

Submission draft
22 December 2010

QR Network Pty Ltd

[Name of Funder]

User Funding – Participation Agreement

*[insert Extension
name]*

Contents

1	Interpretation	4
1.1	Definitions	4
1.2	Interpretation	8
2	Term	10
3	Payment of Monthly Distributions	10
3.1	Monthly Invoice	10
3.2	Supporting information	10
3.3	Payment of Monthly Invoice	10
3.4	Interest on overdue payments	10
3.5	Disputes	10
3.6	Correction of errors	11
3.7	QR Network's right of set off	12
3.8	Method of payment	12
4	Calculation of Monthly Distribution	12
4.1	Objective	12
4.2	Calculation Methodology	12
4.3	Calculation of Monthly Distribution	12
4.4	Variations to Calculation Methodology	13
4.5	Good faith negotiations	13
4.6	Determination of Calculation Dispute	13
5	Outstanding amounts under Construction Agreement	14
5.1	QR Network's right of deduction	14
5.2	When QR Network can exercise right of deduction	14
5.3	Statement of CA Outstanding Amounts	15
5.4	Disputes about CA Outstanding Amounts	15
6	Records and auditing	16
6.1	Keeping of records	16
6.2	Audit	16
7	Force majeure	17
8	Funder's risks	17
8.1	Acknowledgement	17
8.2	No liability	18
9	Limitation of liability	18
9.1	Exclusion of Consequential Loss	18
9.2	Claims against QR Network	18
9.3	Survival	18
10	Termination	18
10.1	Termination of Construction Agreement	18
10.2	No other rights of termination	18

10.3	Effect of termination	19
11	Disputes	19
11.1	Notification of Disputes	19
11.2	Expert determination	19
11.3	Parties to assist Expert	20
11.4	Decision of Expert	20
11.5	Costs	20
11.6	Determination by Court	21
11.7	Injunctive relief	21
11.8	Disputes involving Other Funders	21
11.9	Warranty and acknowledgement	22
12	Confidentiality	22
12.1	Confidentiality obligations	22
12.2	Disclosure of Confidential Information	22
13	GST	23
13.1	Construction	23
13.2	Consideration GST exclusive	23
13.3	Payment of GST	23
13.4	Timing of GST payment	24
13.5	Tax invoice	24
13.6	Adjustment event	24
13.7	Reimbursements	24
13.8	Recipient created tax invoices	24
13.9	Acknowledgment	25
14	Assignment	25
14.1	Assignment	25
14.2	Assignment by QR Network	25
14.3	Assignment by Funder before last Available Date	26
14.4	Charges	26
15	Notices	26
15.1	General	26
15.2	How to give a Notice	26
15.3	Particulars for giving of Notices	26
15.4	Notices by post	26
15.5	Notices by fax	27
15.6	After hours Notices	27
15.7	Process service	27
16	Representations and warranties	27
17	General	28
17.1	Survival	28
17.2	Applicable law	28
17.3	Waiver	28
17.4	Duty	28

17.5	Legal costs	28
17.6	Amendments to be in writing	28
17.7	Rights cumulative	29
17.8	Consents	29
17.9	Further assistance	29
17.10	Counterparts	29
17.11	Entire understanding	29
17.12	Relationship of Parties	29
17.13	Severability	29
17.14	Survival of representations and warranties	30
17.15	Enurement	30
17.16	Merger	30
17.17	Powers of attorney	30
18	JV Participants and liability	30
18.1	Warranty	30
18.2	JV Participants and percentage interests	30
18.3	Liability of JV Participants	30
	Schedule 1 – Agreement details	33
	Schedule 2 – Monthly Distribution	36

Date

Parties

QR Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1,
305 Edward Street, Brisbane, Queensland (**QR Network**)

[Insert] ABN [insert] of [insert] [as agent for and on behalf of the JV
Participants in the Joint Venture] (**Funder**)

Background

- A QR Network and the Customer have entered into the Construction Agreement on or about the same date as this Agreement under which:
- (a) QR Network will:
 - (i) design, procure, construct and commission each of the Customer's Segments for the Customer; and
 - (ii) enter into an access agreement with the Customer or its nominated railway operator (as applicable); and
 - (b) the Customer will pay to QR Network an agreed portion of the costs and expenses incurred by QR Network in designing, procuring, constructing and commissioning the Customer's Segments and a construction incentive payment,
- in accordance with the terms of the Construction Agreement.
- B QR Network agrees to pay Monthly Distributions (subject to permitted deductions) to the Funder in accordance with the terms of this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Access Undertaking means QR Network's rail access undertaking approved by the QCA from time to time.

Agreement means this Agreement, including any **schedules**.

Assigning Party has the meaning given in **clause 14.1(a)**.

Audits has the meaning given in **clause 6.2(a)**.

Auditor has the meaning given in **clause 6.2(a)**.

Available has the meaning given in the Construction Agreement.

Available Date has the meaning given in the Construction Agreement.

Business Day means a day that is not a Saturday, Sunday or bank or public holiday in Brisbane.

CA Dispute Resolution Process means the dispute resolution process under the Construction Agreement.

CA Outstanding Amount means any:

- (a) debt or other money which is due and payable by the Customer to QR Network; and
- (b) claim to any money which QR Network may have against the Customer (whether damages or otherwise),

under or in connection with the Construction Agreement.

Calculation Methodology has the meaning given in **clause 4.2**.

Calculation Methodology Dispute has the meaning given in **clause 4.6(a)(i)**.

Charge has the meaning given in **clause 14.4**.

Chargee has the meaning given in **clause 14.4**.

Chargor has the meaning given in **clause 14.4**.

Claim includes any claim, action, proceeding, suit, demand, damage, loss or liability.

Commencement Date means the date on which this Agreement is executed by QR Network.

[Drafting Note: QR Network will require the Customer/Funder and each Other Customer/Funder to provide executed copies of the User Funding – Construction Agreements and the User Funding - Participation Agreements to QR Network. QR Network will execute all of those documents on the same day so that they will all have the same Commencement Date.]

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement; and
- (b) information disclosed (whether before or after the date of this Agreement) by, or on behalf of, the Disclosing Party to the Recipient which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;

- (iii) the Recipient knows or ought to know is confidential or commercially sensitive; or
- (iv) relates to the business, operations or financial affairs of the Disclosing Party, or a Related Body Corporate of it,

but does not include information which:

- (v) is or becomes public knowledge other than by breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information;
- (vi) is in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (vii) has been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e) and (f)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any claim in tort;
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any claim by a third party,

but does not include:

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

Construction Agreement means the agreement entitled “*User Funding – Construction Agreement: [insert Extension name]*” entered into between QR Network and the Customer in respect of the Extension on or about the Commencement Date.

Customer means the party that is the “Customer” under the Construction Agreement (who, as at the Commencement Date, is the Funder).

Customer’s Segment means each Segment which is a “Customer’s Segment” as defined in the Construction Agreement.

Disclosing Party has the meaning give in **clause 12.1(a)**.

Dispute has the meaning given in **clause 11.1(a)**.

Dispute Notice has the meaning given in **clause 11.1(a)**.

Distribution End Date means the last day of the month during which QR Network ceases to earn regulated revenue attributable to any part of the Extension (other than land) which forms part of a Customer's Segment.

Distribution Period means the period commencing on the Distribution Start Date and ending on the Distribution End Date.

Distribution Start Date means the first day of the month during which QR Network first earns regulated revenue attributable to any part of the Extension which forms part of a Customer's Segment.

Expert has the meaning given in **clause 11.1(a)**.

Extension has the meaning given in the Construction Agreement.

Financial Obligation means any obligation of a Party to pay, or cause to be paid, an amount of money, including damages for a breach of this Agreement.

[Drafting note: Optional definition to be included if the Funder is a Joint Venture.]

Force Majeure Event in respect of QR Network means any event or circumstance:

- (a) which is beyond the reasonable control of QR Network;
- (b) the effects of which could not, by the exercise of reasonable diligence by QR Network, have been avoided; and
- (c) which affects the ability of QR Network to observe and perform its obligations under this Agreement.

Interest Rate means, for any day in a calendar month, the annual interest rate that is the sum of:

- (a) 7%; and
- (b) the interest rate for 30 day bank accepted bills (Source: AFMA, Mnemonic: FIRMMBAB30D) as published or quoted by the Reserve Bank of Australia for the last trading day of the previous calendar month (or in the event that such a rate is not so published or quoted at or in respect of any relevant date, such other similar rate agreed by the Parties or, failing agreement, as determined by an Expert under **clause 11.2**).

Joint Venture means the unincorporated joint venture between the JV Participants specified in **item 2.1 of schedule 1**. [Drafting note: Optional definition to be included if the Funder is a Joint Venture.]

JV Participants means the entities specified in **item 2.2 of schedule 1**. [Drafting note: Optional definition to be included if the Funder is a Joint Venture.]

Monthly Distribution for a calendar month means the amount calculated in accordance with the Calculation Methodology for that month.

Monthly Invoice has the meaning given in **clause 3.1**.

Non-Assigning Party has the meaning given in **clause 14.1(a)**.

Notice has the meaning given in **clause 15.1**.

Objective has the meaning given in **clause 4.1**.

Other Funder means a party which is the “Funder” under an Other Participation Agreement.

Other Participation Agreement means an agreement titled “*User Funding – Participation Agreement: [insert Extension name]*” entered into between QR Network and another party (or other parties) in respect of the Extension on the Commencement Date.

Parties means collectively QR Network and the Funder, and **Party** means one of them.

Proceedings has the meaning given in **clause 11.6(a)**.

Proposed Assignee has the meaning given in **clause 14.1(a)**

QCA means the Queensland Competition Authority established pursuant to the QCA Act, or any body that may from time to time replace, or take over the functions of, the Queensland Competition Authority in respect of the economic regulation of QR Network’s central Queensland coal railway network.

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

Recipient has the meaning given in **clause 12.1**.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Segment has the meaning given in the Construction Agreement.

Sensitive Information means:

- (a) any information of QR Network about its revenues from, or pricing or access provision to, any aggregation of access customers that may permit a recipient of that aggregate information to infer the approximate levels of revenue from, pricing or access provision to any individual access customer; and
- (b) any information about an individual access customer that QR Network is under a contractual or other obligation (including an equitable obligation of confidence) not to disclose.

State means the State of Queensland.

Variation Notice has the meaning given in **clause 4.4**.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;

- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules.
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement; and
- (k) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
 - (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, will continue until the Distribution End Date.

3 Payment of Monthly Distributions

3.1 Monthly Invoice

Within 10 Business Days after the end of each calendar month during the Distribution Period, QR Network must give the Funder a recipient created tax invoice (**Monthly Invoice**) setting out:

- (a) the Monthly Distribution for that month;
- (b) the amounts, if any, which QR Network is entitled to deduct under **clause 5.1(a)** as at the end of that month; and
- (c) the total invoice amount being the amount referred to in **clause 3.1(a)** less, if applicable, the amounts referred to in **clause 3.1(b)**.

3.2 Supporting information

Each Monthly Invoice given by QR Network to the Funder under **clause 3.1** must be accompanied by reasonable details of the calculation of the amounts specified in the Monthly Invoice.

3.3 Payment of Monthly Invoice

Subject to **clause 3.5**, at the time that QR Network gives the Funder a Monthly Invoice, QR Network must pay the total invoice amount specified in the Monthly Invoice to the Customer.

3.4 Interest on overdue payments

- (a) If for any reason a Party does not pay an amount payable under this Agreement on or before the due date for payment, it must pay interest to the other Party.
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.

3.5 Disputes

- (a) Subject to **clause 5.4**, if the Funder Disputes an amount claimed in a Monthly Invoice, the Funder may give QR Network a Dispute Notice under **clause 11.1**.

- (b) Upon resolution of a Dispute referred to in **clause 3.5(a)**, if the amount payable under the relevant Monthly Invoice as agreed or determined under the Dispute resolution process is:
 - (i) more than the amount that was paid by QR Network under the Monthly Invoice, then, within five Business Days after the date of the resolution of the Dispute, QR Network must:
 - (A) give the Funder a further recipient created tax invoice or adjustment note (as applicable) for the amount of the difference, together with interest on that amount calculated in accordance with **clause 3.3** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount in Dispute would have been due and payable but for the Dispute); and
 - (B) pay the amount referred to in **clause 3.5(b)(i)(A)** to the Funder; or
 - (ii) less than the amount that was paid by QR Network under the Monthly Invoice, then, within five Business Days after the date of the resolution of the Dispute:
 - (A) the Funder must pay the amount of the difference, together with interest on that amount calculated in accordance with **clause 3.4** (provided that for the purpose of calculating the interest, the amount of the difference will be deemed to be a payment due and payable by the Funder to QR Network and the due date for payment will be deemed to be the date when the amount payable under the Monthly Invoice was paid by QR Network); and
 - (B) **[Drafting Note: Provide for invoice/adjustment note (if any) to be given].**

3.6 Correction of errors

Despite QR Network's payment of a Monthly Invoice, if, at any time, an error (resulting in an underpayment or overpayment) is discovered by QR Network in the Monthly Invoice:

- (a) if the error results in an underpayment, QR Network must, within five Business Days after the error is discovered:
 - (i) give the Funder a further recipient created tax invoice or adjustment note (as applicable) for the amount of the underpayment, together with interest on that amount calculated in accordance with **clause 3.4** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount of the underpayment would have been due and payable but for the error); and
 - (ii) pay the amount referred to in **clause 3.6(a)(i)** to the Funder; or
- (b) if the error results in an overpayment:

- (i) QR Network may, within five Business Days after the error is discovered, notify the Funder of the amount of the overpayment;
- (ii) the Funder must, within five Business Days after being given a notice under **clause 3.6(b)(i)**, pay the amount of the overpayment to QR Network, together with interest on that amount calculated in accordance with **clause 3.4** (provided that for the purpose of calculating the interest, the amount of the overpayment will be deemed to be a payment due and payable by the Funder to QR Network and the due date for payment will be deemed to be the date when the relevant Monthly Invoice was paid by QR Network).

3.7 QR Network's right of set off

QR Network may deduct from any amounts which are due and payable by QR Network to the Funder under this Agreement any amounts which are due and payable by the Funder to QR Network under this Agreement.

3.8 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 3.7**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

4 Calculation of Monthly Distribution

4.1 Objective

The Parties agree that the amount of the monthly distribution payable by QR Network to the Funder under this Agreement is intended to be calculated so as to achieve the objective set out in **schedule 2 (Objective)**.

4.2 Calculation Methodology

The Parties acknowledge and agree that the methodology set out in **schedule 3 (Calculation Methodology)** for calculating the amount of the monthly distributions payable by QR Network to the Funder under this Agreement as at the Commencement Date achieves the Objective as at the Commencement Date.

4.3 Calculation of Monthly Distribution

The Monthly Distribution for a month will be the amount calculated in accordance with the Calculation Methodology (as varied from time to time under this **clause 4**).

4.4 Variations to Calculation Methodology

If, at any time, a Party considers, acting reasonably, that the Calculation Methodology at that time fails, or will in the future fail, to achieve the Objective for any reason then that Party may give a notice (**Variation Notice**) to the other Party:

- (a) specifying how the Calculation Methodology fails, or will fail, to achieve the Objective;
- (b) requesting that the Calculation Methodology be varied, to the extent necessary, so that the Calculation Methodology achieves, or will achieve, the Objective; and
- (c) setting out the Party's proposed variations to the Calculation Methodology.

4.5 Good faith negotiations

- (a) If a Party gives a Variation Notice, the Parties must promptly (and in any event within ten Business Days) negotiate in good faith to endeavour to agree in writing the variations to the Calculation Methodology, to the extent necessary, so that the Calculation Methodology achieves, or will achieve, the Objective.
- (b) For the purposes of the negotiations referred to in **clause 4.5(a)**, the Parties must:
 - (i) act fairly, reasonably and honestly;
 - (ii) work together and co-operate with each other; and
 - (iii) meet regularly with each other or as otherwise reasonably required by either of them.

4.6 Determination of Calculation Dispute

- (a) If, within one month after a Party gives a Variation Notice to the other Party, the Parties have not agreed on variations to the Calculation Methodology:
 - (i) a Dispute (**Calculation Methodology Dispute**) will be taken to exist between the Parties; and
 - (ii) either Party may refer the Calculation Methodology Dispute to an Expert for determination under **clause 11**.
- (b) Subject to **clause 4.6(c)**, the Parties must jointly appoint the QCA as the Expert to determine the Calculation Methodology Dispute.
- (c) If:
 - (i) the QCA does not accept the appointment as the Expert to determine the Calculation Methodology Dispute; or
 - (ii) the Parties agree to have the Calculation Methodology Dispute determined by an Expert other than the QCA,

then the Calculation Methodology Dispute will be determined by an Expert appointed in accordance with **clause 11.2**.

- (d) If a Calculation Methodology Dispute is referred to an Expert other than the QCA for determination, the Expert must apply the principles which they consider would be applied by the QCA if it were appointed as the Expert to determine the Calculation Methodology Dispute.
- (e) Unless otherwise agreed between the Parties, in determining a Calculation Methodology Dispute, the Expert (whether or not the QCA) must determine:
 - (i) the extent to which the Calculation Methodology fails, or will in the future fail, to achieve the Objective; and
 - (ii) the variations to the Calculation Methodology (if any) required so that the Calculation Methodology (once varied) will achieve the Objective.
- (f) If the Expert determines any variations to the Calculation Methodology in accordance with **clause 4.6(e)**, the Calculation Methodology will be taken to be varied as determined by the Expert:
 - (i) if the Calculation Methodology Dispute is about the Calculation Methodology failing to achieve the Objective in the future – on the date that the Calculation Methodology would, but for the variations, fail to achieve the Objective in the future; or
 - (ii) otherwise - on the date that the Expert notifies the Parties of the Expert's determination.

5 Outstanding amounts under Construction Agreement

5.1 QR Network's right of deduction

- (a) Subject to **clause 5.2**, QR Network may deduct from any amounts which are due and payable by QR Network to the Funder under this Agreement all or part of any CA Outstanding Amounts.
- (b) If QR Network exercises its right of deduction under **clause 5.1(a)**:
 - (i) QR Network must notify the Customer of the deduction; and
 - (ii) the amount deducted will cease to be payable by the Customer to QR Network on the date of the deduction.

5.2 When QR Network can exercise right of deduction

QR Network must not exercise its right of deduction under **clause 5.1(a)** to the extent that:

- (a) if clause 16 of the Construction Agreement applies – QR Network can withdraw funds from the "Bank Account" (as defined in the Construction Agreement) under the Construction Agreement; or

- (b) otherwise – QR Network can draw on the “Bank Guarantee” (as defined in the Construction Agreement) given by the Customer under the Construction Agreement,

to satisfy the CA Outstanding Amount.

5.3 Statement of CA Outstanding Amounts

If, at the end of a calendar month during the Distribution Period, there are any CA Outstanding Amounts, QR Network must, within ten Business Days after the end of that month, give the Funder a statement setting out all CA Outstanding Amounts as at the end of that month.

5.4 Disputes about CA Outstanding Amounts

- (a) The Funder is barred from raising a Dispute under this Agreement in respect of whether an amount which is alleged by QR Network to be a CA Outstanding Amount is or was (as applicable) a CA Outstanding Amount to the extent that the Customer has already disputed, could have disputed, or remains entitled to dispute, under the CA Dispute Resolution Process, whether the amount is or was (as applicable) a CA Outstanding Amount.
- (b) If after QR Network exercises its right of deduction under **clause 5.1(a)**:
 - (i) the Customer disputes, under the CA Dispute Resolution Process, whether an amount which was alleged by QR Network to be a CA Outstanding Amount as at the time of the deduction was a CA Outstanding Amount as at that time;
 - (ii) it is agreed or determined under the CA Dispute Resolution Process that some or all of the amount which was alleged by QR Network to be a CA Outstanding Amount as at the time of the deduction was not a CA Outstanding Amount as at that time; and
 - (iii) the amount deducted by QR Network was more than the total CA Outstanding Amounts (for the avoidance of doubt, excluding the amount which was agreed or determined under the CA Dispute Resolution Process not to be a CA Outstanding Amount), as at the time of the deduction,

then QR Network must, within five Business Days after the resolution of the CA Dispute Resolution Process:

- (iv) give the Funder a recipient created tax invoice or adjustment note (as applicable) for the amount of the difference, together with interest on that amount calculated in accordance with **clause 3.3** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount of the difference was deducted by QR Network); and
- (v) pay the amount referred to in **clause 5.4(b)(iv)** to the Funder.

6 Records and auditing

6.1 Keeping of records

- (a) QR Network must maintain complete records of and relating to all matters necessary to enable the calculation of the amounts payable to the Funder under this Agreement.
- (b) QR Network must preserve and maintain the records referred to in **clause 6.1(a)** for a period of not less than one year following the Distribution End Date.

6.2 Audit

- (a) Subject to **clause 6.2(b)**, the Funder may appoint an independent auditor nominated by it and approved by QR Network (such approval not to be unreasonably withheld or delayed) (**Auditor**) to carry out audits in order to verify the amounts included in Monthly Invoices given to the Funder under this Agreement (**Audits**).
- (b) The Funder acknowledges and agrees that:
 - (i) the Customer has rights under the Construction Agreement to carry out audits under the Construction Agreement to verify whether an amount alleged by QR Network to be a CA Outstanding Amount is a CA Outstanding Amount;
 - (ii) the Customer has rights under the Construction Agreement to dispute under the CA Dispute Resolution Process whether an amount alleged by QR Network to be a CA Outstanding Amount is a CA Outstanding Amount; and
 - (iii) the right of audit under **clause 6.2(a)** does not extend to carrying out audits to verify whether an amount alleged by QR Network to be a CA Outstanding Amount is or was (as applicable) a CA Outstanding Amount.
- (c) The costs and expenses of an Auditor must be borne solely by the Funder.
- (d) Prior to undertaking its first Audit, the Funder must ensure that the Auditor provides QR Network with a signed confidentiality undertaking from the Auditor in favour of QR Network in a form acceptable to QR Network (acting reasonably).
- (e) Upon at least ten Business Days prior written request given by the Funder (not more than once each year of this Agreement), QR Network must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of QR Network relevant to an Audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.

- (f) The Parties acknowledge and agree that the Auditor will only be entitled to disclose to the Funder:
 - (i) whether or not the Auditor verified the amounts included in Monthly Invoices given by QR Network to the Funder; and
 - (ii) information obtained by the Auditor in carrying out an Audit to the extent that the Funder requires access to that information for the purpose of resolving a Dispute.

7 Force majeure

- (a) If QR Network is prevented or hindered by a Force Majeure Event from fully or partly performing any obligation (except for the payment of money) under this Agreement, then QR Network will be excused from performing that obligation for the period that QR Network is so prevented or hindered.
- (b) Upon the occurrence of any Force Majeure Event which prevents or hinders QR Network from fully or partly performing any obligation under this Agreement, QR Network must:
 - (i) give written notice of the event to the Funder as soon as reasonably practicable;
 - (ii) use all reasonable endeavors to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement; and
 - (iii) resume full performance of its obligations under this Agreement as soon as reasonably practicable, and notify the Funder when it does so.

8 Funder's risks

8.1 Acknowledgement

The Funder acknowledges and accepts that:

- (a) its right to payments under this Agreement and the quantum of those payments is determined (in part) by QR Network's revenue from each mainline system to which the Extension relates;
- (b) QR Network's revenue from each of those systems is dependent on various known and unknown risks, uncertainties and other factors (some of which are within, and some of which are beyond, QR Network's control); and
- (c) those risks, uncertainties and other factors may cause QR Network's actual revenue, and the actual payments to the Funder under this Agreement, to differ from that expected by QR Network or the Funder.

8.2 No liability

QR Network will have no liability to the Funder, and the Funder will not be entitled to make any Claim against QR Network, arising out of or in connection with the size, timing or nature of QR Network's revenue from each mainline system to which the Extension relates or the size or timing of the distributions to the Customer under this Agreement.

9 Limitation of liability

9.1 Exclusion of Consequential Loss

Despite any other provision of this Agreement, neither Party will be liable to the other for any Consequential Loss suffered by or claimed against that other Party.

9.2 Claims against QR Network

The Funder will not have, and must not make, any Claim against QR Network in relation to or arising out of the entry into or the performance or non-performance of this Agreement unless the Funder first provides QR Network with a written notice of the purported claim and allows QR Network a reasonable period to rectify the relevant default and QR Network fails to rectify it within that reasonable period.

9.3 Survival

This **clause 9** will survive the termination of this Agreement.

10 Termination

10.1 Termination of Construction Agreement

- (a) This Agreement will automatically terminate (without the need for either Party to give notice to the other Party) if the Construction Agreement:
 - (i) terminates under clause **[9.3]** of the Construction Agreement; or
 - (ii) is terminated by QR Network under clauses **[9.5]** or **[9.6]** of the Construction Agreement.
- (b) If this Agreement terminates under **clause 10.1(a)**, neither Party will have any liability to the other Party in connection with this Agreement or its termination.

10.2 No other rights of termination

- (a) Despite any rule of law or equity to the contrary, neither Party may terminate, rescind or treat as repudiated this Agreement other than as expressly provided for in this Agreement.
- (b) For the avoidance of doubt, except as provided in **clause 10.1(a)**, this Agreement will not terminate, and neither Party will be entitled to

terminate this Agreement, in the event of the expiration or termination for any reason of the Construction Agreement.

10.3 Effect of termination

Nothing in this **clause 10** prejudices in any way a Party's right to claim and recover any damages for any breach of this Agreement by the other Party.

11 Disputes

11.1 Notification of Disputes

- (a) Subject to **clause 11.8**, if any claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, any Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution by an expert (**Expert**) in accordance with **clause 11.2**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 11**.

11.2 Expert determination

Where any matter is referred to an Expert pursuant to **clause 11.1** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 11.2** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;
 - (iii) not be an employee of the Funder or QR Network or a Related Body Corporate of either Party;
 - (iv) not be permitted to act until he or she has given written notice to both Parties that he or she is willing and able to accept the appointment;

- (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide both Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;
 - (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and
 - (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including, without limitation, the *Commercial Arbitration Act 1990* (Qld) as amended, will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (c) if the determination of a matter referred to the Expert would require the Expert to be provided with any Sensitive Information, the Expert must enter into a confidentiality agreement with QR Network requiring the Expert to keep the Sensitive Information confidential (including from the Funder).

11.3 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

11.4 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

11.5 Costs

- (a) The Funder must:
- (i) pay the costs of the Expert and any advisers engaged by the Expert in relation to a Dispute; and
 - (ii) pay to QR Network promptly upon demand any legal and other costs borne by QR Network in relation to the Dispute,
- unless the Expert determines that the position which QR Network had taken in relation to the Dispute was unreasonable, in which case:
- (iii) the costs of the Expert and any advisers engaged by the Expert in relation to the Dispute will be borne equally by the Parties; and
 - (iv) QR Network will bear its own legal and other costs in relation to the Dispute.

- (b) The Funder will bear its own legal costs and other costs in relation to a Dispute.

11.6 Determination by Court

If any Dispute is not otherwise resolved in accordance with this **clause 11**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane, subject to the following:

- (a) the Parties irrevocably agree that the courts of the State are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts; and
- (b) each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

11.7 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

11.8 Disputes involving Other Funders

If QR Network is of the opinion that:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to one or more Other Funders under Other Participation Agreements; or
- (b) a "Dispute" (as defined under an Other Participation Agreement) which arises under the Other Participation Agreement, or the outcome or consequences of that Dispute, may be relevant to the Customer under this Agreement,

then:

- (c) QR Network may, as applicable, join:
 - (i) the relevant Other Funders to the dispute resolution process under this Agreement; or
 - (ii) the Funder to the dispute resolution process under the relevant Other Participation Agreement; and
- (d) QR Network, the Funder and each relevant Other Funder joined to the dispute resolution process under this Agreement or an Other Participation Agreement (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not the Funder and the relevant Other Funders (as applicable) choose to actively participate in the dispute resolution process.

11.9 Warranty and acknowledgement

QR Network warrants, and the Funder acknowledges, that each Other Distribution Agreement will contain a clause on substantially the same terms as this **clause 11**.

12 Confidentiality

12.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 12.2**.

12.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the rights or obligations of the Recipient under this Agreement who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
- (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;

- (ii) who are under a duty of confidentiality to the Recipient; and
- (iii) who have been advised of the confidential nature of the Confidential Information;
- (h) to any officers or employees of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
- (i) if, and to the extent, the Recipient is required to do so by law, any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
- (j) if disclosure is lawfully required by the QCA, or in accordance with the Access Undertaking; or
- (k) to an Auditor or Expert under this Agreement.

13 GST

13.1 Construction

In this **clause 13**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

13.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

13.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

13.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 13.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

13.5 Tax invoice

Subject to **clause 13.8**:

- (a) the Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 13.3**; and
- (b) the recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

13.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 13.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

13.7 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

13.8 Recipient created tax invoices

- (a) QR Network must issue recipient created tax invoices or adjustment notes (as applicable) to the Funder in respect of any supplies [for which amounts are payable by QR Network to the Funder under this Agreement].
- (b) The Funder will not issue tax invoices or adjustment notes (as applicable) in respect of any supplies referred to in **clause 13.8(a)**.
- (c) QR Network acknowledges that it is registered for GST at the time of executing this Agreement and that its Australian Business Number is as set out in this Agreement. QR Network will notify the Funder immediately if it ceases to be registered for GST or if it ceases to satisfy any one of the requirements which enables it to issue a recipient created tax invoice.
- (d) The Funder acknowledges that it is registered for GST at the time of executing this Agreement and that its Australian Business Number is as

set out in this Agreement. The Funder will notify QR Network immediately if it ceases to be registered for GST.

13.9 Acknowledgment

For the avoidance of doubt, the parties acknowledge and agree their understanding that the Monthly Distributions payable by QR Network under this Agreement are, for the purposes of the GST Act, consideration for a taxable supply made by the Funder to QR Network such that QR Network will be required to pay additional amounts on account of GST pursuant to **clause 13.3**.

14 Assignment

14.1 Assignment

- (a) Subject to **clauses 14.2, 14.3 and 14.4**, a Party [(and in the case of the Funder, a JV Participant in the Joint Venture)] (**Assigning Party**) must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or liabilities under this Agreement (or procure or permit any of those things) to any person (**Proposed Assignee**) without the prior written consent of the other Party (**Non-Assigning Party**).
- (b) Notwithstanding any other provision of this **clause 14.1**, an assignment or transfer by an Assigning Party of any of its rights or liabilities under this Agreement is conditional upon, and will only take effect upon, the execution by the Proposed Assignee and the Parties of a deed of novation in a form acceptable to the Non-Assigning Party (acting reasonably), the terms of which include agreement by the Proposed Assignee to be bound by and to perform the obligations of the Assigning Party under this Agreement.
- (c) Following an assignment or transfer by an Assigning Party of any of its rights or liabilities under this Agreement, the Assigning Party must, upon demand by the Non-Assigning Party, promptly pay to the Non-Assigning Party, its reasonable legal and other costs in connection with the proposed assignment or transfer (including the cost of preparing and executing the deed of novation), whether or not the proposed assignment or transfer receives consent or is completed.
- (d) An assignment or transfer in accordance with this **clause 14.1** does not operate to release the Assigning Party from any liability for any breach of this Agreement prior to the assignment or transfer (as applicable).

14.2 Assignment by QR Network

Where the Assigning Party is QR Network, the Assigning Party may assign or transfer all of its rights and liabilities under this Agreement to any person that becomes the owner of the Extension.

14.3 Assignment by Funder before last Available Date

Where the Assigning Party is the Funder [or JV Participant in a Joint Venture], the Assigning Party must not assign or transfer any of its rights or obligations under this Agreement before the Available Date for the last of the Customer's Segments to become Available unless the Assigning Party contemporaneously assigns and transfers to the Proposed Assignee all of the Assigning Party's rights and obligations under the Construction Agreement.

14.4 Charges

The Funder [or a JV Participant in the Joint Venture] (**Chargor**) may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the Chargor, the Chargee and QR Network execute any reasonable form of deed of covenant required by QR Network including terms to the effect that QR Network acknowledges the existence of the Charge, and that the Chargee will comply with this **clause 14** in the exercise of its rights under the Charge.

15 Notices

15.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

15.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the Party's current fax number for Notices.

15.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 1 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by notice to each other Party.

15.4 Notices by post

Subject to **clause 15.1**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or

- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting.

15.5 Notices by fax

Subject to **clause 15.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

15.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

15.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 15** or in accordance with any applicable law.

16 Representations and warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

17 General

17.1 Survival

This **clause 17** and **clauses [#]** and **[#]** survive the termination of this Agreement.

17.2 Applicable law

- (a) This Agreement will be governed by and construed in accordance with the laws applicable in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

17.3 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

17.4 Duty

- (a) As between the Parties, the Funder is liable for and must pay all duty (including any fine or penalty except where it arises from default by QR Network) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If QR Network pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Funder must pay that amount to QR Network on demand.

17.5 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.

17.6 Amendments to be in writing

An amendment or variation of this Agreement will only be effective if it is in writing and executed by all Parties to this Agreement.

17.7 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

17.8 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

17.9 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

17.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

17.11 Entire understanding

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

17.12 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

17.13 Severability

- (a) Subject to **clause 17.13(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 17.13(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or

- (B) relative commercial or financial positions of the Parties; or
- (ii) would be contrary to public policy.

17.14 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

17.15 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

17.16 Merger

The obligations contained in this Agreement will continue until satisfied in full.

17.17 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

18 JV Participants and liability

[Drafting note: Optional clause to be included if the Funder is a Joint Venture.]

18.1 Warranty

The Funder warrants that it enters into this Agreement as agent for the JV Participants in their respective percentage interests in the Joint Venture from time to time.

18.2 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified in writing by the Funder to QR Network from time to time.
- (b) As at the date of this Agreement, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 2.2 of schedule 1**.

18.3 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 18.3(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Agreement that are not Financial Obligations.

- (c) If a JV Participant is in default of a Financial Obligation, and the Funder has not given notice to QR Network identifying the defaulting JV Participant within five Business Days after the date of QR Network giving a notice to the Funder identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Funder under **clause 18.3(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.

Schedule 1

Agreement details

1 Particulars for Notices

1.1 Funder

Business address [insert]
Postal address [insert]
Facsimile No. [insert]
Attention: [insert]

1.2 QR Network

Business address Level 5
192 Ann Street
BRISBANE QLD 4000
Postal address GPO Box 456
BRISBANE QLD 4001
Facsimile No. (07) 3235 [3437]
Attention: Business General Manager, Network Development & Regulation

2 Funder

[Drafting Note: Optional item to be included if the Funder is a Joint Venture.]

2.1 Joint Venture

[insert name of Joint Venture]

2.2 JV Participants in Joint Venture

Name	Percentage interest
[insert]	[insert]
[insert]	[insert]
[insert]	[insert]

Schedule 2

Objective

[Drafting note: The Objective set out below is for consultation purposes and is subject to further review and refinement.]

The mutual objective of the Parties is that throughout the Distribution Period, the Monthly Distribution will be a share of the total revenue received by QR Network determined as detailed below. The calculation of the Monthly Distribution should always protect the legitimate business interests of QR Network.

The Customer's Proportions of each of the Customer's Segments are the "**Customer Financed Assets**".

The Customer Financed Assets will give rise to a component of the System Allowable Revenue attributable to the capital value recognised in the Regulatory Asset Base for the Customer Financed Assets.

A part of this component will be attributable to an operational and performance risk allowance which is to be retained by QR Network and the remainder represents an amount of revenue attributable to the funding of the Customer Financed Assets to be used in the determination of the Monthly Distribution. This amount can be split into an electric asset component and a non-electric asset component.

The total System Allowable Revenue for QR Network for the relevant coal system (in which the Customer Segments are located) will be determined as a part of the regulatory price setting. A share of this will be attributable to electric assets and operating costs and the remainder attributable to non-electric assets and costs.

Subject to the points below, the amount of revenue attributable to the funding of the Customer Financed Assets divided by the total System Allowable Revenue for QR Network for the relevant coal system represents the % share of total revenue received for the relevant coal system which will be payable as the Monthly Distribution. This will be determined separately for the electric and non-electric components. In the case of the non-electric components the amount relevant for the incremental operating cost/revenue (currently AT1) will be excluded from the denominator and the numerator.

The calculation above will be adjusted to take account of system revenue which is determined in relation to previous years. For example:

- (a) Where any year's revenue includes an amount for Revenue Adjustment Amounts, these shall be distributed in the share applicable to the year in which the adjustment is triggered;
- (b) Such distributions under (a) will be calculated separately for electric and non-electric components;

- (c) Where any year's revenue includes an amount for Adjustment Charges for previous years, these shall be distributed in the share applicable to the year in which the adjustment is triggered;
- (d) Such distributions under (c) will be calculated separately for electric and non-electric components.

Schedule 3

Calculation Methodology

[Drafting note: The Calculation Methodology set out below is for consultation purposes and is subject to further review and refinement.]

Determination of Monthly Distribution

For each mainline system upgraded by QR Network, the Monthly Distribution due to the Funder in respect of any month during the Distribution Period shall be

$[AID_t * (AT_{2-4} \text{ Distribution Pool})] +$

$[AID_{(t-2)} * AT_{2-4} RAA_{(t-2)}] +$

$[AIE_t * AT_5 \text{ Distribution Pool}] +$

$[AIE_{(t-2)} * AT_5 RAA_{(t-2)}] +$

$[AID_{(t-n)} * AC_{AT_{2-4}}] +$

$[AIE_{(t-n)} * AC_{AT_5}]$

The Monthly Distribution shall be subject to adjustment for

- (a) invoicing corrections for prior months that fall within the Distribution Period; and
- (b) bad debts in prior months that fall within the Distribution Period.

Definitions

$AC_{AT_{2-4}}$ means an amount that is an Adjustment Charge in relation to AT_{2-4} as set by the QCA for a previous Year.

AC_{AT_5} means an amount that is an Adjustment Charge in relation to AT_5 as set by the QCA for a previous Year.

Adjustment Charge has the meaning given to it in the [2010 Access Undertaking].

Applicable Interest – Diesel (or AID) means the greater of:

- (a) zero, and
- (b) $(X - Y) / Z$

where

X = the capital component of the System Allowable Revenue for AT_{2-4} attributable to the [Customer-financed assets],

Y = OPRA in relation to non-electric, and

Z = the total System Allowable Revenue (including the portion due to the [Customer-financed assets]) for AT_{2-4}

expressed as a percentage for any part or full Year that falls within the Distribution Period,

and shall be calculated at the commencement of that Year.

Applicable Interest – Electric (or AIE) means the greater of

(a) zero, and

(b) $(P - Q) / R$

where

P = the capital component of the System Allowable Revenue for AT₅ attributable to the [Customer-financed assets],

Q = OPRA in relation to electric, and

R = the total System Allowable Revenue (including the portion due to the [Customer-financed assets]) for AT₅

expressed as a percentage for any part or full Year that falls within the Distribution Period,

and shall be calculated at the commencement of that Year.

AT₂₋₄ has the meaning given to it in the [2010 Access Undertaking].

AT₂₋₄ Distribution Pool means AT₂₋₄ Invoiced Amount as adjusted in respect of any AT₂₋₄ RAA and AC_{AT2-4}.

AT₂₋₄ Invoiced Amount means, in respect of a month, the amount invoiced by QR Network in respect of AT₂₋₄ for that month.

AT₂₋₄ RAA means an AT₂₋₄ Revenue Adjustment Amount that is set by the QCA, to the extent that the amount applies in respect of the month for which the Monthly Distribution is to be calculated.

AT₂₋₄ Revenue Adjustment Amount has the meaning given to it in the [2010 Access Undertaking].

AT₅ has the meaning given to it in the [2010 Access Undertaking].

AT₅ Distribution Pool means AT₅ Invoiced Amount as adjusted in respect of any AT₅ RAA and AC_{AT5}.

AT₅ Invoiced Amount means, in respect of a month, the amount invoiced by QR Network in respect of AT₅ for that month.

AT₅ RAA means an AT₅ Revenue Adjustment Amount that is set by the QCA, to the extent that the amount applies in respect of the month for which the Monthly Distribution is to be calculated.

AT₅ Revenue Adjustment Amount has the meaning given to it in the [2010 Access Undertaking].

Distribution Period has the meaning given to it in this Agreement.

Monthly Distribution has the meaning given to it in this Agreement.

OPRA means the operational and performance risk allowance for QR-retained risks in respect of the operational phase of the lifecycle of the Customer-financed assets.

[Drafting note – OPRA will be addressed in the associated Draft Amending Access Undertaking]

Regulatory Asset Base has the meaning given to it in the [2010 Access Undertaking].

Revenue Adjustment Amount has the meaning given to it in the [2010 Access Undertaking].

System Allowable Revenue has the meaning given to it in the [2010 Access Undertaking].

[Drafting note: Further consideration needs to be given to address changes to System Allowable Revenue that occur during a Year.]

' t ' means, in relation to the AID or the AIE as applicable, the Year that includes the month in respect of which the current Monthly Distribution is determined.

' $t-n$ ' means, in relation to the AID (or the AIE), each Year to which the AC_{AT2-4} (or the AC_{AT5}) and in which the Funder had an AID.

' $t-2$ ' means, in relation to the AID, the AIE, the AT_{2-4} RAA or the AT_5 RAA as applicable, the Year prior to the Year that includes the month in respect of which the current Monthly Distribution is determined.

Year has the meaning given to it in the [2010 Access Undertaking].