



QR Network's 2010 Draft Access Undertaking

*Volume 3- Clean Access
Undertaking and
Schedules*

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VOLUME 2 – STANDARD ACCESS AGREEMENTS

PART 1: PREAMBLE

QR Network is a wholly owned subsidiary of 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, heavy haul tracks in central Queensland, and the interstate track between the New South Wales border and Brisbane.

QR Network works closely with its customers and industry partners to attract the largest possible share of the land transport market to rail.

QR Network has developed this access undertaking in accordance with section 136 of the *Queensland Competition Authority Act 1997* (Qld). In accordance with that Act, QR Network's access undertaking has been endorsed by the Queensland Competition Authority.

QR Network's access undertaking provides a framework for access to QR Network's rail network for the purposes of operating train services. It covers access to QR Network's rail network by train services other than interstate train services operating between the New South Wales border and Brisbane.

QR Network's access undertaking sets out the scope and intent of the document (Part 2) and QR Network's obligations in relation to:

- (a) ringfencing (Part 3);
- (b) the framework for negotiating access (Part 4);
- (c) the development of access agreements (Part 5);
- (d) pricing principles (Part 6);
- (e) the utilisation of network capacity (Part 7);
- (f) interface arrangements between QR Network and train operators (Part 8); and
- (g) reporting (Part 9).

In addition, a number of schedules have been developed to support QR Network's access framework, including reference access charges for coal carrying train services.

Information on obtaining access to QR Network's rail network is contained in QR Network's access undertaking and other supporting information held by QR Network. This information can be downloaded from QR Network's web-site. If you require further information on negotiating access pursuant to this access undertaking then please contact:

QR Network Pty Ltd
GPO Box 1429, Brisbane Qld 4001
Floor 21, 127 Creek Street, Brisbane Qld 4000

Tel: (07) 3235 3144
Fax: (07) 3235 3930
Email: qrnetwork@qr.com.au
Web: <http://www.qrnetwork.com.au/>

PART 2. INTENT AND SCOPE

2.1 DURATION OF UNDERTAKING

- (a) Subject to Clause 2.1(b), this Undertaking is effective from the Approval Date to the Terminating Date.
- (b) The Reference Tariffs, as approved in this Undertaking, apply retrospectively and are effective from the Commencing Date.

2.2 NON-DISCRIMINATORY TREATMENT

- (a) This Undertaking will be consistently applied to all Access Seekers, Access Applications and negotiations for Access. QR Network will not unfairly discriminate between Access Seekers in negotiating with Access Seekers for the provision of Access or between Access Holders in providing Access, including in relation to:

- (i) any decision relating to whether QR Network will undertake an Expansion;
- (ii) assessing, allocating and managing Capacity; and
- (iii) providing scheduling and Train Control Services in accordance with the Network Management Principles,

except where there is an express provision to the contrary in the Undertaking or, in respect of an Access Holder, in an Access Agreement with that Access Holder.

- (b) If an Access Seeker or Access Holder considers that QR Network has failed to comply with Clause 2.2(a) they may lodge a written complaint with QR Network.
- (c) QR Network will:
 - (i) advise the QCA, as soon as practicable, of any complaints it receives pursuant to Clause 2.2(b);
 - (ii) investigate complaints received pursuant to Clause 2.2(b); and
 - (iii) advise the complainant and the QCA in writing of the outcome of that investigation and QR Network's proposed response, if any, and use reasonable endeavours to do so within twenty-eight (28) days after receiving such a complaint.
- (d) If the complainant is not satisfied with the outcome of QR Network's investigation, the complainant can apply to the QCA seeking an audit of the conduct that is the subject of the complaint in relation to QR Network's compliance with Clause 2.2(a).
- (e) If a complainant applies to the QCA in accordance with Clause 2.2(d):
 - (i) the QCA may request QR Network to have an audit conducted in accordance with Clause 10.3 in respect of QR Network's compliance with Clause 2.2(a) as it relates to the relevant complaint, if the QCA reasonably believes that such an audit is necessary; and
 - (ii) if the QCA makes such a request, the audit will be conducted in accordance with Clause 10.3.

2.3 INTENT

The intent of this Undertaking is to:

- (a) establish processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, commercial and non-discriminatory;
- (b) establish processes and principles to provide guidance in relation to the pricing and the terms and conditions of Access;
- (c) provide an efficient, effective and binding Dispute resolution process;
- (d) provide that actions pursuant to this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA;
- (e) establish principles and processes to guide cooperation with all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains on an annualised basis; and
- (f) achieve an appropriate balance between:
 - (i) the legitimate business interests of QR Network;
 - (ii) the public interest, including the public interest in having competition in markets;
 - (iii) the interests of Access Seekers, including in being:
 - (A) treated in a fair, consistent and non-discriminatory manner; and
 - (B) provided Access on reasonable commercial terms;
 - (iv) cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains; and
 - (v) to the extent applicable, the pricing principles set out in section 168A of the Act.

2.4 SCOPE

- (a) Subject to Clauses 2.4(b) to (f), this Undertaking provides only for the negotiation and provision of Access.
- (b) This Undertaking is not applicable:
 - (i) to the negotiation or provision of services other than Access to Rail Infrastructure;
 - (ii) to the extent that QR Network's compliance with this Undertaking is inconsistent with QR Network's compliance with its Passenger Priority Obligations; or
 - (iii) in connection with any matter involving an Access Holder or an Access Agreement, to the extent that compliance with this Undertaking is inconsistent with the relevant Access Agreement.

In addition, nothing in this Undertaking can require QR Network or any other party to an Access Agreement, executed before the Approval Date, to vary a term or provision of that Access Agreement.

- (c) Access Holders are responsible for the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services.

- (d) If:
- (i) the land upon which the Rail Infrastructure is situated is not owned by QR Network or a QR Party; and
 - (ii) any one of those entities does not, through a lease, licence or other arrangement with the owners of the land (including, for example, a sublease from Queensland Transport) or pursuant to the TIA, have the authority to authorise Access Seekers to access that land,
- then:
- (iii) it is the responsibility of the Access Seeker to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated; and
 - (iv) the Preliminary Information provided by QR Network to the Access Seeker will provide information to assist the Access Seeker in obtaining such approval.
- (e) To the extent that QR Network or QR Party (“Supplier”) sells or supplies a Related Operator with electric energy in connection with Access, QR Network cannot refuse to, if QR Network is a Supplier, sell or supply electric energy to another Access Seeker, Access Holder or Nominated Railway Operator (or, if QR Network is not a Supplier, procure such a sale or supply from a Supplier). However, the sale or supply of electric energy is not part of Access and, except as specifically referred to in this Undertaking, is not subject to the provisions of this Undertaking. Further, despite any other provision of this Undertaking, QR Network will not be obliged to sell or supply electric energy to an Access Holder – or its Nominated Railway Operator – (or procure such a sale or supply from a QR Party), or to agree to sell or supply electric energy to an Access Seeker (or to procure such a sale or supply from a QR Party):
- (i) if QR Network or a QR Party (who is a Supplier) is not lawfully entitled to sell or supply electric energy to the relevant Access Holder, Nominated Railway Operator or Access Seeker under the *Electricity Act 1994 (Qld)* and the Rules; or
 - (ii) on terms that would be unreasonable or uncommercial.
- If a Dispute arises between an Access Holder, a Nominated Railway Operator or an Access Seeker and QR Network regarding a refusal by QR Network to sell or supply electric energy (or procure such a sale or supply from a QR Party) or the proposed terms and conditions on which QR Network (or a QR Party) offers to sell or supply electric energy to the Access Holder, Nominated Railway Operator or Access Seeker, the Dispute may be referred to Dispute resolution in accordance with Clause 10.1.
- (f) Nothing in this Undertaking affects the rights of QR Network under the Act.

2.5 UNDERTAKING OF QR BOARD

QR Network will procure that the QR Board provides an undertaking to the QCA that QR and all other QR Parties will take such actions as are necessary to enable QR Network to comply with its obligations under this Undertaking where it is reliant on QR (or other QR Parties) in order to do so. In particular, that undertaking shall expressly require:

- (a) provision of access to land (in accordance with paragraph (ii) of the definition of “Access” in this Undertaking), which is owned by QR or a QR Party or which a

- QR Party has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to;
- (b) QR or other QR Parties to take the steps required to allow QR Network to obtain ownership of rail transport infrastructure (as defined under the TIA) in accordance with Clause 3.7.2;
 - (c) QR or other relevant QR Parties to take the steps required to allow QR Network to procure a sale or supply of electric energy in accordance with Clause 2.4(e); and
 - (d) QR and other QR Parties to comply with the arrangements prescribed in Part 3 (Ringfencing Arrangements) of this Undertaking.

2.6 DRAFT INCENTIVE MECHANISM

- (a) Following the Approval Date, QR Network will consult with Access Holders, Access Seekers, their Customers, and any affected Infrastructure Service Providers, in relation to how the revenue cap adjustment provisions in this Undertaking for the Central Queensland Coal Region might be amended to provide an incentive framework that provides QR Network with an incentive to operate, and invest in, the Rail Infrastructure efficiently and to do so in a way that promotes efficiency of a coal supply chain.
- (b) Within one (1) year after the Approval Date, QR Network will submit to the QCA draft amendments to the revenue cap adjustment provisions in this Undertaking to provide QR Network with an incentive to operate, and invest in, the Rail Infrastructure efficiently and to do so in a way that promotes efficiency of a coal supply chain (“Draft Incentive Mechanism Amendments”).
- (c) The QCA may develop its own Draft Incentive Mechanism Amendments if:
 - (i) QR Network does not comply with Clause 2.6(b);
 - (ii) QR Network does not comply with a notice given by the QCA under Clause 2.6(h)(ii) for it to resubmit, the Draft Incentive Mechanism Amendments; or
 - (iii) the QCA refuses to approve the Draft Incentive Mechanism Amendments resubmitted by QR Network in accordance with Clause 2.6(h)(ii).
- (d) Where QR Network submits or resubmits, or the QCA develops, Draft Incentive Mechanism Amendments, the QCA will:
 - (i) publish the Draft Incentive Mechanism Amendments;
 - (ii) invite Access Holders, Access Seekers, their Customers, and any affected Infrastructure Service Providers (and, if the QCA develops Draft Incentive Mechanism Amendments, QR Network) to make submissions on the Draft Incentive Mechanism Amendments to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within that time.
- (e) The QCA will consider the Draft Incentive Mechanism Amendments submitted or resubmitted by QR Network under this Clause 2.6 and either approve or refuse to approve those Draft Incentive Mechanism Amendments within sixty (60) days after their receipt by the QCA or such further period as either the QCA and QR Network may agree or the QCA may reasonably determine and notify to QR Network.

- (f) The QCA may approve Draft Incentive Mechanism Amendments (including Draft Incentive Mechanism Amendments developed by the QCA) only if
 - (i) the QCA considers it appropriate to do so having regard to the matters listed in s.138(2) of the Act;
 - (ii) the incentive mechanism the subject of the Draft Incentive Mechanism Amendments:
 - (A) operates in manner such that there is an equal probability that QR Network can obtain a positive or a negative incentive (that is, in a symmetrical manner); and
 - (B) would not potentially have the effect of reducing any System Allowable Revenue by more than 5%; and
 - (iii) the QCA has complied with Clause 2.6(d).
- (g) If the QCA approves Draft Incentive Mechanism Amendments under Clause 2.6(f):
 - (i) subject to Clause 2.6(g)(ii), the Draft Incentive Mechanism Amendments will:
 - (A) apply to the revenue cap adjustment for the relevant Year in which the QCA's approval is given – which is to be calculated by QR Network and submitted to the QCA in the next Year; and
 - (B) will not apply to the revenue cap adjustment for the Year prior to the Year in which the QCA's approval is given;
 - (ii) if the QCA's approval is given in the last quarter of a Year, then the Draft Incentive Mechanism Amendments will not apply to the revenue cap adjustment for that Year;
 - (iii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iv) QR Network must publish a new version of this Undertaking incorporating the Draft Incentive Mechanism Amendments as approved.
- (h) If the QCA refuses to approve Draft Incentive Mechanism Amendments, the QCA will give QR Network a notice in writing:
 - (i) stating the reasons for its refusal and the way in which the QCA considers that the Draft Incentive Mechanism Amendments should be amended; and
 - (ii) where the Draft Incentive Mechanism Amendments have been submitted under Clause 2.6(b), requiring QR Network to amend the Draft Incentive Mechanism Amendments in a way the QCA considers appropriate and resubmit the Draft Incentive Mechanism Amendments to the QCA within thirty (30) days of that notice.
- (i) If QR Network complies with the notice given under Clause 2.6(h)(ii), the QCA may approve the resubmitted Draft Incentive Mechanism Amendments in accordance with Clause 2.6(f)
- (j) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, the Draft Incentive Mechanism Amendments, if:
 - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reason why QR Network requires the extension of time; and

- (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (k) Nothing in this Clause 2.6 affects:
 - (i) the rights of QR Network under the Act; or
 - (ii) the operation of revenue cap adjustment provisions in Part B, Schedule F of this Undertaking – except to the extent that Draft Incentive Mechanism Amendments are approved by the QCA.

PART 3: RINGFENCING ARRANGEMENTS

3.1 ORGANISATIONAL STRUCTURE

- (a) The structure of the QR corporate group facilitates the separation of the management of Rail Infrastructure from the operation of Train Services by separating QR Network from Related Operators. In addition, within QR there are service groups that provide support activities for both QR Network and Related Operators and core corporate functions.
- (b) The primary function of QR Network is to manage the provision of Below Rail Services. The responsibilities of QR Network include:
 - (i) negotiating Access Agreements with Access Seekers and managing Access Agreements with Access Holders;
 - (ii) developing and managing agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Transport Service Payments;
 - (iii) providing and/or procuring appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR Network's obligations to Access Holders and Queensland Transport;
 - (iv) assessing, allocating and managing Capacity;
 - (v) providing scheduling and Train Control Services for Rail Infrastructure in accordance with the Network Management Principles; and
 - (vi) providing electric transmission infrastructure on electrified sections of the Track to enable Access Holders or Nominated Railway Operators to run electric Train Services, and (subject to Clause 2.4(e)) procuring electric energy for traction on electrified sections of the Track, including managing electric energy supply from other parties, where an Access Seeker, an Access Holder or Nominated Railway Operator requests QR Network to provide that electric energy.
- (c) QR Network may contract with Related Operators for the provision of the following services:
 - (i) Field Incident Management; and
 - (ii) Yard Control services at yards other than Major Yards.
- (d) If Related Operators become responsible for matters integral to the provision of Below Rail Services, other than in accordance with Clause 3.1(c), then QR Network will submit a Draft Amending Undertaking to the QCA including, for example:
 - (i) if this arises due to QR varying its corporate structure during the Term;
 - (ii) if QR Network wishes to assign to a Related Operator any of QR Network's existing Below Rail responsibilities; or
 - (iii) if QR Network has arrangements with:
 - (A) QR Services for any construction, maintenance or associated services for the purpose of providing Below Rail Services; or

- (B) QR for any services (including safety and environmental services) for the purpose of processing Access Applications or providing Below Rail Services,
and QR Network seeks to terminate those arrangements and execute an agreement with a Related Operator for the provision of such services.
- (e) During the Term, QR Network and the QCA may agree to jointly review the appropriateness of Yard Control services at yards other than Major Yards continuing to be performed by a Related Operator. QR Network will, after first obtaining the approval of the QCA, take whatever reasonable steps are required to implement the findings of any such review.

3.2 ACCOUNTING SEPARATION

3.2.1 Preparation of Financial Statements

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

3.2.2 Audit of Financial Statements

- (a) An audit of the Financial Statements will be conducted:
 - (i) within six (6) months of the end of the Year to which the Financial Statements relate, or such longer time as agreed by the QCA;
 - (ii) subject to this Clause 3.2.2, in accordance with Clause 10.3; and
 - (iii) by an Auditor who should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.
- (b) QR Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the Auditor at different times throughout the relevant Year.
- (c) The Auditor will:
 - (i) examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and

- (ii) prepare an audit report that specifies:
 - (A) the scope of the audit;
 - (B) the level of access that the Auditor was provided to QR Network's financial information, including the relevant information systems;
 - (C) whether or not the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
 - (D) if the Auditor identifies that the Financial Statements have not been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.

3.3 MANAGEMENT OF CONFIDENTIAL INFORMATION

- (a) For the purpose of this Clause 3.3:
 - (i) "Confidential Information", in addition to the meaning as defined in Clause 12.1, includes information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and
 - (ii) that other party shall be deemed to be the owner of such Confidential Information.
- (b) The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information:
 - (i) disclosed by Third Party Access Seekers or Third Party Access Holders to QR Network, or disclosed by QR Network to Third Party Access Seekers or Third Party Access Holders, as part of an Access Application or Indicative Access Proposal (including any related discussions or disclosures of information), negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or
 - (ii) collected by a Third Party Access Holder or QR Network in the performance of an Access Agreement with a Third Party,

except that they do not apply to the handling of Confidential Information which relates solely in all material respects to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services. Where a document or discussion is comprised of information only some of which would be information to which this Clause 3.3 applies, this Clause 3.3 will not apply to the remainder of the information in the document or discussion to the extent that QR Network can clearly separate this information from the information to which this Clause 3.3 applies.
- (c) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR Network to enter into a confidentiality deed with the Third Party Access Seeker. Similarly, at any time during the negotiation process, QR Network may require a Third Party Access Seeker to enter into a confidentiality deed with QR Network. The

confidentiality deed entered into in accordance with this Clause 3.3(c) will be in the form specified in Schedule B, unless otherwise agreed between QR Network and the Third Party Access Seeker.

- (d) QR Network, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed by or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:
- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
 - (ii) the disclosure and/or use is:
 - (A) required or compelled by any law;
 - (B) required or compelled by any order of a court;
 - (C) required or compelled by notice validly issued by any Authority;
 - (D) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;
 - (E) required under any stock exchange listing requirement or rule;
 - (F) to the Safety Regulator;
 - (G) to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
 - (H) to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the owner of the Confidential Information;
 - (I) requested by QR's shareholding ministers;
 - (J) for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
 - (K) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
 - (L) to an infrastructure provider for infrastructure forming part of the supply chain in respect of which Access forms a part (including, for example, the operator of a port that is the destination of Train Services) for the purpose of facilitating the coordination of the capacity allocation processes of that infrastructure provider and of QR Network including:
 - (1) matching the Access Rights sought by an Access Seeker or held by an Access Holder with related capacity entitlements granted or to be granted by that infrastructure provider; and
 - (2) aligning the capacity allocation processes (including queues) of QR Network and of the infrastructure provider to facilitate

consistent outcomes for the allocation of capacity in the supply chain,

provided that the infrastructure provider has undertaken to keep the information disclosed to it by QR Network confidential and only use that information for the purpose for which it was disclosed; or

- (M) to a QR Party provided that the disclosure is in accordance with Clause 3.3.2.

3.3.1 External Flows of Confidential Information

- (a) QR Network may, if not reasonably avoidable, appoint an external consultant or independent advisor to provide advice in relation to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, where that same external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter.
- (b) For the purposes of Clause 3.3(d)(i), it would be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) specifying the persons employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;
 - (ii) specifying that those persons must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
 - (iii) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.
- (c) For the purposes of Clause 3.3(d)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator;
 - (ii) specifying:
 - (A) the persons employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract; and
 - (B) that those persons must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network unless otherwise agreed by the Third Party Access Seeker or Third Party Access Holder;

- (iii) if:
 - (A) the external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter in accordance with Clause 3.3.1(a); and
 - (B) QR Network has not been able to reasonably avoid appointing that external consultant or independent advisor to provide advice in relation to that Confidential Information,
requiring the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator on the same or a related matter; and
- (iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder.
- (d) For the purposes of this Undertaking, a person who has been a consultant or contractor to either QR Network or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.
- (e) This Clause 3.3.1 does not apply to the disclosure or use of Confidential Information in accordance with Clause 3.3.2.

3.3.2 Flows of Confidential Information within the QR corporate group

- (a) Notwithstanding any other provision in this Clause 3.3.2, QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to:
 - (i) individuals within QR Network; and
 - (ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and persons providing clerical or administrative assistance to any of them including any Company Secretary and Assistant Company Secretary.
- (b) Subject to Clause 3.3.2(c), QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to persons:
 - (i) in the Rollingstock Engineering Division within QR Services in relation to Rollingstock or Rollingstock interface issues;
 - (ii) in the Property Division within QR in relation to property issues; and
 - (iii) in QR Services in management level 2, 3 or 4 positions in relation to Rail Infrastructure issues,

provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.

- (c) A Third Party Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 3.3.2(b). If a Third Party Access Seeker gives such a notice to QR Network, then:
- (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
 - (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternate mechanism;
 - (iii) all:
 - (A) reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Clause 3.3.2(c)(ii) may be recovered by QR Network from the Third Party Access Seeker as a debt due and owing; and
 - (B) relevant timeframes applicable to QR Network under this Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and
 - (iv) if:
 - (A) the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can obtain the information it requires to respond to the Access Application; or
 - (B) the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process,QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a).
- (d) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a Related Operator where:
- (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure; or
 - (ii) such disclosure is required for the purpose of facilitating the performance of a service referred to in Clause 3.1(c), provided that any disclosure is limited to the extent required for that purpose.
- (e) Subject to Clause 3.3.2(h), if, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR Network wishes to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to an employee or group of a QR Party not specified in Clauses 3.3.2(a), (b) or (d), or to a group specified in Clause 3.3.2(b) on an issue not specified in that clause, QR Network must:
- (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
 - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the purpose of responding to an Access

Application, negotiating an Access Agreement or administering an Access Agreement.

- (f) QR Network may, if not reasonably avoidable, disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to an employee of a QR Party where that person is advising a Related Operator in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 3.3.2(b), QR Network must obtain the consent of the owner of the Confidential Information prior to making the disclosure.
- (g) If QR Network seeks the consent of an Access Seeker or Access Holder for the disclosure of Confidential Information pursuant to Clause 3.3.2(e) or (f):
 - (i) during the process of responding to an Access Application or negotiating an Access Agreement:
 - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a); or
 - (B) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date; or
 - (ii) during the process of administering an Access Agreement:
 - (A) such consent shall not be unreasonably withheld; and
 - (B) if the owner of the Confidential Information fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then consent shall be deemed to have been given.

This Clause 3.3.2(g) does not apply where QR Network has requested consent to disclose the information to a Related Operator.

- (h) QR Network is permitted to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to QR employees in Internal Audit, the Information Services Division and Insurance Management, to the extent necessary for those employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.
- (i) Except where Clause 3.3.2(a) applies, QR Network may only disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Party:
 - (i) if QR Network and the QR Party have entered into a legally enforceable agreement with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that

- QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network; and
- (ii) provided QR Network notifies the QCA of:
 - (A) any breach of such provisions of which QR Network becomes aware; and
 - (B) where there is a breach, the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure.
 - (j) QR Network will establish and maintain a ring fencing register for the purpose of recording the names of those persons within a QR Party (excluding those persons gaining access to Confidential Information in accordance with Clause 3.3.2(a) or (h)) to whom QR Network discloses Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.

3.3.3 Transfer of QR Network employees within the QR corporate group

- (a) QR Network will ensure that all QR Network employees receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ring fencing training and awareness session.
- (b) Where QR Network employees leave QR Network to work for a QR Party, they will undergo, as part of any exit process, a debriefing to remind them of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3 and will be asked to sign an exit certificate (that includes an acknowledgement of having undergone such a debriefing process).
- (c) If the activities of:
 - (i) a project working group (whose members include staff from a Related Operator); or
 - (ii) a Related Operator,affect or could affect the Access of Third Party Access Holders or Third Party Access Seekers, then QR Network must ensure no QR Network employee:
 - (iii) works in such a working group; or
 - (iv) is temporarily transferred to such a Related Operator,unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker (whose Access will or could be affected by the activities of the working group or Related Operator) which, if disclosed to the relevant Related Operator, could provide that Related Operator with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (d) In making all decisions in relation to the temporary transfer of QR Network employees to roles in a QR Party, QR Network must have regard to the

potential implications of any such transfer on QR Network's obligations under this Undertaking to manage Confidential Information.

3.4 DECISION MAKING

- (a) Subject to Clause 3.4(b), QR Network will comply with the following decision making principles when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:
- (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
 - (ii) the decision is made in a manner that is consistent between Access Seekers and/or Access Holders in the same circumstances; and
 - (iii) either:
 - (A) the decision is required in order to comply with:
 - a law;
 - a lawful direction of an Authority;
 - this Undertaking;
 - the Access Agreements of adversely affected Access Holders; or
 - an access code made under the Act; or
 - (B) the decision is made in accordance with QR Network's documented policies and procedures; or
 - (C) the reasons for the decision are documented by QR Network.
- (b) Decisions made in relation to or to prevent an emergency are exempt from the decision making process prescribed by Clause 3.4(a).

3.5 COMPLAINT HANDLING

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR Network has breached one or more of its obligations under Clause 3.3 or Clause 3.4, or that a QR Party has breached a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, they may lodge a written complaint with QR Network.
- (b) QR Network will advise the QCA, as soon as practicable, of any complaints it receives pursuant to Clause 3.5(a).
- (c) QR Network will:
- (i) investigate complaints received pursuant to Clause 3.5(a); and
 - (ii) advise the complainant and the QCA in writing of the outcome of that investigation and QR Network's proposed response, if any, and use reasonable endeavours to do so within twenty-eight (28) days after receiving such a complaint.
- (d) Where a complaint relates to an alleged breach by QR Network of its obligations under Clause 3.4 and the complainant is not satisfied with the outcome of QR Network's investigation, the complainant can apply to the QCA seeking an audit of the relevant QR Network decision(s) the subject of the complaint and that audit must be conducted in accordance with Clause 10.3.

3.6 AUDITS

- (a) An audit of QR Network's compliance with its obligations under Clauses 3.3, 3.4 and 3.5 will be conducted annually and, subject to this Clause 3.6, in accordance with Clause 10.3.
- (b) In considering QR Network's compliance with its obligations under Clauses 3.3, 3.4 and 3.5, the Auditor may take into account QR Network's compliance with any relevant internal procedures.
- (c) The Auditor will compile an audit report identifying:
 - (i) whether QR Network has complied in all material respects with its obligations under Clauses 3.3, 3.4 and 3.5 and, if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.

3.7 RESPONSIBILITY FOR RAIL INFRASTRUCTURE

3.7.1 Line Diagrams

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, QR Network will review and amend the Line Diagrams as necessary, at intervals of no greater than six (6) months, to reflect changes that have been made to the configuration or ownership of the Queensland rail network and will publish on QR Network's website:
 - (i) the current version of the Line Diagrams; and
 - (ii) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) Unless approved by the QCA, QR Network will not:
 - (i) assign or transfer ownership of existing or new Rail Infrastructure from QR Network to a QR Party; or
 - (ii) remove existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amend the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
 - (A) is minor or administrative in nature;
 - (B) reflects an agreement between Queensland Transport and QR Network to cease Queensland Transport funding for the provision of the relevant Rail Infrastructure through Transport Service Payments and to remove the relevant Rail Infrastructure; or
 - (C) does not reflect a permanent reduction in Existing Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of track are undertaken).
- (d) Where the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with Clause 3.7.1(b):
 - (i) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or

- (ii) reflect a change to Rail Infrastructure that contravenes Clause 3.7.1(c), the QCA or that Access Seeker or Access Holder may request in writing that QR Network review and, if necessary, amend the Line Diagrams in accordance with Clause 3.7.1(b).
- (e) Where QR Network receives a request under Clause 3.7.1(d), QR Network must:
 - (i) if the QCA made the request, review the Line Diagrams and make any necessary amendments to the Line Diagrams within thirty (30) days after receiving that request; and
 - (ii) if an Access Seeker or Access Holder made the request:
 - (A) notify the QCA in writing of that request;
 - (B) review the Line Diagrams; and
 - (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether QR Network accepts the matters set out in the request and, if so, the action that QR Network proposes to take; and
 - (D) undertake any required amendments to the Line Diagrams within fourteen (14) days after:
 - (1) where the matter has not been referred to Dispute resolution under Clause 10.1 and QR Network has accepted the matters set out in the request, the giving of the notice under Clause 3.7.1(e)(ii)(C); or
 - (2) if the matter is referred to Dispute resolution under Clause 10.1, the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (f) An Access Seeker or Access Holder may only refer a Dispute in relation to the Line Diagrams to the Dispute resolution process under Clause 10.1, if:
 - (i) such a Dispute exists after QR Network has notified that party in accordance with Clause 3.7.1(e)(ii)(C); or
 - (ii) QR Network has failed to comply with Clause 3.7.1(e)(ii).

3.7.2 Transfer of rail transport infrastructure from QR Party

- (a) If an Access Seeker is reasonably of the opinion that rail transport infrastructure (as defined under the TIA) that is owned by a QR Party forms part of the Declared Service, then the Access Seeker may make a request in writing that QR Network obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly.
- (b) In considering a request made in accordance with Clause 3.7.2(a), QR Network will obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly if, in QR Network's reasonable opinion, this is appropriate having regard to the following principles:
 - (i) subject to Clauses 3.7.2(b)(iv) and 3.7.2(b)(v), the ownership of rail transport infrastructure (as defined under the TIA), as between QR Network and other QR Parties, should be allocated in a way that enables QR Network to operate as a stand alone provider of the Declared Service, except in relation to stations and platforms;

- (ii) the existing market shares of Related Operators should not be a factor in the allocation of ownership of rail transport infrastructure (as defined under the TIA) between QR Network and other QR Parties;
- (iii) subject to Clauses 3.7.2(b)(iv) and 3.7.2(b)(v), ownership of rail transport infrastructure (as defined under the TIA), as between QR Network and other QR Parties, should be allocated in a way that reasonably allows for Access Seekers to undertake activities associated with Access Rights;
- (iv) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between a QR Party and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by the QR Party; and
- (v) any facility that is owned or leased by a Third Party and is accessible from track managed by a QR Party (referred to as a “Private Facility”) should be accessible from Rail Infrastructure, except where the agreement between the QR Party and the Private Facility manager explicitly accepts that the Private Facility is accessible from track managed by the QR Party.

But QR Network is not obliged to do so unless:

- (vi) if ownership of the rail transport infrastructure was with QR Network, the use of the rail transport infrastructure would form part of the Declared Service;
- (vii) if the rail transport infrastructure is not required to operate a Train Service directly between an origin and a destination, access to the rail transport infrastructure satisfies the criteria in s.76(2) of the Act; and
- (viii) if the rail transport infrastructure relates to the Central Queensland Coal Region or that part of the Western System west of Rosewood, the value of the rail transport infrastructure is included in the Regulatory Asset Base at the DORC value;
- (ix) if the rail transport infrastructure relates to the Central Queensland Coal Region, it is included in an Individual Coal System and the System Forecasts, System Allowable Revenue, Reference Tariffs and any other relevant matters for the Individual Coal System are reviewed and amended to take account of the rail transport infrastructure (including taking into account any Incremental Costs associated with the rail transport infrastructure);
- (x) if the rail transport infrastructure relates to that part of the Western System west of Rosewood, the Reference Tariffs and any other relevant matters for the Western System are reviewed and amended to take account of the rail transport infrastructure (including taking into account any Incremental Costs associated with the rail transport infrastructure); and
- (xi) all costs and expenses associated with the transfer of ownership (including taxes and duties) incurred by QR Network or the relevant QR Party are either:
 - (A) paid or reimbursed by the Access Seeker; or
 - (B) if incurred by QR Network and the rail transport infrastructure is included in an Individual Coal System, included in an amendment to the relevant System Allowable Revenue for the Year in which the transfer is to occur.

- (c) If an Access Seeker disagrees with the results of QR Network's consideration of its request under Clause 3.7.2(a), it may refer the issue to the Dispute resolution process set out in Clause 10.1.

PART 4: NEGOTIATION FRAMEWORK

4.1 ACCESS APPLICATION

- (a) Requests for Access must be submitted to QR Network in the form of an Access Application.
- (b) Prior to submitting an Access Application, the Access Seeker may seek initial meetings with QR Network to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and, in particular, the Application Requirements.
- (c) QR Network will make publicly available on QR Network's website:
 - (i) the form(s) of application for Access Applications (which may identify different information requirements for different types of Train Services); and
 - (ii) to the extent reasonably practicable, the Preliminary Information (except for the QR Network Rollingstock Interface Standards).
- (d) An Access Seeker may request a copy of any Preliminary Information that is not provided on QR Network's website (including the QR Network Rollingstock Interface Standards for the rail corridor for which it is interested in seeking Access Rights). QR Network will use reasonable endeavours to make that requested information available to the Access Seeker within fourteen (14) days after QR Network receives the Access Seeker's request and is entitled to levy the charge specified in Schedule D for that information.
- (e) QR Network will use reasonable endeavours to keep the Preliminary Information current.
- (f) If a request for Access specifies:
 - (i) the Customer that the request relates to; and
 - (ii) the contact details for that Customer,then QR Network will provide to the Customer copies of all notices that are required to be given to the Access Seeker in accordance with this Undertaking and relating to the progress of that request for Access, provided that QR Network will not provide the Customer with a copy of the Indicative Access Proposal (or any revision of that document).

4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION

- (a) Within ten (10) Business Days after receiving a request for Access, QR Network may give the Access Seeker a notice that either or both of the following are required:
 - (i) additional information, if reasonably needed to prepare an Indicative Access Proposal (either because the request for Access did not satisfy the Application Requirements, or because there are special circumstances which result in the additional information being reasonably necessary for QR Network to prepare an Indicative Access Proposal); or
 - (ii) clarification of the information that has been provided in the request for Access,and including, in either case, the extent to which that additional information or clarification is required in order for QR Network to be reasonably satisfied that

the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal.

- (b) If QR Network gives an Access Seeker a notice under Clause 4.2(a):
- (i) the Access Seeker must provide the required additional information and clarification of information within:
 - (A) thirty (30) days after the date on which that notice was given to the Access Seeker; or
 - (B) such longer period as QR Network and the Access Seeker agree is reasonably necessary,to the extent that the additional information or clarification is required for QR Network to be satisfied that the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal; and
 - (ii) the additional information or clarification when provided by the Access Seeker to QR Network forms part of the request for Access.
- (c) If QR Network is reasonably satisfied that the request for Access:
- (i) satisfies all of the Application Requirements; or
 - (ii) does not satisfy all of the Application Requirements but that the Access Seeker's request for Access provides a reasonable description of the proposed Train Service (having regard to the Train Service Description requirements set out in the Application Requirements),
- then, within ten (10) Business Days after QR Network received the request for Access or the additional information or clarification in response to the notice given by QR Network under Clause 4.2(a) (even if the Access Seeker was not able to provide all of the additional information or clarification), QR Network will give the relevant Access Seeker a written notice:
- (iii) acknowledging receipt of the Access Application; and
 - (iv) where Clause 4.2(c)(ii) applies, stating that QR Network will prepare an Indicative Access Proposal conditional upon assumptions made by QR Network relating to the information not provided by the Access Seeker.
- (d) If, after the period within which the Access Seeker is required to provide additional information or clarification under Clause 4.2(b)(i), QR Network is not reasonably satisfied of the matters under either Clause 4.2(c)(i) or (ii), QR Network may reject the request for Access by giving a notice in writing to the Access Seeker stating the reasons for that rejection.
- (e) If a request for Access is (in whole or part) for Access Rights which cannot be provided in the absence of QR Network investing in a Significant Investment or which significantly impacts on a Significant Investment that is being investigated, then QR Network shall follow the process set out in Clause 7.5.3.
- (f) If QR Network is required to give an Acknowledgement Notice in accordance with Clause 4.2(c), the date when the relevant Access Application was received by QR Network is, for the purposes of this Undertaking, deemed to be the date when the relevant Access Seeker's request for Access was received by QR Network (subject to Clause 4.4(c)).
- (g) If QR Network has given an Acknowledgement Notice in accordance with Clause 4.2(c) but is yet to provide an Indicative Access Proposal to the Access Seeker, the Access Seeker may review and revise the information in its request

for Access, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that such revision does substantially alter the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view and may suspend preparing an Indicative Access Proposal for the Access Seeker. If, within five (5) Business Days after QR Network gives that notice:

- (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue with the original request for Access without the proposed revisions, the process under this Undertaking in respect of that request for Access will, subject to Clause 4.2(h), continue; or
 - (ii) the notice in Clause 4.2(g)(i) is not given:
 - (A) the provision of the revised information will be deemed to be a written notice that the Access Seeker no longer wishes to proceed with the original request for Access; and
 - (B) the original request for Access and revised information will together comprise a new request for Access deemed to have been received by QR Network on the date five (5) Business Days after QR Network gave the notice under this Clause 4.2(g).
- (h) If a notice is given by the Access Seeker under Clause 4.2(g)(i), the time within which QR Network is required to provide an Indicative Access Proposal to the Access Seeker is extended by the period from (and including) the date on which QR Network notified the Access Seeker in accordance with Clause 4.2(g) to (and including) the date on which the Access Seeker gives QR Network a notice in accordance with Clause 4.2(g)(i).

4.3 INDICATIVE ACCESS PROPOSAL

- (a) Subject to Clauses 4.2(h) and 4.3(b), QR Network will provide an Indicative Access Proposal to an Access Seeker within thirty (30) days after the date on which QR Network gives an Acknowledgement Notice to the Access Seeker.
- (b) QR Network:
 - (i) if it considers that, due to the complexity of the Access Application or other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within the period under Clause 4.3(a), may by written notice to the Access Seeker, within twenty (20) days after the date on which QR Network gives an Acknowledgement Notice to the Access Seeker, extend the period under Clause 4.3(a) by not more than a further thirty (30) days; and
 - (ii) may, in addition to Clause 4.3(b)(i), further extend that period but only with the written agreement of the Access Seeker.
- (c) The Indicative Access Proposal will set out:
 - (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
 - (ii) a summary of the applicable operating characteristics (for example, frequency, transit time, commodity carried);
 - (iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with Clause 4.5.2(a)(vi)) together with, for coal carrying Train Services, QR Network's assumptions regarding Rollingstock, section run times and loading and

- unloading times used in preparing that assessment, except to the extent that either the System Rules indicate or QR Network considers that such an assessment is not required;
- (iv) advice in respect of the existence of other Access Seekers who have submitted an Access Application in respect of Access which, if it were to be provided, would limit the ability of QR Network to provide Access in accordance with the Indicative Access Proposal and whether a queue has been formed (provided that a failure to do so is neither a default under this Undertaking nor does it invalidate or prejudice any Access Agreement executed by QR Network provided that QR Network has acted in good faith);
 - (v) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6, including advice as to whether QR Network has applied Clause 6.1.2(b)(i) or 6.1.2(c) in determining the estimate of the Access Charge and, if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
 - (vi) details of the additional information required for QR Network to progress the proposal and develop the Access Charge and terms and conditions for acceptance; and
 - (vii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date that QR Network dispatches the Indicative Access Proposal to the Access Seeker, or such later date as QR Network specifies.
- (d) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR Network to provide Access in accordance with the specific terms and conditions, including any Access Charge, contained within it.
 - (e) If, after the period within which QR Network is required to give an Indicative Access Proposal to an Access Seeker under Clauses 4.3(a) and (b), the Access Seeker believes that QR Network is not making reasonable progress in the preparation of the Indicative Access Proposal, then the Access Seeker may refer the matter to dispute resolution in accordance with Clause 10.1.
 - (f) If the Access Seeker believes that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify QR Network of its concerns in writing within thirty (30) days after being given the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker may agree.
 - (g) QR Network will use reasonable efforts to respond to the concerns of an Access Seeker notified under Clause 4.3(f), including, where appropriate, by making revisions to the Indicative Access Proposal, within:
 - (i) fourteen (14) days after being notified under Clause 4.3(f); or
 - (ii) if QR Network considers that due to the complexity of the concerns or other extenuating circumstances, it is not reasonable to provide a response within that fourteen (14) day period, such reasonable period as QR Network notifies to the Access Seeker in writing within five (5)

Business Days after the Access Seeker's notice to QR Network under Clause 4.3(f).

- (h) If, after being given a response from QR Network under Clause 4.3(g) (including any revision to the Indicative Access Proposal), the Access Seeker:
- (i) is satisfied with that response, it must notify QR Network of its intention to proceed with negotiations before the expiry of the Indicative Access Proposal or such other timeframe as QR Network and the Access Seeker may agree; or
 - (ii) is not satisfied with that response and seeks to resolve the Dispute in accordance with Clause 10.1, it must:
 - (A) commence that Dispute resolution process within thirty (30) days after being given QR Network's response or such other timeframe as QR Network and the Access Seeker may agree; and
 - (B) within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR Network and the Access Seeker may agree, notify QR Network in writing whether the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.

4.4 NOTIFICATION OF INTENT

- (a) Subject to Clause 4.3(h), if the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the Indicative Access Proposal.
- (b) Subject to Clause 4.3(h), if the Access Seeker gives a notification of its intention to progress its Access Application after the expiry date of the Indicative Access Proposal but not later than six (6) months after that date, QR Network will review the Indicative Access Proposal and, if considered necessary by QR Network, prepare a revised Indicative Access Proposal in accordance with Clause 4.3.
- (c) Where:
- (i) a revised Indicative Access Proposal is prepared and the Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the revised Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the revised Indicative Access Proposal; or
 - (ii) a revised Indicative Access Proposal is not considered necessary by QR Network, the Access Seeker's notification of its intention under Clause 4.4(b) is taken to be validly given even though it is given after the expiry date of the Indicative Access Proposal,

provided that if a queue has been established, or is subsequently established, for the Access Rights in accordance with Clause 7.3.4, the date on which QR Network received the Access Application is deemed to be (notwithstanding Clause 4.2(f)) the date on which the Access Seeker gave QR Network its notification of intent under Clause 4.4(b).

4.5 NEGOTIATION PROCESS

4.5.1 Negotiation Period

- (a) Once the Negotiation Period has commenced both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement. Subject to Clause 4.5.1(b), the Negotiation Period shall commence upon the Access Seeker providing a notification of intent in accordance with Clause 4.4.
- (b) If QR Network has established a queue in accordance with Clause 7.3.4, QR Network may negotiate with any Access Seeker in that queue, but QR Network is only obliged to do so if:
 - (i) at that time, QR Network can provide the requested Access Rights to the Access Seeker within two (2) years; and
 - (ii) were QR Network to execute an Access Agreement with that Access Seeker, QR Network's ability to provide Access Rights to any Access Seeker earlier in the queue would not be adversely affected.
- (c) If QR Network decides not to commence negotiations with an Access Seeker in accordance with Clause 4.5.1(b), then that Access Seeker's Negotiation Period is put on hold until such time as either QR Network commences negotiations with that Access Seeker or QR Network is obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b).
- (d) If, after commencing negotiations with an Access Seeker, QR Network notifies that Access Seeker that it is suspending negotiations on the basis that it is not obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b), then:
 - (i) where QR Network has, until that time, been obliged to negotiate with that Access Seeker, QR Network will provide that Access Seeker with the reasons why it is no longer obliged to negotiate in accordance with Clause 4.5.1(b) and give that Access Seeker thirty (30) days within which to demonstrate to QR Network's satisfaction that QR Network continues to be obliged to negotiate with the Access Seeker; and
 - (ii) that Access Seeker's Negotiation Period is put on hold until such time as:
 - (A) QR Network recommences negotiations; or
 - (B) either:
 - (1) the Access Seeker demonstrates to QR Network's satisfaction that QR Network continues to be obliged to negotiate with that Access Seeker; or
 - (2) QR Network becomes obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b).
- (e) An Access Seeker's Negotiation Period ceases on:
 - (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
 - (ii) QR Network receiving written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
 - (iii) QR Network issuing a Negotiation Cessation Notice to the Access Seeker pursuant to Clause 4.6(a);

- (iv) the expiration of nine (9) months from the commencement of the Negotiation Period unless:
 - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
 - (B) a Dispute arises between the parties that either party has sought to resolve in accordance with Clause 10.1, in which case the Negotiation Period will continue until the resolution of the Dispute and for any further time agreed by the parties or determined during the Dispute resolution process; or
- (v) the Available Capacity being reduced (for example, due to another Access Seeker finalising an Access Agreement), such that QR Network is no longer able to offer Access to the Access Seeker under the terms of the Indicative Access Proposal, except to the extent that:
 - (A) Clause 4.5.1(f) applies; and
 - (B) the Access Seeker has indicated that it is willing to continue negotiations on the basis of the revised Indicative Access Proposal prepared in accordance with Clause 4.5.1(f).
- (f) If:
 - (i) the Available Capacity has been reduced (for example, due to another Access Seeker finalising an Access Agreement) such that QR Network is no longer able to offer all of the Access sought by an Access Seeker under the terms of the relevant Indicative Access Proposal; and
 - (ii) the Available Capacity can satisfy part of the Access Rights sought by the Access Seeker,

QR Network will notify the Access Seeker of that event and the remaining Available Capacity and:

 - (iii) if requested by the Access Seeker within 2 weeks after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised Indicative Access Proposal in accordance with Clause 4.3 in relation to the remaining Available Capacity; and
 - (iv) if, within 2 weeks after being given the revised Indicative Access Proposal, the Access Seeker notifies QR Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking on the basis of the revised Indicative Access Proposal, the negotiation process outlined in this Part 4 will recommence from that point (but without affecting the Access Seeker's position in any queue established by QR Network in accordance with Clause 7.3.4).
- (g) Subject to Clause 4.5.1(f)(iv), if a Negotiation Period ceases and the Access Seeker was in a queue established by QR Network in accordance with Clause 7.3.4, the Access Seeker will be removed from the queue.

4.5.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR Network and the Access Seeker will negotiate and endeavour to agree on the elements comprising the Access Agreement. In order to facilitate this process:
 - (i) QR Network will provide to the Access Seeker Additional Information relevant to the rail corridor applicable to the Access Seeker's Access

- Application and will use reasonable endeavours to ensure such information is the most current available to QR Network and is provided within a reasonable timeframe;
- (ii) an Operating Plan is to be prepared by the Access Seeker in accordance with Clause 8.1.4;
 - (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker, jointly with QR Network, in accordance with Clause 8.1.2 and an IRMP is to be developed and agreed in accordance with Clause 8.1.3;
 - (iv) an EIRMR must be undertaken and prepared by the Access Seeker in accordance with Clause 8.2.1;
 - (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR Network including advice as to whether QR Network has applied Clause 6.1.2(b)(i) or 6.1.2(c) in determining the Access Charge and if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
 - (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR Network and any necessary Infrastructure Enhancements to accommodate Access by the Access Seeker are to be advised by QR Network except to the extent that either the System Rules indicate or QR Network considers that such matters are not required;
 - (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR Network, consistent with Clause 7.2;
 - (viii) the Access Seeker is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Clause 8.1.6; and
 - (ix) other terms and conditions comprising the Access Agreement are to be provided by QR Network consistent with Clause 5.1.
- (b) During the Negotiation Period, the Access Seeker may review and revise the information in its Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that such revision does substantially alter the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view. If, within five (5) Business Days of QR Network giving that notice:
- (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue negotiating on the original Access Application without the proposed revisions, the negotiation process under this Undertaking will continue; or
 - (ii) if the notice in Clause 4.5.2(b)(i) is not given:
 - (A) the provision of the revised information will be deemed to be a written notice referred to and given under Clause 4.5.1(e)(ii) in respect of the original Access Application; and

- (B) the original Access Application and revised information will together comprise a new request for Access deemed to have been submitted to QR Network on the date five (5) Business Days after QR Network gave the notice under this Clause 4.5.2(b).
- (c) QR Network will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.
- (d) In respect of the details required to be developed by the parties in accordance with Clause 4.5.2(a), the parties may agree:
 - (i) to finalise certain aspects after the execution of the Access Agreement;
 - (ii) to make the Access Agreement subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of port capacity); or
 - (iii) to include mechanisms in the Access Agreement to address any subsequent cost or operating impacts arising in connection with the matters referred to in Clauses 4.5.2(d)(i) and (ii).
- (e) QR Network will be responsible for the investigation and design of any necessary Infrastructure Enhancements to accommodate Access by an Access Seeker to Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR Network will be entitled to require that the Access Seeker pay QR Network's reasonable costs for such investigation and design.

4.6 NEGOTIATION CONDITIONS

- (a) At any time during a Negotiation Period, QR Network may, within fourteen (14) days of deciding that it will not enter into an Access Agreement with the relevant Access Seeker, give a Negotiation Cessation Notice to that Access Seeker if:
 - (i) the Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR Network considers on reasonable grounds that such non-compliance is material;
 - (ii) QR Network is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;
 - (iii) QR Network is of the reasonable opinion that the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
 - (iv) QR Network gives a Negotiation Cessation Notice under Clause 3.3.2(c)(iv) or 3.3.2(g)(i)(A);
 - (v) subject to Clause 10.1.3(c), the Access Seeker does not comply with a determination of an expert pursuant to Clause 10.1.3 in relation to the Access Seeker's Access Application; or
 - (vi) the Access Seeker does not comply with a determination of the QCA pursuant to Clause 10.1.4 in relation to a Dispute about the Access Seeker's Access Application.

- (b) Without limitation, it will be reasonable for QR Network to form the opinion that the circumstances in Clause 4.6(a)(ii) apply, if:
- (i) the Access Seeker is Insolvent; or
 - (ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.
- (c) Without limitation, when QR Network is forming an opinion as to whether the circumstances in Clause 4.6(a)(iii) apply, QR Network may consider any one or more of the following factors:
- (i) whether the Access Seeker has secured or is reasonably likely to secure the rights required to leave the QR Network rail network in order to unload at its destination, for instance, port capacity or capacity to unload at a power station;
 - (ii) whether the Access Seeker (if they are seeking to be an Access Holder and not an operator) has secured or is reasonably likely to secure a rail haulage agreement required to operate the Train Services the subject of the Access Application; and
 - (iii) the speed and timeliness of the Access Seeker in conducting its negotiations, including whether QR Network has determined under Clause 4.6(d) that the Access Seeker has taken an unreasonable or excessive amount of time negotiating an Access Agreement.
- (d) An Access Seeker who is in a queue but is not an Access Seeker with whom QR Network is obliged to negotiate in accordance with Clause 4.5.1(b) may notify QR Network that it considers the time taken by such an Access Seeker to negotiate an Access Agreement with QR Network is unreasonable or excessive. If QR Network receives such a notice, QR Network will determine whether the time taken by the applicable Access Seeker is unreasonable or excessive having regard to the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances. QR Network will make its determination and advise both Access Seekers of its decision within seven (7) Business Days of receiving the notification.
- (e) If an Access Seeker disputes that QR Network was entitled to give it a Negotiation Cessation Notice and seeks to resolve the Dispute in accordance with Clause 10.1, for the purposes of Clause 4.6(a), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR Network's favour. If the resolution of the Dispute identifies that QR Network was not entitled to give the Access Seeker a Negotiation Cessation Notice, QR Network will recommence negotiations with that Access Seeker immediately.
- (f) QR Network shall have the right at its option to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Clause 4.6(a)(iii). QR Network may seek acknowledgement of the Access Seeker's liability for costs as part of the negotiation for Access.

4.7 CAPACITY NOTIFICATION REGISTER

- (a) If QR Network ceases negotiations with an Access Seeker in accordance with Clause 4.5.1(e)(v) (in respect of all or part of the Access Rights sought by the Access Seeker), then QR Network will include:
- (i) if requested by the Access Seeker, that Access Seeker's details; and
 - (ii) if specified by the applicable request for Access in accordance with Clause 4.1(f) and requested by the Customer, that Customer's details,
- in the Capacity Notification Register. But QR Network is not obliged to do so unless that person provides evidence satisfactory to QR Network, in relation to the rights required to leave the QR Network rail network in order to unload at its destination (for instance, port capacity or capacity to unload at a power station) that are necessary to use the Access Rights that they are interested in seeking and are to be included in the Capacity Notification Register ("Exit Rights"):
- (iii) that the person has been allocated or is in a queue for Exit Rights; or
 - (iv) if that person owns the facility in respect of which Exit Rights must be obtained, that the capacity of the facility is being expanded to create those Exit Rights or that there are Exit Rights that will become available.
- (b) QR Network will maintain a Capacity Notification Register that identifies:
- (i) each person referred to in Clause 4.7(a) who requests inclusion in the register;
 - (ii) the nature of each person's interest in seeking Access Rights (in respect of which negotiations ceased in accordance with Clause 4.5.1(e)(v)); and
 - (iii) the date on which the applicable Access Application (in respect of which negotiations ceased in accordance with Clause 4.5.1(e)(v)) was or was deemed to have been received by QR Network for queuing purposes.
- (c) Every six (6) months after the date on which QR Network received a person's request in accordance with Clause 4.7(a), that person must:
- (i) notify QR Network that they wish to continue to remain in the Capacity Notification Register; and
 - (ii) in relation to Exit Rights, provide evidence satisfactory to QR Network:
 - (A) that they have been allocated or are in a queue for Exit Rights; or
 - (B) if that person owns the facility in respect of which Exit Rights must be obtained, that the capacity of the facility is being expanded to create those Exit Rights or that there are Exit Rights that will become available,
- provided that such a notice can be given no more than one (1) month prior to the due date for that notice.
- (d) If there is Available Capacity, then QR Network will notify each person indicated in the Capacity Notification Register as being interested in seeking Access Rights applicable to such Available Capacity, of the nature and extent of that Available Capacity.
- (e) If a person notified under Clause 4.7(d) submits a request for Access within one (1) month of being given that notice, then that request for Access is deemed, for the purposes of a queue, to have been received by QR Network on the date recorded in the Capacity Notification Register, in accordance with

Clause 4.7(b)(iii), in respect of that person provided that the request for Access is only for the relevant Access Rights, in accordance with Clause 4.7(b)(ii).

- (f) A person will remain on the Capacity Notification Register until:
 - (i) that person fails to comply with Clause 4.7(c); or
 - (ii) QR Network notifies that person in accordance with Clause 4.7(d).
- (g) This Clause 4.7 does not apply where Clauses 7.5.3 or 7.5.4 apply.

PART 5: ACCESS AGREEMENTS

5.1 DEVELOPMENT OF ACCESS AGREEMENTS

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation process.
- (b) The parties to the Access Agreement will be QR Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services, but if the Access Holder is not the Railway Operator, it must ensure that the relevant Train Services are operated by a Railway Operator.
- (c) The Railway Operator of the Train Services need not have received Accreditation prior to execution of the Access Agreement. The Railway Operator must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.
- (d) Unless otherwise agreed between QR Network and the Access Seeker, the Access Agreement must be consistent with:
 - (i) the terms of a Standard Access Agreement if the Train Services are of the same type specified in that Standard Access Agreement; and
 - (ii) subject to Clause 5.1(e), for Train Services of a type for which there is no Standard Access Agreement, the principles outlined in Schedule E.
- (e) Schedule E does not provide an exhaustive list of the issues that may be included in an Access Agreement. As a result, whilst the terms of a Standard Access Agreement will provide guidance as to how the principles outlined in Schedule E may be reflected in an Access Agreement for a different type of Train Service, variations from the terms and conditions of a Standard Access Agreement may be required for that different type of Train Service.
- (f) Once the Access Seeker has notified QR Network that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR Network will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Access Seeker for execution.
- (g) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR Network.
- (h) QR Network will execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement, or such longer period as the Access Seeker and QR Network agree is reasonably necessary bearing in mind the lead time that would be required to accommodate the development of the Access Seeker's infrastructure or, if the Access Seeker has a proposed Customer, the Customer's infrastructure (such as a mine) and/or elements of the transport logistics chain, as well as development of rail infrastructure, relevant to the Access Application lodged by the Access Seeker.

5.2 DEVELOPMENT OF NEW OR AMENDED STANDARD ACCESS AGREEMENT

- (a) QR Network will submit a Proposed Standard Access Agreement to the QCA:
 - (i) within sixty (60) days after receiving a notice from the QCA in accordance with Clause 5.2(b);

- (ii) as required in accordance with Clause 5.2(n); or
 - (iii) otherwise at QR Network's discretion.
- (b) The QCA may give QR Network a notice requiring it to submit a Proposed Standard Access Agreement if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a pro forma Access Agreement for a specified type of Train Service not covered by a Standard Access Agreement.
- (c) The QCA may develop a Proposed Standard Access Agreement that is consistent with the Undertaking including the principles contained in Schedule E and Clause 5.2(n), as applicable, if:
 - (i) QR Network does not comply with a notice given by the QCA under Clause 5.2(b) or 5.2(h)(ii) for it to submit, or resubmit, a Proposed Standard Access Agreement (whichever is applicable);
 - (ii) QR Network does not submit the Proposed Standard Access Agreements (including consequential amendments to this Undertaking) in accordance with Clause 5.2(n); or
 - (iii) the QCA refuses to approve a Proposed Standard Access Agreement resubmitted by QR Network in accordance with a notice given by the QCA under Clause 5.2(h)(ii).

For the purposes of this Clause 5.2(c), if the QCA develops Proposed Standard Access Agreements consistent with the principles contained in Clauses 5.2(n)(i) and (ii), then the QCA may also develop proposed consequential amendments to this Undertaking in accordance with the principles contained in Clause 5.2(n)(iii). A reference in this Clause 5.2 to such Proposed Standard Access Agreements developed by the QCA includes those proposed consequential amendments.

- (d) Where QR Network submits, or the QCA develops, a Proposed Standard Access Agreement, the QCA will:
 - (i) publish the Proposed Standard Access Agreement;
 - (ii) invite persons to make submissions on the Proposed Standard Access Agreement to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within the time.
- (e) The QCA may approve a Proposed Standard Access Agreement (including a Proposed Standard Access Agreement developed by the QCA) only if the QCA:
 - (i) is satisfied that the Proposed Standard Access Agreement is consistent with this Undertaking including the principles contained in Schedule E and Clause 5.2(n), as applicable;
 - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
 - (iii) has complied with Clause 5.2(d).
- (f) The QCA will consider a Proposed Standard Access Agreement given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a Proposed Standard Access Agreement under this Clause 5.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.

- (g) If the QCA approves a Proposed Standard Access Agreement submitted under Clause 5.2(a), or resubmitted under Clause 5.2(h)(ii):
- (i) the Standard Access Agreement will apply from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
 - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iii) QR Network must:
 - (A) publish a new version of Volume 2 of this Undertaking which includes that Standard Access Agreement; and
 - (B) advise Access Holders and Access Seekers, in respect of the specified Train Services to which the Standard Access Agreement applies, that a Standard Access Agreement has been approved.
- (h) If the QCA refuses to approve a Proposed Standard Access Agreement, the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the Proposed Standard Access Agreement should be amended; and
 - (ii) where the Proposed Standard Access Agreement has been submitted by QR Network in response to a notice given by the QCA under Clause 5.2(b) or in accordance with Clause 5.2(n), requiring QR Network to amend the Proposed Standard Access Agreement in the way the QCA considers appropriate and resubmit the amended Proposed Standard Access Agreement to the QCA within 30 days after the giving of that notice.
- (i) If QR Network complies with the notice given under Clause 5.2(h)(ii), the QCA may approve the resubmitted Proposed Standard Access Agreement in accordance with Clause 5.2(j).
- (j) The QCA may approve the resubmitted Proposed Standard Access Agreement only if the QCA:
- (i) is satisfied that it is in accordance with the notice under Clause 5.2(h);
 - (ii) is satisfied that it is consistent with this Undertaking including the principles contained in Schedule E and Clause 5.2(n), as applicable; and
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
- (k) A Proposed Standard Access Agreement submitted or resubmitted in accordance with this Clause 5.2 may be withdrawn at any time prior to a decision by the QCA approving it, by the party who developed the Proposed Standard Access Agreement, except that if the Proposed Standard Access Agreement relates to a notice given by the QCA under Clause 5.2(b) or is submitted in accordance with Clause 5.2(n), then that withdrawal will only take effect if approved by the QCA.
- (l) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a Proposed Standard Access Agreement, if:
- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and

- (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (m) If the QCA grants QR Network an extension of time under Clause 5.2(l), QR Network must submit, or resubmit, a Proposed Standard Access Agreement, (whichever is applicable) within the time specified by the QCA.
- (n) Within nine (9) months after the Approval Date, QR Network will submit to the QCA:
 - (i) a Proposed Standard Access Agreement which can be entered by users of rail haulage services to contract directly with QR Network for Access Rights without bearing liability and obligations for above rail operational issues, subject to utilisation of those Access Rights being conditional on one or more Railway Operators nominated by the user entering an operator agreement with QR Network of the type described in Clause 5.2(n)(ii);
 - (ii) a Proposed Standard Access Agreement which can be entered into by one or more Railway Operators, nominated by such users who are Access Seekers or Access Holders pursuant to a user agreement with QR Network of the type described in Clause 5.2(n)(i), under which they can utilise some or all of the user's Access Rights, subject to assuming liability and obligations in relation to above rail operational issues; and
 - (iii) if necessary, any consequential amendments to this Undertaking to give effect to the Proposed Standard Access Agreements submitted in accordance with Clauses 5.2(n)(i) and (ii) (including, for example, to provide flexibility for short term scheduling of Train Services) provided that any such amendments do not alter the scope and nature of this Undertaking.

5.3 ACCESS AGREEMENTS FOR NEW OR RENEWED RELATED OPERATOR TRAIN SERVICES

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

5.4 DISCLOSURE OF ACCESS AGREEMENTS

- (a) Upon request by the QCA, QR Network will provide to the QCA the Below Rail aspects of Access Agreements (including Access Charges).
- (b) Except as provided for in Clause 5.4(c), QR Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services.
- (c) Where a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request where it is satisfied that disclosure of the information would be

likely to damage that party's commercial activities and that disclosure would not be in the public interest.

- (d) For the purposes of Clauses 5.4(a) and (b), the Below Rail aspects of Access Agreements will not include:
- (i) the insurance provisions;
 - (ii) the contact details included in the Interface Coordination Plan;
 - (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
 - (iv) the IRMP; and
 - (v) the EIRMR.

PART 6: PRICING PRINCIPLES

6.1 PRICE DIFFERENTIATION

6.1.1 Application of pricing principles

In developing Access Charges and Reference Tariffs, QR Network:

- (a) will apply the pricing principles set out in this Part 6; and
- (b) to the extent of any conflict, will do so in the following order of precedence (from highest to lowest):
 - (i) Limits on Price Differentiation (Clause 6.1.2);
 - (ii) Pricing Limits (Clause 6.2);
 - (iii) Rail Infrastructure Utilisation (Clause 6.3.1); and
 - (iv) Revenue Adequacy (Clause 6.3.2).

6.1.2 Limits on Price Differentiation

- (a) QR Network will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders within a relevant market except as provided for in this Clause 6.1.2.
- (b) Where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker may only vary from the Reference Tariff:
 - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service; or
 - (ii) where the Access Charge is for a Train Service travelling from a mine on the corridor between Burngrove and Coppabella to the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone), to be less than the applicable Reference Tariff provided that:
 - (A) this is for the purpose of reducing QR Network's asset stranding risk on the corridor between Burngrove and Gladstone; and
 - (B) where Access Seekers are directly competing with each other for the purpose of operating the new or renewed Train Service, the Access Charge offered to each of those Access Seekers will only vary between the Access Seekers so as to reflect differences in the cost or risk to QR Network of providing Access as a result of differences in the type of Train Services proposed by the relevant Access Seeker.
- (c) Where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area may only vary from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, either:
 - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to other Train Services of that type; or
 - (ii) over time, to reflect:
 - (A) changes in the cost or risk to QR Network of providing Access;

- (B) changes in relevant Transport Service Payments, where such changes have the result that QR Network can no longer commercially provide Access to Train Services in that specified geographic area at the current Access Charges;
 - (C) Changes in Market Circumstances; or
 - (D) limitations on Available Capacity in accordance with Clause 6.3.1(b).
- (d) QR Network will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:
- (i) where a Reference Tariff is applicable for the Train Service type, to enable the Access Charge to be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time; or
 - (ii) where there is no Reference Tariff applicable for the Train Service type, to enable the Access Charge to be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area,
- provided that QR Network will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.
- (e) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Clause 6.1.2(d), if an Access Holder (“Aggrieved Access Holder”) can demonstrate to QR Network’s reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, QR Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Clause 6.1.2, and if QR Network is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Clause 6.1.2, then QR Network will alter the Access Charge for the Aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.

6.1.3 Establishment of Access Charges for Related Operators

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

6.2 PRICING LIMITS

6.2.1 Application of Pricing Limits

- (a) In determining Access Charges, QR Network will observe price limits in respect of the following elements:
 - (i) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between Train Services and determined in accordance with Clause 6.2.2; and

- (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services and determined in accordance with Clause 6.2.3.
- (b) Subject to the approval of the QCA, QR Network may:
- (i) establish a new Reference Tariff; or
 - (ii) vary an existing Reference Tariff in a way,
- that is inconsistent with Clause 6.2.2(a)(ii) or Clause 6.2.3(a)(ii), for the primary purpose of promoting efficient investment by either QR Network or another person in the relevant transport supply chain.

6.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply to establishing Access Charges for a Train Service such that, over the Evaluation Period, the relevant Access Charge for a Train Service:
- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that Train Service; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that Train Service,
- provided that, if that Train Service is the only Train Service using part of the Rail Infrastructure, compliance with these price limits will be assessed after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Clause 6.2.2(a)(ii), a Maximum Allowable Revenue will be established for the Train Service. The Maximum Allowable Revenue for a Train Service will reflect the Stand Alone Cost of providing Access for that Train Service over the Evaluation Period. The Maximum Allowable Revenue will be determined in accordance with Clause 6.2.4.

6.2.3 Price Limits on Train Service Combinations

- (a) In addition to Clause 6.2.2, price limits will apply in respect of Access Charges to be established for a Train Service such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Clause 6.2.3(c)) for any combination of Train Services incorporating a Train Service:
- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services; and
 - (ii) subject to Clause 6.2.1(b), will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services,
- provided that compliance with these price limits will be assessed after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Clause 6.2.3(a)(ii), a Maximum Allowable Revenue will be established for identified combinations of Train Services. The Maximum Allowable Revenue for a combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the

Evaluation Period. The Maximum Allowable Revenue for the combination of Train Services will be determined in accordance with Clause 6.2.4.

- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
- (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with the Reference Tariff proposed; and
 - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with current applicable Access Charges, except as provided in Clause 6.3.1(b)(ii).
- (d) If QR Network incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Clause 6.2.2(a)(i) or 6.2.3(a)(i), then provided that QR Network observes the limits on price differentiation set out in Clause 6.1.2 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR Network shall be deemed not to be in breach of Clause 6.2.2 or 6.2.3.

6.2.4 Definition of Maximum Allowable Revenue

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

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

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

where:

- AV_o is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Clause 6.2.4(c), at the commencement of the Evaluation Period;
- n is the number of years in the Evaluation Period;
- t is each year within the Evaluation Period from 1 to n;

- MAR_t is the Maximum Allowable Revenue for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;
- C_t is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- M_t is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- ROA is the allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA;
- T is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA; and
- AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Clause 6.2.4(c), at the end of the Evaluation Period.
- (b) In order to determine the amount of each of the variables set out in Clause 6.2.4(a), it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of projects that individually impact significantly on the traffic task. In such circumstances, expected increases in traffic task shall be incorporated into the forecast following service commitment.
- (c) The value of assets used in Clause 6.2.4(a) will be determined using:
- (i) where applicable, the value of the assets for the relevant area of the network contained in the Regulatory Asset Base, where the value of those assets is maintained in accordance with Schedule A; or
 - (ii) where there is no value for the assets for the relevant area of the network contained in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.

6.3 PRICING OBJECTIVES

6.3.1 Rail Infrastructure Utilisation

- (a) Access Holders serve a number of different markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR Network will be entitled to establish different Access Charges for Access Holders serving different markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.

- (b) Where Available Capacity is limited, and QR Network reasonably considers that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified:
- (i) QR Network may establish an Access Charge based on the highest Access Charge QR Network is likely to achieve from the current or likely Access Seekers (provided that the highest Access Charge is developed in accordance with the pricing principles set out in this Part 6), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure (referred to in this Clause 6.3.1(b) as the “Maximum Access Charge”). The Maximum Access Charge may then be quoted to all Access Seekers seeking Access in respect of the relevant Available Capacity, irrespective of a particular Access Seeker’s ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services; and
 - (ii) if QR Network:
 - (A) has received mutually exclusive Access Applications; and
 - (B) chooses to allocate Available Capacity to an Access Application where the Access Seeker will pay an Access Charge that is less than the Maximum Access Charge in preference to an Access Application where the Access Seeker would pay an Access Charge that is equal to the Maximum Access Charge and would otherwise be able to utilise that Available Capacity,then for the purpose of assessing a Maximum Allowable Revenue in accordance with Clause 6.2.4 for all Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge.

6.3.2 Revenue Adequacy

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

6.4 REFERENCE TARIFFS

6.4.1 Application of Reference Tariffs

- (a) It is recognised that there may be a large range between the price limits established in Clause 6.2 within which Access Charges for individual Train Services may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR Network may develop Reference Tariffs for certain types of Train Services.
- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR Network will give Access Holders the

opportunity to incorporate rate review provisions in Access Agreements in accordance with Clause 6.1.2(d).

- (d) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.
- (e) Where the QCA has approved a Reference Tariff submitted to it by QR Network, that Reference Tariff will be an acceptable means by which QR Network provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the Act, as provided for in accordance with section 101(4) of the Act.

6.4.2 Establishment of Reference Tariffs for new Reference Train Services

- (a) QR Network will submit a proposed Reference Tariff for a new Reference Train Service to the QCA:
 - (i) if required in accordance with Clause 6.4.2(b);
 - (ii) subject to Clause 6.4.2(d), within sixty (60) days after receiving a notice from the QCA in accordance with Clause 6.4.2(c); or
 - (iii) otherwise at QR Network's discretion.
- (b) Unless otherwise agreed with the QCA, where a new coal mine is developed and Train Services servicing that mine will utilise Rail Infrastructure in the Central Queensland Coal Region or Western System, the Train Services travelling between the mine (or, where the mine is or will be located on Private Infrastructure, the point where that Private Infrastructure connects to the Rail Infrastructure) and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with and subject to the requirements of Schedule F. (For the avoidance of doubt, where the mine is or will be located on Private Infrastructure, the loading point for the new Train Service will be used for the purpose of calculating the Private Incremental Costs for and describing that Train Service even though that loading point is located adjacent to Private Infrastructure).
- (c) The QCA may give QR Network a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of such a Reference Tariff.
- (d) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a proposed Reference Tariff, if:
 - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
 - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (e) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
 - (i) QR Network does not comply with a notice given by the QCA under Clause 6.4.2(c) or 6.4.2(j)(ii) for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
 - (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by QR Network in accordance with a notice given by the QCA under Clause 6.4.2(j)(ii).

- (f) Where QR Network submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
- (i) publish the proposed Reference Tariff;
 - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within the time.
- (g) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
 - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
 - (iii) has complied with Clause 6.4.2(f).
- (h) The QCA will consider a proposed Reference Tariff given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives that proposed Reference Tariff under this Clause 6.4.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (i) If the QCA approves a proposed Reference Tariff submitted under Clause 6.4.2(a), or resubmitted under Clause 6.4.2(j)(ii):
- (i) the proposed Reference Tariff will apply from the earlier of:
 - (A) the date of the QCA decision;
 - (B) where Clause 6.4.2(b) applies, the date of the first Train Service servicing the new coal mine; and
 - (C) where Clause 6.4.2(c) applies, the date when the relevant notice is given by the QCA,except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
 - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iii) QR Network must:
 - (A) publish a new version of Schedule F which includes the Reference Tariff; and
 - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (j) If the QCA refuses to approve a proposed Reference Tariff the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
 - (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under Clause 6.4.2(c), requiring QR Network to amend the proposed Reference Tariff in the way the QCA

- considers appropriate and resubmit the amended proposed Reference Tariff to the QCA within thirty (30) days after the giving of that notice.
- (k) If QR Network complies with the notice given under Clause 6.4.2(j)(ii), the QCA may approve the resubmitted proposed Reference Tariff in accordance with Clause 6.4.2(l).
 - (l) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
 - (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;
 - (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
 - (m) A proposed Reference Tariff may be withdrawn at any time by the party who developed the proposed Reference Tariff except that if the proposed Reference Tariff was required to be submitted in accordance with Clauses 6.4.2(a)(i) or (ii), then that withdrawal will only take effect if approved by the QCA.
 - (n) If the QCA grants QR Network an extension of time under Clause 6.4.2(d), QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.
 - (o) For the purposes of this Clause 6.4.2:
 - (i) a new Reference Tariff submitted by QR Network or developed by the QCA in accordance with this Clause 6.4.2 must include a review of System Allowable Revenue and System Forecast to the extent applicable to that new Reference Tariff; and
 - (ii) the QCA in approving a new Reference Tariff must also approve the corresponding variation of the applicable System Allowable Revenue and System Forecast.

6.4.3 Review of Reference Tariffs

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

6.4.4 Review of MCI

QR Network must submit to the QCA, together with its submission in accordance with Clause 3.2.6, Part B of Schedule F in respect of the Year ending on 30 June 2012, an analysis comparing the movements of the MCI since the Commencing Date with the movements in its actual maintenance costs in the Central Queensland Coal Region.

6.5 STRUCTURE OF ACCESS CHARGES AND ACCESS CONDITIONS

6.5.1 Structure of Access Charges

- (a) Where a Reference Tariff is applicable for a Train Service type, the structure of Access Charges for that Train Service type will be in accordance with the documentation for that Reference Tariff.

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

6.5.2 Access Conditions

- (a) QR Network may require an Access Seeker to agree to Access Conditions before being granted Access Rights, to the extent that this is reasonably required in order to mitigate QR Network's exposure to the financial risks associated with providing Access for the Access Seeker's proposed Train Service.
- (b) For the purposes of Clause 6.5.2(a), Access Conditions are deemed to be reasonably required:
- (i) where:
 - (A) QR Network is to develop Infrastructure Enhancements (for example, a new branch line or increasing the height of tunnels to accommodate taller than usual trains);
 - (B) either:
 - (1) there will be no more than one Customer using those Infrastructure Enhancements; or
 - (2) if the relevant Access Seeker is not reasonably expected to have any Customers, only Train Services operated for that Access Seeker will use those Infrastructure Enhancements; and
 - (C) those Infrastructure Enhancements would not be required had that Access Seeker not sought Access for its Train Services;
 - (ii) if QR Network requires those Access Conditions pursuant to Clause 6.5.2(e)(ii), provided that the sharing of responsibility between the First Party and the Subsequent Party in respect of the Access Conditions originally borne by the First Party is equitable; or
 - (iii) where QR Network cannot provide the Access sought unless it invests in a Significant Investment.

- (c) For the purposes of Clause 6.5.2(a) and subject to Clause 6.5.2(b), Access Conditions are deemed not to be reasonably required where QR Network is to construct Infrastructure Enhancements:
- (i) that are likely to be used by a number of Customers, Access Seekers or Access Holders such that QR Network's risk of being unable to recover the costs of the Infrastructure Enhancements if any one of those Customers, Access Seekers or Access Holders ceases to require all or part of the relevant Train Services is not material; or
 - (ii) that are for the purpose of increasing Capacity for the operation of Reference Train Services and that will form part of the Central Queensland Coal Region Mainline except where the Infrastructure Enhancement is part of a Significant Investment.
- (d) If an Access Condition results in QR Network earning revenue from the Access Seeker's Access that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), QR Network will:
- (i) negotiate an agreement separate from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) which will provide for payment of a rebate to that party or their nominee, where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the extent that this component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on any relevant Infrastructure Enhancements); or
 - (ii) exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Infrastructure Enhancements to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine the ongoing Access Charge.
- (e) Where the Access of an Access Holder ("First Party") is subject to an Access Condition in relation to the construction of Infrastructure Enhancements and Access is sought by an Access Seeker ("Subsequent Party") to operate Train Services using all or part of those Infrastructure Enhancements, QR Network will use reasonable endeavours to either:
- (i) negotiate an agreement with the First Party where a rebate paid in accordance with Clause 6.5.2(d)(i) includes the amount provided in the Access Charge paid by the Subsequent Party for the cost component to the extent that the component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on the relevant Infrastructure Enhancements); or
 - (ii) renegotiate the terms of the First Party's Access Conditions and impose Access Conditions on the Subsequent Party, so that the First Party and the Subsequent Party share the responsibility that was originally borne by the First Party.
- (f) For the purposes of determining for this Clause 6.5.2 whether another Customer or a Subsequent Party uses (or will use) an Infrastructure Enhancement, the Customer or Subsequent Party is deemed not to do so unless the particular characteristics of the Train Service for the Customer or the Subsequent Party's Train Service would also have resulted in the Infrastructure Enhancement being required for Access to be provided in relation to the Customer or to the Subsequent Party. (For example, if QR Network increased

the height of tunnels to provide Access to an Access Seeker using taller than usual trains, Train Services for Subsequent Parties operating through those tunnels will not use that Infrastructure Enhancement unless they use trains of a height that would also have required the height of the tunnels to be increased.)

6.5.3 Access Conditions Register

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

PART 7: CAPACITY MANAGEMENT

7.1 NETWORK MANAGEMENT PRINCIPLES

- (a) QR Network will:
- (i) perform scheduling, Train Control and associated services; and
 - (ii) provide capacity related information to Access Holders, in accordance with the Network Management Principles.
- (b) When developing the initial System Rules for an Individual Coal System, QR Network will consult with Access Holders and Access Seekers whose Train Services will be affected by the System Rules, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules.
- (c) If, after the consultation referred to in Clause 7.1(b), QR Network decides to make System Rules for an Individual Coal System that has none, QR Network must:
- (i) prepare the proposed System Rules for that Individual Coal System (“Draft System Rules”) having regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements; and
 - (ii) submit the Draft System Rules to the QCA.
- (d) Clauses 5.2(c) to 5.2(m) apply to Draft System Rules in the same way as if a reference to a Proposed Standard Access Agreement were a reference to the Draft System Rules (with all references to Clause 5.2(a) being deemed to be references to Clause 7.1(c)(ii)).
- (e) Without limitation to Clauses 7.1(b) to (d) and Clause 7.1(f), within nine (9) months after the Approval Date, QR Network will submit to the QCA Draft System Rules for the Goonyella coal system.
- (f) Notwithstanding Clauses 7.1(b) to (e) (including any applicable provisions in Clauses 5.2(c) to 5.2(m)), if QR Network is not reasonably satisfied that the amount of any compensation (if any) that might be payable by QR Network to an Access Holder, in accordance with that Access Holder’s Access Agreement, in respect of the making of any Draft System Rules will be included in the calculation of Reference Tariffs and recoverable by QR Network through variations to Reference Tariffs and Access Charges, then QR Network may (in its absolute discretion and without any obligation to consider the interests of any person other than QR Network and notwithstanding the resolution of any Dispute in connection with those Draft System Rules):
- (i) vary or refuse to proceed with the making of all or part of the Draft System Rules (including withdrawing all or part of the Draft System Rules from the process referred to in Clause 7.1(d)); or
 - (ii) if the relevant System Rules have already been made, vary, amend, replace or remove those System Rules.

7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING

- (a) All coal carrying Train Services operating in the Central Queensland Coal Region are required to be a Cyclic Traffic for the purposes of scheduling in accordance with the Network Management Principles.

- (b) Each Train Service Entitlement will have specified scheduling constraints. Scheduling constraints are likely to vary significantly between different types of Train Services and may include, without limitation, the following:
- (i) the specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
 - (ii) the maximum time period between Train Services;
 - (iii) the minimum time period between Train Services;
 - (iv) the average Below Rail Transit Time;
 - (v) the agreed threshold for on-time running of the Train Services;
 - (vi) the regularity of timetable reviews and the applicable review process; and
 - (vii) the allowable modifications of timetable (for example, cancellation or deferral of services).
- (c) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR Network and the Access Holder will then be required to adhere to except to the extent that the timetable is varied in accordance with the Network Management Principles.
- (d) QR Network will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, ITP and DTP, to optimise the use of the Rail Infrastructure as circumstances change from time to time. QR Network will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.

7.3 CAPACITY ALLOCATION

7.3.1 Allocation of Available Capacity

Subject to Clause 7.3.3, Access Rights will be allocated to the first Access Seeker with whom QR Network can negotiate and execute an acceptable Access Agreement.

7.3.2 Competing Applications

In respect of Competing Applications, QR Network will:

- (a) commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an Access Agreement consistent with the principles outlined in Schedule E; and
- (b) complete negotiations and execute an Access Agreement with the Access Seeker who demonstrates to QR Network's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to QR Network's execution of the Access Agreement with that Access Seeker,

except where an Access Seeker ("Customer Applicant") is the proposed Customer in respect of the Competing Application of one or more of the other Access Seekers (each an "Operator Applicant"), in which case:

- (c) the Customer Applicant's Access Application is prioritised ahead of each Operator Applicant's Access Application;
- (d) QR Network will only negotiate with the Customer Applicant;
- (e) QR Network's obligations in relation to each Operator Applicant are suspended until negotiations with the Customer Applicant have ceased (subject to Clause 7.3.2(f)); and
- (f) if QR Network ceases negotiations with the Customer Applicant without executing an Access Agreement with the Customer Applicant, then:
 - (i) the Customer Applicant may nominate which Operator Applicant (if there is more than one) that QR Network should negotiate with; and
 - (ii) if so, QR Network will only negotiate with the nominated Operator Applicant and QR Network's obligations in relation to each other Operator Applicant are suspended until negotiations with the nominated Operator Applicant have ceased.

7.3.3 Requests for mutually exclusive Access Rights

- (a) If, at any time:
 - (i) QR Network has received Access Applications in respect of mutually exclusive Access Rights¹; and
 - (ii) QR Network has received notification from Access Seekers, in accordance with Clause 4.4, of the intention to progress two or more of those Access Applications on the basis of the arrangements outlined in the relevant Indicative Access Proposal,then Clause 7.3.4 applies to those Access Applications except where all of those Access Applications are Competing Applications.
- (b) QR Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is no longer an Access Application in respect of mutually exclusive Access Rights.
- (c) This Clause 7.3.3 does not apply to an Access Application:
 - (i) by a Transferee to the extent that the Access Application relates to Nominated Access Rights; or
 - (ii) if Clause 7.3.7 applies, by an Access Seeker in respect of Transferred Access Rights.

7.3.4 Formation of a queue

- (a) If, in accordance with Clause 7.3.3(a), this Clause 7.3.4 applies in respect of Access Applications for mutually exclusive Access Rights, QR Network will form a queue to determine which Access Seeker will be allocated those Access Rights. The order of that queue will initially be determined based upon the time when QR Network received each Access Application such that, for example, the Access Application received by QR Network at the earliest time is first in

¹ Access Applications received by QR Network are for mutually exclusive Access Rights where, if QR Network granted Access to one or more of the Access Applications, it would not then be able to grant Access to the other Access Applications. That is, the relevant Access Seekers are effectively competing for Access where there is insufficient Capacity to satisfy all of the Access Applications. For example, Access Seekers seeking Access to the last remaining Train Path on particular Rail Infrastructure or seeking Access to Capacity to be created by Infrastructure Enhancements but where the total Capacity sought exceeds that to be provided by the Infrastructure Enhancements.

the queue and the Access Application received next by QR Network is second in the queue, and so on.

- (b) Access Applications to be included in a queue that are Competing Applications will be collectively positioned in the queue in accordance with Clause 7.3.4(a) as though they were a single application received by QR Network, for the purposes of the queue, at the time the earliest of the Competing Applications was received by QR Network.
- (c) Once formed, QR Network may change the order of a queue where:
- (i) subject to Clause 4.5.1(f), the Negotiation Period for an Access Seeker has ceased in accordance with Clause 4.5.1(e);
 - (ii) QR Network reasonably considers that an Access Seeker has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise Access at the level sought, taking into account in both instances and without limitation, the factors listed in Clauses 4.6(c)(i) to (iii);
 - (iii) subject to Clause 7.3.4(d), QR Network reasonably considers that its commercial performance is better served by allocating Access to an Access Seeker who is in the queue but not first in the queue;
 - (iv) QR Network receives a notification of intent in accordance with Clause 4.4 in relation to a further Access Application which is added to the queue; or
 - (v) QR Network has notified relevant Access Holders in accordance with Clause 11.3(b)(ii) of an Access Rights Reduction.
- (d) Without limiting Clause 7.3.4(c)(iii), QR Network may reasonably consider that its commercial performance is better served by allocating Access to an Access Seeker who is in the queue but not first in the queue:
- (i) if:
 - (A) that Access Seeker's Access Application ("Higher NPV Application") has a NPV Value that is 2% or more higher than the NPV Value of an earlier Access Application ("Lower NPV Application") in that queue; and
 - (B) no more than one of the Higher NPV Application and the Lower NPV Application is an Access Application for coal carrying Train Services operating in the Central Queensland Coal Region ("CQCR Application");
 - (ii) if:
 - (A) that Access Seeker has a CQCR Application seeking Access Rights for a term of at least ten (10) years and is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement; and
 - (B) there are one or more other CQCR Applications with a higher position in the queue seeking Access Rights for a term of less than ten (10) years (excluding any Renewal Application for an existing mine with a proposed term representing a reasonable estimate of the remaining life that existing mine) ("Earlier CQCR Applications"); or
 - (iii) if that Access Seeker has an Access Application seeking Access Rights for a term of less than ten (10) years but that term is longer than the term

sought by one or more of the other Access Applications higher in the queue (“Shorter Term Applications”),

provided that:

- (iv) if Clause 7.3.4(d)(i) applies, QR Network moves the Higher NPV Application so that it is above the Lower NPV Application in the queue;
 - (v) if Clause 7.3.4(d)(ii) applies, QR Network moves that Access Seeker’s CQCR Application so that it is above the Earlier CQCR Application in the queue; or
 - (vi) if Clause 7.3.4(d)(iii) applies, QR Network moves that Access Seeker’s Access Application so that it is above the Shorter Term Application in the queue.
- (e) If QR Network, in determining the NPV Value for an Access Application for the purposes of Clause 7.3.4(d), took into account a contribution from other sources of revenue that would reduce or be eliminated as a consequence of QR Network not providing Access to the particular Train Service, QR Network must, on request, provide an Access Seeker adversely affected by that assessment with a copy of the reasons for the assessment.
- (f) Without limiting Clause 7.3.4(c)(iv), if the further Access Application is a Renewal Application, then QR Network will initially place that Renewal Application ahead of all other Access Applications in the queue that are not Renewal Applications.
- (g) If Clause 7.3.4(c)(v) applies, QR Network:
- (i) will only change the order of the queue to give the Conditional Access Holders the highest position in the queue after any Renewal Applications; and
 - (ii) will treat each of those Conditional Access Holders as having the same position in the queue for the purposes of negotiating and allocating Available Capacity.
- (h) QR Network will notify each Access Seeker who has an Access Application in a queue of the initial position of their Access Application in the queue and thereafter of any change to that position in the queue and the reason/s for that change.
- (i) An Access Seeker may only assign its position in a queue to another party where:
- (i) that party is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator to provide the Train Services and wishes that operator to hold the Access Rights; or
 - (ii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.
- (j) If a Dispute concerning positions in a queue or any other aspect of QR Network’s management of a queue is referred to the QCA for resolution under Clause 10.1.4, QR Network will not implement any change to any Access Seeker’s position in that queue unless and until that Dispute is resolved in favour of such a change in position.

7.3.5 Capacity Resumption

- (a) Where an Access Holder (or its Nominated Railway Operator(s)), for any reason other than the occurrence of a Force Majeure Event or the failure of QR Network to make the Access Holder's Access Rights available, does not:
- (i) for Cyclic Traffic, operate, over any four (4) consecutive Quarters, at least ninety percentage points (90%) of the Train Services allowed under the Access Holder's Train Service Entitlement for that period; or
 - (ii) for Timetabled Traffic, operate a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists,
- QR Network may, within forty (40) Business Days, give that Access Holder written notice ("Resumption Notice") of:
- (iii) that underutilisation;
 - (iv) that QR Network is considering reducing the Access Holder's Access Rights from a nominated date ("Date of Resumption") to the extent of that underutilisation; and
 - (v) requesting the Access Holder to demonstrate a sustained requirement for the Access Rights that have not been utilised.
- (b) If a Resumption Notice is given to an Access Holder, QR Network may reduce that Access Holder's Access Rights from the Date of Resumption by:
- (i) for Cyclic Traffic, reducing the Access Holder's Access Rights to the extent that the Access Holder's Train Service Entitlement was underutilised; or
 - (ii) for Timetabled Traffic, deleting the Scheduled Train Path referred to in Clause 7.3.5(a)(ii) from the Access Holder's Train Service Entitlement,
- provided that:
- (iii) the Access Holder has not demonstrated, to QR Network's reasonable satisfaction, a sustained requirement for the Access Rights that were not utilised; and
 - (iv) QR Network is satisfied that it can demonstrate that it has a reasonable expectation of:
 - (A) a sustained alternative demand for the Capacity used by the Access Rights in question; or
 - (B) receiving a commercial benefit sufficiently material to justify the resumption of the Capacity used by the Access Rights in question.
- (c) QR Network may withdraw a Resumption Notice prior to the later of the Date of Resumption and fourteen (14) days after the determination of a Dispute in relation to the Resumption Notice in accordance with Clause 10.1.
- (d) If QR Network resumes an Access Holder's Access Rights in accordance with this Clause 7.3.5, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement will be varied accordingly.

- (e) If there is a Dispute in connection with a decision by QR Network to resume an Access Holder's Access Rights in accordance with this Clause 7.3.5:
 - (i) that Dispute may only be referred to the dispute resolution process contained in the relevant Access Agreement by that Access Holder if it does so within twenty-eight (28) days after receiving the relevant Resumption Notice; and
 - (ii) if so, QR Network will not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.

7.3.6 Capacity Relinquishment and Transfer

- (a) Unless otherwise specified in the Access Holder's Access Agreement, an Access Holder may relinquish Access Rights (whether with or without a transfer of any of those Access Rights) in accordance with this Clause 7.3.6.
- (b) An Access Holder who intends to relinquish Access Rights must give QR Network reasonable notice of its intention to do so ("Notice of Intention to Relinquish"):
 - (i) specifying the Access Rights to be relinquished ("Nominated Access Rights");
 - (ii) subject to Clause 7.3.6(c), the date ("Relinquishment Date") on which and the period for which the Nominated Access Rights are to be relinquished; and
 - (iii) if the Access Holder wishes to affect a transfer of all or part of the Nominated Access Rights to an Access Seeker ("Transferee"), the identity of the Transferee and the Access Rights proposed to be transferred.
- (c) The period from the giving of the Notice of Intention to Relinquish until the Relinquishment Date must not:
 - (i) exceed two (2) years, where:
 - (A) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
 - (B) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region; or
 - (ii) exceed six (6) months, where Clause 7.3.6(c)(i) does not apply.
- (d) An Access Holder who wishes to relinquish or transfer Nominated Access Rights must pay a Relinquishment Fee to QR Network. The relinquishment or transfer of any Access Rights in accordance with this Clause 7.3.6 is subject to and conditional on the Access Holder's payment of the Relinquishment Fee.
- (e) The Access Holder immediately prior to paying the Relinquishment Fee (but not less than 5 Business Days prior to the Relinquishment Date), must request QR Network to calculate the Relinquishment Fee and, if so requested, QR Network will, subject to Clause 7.3.6(f), notify the Access Holder as soon as reasonably practical of the Relinquishment Fee and how it was calculated.
- (f) If the calculation of the Relinquishment Fee in accordance with this Undertaking changes during the period from the time QR Network notifies the

Access Holder under Clause 7.3.6(e) to the Access Holder seeking to pay the Relinquishment Fee, then QR Network:

- (i) may refuse to accept that payment; and
 - (ii) must advise the Access Holder of the correct Relinquishment Fee and the circumstances giving rise to the change in the calculation.
- (g) The relinquishment or transfer of the Nominated Access Rights is subject to the Access Holder's payment of the Relinquishment Fee to QR Network.
- (h) The terms of the applicable Access Agreement will continue to apply in respect of the Nominated Access Rights until the later of:
- (i) the Access Holder paying the Relinquishment Fee to QR Network; and
 - (ii) the Relinquishment Date.
- (i) Where QR Network identifies an opportunity for it to enter into an Access Agreement with an Access Seeker that would result in a lessening of a Relinquishment Fee, QR Network will not unreasonably delay the process for negotiating and executing an Access Agreement with that Access Seeker.
- (j) To the extent that a Notice of Intention to Relinquish identifies a Transferee, QR Network will transfer the applicable Nominated Access Rights provided that:
- (i) the Access Rights sought by the Transferee are for the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic) as the Nominated Access Rights;
 - (ii) corresponding Access Rights are included in a new or varied Access Agreement with the Transferee;
 - (iii) QR Network's obligation to provide Access, for all or part of the period specified in Clause 7.3.6(b)(ii), under that new or varied Access Agreement in respect of the relevant Access Rights commences on and from the later of the Access Holder paying the Relinquishment Fee to QR Network and the Relinquishment Date;
 - (iv) QR Network is satisfied that the new or varied Access Agreement has been developed in accordance with the requirements of this Undertaking;
 - (v) the Access Holder complies with Clauses 7.3.6(b) to (g); and
 - (vi) the nature and extent of Available Capacity available to existing Access Seekers and QR Network's ability to satisfy obligations to existing Access Holders are not adversely affected.
- (k) Subject to Clauses 7.3.6(l) and (m), a Relinquishment Fee is the amount calculated as follows:
- (i) for coal carrying Train Services included in:
 - (A) Access Agreements in place on the day immediately prior to 30 June 2006; or
 - (B) New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Clause 7.3.7(a)(i) but only to the extent that the terms of the Old Access Agreement apply in respect of the relevant Access Rights pursuant to Clause 7.3.7(a)(ii),
- ("Pre-30 June 2006 Coal Access Agreements")

the amount that would be payable over the following two (2) year period if the Access Holder were to pay 40% of the Access Charges that would be payable if it operated the relevant Train Services less the product of that amount and the Reduction Factor;

- (ii) in respect of an Access Agreement, other than Pre-30 June 2006 Coal Access Agreements, that includes an obligation to pay take or pay if an Access Holder does not operate Train Services, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement if the Nominated Access Rights were not relinquished but the Access Holder did not operate the relevant Train Services less the product of that amount and:
 - (A) if the Nominated Access Rights to be relinquished:
 - (1) are for coal carrying Train Services operating in the Central Queensland Coal Region under an Access Agreement executed on or after 30 June 2006; and
 - (2) are not to be transferred to a Transferee,
the greater of the Reduction Factor and 0.5; or
 - (B) if Clause 7.3.6(k)(ii)(A) does not apply, the Reduction Factor; and
 - (iii) in respect of an Access Agreement to which neither Clauses 7.3.6(k)(i) nor (ii) apply, the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as a result of the operation of the relevant Train Services and payment of the applicable Access Charge less the product of that amount and the Reduction Factor.
- (l) If:
- (i) a calculation in accordance with Clauses 7.3.6(k)(i), (ii) or (iii) results in an amount that is less than zero (0); or
 - (ii) the Nominated Access Rights to be relinquished:
 - (1) are for coal carrying Train Services operating in the Central Queensland Coal Region; and
 - (2) are to be transferred to a Transferee for a period of less than two (2) years and only used by that Transferee for coal carrying Train Services operating in the Central Queensland Coal Region,
- then the Relinquishment Fee is deemed to be zero (0).
- (m) For the purposes of Clause 7.3.6(k)(ii), if:
- (i) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services;
 - (ii) the Transferee's or new Access Holder's Train Services that will use the Nominated Access Rights will operate predominantly in and have a Nominated Unloading Facility in, the same Individual Coal System as the Train Services of the existing Access Holder that used those Nominated Access Rights; and
 - (iii) a System Premium applies in relation to the Nominated Access Rights,

then the amount under Clause 7.3.6(k)(ii) must be further adjusted by QR Network to account for any consequential increase in the System Premium that would otherwise result in QR Network over recovering amounts from the Access Holder due to the application of the System Premium and that amount, as so adjusted, will be the Relinquishment Fee.

- (n) For the purposes of Clause 7.3.6(k), a Reduction Factor is the amount calculated as follows:
- (i) if:
- (A) a new Access Holder or a Transferee has executed an Access Agreement (or a variation to an existing Access Agreement) in respect of Access Rights that QR Network could not have provided without using the whole or part of the Nominated Access Rights; and
 - (B) QR Network's provision of the Access Rights under that Access Agreement commenced, for a new Access Holder:
 - (1) who is not a Transferee, after QR Network was given the Notice of Intention to Relinquish, but prior to the payment to it of the Relinquishment Fee; or
 - (2) who is a Transferee, on and from the Relinquishment Date,

then:

- (C) for the purposes of Clause 7.3.6(k)(ii), if:
- (1) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services; and
 - (2) the Transferee's or new Access Holder's Train Services that will use the Nominated Access Rights will operate predominantly in and have a Nominated Unloading Facility in, the same Individual Coal System as the Train Services of the existing Access Holder that used those Nominated Access Rights,

an amount calculated as follows:

$$TOP_B / TOP_A$$

where:

TOP_A is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement ("Remainder of the Original Term") if the Nominated Access Rights were not relinquished but the existing Access Holder did not operate the relevant Train Services; and

TOP_B is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would be payable in accordance with the new Access Holder's or Transferee's Access Agreement (in relation to the whole or part of the Nominated Access Rights) if the new Access Holder's or Transferee's Train Services using the Nominated Access Rights were not operated by or for the new Access Holder or Transferee

during the same period as the Remainder of the Original Term; or

- (D) if Clause 7.3.6(n)(i)(C) does not apply, an amount calculated as follows:

A / B

where:

A is the annual train kilometres over the Common Corridor attributable to the new Access Holder's or Transferee's Train Services in respect of which Access Rights could not have been provided without using the whole or part of the Nominated Access Rights; and

B is the annual train kilometres over the Rail Infrastructure attributable to the Train Services operated under the Nominated Access Rights,

provided that to the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to that relative contribution; and

- (ii) if Clause 7.3.6(n)(i) does not apply, zero (0).
- (o) For the purposes of Clause 7.3.6(k)(ii) and Clause 7.3.6(n)(i)(C), if the Nominated Access Rights are for Train Services in the Central Queensland Coal Region, then:
- (i) QR Network must calculate any relevant take or pay amount in accordance with the relevant Access Agreement; and
- (ii) if that calculation requires information about future events, QR Network may make assumptions about those future events – for example, assumptions about Reference Train Services or Train Services – for the purpose of calculating the maximum amount of take of pay that could potentially be payable.

But QR Network will not make any assumptions about the amount of future Reference Tariffs (except in relation to the escalation of Reference Tariffs in accordance with this Undertaking or the relevant Access Agreement by reference to an index including, for example, CPI).

7.3.7 Customer Initiated Capacity Transfer

- (a) Subject to Clause 7.3.7(b), where an Access Holder has a Customer or Customers, who has or have provided written notification to QR Network requesting the transfer to a specified Access Seeker of some or all of the Access Holder's Access Rights for which they are the Customer or Customers, then:
- (i) QR Network will reduce the Access Rights of the Access Holder in accordance with that request, provided that:
- (A) the equivalent Access Rights ("Transferred Access Rights") are included in a new or varied Access Agreement with that specified Access Seeker ("New Access Agreement"); and

- (B) that New Access Agreement commences at the same time as the Access Holder's Access Agreement ("Old Access Agreement") is varied or terminated (whichever is applicable); and
- (ii) the terms of the Old Access Agreement relating to Take or Pay and Relinquishment Fees will apply to the New Access Agreement (unless it is a Capacity Access Agreement):
 - (A) to the extent that the New Access Agreement relates to the Transferred Access Rights; and
 - (B) until the date that the Transferred Access Rights would have terminated under the Old Access Agreement.

For the purpose of this Clause 7.3.7(a), Access Rights are deemed to be equivalent if those Access Rights relate to Train Services with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic), the same origin and destination and transporting the same net tonnage of the same commodity.

- (b) The transfer of Access Rights in accordance with Clause 7.3.7(a) will only be permitted to proceed if:
 - (i) the relevant Customer or Customers has or have warranted to QR Network in writing that they either are the sole end Customer or collectively constitute one hundred percentage points (100%) of the Customers, in respect of any Train Services operated by the Access Holder pursuant to the Access Rights that they are requesting QR Network to transfer from the Access Holder;
 - (ii) where there is more than one Customer in respect of the Train Services operated by the Access Holder pursuant to those Access Rights, all the Customers warrant to QR Network in writing that they have agreed to request QR Network to transfer those Access Rights from the Access Holder;
 - (iii) the Access Holder's rail haulage agreement or rail haulage agreements with its Customer or Customers:
 - (A) was or were signed after 1 March 2002; or
 - (B) where a relevant rail haulage agreement was signed on or before 1 March 2002 and the particulars of that agreement (such as the parties and term) were notified to the QCA prior to 30 June 2006, the agreement has been varied after 1 March 2002 to extend the term of the agreement and the period that is the extension of that term has commenced;
 - (iv) QR Network is satisfied that:
 - (A) the New Access Agreement has been developed in accordance with the requirements of this Undertaking;
 - (B) the Access Seeker to be granted the Transferred Access Rights has agreed in writing and on terms and conditions satisfactory to QR Network to pay all Adjustment Charges ("Transferred Adjustment Charges") that, but for the transfer in accordance with this Clause 7.3.7, are or would have become payable by the existing Access Holder in relation to Train Services operated prior to the commencement of the New Access Agreement (whether or not those Adjustment Charges are approved by the QCA before or after the commencement of the New Access Agreement); and

- (C) if the Transferred Access Rights are not for coal carrying Train Services, granting of the Transferred Access Rights to the Access Seeker represents the highest value use of those Transferred Access Rights that is likely to be attainable;
 - (v) the Customer or Customers has or have provided QR Network with a legally enforceable written undertaking (including security, if required by QR Network) indemnifying QR Network for all costs, expenses and losses incurred by QR Network in connection with:
 - (A) the transfer (including any costs arising in respect of any Claim by the Access Holder); and
 - (B) any failure of the Access Seeker, who is to be granted the Transferred Access Rights, to pay all Transferred Adjustment Charges when due; and
 - (vi) the Customer or Customers has or have paid to QR Network, where applicable, the Relinquishment Fee (calculated as though the relevant Access Holder were relinquishing those Access Rights and transferring those Access Rights to the specified Access Seeker in accordance with Clause 7.3.6);
 - (vii) where information is provided by the Access Holder pursuant to Clause 7.3.7(c), the information provided, in QR Network's reasonable opinion, does not show that the transfer of the Access Rights would not comply with Clauses 7.3.7(a) and (b); and
 - (viii) where a Dispute has been referred to the QCA in accordance with Clause 7.3.7(d), the Dispute has been resolved in favour of the transfer of Access Rights being permitted.
- (c) An Access Holder may, within fifteen (15) Business Days of being given a notice under Clause 7.3.7(a), notify QR Network in writing of any reasons and supporting evidence as to why Clauses 7.3.7(b)(i), (ii) or (iii) are not satisfied.
- (d) Where:
- (i) a transfer of Access Rights is initiated in accordance with Clause 7.3.7(a); and
 - (ii) a Dispute arises between the Customer or Customers initiating the transfer and the Access Holder as to whether Clauses 7.3.7(b)(i), (ii) and (iii) are satisfied and therefore whether the transfer should be permitted,
- then:
- (iii) either the Customer or Customers or the Access Holder may refer the Dispute to the QCA for the determination in accordance with Clause 10.1.4; and
 - (iv) QR Network will:
 - (A) subject to paragraph (C) below, not be a party to that Dispute resolution process;
 - (B) abide by the QCA's determination of the Dispute; and
 - (C) participate in that Dispute resolution process, if the QCA considers that such participation is necessary to resolve the Dispute, provided that QR Network's costs will be borne by the Customer or Customers initiating the transfer and the Access Holder in the proportions determined by the QCA.

7.4 COMMITTED CAPACITY

- (a) An Access Holder does not have Access Rights beyond the term of its Access Agreement.
- (b) Where an Access Seeker requests Access which will:
 - (i) commence within two (2) years of the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services operating in the Central Queensland Coal Region); and
 - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

QR Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register established in accordance with Clause 7.4(c) as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give such notification is not a default under this Undertaking and does not invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

- (c) QR Network will maintain a Committed Capacity Register that identifies:
 - (i) a party who has notified QR Network of an interest in the Committed Capacity or Access Rights (other than Committed Capacity or an Access Right in respect of coal carrying Train Services in the Central Queensland Coal Region);
 - (ii) the Committed Capacity or Access Rights in which they have an interest; and
 - (iii) the nature of that interest.

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

- (d) QR Network will notify an Access Holder for coal carrying Train Services operating solely in the Central Queensland Coal Region or Western System (and the Customer of that Access Holder (if any)) no more than three (3) years and no less than two (2) years prior to the expiration of an Access Right of that Access Holder that, if:
 - (i) the Access Holder or the Customer (if any) wishes to seek to retain the applicable Access Right beyond the expiry date for that Access Right; or
 - (ii) the Customer wishes another Railway Operator to acquire the applicable Access Right on and from the expiry date for the Access Right,

then the Access Holder, the Customer or the relevant Railway Operator must submit an Access Application to QR Network.

7.5 CAPACITY EXPANSION

7.5.1 Extensions

- (a) QR Network may undertake an Extension, if QR Network is satisfied that it is commercially justified to do so and, if so, QR Network will own and operate that Extension.

- (b) Except where QR Network has agreed to undertake an Extension, QR Network must permit the Extension by:
- (i) providing reasonable access to land for the relevant Access Seeker (or that Access Seeker's Customer – if any) who is proposing to construct the Extension to the extent that access to the land is incidental to and essential for construction of the Extension provided that:
 - (A) the land is owned by QR Network, or QR Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
 - (B) the access is not inconsistent with the terms of any lease, licence or other arrangement to which QR Network is a party in respect of the land; and
 - (ii) subject to Clause 8.3, entering into a Rail Connection Agreement with the relevant Access Seeker or Customer, as applicable, in relation to the relevant Extension.

7.5.2 Incremental investments

- (a) QR Network will undertake all Minor Expansions and Major Expansions where the capital expenditure is reasonably expected to be less than \$300 million, so as to provide sufficient Available Capacity to provide Access Rights sought by an Access Seeker provided that Expansion is in the Central Queensland Coal Region.
- (b) QR Network will undertake Expansions to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker, if:
- (i) neither Clause 7.5.2(a) nor Clause 7.5.3 applies to the Expansion; and
 - (ii) QR Network reasonably considers that its expected net additional revenue less any expected costs associated with the Expansion, is sufficient to commercially justify QR Network undertaking the Expansion (including QR Network's incurring of those costs and exposure to financial and other risks),
- provided that if QR Network decides not to undertake an Expansion in accordance with Clause 7.5.2(b), QR Network:
- (iii) will notify the Access Seeker with the reasons for its decision; and
 - (iv) Clause 7.5.4 will apply in relation to that Expansion.

7.5.3 Significant Investments

- (a) The provisions of this Clause 7.5.3 shall apply to Major Expansions for which the capital expenditure is reasonably expected to be equal to or exceed \$300 million in the Central Queensland Coal Region ("Significant Investments").
- (b) As soon as reasonably practicable after QR Network has identified (or the owner or operator of either an expansion of an unloading facility or a new unloading facility has identified and informed QR Network) that a Significant Investment is required to provide sufficient Available Capacity to provide Access Rights for one or more persons, QR Network will call for expressions of interest from persons ("Applicants"):
- (i) interested in being granted Access Rights in respect of the Available Capacity that is anticipated to arise from the Significant Investment; and

- (ii) who, if required by QR Network, are prepared to fund or underwrite the prefeasibility study costs in connection with the Significant Investment.
- (c) QR Network will commence a prefeasibility study for the Significant Investment, after the Applicants have been identified and those Applicants have, if required by QR Network, agreed to fund or underwrite the costs of the prefeasibility study.
- (d) During the prefeasibility study phase, QR Network will issue the Applicants with a request for proposals in relation to the Available Capacity that is anticipated to arise from the Significant Investment including information in relation to:
 - (i) the anticipated costs and project timetable for the Significant Investment; and
 - (ii) whether QR Network is prepared to fund the Significant Investment and, if so:
 - (A) any Access Conditions being sought by QR Network in relation to the Significant Investment;
 - (B) the aggregate minimum level of participation by Applicants necessary for QR Network to proceed with the Significant Investment on the basis of the Access Conditions (if any) (“Participation Threshold”); and
 - (C) the period during which QR Network and the Applicants may discuss and negotiate the Access Conditions and any other relevant matters (“Conditions Negotiation Period”) provided that period must be a period that is reasonable having regard to:
 - (1) the scale and nature of the Significant Investment and the complexity of the negotiations (including the matters to be negotiated) between QR Network and the Applicants;
 - (2) the desirability of avoiding unnecessary delays in the negotiation process; and
 - (3) the period from the end of the Conditions Negotiation Period to the scheduled commencement of construction for the Significant Investment needing to be sufficient so as to not unreasonably prevent the Applicants from funding (including procuring funding for) the Significant Investment should Clause 7.5.4 apply.
- (e) If pursuant to Clause 7.5.3(d)(ii) QR Network indicates that it is not prepared to fund the Significant Investment, then Clause 7.5.4 applies and this Clause 7.5.3 ceases to apply.
- (f) If, prior to end of the Conditions Negotiation Period, the Applicants, which in aggregate exceed the Participation Threshold, give to QR Network a notice that the project will proceed on the basis of funding from the Applicants or other Access Seekers for the Available Capacity arising from the Significant Investment (such a notice being an “User Funding Notice”), then Clause 7.5.4 applies and this Clause 7.5.3 ceases to apply.

- (g) If at the end of the Conditions Negotiation Period, the Applicants have not given notice pursuant to Clause 7.5.3(f) or QR Network and the Applicants have not concluded negotiation of the Access Conditions and any other relevant matters pursuant to Clause 7.5.3(d)(ii)(C):
- (i) QR Network and the Applicants may agree to extend the Conditions Negotiation Period; and, if they do not agree to such extension,
 - (ii) Clause 7.5.4 shall apply.
- (h) Available Capacity arising from a Significant Investment will only be allocated to, and QR Network will only enter into an Access Agreement with, an Applicant if that Applicant:
- (i) has agreed to the Access Conditions (if any) sought by QR Network in relation to the Significant Investment; and
 - (ii) provides evidence to QR Network that the Applicant has secured or is reasonably likely to secure the rights required to leave the QR Network rail network in order to unload at its destination (for instance, port capacity or capacity to unload at a power station) that are necessary to use the Access Rights arising from the Significant Investment that the Applicant is interested in being allocated.

7.5.4 User Funded Expansions

- (a) If this Clause 7.5.4 applies to:
- (i) an Expansion, in accordance with Clause 7.5.2(b)(iv); or
 - (ii) an Expansion which is a Significant Investment, in accordance with Clause 7.5.3,
- then QR Network must, acting reasonably, provide the relevant Access Seekers with the opportunity to contribute funds (“Contributions”) to QR Network for the development costs and expenses of the Expansion. QR Network will proceed with that Expansion:
- (iii) if the Access Seekers who have agreed to make Contributions (“Contributors”) and QR Network have entered into an agreement (“User Funding Agreement”) setting out the arrangements between the parties for the Expansion (“User Funded Expansion”); and
 - (iv) on the basis that, if the User Funded Expansion is solely funded by Access Seekers for Capacity arising from the User Funded Expansion (“User Funding”), then QR will not be required to bear any project development or capital costs or expenses as a result of or in connection with the User Funded Expansion and User Funded Assets (whether directly or indirectly or whether before or after commissioning of the User Funded Assets).
- (b) A User Funding Agreement must be consistent with the terms of this Undertaking including this Clause 7.5.4.
- (c) QR Network will use reasonable endeavours to negotiate User Funding Agreements promptly and within a reasonable timeframe.
- (d) Without limitation to Clause 7.5.4(a), the following principles will apply to any User Funded Expansion:
- (i) A Contributor must have a direct interest in using the Capacity arising from a User Funded Expansion.

- (ii) The obligations of Contributors will, if required by QR Network, acting reasonably, be supported by security arrangements in favour of and for such amounts and on such terms as QR Network may reasonably require.
- (iii) All infrastructure and other things comprised in the User Funded Expansion (including assets that are or are to be constructed or acquired for, or otherwise arise from, a User Funded Expansion using Contributions) (“User Funded Assets”) will be owned and operated by QR Network.
- (iv) Each Contributor (or, where a Contributor is a Customer, the Contributor’s Railway Operator) must enter into an Access Agreement in accordance with this Undertaking in relation to the Planned Capacity for the User Funded Expansion.
- (v) Each Contributor’s Contributions must be recognised by QR Network as a rebate under the Contributor’s User Funding Agreement:
 - (A) determined by reference to the capital return component of the Access Charges due from time to time in respect of the Capacity arising directly from the User Funded Expansion; and
 - (B) in accordance with the proportion that the Contributor’s Contributions bear to the aggregate of the development costs and expenses of the Expansion,

but the aggregate of the rebates paid or payable to the Contributor shall not exceed the Contributor’s Contributions.

- (vi) Each Contributor, in the proportion that the Contributor’s Contributions represent to the aggregate of all Contributions for the User Funded Expansion (“Contributor’s Proportion”), has a first right of refusal to the Contributor’s Proportion of the Capacity arising from the User Funded Expansion, from time to time and until the first to occur of the following:
 - (A) the aggregate of the rebates paid or payable to the Contributor in accordance with Clause 7.5.4(d)(v) equals the amount of that Contributor’s Contributions; and
 - (B) the Access Rights granted pursuant to the Access Agreement entered into in accordance with Clause 7.5.4(d)(iv) and the Contributor’s rights under the User Funding Agreement cease to be held by the same person or, if the relevant Access Rights are held by a Railway Operator, the Railway Operator’s Customer ceases to hold the rights under the relevant User Funding Agreement.
- (vii) A Contributor may:
 - (A) in accordance with its Access Agreement, transfer its Access Rights to an Access Seeker; or
 - (B) in accordance with the User Funding Agreement, transfer its rights under the User Funding Agreement including its rights in accordance with Clause 7.5.4(d)(v),

(and QR Network will not unreasonably delay or refuse to allow such a transfer). Subject to Clause 7.5.4(d)(vi)(B), a Contributor may transfer either or both of its Access Rights or its rights under a User Funding Agreement and may transfer those rights to the same person or different persons.

- (viii) QR Network will be entitled to recover reasonable fees (including through Access Charges) for the provision of services as the Railway Manager which are commensurate with the commercial and regulatory risks associated with all aspects of management in connection with the User Funded Expansion and User Funded Assets.
- (ix) All operational costs in connection with all User Funded Assets will be recovered by QR Network through Access Charges.
- (x) Without limiting the content of a User Funding Agreement, the User Funding Agreement must set out the nature and extent of the Contributors' involvement in the design, construction and procurement aspects of the User Funded Expansion. In reaching agreement on these provisions, the Contributors and QR Network must, acting reasonably, take account of:
 - (A) the legitimate business interests of Contributors in the design, construction and procurement aspects of the User Funded Expansion having regard to:
 - (1) the requirement for the User Funded Expansion to be completed within desired timeframes; and
 - (2) the likely prudence of costs associated with undertaking the User Funded Expansion; and
 - (B) the legitimate business interests of QR Network including:
 - (1) in the design, construction and procurement aspects of the User Funded Expansion;
 - (2) the safe and reliable operation of the Rail Infrastructure both during the construction period for the User Funded Expansion and after commissioning of the User Funded Assets;
 - (3) as the owner and operator of the User Funded Assets; and
 - (4) in respect of the integration of those User Funded Assets into QR Network's rail network.

7.5.5 Interaction with other provisions

- (a) Notwithstanding Clauses 4.1 to 4.7, if a request for Access is submitted to QR Network seeking Access Rights:
 - (i) which cannot be granted in the absence of QR Network undertaking a Significant Investment; or
 - (ii) which, if granted, would significantly impact on a Significant Investment that is being investigated,then QR Network may reject that request for Access.
- (b) If QR Network rejects a request for Access in accordance with Clause 7.5.5(a), QR Network will give a notice in writing to the Access Seeker that:
 - (i) the request for Access relates to a Significant Investment;
 - (ii) no requests for Access are being accepted by QR Network in respect of that Significant Investment;
 - (iii) if QR Network has not called for expressions of interest in accordance with Clause 7.5.3(b), the Access Seeker's details (and, if provided with the request for Access, the details of its Customer) will be retained by QR

Network so that QR Network can notify them in accordance with Clause 7.5.3(b); and

- (iv) if QR Network has already called for expressions of interest in accordance with Clause 7.5.3(b) and that process has not been finalised, how the Access Seeker can participate in that process including by the issue of a User Funding Notice.
- (c) Part 4 and Clauses 7.3.1 to 7.3.3 do not apply to the extent that QR Network has complied with Clause 7.5.3 or Clause 7.5.4 in relation to QR Network's:
 - (i) negotiations with an Access Seeker for access to; and
 - (ii) allocation of Available Capacity to an Access Seeker arising from, a Significant Investment.
- (d) If this Clause 7.5 is inconsistent with any other provision of this Undertaking, this Clause 7.5 prevails to the extent of that inconsistency.
- (e) If:
 - (i) a Dispute arises in relation to this Clause 7.5; and
 - (ii) either:
 - (A) that Dispute is not resolved by the parties' chief executives (or their nominees) within ten (10) Business Days after the referral under Clause 10.1.2(a); or
 - (B) a chief executive appoints a nominee in accordance with Clause 10.1.2(a) that is unacceptable to the other party,then:
 - (iii) Clause 10.1.2(b) will not apply; and
 - (iv) the relevant Dispute may be referred by either party for resolution by an expert in accordance with Clause 10.1.3.

PART 8: INTERFACE CONSIDERATIONS

8.1 INTERFACE RISK MANAGEMENT PROCESS

8.1.1 General Interface Responsibilities

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

8.1.2 The Interface Risk Assessment

- (a) QR Network will publish on its website:
 - (i) a sample IRMP which specifies a list of safety and Rollingstock issues that should, at a minimum, be addressed by the parties during the Interface Risk Assessment, along with suggested controls for the identified safety and Rollingstock issues; and
 - (ii) if a new version of the sample IRMP is published, a description of the changes made since the immediately preceding version of the sample IRMP.

The IRMP developed by the parties may cover additional safety and/or Rollingstock issues and associated controls depending on the circumstances of the particular operation.

- (b) Prior to undertaking the Interface Risk Assessment, the Access Seeker or Access Holder will provide a draft Operating Plan to QR Network in accordance with Clause 8.1.4.

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

8.1.3 The Interface Risk Management Plan

- (a) Once the Interface Risk Assessment is complete, the Access Seeker or Access Holder and QR Network must jointly develop and agree the IRMP.
- (b) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between QR Network and the Access Seeker or Access Holder for the Interface Risks identified and assessed during the Interface Risk Assessment. As such, it will specify:
 - (i) which Safeworking Procedures and Safety Standards are applicable to the proposed operation;
 - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation;
 - (iii) the audit, inspection and review regime agreed between the parties; and
 - (iv) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (c) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network shall ensure that its Safety Management System incorporates the elements agreed with the Access Seeker or Access Holder in the IRMP, that QR Network is responsible for implementing.

- (d) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) will incorporate into its Safety Management System:
- (i) the elements agreed in the IRMP, that the Access Seeker or Access Holder is responsible for implementing; and
 - (ii) necessary processes for ensuring that the Access Seeker or Access Holder, its Rollingstock, Rollingstock Configurations and Train Services, at all times comply with the requirements of the Access Agreement, including the agreed IRMP.
- (e) The IRMP will become a schedule to the Access Seeker's or Access Holder's Access Agreement. If an Access Agreement has already been negotiated before the finalisation of the IRMP, the implementation of the IRMP may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the EIRMR.
- (f) If the Access Seeker or Access Holder and QR Network cannot agree any aspect of the IRMP, then either party may give to the other party notice in writing of the dispute ("IRMP Dispute Notice"), whereupon either party may then refer the matter to an expert for resolution in accordance with Clause 10.1.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a party gives an IRMP Dispute Notice to the other party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 8.1.3(f)(ii) or the QCA in accordance with Clause 8.1.3(f)(iii), either party may still refer the matter to an expert for resolution in accordance with Clause 10.1.3;
 - (ii) if the matter has not been referred to an expert in accordance with Clause 8.1.3(f)(i), or to the QCA in accordance with Clause 8.1.3(f)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either party may refer the matter to the Safety Regulator through any process that the Safety Regulator considers appropriate; and
 - (iii) if the matter has not been referred to an expert in accordance with Clause 8.1.3(f)(i), or to the Safety Regulator in accordance with Clause 8.1.3(f)(ii), then either party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Clause 10.1.4,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either party is not satisfied with the determination which the expert makes, then notwithstanding Clause 10.1.3(c), either party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 8.1.3(f)(ii) or the QCA under Clause 8.1.3(f)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding upon the parties.

- (g) If an expert, the Safety Regulator or the QCA is called upon, under Clause 8.1.3(f), to make a determination the effect of which would be to establish the content of any aspect of the IRMP, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding

principles for the resolution of a dispute under Clause 8.1.3(f) that may from time to time be determined by the Safety Regulator.

8.1.4 Operating Plan

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

8.1.5 Provision of Assistance by QR Network

- (a) Where QR Network and an Access Seeker or Access Holder agree that training of the Access Seeker's or Access Holder's staff or contractors is required as a control, or part of a control, to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Seeker or Access Holder can only obtain that training from QR Network, QR Network will provide the Access Seeker or Access Holder with that training.
- (b) Where QR Network provides training in accordance with Clause 8.1.5(a), it will be entitled to recover a reasonable commercial charge for providing such training.

8.1.6 Rollingstock Authorisation

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

To demonstrate this compliance, the Access Seeker or Access Holder must certify that the Rollingstock and Rollingstock Configurations meet the

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

- (c) Authorisation of Rollingstock and Rollingstock Configurations may be sought concurrently.
- (d) Where QR Network is not satisfied, on the basis of the documentation provided by an Access Seeker or Access Holder or a certifier in accordance with Clause 8.1.6(b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP, either QR Network or the Access Seeker or Access Holder may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP for resolution by an expert in accordance with Clause 10.1.3.

8.1.7 Audit, Inspection and Review

- (a) The Access Holder must have in place processes to ensure that it complies with its IRMP at all times in its operations on the Rail Infrastructure.
- (b) QR Network and the Access Holder must inform each other of any failure to comply with the relevant IRMP, as and when they become aware of such non-compliance. This will include advice on the nature of the non-compliance and how the relevant party has rectified or intends to rectify the non-compliance.
- (c) In addition, where such failure is relevant to its operations on the Rail Infrastructure, the Access Holder must inform QR Network of any failure to comply with:
 - (i) any applicable Laws;
 - (ii) QR Network Train Control directions; and
 - (iii) the Rollingstock and Rollingstock Configurations authorised under the Access Agreement.
- (d) In addition, QR Network will provide the Access Holder with Above Rail Rollingstock incident information concerning that Access Holder's Train Services.
- (e) Where QR Network has reasonable grounds to believe that the Access Holder has not or is not complying with any aspect of its IRMP, then QR Network may require the conduct of an audit or inspection of the relevant aspect of the Access Holder's Train Services provided that:
 - (i) QR Network advises the Access Holder in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection;
 - (ii) any such inspection or audit is conducted by QR Network, its appointed representative or by a suitably qualified person reasonably acceptable to both parties;
 - (iii) if:
 - (A) the audit or inspection requires access to commercially sensitive information of the Access Holder; and

- (B) the Access Holder has a legitimate commercial reason for wanting to withhold access to that information from QR Network,

then the audit or inspection must be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be:

 - (C) given access to the commercially sensitive information by the Access Holder; and
 - (D) prohibited from disclosing that commercially sensitive information to QR Network; and
- (iv) if QR Network carries out the inspection or audit, QR Network:
 - (A) must not interfere unreasonably with the Access Holder's Rollingstock or Trains; and
 - (B) must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the Access Holder's business activities.
- (f) Where the Access Holder has reasonable grounds to believe that QR Network has not or is not complying with any aspect of the relevant IRMP, then the Access Holder may require the conduct of an audit or inspection of the relevant aspect of the Rail Infrastructure provided that:
 - (i) the Access Holder advises QR Network in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection;
 - (ii) any such inspection or audit is conducted by the Access Holder, its appointed representative or by a suitably qualified person reasonably acceptable to both parties;
 - (iii) If:
 - (A) the audit or inspection requires access to commercially sensitive information of QR Network; and
 - (B) QR Network has a legitimate commercial reason for wanting to withhold access to that information from the Access Holder,

then the audit or inspection must be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be:

 - (C) given access to the commercially sensitive information by QR Network; and
 - (D) prohibited from disclosing that commercially sensitive information to the Access Holder; and
 - (iv) if the Access Holder carries out the inspection or audit, the Access Holder:
 - (A) must not interfere unreasonably with the provision of Above Rail Services and Below Rail Services; and
 - (B) must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR Network or other Access Holders.
- (g) Any other rights of inspection or audit will be specified in the Access Agreement.
- (h) At any time that either party has reasonable grounds to believe that the IRMP is no longer effective either in managing the Interface Risks that it was intended

to manage or in managing new Interface Risks, QR Network and the Access Holder will, in accordance with the Access Agreement, jointly review the effectiveness of the IRMP in addressing the Interface Risks posed by the Access Holder's operations on the Rail Infrastructure.

- (i) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of inspections, audits and/or reviews conducted in accordance with the processes outlined in this Clause 8.1.7.
- (j) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Trains, or the right of an Access Holder's Train Services to operate on the relevant part of the Rail Infrastructure during the course of the Access Holder's Access Agreement.
- (k) The Access Holder's Access Agreement will specify the circumstances in which QR Network may vary System-wide Requirements, including Safeworking Procedures, Safety Standards and Rollingstock Interface Standards, during the course of an Access Holder's Access Agreement.
- (l) Where an Access Holder (or group of Access Holders) and QR Network agree to vary Rollingstock Interface Standards, either in accordance with Clause 8.1.7(k) or as otherwise agreed, and such variation(s) involve an additional cost funded exclusively by that Access Holder (or group of Access Holders), QR Network will be entitled to restrict other Access Holders from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.
- (m) The party whose operations are audited or inspected under Clause 8.1.7(e) or (f) shall bear the reasonable costs of conducting such audit or inspection unless it is demonstrated that the stated grounds for requiring the conduct of the audit did not exist. In circumstances where the stated grounds for such audit have not been demonstrated to exist, the party that required the conduct of the audit or inspection shall bear the costs of conducting such audit or inspection.

8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS

8.2.1 Environmental Investigation and Risk Management Report

- (a) As outlined in Clause 4.5, as part of the negotiation process or as otherwise specified in an Access Agreement, the Access Seeker or Access Holder will commission a suitably qualified person, reasonably acceptable to both QR Network and the Access Seeker or Access Holder, to prepare an EIRMR containing an environmental investigation component and an environmental risk management component which respectively identify:
 - (i) possible risks of Environmental Harm arising out of the proposed use of the Rail Infrastructure by the Access Seeker or Access Holder, including risks associated with those matters identified in Schedule H; and
 - (ii) the manner in which the Access Seeker or Access Holder proposes to address the possible risks of Environmental Harm identified, as well as the roles and responsibilities, including financial responsibility, for the control measures proposed (including an audit regime).
- (b) In order to ensure that an appropriate EIRMR is developed, QR Network will disclose to an Access Seeker or Access Holder on a timely basis all relevant information, reasonably available to it, relating to the environmental impact of

the Access Seeker's or Access Holder's proposed operations on the Rail Infrastructure. This information may include:

- (i) details of any Environmental Authorities held by QR Network that are relevant to the operation by the Access Seeker or Access Holder of its proposed Train Services on the Rail Infrastructure;
 - (ii) relevant environmental reports;
 - (iii) a copy of the QR Code of Practice: Railway Noise Management;
 - (iv) any currently applicable noise levels or limits;
 - (v) particulars of noise complaints and enforcement actions; and
 - (vi) any other information from QR Network's EMS considered relevant by QR Network to the development of an appropriate EIRMR.
- (c) If an Access Seeker or Access Holder has an existing EMS that it proposes to use in connection with its proposed operation on the Rail Infrastructure, the EIRMR should also detail the relevant parts of the Access Seeker's or Access Holder's existing EMS, including how those parts address the risks identified in the EIRMR. Extracts of the relevant parts of the EMS should also be included in the EIRMR.
- (d) The Access Seeker or Access Holder must provide a copy of the EIRMR to QR Network for its consideration.
- (e) QR Network will consider whether the EIRMR adequately addresses the issues outlined in Clause 8.2.1(a) and advise the Access Seeker or Access Holder of its decision.
- (f) In order to assist QR Network in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR Network all relevant information reasonably available to it relating to the environmental impact of its proposed operations on the Rail Infrastructure.
- (g) If, in QR Network's reasonable opinion, the EIRMR discloses areas of risk that cannot be adequately managed by the proposals included in the EIRMR, or the EIRMR fails to identify and adequately deal with additional relevant environmental risks, QR Network may notify the Access Seeker or Access Holder in writing of the risks not adequately managed or not identified or adequately dealt with.
- (h) If QR Network considers that the EIRMR does adequately address the issues outlined in Clause 8.2.1(a), or if QR Network fails to give the Access Seeker or Access Holder the notice referred to in Clause 8.2.1(g) within thirty (30) days of receipt (or such other period as the parties, acting reasonably, agree), the EIRMR will be accepted.
- (i) If QR Network gives the Access Seeker or Access Holder a notice pursuant to Clause 8.2.1(g), the Access Seeker or Access Holder may respond to QR Network, by a date agreed by the parties, with a written proposal that:
- (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in the notice provided pursuant to Clause 8.2.1(g);
 - (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR Network of assuming all or some portion of the risk;

- (iii) where risk abatement or attenuation measures are proposed pursuant to Clause 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
 - (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.
- (j) QR Network may, acting reasonably, accept or reject all or part of the Access Seeker's or Access Holder's proposal (the "Proposal") provided that, if QR Network:
 - (i) accepts the Proposal, the Proposal will be incorporated into and form part of the EIRMR, which will then be accepted; or
 - (ii) rejects all or part of the Proposal, QR Network may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with in the Proposal.
- (k) If the Access Seeker or Access Holder fails to submit its Proposal within the specified time, or if QR Network rejects all or part of the Proposal, then either QR Network or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the Proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks to:
 - (i) if an Access Agreement has not been signed, Dispute resolution in accordance with Clause 10.1; or
 - (ii) if an Access Agreement has been signed, Dispute resolution in accordance with that Access Agreement.
- (l) If the outcome of a Dispute resolution process referred to under Clause 8.2.1(k) is that the EIRMR and/or the Proposal:
 - (i) adequately manage the risks or identify and adequately deal with the risks, then the EIRMR (as modified by the Proposal, where applicable) will be accepted;
 - (ii) fails to adequately manage the risks or identify and adequately deal with the risks and the Access Seeker or Access Holder amends the EIRMR in accordance with that outcome (including any nominated time frame for completion of the amendments), then the EIRMR (as amended) will be accepted; or
 - (iii) fails to adequately manage the risks or identify and adequately deal with the risks and the Access Seeker or Access Holder fails to amend the EIRMR in accordance with that outcome (including any nominated time frame for completion of the amendments), then QR Network may cease negotiations or terminate the Access Agreement (whichever is applicable).
- (m) An EIRMR accepted under this Clause 8.2.1 will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the IRMP.
- (n) A new or varied EIRMR shall be prepared as outlined in this Clause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

8.2.2 Environmental Management System

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

8.2.3 Audit and Review of EIRMR

- (a) As noted in Clause 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.
- (b) An Access Holder will provide QR Network with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder that are relevant to the operation of its Train Services on the Rail Infrastructure.
- (c) QR Network will provide an Access Holder with copies of those parts of QR Network's environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.
- (d) An Access Holder must advise QR Network of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR Network must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR Network becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Clause 8.2.3(d).
- (e) If QR Network becomes aware of:
- (i) any inadequacy of the Access Holder's EIRMR due to:
 - any change in Environmental Laws of relevance to the Access Holder's Train Services; or
 - any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or

- (ii) any non-compliance by the Access Holder with the EIRMR,
then QR Network may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of its EIRMR and/or the Access Holder's compliance with it. The review will only deal with:
 - (iii) the extent to which the EIRMR appears not to address a change in applicable Environmental Laws; or
 - (iv) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
 - (v) the extent of non-compliance by the Access Holder with its EIRMR,
whichever is applicable in the circumstances.
- (f) If directed by QR Network to undertake a review in accordance with Clause 8.2.3(e), the Access Holder will ensure the review is carried out and will provide QR Network with a copy of the review report not later than three (3) months after the notice was received from QR Network.
- (g) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of a review carried out in accordance with Clause 8.2.3(e), including the implementation of changes to the EIRMR.
- (h) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Train Services, on environmental grounds, during the course of the Access Holder's Access Agreement.

8.3 CONNECTING INFRASTRUCTURE

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

- (c) Where the Access Seeker or Access Holder and QR Network cannot agree as to:
- (i) whether works referred to under Clause 8.3(a)(i) are to a reasonable standard;
 - (ii) what is a reasonable period within which to provide comments to QR Network under Clause 8.3(a)(ii)(A);
 - (iii) whether QR Network's proposed project management of the construction of the Connecting Infrastructure will result in unreasonable costs or delays being incurred by the Access Seeker or Access Holder;
 - (iv) an amount payable under Clause 8.3(b);
 - (v) whether QR Network has unreasonably delayed the construction of Connecting Infrastructure; or
 - (vi) any other aspect of a Rail Connection Agreement,
- then, subject to any other remedies sought by a party at law, either party may seek to resolve the Dispute in accordance with Clause 10.1.
- (d) Where QR Network does not elect to exercise its rights under Clause 8.3(a) and the Connecting Infrastructure is constructed by an Access Seeker or Access Holder, QR Network must do all things reasonably necessary to ensure that the Connecting Infrastructure is physically connected to the Rail Infrastructure and to facilitate the movement of Trains between the Connecting Infrastructure and the Rail Infrastructure, provided that:
- (i) the Connecting Infrastructure meets the technical specifications required by QR Network (acting reasonably) for connection to the Rail Infrastructure;
 - (ii) the Connecting Infrastructure has been constructed to a reasonable standard bearing in mind the nature of the traffic and the current or planned service standards for the Rail Infrastructure; and
 - (iii) the Access Seeker or Access Holder has agreed to pay or reimburse to QR Network (on demand by QR Network from time to time) all of the reasonable costs and expenses incurred by QR Network in connection with the Connecting Infrastructure (including costs and expenses incurred in complying with its obligations under this Clause 8.3(d)).
- (e) Where the Access Seeker or Access Holder and QR Network cannot agree as to whether the Connecting Infrastructure:
- (i) meets the relevant technical specifications required by QR Network for connection to the Rail Infrastructure; or
 - (ii) has been constructed to a reasonable standard bearing in mind the nature of the traffic and the current or planned service standards for the Rail Infrastructure,
- then, subject to any other remedies sought by a party at law, either party may seek to resolve the Dispute in accordance with Clause 10.1.

PART 9: REPORTING

9.1 QUARTERLY NETWORK PERFORMANCE REPORTS

- (a) Within thirty (30) days after the end of each Quarter in the Term, QR Network will publicly release a quarterly report in relation to that Quarter containing the information set out in Clauses 9.1(d) to (i) (except for the quarterly report for first Quarter in the Term that begins on or after the Approval Date (“First Quarter Report”), which is only required to contain the information set out in Paragraphs 9.1(e) to (m) of the 2008 Undertaking). QR Network will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.
- (b) In publishing a quarterly report in accordance with Clause 9.1(a), QR Network will include in the quarterly report a comparative presentation of the information in the subject Quarter and the four (4) preceding Quarters in respect of the information set out in Clauses 9.1(d) to (i) provided that for the First Quarter Report, the information for a preceding Quarter for the purposes of the comparative presentation shall be that published for the relevant Quarter under the 2008 Undertaking or, if applicable, published in accordance with Clauses 12.4(c) or (d).
- (c) Where a quarterly report has been published in accordance with Clause 9.1(a) and QR Network has actual knowledge of a material error in the quarterly report, QR Network will, as soon as practicable but no later than the date by which the next quarterly report is to be publicly released, publish either, at QR Network’s discretion, an erratum or a corrected quarterly report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.
- In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the quarterly report unless the QCA has otherwise been notified or is aware of the error.
- (d) Information on the number and reliability of Train Services that have operated in the subject Quarter, as follows:
- (i) the number and percentage of Train Services that reach their destination within the Allotted Time Threshold;
 - (ii) the number and percentage of Train Services that do not reach their destination within the Allotted Time Threshold:
 - (A) due solely to the acts or omissions of QR Network; and
 - (B) not due solely to the acts or omissions of QR Network; and
 - (iii) the total number of Train Services.
- (e) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
- (i) for all Train Services, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
 - (ii) for all Train Services, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres; and

- (iii) for all Train Services, the average Unallocated Delay, in minutes, per one hundred (100) train kilometres.
- (f) Information on the availability of the network for Train Services in the subject Quarter, as follows:
 - (i) number and percentage of Train Services scheduled in the ITP cancelled due to a reason that can be attributed directly to QR Network as Railway Manager;
 - (ii) number and percentage of Train Services scheduled in the ITP cancelled due to a reason that can be attributed directly to an Access Holder (which would include cancellations attributable to a its Nominated Railway Operator); and
 - (iii) number and percentage of Train Services scheduled in the ITP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR Network as Railway Manager.
- (g) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (h) Information on network service quality, as follows:
 - (i) speed restrictions in the subject Quarter, being the average percentage and the average number of kilometres of Track under temporary speed restriction; and
 - (ii) the most recent measure of Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (i) Information for each Individual Coal System on coal carrying Train Services that have operated in the subject Quarter, being:
 - (i) the aggregate gtk;
 - (ii) the aggregate nt;
 - (iii) the aggregate ntk;
 - (iv) the aggregate egtk;
 - (v) the average actual Below Rail Transit Time Percentage (including the methodology for calculating the amount);
 - (vi) the aggregate Train Paths used by the relevant Train Services; and
 - (vii) the aggregate Train Paths contracted for relevant Train Services in accordance with the relevant Train Service Entitlements.
- (j) For the purposes of Clauses 9.1(d) to (g) , the Train Services will be aggregated as follows, Train Services operated for the purpose of:
 - (i) transporting coal within each Individual Coal System;
 - (ii) transporting coal within the Western System;
 - (iii) transporting freight products, and bulk minerals (other than coal); and
 - (iv) providing long distance passenger transport.
- (k) For the purposes of Clause 9.1(h), information on network service quality will be reported in the following segments:
 - (i) each Individual Coal System; and

- (ii) the remainder of the network, with the exception of:
 - the Metropolitan Region; and
 - Standard Gauge Rail Infrastructure.
- (l) QR Network will, in conjunction with its public release of a quarterly report in accordance with this Clause 9.1, provide to the QCA a supplementary quarterly report that presents the information included in the public quarterly report (except for the information in Clause 9.1(h)) for each Railway Operator. If a supplementary quarterly report relates to a Railway Operator, QR Network will provide to that Railway Operator those parts of the supplementary quarterly report that relate to that Railway Operator.

9.2 ANNUAL REPORTS

9.2.1 Annual Financial Report

Within six (6) months after the end of each Year in the Term, or such longer time as agreed by the QCA, QR Network will publicly release Financial Statements in relation to the subject Year, that have been prepared and certified by the QR Network Executive General Manager in accordance with Clause 3.2.1 and, for Financial Statements prepared under Clause 3.2.1(a)(i), which will be accompanied by the audit certificate prepared in accordance with Clause 3.2.2.

9.2.2 Annual Performance Report

- (a) Within four (4) months of the end of each Year in the Term, or such longer time as agreed by the QCA, QR Network will publicly release an annual performance report in relation to the subject Year containing the information set out in Clauses 9.2.2(c) and (d) and which will be accompanied by an audit certificate prepared in accordance with Clause 9.7 in respect of QR Network's compliance with its obligations under this Clause 9.2.2.
- (b) Where an annual performance report has been published in accordance with Clause 9.2.2(a) and QR Network has actual knowledge of a material error in the annual performance report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected annual performance report identifying the material errors. An error will be a material error where:
 - (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.

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

- (c) Information in relation to QR Network's compliance with the Undertaking over the subject Year as follows:
 - (i) the number of requests for Preliminary Information received in accordance with Clause 4.1(d) and the average time (in days) taken to provide the Preliminary Information;
 - (ii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Clause 4.2(c);

- (iii) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Clause 4.2(c), the average delay (in days) taken to acknowledge the Access Applications;
- (iv) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Clause 4.3(a);
- (v) the number and percentage of Access Applications received in accordance with this Undertaking for which the time for the provision of an Indicative Access Proposal was extended in accordance with either Clause 4.3(b)(i) or (ii);
- (vi) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Clauses 4.3(a) and (b), the average delay (in days) taken to provide the Indicative Access Proposals;
- (vii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 10.1;
- (viii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 10.1 and QR Network was found to have committed a breach of the Undertaking;
- (ix) the number of instances where QR Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3;
- (x) the number of instances where QR Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR Network was found to have committed a breach of those ring fencing obligations;
- (xi) the number of instances where an Access Holder has made a written complaint to QR Network about an incorrectly calculated bill, and where QR Network's investigation into the complaint identifies that the bill was incorrectly calculated; and
- (xii) in respect of written complaints that QR Network Train Control has made a decision in breach of QR Network's traffic management decision making matrix contained in Appendix 3, Part B of Schedule G (for each of Third Party Access Holders collectively and Related Operators as Access Holders collectively):
 - (A) the number of complaints received by QR Network;
 - (B) of the complaints received by QR Network, the number which are currently being assessed by QR Network; and
 - (C) of the complaints received by QR Network, the number which, after being assessed by QR Network, were verified.

- (d) Information in relation to the outcome of QR Network's negotiations with Access Seekers over the subject Year as follows:
- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
 - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
 - (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.
- (e) QR Network will, in conjunction with its public release of an annual performance report in accordance with this Clause 9.2.2, provide to the QCA a supplementary annual performance report that presents the information included in the public annual performance report for the following classes of Access Holders:
- (i) Access Holders who are QR Parties (in aggregate); and
 - (ii) Access Holders who are Third Parties (in aggregate).

9.2.3 Maintenance Cost Report

- (a) Within four (4) months after the end of each Year in the Term, or such longer time as agreed by the QCA, QR Network will publicly release an annual report of actual maintenance costs and scope of maintenance in the subject Year containing the information set out in Clause 9.2.3(b) for the geographic areas specified in Clause 9.2.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will:
- (i) report its actual maintenance costs and scope of maintenance in the subject Year compared to the forecast maintenance costs and scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance costs and scope of maintenance; and
 - (ii) for the Central Queensland Coal Region:
 - (A) report the MCI for the subject year (including the indices, if any, comprised in the MCI); and
 - (B) report on the effect on the completion of planned maintenance work of action necessarily taken to restore QR Network's rail network after derailments (but QR Network is not obliged to report in respect of any derailment with a repair cost of less than or equal to \$200,000).
- (c) The actual and forecast maintenance costs and scope of maintenance will be separately reported for:
- (i) each Individual Coal System; and

- (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted forecast maintenance costs and scope of maintenance for the purpose of assessing the relevant Reference Tariff(s),

unless otherwise agreed by QR Network and the QCA.

- (d) Where a report has been published in accordance with Clause 9.2.3(a) and QR Network has actual knowledge of a material error in the report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:

- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
- (ii) otherwise, QR Network or the QCA considers the error to be material.

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

9.2.4 Maintenance Cost Report to the QCA

Within four (4) months after the end of each Year in the Term, unless otherwise agreed between QR Network and the QCA, QR Network will report its actual maintenance cost and scope of maintenance in the subject Year compared to the forecast maintenance cost and scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs, in a format to be agreed with the QCA from time to time, including:

- (a) a detailed description of its actual maintenance cost and scope of maintenance in the following categories:
 - (i) mechanised maintenance;
 - (ii) general track maintenance;
 - (iii) structures and facilities maintenance;
 - (iv) trackside systems maintenance;
 - (v) electrical overhead maintenance; and
 - (vi) telecommunication maintenance;
- (b) an explanation of significant variations between the actual and forecast maintenance costs and scope of maintenance; and
- (c) separate reports on the actual and forecast maintenance costs and scope of maintenance for:
 - (i) each Individual Coal System; and
 - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of QR Network's forecast maintenance costs and scope of maintenance for the purposes of assessing the relevant Reference Tariff(s).

9.2.5 Operational Data Report to the QCA

Unless otherwise agreed between QR Network and the QCA, QR Network will, within four (4) months after the end of each Year in the Term, provide the following operational information to the QCA:

- (a) the aggregate gtk;
- (b) the aggregate nt;
- (c) the aggregate Train Paths used by the relevant Train Services;
- (d) the aggregate ntk; and
- (e) the aggregate egtk,

for each of the following categories, for all coal carrying Train Services that:

- (f) operated on each Individual Coal System in the subject Year; and
- (g) operated within each Individual Coal System classified by origin and destination in the subject Year.

9.3 CAPITAL EXPENDITURE AND REGULATORY ASSET BASE REPORTS

9.3.1 Capital Expenditure Report to the QCA

Unless otherwise agreed between QR Network and the QCA, QR Network will, within four (4) months after the end of each Year in the Term, provide to the QCA the following details for capital expenditure in the subject Year that QR Network considers should be included in the Regulatory Asset Base:

- (a) the name of the project;
- (b) the location of the project;
- (c) the amount of the capital expenditure; and
- (d) information to support the QCA's assessment of the prudence of the capital expenditure in accordance with Clauses 2 and 3 of Schedule A.

9.3.2 Regulatory Asset Base Roll-forward Report to the QCA

Unless otherwise agreed between QR Network and the QCA, QR Network will, within four (4) weeks after receiving the QCA's advice on its approval of capital expenditure for inclusion in the Regulatory Asset Base under Clause 2 of Schedule A for the subject Year, provide to the QCA QR Network's proposed roll-forward of the Regulatory Asset Base in accordance with Clause 1.2 of Schedule A, including details of:

- (a) the opening value of the Regulatory Asset Base for the subject Year;
- (b) indexation of the Regulatory Asset Base;
- (c) depreciation of the Regulatory Asset Base;
- (d) capital expenditure that is included in the Regulatory Asset Base;
- (e) disposals and transfers from the Regulatory Asset Base; and
- (f) the closing value of the Regulatory Asset Base for the subject Year,

separately reported for:

- (g) each Individual Coal System; and
- (h) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s).

9.3.3 Public Regulatory Asset Base Roll-forward Report

- (a) Within one (1) month after notification by the QCA of its acceptance of QR Network's roll-forward of the Regulatory Asset Base for a Year, QR Network will publicly release an annual report of changes to the Regulatory Asset Base for that Year, containing the information set out in Clause 9.3.3(b) for the geographic areas specified in Clause 9.3.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will report for the subject Year the roll-forward of the Regulatory Asset Base including details of:
 - (i) the opening value of the Regulatory Asset Base for the subject Year;
 - (ii) indexation of the Regulatory Asset Base;
 - (iii) depreciation of the Regulatory Asset Base;
 - (iv) capital expenditure that is included in the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;
 - (v) disposals and transfers from the Regulatory Asset Base;
 - (vi) the closing value of the Regulatory Asset Base for the subject Year; and
 - (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.
- (c) The roll-forward of QR Network's Regulatory Asset Base will be separately reported for:
 - (i) each Individual Coal System; and
 - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s) unless otherwise agreed by QR Network and the QCA.

9.4 BREACH REPORTS TO THE QCA

- (a) QR Network will report to the QCA any breaches of this Undertaking of which QR Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by QR Network in respect of the breach, at the following times:
 - (i) within ten (10) Business Days after the end of each calendar month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar month; and
 - (ii) in relation to other breaches, as soon as QR Network becomes aware of the breach,

except where, if that information was sought from QR Network by the QCA under section 105 or 126 of the Act, QR Network could lawfully refuse to provide it to the QCA. If QR Network is obliged to report a breach to the QCA in accordance with this Clause 9.4 and that breach directly and adversely affects the interests of an Access Seeker or Access Holder, then QR Network will also provide the information reported to the QCA in respect of that breach to the relevant Access Seeker or Access Holder.

- (b) Where QR Network does not report a breach or a remedial action proposed or taken by QR Network to the QCA on the basis of exception in this Clause 9.4,

QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of whether that exception applies.

9.5 INFORMATION REQUESTED BY THE QCA

- (a) The QCA has the right, by written notice, to request that QR Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of performing its obligations or functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking. The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.
- (b) QR Network will comply with a request by the QCA under Clause 9.5(a) by the day stated in the notice unless QR Network has a reasonable excuse for non-compliance.

9.6 COMPLIANCE

- (a) The Compliance Officer is to be responsible for using best efforts to undertake the following activities:
 - (i) notifying the QR Network Executive General Manager:
 - (A) as soon as possible of any material breach of the Undertaking by QR Network and advising of any remedial action proposed or taken by QR Network in respect of the breach; and
 - (B) in respect of other breaches and the remedial action proposed or taken by QR Network in respect of those breaches, on a monthly basis;
 - (ii) taking all steps necessary to ensure that QR Network is able to meet its obligations under Clauses 3.2.1, 9.1(a), 9.2.1 to 9.3.3 and 9.5; and
 - (iii) taking all steps necessary to ensure that QR Network is able to meet any other obligation under the Undertaking nominated by the QR Network Executive General Manager and agreed to by the QCA in writing.
- (b) The QR Network Executive General Manager will be responsible for taking all steps necessary for ensuring that QR Network is able to meet any other reporting obligation or activity imposed on QR Network by the Undertaking not identified or nominated under Clause 9.5(a).
- (c) Information provided to the QCA in accordance with Clauses 9.2.4, 9.2.5, 9.3.1, and 9.3.2 will be accompanied by a responsibility statement signed by the QR Network Executive General Manager.

9.7 REPORT AUDITING

- (a) An audit of QR Network's compliance with its reporting obligations under this Part 9 will be conducted:
 - (i) annually; and
 - (ii) subject to this Clause 9.7, in accordance with Clause 10.3.
- (b) The Auditor will compile an audit report identifying:
 - (i) whether QR Network has complied in all material respects with its reporting obligations under this Part 9 and, if not, details as to the relevant non-compliance; and

- (ii) the process adopted for the conduct of the audit.

9.8 AUDIT REQUESTED BY THE QCA

- (a) Notwithstanding any other provisions of this Undertaking that require the conduct of an audit, the QCA may request QR Network to undertake an audit, in accordance with Clause 10.3, in relation to whether any specific conduct or decisions of QR Network comply with this Undertaking provided that the QCA has:
 - (i) reasonable grounds to believe that such an audit is necessary; and
 - (ii) has given QR Network written notice of those grounds and why it believes such an audit is necessary.
- (b) If the QCA, in accordance with Clause 9.8(a), has requested QR Network to undertake an audit, then the audit will be conducted in accordance with Clause 10.3.

PART 10: DISPUTE RESOLUTION AND AMENDMENT PROCESSES

10.1 DISPUTE RESOLUTION

10.1.1 Disputes

- (a) If any dispute or question (“**Dispute**”) arises in relation to:
- (i) the operation of or anything required to be done by QR Network under this Undertaking; or
 - (ii) the negotiation of Access between an Access Seeker and QR Network, then, unless otherwise agreed by the parties to the Dispute or provided for in this Undertaking, that Dispute shall be resolved in accordance with this Clause 10.1 and any party to the Dispute may give to the other parties a Dispute Notice.
- (b) Unless otherwise agreed by the parties, Disputes in connection with an Access Agreement shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking (even if the Dispute relates to provisions included in that Access Agreement that are similar to or are inconsistent with this Undertaking).

10.1.2 Chief Executive Resolution

Unless otherwise agreed by both parties or provided for in this Undertaking:

- (a) any Dispute shall within five (5) Business Days of the Dispute Notice be referred in the first instance to each party’s chief executive (or his or her nominee) for resolution; and
- (b) if:
- (i) the Dispute is not resolved within ten (10) Business Days after the referral under Clause 10.1.2(a); or
 - (ii) a chief executive appoints a nominee in accordance with Clause 10.1.20 that is unacceptable to the other party,

the relevant Dispute may, by agreement between the parties, be referred for resolution by an expert in accordance with Clause 10.1.3 and failing such agreement, either party may refer the Dispute to the QCA in accordance with Clause 10.1.4.

10.1.3 Expert Determination

- (a) Where a Dispute is referred to an expert pursuant to this Clause 10.1 or otherwise in accordance with this Undertaking:
- (i) an expert shall be appointed by agreement between the parties, or in default of such appointment within ten (10) Business Days of the need to refer the Dispute to an expert, the expert appointed is to be the person nominated at the request of a party by:
 - (A) if the parties agree that the Dispute is of a financial nature, the President (for the time being) of CPA Australia;
 - (B) if the parties agree that the Dispute is of a non-financial nature, the President (for the time being) of Engineers Australia – Queensland Division; or

- (C) in any other case, the President (for the time being) of the Queensland Law Society Incorporated;
- (ii) the expert shall:
 - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (B) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty by written notice to the parties before his or her appointment;
 - (C) not be an employee of the parties or of a Related Party of any of them;
 - (D) not be permitted to act until he or she has given written notice to each party that he or she is willing and able to accept the appointment;
 - (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of all the parties), supporting documentation, information and data with respect to the matter submitted by the parties;
 - (F) not make a determination in relation to a Dispute that is inconsistent with this Undertaking;
 - (G) provide the parties with a copy of his or her determination in relation to the Dispute in the form of a report within a reasonable time after his or her appointment;
 - (H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties; and
 - (I) be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 1990 (Qld)*), shall not apply to him or her or to the determination or the procedures by which he or she may reach a determination.
- (b) The parties shall, upon request by the expert, provide or make available to the expert, as soon as reasonably practicable, all information in their possession or control and all assistance, that the expert may reasonably require.
- (c) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Clause 10.1.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Clause 10.1.4.
- (d) Unless otherwise agreed by the parties:
 - (i) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
 - (ii) each party shall bear their own costs of participating in the expert determination.

10.1.4 Determination by the QCA

- (a) If a Dispute is referred to the QCA pursuant to this Clause 10.1 or otherwise in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply in relation to any determination by the QCA of that Dispute. If there is an inconsistency between this Undertaking and Division 5 of Part 5 of the Act then Division 5 of Part 5 of the Act prevails to the extent of that inconsistency.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute of a type that could be notified to the QCA for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:
 - (i) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and
 - (ii) the process and any determination by the QCA is otherwise consistent with Division 5 of Part 5 of the Act and, except to the extent of any inconsistency with Division 5 of Part 5 of the Act, the provisions of this Undertaking.
- (c) If a Dispute is referred to the QCA in accordance with this Clause 10.1.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.
- (d) Where the QCA calls upon the Safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.
- (e) Where a matter is referred to the Safety Regulator for resolution in accordance with Clause 8.1.3(f)(ii), the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportions as the Safety Regulator determines.
- (f) If a Dispute relating to Clause 7.3.4(d) is referred to the QCA in accordance with this Clause 10.1.4, QR Network bears the onus of demonstrating to the QCA that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of QR Network not providing Access to the particular traffic.
- (g) If a Dispute is referred to the QCA in accordance with this Clause 10.1.4 and that Dispute relates to the presumption under Clause 6.5.2(c), QR Network will bear the onus of demonstrating that presumption should not apply.
- (h) If a Dispute is referred to the QCA in accordance with Clause 11.1.3(c), the following principles also apply:
 - (i) the QCA shall, in determining the Dispute, ensure the Supply Chain Operating Assumptions developed by QR Network are consistent with the efficient use of, and investment in, the relevant coal supply chain as a whole, provided that:
 - (A) the Supply Chain Operating Assumptions that apply for part of the relevant coal supply chain must be consistent with the Supply

- Chain Operating Assumptions that apply to the other parts of that coal supply chain;
- (B) QR Network's ability to efficiently operate its business and the Central Queensland Coal Region and to meet its obligations to Access Holders and Access Seekers (including those outside the relevant coal supply chain) is not compromised;
 - (C) all of QR Network's Access Holders (and where relevant Customers) are equitably treated; and
 - (D) the resolution of the Dispute must not adversely affect the right of QR Network to only grant Access Rights in respect of Capacity.
- (ii) the QCA may request other participants in the relevant Supply Chain Group and other persons who use or control components of the relevant coal supply chain who may be affected by the Supply Chain Operating Assumptions developed by QR Network to participate in the Dispute resolution process.

10.2 QCA DECISION-MAKING

- (a) The QCA may not make a decision ("Decision") under this Undertaking that may affect QR Network (including to require QR Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:
- (i) the QCA observed the rules of natural justice;
 - (ii) the QCA observed any procedures that were required by law or this Undertaking;
 - (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
 - (iv) the QCA was authorised to make the Decision under this Undertaking;
 - (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
 - (A) taking an irrelevant consideration into account in the exercise of a power;
 - (B) failing to take a relevant consideration into account in the exercise of a power;
 - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
 - (D) an exercise of a discretionary power in bad faith;
 - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
 - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
 - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
 - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
 - (I) any other exercise of a power in a way that is an abuse of the power;

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

For the avoidance of doubt, the terms of this Clause 10.2(a) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (b) The requirements set out in Clause 10.2(a) also apply to the QCA's conduct in making a Decision.
- (c) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this Clause 10.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.
- (d) This Clause 10.2 does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

10.3 AUDIT PROCESS

An audit required under Clause 2.2, 3.2.2, 3.5(d), 3.6, 9.7 or 9.8 must be conducted in accordance with the following process:

- (a) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, who must:
 - (i) be appropriately qualified and independent;
 - (ii) not be a holder of securities of QR Network or a QR Party or have a Related Party who is a holder of securities of QR Network or a QR Party; and
 - (iii) without limitation to Clause 10.3(a)(i), not in the Year prior to the Year in which the auditor is appointed have received more than 40% of its fee revenue from advising or consulting to QR Network or QR Parties,subject to the QCA approving the auditor (or replacement auditor) – provided that the QCA may refuse to approve an auditor for the purposes of an annual audit required under Clause 3.6 if QR Network has appointed that auditor each year for the last five years for the purpose of audits required under Clause 3.6;
- (b) the QCA's approval of an auditor (or replacement auditor) in accordance with Clause 10.3(a) continues unless and until withdrawn in accordance with Clause 10.3(c);
- (c) if the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may, within three (3) months after completion of the audit, notify QR Network in writing that its approval of that Auditor in relation to the next audit of those matters is withdrawn;
- (d) the Auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the Auditor's obligations to QR Network and

- its duty of care to the QCA, the Auditor's duty of care to the QCA will take precedence;
- (e) prior to commencing the audit the Auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan;
 - (f) the audit plan will:
 - (i) consist of a proposed work program for the execution of the audit, including audit costs (which shall be payable by QR Network); and
 - (ii) provide for the establishment of an audit liaison group, comprising the Auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise;
 - (g) QR Network will provide:
 - (i) any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor to be reasonable after consultation with QR Network; and
 - (ii) if the audit is required under Clause 3.2.2, access to QR Network's financial records and information systems necessary for the purpose of conducting the audit;
 - (h) the Auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report; and
 - (i) the Auditor will provide to QR Network and the QCA a copy of:
 - (i) the audit report (which the QCA may publish); and
 - (ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail.

PART 11: COORDINATION AND PLANNING

11.1 COAL SUPPLY CHAIN COORDINATION FOR CENTRAL QUEENSLAND COAL REGION

11.1.1 Whole of Supply Chain Coordination

QR Network will participate in a Supply Chain Group for the purpose of contributing to the coordination and effective performance of the relevant coal supply chain.

11.1.2 Supply Chain Master Plan

If a Supply Chain Group seeks to develop a Supply Chain Master Plan for a relevant coal supply chain, QR Network will participate in the development of the Supply Chain Master Plan.

11.1.3 Supply Chain Operating Assumptions

- (a) QR Network will develop Supply Chain Operating Assumptions in relation to each Individual Coal System and the Western System.
- (b) If a Supply Chain Group seeks to develop supply chain operating assumptions for a coal supply chain, QR Network will:
 - (i) participate in the development of those supply chain operating assumptions;
 - (ii) notify the Supply Chain Group of the Supply Chain Operating Assumptions applicable to the relevant coal supply chain;
 - (iii) consider any submissions from the Supply Chain Group in respect of whether the Supply Chain Operating Assumptions are reasonable; and
 - (iv) respond to any submissions from the Supply Chain Group as soon as reasonably practicable including whether and, if so, how QR Network has varied the relevant Supply Chain Operating Assumptions in response to those submissions.
- (c) If a participant in a Supply Chain Group is not satisfied that the relevant Supply Chain Operating Assumptions developed by QR Network are reasonable or with QR Network's response to submissions made by that Supply Chain Group regarding those Supply Chain Operating Assumptions, that participant may refer the matter to the QCA for determination in accordance with Clause 10.1.4.

11.2 COAL RAIL INFRASTRUCTURE MASTER PLANNING

11.2.1 Master Plan Process

- (a) QR Network will develop a Coal Rail Infrastructure Master Plan in accordance with this Clause 11.2.
- (b) The Coal Rail Infrastructure Master Plan may be made for a period of up to three (3) years but can extend to a longer time period.
- (c) QR Network will establish a Coal Rail Infrastructure Master Planning Forum comprising:
 - (i) Customers for coal carrying Train Services;
 - (ii) Access Holders that hold Access Rights for coal carrying Train Services and Access Seekers that are seeking Access Rights for coal carrying Train Services;

- (iii) each Railway Operator that has an agreement with an Access Holder to provide Train Services to that Access Holder in respect of some or all of the Access Rights subject to the Access Holder's Access Agreement;
 - (iv) the owners and/or operators of ports utilised by coal carrying Train Services and other coal unloading destinations;
 - (v) the Queensland Resources Council Ltd ABN 59 050 486 952, as an observer only; and
 - (vi) the QCA, as an observer only.
- (d) The Coal Rail Infrastructure Master Planning Forum's function is to act as a consultative body for the purposes of QR Network's development of the Coal Rail Infrastructure Master Plan.
- (e) QR Network will actively involve the Coal Rail Infrastructure Master Planning Forum in the development of the Coal Rail Infrastructure Master Plan. QR Network must:
- (i) as soon as reasonably practical after the Approval Date and then prior to 1 July in each Year (other than the first Year) in the Term, give each member of the Coal System Master Planning Forum a program setting out the consultations that are intended to occur through the Coal System Master Planning Forum over the forthcoming Year (including any processes for obtaining Customer Group acceptance of the scope of capital expenditure projects);
 - (ii) use reasonable endeavours to comply with a plan given to members of the Coal System Master Planning Forum in accordance with Clause 11.2.1(e)(i);
 - (iii) give participants at least ten (10) Business Days prior notice of any proposed meetings of the Coal Rail Infrastructure Master Planning Forum; and
 - (iv) at least five (5) Business Days prior to the proposed meeting, provide each participant with an agenda of the issues to be discussed, and any materials to be considered at that meeting.
- (f) QR Network is to provide an updated Coal Rail Infrastructure Master Plan to the Coal Rail Infrastructure Master Planning Forum (including the QCA) where that plan has substantially changed since the issue of the previous plan.

11.2.2 Content of Master Plan

- (a) QR Network must:
- (i) to the extent that QR Network considers it reasonable to do so, align the Coal Rail Infrastructure Master Plan to each applicable Supply Chain Master Plan; and
 - (ii) if there is any material difference between QR Network's Coal Rail Infrastructure Master Plan and a Supply Chain Master Plan, include in the Coal Rail Infrastructure Master Plan an explanation of the reasons for those differences.
- (b) The Coal Rail Infrastructure Master Plan must include information on the following matters for each Individual Coal System and the Western System:
- (i) the Supply Chain Operating Assumptions upon which the Coal Rail Infrastructure Master Plan is based;
 - (ii) the aggregated contracted Train Paths for coal carrying Train Services;

- (iii) the capacity planning scenarios; and
 - (iv) the proposed Asset Replacement Expenditure, General Expansion Capital Expenditure and Customer and Access Holder specific projects required to satisfy the capacity planning scenarios.
- (c) QR Network will provide in the Coal Rail Infrastructure Master Plan information on the scope, standard and preliminary costs of proposed General Expansion Capital Expenditure projects including information that:
- (i) identifies, by Individual Coal System or the Western System (as applicable), capacity analysis information, reasons for the expansion, identification of the projects that will be required to provide increased capacity to meet increased demand and estimated trigger points for each project;
 - (ii) identifies for each specific project, the scope of the project and describes the general standard of works, the additional Capacity to be delivered by the expansion and preliminary cost information;
 - (iii) quantifies the impact on Capacity during construction and measures for ameliorating this impact;
 - (iv) provides the rationale for the choice of project and a consideration of alternative solutions including:
 - (A) a preliminary analysis of the other Infrastructure Enhancement solutions considered by QR Network; and
 - (B) an indicative assessment of alternative supply chain solutions arising from discussions with other (present and prospective) service providers in the coal supply chain (even if this may involve capacity solutions which QR Network cannot deliver, but which may present a better supply chain solution); and
 - (v) identifies each project that is anticipated to be a Major Expansion.
- (d) In order to provide the information referred to in Clause 11.2.2(c)(i), QR Network will undertake capacity analysis modelling, on the basis of Supply Chain Operating Assumptions, in connection with proposed General Expansion Capital Expenditure projects. QR Network will provide access to the capacity analysis model to a consultant who has been jointly appointed by, and at the cost of, the members of a Customer Group for the purpose of peer reviewing the model, the model's output and sensitivity analysis in respect of proposed General Expansion Capital Expenditure projects relevant to that Customer Group. QR Network will run a reasonable range of scenarios for consideration, as requested by the members of the Customer Group.

11.3 CONTRACTING FOR CAPACITY IN COAL SUPPLY CHAINS

- (a) QR Network will use reasonable endeavours to grant Access Rights to an Access Seeker in respect of coal carrying Train Service only where QR Network has formed a reasonable opinion that the Access Seeker has secured or is reasonably likely to secure the rights required to leave the QR Network rail network in order to unload at its destination.
- (b) Subject to Clause 11.3(d), if QR Network grants Access Rights ("Conditional Access Rights") to Access Seekers ("Conditional Access Holders") that are conditional on the completion of particular Infrastructure Enhancements, then:
 - (i) after the commissioning of the last of the relevant Infrastructure Enhancements, QR Network will, subject to Clause 11.3(c), undertake an

assessment of the change in Capacity arising as a result of those Infrastructure Enhancements (“Change in Capacity”); and

(ii) if:

- (A) that assessment indicates that the Change in Capacity is less than the Planned Capacity for those Infrastructure Enhancements at the time when the Conditional Access Rights were granted; and
- (B) that Change in Capacity is not sufficient to provide all of the Conditional Access Rights to all of the Conditional Access Holders,

then:

- (C) the Conditional Access Rights of each Conditional Access Holder will be reduced on a pro rated basis against the Change in Capacity by reference to the proportion that those Conditional Access Rights bear to the aggregate of the Conditional Access Rights for all of the Conditional Access Holders;
 - (D) QR Network will notify each of the Conditional Access Holders:
 - (1) of the assessment that has been undertaken;
 - (2) of the reduction in that Conditional Access Holder’s Conditional Access Rights (“Access Rights Reduction”) and the basis of that calculation; and
 - (3) that the Conditional Access Holders together will be given the first position in the queue for new Planned Capacity, but only to the extent of their Access Rights Reduction; and
 - (E) for the purposes of the Conditional Access Holders’ position in a queue, QR Network and each Conditional Access Holder is taken to have complied with Clauses 4.1 to 4.4 provided that:
 - (1) each Conditional Access Holder’s Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Access Rights but only to the extent of its Access Rights Reduction; and
 - (2) if QR Network considers it reasonably necessary to do so, QR Network will as soon as reasonably practical provide supplementary material to the Indicative Access Proposal previously provided to each Conditional Access Holder (including in respect of the Infrastructure Enhancements that may be needed to provide the Conditional Access Holders with Access Rights equivalent to their Access Rights Reductions).
- (c) QR Network may defer an assessment for the purposes of Clause 11.3(b) until such time as QR Network reasonably considers that the relevant Infrastructure Enhancements are fully operational and the demand conditions are such that a reasonable assessment can be undertaken.
- (d) QR Network is not required to comply with Clause 11.3(b) to the extent that compliance with Clause 11.3(b) is inconsistent with any Access Agreement for a Conditional Access Holder.
- (e) This Clause 11.3 is in addition to and is not intended to limit or restrict either Part 4 or Part 7. For the avoidance of doubt, if QR Network cannot comply with both its obligations in accordance with this Clause 11.3 and its obligations in

accordance with Part 4 and Part 7, then QR Network's obligations in accordance with Part 4 and Part 7 prevail to the extent of the inconsistency.

11.4 NO FETTER

Notwithstanding any other provision in this Part 11, QR Network is only obliged to comply with Clauses 11.1 and 11.3 to the extent that such compliance:

- (a) is consistent with QR Network's commercial objectives; and
- (b) does not (and QR Network is not compelled to do anything that would) inhibit, restrict, fetter or adversely affect QR Network's ability:
 - (i) to exercise any discretion, power, function or right; or
 - (ii) to comply with any obligation or to do anything,in accordance with this Undertaking or an Access Agreement.

For the avoidance of doubt, QR Network's compliance with Clauses 11.1 and 11.3 does not limit QR Network's rights or obligations in respect of Clause 11.2.

PART 12: DEFINITIONS & INTERPRETATION

12.1 DEFINITIONS

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

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

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

“2008 Undertaking” means the access undertaking prepared by QR Network and approved by the QCA pursuant to the Act which commenced on [insert] (as amended during the term of that access undertaking);

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

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

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

“Access” means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services including, to the extent necessary for the operation of Train Services:

- (i) the use of passing loops and Train queuing and staging including before and after loading and unloading of Trains;
- (ii) the loading and unloading of Trains at facilities that are Rail Infrastructure;
- (iii) Train marshalling and shunting:
 - (A) in preparation for running of a Train Service;
 - (B) before or after loading or unloading of a Train; and
 - (C) before or after maintenance and provisioning of a Train;
- (iv) Stowage;
- (v) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
 - (A) signalling;
 - (B) Train Control Services and associated communication;
 - (C) access to walkways immediately adjacent to, and crew changeover points connecting to, Track; and

- (D) the provision of electric transmission infrastructure on electrified sections of the Track so as to permit the acquisition of electric energy for traction (but, for the avoidance of doubt, not including the sale or supply of electric energy); and
- (vi) entry upon land:
 - (A) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure; or
 - (B) for access to walkways and crew changeover points referred to in paragraph (v)(C) of this definition to the same degree as is available to Related Operators,provided that:
 - (C) the land is owned by QR Network or a QR Party, or QR Network or a QR Party has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
 - (D) the entry is not inconsistent with the terms of any lease, licence or other arrangement to which QR Network or a QR Party is a party in respect of the land;

“Access Agreement” means an agreement between QR Network and an Access Holder for the provision of Access;

“Access Application” means a request for Access by an Access Seeker which:

- (i) has been prepared in writing using the application form provided on QR Network’s website; and
- (ii) which satisfies the Application Requirements;

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

“Access Conditions” means conditions additional to those in the relevant Standard Access Agreement, whether the conditions are contained in an Access Agreement or a separate agreement, that mitigate QR Network’s exposure to the financial risks associated with providing Access for an Access Seeker’s proposed Train Services including, without limitation, conditions requiring:

- (i) an upfront contribution;
- (ii) a payment of an Access Facilitation Charge;
- (iii) a prepayment of all or part of an Access Facilitation Charge;
- (iv) a varied or an additional take or pay arrangement including, for example, to address ‘back-end’ payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal mine, the undepreciated component of any relevant Infrastructure Enhancements that were constructed solely for the purpose of the mine);
- (v) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to QR Network, acting reasonably, to support payment of an amount (including, for example, payment of an Access Facilitation Charge or under an additional take or pay arrangement); or

- (vi) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking,

but which are not inconsistent with the Act.

“Access Conditions Register” has the meaning given to that term under Clause 6.5.3(a);

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

“Access Facilitation Charge” means an ongoing charge separate to an Access Charge for the facilitation of Access which is payable irrespective of the actual usage of Rail Infrastructure;

“Access Holder” means a person who holds Access Rights;

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

“Access Rights Reduction” has the meaning given to that term in Clause 11.3(b)(ii)(D)(2);

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

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

“Acknowledgment Notice” means a notice given to an Access Seeker under Clause 4.2(c) acknowledging the receipt of an Access Application;

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

“Ad Hoc Train Service” means any Train Service:

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

“Additional Information” means that information set out in:

- (i) Part A of Schedule D, to the extent not previously provided by QR Network; and
- (ii) Part B of Schedule D,

but only to the extent required by the Access Seeker;

“Adjustment Amount” has the meaning given to that term in Clause 2.3.1, Part A of Schedule F;

“Adjustment Charge” has the meaning given to that term in Clause 2.3.1, Part A of Schedule F;

“Agreed Paths” means the lesser of:

- (i) the number of Train Paths required for the operation of the number of Train Services that an Access Holder is entitled to operate in accordance with an

Access Right specified under an Access Agreement (as varied from time to time in accordance with the Access Agreement); and

- (ii) the actual Train Paths that QR Network agrees, upon request by the Access Holder from time to time, to make available for the operation of the Access Holder's Train Services;

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

- (i) transporting coal, 30 minutes;
- (ii) transporting bulk minerals (other than coal), 60 minutes;
- (iii) transporting freight products, 60 minutes; and
- (iv) providing long distance passenger transport, 30 minutes;

"Applicable Undertaking" means this Undertaking, the 2008 Undertaking, the 2005 Undertaking or the 2001 Undertaking that applied at the relevant time;

"Applicants" has the meaning given to that term in Clause 7.5.3(b);

"Application Requirements" means:

- (i) the information requirements set out in Schedule C; and
- (ii) any additional information or clarification requested by QR Network under Clause 4.2(a) to the extent that information or clarification is required in order for QR Network to be reasonably satisfied that the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal;

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

"Approved Capital Expenditure" means all capital expenditure approved by the QCA in accordance with Clauses 2 and 3 of Schedule A;

"Asset Management Plan" has the meaning given to that term in Clause 2.4 of Schedule A;

"Asset Replacement Expenditure" means expenditure on capital projects required to maintain the Existing Capacity of the Rail Infrastructure (for example, the replacement of life expired or obsolete assets);

"AT₂₋₄" means the aggregate of the AT₂, AT₃ and AT₄ components of Access Charges;

"AT₂₋₄ Revenue Adjustment Amount" means the amount calculated under Clause 3.2.1(a), Part B of Schedule F;

"AT₅ Revenue Adjustment Amount" means the amount calculated under Clause 3.2.1(b), Part B of Schedule F;

"Auditor" means an auditor appointed by QR Network and approved by the QCA in accordance with Clauses 10.3(a) and (b);

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

“Available Capacity” means Capacity excluding all Committed Capacity except Committed Capacity that will cease being Committed Capacity prior to the time in respect of which that Capacity is being assessed;

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

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

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

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

- (i) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;
- (ii) identified Below Rail Delays for that Train Service;
- (iii) time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraph (i) of this definition; and
- (iv) delays due to Operational Constraints directly caused by the activities of QR Network in maintaining the Rail Infrastructure or due to a fault or deficiency in the Rail Infrastructure provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraph (ii) or (iii) of this definition;

“Below Rail Transit Time Percentage” means, for a Train Service travelling between its origin and destination, the Below Rail Transit Time divided by the relevant nominated section running times (in the direction of travel) as specified in the relevant Train Service Entitlement;

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

“Capacity” means the aggregate of all Existing Capacity and all Planned Capacity;

“Capacity Access Agreement” means an Access Agreement that is substantially consistent with a form of agreement outlined in Clause 5.2(n);

“Capacity Analysis” means an assessment, based on the relevant Access Seeker’s Operating Plan and requested Access Rights, of:

- (i) whether there is sufficient Available Capacity to accommodate the requested Access Rights;
- (ii) if there is not sufficient Available Capacity to accommodate the requested Access Rights, the Infrastructure Enhancements required to provide the additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and timing for completion); and

- (iii) the operational impacts of the requested Access Rights including, in the Central Queensland Coal Region, the impact of the requested Access Rights on the System Operating Assumptions,

and which provides a sufficient basis to enable QR Network to finalise the relevant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

“Capacity Notification Register” means a register maintained by QR Network in accordance with Clause 4.7;

“Capital Expenditure Carryover Account” means the account maintained by QR Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in Clause 4 of Schedule A;

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

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

“Central Queensland Coal Region” means the rail corridors:

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

“Change in Law” means:

- (i) any amendment, repeal, modification or enactment of any Law;
- (ii) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (iii) the making of any new directive, or any change in an existing directive, of any Authority;
- (iv) the imposition of a requirement for authorisations not required as at the Commencing Date;
- (v) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (vi) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

“Change in Relevant Taxes” means:

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

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

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

“Coal Rail Infrastructure Master Plan” means the plan relating to QR Network’s proposed capital expenditure projects containing the information specified under Clause 11.2.2(b);

“Coal Rail Infrastructure Master Planning Forum” means the forum of that name established under Clause 11.2.1(c);

“Commencing Date” means 1 July 2009;

“Committed Capacity” means that portion of the Capacity:

- (i) that is required:
 - (A) to meet the Train Service Entitlements of Access Holders; and
 - (B) to comply with any Passenger Priority Obligation; and
- (ii) arising from a User Funded Expansion to the extent that a person has a right of first refusal in accordance with Clause 7.5.4(d)(vi) (including, if applicable, any person to whom that right has been transferred in accordance with Clause 7.5.4(d)(vii)) and has not waived that right;

“Committed Capacity Register” means a register that identifies persons who have an interest (whether as the existing Access Holder or otherwise) in Committed Capacity for existing Access Rights and including the information identified in Clause 7.4(c);

“Common Corridor” means that part of the Rail Infrastructure that was utilised by the existing Access Holder for the Train Services for which Access Rights are being relinquished and will also be utilised by the new Access Holder’s or Transferee’s Train Services;

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

“Competing Applications” means the Access Applications of two or more Access Seekers for mutually exclusive Access Rights (in other words, the Access Rights sought relate to the same traffic task) – including, for example:

- (i) where two Access Seekers are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same Train Service; or
- (ii) where an Access Seeker is seeking Access Rights in order to provide Train Service/s under a rail haulage agreement with a Customer and that Customer is also an Access Seeker for the same Train Service;

“Compliance Officer” means the QR Network employee designated as such by the QR Network Executive General Manager for the purposes of Clause 9.6(a);

“Conditional Access Holders” has the meaning given to that term in Clause 11.3(b);

“Conditions Negotiation Period” has the meaning given to that term in Clause 7.5.3(d)(ii)(C);

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

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

provided that such information:

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

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

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

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

“Consequential Loss” means, subject to paragraphs (e) and (f) below:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any claim in tort;
- (c) any loss of profits, production, revenue, use, contract, opportunity, reputation or goodwill, any wasted overheads or damage to credit rating whatsoever; and
- (d) any loss arising out of any Claim by a third party including, for the avoidance of doubt, a third party that is a QR Party,

but **Consequential Loss** does not include:

- (e) a loss (including a loss arising out of a Claim by a third party including, for the avoidance doubt, a third party that is a QR Party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (f) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

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

“Contributions” has the meaning given to that term in Clause 7.5.4(a);

“Contributors” has the meaning given to that term in Clause 7.5.4(a)(iii);

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

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

- (i) for Financial Statements prepared under Clause 3.2.1(a)(i), the process for identifying, from QR’s audited general purpose financial statements, the cost base for Below Rail Services, separate from other services provided by QR or Related Parties of QR to which those Financial Statements relate; and
- (ii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
- (iii) the format of Financial Statements;

“CPI” means the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0);

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

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

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

“Cross System Train Service” has the meaning given to that term in Clause 4.2, Part B of Schedule F;

“Customer” means:

- (i) except for Clause 7.3.7, a person that the Access Holder or Access Seeker is providing or intending to provide Train Services (as a Railway Operator) for or on behalf of, and for the purpose of providing such Train Services, the Access Seeker or Access Holder is acquiring or has acquired Access Rights; and

- (ii) for the purposes of Clause 7.3.7, a person that has a rail haulage agreement with the Access Holder (that is a Railway Operator) in respect of some or all of the Access Rights subject to the Access Holder's Access Agreement;

"Customer Group" has the meaning given to that term in Clause 3.2.1 of Schedule A;

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

"Daily Train Plan" or **"DTP"** means that document detailing the scheduled times for all Train Services and any Planned Possessions, Urgent Possessions and Emergency Possessions for a particular day on a specified part of the Rail Infrastructure;

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

"Depreciated Optimised Replacement Cost" or **"DORC"** means the value of assets determined in the following manner:

- (i) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;
- (ii) optimisation of the asset base will occur, but such optimisation will only consider whether or not the infrastructure standard and infrastructure capacity are excessive, given the current and likely future requirements of Access Holders; and
- (iii) depreciation of the optimised replacement asset value will be undertaken over the useful life of the assets;

"Destination System" means the Individual Coal System on which the Nominated Unloading Facility is located;

"Discount Rate" means the rate equivalent to the ROA, as defined in Clause 6.2.4(a);

"Dispute" has the meaning given to that term in Clause 10.1.1(a);

"Dispute Notice" means a notice in writing given under Clause 10.1.1(a) specifying a Dispute and requiring that Dispute to be dealt with in accordance with Clause 10.1;

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

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

"Dwell" means the short-term storage of Trains on Rail Infrastructure at locations specified by QR Network as required for crew changes, meal breaks and on Track maintenance, examination and provisioning of that Train;

"EC" means means the electric energy charge specified as EC for the nominated Reference Train Service in Clauses 5 and 6, Part B of Schedule F;

"Efficient Cost" means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR Network operates, and including any transitional

arrangements agreed between QR Network and the QCA to reflect the transition from QR Network's actual cost to that efficient cost;

"egtk" means the electric gross tonne kilometres attributed to the relevant Train Service, being:

- (i) the gtk for the Train Service, if that Train Service uses electric traction; and
- (ii) zero (0), if the Train Service does not use electric traction;

"EIRMR" is an environmental investigation and risk management report containing the matters referred to it in Clause 8.2.1(a);

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

"EMS" means an environmental management system or a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licenses;

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

- (i) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in, for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄, and/or AT₅ input of the relevant Reference Tariff and, for Reference Tariffs specified in Part C of Schedule F, the AT₁ input of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (ii) a change in QR Network's maintenance practices, reasonably requested by an Access Holder or Customer subsequent to the Commencing Date, which would cause a change in the costs reflected in, for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄, and/or AT₅ components of the relevant Reference Tariff and, for Reference Tariffs specified in Part C of Schedule F, the AT₁ component of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any change in maintenance practices that have previously resulted in a variation of the Reference Tariff;
- (iii) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT₅ input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (iv) a change in the pricing of one or more Retail Entities that either alone or in combination with all other changes in the pricing of relevant Retail Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the EC input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%); or

- (v) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry.

“Environmental Authorities” means:

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

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

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

“EPA” means the State department administering the EP Act;

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

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

“Evaluation Period” means:

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

“Existing Capacity” means the existing capability of Rail Infrastructure (in the absence of any Infrastructure Enhancement) to accommodate Train Services, after:

- (i) providing for QR Network's reasonable requirements for the exclusive utilisation of that Rail Infrastructure for the purposes of performing activities associated with the maintenance, repair or enhancement of Rail Infrastructure, including the operation of work Trains; and
- (ii) for Rail Infrastructure within the Central Queensland Coal Region, taking into account the Supply Chain Operating Assumptions applicable for that Rail Infrastructure;

“Expansion” means any proposed rail transport infrastructure (as defined under the TIA) or other capital project required to expand, create or enhance Capacity including Infrastructure Enhancements (such as, passing loops and duplications, re-routing of existing alignments, improvements in standard or scope of or other modifications to existing assets) in an Individual Coal System – but does not include an Extension;

“Extension” means rail transport infrastructure (as defined under the TIA) that when constructed will connect one or more new unloading or loading facilities to an

Individual Coal System or will connect an Individual Coal System to other rail transport infrastructure (as defined under the TIA);

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

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

“First Escalation Date” means that date identified as such in Part C of Schedule F for the applicable Reference Tariff;

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

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

and includes:

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

“General Expansion Capital Expenditure” means expenditure on capital projects required to expand, create or enhance Capacity (including to develop new Rail Infrastructure) where the relevant Rail Infrastructure is utilised or to be utilised for the benefit of more than one Customer or more than one Access Holder;

“Good Engineering Practices” means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

“GST” has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“gtk” means the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;

“IIARD Act” means the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld);

“Increment” has the meaning given to that term in Clause 3.2.1(b), Part B of Schedule F;

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

“Information Pack” means the information set out in Clause 1, Part A of Schedule D and relevant to the Rail Infrastructure to which Access is sought;

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

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

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

“Infrastructure Enhancement” means new Rail Infrastructure or a modification to existing Rail Infrastructure;

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

“Initial Capacity Assessment” means a preliminary Capacity Analysis limited to:

- (i) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights; and
- (ii) if there is not sufficient Available Capacity, to accommodate the requested Access Rights either:
 - (A) an outline of the Infrastructure Enhancements required to provide additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and the timing for completion); or
 - (B) if QR Network has not carried out the investigations required to provide the information in paragraph (A), an outline of the requirements for an investigation into the works required to accommodate the requested Access Rights;

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

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

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

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

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

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

- (i) the Rail Infrastructure;

- (ii) existing operations on the Rail Infrastructure (including other Train Services); and
- (iii) QR Network's staff, other Access Holders' staff or QR Network's or other Access Holders' interfaces with members of the public (including any activities on the Rail Infrastructure that may affect those matters);

“Intermediate Train Plan” or **“ITP”** means a plan that details the scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the relevant period;

“IRMP” means an interface risk management plan identifying the Interface Risks associated with the Access Seeker's or Access Holder's proposed operations and outlines both the control mechanisms agreed between QR Network and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

“Law” or **“Laws”** includes:

- (i) the provisions of any statute, rule, regulation, code, proclamation, ordinance or by-law, present or future, whether State, Commonwealth or otherwise; and
- (ii) any requirement, condition, notice, consent, accreditation, order or direction or similar thing of any statutory, public or other competent authority (including the State in any of its regulatory capacities), present or future, given or imposed pursuant to anything specified in paragraph (i) of this definition.

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

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

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

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

“Major Expansion” means an Expansion for the purpose of creating or providing additional Capacity substantially as a result of or in connection with a single Major External Development;

“Major External Development” means:

- (a) an expansion of an existing loading or unloading facility (but does not include an increase in capacity at an unloading facility generated through operational improvement and optimisation); or
- (b) a development of a new loading or unloading facility,

announced by an entity other than QR Network or a QR Party, which increases, or facilitates the increase of, the demand for Access for coal carrying Train Services;

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

“Major Yards” means:

- (i) the yards at Acacia Ridge, Fisherman Islands, Callemondah, Jilalan, Coppabella, Paget, Townsville and Pring; and
- (ii) that part of the yards at Rockhampton and Portsmith comprised of Track which has signalling;

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

“Material Default” means:

- (i) failure on more than one occasion to comply with any terms and/or conditions of a relevant agreement that are not fundamental terms and/or conditions; or
- (ii) any breach of a fundamental term and/or condition of a relevant agreement, where a fundamental term and/or condition is one that if breached gives rise to a remedy of termination,

where a relevant agreement is as described in Clause 4.6(b)(ii);

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

“Maximum Allowable Revenue” for the purposes of Clauses 6.2.2 and 6.2.3 is the maximum revenue that QR Network should be entitled to earn from the provision of Access to the relevant Train Service(s) over the Evaluation Period as determined in accordance with Clause 6.2.4;

“MCI” means the maintenance cost index developed by QR Network for the purposes of the escalation of Reference Tariffs and which has been approved by the QCA (and as adjusted from time to time to replace any index used in the calculation of the maintenance cost index that ceases to be published with the CPI, or an appropriate substitute index approved by the QCA);

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

“Minor Expansion” means an Expansion that is not a Major Expansion;

“National Codes of Practice” means the codes developed by the Australian Rail Association to identify, at a high level, the standards required for rail infrastructure in Australia;

“Negotiation Cessation Notice” means a notice of QR Network’s decision not to enter into an Access Agreement with the relevant Access Seeker and the reasons for that decision;

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

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

“New Access Agreement” has the meaning given to that term in Clause 7.3.7(a)(i)(A);

“Noise Planning Levels” means the planning levels for railways referred to in the QR Code of Practice: Railway Noise Management;

“Nominated Access Rights” means the Access Rights to be relinquished or transferred in accordance with Clause 7.3.6;

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

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

“Nominated Railway Operator” means, for an Access Holder, a Railway Operator nominated or appointed by that Access Holder in accordance with an Access Agreement for the purpose of operating Train Services for that Access Holder for specified periods in accordance with that Access Holder’s Access Rights;

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

“NPV Value” means the net present value, calculated at the Discount Rate, of the contribution to Common Costs by a Train Service the subject to an Access Application including any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of QR Network not providing Access for that Train Service (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Payments);

“nt” means the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty;

“ntk” means the net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) travelled by the Train Service;

“Old Access Agreement” has the meaning given to that term in Clause 7.3.7(a)(i)(B);

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

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

“Origin System” means the Individual Coal System on which the Nominated Loading Facility is located;

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

“Participation Threshold” has the meaning given to that term in Clause 7.5.3(d)(ii)(B);

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

“Planned Capacity” means the increase in Existing Capacity that is expected to result from Infrastructure Enhancements that QR Network is committed to construct;

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

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

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

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

“Private Incremental Costs” means those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs:

- (i) are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure;
- (ii) have been reviewed and endorsed by the QCA; and
- (iii) have been submitted to QR Network by the owner or operator of the relevant Private Infrastructure for the purpose of calculating the Access Charges;

“Private Infrastructure” means the infrastructure, including but not limited to the track, signalling and electrical overhead traction system (if applicable), that is not Rail Infrastructure;

“Proposed Standard Access Agreement” means:

- (i) a proposed new, amended or replacement pro forma Access Agreement; and
- (ii) includes a proposal that a Standard Access Agreement cease to be a Standard Access Agreement;

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

“QCA Levy” means the fee allocated to the nominated Train Services to cover the fees imposed by the QCA on beneficiaries of its regulatory services and, for a Reference Train Service, is that amount specified as such for that Reference Train Service in Parts B or C of Schedule F;

“QR” means QR Limited ACN 124 649 967;

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

“QR Network” means QR Network Pty Ltd ACN 132 181 116;

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

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

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

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

“QR Network Executive General Manager” means the person who is, from time to time, the Executive General Manager of QR Network (including that position as renamed or replaced);

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

“QR Party” means a Related Party of QR Network;

“QR Passenger” means QR Passenger Pty Ltd ACN 132 181 090;

“QR Services” means QR Services, a business group within QR;

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

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

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

“Rail Infrastructure” means:

- (a) subject to paragraph (b) of this definition, rail transport infrastructure (as defined under the TIA) 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; or
- (b) for so long as this Undertaking applies in whole or in part to QR Passenger pursuant to a transfer notice in accordance with the IIARD Act:
 - (i) rail transport infrastructure (as defined under the TIA) for which QR Network is the Railway Manager; and
 - (ii) rail transport infrastructure (as defined under the TIA) for which QR Passenger 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;

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

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

“Reasonable Demand” has meaning given to that term in Clause 3.3.2(d)(i) of Schedule A;

“Reduction Factor” means an amount calculated in accordance with Clause 7.3.6(n);

“Reference Tariff” is an Access Charge applicable for a specified Reference Train Service, set out in Schedule F or established by QR Network and authorised by the QCA in accordance with Clause 6.4.2, the purpose of which is to provide information to Access Seekers as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service (as amended, varied or escalated in accordance with this Undertaking from time to time);

“Reference Tonnes” has the meaning given to that term in Clause 3.2.1 of Schedule A;

“Reference Train Service” means a notional Train Service identified in respect to a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions;

“Regulatory Asset Base” means the asset value for the Central Queensland Coal Region and that part of the Western System west of Rosewood, accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services;

“Related Operators” means business groups within QR Parties that undertake the operation of Train Services for transporting passengers or freight for reward;

“Related Operator Train Services” means Train Services provided or to be provided by a Related Operator;

“Related Party” means a related body corporate as defined in the Corporations Act;

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

“Relinquishment Date” has the meaning given to that term in Clause 7.3.6(b)(ii);

“Relinquishment Fee” means an amount calculated in accordance with Clause 7.3.6(k).

“Renewal Application” means an Access Application submitted to QR Network by the relevant Access Holder, the relevant Customer or a Railway Operator nominated by the relevant Customer, in accordance with Clause 7.4(d):

- (i) within sixty (60) days after QR Network gave the relevant notice under Clause 7.4(d); and
- (ii) in respect of Access Rights:
 - (A) not in excess of those under the relevant Access Holder’s existing Access Agreement;
 - (B) for the existing mine which receives the benefit of those Access Rights or a Replacement Mine; and
 - (C) for a term of at least ten (10) years or, if the Access Application relates to an existing mine, the remaining life of that mine,

but does not include an Access Application in respect of Access Rights that were granted to the relevant Access Holder under its existing Access Agreement as a Transferee;

“Replacement Mine” means a mine:

- (i) the Customer or Access Holder for which is the same as the Customer or Access Holder (as applicable) for the existing mine receiving the benefit of the relevant Access Rights (provided that, in the case of the Access Holder, the Access Holder has no Customer);
- (ii) that is in the same geographic area as the existing mine referred to above such that Train Services for that mine use substantially the same Train paths as Train Services for the existing mine; and
- (iii) that is producing a volume of coal substantially equivalent to a reduction in existing volume from the existing mine;

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

“Revenue Adjustment Amounts” means collectively the AT₂₋₄ Revenue Adjustment Amount and the AT₅ Revenue Adjustment Amount and **“Revenue Adjustment Amount”** means one of them;

“Review Event” means:

- (a) a change in QR Network’s maintenance practices, reasonably requested by an Access Holder or Customer subsequent to the Commencing Date, which has caused, or will cause a change in the costs reflected in:
 - (i) for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄ and/or AT₅ components of the relevant Reference Tariff; and
 - (ii) for Reference Tariffs specified in Part C of Schedule F, the AT₁ component of the relevant Reference Tariff,
of greater than two and a half percentage points (2.5%) excluding the impact of:
 - (iii) any change in maintenance practices that have previously resulted in a variation of the Reference Tariff since the Approval Date; and
 - (iv) any adjustment to the Reference Tariff to reflect changes in the MCI;
- (b) a Force Majeure Event – of the type set out in either paragraph (v) or (xii) of the definition of that term – affecting QR Network to the extent that QR Network has incurred or will incur additional incremental costs of greater than \$1 million that have not previously resulted in a variation of the relevant Reference Tariff;
- (c) the implementation of a self-insurance function for QR Network, by no later than 31 December 2010, which must include:
 - (i) a resolution by the QR Network Board resolving which events are being self-insured and acknowledging that it is considered that QR Network will have sufficient financial capacity to assume such self-insured risks;
 - (ii) operation of an appropriate claims management system and implementation of other procedures to ensure that full and accurate costs of any self-insured losses are identified and claimed by QR Network;
 - (iii) varying accounting systems to establish a self-insurance fund and separate expense items for self-insurance;
 - (iv) expanding the current claims management team to provide sufficient capacity to assess and manage additional claims against self-insured risks including the pursuit of recovery against third parties (including QR Parties) where appropriate;

- (v) establishing any other appropriate policies, processes and procedures for the management of claims against self-insured risks; and
- (vi) either demonstrating to the QCA that self-insured losses would not be otherwise recovered through revenue recovery provided for by this Undertaking, or submitting a Draft Amending Undertaking to remove the potential for any such recovery;
- (d) an increase in the number of contracted coal carrying Train Services using Rail Infrastructure between Burngrove and Minerva; or
- (e) any other material change in circumstances that QR Network can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff,

in respect of which QR Network has given written notice to the QCA of QR Network's intention to propose a variation to that Reference Tariff under Clause 2.2, Part A of Schedule F;

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

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

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

"rtp" means the number of reference Train Paths used by the relevant Train Service calculated in accordance with Clause 3.2(a), Part A of Schedule F;

"Rules" has the meaning given in the National Electricity Rules as defined under the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA);

"Safety Management System" means:

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

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

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

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

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

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

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

“Significant Investment” has the meaning given to that term in Clause 7.5.3(a);

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

“Standard Access Agreement” means a pro forma Access Agreement set out in Volume 2 of this Undertaking;

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

“State” means the State of Queensland;

“Stowage” means:

- (i) Dwell; and
- (ii) the short-term storage of Trains on Rail Infrastructure at locations specified by QR Network where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure, but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

“Subsidiary” has the meaning given to that term under the Corporations Act;

“Supply Chain Group” means a group:

- (i) that has been established as a whole of coal supply chain coordination group for the purpose of coordinating some or all aspects of the planning or operation of a coal supply chain within the Central Queensland Coal Region or the Western System; and
- (ii) which QR Network reasonably considers has the support of sufficient participants in the coal supply chain to effectively perform that coordination purpose;

“Supply Chain Master Plan” means an integrated plan identifying feasible investment options for increasing the capacity of a coal supply chain (including variations to supply chain operating assumptions for the coal supply chain) and evaluating those investment options from a total cost, risk and timing perspective;

“Supply Chain Operating Assumptions” means QR Network’s assumptions on matters such as coal supply chain operating mode, operating parameters for each element of the coal supply chain, interface losses between each element of the coal supply chain, coal supply chain flexibility requirements, live run losses and other operating parameters;

“System Allowable Revenue” means:

- (i) for AT₂₋₄ in relation to an Individual Coal System, the total revenue from AT₂₋₄ arising from all Access Agreements in relation to that Individual Coal System that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.3, 6.3, 7.3 and 8.3, Part B of Schedule F; and
- (ii) for the AT₅ component of Access Charges for the Central Queensland Coal Region, the total revenue from the AT₅ component of Access Charges arising from all Access Agreements in relation to the Central Queensland Coal Region that QR Network is entitled to earn over the relevant Year, as specified in either Clause 5.3 or 6.3, Part B of Schedule F,

as amended from time to time and as adjusted in accordance with Clause 3, Part B of Schedule F;

“System Discount” means the amount specified as such, in Part B of Schedule F, for the relevant Reference Train Service;

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

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

“System Path” means a path that can be taken by a Train Service within an Individual Coal System from a specific origin to a Nominated Unloading Facility;

“System Premium” means the amount specified as such, in Part B of Schedule F, for the relevant Reference Train Service;

“System Rules” means the rules made (including as amended and replaced) from time to time in accordance with Clause 7.1 and Appendix 1 of Schedule G;

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

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

“Term” means the period between the Approval Date and the Terminating Date;

“Terminating Date” means the earlier of 30 June 2013 and the date on which this Undertaking is withdrawn in accordance with the Act;

“Third Party” means a person other than a QR Party;

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

“Timetabled Traffic” means a traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train Path on a particular day and/or week (but excluding any traffic that is a coal carrying Train Service in the Central Queensland Coal Region);

“Total Actual Revenue” means:

- (i) for AT₂₋₄ in relation to an Individual Coal System, the amount calculated in accordance with Clauses 3.2.3, 3.2.4 and 3.2.15, Part B of Schedule F; and
- (ii) for the AT₅ component of Access Charges for the Central Queensland Coal Region, the amount calculated in accordance with Clauses 3.2.5 and 3.2.15, Part B of Schedule F;

“Track” means that part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings;

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

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

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

- (i) recording Train running times on Train diagrams and in QR Network’s information systems;
- (ii) reporting of incidents occurring on the Rail Infrastructure;
- (iii) managing incidents occurring on the Rail Infrastructure from within a Train Control centre;
- (iv) Field Incident Management and Yard Control services; and
- (v) exchanging information with Access Holders,

and **“Train Control”** has a related meaning;

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

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

“Train Service” means:

- (a) the operation of a Train on the Rail Infrastructure between a specified origin and destination; and
- (b) for the purpose of the definition of Private Incremental Costs in this Clause 12.1 and Clause 4, Part B of Schedule F, also includes the extent to which the relevant Rollingstock utilises Private Infrastructure in addition to Rail Infrastructure as part of its trip;

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

“Transferee” has the meaning given to that term in Clause 7.3.6(b)(iii);

“Transferred Access Rights” has the meaning given to that term in Clause 7.3.7(a)(i)(A);

Transferred Adjustment Charges has the meaning given to that term in Clause 7.3.7(b)(iv)(B);

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

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

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

“Undertaking” means this document (including all volumes and schedules) which is an undertaking for the purposes of the Act;

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

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

“User Funded Assets” has the meaning given to that term in Clause 7.5.4(d)(iii);

“User Funded Expansion” has the meaning given to that term in Clause 7.5.4(a)(iii);

“User Funding” has the meaning given to that term in Clause 7.5.4(a)(iv);

“User Funding Agreement” has the meaning given to that term in Clause 7.5.4(a)(iii);

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

“X-Factor” means an efficiency factor applicable to maintenance or operating costs as approved by the QCA for the purpose of adjusting System Allowable Revenues in Part B of Schedule F;

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

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

12.2 INTERPRETATION

(a) In this Undertaking unless the context otherwise requires:

- (i) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retains responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
- (ii) reference to a person includes a partnership, an unincorporated joint venture, an unincorporated association, a corporation, a government or statutory body or authority and any other entity recognised by law;
- (iii) where:
 - (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
 - (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage

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

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

- (iv) a reference to “dollars” or “\$” means a reference to Australian dollars;
- (v) words importing the singular number includes the plural number and vice versa;
- (vi) words importing any gender include the other gender;
- (vii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (viii) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (ix) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (x) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (xi) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;
- (xii) clause headings are for reference purpose only;
- (xiii) any reference to the words “include” “includes” or “including” must be read as if they are followed by the words “without limitation”;
- (xiv) any reference to time is to local time in Queensland;
- (xv) subject to Clause 12.2(a)(xvii), reference to a Part, Clause or Schedule is a reference to the corresponding Part or Clause found in Part 1 to Part 12 of this Undertaking or Schedule to this Undertaking as amended or replaced from time to time;
- (xvi) a reference to Volume 2 of this Undertaking:
 - (A) includes Volume 2 of this Undertaking as amended or replaced from time to time in accordance with the Act or this Undertaking; and
 - (B) for the avoidance of doubt, is a reference to the most recent new version of Volume 2 of this Undertaking published by QR Network in accordance with Clause 5.2(g)(iii) from time to time;
- (xvii) in a Schedule to this Undertaking, a reference to:
 - (A) a Part or Clause, is a reference to a Part or Clause of that Schedule unless otherwise stated; and
 - (B) a Part or Clause of this Undertaking, is a reference to a Part or Clause found in Part 1 to Part 12 of this Undertaking;
- (xviii) a reference to this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;

- (xix) a reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (xx) if there is any inconsistency between matters contained in a Schedule or Part 1 and Part 2 to Part 12 of this Undertaking, the provisions in Part 2 to Part 12 of the Undertaking prevail.
- (xxi) QR Network may be taken to have engaged in conduct for a purpose referred to in Clause 6.1.3 even though, after all the evidence has been considered, the existence of the relevant purpose is ascertainable only by inference from the conduct of QR Network or other relevant circumstances;
- (xxii) where in this Undertaking QR Network is prohibited from engaging in conduct for the purpose of preventing or hindering Access, QR Network will be taken to have engaged in such conduct if, having regard to the criteria set out in Clause 12.2(a)(xxiii), QR Network provides or proposes to provide Access to a Related Operator on more favourable terms than the terms on which QR Network provides Access to a competing Third Party Access Holder, or proposes to provide Access to a competing Third Party Access Seeker; and
- (xxiii) for Clause 12.2(a)(xxii), the criteria are the terms, taken as a whole, on which QR Network provides or proposes to provide Access to a Related Operator and the competitor having regard, in particular, to:
 - (A) the Access Charge to be paid by the Related Operator and the competitor; and
 - (B) the nature and quality of the Access provided or proposed to be provided to the Related Operator and the competitor.
- (b) To the extent that QR Network's obligations under this Undertaking are or become inconsistent with QR Network's obligations under any Law, this Undertaking does not apply to the extent of that inconsistency.
- (c) If this Undertaking obliges QR Network to provide any information, reports, documents or other material (in whatever form) ("Information") to the QCA or any other person (including an Auditor) then, notwithstanding any other provision in this Undertaking, QR Network is not required to comply with that obligation if QR Network claims:
 - (i) on the ground of self incrimination a privilege QR Network would be entitled to claim against providing the Information were QR Network a witness in a prosecution for an offence in the Supreme Court; or
 - (ii) that legal professional privilege applies in respect of that Information.But if the QR Network does not comply with an obligation on that basis, QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.
- (d) Notwithstanding any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that QR Network may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).

12.3 NOTICES

- (a) Subject to Clause 12.3(b), where this Undertaking requires a notice or document be given to a person, the notice or document will be given:
- (i) when the notice or document is personally delivered to the person;
 - (ii) where the person is a body corporate, when the person has been served in the way provided for the service of documents under the Corporations Act or another applicable law;
 - (iii) if the notice or document is posted, on the earliest of the following:
 - (A) where the notice is an Acknowledgement Notice, on the date the notice is posted;
 - (B) where the notice (other than an Acknowledgement Notice) is posted within Australia to an Australian address, three (3) Business Days after posting; or
 - (C) in any other case, ten (10) Business Days after posting; or
 - (iv) if the notice is sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee (and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report).
- (b) If a notice or document is given:
- (i) after 5:00 pm in the place of receipt; or
 - (ii) on a day which is a not a Business Day in the place of receipt,
- then it will be deemed to have been given at 9:00 am on the next day which is a Business Day in the place of receipt.

12.4 TRANSITIONAL PROVISIONS

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever ("Matter") done, agreed, arising, given, received, undertaken, commenced or established ("Done") or deemed to be Done under the 2008 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.
- (b) For the purposes of this Undertaking, the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) of the 2008 Undertaking is deemed to be the date when the Internal Access Agreement (as defined under the 2008 Undertaking) it replaced was put in place.
- (c) If this Undertaking requires QR Network to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:
- (i) the relevant report will include information in respect of the period prior to the Approval Date; and
 - (ii) QR Network is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the 2008 Undertaking in respect of that same type of report.

- (d) If the Approval Date is the first day of a Quarter, then QR Network will report on the last Quarter prior to the Approval Date in accordance with the requirements of the 2008 Undertaking.
- (e) If the Approval Date is the first day of a Year, then QR Network will report on the prior Year in accordance with the requirements of the 2008 Undertaking.
- (f) QR Network must calculate the relevant adjustment of 2nd Year System Allowable Revenue in accordance with this Undertaking for the whole of the 2009/2010 Year, provided that if the Approval Date is after the date by which QR Network would have been obliged:
 - (i) to submit Revenue Adjustment Amounts to the QCA for the 2009/2010 Year; or
 - (ii) to calculate the relevant adjustment of 2nd Year System Allowable Revenue for the 2009/2010 Year,then QR Network will comply with those obligations as soon as reasonably practicable after the Approval Date.
- (g) For the purposes of Clause 3.1.1(a), Part B of Schedule F a reference to an adjustment of 2nd Year System Allowable Revenue in accordance with Clause 3.4 includes an adjustment calculated under Clause 12.4(f).

12.5 APPLICATION OF UNDERTAKING AFTER RESTRUCTURE

12.5.1 Background to proposed restructure

- (a) The State has indicated that QR Network is intended to be restructured (as part of a wider restructure of the QR corporate group) so that part of the Rail Infrastructure for which QR Network is the Railway Manager (“Transferred Infrastructure”) is transferred to QR Passenger (which will no longer be a QR Party but will instead be constituted as a government owned corporation known as Queensland Rail Limited). The restructure is intended to principally occur through the publication of transfer notices and/or the giving of project directions in accordance with the IIARD Act.
- (b) After the restructure of QR Network:
 - (i) the State intends to dispose of all or part of its interest in QR; and
 - (ii) QR Network is intended to remain part of the QR corporate group.

12.5.2 Application of Undertaking after approval of QR Passenger’s access undertaking

- (a) Notwithstanding any other provision of this Undertaking (and subject to the provisions of any relevant transfer notice or project direction published or given in accordance with the IIARD Act), on and from the date (“Transition Date”) that an access undertaking that applies only to QR Passenger and that relates to any of the Transferred Infrastructure is first approved by the QCA after the restructure referred to in Clause 12.5.1(a) (being the date of expiry of the period referred to in paragraph (b) of the definition of “Rail Infrastructure”), this Undertaking takes effect in respect of QR Network as follows:
 - (i) this Undertaking does not apply to QR Network in respect of or in connection with the Transferred Infrastructure; and

- (ii) without limitation to Clause 12.5.2(a)(i):
 - (A) Financial Statements prepared in accordance with Clause 3.2.1(a) by QR Network are not required to separately identify the Central Queensland Coal Region from the rest of the network;
 - (B) Clause 3.7.1(b) only applies to QR Network in such a way as to require it to review and amend the Line Diagrams to reflect changes that have been made to the configuration or ownership of Rail Infrastructure;
 - (C) any reference to the Line Diagrams in this Undertaking is a reference to a diagrammatical representation identifying:
 - (1) the configuration of the Rail Infrastructure and associated parts of the rail network used for the predominant purpose of loading, unloading or otherwise relating to the operation of Trains; and
 - (2) whether those parts of the rail network are managed by QR Network, a Related Operator or any other person;
 - (D) the provisions of this Undertaking do not apply to QR Network to the extent that those provisions relate or refer to Part C of Schedule F; and
 - (E) notwithstanding any other provision in this Undertaking, QR Network does not fail to comply with this Undertaking if it discloses Confidential Information to QR Passenger in respect of or in connection with the Transferred Infrastructure and nothing in this Undertaking restricts or prevents QR Network from doing so.
- (b) For the avoidance of doubt, if QR Network is required to do or not to do anything in accordance with a transfer notice or a project direction published or given in accordance with the IIARD Act and this Undertaking is inconsistent with QR Network doing or not doing that thing, then this Undertaking does not apply to the extent of that inconsistency.