



QR Network's
Access
Undertaking
(2009)

*Volume 1 – Regulatory
Framework*

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Attachments

- A. Detailed of amendments for the 2009 Undertaking relative to the 2008 Undertaking
- B. QR Network's principle papers on Capacity Management and Network Management Principles
- C. QR Network's principles paper on Price Setting
- D. QR Network's principles paper on Revenue Cap
- E. QR Network's principles paper on Geographic Scope
- F. QR Network's principles paper on Pricing for Electric Train Services
- G. Report on review of AT₅, dated April 2008, prepared by Synergies Economic Consulting
- H. Valuation report on the Western System Depreciated Optimised Replacement Cost (DORC), dated 30 June 2008, prepared by Connell Hatch (commercial-in-confidence)

Preamble

QR Network is a wholly owned subsidiary of QR Limited (QR), a leading integrated national transport provider. QR Network is responsible for providing, maintaining and managing Access to, and operations on, its rail network and associated rail infrastructure. QR Network's rail network totals almost 10,000 kilometres and includes its metropolitan Citytrain network, regional freight and tourist lines and heavy haul tracks in central and southern Queensland.

QR Network's access undertaking provides a framework for Access to QR Network's rail network for the purposes of operating Train Services. QR Network's 2009 Access Undertaking (the 2009 Undertaking) is being submitted to the Queensland Competition Authority (QCA) in accordance with the *Queensland Competition Authority Act 1997*.

The key objective for the 2009 Undertaking is to create a regulatory framework which ensures QR Network is able to earn a sound commercial return through its role as an efficient provider of Access to Queensland's rail network.

QR is in the midst of enormous market and organisational change, including the huge requirement for additional investment in coal infrastructure and massive changes in customer demands. These changes in the market environment in which QR operates may intensify in impact in a relatively short timeframe and certainly during the proposed term of the 2009 Undertaking.

In this context, in developing its draft 2009 Undertaking, QR Network has needed to consider how the Access Undertaking can facilitate its ability to operate successfully in this dynamic environment while meeting customer needs. Now it is established as a separate subsidiary of QR Ltd, QR Network has considered options for substantially changing the nature of the Access Undertaking in order to remove many of the policies and provisions that have been developed over time to address QR's integrated business structure. While these provisions do provide comfort to stakeholders about how QR Network will manage access while part of an integrated organisation, they do limit QR Network's ability to flexibly respond to changes in its market. However, QR Network recognises that, given its only recent establishment as a separate subsidiary, a positive change in the perception of QR Network Pty Ltd by some stakeholders is expected over the coming period.

As a result, in the draft 2009 Undertaking QR Network has sought to develop a document that balances the key objectives of major stakeholders with QR Network's minimum requirements to commercially manage its business. In developing this draft 2009 Undertaking, QR Network has retained many of the policies and provisions that have been developed as part of its 2001 and 2005 Undertakings. However, QR Network considers that the draft 2009 Undertaking needs to be considered as a whole framework rather than a sum of its parts.

QR Network is delighted to present its draft 2009 Undertaking to the QCA and looks forward to discussing the document further with the QCA and industry stakeholders.

Executive Summary

Introduction

This 2009 Undertaking is being submitted to the QCA in accordance with Clause 136(1) of the *Queensland Competition Authority Act 1997* (QCA Act).

QR Network notes that the service declared by the QCA Act includes Access to not only to:

- Certain assets managed by QR Network; and
- Certain assets managed by other QR business groups.

QR Network confirms that the 2009 Undertaking does not cover Access to the assets managed by other QR business groups.

QR Network proposes that the 2009 Undertaking covers the four (4) year period commencing 1 July 2009 and terminates on 30 June 2013, subject to the ability for QR Network to terminate the 2009 Undertaking at an earlier date if certain events occur.

This submission comprises four (4) volumes:

1. A detailed commentary on the 2009 Undertaking;
2. A detailed discussion of the building blocks supporting the Reference Tariffs for the CQCR as set out in Schedule F;
3. A clean copy of the draft 2009 Undertaking; and
4. A copy of the draft 2009 Undertaking marked up against QR Network's draft 2008 Access Undertaking (the 2008 Undertaking) submitted to the QCA on 28 July 2008.

In preparing the submission QR Network has engaged in extensive consultation with the QCA Secretariat, the Queensland Resources Council (QRC) and coal carrying Train operators. The consultation has involved the publication of a number of discussion and principles papers detailing QR Network's substantive proposals which have been discussed at length with stakeholders and, where possible, reconciled to their satisfaction.

QR Network works closely with its customers and industry partners to attract the largest possible share of the land transport market to rail. In particular, the 2009 Undertaking reflects an access framework and corporate structure which facilitates continued development and growth of the Queensland rail network, particularly those parts servicing the coal industry.

Preamble (Part 1)

QR Network's proposes a 'plain English' explanation of the purpose of the document in Part 1 and consolidation of the intent of the 2009 Undertaking within Part 2.

Intent and Scope (Part 2)

QR Network does not propose to roll forward the obligations in the 2008 Undertaking which bind QR as an entity and hold QR Network accountable for QR's compliance with these obligations. This approach is consistent with the key principle associated with QR's corporate restructure, being to establish QR Network as an entity separate from the other QR business groups.

The specific provisions in Part 2 of the 2008 Undertaking relate to:

- The scope of the 2009 Undertaking;
- Access to electric supply arrangements not controlled by QR Network; and
- The transfer to QR Network of rail transport infrastructure not owned by QR Network.

QR Network acknowledges that an effect of these amendments is that coverage of certain Rail Transport Infrastructure declared in accordance with the QCA Act, being stations and platforms managed by QR Passenger and rail transport infrastructure managed by other QR business groups, will not be rolled forward to the 2009 Undertaking.

Other than these amendments, QR Network's proposes to roll forward the principles set out in the 2008 Undertaking subject to a number of formatting changes which provide a 'plain English' explanation of the intent of the document, greater consistency with the ARTC Undertaking, and consolidate a number of the less material administrative clauses within other Parts.

Ringfencing (Part 3)

QR Network proposes a number of substantive changes to Part 3 following a detailed review of arrangements associated with the change in QR Network's corporate structure, and also to remove Schedule A of the 2008 Undertaking relating to the Line Diagrams and Schedule B relating to the Confidentiality Deed.

QR Network also proposes changes relating to certain QR staff permitted to have access to Confidential Information including:

- QR's Chief Financial Officer; and
- Staff in QR's Insurance Management division.

Finally, QR Network proposes to remove specific obligations relating to QR Network's compliance with and audit of the decision making framework.

Negotiation Framework (Part 4)

QR Network proposes a number of amendments to Part 4 to improve the negotiation framework following a number of issues which arose during the current regulatory period and discussions with stakeholders during the development of the 2009 Undertaking.

Changes to the negotiation framework include to extend and clarify the period for acknowledgement of an Access Application (particularly where further information or clarification is required), to provide for extensions of time for the completion of an Indicative Access Approval subject to Customer approval, and to enable QR Network to reject an Access Application where a reasonable description of a Train Services cannot be formed or where the Capacity to be created relates to a Major Project.

In addition, QR Network has included new provisions which:

- Create a new Capacity Notification Register for the more effective management of Available Capacity, and to replace the Capacity Resumption Register.
- Create the framework for Major Projects.

A substantive amendment has been made to the Access Application Requirements in Schedule C to include the contact details of the Customer relevant to the Access

Application. No substantive amendments have been made to the Preliminary and Additional Information in Schedule D.

Access Agreements (Part 5)

QR Network does not propose any substantive amendments to Part 5 other than to no longer refer to the Standard Access Agreements as being in Volume 2 and to remove provisions relating to QR's Internal Access Agreements.

QR Network also does not propose any substantive amendments to Schedule E other than to clarify the rights of QR Network and Access Seekers with respect to the carriage of dangerous goods and Consequential Loss.

Pricing Principles (Part 6)

QR Network does not propose any substantive amendments to Part 6 other than to provide some flexibility for specific arrangements to breach the pricing principles (subject to QCA approval), to remove provisions relating to Internal Access Agreements which are no longer required as a result of QR's corporate restructure, and to further clarify for Access Seekers the framework for Capacity enhancements and the basis on which Access Conditions are sought.

Capacity Management and Network Management Principles (Part 7)

QR Network proposes to roll forward the basic principles in Part 7 and Schedule G, subject to a significant number of substantive amendments to improve the allocation of Capacity and to clarify a number of aspects which caused some confusion for Access Seekers and Access Holders (and their Customers) during UT2.

These amendments have arisen from the extensive discussions with Train operators and the QRC.

As the substantive amendments include replacing the transfer fee arrangements with general Relinquishment Fee arrangements, the worked example in Schedule M has been removed.

An extensive discussion of the amendments to Part 7 and Schedule G is provided at Attachment B.

Interface Considerations (Part 8)

QR Network does not propose any substantive amendments to the arrangements in Part 8 other than to remove Schedule HA relating to the sample IRMP and to broaden the arrangements for Connecting Infrastructure to include Related Operators.

QR Network does not propose any substantive amendments to Schedule H and I (formerly Schedules J and K of the 2008 Undertaking).

Reporting (Part 9)

QR Network has proposed a number of changes to the reporting arrangements in Part 9, particularly to improve the consistency, relevancy, transparency and effectiveness of its public reports. In some cases, these changes result in measures being added, deleted, expanded, consolidated or modified.

The measures which have been added are already disclosed via reporting frameworks currently in place such as for the existing coal supply chain forums or as part of QCA-specific reports.

Part 9 also incorporates the reporting obligations currently set out in Schedule MB of the 2008 Undertaking, other than the obligation on QR Network to provide a responsibility statement.

Reference Tariff Schedules (Schedule F)

QR Network's proposed amendments to Schedule F have arisen from the extensive discussions with the QCA Secretariat, Train operators and the QRC.

The discussions include preparation of a number of principles papers on various issues related to coal system pricing for the Central Queensland Coal Region (CQCR), which are provided at Attachments C to F. The papers provide extensive

discussions on QR Network's proposals for revenue cap, price setting, geographic scope and the pricing for electric Train Services.

The key proposals from each of these papers are summarised below.

Revenue cap

QR Network proposes to accept a reasonable degree of volume risk in return for the removal of provisions in the 2008 Undertaking relating to an upside increment and downside deduction for breach or negligence not otherwise covered under the relevant Access Agreement.

Price setting

QR Network proposes to establish a new Annual Review process for the revision of selected building block parameters supporting the Reference Tariffs (including cost indexation, System Forecasts and electricity costs). The Annual Review process incorporates the revenue cap process which has been consequentially revised.

Geographic scope

QR Network proposes:

- A substantial simplification of the presentation of Reference Tariffs, including a single tariff (with only slight variations) for each system; and
- A revised approach to the minimum Contribution to Common Costs (CCC).

Pricing for electric Train Services

QR Network proposes the creation of a single AT₅ Reference Tariff component for the CQCR to address QR Network's stranding risk and to remove arrangements which dis-incentivise the efficient utilisation of electric Rail Infrastructure, particularly on the Blackwater system.

In addition, the Reference Tariffs represent significant increases over those in the 2008 Undertaking for all systems. A detailed discussion of the reasons for the increases and the building block parameters supporting them is provided at Volume 2.

Regulatory Asset Base (Schedule A)

With respect to Schedule A (previously Schedule FB of the 2008 Undertaking) QR Network has applied the following principles:

- That QR Network can effectively manage its regulatory risk at the time the a decision to invest is made;
- That the best outcome for the coal supply chain is for Capacity to be considered on forward looking basis for the system as a whole; and
- Continued industry engagement is vital, and an essential element of the process.

In view of the above, QR Network proposes to align of the timing and duration of the coal master planning process with the process established for the December 2007 issue of the Coal System Master Plan , to address UT2 issues associated with the procurement policy and to revise the capital carryover mechanism and Carryover Discount Rate.

Other Matters (Parts 10 and 11)

QR Network has identified a number of areas where, since the development of the 2001 Undertaking common obligations have been developed in separate Parts. QR Network has reviewed these obligations to determine whether the common obligations can be combined.

Accordingly, QR Network has combined a number of obligations within a new Part 10 relating to the Dispute resolution process, the process for decisions made by the QCA and the audit process.

In addition, QR Network has consolidated a number of definitions and interpretive provisions within other Parts to a new Part 11.

1. Introduction

1.1 *Background*

QR Network (previously QR Network Access) was formed in 1998 as a business group of QR. QR Network operates independently of the other business groups within QR and, from 1 September 2008, will be run as a separately incorporated business within the QR portfolio.

QR Network's primary function is to manage rail transport infrastructure in Queensland. QR Network is responsible for negotiating access with parties seeking to use its rail network, for maintaining and managing rail transport infrastructure assets and for managing operations on the network such as organising the manner in which Train Services utilise network Capacity.

QR's 2001 Access Undertaking (the 2001 Undertaking) was first developed by QR Network – on behalf of QR - to provide a framework to manage negotiations with Access Seekers for access to Rail Infrastructure for the purpose of operating Train Services.

The 2001 Undertaking commenced in March 2002 upon its approval by the QCA in December 2001, with the pricing arrangements backdated to 1 July 2001. The 2001 Undertaking was effective for the period 1 July 2001 to 30 June 2005, although some transitional provisions were in place for Access Agreements where negotiations were being conducted prior to the QCA's approval of the 2001 Undertaking.

QR's second Access Undertaking (the 2005 Undertaking) commenced on 30 June 2006 upon its approval by the QCA. Pricing arrangements were backdated to 1 July 2005. The 2005 Undertaking was to be effective for the period 1 July 2005 to 30 June 2009. The 2005 Undertaking included a number of amendments which were approved by the QCA subsequent to 30 June 2006. These amendments related to:

- QR's Proposed Schedule F Amendment regarding the form of regulation to apply to coal carrying Trains Services in the CQCR, approved by the QCA on 29 June 2007; and
- QR's draft amending undertaking (DAU) on maintenance costs for the CQCR, approved by the QCA on 17 December 2007.

On 1 April 2008, QR announced the formation of a new corporate restructure which involved the creation of a number subsidiaries wholly owned by QR. As part of the restructure, substantially all of the assets associated with QR's Below Rail services transfer to a new subsidiary - QR Network Pty Ltd. Ownership of rail transport infrastructure not transferring to QR Network (e.g. stations and platforms) is retained by QR.

On 24 June 2008, QR made a further announcement confirming the effective date for the restructure (and hence the transfer of ownership of rail transport infrastructure from QR to QR Network) on 1 September 2008.

The existing declaration of services under section 6 of the *Queensland Competition Authority Regulation 2007* does not change as a result of the restructure. The impact of this is that from 1 September 2008 QR ceases to be the owner and manager of the assets transferring to QR Network, QR Network becomes the owner and manager of those assets and QR cannot comply with the 2005 Undertaking in relation to the network to be owned and managed by QR Network.

In view of the above, and in accordance with:

- Section 148 of the QCA Act, the 2005 Undertaking was withdrawn; and
- Section 136 of the QCA Act, a new access undertaking (the 2008 Undertaking) was submitted by QR Network.

1.2 Legislative Provisions

The 2009 Undertaking is being submitted to the QCA in accordance with section 136(1) of the QCA Act.

Section 136(1) provides that:

“An owner or operator of a declared service may, without receiving an initial undertaking notice, give a draft access undertaking to the authority.”

In this regard, QR Network (as owner and operator of substantially all of the assets comprising the declared service) is submitting this draft access undertaking (in the form of the 2009 Undertaking) to the authority (i.e. the QCA) on a voluntary basis.

QR Network notes that the declared service includes Access to not only to certain assets managed by QR Network but also to certain assets managed by other QR business groups. QR Network confirms that the 2009 Undertaking does not cover Access to these assets. A discussion of the changes to the 2009 Undertaking relating to QR's corporate restructure is provided at Section 1.3 below.

1.3 QR's Corporate Restructure

QR's new corporate restructure, effective 1 September 2008, will involve the creation of a number of new subsidiaries wholly owned by QR:

- QR Network Pty Ltd, formerly QR Network; and
- QR Passenger Pty Ltd (QR Passenger), formerly the Passenger Services Group.

The QR Network Board will comprise the QR Network Executive General Manager (QR EGM), the QR Chief Executive Officer (QR CEO) and the QR Chief Financial Officer (QR CFO).

For the avoidance of doubt, the following QR business groups will be retained within QR and will not be incorporated:

- QR Services;
- QRNational Regional Freight; and
- QRNational Coal.

No changes are proposed to the structure of the group of companies representing QR's bulk, specialised and intermodal freight divisions.

As part of the restructure, substantially all of QR's below rail assets, together with employee liabilities, employees, contracts and other instruments will be transferred from QR to QR Network. The following Below Rail assets will be transferred from QR to QR Network:

- Rail Infrastructure and associated assets, being associated with the 'red roads' in the Line Diagrams including electrification infrastructure;
- QR's telecommunications backbone; and

- Assets required for management and control of all Train Services including the Mayne Control Centre.

Ownership of stations and platforms do not transfer to QR Network. Instead, ownership is retained by QR subject to an agreement with QR Passenger for the management of these assets.

New Access Agreements will also be executed, effective 1 September 2008, to replace the Internal Access Agreements between QR Network and the QR business groups. The new Access Agreements will be between QR Network and the following entities:

- QR on behalf of QR Services, QRNational Coal and QRNational Regional Freight; and
- QR Passenger.

Service agreements will also be entered into for services provided by QR (on behalf of QR Services, QRNational Coal and QRNational Regional Freight) and QR Passenger. The most significant of these services is in relation to QR Services, which provides maintenance and construction services to QR Network.

1.4 QR Network's Approach

Consistent with QR's vision and QR Network's strategic purpose, QR Network's vision for the 2009 Undertaking has been:

"To create a regulatory framework which ensures QR Network is able to earn a sound commercial return through its role as an efficient provider of access to Queensland's rail network."

Accordingly, the following over-arching objectives were developed for the 2009 Undertaking:

- The provision of Access to promote economic efficiency and which is consistent with a user's ability to pay;
- Efficient investment in the network; and
- The reduction of unnecessary complexity.

1.5 Stakeholder Engagement

1.5.1 Approach to key stakeholders

There have been a number of internal (to QR) and external stakeholders involved in the development of the 2009 Undertaking. QR Network's approach to dealing with these stakeholders has been to:

- Develop and maintain an open and constructive process of engagement;
- Maintain the confidence of the QCA, customers and stakeholders in QR Network and its processes; and
- Take a co-ordinated approach to the management of whole-of-coal supply chain issues.

In addition, QR Network's approach to the consultation process for the 2009 Undertaking has been based around the following principles:

- Active engagement with major stakeholders on key issues;
- Concurrent discussions with other stakeholders whose views are important on issues relevant to stakeholders; and
- Where possible, joint reconciliation of these issues to the satisfaction of all (or most) stakeholders.

During October 2007, QR Network contacted these stakeholders to confirm the commencement of the consultation process and to request initial indications of significant issues prior to commencement of the consultation period.

Following this contact, preliminary discussions were held during November and December 2007 with a number of key stakeholders including:

- The QCA Secretariat;
- The QRC;
- QRNational Coal; and
- Asciano Limited (Asciano) on behalf of Pacific National Pty Ltd, a wholly owned subsidiary of Asciano.

During 2008 regular contact has been maintained with each of these stakeholders. Discussions were held at least monthly to discuss general principles and a number of more detailed discussion and principles papers issued by QR Network.

A general principle for consultation with stakeholders was that the principles in the 2005 Undertaking (and subsequently the 2008 Undertaking) would be retained except where QR Network, following discussions with stakeholders, considered that changes were necessary to these principles to address specific material issues.

Accordingly, stakeholders have not been consulted on amendments:

- Required to give effect to QR's corporate restructure. Whilst most amendments were made as part of QR Network's development of the 2008 Undertaking, a number of further amendments have been made to reflect the limitation of the 2009 Undertaking, post the 2008 Undertaking, to Below Rail services provided by QR Network and to reflect the independent operation of the other QR business groups post 1 September 2008.
- Which QR Network considered were not material relative to the issues addressed in the stakeholder consultation. QR Network believes that in these instances the QCA's consultation process is a more appropriate way to consider QR Network's proposals.
- To improve and/or clarify the operation of the 2009 Undertaking relative to the 2005 and 2008 Undertakings.

1.5.2 Approach to other stakeholders

The issues raised by the key stakeholders related substantially to coal-carrying Train Services in the CQCR. However, as the 2009 Undertaking covers Access by all Train Services on the Queensland rail network, QR Network has considered a number of other external stakeholders including:

- Australian Rail Pty Ltd, comprising the ARG bulk haulage business (ARG);
- QR Intermodal Pty Ltd (QR Intermodal);
- QR Regional Freight;
- QR Passenger; and
- QR Network's shareholding Ministers and their respective departments (Queensland Transport and Queensland Treasury).

ARG and QR Intermodal are wholly owned subsidiaries of QR.

No major issues arose in relation to these stakeholders which had not already been raised by the key stakeholders. Notwithstanding, QR Network has ensured that QR Network's proposals provide an efficient outcome for all users of the Queensland rail network, and to ensure specific non-coal issues are satisfactorily addressed.

As agreed with the QRC, discussions on industry-wide issues relating to the 2009 Undertaking were conducted with the QRC rather than with the individual member mines. However, QR Network did discuss specific issues with selected individual mines where those parties directly contacted QR Network.

1.5.3 Discussion and principles papers

As part of the consultation process, QR Network issued a number of discussion papers on selected topics to the key and other stakeholders. The objective of the papers was to seek feedback on matters where QR Network believed that detailed input from a range of stakeholders was appropriate prior to developing a QR Network proposal for inclusion in the 2009 Undertaking.

The papers published by QR Network were:

- Goonyella to Abbott Point (GAP) Project (released December 2007);
- Maintenance costs - service level specifications (released January 2008);
- Tariff structure (released April 2008); and
- Scope of maintenance activities (released May 2008).

QR Network confirms that no written comments were received from stakeholders in response to these papers.

In addition, to address issues raised by the key stakeholders during the preliminary discussions and to ensure constructive feedback on QR Network's proposals, a number of 'principles' papers were developed. These papers provided for discussion internally and with the key stakeholders (on a without prejudice basis) a summary of QR Network's proposals for major and minor amendments to the 2009 Undertaking to address specific issues.

The papers covered the following topics:

- Revenue cap (released January 2008)
- Price setting (released January 2008)
- Geographical scope of Reference Tariffs (released February 2008)
- Capacity management (released April 2008)
- Pricing for electric Train Services (released April 2008)
- Network Management Principles (released May 2008)

All of the papers except Capacity management and Network Management Principles related specifically to the CQCR, and as such were only released for comment by the key stakeholders (QCA, QRC, QRNational Coal and Asciano). The papers on Capacity management and Network Management Principles also were issued to the other external stakeholders.

Stakeholder feedback comprised written and verbal responses and face-to-face meetings. This feedback has been reflected in both the 2009 Undertaking and in the final principles papers provided at Attachments B to F.

1.6 QR Network's Submission

As indicated above, the key objective for the 2009 Undertaking is to create a regulatory framework which ensures QR Network is able to earn a sound commercial return through its role as an efficient provider of Access to its rail network.

Other objectives include:

- To reflect the commercial intent of QR's corporate restructure, being the creation of a number of independently operating subsidiaries and businesses;
- To address issues raised during the implementation of the 2005 Undertaking following its approval in June 2006;
- To fully reflect the revised corporate arrangements recently announced by QR Network, including the establishment of QR Network as an operating subsidiary of QR;
- To ensure that drafting is effectively achieving intended outcomes;
- To improve the practical application of QR Network's regulatory obligations;

- To simplify these obligations where it is possible to address these issues outside the undertaking (or by way of separate disclosure);
- To provide some consistency with regulatory arrangements for the Australian Rail Track Corporation (ARTC); and
- To develop new Reference Tariffs for coal-carrying Train Services reflecting QR Network's current assessment of all relevant building blocks, particularly in the current environment of major investment by QR Network and its supply chain partners in new Capacity enhancements.

Development of the 2008 Undertaking has provided QR Network the opportunity to fully reflect the implications of the restructure of QR on 1 September 2008 which has resulted in the creation of a QR Network as a separate legal entity within the QR portfolio. The creation of a separate QR Network is a major change to the way in which QR operates and manages Access to its rail network. As such, QR Network believes there is an opportunity to substantially simplify a number of elements incorporated in the 2001, 2005 and 2008 Undertakings for the purpose of addressing QR's integrated structure.

However, QR Network recognises that it has not yet established a track record of operating in this new environment, and as a result stakeholders may be concerned about a substantial change in some of these obligations at this stage. As a result, QR Network has not sought to substantially change the nature of the obligations in the 2009 Undertaking to a lighter handed approach. As QR Network's track record in managing Access within this structure is established, QR Network proposes to seek to more substantially simplify the nature of its regulatory obligations in future access undertakings to reflect a more independent business framework.

In view of the above, the 2009 Undertaking is in substantially the same structure as the 2008 Undertaking (and also the 2005 Undertaking) in that:

- Parts 1 to 9 of the 2008 Undertaking carry forward to the 2009 Undertaking. Note that standard administrative arrangements relating to Dispute resolution, audits and QCA's decision making have been consolidated within a new Part 10, with the definitions section and transitional provisions (being in Part 10 of the 2008 Undertaking) now shown at a new Part 11.
- The Schedules have been retained substantially in their UT2 format, other than arrangements relating to Line Diagrams (old Schedule A), Confidentiality

Deed (old Schedule B), the Sample Risk Management Matrix (old Schedule HA) and transfer fee worked example (Schedule M) which are to be addressed outside the 2009 Undertaking and the Regulatory Asset Base (old Schedule FB) which has been re-numbered as Schedule A. In addition, the specific reporting arrangements set out in the old Schedule MB have been consolidated within Part 9 (Reporting). Finally, Schedules J and K have been renumbered H and B to provide a sequential set of Schedules.

The Standard Access Agreements for Access Holders and Train operators do not form part of this submission. QR Network proposes that these documents be provided to the QCA in late 2008 following QR Network's submission of the 2009 Undertaking and discussions with key stakeholders regarding a new form of contract for coal carrying Train Services (refer Section 6.2 for a more detailed discussion).

This submission does not provide information on a number of inconsequential amendments. These amendments are set out in the marked-up version of the 2009 Undertaking (Volume 3) relative to the 2008 Undertaking and are summarised below.

- For consistency, Clauses, Subclauses, Paragraphs and Sub-paragraphs in the 2005 Undertaking are now described as Clauses;
- Consequential changes have been made to Clauses with cross-references elsewhere in the 2009 Undertaking;
- Defined terms relating to QR Network's corporate structure have been revised to reflect changes arising during UT2 where those changes were not addressed in the 2008 Undertaking;
- In the 2008 Undertaking, a number of Schedules included their own definitional provisions. For the 2009 Undertaking these provisions have been consolidated within the general provisions in Part 11; and
- To improve the presentation of a number of detailed Clauses, a number of formatting amendments have been made.

1.7 Subsequent Events

QR Network's development of the 2009 Undertaking is based upon its expectations of the structure of the rail industry in Queensland over the term of the regulatory period. However, QR Network expects a number of issues to arise between now and

June 2009, when the 2009 Undertaking is expected to become effective, which may need to be reflected in the final 2009 Undertaking approved by the QCA.

Depending on the timing of the QCA's approval process and further discussions with the QCA, QR Network may implement these amendments via either:

- A voluntary DAU following acceptance by the QCA of this 2009 Undertaking;
or
- A revised 2009 Undertaking should it be rejected by the QCA.

A non-exhaustive list of these issues is set out below.

1.7.1 Changes to the structure of the CQCR

The 2009 Undertaking reflects the Queensland rail network, and in particular the CQCR, as at 30 June 2008.

It is possible that a number of changes to the CQCR will occur during the period 1 July 2008 and 30 June 2009. These changes include, but are not limited to, the following:

- Changes to the Goonyella and/or Newlands systems, or the creation of a new system, following confirmation of regulatory and commercial arrangements arising from the GAP Project; and
- Changes to the Western System arising from the establishment of new Reference Tariffs for coal-carrying Train Services from the Columboola mine.

To the extent that these changes impact upon the 2009 Undertaking (and in particular Schedule F) then a number of amendments may be required.

In addition, for the purposes of the 2009 Undertaking, and in particular Schedule F, it is assumed that the following changes to the Blackwater system will occur prior to 30 June 2009:

- The approval of new Reference Tariffs for coal-carrying Train Services from the Minerva mine. QR Network's proposed Schedule F assumes that the QCA approves QR Network's preliminary DAU submitted in July 2008.

- The commencement of coal-carrying Train Services from the Lake Vermont mine, subject to a new Reference Tariff to be approved by the QCA. QR Network's proposed Schedule F assumes an indicative new Reference Tariff for Lake Vermont as part of the Goonyella system, being the system in which the mine is located.

1.7.2 Outcome from the O'Donnell Review

In July 2007, the Queensland Government released an independent report into the Goonyella Coal Chain capacity (the O'Donnell review). The O'Donnell review included a number of recommendations aimed at delivering immediate and near-term gains in Goonyella system Capacity.

The recommendations were:

- That a central coordination role be created to oversee and, if necessary, coordinate all activities which span the whole of the Goonyella supply chain;
- That QR National Coal immediately commence a process to purchase additional train sets to allow it to meet projected volumes; and
- That a business improvement program be commenced across the supply chain, starting immediately with rail operations as this is the current bottleneck.

In January 2008 a further report was issued detailing the progress of implementation of these recommendations.

At this stage, the implications of the O'Donnell review for the coal master planning process set out in Schedule A (formerly Schedule FB) are yet to be confirmed. Discussions with Mr Ross Dunning, the central co-ordinator nominated by the Queensland Government, are continuing and a supply chain framework specifically for the Goonyella system is expected to be developed prior to 30 June 2009.

QR Network is not aware of any discussions to date which have impacted specifically upon the 2009 Undertaking. However, some general amendments have been made to the master planning process in Schedule A to address issues associated with the O'Donnell review which have arisen to date and to ensure that QR Network's process can co-exist with the framework agreed for the Goonyella supply chain.

To the extent that the finalisation of this framework impacts upon the 2009 Undertaking (and in particular Schedule A) then a number of amendments may be required.

1.7.3 QR Network's revenue cap submission for 2007/08

Subparagraph 3.3.1(b)(ii) of Part A of Schedule F of the 2005 Undertaking requires QR to submit a Reference Tariff variation to the QCA within sixty (60) days after the end of each Year of the Term of the 2005 Undertaking.

In respect of the 2007/08 year, the due date for the submission was 29 August 2008. On 21 August 2008 the QCA approved an extension of time for the submission to 31 October 2008. In accordance with Subclause 3B.3.1, the variation will be applied against the relevant Reference Tariff components for each system for 2009/10 using the modelling parameters and assumptions used to determine the Reference Tariffs for that year.

However, the Reference Tariffs to which the variation should be applied form part of the 2009 Undertaking which is yet to be approved by the QCA. In addition, and as discussed further at Section 11.5.6, QR Network has proposed Reference Tariffs for each system to be presented as a single schedule subject to a selected number of variations for nominated Train Services.

Accordingly, in its submission on the 2007/08 revenue cap QR Network will recommend that:

- The QCA accepts QR Network's proposed variations to System Allowable Revenue; and
- The variations, once approved by the QCA, are reflected in the Reference Tariffs approved by the QCA for the 2009 Undertaking.

QR Network's recommendation is consistent with its proposed approach for the UT3 revenue cap, in which the variation is approved subsequent to the revenue cap submission and the Reference Tariff is approved following a further submission based on both the revenue cap submission and an annual reset of volume forecasts. QR Network confirms that the 2009/10 Reference Tariffs shown in the 2009

Undertaking do **not** include an allowance (forecast or otherwise) for the 2007/08 revenue cap.

1.7.4 Development of policies to address climate change

The Federal Government's Department of Climate Change (Department) has indicated that a bill pertaining to emissions trading will be passed in Federal Parliament by mid-2009 as a step towards the commencement of emissions trading in 2010. An Australian Emissions Trading Scheme (ETS) is regarded by the Department as the key instrument for managing climate change as a result of carbon emissions.

A process of gathering information including reports from the Garnaut Review and Treasury modelling and consultation by way of a Green Paper (published July 2008) and the drafting of legislation (expected early 2009) giving effect to the ETS is currently underway.

The structure of a potential Australian framework to manage emissions began development with the Federal Government prior to November 2007 and has been progressed by the Department.

However, the final framework, details and implications for businesses including QR Network are currently unknown. Accordingly, to the extent that the finalisation of this framework impacts upon the 2009 Undertaking then a number of amendments may be required.

1.7.5 Development of initiatives to address coal loss

In late 2007 the Environmental Authority (EPA) required that QR conduct an investigation into whether coal carrying Train Services in the CQCR were a source of dust which had the potential to cause an environmental nuisance or harm to communities living adjacent to the rail corridors.

QR's Coal Loss Environmental Evaluation (EE) report was submitted to the EPA on 31 March 2008 and has been accepted as meeting the EPA's requirements. The EPA has found that coal dust emissions from coal trains comply with the NEPM standards but still has the potential to cause a nuisance to some communities.

The EPA has now requested that QR drafts a Transitional Environmental Program (TEP) that will include short, medium and long-term methods for managing coal dust emissions from coal trains. The TEP will include the recommended mitigation strategies from the final EE establishing a best practice coal dust management plan which sets an international precedence.

During August 2008 QR Network submitted a draft TEP to the EPA for endorsement. At this stage, QR Network does not expect any changes to the draft TEP that will impact upon the 2009 Undertaking. Notwithstanding, to the extent that the finalisation does impact upon the 2009 Undertaking then a number of amendments (particularly to Schedule F) may be required.

1.7.6 Update of selected building block parameters

As discussed further at Section 11, QR Network proposes that a number of the key 'building block' parameters supporting the calculation of Reference Tariffs for the CQCR be reviewed on an annual basis subject to endorsement by the QCA. These parameters include:

- System Forecasts;
- System Allowable Revenues (arising from the 2007/08 revenue cap and any adjustments arising from actual changes in the MCI and CPI relative to forecast); and
- Electric traction costs.

The 2009 Undertaking proposes that prior to 28 February each year, QR Network provides a submission to the QCA detailing the changes in these parameters relative to the parameters assumed for the 2009 Undertaking approved by the QCA. Consistent with this timeframe, QR Network believes that an equivalent review of the parameters above should be conducted subsequent to the QCA's Draft Decision for the Reference Tariffs to apply from 1 July 2009.

1.7.7 2008 update of the Coal System Master Plan for the CQCR

As discussed in Volume 2, QR Network's proposed capital expenditure allowance for UT3 is based on projects which are expected to be included in QR Network's 2008

update of the Coal System Master Plan. The Coal System Master Plan is expected to be issued to the Coal System Master Planning Forum in September, with Customer votes for each of the projects in the Coal System Master Plan to be finalised around the end of 2008.

It is possible that the relevant Customer group may not approve certain projects in the updated Coal System Master Plan. Accordingly, to the extent that finalisation of the Customer votes impacts on the capital expenditure allowance for UT3 then a number of amendments to the 2009 Undertaking may be required.

1.8 Form of Submission

QR Network's submission on the 2009 Undertaking comprises the following volumes:

1. A detailed commentary on the 2009 Undertaking. Each section provides the following information:
 - Background to the key principles associated with the 2008 Undertaking and a summary of the substantive amendments for the 2009 Undertaking;
 - A discussion of issues raised (if any) by stakeholders prior to the preparation of this submission;
 - A discussion of each substantive amendment; and
 - Where appropriate, summary comments on other matters relating to each Part, such as the transfer of certain aspects of the 2008 Undertaking to other Parts, and related Schedules.

Details of each substantive and minor amendment (but not each inconsequential amendment) are provided at Attachment A. Attachments B to F provide QR Network's key policy proposals as set out in its principles and discussion papers summarised at Section 1.5.3 above. Attachment G provides a discussion by Synergies Economic Consulting (Synergies) on the issues associated with the development of a single AT₅ Reference tariff component for the CQCR. Attachment H provides for the QCA's information a commercial-in-confidence valuation report by Connell Hatch on the depreciated optimised replacement cost (DORC) of the Western System.

2. A detailed discussion of the building blocks supporting the Reference Tariffs for the CQCR as set out in Schedule F. This submission includes (but is not limited to) information on the following elements:
 - Opening asset value and roll-forward of the Regulatory Asset Base for the CQCR (RAB);
 - Return of capital (depreciation);
 - Cost of capital;
 - Volume forecasts;
 - Capital expenditure;
 - Maintenance cost and other operating (regional and system wide) cost forecasts;
 - The proposed methodology for development of each of the Reference Tariff components.
3. A clean copy of the draft 2009 Undertaking.
4. A copy of the draft 2009 Undertaking marked up against the 2008 Undertaking formally submitted to the QCA on 28 July 2008. In this regard, QR Network believes that whilst the 2008 Undertaking is yet to be approved by the QCA, it is a more appropriate base upon which the 2009 Undertaking should be developed and reflects discussions between QR Network and the QCA Secretariat in relation to QR's corporate restructure.

QR Network confirms that the length of the 2009 Undertaking, inclusive of Parts 1 to 11 and the Schedules, has been reduced by around one-third relative to the 2008 Undertaking (i.e. from around 290 pages to around 190). The reduction in the volume of the 2009 Undertaking is mainly attributable to the removal of a number of Schedules including the Line Diagrams (old Schedule A), the sample IRMP (old schedule HA) and parts of the Reference Tariff Schedules (Schedule F) relating to cluster pricing.

As indicated above at Section 1.6, revised Access Holder and Operator Standard Access Agreements which reconcile to the draft 2009 Undertaking will be provided in late 2008. The Standard Access Agreements will be presented in both clean and marked-up versions.

In addition, a number of detailed financial models supporting the determination of the Reference Tariffs in Schedule F (and which relate only to coal carrying Train Services on the CQCR) have been prepared by QR Network and are provided concurrently with this submission. The models contain specific information on assumptions, including information on individual Train Services and costs associated with activities which could be sourced from third party suppliers. In this regard:

- QR Network confirms that the Train Service Entitlements set out in the models operate back-to-back with above rail haulage arrangements agreed to between the Access Holder and the mines; and
- Selected services for the operating costs modelled are provided by QR business groups (such as for capital expenditure projects) and are also provided by 3rd party suppliers subject to service arrangements negotiated on an 'arms length' basis.

Accordingly, QR Network believes that the information contained in the models is commercial-in-confidence and accordingly, should not be publicly disclosed. This position is consistent with previous related information provided to the QCA. QR Network confirms that the model outputs are summarised in the submission.

In this submission:

- References to QR Network:
 - Are in the context of QR Network's activities which are proposed to be regulated by the 2009 Undertaking; and
 - Are references to Network Access where those matters related to the period prior to QR Network's establishment.
- References to UT1 are to the period covered by the 2001 Undertaking, effective 1 July 2001.
- References to UT2 are to the period covered by the 2005 Undertaking, effective 1 July 2005, and the 2008 Undertaking which is yet to be approved by the QCA.
- References to UT3 are to the period covered by the 2009 Undertaking which is expected to become effective on 1 July 2009.
- References to "mines" are to coal mine owners as end customers pursuant to a haulage agreement with an Access Holder.

- Other than for Internal Access Agreements and Rail Transport Infrastructure which are referenced in the 2008 Undertaking, defined terms in the submission have the meaning given in the 2009 Undertaking.

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2. Preamble (Part 1)

2.1 *Introduction*

Part 1 of the 2008 Undertaking sets out an explanation of the reasons for the 2008 Undertaking and its intent, confirmation that the 2008 Undertaking will be applied consistently to all Access Applications and a contact point within QR Network for further information.

For the 2009 Undertaking, QR Network's proposes:

- A 'plain English' explanation of the purpose of the document; and
- Consolidation of the intent of the 2009 Undertaking within Part 2.

A summary discussion of these amendments is provided at Section 2.3 below. A detailed explanation of each of the amendments (other than inconsequential amendments) is provided at Attachment A.

2.2 *Stakeholder Issues*

QR Network has not consulted with stakeholders on its proposed amendments to Part 1. Stakeholders did not raise any issues relating to Part 1 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

QR Network considers that the substantive matters raised in this Section are not material for stakeholders, and as such are best addressed via the QCA's consultation process.

2.3 *Substantive Amendments*

The Preamble in the 2008 Undertaking sets out an introduction to and the intent of the 2008 Undertaking, together with a contact point within QR Network where Access Seekers can obtain further information on the process for obtaining Access.

Queries relating to QR's access undertakings have generally been received from parties other than Access Seekers, predominantly members of the public with an

interest in Queensland's rail industry. Contact is made in accordance with the information provided within the Preamble, which in turn is consistent with QR Network's web-site.

Research conducted by QR Network indicates that the access undertaking is the most downloaded document on its web-site (and also on QR's web-site). In this regard, QR Network believes that the Preamble should be read and understood not only by Access Seekers, but also by the public. Accordingly, a simpler, broader introduction to the 2009 Undertaking has been developed.

In view of the above, QR Network proposes to transfer the substantive provisions of the Preamble in the 2008 Undertaking to Part 2 and the insertion of a new 'plain English' introduction which can be read and understood by the public. QR Network proposes to replicate the new Preamble on QR Network's web-site.

The new Preamble sets out the following key information:

- A background to QR Network and its structure;
- An explanation of the role of QR Network;
- An explanation of the reasons for the 2009 Undertaking; and
- A summary of the matters covered in the 2009 Undertaking.

Per the 2008 Undertaking, confirmation is provided on the contact point within QR Network for further information. The Preamble also directs the public (and any Access Seekers) to QR Network's web-site which contains the key documents required to negotiate Access to QR Network's Below Rail network. For some time it has not been necessary to contact QR Network for these documents (such as the Access Application template, Information Packs and Standard Access Agreements) which can be downloaded.

The information in the Preamble on QR and QR Network has been sourced from QR's 2006/07 annual report which is publicly available via the QR web-site (<http://www.qr.com.au>).

In addition and consistent with QR's new corporate structure, the address for QR Network's web-site will be amended to <http://www.qrnetwork.com.au>.

3. Intent and Scope (Part 2)

3.1 *Introduction*

Part 2 of the 2008 Undertaking sets out the scope of the document, together with a number of administrative issues including QR Network's review of Rail Infrastructure, the duration of the 2008 Undertaking and transitional arrangements. Part 2 also confirms that the 2008 Undertaking shall apply only to the negotiation of new Access Agreements or Access Rights in addition to those already conferred by an Access Agreement. The 2008 Undertaking does not override contractual provisions already agreed to between QR Network and an Access Holder.

The main amendments to the 2008 Undertaking relate to the establishment of QR Network as a subsidiary of QR, rather than as a QR business group. QR Network's approach to the 2008 Undertaking has been on the basis that the document should preserve, to the extent possible, the regulatory principles contained in the 2005 Undertaking for a term equivalent to the remainder of the 2005 Undertaking. Accordingly, the 2008 Undertaking essentially rolls forward the obligations in the 2005 Undertaking which bind QR as an entity, and holds QR Network accountable for QR's compliance with these obligations.

QR Network does not propose to roll forward these obligations to the 2009 Undertaking. This approach is consistent with the key principle associated with QR's corporate restructure, being to establish QR Network as an entity separate from the other QR business groups. The specific provisions relate to:

- The scope of the 2009 Undertaking;
- Access to electric supply arrangements not controlled by QR Network; and
- The transfer to QR Network of rail transport infrastructure not owned by QR Network.

A detailed discussion of the substantive amendments to the scope and electric supply arrangements is provided at Section 3.2 below. A discussion of QR Network's proposals for the transfer of rail transport infrastructure is provided at Section 4.3 below.

QR Network acknowledges that an effect of these amendments is that coverage of certain Rail Transport Infrastructure declared for the purposes of section 97 of the QCA Act, being stations and platforms managed by QR Passenger and rail transport infrastructure managed by other QR business groups, will not be rolled forward to the 2009 Undertaking. In this regard, QR has commenced discussions with the Queensland Government regarding the declaration and the implications for QR of the regulation of Access to these assets.

Other than these amendments, QR Network's proposes to roll forward the principles set out in the 2008 Undertaking subject to a number of formatting changes which:

- Provide a 'plain English' explanation of the intent of the document.
- Provide greater consistency with the ARTC Undertaking, for example the transfers of Clause (b) of Part 1 relating to intent and Clause 2.3 relating to duration from the 2008 Undertaking to Clauses 2.2 and 2.1, respectively, in the 2009 Undertaking.
- Consolidate a number of the less material administrative clauses within a separate section of the 2009 Undertaking, and within a number of equivalent arrangements in other Parts.

A summary discussion of these amendments is provided at Section 3.3 below. A detailed explanation of each of the amendments (other than inconsequential amendments) is provided at Attachment A.

3.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposed amendments to Part 2. Stakeholders did not raise any issues relating to Part 2 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

However, in its response to QR Network's preliminary submission on the 2008 Undertaking, Asciano raised a number of concerns regarding the transfer of rail infrastructure not owned by QR Network but which is covered by the section 97 declaration. Whilst QR Network believes that these issues were not relevant for the 2008 Undertaking, they are relevant in the context of QR Network's proposal for the 2009 Undertaking to limit the scope of the document to assets owned by QR

Network. QR Network's comments on these concerns are provided at Section 4.3 below.

Subject to QR Network's proposals for the transfer of rail infrastructure, QR Network considers that the substantive matters raised in this Section are best addressed via the QCA's consultation process.

3.3 Substantive Amendments

3.3.1 Duration of Undertaking – Clause 2.1

QR Network considers that the proposed duration of the Undertaking reflects a balance of creating regulatory certainty for a reasonable period of time, and retaining flexibility to adjust the regulatory arrangements to reflect a changing environment. Four years has previously been considered a reasonable balance between these factors and QR Network considers that, in normal circumstances, four years would continue to be a reasonable regulatory term.

Given the very large investment in infrastructure forecast by QR Network, and in the context of the State Government's massive infrastructure investment program across Queensland, QR Network considers that there is the possibility that products and financial structures not previously utilised by QR Ltd or QR Network may become commercially beneficial or necessary for the future growth and operation of the business. In the event that such options are utilised, it may become appropriate to change the regulatory environment established by the 2009 Undertaking. As a result, QR Network is seeking a four year regulatory term, but with the ability to terminate the 2009 Undertaking at an earlier date in the event of certain changes in financial structure or interest.

Specifically, QR Network proposes that the 2009 Undertaking covers a period that is the shorter of either:

- o A four (4) year period commencing 1 July 2009 (terminating on 30 June 2013); or
- o Such earlier date as advised by QR Network in the event that any of the following occur:

- (i) a Third Party (other than the State or Queensland Treasury Corporation) provides debt or equity funding to QR Network or a QR Party;
- (ii) QR Network ceases to be a subsidiary of QR or QR Network's business of providing Below Rail Services is transferred or assigned in whole or in part to another entity; or
- (iii) there is no QR Party that undertakes the operation of Train Services for reward, except in respect of transporting passengers.

3.3.2 Scope – Clause 2.3(b)

Clause 2.1 of the 2008 Undertaking (now Clause 2.3 of the 2009 Undertaking) covers Access to Rail Infrastructure for the purposes of operating Train Services. "Rail Infrastructure" is defined in the 2008 Undertaking as:

"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"

A key principle for the 2009 Undertaking is to create a framework for the management of Access to the rail infrastructure owned by QR Network. This framework is consistent with the principles associated with QR's corporate restructure and the 2008 Undertaking, being to establish QR Network as a separate entity.

Clause 2.3(b)(i) of the 2009 Undertaking provides specific exclusions in coverage of the document to rail transport infrastructure which is not Rail Infrastructure. In this regard, QR Network proposes that the definition of Rail Infrastructure be amended to (with terms in brackets below added for clarity):

"...rail transport infrastructure as defined in the TIA (Transport Infrastructure Act) for which QR Network is the Railway Manager but only to the extent that the use of that rail transport infrastructure is declared for section 97 of the Act (QCA Act)"

The revised definition specifically excludes the following rail transport infrastructure, for which ownership will be retained by QR:

- Stations and platforms which are controlled by QR Passenger; and
- Other Rail Transport Infrastructure which is not owned by QR Network, essentially infrastructure (predominantly yards and depots) operated by QR business groups.

Rail infrastructure for interstate standard gauge services is not covered by the section 97 declaration. QR Network proposes for this exclusion to continue for the 2009 Undertaking.

QR Network confirms that the effect of these amendments is that Rail Transport Infrastructure not owned by QR Network (and in particular rail infrastructure which is owned by QR and managed by other QR business groups) will not be covered by the 2009 Undertaking.

3.3.3 Supply of electric energy – Clause 2.3(e)

In its submission on the 2008 Undertaking, QR Network confirmed that, although the supply of electric energy does not form part of the declared service, QR Network would continue to be responsible for the supply of electric energy to all Access Holders.

At the time, QR Network accepted that some stakeholders may have had a concern regarding the supply of electric energy to Third Parties in the circumstance where the supply contract is held by another QR business group. Accordingly and although not necessary, QR Network included an amendment to paragraph 2.1(h) of the 2008 Undertaking to deal with the circumstance where a Related Party of QR held the supply contract.

QR Network re-confirms that the relevant supply contracts will be novated from QR to QR Network on 1 September 2008 and that QR Network will supply electric energy for the UT3 period. However, given that the supply of electric energy does not form part of the declared service, in the event that QR Network no longer takes on the role of supplying electric energy to all Access Holders, QR Network does not consider it appropriate for its undertaking to deal with this issue. Accordingly, amendments have been made to this paragraph (now Clause 2.3(e) of the 2009 Undertaking) to reflect these arrangements as the original amendments are no longer required or appropriate.

QR Network confirms that the intent of the amended Clause continues to be that QR Network will supply electric energy to all Access Holders on consistent terms and conditions for the UT3 period.

3.4 Other Issues

The following Clauses from the 2008 Undertaking have been incorporated within other Parts of the 2009 Undertaking:

- Clause 2.2 (Review of Rail Infrastructure) – this Clause has been transferred to a new Clause 3.6. A summary discussion of the drafting amendments to this Clause (which includes the removal of Schedule A of the 2008 Undertaking) is provided at Section 4.3 below.
- Clause 2.5 (Transitional Provisions) – this Clause has been transferred to a new Clause 11.4.

A detailed explanation of each of these amendments (other than inconsequential amendments) is provided at Attachment A.

4. Ringfencing (Part 3)

4.1 *Background*

Part 3 of the 2008 Undertaking sets out QR Network's obligations with respect to ringfencing. These obligations arise as a result of QR's organisational structure, in which the QR 'group' includes both incorporated subsidiaries and unincorporated business groups responsible for above and below rail operations.

Part 3 of the 2008 Undertaking confirms:

- The responsibilities of QR Network;
- The separation of Rail Infrastructure from the operations of Train Services;
- The arrangements to be followed in respect of changes to QR's organisational structure;
- The preparation and audit of 'ringfenced' financial accounts associated with QR Network's Below Rail activities;
- The management of confidential information provided to QR Network by Third Parties;
- Obligations regarding the movement of QR Network employees between QR Network and other QR business groups; and
- The decision making and complaints handling framework which, at a minimum, must be followed, including the requirements for QR Network's compliance with these frameworks to be audited.

In addition, the ringfencing arrangements refer to a Confidentiality Deed between QR Network and an Access Seeker, which is attached at Schedule B.

QR Network proposes a number of substantive amendments for the 2009 Undertaking following a detailed review of arrangements associated with the change in QR Network's corporate structure, and also to remove Schedule A of the 2008 Undertaking relating to the Line Diagrams. Schedule B of the 2008 Undertaking relating to the form of a Confidentiality Deed has also been removed, however clauses in the Confidentiality Deed which are not reflected in the 2008 Undertaking have been incorporated in the 2009 Undertaking. QR Network has also made a

number of amendments relating to certain of QR's staff permitted to have access to Confidential Information and the decision making framework.

A summary discussion of these amendments is provided at Section 4.3 below. A detailed explanation of each of the amendments (other than inconsequential amendments) is provided at Attachment A.

4.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposed amendments to Part 3. Stakeholders did not raise any issues relating to Part 3 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

Whilst QR Network considers that the substantive amendments discussed in this Section are of importance to stakeholders, it believes that consideration of the proposals is best address during the QCA's consultation period and in subsequent discussions with the QCA.

4.3 Substantive Amendments

4.3.1 Organisational structure – Clause 3.1

Two substantive changes have been made to this Clause, being to remove Paragraph 3.1(c) of the 2008 Undertaking relating to the responsibilities of Related Operators and Paragraph 3.1(f) relating to the review of Yard Control services at yards other than the Major Yards.

With respect to the responsibilities of Related Operators, QR Network believes that as a consequence of QR's corporate restructure and the focus of the 2009 Undertaking on assets owned by QR Network, a general description of services QR business groups by parties other than QR Network is no longer necessary. However:

- To the extent that QR Network's responsibilities are carried out under contract by a Related Operator (such as Field Incident Management and Yard Control services) then these are reflected in a new Clause 3.1(c); and
- For the avoidance of doubt, the definition of Train Control Services has been amended to include Field Incident Management and Yard Control services.

With respect to Yard Control services, QR Network notes that:

- This provision was originally included in the 2001 Undertaking at a time when QR Network did not directly manage any yards.
- No issues have arisen during UT1 and UT2 regarding QR's management of these yards.
- Since 2003, no review has been conducted in accordance with this provision.
- Notwithstanding, since the 2003 review (which confirmed Callemondah as the only yard controlled by QR Network) QR Network has progressively taken direct management responsibility for Major Yards including all yards on the CQCR (for the avoidance of doubt, the Rail Infrastructure adjacent to Pring yard is controlled by QR Network). QR Network is satisfied that the most efficient approach for the remaining yards continues to be for their day to day management to be subcontracted (via a Train Operations Management Agreement) to the QR business group that is managing the adjoining facility.

In addition, the length of the Clause has been significantly reduced to improve its practical application and to reflect the principle of QR Network as a separate entity consistent with QR's announcement on its corporate restructure.

4.3.2 Accounting Separation – Clause 3.2

For the 2008 Undertaking a number of amendments were made to reflect the preparation of QR Network's financial statements under QR's new corporate structure. As indicated in QR Network's submission on the 2008 Undertaking, QR's subsidiaries will apply for a class order relieving eligible subsidiaries from preparing and lodging audited financial statements under Chapter 2M of the Corporations Act (Class order 98/1418). The 2008 Undertaking provides for preparation of financial statements in both circumstances where the order is – or is not – granted.

For the 2009 Undertaking, QR Network proposes a number of additional amendments:

- To the financial statement provisions in Clause 3.2.1 to provide flexibility for the current discussions between QR Network and the QCA Secretariat regarding the format of the financial statements for UT3 following QR's corporate restructure. The effect of the amendment is that the arrangements

in the 2008 Undertaking will roll forward to the 2009 Undertaking unless otherwise agreed with the QCA.

- To Clause 3.2.1(a)(ii)(B) to clarify that, for the avoidance of doubt and consistent with current practice, that any supplementary statement should distinguish between the CQCR, QR Network's Below Rail services and all other services provided by QR Network (e.g. terminal management).
- To the audit arrangements in Clause 3.2.2 to align with arrangements across the 2009 Undertaking. In most cases, the impact of these amendments has been to:
 - Retain those audit arrangements which differ between equivalent provisions (e.g. in Part 9 relating to the quarterly performance report); and
 - Consolidate the equivalent provisions (e.g. regarding the conduct of the audit and the publication of reports) within a new Clause 10.3 relating to the audit process.

QR Network believes that these amendments are appropriate to clarify for QR Network, its auditors and stakeholders QR Network's compliance with its audit obligations, which have increased substantially since the 2001 Undertaking and in the 2008 Undertaking are duplicated across a number of Clauses.

4.3.3 Management of Confidential Information – Clause 3.3

A number of substantive amendments have been made to Clauses 3.3, 3.3.1 and 3.3.2 which are summarised below.

Handling of Confidential Information – Clauses 3.3(b)(ii) and 3.3.1(a)

A number of amendments have been made to these Clauses to confirm their application to Third Parties. In this regard:

- Paragraph 2.2(b)(ii) of the 2008 Undertaking implied that QR business groups other than QR Network had obligations towards Third Parties to the extent they received Confidential Information in the performance of an Access Agreement. This wider implication is no longer appropriate (or not may have been intended) as the 2009 Undertaking is restricted to activities conducted by QR Network. QR Network proposes that this Clause be aligned with

Clause 2.2(b)(i) in referring only to Third Parties and QR Network in the disclosure and collection of Confidential Information.

- Paragraph 3.3.1(a) arguably covers the Confidential Information of Related Operators as well as Third Parties, and as it is not possible for this to occur under this Clause the obligation (i.e. toward Third Parties) should be clarified.

Specification of the Form of the Confidentiality Deed – Clause 3.3(c) and Schedule B

Clause 3.3(c) of the 2008 Undertaking provides that, at any time during the negotiation process, either a Third Party Access Seeker or QR Network may require the other party to enter into a confidentiality deed. Schedule B includes a specified form of this confidentiality deed which reflects the obligations placed upon QR Network through Clause 3.3.2 and specifically deals with the consequences of a breach of such confidentiality deed through the specification of liquidated damages. QR Network is not seeking to alter the intent of these provisions but proposes to simplify the drafting of the 2009 Undertaking by amending Clause 3.3(c) to remove the reference to a specified form of the confidentiality deed in Schedule B and replace this with a list of the key principles that will be included in that confidentiality deed. This will include that:

- QR Network will comply with the requirements of the Undertaking in relation to the handling of confidential information;
- If required by an Access Seeker, provisions dealing with the payment of compensation in the event of a breach of confidentiality, including \$10,000 liquidated damages or actual costs if higher than \$50,000.

QR Parties' access to Confidential Information – Clause 3.3(d)(ii)

Whilst not a substantive change to the principle, a substantial proportion of the last bullet point has been transferred to a new Clause 3.3.2(i) alongside arrangements for the flow of Confidential Information within the QR corporate group.

Disclosure to 'support staff' – Clause 3.3.2(a)

QR Network has proposed a number of changes to the drafting of this Clause relative to the 2008 Undertaking to improve its operation under QR's revised corporate

structure. Consistent with the 2005 Undertaking, the 2009 Undertaking confirms that the following persons shall have access to Confidential Information:

- Employees of QR Network; and
- The QR Board, QR CEO and QR CFO (rather than QR's former Chief Operating Officer) and persons providing any clerical assistance to them.

The amendments have been made such that the defined term Support Staff in the 2008 Undertaking is no longer necessary.

Disclosure to a Related Operator – Clause 3.3.2(d)

Consistent with QR's corporate restructure, Subparagraphs 3.2.2(d)(ii) and (iv) of the 2008 Undertaking have been deleted as:

- In respect of matters relating to stations and platforms addressed in subparagraph (ii), these assets are not covered by the 2009 Undertaking; and
- In respect of matters relating to Train Control Services in the Metropolitan Region addressed in sub-paragraph (iv), this function transferred from QR Passenger to QR Network on 1 July 2008.

Disclosure to relevant QR employees – Clause 3.3.2(h)

Paragraph (i) of the 2005 Undertaking sets out those employees outside QR Network permitted to have access to Confidential Information in the course of performing their work duties. In accordance with the 2005 Undertaking, the exempted employees included:

- Ringfencing Compliance Officer;
- Internal Audit;
- Chief Management Accounting Division; and
- Information Services Division.

For the 2008 Undertaking, the list of employees was amended to exclude the Chief Management Accounting Division as ringfenced accounts are now prepared by QR Network and the relevant employees have been re-located.

For the 2009 Undertaking, QR Network proposes similar arrangements to those which applied during UT2 subject to one amendment, being the inclusion of employees from the Insurance Management division within the list of exempted employees. QR Network's comments in this regard are provided below.

- Clause 13 of the Standard Access Agreement requires that an Access Holder or Train operator must provide to QR Network evidence of appropriate insurances to QR Network's reasonable satisfaction. QR Network's review of these insurances is conducted by QR's National Insurance Manager, who resides in the office of the QR CEO. QR Network's insurance arrangements are managed centrally as a 'shared' service by QR's wholly owned subsidiary, On Track Insurance Pty Ltd.
- Currently, this information is held by QR Network and, where it relates to a Third Party, is treated as ringfenced information when requested by the National Insurance Manager.
- The National Insurance Manager has requested that consistent with the Standard Access Agreement, employees from the Insurance Management division be included in the list of exempted QR Network employees in order that the insurance information held by QR Network can be provided in a timely manner.

There have been no changes to the structure associated with QR Network's Internal Audit Division (also an area of the QR CEO's Office) and Information Services Division (an area of QR's Shared Services Group). QR Network believes these employees should continue to be exempted under Clause 3.3.2(g).

Transfer of QR Network employees in management levels 2, 3 and 4 – Paragraph 3.3.2(n) of the 2008 Undertaking

As indicated in its formal submission on the 2008 Undertaking, QR and QR Network will enter into a new Confidentiality Deed covering QR Network's ringfencing obligations under Part 3. The Confidentiality Deed will cover the handling of Confidential Information between QR Network and QR business groups (but not QR Passenger or any other QR subsidiary).

In this regard, QR Network notes that:

- As the 2009 Undertaking is restricted to QR Network, it is unable to bind conduct by QR Network employees once they leave QR Network to work elsewhere in QR, whether for a Related Operator or another QR business group.
- QR Network is not aware of any instance where a QR Network employee in management levels 2, 3 and 4 left QR Network to work for a Related Operator.
- QR Network is aware of instances where a management employee in a Related Operator has left for Asciano, and where management employees in Asciano have left for a Related Operator and also for QR Network. These transfers were not restricted by the 2008 Undertaking.
- QR Network is satisfied that the Confidentiality Deed and the exit briefing process referred to in Clause 3.3.3(b) provides sufficient protection against the disclosure of Confidential Information in the unlikely event that a management level employee leaves QR Network for a Related Operator.

In view of the above, Paragraph 3.3.2(n) of the 2008 Undertaking has not been carried forward to the 2009 Undertaking.

Finally, a new Clause 3.3.3 has been inserted to distinguish the management of Confidential Information within the QR group and the transfer of QR Network employees to other QR business groups (to improve the presentation of these Clauses). Other than Paragraph 3.3.2(n) of the 2008 Undertaking, no substantive changes have been made to the principles associated with Clauses 3.3.2 and 3.3.3.

4.3.4 Decision Making – Clause 3.4 of the 2008 Undertaking

Decisions affecting Access Holders

Clause 3.4 under the 2008 Undertaking requires that QR Network complies with certain principles when making decisions which materially affect an Access Seeker's or Access Holder's rights.

Whilst QR Network accepts these general principles from the perspective of how it manages the provision of Access, it considers that the inclusion of these obligations in the 2009 Undertaking is unnecessary. These provisions were included in the 2005 Undertaking as a direct result of concerns from the QCA regarding the transparency of decision making within an integrated QR structure.

Since the commencement of the 2005 Undertaking, there have not been any issues raised by any Access Seeker, nor any issues identified during an audit process, regarding QR Network's compliance with these decision making principles. QR Network believes that substantial protections already exist for the rights of Access Seekers and Access Holders in the way that QR Network manages Access. In particular:

- The rights of Access Holders are protected via their Access Agreement with QR Network, which takes precedence over any of the confidentiality provisions in the 2001, 2005 and 2008 Undertakings; and
- The rights of Access Seekers are protected via the dispute resolution procedures in Part 10 of the 2009 Undertaking (previously Clause 4.7 of the 2008 Undertaking).

In addition, QR has taken substantial steps to further bolster the independence of QR Network and its decision making by establishing QR Network as a separate subsidiary within the QR portfolio.

Accordingly and as noted above, whilst QR Network accepts these general principles from an access management perspective, it believes that there is no need for these principles to be enshrined as a regulatory obligation in order to protect Access Seekers or Access Holders, and as a result the obligations in relation to decision making in Clause 3.4 and the associated audit obligations in Clause 3.6 of the 2008 Undertaking have not been retained in the 2009 Undertaking.

4.3.5 Compliance and Enforcement – Clauses 3.4 and 3.5

For clarity, Clause 3.5 of the 2008 Undertaking has been separated into two Clauses – Clause 3.4 regarding complaint handling and Clause 3.5 regarding audits. In addition and as previously discussed at Section 4.3.2 above, a number of amendments have been made to Clause 3.5 to align with audit arrangements across the 2009 Undertaking.

As discussed at Section 4.3.4 above, QR Network proposes to remove its obligation in the 2008 Undertaking to have its compliance with the decision making framework audited. In addition, QR Network also proposes a consequential amendment to

remove its obligation in the 2008 Undertaking to conduct an audit of a decision under Clause 3.4 of the 2008 Undertaking where a complainant is not satisfied with QR Network's investigation. In this regard:

- The QCA's ability to investigate a complaint is effectively duplicated in either the Dispute resolution procedures (relating to Access Seekers) or the Access Agreement (for Access Holders).
- No Access Holder – Third Party or otherwise – has made a written complaint against QR Network under Clause 3.5 since the commencement of the 2001 Undertaking. Accordingly, even though audits of this framework since the commencement of UT1 have not been necessary, external costs have been incurred in the preparation of audit plans prior to the 'commencement' of the audit and audit reports following the 'completion' of the audit.

4.3.6 Review of Rail Infrastructure – Clause 3.6

As indicated at Section 3.4 above, Clause 2.2 of the 2008 Undertaking has been transferred to a new Clause 3.6. The reasons for the amendment are as follows:

- Part 2 is now focussed on the intent and scope of the document, consistent with the ARTC Undertaking. A discussion on Line Diagrams is not consistent with this focus.
- Much of this Clause relates to the transfer of rail infrastructure between QR business groups. As such, the objective of the Clause is now more closely aligned with Part 3 which is intended to address issues associated with QR's structural arrangements.

The substantive amendments which have been made to this Clause are set out below.

Line Diagrams – Clause 3.6(a)

QR Network proposes that the Line Diagrams (Schedule A of the 2008 Undertaking) are not rolled forward to the 2009 Undertaking. In this regard, QR Network makes the following comments:

- The current provisions require the Line Diagrams to be updated 6 monthly and published on QR Network's web-site. Accordingly, the published Line Diagrams represent the most up-to-date version available and the one to which Access Seekers (and the public) should refer.
- If the QCA approves the 2009 Undertaking prior to June 2009, then the Line Diagrams would be immediately superseded by a set of revised Line Diagrams which are due for publication in June 2009.
- If the QCA approves the 2009 Undertaking subsequent to June 2009 but prior to December 2009, then the Line Diagrams would be superseded by a set of revised Line Diagrams which are due for publication in December 2009.

QR Network believes that the existing provisions requiring QR Network to update and publish its Line Diagrams not less than every 6 months has worked satisfactorily, and proposes no change to these provisions other than a slight revision to reflect current practice whereby an explanation of the changes is also published.

As a result of the removal of Schedule A, it has been necessary to make a substantive consequential amendment to Clause 3.6. The amendment now requires QR Network only to seek the QCA's approval for a change to the Line Diagrams associated with the matters set out in Clause 3.6(c), rather than address the change via the DAU process.

Transfer of Rail Transport Infrastructure – Paragraphs 2.2(f) and (g) of the 2008 Undertaking

Paragraphs 2.2(f) and (g) of the 2008 Undertaking provide that Rail Transport Infrastructure which is not Rail Infrastructure (being the 'blue roads' in the Line Diagrams) may be transferred to QR Network following a written request by an Access Seeker. This obligation rolled forward from the 2005 Undertaking which binded QR as an entity. QR Network's submission on the 2008 Undertaking acknowledged that the effect of this provision would be to hold QR Network accountable for an obligation which would require either the co-operation of another QR business group or a direction from QR.

QR Network proposes that this obligation is not rolled forward to the 2009 Undertaking.

In this regard and as discussed at Section 3.2 above, in its response to QR Network's preliminary submission on the 2008 Undertaking Asciano raised a number of concerns regarding the transfer of rail infrastructure which was not to be owned by QR Network but which is covered by the section 97 declaration.

In response to the concerns raised by Asciano, QR Network makes the following comments:

- As the 2009 Undertaking is restricted to QR Network, it is unable to require assets owned by QR to be transferred to QR Network.
- A comprehensive review of the Line Diagrams was conducted prior to the QCA's approval of the 2001 Undertaking.
- QR Network is not aware of any instance since the 2001 Undertaking where Rail Transport Infrastructure has been transferred to QR Network at the request of an Access Seeker (in 2007 Rail Transport Infrastructure was voluntarily transferred to QR Network from QR Regional Freight following a request by a Customer).
- QR Network notes that Pacific National Queensland has sought – but failed after referring the dispute to the QCA – in its request to have certain Rail Transport Infrastructure on the North Coast Line transferred to QR Network.
- QR Network is pleased to consider any request by Asciano or any other Access Seeker for the transfer of Rail Transport Infrastructure prior to the QCA's approval of the 2009 Undertaking, in accordance with Clause 2.2 of the 2008 Undertaking.
- As indicated at Section 3.1 above, QR has commenced discussions with the Queensland Government regarding the section 97 declaration of Rail Transport Infrastructure and the implications for Related Operators of the regulation of Access to assets under their management.

5. Negotiation Framework (Part 4)

5.1 Introduction

Part 4 of the 2008 Undertaking sets out the framework by which Access Seekers can request Access from QR Network, to have that request for Access confirmed in terms of whether that request can be met, then negotiate an Access Agreement.

Part 4 also links to the following schedules:

- Schedule C, which sets out the information to be included in an Access Application; and
- Schedule D, which sets out the nature of information to be made available to Access Seekers.

The negotiation framework includes:

- The process (including timeframes) for submitting an Access Application, including the information to be provided, and their acknowledgement by QR Network;
- The issuing of an Indicative Access Proposal (IAP) by QR Network following consideration of the Access Application, including the information to be provided;
- The process for accepting an IAP and the negotiation of an Access Agreement;
- The process to be followed by QR Network where two or more Access Seekers are seeking access to the same Capacity; and
- The guidelines under which the negotiation of an Access Agreement can be terminated.

QR Network proposes a number of substantive amendments to Part 4 and Schedules C and D to improve the negotiation framework following a number of issues which arose during UT2 and discussions with stakeholders during the development of the 2009 Undertaking. In addition, a new Clause 4.7 has been included (replacing Clause 4.7 of the 2008 Undertaking which has been transferred to Clause 10.1) to create a new Capacity Notification Register for the more effective

management of Available Capacity. Finally, a new Clause 4.8 creates a framework for Major Projects which are not currently addressed by the 2008 Undertaking.

A discussion of these substantive amendments is provided at Section 5.3 below.

5.2 Stakeholder Issues

Discussions with stakeholders have raised a number of issues relating to the acceptance of an Access Application from an Access Seeker and the issuing of an IAP. Key issues raised during these discussions include when:

1. When QR Network should accept Access Applications, and prepare a reliable IAP, in respect of Capacity to be created by major enhancements to the Rail Infrastructure, particularly in the CQCR, where the scope of the enhancement is yet to be confirmed by a feasibility study;
2. When information contained in an IAP should be relied upon by Access Seekers, particularly in the circumstance where a description of the Train Service cannot be formed, or where it can only be formed on the basis of a number of simplifying assumptions; and
3. Whether greater transparency of the negotiation framework can be provided to Customers.

QR Network has made a number of substantive amendments to address these issues and a number of other issues which are discussed further below.

5.3 Substantive Amendments

5.3.1 Information to be included in requests for Access – Clause 4.1 and Schedule C

Clause 4.1 requires that requests for Access be submitted in the form of an Access Application.

Currently, a pro forma Access Application is provided on QR Network's website. The pro forma requests details on a range of information required by QR Network to determine whether a reasonable description of the Access Seeker's Train Service can be formed, and whether sufficient Capacity exists to satisfy that request.

The pro forma provides only for the Access Seeker's name to be provided, and as such all contact in relation to the request for Access is between QR Network and the Access Seeker. The QRC, on behalf of Customers, has expressed some frustration in trying to obtain information regarding the progress of Access Applications lodged by an Access Seeker on their behalf, as well as the likelihood that sufficient Capacity does exist – or will exist in the future – to assist with commercial decisions regarding their individual supply chains.

QR Network notes that whilst this issue should primarily be a commercial matter between the Access Seeker and their Customer, some transparency could be provided in circumstances where a Customer's details are provided voluntarily to QR Network. Accordingly, QR Network proposes that the pro forma Access Application (and hence the Access Requirements in Schedule C) will allow for the Customer's contact details to be provided in circumstances where the Access Application is by a Train operator on behalf of a Customer, subject to agreement between the Train operator and the Customer.

The effect of the proposal is that the Customer will receive copies of all notices provided to the Access Seeker in accordance with the 2009 Undertaking, other than in relation to the IAP. In this regard, the IAP contains information on an Access Seeker's operations which is commercial-in-confidence and should not be provided to Customers, particularly in the circumstance where more than one Train operator is seeking Access for the same Train Service in conjunction with a tender process. QR Network believes that in this circumstance disclosure of any aspect of the IAP to the Customer should remain a matter between the Access Seeker and their Customer.

5.3.2 Preliminary and Additional Information – Clause 4.1 and Schedule D

Clause 4.1 also refers to certain Preliminary Information which must be made available to Access Seekers upon request prior to the submission of a request for Access. A list of Preliminary Information is contained in Schedule D. With respect to the list, QR Network proposes the following amendments:

- To the Information Pack (Clause 1 of Part A) to confirm the information that may not be made available via QR Network's website and to transfer the MTP to the list of Commercial Information which is available upon request and free-of-charge. As a result of this amendment, all of the information contained in

the Information Pack and set out in Clause 1 will be available on CD (reflecting current practice) and will also be issued free-of-charge (in contrast to the 2008 Undertaking which imposed a charge for this service).

- To the Rollingstock Interface Standards (Clause 2 of Part A) to confirm, for the avoidance of doubt, that the charge levied is exclusive of GST.
- To the Commercial Information (Clause 3 of Part A, formerly Clause 4 of the 2008 Undertaking) to reflect the MTP, worked example of the Relinquishment Fee (formerly Schedule M) and sample IRMP (formerly Schedule HA) which is available upon request. Other than for the MTP which changes on a regular basis, the information in this Clause will be made available for download via QR Network's website.
- To the Additional Information (Part B) to transfer information on access to the rail corridor (formerly Clause 2, Part A of the 2008 Undertaking). QR Network notes that this information, to the extent that is reasonably required, will depend on the nature of the request for Access and is normally not requested (if at all) until during the Negotiation Period.

5.3.3 Access Applications generally and Indicative Access Proposal (Clauses 4.1 to 4.3)

The UT2 arrangements for requests for Access by Access Seekers represent substantially the same process as was introduced for the 2001 Undertaking.

Only a handful of requests for Access during UT1 have been from parties other than a QR business group. However, during UT2 there has been a greater interest by Third Parties, including both Train operators and Customers, in seeking Access. During UT2 the number of requests for Access received from these Third Parties has increased substantially, albeit from a low base in UT1.

QR Network expects that for UT3 the number of Third Parties requesting Access to QR Network's rail network, particularly on the CQCR, will again increase significantly. The increase will be driven by the following:

- Indications from Customers that they may consider Asciano as Train operator for new or renewed Train Services; and
- A desire by a number of Customers to seek Access without having a pre-arranged Train operator. Under the current arrangements, once an IAP has

been issued mines may either progress to an Access Holder Standard Access Agreement or transfer their Access Application to the Train operator which would then progress to an Operator Standard Access Agreement.

QR Network believes that it is appropriate to review the existing arrangements for the negotiation of Access Agreements to reflect these arrangements and the potential conflicts which will inevitably arise as QR Network's rail network (particularly the CQCR) becomes more congested.

With respect to Access Applications, the following issues have arisen during UT2:

- (a) To provide a better customer interface with Access Seekers and to reduce the risks that the timeframe in respect of an IAP will be breached, QR Network has required that all Access Applications be reviewed by its operations and infrastructure management staff. However, due to the increasing congestion on both the CQCR and the metropolitan network since the commencement of UT1:
 - The amount of time taken to review the Access Applications, for QR Network to then acknowledge receipt of an Access Application **and** confirm that an IAP can be issued in response within the 30 days has been increasing;
 - The proportion of Access Applications requiring the detailed Capacity Analysis referred to in Part 7 of the 2008 Undertaking has been increasing; and
 - The frequency of requests for further information has been increasing.
- (b) QR Network's obligations with respect to requests for Access which require further information are currently unclear. In practice, QR Network has endeavoured to acknowledge the Access Application within the 5 Business Days and use the period after acknowledgement to request further information, thereby causing a delay in issuing the IAP whilst the Access Seeker responds to the request. QR Network has preferred this approach notwithstanding it increases the risk of a technical breach of the 2005 Undertaking.
- (c) There have been a number of instances where the issuing of an IAP has been delayed by QR Network following discussions with the Access Seeker. This delay has increased the risk of technical breach notwithstanding the Access Seeker has been advised and has not objected to the delay.

- (d) QR Network has received a number of Access Applications for Train Services to and from destinations for which Capacity is yet to be created. For example, Access Applications have been received for Capacity requiring major network expansions such as the proposed Wiggins Island coal terminal (WICT). However, the scope of the Rail Infrastructure to be constructed at this unloading facility is subject to a major feasibility study and is yet to be confirmed.
- (e) QR Network has received a number of Access Applications where it believed:
- The information provided was not sufficiently adequate to prepare a reliable IAP;
 - The Access Application was not capable of being clarified within a reasonable timeframe; or
 - QR Network was not able to make a reasonable set of simplifying assumptions on which a reliable IAP could be prepared.

In these circumstances, the 2008 Undertaking is silent as to whether the Access Application should be withdrawn or its consideration be deferred.

In view of the above, QR Network has proposed various amendments to Part 4, the principles of which are summarised below.

Issues (a) and (b)

To address these issues, QR Network proposes:

- To extend the period for acknowledgment of an Access Application from five (5) Business Days to ten (10) Business Days following receipt of the request for Access.
- Within this timeframe, QR Network will consult with its operations and network management staff regarding whether the Access Applications meets the mandatory requirements in order that a reliable IAP can be issued (the Application Requirements, being the information set out in Schedule C and any subsequent information or clarification requested).
- That following this consultation, QR Network will confirm to the Access Seeker **within** 10 Business Days that either:
 - Sufficient information is available to allow an IAP to be prepared; or

- Sufficient information is not available, and the nature and extent of the information required. Assuming the information subsequently provided is sufficient, confirmation via the Acknowledgement Notice will then be provided within 10 Business Days following receipt of that information.
- That an Acknowledgement Notice (which confirms the request for Access as an Access Application, thereby establishing an Access Seeker’s position in a queue in the event that the associated IAP is accepted) will only be issued if the request for Access, including any information subsequently sought:
 - Provides a reasonable description of the Train Service; or
 - Enables QR Network to form a reasonable description of the Train Service based on a number of assumptions.

By way of information, QR Network notes that Access Applications and IAPs have been processed during the 2006/07 and 2007/08 years according to the following timescales:

	2006/07	2007/08*
Acknowledgment of an Access Application		
• < 5 days	121	132
• 5-10 days	24	20
• > 10 days	19	9
Total Access Applications received	164	161
Preparation of an IAP		
• < 30 days	109	141
• 30-60 days	28	23
• > 60 days	7	10
Total IAPs issued	144	174

* Subject to audit.

As indicated in the table above, QR Network’s proposed arrangements would have reduced the amount of technical breaches of QR Network’s Undertaking for Access Applications from around 20% to around 10%, and for IAPs from around 20% to around 5%.

Issue (c)

To address this issue, QR Network proposes:

- To continue to issue an IAP within 30 days of issuing the Acknowledgement Notice but may extend the date for completion of the IAP, but before the due date, only by 30 days and subject to both the provision of a written notice to the Access Seeker and the Access Seeker electing not to object to the extension.
- To extend the date for completion of the IAP by subsequent 30 day periods but subject to provision of a written notice to the Access Seeker before the due date and the Access Seeker's written approval. The effect of this proposal is that the 2009 Undertaking will only be breached if the Access Seeker's approval is not provided.

Issue (d)

To address this issue, QR Network has created a new Clause 4.8 which sets out the process to be followed by QR Network in respect of Major Projects. A discussion of this Clause is provided at Section 5.3.7 below.

Issue (e)

To address this issue, QR Network proposes:

- That if the request for Access could be fulfilled by QR Network investing in an identified Major Project, it **may** reject the request for Access (i.e. QR Network would not be obliged to prepare an IAP) subject to the involvement of the Access Seeker (and their Customer) in the development of the Major Project (refer discussion at Section 5.3.4 below); and
- Otherwise, it **may** reject the request for Access subject to:
 - QR Network providing reasons for the rejection; and
 - The Access Seeker's right to dispute the rejection.

QR Network notes that if it does not reject a request for Access under the proposed Clause 4.2(d) then it would be required to extend the date of the issue of the IAP with the Access Seeker's consent.

In addition, during discussions with the key stakeholders concerns were expressed regarding the information provided in the IAP, in circumstances where there are competing Access Applications for the same Capacity, regarding the Access Seeker's position in a queue and when Capacity might be available for the request for Access to be fulfilled.

QR Network has considered these concerns and proposes:

- For the information on the queue to not be provided. QR Network believes that extent to which any information is required then it quickly becomes superseded by the withdrawal or modification of Access Applications ahead in the queue. In addition, for any information on the queue to be of any relevance it would need to disclose the identity of Access Seekers and their Customers (or equivalent information from which these details could be established) which are commercial-in-confidence.
- Except where the System Rules indicate or QR Network considers is not required (e.g. where there is no change to Capacity arising from the transfer of Access Rights), to provide as part of the IAP information on the Capacity Analysis used to confirm whether Capacity is available. In addition, QR Network proposes that the definition of Capacity Analysis be broadened relative to the 2008 Undertaking to include:
 - An assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights;
 - If there is not sufficient Available Capacity to accommodate the requested Access Rights, an assessment of the Rail Infrastructure expansion or other Infrastructure Enhancements required to provide additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works); and
 - An investigation of the operational impacts of the requested Access Rights based on the Access Seeker's Operating Plan,

Finally and reflecting the current arrangements, Clause 4.1 has been amended to confirm, for the avoidance of doubt, that requests for Access must be submitted in the form of an Access Application. As indicated above, QR Network has had in place for some time a pro forma Access Application, consistent with requirements set out in Schedule C, which can be downloaded from QR Network's website.

5.3.4 Notification of Intent and Negotiating Conditions (Clauses 4.4 and 4.6)

For the avoidance of doubt, no substantive changes have been made to these Clauses.

5.3.5 Negotiation Process (Clause 4.5)

A number of substantive amendments have been made to these Clauses to address a number of issues following discussions with the QRC, including:

- To Clauses 4.5.1(e) and 4.5(f) to confirm, for the avoidance of doubt, QR Network's obligations in a circumstance not considered in the 2008 Undertaking, being where a Negotiation Period has commenced but that the Available Capacity is reduced (e.g. by an Access Seeker ahead in the queue signing up to an Access Agreement) such that the IAP to the subsequent Access Seeker cannot be fulfilled.
- To Clause 4.5.2(a)(i) to improve the presentation of this Clause. The definition of Additional Information (which in turn is linked to Schedule D) has been consequentially amended.
- To Clause 4.5.2(a)(vi) to clarify the circumstances where a Capacity Analysis under Part 7 may not be required (e.g. where there is no change to Capacity arising from the transfer of Access Rights).
- To Clauses 4.5.2(b) to (d) to extend the basis on which negotiations can be suspended or Access Agreements can be executed subject to the finalisation of certain issues. For the avoidance of doubt, this finalisation would include adjustments to the Access Charge 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.

5.3.6 Capacity Notification Register (new Clause 4.7)

Clause 7.5.1 of the 2008 Undertaking provides a mechanism for an Access Seeker whose request for Access cannot currently be satisfied or expansion is not commercially justified to be offered a place on the Capacity Resumption Register (CRR).

Feedback from stakeholders indicates that the CRR has not assisted in providing certainty around the management of conflicts between existing Access Holders and Access Seekers on the CRR. In response to this feedback, QR Network proposes to broaden the intent of the CRR by removing it from Part 7 and providing in Part 4 arrangements for a Capacity Notification Register (CNR).

The CNR provisions in Clause 4.7:

- Apply in respect of requests for Access which cannot be fulfilled where Available Capacity does not exist.
- Provide for the Access Seeker's details (and the Customer's details where they have been provided) to be recorded on the CNR.
- Allow QR Network to notify all parties on the CNR who have requested Access Rights that may be satisfied, in part or in full, when Capacity becomes Available Capacity to lodge an updated request for Access within one month of receiving the notice.
- Then require QR Network to allocate the Available Capacity in accordance with the Capacity allocation principles.
- As for the CRR, require either the Access Seeker or Access Holder to re-confirm their place on the CRR every 6 months.

5.3.7 Major Projects (new Clause 4.8)

QR Network is committed to undertaking Infrastructure Enhancements to meet future Access Rights sought by all Access Seekers provide that it is commercially reasonable to do so.

In principle, QR Network should not require queuing provisions for anything other than short-term imbalances between demand and supply. However, this principle holds only for brownfield expansions of existing systems and assumes that downstream Capacity expansions (such as at the port) will expand concurrently. The Capacity management arrangements in Part 7 do not specifically address circumstances where supply chain expansion planning is not sufficiently progressed or where greenfield corridors or new port facilities will be required to provide the requested Access Rights.

These issues arise in the context of:

- QR Network's management of requests for Access that can only be fulfilled through completion of a Major Project; and
- QR Network's development of new or varied Reference Tariffs which breach the pricing principles on account of a Major Project.

Accordingly, QR Network has developed a new Clause 4.8 which sets out a process for the development of Major Projects. The process provides for obligations on QR Network to:

- When rejecting a request for Access, providing a written notice confirming the rejection, the reasons for the rejection and confirming the process for QR Network's consideration of the Major Project.
- Record the Access Holder's details (and the details of any Customer if provided).
- Consider the feasibility of the Major Project, including a Capacity Allocation Process, and advise Access Holders and Customers of the outcome of that consideration

In addition, as part of the process:

- QR Network would be permitted to seek funding for the costs associated with any feasibility study, either directly from Access Seekers or Customers or via the coal master planning process in Schedule A.
- Access Seekers or Customers would be able to dispute the Capacity Allocation Process via the QCA, subject to a simple materiality threshold (40% of the total number of Access Holders or Customers, such that Access Holders shall not be counted twice in respect of the same request for Access).

The threshold test is intended to prevent unreasonable intervention by minor stakeholders to the detriment of the majority of stakeholders.

With respect to the definition of Major Project, QR Network proposes a definition which ensures that only the largest Infrastructure Enhancements are addressed under the framework. The definition represents a project which:

- Increases in the value of the RAB by 30% or \$300 million; or

- Results in the construction of Rail Infrastructure on a new rail corridor (and, for the avoidance of doubt, in ancillary expenditure required to support the new Rail Infrastructure).

By way of example, QR Network confirms that the GAP Project and WICT are two projects which QR Network considers would fall under this definition.

5.4 Other Issues

As indicated above, the dispute resolution process (Clause 4.7 of the 2008 Undertaking) has been re-located to a new Part 11. A discussion of the amendments associated with this process is provided at Section 11.3.

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6. Access Agreements (Part 5)

6.1 Introduction

Part 5 of the 2008 Undertaking sets out a framework for the development of Access Agreements between QR Network and an Access Seeker, including the establishment of a Standard Access Agreement.

Schedule E sets out the principles to be incorporated in an Access Agreement.

The key aspects of Part 5 and Schedule E are set out below.

- Access to Rail Infrastructure will be underpinned by an Access Agreement between QR Network and the Access Holder.
- The Access Holder must ensure that Train Services are run by an accredited Train operator.
- Subject to limited exclusions, QR Network is obliged to:
 - Allow the public disclosure of the Below Rail aspects of Access Agreements for all coal carrying Train Services; and
 - Allow disclosure to the QCA of the Below Rail aspects of all other Access Agreements.

Standard Access Agreements have been created only for coal carrying Train Services in two forms – for Train operators and Access Holders (e.g. mines). QR Network confirms that to date the Operator Standard Access Agreement has formed the basis of all coal-carrying Train Services, and that an Access Holder Access Agreement has not been signed.

No substantive amendments have been made to Part 5 other than to no longer refer to the Standard Access Agreements as being in Volume 2 and to remove Clause 5.3 of the 2008 Undertaking relating to Internal Access Agreements. A discussion of these issues is provided at Sections 6.3.1 and 6.3.2 below.

No substantive amendments have been made to Schedule E other than to clarify the rights of QR Network and Access Seekers with respect to the carriage of dangerous goods and Consequential Loss. A discussion of these issues is provided at Sections 6.3.3 and 6.3.4 below.

In addition, a number of minor, 'plain English' and formatting amendments have been made. The details of these amendments (other than inconsequential amendments) are set out in Attachment A.

6.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposed amendments to Part 5.

Other than in relation to the Standard Access Agreements which is discussed further at Section 6.3.1 below, stakeholders did not raise any issues relating to Part 5 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

6.3 Substantive Amendments

6.3.1 Standard Access Agreements – Volume 2 of the 2008 Undertaking

During QR Network's consultation, a number of the key stakeholders suggested that the existing Access Holder and Operator Access Agreements should be supplemented by a further form of Standard Access Agreement. This alternate form would:

- Allow a mine to become a holder of Capacity without incurring obligations associated with the operation of Train Services; and
- Allow Train operators to operate on the Rail Infrastructure using the Capacity provided under the above agreement, but for all operational aspects of their services to be managed under an agreement directly between the Train operators and QR Network.

Stakeholder proposals subsequently discussed have essentially proposed a 'split' of the existing Standard Access Agreement into a capacity agreement and an operating agreement. QR Network is currently developing this concept further into a new form of draft Standard Access Agreement, and will consult further with stakeholders on this new form of agreement prior to its submission to the QCA.

QR Network notes that provisions already exist in the 2008 Undertaking for these agreements to be created for approval by the QCA, and the provisions are being retained for UT3. Accordingly, in order to avoid delaying the submission of UT3 until this process has been finalised, QR Network has proposed to separately consult on a set of Standard Access Agreements which is acceptable to mines, Train operators and QR Network. QR Network expects to submit this set of Standard Access Agreements, which would be consistent with the 2009 Undertaking, to the QCA later in 2008.

In view of the above, QR Network has amended the 2009 Undertaking to exclude references to Volume 2 which is not being provided to the QCA concurrently with this submission.

6.3.2 Access Agreements for New or Renewed QR Services (Clause 5.3 of the 2008 Undertaking)

As discussed at Section 1.3, new Access Agreements will be executed, effective 1 September 2008, to replace the Internal Access Agreements between QR Network and the QR business groups. QR Network confirms that from this date there will be no Internal Access Agreements in place, as new Access Agreements between QR Network and QR (on behalf of the relevant QR business groups) will be entered into for all new or renewed Train Services provided by QR.

Accordingly, the provisions in Paragraphs 5.3(a) and (b) of the 2008 Undertaking regarding Internal Access Agreements are no longer required and have been deleted (for the avoidance of doubt, Paragraphs (c) and (d) were removed from the 2005 Undertaking as they were not relevant for the 2008 Undertaking). In this regard, QR Network's obligations under sections 104 and 125 of the QCA Act will continue to apply whether or not they are referred to in the 2009 Undertaking.

6.3.3 Carriage of dangerous goods – Schedule E

QR Network has proposed an amendment to Clause 14 of Schedule E to confirm, for the avoidance of doubt, the liability for carriage of dangerous goods by an Access Holder.

Currently the provisions of Schedule E which refer to indemnities and liabilities require QR Network and the Access Holder to release and indemnify each other for all claims caused by wilful default or negligence.

During 2008 an issue arose where in discussions with an Access Seeker it became apparent that the rights of the parties with respect to dangerous goods were not adequately qualified in the 2005 Access Undertaking. In the case of dangerous goods, the potential consequence of an incident caused by the wilful default or negligence of QR Network will be far greater than for other goods, purely due to the nature of the goods being carried. For example, an incident involving a Train Service carrying dangerous goods could result in substantial costs associated with the clean-up and remediation of the site.

As a result, the risk associated with a Train Service carrying dangerous goods is significantly higher than the risk associated with other Train Services. However, it has become apparent that, where an Access Seeker plans to operate Train Services that may include a mixture of both dangerous goods and 'non-dangerous' goods, it may not be possible for the Access to provide this information sufficiently in advance of the Access Agreement being executed in order that an Access Charge, inclusive of the risk associated with the carriage of dangerous goods in these circumstances, can be determined.

In this regard:

- QR Network's role is to manage, maintain and provide access to the Rail Infrastructure.
- QR Network is unable to obtain sufficient information to reasonably determine the additional cost or risk associated with the dangerous goods to be carried by the Access Seeker (in accordance with the pricing principles).
- If QR Network were to price this risk then each individual Train Service carrying dangerous goods would need to be independently priced based on the class, quantity and locality of the dangerous goods to be carried. The documentation requirements on both parties with respect to these arrangements would accordingly be both complex and onerous.
- It may not be possible for the risk associated with such an arrangement to be priced by QR Network via an appropriate level of insurance (whether insured or otherwise) as QR Network has no contractual relationship with the

Customers for whom the dangerous goods are carried and risks associated with Individual Train Services may not be insurable.

Accordingly, QR Network considers it reasonable that the liability associated with dangerous goods remains with the Access Seeker who can then address this via its haulage agreement with its Customer. QR Network believes that this outcome is the most efficient for all parties concerned.

In view of the above, QR proposes the following additional drafting within Clause 14 to extend the indemnity arrangements, for the avoidance of doubt, to the carriage of dangerous goods:

“...save and except that the Access Holder will be liable for, and is required to release and indemnify QR Network for, claims brought by or against QR Network relating to the carriage of dangerous goods (including explosives and radioactive material)”.

6.3.4 Consequential Loss – Schedule E

QR Network has proposed an amendment to Clause 15 of Schedule E to include, for the avoidance of doubt, reference to damages for Consequential Loss. QR Network has also proposed a consequential amendment to the defined term.

The amendment clarifies that losses arising from claims by Third Parties (except to the extent that such a claim is in respect of the loss or destruction of or damage to real or personal property, or personal injury to or death of any person) are Consequential Losses. This principle was accepted by the QCA for the Standard Access Agreements in respect of the 2005 Undertaking, and the amendment to the 2009 Undertaking has been proposed to correctly reflect that position.

QR Network confirms that in addition to Schedule E, Consequential Loss is also referenced in Clause 8.3 regarding Connecting Infrastructure.

In this regard, QR Network considers that its liability under Clause 8.3, in respect of unreasonable delays by QR Network in developing Connecting Infrastructure, should be consistent with the position taken in respect of the Standard Access Agreements. However, if the QCA considers that paragraph (iv) should not apply in respect of QR

Network's liability under Clause 8.3 for an unreasonable delay, then that paragraph should still be included in the definition of Consequential Loss but made not to apply in respect of Clause 8.3.

7. Pricing Principles (Part 6)

7.1 Introduction

Part 6 of the 2008 Undertaking sets out the key principles to be followed by QR Network in the negotiation of Access Charges with Access Seekers.

The principles relate to price differentiation, pricing limits, the utilisation of the Rail Infrastructure and revenue adequacy. The Reference Tariffs for coal carrying Train Services as set out in Schedule F are developed consistent with these pricing principles.

The key principles associated with Part 6 are set out below.

- QR Network may establish different Access Charges to maximise the commercially viable use of Capacity while meeting the common costs of providing the Rail Infrastructure. However, within a particular traffic type within a particular geographic area, QR Network is restricted in differentiating between Access Seekers except to reflect differences in QR Network's cost or risk associated with those Train Services.
- QR Network cannot establish Access Charges for the Train Services of QR business groups which would prevent or hinder access by a competing Third Party Access Seeker.
- When establishing Access Charges, QR Network must consider:
 - The upper and lower limits for Access Charges for individual Train Services, or combinations of Train Services, so there is no cross subsidy;
 - The upper limit for Access Charges is the level required to recover the standalone cost of providing Access, and the lower limit is the level required to recover the expected Incremental Cost; and
 - The revenue limit is the maximum amount of allowable revenue, taking into consideration revenue earned through Access Charges and transport service payments.
- Where Capacity is limited, and expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified, QR Network may establish an Access Charge based on the highest Access Charge that any user of that Capacity could pay.

- As long as QR Network complies with the pricing constraints, it is entitled to earn revenue from the provision of Access that is sufficient to achieve full recovery of efficient costs, including an adequate rate of return on the value of assets.
- QR Network may develop Reference Tariffs as an Access Charge for a Reference Train Service. QR Network may submit proposed new Reference Tariffs to the QCA for endorsement, and in certain circumstances the QCA can require QR Network to propose new Reference Tariffs.
- QR Network may request that an Access Seeker agrees to additional Access Conditions to the extent reasonably necessary to mitigate QR's exposure to financial risks.

QR Network does not propose any substantive amendments to these principles other than to:

- Provide some flexibility for specific arrangements to breach the pricing principles in circumstances where QR Network can demonstrate, to the QCA's satisfaction, they are beneficial to the transport supply chain;
- Remove provisions relating to Internal Access Agreements which are no longer required as a result of QR's corporate restructure; and
- Seek to further clarify for Access Seekers the framework for Capacity enhancements and the basis on which Access Conditions are being, and will be, sought by QR Network including in relation to Major Projects.

A detailed discussion of these amendments is provided at Section 7.3 below.

In addition, a number of minor, 'plain English' and formatting amendments have been made. The details of these amendments (other than inconsequential amendments) are set out in Attachment A.

A detailed discussion of the structure of the pricing arrangements associated with the CQCR (Schedule F) is provided at Section 10. The determination of the 'building block' elements associated with the Reference Tariffs in Schedule F is discussed in detail in Volume 2.

7.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposed amendments to Part 6. Stakeholders did not raise any issues relating to Part 6 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

As indicated above, QR Network has consulted in detail with stakeholders on the structure of pricing arrangements for coal carrying Train Services in the CQCR, some of which may require the amendments identified in Part 6 in order to be implemented. A detailed discussion of the issues raised during this consultation is provided at Section 11 below.

7.3 Substantive Amendments

7.3.1 Establishment of Access Charges for QR Train Services – Subclause 6.1.2 of the 2008 Undertaking

As indicated at Section 6.3.2 above, Clause 5.3 of the 2008 Undertaking regarding Internal Access Agreements are no longer required and has been deleted.

Consequently, Subclause 6.1.2 of the 2008 Undertaking is also no longer required and has also been removed. As for Clause 5.3, QR Network's obligations under sections 104 and 125 of the QCA Act will continue to apply.

7.3.2 Potential breaches of the pricing principles – Clause 6.2.1(b)

The 2008 Undertaking requires QR Network to establish Access Charges subject to upper and lower limits assessed by standalone cost and Incremental Cost tests for the relevant Reference Train Service (or combination of Train Services).

However, QR Network believes that not all costs (or benefits) affecting the transport supply chain are properly captured in the pricing limitations that apply to the Reference Train Service. As a consequence, it is possible that Reference Tariffs which are established or varied to provide appropriate pricing signals for Access Holders and Access Seekers (such as through a supply chain credit) will breach the pricing principles in the way the principles are currently drafted.

The key issue for Part 6 is that the costs to be recovered via Access Charges must be incurred by QR Network. However, if the revised pricing principles were revised to promote the economically efficient operation of, use of and investment in, transport infrastructure then capturing only QR Network's costs incurred for each Reference Train Service may fail to achieve this objective.

Potential examples which may occur during UT3 are:

- The 'socialisation' of AT₅ as proposed by QR Network in its principles paper on Pricing for Electric Train Services (Attachment F). As discussed in the paper, a segmented assessment of AT₅ costs is inefficient and inequitable in the Blackwater and Goonyella systems (and particularly in the former) and accordingly a single tariff approach across Individual Coal Systems has been proposed.
- The introduction of a supply chain 'credit', incentives for Train operators (or other parties in the transport supply chain) could be provided for efficient investments in infrastructure (i.e. which are more cost-effective than Below Rail infrastructure).

The effect of the new Clause 6.2.1(b) is to permit QR Network to apply to the QCA, in circumstances where the current pricing limitations fail to capture all of the cost components, to address the issue by way of the establishment or variation of a Reference Tariff which breaches the pricing principles.

7.3.3 Matter for expert determination (Subclause 6.4.4 of the 2008 Undertaking)

The only amendment to Part 6 of the 2008 Undertaking related to a matter which, as at the commencement date for the 2005 Undertaking was yet to be resolved in discussions between QR Network and the QCA. QR Network's formal submission on the 2008 Undertaking confirmed that the matter was referred for expert determination and resolved, and accordingly Subclause 6.4.4 was amended to:

- No longer require the matter to be referred for expert determination; and
- For the relevant drafting to reflect the interpretation of the expert.

As the matter specifically related to the CQCR, for the 2009 Undertaking the relevant provisions have been transferred to Clause 4.1.4, Part B of Schedule F.

7.3.4 Access Conditions – Clause 6.5.2

As indicated above, the amendments to Clause 6.5.2 build upon amendments made to the 2001 Undertaking for the 2005 Undertaking, and seek to further clarify for Access Seekers the framework by which QR Network will invest in Capacity enhancements (including for Major Projects) and the basis on which Access Conditions are being, and will be, sought by QR Network for the development of specific network enhancements.

The substantive amendments provide that:

- Access Conditions are deemed to be reasonably required if:
 - QR Network requires such conditions where the First Party is subject to Access Conditions in respect of Infrastructure Enhancements; and
 - QR Network is imposing Access Conditions on a Subsequent Party seeking access to that infrastructure in conjunction with renegotiating the existing party's Access Conditions.

QR Network believes that if it is required to impose Access Conditions on the Subsequent Party then those Access Conditions should be deemed to be reasonably required.

- Access Conditions are deemed to be reasonably required if QR Network cannot provide the Access sought unless it invests in a Major Project, on the basis that such projects involve significant investment by QR Network and the associated financial risks are substantially different and greater than those for other types of projects (refer further comments below).
- Negotiations with a First Party for Access by a Subsequent Party be conducted on a 'reasonable endeavours' basis, to recognise that the First Party is not obliged (and QR Network cannot require it) to enter into a revised rebate agreement.

With respect to Infrastructure Enhancements, QR Network confirms that it has developed this new defined term to standardise various references in the 2008 Undertaking to modifications to infrastructure.

A discussion of QR Network's proposals with respect to Major Projects has been provided at Section 5.3.7 above.

In addition, a number of minor amendments have been made to Clause 6.5.2 to improve the application of this Clause and to align with other Clauses. The details of these amendments (other than inconsequential amendments) are set out in Attachment A.

8. Capacity Management and Network Management Principles (Part 7 and Schedule G)

8.1 Introduction

Part 7 and Schedule G of the 2008 Undertaking set out the framework for QR Network's management of Capacity on the Rail Infrastructure.

The key principles associated with the framework are set out below.

- QR Network will perform scheduling, train control and associated services as well as provide Capacity related information in accordance with Network Management Principles (Schedule G).
- Access rights are to be allocated to the first Access Seeker who negotiates and executes an Access Agreement, subject to the queuing provisions. Where two or more Access Seekers are seeking access to the same Capacity and those applications cannot be modified, QR Network will form a queue for allocating the Capacity.
- The order of the queue will be initially established in order of the date the Access Application was received.
- QR Network is permitted to change the order of the queue where:
 - The Negotiation Period for an Access Seeker has ended;
 - QR Network reasonably considers that an Access Seeker is not genuine or unlikely to use the Capacity; and
 - QR Network reasonably considers the commercial performance of Below Rail services will be better served by allocating Access to a party who is in the queue but not first in the queue
- Disputes regarding queues are to be referred to the QCA.
- QR Network may resume Capacity from an Access Holder if it does not operate a service 7 or more times out of any 12 scheduled occasions.
- An Access Holder may relinquish Access Rights upon the payment of a Relinquishment Fee, which may be reduced if QR Network enters into an Access Agreement with another Access Holder.
- An Access Holder may transfer all or part of its Access Rights to an Access Seeker on payment of a transfer fee. A worked example of a transfer fee is provided at Schedule M.

- QR Network must maintain a Committed Capacity Register (CCR) that identifies the parties who have an interest in Committed Capacity or existing Access Rights. All Access Holders and Queensland Transport will be automatically placed on the CCR.
- QR Network must maintain a CRR that identifies Access Seekers who are interested in Access Rights that are currently not available.

QR Network proposes to roll forward the basic principles in Part 7 and Schedule G, subject to a significant number of substantive amendments to improve the allocation of Capacity and to clarify a number of aspects which caused some confusion for Access Seekers and Access Holders (and their Customers) during UT2. These amendments have arisen from the extensive discussions with Train operators and the QRC on this issue.

As the substantive amendments include replacing the transfer fee arrangements with general Relinquishment Fee arrangements, the worked example in Schedule M has been removed. Instead, QR Network proposes that a worked example of the Relinquishment Fee arrangements be provided on QR Network's website.

A summary discussion of these substantive amendments is provided at Section 8.3 below. A detailed discussion of the substantive amendments is provided at Attachment B.

8.2 Stakeholder Issues

Part 7 was the subject of substantial amendments during the approval process for the 2005 Undertaking. In response to stakeholder concerns regarding the transparency of QR Network's management of network Capacity, more prescriptive arrangements for dealing with Capacity allocation (i.e. queuing) were introduced.

Discussions with the key stakeholders for the 2009 Undertaking indicated some frustration and uncertainty with the operation of Part 7, and in particular the Capacity allocation and Capacity transfer provisions introduced for the 2005 Undertaking.

In response to these discussions, QR Network has held extensive discussions with a range of stakeholders regarding the redrafting of Part 7 and Schedule G to improve its operation and has proposed a range of substantive amendments. A discussion of

the issues raised by these stakeholders and QR Network's response is provided at Attachment B.

8.3 Substantive Amendments

8.3.1 Capacity Management (Part 7)

A fundamental principle of the Access Undertaking should be that the processes for negotiating an Access Agreement and allocating Capacity in the Undertaking should be reasonably clear and avoid ambiguity. QR Network considers that the interaction between Part 4 and Part 7 in the 2005 Undertaking did not satisfy this objective.

Accordingly, the 2009 Undertaking has been restructured to improve the linkages between the negotiation framework (Part 4) and Capacity management (Part 7). Specifically, aspects relating to the Capacity Analysis and the management of a request for Access that cannot be accommodated either commercially or specific rail infrastructure enhancements which have not yet been identified (and which have hence been defined as Major Projects) have been moved to Part 4.

In summary, QR Network's key proposals for Part 7 include:

- The replacement of the CRR in Part 7 by the CNR in Part 4 for the management of requests for Access for which Available Capacity does not exist;
- The modification of resumption thresholds for cyclical traffics to 90% utilisation of annual Train Service Entitlements;
- Simplified the arrangements for the renewal of Access Rights relating to coal carrying train services in the CQCR; and
- The removal of transfer fees for transfers between coal carrying train services within Individual Coal Systems for a term of less than 2 years.

As indicated above, a detailed discussion of the substantive amendments to Part 7 is provided at Attachment B.

8.3.2 Network Management Principles (Schedule G)

Recent and potential future developments in coal supply chain management (e.g. the development of supply chain forums and the outcome of the O'Donnell Review into the Goonyella supply chain) require that the 2009 Undertaking recognises how these specific arrangements have evolved, and might further evolve.

In practice, the greatest evolution in train planning, scheduling and control has been the further shift to cargo assembly practices in the Goonyella 'demand-pull' supply chain as at DBCT has expanded and customers of DBCT have agreed to remove rights to dedicated stockpiles.

The cargo assembly operating paradigm recognises that ship arrival and port scheduling will drive all aspects of Below Rail Capacity management to varying degrees, as well as mine loading performance requirements. In terms of optimising supply chain performance, a mechanism is necessary to more closely link train scheduling and real time train management with port scheduling, the latter driven by timing of ship arrivals and associated ship queues off the port. Accordingly, QR Network has proposed a number of amendments to provide sufficient flexibility for the principles to remain relevant to changes in both coal and non-coal supply chain design and management.

In particular, a new Appendix 1 in Schedule G will allow individual approaches to be adopted for the development of System Rules, particularly in each system of the CQCR to provide flexibility and improved alignment of train scheduling and planning with other elements of the supply chain. Under these arrangements the system specific objectives and coordinating processes can be specified to better reflect the relevant integrated planning arrangements.

QR Network has also included a governance framework around the development and modifications to System Rules. QR Network will consult on the development of the System Rules with all affected parties, including rail and port operators. Where an Access Holder or an Access Seeker considers that a proposed System Rule will not operate equitably or will interfere with the terms and conditions of an Access Agreement, the Access Holder or Access Seeker can rely on the Dispute resolution procedures.

The existing contested train path decision making process has also been amended to better reflect the hybrid nature of the Goonyella system. Under the proposed arrangements an Access Holder will have the ability to redirect underutilised Capacity entitlements to an alternate origin and destination, subject to QR Network being able to meet any requests of another Access Holder within the scope of their entitlements. This will allow Access Seekers reasonable certainty in managing volume risk associated with Customer production disruptions and facilitate short term swapping arrangements.

Additional rules have also been included in the Train Management Decision Making Matrix (Appendix 3, formerly Appendix 2 of the 2008 Undertaking) to allow priority to be given to a late running train over an on-time train where:

- Both Train Services belong to same Train operator and the prioritisation would allow for improvements in rollingstock utilisation and ultimately minimise further disruptions to the current or scheduled Daily Train Plans; or
- The Train Services belong to different Train operators and the prioritisation is required to meet predefined and agreed coal supply chain objectives specified in the System Rules. An objective might include the requirement to arrive at the point of discharge in sequence as required by an agreed integrated plan.

As indicated above, a detailed discussion of the substantive amendments to Schedule G is also provided at Attachment B.

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9. Interface Considerations (Part 8)

9.1 Introduction

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.

Part 8 of the 2008 Undertaking, supported by Schedules HA (Sample Interface Risk Management Matrix), J (Issues for the Environmental Investigation and Risk Management Report (EIRMR)) and K (Operating Plan), sets out the framework by which QR Network manages these risks.

The key aspects of Part 8 are set out below.

- The Interface Risk Management Process commences with an integrated risk assessment and culminates in an Interface Risk Management Plan (IRMP) which specifies:
 - Which Safeworking Procedures and Safety Standards are applicable;
 - Any additional controls agreed;
 - The audit, inspection and review regime agreed; and
 - The particular party responsible for ensuring the various elements of the IRMP are implemented.
- The Access Holder's Safety Management System must reflect the IRMP.
- All Rollingstock and all Rollingstock Configurations must be authorised by QR Network. Access Holders must produce certificates of compliance prepared by an agreed party.
- The Access Holder must have in place processes to ensure IRMP compliance at all times in its operations. QR Network and the Access Holder must inform each other of any failure to comply with the IRMP.
- The Access Holder must prepare an EIRMR which identifies possible risks of environmental harm arising from the proposed use of the Rail Infrastructure and the proposed environmental risk mitigation strategies, including audit requirements. The Access Holder's Environmental Management System must address the risk management proposals in the EIRMR and all relevant legislative requirements.

- If an Access Holder proposes to construct infrastructure which connects to QR Network's Rail Infrastructure, QR Network reserves the right to design, project manage, construct, commission, maintain and upgrade the connecting infrastructure. The Access Holder will fund these works.

QR Network proposes no substantive changes to these arrangements, other than to remove Schedule HA relating to the sample IRMP and to broaden the arrangements for Connecting Infrastructure (formerly adjoining infrastructure) to include Related Operators. With respect to the sample IRMP, QR Network proposes instead that a copy of this information be provided on QR Network's web-site.

A summary discussion of these amendments is provided at Section 9.3 below.

In addition, a selected number of minor, 'plain English' and formatting amendments have been made, including the renumbering of Schedules J and K as Schedules H and I. The details of these amendments (other than inconsequential amendments) are set out in Attachment A.

9.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposed amendments to Part 8. Stakeholders did not raise any issues relating to Part 8 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

QR Network believes that consideration of Part 8 is best addressed during the QCA's consultation period.

9.3 Substantive Amendments

9.3.1 Sample IRMP

As indicated above, QR Network proposes to remove Schedule HA and publish the sample IRMP on QR Network's web-site, rather than as part of the 2009 Undertaking. The following issues are relevant to this proposal:

- QR Network proposes to make no change to the sample IRMP relative to the version included in the 2008 Undertaking (which is equivalent to the sample IRMP in the 2005 Undertaking other than amendments to reflect changes in QR's corporate structure).
- The provisions of the 2008 Undertaking give no regulatory sign-off for the sample IRMP as it is included purely for information purposes. Accordingly, QR Network cannot impose controls simply because they are in the sample IRMP, nor can it require that alternate controls address risks to the same extent as the controls in the sample IRMP. Should an Access Seeker fail to agree with an aspect of the sample IRMP then it can seek Dispute resolution. QR Network believes that as a result, including the sample IRMP in the 2009 Undertaking serves no real purpose apart from information provision.

Reference to the sample IRMP is also made in Clause 3 of Schedule D regarding the Commercial Information to be made available to Access Seekers upon request. Consistent with the other commercial information such as Reference Tariffs and the Standard Access Agreement, no charge will be made for provision of the sample IRMP.

9.3.2 *Connecting Infrastructure (formerly Adjoining Infrastructure)*

Consistent with QR's corporate restructure, QR Network proposes that a number of provisions in the 2008 Undertaking applying to Third Parties should also apply to Related Operators.

With respect to Connecting Infrastructure, QR Network confirms that as a result of the QR corporate restructure, Connecting Infrastructure and the Rail Infrastructure will be owned by different legal entities. Accordingly, for the benefit of the Customers (and to reflect existing commercial practice) QR Network believes it is appropriate to ensure that that QR Network's obligations towards Related Operators are the same as for Third Parties.

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10. Reporting (Part 9)

10.1 Introduction

Part 9 of the 2008 Undertaking, together with Schedule MB, sets out QR Network's obligations regarding compliance and the preparation of various reports.

QR Network is obliged to have appointed a Compliance Officer responsible for monitoring QR Network's compliance with its regulatory obligations and reporting breaches of those obligations internally and to the QCA.

In addition, QR Network is obliged to prepare a number of reports, some of which are published and others provided on a commercial-in-confidence basis to the QCA.

These reports include:

- Monthly and 'as required' reports of breaches of the 2008 Undertaking;
- Audited quarterly network performance reports;
- Audited annual performance reports associated with QR Network's management of Access Seekers;
- Annual reports on QR Network's maintenance costs and its roll forward of the RAB; and
- Special purpose detailed reports associated with QR Network's key operating parameters and maintenance costs.

QR Network has proposed a number of changes to its reporting arrangements, particularly to improve the consistency, relevancy, transparency and effectiveness of its public reports. In some cases, these changes result in measures being added, deleted, expanded, consolidated or modified.

The measures which have been added are already disclosed via reporting frameworks currently in place such as for the Goonyella and Capricornia coal supply chain forums or as part of QCA-specific reports.

A summary discussion of these amendments is provided at Section 10.3 below. A detailed explanation of each of the amendments (other than inconsequential amendments) is provided at Attachment A.

10.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposed amendments to Part 9. Stakeholders did not raise any specific issues relating to Part 9 during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

However, QR Network has considered a number of general issues raised by stakeholders which impact upon QR Network's reporting obligations and have influenced the proposed amendments. These issues included:

- The degree to which QR Network's incentive framework could be improved by a greater degree of transparency associated with certain non-financial Key Performance Indicators (KPIs) limited to the CQCR, as an alternative to developing a set of financial KPIs; and
- Alignment of some of the reporting arrangements with other participants in the coal supply chain.

These issues, together with QR Network's proposals to address them, are discussed further below.

10.3 Substantive Amendments

10.3.1 Introduction

As indicated above, QR Network has conducted a detailed review of its existing reports to identify improvements which can be made to improve their consistency and transparency and align them with reports produced by other elements of the supply chain (particularly across the CQCR).

In some cases, these improvements result in measures being added, deleted, expanded, consolidated or modified. The measures which have been added are already disclosed via reporting frameworks currently in place such as for the Goonyella and Capricornia supply chain forums or as part of QCA-specific reports.

The key change is that reports (including reports previously described in Schedule MB of the 2008 Undertaking) are now divided between:

- Public quarterly reports on QR Network's performance in its management of Queensland's rail network;
- Public annual reports on QR Network's performance in its management of requests for Access and maintenance costs; and
- Specific purpose annual reports covering a range of issue relevant to the QCA (and which contain information which is not suitable for publication) including on capital expenditure and the RAB.

Changes to the quarterly and annual reports are summarised below. For the avoidance of doubt, QR Network proposes no substantive amendments to the breach reporting arrangements in Part 9 including the monthly breach report.

10.3.2 Quarterly network performance report (9.1)

QR Network proposes that disclosure within the quarterly network performance report is better aligned with QR Network's business which is divided between coal, freight (bulk and general freight) and passenger. In addition, QR Network proposes that additional information be provided on performance within each system in the CQCR.

Specific amendments to the quarterly network performance report are summarised below:

Healthy and Unhealthy Train Services

QR Network proposes that reporting of Healthy and Unhealthy Train Services (as defined in the 2008 Undertaking) be replaced by Train Services which reach their destination within an Allotted Time (i.e. are on-time or not on-time).

In this regard, QR Network notes that:

- The effective reporting of Healthy and Unhealthy Trains Services has relied to a significant extent on thresholds which were to be agreed between QR Network and Access Holders. QR Network confirms that since the beginning of UT1 neither QR Network nor any Access Holder have agreed these thresholds.

- The Allotted Time is broadly equivalent to the thresholds currently being used for the reporting of Healthy and Unhealthy Train Services, and which have been developed in the absence of any agreement between QR Network and Access Holders.
- The concept of Healthy and Unhealthy Trains Services is closely aligned with the reporting arrangements under the ARTC Undertaking relating to intermodal services. However, the ARTC intermodal network is significantly different to QR Network's rail network in that:
 - On the ARTC intermodal network, trains enter from and exit to ARTC's rail infrastructure via private infrastructure which is not controlled by ARTC. The concepts of 'healthy' and 'unhealthy' relate to the degree to which these trains present themselves to ARTC network controllers within the agreed timeframe.
 - On QR Network's rail network, trains remain on the Rail Infrastructure from origin to destination. For example, in the CQCR these trains will operate on a cyclic basis stopping only (on Rail Infrastructure) for loading, unloading and provisioning. In this regard, other than for timetabled passenger services trains do not present themselves to QR Network controllers in the same way as for the ARTC network.

In view of the above, QR Network believes that a simpler reporting arrangement is appropriate which reflects the degree to which Train Services are arriving at their destination within a prescribed threshold. Consistent with the current reporting arrangements, QR Network proposes the following thresholds:

- For coal services – 30 minutes;
- For bulk and general freight services – 60 minutes; and
- For long distance passenger services – 60 minutes.

Incidents reported to the Safety Regulator

QR Network proposes that information on major reportable incidents reported to the Safety Regulator be dis-aggregated into 3 categories – directly attributable to QR Network, directly attributable to an Access Holder, and directly attributable to neither QR Network nor an Access Holder.

Operational data for the CQCR

QR Network proposes that the Operational Data Requirements now be reported on 2 bases:

- (i) As a quarterly report disclosed publicly on an aggregate basis, consistent with the new KPIs recently approved by the QCA for DBCT Management Pty Ltd; and
- (ii) As an annual report disclosed to the QCA on an individual Train Services basis, consistent with the old Schedule MB.

The quarterly report would be a new requirement. In addition, this information will incorporate a revised measure associated with the Below Rail Transit Time (BRTT) for the CQCR. Whereas per Subparagraph 9.1(f)(iv)(A) of the 2008 Undertaking the measure was recorded on a nominal basis for the CQCR as a whole, QR Network believes that a more appropriate disclosure is for the BRTT to be presented as percentage for each system, consistent with the BRTT percentages detailed in Schedule F.

For the avoidance of doubt, Subparagraph 9.1(f)(iv)(B) of the 2008 Undertaking has been removed. Consistent with the discussion above on Healthy and Unhealthy Train Services, this measure relies upon thresholds which have not been agreed between QR Network and Access Holders.

Track quality

QR Network proposes that information on track quality be reported on a quarterly basis (previously reported on an annual basis) where this information is available. In some cases, on remote areas of the rail network track quality is recorded regularly but not necessarily on a quarterly basis.

Complaints

Due to the small number of complaints received during UT2 regarding billing and the treatment of non-QR Train Services, QR Network proposes that information on complaints is disclosed on an annual basis (and, consistent with the complaint handling framework is Clause 3.5, relates only to written complaints).

10.3.3 Annual reports (9.2)

Specific amendments to the annual reports are summarised below:

Access performance report

- Due to the very small number of requests actually received, QR Network proposes that information on requests for Preliminary Information be modified to improve the measure as an indicator of QR Network's performance. The effect of the amendment is to require only the number of requests received and the average time taken to provide Preliminary Information requested by an Access Seeker.
- As indicated at Section 10.3.2 above, QR Network proposes that information on complaints be disclosed on an annual basis and relate only to written complaints.

Public maintenance cost report

QR Network proposes no changes to the structure and content of this annual report.

Old Schedule MB reports

These annual reports to the QCA have been subsumed within the existing reporting processes in Part 9 in that:

- As indicated at Section 10.3.2 above, the Operational Data Requirements are now reported on 2 bases - a quarterly public and annual specific report to the QCA.
- The Capital Expenditure and Roll-Forward of the RAB reports are unchanged other than their inclusion within Part 9. These reports have been incorporated alongside the RAB report whose structure and content is also unchanged.
- Arrangements for the Annual Maintenance Cost report have been aligned with arrangements for the public report at Clause 9.2.3. The main effect of this alignment is that the detailed format of these reports will be agreed with the QCA following confirmation by QR Network and QR Services (QR Network believes that it is not necessary to provide the detail of these reports in the 2009 Undertaking).

With respect to the Annual Maintenance Cost report, QR Network confirms that it will roll forward the format of the current report subject to a number of minor amendments which reflect the most recent discussions between QR Network and QR Services. The new expenditure items (which are currently subject to further discussions between now and the commencement of the 2009 Undertaking) are set out below.

- Facilities - Electricity, Emergency Work, Graffiti Management, Programmed Work, and Rates.
- General - Asset Management, Derailment Repairs, External Work, Indirect Time, and Inventory & Minor Asset Management.
- Signalling - Cable Route Maintenance, Corrective Signalling Maintenance (Yards), Level Crossing Protection, Major Network Corridor Signal, Operating System for Civil Infrastructure, Preventative Signalling Maintenance (Yards), Signalling Control Systems, Train Protection Systems Maintenance, Tramway Crossing, Wayside Monitoring Systems Maintenance, and Weighbridge Maintenance.
- Structures - Ancillary Structure Construct/Repair, Concrete Bridge Construction, Drainage Construction/Repairs, Repairs Concrete Bridges, Repairs Steel Bridges, Repairs Timber Bridges, Retaining Wall Construction/Repairs, Steel & Concrete Bridge Construction, Steel Bridge Painting (Contract), Steel Bridge Painting (Spot Painting), Structures Inspections, Structures Pest Control, and Tunnel Repairs.
- Telecommunications - Control and ECO Telephone Maintenance, Corrective Telecommunications Backbone Network Maintenance, Emergency Telephones Maintenance, Mobile Radio, Phone/Data Maintenance, Phone/Data Move/Change/Instal, Portable Radio & Yard Shunt System, Preventative Telecommunications Backbone Network Maintenance, and Telecommunications Backbone Modifications.
- Track - Ballast for ML BCM, Ballast Undercutting (Turnouts), Ballast Undercutting (BCM), Ballast Undercutting (Other), Complete Turnout Replacement, Earthworks – Non Formation, Fencing, Fire & Vegetation Control, Formation Repairs, Level Crossing Construction/Maintenance, Maintenance Ballast, Mechanised Resleepering, Mechanised Resurfacing, Mechanised Resurfacing Turnouts, Minor Yard Maintenance, Monument/Signage Erection, Rail Grinding - Mainline, Rail Grinding - Turnouts, Rail Joint Management, Rail Lubrication, Rail Renewal, Rail Repair,

Rail Stress Adjustment, Sleeper Management, Stone Blowing, Top & Line (Spot Resurfacing), Track Clean-up, Track Geometry Recording, Track Inspections, Track Reconditioning and Removal, Turnout Maintenance, Ultrasonic Testing – Manual, and Ultrasonic Testing Ontrack Machine.

- Traction - 11KV Substation/Low Volt Maintenance, Corrective FS & TSC Maintenance, Corrective Overhead Maintenance, Network Corridor Renewals - Traction Power, Power Systems Control, Preventative Feeder Station (FS) & Track Section Cabin (TSC) Maintenance, Preventative Overhead Maintenance, Supervisory Control and Data Acquisition (SCADA), and Traction Power – Civil Infrastructure.

QR Network notes that an effect of the inclusion of the old Schedule MB reports within Part 9 is that a Responsibility Statement signed by QR Network's EGM is no longer required. The requirement for QR Network to complete a Responsibility Statement arose out of the development of the 2005 Undertaking where a number of information errors were discovered subsequent to their submission by QR to the QCA.

In this regard, QR Network makes the following comments:

- During the 2005 Undertaking, QR Network has made a concerted effort to improve the quality of information provided to the QCA. QR Network is not aware of a material omission of, or error in, information provided to the QCA during UT2.
- QR Network has instituted internal peer review processes associated with a number of key submissions to the QCA, including QR Network's May 2007 maintenance cost submission, QR Network's November 2007 revenue cap submission and the maintenance cost information provided at Volume 2 of this submission.
- Relative to the 2005 Undertaking, the 2008 Undertaking changed the signatory for the responsibility statement from the QR CEO to QR Network's EGM. It is unclear why a specific statement is still required for the provision of selected information when QR Network's EGM is accountable for all information provided to the QCA by QR Network.
- Responsibility statements are not required for the quarterly or annual performance reports in Parts 9.1 and 9.2.

- QR Network is not aware of any evidence to suggest that responsibility statements have improved the transparency and accountability of information relative to other information provided to the QCA for which a responsibility statement is not required.
- The responsibility statements unnecessarily increase the administrative requirements associated with managing compliance with QR Network's regulatory obligations.
- QR Network is not aware of responsibility statements being required from other regulated businesses, including those regulated by the QCA.

Rather than provide a responsibility statement, QR Network proposes that consistent with arrangements for the 2005 and 2008 Undertakings, the annual reports under the old Schedule MB be provided to the QCA accompanied by a letter from the QR Network EGM.

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11. Reference Tariff Schedules (Schedule F)

11.1 Background

Schedule F of the 2008 Undertaking specifies the Reference Tariffs applicable to coal carrying Train Services. This Schedule also specifies the methodology used for determining new Reference Tariffs where required.

As indicated at Section 7 above, Schedule F has been developed in accordance with the principles contained in Part 6, has been endorsed by the QCA and comprises three parts:

- A. Provisions generically applying to all coal carrying Train Services;
- B. The requirements specific to each nominated Reference Train Service on the CQCR; and
- C. The requirements specific to each nominated Reference Train Service on the Western System.

Given the complexity of Schedule F and the substantial degree of consultation with stakeholders regarding Part 6 and in contrast to the other sections, this Section 11 is presented in the same order as the provisions in Schedule F. Discussions on the major issues listed at Section 11.2 below are provided in separate principles papers which are located at Attachments C to F.

As previously indicated, the determination of the 'building block' elements associated with the Reference Tariffs for the CQCR is discussed in detail in Volume 2.

11.2 Stakeholder Issues

A substantial degree of QR Network's consultation with the key stakeholders has related to issues relating to Schedule F, and in particular those addressed in QR Network's discussion and principles papers. These issues, and the location of QR Network's proposals to address them, are as follows:

- Price setting (Attachment C);
- Revenue cap (Attachment D);
- Geographic scope (Attachment E); and

- Pricing for electric Train Services (Attachment F).

To the extent that the principles papers have addressed each of the issues raised by stakeholders then reference is provided below to the detailed discussion in the relevant Attachment rather than in detail below.

11.3 Introduction

This section is equivalent to Clause 1 (Scope) of the 2008 Undertaking. The section has been significantly reduced and reformatted to provide a brief (but broad) overview for Access Seekers and other interested persons as to the scope of Schedule F.

Consistent with these amendments, the 3rd paragraph of the 2008 Undertaking has been re-located to a new Clause 1.3.2 relating to the characteristics of the Reference Train Service and the 4th paragraph has been re-located to a new Clause 3.1 relating to variations in the Reference Train Service.

11.4 General Provisions (Part A)

11.4.1 Reference Train Service Description (Clause 1)

This section is equivalent to Clause 2, Part A of the 2008 Undertaking.

Commodity Type (1.1)

No changes have been made to this Clause.

Geographic Scope (1.2)

Only one amendment has been made to this Clause, to remove the reference in Subclause 2.2.2 of the 2008 Undertaking relating to the minimum CCC. The change reflects QR Network's proposals to set single Reference Tariffs for each system.

A detailed discussion of this issue is provided in QR Network's principles paper on geographic scope provided at Attachment E.

Characteristics (1.3)

A number of minor amendments have been made to this Clause (including to the title which has been simplified), including:

- To the reference in Clause 1.3.1 to Stowage (Paragraph 2.3.1(m) of the 2008 Undertaking) has been removed as it is duplicated at Clause 1.1 of Part B and relates only to Train Services on the CQCR (in addition, the Stowage allowance has been clarified with respect to planned and unplanned short-term storage); and
- As previously discussed, a new Clause 1.3.2 which is equivalent to the 3rd paragraph of Clause 1 (Scope) of the 2008 Undertaking.

Conditions of Access (1.4)

This Clause is equivalent to Clause 2.4.1 of the 2008 Undertaking, other than for a number of minor amendments which:

- Modify the reference to the Standard Access Agreement, reflecting QR Network's proposals discussed at Section 6; and
- Insert, for the avoidance of doubt, new references to the Train Service Entitlements described at Clause 1.2 of Part B and Clause 2.2 of Part C.

11.4.2 Access Charge (Clause 2)

This section is equivalent to Clause 3, Part A of the 2008 Undertaking.

Reference Tariff (2.1)

A minor clarification has been made to this Clause in relation to the operation of Parts B and C (a consequential amendment deleted Clause 1 of Part C has also been made).

Variation of Reference Tariffs (2.2)

A number of amendments have been made to this Clause to address QR Network's proposals for price resetting and the revenue cap process. The main impacts of QR Network's proposals are that:

- An Annual Review process will be conducted covering an annual variation to Reference Tariffs (by way of an Adjustment to System Allowable Revenue), sought by QR Network by 28 February prior to the commencement of the subject Year.
- The revenue cap process will be modified to only involve QCA endorsement of the Revenue Adjustment Amount, rather than the variation of Reference Tariffs arising from the Revenue Adjustment Amount (with the variation to be addressed via the Annual Review process).

These processes are further described below and in QR Network's principles papers provided at Attachments C (regarding the revenue cap process) and D (regarding the Annual Review process).

In particular, QR Network has made a number of amendments to Clause 2.2 including:

- To incorporate in the variation process (in particular at Clause 2.2.1(a)) any proposal by QR Network to propose a variation to a Reference Tariff which breaches the pricing principles in Part 6 (cross-referenced at Clause 6.2.3), subject to the QCA's approval for the variation to be submitted.
- To modify the drafting at Clause 2.2.1(b)(i) associated with Endorsed Variation Events, such that the 60 day deadline relates to the date at which QR Network becomes aware that an Endorsed Variation Event has occurred, rather than the date where the Endorsed Variation Event has occurred.
- To modify the drafting at Clause 2.2.1(b)(ii) associated with the Annual Review process.
- To remove the Review Event provisions in Clause 3.3 of the 2008 Undertaking affecting aspects of Clause 2.2 (being part of Clauses 2.2.2 and 2.2.8 and Clause 3.3.6 of the 2008 Undertaking). This issue was first raised in QR's February 2007 submission to the QCA on the Proposed Schedule F Amendment. In this submission QR Network was argued that:

- The Review Event provisions were no longer required on the basis that the revenue cap arrangements reduced the risk of revenue variation that the Review Event provisions were originally designed to address; and
- To the extent that any residual risk remains, it is best addressed by way of a voluntary DAU.

QR Network notes that the amendment currently proposed (being to remove the Review Event process) was not put forward as part of the Proposed Schedule F Amendment as there were some concerns from stakeholders whether the amendment was within the scope of Clause 3.3 of Part B of the 2005 Undertaking. A further discussion of this issue is provided in QR Network's principles paper on Revenue Cap at Attachment D.

- To modify the drafting at Clause 2.2.4(b) to clarify the circumstances under which a notice requiring QR Network to resubmit a variation of a Reference Tariff can be issued.
- To insert a new Clause 2.2.5 regarding the variation of a Reference Tariff that breaches the pricing principles in Part 6.
- To modify Clause 2.2.6 to align with Clause 2.2.1(b)(i) regarding Endorsed Variation Events.
- To insert a new Clause 2.2.7 to align with Clause 2.2.1(b)(ii) regarding the Annual Review process, which is broadly equivalent to Subclause Paragraph 3.3.7 of the 2008 Undertaking regarding the revenue cap process (note that the process for QCA approval of the Revenue Adjustment Amounts is now located at Clause 3.2).
- To delete Subclauses 3.3.7A to 3.3.7C of the 2008 Undertaking regarding deductions to System Allowable Revenue for breach of an Access Agreement or negligence. A discussion of this issue is provided in QR Network's principles paper on Revenue Cap at Attachment D.
- To modify Clause 2.2.8 to reflect the modified drafting for Endorsed Variation Event and the Annual Review process.

For the avoidance of doubt, Clauses 2.2.9 to 2.2.11 are equivalent to Subclauses 3.3.9 to 3.3.11 of the 2008 Undertaking and have not been amended.

Endorsed Variation Event

In addition, a number of amendments have been made to the definition of endorsed Variation Event to reflect the current arrangements and to reflect the issues set out in QR Network's principles paper on Price Setting at Attachment C.

A comparison of the definitions from the 2008 Undertaking with the 2009 Undertaking is set out below.

- (a) Change in Law or Change in Relevant Taxes - this paragraph is unchanged from the 2008 Undertaking, other than to amend the applicable time period back to the Commencement Date (as per the 2005 Undertaking) and is now Clause (i).
- (b) Change in transmission costs – this paragraph has been combined with the part of paragraph (c) relating to distribution costs, and subject to the amendment of the applicable time period is now Clause (iii). The effect of this amendment is that the Reference Tariff component affected by these cost changes is limited to AT₅.
- (c) Change in electricity costs - this paragraph is now limited to electric energy costs, and subject to the amendment of the applicable time period is now Clause (iv). The effect of this amendment is that the Reference Tariff component affected by these cost changes is limited to EC.
- (d) Changes in Reference Tariffs for the CQCR – this paragraph has been deleted due to the move to system tariffs as discussed in QR Network's principles paper on Geographic Scope at Attachment E.
- (e) Change in the QCA Levy – now Clause (v), this paragraph is unchanged from the 2008 Undertaking.

In addition, a new Clause (ii) has been inserted which includes variations, subject to a 2.5% threshold in maintenance costs arising from changes in maintenance scope which have been reasonably requested by an Access Holder or Customer. A discussion of this issue is provided in QR Network's principles paper on Price Setting at Attachment C.

Escalation of Reference Tariff (3.2 of the 2008 Undertaking)

Clause 3.2 of the 2008 Undertaking relates to the quarterly escalation of Reference Tariffs.

As discussed, QR Network has proposed an annual price re-set of Reference Tariffs for the CQCR to replace the UT2 arrangements. However, QR Network has not proposed a price reset arrangement for the Western System. Accordingly, QR Network proposes that the Reference Tariff in Part C continue to be escalated consistent with the UT2 arrangements.

Accordingly, Clause 3.2 of the 2008 Undertaking has been transferred to Part C and amended accordingly.

Varied Components of Applicable Access Charges (3.4 of the 2008 Undertaking)

A number of changes have been made to this Clause to remove Clauses 3.4.1 and 3.4.2 of the 2008 Undertaking relating to the varied components of Access Charges. In this regard notes that:

- These provisions have not been relied upon since the commencement of UT1.
- The provisions effectively allow the transfer of revenue streams between Years, and were designed to allow QR Network the flexibility to adjust these streams to suit individual circumstances. However, as the introduction of the revenue cap process results in these transfers affecting Access Holders rather than QR Network then these Clauses are no longer appropriate.

In addition, Clause 3.4.3 of the 2008 Undertaking has been transferred to a new Clause 3.3 to improve the presentation of Clause 3 generally.

Access Charges in the Central Queensland Coal Region (3.5 of the 2008 Undertaking)

For the avoidance of doubt, Clause 3.5.1 of the 2008 Undertaking relating to Access Charges in the CQCR has been transferred to a new Clause 4.3 of Part B, reflecting their application to the CQCR.

11.4.3 Variations to Reference Train Service (Clause 3)

As indicated at Section 11.2 above, part of Clause 1, Part A relating to varied Access Charges has been transferred to a new Clause 3.1.

No substantive amendments have been made to Clause 3.2, which is equivalent to Clause 4 of the 2008 Undertaking.

As indicated at Section 11.4.2 above, Clause 3.4.3 of the 2008 Undertaking has been transferred to the new Clause 3.3.

11.4.4 Definitions and Interpretation (Clause 5 of the 2008 Undertaking)

As indicated at Section 13 above, this Clause has been consolidated within the general definitional provisions at Clause 11.1.

11.5 Reference Tariffs for the CQCR (Part B)

11.5.1 Reference Train Service Characteristics (Clause 1)

Clause 1 of the 2008 Undertaking sets out Reference Train Service characteristics related to Stowage and Train Service Entitlements.

For the 2009 Undertaking, Clause 1 has been amended as follows:

- To Clause 1.1 to 'split' Stowage between two concepts - the 'dwell' time that is required for Above Rail services such as crew changes and train provisioning and examinations (and which is planned), and 'stowage' that is related to the short term storage of Trains on the Rail Infrastructure (and which is unplanned). Consistent with QR Network's Capacity modelling, a Dwell allowance only is required, whereas no Stowage allowance is required. QR Network notes that the impact of the amendment is that Stowage is now limited only to time on the Rail Infrastructure associated with its temporary unavailability. In this regard, QR Network believes that:
 - It is not appropriate to have an allowance for this characteristic in the Reference Train Service Description; and

- To the extent that QR Network and the Access Holder agree that an allowance based on the Train operator's own contribution to unplanned, this is best addressed via a KPI regime in the relevant Access Agreement.
- To Clause 1.1 to link to the reference at Clause 1.3.1 of Part A; and
- To Clause 1.2 to link the references at Clause 1.4.1 of Part A to Cyclic Traffic and scheduling procedures to the Network Management Principles, and in particular the applicable System Rules set out in Appendix 1 of Schedule G.

With respect to Dwell, for the purposes of QR Network's Capacity modelling two concepts are measured for the Reference Train:

- Time spent in major yards for scheduled activities such crew changes, meal breaks and on Track maintenance and provisioning of the Train.
- Additional time spent in yards for periodic Train examinations. The modelling assumes that these examinations are conducted at a ratio of one-in-seven return Train journeys. Accordingly, this ratio is reflected in the Reference Train Service characteristics at Clause 1.1(b).

QR Network confirms that these characteristics relate only to time spent by Train Operators on these activities on the Rail Infrastructure (i.e. red track). The characteristics do not relate to time spent at Above Rail facilities (i.e. blue track) for activities such as major maintenance.

11.5.2 Access Charge (Clause 2)

Reference Tariff (2.1)

Introduction

QR Network has considered whether the existing Reference Tariff structure was appropriate to apply for the 2009 Undertaking.

In initial discussions, stakeholders questioned whether the existing four part tariff structure has been effective in creating the performance incentives it was designed to address. In response, QR Network's discussion paper on tariff structure was issued to the key stakeholders on 19 March 2008. Two alternatives were identified for the

'core' tariff (that is, excluding any charges associated with electric assets). These were:

- A two part tariff, with a fixed and variable component; or
- The existing four part tariff converted to a single \$/net tonne price.

Feedback from stakeholders was that no changes to the tariff structure should be sought.

Accordingly, only minor amendments have been made to Clause 2.1 to:

- Include reference to the System Premium and System Discount (refer discussion below); and
- To transfer the definitions for gtk, rtp, nt, ntk, egtk, EC and the QCA Levy to Clause 11.1.

QR Network's comments on aspects of the structure of tariffs which are not discussed elsewhere in this Volume 1 are provided below.

System Premium or Discount

QR Network's principles paper on geographic scope (provided at Attachment E) proposes that:

- Access will be priced under a consistent system tariff unless there is a compelling logic for price differentiation;
- The UT2 'cluster test' will be simplified and refined to reflect changes in system costs and volumes;
- Mines which fail this test will be charged a price premium over the system tariff rather than have a new tariff established; and
- In certain circumstances and to address relative price inequities between mines a system discount may be charged.

Accordingly, a new Clause has been added to confirm the basis on which the system premium or discount will be applied. As for Reference Tariffs generally, the premium or discount will be approved by the QCA.

Incremental maintenance (AT_1) and capacity (AT_2) tariffs

A discussion of the methodology for developing these Reference Tariff components for UT3 is provided at Volume 2.

Allocative parts (AT_3 and AT_4)

No changes are proposed to the general methodology for these Reference Tariffs components, which is essentially a 50/50 allocation of the residual revenue requirement for each system of the CQCR (exclusive of electric assets) after the deduction of revenue attributable to AT_1 and AT_2 .

As indicated in the principles paper on geographic scope at Attachment E, the 100% allocation to AT_4 for the North Blackwater cluster has been removed by the inclusion of the Blackwater system under a single Reference Tariff.

Electric access tariff (AT_5) and electric energy charge (EC)

Charges for electric services are separated into two components – an AT_5 tariff component reflecting the cost of access to the electric network, and an electric charge (EC) tariff component reflecting the cost of electric energy.

QR Network's principles paper on Pricing for Electric Train Services (provided at Attachment F) considered 3 key issues:

- Whether QR Network should continue to be the supplier of electric energy, including for new 3rd party Train operators. QR Network proposes to continue to procure electricity on behalf of all operators for UT3, and to work with operators and regulators to evaluate alternate supply models for subsequent regulatory periods.
- The most appropriate way of charging for EC. QR Network proposes to continue to recover CQCR electricity costs during UT3 through a regional-wide EC tariff, with no changes proposed to the existing Endorsed Variation provisions.
- The most appropriate way of charging for AT_5 . QR Network proposes to combine all electrified elements of the CQCR (currently Blackwater and Goonyella, but also including the GAP Project if electrification of this network proceeds) for the purpose of establishing AT_5 . Specifically, this means:

- A single regulatory asset base for electric traction assets;
- A single AT₅ tariff for electric services operating in any part of the CQCR. In practice, this tariff will mean a relative increase in Goonyella charges and a relative decrease in Blackwater charges; and
- A single revenue cap applied to AT₅ revenue.

In the development of QR Network's proposal, QR Network requested that Synergies review the issues associated with the pricing of electric overhead assets and explore the key economic arguments which support a change to the pricing of AT₅.

A copy of Synergies' report dated April 2008 is provided at Attachment H. The report supports QR Network's proposals for the development of a single AT₅ tariff across the Goonyella and Blackwater systems.

QCA Levy

The QCA Levy is developed by QR Network and approved by the QCA following the QCA's advice as to the amount which should be recovered from Access Holders to contribute to the cost of the QCA's activities.

Neither the QCA Secretariat nor QR Network has proposed any changes to the QCA Levy. For the purposes of this submission, the QCA Levy for the 2008/09 year has been included in the Reference Tariffs at Clauses 5 to 8.

Take or Pay (2.2)

In its initial principles paper on revenue cap, QR Network did not propose any changes to the Take or Pay arrangements in the 2009 Undertaking, other than to:

- Remove the system 'trigger' test for UT3 Take or Pay; and
- Provide some flexibility to smooth large relinquishment and transfer fees over part or all of the period to which the fees relate.

QR Network also proposed that the cap on UT2 Take or Pay be rolled forward to UT3.

In discussions following release of this principles paper, stakeholders indicated support for the removal of the trigger test for UT3 Take or Pay, but expressed concern at QR Network's proposed mechanism (in particular the creation of a 4th class of Take or Pay).

In particular, the QRC believed that accountability for Take or Pay should be directed towards the contracting mine, however it continues to maintain that Take or Pay arrangements in existing contracts should not be re-opened. Accordingly, in response to QR's original proposals the QRC countered that:

- In the 2009 Undertaking, UT3 Take or Pay should remain unchanged relative to UT2; and
- In the Standard Access Agreement, a re-opener equivalent to that for Reference Tariffs be included.

The effect of the QRC's proposal is that:

- For UT3, the Take or Pay arrangements are equivalent to UT2;
- For subsequent regulatory periods, the Take or Pay arrangements are the same for all contracts signed from 1 July 2009 (i.e. from the commencement of UT3); and
- Over time, Take or Pay arrangements would align with the Take or Pay arrangements for the current regulatory period.

QR Network has accepted the QRC's counter-proposal for Take or Pay. Accordingly, only two amendments have been made to Clause 2.2, being to:

- Clause 2.2.2 to simplify its presentation with respect to Take or Pay arrangements for UT1, UT2 and UT3 (as indicated above, whilst the UT2 and UT3 arrangements are referred to separately in the 2005 and 2008 Undertakings the arrangements are equivalent); and
- Remove Clause 2.2.5 of the 2008 Undertaking relating to the UT2 Take or Pay arrangements to be revised following the QCA's acceptance of QR's Proposed Schedule F Amendment (which was finalised in June 2007).

11.5.3 Review of Access Charges (Clause 3 of the 2008 Undertaking)

Clause 3 of the 2008 Undertaking related to specific issues which were addressed during UT2, being the Proposed Schedule F Amendment (finalised June 2007) and QR's DAU on maintenance costs (finalised December 2007).

As these issues have been resolved Clause 3 of the 2008 Undertaking is no longer required and has been deleted.

11.5.4 Annual Review of Reference Tariffs (Clause 3)

A new Clause 3 has been inserted regarding the Annual Review process set out in the principles paper on Price Setting at Attachment C. A detailed discussion of the process is contained in this Attachment. Accordingly, a summary only of the relevant Clauses is provided below.

Requirement for Annual Review of Reference Tariffs (Clause 3.1)

Clause 3.1 is a new Clause which establishes the Annual Review process. In summary, this Clause confirms:

- The System Allowable Revenue (and hence Reference Tariffs) to be reset associated with the revenue cap process (Clause 3.1.1(a)).
- The building block parameters to be reviewed (Clauses 3.1.1(b) and 3.1.2), being:
 - The maintenance cost forecasts (for actual relative to forecast MCI and new branch lines), operating costs (for actual CPI relative to forecast) and the UT2 capital carryover amount; and
 - Forecast electric energy; and
 - System Forecasts.
- The basis of calculation of the maintenance cost adjustments for new branch lines (Clause 3.1.3).

In respect of branch lines and for the avoidance of doubt, QR Network confirms that all references to spurs in the 2008 Undertaking have been amended to branch lines.

Calculation of Revenue Adjustment Amounts (Clause 3.2)

Clause 3.2 sets out the process for determining the Revenue Adjustment Amounts. This Clause is broadly equivalent to Clauses 3B.1, Part B of the 2008 Undertaking relating to the Revenue Adjustment Amount and Clause 3.3, Part A of the 2008 Undertaking subject to a number of changes associated with the revenue cap process discussed at Attachment B.

In summary, this Clause confirms:

- That QR Network must submit to the QCA by 30 September each year the proposed Revenue Adjustment Amounts. The delay to the submission date relative to the 2008 Undertaking (being 29 August) reflects the delay in obtaining the relevant indices supporting the calculation of the MCI which is applied to System Allowable Revenue. QR Network has confirmed with the Australian Bureau of Statistics (ABS) that a number of statistics produced by the ABS which are proposed to be used by QR Network are not publicly available until the 3rd month following the relevant quarter.
- The basis for calculation of the Revenue Adjustment Amounts for the AT₁₋₄ and AT₅ Reference Tariff components (Clause 3.2.1). A discussion on the revisions to the calculations of System Allowable Revenue and Total Actual Revenue is provided at Attachment B.
- The basis on which System Allowable Revenue will be escalated for actual relative to forecast MCI and CPI (Clause 3.2.2).
- The basis on which Total Actual Revenue for AT₂₋₄ is to be calculated, including adjustments for Take or Pay (Clause 3.2.3).
- The basis by which the QCA might approve a variation to any adjustment for Relinquishment Fees (which applies only to AT₂₋₄) where the unadjusted effect on the relevant Reference Tariff components would be material (Clause 3.2.4).
- The basis on which Total Actual Revenue for AT₅ is to be calculated (Clause 3.2.5). For the avoidance of doubt, the basis on which System Allowable Revenue is to be calculated is contained within the Clause 11.1 definitions.
- The process for submission by QR Network and approval by the QCA of the Revenue Adjustment Amounts (Clauses 3.2.6 to 3.2.14). This process replicates the process for the variation of Reference Tariffs in Clause 2.2 of Part A.

Calculation of Increment (Clause 3B.2 of the 2008 Undertaking)

As discussed in Attachment B, QR Network has proposed that QR Network's incentive framework around the revenue cap arrangements be amended to confirm that:

- QR Network will continue to be exposed to the performance of the CQCR systems via the exclusion of AT₁ from the revenue cap; and
- Provisions which provide for an upside Increment and downside deduction for breach of an Access Agreement or negligence (other than in respect of claims under the relevant Access Agreement) will be removed.

Accordingly, Clause 3B.2 relating to the Increment, together with any other references to the Increment in Schedule F, have been removed.

Revenue Adjustment (Clause 3.3)

This Clause is equivalent to Clause 3B.3 of the 2008 Undertaking. No substantive changes have been made to this Clause.

11.5.5 Coal Carrying Train Services for which Reference Tariffs do not apply (Clause 4)

This Clause is loosely based on the structure of Clause 4 of the 2008 Undertaking, with substantial amendments to address issues which are discussed in more detail in the principles paper on Geographical Scope at Attachment E.

Reference Tariffs for New Coal Carrying Train Services (Clause 4.1)

Clause 4 of the 2008 Undertaking provides a Train Service must meet its Incremental Cost plus a minimum CCC. Otherwise, the loading point will be included in a new cluster with the Reference Tariff set at an amount that meets all Incremental Costs plus the minimum CCC.

QR Network has reviewed the minimum CCC for each system to reflect changes in system costs and volumes since these formulae were developed. The objective of

the review has been to reduce the likelihood that new clusters need be created for the smaller, low volume mines.

The review is summarised in QR Network's principles paper on Geographic Scope which is provided at Attachment E. In the paper, QR Network proposes to retain the principles associated with the CCC, but to simplify the application of Clause 4 in that:

- Loading points in a system are subject to the system Reference Tariffs, but for those services where the application of the Reference Tariff is not expected to meet all Incremental Costs and the minimum CCC, a premium will apply so that the total tariff meets the required amount.
- The current cluster test be revised as a new 'system' test, represented by:
 - AT_2 for each system; plus
 - 50% of revenue from the AT_3 Reference Tariff component for the distance that the Train Service will travel on the mainline of the relevant system.
- The system test would be applied on a whole-of-mine-life basis to ensure that mines with ramp-up periods are not penalised merely due to the requisite volumes being expected to occur in a subsequent regulatory period.
- The system test will be applied each regulatory period to ensure that all mines are treated consistently where circumstances change (whether positive or negative).

QR Network proposes that as at the commencement date for the 2009 Undertaking System Premiums and System Discounts would apply only to a small number of Loading or Unloading Facilities in the Blackwater system - Rolleston and Minerva (premium) and Stanwell (discount). It is possible that a premium will be required for the Lake Vermont mine, however as indicated at Section 1.7.1 above a Reference Tariff for this mine is yet to be determined. For the purposes of this submission and to assist with the QCA's consultation, an indicative System Premium has been provided.

This revised approach to the establishment of new Reference Tariffs is reflected in Clauses 4.1.1 and 4.1.2 which is broadly equivalent to the 2008 Undertaking. For the avoidance of doubt, Clause 4.1.2 includes reference to Private Incremental Costs associated with Private Infrastructure, provided those costs are approved by the QCA (a consequential amendment of this defined term has also been made).

In addition, a new Clause 4.1.3 has been inserted related to the matter referred to in Subclause 6.4.4 of the 2008 Undertaking (refer discussion at Section 7.3.3).

Finally, there are no changes to Clause 4.1.4 which is equivalent to Clause 4.1.4 of the 2008 Undertaking.

Cross-System Train Services (Clause 4.2)

A new clause 4.2 has been inserted to provide specific guidance on the determination of Reference Tariffs for cross-system Train Services. A detailed discussion of this issue is provided in the principles paper on geographic scope at Attachment E.

Access Charges where Reference Tariffs do not apply (Clause 4.3)

As indicated at Section 11.4.2 above, Clause 3.5.1 of the 2008 Undertaking relating to Access Charges in the CQCR has been transferred to this new its application to the CQCR.

11.5.6 System Reference Tariffs (Clauses 5 to 8)

A number of consequential amendments have been made to these Clauses to reflect changes elsewhere in Schedule F. These amendments are summarised for each system below.

Blackwater (Clause 5)

- As indicated at Section 1.7.1, Minerva has been included within the Blackwater system. Revised Reference Train Service characteristics (Clauses 5.2.1(a) and (b)) apply to this Train Service.
- The maximum axle load at Clause 5.2.1(b) has been increased from 26 to 26.5 tonnes, reflecting an agreement with the Access Holder.
- For the avoidance of doubt, Clause 5.2.1(c) has been amended to reflect diesel only operation for Train Services to the Minerva and Rolleston mines.
- As indicated at Section 11.5.1 above, the Stowage period in Clause 5.2.1(d) has been replaced by a table of Dwell periods at Clause 5.2.5.

- Loading and Unloading Facilities (Clauses 5.2.3 and 5.2.4) have been updated and are now based on a statistical distribution derived from actual loading and unloading performance over the past 6 months. The value chosen represents the most commonly occurring time (i.e. the mode) within the distribution. The distribution forms the basis for QR Network's modelling of Available Capacity.
- System Forecasts, System Allowable Revenues and Reference Tariffs have been updated (Clauses 5.3 and 5.4(a)). The values represent the relevant outputs from QR Network's UT3 Reference Tariff model. (Note that for Blackwater AT₅ a single network-wide System Allowable Revenue and Reference Tariff has been supplied.)
- The System Premium and Discount applying to Train Services from Rolleston, Minerva and Stanwell based on QR Network's proposed system test described at Section 11.5.5 above (Clause 5.4(b)).

Goonyella (Clause 6)

- The maximum axle load at Clause 6.2.1(b) has been increased from 26 to 26.5 tonnes, reflecting an agreement with the Access Holder.
- As indicated at Section 11.5.1 above, the Stowage period in Clause 6.2.1(d) has been replaced by a table of Dwell periods at Clause 6.2.5.
- As per Blackwater, Loading and Unloading Facilities (Clauses 6.2.3 and 6.2.4) have been updated. A new Loading Facility (Lake Vermont) has also been added.
- System Forecasts, System Allowable Revenues and Reference Tariffs have been updated (Clauses 6.3 and 6.4(a)). (Note that for Goonyella AT₅ a single network-wide System Allowable Revenue and Reference Tariff has been supplied.)
- The indicative System Premium applying to Train Services from Lake Vermont based on QR Network's proposed system test described at Section 11.5.5 above (Clause 6.4(b)).

Moura (Clause 7)

- The train length at Clause 7.2.1(a) has been increased to 1,709 metres and the maximum axle load at Clause 7.2.1(b) has been increased from 26 to

26.5 tonnes, reflecting a UT2 agreement with the Access Holder for the introduction of Blackwater-sized trains on the Moura system.

- As indicated at Section 11.5.1 above, the Stowage period in Clause 7.2.1(d) has been replaced by a table of Dwell periods at Clause 7.2.5.
- As per Blackwater, Loading and Unloading Facilities (Clauses 7.2.3 and 7.2.4) have been updated. Note that due to different loading arrangements at Baralaba the Loading Time at this location is based upon the average time set out in the relevant Access Agreement. A new Loading Facility (Theodore) has also been added.
- System Forecasts, System Allowable Revenues and Reference Tariffs have been updated (Clauses 7.3 and 7.4).

Newlands (Clause 8)

- As indicated at Section 11.5.1 above, the Stowage period in Clause 8.2.1(d) has been replaced by a table of Dwell periods at Clause 8.2.5.
- The Below Rail Transit Time Percentage at Clause 8.2.2 has been increased from 118% to 124%, reflecting an agreement with the Access Holder.
- As per Blackwater, Loading and Unloading Facilities (Clauses 8.2.3 and 8.2.4) have been updated.
- System Forecasts, System Allowable Revenues and Reference Tariffs have been updated (Clauses 8.3 and 8.4).

11.4 Reference Tariffs for the Western System (Part C)

11.4.1 Background

Reference Tariffs for coal carrying Train Services in the Western System are subject to the same pricing principles as those in the CQCR, in that the Access Charges must fall between incremental and stand alone cost. However, unlike the CQCR the UT2 Reference Tariffs for the Western System are not set at the ceiling price. In addition, whilst there was some debate during the development of UT2 about the ceiling price, there was neither detailed analysis available nor agreement with the QCA on the level of the ceiling price. The UT2 Reference Tariff was essentially a negotiated outcome between QR and the QCA in order to finalise the 2005 Undertaking.

11.4.2 Developing a ceiling price

As stakeholders are aware from the UT2 process, the development of a ceiling price for coal services in the Western System is problematic as it would need to be based on a DORC of a modern engineering equivalent asset required to provide these services on a standalone basis. However, there are characteristics of the existing Rail Infrastructure (which would not be applicable if the asset were a modern engineering equivalent asset built only for coal services) which significantly impact on the service that QR Network is able to provide, specifically:

- A critical component of the Rail Infrastructure used for these Train Services is the metropolitan system which is built and maintained primarily for the purpose of operating passenger Train Services. As a result, some sections of the Rail Infrastructure are built and maintained to a higher standard than required for coal traffic and there are significant costs associated with the complexity of the suburban passenger network;
- The remainder of the Rail Infrastructure is constructed to a substantially lesser standard, with constraints on the axle load, the length of the Train and the gross tonnage that can operate.
- The requirement to navigate the metropolitan system means that there are only limited paths available to freight traffic on the Western System (including coal, grain and other freight traffic).

Notwithstanding these complications, QR Network has analysed the ceiling price applicable to coal carrying Train Services in the Western System by considering the following building block elements:

- An estimate of the asset value prepared for QR Network by Connell Hatch, who determined a DORC value for the track sections of the Western System between Rosewood and Macalister. This DORC valuation has been performed in a manner consistent with the approach used by Connell Hatch for the valuation of the track sections between Burngrove and Minerva, which has been used in QR Network's preliminary DAU to establish a Reference Tariff for new Train Services to the Minerva mine;
- An estimate of the future capital expenditure for this section over the UT3 period;

- An estimate of the maintenance costs for this section over the UT3 period; and
- An apportionment of QR Network's forecast system wide and regional costs over the UT3 period. This forecast system wide and regional costs has been developed in a manner consistent with the forecast determined for the CQCR, which is discussed in Volume 2 of this submission.

Using this information, QR Network has identified a ceiling price for the track sections between Rosewood and Macalister of around \$34 per thousand gtk.

Whilst the track quality in the metropolitan system is higher than west of Rosewood, the characteristics of this system are driven by the requirements for passenger Train Services. The assets that would be required for the provision of coal services on a standalone basis cannot be simply identified as a subset of the existing assets (as occurs elsewhere on the network) as a valuation on this basis would not reflect the quality of service that is provided to the coal services. As a result, QR Network has not sought to develop a ceiling price for coal carrying Train Services over the metropolitan system based on an analysis of QR Network's actual costs.

QR Network considers that a DORC valuation of the Rail Infrastructure required for coal carrying Train Services travelling through the metropolitan network is likely to be high due to:

- The land value that would be attributed to the rail corridor;
- The track standards that would be required to be applied on Rail Infrastructure through a major metropolitan area to address environmental and amenity issues; and
- The Rail Infrastructure being of high quality and generally much newer than the Rail Infrastructure west of Rosewood, therefore substantially less depreciation would be applied to the optimised replacement cost.

As capital costs are the largest component of the ceiling price, QR Network believes that it is likely that a ceiling price for coal carrying Train Services in the metropolitan network would be higher than the ceiling price west of Rosewood. However, whilst the standard of Rail Infrastructure (and hence the ceiling price) is substantially higher in the metropolitan system (as is likely to be reflected in the relevant DORC valuation), unless this standard is replicated west of Rosewood Train operators will

not significantly benefit from this higher standard. As a result, QR Network would not seek to apply a higher ceiling price in the metropolitan system than for the section west of Rosewood.

QR Network has not sought to reflect the impact of the issues associated with service quality in this estimate of the ceiling price. QR Network recognises that given these service quality restrictions there are likely to be concerns if QR Network were to attempt to price the Western System coal carrying Train Services at a ceiling price that is unadjusted for these factors. Unfortunately, there is no clear and uncontentious way of adjusting the ceiling price to take account of these issues.

11.4.3 QR Network's proposal

In view of the above, QR Network is not proposing to seek an adjusted ceiling price and to price at this level for the 2009 Undertaking. Rather, QR Network is proposing to apply a nominated Reference Tariff equivalent to 65% of QR Network's unadjusted ceiling price. Applying this factor to the UT2 Reference Tariff results in a Reference Tariff for UT3 of \$22.07 per thousand gtk.

Issues relevant to this proposal are that:

- Western System Customers are seeking to transport higher volumes over the Western System. These higher volumes have a very high incremental cost, with QR Network requiring to invest approximately \$80 million to create additional Capacity of only 2 million tonnes annually. Further increases in Capacity beyond this level may be at an even higher incremental cost.
- There have been substantial real increases in the cost of maintaining the Rail Infrastructure of around 50%. Maintenance and construction costs on the Western System are subject to similar cost pressures as the CQCR (as detailed in Volume 2), and the increases in volume on the Western System have similarly required increases in the required maintenance task.
- The resulting Reference Tariff, which is equivalent to an average of \$6.77 per nt, remains within the range of those proposed for the CQCR (expressed on a \$/nt basis).
- At the current Reference Tariffs, after covering operating expenses and incremental capital expenditure associated with recent volume increases, Western System coal carrying services make minimal contribution to QR

Network's existing Rail Infrastructure investment in the region. The proposed tariff will provide for these services to make a reasonable contribution to QR Network's existing asset values – albeit at a value substantially less than the assessed DORC valuation.

- The proposed Reference Tariff is well below any ceiling price – adjusted or otherwise – for the Western System.

As indicated at Section 11.4.2 above, a DORC valuation has been completed for the Western System west of Rosewood. For information purposes, a copy of the valuation report is provided at Attachment H. As the report contains information on likely unit rates for construction of the track sections subject to the valuation, the report should be treated by the QCA as commercial-in-confidence.

11.4.4 Amendments to Part C, Schedule F

In view of the above, QR Network proposes the following amendments to Part C of Schedule F:

- To delete Clause 1 (Application of this Clause) which is referred to in Part A and is not reflected in Part B;
- To remove the reference to the QCA Levy definition which has been transferred to a new definition in Clause 11.1;
- To include the proposed Western System Reference Tariff; and
- To provide for the escalation of the Reference Tariff in Part C (as indicated at Section 11.4, the escalation provisions are no longer required for Part B and hence have been removed from Part A).

QR Network confirms that the Loading and Unloading Times are unchanged relative to the 2008 Undertaking. Unlike for the CQCR, statistical distributions derived from actual loading and unloading performance are not prepared. Accordingly and as per the Loading Facility at the Baralaba mine, Loading and Unloading Times are based upon the average time set out in the relevant Access Agreement.

12. Regulatory Asset Base (Schedule A)

12.1 Introduction

Schedule FB of the 2008 Undertaking sets out the framework by which QR Network's RAB (for the CQCR) is maintained by QR Network.

The key aspects of Schedule FB are set out below.

- QR Network and the QCA will annually roll forward the RAB to reflect all prudent expenditure approved by the QCA in each financial year.
- Assets in the RAB will not be optimised except in three circumstances:
 1. The QCA's decision was made on information provided by QR Network which was false or misleading;
 2. Demand deteriorates to such a degree that regulated prices on an un-optimised asset would result in a further decline in demand; and
 3. There is the possibility of an actual (not hypothetical) by-pass of that asset.
- The QCA will accept all prudent capital expenditure into the RAB following the commissioning of a project, with QCA scrutinising prudence in scope, standard and costs.
- The QCA may provide QR Network with regulatory pre-approval of the scope of a Capacity enhancement (i.e. prior to QR Network proceeding with the capital expenditure) in certain circumstances according to a defined process.
- QR Network's UT2 Reference Tariffs for coal incorporate an indicative capital expenditure allowance of \$640 million (reflected as an annual allowance of \$160 million). All prudent capital expenditure above or below the \$640 million is documented via a 'capital carryover mechanism'.

With respect to the 2009 Undertaking, QR Network believes that the following principles are relevant:

- QR Network believes it can effectively manage its regulatory risk (i.e. the risk that the QCA will not accept the project/investment as reasonable) at the time the a decision to invest is made;

- The best outcome for the coal supply chain is for Capacity to be considered on forward looking basis for the system as a whole, rather than the minimum capital expenditure increment required to add the next Train Service to the CQCR; and
- Continued industry engagement is vital, and an essential element of the process.

In view of the above, QR Network proposes:

- To re-number the clause (as Schedule A, reflecting the removal of the Line Diagrams);
- To align of the timing and duration of the coal master planning process with the process established for the December 2007 issue of the Coal System Master Plan (refer discussions at Sections 12.2 and 12.3.5 below);
- To address UT2 issues associated with the procurement policy (refer discussion at Section 12.3.4 below); and
- To revise the capital carryover mechanism (refer discussion at Section 12.3.7 below).

A number of other substantive amendments have also been made which are summarised at Section 12.3 below. In addition, a number of formatting amendments have been made to improve the presentation of this Schedule. The detail associated with these amendments (other than inconsequential amendments) are summarised in Attachment A.

12.2 Stakeholder Issues

Following QR Network's July 2007 issue of the Coal System Master Plan, a number of coal industry stakeholders (including the QCA) expressed concerns regarding the transparency of the coal master planning process, and in particular QR Network's Capacity Analysis.

QR Network conducted a review of the current arrangements in response to these concerns. The review indicated that the provisions created for the 2005 Undertaking already allow stakeholders the opportunity to seek greater transparency, via the appointment of an external consultant to peer review the Capacity Analysis.

Stakeholders are yet to seek such an appointment. In addition, QR Network's December 2007 issue of the Coal System Master Plan reflects a number of reforms to the process to address, in part, some of the stakeholders' concerns.

12.3 Substantive Amendments

12.3.1 Scope in excess of Reasonable Demand (Paragraph 2.1(d) of the 2008 Undertaking)

Clause 2.1(d) of the 2008 Access Undertaking has been deleted and included as Clauses 3.2.2(d) and (e) within Section 3.2.2 which describes the assessment of the 'prudence of scope of works'. In this regard, Clauses 3.2.2(d) and (e) more clearly set out the treatment of 'excluded capital' by the QCA.

12.3.2 Asset Replacement Expenditure (Paragraph 2.2(a)(ii) of the 2008 Undertaking)

QR Network has removed the reference to the provision to the QCA of an Asset Management Plan. Previously the Asset Management Plan was provided only for the QCA's information and could be considered during the assessment of QR's asset replacement expenditure. It is QR's intention to provide the QCA with an updated Asset Management Plan where this provides information which would aid the consideration of asset replacement projects as part of Clause 3.2.2 (c)(iv).

12.3.3 Regulatory pre-approval of capital expenditure (Clause 3.1)

The essence of the regulatory pre-approval process has not changed. QR Network does propose a change to include the QCA's consideration of a procurement strategy for projects that have received pre-approval of scope. Further comment on this change is provided at Section 12.3.4 below.

In addition, the conditions for pre-approval have not changed. However, greater clarity has been requested from stakeholders to outline the minimum inclusions within the Coal System Master Plan. These have been provided at Clause 4.1(e)(ii)(A)-(C).

The layout of the regulatory approval criteria (Clause 3.2) has also been amended to keep the approval criteria for all matters (scope, standard and cost) together. This change also reflects the fact that the master planning process and subsequent Customer vote is not only part of the regulatory pre-approval process but more part of business planning and industry interaction by QR Network. Accordingly, coal master planning and the Customer vote process is now contained in a discrete Clause, being Clause 4.

12.3.4 Procurement policy

QR Network currently follows a number of arrangements for the procurement of assets across the CQCR.

As such, these arrangements do not form a 'policy' as specified by the QCA. Given this fact and QR's willingness to provide information in the assessment of capital expenditure, QR seeks to remove reference to the Procurement Policy within Clause 2.3.4(b) and the deletion of Clause 2.3.4(c).

Rather, QR Network has inserted a new Clause 3.1.3 which seeks the QCA endorsement of all or part of QR's procurement strategy relating to a specific project where the scope of the project has received regulatory pre-approval. QR Network believes that the approval of a procurement strategy through this process would alleviate some risk in the assessment of costs for high value capital expenditure projects. It is not foreseen that the approval of such a document is an approval for the cost of a project, but instead would form the basis of the ex-poste assessment of cost.

12.3.5 Timing and duration of Master Planning Process

Schedule FB of the 2008 Undertaking requires QR Network to provide industry with a Coal System Master Plan by the end of June each year. This obligation was included within this document to require QR Network to discuss expansion options with Customers at least on a yearly basis, in order to increase transparency around the enhancement of Rail Infrastructure on the CQCR.

Notwithstanding QR Network's obligations, engagement with Customers in each system occurs on an ongoing basis. These arrangements have been reflected in the

production of the December 2007 issue of the Coal System Master Plan. Accordingly, the obligation to produce a Coal System Master Plan on a yearly basis instead of as a strategic and ongoing document should no longer be necessary.

Currently, Customers are seeking a number of long-term system-wide expansion paths which may not necessarily fall within the short term consideration of projects under the current coal master planning framework. Regardless, QR Network is engaging with Customers in order to develop long term expansion options. QR Network is seeking to have this flexibility reflected in Schedule FB by not obliging QR Network to prepare a Coal System Master Plan where the document is not reasonably required.

12.3.6 Interaction with whole of supply chain planning group

The QRC has asked that QR (i.e. QR Network and QRNational Coal) participate in other master planning processes where QR believes that sufficient support has been received from members within the specified supply chain. Clause 4.3 reflects this request and its intent is to cover QR Network's participation in other master planning groups such as the master planning group for DBCT.

12.3.7 Capital expenditure carryover account and Capital Carryover Discount Rate

As indicated above, QR Network's UT2 Reference Tariffs for coal incorporated an indicative capital expenditure allowance of \$640 million, reflected as an annual allowance of \$160 million. Any variation between actual expenditure and the allowance will be rolled forward to UT3 Reference Tariffs subject to an allowance equivalent to QR Network's Discount Rate.

For UT3, QR Network proposes:

- To incorporate in the UT3 Reference Tariff model a detailed allowance based on the proposed capital expenditure profile for each system in the CQCR. The effect of this amendment is to delete the reference to the Capital Indicator in the 2008 Undertaking.
- That the Discount Rate to be applied to carryover (but, for the avoidance of doubt, not to any other carryover such as the Annual Review) is equivalent

the cost of QR Network's borrowing costs for the incremental expenditure, being the average yield of the ten (10) year Commonwealth Government Bond over a nominated period plus a margin.

A detailed discussion of the Capital Carryover Discount rate is provided in the Volume 2 discussion of QR Network's proposed capital allowance for UT3.

13. Other Matters

13.1 Introduction

In the preparation of the 2009 Undertaking, QR Network identified a number of areas where, since the development of the 2001 Undertaking common obligations have been developed in separate Parts.

In this regard, QR Network believes that it is appropriate to review these common obligations to determine whether the common obligations can be combined to provide clarity for QR Network, its auditors, the QCA and other stakeholders regarding the application of these provisions.

Accordingly, QR Network has combined the following obligations within a new Part 10 of the 2009 Undertaking:

- The Dispute resolution process;
- The process for decisions made by the QCA under the 2009 Undertaking;
and
- The audit process.

A discussion of the consolidation of each of these processes is provided at Section 13.3 below.

In addition, QR Network has consolidated a number of definitions and interpretive provisions within other Parts to a new Part 11 (which is effectively equivalent to Part 10 of the 2008 Undertaking).

13.2 Stakeholder Issues

QR Network has not consulted with stakeholders on its proposals for Parts 10 and 11. Stakeholders did not raise any issues relating to these Parts during the initial round of consultation in late 2007, nor in subsequent discussions prior to the preparation of this submission.

QR Network considers that the substantive matters raised in this Section are best addressed via the QCA's consultation process.

13.3 *Dispute Resolution and Amendment Processes (Part 10)*

13.3.1 *Dispute Resolution (10.1)*

These provisions are predominantly contained in Clause 4.7 of the 2008 Undertaking but are also referenced in varying forms at the following Clauses and Subclauses of the 2008 Undertaking:

- 2.1 and 2.2
- 3.3, 3.3.2 and 3.5.2
- 4.3, 4.5 and 4.6
- 6.5.2
- 7.4.1 and 7.4.2
- 8.1.3, 8.2.1 and 8.3

QR Network believes that where possible, these provisions should be consolidated within a separate provision relating to administrative arrangements, rather than specifically within Clause 4.7 relating to the negotiation framework. Accordingly, QR Network has consolidated Clause 4.7 within a new Clause 10.1. The new Clause is equivalent to the 2008 Undertaking other than for:

- A number of grammatical and formatting amendments to improve the presentation of this Clause; and
- The insertion of a new Clause 10.1.3(f) being a consequential amendment arising out of amendments to Clause 7.3.3.

13.3.2 *QCA Decision Making (10.2)*

This new Clause reflects the consolidation of the equivalent Clauses 5.2(m) to (p) and 6.4.2(o) to (r) of the 2008 Undertaking.

13.3.3 Audit Process (10.3)

This new Clause combines the equivalent audit obligations in Clause 3.2.2 (regarding financial statement audits), Clause 3.6 (regarding ringfencing and decision making audits) and Clause 9.7 (regarding performance report audits). The Clause provides for the following standard arrangements:

- The conduct of an external audit following a request by the QCA;
- The provision by QR Network of information necessary for the conduct of an audit;
- The execution of a Confidentiality Deed by the auditor; and
- The provision of audit reports and any accompanying reports to the QCA following completion of the audit.

13.4 Definitions & Interpretations (Part 11)

13.4.1 Definitions (11.1)

In the 2008 Undertaking, definitions were contained in a number of sections throughout the document to the extent they related to that particular section.

QR Network believes that the inclusion of separate sections containing the definitions add unnecessary confusion for the readers of the document. Accordingly, QR Network has combined within Part 11 definitions from the following sections of the 2008 Undertaking:

- Clause 10.1, being the main section;
- Clause 5, Part A of Schedule F; and
- Clause 4 of Schedule FB.

Amendments to specific definitions are either as a consequence of the substantive amendments described elsewhere in this submission or are minor. The details of each of these amendments are summarised in Attachment A.

13.4.2 Interpretation (11.2)

A number of amendments have been made to the interpretive provisions to reflect issues which have arisen during UT2. The substantive amendments relate to:

- References to persons in the context of a group of persons comprising a Customer (for example, an unincorporated joint venture).
- References to the matters in Paragraphs 10.2(r) to (t) of the 2008 Undertaking associated with the hindering of Access. QR Network notes that its obligations under Sections 104 and 125 of the QCA Act will continue to apply in relation to the hindering of Access whether or not they are referred to in this Clause.
- A new reference to the circumstance where there is an inconsistency between the 2009 Undertaking and any Law.

13.4.3 Notices (11.3) and Transitional Provisions (11.4)

No substantive amendments have been made to these Clauses, which are equivalent to Clauses 10.2 and 10.3 of the 2008 Undertaking and which have been updated for the 2009 Undertaking.