schedule”** means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by QR prior to the day of operation in accordance with the Interface Coordination Plan showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure;

**“Train Service”** means the running of a Train between specified origins and destinations by the Operator (including any Stowage) in accordance with a Train Service Description;

**“Train Service Description”** means the description of a Train Service detailed in Part 1 of **Schedule 1**;

**“Train Service Levels”** means collectively the Nominated Weekly Train Services, the Nominated Monthly Train Services and the Nominated Annual Train Services specified in **Schedule 1**;

**“Transport Infrastructure Act”** means the Transport Infrastructure Act 1994;

**“Urgent Possession”** is similar to a Planned Possession, except that such a possession is required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) Months from the detection of the problem;

**“Variation Notice”** has the meaning given to that term in Clause 3.2(a);

**“Wagon”** means any Rollingstock designed to carry any load other than passengers;

**“Weekly Train Plan”** or **“WTP”** means a seven (7) day plan that details the scheduled times for all Train services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Infrastructure on each day of the relevant week;

**“Weighbridge”** means a weighbridge or weightometer certified under the Trade Measurement Act 1990, as specified in Part 6A of Schedule 2; and

“Year” (when used with a capital) means the period from (and including) the first day of the Month in which the Commitment Date occurs to (but not including) the first anniversary thereof, and from every twelve (12) Month period thereafter except that the last year will end on the date of expiry or termination of this Agreement.

## 1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body and conversely;
  - (ii) a person includes its legal personal representative, successors and assigns;
  - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
  - (iv) conduct includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
  - (vii) time is to local time in Queensland;
  - (viii) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
  - (ix) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the parties;
  - (x) any thing (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
  - (xi) a Clause is to a clause of the General Conditions of Contract to this Agreement;
  - (xii) a Schedule is to a schedule to this Agreement (as amended from time to time in accordance with this Agreement);

- (xiii) any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xiv) any Authority, association or body whether statutory or otherwise shall, in the event of any such Authority, association or body ceasing to exist or being re-constituted, re-named or replaced or the powers or functions thereof being transferred to any other Authority, association or body, be deemed to refer respectively to the Authority, association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof; and
- (e) if there is any inconsistency between matters contained in a Schedule and any other provisions of the Agreement, the other provisions of the Agreement prevail. If there is any inconsistency between matters contained in QR's Access Undertaking and this Agreement, the provisions of this Agreement prevail.

## **2. CHARGES**

### **2.1 Access Charges**

The Access Holder must pay to QR:

- (a) the Access Charges at the times and in the manner set out in this Agreement;
- (b) the charges for Ancillary Services (if any) calculated and payable in the manner set out in this Agreement;
- (c) any other charges or amounts payable in accordance with this Agreement; and
- (d) on demand and without prejudice to the rights, powers and remedies of QR under this Agreement or otherwise at Law, interest at the Default Rate calculated on daily balances and payable daily on any amount outstanding in respect of an invoice, including any disputed amount which is subsequently determined to be payable to QR, from the day after the invoice is due to be paid until the date that the amount outstanding is paid in full, and all interest payable but unpaid at the end of each Month shall be capitalised by QR and such capitalised amount shall itself bear interest at the Default Rate.

### **2.2 Invoicing**

Unless agreed otherwise between the Parties:

- (a) QR will provide to the Access Holder an invoice for the Access Charges, charges for Ancillary Services (if any) and any other charges or amounts payable by the Access Holder under this Agreement as soon as practicable after the end of each Billing Period or, where this Agreement has expired or terminated on a date other than 30 June and the invoice is for annual take or pay charges, as soon as practicable after the first 30 June following that expiration or termination.
- (b) The first Billing Period will commence on the Commitment Date and end on the last day of the Month in which the Commitment Date falls, and each subsequent Billing Period during the Term will commence on the day following the last day of the immediately preceding Billing Period.

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- (c) Subject to Clause 2.2(d), the Access Holder must pay to QR the amount of the invoice referred to in Clause 2.2(a) within fourteen (14) days after receipt of the invoice.
- (d) Where the Access Holder bona fide disputes an amount or amounts claimed in an invoice it shall give notice of that dispute (setting out in detail the grounds for its objection) to QR within fourteen (14) days after receipt of the invoice. Notwithstanding the Access Holder's objection to any amounts claimed in an invoice, the Access Holder must pay to QR the undisputed portion of the amount or amounts claimed in the relevant invoice together with 50% of the disputed portion within fourteen (14) days after receipt of the invoice.
- (e) Any dispute as to the amount claimed in an invoice shall be resolved by an expert in accordance with Clause 17.3. Upon resolution of such dispute in accordance with Clause 17.3:
  - (i) the Access Holder must pay to QR the amount (if any) determined to be payable by the Access Holder to QR together with the interest on that amount calculated in accordance with Clause 2.1(d) within fourteen (14) days after being notified of the expert's determination; or
  - (ii) QR must credit to the Access Holder in the form of a deduction from the invoice for Access Charges and other charges for the Billing Period immediately following a resolution in accordance with Clause 17.3 any amount found to have been overpaid by the Access Holder together with interest on that amount at the Default Rate calculated on daily balances from the date of payment of the amount overpaid to the date of such credit. Such interest payable but unpaid at the end of each Month shall be capitalised and such capitalised amount shall itself bear interest at the Default Rate.
- (f) When providing the Access Holder with an invoice which includes, in whole or part, an amount for an annual take or pay charge, QR shall provide the Access Holder with information on how QR determined the amount of the annual take or pay charge.

**2.3 GST**

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If a Party is required to pay GST on any amount payable or other consideration to be provided under this Agreement, then the other Party must pay to that Party an amount equal to the GST payable on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, then a Party must pay the other Party in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) Each invoice prepared pursuant to Clause 2.2(a) shall take the form of a Tax Invoice.

**2.4 Obligation to Grant Security**

- (a) The Security Deposit (if applicable) shall initially be for the amount specified in Item 5 of the Reference Schedule. If a Security Deposit is applicable the Access Holder must deliver to QR, prior to the operation of Train Services, security for the performance of the Access Holder's obligations under this Agreement in the form of:

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- (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
  - (ii) any other security reasonably acceptable to QR,
- and containing such other terms and conditions as are reasonably acceptable to QR.
- (b) Where the Access Holder has delivered a Security Deposit to QR in the form of cash, QR will pay interest to the Access Holder annually at the Security Interest Rate published on the day the Security Deposit is provided. The Security Interest Rate shall be reset on the first business day of each Month (“Reset Date”) for that Month. Such interest shall be capitalised at each Reset Date and such capitalised interest shall itself bear interest at the Security Interest Rate.
  - (c) The Access Holder may, with QR’s consent, replace any Security Deposit provided by the Access Holder in accordance with this Clause with another form of Security Deposit acceptable to QR. If the Access Holder replaces the Security Deposit with another form of Security Deposit then QR will release the initial Security Deposit in accordance with Clause 2.6(b).
  - (d) The provision and continuance of the Security Deposit (or of any additional or replacement Security Deposit provided by the Access Holder in accordance with Clause 2.4(c) or Clause 2.4(f)) is a condition of the performance by QR of its obligations under this Agreement.
  - (e) If at any time during the Term QR does not hold a Security Deposit from the Access Holder, the Access Holder must provide a Security Deposit within fourteen (14) days after receipt of a notice from QR where:
    - (i) an event of default by the Access Holder in regard to payment of any amount due under this Agreement has occurred, that event of default is not the subject of a bona fide dispute between the Parties and such default continues for seven (7) days after notice of such default from QR; or
    - (ii) in the event of an Assignment or at any time during the Term, if QR is reasonably of the opinion that the Access Holder is:
      - (A) no longer financially sound;
      - (B) no longer able to meet its debts as and when they fall due; or
      - (C) not otherwise capable of performing its obligations under this Agreement.
  - (f) If at any time during the Term the Security Deposit held by QR is less than the amount determined in accordance with Item 5 of the Reference Schedule (including for reasons that QR has drawn on or applied the Security Deposit in accordance with Clause 2.5), the Access Holder must increase the Security Deposit by the amount determined by QR as required to ensure that the amount of Security Deposit accords with Item 5 of the Reference Schedule, and deliver to QR an additional or replacement Security Deposit to reflect the change within fourteen (14) days after receipt of notice from QR.
  - (g) If the Access Holder considers its financial circumstances have changed such that a Security Deposit would no longer be required, the Access Holder may request QR in

writing (but not more than once in any twelve (12) Month Period) to review the creditworthiness of the Access Holder and QR will undertake such a review.

## 2.5 Exercise of Security

The Security Deposit will be held by QR as security for the performance of the obligations of the Access Holder under this Agreement and may be called upon by QR in any circumstances where QR suffers direct loss or damage as a result of default by the Access Holder under this Agreement and is entitled to be compensated for such loss or damage under this Agreement.

## 2.6 Return of Security

QR must repay or return to the Access Holder (and where appropriate provide to the Access Holder any necessary releases in relation to) any Security Deposit provided by the Access Holder under Clause 2.4:

- (a) subject to QR's rights of recourse to the Security Deposit in Clause 2.5, promptly after the Termination Date;
- (b) on receipt of an additional or replacement Security Deposit provided by the Access Holder in accordance with Clause 2.4(c) or 2.4(f); or
- (c) following a review pursuant to Clause 2.4(g), QR, acting reasonably, finds that it is not necessary for the Access Holder to provide QR with a Security Deposit.

## 2.7 Weighbridges and Overload Detectors

- (a) Where an operational Weighbridge or Overload Detector is located en route between Origin and Destination the Access Holder must ensure that the Operator uses reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner to facilitate weighing.
- (b) Where a Weighbridge or Overload Detector is located en route between Origin and Destination, the Party responsible for that Weighbridge or Overload Detector (as specified in Part 6 of **Schedule 2**) must use reasonable endeavours to ensure that:
  - (i) such Weighbridge or Overload Detector is available; and
  - (ii) Trains are operated in a manner that the Weighbridge or Overload Detector weighs the Trains.
- (c) QR may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Access Holder.
- (d) The Access Holder must ensure that the Operator uses reasonable endeavours to ensure that the mass of any Wagon or Train operated by it under this Agreement does not exceed the relevant Maximum Allowable Gross Tonnage.
- (e) In the event that any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, the Access Holder must cause the Operator to reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage. QR may direct a Train to a specific siding or location to allow such reduction and the Access Holder must cause the Operator to comply with such direction.



- (f) In the event that any Wagon operated by the Operator is determined to be in excess of the relevant Maximum Desirable Gross Tonnage, QR may:
- (i) charge the Access Holder (and the Access Holder must pay) an Overload Charge (in accordance with Part 6 of **Schedule 3**) in respect of that Wagon; and
  - (ii) impose any Operational Constraints which QR considers to be reasonable in the circumstances.
- QR will include the Overload Charge in the invoice for Access Charges for the Billing Period immediately following such determination for payment by the Access Holder.
- (g) The Weighbridges to be used by QR in the calculation of Access Charges are those specified in Part 6A of **Schedule 2**.
- (h) Where the Trains are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in Part 6B of **Schedule 2** must use reasonable endeavours to:
- (i) keep a record of the gross mass of each loaded Wagon and Train (and the Access Holder must use reasonable endeavours to ensure such information is obtained from the operator of the Weighbridge or Overload Detector where the Weighbridge or Overload Detector is not owned or controlled by QR);
  - (ii) provide such record to the party loading the Trains; and
  - (iii) provide such record to the other Party within fourteen (14) days of the end of each Month.
- (i) If either Party reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the accuracy of such Weighbridge or Overload Detector to be tested, and the Weighbridge or Overload Detector shall be deemed to have malfunctioned from the date of such notice until such testing has been carried out and/or the Weighbridge or Overload Detector has been recalibrated and the mass will be determined in accordance with Part 2 of **Schedule 3**. Testing will be carried out in accordance with the following procedure:
- (i) As soon as reasonably practicable the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** must ensure that a suitably qualified person conducts a test of the calibration of the Weighbridge or Overload Detector and makes any adjustments required to correct the calibration.
  - (ii) Except in the case of manifest error or fraud, the determination of the person conducting the test will be final and binding on the Parties.
  - (iii) Where the person conducting the test determines that the Weighbridge or Overload Detector is measuring within the tolerances specified in Part 6 of **Schedule 2**, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given pursuant to this Clause 2.7(i) and the Access Charges (including any Overload Charge) will be determined from that date according to Part 5 of **Schedule 3**. The invoice for Access Charges in respect of the Billing Period following such determination will be adjusted to appropriately account for the difference in payment of Access Charges

arising from having treated the Weighbridge or Overload Detector as malfunctioning pursuant to this Clause 2.7(i).

- (iv) The cost of conducting such test shall be met by:
  - (A) the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** in the event that the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in Part 6 of **Schedule 2**; or
  - (B) the Party giving notice under this Clause 2.7(i) in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of **Schedule 2**.
- (j) Notwithstanding any other provision in this Agreement, neither Party will be liable to the other for any damage, loss, cost or expense that the other may suffer or incur as a result of that Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement.
- (k) Notwithstanding any other provision in this Agreement, neither Party shall have any Claim against the other Party as a result of or arising from any delay to or cancellation of Train Services as a result of the operation of Clause 2.7(i).

### 3. TRAIN SERVICE ENTITLEMENTS

#### 3.1 Train Services

- (a) Without limiting any other provision of this Agreement, the Access Holder must not commence (or allow the Operator to commence) any Train Services unless and until the Access Holder has done each of the following in respect to those Train Services:
  - (i) if applicable, delivered to QR the Security Deposit in accordance with Clause 2.4;
  - (ii) provided to QR a certificate of compliance for all of the Access Holder's and/or Operator's Rollingstock and Rollingstock Configurations in accordance with Clause 5.9 and QR has authorised such Rollingstock and Rollingstock Configurations;
  - (iii) demonstrated to QR that the Access Holder has entered into agreements in respect of the Private Facilities as required by Clause 5.11 (if applicable);
  - (iv) provided to QR a copy of the Operator's Emergency Response Plan which must be compatible with the QR Emergency Procedures;
  - (v) provided to QR an acceptable Environmental Investigation and Risk Management Report in accordance with Clause 8.1;
  - (vi) implemented, or caused the Operator to implement, those elements of the Environmental Investigation and Risk Management Report, if applicable, which are to be implemented prior to the commencement of Train Services;
  - (vii) complied with the community liaison requirements referred to in Clause 8.6(a);

- (viii) provided to QR evidence of the Operator's Accreditation as required by Clause 9.1(a);
  - (ix) conducted an Interface Risk Assessment in accordance with Clause 11(a);
  - (x) devised in collaboration with QR and the Operator an Interface Risk Management Plan and implemented, or caused the Operator to implement, the elements of such plan required to be implemented prior to the commencement of Train Services;
  - (xi) caused the Operator to develop the Operator's Safety Management System and incorporate into that system the elements and process referred to in Clause 11(a)(iii); and
  - (xii) taken out and/or caused the Operator to have taken out (as appropriate) the insurances required under Clause 13 and provided to QR evidence of that insurance as required by Clause 13.3.
- (b) QR will use all reasonable endeavours to cooperate with the Access Holder and/or Operator (as applicable) to facilitate the Access Holder's completion or compliance with Clause 3.1(a).
- (c) If the Access Holder has not done (or caused to be done) each of the acts, matters or things specified in Clause 3.1(a) for its initial Train Services by
- (i) the date specified in Item 6 of the Reference Schedule and QR has no reasonable expectation that the Access Holder can commence the operation of Train Services by the Commitment Date; or
  - (ii) by the Commitment Date
- then QR may, provided that QR has complied with Clause 3.1(b), notify the Access Holder in writing of its intention to terminate this Agreement, and if the Access Holder has not complied with all the requirements of Clause 3.1(a) by a date which is thirty (30) days after the date of the notice, QR may terminate this Agreement.
- (d) The Access Holder must cause the Operator to operate Train Services only in accordance with the Train Service Description and this Agreement. Unless acting under a QR Train Control Direction, the Access Holder must ensure that the Operator does not operate Train Services which do not comply with the Train Service Description without the prior written approval of QR, which approval may specify terms in addition to or varying the terms of this Agreement in respect of those Train Services, including the Access Charges applicable. The Access Holder must ensure that the Operator complies with such terms in operating the Train Services.
- (e) For the avoidance of doubt, the Access Holder acknowledges and agrees that it is only entitled to exercise its Access Rights under this Agreement through the Operator, and that it is the Operator, and not the Access Holder, that will operate the Access Holder's Train Services under this Agreement.

### **3.2 Reduction of Access Rights**

- (a) If:
  - (i) during any twelve (12) consecutive weeks during the Term, the Operator fails, for any reason other than due to a Force Majeure Event or the failure

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of QR to make the Access Rights available, to operate all the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks; and

- (ii) QR is satisfied that it can demonstrate that it has:
- (A) a reasonable expectation of a sustained alternative demand for that part of the Access Rights that have not been utilised: or
  - (B) a reasonable expectation of a commercial benefit for the provision of and management of the Infrastructure sufficiently material to justify the resumption of that part of the Access Rights that have not been utilised,

then QR may, within sixty (60) days of the last day of the relevant twelve (12) week period, give a notice (“**Variation Notice**”) to the Access Holder proposing that the Access Holder’s entitlement to operate Train Services be reduced from a nominated date (being a date at least twenty-one (21) days after the Access Holder receives the Variation Notice) (“**Date of Resumption**”) to a level specified in the notice which level shall be no less than that which is equivalent to the Access Holder’s average weekly usage of the Nominated Weekly Train Services during the relevant twelve (12) week period.

- (b) After receipt of a Variation Notice the Access Holder shall have the opportunity to demonstrate to QR’s reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services).
- (c) If the Access Holder fails to demonstrate to QR’s reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services), the Access Holder’s entitlement to operate Train Services shall be reduced to the level specified in the Variation Notice with effect on and from the Date of Resumption.
- (d) If the Access Holder does not agree with the reduction of the Access Holder’s entitlement proposed by QR pursuant to Clause 3.2(a), the Access Holder may, within twenty one (21) days of receipt of the Variation Notice, notify QR in writing that it disputes the proposed reduction in which case the Access Holder may refer the dispute for determination by an expert in accordance with Clause 17.3 of this Agreement. The expert will determine whether the conditions for a reduction in Access Rights set out in Clause 3.2(a) have been met and whether the Access Holder has demonstrated, to QR’s reasonable satisfaction, a sustained requirement for that part of the Access Rights to which the reduction would apply. QR must not effect the reduction proposed in the Variation Notice until resolution of the dispute and may only implement a reduction consistent with the expert’s determination.
- (e) QR may withdraw the Variation Notice at any time prior to the Date of Resumption or fourteen (14) days following the resolution of the dispute, whichever is the later.
- (f) In the event that the Access Holder’s entitlement to operate Train Services is reduced in accordance with this Clause 3.2, the Agreement (including the Base Access Charges) will be varied accordingly.
- (g) The Access Holder shall have no claim or entitlement to compensation as a result of any reduction in Train Services pursuant to this Clause 3.2.

### 3.3 Relinquishment and Transfer of Access Rights

- (a) Where the Access Holder wishes to relinquish some or all of its Access Rights and no other existing or prospective Railway Operator (“**New Railway Operator**”) has agreed to take up New Access Rights pursuant to Clause 3.3(g) or Other Access Rights pursuant to Clause 3.3(h) then provided that:
- (i) the Access Holder has given to QR reasonable notice of its intention to relinquish such Access Rights; and
  - (ii) the Access Holder pays to QR the Relinquishment Fee within:
    - (A) two (2) years of the notice provided in accordance with Clause 3.3(a)(i), where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region; or
    - (B) six (6) Months of the notice provided in accordance with Clause 3.3(a)(i), in any other case,
- then from the date of payment of the Relinquishment Fee, the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights. During the period between when the notice of intention is given and the Relinquishment Fee is paid, the terms of the Agreement will continue to apply in respect of the Access Rights which the Access Holder intends to relinquish.
- (b) The Relinquishment Fee payable under Clause 3.3(a)(ii) will be reduced in accordance with Clause 3.3(d) where:
- (i) a Railway Operator has entered into an access agreement with QR in respect of access rights that QR could not have provided without using the whole or part of the relinquished Access Rights;
  - (ii) following the provision of notice pursuant to Clause 3.3(a)(i), but prior to the payment of the Relinquishment Fee pursuant to Clause 3.3(a)(ii), QR’s obligation to provide such access rights under the new access agreement has commenced; and
  - (iii) no other Railway Operator is seeking to transfer or relinquish access rights that more closely resemble the access rights sought by the New Railway Operator.
- (c) Where QR is negotiating an access agreement with a New Railway Operator that, if executed, would reasonably be expected to result in a reduction to the Access Holder’s Relinquishment Fee pursuant to Clause 3.3(b), QR will not unreasonably delay the process for negotiating and executing an access agreement with that New Railway Operator.
- (d) Where Clause 3.3(b) applies, and subject to Clause 3.3(f), the Relinquishment Fee will be reduced by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the New Railway Operator’s average contribution to Common Costs per train kilometre for its relevant Train services is less than the Access Holder’s average contribution to Common Costs per train kilometre for its relevant Train Services, the Reduction Factor will be decreased in proportion to the relative contribution.

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- (e) Where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region, the amount payable by the Operator to QR under Clause 3.3(a) will not exceed 50% of the Relinquishment Fee (as determined prior to any reduction under Clause 3.3(d)).
- (f) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).
- (g) Where the Access Holder wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights which are Equivalent Access Rights (“**New Access Rights**”), then provided that:
- (i) the Access Holder has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the New Access Rights;
  - (ii) QR has, following the receipt of notice pursuant to Clause 3.3(g)(i), entered into an access agreement with that New Railway Operator for the New Access Rights and QR’s obligation to provide such New Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable); and
  - (iii) the Access Holder pays to QR, where applicable, within fourteen (14) days of receipt of an invoice from QR, a transfer fee, determined by QR as equivalent to the present value, considered over the remaining Term, of any future expected reductions in contributions to QR’s Common Costs in providing the Infrastructure (including the return earned on Infrastructure assets) due to the net effect of the relevant relinquishment of the Access Holder’s Access Rights and the take up of the New Access Rights on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining Term, and provided that in no circumstances will the transfer fee be less than zero (0),
- then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of such Access Rights.
- (h) Where the Access Holder wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights with a different origin/destination but with the same format of Train service description as the Access Rights (that is, a Cyclic Traffic) (“**Other Access Rights**”) then provided that:
- (i) the Access Holder has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the Other Access Rights;
  - (ii) QR has, following the receipt of notice pursuant to Clause 3.3(h)(i), entered into an access agreement with that New Railway Operator for the Other Access Rights and QR’s obligation to provide such Other Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable);
  - (iii) the Access Holder has paid to QR, where applicable, a transfer fee equivalent to the Relinquishment Fee that would have been payable for relinquishment of the Access Rights provided that:
    - (A) where (and only where) the Other Access Rights are for the transportation of specified net tonnes of coal between a specified

origin and destination that have not been included in the Forecast Traffic; or

- (B) where the Other Access Rights are for Train services other than coal carrying Train services operating in the Central Queensland Coal Region,

the transfer fee will be reduced in accordance with Clause 3.3(d); and

- (iv) no other Railway Operator is seeking to transfer access rights that more closely resemble the access rights sought by the New Railway Operator

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights.

- (i) Where Access Rights have been reduced, relinquished or transferred in accordance with this Agreement to the extent that there is no longer any Access Rights, QR will be entitled to terminate this Agreement.

### 3.4 Forecasts

- (a) For the purposes of permitting QR to plan for the maintenance and upgrading of the Infrastructure, the Access Holder will, within thirty (30) days after being requested to do so by QR (such requests to be made not more than once in any six (6) Month period), provide to QR a forecast in writing representing the Access Holder's best estimate for the next six (6) year period specified by QR in its request of:

- (i) the number and frequency of Train Services it will require;
- (ii) the gross tonnage it will transport (or cause the Operator to transport);
- (iii) the average number of gross tonnes per Train it will transport (or cause the Operator to transport); and
- (iv) any changes in Rollingstock or Rollingstock Configuration which will vary any of the above,

such forecast of the above information to be made up of:

- (i) a forecast for each Month of the first year of such period; and
- (ii) a forecast for each of the remaining five (5) years of such period.
- (b) QR will, within thirty (30) days after being requested to do so by the Access Holder (such requests to be made not more than once in any six (6) Month period), provide to the Access Holder forecasts of planned major Enhancements relating to the Nominated Network for each of the next six (6) years.
- (c) The information and/or forecasts provided pursuant to Clauses 3.4(a) or (b) shall be prepared and supplied in good faith however the information and/or forecasts shall not be a representation or warranty as to the accuracy of the information and/or forecasts itself and the parties have no liability in any respect for the information and/or forecasting.

#### **4. DAY TO DAY TRAIN MOVEMENTS**

##### **4.1 Train Control**

QR will provide and will have exclusive responsibility for Train Control in respect of the Nominated Network.

##### **4.2 Train Control Rights and Obligations**

- (a) QR must exercise Train Control by the issue of QR Train Control Directions to the Operator and the Access Holder's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control QR shall have regard to the safe conduct of rail operations on the Infrastructure and:
  - (i) may delay, alter or add a Train Service;
  - (ii) may cancel, re-route or re-schedule a Train Service;
  - (iii) may alter the Scheduled Times for Train Services in the Train Schedule; and
  - (iv) may impose any Operational Constraint on the Nominated Network consistent with Clause 6.2.
- (c) The Access Holder must:
  - (i) ensure the Operator complies with QR Train Control Directions;
  - (ii) ensure the Access Holder's Staff comply with QR Train Control Directions;
  - (iii) ensure that Train drivers are contactable by the QR Train Controller to receive QR Train Control Directions;
  - (iv) ensure the Operator notifies the QR Train Controller as soon as the Operator becomes aware that it is not possible for the Operator or the Access Holder's Staff to comply with a QR Train Control Direction or the Operator or the Access Holder's Staff have not complied with a QR Train Control Direction; and
  - (v) ensure the Operator notifies the QR Train 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 Train Control including the ability of any Train Service to conform to its Scheduled Times.

##### **4.3 Train Control Communications**

The Access Holder must ensure all Trains are equipped with or have available means of communication to permit the Access Holder's Staff to comply with this Agreement (including the Rollingstock Interface Standards and the relevant Safeworking Procedures).

#### **5. TRAIN OPERATIONS**



**5.1 Compliance**

- (a) To the extent relevant to the performance of its obligations under this Agreement, the Access Holder must observe and comply with, and/or cause the Operator to observe and comply with (as applicable):
- (i) all applicable Laws;
  - (ii) the conditions of the Operator's Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) the Rollingstock and Rollingstock Configurations authorised in accordance with Clause 5.9;
  - (v) the Train Service Description (subject to the Network Management Principles);
  - (vi) the description of the relevant Reference Train Service except as otherwise specified in this Agreement;
  - (vii) QR Train Control Directions;
  - (viii) the Safeworking Procedures and Safety Standards;
  - (ix) the Network Management Principles;
  - (x) the Interface Coordination Plan;
  - (xi) to the extent applicable, the QR Emergency Procedures;
  - (xii) the Operator's Emergency Response Plan;
  - (xiii) the Environmental Investigation and Risk Management Report;
  - (xiv) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by QR from time to time and the permits, approvals and licences in respect of facilities to which access is provided by QR to the Access Holder;
  - (xv) the Interface Risk Management Plan (including the Rollingstock Interface Standards);
  - (xvi) subject to the provision of reasonable notice specifying relevant licences and permits and their applicability to the Access Holder and/or Operator, to the extent applicable to the Access Holder and/or Operator, all licences and permits affecting the operations of QR; and
  - (xvii) to the extent applicable to the Access Holder, the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (b) To the extent relevant to the performance of its obligations under this Agreement, QR must observe and comply with:
- (i) all applicable Laws;

- (ii) the conditions of its Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) to the extent applicable, QR Train Control Directions;
  - (v) the Safeworking Procedures and Safety Standards;
  - (vi) to the extent applicable, the Train Service Description (subject to the Network Management Principles);
  - (vii) the Network Management Principles;
  - (viii) the Interface Coordination Plan;
  - (ix) QR's Emergency Procedures;
  - (x) the Interface Risk Management Plan;
  - (xi) all licences and permits affecting the operations of QR; and
  - (xii) the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (c) QR must ensure that as far as practicable:
- (i) the Network Management Principles;
  - (ii) the Safeworking Procedures and Safety Standards; and
  - (iii) QR's Emergency Procedures
- will be applied consistently for all Railway Operators on the Nominated Network.

## 5.2 Compliance with Scheduled Time

- (a) QR must use reasonable endeavours to, and the Access Holder must cause the Operator to use reasonable endeavours to:
- (i) operate Train Services in accordance with the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles, varied in the circumstances specified in this Agreement or otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
  - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service shall be deemed to operate in accordance with its Scheduled Time if it does not vary more than three (3) minutes from the Scheduled Time.

## 5.3 Alterations to Train Services

- (a) The Access Holder must ensure that if the Operator does not propose to operate a Train Service the Operator must, prior to the scheduled operation of the Train Service, advise QR of the cancellation of such Train Service and the reason for such cancellation.

- (b) In the event that a Train Service is unable to operate in accordance with its Scheduled Time then, provided that the Access Holder has complied with Clause 5.2(a), QR will use its reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service provided that QR will be under no obligation to alter the scheduled times for other Train Movements.
- (c) In the event that for any reason the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule or at any other Scheduled Time advised by QR in accordance with Clause 5.3(b), QR may authorise the operation of another Train Movement at that Scheduled Time.
- (d) In the event that a Train Service is for any reason unable to commence to operate in accordance with its Scheduled Time and following bona fide consultation between QR and the Operator it is not possible for QR to provide an alternative Scheduled Time reasonably acceptable to both parties, such Train Service may be cancelled by either QR or the Operator giving notice to the other party as soon as practicable.

#### 5.4 Notification

- (a) QR must notify the Operator's Controller (such notification to include where relevant the anticipated effect on the relevant Train Service) as soon as reasonably practicable after QR discovers or becomes aware of any circumstances including Obstructions (other than those circumstances of which the Operator is aware or ought to have been aware) which:
  - (i) have materially affected, or could potentially materially affect, the ability of any Train Service to comply with its Scheduled Time; or
  - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Access Holder's Staff.
- (b) QR must at the earliest possible time after becoming aware of the relevant changes advise the Operator's Controller from time to time of changes to advices previously provided pursuant to Clause 5.4(a).
- (c) The Operator must inform QR of any failure to comply with:
  - (i) any applicable Laws relevant to the Operator's Train Services;
  - (ii) QR Train Control Directions; and
  - (iii) the Rollingstock and Rollingstock Configurations authorised in **Schedule 4**.

#### 5.5 Operator to Supply Information

The Access Holder must cause the Operator to provide to QR, and at all times maintain operable, all necessary software, hardware and associated communication links to establish, to QR's reasonable satisfaction, an interface with QR's information systems and must provide information to QR in relation to each Train Service prior to operation on the Nominated Network in accordance with paragraph 2.1 of Part 2 of **Schedule 10**. The interface with QR's information systems will be subject to any controls specified by QR to protect the integrity and confidentiality of the systems and the information contained therein.

**5.6 Performance Levels**

- (a) The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in Part 1 of **Schedule 5**. A failure by either Party to achieve the relevant Performance Level will not constitute a breach of this Agreement and the only consequences of such failure as between the Parties shall be the consequences set out in this Clause 5.6.
- (b) If the Operator does not comply with the Operator Performance Level then the Access Holder must pay to QR the amount determined in accordance with **Schedule 5** as part of the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following QR becoming entitled to that amount.
- (c) If QR does not comply with the QR Performance Level then QR will credit to the Access Holder the amount determined in accordance with **Schedule 5** by way of a deduction from the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following the Access Holder becoming entitled to that amount.
- (d) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six (6) Months after the Commitment Date or any previous review of the Performance Levels. If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties may agree on varied Performance Levels and any associated variations to the Agreement including the Base Access Charges and the Train Service Description. If the Parties are unable to agree to such variations, then the existing Performance Levels shall continue to apply unless varied by QR in accordance with the provisions of Clause 5.6(e).
- (e) In the event that the Access Holder and/or the Operator
  - (i) does not comply in any material respect with the Train Service Description; and
  - (ii) the Access Holder fails to demonstrate to the reasonable satisfaction of QR when requested to do so, that the Access Holder and/or the Operator will consistently comply with the Train Service Description for the remainder of the Termthen, following consultation with the Access Holder, QR will be entitled to:
  - (iii) vary the Train Service Description to a level it reasonably expects to be achievable by the Access Holder and/or the Operator for the remainder of the Term having regard to the extent of previous compliance with the Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to a Railway Operator (other than the Access Holder or the Operator) or to QR); and
  - (iv) vary the Agreement (including, without limitation, the Operator Performance Level and the Base Access Charges) to reflect the impact of the change in the Train Service Description.
- (f) The Access Holder shall be entitled to dispute any variation proposed by QR pursuant to Clause 5.6(e) and such dispute will be referred to an expert for resolution in accordance with Clause 17.3.

**5.7 Interface Coordination Plan**

- (a) QR and the Access Holder agree to comply with the Interface Coordination Plan in exercising their rights and performing their obligations under this Agreement.
- (b) QR will provide the Operator with that information identified in paragraph 3(f) of Part 1 of **Schedule 10** relevant to the Operator's operation of Train Services.

**5.8 Operation of Trains and Rollingstock**

The Access Holder is responsible for the safe operation of its (or the Operator's) Rollingstock on the Nominated Network and must ensure that at all times whilst the Operator is operating on the Nominated Network:

- (a) the Access Holder's or Operator's Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards);
- (b) the Operator operates only authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**; and
- (c) all loading and unloading of the Access Holder's or Operator's Rollingstock is undertaken in a manner that:
  - (i) is consistent with the requirements of **Schedule 4** and the Rollingstock Interface Standards;
  - (ii) does not affect the safe operation of the Rollingstock; and
  - (iii) ensures that all items on or in the Access Holder's or Operator's Rollingstock remain secured in position during transit.

**5.9 Authorisation of Rollingstock & Rollingstock Configurations**

- (a) Prior to the operation of any Train Services the Access Holder must:
  - (i) cause the Operator to implement the control measures devised in the Interface Risk Management Plan relevant to assessing the compatibility of the Access Holder's or Operator's Rollingstock and Rollingstock Configurations with the Nominated Network; and
  - (ii) without limiting Clause 5.9(a)(i), provide to QR a certificate by a suitably qualified person whom both QR and the Access Holder accept as being competent to provide such certification as to the compliance of the Access Holder's or Operator's Rollingstock and Rollingstock Configurations with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Rollingstock and Rollingstock Configurations the subject of that certificate shall then, subject to QR's reasonable satisfaction with the certificate provided, be authorised by QR and included in **Schedule 4** as the authorised Rollingstock and Rollingstock Configurations.
- (b) If requested to do so by QR, the Access Holder must provide to QR (or procure the certifying party to provide to QR) relevant documentation (including reports on trials and/or commissioning tests) demonstrating that the Rollingstock and Rollingstock

Configurations comply with the Interface Risk Management Plan including the Rollingstock Interface Standards.

- (c) Where QR is not satisfied, on the basis of documentation provided by the Access Holder or the certifying party in accordance with Clauses 5.9(a) and (b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan, either Party may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan for resolution by an expert in accordance with Clause 17.3.
- (d) In the event that during the Term the Access Holder (or Operator) wishes to:
  - (i) modify any of the Access Holder's or Operator's authorised Rollingstock or Rollingstock Configurations; or
  - (ii) have additional Rollingstock or Rollingstock Configurations authorised for use on the Nominated Network,

then prior to using any such modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network:

- (i) the Access Holder must notify QR (giving details of the relevant modification or additional Rollingstock or Rollingstock Configurations);
- (ii) if QR considers it reasonably necessary to do so, the Access Holder must conduct (or cause to be conducted) a supplementary Interface Risk Assessment jointly with QR in accordance with Clause 11 (and the provisions of that Clause shall apply if there is any dispute between the Parties in relation to the conduct of the supplementary Interface Risk Assessment);
- (iii) the Access Holder must provide to QR a certificate of compliance in respect of the modified or additional Rollingstock or Rollingstock Configurations in accordance with Clauses 5.9(a) to (c);
- (iv) the Interface Risk Management Plan shall be amended to reflect any changes agreed or determined in accordance with this Clause 5.9(d), and the Parties shall make any other amendments to this Agreement (including QR varying the Base Access Charges) which may be reasonably necessary to reflect the authorisation and use of the modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network; and
- (v) QR must advise the Access Holder of any variations to the Base Access Charges payable by the Access Holder as a result of the authorisation of such modified or additional Rollingstock or Rollingstock Configurations. If the Access Holder disputes the variations to the Base Access Charges advised by QR in accordance with this Clause, either Party may refer the dispute to the QCA for determination in accordance with Clause 17.6.

#### 5.10 Amendments to System Wide Requirements

- (a) QR may, acting reasonably, amend a System Wide Requirement by the issue of a notice ("**Amendment Notice**");

- (i) on safety grounds, at any time without the consent of the Access Holder subject to providing reasonable notice of the proposed amendment and consulting with the Access Holder prior to its implementation;
  - (ii) if required pursuant to a Material Change; and
  - (iii) in any other circumstance, subject to negotiating the Access Holder's agreement to such proposed amendment prior to its implementation in accordance with this Clause 5.10 (the Access Holder's agreement not to be unreasonably withheld or delayed).
- (b) The Amendment Notice issued by QR pursuant to Clause 5.10(a) must include details of the proposed amendments to the extent reasonably necessary so as to properly inform the Access Holder of the terms of the proposed amendments and to enable the Access Holder to assess the consequences and impact for the Access Holder (and the Operator) of the proposed amendments and details of the proposed implementation date.
- (c) In respect of any amendment proposed pursuant to Clause 5.10(a)(iii), the Access Holder shall provide advice to QR as to whether:
- (i) the proposed amendments will materially impact on the Access Holder's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Agreement over a sustained period of time notwithstanding the Access Holder's entitlement to reach agreement with QR in terms of the funding of any material financial impact pursuant to Clause 5.10(e)(ii); or
  - (ii) the Access Holder will suffer a net material financial impact (that is, a net cost) equivalent to 1% or greater of the annual Access Charges directly as a result of the proposed amendments.
- (d) Where the Access Holder has provided advice to QR pursuant to Clause 5.10(c)(i) and has satisfied QR, acting reasonably, within thirty (30) days of receipt by QR of that advice, that the Operator's operation of Train Services under this Agreement will be fundamentally frustrated over a sustained period of time directly as a result of the proposed amendments notwithstanding the Access Holder's entitlement to reach agreement with QR in terms of the funding of any net material financial impact pursuant to Clause 5.10(e)(ii), QR will not implement the proposed amendments. In the event that the Access Holder is unable to so satisfy QR, QR may implement the proposed amendments at any time except that:
- (i) in the event that the circumstances outlined in Clause 5.10(c)(ii) exist, such implementation shall be subject to Clause 5.10(e); or
  - (ii) in the event that the Access Holder disputes QR's finding, either Party may refer the dispute for determination by an expert in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the determination of the expert.
- (e) Where the Access Holder has provided advice to QR pursuant to Clause 5.10(c)(ii) that the relevant circumstances exist then:
- (i) within thirty (30) days of providing such advice the Access Holder shall provide to QR further advice of such net material financial impact including estimates of any additional costs, savings, benefits or detriments to be obtained

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or suffered or reasonably expected to be obtained or suffered, by the Access Holder directly as a result of implementing the proposed amendments and the Access Holder shall warrant that any estimates given by it are accurate on the basis of the information reasonably available to it and sufficiently detailed to enable QR to reasonably assess such net material financial impact; and

- (ii) the Parties will negotiate in good faith to agree appropriate financial arrangements between them with respect to such net material financial impact and, failing agreement within a further thirty (30) day period, either Party may refer the matter of appropriate financial arrangements to an expert for determination in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the expert's determination.
- (f) In making his determination the expert must have regard to, except in circumstances where consequences are otherwise provided under this Agreement, the costs and benefits accruing to the Access Holder but excluding any costs associated with other entitlements of QR under this Agreement.
- (g) The Access Holder shall use all reasonable endeavours to minimise the net material financial impact suffered by it due to the proposed amendments.
- (h) Notwithstanding Clause 5.10(e), where any System Wide Requirement is varied on safety grounds, each Party will fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (i) At any time following a determination pursuant to Clause 5.10(e), QR may elect not to proceed with the proposed amendments.
- (j) The Parties must account to each other in respect of the contributions agreed or determined pursuant to Clause 5.10(e)(ii) following completion of the implementation of the proposed amendments and subsequent modifications to the Access Holder's or Operator's systems, equipment or Rollingstock as required by the amendments.
- (k) Where QR implements the proposed amendments in accordance with this Clause 5.10, the relevant System Wide Requirement will be altered accordingly following completion of the implementation of the proposed amendments. The Parties must (and the Access Holder must cause the Operator to) undertake all necessary action and make all necessary amendments to the Interface Risk Management Plan, the Environmental Investigation and Risk Management Report and/or the Operator's Emergency Response Plan in response to the relevant amendments including providing QR with a further certificate of compliance where the Access Holder's or Operator's Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement. QR will allow a reasonable period for the Access Holder and/or Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where QR may require immediate compliance.
- (l) In the event that QR undertakes an Enhancement, QR will only be required to vary the Rollingstock Interface Standards to reflect the impact of the Enhancement where the Parties have agreed as to the level and method of contribution to the funding of the Enhancement by the Access Holder.



**5.11 Private Facilities**

Prior to the commencement of any Train Services, the Access Holder must demonstrate to the reasonable satisfaction of QR that the Access Holder has entered into agreements with the owners or operators of the Private Facilities to enable the Operator to operate Train Services in the manner contemplated in this Agreement (“**Private Facilities Agreements**”). The Access Holder must use reasonable endeavours to maintain the Private Facilities Agreements in full force and effect for the period the Private Facilities are required for the operation of Train Services.

**6. INFRASTRUCTURE MANAGEMENT**

**6.1 Management and Control of the Nominated Network**

QR is responsible for the management of the Nominated Network and shall retain control over all activities on the Nominated Network.

**6.2 Maintenance of the Nominated Network**

- (a) QR must carry out Maintenance Work on the Nominated Network such that, subject to any agreed criteria and the Network Management Principles:
  - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
  - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) QR may impose either temporarily or permanently such Operational Constraints as it considers necessary for the protection of any person or any property (including the Infrastructure) or to facilitate the performance of Maintenance Work or Enhancements provided that in exercising its rights under this Clause 6.2(b) QR must:
  - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternate Scheduled Times having regard to the reasonable requirements of the Operator); and
  - (ii) comply with the relevant procedures specified in the Interface Coordination Plan.
- (c) Except to the extent that an Operational Constraint resulted from a breach by QR of this Agreement, any delays or cancellations of Train Services caused by or resulting from Operational Constraints shall not constitute a default by QR of its obligations under this Agreement and QR will not be liable for any Claims suffered or incurred by or made or brought by or against the Access Holder or Operator as a result of or arising from the imposition of such an Operational Constraint.
- (d) The Access Holder must (and must cause the Operator to) notify QR as soon as is reasonably practicable of any damage to or disrepair or failure in operation or function of any part of the Infrastructure of which the Access Holder or Operator (as applicable) becomes aware.
- (e) The Access Holder must provide reasonable cooperation to QR in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are

consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.

### 6.3 Inspection by Access Holder

- (a) Subject to Clause 6.3(b), the Access Holder may, prior to the initial commencement of Train Services, at its cost and risk, inspect the Infrastructure and circumstances surrounding the Infrastructure comprising the Nominated Network including, but not limited to, fencing and level crossing protection in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with operation of Train Services on the Infrastructure.
- (b) Any inspection by the Access Holder under Clause 6.3(a) shall be subject to:
  - (i) the Access Holder providing reasonable written notice to QR of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
  - (ii) any such inspection being conducted in the presence of a representative of QR; and
  - (iii) such other reasonable conditions as may be imposed by QR on such inspection including, but not limited to, compliance with QR's Safeworking Procedures and Safety Standards;

and shall be conducted in such a manner as to not cause any disruption to any Train Movements or to the undertaking of Maintenance Work or Enhancements.

## 7. INCIDENT MANAGEMENT

### 7.1 Operator's Emergency Response Plan

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services) the Access Holder must cause the Operator to develop and submit to QR a plan (the "**Operator's Emergency Response Plan**") which:
  - (i) contains the set of procedures developed by the Operator which are adequate for dealing with an Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;
  - (ii) without limiting Clause 7.1(a)(i) includes the matters outlined in Part 3 of **Schedule 6** relevant to the Operator's use of the Nominated Network; and
  - (iii) must at all times during the Term be compatible with the QR Emergency Procedures and this Agreement.
- (b) If QR is not reasonably satisfied that the Operator's Emergency Response Plan complies with Clause 7.1(a), QR must notify the Access Holder and if the Parties cannot agree on a mutually acceptable course of action to address QR's concerns within fourteen (14) days after the date of QR's notice, either Party may refer the matter to an expert in accordance with Clause 17.3. The expert will be required to determine whether or not the Operator's Emergency Response Plan:
  - (i) is compatible with the QR Emergency Procedures and this Agreement; and

- (ii) otherwise complies with Clause 7.1(a).

If the expert determines that the Operator's Emergency Response Plan:

- (i) is not compatible with the QR Emergency Procedures and this Agreement, he must determine how the non-compliance should be rectified and the Access Holder must cause the Operator to rectify the Operator's Emergency Response Plan accordingly; or
- (ii) is compatible with the QR Emergency Procedures and this Agreement, the Operator's Emergency Response Plan must be treated as complying with Clause 7.1(a).
- (c) The Access Holder must ensure that any amendments to the Operator's Emergency Response Plan comply with the requirements contained in Clause 7.1(a).
- (d) If the Operator intends to amend the Operator's Emergency Response Plan, the Access Holder must cause the Operator to notify QR of that fact, providing QR with details of the proposed amendments and the reasons for them. Within ten (10) days after receipt of that notice QR must notify the Access Holder if QR disputes any such proposed amendments, in which case any such dispute shall be resolved in accordance with the procedures set out in Clause 7.1(b).
- (e) No amendment to the Operator's Emergency Response Plan to the extent that it relates to the Operator's operations on the Nominated Network will be effective until it has been made in a manner permitted by this Clause 7.1.
- (f) The Access Holder must be able to demonstrate to QR that procedures are in place which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Response Plan and, to the extent relevant, the QR Emergency Procedures and that they are being observed.
- (g) The Access Holder must ensure that at all times sufficient members of the Access Holder's Staff are appropriately qualified to participate in Investigations and that the names and positions of those members of the Access Holder's Staff are maintained in the Operator's Emergency Response Plan.

## 7.2 Obstructions

The Access Holder must not (and must ensure that the Operator does not) cause any Obstruction or permit to continue any Obstruction caused by the Access Holder or Operator.

## 7.3 Notification

- (a) The Access Holder must cause the Operator to notify the QR Train Controller as soon as reasonably practicable after the Operator or the Access Holder's Staff discover or become aware of:
- (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
- (ii) anything which the Operator observes may cause or contribute to the occurrence of an Incident or Obstruction.
- (b) QR must notify the Access Holder of all Incidents involving the Access Holder's or Operator's Rollingstock.

**7.4 Management of Incident Response**

- (a) QR will be responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) The Access Holder must (or must cause the Operator to) arrange Recovery and cooperate with and assist QR in Restoration. The Access Holder will be responsible for effecting timely Recovery in accordance with the Operator's Emergency Response Plan. Where QR reasonably believes that more timely recommencement of Train Movements can be achieved by QR, then QR may, subject to using reasonable efforts to consult with the Access Holder, take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Access Holder's or Operator's Rollingstock) and recover such reasonable direct costs incurred by QR in doing so. The Access Holder must pay to QR such reasonable direct costs incurred by QR.
- (c) If an Incident occurs the Access Holder will (or will cause the Operator to) as soon as reasonably practicable notify QR and:
  - (i) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise the occurrence of injury to any person or damage to any property (including environmental damage) where there is an imminent risk of such injury or damage but otherwise take no action without the prior approval of QR, which approval shall not be unreasonably withheld; and
  - (ii) comply with the directions of QR in respect of the coordination and management of Restoration and Recovery.
- (d) (i) Both Parties must use all reasonable endeavours to ensure (and the Access Holder must cause the Operator to use all reasonable endeavours to ensure) that any property damage or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised provided that QR, subject to QR using reasonable efforts to consult with the Access Holder, will have the right to take such action (including to give directions to the Access Holder and the Operator and the Access Holder's Staff and to remove or require the Access Holder or Operator to remove any of their Rollingstock) as QR considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to Clause 7.4(d)(ii) and (iv), QR shall have no liability for any damage to or loss of freight or Rollingstock caused by such actions.
  - (ii) Where pursuant to Clause 7.4(d)(i) QR seeks to remove or require the Access Holder or Operator to remove any Relevant Rollingstock where QR considers such removal reasonably necessary to recommence Train Movements as soon as practicable and such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock, QR and the Access Holder must:
    - (A) use all reasonable efforts to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and at least within a period of six (6) hours after the occurrence of the Incident or such longer period as the Parties may agree; and
    - (B) if the Parties do not consult or reach agreement within a period of six (6) hours or such longer period as agreed, they will refer the

decision to the chief executive officers of each Party or their nominated delegate as specified in **Schedule 10** who must in good faith seek to agree a course of action within two (2) hours of the referral to them or such longer period as the Parties may agree.

- (iii) Where the chief executive officers of each Party or their nominated delegates, do not consult or do not agree within the specified period in Clause 7.4(d)(ii)(B), QR must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to the Removal Expert who shall assess whether, having regard to:
  - (A) the potential to further damage the Relevant Rollingstock;
  - (B) the impact on QR's ability to effect Restoration; and
  - (C) the time critical nature of the decision,the course of action proposed by QR is reasonable.
- (iv) QR shall be entitled to progress with the proposed course of action unless the Removal Expert assesses that QR's proposed course of action is unreasonable.
- (e) QR may, where it is reasonable and practicable in the circumstances to do so, issue a QR Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of QR and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of QR or another Railway Operator). The Access Holder must cause the Operator to comply with any such QR Train Control Direction. The Access Holder may recover from QR (on behalf of the Operator) such reasonable direct costs incurred by the Operator in complying with this Clause 7.4(e) as agreed and failing agreement within thirty (30) days after notice by the Access Holder to QR as determined by an expert in accordance with Clause 17.3.
- (f) In assessing the costs to be recovered under Clause 7.4(b) or Clause 7.4(e) for the use of Rollingstock, regard shall be had to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (g) Except as otherwise provided in this Agreement QR will not be liable for any delays, cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder or the Operator as a result of complying with a request by QR pursuant to Clause 7.4(e).

## 7.5 Investigations

- (a) In the event of an Incident, an Investigation into the Incident in the circumstances set out in **Schedule 8** must be commenced as soon as practicable unless otherwise agreed between the Parties and must be conducted in the manner and by the persons prescribed in **Schedule 8**.
- (b) Each Party must cooperate and ensure their respective staff cooperate fully with any Investigation and the Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the requirements of **Schedule 8**.

8. ENVIRONMENTAL MANAGEMENT AND PROTECTION

8.1 Environmental Management

- (a) The Access Holder must, prior to the commencement of any Train Services (including any new or varied Train Services):
- (i) cause a suitably qualified person reasonably acceptable to both Parties to prepare a report (“**Environmental Investigation and Risk Management Report**”) containing an environmental investigation component and an environmental risk management component which respectively identify:
    - (A) possible risks of Environmental Harm arising out of the proposed use of the Nominated Network by the Operator, including risks associated with those matters identified in Part 3 of **Schedule 6**; and
    - (B) the manner in which the Operator proposes to address the possible risks of Environmental Harm identified in the Environmental Investigation and Risk Management Report as well as the roles and responsibilities, including financial responsibility, for the control measures proposed and an audit regime,provided that if the Operator has an existing Environmental Management System it proposes to use in connection with the proposed Train Services on the Nominated Network, the Environmental Investigation and Risk Management Report should also detail the extent to which the Operator believes its existing Environmental Management System addresses the risks identified in the Environmental Investigation and Risk Management Report; and
  - (ii) provide a copy of the Environmental Investigation and Risk Management Report to QR for its consideration and, if requested by QR, a copy of the relevant parts of the Operator’s existing Environmental Management System referred to in the Environmental Investigation and Risk Management Report.
- (b) If the Environmental Investigation and Risk Management Report discloses areas of risk which, in the reasonable opinion of QR, cannot be adequately managed by the proposals set out in the Environmental Investigation and Risk Management Report or, in the reasonable opinion of QR, fails to identify and adequately deal with additional relevant environmental risks, then QR may give notice to that effect to the Access Holder within thirty (30) days after the date on which the Environmental Investigation and Risk Management Report was provided to QR (or such other period as the Parties, acting reasonably, may agree), detailing the risks not so adequately managed or not so identified or adequately dealt with. If QR does not give such notice, the Environmental Investigation and Risk Management Report shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (c) If QR gives notice pursuant to Clause 8.1(b) the Access Holder may respond, by a date agreed by the Parties, with a written proposal which demonstrates how the Access Holder proposes to manage those risks (“**Access Holder’s Proposal**”). The Access Holder’s Proposal must:

- (i) contain an investigation of the areas of risk and/or additional relevant environmental risks referred to in Clause 8.1(b);
  - (ii) (A) specify risk abatement or attenuation measures which the Access Holder proposes to undertake in relation to them; and/or  
(B) specify how the Access Charges might contain a component reflecting the cost to QR of assuming all or some portion of the risk;
  - (iii) in relation to paragraph (ii)(A) specify a timeframe for implementation of those measures; and
  - (iv) specify details of any public consultation the Access Holder proposes to undertake in connection with the implementation of any such measures.
- (d) QR may, in the exercise of its reasonable discretion, accept or reject all or part of the Access Holder's Proposal.
- (e) If QR accepts the Access Holder's Proposal, then it will be incorporated into and form part of the Environmental Investigation and Risk Management Report which shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (f) If the Access Holder fails to submit to QR an Access Holder's Proposal by the date agreed by the Parties, or if QR refuses to accept all or part of the Access Holder's Proposal, QR may advise the Access Holder of the risks not adequately managed or not identified or adequately dealt with, and then either Party may refer the issue of whether the Environmental Investigation and Risk Management Report and/or the Access Holder's Proposal does or does not adequately manage or does or does not identify or adequately deal with the relevant environmental risks to an expert in accordance with Clause 17.3.
- (g) If the expert determines that the Environmental Investigation and Risk Management Report and/or Access Holder's Proposal does adequately manage the risks or identifies and adequately deals with the risks, then the Environmental Investigation and Risk Management Report as modified by the Access Holder's Proposal (if applicable) will be accepted, included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (h) If the expert determines that the Environmental Investigation and Risk Management Report and/or Access Holder's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks, then provided the Access Holder amends the Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, the Environmental Investigation and Risk Management Report as amended will be accepted and included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (i) If the expert determines that the Environmental Investigation and Risk Management Report and/or Access Holder's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks and the Access Holder fails to amend the Environmental Investigation and Risk Management Report in accordance with the

expert's determination and/or recommendations within the time frame specified by the expert, QR may terminate this Agreement.

- (j) The Parties agree to implement the determination of the expert.

## 8.2 Environmental Management System

- (a) The Access Holder must cause the Operator to, prior to the commencement of any Train Services (including any new or varied Train Services), have in place an Environmental Management System. The Environmental Management System prepared by the Operator must:
- (i) have regard to the issues raised in the Environmental Investigation and Risk Management Report and contain procedures for implementing the risk management proposals identified in it. The Environmental Investigation and Risk Management Report includes the results of any expert determination referred to in Clause 8.1(f) or any amendment of the Environmental Investigation and Risk Management Report arising from the recommendations of any environmental audit or review conducted pursuant to Clause 8.7;
  - (ii) address all legislative requirements, including the requirements of the Environmental Authorities held by QR from time to time that are relevant to the Train Services to be operated by the Operator under this Agreement; and
  - (iii) identify systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with all Environmental Laws.
- (b) Prior to the commencement of any Train Services (including any new or varied Train Services), QR will ensure that the elements of the Environmental Investigation and Risk Management Report which QR is responsible for implementing are incorporated into QR's Environmental Management System.

## 8.3 Carriage of Dangerous Goods on Train Services

- (a) The Access Holder must ensure that where Dangerous Goods are to be carried on a particular Train Service:
- (i) all requirements of the Dangerous Goods Code are fully complied with (including placement of relevant, accurate and current documentation on Trains);
  - (ii) QR is advised of the details of the Dangerous Goods (including a description and the applicable Dangerous Goods United Nations (UN) Number) prior to the operation of a Train as part of the Train List; and
  - (iii) any authorisation or prior approvals required under the Dangerous Goods Code have been obtained and are available for inspection by QR if so requested.
- (b) The Access Holder must ensure that, where there is any likelihood of Train Services carrying Dangerous Goods and before any Dangerous Goods can be carried on Train Services, the Operator's Emergency Response Plan prepared in accordance with



Clause 7.1 includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried.

#### **8.4 Noise Management during Train Services**

- (a) In addition to any noise attenuation or management measures which may form part of or be identified in the Environmental Investigation and Risk Management Report, the Access Holder shall contribute to, as reasonably determined by QR, the costs incurred by QR in taking noise abatement measures on or adjacent to the Nominated Network considered reasonably necessary by QR where the Noise Planning Levels are, or but for the taking of these measures by QR, would be exceeded during the Term.
- (b) If, during the Term, the Noise Planning Levels are reduced such that noise from the Nominated Network exceeds the new Noise Planning Levels, QR may elect, in its absolute discretion, to implement noise abatement measures on the Nominated Network to ensure compliance with the new Noise Planning Levels. The Access Holder shall contribute to the cost of those noise abatement measures as reasonably determined by QR.
- (c) If the Access Holder disputes any determination made by QR in accordance with this Clause 8.4 regarding the contribution of costs, either Party may refer that dispute to an expert in accordance with Clause 17.3.

#### **8.5 Spillage of Contaminating Materials**

- (a) Where:
  - (i) the activities of the Access Holder or Operator under this Agreement result in any release, spillage or leakage of any Contaminating Material, or QR is reasonably of the opinion that those activities are causing or likely to cause contamination or Environmental Harm, and QR reasonably considers that action is required to prevent, mitigate or remedy that contamination or Environmental Harm; or
  - (ii) QR is given a direction, notice or order by a relevant Authority that some action is required to prevent, mitigate or remedy any actual or threatened contamination or Environmental Harm resulting from, or contributed to by, the activities of the Access Holder or Operator under this Agreement,then QR may notify the Access Holder of the action which is required and the Access Holder must at its cost, as soon as reasonably practicable after receiving such notice, implement such action or cause such action to be implemented.
- (b) If, in QR's reasonable opinion, any action pursuant to Clause 8.5(a) ought best be undertaken by QR, then QR may elect to undertake such action and the Access Holder shall pay to QR the costs incurred by QR in doing so.
- (c) If the Access Holder disputes any action taken by QR in accordance with this Clause 8.5, either Party may refer the dispute to an expert in accordance with Clause 17.3 and if the expert determines the dispute in favour of the Access Holder, QR will reimburse the Access Holder for the costs incurred by the Access Holder as a result of the actions taken by the Access Holder at QR's request (or, if applicable, QR will bear the costs incurred by QR in accordance with Clause 8.5(b) and shall not be able to recover those costs from the Access Holder) to the extent determined by the expert.

**8.6 Community Liaison and Environmental Complaint Procedures**

- (a) Prior to the commencement of any Train Services the Access Holder and/or Operator shall take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by QR, and shall invite QR to be represented at any community meetings organised by the Access Holder and/or Operator.
- (b) In the event that QR, the Access Holder or the Operator receives noise complaints or other complaints dealing with environmental issues in relation to the Nominated Network, both QR and the Access Holder shall inform each other of those complaints as soon as reasonably practicable and shall cooperate in investigating and responding to those complaints.

**8.7 Audit and Review of Environmental Investigation and Risk Management Report**

- (a) The Access Holder will provide QR with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder (or Operator) in respect of its Train Services on the Nominated Network.
- (b) QR will provide the Access Holder with copies of those parts of QR's environmental audits that are relevant to the operation of the Access Holder's Train Services on the Nominated Network.
- (c) If QR becomes aware of:
  - (i) any inadequacy of the Environmental Investigation and Risk Management Report due to:
    - (A) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
    - (B) any conduct on the part of the Access Holder or Operator which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
  - (ii) any non-compliance by the Access Holder or Operator with the Environmental Investigation and Risk Management Report,

then, in addition to any other rights QR may have under this Agreement, QR may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of the Environmental Investigation and Risk Management Report and/or the Access Holder's or Operator's compliance with it. The review will only deal with:

- (i) the extent to which the Environmental Investigation and Risk Management Report appears not to address a change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
- (ii) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
- (iii) the extent of non-compliance by the Access Holder or Operator with the Environmental Investigation and Risk Management Report,

whichever is applicable in the circumstances.

- (d) If directed by QR to undertake a review in accordance with Clause 8.7(c), the Access Holder will ensure the review is carried out and will provide QR with a copy of the review report within a reasonable time after the review has been completed (and in any case, not later than three (3) Months after the notice from QR requiring the review).
- (e) The Access Holder must implement (or cause to be implemented) the reasonable recommendations arising from each review under this Clause 8.7, and the Parties shall amend the Environmental Investigation and Risk Management Report and this Agreement (including any variations to the Base Access Charges) as appropriate.
- (f) Either Party may refer any dispute as to the nature or extent of any amendments to the Environmental Investigation and Risk Management Report or this Agreement that ought to be made to an expert for resolution in accordance with Clause 17.3.

## **8.8 Notification**

- (a) The Access Holder must advise (and must cause the Operator to advise) QR of any failure by the Access Holder or Operator to comply with the Environmental Investigation and Risk Management Report and the Operator's Environmental Management System to the extent relevant to this Agreement as and when the Access Holder or Operator becomes aware of such failure and provide details of how it intends to address the non-compliance. The Access Holder must remedy (or cause the Operator to remedy) such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR and any action required by the Environmental Protection Agency.
- (b) QR must advise the Access Holder of any failure by QR to comply with the Environmental Investigation and Risk Management Report and QR's Environmental Management System to the extent relevant to this Agreement as and when QR becomes aware of such failure. QR must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of the Access Holder and any action required by the Environmental Protection Agency.
- (c) The Access Holder must advise (and must cause the Operator to advise) QR of any failure to comply with their obligations under the Environmental Protection Act 1994 ("EPA"), including any notices or directions relating to the operation of Train Services that they receive from the Environmental Protection Agency. Failure by the Access Holder or the Operator to comply with its obligations under the EPA, where that failure causes or threatens to cause Serious Environmental Harm, entitles QR to terminate in accordance with Clause 20.
- (d) QR will notify the Access Holder of any changes to any Environmental Authorities held by QR or variations to any other environmental information provided by QR to the Access Holder relevant to the operation of Train Services.

## **9. ACCREDITATION**

### **9.1 Evidence of Accreditation**

- (a) The Access Holder must on or before the commencement of any Train Services provide to QR evidence of the Operator's Accreditation (including all conditions and/or variations).

- (b) QR must have and maintain Accreditation to the extent required to perform its obligations under this Agreement and, if requested to do so in writing by the Access Holder, must provide to the Access Holder copies of documentation evidencing currency, renewal or amendment of QR's Accreditation within five (5) days of such request. The Access Holder must ensure that the Operator has and maintains Accreditation to the extent required to operate the Train Services under this Agreement and, if requested to do so in writing by QR, provide to QR copies of documentation evidencing currency, renewal or amendment of the Operator's Accreditation within five (5) days of such request.
- (c) QR will notify the Access Holder as soon as possible of any notice from an Authority affecting or likely to affect QR's Accreditation and will provide a copy of that notice to the Access Holder on request. The Access Holder will cause the Operator to notify QR as soon as possible of any notice from an Authority affecting or likely to affect the Operator's Accreditation and to provide a copy of that notice to QR on request.

## **10. ACCESS HOLDER'S STAFF**

### **10.1 Safety of Staff**

The Access Holder and the Operator will be fully responsible and liable for the health and safety of the Access Holder's Staff and the personal property of the Access Holder's Staff, and the Access Holder indemnifies and releases QR to the extent permitted by law from any liability in relation to the Access Holder's Staff except to the extent that such liability is caused by the wilful default or negligence of QR or QR's Staff.

### **10.2 Qualifications of Access Holder's Staff**

The Access Holder must:

- (a) ensure that all risks associated with Safety Related Work (including the competence of all Access Holder's Staff to safely and properly discharge their duties related to the exercise of the Access Holder's rights or performance of its obligations under this Agreement) are addressed in the Interface Risk Assessment;
- (b) ensure that all Access Holder's Staff hold and keep current all qualifications and accreditations required under any Law and as specified in Part 2 of **Schedule 9** and undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (c) meet all costs of any training and/or testing required to meet the requirements of this Clause 10.2; and
- (d) keep QR advised of the names and position titles of all Access Holder's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Access Holder's Staff whose details have been provided to QR in accordance with this Clause 10.2 and who satisfy the requirements of this Clause 10.2.

### **10.3 Entry onto Land**

The Access Holder must ensure that the Access Holder's Staff do not enter upon the Land in a manner inconsistent with the Interface Coordination Plan, the Interface Risk Management Plan or the Operator's Emergency Response Plan without the prior written approval of QR and that, in the

event such approval is given, the relevant Access Holder's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

## 11. INTERFACE RISK MANAGEMENT

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services):
  - (i) the Access Holder must conduct an Interface Risk Assessment jointly with QR and the Operator in order to:
    - (A) identify all reasonably foreseeable Interface Risks to the Access Holder, the Operator, QR and all persons and property and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of those Interface Risks;
    - (B) agree the applicable controls and measures to adequately address the Interface Risks identified (including any training required for the Operator's Staff) and the Party responsible for implementation of such controls and measures and ensuring their on-going effectiveness;
    - (C) agree an audit, inspection and review regime;
    - (D) agree the applicable Safeworking Procedures and Safety Standards having regard to existing QR and industry practices;
    - (E) agree the Rollingstock Interface Standards (or, if already agreed, agree variations to the Rollingstock Interface Standards); and
    - (F) agree any consequential changes to the provisions of the Agreement, including the applicable Access Charges;
  - (ii) the Parties must incorporate the above agreed outcomes, as applicable, into:
    - (A) the Interface Risk Management Plan which shall be included in Part 2 of **Schedule 9**;
    - (B) Part 1 of **Schedule 6**;
    - (C) **Schedule 3**; and
    - (D) the relevant provisions of the Agreement; and
  - (iii) the Access Holder must cause the Operator to develop the Operator's Safety Management System which must incorporate:
    - (A) the risks identified and the controls and measures and other elements included in the Interface Risk Management Plan that the Access Holder or Operator is responsible for implementing; and
    - (B) necessary processes for ensuring that the Access Holder, the Operator, their Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the agreed Interface Risk Management Plan.

- (b) If the Parties are unable to agree any element of the Interface Risk Assessment or the Interface Risk Management Plan (including the Rollingstock Interface Standards), each Party may give notice in writing to the other Party of the dispute (“**Dispute Notice**”) whereupon either Party may refer the matter in dispute (“Dispute”) to an expert for resolution in accordance with Clause 17.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a Party gives a Dispute Notice to the other Party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 11(b)(ii) or the QCA in accordance with Clause 11(b)(iii), either Party may still refer the matter to an expert for resolution in accordance with Clause 17.3;
  - (ii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the QCA in accordance with Clause 11(b)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either Party may refer the matter to the Safety Regulator; and
  - (iii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the Safety Regulator in accordance with Clause 11(b)(ii), then either Party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Clause 17.6,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either Party is not satisfied with the determination of the expert, then notwithstanding Clause 17.3(i), either Party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 11(b)(ii) or the QCA under Clause 11(b)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding on the Parties.

If an expert, the Safety Regulator or the QCA is called upon under this Clause to make a determination the effect of which would be to establish the content of any aspect of the Interface Risk Management Plan, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a Dispute under this Clause that may from time to time be determined by the Safety Regulator.

Where a Dispute is referred to the QCA in accordance with this Clause, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either Party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the Parties a copy of any advice it receives from the Safety Regulator.

Where the QCA seeks advice from the Safety Regulator in relation to a Dispute, the costs of the Safety Regulator shall be borne by the Parties in such proportion as the QCA determines.

- (c) Prior to the commencement of any of the Access Holder’s Train Services, QR must incorporate the elements of the Interface Risk Management Plan it has agreed to be responsible for implementing into QR’s safety management system.
- (d) The Parties must advise each other of any failure to comply with the Interface Risk Management Plan as and when the Party becomes aware of such non-compliance,

including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

- (e) If at any time during the Term, either Party has reasonable grounds to believe that the Interface Risk Management Plan is no longer effective either in managing the Interface Risks it was intended to manage or in managing new or varied Interface Risks, the Parties must conduct a further joint Interface Risk Assessment to review the Interface Risks which are no longer effectively managed by the current Interface Risk Management Plan or the new or varied Interface Risks (as the case may be).
- (f) Where a Party has reasonable grounds to believe that the other Party (or the Operator) has not or is not complying with any aspect of the Interface Risk Management Plan (including the Rollingstock Interface Standards) then, in accordance with the provisions of Clause 12, that Party may conduct or require the conduct of an inspection or audit of the relevant aspect of the Access Holder's Train Services or the Nominated Network (as applicable).
- (g) The Parties shall amend the Interface Risk Management Plan and this Agreement (including making any variations to the Base Access Charges) if, subsequent to an audit or inspection of the Interface Risk Management Plan, the Parties agree that such amendment is required having regard to the findings of such inspection or audit and, failing agreement, either Party may refer the issue of the need for such amendment to an expert for determination in accordance with Clause 17.3.
- (h) Where QR and the Access Holder agree that training of the Access Holder's Staff is required as a control or part of a control to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Holder and/or the Operator can only obtain that training from QR, QR will provide the Access Holder and/or the Operator with that training and be entitled to recover from the Access Holder a reasonable commercial charge for providing such training.

## **12. INSPECTION AND AUDIT RIGHTS**

### **12.1 Rights of Inspection and Audit**

In addition to the rights of inspection and audit specified in Clauses 6 and 11(f) and subject to the provisions of this Clause 12, either Party may conduct or require the conduct of an inspection or audit relevant to assessing the other Party's (or Operator's) compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Safeworking Procedures and Safety Standards periodically as specified in the Interface Risk Management Plan.

### **12.2 Inspection of Trains and Rollingstock**

- (a) Where QR reasonably believes that the Access Holder's or Operator's Rollingstock or Rollingstock Configurations do not comply with:
  - (i) the authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**;
  - (ii) the Interface Risk Management Plan (including the Rollingstock Interface Standards); or
  - (iii) any applicable Laws relevant to the Access Holder's Train Services,

and QR cannot otherwise determine whether this is the case, QR may inspect any Trains or Rollingstock which is utilised or intended to be utilised in the operation of Train Services or require the Access Holder to have an inspection conducted and for this purpose QR or QR's Staff will be entitled at any time to enter and ride on the Trains or Rollingstock.

- (b) QR shall have the right to require any of the Access Holder's or Operator's Rollingstock (either loaded or empty) to be available at such location as QR may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by QR.
- (c) Notwithstanding the provisions of Clause 2.7, if any of the Access Holder's or Operator's Rollingstock is reasonably considered by QR to be loaded in excess of the limits specified in **Schedule 4** or in an unsafe or insecure manner, then QR may at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Access Holder's expense. If the Operator fails to immediately remove the excess or adjust the load, QR may arrange for its removal or adjustment and the Access Holder will be responsible for all resultant costs incurred by QR.

### **12.3 Notice of Inspection or Audit**

The Party conducting or requiring the conduct of an inspection or audit must give the other Party reasonable prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in Clauses 19 or 20 has occurred and such notice shall 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 upon which the Party requires the inspection or audit; and
- (f) the Party's requirements of the other Party in relation to the inspection or audit.

### **12.4 Conduct of Inspection or Audit**

- (a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the relevant Party, its appointed representative or by a suitably qualified person reasonably acceptable to both Parties, provided that if the inspection or audit would require access to commercially sensitive information of a Party and that Party has a legitimate commercial reason for wanting to withhold access to that information from the other Party, then the inspection or audit shall be conducted by a suitably qualified independent person reasonably acceptable to both Parties who shall be given access to the commercially sensitive information by the Party the subject of the inspection or audit but who shall be prohibited from disclosing that commercially sensitive information to the other Party.
- (b) The Access Holder shall use reasonable endeavours to ensure that QR, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the Access Holder) on which the Access Holder's or Operator's Rollingstock is located from time



to time (which location is specified in a notice pursuant to Clause 12.3) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.

- (c) In exercising any right of inspection or audit under this Agreement, a Party must not interfere unreasonably with the other Party's or the Operator's Trains and Rollingstock or Train Movements on the Nominated Network and must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other Party's or the Operator's business activities.
- (d) Subject to Clause 12.4(e), a Party conducting an inspection or audit ("**Inspecting Party**") will not be liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other Party as a result of the exercise by the Inspecting Party of its rights under this Clause 12 provided the Inspecting Party complies with Clause 12.4(c).
- (e) The Access Holder will be liable for and will indemnify QR in respect of any Claim made against QR by another Railway Operator as a result of a delay or cancellation of a Train service of that other Railway Operator as a result of the exercise by the Access Holder of its inspection or audit rights under this Clause 12, provided that the Access Holder will not be liable for, or be required to indemnify QR in respect of, any such Claim where:
  - (i) the Access Holder has complied with Clause 12.4(c) in exercising its inspection or audit rights; and
  - (ii) the inspection or audit reveals that QR is in breach of its obligations under this Agreement.

#### **12.5 Cooperation by the Parties**

Each Party shall provide (and the Access Holder shall cause the Operator to provide) all reasonable assistance required by the other Party in conducting any inspection or audit under this Agreement, including allowing a Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with QR's Staff or the Access Holder's Staff (as applicable). A member of QR's Staff or the Access Holder's Staff (as applicable) may be present at the inspection or audit.

#### **12.6 Costs of Inspection or Audit**

- (a) The Party who conducts or requires the conduct of an inspection or audit under Clause 6 or an agreed periodic audit shall bear the reasonable costs of conducting the inspection or audit.
- (b) The Party whose operations are inspected or audited under Clause 11(f) or Clause 12.2 shall bear the reasonable costs of conducting the inspection or audit unless it is demonstrated that the stated grounds for requiring the conduct of the inspection or audit did not exist. In circumstances where the stated grounds for such inspection or audit have not been demonstrated to exist, the Party that required the conduct of the inspection or audit shall bear the costs of conducting such inspection or audit.

#### **12.7 Copies of Reports**

The Parties must provide each other with a copy of any report of any inspection or audit undertaken pursuant to this Clause 12 in respect of its compliance (or the compliance of the

Operator) with the Interface Risk Management Plan (including the Rollingstock Interface Standards).

#### **12.8 Consequences of Inspection or Audit**

Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under Clauses 11(f) or 12.2(a)(ii) of this Agreement, that Party will be liable to the other Party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit. The Party who required the conduct of the inspection or audit shall bear the burden of establishing that a reasonable person in its position could have formed that view.

#### **12.9 Parties's Obligations**

An inspection or audit by a Party under this Agreement shall not relieve the other Party of its obligations under this Agreement or at Law.

### **13. INSURANCE BY ACCESS HOLDER**

#### **13.1 Maintain Insurance Policies**

The Access Holder must, and/or (as appropriate) must cause the Operator to, prior to the commencement of Train Services at their expense take out and subsequently maintain current at all times during the Term insurance with a Corporation licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to QR) those policies of insurance required by this Agreement.

#### **13.2 Required Insurance Policies**

The Access Holder must take out and maintain, and/or (as appropriate) must cause the Operator to take out and maintain, insurance for the risks and on the terms specified in **Schedule 7**.

#### **13.3 Disclosure of Insurance Policies**

The Access Holder must provide, and cause the Operator to provide, to QR evidence of the insurance policies effected pursuant to this Clause 13 or, if requested by QR, copies of such insurance policies, to QR's reasonable satisfaction:

- (a) at least fourteen (14) days prior to the commencement of Train Services;
- (b) upon renewal of each insurance policy during the Term; and
- (c) whenever reasonably requested to do so in writing by QR.

#### **13.4 Failure to Disclose Insurance Policies**

If the Access Holder or Operator, whenever required to do so under this Agreement, fails to produce to QR evidence to the reasonable satisfaction of QR of insurances that have been effected or maintained by it, QR may:

- (a) effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Access Holder to QR; and/or
- (b) terminate this Agreement pursuant to Clause 20.1(g).

### **13.5 Minimum Terms of Policies**

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law:

- (a) note the interests of the Access Holder or Operator (as applicable), any contractor and QR;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of QR (which consent shall not be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 7**.

### **13.6 Access Holder Not to Render Policy Void**

The Access Holder must not, and must ensure that the Operator does not, render any of the insurances effected in accordance with this Clause 13 void or voidable or liable to refusal of any claim.

### **13.7 Compliance**

The Access Holder must, and must cause the Operator to, at all times comply with the terms and conditions of all insurance policies effected pursuant to this Clause 13.

### **13.8 Notice of Potential Claims**

In addition to any other obligation on the Access Holder pursuant to this Agreement, the Access Holder must, and must cause the Operator to, notify QR as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement, notify QR of that event in reasonable detail and thereafter keep QR informed of subsequent developments concerning any claim.

### **13.9 Access Holder to pay all excess/deductibles**

The Access Holder must in respect of any claims by it or any other insured for which it is responsible (including the Operator), pay and bear, or must cause the Operator to pay and bear (as appropriate), all excesses/deductibles provided for in any insurances effected in accordance with this Clause 13.

### **13.10 Settlement of Claims**

Upon settlement of a claim under any policy required by this Agreement covering damage to Infrastructure the monies received must be paid to QR unless the Access Holder has already partially or totally indemnified QR for the relevant damage, in which case the monies shall be paid to the Access Holder or Operator (as applicable) but only to the extent that QR has been indemnified.

**14. INDEMNITIES AND LIABILITIES**

**14.1 Indemnity by Access Holder**

Subject to Clause 14.3, the Access Holder is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims of any nature suffered or incurred by or made or brought against QR, its directors or QR's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of QR) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Access Holder or Operator or Access Holder's Staff.

**14.2 Indemnity by QR**

Subject to Clause 14.3, QR is solely liable for and releases, indemnifies and will keep indemnified the Access Holder, its directors and Access Holder's Staff against all Claims of any nature suffered or incurred by or made or brought against the Access Holder, its directors or the Access Holder's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of the Access Holder) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff.

**14.3 Liability to Third Parties**

Notwithstanding Clause 14.1 or Clause 14.2, the Access Holder is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims due to or arising out of this Agreement in respect of damage to or loss of any property or personal injury to or death of any person where such person or property is being transported on Train Services except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff. Unless otherwise agreed, the Access Holder shall extend to QR or cause the Operator to extend to QR any exclusion or limitation of liability afforded by the Operator's conditions of carriage with its or the Access Holder's customers and shall provide to QR details of the Operator's conditions of carriage relevant to QR's liability in place from time to time.

**14.4 Liability from Infrastructure Standard**

Notwithstanding any other provision of this Agreement, QR will not be liable to the Access Holder or Operator and the Access Holder and Operator will not have or make any Claim against QR in respect of any loss of or damage to real or personal property, including property of the Access Holder or Operator, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure except to the extent that such loss, damage, injury, cost or expense results directly from the failure of QR to perform its obligations under Clause 6.2(a).

**14.5 Defence of Claims**

The Parties shall render each other, and the Access Holder shall cause the Operator to render, all reasonable assistance in the defence of any Claim made against a Party by a Third Party arising out of any Incident or other event giving rise to a Claim.

**14.6 Continuation of Indemnities**

The releases and indemnities contained in this Clause 14 for the benefit of either Party continue in full force and effect as to any Claims occurring or arising from any act occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

**14.7 Determination of Liability**

In the event of an Incident involving the Access Holder or Operator or any other event which results or could result in a Claim by or against the Access Holder, Operator or QR, liability as between the Access Holder and QR shall for the purposes of this Clause 14 be determined:

- (a) as agreed between the Parties;
- (b) failing such agreement within one (1) Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to Clause 14.8; or
- (c) where the amount of the Claim exceeds the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and either Party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.

**14.8 Loss Adjuster**

Where a matter is to be referred to a loss adjuster in accordance with Clause 14.7 then the following provisions of this Clause shall apply:

- (a) The loss adjuster shall be appointed by the Parties, or in default of such appointment within fourteen (14) days after the need to appoint a loss adjuster, by the President of The Chartered Institute of Loss Adjusters Australasian Division.
- (b) In any event, the loss adjuster shall:
  - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
  - (ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to fully disclose any such interest or duty before his appointment; and
  - (iii) not be an employee of the Access Holder, Operator or QR or of a Related Body Corporate of any of them.
- (c) The loss adjuster appointed pursuant to this Clause 14.8 shall not be permitted to act until he has given written notice of the acceptance of his appointment to both Parties.
- (d) Any loss adjuster appointed pursuant to this Clause 14.8 shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties.
- (e) Any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

- (f) Each Party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any employee, agent or contractor (including employees, agents or contractors of the Operator) involved in or with knowledge of the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (g) Each Party must make available to the loss adjuster any files, documents, data, recordings or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation.
- (h) The loss adjuster will determine the quantum of the relevant Claim and the liability of the Access Holder and/or QR in respect of such Claim and shall provide a copy of his report on such matters to each of the Parties within a reasonable time after his appointment.
- (i) In the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

#### **14.9 Costs**

The costs of the loss adjuster shall be borne by the Parties in such proportions as liability is determined by the loss adjuster or where the liability is determined by a Court, in such proportions as liability is determined by the Court.

#### **14.10 Relationship with Operator**

- (a) Nothing in this Agreement creates or constitutes any contract between QR and the Operator.
- (b) The Access Holder is responsible for all conduct of the Operator under this Agreement. Any act or omission of the Operator shall be deemed to be an act or omission by the Access Holder for the purposes of this Agreement.
- (c) In no event shall QR be liable to the Operator for any loss or damage suffered or incurred by the Operator except to the extent that QR would have been liable to the Access Holder had the loss or damage suffered or incurred by the Operator instead been suffered or incurred by the Access Holder, and taking into account the limitations upon liability contained in this Agreement. The Access Holder shall indemnify and shall keep indemnified QR, its directors and QR's Staff against any additional liability to the Operator.
- (d) QR acknowledges and agrees that the Access Holder may engage more than one Operator to operate Train Services contemplated by this Agreement provided that where there is more than one Operator to be so appointed:
  - (i) the Access Holder must provide to QR the name and contact details (and any other information reasonably required by QR) for each Operator so appointed;
  - (ii) the Access Holder must notify QR which Train Services are to be operated by each Operator, and must advise QR in advance of any subsequent change in the allocation of Train Services between Operators;

- (iii) references in this Agreement to the "Operator" shall be construed to mean each of the Operators in respect of Train Services operated (or to be operated) by them or, where the context requires, shall be construed to mean any one or more of the Operators.
- (e) QR acknowledges and agrees that the Access Holder may from time to time change the Operator for all or any part of the Train Services contemplated by this Agreement provided that:
  - (i) the Access Holder must provide to QR the name and contact details (and any other information reasonably required by QR) for each new Operator so appointed;
  - (ii) the Access Holder must notify QR which Train Services are to be operated by each new Operator; and
  - (iii) for the avoidance of doubt, references in this Agreement to the "Operator" shall be construed to include the new Operator in respect of the Train Services operated (or to be operated) by it.
- (f) Where:
  - (i) a new Operator is appointed by the Access Holder in place of, or in addition to, an existing Operator or Operators, or an Operator is removed by the Access Holder; or
  - (ii) the Access Holder makes any change in the allocation of Train Services between Operators

QR and the Access Holder shall negotiate and agree any amendments to this Agreement (including the Schedules) that may be necessary to reflect the relevant appointment, removal or change in allocation.
- (g) For the avoidance of doubt, nothing in this Clause 14.10 entitles the Access Holder to make any change in Operators, or in the allocation of Train Services between Operators, where this would result in the use of Access Rights in addition to those granted to the Access Holder under this Agreement unless QR has first agreed to amend this Agreement to provide for the grant of additional Access Rights to the Access Holder to facilitate the change.

## **15. LIMITATION OF LIABILITY**

### **15.1 No Liability for Consequential Loss**

Except as otherwise expressly provided in Clauses 12.8 and 19.3(b), neither Party shall in any circumstances be liable to the other for (and the indemnities in Clauses 14.1 and 14.2 shall not extend to) any Consequential Loss.

### **15.2 Limitation on Claims**

Neither Party shall make any Claim against the other in respect of the neglect or default of that Party under the Agreement unless:

- (a) notice of the Claim has been given to the other within twelve (12) Months of the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds FIFTY THOUSAND DOLLARS (\$50,000.00) in respect of any one event or cause of action or series of related events or causes of action (provided that if this condition is satisfied then the Party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of FIFTY THOUSAND DOLLARS (\$50,000.00)).

### 15.3 Claims in respect of non-provision of Access

The Access Holder shall not have or make any Claim against QR in respect of the non-provision of Access or cancellation of any Train Service unless, and shall only have a claim to the extent that:

- (a) a Train Service is cancelled as a result of a failure by QR to make the Infrastructure available for the Access Holder to operate the Train Service at the Scheduled Time in the Train Schedule and QR was unable to schedule the Train Service at a reasonable alternative time; and
- (b) the failure by QR to make the Infrastructure available was a result of a breach of this Agreement by QR, or negligence on the part of QR; and
- (c) the failure by QR to make the Infrastructure available is not attributable to:
  - (i) the Access Holder or the Operator;
  - (ii) another Railway Operator (other than QR);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
  - (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5** and the total number of Train Services cancelled in a Billing Period as a result of a failure by QR to make the Infrastructure available exceeds the Allowable Threshold; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the non-provision of Access or cancellation of Train Services is of a magnitude which is beyond the scope of that performance and adjustments regime.

### 15.4 Claims in respect of delays to Train Movements



Neither Party (the “**Affected Party**”) shall have or make any Claim against the other Party (the “**Defaulting Party**”) in respect of delays to Train Movements unless, and shall 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 (or the Operator where the Access Holder is the Affected Party);
  - (ii) another Railway Operator (other than the Defaulting Party);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
  - (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (c) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the delays are of a magnitude which is beyond the scope of that performance and adjustments regime.

## 16. MATERIAL CHANGE

### 16.1 Meaning of Material Change

In this Clause 16:

- (a) “**Material Change**” means a:
  - (i) Change in Relevant Taxes;
  - (ii) Change in Law;
  - (iii) change in the funding from governments in respect of that part of the Nominated Network specified in Part 4 of **Schedule 2**; or
  - (iv) matter deemed to be a Material Change under Clause 22.18(b); and
- (b) “**Net Financial Effect**” means the net effect in financial terms of a Material Change on QR 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. Any change in the funding from governments in respect of the Nominated Network which is adverse to QR shall, to the extent that change affects the

financial position of QR, be deemed to be an additional cost to QR of performing its obligations under this Agreement.

## 16.2 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the relevant Train Service under this Agreement then:
- (i) if at any time after the date of this Agreement a Material Change occurs which affects the financial position of QR or the cost to QR of performing its obligations under this Agreement, QR may notify the Access Holder giving details of the Net Financial Effect of the Material Change;
  - (ii) within fourteen (14) days after receipt of a notice under Clause 16.2(a)(i), the Parties shall meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return QR to the position it would have been in had it not been for the Material Change. If the Parties do not reach agreement within twenty (20) days of QR's notice, the matter will be referred to an expert for determination in accordance with Clause 17.3.
- (b) If a Reference Tariff is applicable to the relevant Train Service under this Agreement then the relevant Reference Tariff Schedule will provide for the consequences of Material Change.

## 16.3 Parties Obligations

The Parties' obligations under this Agreement will continue notwithstanding the existence of a Material Change.

## 17. DISPUTES

### 17.1 Method

If any claim, dispute or question ("**Dispute**") arises under this Agreement or in relation to the Access Rights then unless otherwise expressly provided to the contrary in this Agreement such Dispute shall be resolved in accordance with this Clause 17 and either Party may give to the other Party to the Dispute a notice in writing ("**Dispute Notice**") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 17.

### 17.2 Chief Executive Resolution

Except as otherwise provided in this Agreement, the Parties hereby agree that any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the chief executive of QR (or his nominee) and the chief executive of the Access Holder (or his nominee) for the purposes of this Clause 17.2 for resolution. Failing such resolution within fourteen (14) days or in the event that either chief executive appoints a nominee that is unacceptable to the other Party, the relevant Dispute may by agreement between QR and the Access Holder be referred for resolution by an expert in accordance with Clause 17.3 or by arbitration in accordance with Clause 17.4.

**17.3 Expert**

Where any matter may be referred to an expert pursuant to Clause 17.2 or is required by this Agreement to be referred to an expert then except as otherwise provided for in this Agreement, the matter must be referred for determination by a person:

- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by, in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia and, in the case of what the Parties agree are non-financial matters, the President for the time being of the Institution of Engineers, Australia and, in the case of what the Parties agree are combined financial and non-financial matters or where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate by the President for the time being of the Queensland Law Society Incorporated;
- (b) who has appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Access Holder, Operator or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment;
- (f) who shall have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at his request and who must provide both Parties with a copy of his determination in the form of a report within a reasonable time after his appointment;
- (g) who shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (h) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination;
- (i) whose decision, in the absence of manifest error, shall be final and binding upon the Parties; and
- (j) whose costs (and the costs of any advisers to the expert) shall be borne by the Parties in equal shares with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

Any determination made by an expert must be consistent with the provisions of this Agreement.

**17.4 Arbitration**

The Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Access Holder and QR and failing agreement upon such arbitrator within fourteen (14) days after the date of written notice from one Party to the other requiring the appointment of an arbitrator then to an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference shall be an arbitration within the meaning of the Commercial Arbitration Act 1990 (Qld) and subject to the provisions relating to arbitration contained in that Act.

**17.5 Determination by Court**

If any Dispute is not resolved in accordance with Clause 17.2 nor referred to an expert in accordance with Clause 17.3, nor referred to arbitration by agreement of the Parties in accordance with Clause 17.4, nor referred to the QCA in accordance with Clause 17.6, then the Dispute shall be referred to the courts of the State.

**17.6 Queensland Competition Authority (QCA)**

The Parties may agree to refer and where required by this Agreement shall refer any Dispute to the QCA.

**18. FORCE MAJEURE**

**18.1 Claim of Force Majeure**

If by reason of a Force Majeure Event occurring either Party is wholly or partially unable to carry out its obligations under this Agreement (other than an obligation to pay monies), that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and that part of the Nominated Network affected;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to remedy the situation; and
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event.

No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

**18.2 Suspension of Obligations**

If by reason of a Force Majeure Event affecting all or any part of the Nominated Network either Party is delayed or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay monies) then the obligations of that Party will be suspended during that time and to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

**18.3 Duty to Mitigate**

Each Party will use (and the Access Holder will cause the Operator to use) all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event.

**18.4 End of period of Force Majeure**

Subject to Clauses 18.5 and 18.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement at which time it must issue a notice to the other Party advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

**18.5 Termination for Loss or Damage to Nominated Network**

- (a) In the event that any part of the Nominated Network specified in Part 2 of **Schedule 2** is damaged or destroyed by a Force Majeure Event and in QR's reasonable opinion the cost of repairing such damage or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network, QR may by written notice advise the Access Holder of:
- (i) the estimated cost of effecting the necessary repairs or replacement; and
  - (ii) QR's intention to not repair or replace the relevant part of the Nominated Network unless the Access Holder and any other Railway Operator using that part of the Nominated Network pay the amounts specified by QR towards the cost of effecting the necessary repairs or replacement.
- (b) If the Access Holder gives notice to QR advising that it will bear the whole, or that part requested by QR, of the cost of necessary repairs or replacement, then QR will proceed with the repairs or replacement within a reasonable time after receipt by QR from the Access Holder of payment of the relevant amount subject to reaching agreement with any other Railway Operator using the affected part of the Nominated Network. Where the Access Holder pays to QR the whole of the estimated cost, QR must, upon completion of the necessary repairs or replacement, refund to the Access Holder any amount by which the amount paid by the Access Holder exceeds the actual cost and the Access Holder shall pay to QR the amount by which the actual cost exceeds the amount paid by the Access Holder.
- (c) If within sixty (60) days after receipt of a notice from QR under Clause 18.5(a) the Access Holder has not given notice to QR pursuant to Clause 18.5(b) indicating that it will pay the whole, or that part requested by QR, of the cost of the necessary repairs or replacement, QR shall have the right to terminate this Agreement by giving not less than thirty (30) days notice in writing to the Access Holder, without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

**18.6 Termination after extended Force Majeure Event**

If by reason of a Force Majeure Event a Party ("affected Party") is rendered unable to perform its obligations under this Agreement for a period of more than three (3) consecutive Months, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one (1) Month of the end of the three (3) Month period the other Party may terminate this Agreement by thirty (30) days written notice to the affected Party and the provisions of this Agreement relating to

termination set out in Clauses 20.4 and 20.5 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

## 19. SUSPENSION

### 19.1 Right of Suspension

- (a) QR may, by notice in writing to the Access Holder prior to or immediately following the suspension, suspend the right of the Access Holder to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
- (i) the Access Holder fails to pay when due any amount payable under this Agreement and such default continues for seven (7) days after notice from QR to the Access Holder of the default;
  - (ii) the Access Holder (or Operator) fails to meet or comply with:
    - (A) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 5.1(a)(v), 7.3 and 8.6) of this Agreement and QR is of the reasonable opinion that such failure either:
      - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Access Holder or Operator) or other users of the Infrastructure (including Infrastructure Service Providers); or
      - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property; or
    - (B) the Train Service Description and QR is of the reasonable opinion that such failure either:
      - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Access Holder or Operator) or other users of the Infrastructure (including Infrastructure Service Providers) and that QR has sought to avoid such adverse effects by rescheduling Trains and changing Train priority in accordance with the Network Management Principles provided that QR will not be obliged to take any action that may cause any additional cost or risk to QR or an adverse impact on any Railway Operator (other than the Access Holder or Operator); or
      - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property;
  - (iii) an Insolvency Event occurs in relation to the Access Holder;
  - (iv) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement;

- (v) the Access Holder or Operator fails to comply with the requirements of a notice given by QR (within the reasonable time specified in that notice) requiring the Access Holder or Operator to cease conduct which in the reasonable opinion of QR is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm;
- (vi) the Access Holder or Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for seven (7) days after notice from QR to the Access Holder of the default;
- (vii) the Access Holder fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for seven (7) days after notice from QR to the Access Holder of the default;
- (viii) the Access Holder or Operator fails to provide, prior to the departure of the Train pursuant to Clause 5.5, information that is reasonably required by QR in relation to the relevant Train in accordance with Part 2 of **Schedule 10**;
- (ix) the Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement;
- (x) the Access Holder is in default of the due performance of any other obligation under this Agreement, and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (xi) the events or circumstances referred to in Clause 20.1(b), (c) or (f) exist.

Such suspension shall continue until such time as the Access Holder has remedied the relevant default, or caused the Operator to remedy the relevant default, and (where appropriate) taken action to prevent its recurrence.

- (b) QR may suspend the right of the Access Holder to operate any Train Services on the Nominated Network in the event of breach or, acting reasonably, anticipated breach by the Access Holder or Operator of:
  - (i) any Laws relating to rail safety relevant to the operation of Train Services;
  - (ii) QR Train Control Directions given in a manner not inconsistent with the Network Management Principles;
  - (iii) Safeworking Procedures; or
  - (iv) Safety Standards,

and QR is of the reasonable opinion that such breach has caused or such anticipated breach is likely to cause, an increased risk to the safety of any person or material risk to property.

Such suspension may be effected by notice in writing prior to or immediately following the suspension and shall continue until such time as the breach is rectified or, in the event of anticipated breach, the Access Holder has demonstrated that it and the Operator are in compliance. The Access Holder must ensure that upon such suspension the relevant Access Holder's Staff immediately ceases to perform functions on the Nominated Network until such time as the suspension is lifted by QR.

- (c) QR may suspend the operation of the Access Holder's or Operator's Rollingstock or Rollingstock Configurations:
- (i) for actual non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where the Access Holder and/or the Operator has failed to rectify such non-compliance within a reasonable period of time; or
  - (ii) for actual non-compliance or (acting reasonably) anticipated non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.

Such suspension may be effected by notice in writing to the Access Holder prior to or immediately following the suspension and shall continue until the Access Holder and/or Operator has rectified the non-compliance or, in the event of anticipated non-compliance, the Access Holder has demonstrated that it and the Operator are in compliance.

## 19.2 Details of Suspension

Where QR has a right under this Clause 19 to suspend rights of the Access Holder, the notice of suspension given in writing by QR to the Access Holder must set out:

- (a) the rights of the Access Holder which are affected by the suspension;
- (b) the reasons for the suspension; and
- (c) the actions the Access Holder and/or Operator must take to have the suspension lifted.

## 19.3 Effect of Suspension

- (a) The suspension of any rights does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement and shall be without prejudice to QR's other rights and remedies in respect of that or any other default.
- (b) Where QR suspends some or all of the Access Holder's Train Services, QR will be liable to the Access Holder in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in QR's position could have formed the view that the stated grounds for the suspension existed, provided that the Access Holder must use all reasonable endeavours to mitigate the loss or damage arising from the suspension. QR shall bear the burden of establishing that a reasonable person in QR's position could have formed that view.

## 20. TERMINATION

### 20.1 Termination by QR

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, QR may, by notice in writing to the Access Holder, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:



- (a) the Access Holder fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (b) the Access Holder or Operator fails to comply in any material respect with:
- (i) any obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 7.3 and 8.6) of this Agreement; or
  - (ii) any QR Train Control Direction within the control of the Access Holder or Operator, any Safeworking Procedures or Safety Standard,
- and such default continues for, or the Access Holder or the Operator has failed to take reasonable action to prevent recurrence of the default within, thirty (30) days after notice from QR to the Access Holder of the default;
- (c) the Access Holder or Operator fails to comply in any material respect with the Train Service Description and fails to demonstrate to the reasonable satisfaction of QR, within sixty (60) days after notice from QR to do so, that the Access Holder or Operator will consistently comply with the Train Service Description for the remainder of the Term provided that QR, acting reasonably, has determined not to vary the Train Service Description having regard to relevant factors including:
- (i) the impact on other users of the Infrastructure (including Infrastructure Service Providers); and
  - (ii) the efficient utilisation of the Infrastructure;
- (d) an Insolvency Event occurs in relation to the Access Holder and such default continues for a period of sixty (60) days;
- (e) the Operator's Accreditation is suspended, cancelled or amended so that it cannot operate the Train Services or otherwise perform the Access Holder's obligations generally under this Agreement, and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (f) where the Environmental Protection Agency gives the Access Holder or Operator a direction, notice or order about the conduct of the Access Holder and/or Operator in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the Access Holder or Operator fails, within the time:
- (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or
  - (ii) otherwise agreed to by the Environmental Protection Agency,
- to
- (iii) comply with the direction, notice or order, as modified by any court order (if applicable); or
  - (iv) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental

Protection Agency in relation to the requirements of the direction, notice or order,

and such failure continues for thirty (30) days after notice by QR to the Access Holder or Operator to remedy such failure;

- (g) the Access Holder or Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (h) the Access Holder fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for thirty (30) days after notice from QR to the Access Holder of the default;
- (i) the Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement;
- (j) the Access Holder is in default of the due performance of any other obligation under this Agreement, and such default continues for sixty (60) days after notice from QR to the Access Holder of the default,

provided that QR has first exercised its corresponding right of suspension under Clause 19.1.

## **20.2 Termination by the Access Holder**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, the Access Holder may, by notice in writing to QR, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) an Insolvency Event in relation to QR occurs and such default continues for a period of sixty (60) days;
- (b) QR's Accreditation is cancelled such that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from the Access Holder to QR of the default;
- (c) QR fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from the Access Holder to QR of the default;
- (d) QR is in default of the due performance of any other obligation under this Agreement and such default continues for sixty (60) days after notice from the Access Holder to QR of the default.

## **20.3 Grounds for Termination to be specified**

A notice of termination given under Clauses 20.1 or 20.2 must set out the grounds for the termination.

## **20.4 Obligations and other rights upon termination or expiration**

- (a) Neither termination of this Agreement by a Party pursuant to this Clause 20 nor expiration of this Agreement prejudices:

- (i) a Party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law; or
  - (ii) either Party's rights to recover monies due to it under this Agreement.
- (b) Upon termination of this Agreement QR and the Access Holder shall be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts. Any liability in respect of such antecedent breach shall be limited in the manner provided in this Agreement.

#### **20.5 Removal of Rollingstock following termination**

- (a) Immediately on expiration of the Term, and as soon as practicable following termination of this Agreement for any other reason the Access Holder must, at the Access Holder's cost, remove (or cause the Operator to remove) all of the Access Holder's or Operator's Rollingstock from the Nominated Network.
- (b) If the Access Holder fails to remove (or cause to be removed) the Access Holder's or Operator's Rollingstock from the Nominated Network, QR may serve notice on the Access Holder demanding the removal of Rollingstock within a specified time.
- (c) If the Access Holder fails to have removed any of the Access Holder's or Operator's Rollingstock from the Nominated Network the subject of the notice of demand within the time specified in the notice of demand issued by QR in accordance with Clause 20.5(b), QR is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Access Holder.
- (d) The Access Holder is liable, and will indemnify QR, for any costs incurred by QR in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Access Holder or Operator in removing any Rollingstock in accordance with this Clause.
- (e) The Access Holder and/or Operator shall comply with all reasonable directions issued by QR in relation to the removal of the Rollingstock in accordance with this Clause.

### **21. ASSIGNMENT**

#### **21.1 Assignment by QR**

QR may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Access Holder provided that QR procures the Assignee to covenant with the Access Holder by deed to be bound by and to perform the obligations of QR under this Agreement to the extent of the rights and obligations Assigned to the Assignee. Upon the Assignee entering into that deed QR will be released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

#### **21.2 Assignment by the Access Holder**

- (a) Subject to the following provisions of this Clause 21.2, the Access Holder shall not Assign its rights or obligations, or any part thereof, under this Agreement without the prior written consent of QR, which consent may not be unreasonably withheld.

- (b) The Access Holder 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) a Related Body Corporate of the Access Holder which is capable of performing the obligations of the Access Holder under this Agreement provided that the Access Holder shall remain liable for the performance of the duties, responsibilities and obligations assumed by the Assignee and provided however that performance by the Assignee will pro tanto discharge the Access Holder from liability for performance of those duties, responsibilities and obligations that are Assigned; or
  - (ii) a person other than a Related Body Corporate of the Access Holder with the prior written consent of QR, provided that such consent will not be unreasonably withheld if QR is satisfied that such person:
    - (A) is financially sound; and
    - (B) is otherwise capable of performing the obligations of the Access Holder under this Agreement.
- (c) Any Assignment by the Access Holder of its rights or obligations under this Agreement will be conditional upon and will not take effect until the Assignee covenants with QR by deed, in such terms as QR may reasonably require, to be bound by and to perform the obligations of the Access Holder and Operator under this Agreement.
- (d) Except where the Access Holder is a company the shares in which are quoted by the Australian Stock Exchange Limited, any change in shareholding of the Access Holder altering the effective control of the Access Holder will be deemed to be an Assignment of this Agreement.
- (e) The Access Holder shall not:
- (i) register, record or enter in its books any transfer of any share or shares in the capital of the Access Holder;
  - (ii) deal with any beneficial interest in any such share or shares;
  - (iii) issue any new share or shares; or
  - (iv) take or attempt to take any action having the effect:
    - (A) of altering the control of the Access Holder; or
    - (B) that the shareholders of the Access Holder at the date of this Agreement together beneficially hold or control less than 51% of the voting rights of capital in the Access Holder,
- until the requirements of this Clause 21.2 have been complied with.

### 21.3 Charging

A Party (“**Chargor**”) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (“**Chargee**”) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee shall

first covenant in writing in favour of the other Party (“**Non-Charging Party**”), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this Clause 21 as if it were originally a party hereto, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this Clause 21.

## **22. GENERAL**

### **22.1 Variation/Amendment**

Except as otherwise provided in this Agreement any variation or amendment to this Agreement must be in writing signed by both Parties.

### **22.2 Confidentiality**

The Parties shall comply with the provisions of the confidentiality deed set out in **Schedule 12**.

### **22.3 Intellectual Property**

All material supplied or made available by one Party (“the Supplier”) to the other Party remains the intellectual property of the Supplier and cannot be reproduced nor used for any purpose other than the purpose for which it was supplied without the approval of the Supplier.

### **22.4 Entire Agreement**

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.
- (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.

### **22.5 Non-merger**

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

### **22.6 Authority to enter into Agreement**

- (a) The Parties represent and warrant to and covenant with each other that they have full power to enter into and perform their obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Parties respectively enforceable in accordance with its terms.

- (b) If this Agreement is executed by an attorney the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

**22.7 Interpretation not to disadvantage a Party**

In the interpretation of this Agreement no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part thereof.

**22.8 Relationship**

- (a) The relationship between the Parties is entirely contractual and nothing in this Agreement creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (b) This Agreement is for the exclusive benefit of the Parties and does not create any rights in any Third Parties.

**22.9 Notices**

(a) **Form of Notice**

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a QR Train Control Direction or a direction from the QR Commander) ("**Notice**") must be in writing and signed by an authorised officer of that Party and may, if so agreed by QR, be in electronic form.

(b) **Method of Service**

A Notice may be given by:

- (i) being personally delivered on a Party;
- (ii) being left at the Party's current address for service;
- (iii) being sent to the Party's current address for service by pre-paid ordinary mail;  
or
- (iv) being sent by facsimile transmission to the Party's current facsimile number for service provided that a copy of the notice is then delivered by one of the means described above.

(c) **Deemed Notice**

A Notice is deemed given if:

- (i) personally delivered, upon delivery;
- (ii) posted to an address in Australia, three (3) days after posting;
- (iii) sent by facsimile, on the next day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number.

(d) **Addresses for Service**

(i) Each Party's address for service is:

**QR:**

Address: [\*\*\*]

Deleted: Floor 21, 127 Creek Street, BRISBANE QLD 4000

Facsimile: [\*\*\*]

Deleted: 07 - 3235 3439

Attention: [\*\*\*]

Deleted: Group General Manager, Network Access

**Access Holder**

Address: [\*\*\*]

Facsimile: [\*\*\*]

Attention: [\*\*\*]

(ii) A Party may from time to time change its particulars of service by giving written notice of that change to the other Party.

**22.10 Certificate**

A certificate signed by any duly authorised officer of QR as to a matter or as to a sum payable to QR in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

**22.11 Costs**

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

**22.12 Stamp Duty**

- (a) The Access Holder is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If QR pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under or in connection with it, the Access Holder must reimburse QR the amount paid upon demand.

**22.13 Waiver and Exercise of Rights**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.

- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of succeeding defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

#### 22.14 Computation of Time

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

#### 22.15 Severance of invalid or illegal terms

- (a) If any term of this Agreement, or its application to any Party, person or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:
  - (i) that term or its application to such Party, person or circumstance is severable from this Agreement;
  - (ii) the remainder of this Agreement, excluding the severed part, remains in force and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
  - (iii) to the extent permissible by law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this Clause as to a replacement term. If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with Clause 22.15(a)(i) and (ii).

#### 22.16 Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

#### 22.17 Approvals and Consents

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

#### 22.18 Ownership of Land

The Access Holder acknowledges that the land identified in Part 5 of **Schedule 2:**

(a) \_\_\_\_\_ is not owned or controlled by QR; and

(b) \_\_\_\_\_ is not land to which Subparagraph 2.1(c)(ii)(C) of QR's Access Undertaking applies and in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii)(C)

Deleted: QR does not own or control



of QR's Access Undertaking (as those provisions are amended, varied or replaced from time to time) as part of access to the Nominated Network.

and agrees that in respect of that land owned or controlled by another person ("Landowner") then:

(c) the Access Holder will comply (and will cause the Operator to comply) with the requirements of the Landowner in relation to that land as notified to the Access Holder by QR from time to time;

Deleted: a

(d) if, after the date of this Agreement, there is a change in the costs incurred by QR due to the requirements of the Landowner in respect of that land, then that change shall be deemed to be a Material Change; and

Deleted: b

(e) if QR's rights in respect of that land are terminated for any reason other than the default of QR of any agreement that affects QR's use of that land or other than by agreement with the Landowner, then QR may by notice to the Access Holder suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that land.

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#### 22.19 Implementation of Agreement

Each Party must promptly execute all documents and do all such acts and things as is necessary or desirable to implement and give full effect to the provisions of this Agreement.

#### 22.20 Schedules

In the event that the content of a Schedule requires variation or replacement in accordance with this Agreement, QR shall issue to the Access Holder a replacement Schedule which shall upon issue be substituted for and replace the relevant Schedule in this Agreement. Nothing in a Schedule shall be varied in any way except by the issue of a replacement Schedule by QR in accordance with this Clause.

#### 22.21 Governing Law and Jurisdiction

This Agreement shall be interpreted according to the Laws for the time being in force in the State and each of the Parties submits to the jurisdiction of the courts of the State and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.

#### 22.22 Most Favoured Nation Status

(a) If the Access Holder believes on reasonable grounds that:

- (i) QR has entered into an access agreement with another Railway Operator for a Train service that transports the same specified commodity in the same specified geographic area as a Train Service provided in accordance with this Agreement ("Like Train Service"); and
- (ii) the Access Charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking,

the Access Holder may provide written notification to QR which must include the reasons why the Access Holder considers this to be the case.

- (b) Within thirty (30) days of receipt of such notification, QR must advise the Access Holder:
- (i) whether or not QR agrees that the access agreement with the other Railway Operator is for a Like Train Service and, if not, the reasons why QR considers this to be the case;
  - (ii) if QR agrees that the access agreement with the other Railway Operator is for a Like Train Service, whether or not QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking and, if not, the reasons why QR considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
  - (iii) if QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation then within sixty (60) days of advice provided pursuant to Clause 22.22(b) QR must advise the Access Holder:
    - (A) whether or not QR has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in QR's Access Undertaking; or
    - (B) if QR has not been able to vary the access charge applicable to the Like Train Service that QR agrees to the reduction of the Access Charge payable by the Access Holder including the amount of the proposed reduced Access Charge.
- (c) If the Access Holder does not agree with QR's response to its notification, the dispute shall be referred to an expert for resolution in accordance with Clause 17.3.
- (d) If:
- (i) another Railway Operator provides QR with notification that it believes that some or all of the Access Holder's Train Services are a Like Train Service to a Train service operated by the other Railway Operator, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking; and
  - (ii) QR agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking,

then QR has the right by notice to the Access Holder to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in QR's Access Undertaking.

**EXECUTION**

Executed in Queensland

**SIGNED** for and on behalf of )

| QR NETWORK PTY LTD )

in the presence of: )

Deleted: QUEENSLAND  
RAIL

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

[the ACCESS HOLDER] )

in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Note:** QR will require the Access Holder to execute this Agreement either:

- (a) under seal; or
- (b) under s127(i) of the Corporations Act; or
- (c) under a duly executed Power of Attorney.

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**SCHEDULE 1**  
**TRAIN SERVICE ENTITLEMENTS**

**PART 1 TRAIN SERVICE DESCRIPTION**

**1.1 Train Service Characteristics**

The following tables define the characteristics of Train Services which characteristics shall form part of the Train Service Description.

**Commodity:** Coal  
**Sectional Run Times:** See Clause 1.2  
**Special Operating Restrictions:** See Clause 1.5

**System:**

Origin	Destination	Distance (km)	Average Time at Origin Loading Facility (hrs)

Notes: Origin is denoted as the mine and/or QR terms for the location at which the mine loads Trains Train Services run loaded between Origin and Destination and empty between Destination and Origin.  
 Average time at Loading Facility is measured on a monthly basis

For Train Services with the above characteristics, the average time at the Destination unloading facility is as per the following table.

Destination Unloading Facility	Average Time at Destination Unloading Facility (hrs)

Notes: Average time at unloading facility is measured on a monthly basis.

For Train Services with the above characteristics, the average time at Depot and the average Other Dwell Time are as per the following table:

System	Average Time at Depot (hrs)	Average Other Dwell Time (hrs)

**1.2 Sectional Running Times**

The Sectional Running Times to be achieved by coal system Trains are set out in Table 1.2 below:

**Table 1.2 -Sectional Running Times:**

From	To	Sectional Running Time	
		Direction Empty (minutes)	Direction Loaded (minutes)

Note: A Diagram illustrating the location of each Section can be found in **Schedule 2**.

*[Access Holder to provide details of Sectional Running Times]*

### 1.3 Train Service Levels

The number of Nominated Weekly Train Services for the relevant coal system Train that QR will provide to the Access Holder from the Commitment Date are set out in Table 1.3 below:

**Table 1.3: Train Service Levels**

Service Levels	No. of Train Services
Nominated Weekly Train Services <sup>1</sup>	
Nominated Monthly Train Services <sup>1</sup> (31 days)	
Nominated Monthly Train Services <sup>1</sup> (30 days)	
Nominated Monthly Train Services <sup>1</sup> (29 days)	
Nominated Monthly Train Services <sup>1</sup> (28 days)	
Nominated Annual Train Services <sup>1</sup>	

<sup>1</sup> NB: A Train Service is a One Way Train Service

The above Train Service Levels will be converted into timetables using the process referred to in paragraph 2.2(i) of the Scheduling Principles set out in **Schedule 10**.

### 1.4 Transit Times

The transit times applicable to a Train Service for each Origin/Destination combination by system are:

- The sum of the Sectional Running Times as per Table 1.2 for the Sections over which the Train Service operates multiplied by the following applicable factors:

Coal	Average Transit Time (hrs)	Maximum Transit Time (hrs)
Empty Direction		
Loaded Direction		

### 1.5 Special Operating Restrictions

In scheduling Train Services in accordance with the Network Management Principles, QR will comply with the following special operating restrictions:

*[Specific operating restrictions to be agreed]*

## 1.6 Cycle Description

With the following exceptions, the Train Services Cycle description is the most direct route over the Nominated Network between the Origins and Destinations and Destinations and Origins (as described in Paragraph 1.1).

Note: Where there is duplicated Track or multiple roads (eg yards), QR will have the ability to schedule the Train over any of the Tracks or roads.

### Exceptions

*[To be agreed]*

## 1.7 Stowage

*[To identify any agreed short term Stowage requirements additional to that provided in the relevant Reference Tariff Schedule]*

## 1.8 Permitted Movements on the Nominated Network

*[To detail any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times]*

## 1.9 Agreed Exit Threshold and Agreed Deterioration Threshold

**Agreed Exit Threshold:**

**Agreed Deterioration Threshold:**

**SCHEDULE 2**  
**NOMINATED NETWORK**

**PART 1 EXTENT OF NOMINATED NETWORK**

For the purposes of this Agreement the Nominated Network on which the Access Holder will be entitled to operate Train Services will be described by a combination of diagram and/or table but does not include freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

*[Diagram/table to be inserted as applicable]*

**PART 2 PARTS OF NOMINATED NETWORK SUBJECT TO CLAUSE 18.5**

The following line sections to the extent they form part of the Nominated Network as specified in Part 1 of this **Schedule 2** will be subject to the provisions of Clause 18.5 of the Agreement:

*[To be inserted if applicable]*

**PART 3 TRAIN CONTROL CENTRES AND SIGNAL CABINS**

The movement of the Access Holder's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins as follows:

*[Diagram to be inserted]*

**PART 4 PARTS OF THE NOMINATED NETWORK SUBJECT TO CLAUSE 16.1(a)(iii)**

*[To be inserted if applicable]*

**PART 5 LAND IN WHICH OTHER PARTIES HAVE AN INTEREST (Clause 22.18)**

*[To be inserted if applicable]*

**PART 6 WEIGHBRIDGES AND OVERLOAD DETECTORS (Clause 2.7)**

**A. WEIGHBRIDGES CERTIFIED FOR BILLING PURPOSES:**

<b>Location</b>	<b>Owner/Operator</b>	<b>Weighbridge "In Motion Trade Certificate" Electronic Weighing and Billing</b>

The tolerances are those required to achieve certification.

**B. AGREED OPERATIONAL WEIGHBRIDGES AND OVERLOAD DETECTORS**

<b>Location</b>	<b>Owner/Operator</b>	<b>Tolerance</b>
		+/- (x)%

<p><b>SCHEDULE 3</b></p> <p><b>CALCULATION OF ACCESS AND OTHER CHARGES</b></p>
--------------------------------------------------------------------------------

**PART 1 BASE ACCESS CHARGES**

1.1 Table 1.1 below defines the seven elements of the Base Access Charges that are used to calculate the Access Charge payable by the Access Holder to QR for each Train Service:

**Table 1.1: Base Access Charge and X Factors**

	Base Access Charge	X Factors
<b>Train Service</b>		
<b>Origin</b>		
<b>Destination</b>		
<b>Incremental Maintenance Tariff</b> (\$/'000 Gtk) <b>AT<sub>1</sub></b>		0
<b>Incremental Capacity Tariff</b> (\$/ One Way Train Service) <b>AT<sub>2</sub></b>		0
<b>Allocated Tariff 1</b> (\$/'000 Ntk) <b>AT<sub>3</sub></b>		0
<b>Allocated Tariff 2</b> (\$/net tonne) <b>AT<sub>4</sub></b>		0
<b>Electric Tariff</b> (\$/'000 Gtk) <b>AT<sub>5</sub></b>		0
<b>Electric Energy Charge</b> (\$/'000 Gtk) <b>EC</b>		0
<b>QCA Levy</b> (\$/net tonne) <b>QL</b>		

1.2. The elements of the Base Access Charge will be escalated in accordance with Part 4 of this **Schedule 3**.

1.3 Table 1.1 above defines the X Factors and Table 1.2 below defines the First Escalation Dates to be used in escalating the Base Access Charge elements pursuant to Clause 4.1 of this Schedule 3.

**Table 1.2: First Escalation Date for Escalation**

Train Service	Origin	Destination	First Escalation Date
Train Service	Origin	Destination	

**PART 2 RELEVANT OPERATING PARAMETERS**

2.1 The calculation of Gtk, Ntk and net tonnes for application with the Base Access Charges in Part 5 of this Schedule shall be as detailed in this Part 2.

2.2 The gross tonnes for each individual Train Service operated will be the sum of:

- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
- (b) the mass determined at any Weighbridge located adjacent to the loading facilities for each loaded or partly loaded Wagon comprising the Train Service;



- (c) where there is no Weighbridge located adjacent to the loading facility or that Weighbridge has malfunctioned the mass determined at the closest Weighbridge to the loading facility located en route for each loaded or partly loaded Wagon comprising the Train Service;
  - (d) where all Weighbridges en route have malfunctioned, the average mass for loaded Wagons of that class of Wagon determined for all Trains operated of the same Train Service type in the most recent Month during the previous twelve (12) Months for which a Weighbridge was functioning for the entire Month for each loaded or partly loaded Wagon comprising the Train Services provided such data is available; or
  - (e) where there are no Weighbridges located en route between the Origin and Destination or no data is available pursuant to paragraph (d) of this Clause the maximum gross mass as specified in **Schedule 4** for each loaded or partly loaded Wagon comprising the Train Service;
  - (f) the tare mass as specified in **Schedule 4** for each empty Wagon comprising the Train Service; and
  - (g) for all other Rollingstock, the maximum gross mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.
- 2.3** The Gtk for each individual Train Service operated shall be the gross tonnes for the Train Service as calculated in Clause 2.2 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.
- 2.4** The net tonnes for each individual Train Service operated shall be the gross tonnes as calculated in Clause 2.2 of this Schedule less the sum of:
- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
  - (b) the tare mass as specified in **Schedule 4** for each Wagon comprising the Train Service; and
  - (c) for all other Rollingstock, the tare mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.
- 2.5** The Ntk for each individual Train Service operated shall be the net tonnes for the Train Service as calculated in Clause 2.4 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.

### **PART 3 REVIEW DATE**

#### **3.1 Review Date**

**3.1.1** The Parties acknowledge that the Base Access Charge elements have been agreed by reference to the relevant Reference Tariffs in place at the time.

**3.1.2** For the purposes of this **Schedule 3** the Review Dates shall be the first day of the Month immediately following the Month in which the Reference Tariff Schedule relevant to the Train Services has been renewed or varied, or the Reference Tariff relevant to the Train Services has been adjusted or varied, in accordance with QR's Access Undertaking.

#### **3.2 Review of Charges**

QLD Competition Authority  
Date Received<sup>3</sup>  
12-May-2008

- 3.2.1** For each Train Service type the Base Access Charge elements, the X Factors, the First Escalation Date and, where necessary, any other elements of this Schedule 3 will be reviewed on each Review Date.
- 3.2.2** For each Train Service type QR will advise the Access Holder in writing of the Base Access Charge elements, the X Factors, the First Escalation Date and any other changes to this **Schedule 3** to apply from each Review Date within 14 days of the latter of the Review Date or the date on which the QCA endorses the relevant renewal or variation. In determining any variations, QR will have regard to:
- (a) the new or varied relevant Reference Tariffs;
  - (b) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (c) other related factors in the relevant Reference Tariff Schedule; and
  - (d) QR's Access Undertaking.
- 3.2.3** If the Access Holder does not accept some or all of the variations advised pursuant to Clause 3.2.2 of this Schedule, the Access Holder must give QR notice within 14 days of receipt of notice of the variations.
- 3.2.4** The Parties will negotiate in good faith to attempt to agree any new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule for which the Access Holder has given notice pursuant to Clause 3.2.3 of this Schedule.
- 3.2.5** If the Parties have not agreed the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule within thirty (30) days of the relevant Review Date, either Party may refer the determination of the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule to an expert in accordance with Clause 3.3 of this Schedule.
- 3.2.6** Unless and until agreement is reached or a determination is made pursuant to Clause 3.2 of this Schedule, the Base Access Charge elements, X Factors, First Escalation Date and/or any other relevant provision of this Schedule prevailing as at the Review Date shall continue to be utilised to determine the amount of Access Charges payable by the Access Holder. If any change in the Base Access Charge elements, X Factors or First Escalation Date is subsequently agreed or determined then the revised Base Access Charges, Escalation Factor or First Escalation Date will apply from the relevant Review Date and the Parties will account to one another accordingly.
- 3.3 Expert Review**
- 3.3.1** This Clause 3.3 only applies where the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are referred to an expert for review pursuant to Clause 3.2 of this **Schedule 3**.
- 3.3.2** Where a matter is to be referred to an expert pursuant to Clause 3.2 of this Schedule, the matter must be referred for determination by a person:
- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by the President for the time being of the Australian Society of Certified Practising Accountants;

- (b) who has appropriate qualifications and practical experience having regard to the nature of the matter in dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Access Holder, Operator or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment; and
- (f) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

**3.3.3** QR will provide the expert with documentation to support the QR determination of the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule. The expert may request any other documentation from either Party or any other party as it sees fit in order to determine the outcome of the dispute.

**3.3.4** The expert shall be required to undertake to keep confidential all matters coming to its knowledge by reason of the expert's appointment and performance of its duties, other than that already in the public domain. The expert shall not include such information in its reasons for reaching the determination.

**3.3.5** The expert shall review the QR documentation and either:

- (a) uphold the QR Base Access Charge elements, X Factors and/or First Escalation Date and/or any other changes to this Schedule proposed by QR; or
- (b) where the expert believes the QR provided Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule have not been determined consistent with QR's Access Undertaking and the relevant Reference Tariff Schedule, the expert shall seek to reach agreement with QR as to, and failing agreement shall determine, appropriate Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule, having regard to:
  - (i) the new relevant Reference Tariffs;
  - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (iii) other related factors in the relevant Reference Tariff Schedule; and
  - (iv) QR's Access Undertaking.

**3.3.6** The expert will report its findings to QR and the Access Holder and the reasons for such assessment.

**3.3.7** In the absence of manifest error, the decision of the expert shall be final and binding upon the Parties.

**3.3.8** The costs of the expert and any advisers to the expert shall be borne by:

- (a) the Access Holder in the event that the expert does not adjust the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule most recently proposed by QR prior to referral to the expert;

- (b) QR in the event that the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are varied from those most recently proposed by QR prior to referral to the expert; or
- (c) in such other proportion as the expert considers appropriate.

#### **PART 4 ESCALATION FORMULA**

**4.1** Unless otherwise agreed between the Parties, the Base Access Charge elements, except the QCA Levy, and any other charges specified as being subject to escalation will escalate on each Escalation Date from and including the First Escalation Date, in accordance with the following formula:

$$BAC_n = BAC_{n-1} * (CPI_n / CPI_{n-1} - X)$$

Where:

$BAC_n$  means the escalated value of the relevant Base Access Charge element or other charge for the purpose of calculating Access Charges and other charges payable under this Agreement pursuant to Part 5 of this Schedule;

$BAC_{n-1}$  means the escalated value of the relevant Base Access Charge element or other charge applied prior to the relevant Escalation Date or in the case of Access Charges at the First Escalation Date means the relevant Base Access Charge element shown in Table 1.1;

X means the X Factors shown in Table 1.1 for the relevant Base Access Charge element and is zero for all other charges;

$CPI_n$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 6 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined;

$CPI_{n-1}$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 9 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined.

#### **4.2 Review of Consumer Price Index**

**4.2.1** If in the reasonable opinion of QR or the Access Holder the Consumer Price Index used for the purposes of the escalation formula specified in Clause 4.1 of this Schedule:

- (a) is altered in a material way;
- (b) ceases to be published; or
- (c) ceases to be published at sufficiently regular intervals or is likely to cease to be published at sufficiently regular intervals for the purpose of the formula in Clause 4.1 of this Schedule,

then QR or the Access Holder (as the case may be) shall notify the other Party in writing of such opinion.

**4.2.2** Upon such notice being given, the Parties will negotiate with a view to agreeing to vary the application of the Consumer Price Index or to adopting an alternative or alternatives to the Consumer Price Index and failing agreement within forty five (45) days of such notice

being given then the matter shall be referred to an expert in accordance with Clause 17.3 of the Agreement.

- 4.2.3** If the dispute is resolved after the next Escalation Date, the Parties agree to retrospectively adjust any Access Charges invoiced since that date to be consistent with the outcome of the dispute resolution.

## **PART 5 CALCULATION OF INVOICE FOR ACCESS**

- 5.1** The amount of the invoice for charges payable by the Access Holder under this Agreement for the relevant Billing Period shall be calculated in accordance with the following formula:

$$TC = AC * (1 + GST) + G$$

Where

**TC** is the total amount of charges payable by the Access Holder for the relevant Billing Period;

**AC** is the sum of the Access Charges payable for the relevant Billing Period in respect to each Train Service type where the Access Charges payable for each Train Service shall equal the sum of IM, ICC, ALT1, ALT2, ET, EE, QL, and ATP for each Train Service type;

**IM** is the incremental maintenance charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_1 * GTK) / 1000$$

Where

**AT<sub>1</sub>** is the amount specified as AT<sub>1</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

**GTK** is the sum of the Gtk for all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual Train Service operated being determined in accordance with Clause 2.3 of this Schedule;

**ICC** is the incremental capacity charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_2 * NTS$$

Where

**AT<sub>2</sub>** is the amount specified as AT<sub>2</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

**NTS** is the number of relevant individual Train Services operated for the relevant Billing Period;

**ALT1** is the Ntk allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

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$$(AT_3 * NTK) / 1000$$

Where

AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NTK is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;

ALT2 is the net tonne allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_4 * NT$$

Where

AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ET is the electric traction charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_5 * eGTK) / 1000$$

Where

AT<sub>5</sub> is the amount specified as AT<sub>5</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

EE is the electric energy usage charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(EC * eGTK) / 1000$$

Where

EC is the amount specified as EC in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

QL is the QCA Levy charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$QL * NT$$

Where

QL is the amount specified as QL in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ATP is the annual take or pay charge for the relevant Train Service type, calculated for:

- (a) for that part of the first Year following the Commitment Date until 30 June, all Billing Periods from the Commitment Date up to and including the Billing Period commencing 1 June;
- (b) the twelve (12) Billing Periods during a full Year commencing 1 July; or
- (c) for a Year commencing on 1 July and ending on the date of expiry or termination of this Agreement, the twelve (12) Months commencing when that Year commences,

but applied only in the last Billing Period of the period identified in (a) or (b) above or in the case of (c) above, where the last day of the Year is not 30 June, on the first 30 June following the last day of that Year (which is the relevant Billing Period for the purposes of this calculation), and shall be, subject to ATP not being less than zero:

- (d) if  $SGtkY \geq (FGtkY - QRGtkY)$ , zero;
- (e) if  $TR \geq SAR$ , zero;
- (f) if  $TR < SAR$  and  $TATP > MTPA, TPA$ ; or
- (g) otherwise,  $ATPY$ ,

Where:

SGtkY is the System Gtk for the period identified in (b) or (c) above;

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FGtkY is the Forecast GtK for the period identified in (b) or (c) above;

QRGtKY is the System GtK that would have been achieved solely due to coal carrying Train Services that were unable to operate in the period identified in (b) or (c) above directly as a result of a QR Cause; and

TR subject to Clause 5.2 of this **Schedule 3**, is the Total Actual Revenue for  $AT_{2-4}$  for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year less the aggregate amount of Take or Pay for the relevant Year that QR would be entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking);

SAR subject to Clause 5.2 of this **Schedule 3**, is the System Allowable Revenue for  $AT_{2-4}$  for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;

MTPA is the amount by which SAR exceeds TR;

TATP subject to Clause 5.2 of this **Schedule 3**, is the aggregate amount of Take or Pay that QR would be entitled to earn from all Access Agreements executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place of the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking) in relation to the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;

TPA is calculated by the formula:

$$MTPA * (ATPY / TATP)$$

ATPY is calculated by the formula:

$$AT_2 * (CNTSY - QRNTSY - NTSY) + AT_3 * (CNTKY - QRNTKY - NTKY) + AT_4 * (CNTY - QRNTY - NTY)$$

Where:

$AT_2$  is the amount specified as  $AT_2$  in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;

CNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services that the Access Holder



was entitled to operate in the relevant period under **Schedule 1** been operated;

QRNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause;

NTSY is the number of the relevant individual Train Services operated for the relevant Year identified in (a), (b) or (c) above;

AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;

CNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Access Holder was entitled to operate in the relevant period under **Schedule 1** been operated and where Ntk is determined by identifying CNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;

QRNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Ntk is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;

NTKY is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;

AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;

CNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Access Holder was entitled to operate in the relevant period under **Schedule 1** been operated and where Nt is determined by identifying CNTSY for loaded

Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service;

QRNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Nt is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service; and

NTY is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule.

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 including charges for GST not already factored in by the formula for AC including, but not limited to, payment for Ancillary Services, interest, Overload Charges, payment for ad-hoc Train services not calculated in AC above, performance payments from **Schedule 1** or **Schedule 5** and any adjustments (positive or negative).

**5.2** For the purposes of the definitions of TR, SAR and TATP, each of the following terms has the meaning given to that term in QR's Access Undertaking as at the date of this Agreement (including, for the avoidance of doubt, where that term is defined in Schedule F of QR's Access Undertaking):

- (a) Access Agreement;
- (b) Access Rights;
- (c) AT<sub>2.4</sub>;
- (d) Commencing Date;
- (e) Individual Coal System Infrastructure;
- (f) New Access Agreement;
- (g) Take or Pay;
- (h) Total Actual Revenue;
- (i) Train Service;
- (j) System Allowable Revenue; and
- (k) Year.

For the purposes of the definitions of TR and TATP, the amount of Take or Pay that QR is entitled to earn will be calculated in accordance with Subclause 2.2.6, Part B, Schedule F of QR's Access Undertaking as at the date of this Agreement.

- 5.3** For the purposes of this **Schedule 3** a Train Service is a One Way Train Service.
- 5.4** A Train Service shall be deemed to commence at that time nominated by QR in accordance with its information systems in use at the time.

#### **PART 6 OVERLOAD CHARGES**

Overload Charges will be levied at the rate specified in the relevant Load Variation Table published by QR from time to time. The method of calculation and required payment method for Overload Charges will be advised.

**SCHEDULE 4**  
**AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS**

**Clause 5.9**

**PART 1      AUTHORISED ROLLINGSTOCK**

1.1            The following Rollingstock is authorised for operation on the Nominated Network subject to continued compliance with the criteria detailed for each respective item of Rollingstock. Inclusion in this Part 1 is not sufficient for operation on the Nominated Network (or any other part of the Infrastructure) and specific authorisation for the Rollingstock in this Part 1 as part of a Rollingstock Configuration in Part 2 is required prior to any operation of Train Services.

**LOCOMOTIVES:**

<b>Class</b>	
<b>Type</b>	
<b>Locomotive Identification Numbers</b>	
<b>Electric or diesel</b>	
<b>Vehicle Length over Coupling Centres</b>	
<b>Gross Mass</b>	
<b>Maximum Axle Load</b>	
<b>Axle Configuration</b>	
<b>Clearance Category</b>	
<b>Maximum Speed</b>	
<b>Total brake force empty (kN) including method of measurement or calculation</b>	
<b>Total brake force loaded (kN) including method of measurement or calculation</b>	
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>	
<b>Brake block or disc pad type</b>	
<b>Drawgear capacity</b>	
<b>Driver Cabs</b>	
<b>Driver Stations per Cab</b>	
<b>Brakes (26L equiv.)</b>	
<b>Dynamic Brake</b>	
<b>Train Radio</b>	
<b>Fuel Capacity</b>	
<b>General Arrangement Diagram Number</b>	
<b>Compatible with Safeworking DTC/RCS</b>	
<b>Notes and Conditions</b>	
<b>Other</b>	

**WAGONS:**

<b>Class</b>				
<b>Type</b>				
<b>Wagon ID Number</b>				
<b>Vehicle Length over Coupling Centres</b>				
<b>Maximum Gross Mass</b>				
<b>Maximum Allowable Gross Tonnage</b>				
<b>Maximum Desirable Gross Tonnage</b>				
<b>Tare Mass</b>				
<b>Payload</b>				
<b>Maximum Axle Load</b>				
<b>Type of payload (eg dangerous goods)</b>				
<b>Total brake force empty (kN) including method of measurement or calculation</b>				
<b>Total brake force loaded (kN) including method of measurement or calculation</b>				
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>				
<b>Brake block or disc pad type</b>				
<b>Drawgear capacity</b>				
<b>Clearance Category</b>				
<b>Maximum Speed Empty</b>				
<b>Maximum Speed Loaded</b>				
<b>Drawgear Type</b>				
<b>General Arrangement Daigram Number</b>				
<b>Notes and Conditions</b>				
<b>Other</b>				

**PART 2            AUTHORISED ROLLINGSTOCK CONFIGURATIONS**

**2.1**            The following Rollingstock Configurations for Train Services have been authorised for use on the Nominated Network subject to compliance with the criteria detailed below:

<b>Locomotive Class/Type</b>	
<b>Number of locomotives</b>	
<b>Wagon Class/Type</b>	
<b>Maximum number of trailing wagons per locomotive</b>	
<b>Maximum allowable number of trailing wagons in train configuration</b>	
<b>Maximum Allowable Gross Tonnage</b>	
<b>Empty tare tonnage (incl. Locos)</b>	
<b>Maximum Train length</b>	
<b>Maximum speed of empty Train</b>	
<b>Maximum speed of loaded Train</b>	
<b>Limitations/restrictions on marshalling order</b>	
<b>Train braking characteristics</b>	
<b>Brake delay time</b>	
<b>Deceleration rate</b>	
<b>Notes and Conditions</b>	
<b>Any variations from Reference Train Service description</b>	
<b>Other</b>	

**PART 3            RELEVANT ROLLINGSTOCK (Clause 7.4(d)(ii))**

*[To be inserted as applicable]*

**SCHEDULE 5**  
**PERFORMANCE LEVELS**

**Clause 5.6**

**SCHEDULE 6**  
**SAFEWORKING PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES &  
ENVIRONMENTAL STANDARDS**

**Clauses 7.1 and 8.1**

**PART 1 SAFWORKING PROCEDURES / SAFETY STANDARDS**

**1.1 QR's Safeworking Procedures**

QR's Safeworking Procedures that apply to the Nominated Network are as detailed in:

*[To be identified in and completed after the Risk Assessment]*

QR's Safeworking Procedures and Safety Standards form part of QR's safety management system and may be altered from time to time by QR in the manner prescribed in the Agreement and advised in accordance with Part 6 of **Schedule 10**.

**1.2 Line Sections**

The following specific Safeworking Procedures are in operation for the line sections and station yards that comprise the Nominated Network as detailed below:

<b>System</b>	<b>From</b>	<b>To</b>	<b>Safeworking Procedures</b>

**1.3 Localised Areas**

For localised areas such as station yards, QR station masters, signalmen or similar officers may be responsible for giving QR Train Control Directions.

**1.4 High Visibility Clothing**

High visibility clothing is to be constructed from high daytime visibility (Class F) materials, orange (special purpose) in colour. During the hours of darkness or when working in tunnels or low light weather conditions or between 1700 - 0800 hours, the high visibility clothing shall include retroreflective (Class R) material. The retroreflective material is to be at least 50mm wide and is to consist of two parallel strips around the body and in the case of a garment with sleeves a signal parallel strip around the upper arms. The colour and materials are to conform to AS/NZS 1906.4:1997 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments*.



**1.5 Wearing of High Visibility Clothing**

The Access Holder's Staff and visitors shall wear high visibility clothing:

- (a) when on QR's Right of Way;
- (b) in other work situations where high visibility clothing will reduce the risk of coming into contact with moving Trains, vehicles or plant; and
- (c) protective headwear must be worn at emergency sites.

High visibility clothing is not required to be worn by the Access Holder's Staff under the following conditions:

- (a) when the movement of Trains is within a building (such as a diesel shed) and within its defined boundaries is subject to control mechanisms;
- (b) when visitors are proceeding in a direct route on designated walkways to defined locations to access high visibility clothing;
- (c) when the movement of people is directed clear of the track by fencing, barriers or signs and escort is provided by a member of the Access Holder's Staff who is familiar with the local area and operating procedures;
- (d) when a person's duties require them to work within the public areas; or
- (e) when the Access Holder's Staff and visitors are within the confines of operational Rollingstock.

**1.6 Compliance**

The Access Holder is responsible for:

- (a) ensuring the Access Holder's Staff and visitors are instructed in the provisions of this Part 1 of **Schedule 6**;
- (b) ensuring the Access Holder's Staff and visitors comply with this Part 1 of **Schedule 6**;
- (c) specifying which form of high visibility clothing shall be adopted, having regard to local conditions and the nature of the work performed;
- (d) ensuring that the Access Holder's Staff familiarise themselves with local management standards prior to working in situations other than on QR's Right of Way; and,
- (e) ensuring that the Access Holder's Staff inspect, wear and maintain high visibility clothing correctly by:
  - checking for deterioration due to wear, damage, fading and cleanliness;
  - not wearing backpacks or similar items over any high visibility clothing so that the high visibility clothing is concealed; and,
  - ensuring high visibility vests or shirts are securely fastened.

**PART 2 QR EMERGENCY PROCEDURES**

QR will provide the Access Holder with a copy of the QR Emergency Procedures (as amended from time to time) which detail the procedures developed by QR for dealing with a Network Incident.

**PART 3 ENVIRONMENTAL MANAGEMENT STANDARDS**

- 3.1** Clause 8.1 of this Agreement requires an Environmental Investigation and Risk Management Report to be prepared to identify all the risks of Environmental Harm arising out of the use of the Nominated Network by the Access Holder including those risks identified in this Part 3. This list is to be taken as the minimum requirements to be addressed and the Environmental Investigation and Risk

Management Report should not be restricted to the elements included in this list. The Report should have regard to any appropriate Australian Standard dealing with Risk Assessment.

3.2 The risks to be considered and addressed as a minimum in the Environmental Investigation and Risk Management Report are:

**A WATER QUALITY MANAGEMENT**

The Access Holder must consider the impact of the operation on stormwater systems and natural waterways. In doing so all relevant water quality standards and regulations should be met.

**B AIR POLLUTION MANAGEMENT**

The Access Holder must consider the impact of the operation on air quality. In doing so all relevant air quality standards and regulations should be met.

**C CONTAMINATED LAND MANAGEMENT**

The Access Holder must consider the impact of the operation on land contamination. In doing so all practicable control measures to prevent the contamination of land should be undertaken. The requirements of Clause 8.5 of the Agreement shall be a minimum.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated land (Chem Unit 1991) or by other standards considered acceptable by the relevant authorities.

**D NATURE CONSERVATION**

The Access Holder shall consider the impact of the operation on flora and fauna.

**E MANAGEMENT OF HAZARDOUS SUBSTANCES AND DANGEROUS GOODS**

The Access Holder must as a minimum meet the requirements of Clause 8.3 of the Agreement. Any further environmental impacts not specifically addressed by Clause 8.3 should also be addressed.

**F WASTE MANAGEMENT**

The Access Holder must consider the impact of any waste produced by the operation. In doing so all relevant government and local authority requirements should be met.

**G ENVIRONMENTAL NOISE MANAGEMENT**

The Access Holder must determine the likely noise impacts attributable to the Access Holder's Train Services. In that regard, the Access Holder should ascertain whether existing noise levels from the Nominated Network exceed the Planning Levels for Railways referred to in the Environmental Protection (Noise) Policy 1997 ("Noise Planning Levels") and/or whether the Noise Planning Levels are likely to be exceeded because of the Access Holder's Train Services.

The Access Holder should note that where existing noise levels in the Nominated Network exceed the Noise Planning Levels and/or where noise from the Access Holder and/or the Operator's activities are likely to result in an exceedence of the Noise

Planning Levels, this may constitute an area of unacceptable risk to QR for the purposes of Clause 8.1(b) of this Agreement.

## **H ENVIRONMENTAL MONITORING**

The Access Holder must consider the likelihood of the operations under this Agreement causing Environmental Harm or nuisance. Baseline monitoring should be considered where relevant to establish benchmarks and to allow for comparison between pre- access conditions and those during and post access. Where QR has baseline information available it may be provided to the Access Holder and if no further baseline monitoring is undertaken, the QR data shall then be deemed to be an accurate description of the baseline data. Where no baseline monitoring is available, it shall be taken that the Nominated Network currently meets all environmental standards for the purposes of determining cause in any future environmental matters.

## **I EDUCATION, AWARENESS AND TRAINING**

The Access Holder must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Investigation and Risk Management Report.

With respect to environmental issues the Operator's Emergency Response Plan must:

- (i) include specific action plans for minimising environmental damage as a result of Incidents;
- (ii) require immediate and appropriate action to minimise any impact;
- (iii) require relevant authorities and QR to be informed immediately of any Incident;
- (iv) detail the method for the clean up of any contamination resulting from the Incident; and
- (v) require the recording of all environmental Incidents and all measures taken to manage the Incidents on a central register.

SCHEDULE 7

INSURANCE

Clause 13

**Required Insurances**

- (a) **Public liability insurance**
- (i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement by the Access Holder whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than TWO HUNDRED AND FIFTY MILLION DOLLARS (\$250,000,000) and with a self-insured retention not to exceed *[to be inserted]* for any one loss or an aggregate deductible of not more than *[to be inserted]*;
  - (ii) to include cover in respect of personal injury or property damage arising out of 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 which occurs on a definitely identifiable date; and
  - (iii) to cover the Access Holder's rail operations and associated activities on the Nominated Network.
- (b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Access Holder's Staff.
- (c) **Carrier liability insurance** in relation to the legal liability of the insured arising out of the transport of goods by Train Services on behalf of the Access Holder in accordance with this Agreement to a sum insured of not less than ONE MILLION DOLLARS (\$1,000,000) and with a deductible not to exceed *[to be inserted]* for any one loss.
- (d) **Motor Vehicle (non-Act) insurance** to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the Access Holder or Access Holder's Staff and must include:
- (i) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and
  - (ii) a Dangerous Goods extension with a maximum sum insured as required by statute.
- (e) **Motor Vehicle insurance** to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Access Holder or the Access Holder's Staff of all vehicles in the performance of their obligations under this Agreement.
- (f) Insurances effected pursuant to (a) and (d) of this Schedule must:

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- (i) include a principal's indemnity endorsement specifically noting QR as an insured party in respect of its interest arising out of or under this Agreement;
- (ii) include a cross liability clause;
- (iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

**SCHEDULE 8**

**QR's INVESTIGATION PROCEDURES**

**Clause 7.5**

**PART 1 ESTABLISHMENT OF INVESTIGATION**

**1.1 Routine Investigation**

- (a) Any Investigation required under Clause 7.5 of the Agreement and which is in respect of an Incident for which QR reasonably expects the cost of damage (including as a result of Environmental Harm) to be less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) and from which no person required hospitalisation is classified as a routine Investigation and shall be conducted solely by QR unless otherwise agreed by the Parties. QR shall consent to an Operator being a party to such routine Investigation if the Operator requires.
- (b) QR shall provide the Access Holder with a copy of any report produced as a result of a routine Investigation conducted under this Clause 1.1 and the Access Holder shall cooperate in the implementation of all recommendations reasonably made as part of that report.

**1.2 Major Investigation**

- (a) A major Investigation shall be undertaken in the event of an Incident or accident which resulted in a fatality or the hospitalisation of any person or where the cost of the damage (including as a result of Environmental Harm) is reasonably expected to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- (b) Major Investigations conducted under Clause 1.2(a) of this Schedule will be undertaken jointly by the Parties. Management of the Investigation will be facilitated by QR who will appoint the chairperson and who will advise the Department of Transport of the make-up of the Investigation team and its terms of reference.
- (c) A major Investigation will be set up as soon as possible following the Incident and the Parties will be required to have a representative at the site of the Incident within four (4) hours (or such other time as the Parties may agree) of notification to QR of the Incident.

**1.3 Membership of Investigating Teams**

- (a) All members of Investigation teams, whether the Investigation is conducted in accordance with Clauses 1.1 or 1.2 of this Schedule, will be required to be appropriately qualified.
- (b) Investigation teams shall not include any persons directly involved in the relevant Incident or the Recovery or Restoration.
- (c) In the case of a joint Investigation conducted under Clause 1.2 of this Schedule, each Party shall nominate at least one representative and use reasonable efforts to ensure that the members of the Investigation team have collectively the skills and expertise to address the range of operational and Infrastructure issues likely to be encountered. The Parties may agree to the inclusion of additional members in the Investigation team for this purpose.

- (d) The lead investigator of a major Investigation panel must be trained and certified in QR's accident/Incidents investigators course.
- (e) The need for independent team membership will be considered for major Investigations. A pool of interstate railway investigators exists and may be called upon where it is thought a degree of independence would be helpful to the Investigation.
- (f) In cases where worker death has occurred, the terms of reference and team composition shall be determined in conjunction with the QR's Chief Risk Officer.
- (g) Where a major Investigation is undertaken to satisfy requirements of the Transport Infrastructure Act and the Department of Transport reporting guidelines, the chairperson must be registered with the QR's Chief Risk Officer as an authorised investigator.

#### **1.4 Terms of Reference for Investigations**

- (a) The terms of reference for any routine Investigation in accordance with Clause 1.1 of this Schedule will be to determine the cause of the Incident and to stipulate what action has been or will be taken to prevent recurrence.
- (b) The terms of reference for any major Investigation in accordance with Clause 1.2 of this Schedule shall, as a minimum, be to :
  - i. ascertain probable causes;
  - ii. assess contributing factors;
  - iii. review current procedures for ensuring system integrity;
  - iv. make draft recommendations;
  - v. estimate direct and associated costs; and
  - vi. consider whether immediate remedial actions are required.
- (c) Additional terms may be added if agreed by the Parties or if determined in accordance with paragraph 1.3(f) of Part 1 of this Schedule.

#### **PART 2 MAJOR INVESTIGATIONS REPORTS**

A copy of the final reports of a major Investigation will be supplied to each Party. Each Party will be responsible for consideration and action on recommendations that are under the control of that Party. In the case of a fatal accident a copy of the report will also be sent to the Coroner.

#### **PART 3 REVIEW OF INVESTIGATIONS**

- (a) The Department of Transport has the right to call for an independent review of major Investigations in certain circumstances.
- (b) Under the Transport Infrastructure Act, the Minister for Transport may establish or re-establish a Board of Enquiry about an Incident that has happened on or involving a railway and which the Minister considers a serious Incident.

**SCHEDULE 9**

**ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT &  
INTERFACE RISK MANAGEMENT PLAN**

**PART 1 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT  
REPORT**

**Clause 8.1**

*[To be inserted]*

**PART 2 INTERFACE RISK MANAGEMENT PLAN**

**Clause 11 (a)**

*[To be inserted]*



**SCHEDULE 10**  
**INTERFACE COORDINATION PLAN**

**Clause 5.7**

**PART 1 NETWORK MANAGEMENT PRINCIPLES**

**1. Additional Definitions**

In the Network Management Principles, unless inconsistent with the context, the following words and expressions shall have the following meanings:

**“Access Seeker”** means a party who is seeking new or additional access rights;

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

- (i) additional to the number of Train services permitted under an existing access agreement, but otherwise consistent with the Train Services Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing access agreement; or
- (ii) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by QR;

**“Below Rail Delay”** means a delay to a Train service from its scheduled train path in the Daily Train Plan, where that delay can be attributed directly to QR acting as Railway Manager, but excludes:

- (i) cancellations;
- (ii) delays resulting from QR complying with a Passenger Priority Obligation; and
- (iii) delays resulting from a Force Majeure Event;

**“Capacity”** means the capability of a specified section of the Infrastructure to accommodate Train services within a specified time period after providing for QR’s reasonable requirements for the exclusive utilisation of that specified section of the Infrastructure for the purposes of performing activities associated with repair or Enhancement, including the operation of work Trains;

**“Capacity Resumption Register”** means a register maintained by QR and including the following information:

- (i) the Access Seeker who has an interest in access rights; and
- (ii) the access rights in which they have an interest;

**“Committed Capacity Register”** means a register maintained by QR and including the following information:

- (i) the party who has an interest in the access rights;
- (ii) the access rights in which they have an interest; and
- (iii) the nature of the interest;

**“Contested Train Path”** means a Train path in respect of which more than one Railway Operator has expressed an interest in operating a Train service in the week in question;

**“Major Periodic Maintenance”** means activities that renovate the Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year

and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering;

**“Out-of-Course Running”** means the circumstances that occur when the actual running of one or more Train services differs, by more than the agreed threshold, from that provided in the Daily Train Plan;

**“Timetabled Traffic”** means a traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train path on a particular day and/or week;

**“Train Orders”** means railing requests for a nominated period of time submitted to QR, or on behalf of a Railway Operator, to assist in the scheduling of Train Services;

**“Train Service Entitlement”** means a Railway Operator’s entitlement under an access agreement to operate a specified number and type of Train services over the Infrastructure 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, and until such time that access agreements have been developed for all existing QR operated Train services, includes the Capacity that is demonstrably required for the purpose of QR operated Train services and for which access charges are applicable;

## 2. Scheduling Principles

### 2.1 Train Service Entitlements

- (a) Railway Operators operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology<sup>1</sup>.
- (b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), a Weekly Train Plan (WTP), where necessary, and a Daily Train Plan (DTP).
- (c) Where an Access Seeker’s required Capacity cannot be met fully, the Access Seeker may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and if the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

### 2.2 Master Train Plan Principles

- (a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train services and other activities on the Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements. In other words, the Train paths indicated in the MTP for Cyclic Traffics need not necessarily represent the Train paths that those Train services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train paths indicated in the MTP may well indicate the actual Train path that a Train service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.

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<sup>1</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of Train Services per specified period of time.

<sup>2</sup> See Footnote 2 below

- (b) Unless otherwise expressly provided in a Railway Operator's access agreement, the MTP may be modified, as specified in the following paragraphs (c), (d), (e) and (f) where:
- (i) a Railway Operator notifies QR that it wishes to make a long-term change to the **times**<sup>2</sup> at which its Train service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (v) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train service/s operate, provided that change is within the scope of the relevant Railway Operators' Train Service Entitlement/s and is intended to accommodate:
    - the creation of a new or additional Train Service Entitlement, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP;
  - (vi) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlement/s, provided that change is intended to accommodate:
    - the creation of new Planned Possessions or the modification of existing Planned Possessions;
    - the creation of an additional Train Service Entitlement, through either the signing of an access agreement or the variation of an existing access agreement; or
    - any other Operational Constraint affecting the MTP,provided that where the change to the **times** at which scheduled Train service/s operate results in any existing Railway Operator's

<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their access agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (vii) QR notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the **times**<sup>4</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Railway Operators' Train Service Entitlements, QR has made reasonable efforts to mitigate the impact on that Railway Operator. Any limitations upon QR's ability to exercise this right will be specified in individual access agreements;
  - (viii) a Railway Operator's access agreement allows QR to alter the Railway Operator's Train Service Entitlement, for instance by resuming Capacity; or
  - (ix) QR, Infrastructure Service Providers, and all affected Railway Operators, otherwise agree.
- (c) QR may make modifications to the MTP, within the scope of subparagraphs (b)(i), (b)(ii), (b)(iii) and (b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
  - (d) QR may make modifications to the MTP, within the scope of subparagraphs (b)(v), (b)(vi) and (b)(vii) of these MTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
  - (e) Where a change is being sought to the MTP that falls within the scope of subparagraph (b)(ix) of these MTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum<sup>5</sup>. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.
  - (f) QR must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.
  - (g) As a result of QR's obligations in accordance with paragraph (f), where reference is made in paragraph (b) of these MTP Principles to a Railway Operator notifying QR that it wishes to vary its Train Service Entitlement or Train service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.
  - (h) The cancellation of a Train service or Train services in accordance with the above MTP Principles, does not necessarily excuse either QR or a Railway Operator from other access agreement obligations relating to the conduct in question.
  - (i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for QR Train Controllers in carrying out their duties.

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<sup>4</sup> See footnote 2 above.

<sup>5</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.

### 2.3. Weekly Train Plan Principles

- (a) In parts of QR's network where Cyclic Traffics operate, for instance the Central Queensland Coal Region, there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A WTP will be scheduled, utilising Planned Possessions, the Train paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, each Railway Operator's Train Service Entitlement and Train Orders for the particular week in question.
- (b) In the Central Queensland Coal Region, Train Orders for the coming week must, unless otherwise advised by QR, be submitted to QR before 1200 hours on Wednesday.
- (c) The process of scheduling Cyclic Traffics in the WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Railway Operators and Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process applies only for the allocation of a Contested Train Path between Railway Operators for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 1.
- (d) QR will advise Railway Operators of the WTP once it is developed in accordance with the above steps.

### 2.4. Daily Train Plan Principles

- (a) The DTP will indicate all scheduled Train services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Infrastructure.
- (b) In scheduling Cyclic Traffics on the DTP, QR may first schedule a WTP as discussed in the WTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- (c) QR will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Railway Operators and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- (d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in paragraphs (e), (f), and (g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:
  - (i) a Railway Operator notifies QR that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Railway Operator's scheduled Train service/s not being met or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train service/s

<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

operate, whether or not within the scope of the applicable Railway Operator's Train Service Entitlement, provided the change is intended to accommodate:

- the modification of an existing Planned Possession;
- the creation of an Urgent Possession; or
- any other Operational Constraint affecting the DTP,

provided that where the change to scheduled Train service/s results in any existing Railway Operator's Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (v) QR requests 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 Railway Operators' Train Service Entitlement, for the purpose of accommodating an Emergency Possession; or
  - (vi) QR, Infrastructure Service Providers, and all affected Railway Operators otherwise agree.
- (e) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(i), (d)(ii), and (d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
  - (f) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(iv) and (d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
  - (g) Where a change is being sought from the MTP or WTP that falls within the scope of subparagraph (d)(vi) of these DTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose scheduled Train service/s are affected by the change to consider the modification in an appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.
  - (h) Other than as detailed in paragraph (i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
  - (i) Once the DTP is scheduled, variations to the DTP may only be made where:
    - (i) before the day of operation, QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
    - (ii) before the commencement of the relevant Train service/s, a Railway Operator notifies QR that it wishes to make a change to the **times**<sup>9</sup> at which its Train service/s operate, provided that change is within the scope of the Railway Operator's Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not

<sup>8</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.

<sup>9</sup> See Footnote 2 above.

being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or

- (iii) before the commencement of the relevant Train service/s, QR notifies a Railway Operator that an Emergency Possession is required.
- (j) QR may make modifications to the DTP within the scope of subparagraphs (i) (i), (i) (ii) and (i) (iii) of these DTP principles on a case by case basis without the need for consultation.
- (k) The cancellation of a Train service or Train services in accordance with the above DTP Principles, does not necessarily excuse either QR or a Railway Operator from other obligations under this Agreement relating to the conduct in question.
- (l) The DTP will represent the expected train operation performance target over its period.
- (m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control Principles.

### 3. Train Control Principles

- (a) The fundamental objective of Train Control will be to facilitate the safe running of Train services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- (b) The ability of QR and/or a Railway Operator to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- (c) The following general principles apply to Railway Operators and QR Train Controllers:
  - (i) all parties will ensure that operational safety is maintained through compliance with the Safeworking Procedures and Safety Standards, the Rollingstock Interface Standards, applicable Interface Risk Management Plans and Environmental Investigations and Risk Management Reports;
  - (ii) Railway Operators will ensure that activities required to provide and operate Train services, including but not limited to, traincrewing, locomotive and Wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met; and
  - (iii) QR will manage the Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- (d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Railway Operator over another, and as a result, the identity of a Railway Operator will not of itself be a legitimate reason for QR Train Controllers to alter a scheduled Train service.
- (e) The traffic management decision making matrix, at Appendix 2, will be provided to assist QR Train Controllers in the resolution of disputes in accordance with the above principles.

- (f) QR will provide Railway Operators with:
- (i) real time Train Control information that indicates actual running of that Railway Operator's Train services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Train Control diagrams that indicates actual running of that Railway Operator's Train services against the relevant DTP; and
  - (iii) information about the type of Train services<sup>1</sup> operated by other Railway Operators on the same network to assist the Operator to determine whether the QR Train Controller is applying the principles in this Schedule in a consistent manner between Railway Operators.

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<sup>1</sup> For instance, freight Train services, passenger Train service or coal Train services.



Appendix 1

**Contested Train Path Decision-making Process**

QR will determine who is allocated a Contested Train Path, by:

- firstly, eliminating from consideration any Railway Operator whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR still has spare Capacity available, QR may determine which of the parties seeking the Contested Train Path is allocated that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR may determine which of the parties is allocated the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR will document the parties' agreement and keep a record of such<sup>10</sup>.
- then, considering the number of Train services per week that each Railway Operator has a contractual entitlement to in accordance with their Train Service Entitlement. If QR is behind (in the contract year to date) in providing a Railway Operator with its contracted Train services, that Railway Operator will get priority over a Railway Operator that QR is either ahead or on target (in the contract year to date) in providing contracted Train services to. Where QR is behind in providing contracted Train services to more than one Railway Operator, the Railway Operator most behind (in terms of Train services provided as a percentage of contracted Train services) will get first priority over others; and
- finally, where the above considerations do not assist QR in making a decision regarding which requested Train service is scheduled, QR will unilaterally determine which Train service/s is scheduled, and will keep a record of that decision and the reasoning behind that decision. QR will ensure that, over time, no Railway Operator is favoured over another, and where possible, if one Railway Operator is favoured this time, taking into account the Train Service Entitlement held by a Railway Operator, next time they are not favoured. In other words, if one Railway Operator has an entitlement to 10 services per week, and another Railway Operator has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Railway Operator if they received priority over the first Railway Operator on 2 out of 3 consecutive occasions.

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<sup>10</sup> QR envisages that this step will take into account the requirements of the relevant destinations of the Train services in question. In the coal system, for instance, the ports and domestic users, if they do not have an access agreement with QR themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Railway Operators in determining the priority of Train services requested in their weekly train request.

**Appendix 2**

**Traffic Management Decision Making Matrix**

**Notes for the application of the Traffic Management Decision Making Matrix**

As a generic principle for the performance of Train Control, QR recognises (as noted in Paragraph 3 of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of 'on time running', and accordingly, running to the DTP will always result in the most efficient use of the Infrastructure and provide those parties using the Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR considers it necessary to permit QR Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 and 6 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a QR Train Controller's ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train services, as expressed in their Train Service Entitlements.

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 DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running "On Time".

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

**Rules for the application of the Traffic Management Decision Making Matrix**

- Rule 1. Subject to rules 5 and 6, Train B may be given priority on condition Train A will still meet its "On Time" objective.
- Rule 2. Both Trains must meet their "On Time" objective.
- Rule 3. Subject to rules 5 and 6, Train A may be given priority on condition Train B will still meet its "On Time" objective.
- Rule 4. Subject to rules 5 and 6, give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the QR Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or a Passenger Priority Obligation.
- Rule 6. Where a Train is running "Late" due to a Below Rail Delay, it may be given preference over other Trains if the QR Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.

**PART 2 TRAIN CONTROL PROCEDURES**

## 2.1 Operator's Advice to QR Train Controller

For the benefit of the Operator's traincrew contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

For the benefit of the Operator's Controller contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, whether the Train has entered the Nominated Network or not, the Operator's Controller must advise the QR Train Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on Train performance.

In addition to the above, the traincrew of the Operator's Train must directly advise the QR Train Controller of any event that may affect the performance of their Train as soon as reasonably practicable after becoming aware of the event.

At least fifteen (15) minutes prior to the departure of the Operator's Train, the Operator's Controller is to provide the QR Train Controller with the following information:

- information regarding the traincrew, including names, depot, planned crew change locations and details of any mandatory breaks;
- any en route locomotive provisioning requirements;
- if in Train order territory or direct traffic control territory, the number of the leading locomotive; and,
- a Train List which is to contain the following information:
  - the number of the Train;
  - the origin of the Train;
  - the length of the Train in metres (including the locomotives);
  - the number of vehicles in the Train;
  - the gross mass of the Train;
  - the gross trailing load of the Train in tonnes;
  - the motive power employed by the Train;

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- for each vehicle in the Train in the order in which they will be placed, leading end first, the following information:
  - vehicle classification;
  - the vehicle number;
  - vehicle type;
  - gross weight of the vehicle;
  - a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
  - the destination of each vehicle;
  - any known defects eg brakes cut out.
- The Train List must be entered into QR's nominated information system in accordance with the procedures specified by QR.
- Any subsequent changes to the information provided in the Train List must be updated in QR's nominated information system in accordance with the procedures specified by QR as soon as reasonably practicable.
- The Operator must ensure that the contents of the Train List are accurate and reflect all the relevant information pertaining to the Train Service.
- In the case of a passenger Train variations to the above requirements may be specified by QR.

In the event that the weight and/or length of the Train alters during the course of the journey, the Operator's Controller is to advise the QR Train Controller of the new weight and length.

The Operator must provide to QR (and keep current at all times during the Term) the contact details (including mobile and after hours contact details) for the Operator's Controller.

Operator's Controller:

Name: *(to be completed by Operator)*

Position:

Phone:

Mobile:

Fax:

The Operator's Controller must be contactable by the QR Train Controller at all times when any of the Operator's Trains are on the Nominated Network. During times when the Operator's Trains are not on the Nominated Network and the Operator's Controller cannot be contacted the following advice is to be provided to the QR Train Controller:

- the hours during which the Operator's Controller will be unavailable; and,
- after hours contact procedures.

In dark territory the Operator's traincrew is to supply advice of the arrival and departure times, or the departure times if the Train did not stop, for each crossing station that the Train passed through on the Nominated Network when reasonably requested by the QR Train Controller. These times are then to be entered into QR's nominated information system as soon as practicable after the advice is received from the traincrew.

## 2.2 QR Train Controller's Advice to the Operator

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, the QR Train Controller must advise the Operator's Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on the Train's performance.

When reasonably requested by the Operator's Controller, the QR Train Controller is to provide an estimated time of arrival at any location on the Nominated Network for the Operator's Train.

When reasonably requested by the Operator's traincrew, the QR Train Controller will provide information regarding events that may impact on the performance of the Operator's Train.

## 2.3 Consultation Between QR Train Controller and the Operator

The location of meal and personal needs breaks is to be determined by consultation between the QR Train Controller and the Operator's traincrew.

Traincrew shall contact the Operator's Controller to request relief. If traincrew cannot establish communication with the Operator's Controller, the QR Train Controller shall be contacted and relief requested.

It is the responsibility of the Operator's Controller to determine which Trains require relief prior to reaching their destination. Consultation is to take place between QR Train Controller and the Operator's Controller as to the most appropriate time and location to have the Train relieved at.

Once this relief time and location has been agreed to it is the responsibility of the QR Train Controller to advise the Operator's Controller should the estimated time of arrival of the Train at the relief location vary by more than 15 minutes. It is the responsibility of the Operator's Controller to make all the necessary arrangements for traincrew relief.

If a relief request is received from traincrew, the QR Train Controller shall record the request and advise the Operator's Controller.

Upon receiving the relief request advice from the QR Train Controller, the Operator's Controller is to verbally acknowledge receipt. The Operator's Controller shall then consult with the QR Train Controller to advise of relief location.

If the Operator's Controller alters the relief requirements or the relief arrangements become delayed after advice was given to the QR Train Controller, the altered information shall be passed onto the QR Train Controller.

The Operator's Controller shall contact traincrew direct and advise of relief arrangements and if unable to contact traincrew direct, shall request the QR Train Controller to advise traincrew of relief arrangements.

Where traincrew are rostered on "change jobs", or are required to change enroute, it is the responsibility of the Traincrew to advise the QR Train Controller of their roster prior to entering the Nominated Network. It is the responsibility of the QR Train Controller to advise traincrew of the location of the change.

**2.4 Radio Procedures**

When using the Train Control radio system the Access Holder's Staff are to follow the general radio procedures contained in the Observance of Signals Manual STD/0037/SWK (as amended from time to time).

Access to the Train Control radio system for each of the line sections that comprise the Nominated Network can be obtained as follows:

Line Section:

Channel Number:

Line Section:

Channel Number:

**2.5 Procedures for Entering the Nominated Network**

The Operator must comply with originating yard procedures (if any) as advised by QR.

The Operator will only enter the Nominated Network upon receipt of the appropriate safeworking authority as advised by QR.

The Operator's Controller is to advise the QR Train Controller of the anticipated departure time of the Operator's Train at least two (2) hours before the scheduled departure time of the Train or when reasonably requested by the QR Train Controller. Should the anticipated departure time alter from that previously advised to the QR Train Controller, the Operator's Controller is to advise the QR Train Controller of the new anticipated departure time as soon as reasonably practicable after becoming aware of the change.

When the Operator's Train is ready to depart the originating station, the Operator's traincrew is to advise the QR Train Controller.

Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

**2.6 Procedures for Shunting/Entering and Exiting Yards**

QR will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en-route.

**2.7 Procedures for Leaving the Nominated Network**

The Operator must comply with terminating yard procedures (if any) as advised by QR.

**2.8 Contact details for party responsible for loading Trains – Clause 2.7(h)(ii)**

The Operator must provide to QR (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator's Trains.

Party Responsible for Loading the Operator's Trains:

Name: *(to be completed by the Operator)*

Phone:

Fax:

**PART 3 TRAIN OPERATIONS PROCEDURES**

**3.1 Safety Notices**

**(a) Safety Alerts**

Safety Alerts are documents used by QR to communicate any serious safety incident that has or could affect QR and users of its Infrastructure. The Safety Alerts are also used to provide details of the incident for information purposes together with advice regarding any immediate actions to be taken. QR will forward Safety Alerts to the facsimile number specified by the Access Holder in Clause 22.9 of the Agreement. As soon as possible after the receipt of a Safety Alert, the Access Holder is to make the Access Holder's Staff aware of the contents of such Safety Alert.

**(b) Weekly Notices**

Weekly Notices are published weekly by QR for QR employees and contain employment and safety information. The Weekly Notice is used to communicate safety related information about permanent changes or temporary changes which could extend for more than four (4) weeks. An abridged Weekly Notice containing the relevant safety information will be made available to the Access Holder at the same time.

This information will be published in the Weekly Notice seven (7) days prior to the date of such changes becoming effective. If it is necessary to publish the information and there is not enough time to issue it in a Weekly Notice, the information will be published on a Train notice prior to the date of the change becoming effective. The information will then be published as soon as possible in a Weekly Notice and an abridged Weekly Notice.

Members of the Access Holder's Staff who perform Safety Related Work must either receive a copy of the abridged Weekly Notice or have access to a copy or be notified of any information in the Weekly Notice relevant to their area of work. The Access Holder must advise QR of the address to which the abridged Weekly Notices should be forwarded by mail.

The Access Holder is to ensure that all abridged Weekly Notices are distributed to the relevant members of the Access Holder's Staff.

**(c) Train Notices**

Train Notices are instructions published by QR as either a hard copy or by electronic means and which are generally issued daily, but may be issued as determined by QR. They convey operational and safety instructions, information and messages. Train Notices must be issued to members of the Access Holder's Staff who are responsible for the operation of Trains or who work on or near the Track.

QR will advise the Access Holder of its procedures for forwarding Train notices.

The Access Holder is to ensure that all relevant Train Notices are distributed to the relevant members of the Access Holder's Staff.

**(d) Safeworking Forms**

Upon execution of this Agreement QR will provide to the Access Holder sufficient copies of all safeworking forms necessary to operate on the Nominated Network. QR will also supply reasonable quantities of replacement forms as requested by the Access Holder. Additional forms may be obtained through the following contact:

Manager Risk & Compliance  
QR Network Pty Ltd

Ph: (07) 3235 7978 Fax: (07) 3235 7806

### 3.2 **Operational Meetings**

The Access Holder must advise QR of the name and contact details of the Access Holder's Representative to attend operational meetings.

The Access Holder's Representative and the QR Representative (or their nominees) shall meet on a monthly basis or as agreed by the Parties for the purpose of:

- reviewing the achievement of Performance Levels and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
- reviewing requests or proposals by the Access Holder or QR to vary the procedures contained in this Schedule;
- reviewing the reliability of the Access Holder or Operator's Trains;
- reviewing Operational Constraints;
- investigating or reviewing breaches or suspected breaches of the Safeworking Procedures, Safety Standards or QR Train Control Directions by the Access Holder's Staff; and,
- reviewing any other matters relevant to the performance of this Agreement.

The Access Holder's Representative shall attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by QR from time to time.

The QR Representative is:

*(to be completed by QR)*

Ph:

Fax:

The Access Holder's Representative is:

*(to be completed by Access Holder)*

Ph

Fax

## **PART 4 NOMINATED PERSONS**

### **4.1 Nominated Delegates** (Clause 7.4(d)(ii)(B))

The nominated delegate of the chief executive officer of QR will be:

[insert details for delegate]

Phone:



Fax:

The nominated delegate of the chief executive officer of the Access Holder will be:

[insert details for delegate]

Phone:

Fax:

**4.2 Operator's Incident Response Coordinator**

Name:

Position:

Phone:

Mobile:

Fax:

**4.3 Operator's Recovery Team Leader**

Name:

Position:

Phone:

Mobile:

Fax:

**PART 5 POSSESSION PROTOCOLS**

QR will provide the Access Holder with a copy of the Possession Protocols (as amended from time to time) which detail the rules governing the management and scheduling of Planned Possessions, Emergency Possession and Urgent Possessions on the Infrastructure.

**PART 6 DOCUMENT CONTROL PROCEDURES**

The Access Holder will provide to QR the following details of its Document Controller:

Name: *(to be completed by Access Holder)*

Position:

Business Hours Telephone Number:

Postal Address:

Email Address:

Upon execution of this Agreement, QR will issue to the Access Holder one electronic copy of each of the documents listed in Paragraph 1.1 of Part 1 of **Schedule 6**. QR will

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manage updates and revisions of these documents in accordance with AS/NZS 4292.1 Rail Safety Management provisions applying to document control.

Updates and revisions of the QR Emergency Procedures and QR's Investigation Procedures will be managed in the same way.

The Access Holder will be responsible for ongoing distribution of all documents to the relevant members of the Access Holder's Staff.

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**SCHEDULE 11**  
**ANCILLARY SERVICES AND OTHER CHARGES**

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**SCHEDULE 12**  
**CONFIDENTIALITY DEED**

*[Unless otherwise agreed, this deed shall be the confidentiality deed set out in Schedule B of QR's Access Undertaking]*

**SCHEDULE 1**  
**TRAIN SERVICE ENTITLEMENTS**

**PART 1 TRAIN SERVICE DESCRIPTION**

**1.1 Train Service Characteristics**

The following tables define the characteristics of Train Services which characteristics shall form part of the Train Service Description.

**Commodity:** Coal  
**Sectional Run Times:** See Clause 1.2  
**Special Operating Restrictions:** See Clause 1.5

**System:**

Origin	Destination	Distance (km)	Average Time at Origin Loading Facility (hrs)

Notes: Origin is denoted as the mine and/or QR terms for the location at which the mine loads Trains  
 Train Services run loaded between Origin and Destination and empty between Destination and Origin.  
 Average time at Loading Facility is measured on a monthly basis

For Train Services with the above characteristics, the average time at the Destination unloading facility is as per the following table.

Destination Unloading Facility	Average Time at Destination Unloading Facility (hrs)

Notes: Average time at unloading facility is measured on a monthly basis.

For Train Services with the above characteristics, the average time at Depot and the average Other Dwell Time are as per the following table:

System	Average Time at Depot (hrs)	Average Other Dwell Time (hrs)

**1.2 Sectional Running Times**

The Sectional Running Times to be achieved by coal system Trains are set out in Table 1.2 below:

**Table 1.2 -Sectional Running Times:**

From	To	Sectional Running Time	
		Direction Empty (minutes)	Direction Loaded (minutes)

Note: A Diagram illustrating the location of each Section can be found in **Schedule 2**.

*[Access Holder to provide details of Sectional Running Times]*

### 1.3 Train Service Levels

The number of Nominated Weekly Train Services for the relevant coal system Train that QR will provide to the Access Holder from the Commitment Date are set out in Table 1.3 below:

**Table 1.3: Train Service Levels**

Service Levels	No. of Train Services
Nominated Weekly Train Services <sup>1</sup>	
Nominated Monthly Train Services <sup>1</sup> (31 days)	
Nominated Monthly Train Services <sup>1</sup> (30 days)	
Nominated Monthly Train Services <sup>1</sup> (29 days)	
Nominated Monthly Train Services <sup>1</sup> (28 days)	
Nominated Annual Train Services <sup>1</sup>	

<sup>1</sup> NB: A Train Service is a One Way Train Service

The above Train Service Levels will be converted into timetables using the process referred to in paragraph 2.2(i) of the Scheduling Principles set out in **Schedule 10**.

### 1.4 Transit Times

The transit times applicable to a Train Service for each Origin/Destination combination by system are:

- The sum of the Sectional Running Times as per Table 1.2 for the Sections over which the Train Service operates multiplied by the following applicable factors:

Coal	Average Transit Time (hrs)	Maximum Transit Time (hrs)
Empty Direction		
Loaded Direction		

### 1.5 Special Operating Restrictions

In scheduling Train Services in accordance with the Network Management Principles, QR will comply with the following special operating restrictions:

*[Specific operating restrictions to be agreed]*

## 1.6 Cycle Description

With the following exceptions, the Train Services Cycle description is the most direct route over the Nominated Network between the Origins and Destinations and Destinations and Origins (as described in Paragraph 1.1).

Note: Where there is duplicated Track or multiple roads (eg yards), QR will have the ability to schedule the Train over any of the Tracks or roads.

### Exceptions

*[To be agreed]*

## 1.7 Stowage

*[To identify any agreed short term Stowage requirements additional to that provided in the relevant Reference Tariff Schedule]*

## 1.8 Permitted Movements on the Nominated Network

*[To detail any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times]*

## 1.9 Agreed Exit Threshold and Agreed Deterioration Threshold

**Agreed Exit Threshold:**

**Agreed Deterioration Threshold:**

**SCHEDULE 2**  
**NOMINATED NETWORK**

**PART 1 EXTENT OF NOMINATED NETWORK**

For the purposes of this Agreement the Nominated Network on which the Access Holder will be entitled to operate Train Services will be described by a combination of diagram and/or table but does not include freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

*[Diagram/table to be inserted as applicable]*

**PART 2 PARTS OF NOMINATED NETWORK SUBJECT TO CLAUSE 18.5**

The following line sections to the extent they form part of the Nominated Network as specified in Part 1 of this **Schedule 2** will be subject to the provisions of Clause 18.5 of the Agreement:

*[To be inserted if applicable]*

**PART 3 TRAIN CONTROL CENTRES AND SIGNAL CABINS**

The movement of the Access Holder's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins as follows:

*[Diagram to be inserted]*

**PART 4 PARTS OF THE NOMINATED NETWORK SUBJECT TO CLAUSE 16.1(a)(iii)**

*[To be inserted if applicable]*

**PART 5 LAND IN WHICH OTHER PARTIES HAVE AN INTEREST (Clause 22.18)**

Deleted: 9

*[To be inserted if applicable]*



**PART 6 WEIGHBRIDGES AND OVERLOAD DETECTORS (Clause 2.7)**

**A. WEIGHBRIDGES CERTIFIED FOR BILLING PURPOSES:**

<b>Location</b>	<b>Owner/Operator</b>	<b>Weighbridge "In Motion Trade Certificate" Electronic Weighing and Billing</b>

The tolerances are those required to achieve certification.

**B. AGREED OPERATIONAL WEIGHBRIDGES AND OVERLOAD DETECTORS**

<b>Location</b>	<b>Owner/Operator</b>	<b>Tolerance</b>
		+/- (x)%

<b>SCHEDULE 3</b>
<b>CALCULATION OF ACCESS AND OTHER CHARGES</b>

**PART 1 BASE ACCESS CHARGES**

1.1 Table 1.1 below defines the seven elements of the Base Access Charges that are used to calculate the Access Charge payable by the Access Holder to QR for each Train Service:

**Table 1.1: Base Access Charge and X Factors**

			Base Access Charge	X Factors
<b>Train Service</b>				
<b>Origin</b>				
<b>Destination</b>				
<b>Incremental Maintenance Tariff</b>	(\$'000 Gtk)	<b>AT<sub>1</sub></b>		0
<b>Incremental Capacity Tariff</b>	(\$/ One Way Train Service)	<b>AT<sub>2</sub></b>		0
<b>Allocated Tariff 1</b>	(\$'000 Ntk)	<b>AT<sub>3</sub></b>		0
<b>Allocated Tariff 2</b>	(\$/net tonne)	<b>AT<sub>4</sub></b>		0
<b>Electric Tariff</b>	(\$'000 Gtk)	<b>AT<sub>5</sub></b>		0
<b>Electric Energy Charge</b>	(\$'000 Gtk)	<b>EC</b>		0
<b>QCA Levy</b>	(\$/net tonne)	<b>QL</b>		

1.2. The elements of the Base Access Charge will be escalated in accordance with Part 4 of this **Schedule 3**.

1.3 Table 1.1 above defines the X Factors and Table 1.2 below defines the First Escalation Dates to be used in escalating the Base Access Charge elements pursuant to Clause 4.1 of this Schedule 3.

**Table 1.2: First Escalation Date for Escalation**

Train Service	Origin	Destination	First Escalation Date
Train Service	Origin	Destination	

**PART 2 RELEVANT OPERATING PARAMETERS**

2.1 The calculation of Gtk, Ntk and net tonnes for application with the Base Access Charges in Part 5 of this Schedule shall be as detailed in this Part 2.

2.2 The gross tonnes for each individual Train Service operated will be the sum of:

- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
- (b) the mass determined at any Weighbridge located adjacent to the loading facilities for each loaded or partly loaded Wagon comprising the Train Service;

- (c) where there is no Weighbridge located adjacent to the loading facility or that Weighbridge has malfunctioned the mass determined at the closest Weighbridge to the loading facility located en route for each loaded or partly loaded Wagon comprising the Train Service;
- (d) where all Weighbridges en route have malfunctioned, the average mass for loaded Wagons of that class of Wagon determined for all Trains operated of the same Train Service type in the most recent Month during the previous twelve (12) Months for which a Weighbridge was functioning for the entire Month for each loaded or partly loaded Wagon comprising the Train Services provided such data is available; or
- (e) where there are no Weighbridges located en route between the Origin and Destination or no data is available pursuant to paragraph (d) of this Clause the maximum gross mass as specified in **Schedule 4** for each loaded or partly loaded Wagon comprising the Train Service;
- (f) the tare mass as specified in **Schedule 4** for each empty Wagon comprising the Train Service; and
- (g) for all other Rollingstock, the maximum gross mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.

**2.3** The Gtk for each individual Train Service operated shall be the gross tonnes for the Train Service as calculated in Clause 2.2 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.

**2.4** The net tonnes for each individual Train Service operated shall be the gross tonnes as calculated in Clause 2.2 of this Schedule less the sum of:

- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
- (b) the tare mass as specified in **Schedule 4** for each Wagon comprising the Train Service; and
- (c) for all other Rollingstock, the tare mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.

**2.5** The Ntk for each individual Train Service operated shall be the net tonnes for the Train Service as calculated in Clause 2.4 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.

### **PART 3 REVIEW DATE**

#### **3.1 Review Date**

**3.1.1** The Parties acknowledge that the Base Access Charge elements have been agreed by reference to the relevant Reference Tariffs in place at the time.

**3.1.2** For the purposes of this **Schedule 3** the Review Dates shall be the first day of the Month immediately following the Month in which the Reference Tariff Schedule relevant to the Train Services has been renewed or varied, or the Reference Tariff relevant to the Train Services has been adjusted or varied, in accordance with QR's Access Undertaking.

#### **3.2 Review of Charges**

- 3.2.1** For each Train Service type the Base Access Charge elements, the X Factors, the First Escalation Date and, where necessary, any other elements of this Schedule 3 will be reviewed on each Review Date.
- 3.2.2** For each Train Service type QR will advise the Access Holder in writing of the Base Access Charge elements, the X Factors, the First Escalation Date and any other changes to this **Schedule 3** to apply from each Review Date within 14 days of the latter of the Review Date or the date on which the QCA endorses the relevant renewal or variation. In determining any variations, QR will have regard to:
- (a) the new or varied relevant Reference Tariffs;
  - (b) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (c) other related factors in the relevant Reference Tariff Schedule; and
  - (d) QR's Access Undertaking.
- 3.2.3** If the Access Holder does not accept some or all of the variations advised pursuant to Clause 3.2.2 of this Schedule, the Access Holder must give QR notice within 14 days of receipt of notice of the variations.
- 3.2.4** The Parties will negotiate in good faith to attempt to agree any new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule for which the Access Holder has given notice pursuant to Clause 3.2.3 of this Schedule.
- 3.2.5** If the Parties have not agreed the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule within thirty (30) days of the relevant Review Date, either Party may refer the determination of the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule to an expert in accordance with Clause 3.3 of this Schedule.
- 3.2.6** Unless and until agreement is reached or a determination is made pursuant to Clause 3.2 of this Schedule, the Base Access Charge elements, X Factors, First Escalation Date and/or any other relevant provision of this Schedule prevailing as at the Review Date shall continue to be utilised to determine the amount of Access Charges payable by the Access Holder. If any change in the Base Access Charge elements, X Factors or First Escalation Date is subsequently agreed or determined then the revised Base Access Charges, Escalation Factor or First Escalation Date will apply from the relevant Review Date and the Parties will account to one another accordingly.
- 3.3 Expert Review**
- 3.3.1** This Clause 3.3 only applies where the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are referred to an expert for review pursuant to Clause 3.2 of this **Schedule 3**.
- 3.3.2** Where a matter is to be referred to an expert pursuant to Clause 3.2 of this Schedule, the matter must be referred for determination by a person:
- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by the President for the time being of the Australian Society of Certified Practising Accountants;

- (b) who has appropriate qualifications and practical experience having regard to the nature of the matter in dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Access Holder, Operator or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment; and
- (f) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

**3.3.3** QR will provide the expert with documentation to support the QR determination of the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule. The expert may request any other documentation from either Party or any other party as it sees fit in order to determine the outcome of the dispute.

**3.3.4** The expert shall be required to undertake to keep confidential all matters coming to its knowledge by reason of the expert's appointment and performance of its duties, other than that already in the public domain. The expert shall not include such information in its reasons for reaching the determination.

**3.3.5** The expert shall review the QR documentation and either:

- (a) uphold the QR Base Access Charge elements, X Factors and/or First Escalation Date and/or any other changes to this Schedule proposed by QR; or
- (b) where the expert believes the QR provided Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule have not been determined consistent with QR's Access Undertaking and the relevant Reference Tariff Schedule, the expert shall seek to reach agreement with QR as to, and failing agreement shall determine, appropriate Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule, having regard to:
  - (i) the new relevant Reference Tariffs;
  - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (iii) other related factors in the relevant Reference Tariff Schedule; and
  - (iv) QR's Access Undertaking.

**3.3.6** The expert will report its findings to QR and the Access Holder and the reasons for such assessment.

**3.3.7** In the absence of manifest error, the decision of the expert shall be final and binding upon the Parties.

**3.3.8** The costs of the expert and any advisers to the expert shall be borne by:

- (a) the Access Holder in the event that the expert does not adjust the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule most recently proposed by QR prior to referral to the expert;

- (b) QR in the event that the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are varied from those most recently proposed by QR prior to referral to the expert; or
- (c) in such other proportion as the expert considers appropriate.

#### **PART 4 ESCALATION FORMULA**

**4.1** Unless otherwise agreed between the Parties, the Base Access Charge elements, except the QCA Levy, and any other charges specified as being subject to escalation will escalate on each Escalation Date from and including the First Escalation Date, in accordance with the following formula:

$$BAC_n = BAC_{n-1} * (CPI_n / CPI_{n-1} - X)$$

Where:

$BAC_n$  means the escalated value of the relevant Base Access Charge element or other charge for the purpose of calculating Access Charges and other charges payable under this Agreement pursuant to Part 5 of this Schedule;

$BAC_{n-1}$  means the escalated value of the relevant Base Access Charge element or other charge applied prior to the relevant Escalation Date or in the case of Access Charges at the First Escalation Date means the relevant Base Access Charge element shown in Table 1.1;

X means the X Factors shown in Table 1.1 for the relevant Base Access Charge element and is zero for all other charges;

$CPI_n$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 6 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined;

$CPI_{n-1}$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 9 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined.

#### **4.2 Review of Consumer Price Index**

**4.2.1** If in the reasonable opinion of QR or the Access Holder the Consumer Price Index used for the purposes of the escalation formula specified in Clause 4.1 of this Schedule:

- (a) is altered in a material way;
- (b) ceases to be published; or
- (c) ceases to be published at sufficiently regular intervals or is likely to cease to be published at sufficiently regular intervals for the purpose of the formula in Clause 4.1 of this Schedule,

then QR or the Access Holder (as the case may be) shall notify the other Party in writing of such opinion.

**4.2.2** Upon such notice being given, the Parties will negotiate with a view to agreeing to vary the application of the Consumer Price Index or to adopting an alternative or alternatives to the Consumer Price Index and failing agreement within forty five (45) days of such notice

being given then the matter shall be referred to an expert in accordance with Clause 17.3 of the Agreement.

- 4.2.3** If the dispute is resolved after the next Escalation Date, the Parties agree to retrospectively adjust any Access Charges invoiced since that date to be consistent with the outcome of the dispute resolution.

## **PART 5 CALCULATION OF INVOICE FOR ACCESS**

- 5.1** The amount of the invoice for charges payable by the Access Holder under this Agreement for the relevant Billing Period shall be calculated in accordance with the following formula:

$$TC = AC * (1 + GST) + G$$

Where

**TC** is the total amount of charges payable by the Access Holder for the relevant Billing Period;

**AC** is the sum of the Access Charges payable for the relevant Billing Period in respect to each Train Service type where the Access Charges payable for each Train Service shall equal the sum of IM, ICC, ALT1, ALT2, ET, EE, QL, and ATP for each Train Service type;

**IM** is the incremental maintenance charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_1 * GTK) / 1000$$

Where

**AT<sub>1</sub>** is the amount specified as AT<sub>1</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

**GTK** is the sum of the G<sub>tk</sub> for all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the G<sub>tk</sub> for each individual Train Service operated being determined in accordance with Clause 2.3 of this Schedule;

**ICC** is the incremental capacity charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_2 * NTS$$

Where

**AT<sub>2</sub>** is the amount specified as AT<sub>2</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

**NTS** is the number of relevant individual Train Services operated for the relevant Billing Period;

**ALT1** is the N<sub>tk</sub> allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_3 * NTK) / 1000$$

Where

AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NTK is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;

ALT2 is the net tonne allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_4 * NT$$

Where

AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ET is the electric traction charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_5 * eGTK) / 1000$$

Where

AT<sub>5</sub> is the amount specified as AT<sub>5</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

EE is the electric energy usage charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(EC * eGTK) / 1000$$

Where

EC is the amount specified as EC in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and



eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

QL is the QCA Levy charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$QL * NT$$

Where

QL is the amount specified as QL in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ATP is the annual take or pay charge for the relevant Train Service type, calculated for:

- (a) for that part of the first Year following the Commitment Date until 30 June, all Billing Periods from the Commitment Date up to and including the Billing Period commencing 1 June;
- (b) the twelve (12) Billing Periods during a full Year commencing 1 July; or
- (c) for a Year commencing on 1 July and ending on the date of expiry or termination of this Agreement, the twelve (12) Months commencing when that Year commences,

but applied only in the last Billing Period of the period identified in (a) or (b) above or in the case of (c) above, where the last day of the Year is not 30 June, on the first 30 June following the last day of that Year (which is the relevant Billing Period for the purposes of this calculation), and shall be, subject to ATP not being less than zero:

- (d) if  $SGtkY \geq (FGtkY - QRGtkY)$ , zero;
- (e) if  $TR \geq SAR$ , zero;
- (f) if  $TR < SAR$  and  $TATP > MTPA, TPA$ ; or
- (g) otherwise,  $ATPY$ ,

Where:

SGtkY is the System Gtk for the period identified in (b) or (c) above;

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- FGtkY is the Forecast Gtk for the period identified in (b) or (c) above;
- QRGtkY is the System Gtk that would have been achieved solely due to coal carrying Train Services that were unable to operate in the period identified in (b) or (c) above directly as a result of a QR Cause; and
- TR subject to Clause 5.2 of this **Schedule 3**, is the Total Actual Revenue for AT<sub>2-4</sub> for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year less the aggregate amount of Take or Pay for the relevant Year that QR would be entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking);
- SAR subject to Clause 5.2 of this **Schedule 3**, is the System Allowable Revenue for AT<sub>2-4</sub> for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;
- MTPA is the amount by which SAR exceeds TR;
- TATP subject to Clause 5.2 of this **Schedule 3**, is the aggregate amount of Take or Pay that QR would be entitled to earn from all Access Agreements executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place of the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking) in relation to the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;
- TPA is calculated by the formula:  
$$MTPA * (ATPY / TATP)$$
- ATPY is calculated by the formula:  
$$AT_2 * (CNTSY - QRNTSY - NTSY) + AT_3 * (CNTKY - QRNTKY - NTKY) + AT_4 * (CNTY - QRNTY - NTY)$$
- Where:
- AT<sub>2</sub> is the amount specified as AT<sub>2</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;
- CNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services that the Access Holder

was entitled to operate in the relevant period under **Schedule 1** been operated;

QRNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause;

NTSY is the number of the relevant individual Train Services operated for the relevant Year identified in (a), (b) or (c) above;

AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;

CNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Access Holder was entitled to operate in the relevant period under **Schedule 1** been operated and where Ntk is determined by identifying CNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;

QRNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Ntk is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;

NTKY is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;

AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;

CNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Access Holder was entitled to operate in the relevant period under **Schedule 1** been operated and where Nt is determined by identifying CNTSY for loaded

Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service;

QRNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Nt is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service; and

NTY is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule.

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 including charges for GST not already factored in by the formula for AC including, but not limited to, payment for Ancillary Services, interest, Overload Charges, payment for ad-hoc Train services not calculated in AC above, performance payments from **Schedule 1** or **Schedule 5** and any adjustments (positive or negative).

**5.2** For the purposes of the definitions of TR, SAR and TATP, each of the following terms has the meaning given to that term in QR's Access Undertaking as at the date of this Agreement (including, for the avoidance of doubt, where that term is defined in Schedule F of QR's Access Undertaking):

- (a) Access Agreement;
- (b) Access Rights;
- (c)  $AT_{2.4}$ ;
- (d) Commencing Date;
- (e) Individual Coal System Infrastructure;
- (f) New Access Agreement;
- (g) Take or Pay;
- (h) Total Actual Revenue;
- (i) Train Service;
- (j) System Allowable Revenue; and
- (k) Year.

For the purposes of the definitions of TR and TATP, the amount of Take or Pay that QR is entitled to earn will be calculated in accordance with Subclause 2.2.6, Part B, Schedule F of QR's Access Undertaking as at the date of this Agreement.

**5.3** For the purposes of this **Schedule 3** a Train Service is a One Way Train Service.

**5.4** A Train Service shall be deemed to commence at that time nominated by QR in accordance with its information systems in use at the time.

#### **PART 6 OVERLOAD CHARGES**

Overload Charges will be levied at the rate specified in the relevant Load Variation Table published by QR from time to time. The method of calculation and required payment method for Overload Charges will be advised.

**SCHEDULE 4**  
**AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS**

**Clause 5.9**

**PART 1      AUTHORISED ROLLINGSTOCK**

1.1      The following Rollingstock is authorised for operation on the Nominated Network subject to continued compliance with the criteria detailed for each respective item of Rollingstock. Inclusion in this Part 1 is not sufficient for operation on the Nominated Network (or any other part of the Infrastructure) and specific authorisation for the Rollingstock in this Part 1 as part of a Rollingstock Configuration in Part 2 is required prior to any operation of Train Services.

**LOCOMOTIVES:**

<b>Class</b>	
<b>Type</b>	
<b>Locomotive Identification Numbers</b>	
<b>Electric or diesel</b>	
<b>Vehicle Length over Coupling Centres</b>	
<b>Gross Mass</b>	
<b>Maximum Axle Load</b>	
<b>Axle Configuration</b>	
<b>Clearance Category</b>	
<b>Maximum Speed</b>	
<b>Total brake force empty (kN) including method of measurement or calculation</b>	
<b>Total brake force loaded (kN) including method of measurement or calculation</b>	
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>	
<b>Brake block or disc pad type</b>	
<b>Drawgear capacity</b>	
<b>Driver Cabs</b>	
<b>Driver Stations per Cab</b>	
<b>Brakes (26L equiv.)</b>	
<b>Dynamic Brake</b>	
<b>Train Radio</b>	
<b>Fuel Capacity</b>	
<b>General Arrangement Diagram Number</b>	
<b>Compatible with Safeworking DTC/RCS</b>	
<b>Notes and Conditions</b>	
<b>Other</b>	

**WAGONS:**

<b>Class</b>				
<b>Type</b>				
<b>Wagon ID Number</b>				
<b>Vehicle Length over Coupling Centres</b>				
<b>Maximum Gross Mass</b>				
<b>Maximum Allowable Gross Tonnage</b>				
<b>Maximum Desirable Gross Tonnage</b>				
<b>Tare Mass</b>				
<b>Payload</b>				
<b>Maximum Axle Load</b>				
<b>Type of payload (eg dangerous goods)</b>				
<b>Total brake force empty (kN) including method of measurement or calculation</b>				
<b>Total brake force loaded (kN) including method of measurement or calculation</b>				
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>				
<b>Brake block or disc pad type</b>				
<b>Drawgear capacity</b>				
<b>Clearance Category</b>				
<b>Maximum Speed Empty</b>				
<b>Maximum Speed Loaded</b>				
<b>Drawgear Type</b>				
<b>General Arrangement Daigram Number</b>				
<b>Notes and Conditions</b>				
<b>Other</b>				

**PART 2 AUTHORISED ROLLINGSTOCK CONFIGURATIONS**

2.1 The following Rollingstock Configurations for Train Services have been authorised for use on the Nominated Network subject to compliance with the criteria detailed below:

<b>Locomotive Class/Type</b>	
<b>Number of locomotives</b>	
<b>Wagon Class/Type</b>	
<b>Maximum number of trailing wagons per locomotive</b>	
<b>Maximum allowable number of trailing wagons in train configuration</b>	
<b>Maximum Allowable Gross Tonnage</b>	
<b>Empty tare tonnage (incl. Locos)</b>	
<b>Maximum Train length</b>	
<b>Maximum speed of empty Train</b>	
<b>Maximum speed of loaded Train</b>	
<b>Limitations/restrictions on marshalling order</b>	
<b>Train braking characteristics</b>	
<b>Brake delay time</b>	
<b>Deceleration rate</b>	
<b>Notes and Conditions</b>	
<b>Any variations from Reference Train Service description</b>	
<b>Other</b>	

**PART 3 RELEVANT ROLLINGSTOCK (Clause 7.4(d)(ii))**

*[To be inserted as applicable]*



**SCHEDULE 5**  
**PERFORMANCE LEVELS**

**Clause 5.6**

**SCHEDULE 6**  
**SAFEWORKING PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES & ENVIRONMENTAL STANDARDS**

**Clauses 7.1 and 8.1**

**PART 1 SAFWORKING PROCEDURES / SAFETY STANDARDS**

**1.1 QR's Safeworking Procedures**

QR's Safeworking Procedures that apply to the Nominated Network are as detailed in:

*[To be identified in and completed after the Risk Assessment]*

QR's Safeworking Procedures and Safety Standards form part of QR's safety management system and may be altered from time to time by QR in the manner prescribed in the Agreement and advised in accordance with Part 6 of **Schedule 10**.

**1.2 Line Sections**

The following specific Safeworking Procedures are in operation for the line sections and station yards that comprise the Nominated Network as detailed below:

System	From	To	Safeworking Procedures

**1.3 Localised Areas**

For localised areas such as station yards, QR station masters, signalmen or similar officers may be responsible for giving QR Train Control Directions.

**1.4 High Visibility Clothing**

High visibility clothing is to be constructed from high daytime visibility (Class F) materials, orange (special purpose) in colour. During the hours of darkness or when working in tunnels or low light weather conditions or between 1700 - 0800 hours, the high visibility clothing shall include retroreflective (Class R) material. The retroreflective material is to be at least 50mm wide and is to consist of two parallel strips around the body and in the case of a garment with sleeves a signal parallel strip around the upper arms. The colour and materials are to conform to AS/NZS 1906.4:1997 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments*.

### 1.5 Wearing of High Visibility Clothing

The Access Holder's Staff and visitors shall wear high visibility clothing:

- (a) when on QR's Right of Way;
- (b) in other work situations where high visibility clothing will reduce the risk of coming into contact with moving Trains, vehicles or plant; and
- (c) protective headwear must be worn at emergency sites.

High visibility clothing is not required to be worn by the Access Holder's Staff under the following conditions:

- (a) when the movement of Trains is within a building (such as a diesel shed) and within its defined boundaries is subject to control mechanisms;
- (b) when visitors are proceeding in a direct route on designated walkways to defined locations to access high visibility clothing;
- (c) when the movement of people is directed clear of the track by fencing, barriers or signs and escort is provided by a member of the Access Holder's Staff who is familiar with the local area and operating procedures;
- (d) when a person's duties require them to work within the public areas; or
- (e) when the Access Holder's Staff and visitors are within the confines of operational Rollingstock.

### 1.6 Compliance

The Access Holder is responsible for:

- (a) ensuring the Access Holder's Staff and visitors are instructed in the provisions of this Part 1 of **Schedule 6**;
- (b) ensuring the Access Holder's Staff and visitors comply with this Part 1 of **Schedule 6**;
- (c) specifying which form of high visibility clothing shall be adopted, having regard to local conditions and the nature of the work performed;
- (d) ensuring that the Access Holder's Staff familiarise themselves with local management standards prior to working in situations other than on QR's Right of Way; and,
- (e) ensuring that the Access Holder's Staff inspect, wear and maintain high visibility clothing correctly by:
  - checking for deterioration due to wear, damage, fading and cleanliness;
  - not wearing backpacks or similar items over any high visibility clothing so that the high visibility clothing is concealed; and,
  - ensuring high visibility vests or shirts are securely fastened.

## PART 2 QR EMERGENCY PROCEDURES

QR will provide the Access Holder with a copy of the QR Emergency Procedures (as amended from time to time) which detail the procedures developed by QR for dealing with a Network Incident.

## PART 3 ENVIRONMENTAL MANAGEMENT STANDARDS

- 3.1** Clause 8.1 of this Agreement requires an Environmental Investigation and Risk Management Report to be prepared to identify all the risks of Environmental Harm arising out of the use of the Nominated Network by the Access Holder including those risks identified in this Part 3. This list is to be taken as the minimum requirements to be addressed and the Environmental Investigation and Risk

Management Report should not be restricted to the elements included in this list. The Report should have regard to any appropriate Australian Standard dealing with Risk Assessment.

3.2 The risks to be considered and addressed as a minimum in the Environmental Investigation and Risk Management Report are:

**A WATER QUALITY MANAGEMENT**

The Access Holder must consider the impact of the operation on stormwater systems and natural waterways. In doing so all relevant water quality standards and regulations should be met.

**B AIR POLLUTION MANAGEMENT**

The Access Holder must consider the impact of the operation on air quality. In doing so all relevant air quality standards and regulations should be met.

**C CONTAMINATED LAND MANAGEMENT**

The Access Holder must consider the impact of the operation on land contamination. In doing so all practicable control measures to prevent the contamination of land should be undertaken. The requirements of Clause 8.5 of the Agreement shall be a minimum.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated land (Chem Unit 1991) or by other standards considered acceptable by the relevant authorities.

**D NATURE CONSERVATION**

The Access Holder shall consider the impact of the operation on flora and fauna.

**E MANAGEMENT OF HAZARDOUS SUBSTANCES AND DANGEROUS GOODS**

The Access Holder must as a minimum meet the requirements of Clause 8.3 of the Agreement. Any further environmental impacts not specifically addressed by Clause 8.3 should also be addressed.

**F WASTE MANAGEMENT**

The Access Holder must consider the impact of any waste produced by the operation. In doing so all relevant government and local authority requirements should be met.

**G ENVIRONMENTAL NOISE MANAGEMENT**

The Access Holder must determine the likely noise impacts attributable to the Access Holder's Train Services. In that regard, the Access Holder should ascertain whether existing noise levels from the Nominated Network exceed the Planning Levels for Railways referred to in the Environmental Protection (Noise) Policy 1997 ("Noise Planning Levels") and/or whether the Noise Planning Levels are likely to be exceeded because of the Access Holder's Train Services.

The Access Holder should note that where existing noise levels in the Nominated Network exceed the Noise Planning Levels and/or where noise from the Access Holder and/or the Operator's activities are likely to result in an exceedence of the Noise

Planning Levels, this may constitute an area of unacceptable risk to QR for the purposes of Clause 8.1(b) of this Agreement.

## **H ENVIRONMENTAL MONITORING**

The Access Holder must consider the likelihood of the operations under this Agreement causing Environmental Harm or nuisance. Baseline monitoring should be considered where relevant to establish benchmarks and to allow for comparison between pre- access conditions and those during and post access. Where QR has baseline information available it may be provided to the Access Holder and if no further baseline monitoring is undertaken, the QR data shall then be deemed to be an accurate description of the baseline data. Where no baseline monitoring is available, it shall be taken that the Nominated Network currently meets all environmental standards for the purposes of determining cause in any future environmental matters.

## **I EDUCATION, AWARENESS AND TRAINING**

The Access Holder must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Investigation and Risk Management Report.

With respect to environmental issues the Operator's Emergency Response Plan must:

- (i) include specific action plans for minimising environmental damage as a result of Incidents;
- (ii) require immediate and appropriate action to minimise any impact;
- (iii) require relevant authorities and QR to be informed immediately of any Incident;
- (iv) detail the method for the clean up of any contamination resulting from the Incident; and
- (v) require the recording of all environmental Incidents and all measures taken to manage the Incidents on a central register.

SCHEDULE 7

INSURANCE

Clause 13

**Required Insurances**

- (a) **Public liability insurance**
- (i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement by the Access Holder whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than TWO HUNDRED AND FIFTY MILLION DOLLARS (\$250,000,000) and with a self-insured retention not to exceed *[to be inserted]* for any one loss or an aggregate deductible of not more than *[to be inserted]*;
  - (ii) to include cover in respect of personal injury or property damage arising out of 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 which occurs on a definitely identifiable date; and
  - (iii) to cover the Access Holder's rail operations and associated activities on the Nominated Network.
- (b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Access Holder's Staff.
- (c) **Carrier liability insurance** in relation to the legal liability of the insured arising out of the transport of goods by Train Services on behalf of the Access Holder in accordance with this Agreement to a sum insured of not less than ONE MILLION DOLLARS (\$1,000,000) and with a deductible not to exceed *[to be inserted]* for any one loss.
- (d) **Motor Vehicle (non-Act) insurance** to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the Access Holder or Access Holder's Staff and must include:
- (i) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and
  - (ii) a Dangerous Goods extension with a maximum sum insured as required by statute.
- (e) **Motor Vehicle insurance** to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Access Holder or the Access Holder's Staff of all vehicles in the performance of their obligations under this Agreement.
- (f) Insurances effected pursuant to (a) and (d) of this Schedule must:

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- (i) include a principal's indemnity endorsement specifically noting QR as an insured party in respect of its interest arising out of or under this Agreement;
- (ii) include a cross liability clause;
- (iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

**SCHEDULE 8**

**QR's INVESTIGATION PROCEDURES**

**Clause 7.5**

**PART 1 ESTABLISHMENT OF INVESTIGATION**

**1.1 Routine Investigation**

- (a) Any Investigation required under Clause 7.5 of the Agreement and which is in respect of an Incident for which QR reasonably expects the cost of damage (including as a result of Environmental Harm) to be less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) and from which no person required hospitalisation is classified as a routine Investigation and shall be conducted solely by QR unless otherwise agreed by the Parties. QR shall consent to an Operator being a party to such routine Investigation if the Operator requires.
- (b) QR shall provide the Access Holder with a copy of any report produced as a result of a routine Investigation conducted under this Clause 1.1 and the Access Holder shall cooperate in the implementation of all recommendations reasonably made as part of that report.

**1.2 Major Investigation**

- (a) A major Investigation shall be undertaken in the event of an Incident or accident which resulted in a fatality or the hospitalisation of any person or where the cost of the damage (including as a result of Environmental Harm) is reasonably expected to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- (b) Major Investigations conducted under Clause 1.2(a) of this Schedule will be undertaken jointly by the Parties. Management of the Investigation will be facilitated by QR who will appoint the chairperson and who will advise the Department of Transport of the make-up of the Investigation team and its terms of reference.
- (c) A major Investigation will be set up as soon as possible following the Incident and the Parties will be required to have a representative at the site of the Incident within four (4) hours (or such other time as the Parties may agree) of notification to QR of the Incident.

**1.3 Membership of Investigating Teams**

- (a) All members of Investigation teams, whether the Investigation is conducted in accordance with Clauses 1.1 or 1.2 of this Schedule, will be required to be appropriately qualified.
- (b) Investigation teams shall not include any persons directly involved in the relevant Incident or the Recovery or Restoration.
- (c) In the case of a joint Investigation conducted under Clause 1.2 of this Schedule, each Party shall nominate at least one representative and use reasonable efforts to ensure that the members of the Investigation team have collectively the skills and expertise to address the range of operational and Infrastructure issues likely to be encountered. The Parties may agree to the inclusion of additional members in the Investigation team for this purpose.



- (d) The lead investigator of a major Investigation panel must be trained and certified in QR's accident/Incidents investigators course.
- (e) The need for independent team membership will be considered for major Investigations. A pool of interstate railway investigators exists and may be called upon where it is thought a degree of independence would be helpful to the Investigation.
- (f) In cases where worker death has occurred, the terms of reference and team composition shall be determined in conjunction with the QR's Chief Risk Officer.
- (g) Where a major Investigation is undertaken to satisfy requirements of the Transport Infrastructure Act and the Department of Transport reporting guidelines, the chairperson must be registered with the QR's Chief Risk Officer as an authorised investigator.

Deleted: Executive General  
Manager Safety

Deleted: Executive General  
Manager Safety

#### 1.4 Terms of Reference for Investigations

- (a) The terms of reference for any routine Investigation in accordance with Clause 1.1 of this Schedule will be to determine the cause of the Incident and to stipulate what action has been or will be taken to prevent recurrence.
- (b) The terms of reference for any major Investigation in accordance with Clause 1.2 of this Schedule shall, as a minimum, be to :
  - i. ascertain probable causes;
  - ii. assess contributing factors;
  - iii. review current procedures for ensuring system integrity;
  - iv. make draft recommendations;
  - v. estimate direct and associated costs; and
  - vi. consider whether immediate remedial actions are required.
- (c) Additional terms may be added if agreed by the Parties or if determined in accordance with paragraph 1.3(f) of Part 1 of this Schedule.

## PART 2 MAJOR INVESTIGATIONS REPORTS

A copy of the final reports of a major Investigation will be supplied to each Party. Each Party will be responsible for consideration and action on recommendations that are under the control of that Party. In the case of a fatal accident a copy of the report will also be sent to the Coroner.

## PART 3 REVIEW OF INVESTIGATIONS

- (a) The Department of Transport has the right to call for an independent review of major Investigations in certain circumstances.
- (b) Under the Transport Infrastructure Act, the Minister for Transport may establish or re-establish a Board of Enquiry about an Incident that has happened on or involving a railway and which the Minister considers a serious Incident.

**SCHEDULE 9**  
**ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT &  
INTERFACE RISK MANAGEMENT PLAN**

**PART 1 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT  
REPORT**

**Clause 8.1**

*[To be inserted]*

**PART 2 INTERFACE RISK MANAGEMENT PLAN**

**Clause 11 (a)**

*[To be inserted]*

QLD Competition Authority  
Date Received  
12-May-2008

**SCHEDULE 10**  
**INTERFACE COORDINATION PLAN**

**Clause 5.7**

**PART 1 NETWORK MANAGEMENT PRINCIPLES**

**1. Additional Definitions**

In the Network Management Principles, unless inconsistent with the context, the following words and expressions shall have the following meanings:

**“Access Seeker”** means a party who is seeking new or additional access rights;

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

- (i) additional to the number of Train services permitted under an existing access agreement, but otherwise consistent with the Train Services Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing access agreement; or
- (ii) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by QR;

**“Below Rail Delay”** means a delay to a Train service from its scheduled train path in the Daily Train Plan, where that delay can be attributed directly to QR acting as Railway Manager, but excludes:

- (i) cancellations;
- (ii) delays resulting from QR complying with a Passenger Priority Obligation; and
- (iii) delays resulting from a Force Majeure Event;

**“Capacity”** means the capability of a specified section of the Infrastructure to accommodate Train services within a specified time period after providing for QR’s reasonable requirements for the exclusive utilisation of that specified section of the Infrastructure for the purposes of performing activities associated with repair or Enhancement, including the operation of work Trains;

**“Capacity Resumption Register”** means a register maintained by QR and including the following information:

- (i) the Access Seeker who has an interest in access rights; and
- (ii) the access rights in which they have an interest;

**“Committed Capacity Register”** means a register maintained by QR and including the following information:

- (i) the party who has an interest in the access rights;
- (ii) the access rights in which they have an interest; and
- (iii) the nature of the interest;

**“Contested Train Path”** means a Train path in respect of which more than one Railway Operator has expressed an interest in operating a Train service in the week in question;

**“Major Periodic Maintenance”** means activities that renovate the Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year

and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering;

**“Out-of-Course Running”** means the circumstances that occur when the actual running of one or more Train services differs, by more than the agreed threshold, from that provided in the Daily Train Plan;

**“Timetabled Traffic”** means a traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train path on a particular day and/or week;

**“Train Orders”** means railing requests for a nominated period of time submitted to QR, or on behalf of a Railway Operator, to assist in the scheduling of Train Services;

**“Train Service Entitlement”** means a Railway Operator’s entitlement under an access agreement to operate a specified number and type of Train services over the Infrastructure 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, and until such time that access agreements have been developed for all existing QR operated Train services, includes the Capacity that is demonstrably required for the purpose of QR operated Train services and for which access charges are applicable;

## 2. Scheduling Principles

### 2.1 Train Service Entitlements

- (a) Railway Operators operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology<sup>1</sup>.
- (b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), a Weekly Train Plan (WTP), where necessary, and a Daily Train Plan (DTP).
- (c) Where an Access Seeker’s required Capacity cannot be met fully, the Access Seeker may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and if the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

### 2.2 Master Train Plan Principles

- (a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train services and other activities on the Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements. In other words, the Train paths indicated in the MTP for Cyclic Traffics need not necessarily represent the Train paths that those Train services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train paths indicated in the MTP may well indicate the actual Train path that a Train service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.

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<sup>1</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of Train Services per specified period of time.

<sup>2</sup> See Footnote 2 below

- (b) Unless otherwise expressly provided in a Railway Operator's access agreement, the MTP may be modified, as specified in the following paragraphs (c), (d), (e) and (f) where:
- (i) a Railway Operator notifies QR that it wishes to make a long-term change to the **times**<sup>2</sup> at which its Train service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (v) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train service/s operate, provided that change is within the scope of the relevant Railway Operators' Train Service Entitlement/s and is intended to accommodate:
    - the creation of a new or additional Train Service Entitlement, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP;
  - (vi) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlement/s, provided that change is intended to accommodate:
    - the creation of new Planned Possessions or the modification of existing Planned Possessions;
    - the creation of an additional Train Service Entitlement, through either the signing of an access agreement or the variation of an existing access agreement; or
    - any other Operational Constraint affecting the MTP,provided that where the change to the **times** at which scheduled Train service/s operate results in any existing Railway Operator's

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<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their access agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (vii) QR notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the **times**<sup>4</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Railway Operators' Train Service Entitlements, QR has made reasonable efforts to mitigate the impact on that Railway Operator. Any limitations upon QR's ability to exercise this right will be specified in individual access agreements;
  - (viii) a Railway Operator's access agreement allows QR to alter the Railway Operator's Train Service Entitlement, for instance by resuming Capacity; or
  - (ix) QR, Infrastructure Service Providers, and all affected Railway Operators, otherwise agree.
- (c) QR may make modifications to the MTP, within the scope of subparagraphs (b)(i), (b)(ii), (b)(iii) and (b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
  - (d) QR may make modifications to the MTP, within the scope of subparagraphs (b)(v), (b)(vi) and (b)(vii) of these MTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
  - (e) Where a change is being sought to the MTP that falls within the scope of subparagraph (b)(ix) of these MTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum<sup>5</sup>. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.
  - (f) QR must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.
  - (g) As a result of QR's obligations in accordance with paragraph (f), where reference is made in paragraph (b) of these MTP Principles to a Railway Operator notifying QR that it wishes to vary its Train Service Entitlement or Train service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.
  - (h) The cancellation of a Train service or Train services in accordance with the above MTP Principles, does not necessarily excuse either QR or a Railway Operator from other access agreement obligations relating to the conduct in question.
  - (i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for QR Train Controllers in carrying out their duties.

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<sup>4</sup> See footnote 2 above.

<sup>5</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.

### 2.3. Weekly Train Plan Principles

- (a) In parts of QR's network where Cyclic Traffics operate, for instance the Central Queensland Coal Region, there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A WTP will be scheduled, utilising Planned Possessions, the Train paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, each Railway Operator's Train Service Entitlement and Train Orders for the particular week in question.
- (b) In the Central Queensland Coal Region, Train Orders for the coming week must, unless otherwise advised by QR, be submitted to QR before 1200 hours on Wednesday.
- (c) The process of scheduling Cyclic Traffics in the WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Railway Operators and Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process applies only for the allocation of a Contested Train Path between Railway Operators for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 1.
- (d) QR will advise Railway Operators of the WTP once it is developed in accordance with the above steps.

### 2.4. Daily Train Plan Principles

- (a) The DTP will indicate all scheduled Train services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Infrastructure.
- (b) In scheduling Cyclic Traffics on the DTP, QR may first schedule a WTP as discussed in the WTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- (c) QR will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Railway Operators and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- (d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in paragraphs (e), (f), and (g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:
  - (i) a Railway Operator notifies QR that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Railway Operator's scheduled Train service/s not being met or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train service/s

<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.



operate, whether or not within the scope of the applicable Railway Operator's Train Service Entitlement, provided the change is intended to accommodate:

- the modification of an existing Planned Possession;
- the creation of an Urgent Possession; or
- any other Operational Constraint affecting the DTP,

provided that where the change to scheduled Train service/s results in any existing Railway Operator's Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (v) QR requests 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 Railway Operators' Train Service Entitlement, for the purpose of accommodating an Emergency Possession; or
- (vi) QR, Infrastructure Service Providers, and all affected Railway Operators otherwise agree.
- (e) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(i), (d)(ii), and (d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
- (f) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(iv) and (d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- (g) Where a change is being sought from the MTP or WTP that falls within the scope of subparagraph (d)(vi) of these DTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose scheduled Train service/s are affected by the change to consider the modification in an appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.
- (h) Other than as detailed in paragraph (i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
- (i) Once the DTP is scheduled, variations to the DTP may only be made where:
- (i) before the day of operation, QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
- (ii) before the commencement of the relevant Train service/s, a Railway Operator notifies QR that it wishes to make a change to the **times**<sup>9</sup> at which its Train service/s operate, provided that change is within the scope of the Railway Operator's Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not

<sup>8</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.

<sup>9</sup> See Footnote 2 above.

being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or

- (iii) before the commencement of the relevant Train service/s, QR notifies a Railway Operator that an Emergency Possession is required.
- (j) QR may make modifications to the DTP within the scope of subparagraphs (i) (i), (i) (ii) and (i) (iii) of these DTP principles on a case by case basis without the need for consultation.
- (k) The cancellation of a Train service or Train services in accordance with the above DTP Principles, does not necessarily excuse either QR or a Railway Operator from other obligations under this Agreement relating to the conduct in question.
- (l) The DTP will represent the expected train operation performance target over its period.
- (m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control Principles.

### 3. Train Control Principles

- (a) The fundamental objective of Train Control will be to facilitate the safe running of Train services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- (b) The ability of QR and/or a Railway Operator to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- (c) The following general principles apply to Railway Operators and QR Train Controllers:
  - (i) all parties will ensure that operational safety is maintained through compliance with the Safeworking Procedures and Safety Standards, the Rollingstock Interface Standards, applicable Interface Risk Management Plans and Environmental Investigations and Risk Management Reports;
  - (ii) Railway Operators will ensure that activities required to provide and operate Train services, including but not limited to, traincrewing, locomotive and Wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met; and
  - (iii) QR will manage the Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- (d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Railway Operator over another, and as a result, the identity of a Railway Operator will not of itself be a legitimate reason for QR Train Controllers to alter a scheduled Train service.
- (e) The traffic management decision making matrix, at Appendix 2, will be provided to assist QR Train Controllers in the resolution of disputes in accordance with the above principles.

- (f) QR will provide Railway Operators with:
- (i) real time Train Control information that indicates actual running of that Railway Operator's Train services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Train Control diagrams that indicates actual running of that Railway Operator's Train services against the relevant DTP; and
  - (iii) information about the type of Train services<sup>1</sup> operated by other Railway Operators on the same network to assist the Operator to determine whether the QR Train Controller is applying the principles in this Schedule in a consistent manner between Railway Operators.

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<sup>1</sup> For instance, freight Train services, passenger Train service or coal Train services.

**Appendix 1**

**Contested Train Path Decision-making Process**

QR will determine who is allocated a Contested Train Path, by:

- firstly, eliminating from consideration any Railway Operator whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR still has spare Capacity available, QR may determine which of the parties seeking the Contested Train Path is allocated that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR may determine which of the parties is allocated the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR will document the parties' agreement and keep a record of such<sup>10</sup>.
- then, considering the number of Train services per week that each Railway Operator has a contractual entitlement to in accordance with their Train Service Entitlement. If QR is behind (in the contract year to date) in providing a Railway Operator with its contracted Train services, that Railway Operator will get priority over a Railway Operator that QR is either ahead or on target (in the contract year to date) in providing contracted Train services to. Where QR is behind in providing contracted Train services to more than one Railway Operator, the Railway Operator most behind (in terms of Train services provided as a percentage of contracted Train services) will get first priority over others; and
- finally, where the above considerations do not assist QR in making a decision regarding which requested Train service is scheduled, QR will unilaterally determine which Train service/s is scheduled, and will keep a record of that decision and the reasoning behind that decision. QR will ensure that, over time, no Railway Operator is favoured over another, and where possible, if one Railway Operator is favoured this time, taking into account the Train Service Entitlement held by a Railway Operator, next time they are not favoured. In other words, if one Railway Operator has an entitlement to 10 services per week, and another Railway Operator has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Railway Operator if they received priority over the first Railway Operator on 2 out of 3 consecutive occasions.

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<sup>10</sup> QR envisages that this step will take into account the requirements of the relevant destinations of the Train services in question. In the coal system, for instance, the ports and domestic users, if they do not have an access agreement with QR themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Railway Operators in determining the priority of Train services requested in their weekly train request.

**Appendix 2**

**Traffic Management Decision Making Matrix**

**Notes for the application of the Traffic Management Decision Making Matrix**

As a generic principle for the performance of Train Control, QR recognises (as noted in Paragraph 3 of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of ‘on time running’, and accordingly, running to the DTP will always result in the most efficient use of the Infrastructure and provide those parties using the Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR considers it necessary to permit QR Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 and 6 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a QR Train Controller’s ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train services, as expressed in their Train Service Entitlements.

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 DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running “On Time”.

		Train A – Current Status			
		Train A Objective	Train Running “On Time” On Time Exit	Train Running “Ahead” On Time Exit	Train Running “Late” 1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

**Rules for the application of the Traffic Management Decision Making Matrix**

- Rule 1. Subject to rules 5 and 6, Train B may be given priority on condition Train A will still meet its “On Time” objective.
- Rule 2. Both Trains must meet their “On Time” objective.
- Rule 3. Subject to rules 5 and 6, Train A may be given priority on condition Train B will still meet its “On Time” objective.
- Rule 4. Subject to rules 5 and 6, give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the QR Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or a Passenger Priority Obligation.
- Rule 6. Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other Trains if the QR Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.

**PART 2 TRAIN CONTROL PROCEDURES**

## 2.1 Operator's Advice to QR Train Controller

For the benefit of the Operator's traincrew contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

For the benefit of the Operator's Controller contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, whether the Train has entered the Nominated Network or not, the Operator's Controller must advise the QR Train Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on Train performance.

In addition to the above, the traincrew of the Operator's Train must directly advise the QR Train Controller of any event that may affect the performance of their Train as soon as reasonably practicable after becoming aware of the event.

At least fifteen (15) minutes prior to the departure of the Operator's Train, the Operator's Controller is to provide the QR Train Controller with the following information:

- information regarding the traincrew, including names, depot, planned crew change locations and details of any mandatory breaks;
- any en route locomotive provisioning requirements;
- if in Train order territory or direct traffic control territory, the number of the leading locomotive; and,
- a Train List which is to contain the following information:
  - the number of the Train;
  - the origin of the Train;
  - the length of the Train in metres (including the locomotives);
  - the number of vehicles in the Train;
  - the gross mass of the Train;
  - the gross trailing load of the Train in tonnes;
  - the motive power employed by the Train;

- for each vehicle in the Train in the order in which they will be placed, leading end first, the following information:
  - vehicle classification;
  - the vehicle number;
  - vehicle type;
  - gross weight of the vehicle;
  - a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
  - the destination of each vehicle;
  - any known defects eg brakes cut out.
- The Train List must be entered into QR's nominated information system in accordance with the procedures specified by QR.
- Any subsequent changes to the information provided in the Train List must be updated in QR's nominated information system in accordance with the procedures specified by QR as soon as reasonably practicable.
- The Operator must ensure that the contents of the Train List are accurate and reflect all the relevant information pertaining to the Train Service.
- In the case of a passenger Train variations to the above requirements may be specified by QR.

In the event that the weight and/or length of the Train alters during the course of the journey, the Operator's Controller is to advise the QR Train Controller of the new weight and length.

The Operator must provide to QR (and keep current at all times during the Term) the contact details (including mobile and after hours contact details) for the Operator's Controller.

Operator's Controller:

Name: *(to be completed by Operator)*

Position:

Phone:

Mobile:

Fax:

The Operator's Controller must be contactable by the QR Train Controller at all times when any of the Operator's Trains are on the Nominated Network. During times when the Operator's Trains are not on the Nominated Network and the Operator's Controller cannot be contacted the following advice is to be provided to the QR Train Controller:

- the hours during which the Operator's Controller will be unavailable; and,
- after hours contact procedures.

In dark territory the Operator's traincrew is to supply advice of the arrival and departure times, or the departure times if the Train did not stop, for each crossing station that the Train passed through on the Nominated Network when reasonably requested by the QR Train Controller. These times are then to be entered into QR's nominated information system as soon as practicable after the advice is received from the traincrew.

## 2.2 QR Train Controller's Advice to the Operator

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, the QR Train Controller must advise the Operator's Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on the Train's performance.

When reasonably requested by the Operator's Controller, the QR Train Controller is to provide an estimated time of arrival at any location on the Nominated Network for the Operator's Train.

When reasonably requested by the Operator's traincrew, the QR Train Controller will provide information regarding events that may impact on the performance of the Operator's Train.

## 2.3 Consultation Between QR Train Controller and the Operator

The location of meal and personal needs breaks is to be determined by consultation between the QR Train Controller and the Operator's traincrew.

Traincrew shall contact the Operator's Controller to request relief. If traincrew cannot establish communication with the Operator's Controller, the QR Train Controller shall be contacted and relief requested.

It is the responsibility of the Operator's Controller to determine which Trains require relief prior to reaching their destination. Consultation is to take place between QR Train Controller and the Operator's Controller as to the most appropriate time and location to have the Train relieved at.

Once this relief time and location has been agreed to it is the responsibility of the QR Train Controller to advise the Operator's Controller should the estimated time of arrival of the Train at the relief location vary by more than 15 minutes. It is the responsibility of the Operator's Controller to make all the necessary arrangements for traincrew relief.

If a relief request is received from traincrew, the QR Train Controller shall record the request and advise the Operator's Controller.

Upon receiving the relief request advice from the QR Train Controller, the Operator's Controller is to verbally acknowledge receipt. The Operator's Controller shall then consult with the QR Train Controller to advise of relief location.

If the Operator's Controller alters the relief requirements or the relief arrangements become delayed after advice was given to the QR Train Controller, the altered information shall be passed onto the QR Train Controller.

The Operator's Controller shall contact traincrew direct and advise of relief arrangements and if unable to contact traincrew direct, shall request the QR Train Controller to advise traincrew of relief arrangements.

Where traincrew are rostered on "change jobs", or are required to change enroute, it is the responsibility of the Traincrew to advise the QR Train Controller of their roster prior to entering the Nominated Network. It is the responsibility of the QR Train Controller to advise traincrew of the location of the change.



#### 2.4 Radio Procedures

When using the Train Control radio system the Access Holder's Staff are to follow the general radio procedures contained in the Observance of Signals Manual STD/0037/SWK (as amended from time to time).

Access to the Train Control radio system for each of the line sections that comprise the Nominated Network can be obtained as follows:

Line Section:

Channel Number:

Line Section:

Channel Number:

#### 2.5 Procedures for Entering the Nominated Network

The Operator must comply with originating yard procedures (if any) as advised by QR.

The Operator will only enter the Nominated Network upon receipt of the appropriate safeworking authority as advised by QR.

The Operator's Controller is to advise the QR Train Controller of the anticipated departure time of the Operator's Train at least two (2) hours before the scheduled departure time of the Train or when reasonably requested by the QR Train Controller. Should the anticipated departure time alter from that previously advised to the QR Train Controller, the Operator's Controller is to advise the QR Train Controller of the new anticipated departure time as soon as reasonably practicable after becoming aware of the change.

When the Operator's Train is ready to depart the originating station, the Operator's traincrew is to advise the QR Train Controller.

Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

#### 2.6 Procedures for Shunting/Entering and Exiting Yards

QR will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en-route.

#### 2.7 Procedures for Leaving the Nominated Network

The Operator must comply with terminating yard procedures (if any) as advised by QR.

#### 2.8 Contact details for party responsible for loading Trains – Clause 2.7(h)(ii)

The Operator must provide to QR (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator's Trains.

Party Responsible for Loading the Operator's Trains:

Name: *(to be completed by the Operator)*

Phone:

Fax:

**PART 3 TRAIN OPERATIONS PROCEDURES**

**3.1 Safety Notices**

**(a) Safety Alerts**

Safety Alerts are documents used by QR to communicate any serious safety incident that has or could affect QR and users of its Infrastructure. The Safety Alerts are also used to provide details of the incident for information purposes together with advice regarding any immediate actions to be taken. QR will forward Safety Alerts to the facsimile number specified by the Access Holder in Clause 22.9 of the Agreement. As soon as possible after the receipt of a Safety Alert, the Access Holder is to make the Access Holder's Staff aware of the contents of such Safety Alert.

**(b) Weekly Notices**

Weekly Notices are published weekly by QR for QR employees and contain employment and safety information. The Weekly Notice is used to communicate safety related information about permanent changes or temporary changes which could extend for more than four (4) weeks. An abridged Weekly Notice containing the relevant safety information will be made available to the Access Holder at the same time.

This information will be published in the Weekly Notice seven (7) days prior to the date of such changes becoming effective. If it is necessary to publish the information and there is not enough time to issue it in a Weekly Notice, the information will be published on a Train notice prior to the date of the change becoming effective. The information will then be published as soon as possible in a Weekly Notice and an abridged Weekly Notice.

Members of the Access Holder's Staff who perform Safety Related Work must either receive a copy of the abridged Weekly Notice or have access to a copy or be notified of any information in the Weekly Notice relevant to their area of work. The Access Holder must advise QR of the address to which the abridged Weekly Notices should be forwarded by mail.

The Access Holder is to ensure that all abridged Weekly Notices are distributed to the relevant members of the Access Holder's Staff.

**(c) Train Notices**

Train Notices are instructions published by QR as either a hard copy or by electronic means and which are generally issued daily, but may be issued as determined by QR. They convey operational and safety instructions, information and messages. Train Notices must be issued to members of the Access Holder's Staff who are responsible for the operation of Trains or who work on or near the Track.

QR will advise the Access Holder of its procedures for forwarding Train notices.

The Access Holder is to ensure that all relevant Train Notices are distributed to the relevant members of the Access Holder's Staff.

**(d) Safeworking Forms**

Upon execution of this Agreement QR will provide to the Access Holder sufficient copies of all safeworking forms necessary to operate on the Nominated Network. QR will also supply reasonable quantities of replacement forms as requested by the Access Holder. Additional forms may be obtained through the following contact:

Manager Risk & Compliance  
QR Network Pty Ltd

Ph: (07) 3235 7978 Fax: (07) 3235 7806

Deleted: Systems

Deleted: Access Group

Deleted: Queensland Rail

Deleted: 3439

### 3.2

#### Operational Meetings

The Access Holder must advise QR of the name and contact details of the Access Holder's Representative to attend operational meetings.

The Access Holder's Representative and the QR Representative (or their nominees) shall meet on a monthly basis or as agreed by the Parties for the purpose of:

- reviewing the achievement of Performance Levels and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
- reviewing requests or proposals by the Access Holder or QR to vary the procedures contained in this Schedule;
- reviewing the reliability of the Access Holder or Operator's Trains;
- reviewing Operational Constraints;
- investigating or reviewing breaches or suspected breaches of the Safeworking Procedures, Safety Standards or QR Train Control Directions by the Access Holder's Staff; and,
- reviewing any other matters relevant to the performance of this Agreement.

The Access Holder's Representative shall attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by QR from time to time.

The QR Representative is:

*(to be completed by QR)*

Ph:

Fax:

The Access Holder's Representative is:

*(to be completed by Access Holder)*

Ph

Fax

## PART 4 NOMINATED PERSONS

### 4.1 Nominated Delegates (Clause 7.4(d)(ii)(B))

The nominated delegate of the chief executive officer of QR will be:

[insert details for delegate]

Phone:

Deleted: Group General Manager

Deleted: Network Access

Fax:

The nominated delegate of the chief executive officer of the Access Holder will be:

[insert details for delegate]

Phone:

Fax:

#### **4.2 Operator's Incident Response Coordinator**

Name:

Position:

Phone:

Mobile:

Fax:

#### **4.3 Operator's Recovery Team Leader**

Name:

Position:

Phone:

Mobile:

Fax:

### **PART 5 POSSESSION PROTOCOLS**

QR will provide the Access Holder with a copy of the Possession Protocols (as amended from time to time) which detail the rules governing the management and scheduling of Planned Possessions, Emergency Possession and Urgent Possessions on the Infrastructure.

### **PART 6 DOCUMENT CONTROL PROCEDURES**

The Access Holder will provide to QR the following details of its Document Controller:

Name: *(to be completed by Access Holder)*

Position:

Business Hours Telephone Number:

Postal Address:

Email Address:

Upon execution of this Agreement, QR will issue to the Access Holder one electronic copy of each of the documents listed in Paragraph 1.1 of Part 1 of **Schedule 6**. QR will

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manage updates and revisions of these documents in accordance with AS/NZS 4292.1 Rail Safety Management provisions applying to document control.

Updates and revisions of the QR Emergency Procedures and QR's Investigation Procedures will be managed in the same way.

The Access Holder will be responsible for ongoing distribution of all documents to the relevant members of the Access Holder's Staff.

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**SCHEDULE 11**  
**ANCILLARY SERVICES AND OTHER CHARGES**

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**SCHEDULE 12**  
**CONFIDENTIALITY DEED**

*[Unless otherwise agreed, this deed shall be the confidentiality deed set out in Schedule B of QR's Access Undertaking]*

**QR NETWORK PTY LTD**

**and**

**[\*\*\*]**

**OPERATOR ACCESS AGREEMENT  
COAL**

**\* Note: For the purposes of this Access Agreement it is assumed that the Access Holder and the Operator are one and the same**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200



**BETWEEN**     **QR NETWORK PTY LTD** ACN (insert) of Level 14, 305 Edward Street, Brisbane, Queensland (“**QR**”)

**AND**            The party specified in Item 1 of the Reference Schedule (“**Operator**”)

## **RECITALS**

- A**            QR is responsible for the provision of the Infrastructure and Train Control.
- B**            QR has agreed to grant non-exclusive rights to the Operator for the operation of Train Services over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Agreement.
- C**            The Parties may enter into separate agreements for the provision of services by QR to the Operator other than the Access Rights.

## **OPERATIVE PROVISIONS**

- 1.**            In this Agreement words and expressions which are defined in the General Conditions of Contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract.
- 2.**            The following documents shall be deemed to form and be read and construed as part of this Agreement:
- (a)           Reference Schedule attached to this Agreement as **Schedule A**;
  - (b)           General Conditions of Contract attached to this Agreement as **Schedule B**; and
  - (c)           all Schedules, exhibits and annexures to this Agreement.

and Clause 1.2 of the General Conditions of Contract shall apply to the extent that there is any inconsistency between any of the above documents.

## **ACCESS RIGHTS**

### **1. Grant of Access Rights**

In consideration of the Operator agreeing to pay the Access Charges and other payments to be made to QR by the Operator, QR grants to, and will provide, the Operator Access Rights in accordance with the Train Service Description for the operation of Train Services on and from the Commitment Date on the terms in, and subject to the conditions of, this Agreement.

### **2. Nature and Scope of Access Rights**

- (a)           The Access Rights granted under Clause 1 are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b)           The Operator must not:
  - (i)           operate on or use any part of the Infrastructure that is not specifically included in the Nominated Network; or

- (ii) use the Nominated Network for carrying out any provisioning, inspection, testing, maintenance of Rollingstock, any marshalling, shunting or other relocation of Rollingstock or storage of Rollingstock or for any other purpose other than the operation of Train Services

unless specifically directed by QR to do so in accordance with the provisions of this Agreement or as specified in this Agreement.

- (c) The Parties acknowledge and agree QR is required to provide the Operator with certain benefits, rights and services in accordance with Paragraphs 2.1(c) and 2.1(h) of QR's Access Undertaking, and to the extent that these requirements are relevant to the Operator's Access Rights it is intended the terms on which they are provided are detailed in this Agreement.

### **3 Ancillary Services**

In consideration of the Operator agreeing to pay the charges for Ancillary Services, QR will provide the Ancillary Services (if any) set out in **Schedule 11**.

### **4. Renewal**

If the Operator gives notice to QR not less than twelve (12) Months prior to the Termination Date of its intention to seek a renewal of the Term, QR will consult with the Operator in good faith to negotiate an extension or renewal of the Term provided always that:

- (a) subject to any provision to the contrary in QR's Access Undertaking, the Operator will not be granted priority over any other party seeking access to the Nominated Network; and
- (b) the chief executive of the Department of Transport has a right in priority to the Operator and any other party seeking access to reserve the capacity which is committed to the Operator under this Agreement with effect on and from the Termination Date for existing or proposed regularly scheduled passenger services.

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12-May-2008

## **SCHEDULE A**

## **REFERENCE SCHEDULE**

**REFERENCE SCHEDULE**

This Reference Schedule forms part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_  
made between QR and the Operator listed in Item 1 below.

Item

1. **Operator:**  
Name  
ACN  
Address
  
2. **Commencement Date:**
  
3. **Termination Date:**
  
4. **Commitment Date:**
  
5. **Security Deposit:**  
(General Conditions of  
Contract Clause 2.4 (a))  
Subject to QR's reasonable assessment of the  
creditworthiness of the Operator, the Security Deposit (if  
applicable) will be an amount equivalent to the greater of  
twelve (12) weeks Access Charges determined as if the  
Operator made maximum use of its Access Rights or the  
deductible for any one loss as specified in **Schedule 7**
  
6. **Date for Completion of Matters  
prior to the Commencement of  
Train Services:**  
(General Conditions of Contract  
Clause 3.1(c))

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Date Received  
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## **SCHEDULE B**

# **GENERAL CONDITIONS OF CONTRACT**

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## GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract form part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 2008 made between QR and the Operator.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless inconsistent with the context, the following words and expressions shall have the respective following meanings:

“**Access Charges**” means the charges determined in accordance with **Schedule 3** payable to QR by the Operator for the Access Rights and any interest payable in relation to such charges pursuant to this Agreement;

“**Access Rights**” means the rights of access to the Nominated Network granted pursuant to this Agreement;

“**Accreditation**” means accreditation in accordance with Part 4 of Chapter 6 of the Transport Infrastructure Act and “**Accredited**” means to have Accreditation;

“**Agreed Deterioration Threshold**” means the threshold allowance for deviations from a Train path within which a Train Service is considered to be on time, as agreed between QR and the Operator in **Schedule 1**;

“**Agreed Exit Threshold**” means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR and the Operator in **Schedule 1**;

“**Agreement**” or “**this Agreement**” means the Agreement, Reference Schedule and General Conditions of Contract between QR and the Operator and includes all annexures, Schedules and exhibits to this Agreement;

“**Allowable Threshold**” means [*a % agreed between the Parties*] of the total number of Train Services scheduled for a Billing Period;

“**Ancillary Services**” means those services (if any) in addition to Access Rights which QR has agreed to supply to the Operator and which are set out in **Schedule 11**;

“**Assign**” means to assign, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, and “**Assignment**” and “**Assignee**” shall have comparable meanings;

“**Authority**” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR (but excluding QR Limited ACN 124 649 967);

“**Average Transit Time**” means the target average time scheduled for the relevant Train Service type from Origin to Destination or from Destination to Origin which comprises the relevant Sectional Running Times, delays for passing of other Trains on the Nominated Network, Operational Constraints relating to the Infrastructure (other than Operational Constraints attributable to a Railway Operator or a Force Majeure Event) but excluding Planned Dwell Times and which may be varied in accordance with the Interface Coordination Plan;

**“Base Access Charges”** means the Base Access Charges specified in **Schedule 3** and incorporates the elements thereof;

**“Billing Period”** means the period of a Month;

**“Board of Inquiry”** means a board of inquiry established under the Transport Infrastructure Act;

**“Central Queensland Coal Region”** means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine;
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;
- (iv) from the port of Abbot Point to Newlands mine; and
- (v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

**“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 date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; 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 being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

**“Change in Relevant Taxes”** means:

- (a) the imposition of a new Relevant Tax;
- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax;

**“Claim”** means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including the costs and expenses of defending or settling any action, proceeding, claim or demand;

**“Commencement Date”** means the date of execution of this Agreement as specified in Item 2 of the Reference Schedule;

**“Commitment Date”** means the date on which the Access Rights will be available to the Operator as specified in Item 4 of the Reference Schedule;

**“Common Corridor”** means:

- (i) for transfers of Access Rights within an Individual Coal System pursuant to Clause 3.3, that part of the Infrastructure that will be utilised by the New Railway Operator’s Trains in respect of which the Operator’s Relinquishment Fee is to be reduced provided that where the distance from the New Railway Operator’s origin to destination for its relevant train service is greater than the distance from the Operator’s Origin to Destination (“Operator’s haul distance”), the Common Corridor will only extend from the New Railway Operator’s destination (unloading facility) for a distance equal to the Operator’s haul distance;
- (ii) in all circumstances other than those described in subparagraph (i), that part of the Infrastructure that was utilised by the Operator for the Train Services for which Access Rights are being relinquished and will also be utilised by the New Railway Operator’s Trains in respect of which the Operator’s Relinquishment Fee is to be reduced;

**“Common Costs”** means those costs associated with the provision of Infrastructure that are not Incremental Costs for any particular Train service using that Infrastructure;

**“Consequential Loss”** means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort;
- (iii) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever;
- (iv) any loss arising out of any Claim by a Third Party (other than a Claim in respect of loss or destruction of or damage to real or personal property or personal injury to or death of any person),

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

**“Contaminating Materials”** means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable or inflammable, harmful to the environment (including any life form) or may cause pollution, contamination or otherwise cause damage;

**“Corporation”** has the meaning assigned to it by the Corporations Act;

**“Corporations Act”** means the Corporations Act 2001 (Cwth);

**“Cyclic Traffic”** means a traffic such as coal traffic whose Train Service Description is defined in **Schedule 1** in terms of a number of Train Services within a particular period of time, for example, a year, month or week;

**“Daily Train Plan”** or **“DTP”** means that document detailing the scheduled times for all Train services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure;

**“Dangerous Goods”** means any substance or article prescribed as Dangerous Goods under the Dangerous Goods Code;

**“Dangerous Goods Code”** means the following codes prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications as amended or varied from time to time or any other codes developed to replace or supplement them:

- (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; and
- (c) the Code of Practice for the Safe Transport of Radioactive Material;

**“Default Rate”** means 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) plus 2%;

**“Destination”** means the destination or destinations described in **Schedule 1**;

**“Efficient Cost”** means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR operates, and including any transitional arrangements agreed between QR and the QCA to reflect the transition from QR’s actual cost to that efficient cost;

**“Emergency Possession”** is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Infrastructure that is considered dangerous to either a Railway Operator’s and/or QR’s Staff, or where severe speed restrictions have been imposed affecting the scheduled Train services of Railway Operators. Such possession must be carried out less than seven (7) days from the detection of the problem;

**“Enhancement”** means the improvement, upgrading or other variation of the whole or any part of the Infrastructure which affects the capabilities of the Infrastructure and any major replacement programme for elements of the Infrastructure;

**“Environmental Authorities”** means:

- (a) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the *Environmental Protection Act 1994* (Qld); or
- (b) any authority which has effect under section 619 of the *Environmental Protection Act 1994* (Qld);

**“Environmental Harm”** means serious or material environmental harm or environmental nuisance as defined in the Environmental Protection Act 1994;

**“Environmental Investigation and Risk Management Report”** means the environmental investigation and risk management report referred to in Clause 8.1(a) and included in Part 1 of **Schedule 9**;



**“Environmental Laws”** means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies, guidelines, regulations and relevant approved codes of practice and the conditions of all licences, notices, directions, approvals, consents, permissions or permits issued thereunder or amended from time to time;

**“Environmental Management System”** means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licences;

**“Environmental Protection Agency”** means the authority established under the Environmental Protection Act 1994;

**“Equivalent Access Rights”** means access rights which have the same Origin /Destination and have the same format of Train Service Description (that is, such as Cyclic Traffic) as the Access Rights under this Agreement which are being relinquished by the Operator under Clause 3.3;

**“Escalation Date”** means the date being 1 January, 1 April, 1 July and 1 October in each year during the Term, being the dates on which the Access Charges and other charges payable by the Operator to QR under this Agreement are to be escalated in accordance with **Schedule 3**;

**“Evaluation Period”** means:

- (i) when in reference to an individual Train service, the period which is equal to the length of the expected duration of the existing or proposed access agreement in respect of the relevant Train service;
- (ii) when in reference to a combination of Train services for the purpose of determining a Reference Tariff to apply for some or all of those Train services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train services other than referred to in subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed access agreement in respect of any of the Train services comprising the combination of Train services, provided that such period does not exceed ten (10) years;

**“First Escalation Date”** means the Escalation Date identified as the First Escalation Date in Table 1.2 of **Schedule 3** for each Train Service type;

**“Forecast Traffic”** means the current tonnage forecast upon which an applicable Reference Tariff is based;

**“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:
  - (i) 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;
  - (ii) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;

- (iii) act of God;
- (iv) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (v) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (vi) malicious damage or sabotage;
- (vii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (viii) failure of electricity supply from the electricity grid;
- (ix) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (x) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (xi) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement;

**“Good Engineering Practices”** means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**“GST”** means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia;

**“GST Inclusive Reimbursement”** is the amount calculated by the formula:

$$(A - C) \times (1+B)$$

Where:

A = the GST inclusive amount paid by a Party for a Reimbursable Item;

B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made;  
and

C = any GST input tax credit that the Party can claim in respect of that Reimbursable Item;

**“Incident”** means any Network Incident involving the activities of the Operator;

**“Incremental Costs”** means those costs of providing access rights, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train service or combination of Train services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of access rights;

**“Individual Coal System”** means any one of the following:

- (i) all coal carrying Train services operating to or from the port of Abbot Point on the Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train services operating to or from the ports of Hay Point or Dalrymple Bay on the Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train services operating to or from the Stanwell Power Station on the Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;  
or
- (v) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

**“Individual Coal System Infrastructure”** means the relevant one of the following:

- (i) that Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) that Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory branch line;
- (iii) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

**“Infrastructure”** means all rail transport infrastructure as defined in the Transport Infrastructure Act:

- (a) for which QR is the Accredited Railway Manager; or

- (b) for which QR is required to obtain responsibility for under Clause 2.2 of QR's Access Undertaking (as that provision is amended, varied or replaced from time to time);

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

**"Insolvency Event"** means the happening of any of the following events in relation to a Party:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one Month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within fourteen (14) days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

**"Interface Coordination Plan"** means the plan detailed in **Schedule 10** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles;

**"Interface Risk Assessment"** means an assessment of the risks associated with the Operator's operations insofar as they interface with the Infrastructure and other Train services as provided in Clause 11;

**"Interface Risk Management Plan"** means the plan referred to in Clause 11 and included in Part 2 of **Schedule 9**;

**"Interface Risks"** means all the risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Operator's operations and:

- (i) the Nominated Network;
- (ii) the operation of other Train services; and
- (iii) any other activities on the Nominated Network that affect QR's Staff or QR's interfaces with members of the public;

**"Investigation"** means an investigation conducted in accordance with **Schedule 8**;

**"Land"** means the land on which the Nominated Network is situated and which is:

- (a) land owned or controlled by QR; or

- (b) land in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii) of QR's Access Undertaking (as that provision is amended, varied or replaced from time to time);

“**Landowner**” has the meaning given to that term in Clause 22.18;

“**Law**” or “**Laws**” means a statute, ordinance, rule or regulation;

“**Load Variation Table**” means a table published by QR in respect to the relevant Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“**Maintenance Work**” means any work involving repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Infrastructure (other than Enhancements) and includes any inspections or investigations of the Infrastructure;

“**Master Book of Rules**” means QR's standards for Safeworking Procedures;

“**Master Train Plan**” or “**MTP**” means that document detailing the scheduled times as advised by QR from time to time for all Train services operating on the Infrastructure (where such scheduled times remain unchanged from week to week) and any Planned Possessions;

“**Material Change**” has the meaning given to that term in Clause 16.1(a);

“**Material Environmental Harm**” means material environmental harm as defined in the Environmental Protection Act 1994;

“**Maximum Allowable Gross Tonnage**” means the Maximum Allowable Gross Tonnage for a Wagon, Wagon bogie or Train as specified in **Schedule 4**;

“**Maximum Desirable Gross Tonnage**” means the Maximum Desirable Gross Tonnage for a Wagon as specified in **Schedule 4**;

“**Maximum Transit Time**” means the maximum below rail transit time for the relevant Train Service type that QR may utilise under this Agreement;

“**Month**” means calendar month, and “**Monthly**” has a corresponding meaning;

“**Network Incident**” means any Rollingstock derailment, Rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence on the Infrastructure which causes or could cause injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by QR of any Train Movement;

“**Network Management Principles**” means the principles for the provision of Train Control and scheduling as specified in Part 1 of **Schedule 10**;

“**Noise Planning Levels**” means the planning levels for railways referred to in the Environmental Protection (Noise) Policy 1997;

“**Nominated Annual Train Services**” means the number of Train Services that the Operator is entitled to operate during any one (1) year for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

**“Nominated Monthly Train Services”** means the number of Train Services that the Operator is entitled to operate during any one (1) month period for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

**“Nominated Network”** means that part of the Infrastructure detailed in Part 1 of **Schedule 2**;

**“Nominated Weekly Train Services”** means the number of Train Services that the Operator is entitled to operate during any one (1) week period as specified in **Schedule 1** or as varied in accordance with this Agreement;

**“Obstruction”** means any circumstance relating to the whole or any part of the Infrastructure or private siding, including debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation by QR of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by QR;

**“One Way Train Service”** means a Train Service operating in one direction only on the Nominated Network either from Origin to Destination or from Destination to Origin as the case may be;

**“Operational Constraint”** means any restriction on the use of any part of the Infrastructure which impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Emergency Possessions, Urgent Possessions or signalling or overhead restrictions;

**“Operator Performance Level”** means the Operator Performance Level specified in Part 1 of **Schedule 5**;

**“Operator’s Controller”** means the person for the time being nominated in that position pursuant to **Schedule 10** ;

**“Operator’s Customer”** means a party that has a rail haulage agreement with the Operator in respect of some or all of the Access Rights;

**“Operator’s Emergency Response Plan”** means the plan as defined in Clause 7.1(a);

**“Operator’s Incident Response Coordinator”** means the person appointed pursuant to paragraph 4.2 of Part 4 of **Schedule 10**;

**“Operator’s Proposal”** has the meaning given to that term in Clause 8.1(c);

**“Operator’s Recovery Team Leader”** means the person appointed pursuant to paragraph 4.3 of Part 4 of **Schedule 10**;

**“Operator’s Representative”** means the person for the time being appointed pursuant to paragraph 3.2 of Part 3 of **Schedule 10**;

**“Operator’s Safety Management System”** means the system referred to in Clause 11(a)(iii);

**“Operator’s Staff”** means employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator who is involved in any activity associated with the Train Services;

**“Origin”** means the origin or origins described in **Schedule 1**;

**“Other Dwell Times”** means, for any other designated activity, the time period from when a Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant QR Train Controller accordingly;

**“Overload Charge”** means the charge determined in accordance with Part 6 of **Schedule 3**;

**“Overload Detector”** means a weighing mechanism other than a Weighbridge agreed upon for use by the Parties and specified in Part 6B of **Schedule 2**;

**“Party”** means a party to this Agreement and **“Parties”** means the parties to this Agreement;

**“Passenger Priority Obligations”** means the obligations of a Railway Manager pursuant to sections 265 and 266 of the Transport Infrastructure Act;

**“Performance Levels”** means the QR Performance Level and the Operator Performance Level;

**“Planned Dwell Times”** means any of Time at Mine, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule;

**“Planned Possession”** means the temporary closure and/or occupation by QR of a part of the Infrastructure including, but not limited to, closure of Track or isolation of any electrical overhead traction system for the purpose of carrying out Maintenance Work, Enhancement or other work on or in the proximity of the Infrastructure which may affect the safety of any person or property where such closure, occupation or isolation is entered into the Train Schedule and adversely impacts upon the operation of Train services;

**“Possession Protocols”** means the protocols developed and advised by QR from time to time (as varied in accordance with this Agreement) for managing and scheduling track possessions of the Infrastructure;

**“Private Facilities”** means sidings, loading and unloading facilities and any other facilities of any kind which are required by the Operator to operate the Train Services and which do not form part of the Nominated Network;

**“Private Facilities Agreement”** has the meaning given to that term in Clause 5.11;

**“QR Cause”** means where QR is unable to make available the Infrastructure for Train services at the Scheduled Time in the Train Schedule or at a reasonable alternate Scheduled Time as a result of

- (i) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (ii) a Force Majeure Event which prevents QR from making the Infrastructure available for Train services in accordance with the relevant access rights; or
- (iii) any other action by QR which directly resulted in the Infrastructure not being so available,

where such inability by QR is not attributable in any way to a Railway Operator or QR complying with its Passenger Priority Obligations;

**“QR Commander”** means a member of QR’s Staff who has been delegated responsibility for the direction and coordination of QR’s and the Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with external agencies;

“**QR Emergency Procedures**” means the procedures developed and advised by QR from time to time (as varied by QR in accordance with this Agreement) for dealing with a Network Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;

“**QR Performance Level**” means the QR Performance Level specified in Part 1 of **Schedule 5**;

“**QR Representative**” means the QR officer specified in **Schedule 10**;

“**QR Train Control Direction**” means any instruction or direction (whether given orally or in writing, by means of signal or other similar device) issued by QR or on behalf of QR relating to Train Movements;

“**QR Train Controller**” means the person nominated by QR as the supervisor of Train Movements on the relevant part of the Nominated Network and whose details are specified in **Schedule 10**;

“**QR’s Access Undertaking**” means the access undertaking submitted by QR to the Queensland Competition Authority and approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time;

“**QR’s Right of Way**” means the strip of property on which earthworks, traction wiring equipment, tunnels, bridges, fences and track are constructed for the operation of Rollingstock. Where the at grade boundaries for the Right of Way are not readily identifiable they will be regarded as being at least ten (10) metres from the centre line of the track;

“**QR’s Staff**” means the employees, contractors and agents of QR and any other person under the control or supervision of QR involved in the provision of Access Rights;

“**Quarter**” means each period of three (3) consecutive Months commencing 1 January, 1 April, 1 July or 1 October in each year, and “**Quarterly**” has a corresponding meaning;

“**Queensland Competition Authority**” or “**QCA**” means the authority established under the Queensland Competition Authority Act 1997;

“**Rail Safety Accreditation Unit**” or “**RSAU**” means the Rail Safety Accreditation Unit of the Department of Transport for the State;

“**Railway Manager**” has the meaning given to that term in the Transport Infrastructure Act;

“**Railway Operator**” means, as the context allows:

- (a) any party that holds rights of access to all or any part of the Infrastructure; and
- (b) any Accredited railway operator;

and for the avoidance of doubt may include, without limitation, the Operator;

“**Recovery**” means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, including the subsequent retrieval of any such Rollingstock;

“**Reduction Factor**” means for the purposes of Clause 3.3(d):

A / B



Where:

A = the annual train kilometres over the Common Corridor attributable to the New Railway Operator's Trains that utilise the access rights referred to in Clause 3.3(b) for which the Operator's Relinquishment Fee is to be reduced; and

B = the annual train kilometres over the Nominated Network attributable to the Train Services for which the Operator is seeking to relinquish Access Rights;

**"Reference Tariff"** means an access charge applicable to a specified Reference Train Service over a specified part of the Infrastructure as specified in QR's Access Undertaking;

**"Reference Tariff Schedule"** means the schedule attached to QR's Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service;

**"Reference Train Service"** means a notional Train service identified 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 the terms and conditions of the specified access agreement;

**"Reimbursable Item"** means an item of expense incurred by either Party in respect of which that Party is entitled under this Agreement to be reimbursed by the other Party;

**"Related Body Corporate"** has the meaning given to that term in the Corporations Act;

**"Relevant Escalation Date"** means the Escalation Date occurring immediately prior to the last day of the Billing Period for which the invoice for the Access Charges payable in respect of that Billing Period is being prepared;

**"Relevant Rollingstock"** means any Rollingstock of the Operator with a minimum value of ONE MILLION DOLLARS (\$1,000,000) and which has been nominated as Relevant Rollingstock in Part 3 of **Schedule 4**;

**"Relevant Tax"** means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR by, or payable by QR to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

**"Relinquishment Fee"** means the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the Term of this Agreement if the Agreement remained on foot but the Operator did not operate the relevant Train Services;

**"Removal Expert"** means the person for the time being holding the position of Safety Regulator or such other person as agreed between the Parties;

**"Restoration"** means the removal of any Obstruction, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure but does not include Recovery;

**"Review Date"** means the date determined as the Review Date pursuant to Clause 3.1.2 of **Schedule 3**;

**"Rollingstock"** means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track and where used in respect of the Operator's Rollingstock includes Rollingstock which is

owned, hired or leased by the Operator, supplied by a contractor of the Operator or is otherwise in the possession or control of the Operator;

**“Rollingstock Configuration”** means the description of the combinations of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

**“Rollingstock Interface Standards”** means those Rollingstock Interface Standards agreed as part of the Interface Risk Assessment and included in the Interface Risk Management Plan;

**“Safety Regulator”** means the person for the time being holding the position of Safety Regulator in the Rail Safety Accreditation Unit (RSAU);

**“Safety Related Work”** means safety activity in one or more of the following:

- (a) driving and operation of Trains;
- (b) control of the movement of Trains;
- (c) the design, construction, repair, maintenance, upgrading, inspection or testing of Track, Rollingstock, civil and electric traction infrastructure and Signalling and Telecommunications Equipment; and
- (d) any other duties prescribed by QR as safety related work;

**“Safety Standards”** means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR policies as specified in **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement and all standards relating to safety, including occupational health and safety, prescribed by any Laws;

**“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure as specified in Part 1 of **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement;

**“Schedule”** means a schedule to this Agreement and any other schedule which amends, replaces or substitutes a schedule to this Agreement issued from time to time by QR pursuant to Clause 22.20;

**“Scheduled Time”** means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as detailed in the Train Schedule or as amended or altered by QR from time to time on the day of operation pursuant to the Network Management Principles provided that such amendments or alterations do not result in a notice for cancellation by the Operator pursuant to Clause 5.3(d);

**“Sectional Running Times”** means the time period measured from the time a Train Service passes the signal controlling entry into a track section between two relevant specified locations on the Nominated Network to the time the Train Service arrives at the signal controlling entry into the next track section between two relevant specified locations on the Nominated Network, and does not include an allowance for Planned Dwell Times;

**“Security Deposit”** means initially an amount equal to the amount specified in Item 5 of the Reference Schedule;

**“Security Interest Rate”** means the “Cash Rate: average 11am rate” 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 included in another publication agreed between the Parties) less 0.5%;

**“Serious Environmental Harm”** means serious environmental harm as defined in the Environmental Protection Act 1994;

**“Signalling and Telecommunications Equipment”** means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control;

**“State”** means the State of Queensland;

**“Stowage”** means the short-term storage of Trains on the Nominated Network at locations specified by QR but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

**“System Forecast”** means the forecast of Gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in the relevant Reference Tariff Schedule;

**“System Gtk”** means the actual Gtk achieved by all coal carrying Train services to the extent those Train services travel on the relevant Individual Coal System Infrastructure over the relevant period;

**“System Wide Requirements ”** means the Network Management Principles, the Possession Protocols, the Interface Coordination Plan, the Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards, the QR Emergency Procedures and QR’s Investigation Procedures;

**“Tax Invoice”** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);

**“Term”** means the term of this Agreement, commencing on the Commencement Date and ending on the Termination Date;

**“Termination Date”** means the date specified in Item 3 of the Reference Schedule or such earlier date upon which this Agreement is terminated pursuant to the provisions of this Agreement;

**“Third Party”** means a person other than the Operator or QR;

**“Time at Depot”** means the period from when a Train Service arrives at the entry signal to the depot until it has completed all activities at the depot, is ready to depart the depot and has advised the relevant QR Train Controller accordingly;

**“Time at Mine”** means the time period from when a Train Service arrives at the entry signal to the specified mine loading facility until it has completed loading, has presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Time at Unloading Facility”** means the time period from when a Train Service arrives at the entry signal to the specified unloading facility until it has completed unloading, presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Track”** means the part of the Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

**“Train”** means any configuration of Rollingstock operating as a unit on the Track;

**“Train Control”** means the scheduling and control of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation;

**“Train List”** means the information required to be supplied by the Operator in accordance with Part 2 of **Schedule 10** in respect of each individual Train Service to be operated on the Nominated Network;

**“Train Movement”** means the operation of a Train on the Infrastructure by the Operator, QR or any Railway Operator;

**“Train Schedule”** means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by QR prior to the day of operation in accordance with the Interface Coordination Plan showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure;

**“Train Service”** means the running of a Train between specified origins and destinations by the Operator (including any Stowage) in accordance with a Train Service Description;

**“Train Service Description”** means the description of a Train Service detailed in Part 1 of **Schedule 1**;

**“Train Service Levels”** means collectively the Nominated Weekly Train Services, the Nominated Monthly Train Services and the Nominated Annual Train Services specified in **Schedule 1**;

**“Transport Infrastructure Act”** means the Transport Infrastructure Act 1994;

**“Urgent Possession”** is similar to a Planned Possession, except that such a possession is required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) Months from the detection of the problem;

**“Variation Notice”** has the meaning given to that term in Clause 3.2(a);

**“Wagon”** means any Rollingstock designed to carry any load other than passengers;

**“Weekly Train Plan”** or **“WTP”** means a seven (7) day plan that details the scheduled times for all Train services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Infrastructure on each day of the relevant week;

**“Weighbridge”** means a weighbridge or weightometer certified under the Trade Measurement Act 1990, as specified in Part 6A of **Schedule 2**; and

**“Year”** (when used with a capital) means the period from (and including) the first day of the Month in which the Commitment Date occurs to (but not including) the first anniversary thereof, and from every twelve (12) Month period thereafter except that the last year will end on the date of expiry or termination of this Agreement.

## 1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body and conversely;
  - (ii) a person includes its legal personal representative, successors and assigns;
  - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
  - (iv) conduct includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
  - (vii) time is to local time in Queensland;
  - (viii) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
  - (ix) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the Parties;
  - (x) any thing (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
  - (xi) a Clause is to a clause of the General Conditions of Contract to this Agreement;
  - (xii) a Schedule is to a schedule to this Agreement (as amended from time to time in accordance with this Agreement);
  - (xiii) any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
  - (xiv) any Authority, association or body whether statutory or otherwise shall, in the event of any such Authority, association or body ceasing to exist or being re-constituted, re-named or replaced or the powers or functions thereof being transferred to any other Authority, association or body, be deemed to refer respectively to the Authority, association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof; and

- (e) if there is any inconsistency between matters contained in a Schedule and any other provisions of the Agreement, the other provisions of the Agreement prevail. If there is any inconsistency between matters contained in QR's Access Undertaking and this Agreement, the provisions of this Agreement prevail.

## **2. CHARGES**

### **2.1 Access Charges**

The Operator must pay to QR:

- (a) the Access Charges at the times and in the manner set out in this Agreement;
- (b) the charges for Ancillary Services (if any) calculated and payable in the manner set out in this Agreement;
- (c) any other charges or amounts payable in accordance with this Agreement; and
- (d) on demand and without prejudice to the rights, powers and remedies of QR under this Agreement or otherwise at Law, interest at the Default Rate calculated on daily balances and payable daily on any amount outstanding in respect of an invoice, including any disputed amount which is subsequently determined to be payable to QR, from the day after the invoice is due to be paid until the date that the amount outstanding is paid in full, and all interest payable but unpaid at the end of each Month shall be capitalised by QR and such capitalised amount shall itself bear interest at the Default Rate.

### **2.2 Invoicing**

Unless agreed otherwise between the Parties:

- (a) QR will provide to the Operator an invoice for the Access Charges, charges for Ancillary Services (if any) and any other charges or amounts payable by the Operator under this Agreement as soon as practicable after the end of each Billing Period or, where this Agreement has expired or terminated on a date other than 30 June and the invoice is for annual take or pay charges, as soon as practicable after the first 30 June following that expiration or termination.
- (b) The first Billing Period will commence on the Commitment Date and end on the last day of the Month in which the Commitment Date falls, and each subsequent Billing Period during the Term will commence on the day following the last day of the immediately preceding Billing Period.
- (c) Subject to Clause 2.2(d), the Operator must pay to QR the amount of the invoice referred to in Clause 2.2(a) within fourteen (14) days after receipt of the invoice.
- (d) Where the Operator bona fide disputes an amount or amounts claimed in an invoice it shall give notice of that dispute (setting out in detail the grounds for its objection) to QR within fourteen (14) days after receipt of the invoice. Notwithstanding the Operator's objection to any amounts claimed in an invoice, the Operator must pay to QR the undisputed portion of the amount or amounts claimed in the relevant invoice together with 50% of the disputed portion within fourteen (14) days after receipt of the invoice.

- (e) Any dispute as to the amount claimed in an invoice shall be resolved by an expert in accordance with Clause 17.3. Upon resolution of such dispute in accordance with Clause 17.3:
- (i) the Operator must pay to QR the amount (if any) determined to be payable by the Operator to QR together with the interest on that amount calculated in accordance with Clause 2.1(d) within fourteen (14) days after being notified of the expert's determination; or
  - (ii) QR must credit to the Operator in the form of a deduction from the invoice for Access Charges and other charges for the Billing Period immediately following a resolution in accordance with Clause 17.3 any amount found to have been overpaid by the Operator together with interest on that amount at the Default Rate calculated on daily balances from the date of payment of the amount overpaid to the date of such credit. Such interest payable but unpaid at the end of each Month shall be capitalised and such capitalised amount shall itself bear interest at the Default Rate.
- (f) When providing the Operator with an invoice which includes, in whole or part, an amount for an annual take or pay charge, QR shall provide the Operator with information on how QR determined the amount of the annual take or pay charge.

### **2.3 GST**

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If a Party is required to pay GST on any amount payable or other consideration to be provided under this Agreement, then the other Party must pay to that Party an amount equal to the GST payable on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, then a Party must pay the other Party in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) Each invoice prepared pursuant to Clause 2.2(a) shall take the form of a Tax Invoice.

### **2.4 Obligation to Grant Security**

- (a) The Security Deposit (if applicable) shall initially be for the amount specified in Item 5 of the Reference Schedule. If a Security Deposit is applicable the Operator must deliver to QR, prior to the operation of Train Services, security for the performance of the Operator's obligations under this Agreement in the form of:
  - (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
  - (ii) any other security reasonably acceptable to QR,and containing such other terms and conditions as are reasonably acceptable to QR.
- (b) Where the Operator has delivered a Security Deposit to QR in the form of cash, QR will pay interest to the Operator annually at the Security Interest Rate published on the day the Security Deposit is provided. The Security Interest Rate shall be reset on the first business day of each Month ("**Reset Date**") for that Month. Such interest shall

be capitalised at each Reset Date and such capitalised interest shall itself bear interest at the Security Interest Rate.

- (c) The Operator may, with QR's consent, replace any Security Deposit provided by the Operator in accordance with this Clause with another form of Security Deposit acceptable to QR. If the Operator replaces the Security Deposit with another form of Security Deposit then QR will release the initial Security Deposit in accordance with Clause 2.6(b).
- (d) The provision and continuance of the Security Deposit (or of any additional or replacement Security Deposit provided by the Operator in accordance with Clause 2.4(c) or Clause 2.4(f)) is a condition of the performance by QR of its obligations under this Agreement.
- (e) If at any time during the Term QR does not hold a Security Deposit from the Operator, the Operator must provide a Security Deposit within fourteen (14) days after receipt of a notice from QR where:
  - (i) an event of default by the Operator in regard to payment of any amount due under this Agreement has occurred, that event of default is not the subject of a bona fide dispute between the Parties and such default continues for seven (7) days after notice of such default from QR; or
  - (ii) in the event of an Assignment or at any time during the Term, if QR is reasonably of the opinion that the Operator is:
    - (A) no longer financially sound;
    - (B) no longer able to meet its debts as and when they fall due; or
    - (C) not otherwise capable of performing its obligations under this Agreement.
- (f) If at any time during the Term the Security Deposit held by QR is less than the amount determined in accordance with Item 5 of the Reference Schedule (including for reasons that QR has drawn on or applied the Security Deposit in accordance with Clause 2.5), the Operator must increase the Security Deposit by the amount determined by QR as required to ensure that the amount of Security Deposit accords with Item 5 of the Reference Schedule, and deliver to QR an additional or replacement Security Deposit to reflect the change within fourteen (14) days after receipt of notice from QR.
- (g) If the Operator considers its financial circumstances have changed such that a Security Deposit would no longer be required, the Operator may request QR in writing (but not more than once in any twelve (12) Month Period) to review the creditworthiness of the Operator and QR will undertake such a review.



## 2.5 Exercise of Security

The Security Deposit will be held by QR as security for the performance of the obligations of the Operator under this Agreement and may be called upon by QR in any circumstances where QR suffers direct loss or damage as a result of default by the Operator under this Agreement and is entitled to be compensated for such loss or damage under this Agreement.

## 2.6 Return of Security

QR must repay or return to the Operator (and where appropriate provide to the Operator any necessary releases in relation to) any Security Deposit provided by the Operator under Clause 2.4:

- (a) subject to QR's rights of recourse to the Security Deposit in Clause 2.5, promptly after the Termination Date;
- (b) on receipt of an additional or replacement Security Deposit provided by the Operator in accordance with Clause 2.4(c) or 2.4(f); or
- (c) following a review pursuant to Clause 2.4(g), QR, acting reasonably, finds that it is not necessary for the Operator to provide QR with a Security Deposit.

## 2.7 Weighbridges and Overload Detectors

- (a) Where an operational Weighbridge or Overload Detector is located en route between Origin and Destination the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner to facilitate weighing.
- (b) Where a Weighbridge or Overload Detector is located en route between Origin and Destination, the Party responsible for that Weighbridge or Overload Detector (as specified in Part 6 of **Schedule 2**) must use reasonable endeavours to ensure that:
  - (i) such Weighbridge or Overload Detector is available; and
  - (ii) Trains are operated in a manner that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (c) QR may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.
- (d) The Operator must use reasonable endeavours to ensure that the mass of any Wagon or Train operated by it under this Agreement does not exceed the relevant Maximum Allowable Gross Tonnage.
- (e) In the event that any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage. QR may direct a Train to a specific siding or location to allow such reduction and the Operator shall comply with such direction.
- (f) In the event that any Wagon operated by the Operator is determined to be in excess of the relevant Maximum Desirable Gross Tonnage, QR may:
  - (i) charge the Operator (and the Operator must pay) an Overload Charge (in accordance with Part 6 of **Schedule 3**) in respect of that Wagon; and

- (ii) impose any Operational Constraints which QR considers to be reasonable in the circumstances.

QR will include the Overload Charge in the invoice for Access Charges for the Billing Period immediately following such determination for payment by the Operator.

- (g) The Weighbridges to be used by QR in the calculation of Access Charges are those specified in Part 6A of **Schedule 2**.
- (h) Where the Operator's Trains are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in Part 6B of **Schedule 2** must use reasonable endeavours to:
  - (i) keep a record of the gross mass of each loaded Wagon and Train (and the Operator must use reasonable endeavours to ensure such information is obtained from the operator of the Weighbridge or Overload Detector where the Weighbridge or Overload Detector is not owned or controlled by QR);
  - (ii) provide such record to the party loading the Trains; and
  - (iii) provide such record to the other Party within fourteen (14) days of the end of each Month.
- (i) If either Party reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the accuracy of such Weighbridge or Overload Detector to be tested, and the Weighbridge or Overload Detector shall be deemed to have malfunctioned from the date of such notice until such testing has been carried out and/or the Weighbridge or Overload Detector has been recalibrated and the mass will be determined in accordance with Part 2 of **Schedule 3**. Testing will be carried out in accordance with the following procedure:
  - (i) As soon as reasonably practicable the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** must ensure that a suitably qualified person conducts a test of the calibration of the Weighbridge or Overload Detector and makes any adjustments required to correct the calibration.
  - (ii) Except in the case of manifest error or fraud, the determination of the person conducting the test will be final and binding on the Parties.
  - (iii) Where the person conducting the test determines that the Weighbridge or Overload Detector is measuring within the tolerances specified in Part 6 of **Schedule 2**, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given pursuant to this Clause 2.7(i) and the Access Charges (including any Overload Charge) will be determined from that date according to Part 5 of **Schedule 3**. The invoice for Access Charges in respect of the Billing Period following such determination will be adjusted to appropriately account for the difference in payment of Access Charges arising from having treated the Weighbridge or Overload Detector as malfunctioning pursuant to this Clause 2.7(i).
  - (iv) The cost of conducting such test shall be met by:

- (A) the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** in the event that the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in Part 6 of **Schedule 2**; or
  - (B) the Party giving notice under this Clause 2.7(i) in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of **Schedule 2**.
- (j) Notwithstanding any other provision in this Agreement, neither Party will be liable to the other for any damage, loss, cost or expense that the other may suffer or incur as a result of that Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement.
- (k) Notwithstanding any other provision in this Agreement, neither Party shall have any Claim against the other Party as a result of or arising from any delay to or cancellation of Train Services as a result of the operation of Clause 2.7(i).

### 3. TRAIN SERVICE ENTITLEMENTS

#### 3.1 Train Services

- (a) Without limiting any other provision of this Agreement, the Operator must not commence any Train Services unless and until the Operator has done each of the following in respect to those Train Services:
- (i) if applicable, delivered to QR the Security Deposit in accordance with Clause 2.4;
  - (ii) provided to QR a certificate of compliance for all of the Operator's Rollingstock and Rollingstock Configurations in accordance with Clause 5.9 and QR has authorised such Rollingstock and Rollingstock Configurations;
  - (iii) demonstrated to QR that the Operator has entered into agreements in respect of the Private Facilities as required by Clause 5.11 (if applicable);
  - (iv) provided to QR a copy of the Operator's Emergency Response Plan which must be compatible with the QR Emergency Procedures;
  - (v) provided to QR an acceptable Environmental Investigation and Risk Management Report in accordance with Clause 8.1;
  - (vi) implemented those elements of the Environmental Investigation and Risk Management Report, if applicable, which are to be implemented prior to the commencement of Train Services;
  - (vii) complied with the community liaison requirements referred to in Clause 8.6(a);
  - (viii) provided to QR evidence of its Accreditation as required by Clause 9.1(a);
  - (ix) conducted an Interface Risk Assessment in accordance with Clause 11(a);
  - (x) devised in collaboration with QR an Interface Risk Management Plan and implemented the elements of such plan required to be implemented prior to the commencement of Train Services;
  - (xi) developed the Operator's Safety Management System and incorporated into that system the elements and process referred to in Clause 11(a)(iii); and

- (xii) taken out the insurances required under Clause 13 and provided to QR evidence of that insurance as required by Clause 13.3.
- (b) QR will use all reasonable endeavours to cooperate with the Operator to facilitate the Operator's completion or compliance with Clause 3.1(a).
- (c) If the Operator has not done each of the acts, matters or things specified in Clause 3.1(a) for its initial Train Services by
  - (i) the date specified in Item 6 of the Reference Schedule and QR has no reasonable expectation that the Operator can commence the operation of Train Services by the Commitment Date; or
  - (ii) by the Commitment Date

then QR may, provided that QR has complied with Clause 3.1(b), notify the Operator in writing of its intention to terminate this Agreement and if the Operator has not complied with all the requirements of Clause 3.1(a) by a date which is thirty (30) days after the date of the notice, QR may terminate this Agreement.

- (d) The Operator must operate Train Services only in accordance with the Train Service Description and this Agreement. Unless acting under a QR Train Control Direction, the Operator must not operate Train Services which do not comply with the Train Service Description without the prior written approval of QR, which approval may specify terms in addition to or varying the terms of this Agreement in respect of those Train Services, including the Access Charges applicable. The Operator must comply with such terms in operating the Train Services.

### 3.2 Reduction of Access Rights

- (a) If:
  - (i) during any twelve (12) consecutive weeks during the Term, the Operator fails, for any reason other than due to a Force Majeure Event or the failure of QR to make the Access Rights available, to operate all the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks; and
  - (ii) QR is satisfied that it can demonstrate that it has:
    - (A) a reasonable expectation of a sustained alternative demand for that part of the Access Rights that have not been utilised: or
    - (B) a reasonable expectation of a commercial benefit for the provision of and management of the Infrastructure sufficiently material to justify the resumption of that part of the Access Rights that have not been utilised,

then QR may, within sixty (60) days of the last day of the relevant twelve (12) week period, give a notice ("**Variation Notice**") to the Operator proposing that the Operator's entitlement to operate Train Services be reduced from a nominated date (being a date at least twenty-one (21) days after the Operator receives the Variation Notice) ("**Date of Resumption**") to a level specified in the notice which level shall be no less than that which

is equivalent to the Operator's average weekly usage of the Nominated Weekly Train Services during the relevant twelve (12) week period.

- (b) After receipt of a Variation Notice the Operator shall have the opportunity to demonstrate to QR's reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services).
- (c) If the Operator fails to demonstrate to QR's reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services), the Operator's entitlement to operate Train Services shall be reduced to the level specified in the Variation Notice with effect on and from the Date of Resumption.
- (d) If the Operator does not agree with the reduction of the Operator's entitlement proposed by QR pursuant to Clause 3.2(a), the Operator may, within twenty one (21) days of receipt of the Variation Notice, notify QR in writing that it disputes the proposed reduction in which case the Operator may refer the dispute for determination by an expert in accordance with Clause 17.3 of this Agreement. The expert will determine whether the conditions for a reduction in Access Rights set out in Clause 3.2(a) have been met and whether the Operator has demonstrated, to QR's reasonable satisfaction, a sustained requirement for that part of the Access Rights to which the reduction would apply. QR must not effect the reduction proposed in the Variation Notice until resolution of the dispute and may only implement a reduction consistent with the expert's determination.
- (e) QR may withdraw the Variation Notice at any time prior to the Date of Resumption or fourteen (14) days following the resolution of the dispute, whichever is the later.
- (f) Where the Operator's Customer or Customers has or have provided concurrent written notification to QR and the Operator that they intend to vary or terminate their rail haulage agreement(s) with the Operator and use another Railway Operator for some or all of their rail haulage services, then QR will, as permitted under and subject to any restrictions specified in QR's Access Undertaking, reduce the Access Rights for the Operator necessary for the Customer or Customers to effect the termination or variation of the relevant rail haulage agreement(s). The provisions of Clause 17 shall not apply to this Clause 3.2(f).
- (g) In the event that the Operator's entitlement to operate Train Services is reduced in accordance with this Clause 3.2, the Agreement (including the Base Access Charges) will be varied accordingly.
- (h) The Operator shall have no claim or entitlement to compensation as a result of any reduction in Train Services pursuant to this Clause 3.2.

### 3.3 Relinquishment and Transfer of Access Rights

- (a) Where the Operator wishes to relinquish some or all of its Access Rights and no other existing or prospective Railway Operator ("**New Railway Operator**") has agreed to take up New Access Rights pursuant to Clause 3.3(g) or Other Access Rights pursuant to Clause 3.3(h) then provided that:
  - (i) the Operator has given to QR reasonable notice of its intention to relinquish such Access Rights; and
  - (ii) the Operator pays to QR the Relinquishment Fee within:

- (A) two (2) years of the notice provided in accordance with Clause 3.3(a)(i), where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region; or
- (B) six (6) Months of the notice provided in accordance with Clause 3.3(a)(i), in any other case,

then from the date of payment of the Relinquishment Fee, the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights. During the period between when the notice of intention is given and the Relinquishment Fee is paid, the terms of the Agreement will continue to apply in respect of the Access Rights which the Operator intends to relinquish.

- (b) The Relinquishment Fee payable under Clause 3.3(a)(ii) will be reduced in accordance with Clause 3.3(d) where:
  - (i) a Railway Operator has entered into an access agreement with QR in respect of access rights that QR could not have provided without using the whole or part of the relinquished Access Rights;
  - (ii) following the provision of notice pursuant to Clause 3.3(a)(i) but prior to the payment of the Relinquishment Fee pursuant to Clause 3.3(a)(ii), QR's obligation to provide such access rights under the new access agreement has commenced; and
  - (iii) no other Railway Operator is seeking to transfer or relinquish access rights that more closely resemble the access rights sought by the New Railway Operator.
- (c) Where QR is negotiating an access agreement with a New Railway Operator that, if executed, would reasonably be expected to result in a reduction to the Operator's Relinquishment Fee pursuant to Clause 3.3(b), QR will not unreasonably delay the process for negotiating and executing an access agreement with that New Railway Operator.
- (d) Where Clause 3.3(b) applies and subject to Clause 3.3(f), the Relinquishment Fee will be reduced by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the New Railway Operator's average contribution to Common Costs per train kilometre for its relevant Train services is less than the Operator's average contribution to Common Costs per train kilometre for its relevant Train Services, the Reduction Factor will be decreased in proportion to the relative contribution.
- (e) Where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region, the amount payable by the Operator to QR under Clause 3.3(a) will not exceed 50% of the Relinquishment Fee (as determined prior to any reduction under Clause 3.3(d)).
- (f) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).
- (g) Where the Operator wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights which are Equivalent Access Rights ("**New Access Rights**") then provided that:

- (i) the Operator has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the New Access Rights;
- (ii) QR has, following the receipt of notice pursuant to Clause 3.3(g)(i), entered into an access agreement with that New Railway Operator for the New Access Rights and QR's obligation to provide such New Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable); and
- (iii) the Operator pays to QR, where applicable, within fourteen (14) days of receipt of an invoice from QR, a transfer fee, determined by QR as equivalent to the present value, considered over the remaining Term, of any future expected reductions in contributions to QR's Common Costs in providing the Infrastructure (including the return earned on Infrastructure assets) due to the net effect of the relevant relinquishment of the Operator's Access Rights and the take up of the New Access Rights on the assumption that the Operator would have fully utilised the Access Rights for the remaining Term and provided that in no circumstances will the transfer fee be less than zero (0),

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of such Access Rights.

- (h) Where the Operator wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights with a different origin/destination but with the same format of Train service description as the Access Rights (that is, a Cyclic Traffic) ("**Other Access Rights**") then provided that:
    - (i) the Operator has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the Other Access Rights;
    - (ii) QR has, following the receipt of notice pursuant to Clause 3.3(h)(i), entered into an access agreement with that New Railway Operator for the Other Access Rights and QR's obligation to provide such Other Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable);
    - (iii) the Operator has paid to QR, where applicable, a transfer fee equivalent to the Relinquishment Fee that would have been payable for relinquishment of the Access Rights provided that:
      - (A) where (and only where) the Other Access Rights are for the transportation of specified net tonnes of coal between a specified origin and destination that have not been included in the Forecast Traffic; or
      - (B) where the Other Access Rights are for Train services other than coal carrying Train services operating in the Central Queensland Coal Region,
- the transfer fee will be reduced in accordance with Clause 3.3(d); and
- (iv) no other Railway Operator is seeking to transfer access rights that more closely resemble the access rights sought by the New Railway Operator

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights.

- (i) Where Access Rights have been reduced, relinquished or transferred in accordance with this Agreement to the extent that there is no longer any Access Rights, QR will be entitled to terminate this Agreement.

### **3.4 Forecasts**

- (a) For the purposes of permitting QR to plan for the maintenance and upgrading of the Infrastructure the Operator will within thirty (30) days after being requested to do so by QR (such requests to be made not more than once in any six (6) Month period), provide to QR a forecast in writing representing the Operator's best estimate for the next six (6) year period specified by QR in its request of:
  - (i) the number and frequency of Train Services it will require;
  - (ii) the gross tonnage it will transport;
  - (iii) the average number of gross tonnes per Train it will transport; and
  - (iv) any changes in Rollingstock or Rollingstock Configuration which will vary any of the above,

such forecast of the above information to be made up of:

- (i) a forecast for each Month of the first year of such period; and
  - (ii) a forecast for each of the remaining five (5) years of such period.
- (b) QR will, within thirty (30) days after being requested to do so by the Operator (such requests to be made not more than once in any six (6) Month period), provide to the Operator forecasts of planned major Enhancements relating to the Nominated Network for each of the next six (6) years.
  - (c) The information and/or forecasts provided pursuant to Clauses 3.4(a) or (b) shall be prepared and supplied in good faith however the information and/or forecasts shall not be a representation or warranty as to the accuracy of the information and/or forecasts itself and the parties have no liability in any respect for the information and/or forecasting.

## **4. DAY TO DAY TRAIN MOVEMENTS**

### **4.1 Train Control**

QR will provide and will have exclusive responsibility for Train Control in respect of the Nominated Network.

### **4.2 Train Control Rights and Obligations**

- (a) QR must exercise Train Control by the issue of QR Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control QR shall have regard to the safe conduct of rail operations on the Infrastructure and:



- (i) may delay, alter or add a Train Service;
  - (ii) may cancel, re-route or re-schedule a Train Service;
  - (iii) may alter the Scheduled Times for Train Services in the Train Schedule; and
  - (iv) may impose any Operational Constraint on the Nominated Network consistent with Clause 6.2.
- (c) The Operator must:
- (i) comply with QR Train Control Directions;
  - (ii) ensure the Operator's Staff comply with QR Train Control Directions;
  - (iii) ensure that Train drivers are contactable by the QR Train Controller to receive QR Train Control Directions;
  - (iv) notify the QR Train Controller as soon as the Operator becomes aware that it is not possible for the Operator or the Operator's Staff to comply with a QR Train Control Direction or the Operator or the Operator's Staff have not complied with a QR Train Control Direction; and
  - (v) notify the QR Train 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 Train Control including the ability of any Train Service to conform to its Scheduled Times.

#### **4.3 Train Control Communications**

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Agreement (including the Rollingstock Interface Standards and the relevant Safeworking Procedures).

### **5. TRAIN OPERATIONS**

#### **5.1 Compliance**

- (a) To the extent relevant to the performance of its obligations under this Agreement the Operator must observe and comply with :
  - (i) all applicable Laws;
  - (ii) the conditions of its Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) the Rollingstock and Rollingstock Configurations authorised in accordance with Clause 5.9;
  - (v) the Train Service Description (subject to the Network Management Principles);

- (vi) the description of the relevant Reference Train Service except as otherwise specified in this Agreement;
  - (vii) QR Train Control Directions;
  - (viii) the Safeworking Procedures and Safety Standards;
  - (ix) the Network Management Principles;
  - (x) the Interface Coordination Plan;
  - (xi) to the extent applicable, the QR Emergency Procedures;
  - (xii) the Operator's Emergency Response Plan;
  - (xiii) the Environmental Investigation and Risk Management Report;
  - (xiv) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by QR from time to time and the permits, approvals and licences in respect of facilities to which access is provided by QR to the Operator;
  - (xv) the Interface Risk Management Plan (including the Rollingstock Interface Standards);
  - (xvi) subject to the provision of reasonable notice specifying relevant licences and permits and their applicability to the Operator, to the extent applicable to the Operator, all licences and permits affecting the operations of QR; and
  - (xvii) to the extent applicable to the Operator, the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (b) To the extent relevant to the performance of its obligations under this Agreement QR must observe and comply with:
- (i) all applicable Laws;
  - (ii) the conditions of its Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) to the extent applicable, QR Train Control Directions;
  - (v) the Safeworking Procedures and Safety Standards;
  - (vi) to the extent applicable, the Train Service Description (subject to the Network Management Principles);
  - (vii) the Network Management Principles;
  - (viii) the Interface Coordination Plan;
  - (ix) QR's Emergency Procedures;
  - (x) the Interface Risk Management Plan;

- (xi) all licences and permits affecting the operations of QR; and
  - (xii) the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (c) QR must ensure that as far as practicable:
- (i) the Network Management Principles;
  - (ii) the Safeworking Procedures and Safety Standards; and
  - (iii) QR's Emergency Procedures
- will be applied consistently for all Railway Operators on the Nominated Network.

## **5.2 Compliance with Scheduled Time**

- (a) The Parties must use reasonable endeavours to:
- (i) operate Train Services in accordance with the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles, varied in the circumstances specified in this Agreement or otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
  - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service shall be deemed to operate in accordance with its Scheduled Time if it does not vary more than three (3) minutes from the Scheduled Time.

## **5.3 Alterations to Train Services**

- (a) If the Operator does not propose to operate a Train Service the Operator must, prior to the scheduled operation of the Train Service, advise QR of the cancellation of such Train Service and the reason for such cancellation.
- (b) In the event that a Train Service is unable to operate in accordance with its Scheduled Time then, provided that the Operator has complied with Clause 5.2(a), QR will use its reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service provided that QR will be under no obligation to alter the scheduled times for other Train Movements.
- (c) In the event that for any reason the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule or at any other Scheduled Time advised by QR in accordance with Clause 5.3(b), QR may authorise the operation of another Train Movement at that Scheduled Time.
- (d) In the event that a Train Service is for any reason unable to commence to operate in accordance with its Scheduled Time and following bona fide consultation between the Parties it is not possible for QR to provide an alternative Scheduled Time reasonably acceptable to both Parties, such Train Service may be cancelled by either Party giving notice to the other Party as soon as practicable.

## **5.4 Notification**

- (a) QR must notify the Operator's Controller (such notification to include where relevant the anticipated effect on the relevant Train Service) as soon as reasonably practicable after QR discovers or becomes aware of any circumstances including Obstructions (other than those circumstances of which the Operator is aware or ought to have been aware) which:
  - (i) have materially affected, or could potentially materially affect, the ability of any Train Service to comply with its Scheduled Time; or
  - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.
- (b) QR must at the earliest possible time after becoming aware of the relevant changes advise the Operator's Controller from time to time of changes to advices previously provided pursuant to Clause 5.4(a).
- (c) The Operator must inform QR of any failure to comply with:
  - (i) any applicable Laws relevant to the Operator's Train Services;
  - (ii) QR Train Control Directions; and
  - (iii) the Rollingstock and Rollingstock Configurations authorised in **Schedule 4**.

## 5.5 Operator to Supply Information

The Operator must provide to QR and at all times maintain operable all necessary software, hardware and associated communication links to establish, to QR's reasonable satisfaction, an interface with QR's information systems and must provide information to QR in relation to each Train Service prior to operation on the Nominated Network in accordance with paragraph 2.1 of Part 2 of **Schedule 10**. The interface with QR's information systems will be subject to any controls specified by QR to protect the integrity and confidentiality of the systems and the information contained therein.

## 5.6 Performance Levels

- (a) The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in Part 1 of **Schedule 5**. A failure by either Party to achieve the relevant Performance Level will not constitute a breach of this Agreement and the only consequences of such failure as between the Parties shall be the consequences set out in this Clause 5.6.
- (b) If the Operator does not comply with the Operator Performance Level then the Operator must pay to QR the amount determined in accordance with **Schedule 5** as part of the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following QR becoming entitled to that amount.
- (c) If QR does not comply with the QR Performance Level then QR will credit to the Operator the amount determined in accordance with **Schedule 5** by way of a deduction from the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following the Operator becoming entitled to that amount.
- (d) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six (6) Months of the Commitment Date or any previous review of the Performance Levels. If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties

may agree on varied Performance Levels and any associated variations to the Agreement including the Base Access Charges and the Train Service Description. If the Parties are unable to agree to such variations then the existing Performance Levels shall continue to apply unless varied by QR in accordance with the provisions of Clause 5.6(e).

- (e) In the event that the Operator
  - (i) does not comply in any material respect with the Train Service Description; and
  - (ii) the Operator fails to demonstrate to the reasonable satisfaction of QR when requested to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term

then, following consultation with the Operator, QR will be entitled to:

- (iii) vary the Train Service Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term having regard to the extent of previous compliance with the Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to QR); and
  - (iv) vary the Agreement (including, without limitation, the Operator Performance Level and the Base Access Charges) to reflect the impact of the change in the Train Service Description.
- (f) The Operator shall be entitled to dispute any variation proposed by QR pursuant to Clause 5.6(e) and such dispute will be referred to an expert for resolution in accordance with Clause 17.3.

## 5.7 Interface Coordination Plan

- (a) QR and the Operator agree to comply with the Interface Coordination Plan in exercising their rights and performing their obligations under this Agreement.
- (b) QR will provide the Operator with that information identified in paragraph 3(f) of Part 1 of **Schedule 10** relevant to the Operator's operation of Train Services.

## 5.8 Operation of Trains and Rollingstock

The Operator is responsible for the safe operation of its Rollingstock on the Nominated Network and must ensure that at all times whilst operating on the Nominated Network:

- (a) its Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards);
- (b) it operates only authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**; and
- (c) all loading and unloading of its Rollingstock is undertaken in a manner that:
  - (i) is consistent with the requirements of **Schedule 4** and the Rollingstock Interface Standards;

- (ii) does not affect the safe operation of the Rollingstock; and
- (iii) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

## 5.9 Authorisation of Rollingstock & Rollingstock Configurations

- (a) Prior to the operation of any Train Services the Operator must:
  - (i) implement the control measures devised in the Interface Risk Management Plan relevant to assessing the compatibility of the Operator's Rollingstock and Rollingstock Configurations with the Nominated Network; and
  - (ii) without limiting Clause 5.9(a)(i), provide to QR a certificate by a suitably qualified person whom both QR and the Operator accept as being competent to provide such certification as to the compliance of the Operator's Rollingstock and Rollingstock Configurations with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Rollingstock and Rollingstock Configurations the subject of that certificate shall then, subject to QR's reasonable satisfaction with the certificate provided, be authorised by QR and included in **Schedule 4** as the authorised Rollingstock and Rollingstock Configurations.
- (b) If requested to do so by QR, the Operator must provide to QR (or procure the certifying party to provide to QR) relevant documentation (including reports on trials and/or commissioning tests) demonstrating that the Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards).
- (c) Where QR is not satisfied, on the basis of documentation provided by the Operator or the certifying party in accordance with Clauses 5.9(a) and (b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan, either Party may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan for resolution by an expert in accordance with Clause 17.3.
- (d) In the event that during the Term the Operator wishes to:
  - (i) modify any of the Operator's authorised Rollingstock or Rollingstock Configurations; or
  - (ii) have additional Rollingstock or Rollingstock Configurations authorised for use on the Nominated Network,then prior to using any such modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network:
  - (i) the Operator must notify QR (giving details of the relevant modification or additional Rollingstock or Rollingstock Configurations);
  - (ii) if QR considers it reasonably necessary to do so, the Operator must conduct a supplementary Interface Risk Assessment jointly with QR in accordance with Clause 11 (and the provisions of that Clause shall apply if there is any

dispute between the Parties in relation to the conduct of the supplementary Interface Risk Assessment);

- (iii) the Operator must provide to QR a certificate of compliance in respect of the modified or additional Rollingstock or Rollingstock Configurations in accordance with Clauses 5.9(a) to (c);
- (iv) the Interface Risk Management Plan shall be amended to reflect any changes agreed or determined in accordance with this Clause 5.9(d) and the Parties shall make any other amendments to this Agreement (including QR varying the Base Access Charges) which may be reasonably necessary to reflect the authorisation and use of the modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network; and
- (v) QR must advise the Operator of any variations to the Base Access Charges payable by the Operator as a result of the authorisation of such modified or additional Rollingstock or Rollingstock Configurations. If the Operator disputes the variations to the Base Access Charges advised by QR in accordance with this Clause, either Party may refer the dispute to the QCA for determination in accordance with Clause 17.6.

#### **5.10 Amendments to System Wide Requirements**

- (a) QR may, acting reasonably, amend a System Wide Requirement by the issue of a notice ("**Amendment Notice**"):
  - (i) on safety grounds, at any time without the consent of the Operator subject to providing reasonable notice of the proposed amendment and consulting with the Operator prior to its implementation;
  - (ii) if required pursuant to a Material Change; and
  - (iii) in any other circumstance, subject to negotiating the Operator's agreement to such proposed amendment prior to its implementation in accordance with this Clause 5.10 (the Operator's agreement not to be unreasonably withheld or delayed).
- (b) The Amendment Notice issued by QR pursuant to Clause 5.10(a) must include details of the proposed amendments to the extent reasonably necessary so as to properly inform the Operator of the terms of the proposed amendments and to enable the Operator to assess the consequences and impact for the Operator of the proposed amendments and details of the proposed implementation date.
- (c) In respect of any amendment proposed pursuant to Clause 5.10(a)(iii), the Operator shall provide advice to QR as to whether:
  - (i) the proposed amendments will materially impact on the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Agreement over a sustained period of time notwithstanding the Operator's entitlement to reach agreement with QR in terms of the funding of any material financial impact pursuant to Clause 5.10(e)(ii); or
  - (ii) the Operator will suffer a net material financial impact (that is, a net cost equivalent to 1% or greater of the annual Access Charges directly as a result of the proposed amendments.

- (d) Where the Operator has provided advice to QR pursuant to Clause 5.10(c)(i) and has satisfied QR, acting reasonably, within thirty (30) days of receipt by QR of that advice, that the Operator's operation of Train Services under this Agreement will be fundamentally frustrated over a sustained period of time directly as a result of the proposed amendments notwithstanding the Operator's entitlement to reach agreement with QR in terms of the funding of any net material financial impact pursuant to Clause 5.10(e)(ii), QR will not implement the proposed amendments. In the event that the Operator is unable to so satisfy QR, QR may implement the proposed amendments at any time except that:
- (i) in the event that the circumstances outlined in Clause 5.10(c)(ii) exist, such implementation shall be subject to Clause 5.10(e); or
  - (ii) in the event that the Operator disputes QR's finding, either Party may refer the dispute for determination by an expert in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the determination of the expert.
- (e) Where the Operator has provided advice to QR pursuant to Clause 5.10(c)(ii) that the relevant circumstances exist then:
- (i) within thirty (30) days of providing such advice the Operator shall provide to QR further advice of such net material financial impact including 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 amendments and the Operator shall warrant that any estimates given by it are accurate on the basis of the information reasonably available to it and sufficiently detailed to enable QR to reasonably assess such net material financial impact; and
  - (ii) the Parties will negotiate in good faith to agree appropriate financial arrangements between them with respect to such net material financial impact and, failing agreement within a further thirty (30) day period, either Party may refer the matter of appropriate financial arrangements to an expert for determination in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the expert's determination.
- (f) In making his determination the expert must have regard to, except in circumstances where consequences are otherwise provided under this Agreement, the costs and benefits accruing to the Operator but excluding any costs associated with other entitlements of QR under this Agreement.
- (g) The Operator shall use all reasonable endeavours to minimise the net material financial impact suffered by it due to the proposed amendments.
- (h) Notwithstanding Clause 5.10(e), where any System Wide Requirement is varied on safety grounds, each Party will fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (i) At any time following a determination pursuant to Clause 5.10(e), QR may elect not to proceed with the proposed amendments.
- (j) The Parties must account to each other in respect of the contributions agreed or determined pursuant to Clause 5.10(e)(ii) following completion of the implementation



of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.

- (k) Where QR implements the proposed amendments in accordance with this Clause 5.10, the relevant System Wide Requirement will be altered accordingly following completion of the implementation of the proposed amendments. The Parties must undertake all necessary action and make all necessary amendments to the Interface Risk Management Plan, the Environmental Investigation and Risk Management Report and/or the Operator's Emergency Response Plan in response to the relevant amendments including providing QR with a further certificate of compliance where the Operator's Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement. QR will allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where QR may require immediate compliance.
- (l) In the event that QR undertakes an Enhancement, QR will only be required to vary the Rollingstock Interface Standards to reflect the impact of the Enhancement where the Parties have agreed as to the level and method of contribution to the funding of the Enhancement by the Operator.

#### **5.11 Private Facilities**

Prior to the commencement of any Train Services, the Operator must demonstrate to the reasonable satisfaction of QR that the Operator has entered into agreements with the owners or operators of the Private Facilities to enable the Operator to operate Train Services in the manner contemplated in this Agreement ("**Private Facilities Agreements**"). The Operator must use reasonable endeavours to maintain the Private Facilities Agreements in full force and effect for the period the Private Facilities are required for the operation of Train Services.

## **6. INFRASTRUCTURE MANAGEMENT**

### **6.1 Management and Control of the Nominated Network**

QR is responsible for the management of the Nominated Network and shall retain control over all activities on the Nominated Network.

### **6.2 Maintenance of the Nominated Network**

- (a) QR must carry out Maintenance Work on the Nominated Network such that, subject to any agreed criteria and the Network Management Principles:
  - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
  - (ii) the Operator can operate Train Services in accordance with its Scheduled Times.
- (b) QR may impose either temporarily or permanently such Operational Constraints as it considers necessary for the protection of any person or any property (including the Infrastructure) or to facilitate the performance of Maintenance Work or Enhancements provided that in exercising its rights under this Clause 6.2(b) QR must:
  - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing

alternate Scheduled Times having regard to the reasonable requirements of the Operator); and

- (ii) comply with the relevant procedures specified in the Interface Coordination Plan.
- (c) Except to the extent that an Operational Constraint resulted from a breach by QR of this Agreement, any delays or cancellations of Train Services caused by or resulting from Operational Constraints shall not constitute a default by QR of its obligations under this Agreement and QR will not be liable for any Claims suffered or incurred by or made or brought by or against the Operator as a result of or arising from the imposition of such an Operational Constraint.
- (d) The Operator must notify QR as soon as is reasonably practicable of any damage to or disrepair or failure in operation or function of any part of the Infrastructure of which the Operator becomes aware.
- (e) The Operator must provide reasonable cooperation to QR in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.

### **6.3 Inspection by Operator**

- (a) Subject to Clause 6.3(b), the Operator may, prior to the initial commencement of Train Services, at its cost and risk, inspect the Infrastructure and circumstances surrounding the Infrastructure comprising the Nominated Network including, but not limited to, fencing and level crossing protection in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with operation of Train Services on the Infrastructure.
- (b) Any inspection by the Operator under Clause 6.3(a) shall be subject to
  - (i) the Operator providing reasonable written notice to QR of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
  - (ii) any such inspection being conducted in the presence of a representative of QR; and
  - (iii) such other reasonable conditions as may be imposed by QR on such inspection including, but not limited to, compliance with QR's Safeworking Procedures and Safety Standards;

and shall be conducted in such a manner as to not cause any disruption to any Train Movements or to the undertaking of Maintenance Work or Enhancements.

## **7. INCIDENT MANAGEMENT**

### **7.1 Operator's Emergency Response Plan**

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services) the Operator must develop and submit to QR a plan (the "**Operator's Emergency Response Plan**") which:

- (i) contains the set of procedures developed by the Operator which are adequate for dealing with an Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;
  - (ii) without limiting Clause 7.1(a)(i) includes the matters outlined in Part 3 of **Schedule 6** relevant to the Operator's use of the Nominated Network; and
  - (iii) must at all times during the Term be compatible with the QR Emergency Procedures and this Agreement.
- (b) If QR is not reasonably satisfied that the Operator's Emergency Response Plan complies with Clause 7.1(a), QR must notify the Operator and if the Parties cannot agree on a mutually acceptable course of action to address QR's concerns within fourteen (14) days after the date of QR's notice, either Party may refer the matter to an expert in accordance with Clause 17.3. The expert will be required to determine whether or not the Operator's Emergency Response Plan:
- (i) is compatible with the QR Emergency Procedures and this Agreement; and
  - (ii) otherwise complies with Clause 7.1(a).
- If the expert determines that the Operator's Emergency Response Plan:
- (i) is not compatible with the QR Emergency Procedures and this Agreement, he must determine how the non-compliance should be rectified and the Operator must rectify the Operator's Emergency Response Plan accordingly; or
  - (ii) is compatible with the QR Emergency Procedures and this Agreement, the Operator's Emergency Response Plan must be treated as complying with Clause 7.1(a).
- (c) The Operator must ensure that any amendments to the Operator's Emergency Response Plan comply with the requirements contained in Clause 7.1(a).
- (d) If the Operator intends to amend the Operator's Emergency Response Plan it must notify QR of that fact, providing QR with details of the proposed amendments and the reasons for them. Within ten (10) days after receipt of that notice QR must notify the Operator if QR disputes any such proposed amendments, in which case any such dispute shall be resolved in accordance with the procedures set out in Clause 7.1(b).
- (e) No amendment to the Operator's Emergency Response Plan to the extent that it relates to the Operator's operations on the Nominated Network will be effective until it has been made in a manner permitted by this Clause 7.1.
- (f) The Operator must be able to demonstrate to QR that procedures are in place which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Response Plan and, to the extent relevant, the QR Emergency Procedures and that they are being observed.
- (g) The Operator must ensure that at all times sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations and that the names and positions of those members of the Operator's Staff are maintained in the Operator's Emergency Response Plan.

## 7.2 Obstructions

The Operator must not cause any Obstruction or permit to continue any Obstruction caused by the Operator.

### 7.3 Notification

- (a) The Operator must notify the QR Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
  - (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
  - (ii) anything which the Operator observes may cause or contribute to the occurrence of an Incident or Obstruction.
- (b) QR must notify the Operator of all Incidents involving the Operator's Rollingstock.

### 7.4 Management of Incident Response

- (a) QR will be responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) The Operator must arrange Recovery and must cooperate with and assist QR in Restoration. The Operator will be responsible for effecting timely Recovery in accordance with the Operator's Emergency Response Plan. Where QR reasonably believes that more timely recommencement of Train Movements can be achieved by QR, then QR may, subject to using reasonable efforts to consult with the Operator, take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) and recover such reasonable direct costs incurred by QR in doing so. The Operator must pay to QR such reasonable direct costs incurred by QR.
- (c) If an Incident occurs the Operator will as soon as reasonably practicable notify QR and:
  - (i) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise the occurrence of injury to any person or damage to any property (including environmental damage) where there is an imminent risk of such injury or damage but otherwise take no action without the prior approval of QR, which approval shall not be unreasonably withheld; and
  - (ii) comply with the directions of QR in respect of the coordination and management of Restoration and Recovery.
- (d) (i) Both Parties must use all reasonable endeavours to ensure that any property damage or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised provided that QR, subject to QR using reasonable efforts to consult with the Operator, will have the right to take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock) as it considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to Clause 7.4(d)(ii) and (iv), QR shall have no liability for any damage to or loss of freight or Rollingstock caused by such actions.

- (ii) Where pursuant to Clause 7.4(d)(i) QR seeks to remove or require the Operator to remove any Relevant Rollingstock where QR considers such removal reasonably necessary to recommence Train Movements as soon as practicable and such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock, QR and the Operator must:
  - (A) use all reasonable efforts to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and at least within a period of six (6) hours after the occurrence of the Incident or such longer period as the Parties may agree; and
  - (B) if the Parties do not consult or reach agreement within a period of six (6) hours or such longer period as agreed, they will refer the decision to the chief executive officers of each Party or their nominated delegate as specified in **Schedule 10** who must in good faith seek to agree a course of action within two (2) hours of the referral to them or such longer period as the Parties may agree.
- (iii) Where the chief executive officers of each Party or their nominated delegates, do not consult or do not agree within the specified period in Clause 7.4(d)(ii)(B), QR must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to the Removal Expert who shall assess whether, having regard to:
  - (A) the potential to further damage the Relevant Rollingstock;
  - (B) the impact on QR's ability to effect Restoration; and
  - (C) the time critical nature of the decision,the course of action proposed by QR is reasonable.
- (iv) QR shall be entitled to progress with the proposed course of action unless the Removal Expert assesses that QR's proposed course of action is unreasonable.
- (e) QR may, where it is reasonable and practicable in the circumstances to do so, issue a QR Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of QR and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of QR or another Railway Operator). The Operator may recover from QR such reasonable direct costs incurred in complying with this Clause 7.4(e) as agreed and failing agreement within thirty (30) days after notice by the Operator to QR as determined by an expert in accordance with Clause 17.3.
- (f) In assessing the costs to be recovered under Clause 7.4(b) or Clause 7.4(e) for the use of Rollingstock, regard shall be had to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (g) Except as otherwise provided in this Agreement QR will not be liable for any delays, cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the Operator as a result of complying with a request by QR pursuant to Clause 7.4(e).

## 7.5 Investigations

- (a) In the event of an Incident an Investigation into the Incident in the circumstances set out in **Schedule 8** must be commenced as soon as practicable unless otherwise agreed between the Parties and must be conducted in the manner and by the persons prescribed in **Schedule 8**.
- (b) Each Party must cooperate and ensure their respective staff cooperate fully with any Investigation and the Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the requirements of **Schedule 8**.

## 8 ENVIRONMENTAL MANAGEMENT AND PROTECTION

### 8.1 Environmental Management

- (a) The Operator must, prior to the commencement of any Train Services (including any new or varied Train Services):
  - (i) cause a suitably qualified person reasonably acceptable to both Parties to prepare a report (“**Environmental Investigation and Risk Management Report**”) containing an environmental investigation component and an environmental risk management component which respectively identify:
    - (A) possible risks of Environmental Harm arising out of the proposed use of the Nominated Network by the Operator, including risks associated with those matters identified in Part 3 of **Schedule 6**; and
    - (B) the manner in which the Operator proposes to address the possible risks of Environmental Harm identified in the Environmental Investigation and Risk Management Report as well as the roles and responsibilities, including financial responsibility, for the control measures proposed and an audit regime,provided that if the Operator has an existing Environmental Management System it proposes to use in connection with the proposed Train Services on the Nominated Network, the Environmental Investigation and Risk Management Report should also detail the extent to which the Operator believes its existing Environmental Management System addresses the risks identified in the Environmental Investigation and Risk Management Report; and
  - (ii) provide a copy of the Environmental Investigation and Risk Management Report to QR for its consideration and, if requested by QR, a copy of the relevant parts of the Operator’s existing Environmental Management System referred to in the Environmental Investigation and Risk Management Report.
- (b) If the Environmental Investigation and Risk Management Report discloses areas of risk which, in the reasonable opinion of QR, cannot be adequately managed by the proposals set out in the Environmental Investigation and Risk Management Report or, in the reasonable opinion of QR, fails to identify and adequately deal with additional relevant environmental risks, then QR may give notice to that effect to the Operator

within thirty (30) days after the date on which the Environmental Investigation and Risk Management Report was provided to QR (or such other period as the Parties, acting reasonably, may agree), detailing the risks not so adequately managed or not so identified or adequately dealt with. If QR does not give such notice, the Environmental Investigation and Risk Management Report shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.

- (c) If QR gives notice pursuant to Clause 8.1(b) the Operator may respond, by a date agreed by the Parties, with a written proposal which demonstrates how the Operator proposes to manage those risks (“**Operator’s Proposal**”). The Operator’s Proposal must:
  - (i) contain an investigation of the areas of risk and/or additional relevant environmental risks referred to in Clause 8.1(b);
  - (ii)
    - (A) specify risk abatement or attenuation measures which the Operator proposes to undertake in relation to them; and/or
    - (B) specify how the Access Charges might contain a component reflecting the cost to QR of assuming all or some portion of the risk;
  - (iii) in relation to paragraph (ii)(A) specify a timeframe for implementation of those measures; and
  - (iv) specify details of any public consultation the Operator proposes to undertake in connection with the implementation of any such measures.
- (d) QR may, in the exercise of its reasonable discretion, accept or reject all or part of the Operator’s Proposal.
- (e) If QR accepts the Operator’s Proposal, then it will be incorporated into and form part of the Environmental Investigation and Risk Management Report which shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (f) If the Operator fails to submit to QR an Operator’s Proposal by the date agreed by the Parties or if QR refuses to accept all or part of the Operator’s Proposal, QR may advise the Operator of the risks not adequately managed or not identified or adequately dealt with and then either Party may refer the issue of whether the Environmental Investigation and Risk Management Report and/or the Operator’s Proposal does or does not adequately manage or does or does not identify or adequately deal with the relevant environmental risks to an expert in accordance with Clause 17.3.
- (g) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator’s Proposal does adequately manage the risks or identifies and adequately deals with the risks, then the Environmental Investigation and Risk Management Report as modified by the Operator’s Proposal (if applicable) will be accepted, included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (h) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator’s Proposal does not adequately manage the risks or does not identify and adequately deal with the risks, then provided the Operator amends the

Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, the Environmental Investigation and Risk Management Report as amended will be accepted and included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.

- (i) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks and the Operator fails to amend the Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, QR may terminate this Agreement.
- (j) The parties agree to implement the determination of the expert.

## **8.2 Environmental Management System**

- (a) The Operator must prior to the commencement of any Train Services (including any new or varied Train Services) have in place an Environmental Management System.

The Environmental Management System prepared by the Operator must:

- (i) have regard to the issues raised in the Environmental Investigation and Risk Management Report and contain procedures for implementing the risk management proposals identified in it. The Environmental Investigation and Risk Management Report includes the results of any expert determination referred to in Clause 8.1(f) or any amendment of the Environmental Investigation and Risk Management Report arising from the recommendations of any environmental audit or review conducted pursuant to Clause 8.7;
  - (ii) address all legislative requirements, including the requirements of the Environmental Authorities held by QR from time to time that are relevant to the Operator's Train Services; and
  - (iii) identify systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with all Environmental Laws.
- (b) Prior to the commencement of any Train Services (including any new or varied Train Services), QR will ensure that the elements of the Environmental Investigation and Risk Management Report which QR is responsible for implementing are incorporated into QR's Environmental Management System.

## **8.3 Carriage of Dangerous Goods on Train Services**

- (a) The Operator must ensure that where Dangerous Goods are to be carried on a particular Train Service:
  - (i) all requirements of the Dangerous Goods Code are fully complied with (including placement of relevant, accurate and current documentation on Trains);
  - (ii) QR is advised of the details of the Dangerous Goods (including a description and the applicable Dangerous Goods United Nations (UN) Number) prior to the operation of a Train as part of the Train List; and



- (iii) any authorisation or prior approvals required under the Dangerous Goods Code have been obtained and are available for inspection by QR if so requested.
- (b) The Operator must ensure that, where there is any likelihood of Train Services carrying Dangerous Goods and before any Dangerous Goods can be carried on Train Services, the Operator's Emergency Response Plan prepared in accordance with Clause 7.1 includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried.

#### **8.4 Noise Management during Train Services**

- (a) In addition to any noise attenuation or management measures which may form part of or be identified in the Environmental Investigation and Risk Management Report, the Operator shall contribute to, as reasonably determined by QR, the costs incurred by QR in taking noise abatement measures on or adjacent to the Nominated Network considered reasonably necessary by QR where the Noise Planning Levels are, or but for the taking of these measures by QR, would be exceeded during the Term.
- (b) If, during the Term, the Noise Planning Levels are reduced such that noise from the Nominated Network exceeds the new Noise Planning Levels, QR may elect, in its absolute discretion, to implement noise abatement measures on the Nominated Network to ensure compliance with the new Noise Planning Levels. The Operator shall contribute to the cost of those noise abatement measures as reasonably determined by QR.
- (c) If the Operator disputes any determination made by QR in accordance with this Clause 8.4 regarding the contribution of costs, either Party may refer that dispute to an expert in accordance with Clause 17.3.

#### **8.5 Spillage of Contaminating Materials**

- (a) Where:
  - (i) the activities of the Operator under this Agreement result in any release, spillage or leakage of any Contaminating Material, or QR is reasonably of the opinion that those activities are causing or likely to cause contamination or Environmental Harm, and QR reasonably considers that action is required to prevent, mitigate or remedy that contamination or Environmental Harm; or
  - (ii) QR is given a direction, notice or order by a relevant Authority that some action is required to prevent, mitigate or remedy any actual or threatened contamination or Environmental Harm resulting from, or contributed to by, the activities of the Operator under this Agreement,

then QR may notify the Operator of the action which is required and the Operator must at its cost, as soon as reasonably practicable after receiving such notice, implement such action.

- (b) If, in QR's reasonable opinion, any action pursuant to Clause 8.5(a) ought best be undertaken by QR, then QR may elect to undertake such action and the Operator shall pay to QR the costs incurred by QR in doing so.

- (c) If the Operator disputes any action taken by QR in accordance with this Clause 8.5, either Party may refer the dispute to an expert in accordance with Clause 17.3 and if the expert determines the dispute in favour of the Operator, QR will reimburse the Operator for the costs incurred by the Operator as a result of the actions taken by the Operator at QR's request (or, if applicable, QR will bear the costs incurred by QR in accordance with Clause 8.5(b) and shall not be able to recover those costs from the Operator) to the extent determined by the expert.

#### **8.6 Community Liaison and Environmental Complaint Procedures**

- (a) Prior to the commencement of any Train Services the Operator shall take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by QR and shall invite QR to be represented at any community meetings organised by the Operator.
- (b) In the event that QR or the Operator receives noise complaints or other complaints dealing with environmental issues in relation to the Nominated Network, both QR and the Operator shall inform each other of those complaints as soon as reasonably practicable and shall cooperate in investigating and responding to those complaints.

#### **8.7 Audit and Review of Environmental Investigation and Risk Management Report**

- (a) The Operator will provide QR with copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services on the Nominated Network.
- (b) QR will provide the Operator with copies of those parts of QR's environmental audits that are relevant to the operation of the Operator's Train Services on the Nominated Network.
- (c) If QR becomes aware of:
  - (i) any inadequacy of the Operator's Environmental Investigation and Risk Management Report due to:
    - (A) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
    - (B) any conduct on the part of the Operator which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
  - (ii) any non-compliance by the Operator with its Environmental Investigation and Risk Management Report,

then, in addition to any other rights QR may have under this Agreement, QR may by notice to the Operator direct the Operator to undertake a review of the adequacy of its Environmental Investigation and Risk Management Report and/or the Operator's compliance with it. The review will only deal with:

- (i) the extent to which the Environmental Investigation and Risk Management Report appears not to address a change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or

- (ii) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
- (iii) the extent of non-compliance by the Operator with its Environmental Investigation and Risk Management Report,

whichever is applicable in the circumstances.

- (d) If directed by QR to undertake a review in accordance with Clause 8.7(c), the Operator will ensure the review is carried out and will provide QR with a copy of the review report within a reasonable time after the review has been completed (and in any case, not later than three (3) Months after the notice from QR requiring the review).
- (e) The Operator must implement the reasonable recommendations arising from each review under this Clause 8.7 and the Parties shall amend the Environmental Investigation and Risk Management Report and this Agreement (including any variations to the Base Access Charges) as appropriate.
- (f) Either Party may refer any dispute as to the nature or extent of any amendments to the Environmental Investigation and Risk Management Report or this Agreement that ought to be made to an expert for resolution in accordance with Clause 17.3.

## **8.8 Notification**

- (a) The Operator must advise QR of any failure by the Operator to comply with its Environmental Investigation and Risk Management Report and the Operator's Environmental Management System to the extent relevant to this Agreement as and when the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance. The Operator must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR and any action required by the Environmental Protection Agency.
- (b) QR must advise the Operator of any failure by QR to comply with the Operator's Environmental Investigation and Risk Management Report and QR's Environmental Management System to the extent relevant to this Agreement as and when QR becomes aware of such failure. QR must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of the Operator and any action required by the Environmental Protection Agency.
- (c) The Operator must advise QR of any failure to comply with its obligations under the Environmental Protection Act 1994 ("EPA"), including any notices or directions relating to the operation of Train Services that it receives from the Environmental Protection Agency. Failure by the Operator to comply with its obligations under the EPA, where that failure causes or threatens to cause Serious Environmental Harm, entitles QR to terminate in accordance with Clause 20.
- (d) QR will notify the Operator of any changes to any Environmental Authorities held by QR or variations to any other environmental information provided by QR to the Operator relevant to the operation of Train Services.

## **9. ACCREDITATION**

### **9.1 Evidence of Accreditation**

- (a) The Operator must on or before the commencement of any Train Services provide to QR evidence of its Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations under this Agreement and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five (5) days of such request.
- (c) Each Party will notify the other as soon as possible of any notice from an Authority affecting or likely to affect its Accreditation and will provide a copy of that notice to the other Party on request.

## **10. OPERATOR'S STAFF**

### **10.1 Safety of Staff**

The Operator will be fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and indemnifies and releases QR to the extent permitted by law from any liability in relation to the Operator's Staff except to the extent that such liability is caused by the wilful default or negligence of QR or QR's Staff.

### **10.2 Qualifications of Operator's Staff**

The Operator must:

- (a) ensure that all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their duties related to the exercise of the Operator's rights or performance of its obligations under this Agreement) are addressed in the Interface Risk Assessment;
- (b) ensure that all Operator's Staff hold and keep current all qualifications and accreditations required under any Law and as specified in Part 2 of **Schedule 9** and undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (c) meet all costs of any training and/or testing required to meet the requirements of this Clause 10.2; and
- (d) keep QR advised of the names and position titles of all Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Operator's Staff whose details have been provided to QR in accordance with this Clause 10.2 and who satisfy the requirements of this Clause 10.2.

### **10.3 Entry onto Land**

The Operator must ensure that the Operator's Staff do not enter upon the Land in a manner inconsistent with the Interface Coordination Plan, the Interface Risk Management Plan or the Operator's Emergency Response Plan without the prior written approval of QR and that, in the

event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

## 11. INTERFACE RISK MANAGEMENT

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services):
- (i) the Operator must conduct an Interface Risk Assessment jointly with QR in order to:
    - (A) identify all reasonably foreseeable Interface Risks to the Operator, QR and all persons and property and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of those Interface Risks;
    - (B) agree the applicable controls and measures to adequately address the Interface Risks identified (including any training required for the Operator's Staff) and the Party responsible for implementation of such controls and measures and ensuring their on-going effectiveness;
    - (C) agree an audit, inspection and review regime;
    - (D) agree the applicable Safeworking Procedures and Safety Standards having regard to existing QR and industry practices;
    - (E) agree the Rollingstock Interface Standards (or, if already agreed, agree variations to the Rollingstock Interface Standards); and
    - (F) agree any consequential changes to the provisions of the Agreement, including the applicable Access Charges;
  - (ii) the Parties must incorporate the above agreed outcomes, as applicable, into:
    - (A) the Interface Risk Management Plan which shall be included in Part 2 of **Schedule 9**;
    - (B) Part 1 of **Schedule 6**;
    - (C) **Schedule 3**; and
    - (D) the relevant provisions of the Agreement; and
  - (iii) the Operator is responsible for the development of the Operator's Safety Management System which must incorporate:
    - (A) the risks identified and the controls and measures and other elements included in the Interface Risk Management Plan that the Operator is responsible for implementing; and
    - (B) necessary processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the agreed Interface Risk Management Plan.

- (b) If the Parties are unable to agree any element of the Interface Risk Assessment or the Interface Risk Management Plan (including the Rollingstock Interface Standards), each Party may give notice in writing to the other Party of the dispute (“**Dispute Notice**”) whereupon either Party may refer the matter in dispute (“**Dispute**”) to an expert for resolution in accordance with Clause 17.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a Party gives a Dispute Notice to the other Party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 11(b)(ii) or the QCA in accordance with Clause 11(b)(iii), either Party may still refer the matter to an expert for resolution in accordance with Clause 17.3;
  - (ii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the QCA in accordance with Clause 11(b)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either Party may refer the matter to the Safety Regulator; and
  - (iii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the Safety Regulator in accordance with Clause 11(b)(ii), then either Party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Clause 17.6,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either Party is not satisfied with the determination of the expert, then notwithstanding Clause 17.3(i), either Party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 11(b)(ii) or the QCA under Clause 11(b)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding on the Parties.

If an expert, the Safety Regulator or the QCA is called upon under this Clause to make a determination the effect of which would be to establish the content of any aspect of the Interface Risk Management Plan, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a Dispute under this Clause that may from time to time be determined by the Safety Regulator.

Where a Dispute is referred to the QCA in accordance with this Clause, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either Party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the Parties a copy of any advice it receives from the Safety Regulator.

Where the QCA seeks advice from the Safety Regulator in relation to a Dispute, the costs of the Safety Regulator shall be borne by the Parties in such proportion as the QCA determines.

- (c) Prior to the commencement of any of the Operator’s Train Services, QR must incorporate the elements of the Interface Risk Management Plan it has agreed to be responsible for implementing into QR’s safety management system.
- (d) The Parties must advise each other of any failure to comply with the Interface Risk Management Plan as and when the Party becomes aware of such non-compliance,

including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

- (e) If at any time during the Term, either Party has reasonable grounds to believe that the Interface Risk Management Plan is no longer effective either in managing the Interface Risks it was intended to manage or in managing new or varied Interface Risks, the Parties must conduct a further joint Interface Risk Assessment to review the Interface Risks which are no longer effectively managed by the current Interface Risk Management Plan or the new or varied Interface Risks (as the case may be).
- (f) Where a Party has reasonable grounds to believe that the other Party has not or is not complying with any aspect of the Interface Risk Management Plan (including the Rollingstock Interface Standards) then, in accordance with the provisions of Clause 12, that Party may conduct or require the conduct of an inspection or audit of the relevant aspect of the Operator's Train Services or the Nominated Network (as applicable).
- (g) The Parties shall amend the Interface Risk Management Plan and this Agreement (including making any variations to the Base Access Charges) if, subsequent to an audit or inspection of the Interface Risk Management Plan, the Parties agree that such amendment is required having regard to the findings of such inspection or audit and, failing agreement, either Party may refer the issue of the need for such amendment to an expert for determination in accordance with Clause 17.3.
- (h) Where QR and the Operator agree that training of the Operator's Staff is required as a control or part of a control to a particular Interface Risk identified in the Interface Risk Assessment and the Operator can only obtain that training from QR, QR will provide the Operator with that training and be entitled to recover a reasonable commercial charge for providing such training.

## 12. INSPECTION AND AUDIT RIGHTS

### 12.1 Rights of Inspection and Audit

In addition to the rights of inspection and audit specified in Clauses 6 and 11(f) and subject to the provisions of this Clause 12, either Party may conduct or require the conduct of an inspection or audit relevant to assessing the other Party's compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Safeworking Procedures and Safety Standards periodically as specified in the Interface Risk Management Plan.

### 12.2 Inspection of Trains and Rollingstock

- (a) Where QR reasonably believes that the Operator's Rollingstock or Rollingstock Configurations do not comply with:
  - (i) the authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**;
  - (ii) the Interface Risk Management Plan (including the Rollingstock Interface Standards); or
  - (iii) any applicable Laws relevant to the Operator's Train Services,and QR cannot otherwise determine whether this is the case, QR may inspect any Trains or Rollingstock which is utilised or intended to be utilised in the operation of

Train Services or require the Operator to have an inspection conducted and for this purpose QR or QR's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.

- (b) QR shall have the right to require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as QR may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by QR.
- (c) Notwithstanding the provisions of Clause 2.7, if any of the Operator's Rollingstock is reasonably considered by QR to be loaded in excess of the limits specified in **Schedule 4** or in an unsafe or insecure manner, then QR may 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. If the Operator fails to immediately remove the excess or adjust the load, QR may arrange for its removal or adjustment and the Operator will be responsible for all resultant costs incurred by QR.

### **12.3 Notice of Inspection or Audit**

The Party conducting or requiring the conduct of an inspection or audit must give the other Party reasonable prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in Clauses 19 or 20 has occurred and such notice shall 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 upon which the Party requires the inspection or audit; and
- (f) the Party's requirements of the other Party in relation to the inspection or audit.

### **12.4 Conduct of Inspection or Audit**

- (a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the relevant Party, its appointed representative or by a suitably qualified person reasonably acceptable to both Parties, provided that if the inspection or audit would require access to commercially sensitive information of a Party and that Party has a legitimate commercial reason for wanting to withhold access to that information from the other Party, then the inspection or audit shall be conducted by a suitably qualified independent person reasonably acceptable to both Parties who shall be given access to the commercially sensitive information by the Party the subject of the inspection or audit but who shall be prohibited from disclosing that commercially sensitive information to the other Party .
- (b) The Operator shall use reasonable endeavours to ensure that QR, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the Operator) on which the Operator's Rollingstock is located from time to time (which location is specified in a notice pursuant to Clause 12.3) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.



- (c) In exercising any right of inspection or audit under this Agreement, a Party must not interfere unreasonably with the other Party's Trains and Rollingstock or Train Movements on the Nominated Network and must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other Party's business activities.
- (d) Subject to Clause 12.4(e), a Party conducting an inspection or audit ("**Inspecting Party**") will not be liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other Party as a result of the exercise by the Inspecting Party of its rights under this Clause 12 provided the Inspecting Party complies with Clause 12.4(c).
- (e) The Operator will be liable for and will indemnify QR in respect of any Claim made against QR by another Railway Operator as a result of a delay or cancellation of a Train service of that other Railway Operator as a result of the exercise by the Operator of its inspection or audit rights under this Clause 12, provided that the Operator will not be liable for, or be required to indemnify QR in respect of, any such Claim where:
  - (i) the Operator has complied with Clause 12.4(c) in exercising its inspection or audit rights; and
  - (ii) the inspection or audit reveals that QR is in breach of its obligations under this Agreement.

#### **12.5 Cooperation by the Parties**

Each Party shall provide all reasonable assistance required by the other Party in conducting any inspection or audit under this Agreement, including allowing a Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with QR's Staff or the Operator's Staff (as applicable). A member of QR's Staff or the Operator's Staff (as applicable) may be present at the inspection or audit.

#### **12.6 Costs of Inspection or Audit**

- (a) The Party who conducts or requires the conduct of an inspection or audit under Clause 6 or an agreed periodic audit shall bear the reasonable costs of conducting the inspection or audit.
- (b) The Party whose operations are inspected or audited under Clause 11(f) or Clause 12.2 shall bear the reasonable costs of conducting the inspection or audit unless it is demonstrated that the stated grounds for requiring the conduct of the inspection or audit did not exist. In circumstances where the stated grounds for such inspection or audit have not been demonstrated to exist, the Party that required the conduct of the inspection or audit shall bear the costs of conducting such inspection or audit.

#### **12.7 Copies of Reports**

The Parties must provide each other with a copy of any report of any inspection or audit undertaken pursuant to this Clause 12 in respect of its compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards).

## **12.8 Consequences of Inspection or Audit**

Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under Clauses 11(f) or 12.2(a)(ii) of this Agreement, that Party will be liable to the other Party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit. The Party who required the conduct of the inspection or audit shall bear the burden of establishing that a reasonable person in its position could have formed that view.

## **12.9 Parties' Obligations**

An inspection or audit by a Party under this Agreement shall not relieve the other Party of its obligations under this Agreement or at Law.

## **13 INSURANCE BY OPERATOR**

### **13.1 Maintain Insurance Policies**

The Operator must prior to the commencement of Train Services at its expense take out and subsequently maintain current at all times during the Term insurance with a Corporation licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to QR) those policies of insurance required by this Agreement.

### **13.2 Required Insurance Policies**

The Operator must take out and maintain insurance for the risks and on the terms specified in Schedule 7.

### **13.3 Disclosure of Insurance Policies**

The Operator must provide to QR evidence of the insurance policies effected pursuant to this Clause 13 or, if requested by QR, copies of such insurance policies, to QR's reasonable satisfaction:

- (a) at least fourteen (14) days prior to the commencement of Train Services;
- (b) upon renewal of each insurance policy during the Term; and
- (c) whenever reasonably requested to do so in writing by QR.

### **13.4 Failure to Disclose Insurance Policies**

If the Operator, whenever required to do so under this Agreement, fails to produce to QR evidence to the reasonable satisfaction of QR of insurances that have been effected or maintained by it, QR may :

- (a) effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to QR; and/or
- (b) terminate this Agreement pursuant to Clause 20.1(g).

### **13.5 Minimum Terms of Policies**

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law :

- (a) note the interests of the Operator, any contractor and QR;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of QR (which consent shall not be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 7**.

### **13.6 Operator Not to Render Policy Void**

The Operator must not render any of the insurances effected in accordance with this Clause 13 void or voidable or liable to refusal of any claim.

### **13.7 Compliance**

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this Clause 13.

### **13.8 Notice of Potential Claims**

In addition to any other obligation on the Operator pursuant to this Agreement, the Operator must notify QR as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement, notify QR of that event in reasonable detail and thereafter keep QR informed of subsequent developments concerning any claim.

### **13.9 Operator to pay all excess/deductibles**

The Operator must in respect of any claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this Clause 13.

### **13.10 Settlement of Claims**

Upon settlement of a claim under any policy required by this Agreement covering damage to Infrastructure the monies received must be paid to QR unless the Operator has already partially or totally indemnified QR for the relevant damage, in which case the monies shall be paid to the Operator but only to the extent that QR has been indemnified.

## **14. INDEMNITIES AND LIABILITIES**

### **14.1 Indemnity by Operator**

Subject to Clause 14.3, the Operator is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims of any nature suffered or incurred by or made or brought against QR, its directors or QR's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of QR) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Operator, the Operator's Customer or the Operator's Staff.

#### **14.2 Indemnity by QR**

Subject to Clause 14.3, QR is solely liable for and releases, indemnifies and will keep indemnified the Operator, its directors and Operator's Staff against all Claims of any nature suffered or incurred by or made or brought against the Operator, its directors or the Operator's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of the Operator) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff.

#### **14.3 Liability to Third Parties**

Notwithstanding Clause 14.1 or Clause 14.2, the Operator is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims due to or arising out of this Agreement in respect of damage to or loss of any property or personal injury to or death of any person where such person or property is being transported on Train Services except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff. Unless otherwise agreed, the Operator shall extend to QR or procure the Operator's Customer to extend to QR any exclusion or limitation of liability afforded by the Operator's conditions of carriage with the Operator's Customer and shall provide to QR details of the Operator's conditions of carriage relevant to QR's liability in place from time to time.

#### **14.4 Liability from Infrastructure Standard**

Notwithstanding any other provision of this Agreement, QR will not be liable to the Operator or the Operator's Customer and the Operator and the Operator's Customer will not have or make any Claim against QR in respect of any loss of or damage to real or personal property, including property of the Operator or the Operator's Customer, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure except to the extent that such loss, damage, injury, cost or expense results directly from the failure of QR to perform its obligations under Clause 6.2(a).

#### **14.5 Defence of Claims**

The Parties shall render each other, and the Operator will procure the Operator's Customer to render, all reasonable assistance in the defence of any Claim made against a Party by a Third Party arising out of any Incident or other event giving rise to a Claim.

#### **14.6 Continuation of Indemnities**

The releases and indemnities contained in this Clause 14 for the benefit of either Party continue in full force and effect as to any Claims occurring or arising from any act occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

#### **14.7 Determination of Liability**

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator, the Operator's Customer or QR, liability as between the Operator and QR shall for the purposes of this Clause 14 be determined:

- (a) as agreed between the Parties;

- (b) failing such agreement within one (1) Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to Clause 14.8; or
- (c) where the amount of the Claim exceeds the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and either Party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.

#### **14.8 Loss Adjuster**

Where a matter is to be referred to a loss adjuster in accordance with Clause 14.7 then the following provisions of this Clause shall apply:

- (a) The loss adjuster shall be appointed by the Parties, or in default of such appointment within fourteen (14) days after the need to appoint a loss adjuster, by the President of The Chartered Institute of Loss Adjusters Australasian Division.
- (b) In any event, the loss adjuster shall:
  - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
  - (ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to fully disclose any such interest or duty before his appointment; and
  - (iii) not be an employee of the Operator or QR or of a Related Body Corporate of either Party.
- (c) The loss adjuster appointed pursuant to this Clause 14.8 shall not be permitted to act until he has given written notice of the acceptance of his appointment to both Parties.
- (d) Any loss adjuster appointed pursuant to this Clause 14.8 shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties.
- (e) Any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld), shall not apply to him or his determination or the procedures by which he may reach his determination.
- (f) Each Party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any employee, agent or contractor (including employees, agents or contractors of the Operator's Customer) involved in or with knowledge of the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (g) Each Party must make available to the loss adjuster any files, documents, data, recordings or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation.
- (h) The loss adjuster will determine the quantum of the relevant Claim and the liability of the Operator and/or QR in respect of such Claim and shall provide a copy of his report on such matters to each of the Parties within a reasonable time after his appointment.

- (i) In the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

#### **14.9 Costs**

The costs of the loss adjuster shall be borne by the Parties in such proportions as liability is determined by the loss adjuster or where the liability is determined by a Court, in such proportions as liability is determined by the Court.

#### **14.10 Relationship with Operator's Customer**

- (a) Nothing in this Agreement creates or constitutes any contract between QR and an Operator's Customer.
- (b) The Operator is responsible for all conduct of the Operator's Customer under this Agreement. Any act or omission of the Operator's Customer shall be deemed to be an act or omission by the Operator for the purposes of this Agreement.
- (c) In no event shall QR be liable to the Operator's Customer for any loss or damage suffered or incurred by the Operator's Customer and the Operator shall indemnify and shall keep indemnified QR, its directors and QR's Staff against any such liability except to the extent that QR would have been liable to the Operator had the loss or damage suffered or incurred by the Operator's Customer instead been suffered or incurred by the Operator, and taking into account the limitations upon liability contained in this Agreement.

### **15. LIMITATION OF LIABILITY**

#### **15.1 No Liability for Consequential Loss**

Except as otherwise expressly provided in Clauses 12.8 and 19.3(b), neither Party shall in any circumstances be liable to the other for (and the indemnities in Clauses 14.1 and 14.2 shall not extend to) any Consequential Loss.

#### **15.2 Limitation on Claims**

Neither Party shall make any Claim against the other in respect of the neglect or default of that Party under the Agreement unless:

- (a) notice of the Claim has been given to the other within twelve (12) Months of the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds FIFTY THOUSAND DOLLARS (\$50,000.00) in respect of any one event or cause of action or series of related events or causes of action (provided that if this condition is satisfied then the Party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of FIFTY THOUSAND DOLLARS (\$50,000.00)).

#### **15.3 Claims in respect of non-provision of Access**

The Operator shall not have or make any Claim against QR in respect of the non-provision of Access or cancellation of any Train Service unless, and shall only have a claim to the extent that:

- (a) a Train Service is cancelled as a result of a failure by QR to make the Infrastructure available for the Operator to operate the Train Service at the Scheduled Time in the

Train Schedule and QR was unable to schedule the Train Service at a reasonable alternative time; and

- (b) the failure by QR to make the Infrastructure available was a result of a breach of this Agreement by QR, or negligence on the part of QR; and
- (c) the failure by QR to make the Infrastructure available is not attributable to:
  - (i) the Operator or the Operator's Customer;
  - (ii) another Railway Operator (other than QR);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
  - (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5** and the total number of Train Services cancelled in a Billing Period as a result of a failure by QR to make the Infrastructure available exceeds the Allowable Threshold; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the non-provision of Access or cancellation of Train Services is of a magnitude which is beyond the scope of that performance and adjustments regime.

#### 15.4 Claims in respect of delays to Train Movements

Neither Party (the "**Affected Party**") shall have or make any Claim against the other Party (the "**Defaulting Party**") in respect of delays to Train Movements unless, and shall 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 (or the Operator's Customer where the Operator is the Affected Party);
  - (ii) another Railway Operator (other than the Defaulting Party);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or

- (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (c) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the delays are of a magnitude which is beyond the scope of that performance and adjustments regime.

## 16. MATERIAL CHANGE

### 16.1 Meaning of Material Change

In this Clause 16:

- (a) **“Material Change”** means a:
  - (i) Change in Relevant Taxes;
  - (ii) Change in Law;
  - (iii) change in the funding from governments in respect of that part of the Nominated Network specified in Part 4 of **Schedule 2**; or
  - (iv) matter deemed to be a Material Change under Clause 22.18(b); and
- (b) **“Net Financial Effect”** means the net effect in financial terms of a Material Change on QR 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. Any change in the funding from governments in respect of the Nominated Network which is adverse to QR shall, to the extent that change affects the financial position of QR, be deemed to be an additional cost to QR of performing its obligations under this Agreement.

### 16.2 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the relevant Train Service under this Agreement then:
  - (i) if at any time after the date of this Agreement a Material Change occurs which affects the financial position of QR or the cost to QR of performing its obligations under this Agreement, QR may notify the Operator giving details of the Net Financial Effect of the Material Change;
  - (ii) within fourteen (14) days after receipt of a notice under Clause 16.2(a)(i), the Parties shall meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return QR to the position it would have been in had it not been for the Material Change. If the Parties do not reach agreement within twenty (20) days of QR's notice, the matter will be referred to an expert for determination in accordance with Clause 17.3.



- (b) If a Reference Tariff is applicable to the relevant Train Service under this Agreement then the relevant Reference Tariff Schedule will provide for the consequences of Material Change.

### **16.3 Parties Obligations**

The Parties' obligations under this Agreement will continue notwithstanding the existence of a Material Change.

## **17. DISPUTES**

### **17.1 Method**

If any claim, dispute or question ("**Dispute**") arises under this Agreement or in relation to the Access Rights then unless otherwise expressly provided to the contrary in this Agreement such Dispute shall be resolved in accordance with this Clause 17 and either Party may give to the other Party to the Dispute a notice in writing ("**Dispute Notice**") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 17.

### **17.2 Chief Executive Resolution**

Except as otherwise provided in this Agreement, the Parties hereby agree that any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the chief executive of QR (or his nominee) and the chief executive of the Operator (or his nominee) for the purposes of this Clause 17.2 for resolution. Failing such resolution within fourteen (14) days or in the event that either chief executive appoints a nominee that is unacceptable to the other Party, the relevant Dispute may by agreement between QR and the Operator be referred for resolution by an expert in accordance with Clause 17.3 or by arbitration in accordance with Clause 17.4.

### **17.3 Expert**

Where any matter may be referred to an expert pursuant to Clause 17.2 or is required by this Agreement to be referred to an expert then except as otherwise provided for in this Agreement, the matter must be referred for determination by a person:

- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by, in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia, in the case of what the Parties agree are non-financial matters, the President for the time being of the Institution of Engineers, Australia and, in the case of what the Parties agree are combined financial and non-financial matters or where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate, by the President for the time being of the Queensland Law Society Incorporated;
- (b) who has appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;

- (d) who is not an employee of the Operator, the Operator's Customer or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment;
- (f) who shall have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at his request and who must provide both Parties with a copy of his determination in the form of a report within a reasonable time after his appointment;
- (g) who shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (h) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld), shall not apply to him or his determination or the procedures by which he may reach his determination;
- (i) whose decision, in the absence of manifest error, shall be final and binding upon the Parties; and
- (j) whose costs (and the costs of any advisers to the expert) shall be borne by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

Any determination made by an expert must be consistent with the provisions of this Agreement.

#### **17.4 Arbitration**

The Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Operator and QR and failing agreement upon such arbitrator within fourteen (14) days after the date of written notice from one Party to the other requiring the appointment of an arbitrator then to an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference shall be an arbitration within the meaning of the Commercial Arbitration Act 1990 (Qld), and subject to the provisions relating to arbitration contained in that Act.

#### **17.5 Determination by Court**

If any Dispute is not resolved in accordance with Clause 17.2 nor referred to an expert in accordance with Clause 17.3, nor referred to arbitration by agreement of the Parties in accordance with Clause 17.4, nor referred to the QCA in accordance with Clause 17.6, then the Dispute shall be referred to the courts of the State.

#### **17.6 Queensland Competition Authority (QCA)**

The Parties may agree to refer and where required by this Agreement shall refer any Dispute to the QCA.

**18. FORCE MAJEURE**

**18.1 Claim of Force Majeure**

If by reason of a Force Majeure Event occurring either Party is wholly or partially unable to carry out its obligations under this Agreement (other than an obligation to pay monies), that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and that part of the Nominated Network affected;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to remedy the situation; and
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event.

No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

**18.2 Suspension of obligations**

If by reason of a Force Majeure Event affecting all or any part of the Nominated Network either Party is delayed or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay monies) then the obligations of that Party will be suspended during that time and to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

**18.3 Duty to Mitigate**

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event.

**18.4 End of period of Force Majeure**

Subject to Clauses 18.5 and 18.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement at which time it must issue a notice to the other Party advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

**18.5 Termination for Loss or Damage to Nominated Network**

- (a) In the event that any part of the Nominated Network specified in Part 2 of **Schedule 2** is damaged or destroyed by a Force Majeure Event and in QR's reasonable opinion the cost of repairing such damage or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network, QR may by written notice advise the Operator of:
  - (i) the estimated cost of effecting the necessary repairs or replacement; and

- (ii) its intention to not repair or replace the relevant part of the Nominated Network unless the Operator and any other Railway Operator using that part of the Nominated Network pay the amounts specified by QR towards the cost of effecting the necessary repairs or replacement.
- (b) If the Operator gives notice to QR advising that it will bear the whole, or that part requested by QR, of the cost of necessary repairs or replacement, then QR will proceed with the repairs or replacement within a reasonable time after receipt by QR from the Operator of payment of the relevant amount subject to reaching agreement with any other Railway Operator using the affected part of the Nominated Network. Where the Operator pays to QR the whole of the estimated cost, QR must, upon completion of the necessary repairs or replacement, refund to the Operator any amount by which the amount paid by the Operator exceeds the actual cost and the Operator shall pay to QR the amount by which the actual cost exceeds the amount paid by the Operator.
- (c) If within sixty (60) days after receipt of a notice from QR under Clause 18.5(a) the Operator has not given notice to QR pursuant to Clause 18.5(b) indicating that it will pay the whole, or that part requested by QR, of the cost of the necessary repairs or replacement, QR shall have the right to terminate this Agreement by giving not less than thirty (30) days notice in writing to the Operator without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

## **18.6 Termination after extended Force Majeure Event**

If by reason of a Force Majeure Event a Party (“affected Party”) is rendered unable to perform its obligations under this Agreement for a period of more than three (3) consecutive Months, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one (1) Month of the end of the three (3) Month period the other Party may terminate this Agreement by thirty (30) days written notice to the affected Party and the provisions of this Agreement relating to termination set out in Clauses 20.4 and 20.5 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

## **19. SUSPENSION**

### **19.1 Right of Suspension**

- (a) QR may, by notice in writing to the Operator prior to or immediately following the suspension, 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) the Operator fails to pay when due any amount payable under this Agreement and such default continues for seven (7) days after notice from QR to the Operator of the default;
  - (ii) the Operator fails to meet or comply with:
    - (A) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 5.1(a)(v), 7.3 and 8.6) of this Agreement and QR is of the reasonable opinion that such failure either:
      - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Infrastructure (including Infrastructure Service Providers); or

- (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property; or
- (B) the Train Service Description and QR is of the reasonable opinion that such failure either:
  - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Infrastructure (including Infrastructure Service Providers) and that QR has sought to avoid such adverse effects by rescheduling Trains and changing Train priority in accordance with the Network Management Principles provided that QR will not be obliged to take any action that may cause any additional cost or risk to QR or an adverse impact on any Railway Operator (other than the Operator); or
  - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property;
- (iii) an Insolvency Event occurs in relation to the Operator;
- (iv) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement;
- (v) the Operator fails to comply with the requirements of a notice given by QR (within the reasonable time specified in that notice) requiring the Operator to cease conduct which in the reasonable opinion of QR is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm;
- (vi) the Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for seven (7) days after notice from QR to the Operator of the default;
- (vii) the Operator fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for seven (7) days after notice from QR to the Operator of the default;
- (viii) the Operator fails to provide, prior to the departure of the Train pursuant to Clause 5.5, information that is reasonably required by QR in relation to the relevant Train in accordance with Part 2 of **Schedule 10**;
- (ix) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement;
- (x) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (xi) the events or circumstances referred to in Clause 20.1(b), (c) or (f) exist.

Such suspension shall continue until such time as the Operator has remedied the relevant default and, where appropriate, taken action to prevent its recurrence.

- (b) QR may suspend the right of the Operator to operate any Train Services on the Nominated Network in the event of breach or, acting reasonably, anticipated breach of:
- (i) any Laws relating to rail safety relevant to the operation of Train Services;
  - (ii) QR Train Control Directions given in a manner not inconsistent with the Network Management Principles;
  - (iii) Safeworking Procedures; or
  - (iv) Safety Standards,

and QR is of the reasonable opinion that such breach has caused or such anticipated breach is likely to cause, an increased risk to the safety of any person or material risk to property.

Such suspension may be effected by notice in writing prior to or immediately following the suspension and shall continue until such time as the breach is rectified or, in the event of anticipated breach, the Operator has demonstrated that it is in compliance. The Operator must ensure that upon such suspension the relevant Operator's Staff immediately ceases to perform functions on the Nominated Network until such time as the suspension is lifted by QR.

- (c) QR may suspend the operation of the Operator's Rollingstock or Rollingstock Configurations:
- (i) for actual non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where the Operator has failed to rectify such non-compliance within a reasonable period of time; or
  - (ii) for actual non-compliance or (acting reasonably) anticipated non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.

Such suspension may be effected by notice in writing to the Operator prior to or immediately following the suspension and shall continue until the Operator has rectified the non-compliance or, in the event of anticipated non-compliance, the Operator has demonstrated that it is in compliance.

## 19.2 Details of Suspension

Where QR has a right under this Clause 19 to suspend rights of the Operator, the notice of suspension given in writing by QR to the Operator 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.

**19.3 Effect of Suspension**

- (a) The suspension of any rights does not affect or suspend any other obligation of the Operator, including the obligation to pay Access Charges under this Agreement and shall be without prejudice to QR's other rights and remedies in respect of that or any other default.
- (b) Where QR suspends some or all of the Operator's Train Services, QR will be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in QR's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension. QR shall bear the burden of establishing that a reasonable person in QR's position could have formed that view.

**20. TERMINATION**

**20.1 Termination by QR**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, QR may, by notice in writing to the Operator, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) the Operator fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (b) the Operator fails to comply in any material respect with:
  - (i) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 7.3 and 8.6) of this Agreement; or
  - (ii) any QR Train Control Direction within the control of the Operator, any Safeworking Procedures or Safety Standard,and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default within, thirty (30) days after notice from QR to the Operator of the default;
- (c) the Operator fails to comply in any material respect with the Train Service Description and fails to demonstrate to the reasonable satisfaction of QR, within sixty (60) days after notice from QR to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term provided that QR, acting reasonably, has determined not to vary the Train Service Description having regard to relevant factors including:
  - (i) the impact on other users of the Infrastructure (including Infrastructure Service Providers); and
  - (ii) the efficient utilisation of the Infrastructure;
- (d) an Insolvency Event occurs in relation to the Operator and such default continues for a period of sixty (60) days;

- (e) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (f) where the Environmental Protection Agency gives the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the Operator fails, within the time:
  - (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or
  - (ii) otherwise agreed to by the Environmental Protection Agency,  
to
  - (iii) comply with the direction, notice or order, as modified by any court order (if applicable); or
  - (iv) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Protection Agency in relation to the requirements of the direction, notice or order,and such failure continues for thirty (30) days after notice by QR to the Operator to remedy such failure;
- (g) the Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (h) the Operator fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (i) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement;
- (j) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for sixty (60) days after notice from QR to the Operator of the default,

provided that QR has first exercised its corresponding right of suspension under Clause 19.1.

## **20.2 Termination by the Operator**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, the Operator may, by notice in writing to QR, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) an Insolvency Event in relation to QR occurs and such default continues for a period of sixty (60) days;



- (b) QR's Accreditation is cancelled such that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from the Operator to QR of the default;
- (c) QR fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from the Operator to QR of the default;
- (d) QR is in default of the due performance of any other obligation under this Agreement and such default continues for sixty (60) days after notice from the Operator to QR of the default.

### **20.3 Grounds for Termination to be specified**

A notice of termination given under Clauses 20.1 or 20.2 must set out the grounds for the termination.

### **20.4 Obligations and other rights upon termination or expiration**

- (a) Neither termination of this Agreement by a Party pursuant to this Clause 20 nor expiration of this Agreement prejudices:
  - (i) a Party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law; or
  - (ii) either Party's rights to recover monies due to it under this Agreement.
- (b) Upon termination of this Agreement QR and the Operator shall be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts. Any liability in respect of such antecedent breach shall be limited in the manner provided in this Agreement.

### **20.5 Removal of Rollingstock following termination**

- (a) Immediately on expiration of the Term, and as soon as practicable following termination of this Agreement for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, QR may serve notice on the Operator demanding the removal of Rollingstock within a specified time.
- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice of demand within the time specified in the notice of demand issued by QR in accordance with Clause 20.5(b), QR is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator.
- (d) The Operator is liable, and will indemnify QR, for any costs incurred by QR in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this Clause.
- (e) The Operator shall comply with all reasonable directions issued by QR in relation to the removal of the Rollingstock in accordance with this Clause.

**21. ASSIGNMENT**

**21.1 Assignment by QR**

QR may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Operator provided that QR procures the Assignee to covenant with the Operator by deed to be bound by and to perform the obligations of QR under this Agreement to the extent of the rights and obligations Assigned to the Assignee. Upon the Assignee entering into that deed QR will be released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

**21.2 Assignment by the Operator**

- (a) Subject to the following provisions of this Clause 21.2, the Operator shall not Assign its rights or obligations, or any part thereof, under this Agreement without the prior written consent of QR, which consent may not be unreasonably withheld.
- (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) a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Agreement provided that the Operator shall remain liable for the performance of the duties, responsibilities and obligations assumed by the Assignee and provided however that performance by the Assignee will pro tanto discharge the Operator from liability for performance of those duties, responsibilities and obligations that are Assigned; or
  - (ii) a person other than a Related Body Corporate of the Operator with the prior written consent of QR, provided that such consent will not be unreasonably withheld if QR is satisfied that such person:
    - (A) is financially sound;
    - (B) is Accredited to operate Train Services; and
    - (C) is otherwise capable of performing the obligations of the Operator under this Agreement.
- (c) Any Assignment by the Operator of its rights or obligations under this Agreement will be conditional upon and will not take effect until the Assignee covenants with QR by deed, in such terms as QR may reasonably require, to be bound by and to perform the obligations of the Operator under this Agreement.
- (d) Except where the Operator is a company the shares in which are quoted by the Australian Stock Exchange Limited, any change in shareholding of the Operator altering the effective control of the Operator will be deemed to be an Assignment of this Agreement.
- (e) The Operator shall not:
  - (i) register, record or enter in its books any transfer of any share or shares in the capital of the Operator ;
  - (ii) deal with any beneficial interest in any such share or shares;

- (iii) issue any new share or shares; or
- (iv) take or attempt to take any action having the effect:
  - (A) of altering the control of the Operator ; or
  - (B) that the shareholders of the Operator at the date of this Agreement together beneficially hold or control less than 51% of the voting rights of capital in the Operator,

until the requirements of this Clause 21.2 have been complied with.

### **21.3 Charging**

A Party (“**Chargor**”) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (“**Chargee**”) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee shall first covenant in writing in favour of the other Party (“**Non-Charging Party**”), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this Clause 21 as if it were originally a party hereto, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this Clause 21.

## **22. GENERAL**

### **22.1 Variation/Amendment**

Except as otherwise provided in this Agreement any variation or amendment to this Agreement must be in writing signed by both Parties.

### **22.2 Confidentiality**

The Parties shall comply with the provisions of the confidentiality deed set out in **Schedule 12**.

### **22.3 Intellectual Property**

All material supplied or made available by one Party (“**the Supplier**”) to the other Party remains the intellectual property of the Supplier and cannot be reproduced nor used for any purpose other than the purpose for which it was supplied without the approval of the Supplier .

### **22.4 Entire Agreement**

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.

- (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.

## **22.5 Non-merger**

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

## **22.6 Authority to enter into Agreement**

- (a) The Parties represent and warrant to and covenant with each other that they have full power to enter into and perform their obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Parties respectively enforceable in accordance with its terms.
- (b) If this Agreement is executed by an attorney the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

## **22.7 Interpretation not to disadvantage a Party**

In the interpretation of this Agreement no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part thereof.

## **22.8 Relationship**

- (a) The relationship between the Parties is entirely contractual and nothing in this Agreement creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (b) This Agreement is for the exclusive benefit of the Parties and does not create any rights in any Third Parties.

## **22.9 Notices**

### **(a) Form of Notice**

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a QR Train Control Direction or a direction from the QR Commander) ("**Notice**") must be in writing and signed by an authorised officer of that Party and may, if so agreed by QR, be in electronic form.

### **(b) Method of Service**

A Notice may be given by:

- (i) being personally delivered on a Party;
- (ii) being left at the Party's current address for service;

- (iii) being sent to the Party's current address for service by pre-paid ordinary mail; or
- (iv) being sent by facsimile transmission to the Party's current facsimile number for service provided that a copy of the notice is then delivered by one of the means described above.

(c) **Deemed Notice**

A Notice is deemed given if:

- (i) personally delivered, upon delivery;
- (ii) posted to an address in Australia, three (3) days after posting;
- (iii) sent by facsimile, on the next day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number.

(d) **Addresses for Service**

- (i) Each Party's address for service is:

**QR:**

Address: [\*\*\*]

Facsimile [\*\*\*]

Attention: [\*\*\*]

**Operator**

Address: [\*\*\*]

Facsimile: [\*\*\*]

Attention: [\*\*\*]

- (ii) A Party may from time to time change its particulars of service by giving written notice of that change to the other Party

**22.10 Certificate**

A certificate signed by any duly authorised officer of QR as to a matter or as to a sum payable to QR in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

**22.11 Costs**

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

**22.12 Stamp Duty**

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If QR pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under or in connection with it, the Operator must reimburse QR the amount paid upon demand.

**22.13 Waiver and Exercise of Rights**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of succeeding defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

**22.14 Computation of Time**

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

**22.15 Severance of invalid or illegal terms**

- (a) If any term of this Agreement, or its application to any Party, person or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:
  - (i) that term or its application to such Party, person or circumstance is severable from this Agreement;
  - (ii) the remainder of this Agreement, excluding the severed part, remains in force and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
  - (iii) to the extent permissible by law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.

- (b) The Parties must act reasonably and in good faith in seeking an agreement under this Clause as to a replacement term. If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with Clause 22.15(a)(i) and (ii).

**22.16 Rights Cumulative**

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

**22.17 Approvals and Consents**

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

**22.18 Ownership of Land**

The Operator acknowledges that the land identified in Part 5 of **Schedule 2**:

- (a) is not owned or controlled by QR; and
- (b) is not land to which Subparagraph 2.1(c)(ii)(C) of QR's Access Undertaking applies and in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii)(C) of QR's Access Undertaking (as those provisions are amended, varied or replaced from time to time) as part of access to the Nominated Network,

and agrees that in respect of that land owned or controlled by another person ("**Landowner**") then:

- (c) the Operator will comply with the requirements of the Landowner in relation to that land as notified to the Operator by QR from time to time;
- (d) if, after the date of this Agreement, there is a change in the costs incurred by QR due to the requirements of the Landowner in respect of that land, then that change shall be deemed to be a Material Change; and
- (e) if QR's rights in respect of that land are terminated for any reason other than the default of QR of any agreement that affects QR's use of that land or other than by agreement with the Landowner, then QR may by notice to the Operator suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that land.

**22.19 Implementation of Agreement**

Each Party must promptly execute all documents and do all such acts and things as is necessary or desirable to implement and give full effect to the provisions of this Agreement.

**22.20 Schedules**

In the event that the content of a Schedule requires variation or replacement in accordance with this Agreement, QR shall issue to the Operator a replacement Schedule which shall upon issue be substituted for and replace the relevant Schedule in this Agreement. Nothing in a Schedule shall be varied in any way except by the issue of a replacement Schedule by QR in accordance with this Clause.

**22.21 Governing Law and Jurisdiction**

This Agreement shall be interpreted according to the Laws for the time being in force in the State and each of the Parties submits to the jurisdiction of the courts of the State and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.

**22.22 Most Favoured Nation Status**

- (a) If the Operator believes on reasonable grounds that:
- (i) QR has entered into an access agreement with another Railway Operator for a Train service that transports the same specified commodity in the same specified geographic area as a Train Service provided in accordance with this Agreement (“**Like Train Service**”); and
  - (ii) the Access Charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR’s Access Undertaking,
- the Operator may provide written notification to QR which must include the reasons why the Operator considers this to be the case.
- (b) Within thirty (30) days of receipt of such notification, QR must advise the Operator:
- (i) whether or not QR agrees that the access agreement with the other Railway Operator is for a Like Train Service and, if not, the reasons why QR considers this to be the case;
  - (ii) if QR agrees that the access agreement with the other Railway Operator is for a Like Train Service, whether or not QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR’s Access Undertaking and, if not, the reasons why QR considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
  - (iii) if QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation then within sixty (60) days of advice provided pursuant to Clause 22.22(b) QR must advise the Operator:
    - (A) whether or not QR has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in QR’s Access Undertaking; or
    - (B) if QR has not been able to vary the access charge applicable to the Like Train Service that QR agrees to the reduction of the Access Charge payable by the Operator including the amount of the proposed reduced Access Charge.
- (c) If the Operator does not agree with QR’s response to its notification, the dispute shall be referred to an expert for resolution in accordance with Clause 17.3.
- (d) If:



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- (i) another Railway Operator provides QR with notification that it believes that some or all of the Operator's Train Services are a Like Train Service to a Train service operated by the other Railway Operator, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking; and
- (ii) QR agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking,

then QR has the right by notice to the Operator to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in QR's Access Undertaking.

**EXECUTION**

Executed in Queensland

**SIGNED** for and on behalf of )

**QR NETWORK PTY LTD** )

in the presence of: )

\_\_\_\_\_

Witness

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

**[the OPERATOR]** )

in the presence of: )

\_\_\_\_\_

Witness

\_\_\_\_\_

Print Name

\_\_\_\_\_

Witness

\_\_\_\_\_

Print Name

**Note:** QR will require the Operator to execute this Agreement either:

- (a) under seal; or
- (b) under s127(i) of the Corporations Act; or
- (c) under a duly executed Power of Attorney.

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QR NETWORK PTY LTD

Deleted: QUEENSLAND  
RAIL

Deleted: ABN 47 564 947 264

and

[\*\*\*]

Deleted: ABN

## OPERATOR ACCESS AGREEMENT COAL

**\* Note: For the purposes of this Access Agreement it is assumed that the Access Holder and the Operator are one and the same**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200

**BETWEEN** QR NETWORK PTY LTD ACN (insert) of Level 14, 305 Edward Street, Brisbane, Queensland, ("QR")

**AND** The party specified in Item 1 of the Reference Schedule ("**Operator**")

**Deleted: QUEENSLAND RAIL**, a body corporate established pursuant to the Government Owned Corporations Act 1993 and having its principal office at Rail Centre 1, 305 Edward Street, Brisbane in the State of Queensland

## RECITALS

- A** QR is responsible for the provision of the Infrastructure and Train Control.
- B** QR has agreed to grant non-exclusive rights to the Operator for the operation of Train Services over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Agreement.
- C** The Parties may enter into separate agreements for the provision of services by QR to the Operator other than the Access Rights.

## OPERATIVE PROVISIONS

1. In this Agreement words and expressions which are defined in the General Conditions of Contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - (a) Reference Schedule attached to this Agreement as **Schedule A**;
  - (b) General Conditions of Contract attached to this Agreement as **Schedule B**; and
  - (c) all Schedules, exhibits and annexures to this Agreement.

and Clause 1.2 of the General Conditions of Contract shall apply to the extent that there is any inconsistency between any of the above documents.

## ACCESS RIGHTS

### 1. Grant of Access Rights

In consideration of the Operator agreeing to pay the Access Charges and other payments to be made to QR by the Operator, QR grants to, and will provide, the Operator Access Rights in accordance with the Train Service Description for the operation of Train Services on and from the Commitment Date on the terms in, and subject to the conditions of, this Agreement.

### 2. Nature and Scope of Access Rights

- (a) The Access Rights granted under Clause 1 are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Operator must not:
  - (i) operate on or use any part of the Infrastructure that is not specifically included in the Nominated Network; or

- (ii) use the Nominated Network for carrying out any provisioning, inspection, testing, maintenance of Rollingstock, any marshalling, shunting or other relocation of Rollingstock or storage of Rollingstock or for any other purpose other than the operation of Train Services

unless specifically directed by QR to do so in accordance with the provisions of this Agreement or as specified in this Agreement.

- (c) The Parties acknowledge and agree QR is required to provide the Operator with certain benefits, rights and services in accordance with Paragraphs 2.1(c) and 2.1(h) of QR's Access Undertaking, and to the extent that these requirements are relevant to the Operator's Access Rights it is intended the terms on which they are provided are detailed in this Agreement.

### **3 Ancillary Services**

In consideration of the Operator agreeing to pay the charges for Ancillary Services, QR will provide the Ancillary Services (if any) set out in **Schedule 11**.

### **4. Renewal**

If the Operator gives notice to QR not less than twelve (12) Months prior to the Termination Date of its intention to seek a renewal of the Term, QR will consult with the Operator in good faith to negotiate an extension or renewal of the Term provided always that:

- (a) subject to any provision to the contrary in QR's Access Undertaking, the Operator will not be granted priority over any other party seeking access to the Nominated Network; and
- (b) the chief executive of the Department of Transport has a right in priority to the Operator and any other party seeking access to reserve the capacity which is committed to the Operator under this Agreement with effect on and from the Termination Date for existing or proposed regularly scheduled passenger services.

**SCHEDULE A**

**REFERENCE SCHEDULE**

5  
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**REFERENCE SCHEDULE**

This Reference Schedule forms part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 2008 made between QR and the Operator listed in Item 1 below.

Item

1. **Operator:**

Name
<a href="#">ACN</a>
Address
  
2. **Commencement Date:**
  
3. **Termination Date:**
  
4. **Commitment Date:**
  
5. **Security Deposit:**

(General Conditions of Contract Clause 2.4 (a))	Subject to QR's reasonable assessment of the creditworthiness of the Operator, the Security Deposit (if applicable) will be an amount equivalent to the greater of twelve (12) weeks Access Charges determined as if the Operator made maximum use of its Access Rights or the deductible for any one loss as specified in <b>Schedule 7</b>
-------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
  
6. **Date for Completion of Matters prior to the Commencement of Train Services:**

(General Conditions of Contract Clause 3.1(c))
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## **SCHEDULE B**

### **GENERAL CONDITIONS OF CONTRACT**



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**SCHEDULES**

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<b>SCHEDULE</b>	<b>4</b>	<b>AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS</b>
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<b>SCHEDULE</b>	<b>12</b>	<b>CONFIDENTIALITY DEED</b>

GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract form part of the Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 200 made between QR and the Operator.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless inconsistent with the context, the following words and expressions shall have the respective following meanings:

“**Access Charges**” means the charges determined in accordance with **Schedule 3** payable to QR by the Operator for the Access Rights and any interest payable in relation to such charges pursuant to this Agreement;

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“**Access Rights**” means the rights of access to the Nominated Network granted pursuant to this Agreement;

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“**Accreditation**” means accreditation in accordance with Part 4 of Chapter 6 of the Transport Infrastructure Act and “**Accredited**” means to have Accreditation;

Deleted: <#>any amount which Paragraph 6.4.4(f) of QR's Access Undertaking or Paragraph 3.8(b) of Schedule F, Part B of QR's Access Undertaking provide that QR may recover from the Operator as a component of the Operator's access charges;|

“**Agreed Deterioration Threshold**” means the threshold allowance for deviations from a Train path within which a Train Service is considered to be on time, as agreed between QR and the Operator in **Schedule 1**;

“**Agreed Exit Threshold**” means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR and the Operator in **Schedule 1**;

“**Agreement**” or “**this Agreement**” means the Agreement, Reference Schedule and General Conditions of Contract between QR and the Operator and includes all annexures, Schedules and exhibits to this Agreement;

“**Allowable Threshold**” means [*a % agreed between the Parties*] of the total number of Train Services scheduled for a Billing Period;

“**Ancillary Services**” means those services (if any) in addition to Access Rights which QR has agreed to supply to the Operator and which are set out in **Schedule 11**;

“**Assign**” means to assign, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, and “**Assignment**” and “**Assignee**” shall have comparable meanings;

“**Authority**” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR (but excluding QR Limited ACN 124 649 967);

“**Average Transit Time**” means the target average time scheduled for the relevant Train Service type from Origin to Destination or from Destination to Origin which comprises the relevant Sectional Running Times, delays for passing of other Trains on the Nominated Network, Operational Constraints relating to the Infrastructure (other than Operational Constraints attributable to a Railway Operator or a Force Majeure Event) but excluding Planned Dwell Times and which may be varied in accordance with the Interface Coordination Plan;



“**Base Access Charges**” means the Base Access Charges specified in **Schedule 3** and incorporates the elements thereof;

“**Billing Period**” means the period of a Month;

“**Board of Inquiry**” means a board of inquiry established under the Transport Infrastructure Act;

“**Central Queensland Coal Region**” means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine;
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;
- (iv) from the port of Abbot Point to Newlands mine; and
- (v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

“**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 date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; 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 being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

“**Change in Relevant Taxes**” means:

- (a) the imposition of a new Relevant Tax;
- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax;

“**Claim**” means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including the costs and expenses of defending or settling any action, proceeding, claim or demand;

“**Commencement Date**” means the date of execution of this Agreement as specified in Item 2 of the Reference Schedule;

**“Commitment Date”** means the date on which the Access Rights will be available to the Operator as specified in Item 4 of the Reference Schedule;

**“Common Corridor”** means:

- (i) for transfers of Access Rights within an Individual Coal System pursuant to Clause 3.3, that part of the Infrastructure that will be utilised by the New Railway Operator’s Trains in respect of which the Operator’s Relinquishment Fee is to be reduced provided that where the distance from the New Railway Operator’s origin to destination for its relevant train service is greater than the distance from the Operator’s Origin to Destination (“Operator’s haul distance”), the Common Corridor will only extend from the New Railway Operator’s destination (unloading facility) for a distance equal to the Operator’s haul distance;
- (ii) in all circumstances other than those described in subparagraph (i), that part of the Infrastructure that was utilised by the Operator for the Train Services for which Access Rights are being relinquished and will also be utilised by the New Railway Operator’s Trains in respect of which the Operator’s Relinquishment Fee is to be reduced;

**“Common Costs”** means those costs associated with the provision of Infrastructure that are not Incremental Costs for any particular Train service using that Infrastructure;

**“Consequential Loss”** means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort;
- (iii) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever;
- (iv) any loss arising out of any Claim by a Third Party (other than a Claim in respect of loss or destruction of or damage to real or personal property or personal injury to or death of any person),

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

**“Contaminating Materials”** means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable or inflammable, harmful to the environment (including any life form) or may cause pollution, contamination or otherwise cause damage;

**“Corporation”** has the meaning assigned to it by the Corporations Act;

**“Corporations Act”** means the Corporations Act 2001 (Cwth);

**“Cyclic Traffic”** means a traffic such as coal traffic whose Train Service Description is defined in **Schedule 1** in terms of a number of Train Services within a particular period of time, for example, a year, month or week;

**“Daily Train Plan”** or **“DTP”** means that document detailing the scheduled times for all Train services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure;

**“Dangerous Goods”** means any substance or article prescribed as Dangerous Goods under the Dangerous Goods Code;

**“Dangerous Goods Code”** means the following codes prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications as amended or varied from time to time or any other codes developed to replace or supplement them:

- (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; and
- (c) the Code of Practice for the Safe Transport of Radioactive Material;

**“Default Rate”** means 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) plus 2%;

**“Destination”** means the destination or destinations described in **Schedule 1**;

**“Efficient Cost”** means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR operates, and including any transitional arrangements agreed between QR and the QCA to reflect the transition from QR’s actual cost to that efficient cost;

**“Emergency Possession”** is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Infrastructure that is considered dangerous to either a Railway Operator’s and/or QR’s Staff, or where severe speed restrictions have been imposed affecting the scheduled Train services of Railway Operators. Such possession must be carried out less than seven (7) days from the detection of the problem;

**“Enhancement”** means the improvement, upgrading or other variation of the whole or any part of the Infrastructure which affects the capabilities of the Infrastructure and any major replacement programme for elements of the Infrastructure;

**“Environmental Authorities”** means:

- (a) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the *Environmental Protection Act 1994* (Qld); or
- (b) any authority which has effect under section 619 of the *Environmental Protection Act 1994* (Qld);

**“Environmental Harm”** means serious or material environmental harm or environmental nuisance as defined in the Environmental Protection Act 1994;

**“Environmental Investigation and Risk Management Report”** means the environmental investigation and risk management report referred to in Clause 8.1(a) and included in Part 1 of **Schedule 9**;

**“Environmental Laws”** means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies, guidelines, regulations and relevant approved codes of practice and the conditions of all licences, notices, directions, approvals, consents, permissions or permits issued thereunder or amended from time to time;

**“Environmental Management System”** means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licences;

**“Environmental Protection Agency”** means the authority established under the Environmental Protection Act 1994;

**“Equivalent Access Rights”** means access rights which have the same Origin /Destination and have the same format of Train Service Description (that is, such as Cyclic Traffic) as the Access Rights under this Agreement which are being relinquished by the Operator under Clause 3.3;

**“Escalation Date”** means the date being 1 January, 1 April, 1 July and 1 October in each year during the Term, being the dates on which the Access Charges and other charges payable by the Operator to QR under this Agreement are to be escalated in accordance with **Schedule 3**;

**“Evaluation Period”** means:

- (i) when in reference to an individual Train service, the period which is equal to the length of the expected duration of the existing or proposed access agreement in respect of the relevant Train service;
- (ii) when in reference to a combination of Train services for the purpose of determining a Reference Tariff to apply for some or all of those Train services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train services other than referred to in subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed access agreement in respect of any of the Train services comprising the combination of Train services, provided that such period does not exceed ten (10) years;

**“First Escalation Date”** means the Escalation Date identified as the First Escalation Date in Table 1.2 of **Schedule 3** for each Train Service type;

**“Forecast Traffic”** means the current tonnage forecast upon which an applicable Reference Tariff is based;

**“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:
  - (i) 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;
  - (ii) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;

- (iii) act of God;
- (iv) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (v) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (vi) malicious damage or sabotage;
- (vii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (viii) failure of electricity supply from the electricity grid;
- (ix) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (x) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (xi) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement;

**“Good Engineering Practices”** means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**“GST”** means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia;

**“GST Inclusive Reimbursement”** is the amount calculated by the formula:

$$(A - C) \times (1+B)$$

Where:

A = the GST inclusive amount paid by a Party for a Reimbursable Item;

B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made;  
and

C = any GST input tax credit that the Party can claim in respect of that Reimbursable Item;

**“Incident”** means any Network Incident involving the activities of the Operator;

**“Incremental Costs”** means those costs of providing access rights, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train service or combination of Train services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of access rights;

**“Individual Coal System”** means any one of the following:

- (i) all coal carrying Train services operating to or from the port of Abbot Point on the Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train services operating to or from the ports of Hay Point or Dalrymple Bay on the Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train services operating to or from the Stanwell Power Station on the Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;  
or
- (v) all coal carrying Train services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

**“Individual Coal System Infrastructure”** means the relevant one of the following:

- (i) that Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) that Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory branch line;
- (iii) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine and Rolleston mine and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

**“Infrastructure”** means all rail transport infrastructure as defined in the Transport Infrastructure Act;

(a) \_\_\_\_\_ for which QR is the Accredited Railway Manager; or

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(b) for which QR is required to obtain responsibility for under Clause 2.2 of QR's Access Undertaking (as that provision is amended, varied or replaced from time to time);

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

**"Insolvency Event"** means the happening of any of the following events in relation to a Party:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one Month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within fourteen (14) days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

**"Interface Coordination Plan"** means the plan detailed in **Schedule 10** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles;

**"Interface Risk Assessment"** means an assessment of the risks associated with the Operator's operations insofar as they interface with the Infrastructure and other Train services as provided in Clause 11;

**"Interface Risk Management Plan"** means the plan referred to in Clause 11 and included in Part 2 of **Schedule 9**;

**"Interface Risks"** means all the risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Operator's operations and:

- (i) the Nominated Network;
- (ii) the operation of other Train services; and
- (iii) any other activities on the Nominated Network that affect QR's Staff or QR's interfaces with members of the public;

**"Investigation"** means an investigation conducted in accordance with **Schedule 8**;

**"Land"** means the land on which the Nominated Network is situated and which is:

- (a) land owned or controlled by QR; or

(b) land in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii) of QR's Access Undertaking (as that provision is amended, varied or replaced from time to time);

“**Landowner**” has the meaning given to that term in Clause 22.18;

“**Law**” or “**Laws**” means a statute, ordinance, rule or regulation;

“**Load Variation Table**” means a table published by QR in respect to the relevant Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“**Maintenance Work**” means any work involving repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Infrastructure (other than Enhancements) and includes any inspections or investigations of the Infrastructure;

“**Master Book of Rules**” means QR’s standards for Safeworking Procedures;

“**Master Train Plan**” or “**MTP**” means that document detailing the scheduled times as advised by QR from time to time for all Train services operating on the Infrastructure (where such scheduled times remain unchanged from week to week) and any Planned Possessions;

“**Material Change**” has the meaning given to that term in Clause 16.1(a);

“**Material Environmental Harm**” means material environmental harm as defined in the Environmental Protection Act 1994;

“**Maximum Allowable Gross Tonnage**” means the Maximum Allowable Gross Tonnage for a Wagon, Wagon bogie or Train as specified in **Schedule 4**;

“**Maximum Desirable Gross Tonnage**” means the Maximum Desirable Gross Tonnage for a Wagon as specified in **Schedule 4**;

“**Maximum Transit Time**” means the maximum below rail transit time for the relevant Train Service type that QR may utilise under this Agreement;

“**Month**” means calendar month, and “**Monthly**” has a corresponding meaning;

“**Network Incident**” means any Rollingstock derailment, Rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence on the Infrastructure which causes or could cause injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by QR of any Train Movement;

“**Network Management Principles**” means the principles for the provision of Train Control and scheduling as specified in Part 1 of **Schedule 10**;

“**Noise Planning Levels**” means the planning levels for railways referred to in the Environmental Protection (Noise) Policy 1997;

“**Nominated Annual Train Services**” means the number of Train Services that the Operator is entitled to operate during any one (1) year for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;



“**Nominated Monthly Train Services**” means the number of Train Services that the Operator is entitled to operate during any one (1) month period for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

“**Nominated Network**” means that part of the Infrastructure detailed in Part 1 of **Schedule 2**;

“**Nominated Weekly Train Services**” means the number of Train Services that the Operator is entitled to operate during any one (1) week period as specified in **Schedule 1** or as varied in accordance with this Agreement;

“**Obstruction**” means any circumstance relating to the whole or any part of the Infrastructure or private siding, including debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation by QR of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by QR;

“**One Way Train Service**” means a Train Service operating in one direction only on the Nominated Network either from Origin to Destination or from Destination to Origin as the case may be;

“**Operational Constraint**” means any restriction on the use of any part of the Infrastructure which impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Emergency Possessions, Urgent Possessions or signalling or overhead restrictions;

“**Operator Performance Level**” means the Operator Performance Level specified in Part 1 of **Schedule 5**;

“**Operator’s Controller**” means the person for the time being nominated in that position pursuant to **Schedule 10** ;

“**Operator’s Customer**” means a party that has a rail haulage agreement with the Operator in respect of some or all of the Access Rights;

“**Operator’s Emergency Response Plan**” means the plan as defined in Clause 7.1(a);

“**Operator’s Incident Response Coordinator**” means the person appointed pursuant to paragraph 4.2 of Part 4 of **Schedule 10**;

“**Operator’s Proposal**” has the meaning given to that term in Clause 8.1(c);

“**Operator’s Recovery Team Leader**” means the person appointed pursuant to paragraph 4.3 of Part 4 of **Schedule 10**;

“**Operator’s Representative**” means the person for the time being appointed pursuant to paragraph 3.2 of Part 3 of **Schedule 10**;

“**Operator’s Safety Management System**” means the system referred to in Clause 11(a)(iii);

“**Operator's Staff**” means employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator who is involved in any activity associated with the Train Services;

“**Origin**” means the origin or origins described in **Schedule 1**;

Deleted: “Operator” means the party specified in Item 1 of the Reference Schedule its successors and permitted assigns; ¶

“**Other Dwell Times**” means, for any other designated activity, the time period from when a Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant QR Train Controller accordingly;

“**Overload Charge**” means the charge determined in accordance with Part 6 of **Schedule 3**;

“**Overload Detector**” means a weighing mechanism other than a Weighbridge agreed upon for use by the Parties and specified in Part 6B of **Schedule 2**;

“**Party**” means a party to this Agreement and “**Parties**” means the parties to this Agreement;

“**Passenger Priority Obligations**” means the obligations of a Railway Manager pursuant to sections 265 and 266 of the Transport Infrastructure Act;

“**Performance Levels**” means the QR Performance Level and the Operator Performance Level;

“**Planned Dwell Times**” means any of Time at Mine, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule;

“**Planned Possession**” means the temporary closure and/or occupation by QR of a part of the Infrastructure including, but not limited to, closure of Track or isolation of any electrical overhead traction system for the purpose of carrying out Maintenance Work, Enhancement or other work on or in the proximity of the Infrastructure which may affect the safety of any person or property where such closure, occupation or isolation is entered into the Train Schedule and adversely impacts upon the operation of Train services;

“**Possession Protocols**” means the protocols developed and advised by QR from time to time (as varied in accordance with this Agreement) for managing and scheduling track possessions of the Infrastructure;

“**Private Facilities**” means sidings, loading and unloading facilities and any other facilities of any kind which are required by the Operator to operate the Train Services and which do not form part of the Nominated Network;

“**Private Facilities Agreement**” has the meaning given to that term in Clause 5.11;

“**QR Cause**” means where QR is unable to make available the Infrastructure for Train services at the Scheduled Time in the Train Schedule or at a reasonable alternate Scheduled Time as a result of

- (i) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (ii) a Force Majeure Event which prevents QR from making the Infrastructure available for Train services in accordance with the relevant access rights; or
- (iii) any other action by QR which directly resulted in the Infrastructure not being so available,

where such inability by QR is not attributable in any way to a Railway Operator or QR complying with its Passenger Priority Obligations;

“**QR Commander**” means a member of QR’s Staff who has been delegated responsibility for the direction and coordination of QR’s and the Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with external agencies;

**Deleted:** “QR” means Queensland Rail a body corporate established pursuant to the Government Owned Corporations Act 1993, its successors and assigns;¶

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“**QR Emergency Procedures**” means the procedures developed and advised by QR from time to time (as varied by QR in accordance with this Agreement) for dealing with a Network Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;

“**QR Performance Level**” means the QR Performance Level specified in Part 1 of **Schedule 5**;

“**QR Representative**” means the QR officer specified in **Schedule 10**;

“**QR Train Control Direction**” means any instruction or direction (whether given orally or in writing, by means of signal or other similar device) issued by QR or on behalf of QR relating to Train Movements;

“**QR Train Controller**” means the person nominated by QR as the supervisor of Train Movements on the relevant part of the Nominated Network and whose details are specified in **Schedule 10**;

“**QR’s Access Undertaking**” means the access undertaking submitted by QR to the Queensland Competition Authority and approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time;

“**QR’s Right of Way**” means the strip of property on which earthworks, traction wiring equipment, tunnels, bridges, fences and track are constructed for the operation of Rollingstock. Where the at grade boundaries for the Right of Way are not readily identifiable they will be regarded as being at least ten (10) metres from the centre line of the track;

“**QR’s Staff**” means the employees, contractors and agents of QR and any other person under the control or supervision of QR involved in the provision of Access Rights;

“**Quarter**” means each period of three (3) consecutive Months commencing 1 January, 1 April, 1 July or 1 October in each year, and “**Quarterly**” has a corresponding meaning;

“**Queensland Competition Authority**” or “**QCA**” means the authority established under the Queensland Competition Authority Act 1997;

“**Rail Safety Accreditation Unit**” or “**RSAU**” means the Rail Safety Accreditation Unit of the Department of Transport for the State;

“**Railway Manager**” has the meaning given to that term in the Transport Infrastructure Act;

“**Railway Operator**” means, as the context allows:

- (a) any party that holds rights of access to all or any part of the Infrastructure; and
- (b) any Accredited railway operator;

and for the avoidance of doubt may include, without limitation, the Operator;

“**Recovery**” means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, including the subsequent retrieval of any such Rollingstock;

“**Reduction Factor**” means for the purposes of Clause 3.3(d):

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the New Railway Operator's Trains that utilise the access rights referred to in Clause 3.3(b) for which the Operator's Relinquishment Fee is to be reduced; and

B = the annual train kilometres over the Nominated Network attributable to the Train Services for which the Operator is seeking to relinquish Access Rights;

**"Reference Tariff"** means an access charge applicable to a specified Reference Train Service over a specified part of the Infrastructure as specified in QR's Access Undertaking;

**"Reference Tariff Schedule"** means the schedule attached to QR's Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service;

**"Reference Train Service"** means a notional Train service identified 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 the terms and conditions of the specified access agreement;

**"Reimbursable Item"** means an item of expense incurred by either Party in respect of which that Party is entitled under this Agreement to be reimbursed by the other Party;

**"Related Body Corporate"** has the meaning given to that term in the Corporations Act;

**"Relevant Escalation Date"** means the Escalation Date occurring immediately prior to the last day of the Billing Period for which the invoice for the Access Charges payable in respect of that Billing Period is being prepared;

**"Relevant Rollingstock"** means any Rollingstock of the Operator with a minimum value of ONE MILLION DOLLARS (\$1,000,000) and which has been nominated as Relevant Rollingstock in Part 3 of Schedule 4;

**"Relevant Tax"** means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR by, or payable by QR to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

**"Relinquishment Fee"** means the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the Term of this Agreement if the Agreement remained on foot but the Operator did not operate the relevant Train Services;

**"Removal Expert"** means the person for the time being holding the position of Safety Regulator or such other person as agreed between the Parties;

**"Restoration"** means the removal of any Obstruction, the rectification of any Incident and the prompt commencement of Train Movements including all requisite repairs to the Infrastructure but does not include Recovery;

**"Review Date"** means the date determined as the Review Date pursuant to Clause 3.1.2 of Schedule 3;

**"Rollingstock"** means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track and where used in respect of the Operator's Rollingstock includes Rollingstock which is

owned, hired or leased by the Operator, supplied by a contractor of the Operator or is otherwise in the possession or control of the Operator;

**“Rollingstock Configuration”** means the description of the combinations of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

**“Rollingstock Interface Standards”** means those Rollingstock Interface Standards agreed as part of the Interface Risk Assessment and included in the Interface Risk Management Plan;

**“Safety Regulator”** means the person for the time being holding the position of Safety Regulator in the Rail Safety Accreditation Unit (RSAU);

**“Safety Related Work”** means safety activity in one or more of the following:

- (a) driving and operation of Trains;
- (b) control of the movement of Trains;
- (c) the design, construction, repair, maintenance, upgrading, inspection or testing of Track, Rollingstock, civil and electric traction infrastructure and Signalling and Telecommunications Equipment; and
- (d) any other duties prescribed by QR as safety related work;

**“Safety Standards”** means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR policies as specified in **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement and all standards relating to safety, including occupational health and safety, prescribed by any Laws;

**“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure as specified in Part 1 of **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement;

**“Schedule”** means a schedule to this Agreement and any other schedule which amends, replaces or substitutes a schedule to this Agreement issued from time to time by QR pursuant to Clause 22.20;

**“Scheduled Time”** means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as detailed in the Train Schedule or as amended or altered by QR from time to time on the day of operation pursuant to the Network Management Principles provided that such amendments or alterations do not result in a notice for cancellation by the Operator pursuant to Clause 5.3(d);

**“Sectional Running Times”** means the time period measured from the time a Train Service passes the signal controlling entry into a track section between two relevant specified locations on the Nominated Network to the time the Train Service arrives at the signal controlling entry into the next track section between two relevant specified locations on the Nominated Network, and does not include an allowance for Planned Dwell Times;

**“Security Deposit”** means initially an amount equal to the amount specified in Item 5 of the Reference Schedule;

**“Security Interest Rate”** means the “Cash Rate: average 11am rate” 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 included in another publication agreed between the Parties) less 0.5%;

**“Serious Environmental Harm”** means serious environmental harm as defined in the Environmental Protection Act 1994;

**“Signalling and Telecommunications Equipment”** means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control;

**“State”** means the State of Queensland;

**“Stowage”** means the short-term storage of Trains on the Nominated Network at locations specified by QR but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

**“System Forecast”** means the forecast of Gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in the relevant Reference Tariff Schedule;

**“System Gtk”** means the actual Gtk achieved by all coal carrying Train services to the extent those Train services travel on the relevant Individual Coal System Infrastructure over the relevant period;

**“System Wide Requirements ”** means the Network Management Principles, the Possession Protocols, the Interface Coordination Plan, the Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards, the QR Emergency Procedures and QR’s Investigation Procedures;

**“Tax Invoice”** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);

**“Term”** means the term of this Agreement, commencing on the Commencement Date and ending on the Termination Date;

**“Termination Date”** means the date specified in Item 3 of the Reference Schedule or such earlier date upon which this Agreement is terminated pursuant to the provisions of this Agreement;

**“Third Party”** means a person other than the Operator or QR;

**“Time at Depot”** means the period from when a Train Service arrives at the entry signal to the depot until it has completed all activities at the depot, is ready to depart the depot and has advised the relevant QR Train Controller accordingly;

**“Time at Mine”** means the time period from when a Train Service arrives at the entry signal to the specified mine loading facility until it has completed loading, has presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Time at Unloading Facility”** means the time period from when a Train Service arrives at the entry signal to the specified unloading facility until it has completed unloading, presented at the exit signal, is ready to depart the facility and has advised the relevant QR Train Controller accordingly;

**“Track”** means the part of the Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

“**Train**” means any configuration of Rollingstock operating as a unit on the Track;

“**Train Control**” means the scheduling and control of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation;

“**Train List**” means the information required to be supplied by the Operator in accordance with Part 2 of **Schedule 10** in respect of each individual Train Service to be operated on the Nominated Network;

“**Train Movement**” means the operation of a Train on the Infrastructure by the Operator, QR or any Railway Operator;

“**Train Schedule**” means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by QR prior to the day of operation in accordance with the Interface Coordination Plan showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure;

“**Train Service**” means the running of a Train between specified origins and destinations by the Operator (including any Stowage) in accordance with a Train Service Description;

“**Train Service Description**” means the description of a Train Service detailed in Part 1 of **Schedule 1**;

“**Train Service Levels**” means collectively the Nominated Weekly Train Services, the Nominated Monthly Train Services and the Nominated Annual Train Services specified in **Schedule 1**;

“**Transport Infrastructure Act**” means the Transport Infrastructure Act 1994;

“**Urgent Possession**” is similar to a Planned Possession, except that such a possession is required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) Months from the detection of the problem;

“**Variation Notice**” has the meaning given to that term in Clause 3.2(a);

“**Wagon**” means any Rollingstock designed to carry any load other than passengers;

“**Weekly Train Plan**” or “**WTP**” means a seven (7) day plan that details the scheduled times for all Train services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Infrastructure on each day of the relevant week;

“**Weighbridge**” means a weighbridge or weightometer certified under the Trade Measurement Act 1990, as specified in Part 6A of **Schedule 2**; and

“**Year**” (when used with a capital) means the period from (and including) the first day of the Month in which the Commitment Date occurs to (but not including) the first anniversary thereof, and from every twelve (12) Month period thereafter except that the last year will end on the date of expiry or termination of this Agreement.

## 1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body and conversely;
  - (ii) a person includes its legal personal representative, successors and assigns;
  - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
  - (iv) conduct includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
  - (vii) time is to local time in Queensland;
  - (viii) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
  - (ix) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the Parties;
  - (x) any thing (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
  - (xi) a Clause is to a clause of the General Conditions of Contract to this Agreement;
  - (xii) a Schedule is to a schedule to this Agreement (as amended from time to time in accordance with this Agreement);
  - (xiii) any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
  - (xiv) any Authority, association or body whether statutory or otherwise shall, in the event of any such Authority, association or body ceasing to exist or being re-constituted, re-named or replaced or the powers or functions thereof being transferred to any other Authority, association or body, be deemed to refer respectively to the Authority, association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof; and



- (e) if there is any inconsistency between matters contained in a Schedule and any other provisions of the Agreement, the other provisions of the Agreement prevail. If there is any inconsistency between matters contained in QR's Access Undertaking and this Agreement, the provisions of this Agreement prevail.

## **2. CHARGES**

### **2.1 Access Charges**

The Operator must pay to QR:

- (a) the Access Charges at the times and in the manner set out in this Agreement;
- (b) the charges for Ancillary Services (if any) calculated and payable in the manner set out in this Agreement;
- (c) any other charges or amounts payable in accordance with this Agreement; and
- (d) on demand and without prejudice to the rights, powers and remedies of QR under this Agreement or otherwise at Law, interest at the Default Rate calculated on daily balances and payable daily on any amount outstanding in respect of an invoice, including any disputed amount which is subsequently determined to be payable to QR, from the day after the invoice is due to be paid until the date that the amount outstanding is paid in full, and all interest payable but unpaid at the end of each Month shall be capitalised by QR and such capitalised amount shall itself bear interest at the Default Rate.

### **2.2 Invoicing**

Unless agreed otherwise between the Parties:

- (a) QR will provide to the Operator an invoice for the Access Charges, charges for Ancillary Services (if any) and any other charges or amounts payable by the Operator under this Agreement as soon as practicable after the end of each Billing Period or, where this Agreement has expired or terminated on a date other than 30 June and the invoice is for annual take or pay charges, as soon as practicable after the first 30 June following that expiration or termination.
- (b) The first Billing Period will commence on the Commitment Date and end on the last day of the Month in which the Commitment Date falls, and each subsequent Billing Period during the Term will commence on the day following the last day of the immediately preceding Billing Period.
- (c) Subject to Clause 2.2(d), the Operator must pay to QR the amount of the invoice referred to in Clause 2.2(a) within fourteen (14) days after receipt of the invoice.
- (d) Where the Operator bona fide disputes an amount or amounts claimed in an invoice it shall give notice of that dispute (setting out in detail the grounds for its objection) to QR within fourteen (14) days after receipt of the invoice. Notwithstanding the Operator's objection to any amounts claimed in an invoice, the Operator must pay to QR the undisputed portion of the amount or amounts claimed in the relevant invoice together with 50% of the disputed portion within fourteen (14) days after receipt of the invoice.

- (e) Any dispute as to the amount claimed in an invoice shall be resolved by an expert in accordance with Clause 17.3. Upon resolution of such dispute in accordance with Clause 17.3:
- (i) the Operator must pay to QR the amount (if any) determined to be payable by the Operator to QR together with the interest on that amount calculated in accordance with Clause 2.1(d) within fourteen (14) days after being notified of the expert's determination; or
  - (ii) QR must credit to the Operator in the form of a deduction from the invoice for Access Charges and other charges for the Billing Period immediately following a resolution in accordance with Clause 17.3 any amount found to have been overpaid by the Operator together with interest on that amount at the Default Rate calculated on daily balances from the date of payment of the amount overpaid to the date of such credit. Such interest payable but unpaid at the end of each Month shall be capitalised and such capitalised amount shall itself bear interest at the Default Rate.
- (f) When providing the Operator with an invoice which includes, in whole or part, an amount for an annual take or pay charge, QR shall provide the Operator with information on how QR determined the amount of the annual take or pay charge.

### **2.3 GST**

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If a Party is required to pay GST on any amount payable or other consideration to be provided under this Agreement, then the other Party must pay to that Party an amount equal to the GST payable on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, then a Party must pay the other Party in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) Each invoice prepared pursuant to Clause 2.2(a) shall take the form of a Tax Invoice.

### **2.4 Obligation to Grant Security**

- (a) The Security Deposit (if applicable) shall initially be for the amount specified in Item 5 of the Reference Schedule. If a Security Deposit is applicable the Operator must deliver to QR, prior to the operation of Train Services, security for the performance of the Operator's obligations under this Agreement in the form of:
  - (i) an unconditional and irrevocable bank guarantee (or equivalent) issued by a bank holding a current Australian banking licence; or
  - (ii) any other security reasonably acceptable to QR,and containing such other terms and conditions as are reasonably acceptable to QR.
- (b) Where the Operator has delivered a Security Deposit to QR in the form of cash, QR will pay interest to the Operator annually at the Security Interest Rate published on the day the Security Deposit is provided. The Security Interest Rate shall be reset on the first business day of each Month ("**Reset Date**") for that Month. Such interest shall

be capitalised at each Reset Date and such capitalised interest shall itself bear interest at the Security Interest Rate.

- (c) The Operator may, with QR's consent, replace any Security Deposit provided by the Operator in accordance with this Clause with another form of Security Deposit acceptable to QR. If the Operator replaces the Security Deposit with another form of Security Deposit then QR will release the initial Security Deposit in accordance with Clause 2.6(b).
- (d) The provision and continuance of the Security Deposit (or of any additional or replacement Security Deposit provided by the Operator in accordance with Clause 2.4(c) or Clause 2.4(f)) is a condition of the performance by QR of its obligations under this Agreement.
- (e) If at any time during the Term QR does not hold a Security Deposit from the Operator, the Operator must provide a Security Deposit within fourteen (14) days after receipt of a notice from QR where:
  - (i) an event of default by the Operator in regard to payment of any amount due under this Agreement has occurred, that event of default is not the subject of a bona fide dispute between the Parties and such default continues for seven (7) days after notice of such default from QR; or
  - (ii) in the event of an Assignment or at any time during the Term, if QR is reasonably of the opinion that the Operator is:
    - (A) no longer financially sound;
    - (B) no longer able to meet its debts as and when they fall due; or
    - (C) not otherwise capable of performing its obligations under this Agreement.
- (f) If at any time during the Term the Security Deposit held by QR is less than the amount determined in accordance with Item 5 of the Reference Schedule (including for reasons that QR has drawn on or applied the Security Deposit in accordance with Clause 2.5), the Operator must increase the Security Deposit by the amount determined by QR as required to ensure that the amount of Security Deposit accords with Item 5 of the Reference Schedule, and deliver to QR an additional or replacement Security Deposit to reflect the change within fourteen (14) days after receipt of notice from QR.
- (g) If the Operator considers its financial circumstances have changed such that a Security Deposit would no longer be required, the Operator may request QR in writing (but not more than once in any twelve (12) Month Period) to review the creditworthiness of the Operator and QR will undertake such a review.

**2.5 Exercise of Security**

The Security Deposit will be held by QR as security for the performance of the obligations of the Operator under this Agreement and may be called upon by QR in any circumstances where QR suffers direct loss or damage as a result of default by the Operator under this Agreement and is entitled to be compensated for such loss or damage under this Agreement.

**2.6 Return of Security**

QR must repay or return to the Operator (and where appropriate provide to the Operator any necessary releases in relation to) any Security Deposit provided by the Operator under Clause 2.4:

- (a) subject to QR's rights of recourse to the Security Deposit in Clause 2.5, promptly after the Termination Date;
- (b) on receipt of an additional or replacement Security Deposit provided by the Operator in accordance with Clause 2.4(c) or 2.4(f); or
- (c) following a review pursuant to Clause 2.4(g), QR, acting reasonably, finds that it is not necessary for the Operator to provide QR with a Security Deposit.

**2.7 Weighbridges and Overload Detectors**

- (a) Where an operational Weighbridge or Overload Detector is located en route between Origin and Destination the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner to facilitate weighing.
- (b) Where a Weighbridge or Overload Detector is located en route between Origin and Destination, the Party responsible for that Weighbridge or Overload Detector (as specified in Part 6 of **Schedule 2**) must use reasonable endeavours to ensure that:
  - (i) such Weighbridge or Overload Detector is available; and
  - (ii) Trains are operated in a manner that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (c) QR may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.
- (d) The Operator must use reasonable endeavours to ensure that the mass of any Wagon or Train operated by it under this Agreement does not exceed the relevant Maximum Allowable Gross Tonnage.
- (e) In the event that any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage. QR may direct a Train to a specific siding or location to allow such reduction and the Operator shall comply with such direction.
- (f) In the event that any Wagon operated by the Operator is determined to be in excess of the relevant Maximum Desirable Gross Tonnage, QR may:
  - (i) charge the Operator (and the Operator must pay) an Overload Charge (in accordance with Part 6 of **Schedule 3**) in respect of that Wagon; and

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- (ii) impose any Operational Constraints which QR considers to be reasonable in the circumstances.

QR will include the Overload Charge in the invoice for Access Charges for the Billing Period immediately following such determination for payment by the Operator.

- (g) The Weighbridges to be used by QR in the calculation of Access Charges are those specified in Part 6A of **Schedule 2**.
- (h) Where the Operator's Trains are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in Part 6B of **Schedule 2** must use reasonable endeavours to:
  - (i) keep a record of the gross mass of each loaded Wagon and Train (and the Operator must use reasonable endeavours to ensure such information is obtained from the operator of the Weighbridge or Overload Detector where the Weighbridge or Overload Detector is not owned or controlled by QR);
  - (ii) provide such record to the party loading the Trains; and
  - (iii) provide such record to the other Party within fourteen (14) days of the end of each Month.
- (i) If either Party reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the accuracy of such Weighbridge or Overload Detector to be tested, and the Weighbridge or Overload Detector shall be deemed to have malfunctioned from the date of such notice until such testing has been carried out and/or the Weighbridge or Overload Detector has been recalibrated and the mass will be determined in accordance with Part 2 of **Schedule 3**. Testing will be carried out in accordance with the following procedure:
  - (i) As soon as reasonably practicable the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** must ensure that a suitably qualified person conducts a test of the calibration of the Weighbridge or Overload Detector and makes any adjustments required to correct the calibration.
  - (ii) Except in the case of manifest error or fraud, the determination of the person conducting the test will be final and binding on the Parties.
  - (iii) Where the person conducting the test determines that the Weighbridge or Overload Detector is measuring within the tolerances specified in Part 6 of **Schedule 2**, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given pursuant to this Clause 2.7(i) and the Access Charges (including any Overload Charge) will be determined from that date according to Part 5 of **Schedule 3**. The invoice for Access Charges in respect of the Billing Period following such determination will be adjusted to appropriately account for the difference in payment of Access Charges arising from having treated the Weighbridge or Overload Detector as malfunctioning pursuant to this Clause 2.7(i).
  - (iv) The cost of conducting such test shall be met by:

- (A) the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** in the event that the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in Part 6 of **Schedule 2**; or
  - (B) the Party giving notice under this Clause 2.7(i) in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of **Schedule 2**.
- (j) Notwithstanding any other provision in this Agreement, neither Party will be liable to the other for any damage, loss, cost or expense that the other may suffer or incur as a result of that Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement.
- (k) Notwithstanding any other provision in this Agreement, neither Party shall have any Claim against the other Party as a result of or arising from any delay to or cancellation of Train Services as a result of the operation of Clause 2.7(i).

### 3. TRAIN SERVICE ENTITLEMENTS

#### 3.1 Train Services

- (a) Without limiting any other provision of this Agreement, the Operator must not commence any Train Services unless and until the Operator has done each of the following in respect to those Train Services:
- (i) if applicable, delivered to QR the Security Deposit in accordance with Clause 2.4;
  - (ii) provided to QR a certificate of compliance for all of the Operator's Rollingstock and Rollingstock Configurations in accordance with Clause 5.9 and QR has authorised such Rollingstock and Rollingstock Configurations;
  - (iii) demonstrated to QR that the Operator has entered into agreements in respect of the Private Facilities as required by Clause 5.11 (if applicable);
  - (iv) provided to QR a copy of the Operator's Emergency Response Plan which must be compatible with the QR Emergency Procedures;
  - (v) provided to QR an acceptable Environmental Investigation and Risk Management Report in accordance with Clause 8.1;
  - (vi) implemented those elements of the Environmental Investigation and Risk Management Report, if applicable, which are to be implemented prior to the commencement of Train Services;
  - (vii) complied with the community liaison requirements referred to in Clause 8.6(a);
  - (viii) provided to QR evidence of its Accreditation as required by Clause 9.1(a);
  - (ix) conducted an Interface Risk Assessment in accordance with Clause 11(a);
  - (x) devised in collaboration with QR an Interface Risk Management Plan and implemented the elements of such plan required to be implemented prior to the commencement of Train Services;
  - (xi) developed the Operator's Safety Management System and incorporated into that system the elements and process referred to in Clause 11(a)(iii); and

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- (xii) taken out the insurances required under Clause 13 and provided to QR evidence of that insurance as required by Clause 13.3.
- (b) QR will use all reasonable endeavours to cooperate with the Operator to facilitate the Operator's completion or compliance with Clause 3.1(a).
- (c) If the Operator has not done each of the acts, matters or things specified in Clause 3.1(a) for its initial Train Services by
  - (i) the date specified in Item 6 of the Reference Schedule and QR has no reasonable expectation that the Operator can commence the operation of Train Services by the Commitment Date; or
  - (ii) by the Commitment Datethen QR may, provided that QR has complied with Clause 3.1(b), notify the Operator in writing of its intention to terminate this Agreement and if the Operator has not complied with all the requirements of Clause 3.1(a) by a date which is thirty (30) days after the date of the notice, QR may terminate this Agreement.
- (d) The Operator must operate Train Services only in accordance with the Train Service Description and this Agreement. Unless acting under a QR Train Control Direction, the Operator must not operate Train Services which do not comply with the Train Service Description without the prior written approval of QR, which approval may specify terms in addition to or varying the terms of this Agreement in respect of those Train Services, including the Access Charges applicable. The Operator must comply with such terms in operating the Train Services.

### 3.2 Reduction of Access Rights

- (a) If:
  - (i) during any twelve (12) consecutive weeks during the Term, the Operator fails, for any reason other than due to a Force Majeure Event or the failure of QR to make the Access Rights available, to operate all the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks; and
  - (ii) QR is satisfied that it can demonstrate that it has:
    - (A) a reasonable expectation of a sustained alternative demand for that part of the Access Rights that have not been utilised: or
    - (B) a reasonable expectation of a commercial benefit for the provision of and management of the Infrastructure sufficiently material to justify the resumption of that part of the Access Rights that have not been utilised,

then QR may, within sixty (60) days of the last day of the relevant twelve (12) week period, give a notice ("**Variation Notice**") to the Operator proposing that the Operator's entitlement to operate Train Services be reduced from a nominated date (being a date at least twenty-one (21) days after the Operator receives the Variation Notice) ("**Date of Resumption**") to a level specified in the notice which level shall be no less than that which

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is equivalent to the Operator's average weekly usage of the Nominated Weekly Train Services during the relevant twelve (12) week period.

- (b) After receipt of a Variation Notice the Operator shall have the opportunity to demonstrate to QR's reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services).
- (c) If the Operator fails to demonstrate to QR's reasonable satisfaction a sustained requirement for that part of the Access Rights that have not been utilised (or such other nominated number of Train Services), the Operator's entitlement to operate Train Services shall be reduced to the level specified in the Variation Notice with effect on and from the Date of Resumption.
- (d) If the Operator does not agree with the reduction of the Operator's entitlement proposed by QR pursuant to Clause 3.2(a), the Operator may, within twenty one (21) days of receipt of the Variation Notice, notify QR in writing that it disputes the proposed reduction in which case the Operator may refer the dispute for determination by an expert in accordance with Clause 17.3 of this Agreement. The expert will determine whether the conditions for a reduction in Access Rights set out in Clause 3.2(a) have been met and whether the Operator has demonstrated, to QR's reasonable satisfaction, a sustained requirement for that part of the Access Rights to which the reduction would apply. QR must not effect the reduction proposed in the Variation Notice until resolution of the dispute and may only implement a reduction consistent with the expert's determination.
- (e) QR may withdraw the Variation Notice at any time prior to the Date of Resumption or fourteen (14) days following the resolution of the dispute, whichever is the later.
- (f) Where the Operator's Customer or Customers has or have provided concurrent written notification to QR and the Operator that they intend to vary or terminate their rail haulage agreement(s) with the Operator and use another Railway Operator for some or all of their rail haulage services, then QR will, as permitted under and subject to any restrictions specified in QR's Access Undertaking, reduce the Access Rights for the Operator necessary for the Customer or Customers to effect the termination or variation of the relevant rail haulage agreement(s). The provisions of Clause 17 shall not apply to this Clause 3.2(f).
- (g) In the event that the Operator's entitlement to operate Train Services is reduced in accordance with this Clause 3.2, the Agreement (including the Base Access Charges) will be varied accordingly.
- (h) The Operator shall have no claim or entitlement to compensation as a result of any reduction in Train Services pursuant to this Clause 3.2.

### 3.3 Relinquishment and Transfer of Access Rights

- (a) Where the Operator wishes to relinquish some or all of its Access Rights and no other existing or prospective Railway Operator ("**New Railway Operator**") has agreed to take up New Access Rights pursuant to Clause 3.3(g) or Other Access Rights pursuant to Clause 3.3(h) then provided that:
  - (i) the Operator has given to QR reasonable notice of its intention to relinquish such Access Rights; and
  - (ii) the Operator pays to QR the Relinquishment Fee within:



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- (A) two (2) years of the notice provided in accordance with Clause 3.3(a)(i), where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region; or
- (B) six (6) Months of the notice provided in accordance with Clause 3.3(a)(i), in any other case,

then from the date of payment of the Relinquishment Fee, the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights. During the period between when the notice of intention is given and the Relinquishment Fee is paid, the terms of the Agreement will continue to apply in respect of the Access Rights which the Operator intends to relinquish.

- (b) The Relinquishment Fee payable under Clause 3.3(a)(ii) will be reduced in accordance with Clause 3.3(d) where:
  - (i) a Railway Operator has entered into an access agreement with QR in respect of access rights that QR could not have provided without using the whole or part of the relinquished Access Rights;
  - (ii) following the provision of notice pursuant to Clause 3.3(a)(i) but prior to the payment of the Relinquishment Fee pursuant to Clause 3.3(a)(ii), QR's obligation to provide such access rights under the new access agreement has commenced; and
  - (iii) no other Railway Operator is seeking to transfer or relinquish access rights that more closely resemble the access rights sought by the New Railway Operator.
- (c) Where QR is negotiating an access agreement with a New Railway Operator that, if executed, would reasonably be expected to result in a reduction to the Operator's Relinquishment Fee pursuant to Clause 3.3(b), QR will not unreasonably delay the process for negotiating and executing an access agreement with that New Railway Operator.
- (d) Where Clause 3.3(b) applies and subject to Clause 3.3(f), the Relinquishment Fee will be reduced by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the New Railway Operator's average contribution to Common Costs per train kilometre for its relevant Train services is less than the Operator's average contribution to Common Costs per train kilometre for its relevant Train Services, the Reduction Factor will be decreased in proportion to the relative contribution.
- (e) Where the Train Services under this Agreement (including those Train Services in relation to the Access Rights that are to be relinquished) operate in the Central Queensland Coal Region, the amount payable by the Operator to QR under Clause 3.3(a) will not exceed 50% of the Relinquishment Fee (as determined prior to any reduction under Clause 3.3(d)).
- (f) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).
- (g) Where the Operator wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights which are Equivalent Access Rights ("**New Access Rights**") then provided that:

- (i) the Operator has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the New Access Rights;
- (ii) QR has, following the receipt of notice pursuant to Clause 3.3(g)(i), entered into an access agreement with that New Railway Operator for the New Access Rights and QR's obligation to provide such New Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable); and
- (iii) the Operator pays to QR, where applicable, within fourteen (14) days of receipt of an invoice from QR, a transfer fee, determined by QR as equivalent to the present value, considered over the remaining Term, of any future expected reductions in contributions to QR's Common Costs in providing the Infrastructure (including the return earned on Infrastructure assets) due to the net effect of the relevant relinquishment of the Operator's Access Rights and the take up of the New Access Rights on the assumption that the Operator would have fully utilised the Access Rights for the remaining Term and provided that in no circumstances will the transfer fee be less than zero (0),

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of such Access Rights.

- (h) Where the Operator wishes to relinquish some or all of its Access Rights and a New Railway Operator has agreed to take up access rights with a different origin/destination but with the same format of Train service description as the Access Rights (that is, a Cyclic Traffic) ("**Other Access Rights**") then provided that:

- (i) the Operator has given QR reasonable notice of its intention to relinquish such Access Rights to enable the New Railway Operator to take up the Other Access Rights;
- (ii) QR has, following the receipt of notice pursuant to Clause 3.3(h)(i), entered into an access agreement with that New Railway Operator for the Other Access Rights and QR's obligation to provide such Other Access Rights has commenced at the same time as this Agreement is varied or terminated (whichever is applicable);
- (iii) the Operator has paid to QR, where applicable, a transfer fee equivalent to the Relinquishment Fee that would have been payable for relinquishment of the Access Rights provided that:
  - (A) where (and only where) the Other Access Rights are for the transportation of specified net tonnes of coal between a specified origin and destination that have not been included in the Forecast Traffic; or
  - (B) where the Other Access Rights are for Train services other than coal carrying Train services operating in the Central Queensland Coal Region,

the transfer fee will be reduced in accordance with Clause 3.3(d); and

- (iv) no other Railway Operator is seeking to transfer access rights that more closely resemble the access rights sought by the New Railway Operator

then from the date of payment of the transfer fee the Agreement (including the Base Access Charges) will be amended to reflect the relinquishment of the Access Rights.

- (i) Where Access Rights have been reduced, relinquished or transferred in accordance with this Agreement to the extent that there is no longer any Access Rights, QR will be entitled to terminate this Agreement.

### **3.4 Forecasts**

- (a) For the purposes of permitting QR to plan for the maintenance and upgrading of the Infrastructure the Operator will within thirty (30) days after being requested to do so by QR (such requests to be made not more than once in any six (6) Month period), provide to QR a forecast in writing representing the Operator's best estimate for the next six (6) year period specified by QR in its request of:

- (i) the number and frequency of Train Services it will require;
- (ii) the gross tonnage it will transport;
- (iii) the average number of gross tonnes per Train it will transport; and
- (iv) any changes in Rollingstock or Rollingstock Configuration which will vary any of the above,

such forecast of the above information to be made up of:

- (i) a forecast for each Month of the first year of such period; and
  - (ii) a forecast for each of the remaining five (5) years of such period.
- (b) QR will, within thirty (30) days after being requested to do so by the Operator (such requests to be made not more than once in any six (6) Month period), provide to the Operator forecasts of planned major Enhancements relating to the Nominated Network for each of the next six (6) years.
  - (c) The information and/or forecasts provided pursuant to Clauses 3.4(a) or (b) shall be prepared and supplied in good faith however the information and/or forecasts shall not be a representation or warranty as to the accuracy of the information and/or forecasts itself and the parties have no liability in any respect for the information and/or forecasting.

## **4. DAY TO DAY TRAIN MOVEMENTS**

### **4.1 Train Control**

QR will provide and will have exclusive responsibility for Train Control in respect of the Nominated Network.

### **4.2 Train Control Rights and Obligations**

- (a) QR must exercise Train Control by the issue of QR Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control QR shall have regard to the safe conduct of rail operations on the Infrastructure and:

- (i) may delay, alter or add a Train Service;
  - (ii) may cancel, re-route or re-schedule a Train Service;
  - (iii) may alter the Scheduled Times for Train Services in the Train Schedule; and
  - (iv) may impose any Operational Constraint on the Nominated Network consistent with Clause 6.2.
- (c) The Operator must:
- (i) comply with QR Train Control Directions;
  - (ii) ensure the Operator's Staff comply with QR Train Control Directions;
  - (iii) ensure that Train drivers are contactable by the QR Train Controller to receive QR Train Control Directions;
  - (iv) notify the QR Train Controller as soon as the Operator becomes aware that it is not possible for the Operator or the Operator's Staff to comply with a QR Train Control Direction or the Operator or the Operator's Staff have not complied with a QR Train Control Direction; and
  - (v) notify the QR Train 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 Train Control including the ability of any Train Service to conform to its Scheduled Times.

#### **4.3 Train Control Communications**

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Agreement (including the Rollingstock Interface Standards and the relevant Safeworking Procedures).

### **5. TRAIN OPERATIONS**

#### **5.1 Compliance**

- (a) To the extent relevant to the performance of its obligations under this Agreement the Operator must observe and comply with :
- (i) all applicable Laws;
  - (ii) the conditions of its Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) the Rollingstock and Rollingstock Configurations authorised in accordance with Clause 5.9;
  - (v) the Train Service Description (subject to the Network Management Principles);

- (vi) the description of the relevant Reference Train Service except as otherwise specified in this Agreement;
  - (vii) QR Train Control Directions;
  - (viii) the Safeworking Procedures and Safety Standards;
  - (ix) the Network Management Principles;
  - (x) the Interface Coordination Plan;
  - (xi) to the extent applicable, the QR Emergency Procedures;
  - (xii) the Operator's Emergency Response Plan;
  - (xiii) the Environmental Investigation and Risk Management Report;
  - (xiv) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by QR from time to time and the permits, approvals and licences in respect of facilities to which access is provided by QR to the Operator;
  - (xv) the Interface Risk Management Plan (including the Rollingstock Interface Standards);
  - (xvi) subject to the provision of reasonable notice specifying relevant licences and permits and their applicability to the Operator, to the extent applicable to the Operator, all licences and permits affecting the operations of QR; and
  - (xvii) to the extent applicable to the Operator, the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (b) To the extent relevant to the performance of its obligations under this Agreement QR must observe and comply with:
- (i) all applicable Laws;
  - (ii) the conditions of its Accreditation;
  - (iii) the lawful requirements of relevant Authorities;
  - (iv) to the extent applicable, QR Train Control Directions;
  - (v) the Safeworking Procedures and Safety Standards;
  - (vi) to the extent applicable, the Train Service Description (subject to the Network Management Principles);
  - (vii) the Network Management Principles;
  - (viii) the Interface Coordination Plan;
  - (ix) QR's Emergency Procedures;
  - (x) the Interface Risk Management Plan;

- (xi) all licences and permits affecting the operations of QR; and
  - (xii) the terms of QR's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (c) QR must ensure that as far as practicable:
- (i) the Network Management Principles;
  - (ii) the Safeworking Procedures and Safety Standards; and
  - (iii) QR's Emergency Procedures
- will be applied consistently for all Railway Operators on the Nominated Network.

## 5.2 Compliance with Scheduled Time

- (a) The Parties must use reasonable endeavours to:
- (i) operate Train Services in accordance with the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles, varied in the circumstances specified in this Agreement or otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
  - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service shall be deemed to operate in accordance with its Scheduled Time if it does not vary more than three (3) minutes from the Scheduled Time.

## 5.3 Alterations to Train Services

- (a) If the Operator does not propose to operate a Train Service the Operator must, prior to the scheduled operation of the Train Service, advise QR of the cancellation of such Train Service and the reason for such cancellation.
- (b) In the event that a Train Service is unable to operate in accordance with its Scheduled Time then, provided that the Operator has complied with Clause 5.2(a), QR will use its reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service provided that QR will be under no obligation to alter the scheduled times for other Train Movements.
- (c) In the event that for any reason the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule or at any other Scheduled Time advised by QR in accordance with Clause 5.3(b), QR may authorise the operation of another Train Movement at that Scheduled Time.
- (d) In the event that a Train Service is for any reason unable to commence to operate in accordance with its Scheduled Time and following bona fide consultation between the Parties it is not possible for QR to provide an alternative Scheduled Time reasonably acceptable to both Parties, such Train Service may be cancelled by either Party giving notice to the other Party as soon as practicable.

## 5.4 Notification

- (a) QR must notify the Operator's Controller (such notification to include where relevant the anticipated effect on the relevant Train Service) as soon as reasonably practicable after QR discovers or becomes aware of any circumstances including Obstructions (other than those circumstances of which the Operator is aware or ought to have been aware) which:
- (i) have materially affected, or could potentially materially affect, the ability of any Train Service to comply with its Scheduled Time; or
  - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.
- (b) QR must at the earliest possible time after becoming aware of the relevant changes advise the Operator's Controller from time to time of changes to advices previously provided pursuant to Clause 5.4(a).
- (c) The Operator must inform QR of any failure to comply with:
- (i) any applicable Laws relevant to the Operator's Train Services;
  - (ii) QR Train Control Directions; and
  - (iii) the Rollingstock and Rollingstock Configurations authorised in **Schedule 4**.

## 5.5 Operator to Supply Information

The Operator must provide to QR and at all times maintain operable all necessary software, hardware and associated communication links to establish, to QR's reasonable satisfaction, an interface with QR's information systems and must provide information to QR in relation to each Train Service prior to operation on the Nominated Network in accordance with paragraph 2.1 of Part 2 of **Schedule 10**. The interface with QR's information systems will be subject to any controls specified by QR to protect the integrity and confidentiality of the systems and the information contained therein.

## 5.6 Performance Levels

- (a) The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in Part 1 of **Schedule 5**. A failure by either Party to achieve the relevant Performance Level will not constitute a breach of this Agreement and the only consequences of such failure as between the Parties shall be the consequences set out in this Clause 5.6.
- (b) If the Operator does not comply with the Operator Performance Level then the Operator must pay to QR the amount determined in accordance with **Schedule 5** as part of the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following QR becoming entitled to that amount.
- (c) If QR does not comply with the QR Performance Level then QR will credit to the Operator the amount determined in accordance with **Schedule 5** by way of a deduction from the invoice issued by QR for Access Charges and other charges for the Billing Period immediately following the Operator becoming entitled to that amount.
- (d) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six (6) Months of the Commitment Date or any previous review of the Performance Levels. If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties

may agree on varied Performance Levels and any associated variations to the Agreement including the Base Access Charges and the Train Service Description. If the Parties are unable to agree to such variations then the existing Performance Levels shall continue to apply unless varied by QR in accordance with the provisions of Clause 5.6(e).

- (e) In the event that the Operator
  - (i) does not comply in any material respect with the Train Service Description; and
  - (ii) the Operator fails to demonstrate to the reasonable satisfaction of QR when requested to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term

then, following consultation with the Operator, QR will be entitled to:

- (iii) vary the Train Service Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term having regard to the extent of previous compliance with the Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to QR); and
  - (iv) vary the Agreement (including, without limitation, the Operator Performance Level and the Base Access Charges) to reflect the impact of the change in the Train Service Description.
- (f) The Operator shall be entitled to dispute any variation proposed by QR pursuant to Clause 5.6(e) and such dispute will be referred to an expert for resolution in accordance with Clause 17.3.

#### **5.7 Interface Coordination Plan**

- (a) QR and the Operator agree to comply with the Interface Coordination Plan in exercising their rights and performing their obligations under this Agreement.
- (b) QR will provide the Operator with that information identified in paragraph 3(f) of Part 1 of **Schedule 10** relevant to the Operator's operation of Train Services.

#### **5.8 Operation of Trains and Rollingstock**

The Operator is responsible for the safe operation of its Rollingstock on the Nominated Network and must ensure that at all times whilst operating on the Nominated Network:

- (a) its Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards);
- (b) it operates only authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**; and
- (c) all loading and unloading of its Rollingstock is undertaken in a manner that:
  - (i) is consistent with the requirements of **Schedule 4** and the Rollingstock Interface Standards;



- (ii) does not affect the safe operation of the Rollingstock; and
- (iii) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

## 5.9 Authorisation of Rollingstock & Rollingstock Configurations

- (a) Prior to the operation of any Train Services the Operator must:
  - (i) implement the control measures devised in the Interface Risk Management Plan relevant to assessing the compatibility of the Operator's Rollingstock and Rollingstock Configurations with the Nominated Network; and
  - (ii) without limiting Clause 5.9(a)(i), provide to QR a certificate by a suitably qualified person whom both QR and the Operator accept as being competent to provide such certification as to the compliance of the Operator's Rollingstock and Rollingstock Configurations with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Rollingstock and Rollingstock Configurations the subject of that certificate shall then, subject to QR's reasonable satisfaction with the certificate provided, be authorised by QR and included in **Schedule 4** as the authorised Rollingstock and Rollingstock Configurations.
- (b) If requested to do so by QR, the Operator must provide to QR (or procure the certifying party to provide to QR) relevant documentation (including reports on trials and/or commissioning tests) demonstrating that the Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards).
- (c) Where QR is not satisfied, on the basis of documentation provided by the Operator or the certifying party in accordance with Clauses 5.9(a) and (b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan, either Party may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan for resolution by an expert in accordance with Clause 17.3.
- (d) In the event that during the Term the Operator wishes to:
  - (i) modify any of the Operator's authorised Rollingstock or Rollingstock Configurations; or
  - (ii) have additional Rollingstock or Rollingstock Configurations authorised for use on the Nominated Network,then prior to using any such modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network:
  - (i) the Operator must notify QR (giving details of the relevant modification or additional Rollingstock or Rollingstock Configurations);
  - (ii) if QR considers it reasonably necessary to do so, the Operator must conduct a supplementary Interface Risk Assessment jointly with QR in accordance with Clause 11 (and the provisions of that Clause shall apply if there is any

dispute between the Parties in relation to the conduct of the supplementary Interface Risk Assessment);

- (iii) the Operator must provide to QR a certificate of compliance in respect of the modified or additional Rollingstock or Rollingstock Configurations in accordance with Clauses 5.9(a) to (c);
- (iv) the Interface Risk Management Plan shall be amended to reflect any changes agreed or determined in accordance with this Clause 5.9(d) and the Parties shall make any other amendments to this Agreement (including QR varying the Base Access Charges) which may be reasonably necessary to reflect the authorisation and use of the modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network; and
- (v) QR must advise the Operator of any variations to the Base Access Charges payable by the Operator as a result of the authorisation of such modified or additional Rollingstock or Rollingstock Configurations. If the Operator disputes the variations to the Base Access Charges advised by QR in accordance with this Clause, either Party may refer the dispute to the QCA for determination in accordance with Clause 17.6.

#### 5.10 Amendments to System Wide Requirements

- (a) QR may, acting reasonably, amend a System Wide Requirement by the issue of a notice ("**Amendment Notice**");
  - (i) on safety grounds, at any time without the consent of the Operator subject to providing reasonable notice of the proposed amendment and consulting with the Operator prior to its implementation;
  - (ii) if required pursuant to a Material Change; and
  - (iii) in any other circumstance, subject to negotiating the Operator's agreement to such proposed amendment prior to its implementation in accordance with this Clause 5.10 (the Operator's agreement not to be unreasonably withheld or delayed).
- (b) The Amendment Notice issued by QR pursuant to Clause 5.10(a) must include details of the proposed amendments to the extent reasonably necessary so as to properly inform the Operator of the terms of the proposed amendments and to enable the Operator to assess the consequences and impact for the Operator of the proposed amendments and details of the proposed implementation date.
- (c) In respect of any amendment proposed pursuant to Clause 5.10(a)(iii), the Operator shall provide advice to QR as to whether:
  - (i) the proposed amendments will materially impact on the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Agreement over a sustained period of time notwithstanding the Operator's entitlement to reach agreement with QR in terms of the funding of any material financial impact pursuant to Clause 5.10(e)(ii); or
  - (ii) the Operator will suffer a net material financial impact (that is, a net cost) equivalent to 1% or greater of the annual Access Charges directly as a result of the proposed amendments.

- (d) Where the Operator has provided advice to QR pursuant to Clause 5.10(c)(i) and has satisfied QR, acting reasonably, within thirty (30) days of receipt by QR of that advice, that the Operator's operation of Train Services under this Agreement will be fundamentally frustrated over a sustained period of time directly as a result of the proposed amendments notwithstanding the Operator's entitlement to reach agreement with QR in terms of the funding of any net material financial impact pursuant to Clause 5.10(e)(ii), QR will not implement the proposed amendments. In the event that the Operator is unable to so satisfy QR, QR may implement the proposed amendments at any time except that:
- (i) in the event that the circumstances outlined in Clause 5.10(c)(ii) exist, such implementation shall be subject to Clause 5.10(e); or
  - (ii) in the event that the Operator disputes QR's finding, either Party may refer the dispute for determination by an expert in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the determination of the expert.
- (e) Where the Operator has provided advice to QR pursuant to Clause 5.10(c)(ii) that the relevant circumstances exist then:
- (i) within thirty (30) days of providing such advice the Operator shall provide to QR further advice of such net material financial impact including 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 amendments and the Operator shall warrant that any estimates given by it are accurate on the basis of the information reasonably available to it and sufficiently detailed to enable QR to reasonably assess such net material financial impact; and
  - (ii) the Parties will negotiate in good faith to agree appropriate financial arrangements between them with respect to such net material financial impact and, failing agreement within a further thirty (30) day period, either Party may refer the matter of appropriate financial arrangements to an expert for determination in accordance with Clause 17.3 and QR will not implement the proposed amendments pending the expert's determination.
- (f) In making his determination the expert must have regard to, except in circumstances where consequences are otherwise provided under this Agreement, the costs and benefits accruing to the Operator but excluding any costs associated with other entitlements of QR under this Agreement.
- (g) The Operator shall use all reasonable endeavours to minimise the net material financial impact suffered by it due to the proposed amendments.
- (h) Notwithstanding Clause 5.10(e), where any System Wide Requirement is varied on safety grounds, each Party will fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (i) At any time following a determination pursuant to Clause 5.10(e), QR may elect not to proceed with the proposed amendments.
- (j) The Parties must account to each other in respect of the contributions agreed or determined pursuant to Clause 5.10(e)(ii) following completion of the implementation

of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.

- (k) Where QR implements the proposed amendments in accordance with this Clause 5.10, the relevant System Wide Requirement will be altered accordingly following completion of the implementation of the proposed amendments. The Parties must undertake all necessary action and make all necessary amendments to the Interface Risk Management Plan, the Environmental Investigation and Risk Management Report and/or the Operator's Emergency Response Plan in response to the relevant amendments including providing QR with a further certificate of compliance where the Operator's Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement. QR will allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where QR may require immediate compliance.
- (l) In the event that QR undertakes an Enhancement, QR will only be required to vary the Rollingstock Interface Standards to reflect the impact of the Enhancement where the Parties have agreed as to the level and method of contribution to the funding of the Enhancement by the Operator.

#### **5.11 Private Facilities**

Prior to the commencement of any Train Services, the Operator must demonstrate to the reasonable satisfaction of QR that the Operator has entered into agreements with the owners or operators of the Private Facilities to enable the Operator to operate Train Services in the manner contemplated in this Agreement ("**Private Facilities Agreements**"). The Operator must use reasonable endeavours to maintain the Private Facilities Agreements in full force and effect for the period the Private Facilities are required for the operation of Train Services.

### **6. INFRASTRUCTURE MANAGEMENT**

#### **6.1 Management and Control of the Nominated Network**

QR is responsible for the management of the Nominated Network and shall retain control over all activities on the Nominated Network.

#### **6.2 Maintenance of the Nominated Network**

- (a) QR must carry out Maintenance Work on the Nominated Network such that, subject to any agreed criteria and the Network Management Principles:
  - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
  - (ii) the Operator can operate Train Services in accordance with its Scheduled Times.
- (b) QR may impose either temporarily or permanently such Operational Constraints as it considers necessary for the protection of any person or any property (including the Infrastructure) or to facilitate the performance of Maintenance Work or Enhancements provided that in exercising its rights under this Clause 6.2(b) QR must:
  - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing

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alternate Scheduled Times having regard to the reasonable requirements of the Operator); and

- (ii) comply with the relevant procedures specified in the Interface Coordination Plan.
- (c) Except to the extent that an Operational Constraint resulted from a breach by QR of this Agreement, any delays or cancellations of Train Services caused by or resulting from Operational Constraints shall not constitute a default by QR of its obligations under this Agreement and QR will not be liable for any Claims suffered or incurred by or made or brought by or against the Operator as a result of or arising from the imposition of such an Operational Constraint.
- (d) The Operator must notify QR as soon as is reasonably practicable of any damage to or disrepair or failure in operation or function of any part of the Infrastructure of which the Operator becomes aware.
- (e) The Operator must provide reasonable cooperation to QR in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.

### **6.3 Inspection by Operator**

- (a) Subject to Clause 6.3(b), the Operator may, prior to the initial commencement of Train Services, at its cost and risk, inspect the Infrastructure and circumstances surrounding the Infrastructure comprising the Nominated Network including, but not limited to, fencing and level crossing protection in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with operation of Train Services on the Infrastructure.
- (b) Any inspection by the Operator under Clause 6.3(a) shall be subject to
  - (i) the Operator providing reasonable written notice to QR of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
  - (ii) any such inspection being conducted in the presence of a representative of QR; and
  - (iii) such other reasonable conditions as may be imposed by QR on such inspection including, but not limited to, compliance with QR's Safeworking Procedures and Safety Standards;

and shall be conducted in such a manner as to not cause any disruption to any Train Movements or to the undertaking of Maintenance Work or Enhancements.

## **7. INCIDENT MANAGEMENT**

### **7.1 Operator's Emergency Response Plan**

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services) the Operator must develop and submit to QR a plan (the "**Operator's Emergency Response Plan**") which:

- (i) contains the set of procedures developed by the Operator which are adequate for dealing with an Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;
  - (ii) without limiting Clause 7.1(a)(i) includes the matters outlined in Part 3 of **Schedule 6** relevant to the Operator's use of the Nominated Network; and
  - (iii) must at all times during the Term be compatible with the QR Emergency Procedures and this Agreement.
- (b) If QR is not reasonably satisfied that the Operator's Emergency Response Plan complies with Clause 7.1(a), QR must notify the Operator and if the Parties cannot agree on a mutually acceptable course of action to address QR's concerns within fourteen (14) days after the date of QR's notice, either Party may refer the matter to an expert in accordance with Clause 17.3. The expert will be required to determine whether or not the Operator's Emergency Response Plan:
- (i) is compatible with the QR Emergency Procedures and this Agreement; and
  - (ii) otherwise complies with Clause 7.1(a).
- If the expert determines that the Operator's Emergency Response Plan:
- (i) is not compatible with the QR Emergency Procedures and this Agreement, he must determine how the non-compliance should be rectified and the Operator must rectify the Operator's Emergency Response Plan accordingly; or
  - (ii) is compatible with the QR Emergency Procedures and this Agreement, the Operator's Emergency Response Plan must be treated as complying with Clause 7.1(a).
- (c) The Operator must ensure that any amendments to the Operator's Emergency Response Plan comply with the requirements contained in Clause 7.1(a).
- (d) If the Operator intends to amend the Operator's Emergency Response Plan it must notify QR of that fact, providing QR with details of the proposed amendments and the reasons for them. Within ten (10) days after receipt of that notice QR must notify the Operator if QR disputes any such proposed amendments, in which case any such dispute shall be resolved in accordance with the procedures set out in Clause 7.1(b).
- (e) No amendment to the Operator's Emergency Response Plan to the extent that it relates to the Operator's operations on the Nominated Network will be effective until it has been made in a manner permitted by this Clause 7.1.
- (f) The Operator must be able to demonstrate to QR that procedures are in place which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Response Plan and, to the extent relevant, the QR Emergency Procedures and that they are being observed.
- (g) The Operator must ensure that at all times sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations and that the names and positions of those members of the Operator's Staff are maintained in the Operator's Emergency Response Plan.

## 7.2 Obstructions

The Operator must not cause any Obstruction or permit to continue any Obstruction caused by the Operator.

### 7.3 Notification

- (a) The Operator must notify the QR Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
  - (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
  - (ii) anything which the Operator observes may cause or contribute to the occurrence of an Incident or Obstruction.
- (b) QR must notify the Operator of all Incidents involving the Operator's Rollingstock.

### 7.4 Management of Incident Response

- (a) QR will be responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) The Operator must arrange Recovery and must cooperate with and assist QR in Restoration. The Operator will be responsible for effecting timely Recovery in accordance with the Operator's Emergency Response Plan. Where QR reasonably believes that more timely recommencement of Train Movements can be achieved by QR, then QR may, subject to using reasonable efforts to consult with the Operator, take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) and recover such reasonable direct costs incurred by QR in doing so. The Operator must pay to QR such reasonable direct costs incurred by QR.
- (c) If an Incident occurs the Operator will as soon as reasonably practicable notify QR and:
  - (i) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise the occurrence of injury to any person or damage to any property (including environmental damage) where there is an imminent risk of such injury or damage but otherwise take no action without the prior approval of QR, which approval shall not be unreasonably withheld; and
  - (ii) comply with the directions of QR in respect of the coordination and management of Restoration and Recovery.
- (d) (i) Both Parties must use all reasonable endeavours to ensure that any property damage or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised provided that QR, subject to QR using reasonable efforts to consult with the Operator, will have the right to take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock) as it considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to Clause 7.4(d)(ii) and (iv), QR shall have no liability for any damage to or loss of freight or Rollingstock caused by such actions.

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- (ii) Where pursuant to Clause 7.4(d)(i) QR seeks to remove or require the Operator to remove any Relevant Rollingstock where QR considers such removal reasonably necessary to recommence Train Movements as soon as practicable and such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock, QR and the Operator must:
- (A) use all reasonable efforts to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and at least within a period of six (6) hours after the occurrence of the Incident or such longer period as the Parties may agree; and
  - (B) if the Parties do not consult or reach agreement within a period of six (6) hours or such longer period as agreed, they will refer the decision to the chief executive officers of each Party or their nominated delegate as specified in **Schedule 10** who must in good faith seek to agree a course of action within two (2) hours of the referral to them or such longer period as the Parties may agree.
- (iii) Where the chief executive officers of each Party or their nominated delegates, do not consult or do not agree within the specified period in Clause 7.4(d)(ii)(B), QR must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to the Removal Expert who shall assess whether, having regard to:
- (A) the potential to further damage the Relevant Rollingstock;
  - (B) the impact on QR's ability to effect Restoration; and
  - (C) the time critical nature of the decision,
- the course of action proposed by QR is reasonable.
- (iv) QR shall be entitled to progress with the proposed course of action unless the Removal Expert assesses that QR's proposed course of action is unreasonable.
- (e) QR may, where it is reasonable and practicable in the circumstances to do so, issue a QR Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of QR and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of QR or another Railway Operator). The Operator may recover from QR such reasonable direct costs incurred in complying with this Clause 7.4(e) as agreed and failing agreement within thirty (30) days after notice by the Operator to QR as determined by an expert in accordance with Clause 17.3.
- (f) In assessing the costs to be recovered under Clause 7.4(b) or Clause 7.4(e) for the use of Rollingstock, regard shall be had to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (g) Except as otherwise provided in this Agreement QR will not be liable for any delays, cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the Operator as a result of complying with a request by QR pursuant to Clause 7.4(e).



**7.5 Investigations**

- (a) In the event of an Incident an Investigation into the Incident in the circumstances set out in **Schedule 8** must be commenced as soon as practicable unless otherwise agreed between the Parties and must be conducted in the manner and by the persons prescribed in **Schedule 8**.
- (b) Each Party must cooperate and ensure their respective staff cooperate fully with any Investigation and the Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the requirements of **Schedule 8**.

**8 ENVIRONMENTAL MANAGEMENT AND PROTECTION**

**8.1 Environmental Management**

- (a) The Operator must, prior to the commencement of any Train Services (including any new or varied Train Services):
  - (i) cause a suitably qualified person reasonably acceptable to both Parties to prepare a report (“**Environmental Investigation and Risk Management Report**”) containing an environmental investigation component and an environmental risk management component which respectively identify:
    - (A) possible risks of Environmental Harm arising out of the proposed use of the Nominated Network by the Operator, including risks associated with those matters identified in Part 3 of **Schedule 6**; and
    - (B) the manner in which the Operator proposes to address the possible risks of Environmental Harm identified in the Environmental Investigation and Risk Management Report as well as the roles and responsibilities, including financial responsibility, for the control measures proposed and an audit regime,provided that if the Operator has an existing Environmental Management System it proposes to use in connection with the proposed Train Services on the Nominated Network, the Environmental Investigation and Risk Management Report should also detail the extent to which the Operator believes its existing Environmental Management System addresses the risks identified in the Environmental Investigation and Risk Management Report; and
  - (ii) provide a copy of the Environmental Investigation and Risk Management Report to QR for its consideration and, if requested by QR, a copy of the relevant parts of the Operator’s existing Environmental Management System referred to in the Environmental Investigation and Risk Management Report.
- (b) If the Environmental Investigation and Risk Management Report discloses areas of risk which, in the reasonable opinion of QR, cannot be adequately managed by the proposals set out in the Environmental Investigation and Risk Management Report or, in the reasonable opinion of QR, fails to identify and adequately deal with additional relevant environmental risks, then QR may give notice to that effect to the Operator

within thirty (30) days after the date on which the Environmental Investigation and Risk Management Report was provided to QR (or such other period as the Parties, acting reasonably, may agree), detailing the risks not so adequately managed or not so identified or adequately dealt with. If QR does not give such notice, the Environmental Investigation and Risk Management Report shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.

- (c) If QR gives notice pursuant to Clause 8.1(b) the Operator may respond, by a date agreed by the Parties, with a written proposal which demonstrates how the Operator proposes to manage those risks (“**Operator’s Proposal**”). The Operator’s Proposal must:
- (i) contain an investigation of the areas of risk and/or additional relevant environmental risks referred to in Clause 8.1(b);
  - (ii)
    - (A) specify risk abatement or attenuation measures which the Operator proposes to undertake in relation to them; and/or
    - (B) specify how the Access Charges might contain a component reflecting the cost to QR of assuming all or some portion of the risk;
  - (iii) in relation to paragraph (ii)(A) specify a timeframe for implementation of those measures; and
  - (iv) specify details of any public consultation the Operator proposes to undertake in connection with the implementation of any such measures.
- (d) QR may, in the exercise of its reasonable discretion, accept or reject all or part of the Operator’s Proposal.
- (e) If QR accepts the Operator’s Proposal, then it will be incorporated into and form part of the Environmental Investigation and Risk Management Report which shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (f) If the Operator fails to submit to QR an Operator’s Proposal by the date agreed by the Parties or if QR refuses to accept all or part of the Operator’s Proposal, QR may advise the Operator of the risks not adequately managed or not identified or adequately dealt with and then either Party may refer the issue of whether the Environmental Investigation and Risk Management Report and/or the Operator’s Proposal does or does not adequately manage or does or does not identify or adequately deal with the relevant environmental risks to an expert in accordance with Clause 17.3.
- (g) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator’s Proposal does adequately manage the risks or identifies and adequately deals with the risks, then the Environmental Investigation and Risk Management Report as modified by the Operator’s Proposal (if applicable) will be accepted, included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (h) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator’s Proposal does not adequately manage the risks or does not identify and adequately deal with the risks, then provided the Operator amends the

Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, the Environmental Investigation and Risk Management Report as amended will be accepted and included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.

- (i) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks and the Operator fails to amend the Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, QR may terminate this Agreement.
- (j) The parties agree to implement the determination of the expert.

## **8.2 Environmental Management System**

- (a) The Operator must prior to the commencement of any Train Services (including any new or varied Train Services) have in place an Environmental Management System.

The Environmental Management System prepared by the Operator must:

- (i) have regard to the issues raised in the Environmental Investigation and Risk Management Report and contain procedures for implementing the risk management proposals identified in it. The Environmental Investigation and Risk Management Report includes the results of any expert determination referred to in Clause 8.1(f) or any amendment of the Environmental Investigation and Risk Management Report arising from the recommendations of any environmental audit or review conducted pursuant to Clause 8.7;
  - (ii) address all legislative requirements, including the requirements of the Environmental Authorities held by QR from time to time that are relevant to the Operator's Train Services; and
  - (iii) identify systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with all Environmental Laws.
- (b) Prior to the commencement of any Train Services (including any new or varied Train Services), QR will ensure that the elements of the Environmental Investigation and Risk Management Report which QR is responsible for implementing are incorporated into QR's Environmental Management System.

## **8.3 Carriage of Dangerous Goods on Train Services**

- (a) The Operator must ensure that where Dangerous Goods are to be carried on a particular Train Service:
  - (i) all requirements of the Dangerous Goods Code are fully complied with (including placement of relevant, accurate and current documentation on Trains);
  - (ii) QR is advised of the details of the Dangerous Goods (including a description and the applicable Dangerous Goods United Nations (UN) Number) prior to the operation of a Train as part of the Train List; and

- (iii) any authorisation or prior approvals required under the Dangerous Goods Code have been obtained and are available for inspection by QR if so requested.
- (b) The Operator must ensure that, where there is any likelihood of Train Services carrying Dangerous Goods and before any Dangerous Goods can be carried on Train Services, the Operator's Emergency Response Plan prepared in accordance with Clause 7.1 includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried.

#### **8.4 Noise Management during Train Services**

- (a) In addition to any noise attenuation or management measures which may form part of or be identified in the Environmental Investigation and Risk Management Report, the Operator shall contribute to, as reasonably determined by QR, the costs incurred by QR in taking noise abatement measures on or adjacent to the Nominated Network considered reasonably necessary by QR where the Noise Planning Levels are, or but for the taking of these measures by QR, would be exceeded during the Term.
- (b) If, during the Term, the Noise Planning Levels are reduced such that noise from the Nominated Network exceeds the new Noise Planning Levels, QR may elect, in its absolute discretion, to implement noise abatement measures on the Nominated Network to ensure compliance with the new Noise Planning Levels. The Operator shall contribute to the cost of those noise abatement measures as reasonably determined by QR.
- (c) If the Operator disputes any determination made by QR in accordance with this Clause 8.4 regarding the contribution of costs, either Party may refer that dispute to an expert in accordance with Clause 17.3.

#### **8.5 Spillage of Contaminating Materials**

- (a) Where:
  - (i) the activities of the Operator under this Agreement result in any release, spillage or leakage of any Contaminating Material, or QR is reasonably of the opinion that those activities are causing or likely to cause contamination or Environmental Harm, and QR reasonably considers that action is required to prevent, mitigate or remedy that contamination or Environmental Harm; or
  - (ii) QR is given a direction, notice or order by a relevant Authority that some action is required to prevent, mitigate or remedy any actual or threatened contamination or Environmental Harm resulting from, or contributed to by, the activities of the Operator under this Agreement,

then QR may notify the Operator of the action which is required and the Operator must at its cost, as soon as reasonably practicable after receiving such notice, implement such action.

- (b) If, in QR's reasonable opinion, any action pursuant to Clause 8.5(a) ought best be undertaken by QR, then QR may elect to undertake such action and the Operator shall pay to QR the costs incurred by QR in doing so.

- (c) If the Operator disputes any action taken by QR in accordance with this Clause 8.5, either Party may refer the dispute to an expert in accordance with Clause 17.3 and if the expert determines the dispute in favour of the Operator, QR will reimburse the Operator for the costs incurred by the Operator as a result of the actions taken by the Operator at QR's request (or, if applicable, QR will bear the costs incurred by QR in accordance with Clause 8.5(b) and shall not be able to recover those costs from the Operator) to the extent determined by the expert.

#### **8.6 Community Liaison and Environmental Complaint Procedures**

- (a) Prior to the commencement of any Train Services the Operator shall take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by QR and shall invite QR to be represented at any community meetings organised by the Operator.
- (b) In the event that QR or the Operator receives noise complaints or other complaints dealing with environmental issues in relation to the Nominated Network, both QR and the Operator shall inform each other of those complaints as soon as reasonably practicable and shall cooperate in investigating and responding to those complaints.

#### **8.7 Audit and Review of Environmental Investigation and Risk Management Report**

- (a) The Operator will provide QR with copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services on the Nominated Network.
- (b) QR will provide the Operator with copies of those parts of QR's environmental audits that are relevant to the operation of the Operator's Train Services on the Nominated Network.
- (c) If QR becomes aware of:
- (i) any inadequacy of the Operator's Environmental Investigation and Risk Management Report due to:
    - (A) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
    - (B) any conduct on the part of the Operator which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
  - (ii) any non-compliance by the Operator with its Environmental Investigation and Risk Management Report,

then, in addition to any other rights QR may have under this Agreement, QR may by notice to the Operator direct the Operator to undertake a review of the adequacy of its Environmental Investigation and Risk Management Report and/or the Operator's compliance with it. The review will only deal with:

- (i) the extent to which the Environmental Investigation and Risk Management Report appears not to address a change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or

- (ii) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
- (iii) the extent of non-compliance by the Operator with its Environmental Investigation and Risk Management Report,

whichever is applicable in the circumstances.

- (d) If directed by QR to undertake a review in accordance with Clause 8.7(c), the Operator will ensure the review is carried out and will provide QR with a copy of the review report within a reasonable time after the review has been completed (and in any case, not later than three (3) Months after the notice from QR requiring the review).
- (e) The Operator must implement the reasonable recommendations arising from each review under this Clause 8.7 and the Parties shall amend the Environmental Investigation and Risk Management Report and this Agreement (including any variations to the Base Access Charges) as appropriate.
- (f) Either Party may refer any dispute as to the nature or extent of any amendments to the Environmental Investigation and Risk Management Report or this Agreement that ought to be made to an expert for resolution in accordance with Clause 17.3.

## 8.8 Notification

- (a) The Operator must advise QR of any failure by the Operator to comply with its Environmental Investigation and Risk Management Report and the Operator's Environmental Management System to the extent relevant to this Agreement as and when the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance. The Operator must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR and any action required by the Environmental Protection Agency.
- (b) QR must advise the Operator of any failure by QR to comply with the Operator's Environmental Investigation and Risk Management Report and QR's Environmental Management System to the extent relevant to this Agreement as and when QR becomes aware of such failure. QR must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of the Operator and any action required by the Environmental Protection Agency.
- (c) The Operator must advise QR of any failure to comply with its obligations under the Environmental Protection Act 1994 ("EPA"), including any notices or directions relating to the operation of Train Services that it receives from the Environmental Protection Agency. Failure by the Operator to comply with its obligations under the EPA, where that failure causes or threatens to cause Serious Environmental Harm, entitles QR to terminate in accordance with Clause 20.
- (d) QR will notify the Operator of any changes to any Environmental Authorities held by QR or variations to any other environmental information provided by QR to the Operator relevant to the operation of Train Services.

**9. ACCREDITATION**

**9.1 Evidence of Accreditation**

- (a) The Operator must on or before the commencement of any Train Services provide to QR evidence of its Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations under this Agreement and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five (5) days of such request.
- (c) Each Party will notify the other as soon as possible of any notice from an Authority affecting or likely to affect its Accreditation and will provide a copy of that notice to the other Party on request.

**10. OPERATOR'S STAFF**

**10.1 Safety of Staff**

The Operator will be fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and indemnifies and releases QR to the extent permitted by law from any liability in relation to the Operator's Staff except to the extent that such liability is caused by the wilful default or negligence of QR or QR's Staff.

**10.2 Qualifications of Operator's Staff**

The Operator must:

- (a) ensure that all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their duties related to the exercise of the Operator's rights or performance of its obligations under this Agreement) are addressed in the Interface Risk Assessment;
- (b) ensure that all Operator's Staff hold and keep current all qualifications and accreditations required under any Law and as specified in Part 2 of **Schedule 9** and undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (c) meet all costs of any training and/or testing required to meet the requirements of this Clause 10.2; and
- (d) keep QR advised of the names and position titles of all Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Operator's Staff whose details have been provided to QR in accordance with this Clause 10.2 and who satisfy the requirements of this Clause 10.2.

**10.3 Entry onto Land**

The Operator must ensure that the Operator's Staff do not enter upon the Land in a manner inconsistent with the Interface Coordination Plan, the Interface Risk Management Plan or the Operator's Emergency Response Plan without the prior written approval of QR and that, in the

event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

## 11. INTERFACE RISK MANAGEMENT

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services):
- (i) the Operator must conduct an Interface Risk Assessment jointly with QR in order to:
    - (A) identify all reasonably foreseeable Interface Risks to the Operator, QR and all persons and property and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of those Interface Risks;
    - (B) agree the applicable controls and measures to adequately address the Interface Risks identified (including any training required for the Operator's Staff) and the Party responsible for implementation of such controls and measures and ensuring their on-going effectiveness;
    - (C) agree an audit, inspection and review regime;
    - (D) agree the applicable Safeworking Procedures and Safety Standards having regard to existing QR and industry practices;
    - (E) agree the Rollingstock Interface Standards (or, if already agreed, agree variations to the Rollingstock Interface Standards); and
    - (F) agree any consequential changes to the provisions of the Agreement, including the applicable Access Charges;
  - (ii) the Parties must incorporate the above agreed outcomes, as applicable, into:
    - (A) the Interface Risk Management Plan which shall be included in Part 2 of **Schedule 9**;
    - (B) Part 1 of **Schedule 6**;
    - (C) **Schedule 3**; and
    - (D) the relevant provisions of the Agreement; and
  - (iii) the Operator is responsible for the development of the Operator's Safety Management System which must incorporate:
    - (A) the risks identified and the controls and measures and other elements included in the Interface Risk Management Plan that the Operator is responsible for implementing; and
    - (B) necessary processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the agreed Interface Risk Management Plan.



- (b) If the Parties are unable to agree any element of the Interface Risk Assessment or the Interface Risk Management Plan (including the Rollingstock Interface Standards), each Party may give notice in writing to the other Party of the dispute (“**Dispute Notice**”) whereupon either Party may refer the matter in dispute (“**Dispute**”) to an expert for resolution in accordance with Clause 17.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a Party gives a Dispute Notice to the other Party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 11(b)(ii) or the QCA in accordance with Clause 11(b)(iii), either Party may still refer the matter to an expert for resolution in accordance with Clause 17.3;
  - (ii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the QCA in accordance with Clause 11(b)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either Party may refer the matter to the Safety Regulator; and
  - (iii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the Safety Regulator in accordance with Clause 11(b)(ii), then either Party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Clause 17.6,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either Party is not satisfied with the determination of the expert, then notwithstanding Clause 17.3(i), either Party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 11(b)(ii) or the QCA under Clause 11(b)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding on the Parties.

If an expert, the Safety Regulator or the QCA is called upon under this Clause to make a determination the effect of which would be to establish the content of any aspect of the Interface Risk Management Plan, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a Dispute under this Clause that may from time to time be determined by the Safety Regulator.

Where a Dispute is referred to the QCA in accordance with this Clause, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either Party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the Parties a copy of any advice it receives from the Safety Regulator.

Where the QCA seeks advice from the Safety Regulator in relation to a Dispute, the costs of the Safety Regulator shall be borne by the Parties in such proportion as the QCA determines.

- (c) Prior to the commencement of any of the Operator’s Train Services, QR must incorporate the elements of the Interface Risk Management Plan it has agreed to be responsible for implementing into QR’s safety management system.
- (d) The Parties must advise each other of any failure to comply with the Interface Risk Management Plan as and when the Party becomes aware of such non-compliance,

including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

- (e) If at any time during the Term, either Party has reasonable grounds to believe that the Interface Risk Management Plan is no longer effective either in managing the Interface Risks it was intended to manage or in managing new or varied Interface Risks, the Parties must conduct a further joint Interface Risk Assessment to review the Interface Risks which are no longer effectively managed by the current Interface Risk Management Plan or the new or varied Interface Risks (as the case may be).
- (f) Where a Party has reasonable grounds to believe that the other Party has not or is not complying with any aspect of the Interface Risk Management Plan (including the Rollingstock Interface Standards) then, in accordance with the provisions of Clause 12, that Party may conduct or require the conduct of an inspection or audit of the relevant aspect of the Operator's Train Services or the Nominated Network (as applicable).
- (g) The Parties shall amend the Interface Risk Management Plan and this Agreement (including making any variations to the Base Access Charges) if, subsequent to an audit or inspection of the Interface Risk Management Plan, the Parties agree that such amendment is required having regard to the findings of such inspection or audit and, failing agreement, either Party may refer the issue of the need for such amendment to an expert for determination in accordance with Clause 17.3.
- (h) Where QR and the Operator agree that training of the Operator's Staff is required as a control or part of a control to a particular Interface Risk identified in the Interface Risk Assessment and the Operator can only obtain that training from QR, QR will provide the Operator with that training and be entitled to recover a reasonable commercial charge for providing such training.

## **12. INSPECTION AND AUDIT RIGHTS**

### **12.1 Rights of Inspection and Audit**

In addition to the rights of inspection and audit specified in Clauses 6 and 11(f) and subject to the provisions of this Clause 12, either Party may conduct or require the conduct of an inspection or audit relevant to assessing the other Party's compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Safeworking Procedures and Safety Standards periodically as specified in the Interface Risk Management Plan.

### **12.2 Inspection of Trains and Rollingstock**

- (a) Where QR reasonably believes that the Operator's Rollingstock or Rollingstock Configurations do not comply with:
  - (i) the authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**;
  - (ii) the Interface Risk Management Plan (including the Rollingstock Interface Standards); or
  - (iii) any applicable Laws relevant to the Operator's Train Services,

and QR cannot otherwise determine whether this is the case, QR may inspect any Trains or Rollingstock which is utilised or intended to be utilised in the operation of

Train Services or require the Operator to have an inspection conducted and for this purpose QR or QR's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.

- (b) QR shall have the right to require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as QR may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by QR.
- (c) Notwithstanding the provisions of Clause 2.7, if any of the Operator's Rollingstock is reasonably considered by QR to be loaded in excess of the limits specified in **Schedule 4** or in an unsafe or insecure manner, then QR may 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. If the Operator fails to immediately remove the excess or adjust the load, QR may arrange for its removal or adjustment and the Operator will be responsible for all resultant costs incurred by QR.

### **12.3 Notice of Inspection or Audit**

The Party conducting or requiring the conduct of an inspection or audit must give the other Party reasonable prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in Clauses 19 or 20 has occurred and such notice shall 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 upon which the Party requires the inspection or audit; and
- (f) the Party's requirements of the other Party in relation to the inspection or audit.

### **12.4 Conduct of Inspection or Audit**

- (a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the relevant Party, its appointed representative or by a suitably qualified person reasonably acceptable to both Parties, provided that if the inspection or audit would require access to commercially sensitive information of a Party and that Party has a legitimate commercial reason for wanting to withhold access to that information from the other Party, then the inspection or audit shall be conducted by a suitably qualified independent person reasonably acceptable to both Parties who shall be given access to the commercially sensitive information by the Party the subject of the inspection or audit but who shall be prohibited from disclosing that commercially sensitive information to the other Party .
- (b) The Operator shall use reasonable endeavours to ensure that QR, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the Operator) on which the Operator's Rollingstock is located from time to time (which location is specified in a notice pursuant to Clause 12.3) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.

- (c) In exercising any right of inspection or audit under this Agreement, a Party must not interfere unreasonably with the other Party's Trains and Rollingstock or Train Movements on the Nominated Network and must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other Party's business activities.
- (d) Subject to Clause 12.4(e), a Party conducting an inspection or audit ("**Inspecting Party**") will not be liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other Party as a result of the exercise by the Inspecting Party of its rights under this Clause 12 provided the Inspecting Party complies with Clause 12.4(c).
- (e) The Operator will be liable for and will indemnify QR in respect of any Claim made against QR by another Railway Operator as a result of a delay or cancellation of a Train service of that other Railway Operator as a result of the exercise by the Operator of its inspection or audit rights under this Clause 12, provided that the Operator will not be liable for, or be required to indemnify QR in respect of, any such Claim where:
- (i) the Operator has complied with Clause 12.4(c) in exercising its inspection or audit rights; and
  - (ii) the inspection or audit reveals that QR is in breach of its obligations under this Agreement.

#### **12.5 Cooperation by the Parties**

Each Party shall provide all reasonable assistance required by the other Party in conducting any inspection or audit under this Agreement, including allowing a Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with QR's Staff or the Operator's Staff (as applicable). A member of QR's Staff or the Operator's Staff (as applicable) may be present at the inspection or audit.

#### **12.6 Costs of Inspection or Audit**

- (a) The Party who conducts or requires the conduct of an inspection or audit under Clause 6 or an agreed periodic audit shall bear the reasonable costs of conducting the inspection or audit.
- (b) The Party whose operations are inspected or audited under Clause 11(f) or Clause 12.2 shall bear the reasonable costs of conducting the inspection or audit unless it is demonstrated that the stated grounds for requiring the conduct of the inspection or audit did not exist. In circumstances where the stated grounds for such inspection or audit have not been demonstrated to exist, the Party that required the conduct of the inspection or audit shall bear the costs of conducting such inspection or audit.

#### **12.7 Copies of Reports**

The Parties must provide each other with a copy of any report of any inspection or audit undertaken pursuant to this Clause 12 in respect of its compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards).

**12.8 Consequences of Inspection or Audit**

Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under Clauses 11(f) or 12.2(a)(ii) of this Agreement, that Party will be liable to the other Party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit. The Party who required the conduct of the inspection or audit shall bear the burden of establishing that a reasonable person in its position could have formed that view.

**12.9 Parties' Obligations**

An inspection or audit by a Party under this Agreement shall not relieve the other Party of its obligations under this Agreement or at Law.

**13 INSURANCE BY OPERATOR**

**13.1 Maintain Insurance Policies**

The Operator must prior to the commencement of Train Services at its expense take out and subsequently maintain current at all times during the Term insurance with a Corporation licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to QR) those policies of insurance required by this Agreement.

**13.2 Required Insurance Policies**

The Operator must take out and maintain insurance for the risks and on the terms specified in **Schedule 7**.

**13.3 Disclosure of Insurance Policies**

The Operator must provide to QR evidence of the insurance policies effected pursuant to this Clause 13 or, if requested by QR, copies of such insurance policies, to QR's reasonable satisfaction:

- (a) at least fourteen (14) days prior to the commencement of Train Services;
- (b) upon renewal of each insurance policy during the Term; and
- (c) whenever reasonably requested to do so in writing by QR.

**13.4 Failure to Disclose Insurance Policies**

If the Operator, whenever required to do so under this Agreement, fails to produce to QR evidence to the reasonable satisfaction of QR of insurances that have been effected or maintained by it, QR may :

- (a) effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to QR; and/or
- (b) terminate this Agreement pursuant to Clause 20.1(g).

**13.5 Minimum Terms of Policies**

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law :

- (a) note the interests of the Operator, any contractor and QR;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of QR (which consent shall not be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 7**.

**13.6 Operator Not to Render Policy Void**

The Operator must not render any of the insurances effected in accordance with this Clause 13 void or voidable or liable to refusal of any claim.

**13.7 Compliance**

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this Clause 13.

**13.8 Notice of Potential Claims**

In addition to any other obligation on the Operator pursuant to this Agreement, the Operator must notify QR as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement, notify QR of that event in reasonable detail and thereafter keep QR informed of subsequent developments concerning any claim.

**13.9 Operator to pay all excess/deductibles**

The Operator must in respect of any claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this Clause 13.

**13.10 Settlement of Claims**

Upon settlement of a claim under any policy required by this Agreement covering damage to Infrastructure the monies received must be paid to QR unless the Operator has already partially or totally indemnified QR for the relevant damage, in which case the monies shall be paid to the Operator but only to the extent that QR has been indemnified.

**14. INDEMNITIES AND LIABILITIES**

**14.1 Indemnity by Operator**

Subject to Clause 14.3, the Operator is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims of any nature suffered or incurred by or made or brought against QR, its directors or QR's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of QR) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Operator, the Operator's Customer or the Operator's Staff.

#### 14.2 Indemnity by QR

Subject to Clause 14.3, QR is solely liable for and releases, indemnifies and will keep indemnified the Operator, its directors and Operator's Staff against all Claims of any nature suffered or incurred by or made or brought against the Operator, its directors or the Operator's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of the Operator) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff.

#### 14.3 Liability to Third Parties

Notwithstanding Clause 14.1 or Clause 14.2, the Operator is solely liable for and releases, indemnifies and will keep indemnified QR, its directors and QR's Staff against all Claims due to or arising out of this Agreement in respect of damage to or loss of any property or personal injury to or death of any person where such person or property is being transported on Train Services except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by the wilful default or any deliberate or negligent act or omission of QR or QR's Staff. Unless otherwise agreed, the Operator shall extend to QR or procure the Operator's Customer to extend to QR any exclusion or limitation of liability afforded by the Operator's conditions of carriage with the Operator's Customer and shall provide to QR details of the Operator's conditions of carriage relevant to QR's liability in place from time to time.

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#### 14.4 Liability from Infrastructure Standard

Notwithstanding any other provision of this Agreement, QR will not be liable to the Operator or the Operator's Customer and the Operator and the Operator's Customer will not have or make any Claim against QR in respect of any loss of or damage to real or personal property, including property of the Operator or the Operator's Customer, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure except to the extent that such loss, damage, injury, cost or expense results directly from the failure of QR to perform its obligations under Clause 6.2(a).

#### 14.5 Defence of Claims

The Parties shall render each other, and the Operator will procure the Operator's Customer to render, all reasonable assistance in the defence of any Claim made against a Party by a Third Party arising out of any Incident or other event giving rise to a Claim.

#### 14.6 Continuation of Indemnities

The releases and indemnities contained in this Clause 14 for the benefit of either Party continue in full force and effect as to any Claims occurring or arising from any act occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

#### 14.7 Determination of Liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator, the Operator's Customer or QR, liability as between the Operator and QR shall for the purposes of this Clause 14 be determined:

- (a) as agreed between the Parties;

- (b) failing such agreement within one (1) Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to Clause 14.8; or
- (c) where the amount of the Claim exceeds the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and either Party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.

#### 14.8 Loss Adjuster

Where a matter is to be referred to a loss adjuster in accordance with Clause 14.7 then the following provisions of this Clause shall apply:

- (a) The loss adjuster shall be appointed by the Parties, or in default of such appointment within fourteen (14) days after the need to appoint a loss adjuster, by the President of The Chartered Institute of Loss Adjusters Australasian Division.
- (b) In any event, the loss adjuster shall:
  - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
  - (ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to fully disclose any such interest or duty before his appointment; and
  - (iii) not be an employee of the Operator or QR or of a Related Body Corporate of either Party.
- (c) The loss adjuster appointed pursuant to this Clause 14.8 shall not be permitted to act until he has given written notice of the acceptance of his appointment to both Parties.
- (d) Any loss adjuster appointed pursuant to this Clause 14.8 shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties.
- (e) Any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld), shall not apply to him or his determination or the procedures by which he may reach his determination.
- (f) Each Party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any employee, agent or contractor (including employees, agents or contractors of the Operator's Customer) involved in or with knowledge of the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (g) Each Party must make available to the loss adjuster any files, documents, data, recordings or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation.
- (h) The loss adjuster will determine the quantum of the relevant Claim and the liability of the Operator and/or QR in respect of such Claim and shall provide a copy of his report on such matters to each of the Parties within a reasonable time after his appointment.



- (i) In the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

**14.9 Costs**

The costs of the loss adjuster shall be borne by the Parties in such proportions as liability is determined by the loss adjuster or where the liability is determined by a Court, in such proportions as liability is determined by the Court.

**14.10 Relationship with Operator's Customer**

- (a) Nothing in this Agreement creates or constitutes any contract between QR and an Operator's Customer.
- (b) The Operator is responsible for all conduct of the Operator's Customer under this Agreement. Any act or omission of the Operator's Customer shall be deemed to be an act or omission by the Operator for the purposes of this Agreement.
- (c) In no event shall QR be liable to the Operator's Customer for any loss or damage suffered or incurred by the Operator's Customer and the Operator shall indemnify and shall keep indemnified QR, its directors and QR's Staff against any such liability except to the extent that QR would have been liable to the Operator had the loss or damage suffered or incurred by the Operator's Customer instead been suffered or incurred by the Operator, and taking into account the limitations upon liability contained in this Agreement.

**15. LIMITATION OF LIABILITY**

**15.1 No Liability for Consequential Loss**

Except as otherwise expressly provided in Clauses 12.8 and 19.3(b), neither Party shall in any circumstances be liable to the other for (and the indemnities in Clauses 14.1 and 14.2 shall not extend to) any Consequential Loss.

**15.2 Limitation on Claims**

Neither Party shall make any Claim against the other in respect of the neglect or default of that Party under the Agreement unless:

- (a) notice of the Claim has been given to the other within twelve (12) Months of the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds FIFTY THOUSAND DOLLARS (\$50,000.00) in respect of any one event or cause of action or series of related events or causes of action (provided that if this condition is satisfied then the Party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of FIFTY THOUSAND DOLLARS (\$50,000.00)).

**15.3 Claims in respect of non-provision of Access**

The Operator shall not have or make any Claim against QR in respect of the non-provision of Access or cancellation of any Train Service unless, and shall only have a claim to the extent that:

- (a) a Train Service is cancelled as a result of a failure by QR to make the Infrastructure available for the Operator to operate the Train Service at the Scheduled Time in the

Train Schedule and QR was unable to schedule the Train Service at a reasonable alternative time; and

- (b) the failure by QR to make the Infrastructure available was a result of a breach of this Agreement by QR, or negligence on the part of QR; and
- (c) the failure by QR to make the Infrastructure available is not attributable to:
  - (i) the Operator or the Operator's Customer;
  - (ii) another Railway Operator (other than QR);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
  - (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5** and the total number of Train Services cancelled in a Billing Period as a result of a failure by QR to make the Infrastructure available exceeds the Allowable Threshold; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the non-provision of Access or cancellation of Train Services is of a magnitude which is beyond the scope of that performance and adjustments regime.

#### 15.4 Claims in respect of delays to Train Movements

Neither Party (the "**Affected Party**") shall have or make any Claim against the other Party (the "**Defaulting Party**") in respect of delays to Train Movements unless, and shall 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 (or the Operator's Customer where the Operator is the Affected Party);
  - (ii) another Railway Operator (other than the Defaulting Party);
  - (iii) a Force Majeure Event;
  - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or

- (v) any action taken by QR, acting reasonably, in response to an emergency or a genuine safety risk; and
- (c) either:
  - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**; or
  - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the delays are of a magnitude which is beyond the scope of that performance and adjustments regime.

## 16. MATERIAL CHANGE

### 16.1 Meaning of Material Change

In this Clause 16:

- (a) **“Material Change”** means a:
  - (i) Change in Relevant Taxes;
  - (ii) Change in Law;
  - (iii) change in the funding from governments in respect of that part of the Nominated Network specified in Part 4 of **Schedule 2**; or
  - (iv) matter deemed to be a Material Change under Clause 22.18(b); and
- (b) **“Net Financial Effect”** means the net effect in financial terms of a Material Change on QR 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. Any change in the funding from governments in respect of the Nominated Network which is adverse to QR shall, to the extent that change affects the financial position of QR, be deemed to be an additional cost to QR of performing its obligations under this Agreement.

### 16.2 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the relevant Train Service under this Agreement then:
  - (i) if at any time after the date of this Agreement a Material Change occurs which affects the financial position of QR or the cost to QR of performing its obligations under this Agreement, QR may notify the Operator giving details of the Net Financial Effect of the Material Change;
  - (ii) within fourteen (14) days after receipt of a notice under Clause 16.2(a)(i), the Parties shall meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return QR to the position it would have been in had it not been for the Material Change. If the Parties do not reach agreement within twenty (20) days of QR’s notice, the matter will be referred to an expert for determination in accordance with Clause 17.3.

- (b) If a Reference Tariff is applicable to the relevant Train Service under this Agreement then the relevant Reference Tariff Schedule will provide for the consequences of Material Change.

### **16.3 Parties Obligations**

The Parties' obligations under this Agreement will continue notwithstanding the existence of a Material Change.

## **17. DISPUTES**

### **17.1 Method**

If any claim, dispute or question ("**Dispute**") arises under this Agreement or in relation to the Access Rights then unless otherwise expressly provided to the contrary in this Agreement such Dispute shall be resolved in accordance with this Clause 17 and either Party may give to the other Party to the Dispute a notice in writing ("**Dispute Notice**") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 17.

### **17.2 Chief Executive Resolution**

Except as otherwise provided in this Agreement, the Parties hereby agree that any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the chief executive of QR (or his nominee) and the chief executive of the Operator (or his nominee) for the purposes of this Clause 17.2 for resolution. Failing such resolution within fourteen (14) days or in the event that either chief executive appoints a nominee that is unacceptable to the other Party, the relevant Dispute may by agreement between QR and the Operator be referred for resolution by an expert in accordance with Clause 17.3 or by arbitration in accordance with Clause 17.4.

### **17.3 Expert**

Where any matter may be referred to an expert pursuant to Clause 17.2 or is required by this Agreement to be referred to an expert then except as otherwise provided for in this Agreement, the matter must be referred for determination by a person:

- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by, in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia, in the case of what the Parties agree are non-financial matters, the President for the time being of the Institution of Engineers, Australia and, in the case of what the Parties agree are combined financial and non-financial matters or where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate, by the President for the time being of the Queensland Law Society Incorporated;
- (b) who has appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;

- (d) who is not an employee of the Operator, the Operator's Customer or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment;
- (f) who shall have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at his request and who must provide both Parties with a copy of his determination in the form of a report within a reasonable time after his appointment;
- (g) who shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (h) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld), shall not apply to him or his determination or the procedures by which he may reach his determination;
- (i) whose decision, in the absence of manifest error, shall be final and binding upon the Parties; and
- (j) whose costs (and the costs of any advisers to the expert) shall be borne by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

Deleted: either Party

Any determination made by an expert must be consistent with the provisions of this Agreement.

#### 17.4 Arbitration

The Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Operator and QR and failing agreement upon such arbitrator within fourteen (14) days after the date of written notice from one Party to the other requiring the appointment of an arbitrator then to an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference shall be an arbitration within the meaning of the Commercial Arbitration Act 1990 (Qld), and subject to the provisions relating to arbitration contained in that Act.

#### 17.5 Determination by Court

If any Dispute is not resolved in accordance with Clause 17.2 nor referred to an expert in accordance with Clause 17.3, nor referred to arbitration by agreement of the Parties in accordance with Clause 17.4, nor referred to the QCA in accordance with Clause 17.6, then the Dispute shall be referred to the courts of the State.

#### 17.6 Queensland Competition Authority (QCA)

The Parties may agree to refer and where required by this Agreement shall refer any Dispute to the QCA.

**18. FORCE MAJEURE**

**18.1 Claim of Force Majeure**

If by reason of a Force Majeure Event occurring either Party is wholly or partially unable to carry out its obligations under this Agreement (other than an obligation to pay monies), that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and that part of the Nominated Network affected;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to remedy the situation; and
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event.

No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

**18.2 Suspension of obligations**

If by reason of a Force Majeure Event affecting all or any part of the Nominated Network either Party is delayed or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay monies) then the obligations of that Party will be suspended during that time and to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

**18.3 Duty to Mitigate**

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event.

**18.4 End of period of Force Majeure**

Subject to Clauses 18.5 and 18.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement at which time it must issue a notice to the other Party advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

**18.5 Termination for Loss or Damage to Nominated Network**

- (a) In the event that any part of the Nominated Network specified in Part 2 of **Schedule 2** is damaged or destroyed by a Force Majeure Event and in QR's reasonable opinion the cost of repairing such damage or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network, QR may by written notice advise the Operator of:
  - (i) the estimated cost of effecting the necessary repairs or replacement; and

- (ii) its intention to not repair or replace the relevant part of the Nominated Network unless the Operator and any other Railway Operator using that part of the Nominated Network pay the amounts specified by QR towards the cost of effecting the necessary repairs or replacement.
- (b) If the Operator gives notice to QR advising that it will bear the whole, or that part requested by QR, of the cost of necessary repairs or replacement, then QR will proceed with the repairs or replacement within a reasonable time after receipt by QR from the Operator of payment of the relevant amount subject to reaching agreement with any other Railway Operator using the affected part of the Nominated Network. Where the Operator pays to QR the whole of the estimated cost, QR must, upon completion of the necessary repairs or replacement, refund to the Operator any amount by which the amount paid by the Operator exceeds the actual cost and the Operator shall pay to QR the amount by which the actual cost exceeds the amount paid by the Operator.
- (c) If within sixty (60) days after receipt of a notice from QR under Clause 18.5(a) the Operator has not given notice to QR pursuant to Clause 18.5(b) indicating that it will pay the whole, or that part requested by QR, of the cost of the necessary repairs or replacement, QR shall have the right to terminate this Agreement by giving not less than thirty (30) days notice in writing to the Operator without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

#### **18.6 Termination after extended Force Majeure Event**

If by reason of a Force Majeure Event a Party ("affected Party") is rendered unable to perform its obligations under this Agreement for a period of more than three (3) consecutive Months, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one (1) Month of the end of the three (3) Month period the other Party may terminate this Agreement by thirty (30) days written notice to the affected Party and the provisions of this Agreement relating to termination set out in Clauses 20.4 and 20.5 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

### **19. SUSPENSION**

#### **19.1 Right of Suspension**

- (a) QR may, by notice in writing to the Operator prior to or immediately following the suspension, 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) the Operator fails to pay when due any amount payable under this Agreement and such default continues for seven (7) days after notice from QR to the Operator of the default;
  - (ii) the Operator fails to meet or comply with:
    - (A) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 5.1(a)(v), 7.3 and 8.6) of this Agreement and QR is of the reasonable opinion that such failure either:
      - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Infrastructure (including Infrastructure Service Providers); or

- (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property; or
- (B) the Train Service Description and QR is of the reasonable opinion that such failure either:
  - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Infrastructure (including Infrastructure Service Providers) and that QR has sought to avoid such adverse effects by rescheduling Trains and changing Train priority in accordance with the Network Management Principles provided that QR will not be obliged to take any action that may cause any additional cost or risk to QR or an adverse impact on any Railway Operator (other than the Operator); or
  - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property;
- (iii) an Insolvency Event occurs in relation to the Operator;
- (iv) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement;
- (v) the Operator fails to comply with the requirements of a notice given by QR (within the reasonable time specified in that notice) requiring the Operator to cease conduct which in the reasonable opinion of QR is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm;
- (vi) the Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for seven (7) days after notice from QR to the Operator of the default;
- (vii) the Operator fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for seven (7) days after notice from QR to the Operator of the default;
- (viii) the Operator fails to provide, prior to the departure of the Train pursuant to Clause 5.5, information that is reasonably required by QR in relation to the relevant Train in accordance with Part 2 of **Schedule 10**;
- (ix) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement;
- (x) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (xi) the events or circumstances referred to in Clause 20.1(b), (c) or (f) exist.

Such suspension shall continue until such time as the Operator has remedied the relevant default and, where appropriate, taken action to prevent its recurrence.



- (b) QR may suspend the right of the Operator to operate any Train Services on the Nominated Network in the event of breach or, acting reasonably, anticipated breach of:
- (i) any Laws relating to rail safety relevant to the operation of Train Services;
  - (ii) QR Train Control Directions given in a manner not inconsistent with the Network Management Principles;
  - (iii) Safeworking Procedures; or
  - (iv) Safety Standards,

and QR is of the reasonable opinion that such breach has caused or such anticipated breach is likely to cause, an increased risk to the safety of any person or material risk to property.

Such suspension may be effected by notice in writing prior to or immediately following the suspension and shall continue until such time as the breach is rectified or, in the event of anticipated breach, the Operator has demonstrated that it is in compliance. The Operator must ensure that upon such suspension the relevant Operator's Staff immediately ceases to perform functions on the Nominated Network until such time as the suspension is lifted by QR.

- (c) QR may suspend the operation of the Operator's Rollingstock or Rollingstock Configurations:
- (i) for actual non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where the Operator has failed to rectify such non-compliance within a reasonable period of time; or
  - (ii) for actual non-compliance or (acting reasonably) anticipated non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.

Such suspension may be effected by notice in writing to the Operator prior to or immediately following the suspension and shall continue until the Operator has rectified the non-compliance or, in the event of anticipated non-compliance, the Operator has demonstrated that it is in compliance.

## 19.2 Details of Suspension

Where QR has a right under this Clause 19 to suspend rights of the Operator, the notice of suspension given in writing by QR to the Operator 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.

**19.3 Effect of Suspension**

- (a) The suspension of any rights does not affect or suspend any other obligation of the Operator, including the obligation to pay Access Charges under this Agreement and shall be without prejudice to QR's other rights and remedies in respect of that or any other default.
- (b) Where QR suspends some or all of the Operator's Train Services, QR will be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in QR's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension. QR shall bear the burden of establishing that a reasonable person in QR's position could have formed that view.

**20. TERMINATION**

**20.1 Termination by QR**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, QR may, by notice in writing to the Operator, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) the Operator fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (b) the Operator fails to comply in any material respect with:
  - (i) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 7.3 and 8.6) of this Agreement; or
  - (ii) any QR Train Control Direction within the control of the Operator, any Safeworking Procedures or Safety Standard,and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default within, thirty (30) days after notice from QR to the Operator of the default;
- (c) the Operator fails to comply in any material respect with the Train Service Description and fails to demonstrate to the reasonable satisfaction of QR, within sixty (60) days after notice from QR to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term provided that QR, acting reasonably, has determined not to vary the Train Service Description having regard to relevant factors including:
  - (i) the impact on other users of the Infrastructure (including Infrastructure Service Providers); and
  - (ii) the efficient utilisation of the Infrastructure;
- (d) an Insolvency Event occurs in relation to the Operator and such default continues for a period of sixty (60) days;

- (e) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (f) where the Environmental Protection Agency gives the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the Operator fails, within the time:
- (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or
  - (ii) otherwise agreed to by the Environmental Protection Agency,
- to
- (iii) comply with the direction, notice or order, as modified by any court order (if applicable); or
  - (iv) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Protection Agency in relation to the requirements of the direction, notice or order,
- and such failure continues for thirty (30) days after notice by QR to the Operator to remedy such failure;
- (g) the Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (h) the Operator fails to establish, maintain or replace the Security Deposit as required under this Agreement and such default continues for thirty (30) days after notice from QR to the Operator of the default;
- (i) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement;
- (j) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for sixty (60) days after notice from QR to the Operator of the default,

provided that QR has first exercised its corresponding right of suspension under Clause 19.1.

## **20.2 Termination by the Operator**

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, the Operator may, by notice in writing to QR, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) an Insolvency Event in relation to QR occurs and such default continues for a period of sixty (60) days;

- (b) QR's Accreditation is cancelled such that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from the Operator to QR of the default;
- (c) QR fails to pay when due any amount payable under this Agreement and such default continues for thirty (30) days after notice from the Operator to QR of the default;
- (d) QR is in default of the due performance of any other obligation under this Agreement and such default continues for sixty (60) days after notice from the Operator to QR of the default.

### **20.3 Grounds for Termination to be specified**

A notice of termination given under Clauses 20.1 or 20.2 must set out the grounds for the termination.

### **20.4 Obligations and other rights upon termination or expiration**

- (a) Neither termination of this Agreement by a Party pursuant to this Clause 20 nor expiration of this Agreement prejudices:
  - (i) a Party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law; or
  - (ii) either Party's rights to recover monies due to it under this Agreement.
- (b) Upon termination of this Agreement QR and the Operator shall be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts. Any liability in respect of such antecedent breach shall be limited in the manner provided in this Agreement.

### **20.5 Removal of Rollingstock following termination**

- (a) Immediately on expiration of the Term, and as soon as practicable following termination of this Agreement for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, QR may serve notice on the Operator demanding the removal of Rollingstock within a specified time.
- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice of demand within the time specified in the notice of demand issued by QR in accordance with Clause 20.5(b), QR is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator.
- (d) The Operator is liable, and will indemnify QR, for any costs incurred by QR in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this Clause.
- (e) The Operator shall comply with all reasonable directions issued by QR in relation to the removal of the Rollingstock in accordance with this Clause.

**21. ASSIGNMENT**

**21.1 Assignment by QR**

QR may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Operator provided that QR procures the Assignee to covenant with the Operator by deed to be bound by and to perform the obligations of QR under this Agreement to the extent of the rights and obligations Assigned to the Assignee. Upon the Assignee entering into that deed QR will be released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

**21.2 Assignment by the Operator**

- (a) Subject to the following provisions of this Clause 21.2, the Operator shall not Assign its rights or obligations, or any part thereof, under this Agreement without the prior written consent of QR, which consent may not be unreasonably withheld.
- (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) a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Agreement provided that the Operator shall remain liable for the performance of the duties, responsibilities and obligations assumed by the Assignee and provided however that performance by the Assignee will pro tanto discharge the Operator from liability for performance of those duties, responsibilities and obligations that are Assigned; or
  - (ii) a person other than a Related Body Corporate of the Operator with the prior written consent of QR, provided that such consent will not be unreasonably withheld if QR is satisfied that such person:
    - (A) is financially sound;
    - (B) is Accredited to operate Train Services; and
    - (C) is otherwise capable of performing the obligations of the Operator under this Agreement.
- (c) Any Assignment by the Operator of its rights or obligations under this Agreement will be conditional upon and will not take effect until the Assignee covenants with QR by deed, in such terms as QR may reasonably require, to be bound by and to perform the obligations of the Operator under this Agreement.
- (d) Except where the Operator is a company the shares in which are quoted by the Australian Stock Exchange Limited, any change in shareholding of the Operator altering the effective control of the Operator will be deemed to be an Assignment of this Agreement.
- (e) The Operator shall not:
  - (i) register, record or enter in its books any transfer of any share or shares in the capital of the Operator ;
  - (ii) deal with any beneficial interest in any such share or shares;

- (iii) issue any new share or shares; or
- (iv) take or attempt to take any action having the effect:
  - (A) of altering the control of the Operator ; or
  - (B) that the shareholders of the Operator at the date of this Agreement together beneficially hold or control less than 51% of the voting rights of capital in the Operator,

until the requirements of this Clause 21.2 have been complied with.

### **21.3 Charging**

A Party (“**Chargor**”) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (“**Chargee**”) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee shall first covenant in writing in favour of the other Party (“**Non-Charging Party**”), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this Clause 21 as if it were originally a party hereto, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this Clause 21.

## **22. GENERAL**

### **22.1 Variation/Amendment**

Except as otherwise provided in this Agreement any variation or amendment to this Agreement must be in writing signed by both Parties.

### **22.2 Confidentiality**

The Parties shall comply with the provisions of the confidentiality deed set out in **Schedule 12**.

### **22.3 Intellectual Property**

All material supplied or made available by one Party (“**the Supplier**”) to the other Party remains the intellectual property of the Supplier and cannot be reproduced nor used for any purpose other than the purpose for which it was supplied without the approval of the Supplier .

### **22.4 Entire Agreement**

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.

- (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.

#### **22.5 Non-merger**

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

#### **22.6 Authority to enter into Agreement**

- (a) The Parties represent and warrant to and covenant with each other that they have full power to enter into and perform their obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Parties respectively enforceable in accordance with its terms.
- (b) If this Agreement is executed by an attorney the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

#### **22.7 Interpretation not to disadvantage a Party**

In the interpretation of this Agreement no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part thereof.

#### **22.8 Relationship**

- (a) The relationship between the Parties is entirely contractual and nothing in this Agreement creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (b) This Agreement is for the exclusive benefit of the Parties and does not create any rights in any Third Parties.

#### **22.9 Notices**

##### **(a) Form of Notice**

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a QR Train Control Direction or a direction from the QR Commander) ("**Notice**") must be in writing and signed by an authorised officer of that Party and may, if so agreed by QR, be in electronic form.

##### **(b) Method of Service**

A Notice may be given by:

- (i) being personally delivered on a Party;
- (ii) being left at the Party's current address for service;

- (iii) being sent to the Party's current address for service by pre-paid ordinary mail; or
- (iv) being sent by facsimile transmission to the Party's current facsimile number for service provided that a copy of the notice is then delivered by one of the means described above.

(c) **Deemed Notice**

A Notice is deemed given if:

- (i) personally delivered, upon delivery;
- (ii) posted to an address in Australia, three (3) days after posting;
- (iii) sent by facsimile, on the next day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number.

(d) **Addresses for Service**

- (i) Each Party's address for service is:

**QR:**

Address: [\*\*\*]

Facsimile: [\*\*\*]

Attention: [\*\*\*]

**Deleted:** Floor 21, 127 Creek Street, BRISBANE QLD 4000

**Deleted:** 07 – 3235 3439

**Deleted:** Group General Manager, Network Access

**Operator**

Address: [\*\*\*]

Facsimile: [\*\*\*]

Attention: [\*\*\*]

- (ii) A Party may from time to time change its particulars of service by giving written notice of that change to the other Party

**22.10 Certificate**

A certificate signed by any duly authorised officer of QR as to a matter or as to a sum payable to QR in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

**22.11 Costs**

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.



**22.12 Stamp Duty**

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If QR pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under or in connection with it, the Operator must reimburse QR the amount paid upon demand.

**22.13 Waiver and Exercise of Rights**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of succeeding defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

**22.14 Computation of Time**

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

**22.15 Severance of invalid or illegal terms**

- (a) If any term of this Agreement, or its application to any Party, person or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:
  - (i) that term or its application to such Party, person or circumstance is severable from this Agreement;
  - (ii) the remainder of this Agreement, excluding the severed part, remains in force and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
  - (iii) to the extent permissible by law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.

- (b) The Parties must act reasonably and in good faith in seeking an agreement under this Clause as to a replacement term. If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with Clause 22.15(a)(i) and (ii).

#### 22.16 Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

#### 22.17 Approvals and Consents

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

#### 22.18 Ownership of Land

The Operator acknowledges that ~~the land identified in Part 5 of Schedule 2:~~

Deleted: QR does not own or control

~~(a) is not owned or controlled by QR; and~~

~~(b) is not land to which Subparagraph 2.1(c)(ii)(C) of QR's Access Undertaking applies and in respect of which entry is required to be given by QR under Subparagraph 2.1(c)(ii)(C) of QR's Access Undertaking (as those provisions are amended, varied or replaced from time to time) as part of access to the Nominated Network.~~

and agrees that in respect of that land owned or controlled by another person ("Landowner") then:

~~(c) the Operator will comply with the requirements of the Landowner in relation to that land as notified to the Operator by QR from time to time;~~

Deleted: a

~~(d) if, after the date of this Agreement, there is a change in the costs incurred by QR due to the requirements of the Landowner in respect of that land, then that change shall be deemed to be a Material Change; and~~

Deleted: b

~~(e) if QR's rights in respect of that land are terminated for any reason other than the default of QR of any agreement that affects QR's use of that land or other than by agreement with the Landowner, then QR may by notice to the Operator suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that land.~~

Deleted: c

#### 22.19 Implementation of Agreement

Each Party must promptly execute all documents and do all such acts and things as is necessary or desirable to implement and give full effect to the provisions of this Agreement.

#### 22.20 Schedules

In the event that the content of a Schedule requires variation or replacement in accordance with this Agreement, QR shall issue to the Operator a replacement Schedule which shall upon issue be substituted for and replace the relevant Schedule in this Agreement. Nothing in a Schedule shall be varied in any way except by the issue of a replacement Schedule by QR in accordance with this Clause.

#### 22.21 Governing Law and Jurisdiction

This Agreement shall be interpreted according to the Laws for the time being in force in the State and each of the Parties submits to the jurisdiction of the courts of the State and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.

**22.22 Most Favoured Nation Status**

- (a) If the Operator believes on reasonable grounds that:
- (i) QR has entered into an access agreement with another Railway Operator for a Train service that transports the same specified commodity in the same specified geographic area as a Train Service provided in accordance with this Agreement (“**Like Train Service**”); and
  - (ii) the Access Charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR’s Access Undertaking,
- the Operator may provide written notification to QR which must include the reasons why the Operator considers this to be the case.
- (b) Within thirty (30) days of receipt of such notification, QR must advise the Operator:
- (i) whether or not QR agrees that the access agreement with the other Railway Operator is for a Like Train Service and, if not, the reasons why QR considers this to be the case;
  - (ii) if QR agrees that the access agreement with the other Railway Operator is for a Like Train Service, whether or not QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in QR’s Access Undertaking and, if not, the reasons why QR considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
  - (iii) if QR agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation then within sixty (60) days of advice provided pursuant to Clause 22.22(b) QR must advise the Operator:
    - (A) whether or not QR has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in QR’s Access Undertaking; or
    - (B) if QR has not been able to vary the access charge applicable to the Like Train Service that QR agrees to the reduction of the Access Charge payable by the Operator including the amount of the proposed reduced Access Charge.
- (c) If the Operator does not agree with QR’s response to its notification, the dispute shall be referred to an expert for resolution in accordance with Clause 17.3.
- (d) If:

QLD Competition Authority  
Date Received  
12-May-2008

- (i) another Railway Operator provides QR with notification that it believes that some or all of the Operator's Train Services are a Like Train Service to a Train service operated by the other Railway Operator, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking; and
- (ii) QR agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in QR's Access Undertaking,

then QR has the right by notice to the Operator to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in QR's Access Undertaking.

**EXECUTION**

Executed in Queensland

**SIGNED** for and on behalf of )

QR NETWORK PTY LTD )

in the presence of: )

Deleted: QUEENSLAND  
RAIL

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**[the OPERATOR]** )

in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Note:** QR will require the Operator to execute this Agreement either:

- (a) under seal; or
- (b) under s127(i) of the Corporations Act; or
- (c) under a duly executed Power of Attorney.

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**SCHEDULE 1**  
**TRAIN SERVICE ENTITLEMENTS**

**PART 1 TRAIN SERVICE DESCRIPTION**

**1.1 Train Service Characteristics**

The following tables define the characteristics of Train Services which characteristics shall form part of the Train Service Description.

**Commodity:** Coal  
**Sectional Run Times:** See Clause 1.2  
**Special Operating Restrictions:** See Clause 1.5

**System:**

<b>Origin</b>	<b>Destination</b>	<b>Distance (km)</b>	<b>Average Time at Origin Loading Facility (hrs)</b>

Notes: Origin is denoted as the mine and/or QR terms for the location at which the mine loads Trains Train Services run loaded between Origin and Destination and empty between Destination and Origin.  
Average time at Loading Facility is measured on a monthly basis

For Train Services with the above characteristics, the average time at the Destination unloading facility is as per the following table.

<b>Destination Unloading Facility</b>	<b>Average Time at Destination Unloading Facility (hrs)</b>

Notes: Average time at unloading facility is measured on a monthly basis.

For Train Services with the above characteristics, the average time at Depot and the average Other Dwell Time are as per the following table:

<b>System</b>	<b>Average Time at Depot (hrs)</b>	<b>Average Other Dwell Time (hrs)</b>

**1.2 Sectional Running Times**

The Sectional Running Times to be achieved by coal system Trains are set out in Table 1.2 below:

**Table 1.2 -Sectional Running Times:**

From	To	Sectional Running Time	
		Direction Empty (minutes)	Direction Loaded (minutes)

Note: A Diagram illustrating the location of each Section can be found in **Schedule 2**.

*[Operator to provide details of Sectional Running Times]*

### 1.3 Train Service Levels

The number of Nominated Weekly Train Services for the relevant coal system Train that QR will provide to the Operator from the Commitment Date are set out in Table 1.3 below:

**Table 1.3: Train Service Levels**

Service Levels	No. of Train Services
Nominated Weekly Train Services <sup>1</sup>	
Nominated Monthly Train Services <sup>1</sup> (31 days)	
Nominated Monthly Train Services <sup>1</sup> (30 days)	
Nominated Monthly Train Services <sup>1</sup> (29 days)	
Nominated Monthly Train Services <sup>1</sup> (28 days)	
Nominated Annual Train Services <sup>1</sup>	

<sup>1</sup> NB: A Train Service is a One Way Train Service

The above Train Service Levels will be converted into timetables using the process referred to in paragraph 2.2(i) of the Scheduling Principles set out in **Schedule 10**.

### 1.4 Transit Times

The transit times applicable to a Train Service for each Origin/Destination combination by system are:

- The sum of the Sectional Running Times as per Table 1.2 for the Sections over which the Train Service operates multiplied by the following applicable factors:

Coal	Average Transit Time (hrs)	Maximum Transit Time (hrs)
Empty Direction		
Loaded Direction		

### 1.5 Special Operating Restrictions

In scheduling Train Services in accordance with the Network Management Principles, QR will comply with the following special operating restrictions:

*[Specific operating restrictions to be agreed]*

## 1.6 Cycle Description

With the following exceptions, the Train Services Cycle description is the most direct route over the Nominated Network between the Origins and Destinations and Destinations and Origins (as described in Paragraph 1.1).

Note: Where there is duplicated Track or multiple roads (eg yards), QR will have the ability to schedule the Train over any of the Tracks or roads.

### Exceptions

*[To be agreed]*

## 1.7 Stowage

*[To identify any agreed short term Stowage requirements additional to that provided in the relevant Reference Tariff Schedule]*

## 1.8 Permitted Movements on the Nominated Network

*[To detail any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times]*

## 1.9 Agreed Exit Threshold and Agreed Deterioration Threshold

**Agreed Exit Threshold:**

**Agreed Deterioration Threshold:**

**SCHEDULE 2**  
**NOMINATED NETWORK**

**PART 1 EXTENT OF NOMINATED NETWORK**

For the purposes of this Agreement the Nominated Network on which the Operator will be entitled to operate Train Services will be described by a combination of diagram and/or table but does not include freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

*[Diagram/table to be inserted as applicable]*

**PART 2 PARTS OF NOMINATED NETWORK SUBJECT TO CLAUSE 18.5**

The following line sections to the extent they form part of the Nominated Network as specified in Part 1 of this **Schedule 2** will be subject to the provisions of Clause 18.5 of the Agreement:

*[To be inserted if applicable]*

**PART 3 TRAIN CONTROL CENTRES AND SIGNAL CABINS**

The movement of the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins as follows:

*[Diagram to be inserted]*

**PART 4 PARTS OF THE NOMINATED NETWORK SUBJECT TO CLAUSE 16.1(a)(iii)**

*[To be inserted if applicable]*

**PART 5 LAND IN WHICH OTHER PARTIES HAVE AN INTEREST (Clause 22.18)**

*[To be inserted if applicable]*

**PART 6 WEIGHBRIDGES AND OVERLOAD DETECTORS (Clause 2.7)**

**A. WEIGHBRIDGES CERTIFIED FOR BILLING PURPOSES:**

<b>Location</b>	<b>Owner/Operator</b>	<b>Weighbridge "In Motion Trade Certificate" Electronic Weighing and Billing</b>

The tolerances are those required to achieve certification.

**B. AGREED OPERATIONAL WEIGHBRIDGES AND OVERLOAD DETECTORS**

<b>Location</b>	<b>Owner/Operator</b>	<b>Tolerance</b>
		+/- (x)%



**SCHEDULE 3**  
**CALCULATION OF ACCESS AND OTHER CHARGES**

**PART 1 BASE ACCESS CHARGES**

1.1 Table 1.1 below defines the seven elements of the Base Access Charges that are used to calculate the Access Charge payable by the Operator to QR for each Train Service:

**Table 1.1: Base Access Charge and X Factors**

			Base Access Charge	X Factors
<b>Train Service</b>				
<b>Origin</b>				
<b>Destination</b>				
<b>Incremental Maintenance Tariff</b>	(\$/000 Gtk)	<b>AT<sub>1</sub></b>		0
<b>Incremental Capacity Tariff</b>	(\$/ One Way Train Service)	<b>AT<sub>2</sub></b>		0
<b>Allocated Tariff 1</b>	(\$/000 Ntk)	<b>AT<sub>3</sub></b>		0
<b>Allocated Tariff 2</b>	(\$/net tonne)	<b>AT<sub>4</sub></b>		0
<b>Electric Tariff</b>	(\$/000 Gtk)	<b>AT<sub>5</sub></b>		0
<b>Electric Energy Charge</b>	(\$/000 Gtk)	<b>EC</b>		0
<b>QCA Levy</b>	(\$/net tonne)	<b>QL</b>		

1.2. The elements of the Base Access Charge will be escalated in accordance with Part 4 of this **Schedule 3**.

1.3 Table 1.1 above defines the X Factors and Table 1.2 below defines the First Escalation Dates to be used in escalating the Base Access Charge elements pursuant to Clause 4.1 of this Schedule 3.

**Table 1.2: First Escalation Date for Escalation**

Train Service	Origin	Destination	First Escalation Date
Train Service	Origin	Destination	

**PART 2 RELEVANT OPERATING PARAMETERS**

2.1 The calculation of Gtk, Ntk and net tonnes for application with the Base Access Charges in Part 5 of this Schedule shall be as detailed in this Part 2.

2.2 The gross tonnes for each individual Train Service operated will be the sum of:

- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
- (b) the mass determined at any Weighbridge located adjacent to the loading facilities for each loaded or partly loaded Wagon comprising the Train Service;

- (c) where there is no Weighbridge located adjacent to the loading facility or that Weighbridge has malfunctioned the mass determined at the closest Weighbridge to the loading facility located en route for each loaded or partly loaded Wagon comprising the Train Service;
  - (d) where all Weighbridges en route have malfunctioned, the average mass for loaded Wagons of that class of Wagon determined for all Trains operated of the same Train Service type in the most recent Month during the previous twelve (12) Months for which a Weighbridge was functioning for the entire Month for each loaded or partly loaded Wagon comprising the Train Services provided such data is available; or
  - (e) where there are no Weighbridges located en route between the Origin and Destination or no data is available pursuant to paragraph (d) of this Clause the maximum gross mass as specified in **Schedule 4** for each loaded or partly loaded Wagon comprising the Train Service;
  - (f) the tare mass as specified in **Schedule 4** for each empty Wagon comprising the Train Service; and
  - (g) for all other Rollingstock, the maximum gross mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.
- 2.3** The Gtk for each individual Train Service operated shall be the gross tonnes for the Train Service as calculated in Clause 2.2 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.
- 2.4** The net tonnes for each individual Train Service operated shall be the gross tonnes as calculated in Clause 2.2 of this Schedule less the sum of:
- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
  - (b) the tare mass as specified in **Schedule 4** for each Wagon comprising the Train Service; and
  - (c) for all other Rollingstock, the tare mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.
- 2.5** The Ntk for each individual Train Service operated shall be the net tonnes for the Train Service as calculated in Clause 2.4 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.

### **PART 3 REVIEW DATE**

#### **3.1 Review Date**

**3.1.1** The Parties acknowledge that the Base Access Charge elements have been agreed by reference to the relevant Reference Tariffs in place at the time.

**3.1.2** For the purposes of this **Schedule 3** the Review Dates shall be the first day of the Month immediately following the Month in which the Reference Tariff Schedule relevant to the Train Services has been renewed or varied, or the Reference Tariff relevant to the Train Services has been adjusted or varied, in accordance with QR's Access Undertaking.

#### **3.2 Review of Charges**

- 3.2.1** For each Train Service type the Base Access Charge elements, the X Factors, the First Escalation Date and, where necessary, any other elements of this Schedule 3 will be reviewed on each Review Date.
- 3.2.2** For each Train Service type QR will advise the Operator in writing of the Base Access Charge elements, the X Factors, the First Escalation Date and any other changes to this **Schedule 3** to apply from each Review Date within 14 days of the latter of the Review Date or the date on which the QCA endorses the relevant renewal or variation. In determining any variations, QR will have regard to:
- (a) the new or varied relevant Reference Tariffs;
  - (b) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (c) other related factors in the relevant Reference Tariff Schedule; and
  - (d) QR's Access Undertaking.
- 3.2.3** If the Operator does not accept some or all of the variations advised pursuant to Clause 3.2.2 of this Schedule, the Operator must give QR notice within 14 days of receipt of notice of the variations.
- 3.2.4** The Parties will negotiate in good faith to attempt to agree any new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule for which the Operator has given notice pursuant to Clause 3.2.3 of this Schedule.
- 3.2.5** If the Parties have not agreed the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule within thirty (30) days of the relevant Review Date, either Party may refer the determination of the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule to an expert in accordance with Clause 3.3 of this **Schedule 3**.
- 3.2.6** Unless and until agreement is reached or a determination is made pursuant to Clause 3.2 of this Schedule, the Base Access Charge elements, X Factors, First Escalation Date and/or any other relevant provision of this Schedule prevailing as at the Review Date shall continue to be utilised to determine the amount of Access Charges payable by the Operator. If any change in the Base Access Charge elements, X Factors or First Escalation Date is subsequently agreed or determined then the revised Base Access Charges, Escalation Factor or First Escalation Date will apply from the relevant Review Date and the Parties will account to one another accordingly.
- 3.3 Expert Review**
- 3.3.1** This Clause 3.3 only applies where the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are referred to an expert for review pursuant to Clause 3.2 of this **Schedule 3**.
- 3.3.2** Where a matter is to be referred to an expert pursuant to Clause 3.2 of this Schedule, the matter must be referred for determination by a person:
- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by the President for the time being of the Australian Society of Certified Practising Accountants;

- (b) who has appropriate qualifications and practical experience having regard to the nature of the matter in dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Operator or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment; and
- (f) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

**3.3.3** QR will provide the expert with documentation to support the QR determination of the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule. The expert may request any other documentation from either Party or any other party as it sees fit in order to determine the outcome of the dispute.

**3.3.4** The expert shall be required to undertake to keep confidential all matters coming to its knowledge by reason of the expert's appointment and performance of its duties, other than that already in the public domain. The expert shall not include such information in its reasons for reaching the determination.

**3.3.5** The expert shall review the QR documentation and either:

- (a) uphold the QR Base Access Charge elements, X Factors and/or First Escalation Date and/or any other changes to this Schedule proposed by QR; or
- (b) where the expert believes the QR provided Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule have not been determined consistent with QR's Access Undertaking and the relevant Reference Tariff Schedule, the expert shall seek to reach agreement with QR as to, and failing agreement shall determine, appropriate Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule, having regard to:
  - (i) the new relevant Reference Tariffs;
  - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (iii) other related factors in the relevant Reference Tariff Schedule; and
  - (iv) QR's Access Undertaking.

**3.3.6** The expert will report its findings to QR and the Operator and the reasons for such assessment.

**3.3.7** In the absence of manifest error, the decision of the expert shall be final and binding upon the Parties.

**3.3.8** The costs of the expert and any advisers to the expert shall be borne by:

- (a) the Operator in the event that the expert does not adjust the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule most recently proposed by QR prior to referral to the expert;
- (b) QR in the event that the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are varied from those most recently proposed by QR prior to referral to the expert; or

(c) in such other proportion as the expert considers appropriate.

#### **PART 4 ESCALATION FORMULA**

**4.1** Unless otherwise agreed between the Parties, the Base Access Charge elements, except the QCA Levy, and any other charges specified as being subject to escalation will escalate on each Escalation Date from and including the First Escalation Date, in accordance with the following formula:

$$BAC_n = BAC_{n-1} * (CPI_n / CPI_{n-1} - X)$$

Where:

$BAC_n$  means the escalated value of the relevant Base Access Charge element or other charge for the purpose of calculating Access Charges and other charges payable under this Agreement pursuant to Part 5 of this Schedule;

$BAC_{n-1}$  means the escalated value of the relevant Base Access Charge element or other charge applied prior to the relevant Escalation Date or in the case of Access Charges at the First Escalation Date means the relevant Base Access Charge element shown in Table 1.1;

X means the X Factors shown in Table 1.1 for the relevant Base Access Charge element and is zero for all other charges;

$CPI_n$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 6 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined;

$CPI_{n-1}$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 9 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined.

#### **4.2 Review of Consumer Price Index**

**4.2.1** If in the reasonable opinion of QR or the Operator the Consumer Price Index used for the purposes of the escalation formula specified in Clause 4.1 of this Schedule:

- (a) is altered in a material way;
- (b) ceases to be published; or
- (c) ceases to be published at sufficiently regular intervals or is likely to cease to be published at sufficiently regular intervals for the purpose of the formula in Clause 4.1 of this Schedule,

then QR or the Operator (as the case may be) shall notify the other Party in writing of such opinion.

**4.2.2** Upon such notice being given, the Parties will negotiate with a view to agreeing to vary the application of the Consumer Price Index or to adopting an alternative or alternatives to the Consumer Price Index and failing agreement within forty five (45) days of such notice being given then the matter shall be referred to an expert in accordance with Clause 17.3 of the Agreement.

- 4.2.3 If the dispute is resolved after the next Escalation Date, the Parties agree to retrospectively adjust any Access Charges invoiced since that date to be consistent with the outcome of the dispute resolution.

## PART 5 CALCULATION OF INVOICE FOR ACCESS

- 5.1 The amount of the invoice for charges payable by the Operator under this Agreement for the relevant Billing Period shall be calculated in accordance with the following formula:

$$TC = AC * (1 + GST) + G$$

Where

TC is the total amount of charges payable by the Operator for the relevant Billing Period;

AC is the sum of the Access Charges payable for the relevant Billing Period in respect to each Train Service type where the Access Charges payable for each Train Service shall equal the sum of IM, ICC, ALT1, ALT2, ET, EE, QL, and ATP for each Train Service type;

IM is the incremental maintenance charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_1 * GTK) / 1000$$

Where

AT<sub>1</sub> is the amount specified as AT<sub>1</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

GTK is the sum of the Gtk for all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual Train Service operated being determined in accordance with Clause 2.3 of this Schedule;

ICC is the incremental capacity charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_2 * NTS$$

Where

AT<sub>2</sub> is the amount specified as AT<sub>2</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NTS is the number of relevant individual Train Services operated for the relevant Billing Period;

ALT1 is the Ntk allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_3 * NTK) / 1000$$

Where

AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NTK is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;

ALT2 is the net tonne allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_4 * NT$$

Where

AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ET is the electric traction charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_5 * eGTK) / 1000$$

Where

AT<sub>5</sub> is the amount specified as AT<sub>5</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

EE is the electric energy usage charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(EC * eGTK) / 1000$$

Where

EC is the amount specified as EC in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the

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relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

QL is the QCA Levy charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$QL * NT$$

Where

QL is the amount specified as QL in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ATP is the annual take or pay charge for the relevant Train Service type, calculated for:

- (a) for that part of the first Year following the Commitment Date until 30 June, all Billing Periods from the Commitment Date up to and including the Billing Period commencing 1 June;
- (b) the twelve (12) Billing Periods during a full Year commencing 1 July; or
- (c) for a Year commencing on 1 July and ending on the date of expiry or termination of this Agreement, the twelve (12) Months commencing when that Year commences,

but applied only in the last Billing Period of the period identified in (a) or (b) above or in the case of (c) above, where the last day of the Year is not 30 June, on the first 30 June following the last day of that Year (which is the relevant Billing Period for the purposes of this calculation), and shall be, subject to ATP not being less than zero:

- (d) if  $SGtkY \geq (FGtkY - QRGtkY)$ , zero;
- (e) if  $TR \geq SAR$ , zero;
- (f) if  $TR < SAR$  and  $TATP > MTPA$ , TPA; or
- (g) otherwise, ATPY,

Where:

SGtkY is the System Gtk for the period identified in (b) or (c) above;

FGtkY is the Forecast Gtk for the period identified in (b) or (c) above;



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QRGtkY is the System Gtk that would have been achieved solely due to coal carrying Train Services that were unable to operate in the period identified in (b) or (c) above directly as a result of a QR Cause; and

TR subject to Clause 5.2 of this **Schedule 3**, is the Total Actual Revenue for  $AT_{2-4}$  for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year less the aggregate amount of Take or Pay for the relevant Year that QR would be entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking);

SAR subject to Clause 5.2 of this **Schedule 3**, is the System Allowable Revenue for  $AT_{2-4}$  for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;

MTPA is the amount by which SAR exceeds TR;

TATP subject to Clause 5.2 of this **Schedule 3**, is the aggregate amount of Take or Pay that QR would be entitled to earn from all Access Agreements executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place of the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking) in relation to the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;

TPA is calculated by the formula:

$$MTPA * (ATPY / TATP)$$

ATPY is calculated by the formula:

$$AT_2 * (CNTSY - QRNTSY - NTSY) + AT_3 * (CNTKY - QRNTKY - NTKY) + AT_4 * (CNTY - QRNTY - NTY)$$

Where:

$AT_2$  is the amount specified as  $AT_2$  in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;

CNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services that the Operator was entitled to operate in the relevant period under **Schedule 1** been operated;

- QRNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause;
- NTSY is the number of the relevant individual Train Services operated for the relevant Year identified in (a), (b) or (c) above;
- AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;
- CNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Operator was entitled to operate in the relevant period under **Schedule 1** been operated and where Ntk is determined by identifying CNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;
- QRNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Ntk is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;
- NTKY is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;
- AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;
- CNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Operator was entitled to operate in the relevant period under **Schedule 1** been operated and where Nt is determined by identifying CNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service;

QRNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Nt is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service; and

NTY is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule.

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 including charges for GST not already factored in by the formula for AC including, but not limited to, payment for Ancillary Services, interest, Overload Charges, payment for ad-hoc Train services not calculated in AC above, performance payments from **Schedule 1** or **Schedule 5** and any adjustments (positive or negative).

**5.2** For the purposes of the definitions of TR, SAR and TATP, each of the following terms has the meaning given to that term in QR's Access Undertaking as at the date of this Agreement (including, for the avoidance of doubt, where that term is defined in Schedule F of QR's Access Undertaking):

- (a) Access Agreement;
- (b) Access Rights;
- (c) AT<sub>2,4</sub>;
- (d) Commencing Date;
- (e) Individual Coal System Infrastructure;
- (f) New Access Agreement;
- (g) Take or Pay;
- (h) Total Actual Revenue;
- (i) Train Service;
- (j) System Allowable Revenue; and
- (k) Year.

For the purposes of the definitions of TR and TATP, the amount of Take or Pay that QR is entitled to earn will be calculated in accordance with Subclause 2.2.6, Part B, Schedule F of QR's Access Undertaking as at the date of this Agreement.

**5.3** For the purposes of this **Schedule 3** a Train Service is a One Way Train Service.

- 5.4 A Train Service shall be deemed to commence at that time nominated by QR in accordance with its information systems in use at the time.

**PART 6 OVERLOAD CHARGES**

Overload Charges will be levied at the rate specified in the relevant Load Variation Table published by QR from time to time. The method of calculation and required payment method for Overload Charges will be advised.

**SCHEDULE 4**  
**AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS**

**Clause 5.9**

**PART 1      AUTHORISED ROLLINGSTOCK**

1.1            The following Rollingstock is authorised for operation on the Nominated Network subject to continued compliance with the criteria detailed for each respective item of Rollingstock. Inclusion in this Part 1 is not sufficient for operation on the Nominated Network (or any other part of the Infrastructure) and specific authorisation for the Rollingstock in this Part 1 as part of a Rollingstock Configuration in Part 2 is required prior to any operation of Train Services.

**LOCOMOTIVES:**

<b>Class</b>	
<b>Type</b>	
<b>Locomotive Identification Numbers</b>	
<b>Electric or diesel</b>	
<b>Vehicle Length over Coupling Centres</b>	
<b>Gross Mass</b>	
<b>Maximum Axle Load</b>	
<b>Axle Configuration</b>	
<b>Clearance Category</b>	
<b>Maximum Speed</b>	
<b>Total brake force empty (kN) including method of measurement or calculation</b>	
<b>Total brake force loaded (kN) including method of measurement or calculation</b>	
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>	
<b>Brake block or disc pad type</b>	
<b>Drawgear capacity</b>	
<b>Driver Cabs</b>	
<b>Driver Stations per Cab</b>	
<b>Brakes (26L equiv.)</b>	
<b>Dynamic Brake</b>	
<b>Train Radio</b>	
<b>Fuel Capacity</b>	
<b>General Arrangement Diagram Number</b>	
<b>Compatible with Safeworking DTC/RCS</b>	
<b>Notes and Conditions</b>	
<b>Other</b>	

**WAGONS:**

<b>Class</b>				
<b>Type</b>				
<b>Wagon ID Number</b>				
<b>Vehicle Length over Coupling Centres</b>				
<b>Maximum Gross Mass</b>				
<b>Maximum Allowable Gross Tonnage</b>				
<b>Maximum Desirable Gross Tonnage</b>				
<b>Tare Mass</b>				
<b>Payload</b>				
<b>Maximum Axle Load</b>				
<b>Type of payload (eg dangerous goods)</b>				
<b>Total brake force empty (kN) including method of measurement or calculation</b>				
<b>Total brake force loaded (kN) including method of measurement or calculation</b>				
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>				
<b>Brake block or disc pad type</b>				
<b>Drawgear capacity</b>				
<b>Clearance Category</b>				
<b>Maximum Speed Empty</b>				
<b>Maximum Speed Loaded</b>				
<b>Drawgear Type</b>				
<b>General Arrangement Daigram Number</b>				
<b>Notes and Conditions</b>				
<b>Other</b>				

**PART 2 AUTHORISED ROLLINGSTOCK CONFIGURATIONS**

**2.1** The following Rollingstock Configurations for Train Services have been authorised for use on the Nominated Network subject to compliance with the criteria detailed below:

<b>Locomotive Class/Type</b>	
<b>Number of locomotives</b>	
<b>Wagon Class/Type</b>	
<b>Maximum number of trailing wagons per locomotive</b>	
<b>Maximum allowable number of trailing wagons in train configuration</b>	
<b>Maximum Allowable Gross Tonnage</b>	
<b>Empty tare tonnage (incl. Locos)</b>	
<b>Maximum Train length</b>	
<b>Maximum speed of empty Train</b>	
<b>Maximum speed of loaded Train</b>	
<b>Limitations/restrictions on marshalling order</b>	
<b>Train braking characteristics</b>	
<b>Brake delay time</b>	
<b>Deceleration rate</b>	
<b>Notes and Conditions</b>	
<b>Any variations from Reference Train Service description</b>	
<b>Other</b>	

**PART 3 RELEVANT ROLLINGSTOCK (Clause 7.4(d)(ii))**

*[To be inserted as applicable]*

**SCHEDULE 5  
PERFORMANCE LEVELS**

**Clause 5.6**

**SCHEDULE 6  
SAFEWORKING PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES &  
ENVIRONMENTAL STANDARDS**

**Clauses 7.1 and 8.1**

**PART 1 SAFWORKING PROCEDURES / SAFETY STANDARDS**

**1.1 QR's Safeworking Procedures**

QR's Safeworking Procedures that apply to the Nominated Network are as detailed in:

*[To be identified in and completed after the Risk Assessment]*

QR's Safeworking Procedures and Safety Standards form part of QR's safety management system and may be altered from time to time by QR in the manner prescribed in the Agreement and advised in accordance with Part 6 of **Schedule 10**.

**1.2 Line Sections**

The following specific Safeworking Procedures are in operation for the line sections and station yards that comprise the Nominated Network as detailed below:

System	From	To	Safeworking Procedures

**1.3 Localised Areas**

For localised areas such as station yards, QR station masters, signalmen or similar officers may be responsible for giving QR Train Control Directions.

**1.4 High Visibility Clothing**

High visibility clothing is to be constructed from high daytime visibility (Class F) materials, orange (special purpose) in colour. During the hours of darkness or when



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working in tunnels or low light weather conditions or between 1700 - 0800 hours, the high visibility clothing shall include shall include retroreflective (Class R) material. The retroreflective material is to be at least 50mm wide and is to consist of two parallel strips around the body and in the case of a garment with sleeves a signal parallel strip around the upper arms. The colour and materials are to conform to AS/NZS 1906.4:1997 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments*.

**1.5 Wearing of High Visibility Clothing**

The Operator's Staff and visitors shall wear high visibility clothing:

- (a) when on QR's Right of Way;
- (b) in other work situations where high visibility clothing will reduce the risk of coming into contact with moving Trains, vehicles or plant; and
- (c) protective headwear must be worn at emergency sites.

High visibility clothing is not required to be worn by the Operator's Staff under the following conditions:

- (a) when the movement of Trains is within a building (such as a diesel shed) and within its defined boundaries is subject to control mechanisms;
- (b) when visitors are proceeding in a direct route on designated walkways to defined locations to access high visibility clothing;
- (c) when the movement of people is directed clear of the track by fencing, barriers or signs and escort is provided by a member of the Operator's Staff who is familiar with the local area and operating procedures;
- (d) when a person's duties require them to work within the public areas; or
- (e) when the Operator's Staff and visitors are within the confines of operational Rollingstock.

**1.6 Compliance**

The Operator is responsible for:

- (a) ensuring the Operator's Staff and visitors are instructed in the provisions of this Part 1 of **Schedule 6**;
- (b) ensuring the Operator's Staff and visitors comply with this Part 1 of **Schedule 6**;
- (c) specifying which form of high visibility clothing shall be adopted, having regard to local conditions and the nature of the work performed;
- (d) ensuring that the Operator's Staff familiarise themselves with local management standards prior to working in situations other than on QR's Right of Way; and,
- (e) ensuring that the Operator's Staff inspect, wear and maintain high visibility clothing correctly by:
  - checking for deterioration due to wear, damage, fading and cleanliness;
  - not wearing backpacks or similar items over any high visibility clothing so that the high visibility clothing is concealed; and,
  - ensuring high visibility vests or shirts are securely fastened.

**PART 2 QR EMERGENCY PROCEDURES**

QR will provide the Operator with a copy of the QR Emergency Procedures (as amended from time to time) which detail the procedures developed by QR for dealing with a Network Incident.

**PART 3 ENVIRONMENTAL MANAGEMENT STANDARDS**

- 3.1** Clause 8.1 of this Agreement requires an Environmental Investigation and Risk Management Report to be prepared to identify all the risks of Environmental Harm arising out of the use of the Nominated Network by the Operator including those risks identified in this Part 3. This list is to be taken as the minimum requirements to be addressed and the Environmental Investigation and Risk Management Report should

not be restricted to the elements included in this list. The Report should have regard to any appropriate Australian Standard dealing with Risk Assessment.

**3.2**

The risks to be considered and addressed as a minimum in the Environmental Investigation and Risk Management Report are:

**A WATER QUALITY MANAGEMENT**

The Operator must consider the impact of the operation on stormwater systems and natural waterways. In doing so all relevant water quality standards and regulations should be met.

**B AIR POLLUTION MANAGEMENT**

The Operator must consider the impact of the operation on air quality. In doing so all relevant air quality standards and regulations should be met.

**C CONTAMINATED LAND MANAGEMENT**

The Operator must consider the impact of the operation on land contamination. In doing so all practicable control measures to prevent the contamination of land should be undertaken. The requirements of Clause 8.5 of the Agreement shall be a minimum.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated land (Chem Unit 1991) or by other standards considered acceptable by the relevant authorities.

**D NATURE CONSERVATION**

The Operator shall consider the impact of the operation on flora and fauna.

**E MANAGEMENT OF HAZARDOUS SUBSTANCES AND DANGEROUS GOODS**

The Operator must as a minimum meet the requirements of Clause 8.3 of the Agreement. Any further environmental impacts not specifically addressed by Clause 8.3 should also be addressed.

**F WASTE MANAGEMENT**

The Operator must consider the impact of any waste produced by the operation. In doing so all relevant government and local authority requirements should be met.

**G ENVIRONMENTAL NOISE MANAGEMENT**

The Operator must determine the likely noise impacts attributable to the Operator's Train Services. In that regard, the Operator should ascertain whether existing noise levels from the Nominated Network exceed the Planning Levels for Railways referred to in the Environmental Protection (Noise) Policy 1997 ("Noise Planning Levels") and/or whether the Noise Planning Levels are likely to be exceeded because of the Operator's Train Services.

The Operator should note that where existing noise levels in the Nominated Network exceed the Noise Planning Levels and/or where noise from the Operator's activities are likely to result in an exceedence of the Noise Planning Levels, this may constitute an area of unacceptable risk to QR for the purposes of Clause 8.1(b) of this Agreement.

## **H ENVIRONMENTAL MONITORING**

The Operator must consider the likelihood of the operations under this Agreement causing Environmental Harm or nuisance. Baseline monitoring should be considered where relevant to establish benchmarks and to allow for comparison between pre- access conditions and those during and post access. Where QR has baseline information available it may be provided to the Operator and if no further baseline monitoring is undertaken, the QR data shall then be deemed to be an accurate description of the baseline data. Where no baseline monitoring is available, it shall be taken that the Nominated Network currently meets all environmental standards for the purposes of determining cause in any future environmental matters.

## **I EDUCATION, AWARENESS AND TRAINING**

The Operator must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Investigation and Risk Management Report.

With respect to environmental issues the Operator's Emergency Response Plan must:

- (i) include specific action plans for minimising environmental damage as a result of Incidents;
- (ii) require immediate and appropriate action to minimise any impact;
- (iii) require relevant authorities and QR to be informed immediately of any Incident;
- (iv) detail the method for the clean up of any contamination resulting from the Incident; and
- (v) require the recording of all environmental Incidents and all measures taken to manage the Incidents on a central register.

SCHEDULE 7

INSURANCE

Clause 13

**Required Operator's Insurances**

- (a) **Public liability insurance**
- (i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than TWO HUNDRED AND FIFTY MILLION DOLLARS (\$250,000,000) and with a self-insured retention not to exceed *[to be inserted]* for any one loss or an aggregate deductible of not more than *[to be inserted]*;
  - (ii) to include cover in respect of personal injury or property damage arising out of 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 which occurs on a definitely identifiable date; and
  - (iii) to cover the Operator's rail operations and associated activities on the Nominated Network.
- (b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.
- (c) **Carrier liability insurance** in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than ONE MILLION DOLLARS (\$1,000,000) and with a deductible not to exceed *[to be inserted]* for any one loss.
- (d) **Motor Vehicle (non-Act) insurance** to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the Operator or Operator's Staff and must include:
- (i) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and
  - (ii) a Dangerous Goods extension with a maximum sum insured as required by statute.
- (e) **Motor Vehicle insurance** to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Agreement.
- (f) Insurances effected pursuant to (a) and (d) of this Schedule must:
- (i) include a principal's indemnity endorsement specifically noting QR as an insured party in respect of its interest arising out of or under this Agreement;

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- (ii) include a cross liability clause;
- (iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

**SCHEDULE 8**

**QR's INVESTIGATION PROCEDURES**

**Clause 7.5**

**PART 1 ESTABLISHMENT OF INVESTIGATION**

**1.1 Routine Investigation**

- (a) Any Investigation required under Clause 7.5 of the Agreement and which is in respect of an Incident for which QR reasonably expects the cost of damage (including as a result of Environmental Harm) to be less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) and from which no person required hospitalisation is classified as a routine Investigation and shall be conducted solely by QR unless otherwise agreed by the Parties. QR shall consent to an Operator being a party to such routine Investigation if the Operator requires.
- (b) QR shall provide the Operator with a copy of any report produced as a result of a routine Investigation conducted under this Clause 1.1 and the Operator shall cooperate in the implementation of all recommendations reasonably made as part of that report.

**1.2 Major Investigation**

- (a) A major Investigation shall be undertaken in the event of an Incident or accident which resulted in a fatality or the hospitalisation of any person or where the cost of the damage (including as a result of Environmental Harm) is reasonably expected to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- (b) Major Investigations conducted under Clause 1.2(a) of this Schedule will be undertaken jointly by the Parties. Management of the Investigation will be facilitated by QR who will appoint the chairperson and who will advise the Department of Transport of the make-up of the Investigation team and its terms of reference.
- (c) A major Investigation will be set up as soon as possible following the Incident and the Parties will be required to have a representative at the site of the Incident within four (4) hours (or such other time as the Parties may agree) of notification to QR of the Incident.

**1.3 Membership of Investigating Teams**

- (a) All members of Investigation teams, whether the Investigation is conducted in accordance with Clauses 1.1 or 1.2 of this Schedule, will be required to be appropriately qualified.
- (b) Investigation teams shall not include any persons directly involved in the relevant Incident or the Recovery or Restoration.
- (c) In the case of a joint Investigation conducted under Clause 1.2 of this Schedule, each Party shall nominate at least one representative and use reasonable efforts to ensure that the members of the Investigation team have collectively the skills and expertise to address the range of operational and Infrastructure issues likely to be encountered. The Parties may agree to the inclusion of additional members in the Investigation team for this purpose.

- (d) The lead investigator of a major Investigation panel must be trained and certified in QR's accident/Incidents investigators course.
- (e) The need for independent team membership will be considered for major Investigations. A pool of interstate railway investigators exists and may be called upon where it is thought a degree of independence would be helpful to the Investigation.
- (f) In cases where worker death has occurred, the terms of reference and team composition shall be determined in conjunction with the QR's Chief Risk Officer.
- (g) Where a major Investigation is undertaken to satisfy requirements of the Transport Infrastructure Act and the Department of Transport reporting guidelines, the chairperson must be registered with the QR's Chief Risk Officer as an authorised investigator.

#### **1.4 Terms of Reference for Investigations**

- (a) The terms of reference for any routine Investigation in accordance with Clause 1.1 of this Schedule will be to determine the cause of the Incident and to stipulate what action has been or will be taken to prevent recurrence.
- (b) The terms of reference for any major Investigation in accordance with Clause 1.2 of this Schedule shall, as a minimum, be to :
  - i. ascertain probable causes;
  - ii. assess contributing factors;
  - iii. review current procedures for ensuring system integrity;
  - iv. make draft recommendations;
  - v. estimate direct and associated costs; and
  - vi. consider whether immediate remedial actions are required.
- (c) Additional terms may be added if agreed by the Parties or if determined in accordance with paragraph 1.3(f) of Part 1 of this Schedule.

#### **PART 2 MAJOR INVESTIGATIONS REPORTS**

A copy of the final reports of a major Investigation will be supplied to each Party. Each Party will be responsible for consideration and action on recommendations that are under the control of that Party. In the case of a fatal accident a copy of the report will also be sent to the Coroner.

#### **PART 3 REVIEW OF INVESTIGATIONS**

- (a) The Department of Transport has the right to call for an independent review of major Investigations in certain circumstances.
- (b) Under the Transport Infrastructure Act, the Minister for Transport may establish or re-establish a Board of Enquiry about an Incident that has happened on or involving a railway and which the Minister considers a serious Incident.



**SCHEDULE 9**

**ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT &  
INTERFACE RISK MANAGEMENT PLAN**

**PART 1 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT  
REPORT**

**Clause 8.1**

*[To be inserted]*

**PART 2 INTERFACE RISK MANAGEMENT PLAN**

**Clause 11 (a)**

*[To be inserted]*

**SCHEDULE 10**  
**INTERFACE COORDINATION PLAN**

**Clause 5.7**

**PART 1 NETWORK MANAGEMENT PRINCIPLES**

**1. Additional Definitions**

In the Network Management Principles, unless inconsistent with the context, the following words and expressions shall have the following meanings:

**“Access Seeker”** means a party who is seeking new or additional access rights;

**“Ad Hoc Train Service”** means any Train service:

- (i) additional to the number of Train services permitted under an existing access agreement, but otherwise consistent with the Train Service Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing access agreement; or
- (ii) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by QR;

**“Below Rail Delay”** means a delay to a Train service from its scheduled train path in the Daily Train Plan, where that delay can be attributed directly to QR acting as Railway Manager, but excludes:

- (i) cancellations;
- (ii) delays resulting from QR complying with its Passenger Priority Obligations; and
- (iii) delays resulting from a Force Majeure Event;

**“Capacity”** means the capability of a specified section of the Infrastructure to accommodate Train services within a specified time period after providing for QR’s reasonable requirements for the exclusive utilisation of that specified section of the Infrastructure for the purposes of performing activities associated with repair or Enhancement, including the operation of work Trains;

**“Capacity Resumption Register”** means a register maintained by QR and including the following information:

- (i) the Access Seeker who has an interest in access rights; and
- (ii) the access rights in which they have an interest;

**“Committed Capacity Register”** means a register maintained by QR and including the following information:

- (i) the party who has an interest in the access rights;
- (ii) the access rights in which they have an interest; and
- (iii) the nature of the interest;

**“Contested Train Path”** means a Train path in respect of which more than one Railway Operator has expressed an interest in operating a Train service in the week in question;

**“Major Periodic Maintenance”** means activities that renovate the Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year

and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering;

**“Out-of-Course Running”** means the circumstances that occur when the actual running of one or more Train services differs, by more than the agreed threshold, from that provided in the Daily Train Plan;

**“Timetabled Traffic”** means a traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train path on a particular day and/or week;

**“Train Orders”** means railing requests for a nominated period of time submitted to QR, or on behalf of a Railway Operator, to assist in the scheduling of Train Services;

**“Train Service Entitlement”** means a Railway Operator’s entitlement under an access agreement to operate a specified number and type of Train services over the Infrastructure 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, and until such time that access agreements have been developed for all existing QR operated Train services, includes the Capacity that is demonstrably required for the purpose of QR operated Train services and for which access charges are applicable;

## 2. Scheduling Principles

### 2.1 Train Service Entitlements

- (a) Railway Operators operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology<sup>1</sup>.
- (b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), a Weekly Train Plan (WTP), where necessary, and a Daily Train Plan (DTP).
- (c) Where an Access Seeker’s required Capacity cannot be met fully, the Access Seeker may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and if the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

### 2.2 Master Train Plan Principles

- (a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train services and other activities on the Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements. In other words, the Train paths indicated in the MTP for Cyclic Traffics need not necessarily represent the Train paths that those Train services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train paths indicated in the MTP may well indicate the actual Train path that a Train service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.

<sup>1</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of Train Services per specified period of time.

<sup>2</sup> See Footnote 2 below

- (b) Unless otherwise expressly provided in a Railway Operator's access agreement, the MTP may be modified, as specified in the following paragraphs (c), (d), (e) and (f) where:
- (i) a Railway Operator notifies QR that it wishes to make a long-term change to the **times**<sup>2</sup> at which its Train service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (v) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train service/s operate, provided that change is within the scope of the relevant Railway Operators' Train Service Entitlement/s and is intended to accommodate:
    - the creation of a new or additional Train Service Entitlement, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP;
  - (vi) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlement/s, provided that change is intended to accommodate:
    - the creation of new Planned Possessions or the modification of existing Planned Possessions;
    - the creation of an additional Train Service Entitlement, through either the signing of an access agreement or the variation of an existing access agreement; or
    - any other Operational Constraint affecting the MTP,provided that where the change to the **times** at which scheduled Train service/s operate results in any existing Railway Operator's

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<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their access agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (vii) QR notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the **times**<sup>4</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Railway Operators' Train Service Entitlements, QR has made reasonable efforts to mitigate the impact on that Railway Operator. Any limitations upon QR's ability to exercise this right will be specified in individual access agreements;
  - (viii) a Railway Operator's access agreement allows QR to alter the Railway Operator's Train Service Entitlement, for instance by resuming Capacity; or
  - (ix) QR, Infrastructure Service Providers, and all affected Railway Operators, otherwise agree.
- (c) QR may make modifications to the MTP, within the scope of subparagraphs (b)(i), (b)(ii), (b)(iii) and (b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
  - (d) QR may make modifications to the MTP, within the scope of subparagraphs (b)(v), (b)(vi) and (b)(vii) of these MTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
  - (e) Where a change is being sought to the MTP that falls within the scope of subparagraph (b)(ix) of these MTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum<sup>5</sup>. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.
  - (f) QR must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.
  - (g) As a result of QR's obligations in accordance with paragraph (f), where reference is made in paragraph (b) of these MTP Principles to a Railway Operator notifying QR that it wishes to vary its Train Service Entitlement or Train service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.
  - (h) The cancellation of a Train service or Train services in accordance with the above MTP Principles, does not necessarily excuse either QR or a Railway Operator from other access agreement obligations relating to the conduct in question.
  - (i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for QR Train Controllers in carrying out their duties.

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<sup>4</sup> See footnote 2 above.

<sup>5</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.

### 2.3. Weekly Train Plan Principles

- (a) In parts of QR's network where Cyclic Traffics operate, for instance the Central Queensland Coal Region, there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A WTP will be scheduled, utilising Planned Possessions, the Train paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, each Railway Operator's Train Service Entitlement and Train Orders for the particular week in question.
- (b) In the Central Queensland Coal Region, Train Orders for the coming week must, unless otherwise advised by QR, be submitted to QR before 1200 hours on Wednesday.
- (c) The process of scheduling Cyclic Traffics in the WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Railway Operators and Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process applies only for the allocation of a Contested Train Path between Railway Operators for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 1.
- (d) QR will advise Railway Operators of the WTP once it is developed in accordance with the above steps.

### 2.4. Daily Train Plan Principles

- (a) The DTP will indicate all scheduled Train services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Infrastructure.
- (b) In scheduling Cyclic Traffics on the DTP, QR may first schedule a WTP as discussed in the WTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- (c) QR will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Railway Operators and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- (d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in paragraphs (e), (f), and (g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:
  - (i) a Railway Operator notifies QR that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Railway Operator's scheduled Train service/s not being met or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train service/s

<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

operate, whether or not within the scope of the applicable Railway Operator's Train Service Entitlement, provided the change is intended to accommodate:

- the modification of an existing Planned Possession;
- the creation of an Urgent Possession; or
- any other Operational Constraint affecting the DTP,

provided that where the change to scheduled Train service/s results in any existing Railway Operator's Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (v) QR requests 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 Railway Operators' Train Service Entitlement, for the purpose of accommodating an Emergency Possession; or
  - (vi) QR, Infrastructure Service Providers, and all affected Railway Operators otherwise agree.
- (e) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(i), (d)(ii), and (d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
  - (f) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(iv) and (d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
  - (g) Where a change is being sought from the MTP or WTP that falls within the scope of subparagraph (d)(vi) of these DTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose scheduled Train service/s are affected by the change to consider the modification in an appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.
  - (h) Other than as detailed in paragraph (i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
  - (i) Once the DTP is scheduled, variations to the DTP may only be made where:
    - (i) before the day of operation, QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
    - (ii) before the commencement of the relevant Train service/s, a Railway Operator notifies QR that it wishes to make a change to the **times**<sup>9</sup> at which its Train service/s operate, provided that change is within the scope of the Railway Operator's Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not

<sup>8</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.

<sup>9</sup> See Footnote 2 above.

being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or

- (iii) before the commencement of the relevant Train service/s, QR notifies a Railway Operator that an Emergency Possession is required.
- (j) QR may make modifications to the DTP within the scope of subparagraphs (i) (i), (i) (ii) and (i) (iii) of these DTP principles on a case by case basis without the need for consultation.
- (k) The cancellation of a Train service or Train services in accordance with the above DTP Principles, does not necessarily excuse either QR or a Railway Operator from other obligations under this Agreement relating to the conduct in question.
- (l) The DTP will represent the expected train operation performance target over its period.
- (m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control Principles.

### 3. Train Control Principles

- (a) The fundamental objective of Train Control will be to facilitate the safe running of Train services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- (b) The ability of QR and/or a Railway Operator to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- (c) The following general principles apply to Railway Operators and QR Train Controllers:
  - (i) all parties will ensure that operational safety is maintained through compliance with the Safeworking Procedures and Safety Standards, the Rollingstock Interface Standards, applicable Interface Risk Management Plans and Environmental Investigations and Risk Management Reports;
  - (ii) Railway Operators will ensure that activities required to provide and operate Train services, including but not limited to, traincrewing, locomotive and Wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met; and
  - (iii) QR will manage the Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- (d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Railway Operator over another, and as a result, the identity of a Railway Operator will not of itself be a legitimate reason for QR Train Controllers to alter a scheduled Train service.
- (e) The traffic management decision making matrix, at Appendix 2, will be provided to assist QR Train Controllers in the resolution of disputes in accordance with the above principles.



- (f) QR will provide Railway Operators with:
- (i) real time Train Control information that indicates actual running of that Railway Operator's Train services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Train Control diagrams that indicates actual running of that Railway Operator's Train services against the relevant DTP; and
  - (iii) information about the type of Train services<sup>1</sup> operated by other Railway Operators on the same network to assist the Operator to determine whether the QR Train Controller is applying the principles in this Schedule in a consistent manner between Railway Operators.

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<sup>1</sup> For instance, freight Train services, passenger Train service or coal Train services.

Appendix 1

**Contested Train Path Decision-making Process**

QR will determine who is allocated a Contested Train Path, by:

- firstly, eliminating from consideration any Railway Operator whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR still has spare Capacity available, QR may determine which of the parties seeking the Contested Train Path is allocated that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR may determine which of the parties is allocated the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR will document the parties' agreement and keep a record of such<sup>10</sup>.
- then, considering the number of Train services per week that each Railway Operator has a contractual entitlement to in accordance with their Train Service Entitlement. If QR is behind (in the contract year to date) in providing a Railway Operator with its contracted Train services, that Railway Operator will get priority over a Railway Operator that QR is either ahead or on target (in the contract year to date) in providing contracted Train services to. Where QR is behind in providing contracted Train services to more than one Railway Operator, the Railway Operator most behind (in terms of Train services provided as a percentage of contracted Train services) will get first priority over others; and
- finally, where the above considerations do not assist QR in making a decision regarding which requested Train service is scheduled, QR will unilaterally determine which Train service/s is scheduled, and will keep a record of that decision and the reasoning behind that decision. QR will ensure that, over time, no Railway Operator is favoured over another, and where possible, if one Railway Operator is favoured this time, taking into account the Train Service Entitlement held by a Railway Operator, next time they are not favoured. In other words, if one Railway Operator has an entitlement to 10 services per week, and another Railway Operator has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Railway Operator if they received priority over the first Railway Operator on 2 out of 3 consecutive occasions.

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<sup>10</sup> QR envisages that this step will take into account the requirements of the relevant destinations of the Train services in question. In the coal system, for instance, the ports and domestic users, if they do not have an access agreement with QR themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Railway Operators in determining the priority of Train services requested in their weekly train request.

**Appendix 2**

**Traffic Management Decision Making Matrix**

**Notes for the application of the Traffic Management Decision Making Matrix**

As a generic principle for the performance of Train Control, QR recognises (as noted in Paragraph 3 of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of 'on time running', and accordingly, running to the DTP will always result in the most efficient use of the Infrastructure and provide those parties using the Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR considers it necessary to permit QR Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 and 6 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a QR Train Controller's ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train services, as expressed in their Train Service Entitlements.

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 DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running "On Time".

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

**Rules for the application of the Traffic Management Decision Making Matrix**

- Rule 1. Subject to rules 5 and 6, Train B may be given priority on condition Train A will still meet its "On Time" objective.
- Rule 2. Both Trains must meet their "On Time" objective.
- Rule 3. Subject to rules 5 and 6, Train A may be given priority on condition Train B will still meet its "On Time" objective.
- Rule 4. Subject to rules 5 and 6, give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the QR Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or a Passenger Priority Obligation.
- Rule 6. Where a Train is running "Late" due to a Below Rail Delay, it may be given preference over other Trains if the QR Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.

**PART 2 TRAIN CONTROL PROCEDURES**

## 2.1 Operator's Advice to QR Train Controller

For the benefit of the Operator's traincrew contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

For the benefit of the Operator's Controller contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, whether the Train has entered the Nominated Network or not, the Operator's Controller must advise the QR Train Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on Train performance.

In addition to the above, the traincrew of the Operator's Train must directly advise the QR Train Controller of any event that may affect the performance of their Train as soon as reasonably practicable after becoming aware of the event.

At least fifteen (15) minutes prior to the departure of the Operator's Train, the Operator's Controller is to provide the QR Train Controller with the following information:

- information regarding the traincrew, including names, depot, planned crew change locations and details of any mandatory breaks;
- any en route locomotive provisioning requirements;
- if in Train order territory or direct traffic control territory, the number of the leading locomotive; and,
- a Train List which is to contain the following information:
  - the number of the Train;
  - the origin of the Train;
  - the length of the Train in metres (including the locomotives);
  - the number of vehicles in the Train;
  - the gross mass of the Train;
  - the gross trailing load of the Train in tonnes;
  - the motive power employed by the Train;

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- for each vehicle in the Train in the order in which they will be placed, leading end first, the following information:
  - vehicle classification;
  - the vehicle number;
  - vehicle type;
  - gross weight of the vehicle;
  - a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
  - the destination of each vehicle;
  - any known defects eg brakes cut out.
- The Train List must be entered into QR's nominated information system in accordance with the procedures specified by QR.
- Any subsequent changes to the information provided in the Train List must be updated in QR's nominated information system in accordance with the procedures specified by QR as soon as reasonably practicable.
- The Operator must ensure that the contents of the Train List are accurate and reflect all the relevant information pertaining to the Train Service.
- In the case of a passenger Train variations to the above requirements may be specified by QR.

In the event that the weight and/or length of the Train alters during the course of the journey, the Operator's Controller is to advise the QR Train Controller of the new weight and length.

The Operator must provide to QR (and keep current at all times during the Term) the contact details (including mobile and after hours contact details) for the Operator's Controller.

Operator's Controller:

Name: *(to be completed by Operator)*

Position:

Phone:

Mobile:

Fax:

The Operator's Controller must be contactable by the QR Train Controller at all times when any of the Operator's Trains are on the Nominated Network. During times when the Operator's Trains are not on the Nominated Network and the Operator's Controller cannot be contacted the following advice is to be provided to the QR Train Controller:

- the hours during which the Operator's Controller will be unavailable; and,
- after hours contact procedures.

In dark territory the Operator's traincrew is to supply advice of the arrival and departure times, or the departure times if the Train did not stop, for each crossing station that the Train passed through on the Nominated Network when reasonably requested by the QR Train Controller. These times are then to be entered into QR's nominated information system as soon as practicable after the advice is received from the traincrew.

## 2.2 QR Train Controller's Advice to the Operator

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, the QR Train Controller must advise the Operator's Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on the Train's performance.

When reasonably requested by the Operator's Controller, the QR Train Controller is to provide an estimated time of arrival at any location on the Nominated Network for the Operator's Train.

When reasonably requested by the Operator's traincrew, the QR Train Controller will provide information regarding events that may impact on the performance of the Operator's Train.

## 2.3 Consultation Between QR Train Controller and the Operator

The location of meal and personal needs breaks is to be determined by consultation between the QR Train Controller and the Operator's traincrew.

Traincrew shall contact the Operator's Controller to request relief. If traincrew cannot establish communication with the Operator's Controller, the QR Train Controller shall be contacted and relief requested.

It is the responsibility of the Operator's Controller to determine which Trains require relief prior to reaching their destination. Consultation is to take place between QR Train Controller and the Operator's Controller as to the most appropriate time and location to have the Train relieved at.

Once this relief time and location has been agreed to it is the responsibility of the QR Train Controller to advise the Operator's Controller should the estimated time of arrival of the Train at the relief location vary by more than 15 minutes. It is the responsibility of the Operator's Controller to make all the necessary arrangements for traincrew relief.

If a relief request is received from traincrew, the QR Train Controller shall record the request and advise the Operator's Controller.

Upon receiving the relief request advice from the QR Train Controller, the Operator's Controller is to verbally acknowledge receipt. The Operator's Controller shall then consult with the QR Train Controller to advise of relief location.

If the Operator's Controller alters the relief requirements or the relief arrangements become delayed after advice was given to the QR Train Controller, the altered information shall be passed onto the QR Train Controller.

The Operator's Controller shall contact traincrew direct and advise of relief arrangements and if unable to contact traincrew direct, shall request the QR Train Controller to advise traincrew of relief arrangements.

Where traincrew are rostered on "change jobs", or are required to change enroute, it is the responsibility of the Traincrew to advise the QR Train Controller of their roster prior to entering the Nominated Network. It is the responsibility of the QR Train Controller to advise traincrew of the location of the change.

**2.4 Radio Procedures**

When using the Train Control radio system the Operator's Staff are to follow the general radio procedures contained in the Observance of Signals Manual STD/0037/SWK (as amended from time to time).

Access to the Train Control radio system for each of the line sections that comprise the Nominated Network can be obtained as follows:

Line Section:

Channel Number:

Line Section:

Channel Number:

**2.5 Procedures for Entering the Nominated Network**

The Operator must comply with originating yard procedures (if any) as advised by QR.

The Operator will only enter the Nominated Network upon receipt of the appropriate safeworking authority as advised by QR.

The Operator's Controller is to advise the QR Train Controller of the anticipated departure time of the Operator's Train at least two (2) hours before the scheduled departure time of the Train or when reasonably requested by the QR Train Controller. Should the anticipated departure time alter from that previously advised to the QR Train Controller, the Operator's Controller is to advise the QR Train Controller of the new anticipated departure time as soon as reasonably practicable after becoming aware of the change.

When the Operator's Train is ready to depart the originating station, the Operator's traincrew is to advise the QR Train Controller.

Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

**2.6 Procedures for Shunting/Entering and Exiting Yards**

QR will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en-route.

**2.7 Procedures for Leaving the Nominated Network**

The Operator must comply with terminating yard procedures (if any) as advised by QR.

**2.8 Contact details for party responsible for loading Trains – Clause 2.7(h)(ii)**

The Operator must provide to QR (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator's Trains.

Party Responsible for Loading the Operator's Trains:

Name: *(to be completed by the Operator)*

Phone:

Fax:

**PART 3 TRAIN OPERATIONS PROCEDURES**

**3.1 Safety Notices**

**(a) Safety Alerts**

Safety Alerts are documents used by QR to communicate any serious safety incident that has or could affect QR and users of its Infrastructure. The Safety Alerts are also used to provide details of the incident for information purposes together with advice regarding any immediate actions to be taken. QR will forward Safety Alerts to the facsimile number specified by the Operator in Clause 22.9 of the Agreement. As soon as possible after the receipt of a Safety Alert, the Operator is to make the Operator's Staff aware of the contents of such Safety Alert.

**(b) Weekly Notices**

Weekly Notices are published weekly by QR for QR employees and contain employment and safety information. The Weekly Notice is used to communicate safety related information about permanent changes or temporary changes which could extend for more than four (4) weeks. An abridged Weekly Notice containing the relevant safety information will be made available to the Operator at the same time.

This information will be published in the Weekly Notice seven (7) days prior to the date of such changes becoming effective. If it is necessary to publish the information and there is not enough time to issue it in a Weekly Notice, the information will be published on a Train notice prior to the date of the change becoming effective. The information will then be published as soon as possible in a Weekly Notice and an abridged Weekly Notice.

Members of the Operator's Staff who perform Safety Related Work must either receive a copy of the abridged Weekly Notice or have access to a copy or be notified of any information in the Weekly Notice relevant to their area of work. The Operator must advise QR of the address to which the abridged Weekly Notices should be forwarded by mail.

The Operator is to ensure that all abridged Weekly Notices are distributed to the relevant members of the Operator's Staff.

**(c) Train Notices**

Train Notices are instructions published by QR as either a hard copy or by electronic means and which are generally issued daily, but may be issued as determined by QR. They convey operational and safety instructions, information and messages. Train Notices must be issued to members of the Operator's Staff who are responsible for the operation of Trains or who work on or near the Track.

QR will advise the Operator of its procedures for forwarding Train notices.

The Operator is to ensure that all relevant Train Notices are distributed to the relevant members of the Operator's Staff.

**(d) Safeworking Forms**

Upon execution of this Agreement QR will provide to the Operator sufficient copies of all safeworking forms necessary to operate on the Nominated Network. QR will also supply reasonable quantities of replacement forms as requested by the Operator. Additional forms may be obtained through the following contact:



Manager Risk & Compliance  
QR Network Pty Ltd

Ph: (07) 3235 7978 Fax: (07) 3235 7806

### 3.2 **Operational Meetings**

The Operator must advise QR of the name and contact details of the Operator's Representative to attend operational meetings.

The Operator's Representative and the QR Representative (or their nominees) shall meet on a monthly basis or as agreed by the Parties for the purpose of:

- reviewing the achievement of Performance Levels and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
- reviewing requests or proposals by the Operator or QR to vary the procedures contained in this Schedule;
- reviewing the reliability of the Operator's Trains;
- reviewing Operational Constraints;
- investigating or reviewing breaches or suspected breaches of the Safeworking Procedures, Safety Standards or QR Train Control Directions by the Operator's Staff; and,
- reviewing any other matters relevant to the performance of this Agreement.

The Operator's Representative shall attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by QR from time to time.

The QR Representative is:

*(to be completed by QR)*

Ph:

Fax:

The Operator's Representative is:

*(to be completed by Operator)*

Ph

Fax

## **PART 4 NOMINATED PERSONS**

### **4.1 Nominated Delegates (Clause 7.4(d)(ii)(B))**

The nominated delegate of the chief executive officer of QR will be:

[insert details for delegate]

Phone:  
Fax:

The nominated delegate of the chief executive officer of the Operator will be:

[insert details for delegate]

Phone:  
Fax:

**4.2 Operator's Incident Response Coordinator**

Name:  
Position:

Phone:  
Mobile:  
Fax:

**4.3 Operator's Recovery Team Leader**

Name:  
Position:

Phone:  
Mobile:  
Fax:

**PART 5 POSSESSION PROTOCOLS**

QR will provide the Operator with a copy of the Possession Protocols (as amended from time to time) which detail the rules governing the management and scheduling of Planned Possessions, Emergency Possession and Urgent Possessions on the Infrastructure.

**PART 6 DOCUMENT CONTROL PROCEDURES**

The Operator will provide to QR the following details of its Document Controller:

Name: *(to be completed by Operator)*

Position:

Business Hours Telephone Number:

Postal Address:

Email Address:

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Upon execution of this Agreement, QR will issue to the Operator one electronic copy of each of the documents listed in Paragraph 1.1 of Part 1 of **Schedule 6**. QR will manage updates and revisions of these documents in accordance with AS/NZS 4292.1 Rail Safety Management provisions applying to document control.

Updates and revisions of the QR Emergency Procedures and QR's Investigation Procedures will be managed in the same way.

The Operator will be responsible for ongoing distribution of all documents to the relevant members of the Operator's Staff.

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**SCHEDULE 11**  
**ANCILLARY SERVICES AND OTHER CHARGES**

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**SCHEDULE 12**  
**CONFIDENTIALITY DEED**

*[Unless otherwise agreed, this deed shall be the confidentiality deed set out in Schedule B of QR's Access Undertaking]*

<b>SCHEDULE 1</b>
<b>TRAIN SERVICE ENTITLEMENTS</b>

**PART 1 TRAIN SERVICE DESCRIPTION**

**1.1 Train Service Characteristics**

The following tables define the characteristics of Train Services which characteristics shall form part of the Train Service Description.

**Commodity:** Coal  
**Sectional Run Times:** See Clause 1.2  
**Special Operating Restrictions:** See Clause 1.5

**System:**

Origin	Destination	Distance (km)	Average Time at Origin Loading Facility (hrs)

Notes: Origin is denoted as the mine and/or QR terms for the location at which the mine loads Trains Train Services run loaded between Origin and Destination and empty between Destination and Origin.  
 Average time at Loading Facility is measured on a monthly basis

For Train Services with the above characteristics, the average time at the Destination unloading facility is as per the following table.

Destination Unloading Facility	Average Time at Destination Unloading Facility (hrs)

Notes: Average time at unloading facility is measured on a monthly basis.

For Train Services with the above characteristics, the average time at Depot and the average Other Dwell Time are as per the following table:

System	Average Time at Depot (hrs)	Average Other Dwell Time (hrs)

**1.2 Sectional Running Times**

The Sectional Running Times to be achieved by coal system Trains are set out in Table 1.2 below:

**Table 1.2 -Sectional Running Times:**

From	To	Sectional Running Time	
		Direction Empty (minutes)	Direction Loaded (minutes)

Note: A Diagram illustrating the location of each Section can be found in **Schedule 2**.

*[Operator to provide details of Sectional Running Times]*

### 1.3 Train Service Levels

The number of Nominated Weekly Train Services for the relevant coal system Train that QR will provide to the Operator from the Commitment Date are set out in Table 1.3 below:

**Table 1.3: Train Service Levels**

Service Levels	No. of Train Services
Nominated Weekly Train Services <sup>1</sup>	
Nominated Monthly Train Services <sup>1</sup> (31 days)	
Nominated Monthly Train Services <sup>1</sup> (30 days)	
Nominated Monthly Train Services <sup>1</sup> (29 days)	
Nominated Monthly Train Services <sup>1</sup> (28 days)	
Nominated Annual Train Services <sup>1</sup>	

<sup>1</sup> NB: A Train Service is a One Way Train Service

The above Train Service Levels will be converted into timetables using the process referred to in paragraph 2.2(i) of the Scheduling Principles set out in **Schedule 10**.

### 1.4 Transit Times

The transit times applicable to a Train Service for each Origin/Destination combination by system are:

- The sum of the Sectional Running Times as per Table 1.2 for the Sections over which the Train Service operates multiplied by the following applicable factors:

Coal	Average Transit Time (hrs)	Maximum Transit Time (hrs)
Empty Direction		
Loaded Direction		

### 1.5 Special Operating Restrictions

In scheduling Train Services in accordance with the Network Management Principles, QR will comply with the following special operating restrictions:

*[Specific operating restrictions to be agreed]*

## 1.6 Cycle Description

With the following exceptions, the Train Services Cycle description is the most direct route over the Nominated Network between the Origins and Destinations and Destinations and Origins (as described in Paragraph 1.1).

Note: Where there is duplicated Track or multiple roads (eg yards), QR will have the ability to schedule the Train over any of the Tracks or roads.

### Exceptions

*[To be agreed]*

## 1.7 Stowage

*[To identify any agreed short term Stowage requirements additional to that provided in the relevant Reference Tariff Schedule]*

## 1.8 Permitted Movements on the Nominated Network

*[To detail any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times]*

## 1.9 Agreed Exit Threshold and Agreed Deterioration Threshold

**Agreed Exit Threshold:**

**Agreed Deterioration Threshold:**



**SCHEDULE 2**  
**NOMINATED NETWORK**

**PART 1 EXTENT OF NOMINATED NETWORK**

For the purposes of this Agreement the Nominated Network on which the Operator will be entitled to operate Train Services will be described by a combination of diagram and/or table but does not include freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

*[Diagram/table to be inserted as applicable]*

**PART 2 PARTS OF NOMINATED NETWORK SUBJECT TO CLAUSE 18.5**

The following line sections to the extent they form part of the Nominated Network as specified in Part 1 of this **Schedule 2** will be subject to the provisions of Clause 18.5 of the Agreement:

*[To be inserted if applicable]*

**PART 3 TRAIN CONTROL CENTRES AND SIGNAL CABINS**

The movement of the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins as follows:

*[Diagram to be inserted]*

**PART 4 PARTS OF THE NOMINATED NETWORK SUBJECT TO CLAUSE 16.1(a)(iii)**

*[To be inserted if applicable]*

**PART 5 LAND IN WHICH OTHER PARTIES HAVE AN INTEREST (Clause 22.18)**

Deleted: 19

*[To be inserted if applicable]*

**PART 6 WEIGHBRIDGES AND OVERLOAD DETECTORS (Clause 2.7)**

**A. WEIGHBRIDGES CERTIFIED FOR BILLING PURPOSES:**

<b>Location</b>	<b>Owner/Operator</b>	<b>Weighbridge "In Motion Trade Certificate" Electronic Weighing and Billing</b>

The tolerances are those required to achieve certification.

**B. AGREED OPERATIONAL WEIGHBRIDGES AND OVERLOAD DETECTORS**

<b>Location</b>	<b>Owner/Operator</b>	<b>Tolerance</b>
		+/- (x)%

<b>SCHEDULE 3</b>
<b>CALCULATION OF ACCESS AND OTHER CHARGES</b>

**PART 1 BASE ACCESS CHARGES**

1.1 Table 1.1 below defines the seven elements of the Base Access Charges that are used to calculate the Access Charge payable by the Operator to QR for each Train Service:

**Table 1.1: Base Access Charge and X Factors**

			Base Access Charge	X Factors
<b>Train Service</b>				
<b>Origin</b>				
<b>Destination</b>				
<b>Incremental Maintenance Tariff</b>	(\$'000 Gtk)	<b>AT<sub>1</sub></b>		0
<b>Incremental Capacity Tariff</b>	(\$/ One Way Train Service)	<b>AT<sub>2</sub></b>		0
<b>Allocated Tariff 1</b>	(\$'000 Ntk)	<b>AT<sub>3</sub></b>		0
<b>Allocated Tariff 2</b>	(\$/net tonne)	<b>AT<sub>4</sub></b>		0
<b>Electric Tariff</b>	(\$'000 Gtk)	<b>AT<sub>5</sub></b>		0
<b>Electric Energy Charge</b>	(\$'000 Gtk)	<b>EC</b>		0
<b>QCA Levy</b>	(\$/net tonne)	<b>QL</b>		

1.2. The elements of the Base Access Charge will be escalated in accordance with Part 4 of this **Schedule 3**.

1.3 Table 1.1 above defines the X Factors and Table 1.2 below defines the First Escalation Dates to be used in escalating the Base Access Charge elements pursuant to Clause 4.1 of this Schedule 3.

**Table 1.2: First Escalation Date for Escalation**

Train Service	Origin	Destination	First Escalation Date
Train Service	Origin	Destination	

**PART 2 RELEVANT OPERATING PARAMETERS**

2.1 The calculation of Gtk, Ntk and net tonnes for application with the Base Access Charges in Part 5 of this Schedule shall be as detailed in this Part 2.

2.2 The gross tonnes for each individual Train Service operated will be the sum of:

- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
- (b) the mass determined at any Weighbridge located adjacent to the loading facilities for each loaded or partly loaded Wagon comprising the Train Service;

- (c) where there is no Weighbridge located adjacent to the loading facility or that Weighbridge has malfunctioned the mass determined at the closest Weighbridge to the loading facility located en route for each loaded or partly loaded Wagon comprising the Train Service;
- (d) where all Weighbridges en route have malfunctioned, the average mass for loaded Wagons of that class of Wagon determined for all Trains operated of the same Train Service type in the most recent Month during the previous twelve (12) Months for which a Weighbridge was functioning for the entire Month for each loaded or partly loaded Wagon comprising the Train Services provided such data is available; or
- (e) where there are no Weighbridges located en route between the Origin and Destination or no data is available pursuant to paragraph (d) of this Clause the maximum gross mass as specified in **Schedule 4** for each loaded or partly loaded Wagon comprising the Train Service;
- (f) the tare mass as specified in **Schedule 4** for each empty Wagon comprising the Train Service; and
- (g) for all other Rollingstock, the maximum gross mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.

**2.3** The Gtk for each individual Train Service operated shall be the gross tonnes for the Train Service as calculated in Clause 2.2 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.

**2.4** The net tonnes for each individual Train Service operated shall be the gross tonnes as calculated in Clause 2.2 of this Schedule less the sum of:

- (a) the maximum gross mass as specified in **Schedule 4** for each locomotive comprising the Train Service;
- (b) the tare mass as specified in **Schedule 4** for each Wagon comprising the Train Service; and
- (c) for all other Rollingstock, the tare mass specified in **Schedule 4** for each item of such Rollingstock comprising the Train Service.

**2.5** The Ntk for each individual Train Service operated shall be the net tonnes for the Train Service as calculated in Clause 2.4 of this Schedule multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service.

### **PART 3 REVIEW DATE**

#### **3.1 Review Date**

**3.1.1** The Parties acknowledge that the Base Access Charge elements have been agreed by reference to the relevant Reference Tariffs in place at the time.

**3.1.2** For the purposes of this **Schedule 3** the Review Dates shall be the first day of the Month immediately following the Month in which the Reference Tariff Schedule relevant to the Train Services has been renewed or varied, or the Reference Tariff relevant to the Train Services has been adjusted or varied, in accordance with QR's Access Undertaking.

#### **3.2 Review of Charges**

- 3.2.1** For each Train Service type the Base Access Charge elements, the X Factors, the First Escalation Date and, where necessary, any other elements of this Schedule 3 will be reviewed on each Review Date.
- 3.2.2** For each Train Service type QR will advise the Operator in writing of the Base Access Charge elements, the X Factors, the First Escalation Date and any other changes to this **Schedule 3** to apply from each Review Date within 14 days of the latter of the Review Date or the date on which the QCA endorses the relevant renewal or variation. In determining any variations, QR will have regard to:
- (a) the new or varied relevant Reference Tariffs;
  - (b) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (c) other related factors in the relevant Reference Tariff Schedule; and
  - (d) QR's Access Undertaking.
- 3.2.3** If the Operator does not accept some or all of the variations advised pursuant to Clause 3.2.2 of this Schedule, the Operator must give QR notice within 14 days of receipt of notice of the variations.
- 3.2.4** The Parties will negotiate in good faith to attempt to agree any new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule for which the Operator has given notice pursuant to Clause 3.2.3 of this Schedule.
- 3.2.5** If the Parties have not agreed the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule within thirty (30) days of the relevant Review Date, either Party may refer the determination of the new Base Access Charge elements, X Factors, First Escalation Date and/or other changes to this Schedule to an expert in accordance with Clause 3.3 of this **Schedule 3**.
- 3.2.6** Unless and until agreement is reached or a determination is made pursuant to Clause 3.2 of this Schedule, the Base Access Charge elements, X Factors, First Escalation Date and/or any other relevant provision of this Schedule prevailing as at the Review Date shall continue to be utilised to determine the amount of Access Charges payable by the Operator. If any change in the Base Access Charge elements, X Factors or First Escalation Date is subsequently agreed or determined then the revised Base Access Charges, Escalation Factor or First Escalation Date will apply from the relevant Review Date and the Parties will account to one another accordingly.
- 3.3 Expert Review**
- 3.3.1** This Clause 3.3 only applies where the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are referred to an expert for review pursuant to Clause 3.2 of this **Schedule 3**.
- 3.3.2** Where a matter is to be referred to an expert pursuant to Clause 3.2 of this Schedule, the matter must be referred for determination by a person:
- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by the President for the time being of the Australian Society of Certified Practising Accountants;

- (b) who has appropriate qualifications and practical experience having regard to the nature of the matter in dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Operator or QR or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment; and
- (f) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

**3.3.3** QR will provide the expert with documentation to support the QR determination of the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule. The expert may request any other documentation from either Party or any other party as it sees fit in order to determine the outcome of the dispute.

**3.3.4** The expert shall be required to undertake to keep confidential all matters coming to its knowledge by reason of the expert's appointment and performance of its duties, other than that already in the public domain. The expert shall not include such information in its reasons for reaching the determination.

**3.3.5** The expert shall review the QR documentation and either:

- (a) uphold the QR Base Access Charge elements, X Factors and/or First Escalation Date and/or any other changes to this Schedule proposed by QR; or
- (b) where the expert believes the QR provided Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule have not been determined consistent with QR's Access Undertaking and the relevant Reference Tariff Schedule, the expert shall seek to reach agreement with QR as to, and failing agreement shall determine, appropriate Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule, having regard to:
  - (i) the new relevant Reference Tariffs;
  - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
  - (iii) other related factors in the relevant Reference Tariff Schedule; and
  - (iv) QR's Access Undertaking.

**3.3.6** The expert will report its findings to QR and the Operator and the reasons for such assessment.

**3.3.7** In the absence of manifest error, the decision of the expert shall be final and binding upon the Parties.

**3.3.8** The costs of the expert and any advisers to the expert shall be borne by:

- (a) the Operator in the event that the expert does not adjust the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule most recently proposed by QR prior to referral to the expert;
- (b) QR in the event that the Base Access Charge elements, X Factors, First Escalation Date and/or any other changes to this Schedule are varied from those most recently proposed by QR prior to referral to the expert; or

- (c) in such other proportion as the expert considers appropriate.

#### **PART 4 ESCALATION FORMULA**

- 4.1** Unless otherwise agreed between the Parties, the Base Access Charge elements, except the QCA Levy, and any other charges specified as being subject to escalation will escalate on each Escalation Date from and including the First Escalation Date, in accordance with the following formula:

$$BAC_n = BAC_{n-1} * (CPI_n / CPI_{n-1} - X)$$

Where:

$BAC_n$  means the escalated value of the relevant Base Access Charge element or other charge for the purpose of calculating Access Charges and other charges payable under this Agreement pursuant to Part 5 of this Schedule;

$BAC_{n-1}$  means the escalated value of the relevant Base Access Charge element or other charge applied prior to the relevant Escalation Date or in the case of Access Charges at the First Escalation Date means the relevant Base Access Charge element shown in Table 1.1;

X means the X Factors shown in Table 1.1 for the relevant Base Access Charge element and is zero for all other charges;

$CPI_n$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 6 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined;

$CPI_{n-1}$  means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 9 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable  $BAC_n$  is being determined.

#### **4.2 Review of Consumer Price Index**

- 4.2.1** If in the reasonable opinion of QR or the Operator the Consumer Price Index used for the purposes of the escalation formula specified in Clause 4.1 of this Schedule:

- (a) is altered in a material way;
- (b) ceases to be published; or
- (c) ceases to be published at sufficiently regular intervals or is likely to cease to be published at sufficiently regular intervals for the purpose of the formula in Clause 4.1 of this Schedule,

then QR or the Operator (as the case may be) shall notify the other Party in writing of such opinion.

- 4.2.2** Upon such notice being given, the Parties will negotiate with a view to agreeing to vary the application of the Consumer Price Index or to adopting an alternative or alternatives to the Consumer Price Index and failing agreement within forty five (45) days of such notice being given then the matter shall be referred to an expert in accordance with Clause 17.3 of the Agreement.

- 4.2.3 If the dispute is resolved after the next Escalation Date, the Parties agree to retrospectively adjust any Access Charges invoiced since that date to be consistent with the outcome of the dispute resolution.

## PART 5 CALCULATION OF INVOICE FOR ACCESS

- 5.1 The amount of the invoice for charges payable by the Operator under this Agreement for the relevant Billing Period shall be calculated in accordance with the following formula:

$$TC = AC * (1 + GST) + G$$

Where

TC is the total amount of charges payable by the Operator for the relevant Billing Period;

AC is the sum of the Access Charges payable for the relevant Billing Period in respect to each Train Service type where the Access Charges payable for each Train Service shall equal the sum of IM, ICC, ALT1, ALT2, ET, EE, QL, and ATP for each Train Service type;

IM is the incremental maintenance charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_1 * GTK) / 1000$$

Where

AT<sub>1</sub> is the amount specified as AT<sub>1</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

GTK is the sum of the G<sub>tk</sub> for all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the G<sub>tk</sub> for each individual Train Service operated being determined in accordance with Clause 2.3 of this Schedule;

ICC is the incremental capacity charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_2 * NTS$$

Where

AT<sub>2</sub> is the amount specified as AT<sub>2</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NTS is the number of relevant individual Train Services operated for the relevant Billing Period;

ALT1 is the N<sub>tk</sub> allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_3 * NTK) / 1000$$

Where



- AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and
- NTK is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;
- ALT2 is the net tonne allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:
- $AT_4 * NT$
- Where
- AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and
- NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;
- ET is the electric traction charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:
- $(AT_5 * eGTK) / 1000$
- Where
- AT<sub>5</sub> is the amount specified as AT<sub>5</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and
- eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.
- EE is the electric energy usage charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:
- $(EC * eGTK) / 1000$
- Where
- EC is the amount specified as EC in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and
- eGTK is the sum of the Gtk of all relevant electric locomotive hauled Train Services (loaded and empty) operated for the

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relevant Billing Period on the basis of the Gtk for each individual electric locomotive hauled Train Service operated being determined in accordance with Clause 2.3 of this Schedule.

QL is the QCA Levy charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$QL * NT$$

Where

QL is the amount specified as QL in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period; and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this Schedule;

ATP is the annual take or pay charge for the relevant Train Service type, calculated for:

- (a) for that part of the first Year following the Commitment Date until 30 June, all Billing Periods from the Commitment Date up to and including the Billing Period commencing 1 June;
- (b) the twelve (12) Billing Periods during a full Year commencing 1 July; or
- (c) for a Year commencing on 1 July and ending on the date of expiry or termination of this Agreement, the twelve (12) Months commencing when that Year commences,

but applied only in the last Billing Period of the period identified in (a) or (b) above or in the case of (c) above, where the last day of the Year is not 30 June, on the first 30 June following the last day of that Year (which is the relevant Billing Period for the purposes of this calculation), and shall be, subject to ATP not being less than zero:

- (d) if  $SGtkY \geq (FGtkY - QRGtkY)$ , zero;
- (e) if  $TR \geq SAR$ , zero;
- (f) if  $TR < SAR$  and  $TATP > MTPA$ , TPA; or
- (g) otherwise, ATPY,

Where:

SGtkY is the System Gtk for the period identified in (b) or (c) above;

FGtkY is the Forecast Gtk for the period identified in (b) or (c) above;

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- QRGtkY is the System Gtk that would have been achieved solely due to coal carrying Train Services that were unable to operate in the period identified in (b) or (c) above directly as a result of a QR Cause; and
- TR subject to Clause 5.2 of this **Schedule 3**, is the Total Actual Revenue for AT<sub>2-4</sub> for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year less the aggregate amount of Take or Pay for the relevant Year that QR would be entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking);
- SAR subject to Clause 5.2 of this **Schedule 3**, is the System Allowable Revenue for AT<sub>2-4</sub> for the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;
- MTPA is the amount by which SAR exceeds TR;
- TATP subject to Clause 5.2 of this **Schedule 3**, is the aggregate amount of Take or Pay that QR would be entitled to earn from all Access Agreements executed or renewed on or after the Commencing Date (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place of the day immediately prior to the Commencing Date pursuant to Paragraph 7.4.4(f) of QR's Access Undertaking) in relation to the Individual Coal System Infrastructure to which this Agreement relates for the relevant Year;
- TPA is calculated by the formula:  
$$MTPA * (ATPY / TATP)$$
- ATPY is calculated by the formula:  
$$AT_2 * (CNTSY - QRNTSY - NTSY) + AT_3 * (CNTKY - QRNTKY - NTKY) + AT_4 * (CNTY - QRNTY - NTY)$$
- Where:
- AT<sub>2</sub> is the amount specified as AT<sub>2</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;
- CNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services that the Operator was entitled to operate in the relevant period under **Schedule 1** been operated;

- QRNTSY is the sum of the NTS (as defined above) that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause;
- NTSY is the number of the relevant individual Train Services operated for the relevant Year identified in (a), (b) or (c) above;
- AT<sub>3</sub> is the amount specified as AT<sub>3</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;
- CNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Operator was entitled to operate in the relevant period under **Schedule 1** been operated and where Ntk is determined by identifying CNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;
- QRNTKY is the sum of the Ntk that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Ntk is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR multiplied by the distance specified in Table 1.1 of **Schedule 1** for the relevant Train Service;
- NTKY is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule;
- AT<sub>4</sub> is the amount specified as AT<sub>4</sub> in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period;
- CNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, had all the relevant Train Services (loaded and empty) that the Operator was entitled to operate in the relevant period under **Schedule 1** been operated and where Nt is determined by identifying CNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service;

QRNTY is the sum of the Nt that would have been determined for the period identified in (a), (b) or (c) above, solely due to those relevant Train Services that were unable to operate directly as a result of a QR Cause where Nt is determined by identifying QRNTSY for loaded Train Services (as defined above) multiplied by a nominal net tonnes per loaded Train Service as reasonably determined by QR for the relevant Train Service; and

NTY is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Year identified in (a), (b) or (c) above on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.5 of this Schedule.

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 including charges for GST not already factored in by the formula for AC including, but not limited to, payment for Ancillary Services, interest, Overload Charges, payment for ad-hoc Train services not calculated in AC above, performance payments from **Schedule 1** or **Schedule 5** and any adjustments (positive or negative).

**5.2** For the purposes of the definitions of TR, SAR and TATP, each of the following terms has the meaning given to that term in QR's Access Undertaking as at the date of this Agreement (including, for the avoidance of doubt, where that term is defined in Schedule F of QR's Access Undertaking):

- (a) Access Agreement;
- (b) Access Rights;
- (c)  $AT_{2,4}$ ;
- (d) Commencing Date;
- (e) Individual Coal System Infrastructure;
- (f) New Access Agreement;
- (g) Take or Pay;
- (h) Total Actual Revenue;
- (i) Train Service;
- (j) System Allowable Revenue; and
- (k) Year.

For the purposes of the definitions of TR and TATP, the amount of Take or Pay that QR is entitled to earn will be calculated in accordance with Subclause 2.2.6, Part B, Schedule F of QR's Access Undertaking as at the date of this Agreement.

**5.3** For the purposes of this **Schedule 3** a Train Service is a One Way Train Service.

- 5.4 A Train Service shall be deemed to commence at that time nominated by QR in accordance with its information systems in use at the time.

**PART 6 OVERLOAD CHARGES**

Overload Charges will be levied at the rate specified in the relevant Load Variation Table published by QR from time to time. The method of calculation and required payment method for Overload Charges will be advised.

**SCHEDULE 4**  
**AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS**

**Clause 5.9**

**PART 1      AUTHORISED ROLLINGSTOCK**

1.1      The following Rollingstock is authorised for operation on the Nominated Network subject to continued compliance with the criteria detailed for each respective item of Rollingstock. Inclusion in this Part 1 is not sufficient for operation on the Nominated Network (or any other part of the Infrastructure) and specific authorisation for the Rollingstock in this Part 1 as part of a Rollingstock Configuration in Part 2 is required prior to any operation of Train Services.

**LOCOMOTIVES:**

<b>Class</b>	
<b>Type</b>	
<b>Locomotive Identification Numbers</b>	
<b>Electric or diesel</b>	
<b>Vehicle Length over Coupling Centres</b>	
<b>Gross Mass</b>	
<b>Maximum Axle Load</b>	
<b>Axle Configuration</b>	
<b>Clearance Category</b>	
<b>Maximum Speed</b>	
<b>Total brake force empty (kN) including method of measurement or calculation</b>	
<b>Total brake force loaded (kN) including method of measurement or calculation</b>	
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>	
<b>Brake block or disc pad type</b>	
<b>Drawgear capacity</b>	
<b>Driver Cabs</b>	
<b>Driver Stations per Cab</b>	
<b>Brakes (26L equiv.)</b>	
<b>Dynamic Brake</b>	
<b>Train Radio</b>	
<b>Fuel Capacity</b>	
<b>General Arrangement Diagram Number</b>	
<b>Compatible with Safeworking DTC/RCS</b>	
<b>Notes and Conditions</b>	
<b>Other</b>	

**WAGONS:**

<b>Class</b>				
<b>Type</b>				
<b>Wagon ID Number</b>				
<b>Vehicle Length over Coupling Centres</b>				
<b>Maximum Gross Mass</b>				
<b>Maximum Allowable Gross Tonnage</b>				
<b>Maximum Desirable Gross Tonnage</b>				
<b>Tare Mass</b>				
<b>Payload</b>				
<b>Maximum Axle Load</b>				
<b>Type of payload (eg dangerous goods)</b>				
<b>Total brake force empty (kN) including method of measurement or calculation</b>				
<b>Total brake force loaded (kN) including method of measurement or calculation</b>				
<b>Handbrake/park brake force (kN) including method of measurement or calculation</b>				
<b>Brake block or disc pad type</b>				
<b>Drawgear capacity</b>				
<b>Clearance Category</b>				
<b>Maximum Speed Empty</b>				
<b>Maximum Speed Loaded</b>				
<b>Drawgear Type</b>				
<b>General Arrangement Daigram Number</b>				
<b>Notes and Conditions</b>				
<b>Other</b>				



**PART 2 AUTHORISED ROLLINGSTOCK CONFIGURATIONS**

2.1 The following Rollingstock Configurations for Train Services have been authorised for use on the Nominated Network subject to compliance with the criteria detailed below:

<b>Locomotive Class/Type</b>	
<b>Number of locomotives</b>	
<b>Wagon Class/Type</b>	
<b>Maximum number of trailing wagons per locomotive</b>	
<b>Maximum allowable number of trailing wagons in train configuration</b>	
<b>Maximum Allowable Gross Tonnage</b>	
<b>Empty tare tonnage (incl. Locos)</b>	
<b>Maximum Train length</b>	
<b>Maximum speed of empty Train</b>	
<b>Maximum speed of loaded Train</b>	
<b>Limitations/restrictions on marshalling order</b>	
<b>Train braking characteristics</b>	
<b>Brake delay time</b>	
<b>Deceleration rate</b>	
<b>Notes and Conditions</b>	
<b>Any variations from Reference Train Service description</b>	
<b>Other</b>	

**PART 3 RELEVANT ROLLINGSTOCK (Clause 7.4(d)(ii))**

*[To be inserted as applicable]*

**SCHEDULE 5  
PERFORMANCE LEVELS**

**Clause 5.6**

**SCHEDULE 6  
SAFEWORKING PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES &  
ENVIRONMENTAL STANDARDS**

**Clauses 7.1 and 8.1**

**PART 1 SAFWORKING PROCEDURES / SAFETY STANDARDS**

**1.1 QR's Safeworking Procedures**

QR's Safeworking Procedures that apply to the Nominated Network are as detailed in:

*[To be identified in and completed after the Risk Assessment]*

QR's Safeworking Procedures and Safety Standards form part of QR's safety management system and may be altered from time to time by QR in the manner prescribed in the Agreement and advised in accordance with Part 6 of **Schedule 10**.

**1.2 Line Sections**

The following specific Safeworking Procedures are in operation for the line sections and station yards that comprise the Nominated Network as detailed below:

<b>System</b>	<b>From</b>	<b>To</b>	<b>Safeworking Procedures</b>

**1.3 Localised Areas**

For localised areas such as station yards, QR station masters, signalmen or similar officers may be responsible for giving QR Train Control Directions.

**1.4 High Visibility Clothing**

High visibility clothing is to be constructed from high daytime visibility (Class F) materials, orange (special purpose) in colour. During the hours of darkness or when

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working in tunnels or low light weather conditions or between 1700 - 0800 hours, the high visibility clothing shall include retroreflective (Class R) material. The retroreflective material is to be at least 50mm wide and is to consist of two parallel strips around the body and in the case of a garment with sleeves a signal parallel strip around the upper arms. The colour and materials are to conform to AS/NZS 1906.4:1997 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments*.

## 1.5 Wearing of High Visibility Clothing

The Operator's Staff and visitors shall wear high visibility clothing:

- (a) when on QR's Right of Way;
- (b) in other work situations where high visibility clothing will reduce the risk of coming into contact with moving Trains, vehicles or plant; and
- (c) protective headwear must be worn at emergency sites.

High visibility clothing is not required to be worn by the Operator's Staff under the following conditions:

- (a) when the movement of Trains is within a building (such as a diesel shed) and within its defined boundaries is subject to control mechanisms;
- (b) when visitors are proceeding in a direct route on designated walkways to defined locations to access high visibility clothing;
- (c) when the movement of people is directed clear of the track by fencing, barriers or signs and escort is provided by a member of the Operator's Staff who is familiar with the local area and operating procedures;
- (d) when a person's duties require them to work within the public areas; or
- (e) when the Operator's Staff and visitors are within the confines of operational Rollingstock.

## 1.6 Compliance

The Operator is responsible for:

- (a) ensuring the Operator's Staff and visitors are instructed in the provisions of this Part 1 of **Schedule 6**;
- (b) ensuring the Operator's Staff and visitors comply with this Part 1 of **Schedule 6**;
- (c) specifying which form of high visibility clothing shall be adopted, having regard to local conditions and the nature of the work performed;
- (d) ensuring that the Operator's Staff familiarise themselves with local management standards prior to working in situations other than on QR's Right of Way; and,
- (e) ensuring that the Operator's Staff inspect, wear and maintain high visibility clothing correctly by:
  - checking for deterioration due to wear, damage, fading and cleanliness;
  - not wearing backpacks or similar items over any high visibility clothing so that the high visibility clothing is concealed; and,
  - ensuring high visibility vests or shirts are securely fastened.

## PART 2 QR EMERGENCY PROCEDURES

QR will provide the Operator with a copy of the QR Emergency Procedures (as amended from time to time) which detail the procedures developed by QR for dealing with a Network Incident.

## PART 3 ENVIRONMENTAL MANAGEMENT STANDARDS

- 3.1 Clause 8.1 of this Agreement requires an Environmental Investigation and Risk Management Report to be prepared to identify all the risks of Environmental Harm arising out of the use of the Nominated Network by the Operator including those risks identified in this Part 3. This list is to be taken as the minimum requirements to be addressed and the Environmental Investigation and Risk Management Report should

not be restricted to the elements included in this list. The Report should have regard to any appropriate Australian Standard dealing with Risk Assessment.

3.2 The risks to be considered and addressed as a minimum in the Environmental Investigation and Risk Management Report are:

**A WATER QUALITY MANAGEMENT**

The Operator must consider the impact of the operation on stormwater systems and natural waterways. In doing so all relevant water quality standards and regulations should be met.

**B AIR POLLUTION MANAGEMENT**

The Operator must consider the impact of the operation on air quality. In doing so all relevant air quality standards and regulations should be met.

**C CONTAMINATED LAND MANAGEMENT**

The Operator must consider the impact of the operation on land contamination. In doing so all practicable control measures to prevent the contamination of land should be undertaken. The requirements of Clause 8.5 of the Agreement shall be a minimum.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated land (Chem Unit 1991) or by other standards considered acceptable by the relevant authorities.

**D NATURE CONSERVATION**

The Operator shall consider the impact of the operation on flora and fauna.

**E MANAGEMENT OF HAZARDOUS SUBSTANCES AND DANGEROUS GOODS**

The Operator must as a minimum meet the requirements of Clause 8.3 of the Agreement. Any further environmental impacts not specifically addressed by Clause 8.3 should also be addressed.

**F WASTE MANAGEMENT**

The Operator must consider the impact of any waste produced by the operation. In doing so all relevant government and local authority requirements should be met.

**G ENVIRONMENTAL NOISE MANAGEMENT**

The Operator must determine the likely noise impacts attributable to the Operator's Train Services. In that regard, the Operator should ascertain whether existing noise levels from the Nominated Network exceed the Planning Levels for Railways referred to in the Environmental Protection (Noise) Policy 1997 ("Noise Planning Levels") and/or whether the Noise Planning Levels are likely to be exceeded because of the Operator's Train Services.

The Operator should note that where existing noise levels in the Nominated Network exceed the Noise Planning Levels and/or where noise from the Operator's activities are likely to result in an exceedence of the Noise Planning Levels, this may constitute an area of unacceptable risk to QR for the purposes of Clause 8.1(b) of this Agreement.

## **H ENVIRONMENTAL MONITORING**

The Operator must consider the likelihood of the operations under this Agreement causing Environmental Harm or nuisance. Baseline monitoring should be considered where relevant to establish benchmarks and to allow for comparison between pre- access conditions and those during and post access. Where QR has baseline information available it may be provided to the Operator and if no further baseline monitoring is undertaken, the QR data shall then be deemed to be an accurate description of the baseline data. Where no baseline monitoring is available, it shall be taken that the Nominated Network currently meets all environmental standards for the purposes of determining cause in any future environmental matters.

## **I EDUCATION, AWARENESS AND TRAINING**

The Operator must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Investigation and Risk Management Report.

With respect to environmental issues the Operator's Emergency Response Plan must:

- (i) include specific action plans for minimising environmental damage as a result of Incidents;
- (ii) require immediate and appropriate action to minimise any impact;
- (iii) require relevant authorities and QR to be informed immediately of any Incident;
- (iv) detail the method for the clean up of any contamination resulting from the Incident; and
- (v) require the recording of all environmental Incidents and all measures taken to manage the Incidents on a central register.

SCHEDULE 7

INSURANCE

Clause 13

**Required Operator's Insurances**

- (a) **Public liability insurance**
- (i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than TWO HUNDRED AND FIFTY MILLION DOLLARS (\$250,000,000) and with a self-insured retention not to exceed *[to be inserted]* for any one loss or an aggregate deductible of not more than *[to be inserted]*;
  - (ii) to include cover in respect of personal injury or property damage arising out of 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 which occurs on a definitely identifiable date; and
  - (iii) to cover the Operator's rail operations and associated activities on the Nominated Network.
- (b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.
- (c) **Carrier liability insurance** in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than ONE MILLION DOLLARS (\$1,000,000) and with a deductible not to exceed *[to be inserted]* for any one loss.
- (d) **Motor Vehicle (non-Act) insurance** to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the Operator or Operator's Staff and must include:
- (i) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and
  - (ii) a Dangerous Goods extension with a maximum sum insured as required by statute.
- (e) **Motor Vehicle insurance** to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Agreement.
- (f) Insurances effected pursuant to (a) and (d) of this Schedule must:
- (i) include a principal's indemnity endorsement specifically noting QR as an insured party in respect of its interest arising out of or under this Agreement;

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- (ii) include a cross liability clause;
- (iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.



**SCHEDULE 8**

**QR's INVESTIGATION PROCEDURES**

**Clause 7.5**

**PART 1 ESTABLISHMENT OF INVESTIGATION**

**1.1 Routine Investigation**

- (a) Any Investigation required under Clause 7.5 of the Agreement and which is in respect of an Incident for which QR reasonably expects the cost of damage (including as a result of Environmental Harm) to be less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) and from which no person required hospitalisation is classified as a routine Investigation and shall be conducted solely by QR unless otherwise agreed by the Parties. QR shall consent to an Operator being a party to such routine Investigation if the Operator requires.
- (b) QR shall provide the Operator with a copy of any report produced as a result of a routine Investigation conducted under this Clause 1.1 and the Operator shall cooperate in the implementation of all recommendations reasonably made as part of that report.

**1.2 Major Investigation**

- (a) A major Investigation shall be undertaken in the event of an Incident or accident which resulted in a fatality or the hospitalisation of any person or where the cost of the damage (including as a result of Environmental Harm) is reasonably expected to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- (b) Major Investigations conducted under Clause 1.2(a) of this Schedule will be undertaken jointly by the Parties. Management of the Investigation will be facilitated by QR who will appoint the chairperson and who will advise the Department of Transport of the make-up of the Investigation team and its terms of reference.
- (c) A major Investigation will be set up as soon as possible following the Incident and the Parties will be required to have a representative at the site of the Incident within four (4) hours (or such other time as the Parties may agree) of notification to QR of the Incident.

**1.3 Membership of Investigating Teams**

- (a) All members of Investigation teams, whether the Investigation is conducted in accordance with Clauses 1.1 or 1.2 of this Schedule, will be required to be appropriately qualified.
- (b) Investigation teams shall not include any persons directly involved in the relevant Incident or the Recovery or Restoration.
- (c) In the case of a joint Investigation conducted under Clause 1.2 of this Schedule, each Party shall nominate at least one representative and use reasonable efforts to ensure that the members of the Investigation team have collectively the skills and expertise to address the range of operational and Infrastructure issues likely to be encountered. The Parties may agree to the inclusion of additional members in the Investigation team for this purpose.

- (d) The lead investigator of a major Investigation panel must be trained and certified in QR's accident/Incidents investigators course.
- (e) The need for independent team membership will be considered for major Investigations. A pool of interstate railway investigators exists and may be called upon where it is thought a degree of independence would be helpful to the Investigation.
- (f) In cases where worker death has occurred, the terms of reference and team composition shall be determined in conjunction with the QR's Chief Risk Officer.
- (g) Where a major Investigation is undertaken to satisfy requirements of the Transport Infrastructure Act and the Department of Transport reporting guidelines, the chairperson must be registered with the QR's Chief Risk Officer as an authorised investigator.

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Deleted: Executive General Manager Safety

#### 1.4 Terms of Reference for Investigations

- (a) The terms of reference for any routine Investigation in accordance with Clause 1.1 of this Schedule will be to determine the cause of the Incident and to stipulate what action has been or will be taken to prevent recurrence.
- (b) The terms of reference for any major Investigation in accordance with Clause 1.2 of this Schedule shall, as a minimum, be to :
  - i. ascertain probable causes;
  - ii. assess contributing factors;
  - iii. review current procedures for ensuring system integrity;
  - iv. make draft recommendations;
  - v. estimate direct and associated costs; and
  - vi. consider whether immediate remedial actions are required.
- (c) Additional terms may be added if agreed by the Parties or if determined in accordance with paragraph 1.3(f) of Part 1 of this Schedule.

## PART 2 MAJOR INVESTIGATIONS REPORTS

A copy of the final reports of a major Investigation will be supplied to each Party. Each Party will be responsible for consideration and action on recommendations that are under the control of that Party. In the case of a fatal accident a copy of the report will also be sent to the Coroner.

## PART 3 REVIEW OF INVESTIGATIONS

- (a) The Department of Transport has the right to call for an independent review of major Investigations in certain circumstances.
- (b) Under the Transport Infrastructure Act, the Minister for Transport may establish or re-establish a Board of Enquiry about an Incident that has happened on or involving a railway and which the Minister considers a serious Incident.

**SCHEDULE 9**  
**ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT &  
INTERFACE RISK MANAGEMENT PLAN**

**PART 1 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT  
REPORT**

**Clause 8.1**

*[To be inserted]*

**PART 2 INTERFACE RISK MANAGEMENT PLAN**

**Clause 11 (a)**

*[To be inserted]*

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**SCHEDULE 10**  
**INTERFACE COORDINATION PLAN**

**Clause 5.7**

**PART 1 NETWORK MANAGEMENT PRINCIPLES**

**1. Additional Definitions**

In the Network Management Principles, unless inconsistent with the context, the following words and expressions shall have the following meanings:

**“Access Seeker”** means a party who is seeking new or additional access rights;

**“Ad Hoc Train Service”** means any Train service:

- (i) additional to the number of Train services permitted under an existing access agreement, but otherwise consistent with the Train Service Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing access agreement; or
- (ii) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by QR;

**“Below Rail Delay”** means a delay to a Train service from its scheduled train path in the Daily Train Plan, where that delay can be attributed directly to QR acting as Railway Manager, but excludes:

- (i) cancellations;
- (ii) delays resulting from QR complying with its Passenger Priority Obligations; and
- (iii) delays resulting from a Force Majeure Event;

**“Capacity”** means the capability of a specified section of the Infrastructure to accommodate Train services within a specified time period after providing for QR’s reasonable requirements for the exclusive utilisation of that specified section of the Infrastructure for the purposes of performing activities associated with repair or Enhancement, including the operation of work Trains;

**“Capacity Resumption Register”** means a register maintained by QR and including the following information:

- (i) the Access Seeker who has an interest in access rights; and
- (ii) the access rights in which they have an interest;

**“Committed Capacity Register”** means a register maintained by QR and including the following information:

- (i) the party who has an interest in the access rights;
- (ii) the access rights in which they have an interest; and
- (iii) the nature of the interest;

**“Contested Train Path”** means a Train path in respect of which more than one Railway Operator has expressed an interest in operating a Train service in the week in question;

**“Major Periodic Maintenance”** means activities that renovate the Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year

and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering;

**“Out-of-Course Running”** means the circumstances that occur when the actual running of one or more Train services differs, by more than the agreed threshold, from that provided in the Daily Train Plan;

**“Timetabled Traffic”** means a traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train path on a particular day and/or week;

**“Train Orders”** means railing requests for a nominated period of time submitted to QR, or on behalf of a Railway Operator, to assist in the scheduling of Train Services;

**“Train Service Entitlement”** means a Railway Operator’s entitlement under an access agreement to operate a specified number and type of Train services over the Infrastructure 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, and until such time that access agreements have been developed for all existing QR operated Train services, includes the Capacity that is demonstrably required for the purpose of QR operated Train services and for which access charges are applicable;

## 2. Scheduling Principles

### 2.1 Train Service Entitlements

- (a) Railway Operators operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology<sup>1</sup>.
- (b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), a Weekly Train Plan (WTP), where necessary, and a Daily Train Plan (DTP).
- (c) Where an Access Seeker’s required Capacity cannot be met fully, the Access Seeker may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and if the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

### 2.2 Master Train Plan Principles

- (a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train services and other activities on the Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements. In other words, the Train paths indicated in the MTP for Cyclic Traffics need not necessarily represent the Train paths that those Train services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train paths indicated in the MTP may well indicate the actual Train path that a Train service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.

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<sup>1</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of Train Services per specified period of time.

<sup>2</sup> See Footnote 2 below

- (b) Unless otherwise expressly provided in a Railway Operator's access agreement, the MTP may be modified, as specified in the following paragraphs (c), (d), (e) and (f) where:
- (i) a Railway Operator notifies QR that it wishes to make a long-term change to the **times**<sup>2</sup> at which its Train service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (v) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train service/s operate, provided that change is within the scope of the relevant Railway Operators' Train Service Entitlement/s and is intended to accommodate:
    - the creation of a new or additional Train Service Entitlement, through the signing of an access agreement, or the negotiation of a variation to a Railway Operator's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP;
  - (vi) QR notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlement/s, provided that change is intended to accommodate:
    - the creation of new Planned Possessions or the modification of existing Planned Possessions;
    - the creation of an additional Train Service Entitlement, through either the signing of an access agreement or the variation of an existing access agreement; or
    - any other Operational Constraint affecting the MTP,provided that where the change to the **times** at which scheduled Train service/s operate results in any existing Railway Operator's

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<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their access agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (vii) QR notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the **times**<sup>4</sup> at which one or more scheduled Train service/s operate, whether or not within the scope of the affected Railway Operator's Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Railway Operators' Train Service Entitlements, QR has made reasonable efforts to mitigate the impact on that Railway Operator. Any limitations upon QR's ability to exercise this right will be specified in individual access agreements;
  - (viii) a Railway Operator's access agreement allows QR to alter the Railway Operator's Train Service Entitlement, for instance by resuming Capacity; or
  - (ix) QR, Infrastructure Service Providers, and all affected Railway Operators, otherwise agree.
- (c) QR may make modifications to the MTP, within the scope of subparagraphs (b)(i), (b)(ii), (b)(iii) and (b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
  - (d) QR may make modifications to the MTP, within the scope of subparagraphs (b)(v), (b)(vi) and (b)(vii) of these MTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
  - (e) Where a change is being sought to the MTP that falls within the scope of subparagraph (b)(ix) of these MTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum<sup>5</sup>. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.
  - (f) QR must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.
  - (g) As a result of QR's obligations in accordance with paragraph (f), where reference is made in paragraph (b) of these MTP Principles to a Railway Operator notifying QR that it wishes to vary its Train Service Entitlement or Train service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.
  - (h) The cancellation of a Train service or Train services in accordance with the above MTP Principles, does not necessarily excuse either QR or a Railway Operator from other access agreement obligations relating to the conduct in question.
  - (i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for QR Train Controllers in carrying out their duties.

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<sup>4</sup> See footnote 2 above.

<sup>5</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.



### 2.3. Weekly Train Plan Principles

- (a) In parts of QR's network where Cyclic Traffics operate, for instance the Central Queensland Coal Region, there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A WTP will be scheduled, utilising Planned Possessions, the Train paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, each Railway Operator's Train Service Entitlement and Train Orders for the particular week in question.
- (b) In the Central Queensland Coal Region, Train Orders for the coming week must, unless otherwise advised by QR, be submitted to QR before 1200 hours on Wednesday.
- (c) The process of scheduling Cyclic Traffics in the WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Railway Operators and Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process applies only for the allocation of a Contested Train Path between Railway Operators for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 1.
- (d) QR will advise Railway Operators of the WTP once it is developed in accordance with the above steps.

### 2.4. Daily Train Plan Principles

- (a) The DTP will indicate all scheduled Train services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Infrastructure.
- (b) In scheduling Cyclic Traffics on the DTP, QR may first schedule a WTP as discussed in the WTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- (c) QR will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Railway Operators and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- (d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in paragraphs (e), (f), and (g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:
  - (i) a Railway Operator notifies QR that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Railway Operator's scheduled Train service/s not being met or a Planned Possession not being met;
  - (ii) QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train service/s

<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

operate, whether or not within the scope of the applicable Railway Operator's Train Service Entitlement, provided the change is intended to accommodate:

- the modification of an existing Planned Possession;
- the creation of an Urgent Possession; or
- any other Operational Constraint affecting the DTP,

provided that where the change to scheduled Train service/s results in any existing Railway Operator's Train Service Entitlement not being met, such change is only made with the agreement of such Railway Operator/s, such agreement not to be unreasonably withheld;

- (v) QR requests 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 Railway Operators' Train Service Entitlement, for the purpose of accommodating an Emergency Possession; or
- (vi) QR, Infrastructure Service Providers, and all affected Railway Operators otherwise agree.
- (e) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(i), (d)(ii), and (d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
- (f) QR may make modifications from the MTP or WTP (where applicable), within the scope of subparagraphs (d)(iv) and (d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Railway Operators whose Train service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- (g) Where a change is being sought from the MTP or WTP that falls within the scope of subparagraph (d)(vi) of these DTP Principles, QR will invite Infrastructure Service Providers and all Railway Operators whose scheduled Train service/s are affected by the change to consider the modification in an appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.
- (h) Other than as detailed in paragraph (i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
- (i) Once the DTP is scheduled, variations to the DTP may only be made where:
- (i) before the day of operation, QR receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Railway Operator's scheduled Train service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
- (ii) before the commencement of the relevant Train service/s, a Railway Operator notifies QR that it wishes to make a change to the **times**<sup>9</sup> at which its Train service/s operate, provided that change is within the scope of the Railway Operator's Train Service Entitlement, and does not result in any other Railway Operator's scheduled Train service/s not

<sup>8</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.

<sup>9</sup> See Footnote 2 above.

being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or

- (iii) before the commencement of the relevant Train service/s, QR notifies a Railway Operator that an Emergency Possession is required.
- (j) QR may make modifications to the DTP within the scope of subparagraphs (i) (i), (i) (ii) and (i) (iii) of these DTP principles on a case by case basis without the need for consultation.
- (k) The cancellation of a Train service or Train services in accordance with the above DTP Principles, does not necessarily excuse either QR or a Railway Operator from other obligations under this Agreement relating to the conduct in question.
- (l) The DTP will represent the expected train operation performance target over its period.
- (m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control Principles.

### 3. Train Control Principles

- (a) The fundamental objective of Train Control will be to facilitate the safe running of Train services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- (b) The ability of QR and/or a Railway Operator to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- (c) The following general principles apply to Railway Operators and QR Train Controllers:
  - (i) all parties will ensure that operational safety is maintained through compliance with the Safeworking Procedures and Safety Standards, the Rollingstock Interface Standards, applicable Interface Risk Management Plans and Environmental Investigations and Risk Management Reports;
  - (ii) Railway Operators will ensure that activities required to provide and operate Train services, including but not limited to, traincrewing, locomotive and Wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met; and
  - (iii) QR will manage the Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- (d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Railway Operator over another, and as a result, the identity of a Railway Operator will not of itself be a legitimate reason for QR Train Controllers to alter a scheduled Train service.
- (e) The traffic management decision making matrix, at Appendix 2, will be provided to assist QR Train Controllers in the resolution of disputes in accordance with the above principles.

- (f) QR will provide Railway Operators with:
- (i) real time Train Control information that indicates actual running of that Railway Operator's Train services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Train Control diagrams that indicates actual running of that Railway Operator's Train services against the relevant DTP; and
  - (iii) information about the type of Train services<sup>1</sup> operated by other Railway Operators on the same network to assist the Operator to determine whether the QR Train Controller is applying the principles in this Schedule in a consistent manner between Railway Operators.

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<sup>1</sup> For instance, freight Train services, passenger Train service or coal Train services.

**Appendix 1**

**Contested Train Path Decision-making Process**

QR will determine who is allocated a Contested Train Path, by:

- firstly, eliminating from consideration any Railway Operator whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR still has spare Capacity available, QR may determine which of the parties seeking the Contested Train Path is allocated that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR may determine which of the parties is allocated the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR will document the parties' agreement and keep a record of such<sup>10</sup>.
- then, considering the number of Train services per week that each Railway Operator has a contractual entitlement to in accordance with their Train Service Entitlement. If QR is behind (in the contract year to date) in providing a Railway Operator with its contracted Train services, that Railway Operator will get priority over a Railway Operator that QR is either ahead or on target (in the contract year to date) in providing contracted Train services to. Where QR is behind in providing contracted Train services to more than one Railway Operator, the Railway Operator most behind (in terms of Train services provided as a percentage of contracted Train services) will get first priority over others; and
- finally, where the above considerations do not assist QR in making a decision regarding which requested Train service is scheduled, QR will unilaterally determine which Train service/s is scheduled, and will keep a record of that decision and the reasoning behind that decision. QR will ensure that, over time, no Railway Operator is favoured over another, and where possible, if one Railway Operator is favoured this time, taking into account the Train Service Entitlement held by a Railway Operator, next time they are not favoured. In other words, if one Railway Operator has an entitlement to 10 services per week, and another Railway Operator has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Railway Operator if they received priority over the first Railway Operator on 2 out of 3 consecutive occasions.

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<sup>10</sup> QR envisages that this step will take into account the requirements of the relevant destinations of the Train services in question. In the coal system, for instance, the ports and domestic users, if they do not have an access agreement with QR themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Railway Operators in determining the priority of Train services requested in their weekly train request.

**Appendix 2**

**Traffic Management Decision Making Matrix**

**Notes for the application of the Traffic Management Decision Making Matrix**

As a generic principle for the performance of Train Control, QR recognises (as noted in Paragraph 3 of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of ‘on time running’, and accordingly, running to the DTP will always result in the most efficient use of the Infrastructure and provide those parties using the Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR considers it necessary to permit QR Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 and 6 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a QR Train Controller’s ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train services, as expressed in their Train Service Entitlements.

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 DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running “On Time”.

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
<b>Train B – Current Status</b>	Train B	Objective	On Time Exit	On Time Exit	1. Lose no more time 2. Make up time 3. Hold the gain
	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

**Rules for the application of the Traffic Management Decision Making Matrix**

- Rule 1. Subject to rules 5 and 6, Train B may be given priority on condition Train A will still meet its “On Time” objective.
- Rule 2. Both Trains must meet their “On Time” objective.
- Rule 3. Subject to rules 5 and 6, Train A may be given priority on condition Train B will still meet its “On Time” objective.
- Rule 4. Subject to rules 5 and 6, give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the QR Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or a Passenger Priority Obligation.
- Rule 6. Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other Trains if the QR Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.

**PART 2 TRAIN CONTROL PROCEDURES**

## 2.1 Operator's Advice to QR Train Controller

For the benefit of the Operator's traincrew contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

For the benefit of the Operator's Controller contact details for the QR Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, whether the Train has entered the Nominated Network or not, the Operator's Controller must advise the QR Train Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on Train performance.

In addition to the above, the traincrew of the Operator's Train must directly advise the QR Train Controller of any event that may affect the performance of their Train as soon as reasonably practicable after becoming aware of the event.

At least fifteen (15) minutes prior to the departure of the Operator's Train, the Operator's Controller is to provide the QR Train Controller with the following information:

- information regarding the traincrew, including names, depot, planned crew change locations and details of any mandatory breaks;
- any en route locomotive provisioning requirements;
- if in Train order territory or direct traffic control territory, the number of the leading locomotive; and,
- a Train List which is to contain the following information:
  - the number of the Train;
  - the origin of the Train;
  - the length of the Train in metres (including the locomotives);
  - the number of vehicles in the Train;
  - the gross mass of the Train;
  - the gross trailing load of the Train in tonnes;
  - the motive power employed by the Train;

- for each vehicle in the Train in the order in which they will be placed, leading end first, the following information:
  - vehicle classification;
  - the vehicle number;
  - vehicle type;
  - gross weight of the vehicle;
  - a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
  - the destination of each vehicle;
  - any known defects eg brakes cut out.
- The Train List must be entered into QR's nominated information system in accordance with the procedures specified by QR.
- Any subsequent changes to the information provided in the Train List must be updated in QR's nominated information system in accordance with the procedures specified by QR as soon as reasonably practicable.
- The Operator must ensure that the contents of the Train List are accurate and reflect all the relevant information pertaining to the Train Service.
- In the case of a passenger Train variations to the above requirements may be specified by QR.

In the event that the weight and/or length of the Train alters during the course of the journey, the Operator's Controller is to advise the QR Train Controller of the new weight and length.

The Operator must provide to QR (and keep current at all times during the Term) the contact details (including mobile and after hours contact details) for the Operator's Controller.

Operator's Controller:

Name: *(to be completed by Operator)*

Position:

Phone:

Mobile:

Fax:

The Operator's Controller must be contactable by the QR Train Controller at all times when any of the Operator's Trains are on the Nominated Network. During times when the Operator's Trains are not on the Nominated Network and the Operator's Controller cannot be contacted the following advice is to be provided to the QR Train Controller:

- the hours during which the Operator's Controller will be unavailable; and,
- after hours contact procedures.

In dark territory the Operator's traincrew is to supply advice of the arrival and departure times, or the departure times if the Train did not stop, for each crossing station that the Train passed through on the Nominated Network when reasonably requested by the QR Train Controller. These times are then to be entered into QR's nominated information system as soon as practicable after the advice is received from the traincrew.



## 2.2 QR Train Controller's Advice to the Operator

As soon as reasonably practicable after becoming aware of any event that may affect the performance of the Operator's Train, the QR Train Controller must advise the Operator's Controller. Such advice is to include:

- the Train number;
- nature of the event; and,
- likely impact on the Train's performance.

When reasonably requested by the Operator's Controller, the QR Train Controller is to provide an estimated time of arrival at any location on the Nominated Network for the Operator's Train.

When reasonably requested by the Operator's traincrew, the QR Train Controller will provide information regarding events that may impact on the performance of the Operator's Train.

## 2.3 Consultation Between QR Train Controller and the Operator

The location of meal and personal needs breaks is to be determined by consultation between the QR Train Controller and the Operator's traincrew.

Traincrew shall contact the Operator's Controller to request relief. If traincrew cannot establish communication with the Operator's Controller, the QR Train Controller shall be contacted and relief requested.

It is the responsibility of the Operator's Controller to determine which Trains require relief prior to reaching their destination. Consultation is to take place between QR Train Controller and the Operator's Controller as to the most appropriate time and location to have the Train relieved at.

Once this relief time and location has been agreed to it is the responsibility of the QR Train Controller to advise the Operator's Controller should the estimated time of arrival of the Train at the relief location vary by more than 15 minutes. It is the responsibility of the Operator's Controller to make all the necessary arrangements for traincrew relief.

If a relief request is received from traincrew, the QR Train Controller shall record the request and advise the Operator's Controller.

Upon receiving the relief request advice from the QR Train Controller, the Operator's Controller is to verbally acknowledge receipt. The Operator's Controller shall then consult with the QR Train Controller to advise of relief location.

If the Operator's Controller alters the relief requirements or the relief arrangements become delayed after advice was given to the QR Train Controller, the altered information shall be passed onto the QR Train Controller.

The Operator's Controller shall contact traincrew direct and advise of relief arrangements and if unable to contact traincrew direct, shall request the QR Train Controller to advise traincrew of relief arrangements.

Where traincrew are rostered on "change jobs", or are required to change enroute, it is the responsibility of the Traincrew to advise the QR Train Controller of their roster prior to entering the Nominated Network. It is the responsibility of the QR Train Controller to advise traincrew of the location of the change.

#### 2.4 **Radio Procedures**

When using the Train Control radio system the Operator's Staff are to follow the general radio procedures contained in the Observance of Signals Manual STD/0037/SWK (as amended from time to time).

Access to the Train Control radio system for each of the line sections that comprise the Nominated Network can be obtained as follows:

Line Section:

Channel Number:

Line Section:

Channel Number:

#### 2.5 **Procedures for Entering the Nominated Network**

The Operator must comply with originating yard procedures (if any) as advised by QR.

The Operator will only enter the Nominated Network upon receipt of the appropriate safeworking authority as advised by QR.

The Operator's Controller is to advise the QR Train Controller of the anticipated departure time of the Operator's Train at least two (2) hours before the scheduled departure time of the Train or when reasonably requested by the QR Train Controller. Should the anticipated departure time alter from that previously advised to the QR Train Controller, the Operator's Controller is to advise the QR Train Controller of the new anticipated departure time as soon as reasonably practicable after becoming aware of the change.

When the Operator's Train is ready to depart the originating station, the Operator's traincrew is to advise the QR Train Controller.

Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

#### 2.6 **Procedures for Shunting/Entering and Exiting Yards**

QR will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en-route.

#### 2.7 **Procedures for Leaving the Nominated Network**

The Operator must comply with terminating yard procedures (if any) as advised by QR.

#### 2.8 **Contact details for party responsible for loading Trains – Clause 2.7(h)(ii)**

The Operator must provide to QR (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator's Trains.

Party Responsible for Loading the Operator's Trains:

Name: *(to be completed by the Operator)*

Phone:

Fax:

**PART 3 TRAIN OPERATIONS PROCEDURES**

**3.1 Safety Notices**

**(a) Safety Alerts**

Safety Alerts are documents used by QR to communicate any serious safety incident that has or could affect QR and users of its Infrastructure. The Safety Alerts are also used to provide details of the incident for information purposes together with advice regarding any immediate actions to be taken. QR will forward Safety Alerts to the facsimile number specified by the Operator in Clause 22.9 of the Agreement. As soon as possible after the receipt of a Safety Alert, the Operator is to make the Operator's Staff aware of the contents of such Safety Alert.

**(b) Weekly Notices**

Weekly Notices are published weekly by QR for QR employees and contain employment and safety information. The Weekly Notice is used to communicate safety related information about permanent changes or temporary changes which could extend for more than four (4) weeks. An abridged Weekly Notice containing the relevant safety information will be made available to the Operator at the same time.

This information will be published in the Weekly Notice seven (7) days prior to the date of such changes becoming effective. If it is necessary to publish the information and there is not enough time to issue it in a Weekly Notice, the information will be published on a Train notice prior to the date of the change becoming effective. The information will then be published as soon as possible in a Weekly Notice and an abridged Weekly Notice.

Members of the Operator's Staff who perform Safety Related Work must either receive a copy of the abridged Weekly Notice or have access to a copy or be notified of any information in the Weekly Notice relevant to their area of work. The Operator must advise QR of the address to which the abridged Weekly Notices should be forwarded by mail.

The Operator is to ensure that all abridged Weekly Notices are distributed to the relevant members of the Operator's Staff.

**(c) Train Notices**

Train Notices are instructions published by QR as either a hard copy or by electronic means and which are generally issued daily, but may be issued as determined by QR. They convey operational and safety instructions, information and messages. Train Notices must be issued to members of the Operator's Staff who are responsible for the operation of Trains or who work on or near the Track.

QR will advise the Operator of its procedures for forwarding Train notices.

The Operator is to ensure that all relevant Train Notices are distributed to the relevant members of the Operator's Staff.

**(d) Safeworking Forms**

Upon execution of this Agreement QR will provide to the Operator sufficient copies of all safeworking forms necessary to operate on the Nominated Network. QR will also supply reasonable quantities of replacement forms as requested by the Operator. Additional forms may be obtained through the following contact:

Manager Risk & Compliance  
QR Network Pty Ltd

Ph: (07) 3235 7978 Fax: (07) 3235 7806

Deleted: Systems

Deleted: Access Group

Deleted: Queensland Rail

Deleted: 3439

### 3.2

#### Operational Meetings

The Operator must advise QR of the name and contact details of the Operator's Representative to attend operational meetings.

The Operator's Representative and the QR Representative (or their nominees) shall meet on a monthly basis or as agreed by the Parties for the purpose of:

- reviewing the achievement of Performance Levels and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
- reviewing requests or proposals by the Operator or QR to vary the procedures contained in this Schedule;
- reviewing the reliability of the Operator's Trains;
- reviewing Operational Constraints;
- investigating or reviewing breaches or suspected breaches of the Safeworking Procedures, Safety Standards or QR Train Control Directions by the Operator's Staff; and,
- reviewing any other matters relevant to the performance of this Agreement.

The Operator's Representative shall attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by QR from time to time.

The QR Representative is:

*(to be completed by QR)*

Ph:

Fax:

The Operator's Representative is:

*(to be completed by Operator)*

Ph

Fax

## PART 4 NOMINATED PERSONS

### 4.1 Nominated Delegates (Clause 7.4(d)(ii)(B))

The nominated delegate of the chief executive officer of QR will be:

[insert details for delegate]

Phone:  
Fax:

Deleted: Group General  
Manager

Deleted: Network Access

The nominated delegate of the chief executive officer of the Operator will be:

[insert details for delegate]

Phone:  
Fax:

#### 4.2 Operator's Incident Response Coordinator

Name:  
Position:

Phone:  
Mobile:  
Fax:

#### 4.3 Operator's Recovery Team Leader

Name:  
Position:

Phone:  
Mobile:  
Fax:

### PART 5 POSSESSION PROTOCOLS

QR will provide the Operator with a copy of the Possession Protocols (as amended from time to time) which detail the rules governing the management and scheduling of Planned Possessions, Emergency Possession and Urgent Possessions on the Infrastructure.

### PART 6 DOCUMENT CONTROL PROCEDURES

The Operator will provide to QR the following details of its Document Controller:

Name: *(to be completed by Operator)*

Position:

Business Hours Telephone Number:

Postal Address:

Email Address:

Upon execution of this Agreement, QR will issue to the Operator one electronic copy of each of the documents listed in Paragraph 1.1 of Part 1 of **Schedule 6**. QR will manage updates and revisions of these documents in accordance with AS/NZS 4292.1 Rail Safety Management provisions applying to document control.

Updates and revisions of the QR Emergency Procedures and QR's Investigation Procedures will be managed in the same way.

The Operator will be responsible for ongoing distribution of all documents to the relevant members of the Operator's Staff.

QLD Competition Authority  
Date Received  
12-May-2008

**SCHEDULE 11**  
**ANCILLARY SERVICES AND OTHER CHARGES**

QLD Competition Authority  
Date Received  
12-May-2008

**SCHEDULE 12**  
**CONFIDENTIALITY DEED**

*[Unless otherwise agreed, this deed shall be the confidentiality deed set out in Schedule B of QR's Access Undertaking]*